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Directorate General Internal Market and Services
European Commission
2, rue de Spa
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BELGIUM

Paris, May 22, 2008

AFG's COMMENTS ON THE EXPERT GROUP REPORT ON OPEN-ENDED REAL ESTATE FUNDS

Dear Mr. Wright,

AFG[1] welcomes the report of the expert group on real estate funds and congratulates the experts for the work undertaken and the quality of the report delivered. This reflexion at European level comes at the right time since in France we have already experienced real estate funds (e.g. SCPI, SIIC) and have recently updated our regulation in the area of open-ended real estate funds – permitting the creation at the end of 2007 of the first "OPCI" (i.e. Organismes de Placement Collectif Immobilier).

Overall, our industry is supporting the conclusions and recommendations of the experts. However we have some specific comments on a few topics that we will detail in our answer.

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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 405 asset management 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 nearly 1500 billion euros managed, i.e. 22% of all EU investment funds assets under management), wherever the funds are domiciled in the EU, *and second at worldwide level after the US*. In the field of collective investment, AFG covers – beside UCITS and other general purpose funds – the employee savings schemes and products such as regulated 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).

As a preliminary remark, we want to stress that although the European Commission gave the mandate to the experts to work only on open-ended real estate funds for retail clients, there is a need to also work on a European framework for closed-ended real estate funds and to address the issue of distribution to institutional investors.

On the report itself, we would like to make the following comments:

Recommendations 1 and 2:
We strongly support them. We fully share the view that "*consumers would be better served if regulated OEREFs could be sold effectively across EU borders, providing increased fund choice and more competitive price*".

Recommendation 3:
We agree that finding a common tax framework for OEREFs is a very difficult task. Therefore, tax issues should not be tied to fund regulation issues. It should stay as a separate topic and the lack of harmonisation of the tax regime should not slow down any further work on the European OEREF regime.

Recommendation 4:
We agree that existing national regimes should provide the ground for a European framework. However, it should be clear that the European regime which will give the right to a "passport" will not supersede national regimes, but only complement them – as, by analogy, it is already the case for the existing UCITS regime, which has complemented but not superseded the 'general purpose' fund national regimes (see Chapter 5.3).

Recommendation 5:
We support the general statements regarding the essential elements for European regime of OEREFs. However, we want to make the following comments:

1. *Property valuation*: the group acknowledged that property valuation should be made in application of international valuations standards. In the field of real estate funds, it should be ensured that international valuation methodologies are used and implemented.
2. *NAV calculation*: although the property should be valuated by one or two experts, the management company should have the right to take a different position while calculating the NAV, providing that its opinion is justified.
   More particularly, please indeed note that the asset management company should have the possibility to remain responsible of the NAV calculation and to go beyond the independent experts' opinion. In that case, the asset management company would bear entire responsibility for the valuation (justification: the asset manager is the one who is the most knowledgeable about the risks of all the underlying assets of the portfolios he manages and therefore he can take the final responsibility for setting up the NAV).
3. *Disclosure policy*: retail investors should get adequate disclosure on the product's features to avoid misselling.

Recommendation 6:
We agree with the 6 key features as identified but remind that regarding property valuation and NAV calculation, the management company should have the possibility, under its own responsibility and if justified, to calculate the NAV taking a different view from the experts on the property valuation.

Recommendations 7 and 8:
Regarding the form of the legislative action, we agree that the European OEREFs regime should be built on the model of the UCITS regime; however, it is true that OEREFs cannot be integrated into the general UCITS Directive as such. OEREF and UCITS are different types of funds with their own specificities. We propose instead to rename the UCITS Directive as an "investment Fund Directive" – keeping its essential principles common to all types of funds within a Level 1 "framework Directive" - and to extend it beyond UCITS by setting up dedicated Level 2 implementing Directives for each type of funds (i.e. one dedicated implementing Directive for UCITS based on the existing details of the UCITS Directive, another implementing Directive for OEREFs and later on possibly other implementing Directives for other types of specific funds, e.g. hedge funds/funds of hedge funds and private equity funds). Thus, the specific rules of the current UCITS funds will be maintained in an implementing Directive on UCITS, while the specific rules of the OEREFs will be detailed in another implementing Directive on real estate funds. This solution will offer the advantage to keep the current rules of the UCITS Directive without prejudice to create a consistent legal framework for other types of funds, including OEREFs.

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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), or Stéphanie Saint-Pé, Legal Affairs Division, at 01 44 94 96 69 (e-mail: s.saint-pe@afg.asso.fr).

Yours sincerely,

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