SJ- n°2488/Div.

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

Paris, 6 January 2009

AFG RESPONSE TO CESR'S CALL FOR EVIDENCE REGARDING THE IMPACT OF MIFID ON SECONDARY MARKETS FUNCTIONING

Dear Mr Comporti,

The Association Française de la Gestion financière (AFG)[1] welcomes CESR's call for evidence regarding the impact of MiFID on secondary markets functioning.

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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 409 management companies. They are entrepreneurial or belong to French or foreign banking or insurance groups.

AFG members are managing 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 from France, 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, 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 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).

Before entering the substance of the questions raised by the call for evidence, AFG wishes to stress that *from a realistic point of view it is probably too soon to assess in the most valuable way the impact of MiFID*. The implementation of MiFID by practioners is only one year old. Even worse, some interpretations on a few but crucial topics have not been made yet by national regulators, and are still depending on their behaviour in practice on a case-by-case basis (such as on inducements or transaction reporting for instance).

Regarding the impact of MiFID on equity secondary markets, we want nevertheless to point out three major concerns.

First and most importantly, the fragmentation of markets, although theoretically legitimate by setting up a competition between venues (as opposed to monopolies generated by a concentration rule), is not necessarily optimal from a trading perspective. In spite of theoretically higher prices due to the concentration rule, the concentration of orders on a single venue ensured a higher liquidity for market participants. The fragmentation of markets has contributed to reduce the liquidity of each of the venues competing on the same equity, with a potential prejudice for end investors.

Second, the increased fragmentation of markets induced by the MiFID creates an important difficulty for the valuation of portfolios (whichever these portfolios are managed on behalf of third parties, or are proprietary portfolios): which price(s) must be taken into account for such a valuation? From this perspective, and for the time being, the fragmentation of markets is a step back as compared to the previous mandatory concentration of trading venues – which was an easier way to know on which venue the valuation price had to be taken. From this perspective, the fragmentation of markets creates potentially a prejudice to end investors (in case of portfolios managed on behalf of third parties) or shareholders (in case of proprietary portfolios managed by financial institutions), if the venue taken in reference for the valuation of portfolios is not representative.

Third, regarding best execution, and even beyond the impact of MiFID on equity secondary markets functioning, such a fragmentation still creates difficulties for a wide range of brokers and management companies to be legally sure that they have ensured the best execution. MiFID has generated a higher legal uncertainty here, which can only be managed – to a limited extent though – by investing in costly software just to be able to justify vis-à-vis national regulators that such market participants have made their best efforts to ensure the best execution. Such a cost linked to the implementation of MiFID contributes to reduce the number of market participants, to the benefit of the bigger ones, and therefore reduces competition between market participants – to the prejudice of end investors once again.

Here are below our responses to the detailed questions raised by CESR.

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Benefits

1. The key benefits of MiFID provisions relating to equity secondary markets were probably taken by the *new trading venues* being able to challenge the already existing equity exchanges, by the *largest investment banks* able to internalise their orders and by all the series of *external consultants and ancillary service providers* (e.g. IT, software…) offering their costly services to market participants to give such participants some legal safety vis-à-vis their own national regulators.

2. No, we don't consider that there are any remaining barriers to a pan-European level playing field across trading venues. Market participants are free to trade everywhere in the EU.

3. We don't see why MiFID would have supported innovation in the equity secondary markets – apart from the development of new software tools, which are just a costly response to the new legal constraints generated by MiFID.

Downsides

4. Yes, management companies have faced significant costs as a result of MiFID relating to equity secondary markets. Even if it is too soon to fully evaluate the whole cost as the MiFID has only been implemented last year, it is already certain that it generated a high cost in setting up new softwares in connection with best execution, or otherwise through the lower liquidity of venues being multiple, as compared to the previous situation with the concentration rule.

5. No comment.

Trading Costs

6. The impact of increased competition between equity trading venues on trading costs has been negative, as the reduction of liquidity of each venue as compared to the previous situation of the concentration rule may have increased the price at which equities are bought.

Potential fragmentation

7. The fragmentation of trading and/or liquidity in European equity markets has been variable from one Member State to another. Currently, the majority of important alternative trading venues are based in the UK and developed rapidly there, probably because of the different traditional way of trading as compared to continental Europe. Conversely, in continental Europe, alternative venues developed less rapidly for the moment. However and once again, we have not yet a sufficiently long historical trend to make a truly valuable judgment. In any case, such a fragmentation is already raising concerns as it negatively impacted: the *price formation process* (lower liquidity, both because of the development of alternative venues but also because of the development of internalisation of orders in major investment banks), *best execution* (which is by definition more difficult to ensure when there is no concentration rule), but also creates a major difficulty for the *valuation of portfolios* – as already mentioned in our introductory comments.

8. No, pre- and post-trade transparency requirements do not really mitigate potential concerns arising from market fragmentation. Market fragmentation cannot be solved only through transparency requirements as the transparency principle cannot solve the lower liquidity issue.

Transparency

9. No comment

10. We don't see any benefit to dark pools of liquidity.

11. See our response to question 10 right above.

12. The MiFID pre- and post-trade transparency regime works rather well, but generated indirect operational costs due to the market fragmentation, to the prejudice of end-investors.

Data

13. No comment.

14. No comment.

15. No comment.

16. Regarding the link between availability of data and best execution, we consider that before that the notion of best execution has not been made fully clear and consistent yet at national level, across the EU.

17. We cannot fully estimate if commercial forces provide effective consolidation of data, but we can already state that the MiFID contributed greatly to develop private profits among a few data providers – but should it have been the goal of a European Directive?

General

18. No, we don't think that the implementation of MiFID is delivering the Directive's objectives in relation to equity secondary markets (e.g. fostering competition and a level playing field between EEA trading venues, upholding the integrity and overall efficiency of the markets). In particular regarding the overall efficiency of the markets, the replacement of the concentration rule by the market fragmentation generated additional costs for market participants and finally for end-investors (including retail investors).

19. See our introductory remarks.

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We thank CESR 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) or our Head of International Affairs Stéphane Janin at 33 1 44 94 94 04 (e-mail: s.janin@afg.asso.fr).

Yours sincerely,

(signed)

Pierre Bollon