CJ/KC/SJ – n° 2184/Div.

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

Paris, December 11, 2006

AFG RESPONSE TO CESR CONSULTATION ON THE LIST OF MINIMUM RECORDS IN ARTICLE 51(3) OF THE MiFID IMPLEMENTING DIRECTIVE

Dear Mr Demarigny,

The Association Française de la Gestion financière (AFG)[1] welcomes the CESR's consultation on the minimum records that Member States should require from investment firms.

[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 around 400 investment management companies. They are entrepreneurial or belong to French or foreign banking, insurance or asset management groups. AFG members are managing around 2200 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 more than 1200 billion euros i.e. 20% of all EU investment funds assets under management, wherever the funds are domiciled). In the field of collective investment, our industry includes – beside UCITS – the employee savings schemes funds and products such as regulated hedge funds and a significant part of private equity funds. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA).

AFG welcomes the initiative of a future recommendation by CESR to establish a list of records that should be kept by investment firms, in order to ensure a sufficient level of harmonisation among Member States. As reminded by CESR itself in its covering note of the consultation, we do not think it is CESR's role to work – at this stage at least – on the harmonisation of the content of the different records. Its current role is only limited to establishment of the list of records.

CESR considers that national authorities may add other records to the list drawn up: we would prefer not leaving this freedom to national authorities, in order to avoid distortion and discrepancies from one regulator to another one. Therefore CESR should recommend a *maximum* harmonised list of records.

CESR should show restraint in establishing the list, as recordkeeping is only for management companies and hence for their clients. As CESR is aware, management companies are not executing clients' orders but managing portfolios on their behalf.

Having said that, please find below our brief answers to CESR's questions:

1. **Do you agree that a common list of minimum records in all CESR members will benefit investors and industry?**

Although AFG is in favour of setting up the same list in all Member States, we are concerned about the term 'minimum'. CESR should also recommend the list as being a list of maximum records to foster harmonisation among Member States. It would, indeed, be 'the' list of records.

About the purpose of such a list, AFG would have liked CESR to remind that the first purpose of the list was to 'enable the competent authority to monitor compliance with the requirements under this Directive [MiFID Level 1]' as stated in Article 13 (6) of MiFID Level 1. AFG understands that a common list could benefit investors. CESR must be aware that a too detailed list will be burdensome and costly for the industry, and in the end, for its clients, the investors, and should limit it to the necessary items.

2. **Do you agree with the content of the list elaborated by CESR? If not, which records should be added or deleted and for which reasons?**

We agree with the list as established but would welcome:

- a type of a 'grand-fathering' provision that would allow management companies to *progressively* update their clients' files relating to the client's knowledge, experience, and whenever necessary, financial situation. Small-sized management companies having low financial and material means will need time to adjust to the new MiFID Rules since the national transposition provisions are unknown yet. Due to the short period of time between the future implementation of the directives by the national authorities and the 1st of November 2007, management companies will have to bear a heavy burden to comply with Articles 19(4) and 19(5). Small-sized companies will be in a very difficult position to comply with these rules on the 1st of November. Therefore, management companies should only have the duty to review and update their clients' files, according to Articles 19(4) and 19 (5), when a *new* factual element arises and not a general obligation to review all clients' files for the 1st of November 2007 (in particular when no new event occurs in the relationship between the client and the management company).

- a precision about the record of transaction data: to avoid any useless and costly double records held by the management companies and the custodians/transfer agents, we think CESR should exempt management companies from collecting and recording these data that are already collected and kept by custodians/transfer agents. As an illustration, 'accounting records' ('enregistrements comptables') should only be held by the custodians/transfer agents.

- a precision regarding box 22 '*Services or activities giving rise to detrimental conflict of interest'*. According to Articles 21 and 22 of the implementing MiFID, the conflicts of interests falling within the scope of MiFID are 'conflicts of interests entailing a material risk of damage to the interests of one or more clients'.

  Therefore we would suggest the following amendments to box 22 (reproduced in red below):

Types of record	*Contents of record must include*	*Time at which record must be created*
Services or activities giving rise to detrimental conflict of interest.	The services and activities covered by Annex I of MiFID Level 1 for which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or may arise. ~~under Art. 23 of Directive 2006/73/EC.~~ *Justification:* *Article 23 does not refer to any services and activities. Services and activities listed in Annex I of MiFID level 1 and giving rise to detrimental conflicts of interest under the situations covered by Article 21 and further detailed in Article 22 of the implementing Directive (i.e. 2006/73/EC) are the ones that should be recorded.*	At the time the conflict of interest entailing a material risk of damage to the interests of one or more clients is identified. *Justification:* *Only specific conflicts of interests are covered by MiFID i.e. 'conflicts entailing a material risk of damage to the interests of one or more clients'*

3. Do you consider that a specific requirement for keeping records of the provision of investment advice should be introduced?

We do not believe CESR should recommend any specific requirement for keeping records of the provision of investment advice since the implementing Directive does not provide

for the possibility. CESR should not go beyond what the detailed MiFID level 2 Directive (Article 51 (3)) provides for.

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If you wish to discuss the contents of this letter with us, please contact myself at 01 44 94 94 14 (e-mail: p.bollon@afg.asso.fr), Stephane Janin, Head of International Affairs Division, at 01 44 94 94 04, , (e-mail: s.janin@afg.asso.fr), Catherine Jasserand, Deputy Head of International Affairs Division, at 01 44 94 96 58 (e-mail: c.jasserand@afg.asso.fr) or Katia Chauprade, Senior Adviser, at 01 44 94 96 59 (e-mail: k.chauprade@afg.asso.fr).

Yours sincerely,

(signed)

Pierre Bollon