7 April 2010

CESR
11-13 Avenue de Friedland
75008 Paris
France

Dear Sir

Call for Evidence on Cross Sectoral Internal Governance Issues

I am writing with IMA's response to the above call for evidence.

The IMA represents the asset management industry operating in the UK. Our members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of around €3.5 trillion of assets, which are invested on behalf of clients globally. These include authorised investment funds (including UCITS), institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles.

We welcome the 3L3 analysis of cross sectoral internal governance requirements, and think it important that differences in regulatory requirements on governance for the banking, securities and insurance sectors are identified, and consideration given to whether further convergence is necessary.

Our comments on specific points in the call for evidence and the accompanying report are set out below.

Proportionality

We welcome the report's acknowledgment of the importance of the principle of proportionality, that the types of business and business models across these sectors vary widely in complexity and degree of risk, and that when assessing whether there should be more harmonisation these differences should be taken into account.

In this context, page 12 of the report acknowledges that one of the key issues being considered under the various international and EU initiatives in the area of governance following the recent financial crisis is whether governance requirements for banks and other systemically important financial institutions should be more stringent than for other types of entity – such as asset managers, whose business models do not involve the taking of principal financial risk.

We think it crucial that regulations are drawn up on a proportionate basis. So, any moves towards cross-sectoral convergence should recognise the differences in the underlying systemic risks that particular financial institutions pose and should not seek to adopt a “one size fits all” approach. It is not appropriate to assume that the same detailed requirements on remuneration, for example, should be applied to the fund management industry as to the banking industry (see below). A fund manager’s business model is very different to that in the banking sector. For example, client money and assets are segregated from those of the firms, and the manager’s activities do not put their security at risk. On the other hand, in banks, client funds are held on the balance sheet and are used in the business.

Conflicts of interest

Section 5.2 of the report identifies that the requirements relating to conflicts policies and management are much more prescriptive in MiFID than they are in CRD or Solvency II and goes onto discuss whether there is a case for importing some of the more specific MiFID provisions into CRD and Solvency II. In our view this is definitely something which should be done, for a number of reasons:

- The types of conflicts which can arise in the banking and insurance context are just as varied and significant as those which can arise in the securities industry. On page 25 the report states that 'the major source of conflicts in a banking or insurance context relates to the adequate balance that should be established between the performance of individual units and the remuneration of their employees’. This appears to underestimate the range of conflicts that can occur in a banking or insurance context. To give just a few examples, just as with securities firms, banks/insurers may recommend or sell products issued by themselves or affiliated companies; bank/insurers/their employees/directors may receive inducements that may influence behaviour in a way that conflicts with the interests of clients; employees or directors may engage in activities or acquire interests, which conflict with clients’ interests; and banks may provide advice to a corporate in relation to a debt issuance and at the same time advise other clients as to the pros and cons of investing in the debt.

- The report states that MiFID has a different focus from CRD and Solvency II in that MiFID has consumer protection as one of its objectives whereas CRD and Solvency II has a prudential focus. But in our view this should not detract from the need for conflicts management. As the report acknowledges on page 23, this is not necessary just to protect the interests of an entity’s clients but also to maintain market confidence. The costs of failing to manage conflicts, in loss of reputation, as well as direct costs, can be substantial; and the impact of the loss of consumer trust is no less significant.

- In any case it cannot be right that consumer protection is not a regulatory objective in the banking and insurance sectors. Various EU initiatives (in particular, the PRIPs project) recognise the need to create a more level playing field with regard to consumer protection across the retail banking, securities and insurance sectors, and proper management of conflicts is a crucial part of this. The latest Commission update on the PRIPs project recognises that the same detailed requirements on conflicts of interest should in general apply to all sales, but that some tailoring of the detailed requirements to reflect different distribution arrangements may be necessary.

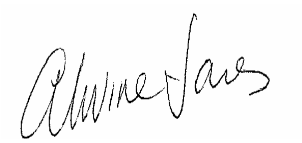
Remuneration

Finally we note that the report recommends a coherent remuneration framework for the three sectors. But a one size fits all approach is not appropriate for remuneration policy. Remuneration practices in the fund management sector played no part in the present crisis. As noted above, the business model is very different to the banking sector. So far as the traditional asset management sector is concerned, regulators generally and rightly regard it as relatively low risk.

And we do not think that there are the same issues around potential conflicts of interests with regard to remuneration for asset managers as there are with banks. Asset managers are typically rewarded based on the performance of the funds that they manage and so, far from the employees' and clients' interests conflicting, they are closely aligned. It is also the case that fund managers' performance is assessed on a medium to long-term basis and that other factors, such as client satisfaction, attitude to risk and the extent to which the employee is a team player, will be taken into account. We have no difficulty with the concept of a high-level principles-based approach to the regulation of remuneration in the asset management sector, but to extend detailed requirements across the board would be unnecessary and disproportionate.

Please do not hesitate to contact us should you need any further information.

Yours faithfully



Alwine Jones
Adviser