SJ – n° 2153/Div.

Mr Fabrice Demarigny
Secretary General
Committee of European Securities Regulators (CESR)
11-13, Avenue de Friedland
75008 Paris

Paris, 11 September 2006

AFG RESPONSE TO CESR CONSULTATION REGARDING CESR WORK PROGRAMME ON MIFID LEVEL 3 WORK

Dear Mr Demarigny,

The Association Française de la Gestion financière (AFG)[1] welcomes CESR's consultation paper regarding CESR work programme on MiFID Level 3 work.

AFG wishes to congratulate CESR for all the work it has already carried out – for years now – in the context of the MiFID Directive. The final adoption of the Level 2 measures in due time (with terrible time constraints) and by unanimity of Member States and with the agreement of the European Parliament shows clearly the quality of the preparatory work of CESR through its technical advice.

[1] The Association Française de la Gestion financière (AFG)[1] represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. Our members include around 400 management companies and investment companies. They are entrepreneurial or belong to French or foreign banking, insurance or asset management groups. AFG members are managing around 2200 billion euros in the field of investment management - making in particular the French industry the leader in Europe in terms of financial management location for collective investments, with more than 1200 billion euros (i.e. 20% of EU investment funds assets under management) and the second at global level. In the field of collective investment, our industry includes – beside UCITS – the employee savings schemes funds and products such as regulated hedge funds and a significant part of private equity funds. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA).

Obviously the work for CESR on MiFID is not over. Level 3 will be a crucial step in ensuring that in practice regulators will find ways to converge. In this context the current CESR public consultation is very useful.

We have no specific comment to make at this stage on the whole list of topics identified by CESR in the annex of the document.

However, we have a general concern on the draft timing envisaged by CESR.

Many topics for our industry implying potentially *internal organisational changes* fall into the "*other areas of work*" category, with "*medium-high priority*".

The point is that the timetables proposed by CESR on those topics are either Q3 2007 or after Q2 2008.

But as Member States and regulators have to transpose Levels 1 and 2 by the end of January 2007, and as firms will have to comply with the transposed texts by 1 November 2007, we wonder how CESR could reasonably decide to start working in late 2006-beginning 2007 for establishing guidance on what should be applied by regulators: firms cannot wait for an advice by CESR in the second half of 2007, *as their processes have to be planned (and budgeted) well in advance of the November 2007 deadline*.

Therefore, rather than keeping this series of topics for Q3 2007, we would suggest three options to CESR:

- either to schedule deliveries of the related reports by end 2006 (in order to influence the way the related provisions will be transposed by regulators and consequently to be applied by firms) – but this timetable seems very tight;

- or to schedule the deliveries of such reports by end Q1 2007, i.e. right after the official deadline for transposition by Member States, to help firms in the way they will have to implement the provisions adopted at European and national levels. AFG wishes to recall that firms will be at legal risk after 1 November 2007 if they have not implemented the texts related to the MiFID. The crucial point is for professionals to know how CESR intends to analyse Levels 1 and 2, but taking into account the way regulators have *already* interpreted those texts in their national transposition. In other words, if it appeared that it is too late for CESR to provide for Level 3 guidance before national transposition (i.e. by the end of January 2007), then national transposition texts should be taken into account by CESR in its Level 3 work (even though in theory Level 3 should directly derive from Levels 1 and 2). Otherwise CESR's Level 3 guidance might conflict with already transposed texts and therefore generate significant issues – this timetable seems probably the best if we want to conciliate it with firms' one;

- or, if CESR is not able to deliver such reports by end Q1 2007, to wait until end 2008 for delivering guidance on these issues. Considering the costs and time which will have been already spent in 2007 by firms for implementing the transposition of Levels 1 and 2 as well as the Regulation, it should absolutely not be envisaged to ask them for changes in their policies and processes before 2009 at least. But this third option would it in any case more costly than the first or second option.

In the same way, on *issues related to cross-border activities*, such as the functioning of the passport and relationship between the home authority and the host authority, AFG considers that CESR reports on those issues should be issued fast as they will be the corner-stone of the functioning of the Internal Market through the MiFID. In our view, a short timeline (delivery: end 2006-Q1 2007) should be manageable by CESR as CESR has already a deep knowledge of such regulatory issues.

As a last comment, we wish to recall that initially, in the Lamfalussy Report, the comitology approach, including the Level 3 guidance, was considered as fitting better to Level 1 and 2 *Regulations* rather than Level 1 and 2 Directives. The MiFID case today shows clearly why: the management of the Level 3 timetable is very difficult to conciliate with Directives – as the work and timetable for national transposition might conflict with the CESR work and timetable for issuing guidance on Levels 1 and 2. It is one of the reasons why AFG favours Regulations as compared to Directives. We would be glad that CESR points to the European Commission this partial inconsistency of the Lamfalussy approach when applied to Directives.

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If you wish to discuss the contents of this letter with us, please contact myself on 00 33 1 44 94 94 14 (e-mail: p.bollon@afg.asso.fr), our Head of International Affairs Stéphane Janin on 00 33 1 44 94 94 04 (e-mail: s.janin@afg.asso.fr) or his deputy Catherine Jasserand on 00 33 1 44 94 96 58 (e-mail: c.jasserand@afg.asso.fr).

Yours sincerely,

(signed)

Pierre Bollon