SJ/EP – n°2576/Div.

Mr Greg Tanzer
Secretary General
International Organization of
Securities Commissions
C/ Oquendo 12
28006 Madrid
Spain

20th May, 2009

Re: ASSOCIATION FRANCAISE DE LA GESTION (AFG)'s comments on IOSCO Consultation Report regarding Policies on Direct Electronic Access

Dear Mr Tanzer:

The ASSOCIATION FRANCAISE DE LA GESTION (AFG)[1] would like to thank IOSCO for having solicited comments on its Technical Committee Report regarding Policies on Direct Electronic Access.

[1] The Association Française de la Gestion financière (AFG) represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. Our members include 409 management companies and 660 investment companies. They are entrepreneurial or belong to French or foreign banking or insurance groups.

AFG members are managing 2400 billion euros in the field of investment management. In terms of financial management location, it makes the French industry the leader in Europe for collective investments (with 1300 billion euros managed by French companies, i.e. 23% of all EU investment funds assets under management, wherever the funds are domiciled in the EU) and the second at worldwide level. In terms of fund domiciliation, French funds are second in Europe and third at worldwide level. Regarding product interests, our association

General Comments:

Let's first stress, for the knowledge of IOSCO members, that management companies should be considered as being part of the most important DEA customers. First, in volume, management companies represent a large part of the professional customer market. Second, in quality, management companies (contrary to the proprietary trading desks of banks for instance) act on behalf of end-investors, which are retail investors very often, vis-à-vis which they bear a fiduciary duty. For these two reasons, we ask IOSCO to take carefully into account the comments from management companies.

Many French investment management companies use various Direct Electronic Access modes. A few French management companies are direct members of regulated markets; many other French management companies make use of Automated Order Routing through intermediaries' infrastructure (AOR) and/or Sponsored Access (SA).

Our members trade on many different marketplaces over the world, as the French asset management industry is one of the top ones at global level – in particular for collective portfolio management. From this perspective, Direct Access is very helpful, both for facilitating and fastening the execution of orders as well as reducing fraud - such as front-running/trading ahead of the DEA customer, or post-trading reallocation of orders by intermediaries, in some parts of the world, which harm management companies acting on behalf of the end investors.

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Detailed comments:

I. Pre-conditions for DEA:

a. 1st pre-condition for DEA: Minimum Customer Standards:

AFG members fully agree on the 4 minimum standards identified by IOSCO. We cannot imagine that these standards could not be required as they are necessary to manage the systemic and the credit risks related to trades by DEA customers.

b. 2nd pre-condition for DEA: Legally Binding Agreement:

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represents – besides UCITS – the employee saving scheme funds, 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).

We agree that there should be a recorded, legally binding contract between the intermediary and the DEA customer, the nature and detail of which should be appropriate to the nature of the service provided. The key points of it are those identified in p. 15 of the IOSCO Report.

Conversely, we don't think that SA DEA customers should be required to enter into a contractual relationship with the market, as we think that the intermediary must stay responsible vis-à-vis the market for the SA it has agreed on with its SA DEA customers (and in any case the intermediary may refuse such a SA to its customers). Requiring a contractual relationship between the SA DEA customer and the market would create an uncertainty from this perspective, by potentially lowering the responsibility of the intermediary vis-à-vis the market.

c. 3rd pre-condition for DEA: Sub-delegation:

As a general principle, we don't agree on the possibility for a DEA customer to sub-delegate its direct access privileges directly to another party, as we think that from a systemic perspective it increases risks.

However, if IOSCO wants to generalise such such-delegations in spite of the systemic risks involved, then it should be at least necessary that the responsible intermediary's contractual arrangements with its DEA customer allow it to identify the sub-delegatee if required by a market authority.

In addition, a specific contract between the DEA customer and its sub-delegatee should be required. In particular, such a contract – as well as the contract between the intermediary and the DEA customer – should make clear that the responsibility of the DEA customer remains although it may sub-delegate this DEA to a sub-delegatee. By analogy, a similar requirement exists today for management companies when they delegate some of their official functions: the fact of delegating some functions does not repeal the liability of the relevant management company.

The areas to be covered by such a contract should be the same as those required from DEA customers, which were identified above, as the sub-delegatee would play the same role as a direct DEA customer.

II. Information Flow:

a. Customer Identification:

We agree that intermediaries should disclose to market authorities upon request and in a timely manner the identity of their DEA Customers in order to facilitate market surveillance.

b. Pre and Post-Trade Information:

We agree that markets should provide member firms with access to *some* pre- and post-trade information (on a real-time basis) to enable these firms to implement appropriate monitoring and risk management controls.

However, we are not sure that *all* pre- and post-trade information should be delivered, in particular regarding pre-trade information. For instance, it must be avoided that pre-trade information which would facilitate the identification of DEA customers could lead to market abuse such as front-running/trading ahead of the customer for instance. For this reason, pre-trade information should be partly anonymised.

In addition, regarding post-trade information, this information should be made available to the larger public and not only to member firms.

III. Adequate Systems and Controls

a. Markets:

We agree that, *in principle*, markets wishing to permit AOR and SA should have rules in place that seek to ensure that intermediaries providing DEA access to their Customers have adequate pre-trade controls to manage adequately the risk to fair and orderly trading.

However, and as already mentioned above, such pre-trade controls should not increase the risk of fraud by the intermediaries through front-running/trading ahead at the expense of customers.

b. Intermediaries:

We agree that intermediaries (including clearing firms) should have in place both regulatory and financial controls, including automated pre-trade filters (such as “fat finger” stop buttons to more sophisticated filters applying customer position and/or credit limits), which can limit or prevent a customer from placing an order that exceeds existing position or credit limits on such a customer.

We also agree that intermediaries (including clearing firms) should have adequate operational and technical systems to manage their DEA systems.

But we think that pre-trade filters should not be replaced *only* by post-trade controls, as obviously it is better to avoid mis-trading ex ante rather than to try fixing it once it has occurred. Fast execution is important, but it must not be done at the expense of market disturbance afterwards.

As far as possible, pre-trade controls should be at the market level rather than at intermediary level. The market have a better vision of all the players, and in addition it is not conflicts by

interest (contrary to intermediaries, which might be tented by frauds such as front-running/trading ahead of customer orders).

In addition, DEA systems and control procedures should be similar or equivalent to those applied at present to non-DEA business.

Regarding “drop copies” dropped by SA customers to their intermediaries, we think that these copies represent useful information for the relevant intermediaries even if the orders could not be stopped prior to execution. If some intermediaries are reluctant to the use of such “drop copies”, then they are still free to refuse them in their contractual arrangements with the relevant DEA customers.

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We thank you in advance for your attention to the views expressed above.

If you wish to discuss the contents of this letter with us, please contact myself at +33 1 44 94 94 14 (e-mail: p.bollon@afg.asso.fr) or Stéphane Janin, Head of International Affairs Division at +33 1 44 94 94 04 (e-mail: s.janin@afg.asso.fr).

Sincerely,

Pierre BOLLON