



SJ/CJ – n° 2262/Div.

Ms. Tillie Rijk  
IOSCO General Secretariat  
C/ Oquendo 12  
28006 Madrid  
Spain

June 8, 2007

Re: AFG's response to IOSCO consultation on "*An Overview of the Work of IOSCO's Technical Committee* »

Dear Ms. Rijk,

The Association Française de la Gestion financière (AFG)<sup>1</sup> would like to thank IOSCO and the members of the Technical Committee ("TC") for the work that they have carried out in producing the Consultation Report on "*An Overview of the Work of IOSCO's Technical Committee*" last March. We also want to thank the TC for having invited the International Investment Funds Association (IIFA), of which AFG is a member, in Madrid on 26 March to discuss the relevant topics.

On this basis, we are glad to provide for the following comments on the Report. Before entering the substance of the Report itself, we wish to stress some methodology issues.

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<sup>1</sup> 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 365 management companies and 772 investment companies. They are entrepreneurial or belong to French or foreign banking or insurance groups.

AFG members are managing more than 2500 billion euros in the field of investment management. In terms of financial management location, it makes the French industry *the leader in Europe for collective investments* (with more than 1500 billion euros managed by French companies, i.e. 22% of all EU investment funds assets under management, wherever the funds are domiciled in the EU) *and the second at worldwide level*. In terms of fund domiciliation, French funds are respectively second in Europe and third at worldwide level. In terms of product interests, our association represents – besides UCITS – the employee savings schemes funds, 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).

On the general relationship between IOSCO and the industry:

1. We wish to have regular meetings similar to the one we had in Madrid, for instance twice a year (as expected for 2007: March + November), but which should remain informal at this stage. We found the Madrid meeting very fruitful, by reinforcing the practical exchanges of views, and therefore allowing for going beyond mere expressions of written positions in formal contributions;
2. We think that “theme expert groups” (for each Standing Committee) could be set up, as it is currently the case for CESR for instance. We have tested very successfully such an approach with CESR, and we think it might be appropriate to follow such an approach at IOSCO level as well;
3. In any case, we also think that IOSCO should improve its way of communicating and disclosing information, both when launching new consultations and when setting up public events like public conferences. In the latter case, it happened that we were informed by chance and very late of some public conferences – and in some cases, it has been therefore difficult or even impossible for us to participate and thus provide input;

On the working methodology of IOSCO:

1. *We clearly warn on the danger for IOSCO to look only for “quick wins”, which are sometimes requested by the industry of some countries. As a paradox, looking just for “quick wins” could finally end up with delaying the launch of the really needed actions.*

First of all, should we speak about “legal quick wins” or “practical quick wins”? Getting a “legal quick win” can be rather easy; but it would not guarantee getting any quick wins *in practice*. For instance, in our opinion, regarding the current EU debate on private placement, we do support getting a legal framework for private placement of non-harmonised funds – that some players consider as a “quick win” – but we think that in practice it will only facilitate the *selling* of such funds: it will not facilitate the *buying* of such funds by some types of qualified investors, as long as their investment rules prevent them from buying such funds (e.g. insurance companies, pension funds, etc.). As long as the EU legislative action on private placement is not accompanied in parallel by a similar action to ease the faculty from the demand side to invest in such products, we will not have any quick win *in practice*. Not linking the two parallel actions would end up with launching at a later stage such an action on the demand side – which would mean having wasted time by just focusing in the short term on legal, but incomplete, “quick wins”. Therefore, IOSCO should identify, topic by topic, quick wins to be delivered *in practice*.

Second, and even more widely than just looking for practical quick wins, the approach to be followed by IOSCO should be *pro-active*. In this view, IOSCO should consider how regulation could facilitate innovation and industry developments. It should not wait for scandals, which always imply the risk of “scandal-driven regulation” (such as SOX in the US for instance) which can destabilise or over-constraint a whole national or sectorial industry. Neither should IOSCO rush to only act for one part of the financial industry without considering the whole picture since it could create an unlevel playing field. It has often appeared to us that actions have only been decided

for our industry because it better known to the regulators and already more transparent than the other parts of the industry.

2. *Regarding the debate on mutual recognition, we clearly favour the search for harmonising principles (through a principle-based approach) rather than looking for mutual recognition: the limits of mutual recognition have already been tested unsuccessfully many times and in many areas in the context of cross-border activities. In addition, once harmonised principles have been achieved, they have a pedagogic virtue for less advanced financial centres all around the world, by helping them to make their own national regulation converging towards such already harmonised principles;*

On the substance of IOSCO's Consultation Report:

1. *As a new and essential topic, we strongly wish that the 2007-2008 IOSCO working programme explicitly deals with the issue of level playing field between financial products (in particular in the case of unfair competition between investment funds on the one hand and capital market products – such as notes or certificates - on the other hand, as the latter are for instance less transparent for investors and benefit from regulations ensuring faster legal processes for domestic and cross-border registrations);*
2. *Generally speaking, we are reluctant to any approach differentiating systematically wholesale from retail. For instance, such an approach does not fit with the fund industry, where there is a blurred line between the two categories very often (e.g. many pure professional/qualified investors, like corporate, invest in products which can be sold to retail investors as well; on the contrary, many retail investors get access to complex/risky products through professional investors). It is not by chance if the UCITS Directive never made any different treatment between retail and wholesale – and it is also probably the reason why only very few misselling scandals occurred in the field of funds, at least in continental Europe;*
3. *As a consequence of the two previous remarks, we do contest the statement and the approach by IOSCO regarding the “Point of sale disclosure and customer suitability” (D.1.2 of the Consultation Report). Why stating: “many retail investors who buy investment products, particularly interests in a collective investment scheme and possibly similar products, may not clearly understand the products or the layers of costs associated with those products”? On the contrary, CISs are the most transparent investment vehicles: for instance, the expenses are disclosed through Total Expense Ratios (TERs), and CIS are fee-based instruments and not spread-based instruments (in the latter case, investors are not able to know the real final cost of their investment). In addition, CIS are usually less risky (through mandatory risk spreading rules – as compared to a single share for instance) and in many jurisdictions the provision of fund prospectuses to investors is mandatory. The statement by IOSCO is therefore very concerning for our members;*
4. *More generally, we wish that the 2007-2008 IOSCO working programme makes clearer the split of responsibility between the distributors and the producers – but*

avoid to only focusing on funds (following the request for a better level playing field that we mentioned above). If regulators, intentionally or not, still continue to focus on fund production and distribution, they will finally contribute de facto to push investors towards risky and less transparent other types of financial products – leading therefore to less investor protection, contrarily to the official mission regulators have to fulfil;

5. *In the same vein, we dispute the fact that soft commissions and incentives are only tackled in the field of asset management (E.1.3 of the Consultation Report) : soft commissions and incentives may occur in other financial sectors and for other financial products as well;*
6. *Beyond the so-called “Valuation of Hedge Fund Portfolios” (E.1.1) and “Elements of regulation for hedge” (E.1.2), we clearly wish that the 2007-2008 IOSCO working programme insists even more on the topic of hedge funds (even though IOSCO is already working actively on it) and not only funds of hedge funds, in order to provide for a light but real regulation of the relevant players in the value chain for the two types of funds (at least for on-shore funds), which would facilitate the cross-border marketing and subscription of such products – which is very difficult today in many parts of the world as the regulations are very fragmented;*
7. *Regarding Credit Rating Agencies (CRAS) (A.4 of the Consultation Report), we strongly support the will of IOSCO to continue to monitor new developments of CRAS’s activities and their impact on the market, as we consider that CRAs are still currently increasing their role on the markets, in particular through the continuous development of structured products (in which many investment funds invest on behalf of their investors, for which they have a fiduciary duty): the need for a high degree of reliance in CRAs’ ratings is crucial for us.*
8. *Regarding Audit Quality and Audit Contingency Planning (B.3 and B.4 of the Consultation Report), we consider that auditor liability should not constitute an issue as such: some jurisdictions have already capped or are currently capping auditor liability, when other jurisdictions do not see any need to do so. Therefore, this specific issue should be left open at this stage by IOSCO.*

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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](mailto: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](mailto:s.janin@afg.asso.fr)) or his deputy Catherine Jasserand at +33 1 44 94 96 58 (e-mail: [c.jasserand@afg.asso.fr](mailto:c.jasserand@afg.asso.fr)).

Sincerely,

Pierre BOLLON