SJ- n°2521/Div.

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

Paris, 19 March 2009

AFG RESPONSE TO CESR'S CALL FOR EVIDENCE ON POSSIBLE IMPLEMENTING MEASURES CONCERNING THE FUTURE UCITS DIRECTIVE

Dear Mr Comporti,

The Association Française de la Gestion financière (AFG)[1] welcomes CESR's call for evidence on possible implementing measures concerning the future UCITS Directive.

Before submitting our views on what CESR should consider in its advice to the Commission, AFG wishes to stress some general points.

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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 409 management companies. They are entrepreneurial or belong to French or foreign banking or insurance groups.

AFG members are managing 2500 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 nearly 1400 billion euros managed from France, i.e. 22% of all EU investment funds assets under management), wherever the funds are domiciled in the EU, *and second at worldwide level after the US*. In the field of collective investment, our industry includes – beside UCITS – the employee savings schemes and products such as regulated hedge funds/funds of hedge funds as well as a significant part of private equity funds and real estate funds. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA) and of the European Federation for Retirement Provision (EFRP). AFG is also an active member of the International Investment Funds Association (IIFA).

First, we will not enter into details for each question raised by the Commission in its requests to CESR. We will take the opportunity of the forthcoming public consultation by CESR, following this call for evidence, to develop detailed responses. For this call for evidence, we will concentrate on the aspects which appear as the most important for the industry.

Second, we want to stress to CESR that for us all topics which are the subject of Level 2 measures are equally crucial. Rightly, CESR does not intend to prioritise its delivery to the Commission, and in any case we urge both CESR to deliver all the parts of its advice at the same time, and further on the Commission to deliver all the Level 2 measures at the same time. For us, all Level 2 measures have to be adopted simultaneously as they deal with a series of tools (fund mergers, master-feeders, management company passport, product passport) which can be alternatively be used by the management companies, depending on their business strategies. In order to guarantee neutrality vis-à-vis these business strategies, all the tools of the tool-box must be made available at the same time.

Third, we consider that as far as possible CESR should set up harmonised provisions. In particular regarding agreements between management companies and depositaries, between master funds and feeder funds, etc. both the essential elements of the content of the agreements and the jurisdiction of the applicable law for such agreements should be harmonised across the EU. Otherwise the diversity of situations would create very confused and complex situations.

Fourth, later on, the Commission should try to adopt Regulations rather than Directives – once again to minimise the risk of discrepancies across Europe.

Last, we want to recall that there is an urgent need for dealing with taxation issues, in particular regarding fund mergers - following the commitment of the EC in its previous White Paper to tackle specifically the fund merger taxation issue in a Communication.

Here are below our more detailed views on what CESR should consider in its advice.

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PART I: REQUEST FOR TECHNICAL ADVICE ON LEVEL 2 MEASURES RELATED TO THE MANAGEMENT COMPANY PASSPORT

- box p. 7:
    - letter a: danger to have procedures and arrangements based on a fund-by-fund approach, which could appear as non manageable in practice by the management company. We ask for *wide categories* of natures of funds (like for 'programmes d'activité' in France) - by reasoning in terms of '*analogy*' – and, as far as possible, general principles applicable to all funds. In addition, we want the Board to be able to delegate some of its tasks, for instance to a Risk Committee or to a New Product Committee set up by the Board
    - letter b: regarding conflicts of interest, we would suggest CESR to check to which extent the relevant MiFID rules are also applicable to collective portfolio

management. The requirements should be proportionate to the activity of collective portfolio management

- box p. 10:
  - point 1: no reason to give a different treatment for domestic regimes as compared to cross-border ones
  - point 2: strong support for standard agreements, in order to get a single standard across Europe
  - point 3: the applicable law should be the one of UCITS's domicile. In addition, such an harmonised applicable law will facilitate the applicability of the standard agreements mentioned right above. Otherwise, if the choice remains fully flexible, it will create too various situations which will be difficult to manage afterwards at national and European levels

PART II: REQUEST FOR TECHNICAL ADVICE ON LEVEL 2 MEASURES RELATED TO THE KEY INVESTOR INFORMATION

- box p. 19:
  - point 2 on sign-posts: our members are concerned by the fact that referring to other information contained in other documents apart from the one included in the KID could lead some national regulators – but not all regulators – to try to impose some of these elements (with the consequent legal liability attached). CESR should stick to Level 1 Art. 78 as far as possible
  - point 3: no need for Level 3. We need harmonised definitions at Level 2, as well as harmonised presentation of KIDs – for instance the size of typing (e.g. done for Simplified Prospectuses in France currently)

- box p. 21:
  - para 2.2.2 and 2.2.3: an EU centralised database by CESR for storage (similar to the French GECO database of the AMF, for instance) would be very helpful. In addition, the information could be sent by e-mail to subscribers

PART III: REQUEST FOR TECHNICAL ADVICE ON LEVEL 2 MEASURES RELATED TO FUND MERGERS, MASTER-FEEDER STRUCTURE AND NOTIFICATION PROCEDURE

- box p. 23:
  - point 1 letter a: request just for a proportionate, short and clear justification of the merger : it is in the own interest of the unit-holder. Wordings such as "for reasons of cost or internal restructuring" for instance could be allowed, in order to keep it clear.

- box p. 24:
  - point 2 at the very top: not to include the KII of the other UCITS in the information letter or as a stand alone document, but just to say where it is accessible
  - point 2 at the bottom: not to oblige a specific form, but to let the choice for the Manco. E.g. written press, internet sites

- box p. 26: *general request - for all the master-feeder part - to start from the existing national regimes, and not to reinvent the wheel*
    - point 1: same remark
    - point 2: request for a draft model agreement
    - point 3: the applicable law should be the one of the master, as it would be easier to manage if different feeders are located in different countries

- box p. 30:
    - point regarding the liquidation of the master: if a liquidation is anticipated, there must be a reasonable delay in order to be able to organise the liquidation and to find another master

- box p. 31:
    - point regarding a merger or division of the master: on letter f (conditions for approval): we have a request that the feeder of the previous master may become a feeder of the new master without having to start from scratch all documentation with the new master, as there is a legitimacy for staying in the new master (see CESR comment in the last para of p.28, first sentence). For the feeder which wishes to stay invested in the master, there should be a principle of legitimacy which should apply and therefore limit the new approval mentioned in letter f to very limited items (see CESR comment in the last para of p.28, first sentence). In addition, it must be also allowed to stop subscriptions and redemptions during the merger operation (for the benefit of investors).

- box p. 32:
    - points 1 and 2: our members are clearly in favour of a model agreement, which would be then applied both for domestic master-feeders and cross-border ones
    - point 3: our members are clearly in favour of the law of the domicile of the master fund, for the reason expressed above: it would be easier to manage if feeders belong to various countries. It would also be consistent with the law of the management company, the law of the auditors, etc.

- box p. 33: we must limit the communication of irregularities from the depositary to the regulator, only to those irregularities which are material (e.g. for ratio trespassings, only those which are durable and significant; or significant deviation from official investment policy) and which have significant consequences on the feeder. In addition, the depositary must enter into a dialogue with the master management company before sending the information to the regulator, as it will be a way to see if the irregularity is significant or not and as it will save time afterwards if the information is sent to the regulator (in particular to explain the reasons of the irregularities). Such an early dialogue between the depositary and the master management company will be also beneficial to investors, as it will fasten the regularisation of the irregularity

- box p. 35 at the top:
    - point 2: we ask strongly for a draft model agreement (as we already did above)
    - point 3: the applicable law should be the one of the domicile of the master fund, as it would be consistent with the law of the depositary and management company

- box p. 35 at the bottom: regarding the information letter, we don't find any mention of it in the relevant Article of the new Level 1? So why is it required in the mandate? In any case, the information should be simple, understandable and short

- box p. 36 at the top: no need for a letter; for instance a publication in the press might be alternatively considered, complemented by a letter or an e-mail to unit-holders

- box p. 37: it must be recalled that a contribution in kind should depend on the agreement from the master fund : this need for getting the agreement from the master fund should be explicitly mentioned in the fund rules, subject to the agreement of the Board

- box p. 39: the scope should be carefully scrutinised. The list of topics should be strictly limited. The content should also be harmonised as far as possible. Another issue is that some Member States consider that some provisions regarding marketing arrangements are non-harmonised because they are not in the scope of the UCITS Directive. But for instance in some cases the areas are covered by other directives, like MiFID, the Distance Marketing Directive or the E-Commerce Directive. In any case the national marketing arrangements should not be included in the KID: they should be included in a dedicated guide on marketing rules, such as the one the French AMF has recently produced. In any case, all these national marketing arrangement rules should be disclosed on regulators' websites, and there would be no possible sanction as long as the relevant marketing arrangement provision has not been disclosed by the regulator itself on its website

- box p. 40: fees which are currently required by host authorities should be repealed, as there will not be any notification file transmitted from the management company to the regulator any more. All this information and/or documents should be centralised at home regulator level or at European regulator (CESR) level, on a database accessible to all regulators

- box p. 41: ok in principle for Level 2 measures, based on the existing Level 3 guidance from CESR. We support the aim of facilitating electronic communication.

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If you need any further information, please don’t hesitate to contact myself at +33 1 44 94 94 29 (p.bollon@afg.asso.fr) or our Head of International Affairs Division, Stéphane Janin, at +33 1 44 94 94 04 (s.janin@afg.asso.fr) .

Sincerely Yours,

Pierre Bollon