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Comments of the Association Française de la Gestion Financière (AFG) on : <i>The role of CESR in the regulation and supervision of UCITS and Asset Management activities in the EU</i>

Dear Sirs,

We are grateful to the Committee of European Securities Regulators – CESR – for giving us the opportunity to comment its inaugural consultation paper on *UCITS and Asset Management activities*. **The Association Française de la Gestion Financière – AFG – would like to stress the importance that this consultation bears for us, our members and our industry at the European level and for the long term.**

As you know, AFG is the trade association representing the French investment management industry. In our country, more than 500 management companies take care of nearly 1.600 billion Euros of assets (end November 2003). That includes 1.000 billion Euros through collective investment schemes, which positions France as the leading country in the European Union, and the balance in the form of discretionary portfolio management. In France, investment management concerns, directly or indirectly, more than 10 million investors, on behalf of whom our member companies are investing.

Moreover, AFG and its members participate actively to working groups and to public consultations at European or international levels. We were therefore interviewed by the *inter-institutional monitoring group on the new process for regulating securities markets in Europe*, chaired by Mr. Michel Prada. **That allowed us once again to confirm our positive opinion on the increasing quality of the Lamfalussy process so far, but also to point out the need for an even closer co-operation of the regulators with the industry, and for a**

special pillar dedicated to UCITS and asset management activities, currently fragmented between UCITS and Investment Services Directives, or at least a clearly segregated sphere within CESR based on the principle that “buy-side” should definitely be separated from “sell-side” to structure a better market governance.

At the European scale AFG is also an active member of both associations representing asset management and UCITS areas : FEFSI (Fédération des Fonds et Sociétés d’Investissement) and EAMA (European Asset Management Association). Those trade associations should soon merge into a single industry representative body for Europe, a move we have advocated for a long time and that will with no doubts help strengthening the common work of the investment management industry, the European institutions and CESR. Such trade association will have the responsibility to represent some 8.000 billion Euros of assets (equivalent to 90% of the European Union GDP), amount which should still increase through the funding of pension schemes in the future, a large part being devoted to active financing of the economy (savings re-oriented towards real economy).

AFG would also like to stress the overall good quality and structure of this consultation paper, and the constructive efforts made by the Committee to consult with representatives of the EU industry beforehand. However, notwithstanding this positive start, we would support **some amendments to the proposals presented by CESR** on certain major matters as you will read further on. These amendments were already explained orally by our Director General, Mr. Pierre Bollon, at CESR’s public hearing.

Finally, **AFG would like to warmly welcome CESR into the UCITS and Asset Management activities in Europe.** We are confident that the best outcome can emerge from a fruitful co-operation between the industry and CESR in the future and this will pave the way for a unified single investment management European market to the benefit of all European consumers.

You will find in the attached document our detailed answers to the questions included in the consultation paper. Furthermore, we fully support the answer to the consultation issued by FEFSI and EAMA.

Please do not hesitate to contact us for any additional information or if you would like to discuss further any idea developed in our answer.

Yours faithfully,

The Chairman

Alain LECLAIR

Answers of AFG on the questions included in CESR Public Consultation :
The role of CESR in the regulation and supervision of UCITS and Asset Management activities in the EU

1. Background

1.1 & 1.2 Do market participants share the views of CESR on the need for its future involvement in the areas of UCITS and asset management? Do market participants agree with the proposed role of CESR in facilitating convergence of the regulation and supervision on the “buy side”?

AFG does share the views of CESR on the need for its future involvement in the areas of UCITS and asset management. **We even urge the involvement of CESR as soon as possible**, taking into account the deadlines set up by the UCITS directive (Directives 2001/107/CE and 2001/108/CE) and the existing needs for harmonization of a still fragmented European investment management market.

February 13, 2004 (less than two and a half months away from now on) will constitute a **significant milestone for the European UCITS industry**, as from this date the revised directive should be applied all over in the EU. However, major practical issues still need to be worked out through secondary legislation or guidelines in order to implement the much needed level playing field that investors have been awaiting for so long.

The integration of UCITS in the securities pillar will bring significant potential advantages for the investment industry. We will have a better basis to enforce swiftly, and regularly adapt to the market evolution, the UCITS directive and the Investment Services Directive (ISD) which are today the main sources of regulation of our industry, and should be fully convergent on subjects relating to us. We should also hopefully benefit from the application of the Lamfalussy process in order to fasten the evolution towards an integrated European market for investment management. We are also confident that we will find an appropriate platform for expressing our interests and opinion as the "buy side" of the securities markets.

We would like to underline that the separation of tasks between the three Lamfalussy pillars is not always clear. For example, pensions, which fall under the insurance pillar, are very closely intertwined with investment management, and the capital adequacy issue needs a proper co-ordination between the banking and securities pillars. Therefore, it will be crucial for CESR to provide for the necessary link with the two other pillars “banking” and “insurance”.

We finally maintain that the importance of the investment management industry, which assets represent some 8.000 billion Euros (amount close to the European GDP), and the need for high regulatory attention in the interests of investors, are clear arguments for **a segregated working sphere for investment management issues within CESR**. Such a structure does not clearly emerge from the present consultation paper.

We still consider a separated regulatory pillar for investment management (including pensions) at the European level as the best solution that should not be forgotten for the medium term. That possible future “fourth pillar” would usefully complete the banking, insurance and securities ones. It would efficiently represent the investor side of the unified financial market.

2. Areas of work by CESR in the asset management activities

2.1 Do market participants agree with the list of general points and the definition of priorities and possible input by CESR as set out above?

We would like to praise the good overview of CESR on the current priorities and its possible input detailed in the consultation paper. That reflects both the thorough knowledge of the subject by CESR experts and the good co-ordination that took place with the representatives of the EU industry.

However, we do not agree with one of the general principles set up in point 2.1 C :

“CESR should not start to work on matters where the UCITS Contact Committee is about to finish its work (e.g. simplified prospectus, derivatives).”

From a very pragmatic point of view the two issues mentioned (simplified prospectus and derivatives) constitute urgent matters to be dealt with, with regard to the 13 February 2004 deadline. Informal comments from different sources mention that the UCITS Contact Committee (CC) has been working actively on them. However, as no information was made public by the CC, the industry does not have any basis today on these two major matters, and we fear that different and sometimes uneven standards might be individually set up by the regulators of EU countries. Therefore, we would also welcome CESR implication in these two matters as soon as possible and hopefully in co-ordination with the CC, for the industry to receive implementing guidelines at least by February 2004.

Besides, we would appreciate that, before being discussed at the next CC meeting (presumably 19 December), the formal proposals of the Contact Committee be circulated for comments to the industry, as it would be the case under your own consultation process.

2.2 & 2.3 Are there any areas on which CESR should concentrate? Which areas of work do you consider to be a priority?

First of all, the four chapters selected in the consultation paper are important for our industry and they will have to be dealt with by CESR in the future in order to achieve the unified single investment management European market as soon as possible.

However, our members (French investment management companies) have definitely selected Part B as the first area of subjects to be tackled, in addition to the two issues above-mentioned (simplified prospectus and derivatives). **From a business and commercial point of view, a harmonized implementation of the UCITS Directive and a real possibility to market the products cross-border constitute today’s priority.** Out of the different areas included in part B, we would prioritize them as follows (although this order must not be considered too strictly and might change in the future):

Very urgent matters

- Simplified prospectus and passporting of UCITS;
- Obstacles to cross-border distribution of funds;
- The scope of the passport of investment management companies;
- Management of assets for individual and collective funded pension schemes
- Use of derivatives.

Urgent matters

- Outsourcing/delegation of functions;
- Money-market instruments;
- Use of indexes;
- Depositaries (role and responsibilities).

Further on, part D, “consistency with other EU directives”, constitutes another priority for our industry, especially for the consistent implementation of the new Investment Services Directive with the UCITS Directive. Indeed, in the case of the ISD, it is not only consistency which is sought, but it is a common regulation of UCITS and asset management.

Then, work on other types of funds not yet encompassed by the directive, but included in its review clause (hedge funds, real-estate funds, etc.) should constitute an important area of work, in order to update and enhance the global harmonization of the investment management European market.

Finally, out of the four chapters presented we believe that the A part (“areas where supervisory convergence should be achieved”), which is more general and has anyway to be strongly implemented on a national level, should constitute a more long term topic, taking into account the urgency of the implementation and application of the European directive. Besides, its content could be restructured in order to reshape some subjects that might not imply regulatory action but rather exchange of experience (for instance : “collection of data by supervisors”).

The priorities detailed in this paper today must not be considered as a final and immovable position. As you know, the industry is currently experiencing the final stage of the implementation of the UCITS directive, and new unexpected elements may appear in the aftermath of 13 February 2004. In our view, **such establishment of priorities with the investment management industry should be reviewed during the second half of 2004, and regularly further on.**

3. Organisation of CESR work

3.1 Do market participants agree with this approach?

In the consultation paper a two step approach mentions first the creation of a provisional expert group, and at a later stage the setting up of a permanent one.

Considering the urgency of the tasks to be achieved and the huge load of work ahead of us, we would rather promote a faster and deeper two-step approach :

- to begin directly with the creation of a **permanent group** (which should not be contradictory with the legal process of transferring competence from the Contact Committee to CESR);
- and as soon as the legal process of transferring competence to CESR is started, the creation, like for CESR-FIN or CESR-Pol, of an institutionalized permanent group dedicated to investment management issues, that could be named “CESR-AM” (for CESR-Asset Management) or “CESR-IM” (for CESR-Investment Management).

Besides, with the setting up of a permanent expert group, we fully support the idea of CESR to allocate as soon as possible a permanent member of the Secretariat to this specific task. It seems to us that the technical aspects of the subject would require someone already specialised in these matters.

3.2 & 3.3 Do market participants agree with the approach to consultation? Do market participants agree to create a specific Consultative Working Group in order to reflect the specificity of the “buy side”?

Concerning CESR’s approach to consultation, we do welcome, at a first stage the wide and open consultation procedure that CESR is already practicing with other issues or directives (market abuse, prospectus, etc.) it is mandated for. That, of course, in order to receive as much reactions and input as possible from all possible interested parties: corporate companies, customers, asset managers, individual and institutional investors, etc.

Besides, on top of that we would definitely stress the need for a closer consultation on a very regular basis with representatives of the industry at a European level. That means the creation of a specific consultative working group as it is described in the present consultation paper.

But more than the existence of this specific “Investment Management consultative working group” beside CESR’s “Investment Management Expert group”, we would insist on the proper functioning of these entities and on the utmost need for the closest co-operation between both of them. Such group, by essence different from other ad hoc consultative working groups should bear a different kind of name. We would suggest to rename it “**Investment Management Industry Panel**”.

Furthermore, the buy-side involvement should not be reduced to strict asset management issues, but should also encompass matters for which we feel responsible and in which we represent our investors’ views and says : corporate governance, accountancy norms, financial research ethics, etc.

We would support all kind of regular consultation between the two groups, and a systematic submission to the “Investment Management Industry Panel” of draft documents for remarks before :

- any public consultation ;
- the publishing of the results of these consultations ;
- the sending to the European Commission of proposals of answers on specific mandates related to level 2 Lamfalussy process ;
- the publishing of level 3 Lamfalussy process measures,
- etc.

In other words, that close co-operation between the two bodies would be the assurance for CESR to get a real “back-up” from industry representatives dealing on a day-to-day basis with investment management issues.

Needless to say, a permanent working relationship between CESR on the one side and the most likely directly affected industry representative bodies on the other is of major importance.

Such a close work will not prevent CESR from keeping its full independence for the final decisions and documents.

3.4 Do market participants see other areas of expertise that the Consultative Working Group should benefit from?

First we would suggest that some expertise from depositary institutions (and those in charge of administration of funds, accounting, etc.) be associated to the Consultative Working Group (*Investment Management Industry Panel*), as these actors are essential for the guarantee of a robust asset management industry in general.

We would also promote the idea of having representatives from the soon to come European association that will result from the merger of FEFSI and EAMA in the Consultative Working Group on a permanent basis, in addition to the other members.

The European trade association is the natural counterpart for CESR in order to express the “feelings” of the European industry as in the same way national trade associations are natural interlocutors to their national regulators and act as a most valuable link between the authorities and the industry.

Taking these elements into account, a group of only 12 members might be slightly short, and we would eventually suggest to extend it.