



CJ/SJ- n° 2193/Div.

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

Paris, January 29, 2007

AFG RESPONSE TO CESR'S CALL FOR EVIDENCE ON THE SUPERVISORY FUNCTIONING OF THE PROSPECTUS DIRECTIVE AND REGULATION

Dear Mr Demarigny,

The Association Française de la Gestion financière (AFG)¹ welcomes the CESR's call for evidence on the Supervisory Functioning of the Prospectus Directive and Regulation. By answering to this Call of Evidence, we are fully endorsing the answer made by our European Association, EFAMA².

In the context of this Call for Evidence, AFG will only reply to CESR's question as to whether the new prospectus regime is providing an enhanced level of disclosure and protection for investors.

As we already stated on many occasions, a level playing field for funds and other competing savings/investment products is a crucial issue both for investors and for the European fund management industry.

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 around 400 management companies and investment companies. They are entrepreneurial or belong to French or foreign banking, insurance or asset management groups. AFG members are managing around 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 about 1500 billion euros i.e. 22% of all EU investment funds assets under management) and the second at global level after the US. 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).

² EFAMA is the European Fund and Asset Management Association.

Among the most popular products competing with UCITS are structured notes or certificates, which are subject to the much lighter regulatory regime of the Prospectus Directive as compared to the onerous requirements of the UCITS Directive.

The advantages enjoyed by structured products and certificates are numerous: the approval procedures are much simpler and shorter than for UCITS, giving them a great advantage in speed to market. The financial instruments covered by the Prospectus Directive benefit from a maximum 20 (or even 10 in some cases) day procedure for Home authorisation, as compared to **no** maximum for Home authorisation in the case of funds covered by the UCITS Directive (on average in practice: 2 to 4 months). In addition, for cross-border notification, the maximum period is 3 days for financial instruments covered by the Prospectus Directive as compared to 2 months in the case of funds covered by the UCITS Directive.

In addition; there are no restrictions as to the underlying assets or to the diversification comparable to the UCITS eligible assets regime.

Lastly but most importantly, the level of transparency and disclosure under the Prospectus Directive is much lower than for UCITS.

UCITS offer investors great transparency and high disclosure regarding costs, investment objectives, policies and risks, as well as performance. The fund producer /manager must provide a full and a simplified prospectus, together with annual and semi-annual reports and frequent (usually daily) publication of the NAV. Regarding costs, UCITS must disclose the Total Expense Ratio (TER), entry and exit commissions, and the Portfolio Turnover Rate. Regarding the suitability of the product, detailed descriptions of the investment objectives/policy and of the investment risks protect investors before they make their choice, while extensive disclosure of holdings and performance keep them informed and allow them to review their investments.

Almost none of this is available to investors in structured products and certificates issued under the Prospectus Directive. Under the Prospectus Directive there is an obligation to publish a prospectus with a summary³, but there is no obligation to disclose either costs included in the product structure or wrapper, or costs related to the underlying instruments. Due to their lack of transparency, structured products and certificates can thus appear cheaper than funds, which are much more transparent.

Regarding the investment objectives, there is no obligation for a comprehensive explanation, and only basic information must be provided about the underlying. Only a rather vague requirement to disclose prominently “risk factors that are material to the securities”⁴ applies. No diversification rules or provisions for risk management apply to instruments under the Prospectus Directive.

While the Prospectus Directive applies to information to be made public at the issuance of securities and does not provide for information updates to existing investors, the UCITS Directive also provides for regular information updates for fund investors, as retail investors would otherwise have difficulties gathering themselves the necessary information.

³ However, extensive exemptions from publication requirements are provided by Art. 3 (2) of the Prospectus Directive.

⁴ See Annex XII – Item 2 of the Regulation for the Prospectus Directive 809/2004.

While the Prospectus Directive provisions are appropriate for shares and bonds – instruments which presuppose a sophisticated level of investment know-how for direct investors – they clearly were not designed for more recent products such as structured products and certificates, which are far more complex but are nonetheless being targeted more and more in the European Union at retail investors, and increasingly marketed as options for retirement savings.

It is obvious that the lack of information and transparency poses enormous risks to retail investors and that – in the interest of investor protection – stricter disclosure requirements should be imposed. MiFID will not provide sufficient remedy to the deficiencies of the Prospectus Directive because it requires disclosure of existing information, and the information is currently not available, either to investors or to advisors. On this basis, it is not possible for advisors under MiFID to provide their clients with the same level of advice as for UCITS. New approaches should be developed to assess the costs embedded in structured products, as the same methodology applied to UCITS would not fit with them.

AFG is well aware of the fact that CESR's powers are limited by the current provisions of the Directive, but we take this opportunity to strongly urge CESR to recommend legislative change to the European Commission in this regard, which we will be glad to support.

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If you wish to discuss the contents of this letter with us, please contact myself at 01 44 94 94 14 (e-mail: p.bollon@afg.asso.fr), Stéphane Janin, Head of International Affairs Division, at 01 44 94 94 04, , (e-mail: s.janin@afg.asso.fr) or Catherine Jasserand, Deputy Head of International Affairs Division, at 01 44 94 96 58 (e-mail: c.jasserand@afg.asso.fr).

Yours sincerely,

(signed)

Pierre Bollon