European Fund and Asset Management Association

EFAMA's COMMENTS

ON THE 3L3 MEDIUM TERM WORK PROGRAMME

EFAMA[1] is grateful for the opportunity to comment on the *3L3 Medium Term Work Programme* issued by CESR, CEBS & CEIOPS in November 2007 as a Consultation Paper. We particularly welcome the 3L3 Committees' commitment for enhanced cross-sector collaboration. As we have already underlined on numerous occasions, the cross-sector activity of the 3L3 Committees is of utmost importance to the European investment management industry. As early as the 3L3 conference in 2005, EFAMA's President, Stefan Bichsel, underlined that investment management is cross-sectoral business for which a cross-sectoral approach is crucial. Without full consistency in cross-sectoral regulation and supervision there will be no Single Market for investment management.

In our comments on the *2nd Interim Report of the Inter-Institutional Monitoring Group*[2] we repeated this message by pointing out that a level playing field on the provision of competing financial services such as household savings products, which are structured in different legal formats and are therefore covered by different Level 3 Committees, can only be reached through cross-sector collaboration between Level 3 bodies. The same applies to savings for retirement.

Regarding the six key areas considered as priorities for the next three years, three are particularly relevant to the European investment management industry:

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1 [1] EFAMA is the representative association for the European investment management industry. Through its member associations from 20 EU Member States, Liechtenstein, Norway, Switzerland and Turkey, as well as its corporate members, EFAMA represented at end September 2007 over €16.5 trillion in assets under management, of which €8.2 trillion through over 46,000 investment funds. For more information, please visit www.efama.org.

2 April 2007, see: http://www.efama.org/55PositionPapers/82007/iimg

- A common 3L3 framework for cooperation between national authorities
- Developing 3L3 convergence of regulatory and supervisory practices in the field of competing products
- Capital modelling CRD and (Basel II) and Solvency II

A common 3L3 framework for cooperation between national authorities

In our statement on the *2nd Interim Report* we supported IIMG's view that European financial supervisors at national level clearly are mandated to protect and support the proper functioning of national financial markets but that a similar clear-cut mission statement is missing regarding the European market place. The Single Market for financial services/products can only function if national authorities are seriously committed to its development and functioning.

We therefore agree with the 3L3 Committees that developing tools for better cooperation among national supervisors is requisite for the proper functioning of integrated EU financial markets and should be given highest priority both on cross-sector and sector specific levels.

With respect to UCITS, past experience as well as the current discussion about a simplification of the notification procedure, of cross-border fund mergers and, in particular, about a real passport for the management company clearly demonstrate the importance of this issue. In its *Exposure Draft* of March 2007[3] the Commission, with the full support of the industry, has shown what needs to be done to strengthen supervisory collaboration:

- Clear division of the supervisory responsibilities
- Appropriate information flows to and between regulators
- Clear delegation and enforcement rules.

[3] Initial Orientations on Possible Adjustments on the UCITS Directive

Developing 3L3 convergence of regulatory and supervisory practices in the field of competing products

The financial services' sector is witnessing growing competition between various investment products. As far as household savings products are concerned, this creates significant difficulties with respect to investor protection as the various products provide very different levels of investor protection depending on how these products are legally structured/ wrapped. At European level, part of these products, namely UCITS, are subject to supervision by CESR regarding production and distribution. Another part, the so-called structured bonds, are also subject to supervision by CESR where distribution is concerned but they come under CEBS supervision where production is concerned. Also, regulation of these products in terms of information to be provided by the producers differs significantly from the corresponding UCITS regulation resulting in significant difficulties regarding the application of MiFID suitable advice rules. A third group of products, i.e. unit-linked life insurance, is subject to supervision by CEIOPS, based on a very different set of regulations compared with the UCITS Directive regarding production and MiFID regarding distribution. These products are virtually indistinguishable to investors.

We therefore welcome the Committees' initiative to find out how this issue has been dealt with by each of the 3L3 members at national level and we are aware of a number of of initiatives undertaken at national level to deal with this issue. However, we feel that the 3L3 Committees do not attach the same level of importance and urgency to this issue. We believe that, in the interest of a Single Market, a pan-European approach is necessary. We will therefore support any initiative of CESR, CEIOPS and CEBS to enhance consistency of their work in this respect.

Capital modelling CRD and (Basel II) and Solvency II

We fully agree with the 3L3 Committees that the introduction of two different risk-sensitive approaches, Solvency II and CRD (implementing Basel II in the EU) poses significant challenges to both the industry and financial supervisors. Not only are responsibilities shared between the 3L3 Committees depending on the type of service providers, banks, insurance companies/IORP or investment managers, but also CRD is also interpreted differently from country to country.

The problems are even more significant in the pensions area where insurance, banking and fund groups are competing with a broad range of products. Depending on their producer, they are supervised by CESR, CEIOPS or CEBS. Whilst it might at first look tempting to apply the same Solvency II rules to all pension products, this is in actual fact not justified. Indeed, products vary significantly, ranging from pure defined benefit schemes to pure defined contribution schemes, with numerous grading in between. Any new regulation in this field (e.g. the upcoming review of the IORP Directive[4]) would therefore need careful consideration and assessment of what is a meaningful risk-precaution for each of the product groups.

Valuation of financial instruments

Finally, we would like to remind the 3L3 Committees that the issue of valuation of financial instruments is currently under scrutiny not only at European level, national industries and authorities also are working on this issue, as is IOSCO at international level. Regarding the investment management industry, EFAMA has set up a working group looking for viable and pragmatic solutions to the valuation problems. We are happy to share our findings with the 3L3 Committees as soon as the work has been completed, in the hope that they can contribute to a fundamental discussion. In any case, the 3L3 Committees should, when working on this issue, take into account what other institutions are doing.

To conclude, we encourage the 3L3 Committees not only to continue their cooperation, but to strengthen it significantly. EFAMA will support any initiative going in this direction.

Steffen Matthias, 10 February 2008

[4] Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision