CJ/SJ Div n° 2452/Div.

Interest representative register number:

5975679180-97

Mr David Wright
Deputy Director General
Directorate General Internal Market and Services
European Commission
2/4 rue de Spa
1000 Bruxelles
BELGIQUE

Paris, August 29, 2008

AFG RESPONSE TO COMMISSION SERVICES CONSULTATION REGARDING A DRAFT DIRECTIVE/REGULATION ON CREDIT RATING AGENCIES

The Association Française de la Gestion financière (AFG)[1] welcomes the opportunity given by the Commission services to express the point of view of the French asset management

[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 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*

industry on the credit rating agencies (CRAs). AFG is registered under the number **5975679180-97** in the European Commission's register of interest representatives.

AFG has been very active in the discussions relating to CRAs and answered CESR's and IOSCO's numerous consultations on the topic in recent months and years. We have always strongly supported a framework regulation of the CRAs.

However, we regret that the Commission organises such a consultation on CRAs so suddenly and for such a short period during the summer break, as it is a crucial topic impacting the whole range of market participants. For several years, in spite of our frequent requests to the Commission for tackling this issue – *before* the sub-prime crisis (see for instance our attached response to the Commission more than 3 years ago, in July 2005, on the Financial Services Policy Green Paper: apart from the asset management file, CRAs was our first priority for the 2005-2010 timeframe[2]) – no urge was felt to take action.

Therefore, we doubt that the current two consultations on CRAs will provide for the most satisfactory responses, both quantitatively and qualitatively, from the whole range of market participants impacted by CRAs and credit ratings, and especially from the 'buy-side' specific representative organisations, both at national and European levels.

Considering this very short timeline for consultation, and as we strongly support option 2 reinforcing CESR's role, as proposed by the Commission in its document, we suggest the Commission to open another consultation period in order to let us enough time to amend appropriately all the relevant Articles of the draft Directive/Regulation later on – depending on the option finally retained by the Commission.

You will find below our first series of specific comments.

US. In the field of collective investment, our industry includes – beside UCITS – 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. 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).

[2] See attached, p. 7 to 9

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Specific Comments:

1/ The authorisation procedure and the supervisory architecture: the necessary intervention of a European entity (preferably CESR or a least with strong CESR implication)

The scope of the Directive is, in our view, not clear enough. Does it mean, for example, that no unregistered entity can publish opinions?

We would like to comment on the supervisory options proposed by the Commission: either authorisation granted at national level with a role given to CESR (option 1) or authorisation at EU level through the establishment of a Community Agency (option 2).

We favour the *second option*. However, as it would not seem very realistic, in the short term, to set up a *new* Community agency *only* dedicated to CRAs, **we would strongly support, by contrast, giving CESR this role of delivering authorisations to CRAs in the EU**. As CRAs have potentially an international or at least regional scope of activities, it would make much sense to get their authorisation submitted to a regional entity, and not to a mere national one. Moreover, the power of such a regional authorisation entity vis-à-vis CRAs would be stronger. It could also, maybe, be envisaged to create a specific European agency, consisting of a college of national regulators, delegating its operational secretariat to CESR staff, day-to-day control being executed by national securities regulators coordinating their work at CESR's level.

Conversely, the *first option* is dangerous in the sense that the 'home Member State competent authority' would have the leading role in the supervision and enforcement- even if the other authorities and CESR can play a role. The European Commission should keep in mind that we could not exclude that most of the CRAs might be located in the same Member State and that option 1 would therefore give excessive powers (supervision, sanctions) on the CRAs to only one national supervisor with high potential pan-European impacts.

2/ The draft: mostly sound ideas, parts of which should be left to Level 2 or even self-regulation

In general we support the drafting from the Commission, although it is, in our view, too much detailed and difficult to enforce. Many, and maybe most, parts could be left to Level 2, and subject to impact analysis, or even left to codes of conduct submitted to the approval of CESR (or the Agency).

We mentioned below where the drafting might be amended – or conversely where we strongly support Commission's proposal.

a) Definitions – Article 2 of the draft

We are wondering whether *para 13* 'Home Member State competent authority' is relevant since there are no 'Host Member State competent authorities'.

Para 9 defining 'related third party' seems too broad.

b) Procedure for authorisation- Article 3 to Article 6

Articles 3 to 6 have obviously to be amended according to the option chosen. We would be happy to bring drafting suggestions once option 2 is taken on board by the Commission.

c) Organisation requirements – Article 7 to Article 17

Article 12 - rating methodologies: from the perspective of the credit ratings' users, this provision is highly important to ensure a better quality and understanding of ratings. It is necessary to properly disclose to users the methodology used.

Article 14 para 3 – symbology of ratings: we support this paragraph.

Article 15 para 3 – adressees of confidential information by CRAs: we suggest to deleted the optional sending of information by CRAs to CESR, and to make it compulsory as we consider that a bigger role should be given to CESR (in line with our position in favour of option 2).

d) Designation and powers of competent authorities:

Article 21- sanctions: in order to be consistent with the sanctions applicable to the rest of market participants other than CRAs, this provision should be copied out from the MiFID

(Article 51) which provides for administrative sanctions 'without prejudice to the procedures for the withdrawal of authorisation or to the right of Member State to impose criminal sanctions'.

Article 22- action by competent authorities other than the home MS competent authority:

This Article (among others) should be fully reviewed as CESR should play a central role of cooperation, mediation and arbitrage (as mentioned for instance in the Market Abuse Directive), even more if option 2 is taken on board by the Commission.

e) Cooperation between competent authorities of different Member States:

We are surprised by the proposal of the European Commission. As for Article 22 right above, we think that CESR must be given a greater role to ensure cooperation as well as delegation of tasks between competent authorities. We are also surprised by the content of *Article 26* relating to the refusal to cooperate. We call on the European Commission to review the cooperation chapter of the draft in line with option 2 according to our wish.

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We are looking forward to further work on more detailed drafting suggestions that we could make, if the Commission allows us to do so.

In any case, we thank the Commission very much for taking into consideration our comments and remain at your disposal for any further questions. Please feel free to contact myself at +33 1 44 94 94 14 (e-mail: p.bollon@afg.asso.fr), our Head of International Affairs Stéphane Janin at +33 1 44 94 94 04 (e-mail: s.janin@afg.asso.fr) or his deputy Catherine Jasserand at +33 1 44 94 96 58 (e-mail: c.jasserand@afg.asso.fr).

Yours sincerely,

Pierre Bollon

ATTACHMENT

SJ - n° 2050/Div

M. Alexander Schaub
Directeur Général
Direction Générale Marché intérieur et services
Commission européenne
107 Avenue de Cortenbergh
1049 Bruxelles
Belgique

Paris, 25 july 2005

AFG's response to DG MARKT consultation on Financial Services Policy 'Green Paper'

Dear Mr Schaub,

The Association Française de la Gestion financière (AFG) is very pleased to have the opportunity to comment on the consultative 'Green Paper' issued by DG MARKT services on the future Financial Services Policy (2005-2010).

As you are aware, AFG represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. Our members include management companies and investment companies. They are entrepreneurial or belong to French or foreign banking, insurance or asset management groups. AFG members are managing over 1800 billion euros in the field of investment management - making the French industry a leader in Europe (for collective investment in particular, with more than 1100 billion euros i.e. 20% of EU investment funds assets under management) and at global level. 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).

Therefore, we hope that AFG (through the size and diversity of its membership) can provide with a helpful contribution to DG MARKT services, based on our members' experience.

1. General remarks

From a general perspective, we are disappointed by the lack of dynamics of the Green Paper. It seems, basically, to equate new legislation with unnecessary costs. We do not share such a view. It is true that it can be, and indeed has been in the past, the case more often than not.

But it is also thanks to European legislative action that many national regulations have been modernised and that many barriers to cross-border business have been dismantled.

We have the feeling that DG MARKT services did not fully take on board the proposals made by the four Expert Groups set up by the Commission in late 2003. Those Expert Groups worked intensively in order to propose detailed tracks for action to the Commission, and it appears to us that the Commission does not clearly justify in its Green Paper why it departs from these requests for actions coming from those which need them - professionals.

For us, the Commission cannot stop its legislative work. Improving the convergence in the enforcement of the existing legislation is a very laudable objective. But obviously it is not enough.

In the field of financial services, innovation is still accelerating. This permanent innovation generates changes in the landscape of the industry. These changes in practice must be accompanied by upgrading the relevant legislation, opening it to new financial techniques in an appropriate way.

A 'no action position' by the Commission would harm the competitiveness of the European industry vis-à-vis its non-European competitors. As Commissioner McCreevy stated in its speech for the Exchange of Views on Financial Services Policy 2005-2010, held on 18 July 2005 in Brussels: "*Legislation has to help, not hinder, this process [of innovation] – working with the ebbs and flows of markets.*"

Indeed, innovation must develop within an appropriate regulatory framework. If the Commission decides not to take action to adapt the legislative framework to innovation, innovation will develop beside it. Consequently, it will increase the risk of financial scandals in Europe. For the time being, Europe has avoided scandals similar to those of the United States. If scandals burst, the blame would be at least partly put on European institutions, in particular the Commission (as warnings will have been raised by interested parties before). It would also finally lead to a '*scandals driven regulation*' as in the United States – which might entail an overshooting wave of measures, inappropriate both to professionals and investors. A 'no action' position would thus create a political risk vis-à-vis the other European institutions, European industry and European public opinion.

Therefore, we urge the Commission to go forward towards the route for an upgraded European legislation in many areas.

2. Areas for action

Before entering the subject of asset management, we consider that at least three other topics should be dealt by the Commission through European legal texts rapidly.

a) Credit rating agencies (CRAs)

First, we consider that limiting their regulation to the existing CAD 3 provisions is clearly not sufficient for investors. Europe needs some autonomy in the area of registration/status of CRAs, knowing that today, European issuers and investors depend on decisions taken by the US SEC to register candidate agencies as NRSROs. Let us recall in particular that some major CRAs belong to European owners and are submitted in practice to non-European regulators only.

As CAD 3 (and possibly Solvency 2) will regulate the use of credit ratings for prudential purposes, it seems necessary to consider *building a European regime for credit rating agencies ahead of any regulated use of credit ratings in Europe*.

Second, the development of structured finance is currently increasing the role of CRAs. Nowadays, the largest source of revenues and the main source of growth for CRAs is structured finance. But the point is that "*the structured credit market is relatively opaque*"[3]. The Bank for International Settlements (BIS) wrote in its latest annual report[4]: "*although efforts have been made to develop more realistic pricing models and risk management systems, many market participants are still building up their analytical capacity. One consequence is that rating agencies have played a key role in the development of the market*"[5].

Considering this increasing key role of credit rating agencies in the financial markets, at least comprehensive analysis is required before concluding on the need or not for regulatory action.

Third, the Securities Expert Group set up by the Commission in 2003 decided to keep the topic within the scope of possible future actions by the Commission.

On the substance, we consider that *progress could still be made* in terms of competition, transparency for methodology, disclosure of conflicts of interest and management of inside information.

Let us recall that as far the EU is concerned, Parmalat was still rated with an investment-grade a couple of weeks before its collapse (with some similarity with Enron and Worldcom in the US).

CRAs operate as an oligopoly in practice. Some market participants have accused or suspected CRAs to have abused their oligopolistic positions by refusing to rate new issues unless the agency has already been engaged to rate a substantial portion of certain classes of the issuer's outstanding securities. Other strong-arm suspected practices by the CRAs include requesting payment from issuers for unsolicited ratings (for instance, *see attachment 1/A*).

Moreover, the results of the 2004 survey of the America-based Association for Financial Professionals (AFP)[6] reveals that a third of finance managers perceive the credit ratings of their own organizations to be inaccurate; 42% perceive rating changes to be untimely. See *attachment 1/B* for more details by AFP.

The US Congress is currently debating possible evolutions on the subject after the Enron and Worldcom cases. Hearings were organised in June 2005 on the subject.

In this context, the America-based counterpart of AFG, the Investment Company Institute (ICI), wrote to the US House of Representatives Subcommittee in charge of these hearings. ICI stated that "*Given the importance of these credit ratings, we believe that maintaining the integrity and quality of the credit ratings process is essential to investor confidence and to the proper functioning of our capital markets* (…). *We support the goals* [of the "Credit Rating Agency Duopoly Relief Act of 2005" recently introduced by the US Congress] – *the promotion of competition among credit rating agencies and the protection of investors. We therefore look forward to working with the committee to ensure passage of legislation that*

[3] See Financial Times, 28 July 2005: "*Credit rating agencies soar as structured finance takes pride of place*"
[4] BIS 75th Annual Report, 27 June 2005, p. 118
[5] Furthermore, according to Alex Veroude, a CDO manager and issuer at Gulf Investment Bank, quoted by FT 28/07/05 (see footnote 1): "*the whole CDO* [business] *exists largely by virtue of rating agencies –we can only do them because the rating agencies come up with the ratings*". According to the Financial Times, "*that makes agencies analysis extraordinarily influential – and their role in the industry pivotal. (…) some investors complain that it can be hard to monitor how the agencies arrive at their decisions. For example, the three agencies give different weights to the importance of an individual manager's record when rating a managed CDO. Meanwhile, as the BIS has noted, the quality of the ratings has not been tested over a long period."*
[6] The Association for Financial Professionals (AFP) serves more than 14,000 individual members in corporate treasury and financial management in the US.

achieves these goals." See the full contents of the ICI letter to the US Congress in *attachment 1/C*.

AFG fully shares the views of ICI and AFP, from an investor perspective.

Apart from the report adopted by the European Parliament in 2004, very little has been done so far at the level of European institutions. The Commission delivered a mandate to CESR, the outcome of which was very limited as CESR members had already endorsed a very soft report at the level of IOSCO.

In the US, the Congress is launching action. **It would be a bad signal if the EU stayed inert at the same moment.**

Therefore, we think the Commission should build up a dedicated working group on the issue right now.

b) Clearing and settlement

From the investors perspective, clearing and settlement require a Directive. Final investors need a structural safety which requires, as a prerequisite, a segregation of functions ensured by European law. Still in the interests of investors, and as mentioned in the report of the European Parliament, there is an obvious need for a higher degree of transparency – in particular on the prices of services – as well as a free access to the system.

For more details on AFG position, see our views as already expressed in our response to Commission's communication on the subject as well as the letter we sent to a large number of MEPs on the EP draft report (*attachment 2*).

c) Corporate governance of issuers

Regarding corporate governance of issuers, we fully support the actions currently undertaken by the European Commission in this field. In particular, we ask – as do both EFAMA and the International Corporate Governance Network (ICGN) - for strongly facilitating the exercise of shareholders (notably on a cross-border basis). For your information, regarding shareholders' rights, AFG supported Commission's views in general through its detailed answers to Commission's first and second consultations (see *attachment 3*).

d) Asset management

Regarding asset management, AFG members share the following view (which was submitted by AFG with more details to Commissioner Mc Creevy in June 2005 – see *attachment 4*).

Along with clearing and settlement, asset management does constitute a strategic area, from various angles. The activity of investors through asset managers helps financing economy. It also helps financing retirement regimes. Last, asset management activity contributes to supporting the European financial marketplace. It is worthwhile to notice that at global level, the experience built by Europe in asset management is more and more influent (in particular in the US, whose industry is moving towards continental Europe successful experience of balanced funds and guaranteed funds for instance). In Asia, UCITSs built after the UCITS Directive are now considered as synonyms of safety for investors.

European institutions must be able to keep this comparative advantage in terms of experience and reputation. But the legal framework must improve this advantage if Europe wants to keep this pole of excellence.

In recent years, *European institutions seemed to understand this need for legal improvement regarding asset management.*

On the one hand, the Commission rightly set up both an Expert Group and a Unit specifically dedicated to this area (‘*asset management’* unit). We wish to thank you once again for having taken these crucial decisions. We have just one wish: for the moment this unit just covers collective investment in practice. As the official scope of the unit is ‘*asset management*’, it would seem appropriate for it to cover also retirement pension schemes and discretionary portfolio management as well, as in our view these two aspects are parts of asset management and have inter-connections with collective investment.

On the other hand, an overwhelming majority of MEPs in the European Parliament adopted a resolution in January 2004, based on a report by MEP Purvis, asking the Commission to broaden the scope of application of Community legislation to alternative investments such as hedge funds and to make full use of the Lamfalussy format for this purpose (which is not currently the case).

We will not develop here our detailed views on necessary actions to be undertaken by the Commission in the field of asset management for coming years, as a specific consultation has just been launched by the Commission following the publication of the Green Paper on investment funds – we will give our detailed opinion by November in the context of that consultation.

At this stage, we just want to stress the following *four general points*.

First, the existing European legal framework hinders building up a truly integrated and competitive European asset management single market, as it does not fit with the evolutions of the industry, products and strategies. AFG considers that an in-depth revision of legal measures must be undertaken in the field of asset management as soon as now. We strongly disagree with the reason sometimes given to postpone this work: some parties claim that as this in-depth revision will take time before getting results in practice, it is better to wait before reforming the legal framework. On the contrary, in the view of the France-based asset management industry, it is precisely because it will take time for practical results that it is urgent to launch actions at the level of the legal framework. Non-European competitors will not wait for us.

Second, the legal framework for asset management should be simplified. Two Directives – namely the MiFID and the UCITS Directive – currently impact our activity, although our activity is now widely identified through entities dedicated to the *single* activity of asset management. This situation is not satisfactory.

Third, the legal format of the existing UCITS Directive does not fit with our needs. As mentioned above, our members require a legal framework which allows fast adaptation to rapid changes in our environment. Therefore, we will support actively the efforts from the Commission to widen the scope of the Lamfalussy approach to asset management: only essential principles at Level 1, technical details at Level 2 – but avoiding over-regulation and leaving some space for Level 3.

Four, the Commission should start working on improving consistency between legislations applicable to different parts of the financial sector. In our view, the existing European provisions applicable to collective portfolio management are too detailed as compared to competitor financial products. The Commission must ensure a level playing field through legislation.

In the area of asset management, the time is right for ambition.

3. Other issues raised by the Commission Green Paper

On the other issues raised by the consultative paper, AFG wishes to make the following comments.

a) Retail Financial Services

AFG appreciates the Commission's efforts to facilitate the provision of retail financial services in Europe. In our opinion, however, the need for any regulatory intervention should be ascertained by research work and discussions with the interested groups of market participants. The establishment of forum groups as proposed by the Commission might constitute an appropriate tool to tackle these issues.

In particular, the need to introduce common European standards for the provision of cross-border services by financial intermediaries should be put under a thorough scrutiny. The Markets in Financial Instruments Directive (MiFID) already ensures a high-level protection of retail investors by means of appropriate risk management, consistent handling of conflicts of interests and comprehensive transparency requirements.

It is of utmost importance that any regulatory steps aiming at increasing transparency apply on an *equal basis to the intermediaries of all financial services*, thus creating a level playing field for comparable products and facilitating a fair competition to the benefit of retail investors. Therefore, we request the Commission to pay particular attention to these issues when assessing the scope of further retail integration.

In terms of the adequate regulatory approach, we strongly prefer the *creation of pan-European passports for certain retail services*. This regulatory concept has been proved and tested by means of many successfully implemented measures and is definitely consistent with other pieces of European financial legislation. However, another route could be the creation of "*26th regimes*" which allow "European" products without prohibiting a regime for domestic non-harmonised products. In practice, it is already the case today for Collective Investment Schemes in Europe: some are UCITS Directive-compliant when others (not benefiting from a "passport") are not.

b) Better Regulation and International Dimension

Regarding *better regulation*, we strongly support the use of impact assessments or cost-benefit analysis. However, we consider that the Commission must avoid the risk of "*paralysis by analysis*": in-depth analysis must not become a reason for always postponing legislative actions which are in fact necessary.

Moreover, we consider that better regulation requires a better representation of professional sectors, not only at Commission level abut also at the level of CESR, CEBS and CEIOPS. In particular, we wish asset management representatives to be involved in the work currently done by CEIOPS, at least for the issues related to occupational retirement.

Better regulation requires also taking into account some *exogeneous dimensions of financial services*. Financial services policy must start from comprehensive macro-economic studies, including analysis of savings and needs for financing the overall economy. Moreover, AFG considers that issuers must be better involved in the work carried out by the Commission on financial topics – as financial markets in particular are basically a means to raise capital for issuers. Investors (which are sometimes presented as opposed to issuers) need in fact a legal

framework which ensures the competitiveness of issuers as well, in order to get the best medium-term performance for investors.

Regarding "*International Dimension*" as stated by Commissioner McCreevy in his speech on 18 July 2005 in Brussels, if we wish the Single Market to really work, and if we wish also to take better account of this International Dimension, we need a single securities and asset management regulator in the EU.

From the perspective of the Internal Market, what is the way to enforce a single set of legislation? Nowadays, CESR is struggling with its own members in order to standardise practices (level 3). But national regulators try naturally to keep power – and power means differentiating from the others in behaviour. From this perspective, a European single regulator is the only practical solution to get a Single Market in the facts.

From an external perspective, the "*International Dimension*" of actions by the EU is currently becoming crucial. But it cannot be reinforced without a credible and powerful European securities and asset management regulator. Facing non-European regulators – well-equipped in budget, staff and powers – the EU is presenting either national regulators which are credible but have no power to enforce European legislation in the whole Europe or Level 3 committees which have some very limited powers in practice for the moment and are small entities. On this basis, how could we imagine a fair and balanced answer shared by the EU and non-EU authorities to the very sound question raised by Commissioner McCreevy in his speech: "*Is it really necessary to have several sets of regulation which duplicate each other and cause conflicts in law?*" As long as the EU will not have a single securities and asset management regulator, the answer will be difficult to find if we want to promote the European interests – which is our common ultimate goal.

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We thank once again the staff of DG MARKT services for its readiness to speak with us in the preparation of the current Green Papers. We hope that you will find our contribution useful and opt to give impetus in the very important task of setting an ambitious Financial Services Policy for the years to come.

If you wish to discuss any point of this letter, or for any other question, do not hesitate to contact us on 00 33 1 44 94 94 14 (e-mail: p.bollon@afg.asso.fr) and/or Stéphane Janin on 00 33 1 44 94 94 04 (e-mail: s.janin@afg.asso.fr).

Yours sincerely,

Pierre Bollon

Attachments:

- *Attachments regarding Credit Rating Agencies (CRAs):*
  - *Attachment 1/A: Practical case of Northern Trust (Northern Trust response to SEC's public consultation on CRAs)*
  - *Attachment 1/B: Statement of the Association for Financial Professionals (AFP) before the Congress*
  - *Attachment 1/C: Letter from the Investment Company Institute to the Congress*
- *Attachment 2 regarding AFG's position on Clearing and Settlement*
- *Attachment 3 regarding AFG's position on shareholders' rights*
- *Attachment 4 regarding AFG's preliminary position on the Asset Management Green Paper*

ATTACHMENT1/A

Northern Trust response to SEC's public consultation on Credit Rating Agencies (28 July 2003)

July 28, 2003

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609
e-mail: rule-comments@sec.gov

Re: File No. 57-12-03

Ladies and Gentlemen:

We are very pleased to have this opportunity to respond to the SEC's request contained in the release entitled "Rating Agencies and the Use of Credit Ratings Under the Federal Securities Laws."

Northern Trust Corporation ("Northern") is a publicly registered and traded multi-bank holding company with its headquarters in Chicago, Illinois. Northern also has issued publicly registered debt securities on numerous occasions, as a regular part of its corporate finance activities. We have a network of offices in 14 U.S. states and international offices in six countries and over 8,200 employees worldwide. Northern had assets totaling $39 billion and trust assets under administration totaling $1.8 trillion as of June 30, 2003.

We are delighted to have this opportunity to comment on these matters. We are strong supporters of uniform standards on the matters discussed herein, and we welcome the opportunity to discuss any comments in this letter should you wish to do so.

While we regard many of the questions raised in the release important and worthy of comment, we will confine our response to answering questions 47 and 48 in the section "Alleged Anticompetitive, Abusive and Unfair Practices," which questions touch on matters that particularly concern us.

Question 47: Should NRSRO recognition specifically be conditioned on an NRSRO's agreeing to forbear from requiring issuers to purchase ancillary services as a precondition for performance of the ratings service?

Question 48: Should NRSRO recognition specifically be conditioned on an NRSRO's not engaging in specified practices with respect to unsolicited rating, (e.g., sending a fee

schedule and "encouraging" payment, indicating a rating might be improved with the cooperation of the issuer)?

In general, Northern has experienced past issues with rating agencies in at least two respects. First, Northern has been required to purchase ratings that it has not requested and has no intention to request, in order to receive ratings that Northern does desire to receive. Secondly, Northern has been sent bills by rating agencies for ratings that were not requested by Northern, and for which Northern had not previously agreed to pay. On occasion, we have paid such invoices in order to preserve goodwill with the rating agency, but we feel that this practice, along with the one described above, is prone to abuse.

In the case of the first practice mentioned above, that of the "linked" service, the security issuer has no meaningful choice but to "hire" the rating agency to perform a service that the issuer does not need, in order to receive what is an essential service, the rating of a particular securities issue or other service. In the second case, that of the invoice submitted for work not requested, the issuer may refuse to pay, but is subjected to a reasonable concern that failure to pay will perhaps affect future ratings by the rating agency, or may affect the attitude of the rating agency to the issuer more generally.

Both problems can be effectively dealt with by a requirement that all services for which a rating agency may receive compensation must be the subject of a written agreement for services previously entered into not more often than annually or even biannually between issuer and rating agency. This agreement should not be occasioned by the rating of any particular issue or service of the issuer. Compensation may be calculated either on a per service basis or on a flat fee, but in any case any invoice or other request for payment by the rating agency should be the result of a prior written agreement between the parties covering all material terms of the relationship. Of course, any communication that states or implies any connection between the terms of compensation of the rating agency and the ratings actually received by an issuer must be explicitly prohibited.

We feel that if implemented, these straightforward policies would help restore investor confidence in the fairness of ratings provided by NRSRO's, and would also protect the interests of issuers who frequently need to employ the services of an NRSRO.

Sincerely,

/s/ James I. Kaplan

James I. Kaplan
Associaate General Counsel
Northern Trust Corporation

JIK:pf

ATTACHMENT 1/B

Extracts from the Statement of the President and CEO of the Association for Financial Professionals (AFP) before the US House Financial Services Committee on 'Legislative Solutions for the Rating Agency Duopoly' (29 June 2005)

"*AFP's research has consistently shown that confidence in rating agencies and their ratings is low and has continued to diminish over the past few years* (…)."

"*AFP has stated that the SEC's existing recognition process has created an artificial barrier to entry to the credit ratings market. This barrier has led to a concentration of market power with the recognized rating agencies and a lack of competition and innovation in the credit ratings market* (…)."

"*We do not believe that the SEC proposal would foster a truly competitive market and fails to address the need for ongoing oversight of the credit ratings market* (…)."

"*Ongoing oversight must ensure that registered statistical rating organizations continue to issue credible and reliable ratings. Further, the Commission must periodically verify that registered statistical rating organizations have and adhere to policies that protect non-public information and prevent conflicts of interest and unfair and abusive practices* (…)."

ATTACHMENT 1/C

Investment Company Institute (ICI)'s letter to the US Congress on Credit Rating Agencies (29 June 2005)

June 29, 2005

The Honorable Richard H. Baker, Chairman
The Honorable Paul Kanjorski, Ranking Member
Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Baker and Ranking Member Kanjorski:

The Investment Company Institute* commends the House Financial Services Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises for holding a June 29 hearing entitled "Legislative Solutions for the Rating Agency Duopoly." Creating an efficient credit rating process is critical to investors and to the U.S. securities markets as a whole. Accordingly, we support the Subcommittee's continued examination of these issues. While we have some technical concerns with H.R. 2990, the "Credit Rating Agency Duopoly Relief Act of 2005" recently introduced by Rep. Michael G. Fitzpatrick (R-PA), we support its goals - the promotion of competition among credit rating agencies and the protection of investors. We therefore look forward to working with the committee to ensure passage of legislation that achieves these goals.

The Institute and its members have a longstanding interest in ensuring appropriate oversight of credit rating agencies given the significant role that they play in the U.S. securities markets. The ratings published by credit rating agencies play an important part in the investment decisions of institutional investors, including mutual funds, and the Securities and Exchange Commission and other regulatory agencies rely upon these ratings as assessments of investment risk for various regulatory purposes. Given the importance of these credit ratings, we believe that maintaining the integrity and quality of the credit ratings process is essential to investor confidence and to the proper functioning of our capital markets.

Please feel free to contact me at 202-326-5901 if you have questions or if I can assist you with this or any matter.

Sincerely,

Paul Schott Stevens
President

cc: The Honorable Michael Oxley
The Honorable Barney Frank

ENDNOTES

* ICI members include 8,541 open-end investment companies (mutual funds), 653 closed-end investment companies, 143 exchange-traded funds, and 5 sponsors of unit investment trusts. Mutual fund members of the ICI have total assets of approximately $7.838 trillion (representing more than 95 percent of all assets of US mutual funds); these funds serve approximately 87.7 million shareholders in more than 51.2 million households.

ATTACHMENT 2

SJ - n° 2007/Div.

MEP ….
European Parliament
Rue Wiertz
1047 Brussels
Belgium

Paris, …. 2005

AFG CONCERNS REGARDING MRS VILLIERS' REPORT ON CLEARING AND SETTLEMENT

(…)

At this stage of discussions, we just want to stress three core principles which appear for us as crucial to take into account for European future developments in the field of clearing and settlement.

First, we consider that in order to reduce their own risks and those of their clients, asset managers need a clear segregation of functions for each type of entities acting in the clearing and settlement process. In particular, we support initiatives which would lead to defining the function of central depositary as well as making this function separate from any other intermediation activities. Thus, asset managers on behalf of their clients would be in a position to identify the risk attached to every segment of activities (knowing that one of the main functions of a central system is to guarantee the finality of settlements without any financial or operational risk).

Second, we wish that the processing in financial instruments, including units of UCITS, be equivalent at European level and at domestic level. It requires that the future European system would offer to the existing operators acting on national infrastructures, both reductions of costs and improvements of compatibility with the main systems outside Europe. In particular, specificities of UCITS should be taken into account.

Third, such a future organisation – which would lead to higher efficiency and lower costs for investors – shall need European legislation in order to reach harmonisation between Member States. In the interest of investors, we must avoid discrepancies in interpretations of standards which would then lead to undue costs as well as financial and operational risks.

Therefore, AFG supports the initiative to bring forward a directive on clearing and settlement. The Single Market won't be reached by implementation and enforcement of the Financial Services Action Plan only. Post-trading is obviously a key part of this legislative framework, notably through the clear identification of functions in the clearing and settlement process – including between banking and infrastructure activities. This last segregation of functions is already in place in the majority of Member States, and should be kept as a basis for building the future legislative framework on this matter in Europe, as experience showed that this model based on segregation of functions have been working pretty well for decades – ensuring a high degree of safety for investors notably.

The aim of any future action in the field of clearing and settlement is to reduce costs at the level of the Single Market (considering the development of cross-border activities) without creating higher risks for investors. Market-led solutions or non-binding standards proposed by regulators' fora do not seem safe enough on the investor protection side. Investor protection requires a Directive.

If you would like to discuss the contents of this letter with us, please contact myself on 00 33 1 44 94 94 14, or Stéphane Janin on 00 33 1 44 94 94 04 (e-mail: s.janin@afg.asso.fr).

Yours sincerely.

(signed)

Pierre BOLLON

ATTACHMENT 3

SJ/KC - n° /Div

M. Pierre Delsaux
Directeur
Direction F « Libre circulation des capitaux, droit des sociétés et gouvernement d'entreprise »
Direction Générale Marché intérieur et services
Commission européenne
107 Avenue de Cortenbergh
1049 Bruxelles
Belgique

Paris, le 13 juillet 2005

AFG's response to DG MARKT consultation on shareholders' rights

Dear Mr Delsaux,

The Association Française de la Gestion financière (AFG) is very pleased to have the opportunity to comment on the second consultation paper issued by DG MARKT on shareholders' rights.

AFG represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. Our members include management companies and investment companies. They are entrepreneurial or belong to French or foreign banking, insurance or asset management groups. AFG members are managing over 1800 billion euros in the field of investment management - making the French industry a leader in Europe (for collective investment in particular, with more than 1100 billion euros i.e. 20% of EU investment funds assets under management) and at global level. 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.

Therefore, we hope that AFG (through the size and diversity of its membership) can provide with a helpful contribution to DG MARKT, based on our members' experience.

Moreover, AFG is an active member of the European Fund and Asset Management Association (EFAMA). AFG has also been supporting for years the work of the International

Corporate Governance Network (ICGN) and I am currently one of the elected members of its Board of Directors.

Regarding specifically shareholders' rights, AFG has been developing a comprehensive policy since 1998 under the guidance of its Corporate Governance Committee, chaired by Mr Hellebuyck. In particular, AFG has drafted corporate governance recommendations, relating to general meetings and boards of directors of companies making offers to the public, in 1998. These recommendations are updated on a regular basis (2001, 2004). The main aim of these recommendations is to guide investment managers, notably when they intend to make use of their shareholders' rights in General Meetings. AFG sets up annual "warning programmes" which allow AFG to disseminate specific recommendations to investment managers before the general meetings of the relevant companies – by stressing every draft resolution which might contradict AFG recommendations.

In this view, we are very supportive of the efforts of the European Commission dedicated to developing a better use of shareholders' rights across the Union. From an investors' perspective, this is a prerequisite for ensuring the most efficient management of companies.

Before entering the substance of the DG MARKT consultation, we wish to mention one general point. Even though we are ready to answer in English language to a consultative paper drafted in English language as well, we must stress that considering the differences in legal systems between anglo-saxon countries and continental Europe, the meaning of the same notion might be different from one respondent to another one – and might therefore generate also some difficulties for DG MARKT services to interpret the answers given to the consultation on some legal points raised through it.

For instance, the notions of 'ultimate investor' and 'ultimate accountholder' might be interpreted very differently between continental Member States and some other Member States.

In such cases – but only in these specific cases - it seems for us that it is better to keep the 'statu quo' rather than taking the risk of trying to find common definitions on every legal aspect raised by the consultative paper, to avoid situations where at last some definitions would fit with no current approaches in Europe at all (or even worse, which would impose a view which is not currently shared by a large majority of Member States legislations).

Moreover, one of the weak points of consultations by the Commission in general is its difficulty to get input from retail investors. If DG MARKT continues in particular to limit translations on a few consultative papers and does not ensure national language versions of these papers, it will obviously bias the outcome from such consultation exercises. In the specific case of shareholders' rights, it must not be neglected that more and more retail investors want to make use of their shareholders' rights on a cross-border basis. If this point is not taken into account for the future, it might harm the legitimacy of such consultations and the conclusions drawn from them.

Our final general comment is related to the so-called Dialogue with the USA and non-european continents more widely: we urge the Commission to ensure that in parallel with its action on improving shareholders' rights in the Union, the United States of America as well as a significant number of States in Asia and South America facilitate shareholders' rights from non-domestic shareholders. This request should be put on the agenda of Internal Market Commissioner McCreevy when dialoguing with non-European counterparts (notably the USA).

On the questions raised by the consultative paper, AFG wishes to make the following comments.

1. Scope

We agree with the proposed scope for any future measures at EU level on shareholders' rights, i.e. application solely to companies formed under the laws of a Member State and whose securities are listed.

However, we do not want the Commission to limit those companies whose securities are admitted to trading on a *regulated* market in one or more Member States within the meaning of Council Directive 2004/39/EC.

Moreover, a faculty should be offered to Member States to enlarge the scope of application to non-listed companies ('opt-in').

We also agree that UCITS (of the corporate type) falling within the scope of Article 1(2) of modified Directive 85/611/EEC and equivalent funds should be *excluded* from the scope of application.

2. The "ultimate investor" or "ultimate accountholder"

Although such definitions would obviously be helpful, we strongly doubt that such an objective could easily be met and therefore, we support the view of the Commission that it would be inappropriate to provide for a legal definition of 'ultimate investor' as a prerequisite to facilitating the cross-border exercise of shareholders rights. We agree with the Commission that the cross-border exercise of shareholders' rights can be significantly eased by ensuring that non-residents are able to cast informed votes, i.e. that they receive information releavant to General Meetings and that voting at a distance is not subject to overly cumbersome requirements.

Therefore, in order to answer *questions 1 and 2*, AFG does not consider that granting 'ultimate investors' at EU level a legal enforceable right to direct how votes attached to shares credited to their accounts are cast is a pre-requisite to facilitating cross-border voting.

It must also be made clear that, in the case of investment funds, the right to vote belongs to the fund manager. We strongly support EFAMA's answer on this point.

3. Stock lending and depositary receipts

3.1 Stock lending

We support the minimum standard as proposed by the Commission, i.e:

- *"agreements providing for the temporary transfer for consideration of shares shall contain provisions informing the relevant parties to the agreement of the effect of the agreement with regard to the voting rights attaching to the transferred shares;*

- *where an intermediary enters into such an agreement in relation to shares which the intermediary holds on behalf of another person, or which are held in a securities account in the name of another person, the intermediary shall, prior to entering into the agreement, duly inform that person or its representatives of its intention to enter into such an agreement and the effects of the agreement with regard to the voting rights attaching to the relevant shares."*

We also remind that the ICGN is currently devising a code of best practice in this field.

3.2 Depositary receipts

We support the minimum standard as proposed by the Commission, i.e. holders of depositary receipts shall alone have the right to determine how the voting rights attached to underlying shares represented by depositary receipts are exercised. It is also a subject on which the ICGN has done substantial work.

4. Pre General Meeting communications

- Notice periods for convening a General Meeting

We support *only partially* the minimum standards as proposed by the Commission, i.e.:

- *"Annual General Meetings of listed companies shall be convened on a first call with no less than 21 business days notice*
- *Other Shareholders' Meetings shall be convened on a first call with no less that 10 business days notice."*

R*egarding the first indent*, AFG considers that the proposed provision should apply not only to Annual General Meetings, but to General Meetings in general. All General Meetings should be covered by the provision, as crucial resolutions may be adopted during such non-Annual General Meetings. We therefore ask for the deletion of the word "*Annual*".

Regarding the second indent, our members feel that 10 days is too short a period in practice. Why not set the same 21 days period for all Meetings?

Despite the fact that DG MARKT services speak about "*minimum standards*", AFG considers that this extension of the provision to all General Meetings (not only Annual ones) must be applied as a minimum standard in all Member States – in order to ensure a level playing field at Union level, for the benefit of investors.

- Content of the notice

We agree *only partially* with the minimum standards, i.e.:

- *"Any notice convening a General Meeting shall at least:*
  - *Indicate precisely the place, time and agenda of the meeting and give a clear and precise description of participation and voting procedures and requirements for voting at the General Meeting. Alternatively, it may indicate where such information may be obtained*
  - *Indicate where the full, unabridged text of the resolutions and the documents intended to be submitted to the General Meeting may be obtained."*

On this aspect, we do not agree on the fact, as stated in the first bullet point, that an alternative could be to indicate merely where such information may be obtained. Within all Member States, it is necessary to indicate all the elements mentioned in the first sentence of the first bullet point. Otherwise, investors might be at risk of not being informed of such information and in practice might lose their power to vote without even knowing it. Therefore, *this last sentence of the first bullet point should be deleted.*

We also think that all listed companies should maintain a website on which all this information would be made available.

- Information relevant to the General Meeting

We basically support Commission's minimum standard, i.e. *"the full text of the resolutions and documents related to the agenda items and intended to be submitted to the General Meeting shall be made available at the latest 15 business days before any Annual General Meeting, and at latest 10 business days before any other General Meeting."*

However, as stated above, we would not make any distinction between annual and other (General) Meetings.

- Dissemination, and language, of the meeting notice and materials

We do not agree with the minimum standard proposed by the Commission, i.e. *"Any notice convening a General Meeting and any document intended to be submitted to the General Meeting shall be made available in a language customery in the sphere of international finance, unless the General Meeting decides to the contrary."*

In our view, such a wording introduces several uncertainties, in particular the legal consequences of such a provision: many investors might appeal to the courts to contest the legal meaning of documents submitted to the General Meeting, if the language of these documents is different from the one of the national company law for instance.

Therefore, we suggest requiring such notices and documents to be made available both in the local language and in such a language "*customery in the sphere of international finance*".

- Specific section of the issuer's website dedicated to the General Meeting

We support Commission's minimum standards and think that any listed company should maintain such a website.

5. Admission to the General Meeting – share blocking

We support strongly the condemnation of share blocking.

However, we support *only partially* Commission's minimum standards, i.e.:

"1. Provisions making the right to vote in a General Meeting conditional, or allowing the right to vote to be made conditional, on the immobilisation of the corresponding shares for any period prior to the Meeting shall be abolished

2. The right to vote at the General Meeting of a listed company shall be made conditional upon qualifying as a shareholder of that listed company on a given date prior to the relevant General Meeting."

Although we strongly share the stated principles and in particular the abolishment of immobilisation of shares, we consider necessary to set up a *specific time period* on point 2. This period should ideally be the same at EU level to ease the exercise of their rights by investors.

A commonly used reference is to take as a reference the record date, which is D - 3.

6. Shareholders rights in relation to the General Meeting

6.1 Electronic participation in General Meetings

We support Commission's minimum standard, i.e. "*Member States shall remove existing requirements, and shall not impose new requirements, that act or would act as a barrier to*

the development of the participation of shareholders to the general meeting via electronic means."

Moreover, AFG wishes to add that in practice, for internet shareholders' voting, a sufficient condition is that the website of the Meeting service of the relevant issuer registers the intention to vote from shareholders, registers their voting instructions and launches a request for confirmation of identity.

6.2 Right to ask questions

We support Commission's proposals.

6.3 Rights to add items to the agenda and table questions

We agree *to some extent* on Commission's proposals.

On point 2 (i.e. "*such minimum stake shall not exceed 5% of the share capital of the issuer or a value of € 10 million, whichever is the lower*"), we did not find solid basis from DG MARKT services to justify these thresholds, which are very high (in France, the limit in percentage is 0.5%).

Accordingly, we suggest replacing the threshold of 5% by 1%.

6.4 Voting

- Voting by correspondence

We support Commission's proposals.

- Proxy voting

We agree to some extent on Commission's proposals.

We wish to make some reservations on points 2 and 5.

Regarding point 2, we ask DG MARKT services to introduce a provision on the principle for a *permanent proxy to a shareholder or to a proxy in order to be able to exercise the rights of a shareholder in several issuers for a maximum period of one year*.

Regarding point 5, we don't understand the need for such a provision, which has not been sufficiently justified in our view.

7. Position of intermediaries in the cross-border voting process

- Definition of intermediary

We support Commission's proposal.

- Registration as nominees

We wish the Commission to provide that shareholders must have the freedom to decide to be registered in a nominative form, if the shareholders wish to do so.

- Being granted a power of attorney

We support Commission's proposal.

- Voting upon instructions

We do not agree on points 1 and 3.

Regarding point 1, DG MARKT services propose, as a minimum standard, to provide that "*Member States shall allow intermediaries to hold shares on behalf of their clients in collective or individual accounts.*"

In our view, it is not the existing system as applied in many continental Member States, and therefore the provision in point 1should not be set up as a European requirement: it should be deleted.

Regarding point 3, we oppose as well to the proposed provision, as it derives from the faculty of collective accounts as provided in point 1.

8. Communications following the General Meeting/dissemination of the voting results

We support Commission's proposals.

9. Other suggestions

The following questions should be tackled:

- adoption of a 'one-share-one vote' standard for equity securities. It is a crucial principle in order to avoid minority shareholders to get the majority of votes.
- sponsorship of a central information database for disclosure documents of relevant companies in all Member States
- establishment of standards in order to ensure the possibility for shareholders to exchange information and opinions regarding the exercise of voting rights without taking the risk of being suspected of 'actions de concert'.

From a general perspective, in parallel with building a harmonised regime on shareholders' rights at EU level, we urge the Commission to facilitate also cross-border voting between the EU and other areas such as the USA. This topic should be put on the agenda of the dialogues between the Commission and American counterparts as well as with other non European counterparts (Asia, South America).

If you would like to discuss any point of this letter, or for any other question, do not hesitate to contact us 00 33 1 44 94 94 14 (e-mail: p.bollon@afg.asso.fr) and/or Stéphane Janin on 00 33 1 44 94 94 04 (e-mail: s.janin@afg.asso.fr).

Yours sincerely,

Pierre Bollon

ATTACHMENT 4

Le Président,

SJ/LD/PB - n° 2032/Div

Mr Charlie McCreevy
European Commissioner for Internal Market and Services
European Commission
1049 Brussels
Belgium

Paris, 2 June 2005

(…) AFG views on the forthcoming Green Paper regarding asset management

One year ago, we highly appreciated the initiative from DG MARKT to set up four post-FSAP professional expert groups in order to assess the progress and existing limits of European financial integration in relation to specific financial fields, in particular investment management. Asset management for third parties has become a major player on European financial markets today, and our members welcome the importance DG MARKT recognised to our industry through the setting up of both a dedicated expert group and a dedicated new unit in the Financial Markets Directorate.

The France-based management industry strongly supports actions which will reinforce and speed up the process of building up a Single Market in the field of financial services, as it is for the common profit of issuers, investors and asset managers.

Therefore, AFG wishes that the Commission continues to take new initiatives which will lead to this Single Market in practice. In order to get the largest consensus, these initiatives will require avoiding over-regulation of the asset management industry, in order not to deter innovation and not to stifle competition. Indeed, the creation of new management companies and the development of new management techniques and products should be encouraged. Beyond regulatory impact assessments, cost-benefit analysis should become the rule. We must refrain, though, from the temptation to equate any new European initiative with cost – as the building of a Single Market for investment management, driver of creative competition and economies of scale, does require legislative action most often than not.

In the field of investment management, our members share **two general concerns**.

First, the existing regimes remain very different from a Member State to another one. When these regimes cover issues already dealt with by the UCITS Directive, some Member States take an over-flexible approach for *interpretation* of the provisions of the Directive while others take the opposite position by sticking too rigidly to the letter of the text or even by applying stricter rules. When there is no Community legislation, the divergence in *national regulations* remains too wide. In both cases, it creates prejudice to our members which wish a Single Market in practice, in order to be able to develop their activities at European level. It also creates a prejudice to investors, which cannot benefit from an increased innovative and yet properly regulated competition.

In this view, it appears to AFG that you could take action towards CESR in the following way. We consider that the European Commission should ensure that the work of CESR for harmonising national interpretations is fully consistent with the provisions of the UCITS Directive – in order to avoid any legal risk to distort the letter or the spirit of these provisions. And if it appears that some potential improvements of harmonised practice would not fit with the UCITS Directive, then the European Commission should make clear to CESR that these improvements are not currently possible following the UCITS Directive provisions. For instance, AFG supports the widening of eligible assets and management techniques for UCITS, but our members consider a clear-cut must be made between what is legally possible under the provisions of the existing UCITS Directive and what requires amendments to this Directive.

This latter consideration leads to the **second general concern** of our members: it appears that for many topics the existing Directive needs upgrading, and the Commission should recognise it.

In practice, how to tackle this difficult issue of upgrading the Directive?

AFG members consider that we have obviously to start from the real world, and agree to make the distinction between objectives to be reached in the medium term and those to be reached in the short term. However, there is an important caveat: work should start without delay also on the changes that will take a longer time to be devised and implemented.

For medium term deliveries, the development of open architecture will require ambitious European legal actions. Otherwise, the limits of the existing legal framework might impair this development. As the common aim for the Commission and professionals is to make the Single Market a reality, we have to build together a complete set of functions which can be ensured at pan-european level.

The crucial point is to **avoid wasting a precious time, increasing the gap between the real world and the legal framework**. We all know that implementing any initiative is quite long, no less than five years, which delays the positive effects of any European action after any decision. In that sense, it is pretty sure that some time will be required to take any new initiative.

Therefore, if we want to make real progress in order to offer in a medium term period a full European choice for investors in an open architecture (with profits for investors, in terms of lower costs through wider choice), it will require **starting working as soon as now** for medium term deliveries, i.e. on the appropriate legal framework for cross-border activities at all levels of functions involved.

A very crucial point would be to authorise management companies from one Member State to launch UCITS funds under the law of another Member State.

In the same vein, cross-border passport for depositaries will be needed, based on a clear definition of the related function.

Work seems to us also required as soon as today, in particular vis-à-vis retail investors, to find an appropriate European legal framework for regulated hedge funds, real estate funds and some types of private equity funds. One solution might be to keep the general themes of the framework already existing today for UCITS, but to adapt the details under these themes in order to fit with the specificities of these funds, which would become specific funds covered as well as existing UCITS by the directive. This approach would adapt well to the Lamfalussy approach, by clearly differentiating Level 1 provisions (essential principles) from Level 2 provisions (technical details).

In that sense, we consider that the cornerstone of the future framework for investment management should be the harmonised notion of provider. Currently, management companies are very diverse from one Member State from another one. This heterogeneity harms the development of a real single European market for products. Moreover, if the Commission wants to tackle innovation in an appropriate way, it must take into account the specific – though not necessarily higher - risks involved by the financial techniques related to today non-UCITS products such as hedge funds. It would probably be better to deal with the risk dimension if the definition of provider was already harmonised.

However, **upgraded regulation does not mean over-regulation**. Even though there is a clear need for professionals to upgrade not only implementation but also legislation to be applied to asset management, it does not mean creating additional constraints for the industry. In particular, let us recall that already today many requirements apply to the asset management industry – for the sake of investors – that do not exist for competitors offering products which are similar but are out of the scope of the UCITS Directive for instance.

For short term deliveries, four topics require regulatory adaptations of the existing legislation.

The first topic relates to cross-border registration of UCITS. The vast majority of professionals active in Europe share the view that there is a need for simplifying the process. EFAMA has recently published a position paper on the subject. This document was prepared by UK IMA and AFG contributed actively to it. Some improvements can be managed under the existing European legal framework. However, we recognise that full improvement for the cross-border process cannot be gained without Community legal changes and we wish the Commission to hear this request for upgrading legislation on the issue.

The second topic relates to facilitating economies of scale. We consider that cross-border mergers should be eased in the Union. But from a pragmatic point of view, the easiest and hence quickest measure would be to authorise European master-feeders. The master-feeder architecture does not collide with Commission's and Member States' legitimate concerns on investors' protection, as master-feeders do not increase the risks for investors and, at the same time, ease the access to harmonised products by investors at a lower cost.

For non-harmonised products - and this is our third topic - a short term solution for accessing some of these products could be to create for the time being a definition of the notion of European private placement. Private placement is currently very heterogeneous from one Member State to another one. Harmonisation of the notion would help developing a Single Market for such products. But we are aware that even at domestic level in Member States, private placement rules are not harmonised for different savings products.

Apart from this point and still in the short term, there is a need for clarification of responsibilities between the manager and the distributor vis-à-vis the investor, as open architecture is currently developing in the whole Union.

Lastly, we want to mention **two specific topics** which will have to be considered by the European Commission in the medium term as well. These two topics impact our industry in both cases.

On the one hand, in order to ensure investor protection and to guarantee a full open architecture, we consider that **fluid circulation of funds in Europe** without undue risks is crucial, including regarding clearing and settlement processes.

On these last processes, we consider that some aspects of them should be tackled through a Directive, such as segregation of functions for instance.

On the other hand, our industry will have to be involved in building a **European defined contribution scheme**, as this type of vehicle is essential for the future growth of our activity. On this latter issue, our in-depth views are presented in the second part of our letter, right below.

(…)

Yours sincerely,

Alain Leclair