



JA/CD - n° 2531/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 Brussels
BELGIUM

Paris, 7 April 2009

AFG RESPONSE TO THE EUROPEAN COMMISSION'S CONSULTATION ON THE REVIEW OF INVESTOR-COMPENSATION SCHEMES

On 9th February 2009 the European Commission launched a consultation on the relevance of reviewing the Directive 97/7 on investor-compensation schemes. Please find hereafter the response of the AFG¹ to the issues that we believe mostly affect collective investments.

The AFG questions proposals made in some cases without justification or legal or economical basis. We also and above all believe that amending the scope of the Directive on investor-compensation schemes would undermine the interests of the investors. Rather than from a twist of existing mechanisms, enhanced UCITS investors' protection will arise from the review of measures relating to depositaries, in the more global context of the review of the Directive on UCITS. It is a move we have been advocating, unfortunately in vain, for a long time.

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 more than 2300 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 1400 billion euros managed, i.e. 21% 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. 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).

Please find hereafter our detailed responses to the questions raised by the Commission that we believe are the most relevant to our purposes.

2) Would it be appropriate to include in the scope of the ICSD all investment firms seeking authorisation to the provision of investment services, although their authorisation would not allow holding clients' assets?

No real justification underpins this proposal of extension. Service providers holding clients' assets already have the obligation to adhere to a scheme protecting these assets. In this context, the extension of the protection to firms that do not hold clients' assets does not make sense, as we do not see what kind of prejudice they could cause to the investors.

4a) Should investors be able to claim compensation in the case of default of the third party where their assets had been deposited?

The AFG is not favourable to the extension of the protection given to depositaries for the benefit of UCITS. We wish to highlight the fact that the current scheme is designed to compensate individual portfolios whose size is far from comparable to that of UCITS. The assets held by depositaries on behalf of UCITS represent significant amounts for each individual UCITS.

Extending the protection to UCITS would lead to either the scheme granting a small amount of compensation to the UCITS or to significantly increase the amounts protected, which would in turn lead to a significant increase in the contributions, implying a direct impact on the costs incurred by end-investors.

Also for cost-related reasons, we believe it would be illusory and hazardous to implement a protection specific to the sub-depositary for the benefit of the depositary of UCITS.

Rather, we believe that an enhancement of the protection of the end-investor will arise from a real and significant harmonisation of the role and responsibilities of depositaries in Europe (obligation of segregating the assets held by the depositary, obligation of restitution even when the assets are held outside European borders...) – as recent events have unfortunately shown.

5) Should loss events include also any losses suffered by (retail) investors as a consequence of the violation of conduct of business rules?

The AFG is opposed to the extension of the guaranteed clients' compensation in case of a violation of conduct of business rules, as this extension would constitute a legal and bureaucratic monster.

Indeed it would lead to significantly extend the scope of the protection scheme. The conduct of business rules, particularly since the MiFID, include a particularly large and varied number

of measures (relating to the information of clients as well as the way services are provided to them) whose assessment is by nature arbitrary, as they often relate to behavioural issues that have to be appreciated on a case-by-case basis. Moreover, these rules have been transposed in very different manners by different regulators. Such an extension would dramatically change the aim of the Directive, as it originally was designed to indemnify investors in case their assets were not returned to them.

Numerous claims for compensation would follow, which could rapidly create bottlenecks in the system. Moreover, the implementation of such a protection scheme would be extremely complex. Indeed, the concept of compensation arising from the violation of conduct of business rules would have to be assessed on a case-by-case basis by the tribunals in each member state, possibly following lengthy and unpredictable legal proceedings, in particular raising issues on the sharing of responsibility between producers and distributors. This case-by-case assessment, notwithstanding its complexity and length, would inevitably lead to case laws that might potentially create inequalities between two retail investors.

It should also be noted that the multiplication of potential compensation claims would imply a significant increase in contributions to the protection scheme, which would directly impact the costs incurred by end-investors.

Finally, and this probably is the strongest criticism against this project, by having such a large scope, it would create a significant moral hazard, even more shocking as current times call for a more acute sense of responsibility from each participant. The implementation of such a protection scheme might entice some participants in the chain, distributors, investment managers, etc, to less rigour and professionalism in their diligence, knowing that they will be covered by this protection.

10) Do you think special attention should be given to money market funds?

It would not be relevant to put in place compulsory protection schemes for investors in money market funds. These funds are not guaranteed and should not be the object of particular measures in this matter.

Again, the size of the potential compensation seems difficult to evaluate, considering that no accurate definition of money market funds is available at a European level.

As for the other UCITS, the decision to implement a protection scheme for the benefit of investors should remain a simple commercial option at the creation of the fund (the protection being granted by a third-party subject to insurance or bank like requirements).

It should be the role of the distributor and of the documentation on the fund (KII...) to inform the investor as accurately as possible on the risks attached to the investment in a specific money market fund. The investors' belief that their investment cannot experience a decrease in market value probably is more hazardous than the possible decrease in market value of some money market funds.

11) Based on the concrete application of the ICSD do you see further issues other than the ones mentioned in the present document that might be of relevance to this analysis?

The AFG strongly believes that the enhancement of the protection of UCITS investors will be found in the harmonisation and review of the responsibilities and roles of depositaries in Europe, a subject that has been put aside for too long.

We thank the European Commission very much for taking into consideration our comments and remain available 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 Legal Jérôme Abisset at 33 1 44 94 96 56 (e-mail: j.abisset@afg.asso.fr), or our Deputy Head of International Affairs Carine Delfrayssi at 33 1 44 94 96 56 (e-mail: c.delfrayssi@afg.asso.fr).

Yours sincerely,

(signed)

Pierre Bollon