



CD/SJ – n° 4074/Div.

Mr Mohamed Ben Salem
General Secretariat
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid
Spain

25th March, 2013

**Re. : ASSOCIATION FRANCAISE DE LA GESTION (AFG)'s comments regarding
IOSCO Consultation Report on Client Asset Protection**

Dear Mr Ben Salem,

The ASSOCIATION FRANCAISE DE LA GESTION FINANCIERE (AFG) – French Asset Management Association¹ – would like to thank the International Organization of Securities Commissions (IOSCO) for providing the opportunity to submit comments regarding the Consultation Report on Client Asset Protection published in February 2013 (“the Report”).

¹ The Association Française de la Gestion financière (AFG) represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. Our members include 426 management companies. They are entrepreneurial or belong to French or foreign banking or insurance groups. AFG members manage 2,700 billion euros in the field of investment management as of end December 2012, making the Paris Fund Industry the leader in Europe for the financial management of collective investments. In the field of collective investment, our industry includes – beside UCITS – employee savings schemes and products such as regulated hedge funds/funds of hedge funds, private equity funds, real estate funds and socially responsible investment. AFG is of course an active member of the European Fund and Investment Management Association (EFAMA) and of PensionsEurope. AFG is also an active member of the International Investment Funds Association (IIFA).

General comments

We would like to express the following comments regarding the IOSCO Report:

We welcome the publication of the Report and support IOSCO's general aim to provide guidance to regulators on how to enhance their supervision on intermediaries holding client assets by clarifying the roles of the intermediary and the regulator in protecting those assets.

In the EU, the depositary regime has been and will be enhanced through the AIFM Directive and the UCITS Directive respectively. The role and responsibilities of the depositary have been reinforced in order to ensure that the assets of investment funds – and in turn of the end-investors – benefit from the appropriate level of protection.

In particular, for retail funds such as UCITS, the depositary's responsibilities should not be blurred and lightened through contractual discharges as retail investors are not always able to understand the meaning and potential consequences of such contractual discharges.

Detailed comments

Principle 1 – An intermediary should maintain accurate and up-to-date records and accounts of client assets that readily establish the precise nature, amount, location and ownership status of client assets and the clients for whom the client assets are held. The records should also be maintained in such a way that they may be used as an audit trail.

AFG supports the requirement for the intermediary to maintain records and accounts of client assets that establish the nature, amount, location and ownership status of client assets and the clients for whom the client assets are held. We further agree that the accounts should clearly distinguish assets held for clients from asset held for the intermediary.

In the specific case of investment funds, we believe that the depositary's accounts should also distinguish the assets of investment funds from the assets of the depositary's other clients. Indeed, such a distinction would enhance the protection of funds' assets.

In particular, this is key in case of the depositary's bankruptcy, when assets have to be easily and quickly identified to be transferred to another depositary in order to ensure the continuity of the management of the funds' assets without any long disruption.

In addition, such a distinction would also be very useful in case the assets have to be returned to the clients.

Principle 2 – An intermediary should provide a statement to each client on a regular basis, as well as on request, detailing the client assets held for or on behalf of such client.

We support principle 2 as it enhances transparency vis-à-vis clients.

Principle 3 – An intermediary should maintain appropriate arrangements to safeguard the clients’ rights in client assets and minimise the risk of loss and misuse.

We generally support principle 3. In particular, we support the requirements relating to the due diligence required in case client assets are placed with a third party.

Principle 4 – Where an intermediary places or deposits client assets in a foreign jurisdiction, the intermediary should understand and take into account the foreign regime to the extent necessary to achieve compliance with applicable domestic requirements.

We agree with principle 4.

Principle 5 – An intermediary should ensure that there is clarity and transparency in the disclosure of the relevant client asset protection regime(s) and arrangements and the consequent risks involved.

AFG supports principle 5 as it provides for disclosure requirements that ensure that clients can make informed decisions concerning their investment.

Principle 6–Where the regulatory regime permits clients to waive or to modify the degree of protection applicable to client assets or otherwise to opt out of the application of the client asset protection regime, such arrangements should be subject to the following safeguards:

(a) The arrangement should only take place with the client’s explicit, written consent.

(b) Before such consent is obtained, the intermediary should ensure that the client has been provided with a clear and understandable disclosure of the implications of giving such consent.

(c) If such arrangements are limited to particular categories of clients, clear criteria delineating those clients that fall within such categories should be defined.

In particular with regards principle 6, we believe that a clarification of the definition of “client” would be useful in order to avoid any confusion or misunderstanding.

Indeed, we understand that, in the specific case of investment funds, depositaries (i.e. intermediaries) hold the assets of investment funds (i.e. clients) managed by a management company and owned by end-investors. The management company has a fiduciary duty vis-à-vis the end-investors and does not hold their assets.

We would like to make clear that the proposed waiving or modification of the degree of protection applicable to the assets only belongs to the investment fund – not the depositary. In other words, the depositary should not be allowed to waive or modify the degree of protection applicable to the investment fund assets on its own accord.

We understand that, in very specific cases, the depositary may request a discharge of responsibility through a contractual agreement – for instance in case of delegation to a sub-custodian located in a different country.

However, such very specific cases should be limited to cases where end-investors are professional investors. In case end-investors in the investment fund are retail investors – e.g. UCITS – such possibility for a contractual discharge of responsibility by the depositary should not be allowed. Indeed, retail investors are not always able to understand the meaning and potential consequences of such a contractual discharge.

Principle 7 – Regulators should oversee intermediaries’ compliance with the applicable domestic requirements to safeguard client assets.

We support principle 7.

Principle 8 – Where an intermediary places or deposits client assets in a foreign jurisdiction, the regulator should, to the extent necessary to perform its supervisory responsibilities concerning applicable domestic requirements, consider information sources that may be available to it, including information provided to it by the intermediaries it regulates and/or assistance from local regulators in the foreign jurisdiction.

AFG agrees with principle 8 and suggests that it may take the form of a cooperation arrangement between the regulator and the local regulators in the relevant foreign jurisdictions.

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We thank you in advance for your attention to the views expressed above.

If you wish to discuss the contents of this letter with us, please contact myself at +33 1 44 94 94 14 (e-mail: p.bollon@afg.asso.fr), Stéphane Janin, Head of International Affairs Division, at +33 1 44 94 94 04 (e-mail: s.janin@afg.asso.fr), or Carine Delfrayssi, Deputy Head of International Affairs Division, at +33 1 44 94 96 58 (e-mail: c.delfrayssi@afg.asso.fr).

Sincerely,

(Signed)

Pierre BOLLON