AGA - n° 2800_01/Div.

EUROPEAN COMMISSION
Directorate General Internal Market and Services
Financial services policy and financial markets
Securities markets

markt-consultations@ec.europa.eu

Paris, 7 January 2011

Interest representative register number:
5975679180-97

AFG response to the Commission's public consultation on Credit Rating Agencies

The Association Française de la Gestion financière (AFG)[1] welcomes the Commission's consultation on Credit Rating Agencies and thanks for the opportunity to express the French asset management's opinion on the topic.

As an introductory remark, we would like to remind the ever moving regulatory environment the actors are facing today and point out the need to reserve enough time for topics to mature within the global framework before implementing new measures, especially in a relatively new piece of regulation, so as to gain in efficiency and prevent as much as possible unintended effects.

---

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

AFG members are managing 2600 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 1600 billion euros managed from France, i.e. 23% 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).

1. Overreliance on External Credit Ratings

Our members are strongly in favour of reducing as much as possible the current "overreliance" on external credit ratings, which is not a natural behaviour of market participants but mainly the result of well intended but flawed regulations. Accordingly, to reduce reliance, first of all regulation should stop using prescriptive references to them and over all, CRAs should not become a regulatory arm. Indeed, it should be avoided as much as possible to create automatic links between ratings and market movements. Absent regulatory requirements based on external ratings, the strength of this link would be much diminished.

Our members recognize that credit ratings may play an important role in the credit assessment process, however external ratings constitute only one device amongst others in the analyst's toolbox. Relying on external CRA ratings should not have a mandatory feature. The idea is to have an optional tool used at the manager's discretion and not a regulatory constraint.

Downsizing regulatory rating restrictions for clients/institutional investors would probably help so as they translate less into investment provisions for investment managers. In any case, incentives to sell assets rated below a certain category in investment mandates should be fought against, as this creates too much reliance on the accuracy of a rating and generates a mimetic behaviour in the market.

May 2010 released CESR definitions for money market funds surprisingly introduced mandatory reference and limits to CRA's ratings. Indeed, **CESR's guidelines on "Common definition of European money market funds" should be modified so as to remove any mandatory reference to credit ratings to define money market instruments "of high quality".** It is the asset manager's responsibility to finally assess the quality of the instruments it invests in and the extent to which external credit ratings are used in its internal analysis process. Credit analysis is part of asset management core competences and no downsizing of quality or responsibility is acceptable. European money market funds should remain a managed product and not become a standardized template because that might generate systemic risk through mimetic behaviour in times of liquidity shrinkage. **If the recent rule is not changed, then the credibility of the will of the European authorities to fight so called overreliance on external ratings will be reduced to zero and all other measures that might be taken will lack any credibility.**

Finally, our members are clearly not of the opinion that a requirement to use at least two external ratings for capital requirements could help reducing the current state of reliance. The main effect would be a surge in costs for the industry.

2. Sovereign Debt Ratings

When it comes to sovereign ratings, their treatment should be equal to that of any other rating. The period before the publication should be the same for all types of issuers. Otherwise, serious structural distortions would be brought to the market.

3. Enhancing competition in the credit rating industry

We are not in favour of creating a European Credit Agency, although the concept may appear intellectually very appealing, as in practice its implementation will likely be ineffective and even counterproductive as there are potentially high conflicts of interests, difficulties to finance it and operate it in a competitive environment, etc. This would certainly imply increased costs and would certainly contribute poorly to enhancing competition in the area. The efforts should be more concentrated on the quality of the service provided by natural players.

4. Civil Liability of Credit Rating Agencies

A civil liability regime specific to the CRAs would be difficult to establish, would probably have perverse effects in terms of willingness to rate and would certainly unduly increase costs. Nevertheless, there is a need of harmonisation in common liability provisions in Europe. We are of the opinion that the principle of the liability for gross negligence and intent is an effective provision that should be harmonised to provide legal certainty, thus preventing erratic contractual liability provisions and any crazy obligations in terms of liability disclaimers.

5. Potential Conflicts of Interest due to the "Issuer-Pays" Model

Our members are of the opinion that an "investor-pays" model is not a viable model. Indeed, this model was tested by the past did not make through (ex: IBCA has finally changed towards "issuer-pays" model). Also, such a model has also his part of conflicts of interests and clearly creates a problem in terms of transparency. Finally, in such a model, information would be only available to those who can pay, excluding small size asset managers and institutional investors as well as retail investors.

Improvements in this area could be: the possibility to opt-out of CUSIP/US ISIN securities identification number licences, the standardisation of rating scales and symbols, systematically subject the current and future rating data feed pricing regime to ESMA for approval.

If you need any further information, please don't hesitate to contact Eric Pagniez, at +33.1.44.94.94.06 (e.pagniez@afg.asso.fr) or Adina Gurau Audibert, at +33.1.44.94.94.31 (a.gurau.audibert@afg.asso.fr) or myself at +33.1.44.94.94.29 (p.bollon@afg.asso.fr).

Sincerely Yours,

(signed)

Pierre Bollon