



CJ/SJ/VB- n° 2296/Div.

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

Paris, 10 September 2007

**AFG RESPONSE TO CESR'S CALL FOR EVIDENCE ON THE POSSIBLE CESR LEVEL THREE WORK ON THE TRANSPARENCY DIRECTIVE**

Dear Mr Demarigny,

The Association Française de la Gestion financière (AFG)<sup>1</sup> welcomes CESR's Call for evidence on the possible CESR level 3 work on the transparency directive and acknowledges the importance of the issue.

AFG is actively contributing to discussions at European level on financial markets and expresses in this answer the concerns of its industry regarding the implementation of the transparency Directive across Europe.

*a) The need for a European centralised database*

Since more and more transactions are cross-border, our members have expressed their fear of reaching voting rights/shares notification thresholds applicable in other Member States

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<sup>1</sup> The Association Française de la Gestion financière (AFG)<sup>1</sup> 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, making in particular the French industry *the leader in Europe in terms of financial management location for collective investments* (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*. In the field of collective investment, our industry includes – beside UCITS – the employee savings schemes funds and products such as regulated hedge funds/funds of hedge funds as well as private equity 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).

without being aware of them and therefore not being able to report them, by ignorance, to the relevant foreign competent authorities.

Things would be easier if the implementation of the Transparency Directive were the same across Europe. But as CESR has noticed in its Call for Evidence, there are differences in the implementation from one Member State to another. This is the case regarding the notification thresholds. We can notice the different practices existing in Europe, practices that are not always known by the industry – especially as national legislations may be subject to regular changes. CESR should also have in mind that in addition to legal notification thresholds, statutory thresholds can also be set up – as it is the case in France for instance.

As a consequence, and because reporting thresholds vary from one Member State to another, it is absolutely necessary *at least to set up a centralised database with the relevant information for each Member State*. The database should contain, for each CESR Member:

- The notification of legal threshold regime (in a language customary in the sphere of international finance),
- The reporting procedure (to whom, when and how to file the report),
- The rule to aggregate the voting rights or the shares, which are sometimes tricky when to be applied for:
  - o different funds managed by the same management company
  - o some financial instruments such as derivatives, convertible bonds,
  - o stock lending
- The deadline for notification after breaching the threshold,
- The penalties (deletion of voting rights, administrative fines by regulators, etc.).

For easing the workload for asset managers – and institutional investors in general – it is clear that such rules should be ultimately harmonised at EEA level.

Anyway, this project would have more success if it were set up at CESR level. We therefore clearly support the idea of establishing an EU network of national storage mechanisms. But we ask this network to consist of a centralised database, where market participants would find at least the existing legal thresholds applicable in each Member State, and the relevant sanctions in not notifying the breaching of such legal thresholds.

This does not mean necessarily that CESR would be responsible for maintaining the database; one could imagine that CESR would host the database under each regulator's responsibility to provide and update data.

Besides this major issue on a centralised database regarding the legal thresholds, we would also welcome a work from CESR on standard forms for notification of such holdings and support any initiative permitting to establish equivalence of third countries' regimes.

Still regarding the database, and as a second step not to postpone the urgent work to be carried out on legal thresholds, it would be very helpful to get on it – beyond legal thresholds – the statutory threshold applicable for each EEA issuer covered by the scope of the Transparency Directive.

#### *b) Membership of CESR's consultative group on Transparency*

In addition to this first main issue, related to setting up a European database, a second main issue has to be raised before CESR: the composition of CESR's consultative group on Transparency. It seems that there is no representative of professional investors in this group yet. We urge CESR to amend this composition accordingly.

We thank CESR in advance for taking the time to review our answer.

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If you wish to discuss the content of this letter with us, please contact myself at 01 44 94 94 14 (e-mail: [p.bollon@afg.asso.fr](mailto:p.bollon@afg.asso.fr)), Valentine Bonnet, Head of Corporate Governance Division at 04 44 94 94 32 (e-mail: [v.bonnet@afg.asso.fr](mailto:v.bonnet@afg.asso.fr)), Stéphane Janin, Head of International Affairs Division at 01 44 94 94 04 (e-mail: [s.janin@afg.asso.fr](mailto:s.janin@afg.asso.fr)) or his deputy Catherine Jasserand at 01 44 94 96 58 (e-mail: [c.jasserand@afg.asso.fr](mailto:c.jasserand@afg.asso.fr)).

Yours sincerely,

(signed)

Pierre Bollon