



CJ/AP/SJ – n° 2281/Div.

Mr Eric Ducoulombier
Head of Unit
Retail issues, consumer policy and
payment systems
Directorate General Internal Market and
Services
European Commission
2 rue de Spa
1000 Brussels
BELGIUM

Paris, 16 July 2007

AFG RESPONSE TO EUROPEAN COMMISSION'S GREEN PAPER ON RETAIL FINANCIAL SERVICES IN THE SINGLE MARKET

Dear Mr. Ducoulombier,

AFG¹ welcomes European Commission's Green Paper on Retail Financial Services in the Single Market and generally supports the objectives and priorities set out in the paper.

¹ The Association Française de la Gestion financière (AFG)¹ represents the France-based investment management industry, both for collective and discretionary financial portfolio managements.

Our members include 365 management companies and 772 investment companies. These management companies 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, making in particular *the French investment fund management industry the leader in Europe* (with more than 1500 billion euros managed, 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* after the US. In the field of collective investments, our industry includes – besides UCITS – the employee savings scheme funds and products such as regulated hedge funds/funds of hedge funds, 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).

GENERAL COMMENTS

Although the management industry is not specifically targeted by this consultation, we deem rather essential to answer the consultation since the European Commission is announcing the review of two Directives that might have an impact on asset management (IMD and the Directive on distance marketing of financial services) and mentions topics relating to our industry (UCITS and pension schemes). We will not answer each question but will also provide some comments on the text of the consultation itself.

As a first general comment, we fully support the aim of European Commission's services to guarantee a level playing field between financial products. This issue is also crucial if we want to ensure that investors understand them well and can compare between them.

We also fully support the aim of tackling the retirement financing, as in particular European Personal Pension Accounts in the EU, such as the PERCO in France for instance, have already been tested successfully.

However, regarding the **restrictions on providers and channels which limit access to retail financial services**, we wish to draw European Commission's attention on **five major current issues regarding access to investment funds by investors**:

- **First, a whole set of problems will be solved only if the proposals contemplated by the Commission for the modernisation of the UCITS Directive are tackled by the end of this year and adopted next year by the European Parliament and the Council:** cross-border notification procedure, fund mergers, master-feeder funds, etc.
- **However, due to the lack of a real "Management Company Passport" in the draft proposal of the Commission on the revision of the UCITS Directive, the choice of UCITS currently offered to investors would remain unduly restricted in the future.** Many European Management Companies would wish to offer UCITS legally domiciled in the countries of investors (in order to answer more appropriately investors' needs), but they cannot do it as long as it would not be economically sensible for them to set up subsidiaries in these countries of investors. The setting up of local subsidiaries is very costly, which means in practice that only a very few Management Companies can afford this cross-border activity of managing foreign funds. AFG, as well as almost all national investment management associations and the European association EFAMA (European Fund and Asset Management Association), are currently very actively requesting an amendment of the UCITS Directive on this topic. We hope the European Commission will soon take position positively on this subject, to the benefit of investors in particular and not restrict its proposals to a highly unsatisfactory "partial" passport;
- **Beyond issues directly related to UCITS funds, we wish to stress that currently investors cannot get easy access to some categories of non-UCITS funds (regulated hedge funds/funds of hedge funds, real estate funds, private equity funds) from other Member States.** In spite of the development of national regulations for such non-UCITS funds, there is no common European framework for such products. It means that investors are restricted in their choice when they want to invest in non-UCITS funds. It is why AFG, other national investment management

associations and EFAMA are currently requesting as well to get such an EU framework for these “alter-UCITS” funds, still to the benefit of investors. In particular, AFG and other national investment management associations made recent joint requests to Commissioner Mc Creevy and his Cabinet for setting up a dedicated expert group on regulated hedge funds/funds of hedge funds².

- **Fourth, it is essential that a European defined-contribution scheme can be offered to European citizens willing to develop savings for their retirement.** The European Personal Pension Account (EPPA), developed by EFAMA on the basis of some national successful experiences (such as the PERCO in France) is a proposal that the Commission should consider in more depth.
- **Fifth, some Directives might, proving to be unguided missiles, cause collateral damages.** For instance, regarding the Markets in Financial Instruments Directive (MiFID), we have no doubt on many of the qualities of the MiFID: it appropriately addresses the long standing question of responsibility of saving product distributors, the responsibility of the financial intermediaries for best executing securities orders, and even the touchy subject of disclosure of costs and potential conflicts of interest to investors. But this missile contains ambiguities. It leads to a fundamental rethinking of financial regulation of the European framework, creating a considerable confusion as to how exactly the MiFID and the UCITS Directive will interact in particular. This uncertainty reflects the growing pains of regulatory transformation that represents no less than a tectonic shift, from intense and prescriptive product regulation to a more flexible, principle-based regulation of management functions. Unlike UCITS, MiFID is a horizontal Directive that cuts across the entire financial services industry (except for insurance and some banking products). Precisely because the two Directives are rooted in diverging regulatory philosophies, and therefore are not natural partners, the exercise of trying to fit the two together will require effort and currently leads to strong difficulties.

If MiFID approach means that new regulation standards apply to all products **but exclusively at the point of sale**, and do not interfere on the content or manufacturing of such products then, why did we spend collectively over twenty-five years to build a European fund and asset management industry of such a quality? If we dare an audacious comparison, it would mean that pharmaceutical products won't need any longer any Food and Drug Administration visa, being sold under the sole drugstore tenant's good opinion and appropriate advice on his customer need. We wonder also why having spent so much time on defining and enlarging the eligibility of assets in UCITS if the new passport to distribution is to be named “MiFIDisation”, which could open the door to all substitute products, with no level playing field, whether they come from Europe or from elsewhere (including from some exotic offshore locations).

SPECIFIC COMMENTS

In addition to these general comments, our specific comments on the priorities and objectives identified are the following:

² Letters sent to Commissioner's Cabinet on 16 April and 14 May 2007.

- **Context (section 2 of the consultation paper):**

Although we globally agree on the analysis made on retail financial services and on the existing barriers to the Single Market, we are concerned by the statement (see point 8 of the consultation paper) following which *'high switching costs can reduce consumers' potential to change providers for products such as bank accounts and investment funds'*. It is true that the European Commission should ensure that consumers get the accurate and true information on the products and services to make the best deal; however we are not sure that this issue should be dealt with as a priority.

- **Objectives and Actions (section 4.1. Lower prices and more choice for consumers – para 19 of the consultation paper):**

We support European Commission's initiative on the portability of supplementary pension rights. We take this opportunity to recall that the French asset management industry is in favour of personal pension plans. EFAMA, the European Fund and Asset Management Association, has proposed a European personal pension account (EPPA)³ to allow an easy cross-border portability of pension rights. For us, such a move would be much wiser than the idea of creating difficulties to existing defined-benefit and insurance schemes.

- **Providing legal certainty for consumers (section 4.2 Enhancing consumer confidence – para 31 of the consultation paper):**

We would like to draw European Commission's attention on the fact that in the context of the current discussion on the proposal for a Regulation on the law applicable to contractual obligations (Rome I), some amendments have been made to consider that Article 5 of the draft Regulation relating to the applicable law to contracts between consumers and professionals would exclude contracts covered by the MiFID and the UCITS Directive.

- **Providing the right information at the right time (section 4.3 – para 39 of the consultation paper):**

We agree on the analysis made by the European Commission and take the opportunity to recall that for UCITS, a Key Investor Information document will be set up to replace the Simplified Prospectus and will only reach its objective (improving the quality of the information clearly understandable by the consumer) if the content of the KII is harmonised at the EU level.

- **Conclusion (section 5 of the consultation paper):**

- **Paras 44 and 45:**

As mentioned in the general comments above, regarding the restrictions on providers and channels which limit access to retail financial services, we think that setting up a real Management Company Passport for UCITS as well as a European legal framework on non-UCITS funds (regulated hedge funds/funds of hedge funds, real estate funds, private equity funds) would dramatically benefit investors by widening the range of products accessible by them, without harming investor protection. On the latter topic (alter-UCITS

³ EFAMA Report, May 2005, www.efama.org

funds), the European Commission services are currently launching an expert group on real estate funds, and we wish they set up in parallel another expert group on regulated hedge funds/funds of hedge funds in particular. Our wish is currently shared by many national investment management associations as well as by EFAMA. The Commission should also launch a working group on a pan-European defined-contribution occupational retirement scheme.

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Should you have any questions, please contact myself at 01 44 94 94 14 (e-mail: p.bollon@afg.asso.fr); Stéphane Janin, Head of International Affairs Division, at 01 44 94 94 04 (e-mail: s.janin@afg.asso.fr); or Catherine Jasserand, Deputy Head of International Affairs Division, at 01 44 94 96 58 (e-mail: c.jasserand@afg.asso.fr).

Yours sincerely,

(signed)

Pierre Bollon