



SJ/EP – n° 2287/Div.

Ms. Pamela Vulpes
IOSCO General Secretariat
C/ Oquendo 12
28006 Madrid
Spain

July 19, 2007

Re: AFG's response on IOSCO's Consultation Report on "*An experiment within Standing Committee 5 For Investment Management (SC5) to Establish a Framework For Identifying Strategic Priorities*"

Dear Ms. Vulpes,

The Association Française de la Gestion financière (AFG)¹ would like to thank IOSCO and the members of Standing Committee 5 ("SC5") for the work that they have carried out in producing the *Consultation Report on "An experiment within Standing Committee 5 For Investment Management (SC5) to Establish a Framework For Identifying Strategic Priorities"* and welcomes the opportunity to comment on the Report.

¹ The Association Française de la Gestion financière (AFG)¹ represents the France-based investment management industry, both for collective and discretionary financial portfolio managements. Our members include 365 management companies and 772 investment companies. These management companies are entrepreneurial or belong to French or foreign banking, insurance or asset management groups. AFG members are managing more than 2500 billion euros in the field of investment management, *making the French collective investment fund industry the leader in Europe* (with nearly 1500 billion euros managed, i.e. 22% of all EU investment funds assets under management, wherever the funds are domiciled in the EU) *and the second at worldwide level after the US*. In the field of collective investment, our industry includes – besides UCITS – the employee savings scheme funds and products such as regulated hedge funds/funds of hedge funds, 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 International Investment Funds Association (IIFA).

AFG considers that the work of the SC5 is crucial for the future development of regulatory matters related to investment management, in particular because of the growing globalisation of our activities. For instance in our discussions at the International Investment Funds Association (IIFA), we are more and more stricken by the common issues hitting our industry in so diverse countries from other continents.

Therefore we consider that this specific consultation by IOSCO SC5 is fundamental, in particular for trying to set up both the best process to identify the list of future priorities, as well as this list of priorities itself.

1. Regarding the process for identification of future strategic priorities

Regarding the process through which IOSCO SC5 tried to identify strategic priorities for the future, we wish to make the following comments.

First of all, we fully agree in principle on having both a bottom-up approach and a top-down one. The first one is indeed a way to start from existing facts (and in particular, existing issues) and the second one is a way to take a wider perspective. We just wish to draw SC5's attention to the potential danger of putting too much emphasis on the top-down approach, as it may be a too general approach as compared to the first one. We think that it is very difficult to conclude on priorities from such a top-down approach, as it is more a way to use for identifying the current trends of the industry, rather than the regulatory issues related to them. Identifying the main industry trends does not necessarily entail the need for specific regulatory work by IOSCO with regard to them in the future.

Therefore, we have doubts on the added value of the list of inferred strategic priorities based on the top-down approach, as mentioned in the Appendix B of the Consultation Report. We don't really see how the very interesting economic analysis provided by the Report in Appendix B could lead to useful topics for the SC5. We are not sure that the industry nor investors need the SC5 to work on topics such as (see page 32 of the Consultation Report): "*CIS markets' financial stability issues*", "*rationality of investors*", nor to follow non-demonstrated and even – to our sense – largely false statements such as "*additional efforts may be needed to ensure product suitability (for investors) and transparency, through disclosures on operation and performance*", or "*low fee transparency levels*". Some statements might even lead to paradoxes, for instance the Report mentions "*the abundant and sometimes redundant supply of products*" when conversely very often regulators ask the industry to widen the choice of investments to investors.

In addition, we have difficulties to understand the list of findings of the combined top-down and bottom-up approaches submitted in Appendix C, which is probably not clearly enough substantiated.

Therefore, we would then prefer to rely in the short term on the list of priorities identified through the bottom-up approach. The advantage to give more weight to this approach is that – once again – it starts from practical experiences of regulators, and the prioritisation is easier to make by checking how many regulators put emphasis on such or such topic. This basic, starting from real life approach seems preferable to the top-down approach which seems more uncertain in its conclusions.

However, we wish to mention two potential biases the bottom-up approach might have:

- There could be distorting views of the industry by regulators when identifying priorities starting from enforcement cases. For instance, a differentiation must be made between exceptional, high-profiled cases of prosecution which very often are not representative of the behaviour of a whole industry, as compared to more common difficulties encountered by the industry and investors and which are not heavy cases very often;
- The bottom-up approach, being managed by the regulators themselves, might therefore miss some topics as having priority. Regulators assess priority from their own perspective – which is perfectly legitimate – but the order of priority may be very different for the industry.

On this basis, we suggest amending the list of future strategic priorities in the following way.

2. Regarding the tentative list of future strategic priorities proposed by the Consultation Report

We consider the combined top-down and bottom-up exercise as too unclear in its mechanism to accept as such the list of priorities it generated.

Therefore, starting from the simpler bottom-up approach at this stage, we want to discuss the list of 18 topics identified by IOSCO SC5 in Table 1 (“*Grid of strategic issues*”), in pages 6 and 7 of the Report.

But before entering this list of topics, we wish to stress that IOSCO should crucially take more account of the need for a level playing field between savings products. Instead of concentrating on the already highly regulated and transparent investment funds, IOSCO should focus on closing the gap separating them from less transparent savings products, bringing the latter up to similar high standards. In particular structured products such as certificates benefit from regulatory arbitrage and are often sold to retail investors as an alternative to investment funds.

Regarding the list of topics itself, we agree with Table 1 that some topics must be (or must remain) on the top of the list, such as “*hedge funds and alternative fund products*”. But then it should be complemented by another topic, which is “*property funds and private equity funds*”. In both cases, the products are currently developing rapidly at domestic level in many countries all over the world (this phenomenon does not appear so clearly in the top-down approach of the Report), because of both increasing offer of products and demand from investors. But this type of products remains on national markets only and can neither be sold nor subscribed easily on a cross-border basis, which is clearly not optimal.

But maybe because of the bias of regulators following mainly a general goal which consists of investor protection, some topics not directly related to investor protection were apparently badly ranked, unduly according to us. For instance in Europe we experienced very badly the implementation of the so-called ‘Simplified Prospectus’ for UCITS, which ended with huge domestic costs for the industry and no benefits to its clients. Therefore we would be very

grateful to IOSCO if the topic of “*Cost of regulation*” could be put on the list of strategic priorities. For the industry all over the world, cost of regulation is crucial, with at least four dimensions. First, regulation generates costs within management companies/firms. Second, the cost of regulation is borne ultimately by investors and is part of the net performance delivered to them by professionals. Third, on the substance, we need regulators to work together on the reasons for extra cost of regulation currently generated by cross-border activities of professionals as compared to domestic ones, in order to reduce them to the strict minimum. Last, but by no means least, the cost of regulation should be similar for competing products or services and not create an unlevelled playing field.

We would also suggest IOSCO to deal with a fourth topic, i.e. “*customers’ education*”, as the need for retail investors to build savings for their retirement (all over the world) as well as for future high expenses such as children education or old age care costs (in many parts of the world), is growing very fast and would fit with regulators’ missions.

By contrast, we think that some issues have been recently discussed or are still under discussion today, for which it seems more appropriate to postpone the debate in SC5 for the time being. We think for instance that the topic proposed by IOSCO, “*distribution of CIS products, commissions and fee sharing arrangements*” should be postponed until the European and American industries in particular have implemented and tested the new national frameworks deriving from European or American regulatory initiatives in this matter (e.g. MiFID in the European Union or revision of the 12b-1 Rule in the US). Moreover, we contest the assessment according to which investors do not always understand the true costs of investment funds. We have the feeling that collective investment schemes are the more transparent financial products, in particular as in many countries a Total Expense Ratio (TER) is delivered to investors. In addition, if a work had to be carried out on disclosure and understanding of costs, then the whole range of financial products should be tackled (including capital market products, which very often include hidden costs as they are spread-based and not fee-based, contrary to investment funds).

In the same vein, we contest another priority, on “*CIS disclosure at point of sale*”, as once again this topic should be tackled on a horizontal way, by making a mapping of disclosure for all savings products and not only collective investment schemes.

We are surprised those two topics are still maintained as a priority by SC5 as the industry (including AFG) had already expressed reluctance to such an approach in the context of the public consultation on the Work of IOSCO’s Technical Committee in March 2007 (see for instance the attached AFG’s letter on IOSCO TC working programme): “(...) *we do contest the statement and the approach by IOSCO regarding the “Point of sale disclosure and customer suitability” (D.1.2 of the Consultation Report). Why stating: “many retail investors who buy investment products, particularly interests in a collective investment scheme and possibly similar products, may not clearly understand the products or the layers of costs associated with those products”? On the contrary, CISs are the most transparent investment vehicles: for instance, the expenses are disclosed through Total Expense Ratios (TERs), and CIS are fee-based instruments and not spread-based instruments (in the latter case, investors are not able to know the real final cost of their investment). In addition, CIS are usually less risky (through mandatory risk spreading rules – as compared to a single share for instance) and in many jurisdictions the provision of fund prospectuses to investors is mandatory. The statement by IOSCO is therefore very concerning for our members”.*

We also contest the third topic proposed by the SC5, i.e. “*asset pricing and CIS valuation issue*”. We think that for instance in the European Union the UCITS Directive complemented by national regulatory regimes for non-UCITS funds (such as for on-shore hedge funds and funds of hedge funds) provides already for the appropriate tools to manage asset pricing and CIS valuation issues.

We contest for the same reason the fourth topic proposed by SC5, i.e. “*risk management aspects linked to the use of derivatives and complex strategies within CIS products*”: the UCITS Directive and national regulatory regimes (at least in the European Union) provide for the appropriate tools to manage risks. Once again, investment funds should not be singled out in this matter, as compared for example with certificates and other competing products.

To sum it up, we deeply regret to contest the four priorities identified by SC5 members but we think that other priorities – rightly mentioned in the bottom-up comprehensive list of topics – should be tackled instead:

- “*hedge funds and alternative fund products*”
- “*property funds and private equity funds*”
- “*cost of regulation*”
- “*customers’ education*”.

3. Regarding statistics

We fully agree that it is very difficult to collect consistent data at global level. Ourselves try to do it at regional (EFAMA) and worldwide (IIFA) levels.

In particular, we will continue our own efforts to get more consistent and reliable data at the level of IIFA but we think it will require several years before achieving satisfactory results.

**
*

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) or Stéphane Janin, Head of International Affairs Division at 01 44 94 94 04 (e-mail: s.janin@afg.asso.fr).

Yours sincerely,

Pierre BOLLON

Attachment: AFG's response to IOSCO consultation on "*An Overview of the Work of IOSCO's Technical Committee* »

ATTACHEMENT



SJ/CJ – n° 2262/Div.

Ms. Tillie Rijk
IOSCO General Secretariat
C/ Oquendo 12
28006 Madrid
Spain

June 8, 2007

Re: AFG's response to IOSCO consultation on "*An Overview of the Work of IOSCO's Technical Committee* »

Dear Ms. Rijk,

The Association Française de la Gestion financière (AFG)² would like to thank IOSCO and the members of the Technical Committee ("TC") for the work that they have carried out in producing the Consultation Report on "*An Overview of the Work of IOSCO's Technical Committee*" last March. We also want to thank the TC for having invited the International Investment Funds Association (IIFA), of which AFG is a member, in Madrid on 26 March to discuss the relevant topics.

On this basis, we are glad to provide for the following comments on the Report. Before entering the substance of the Report itself, we wish to stress some methodology issues.

² 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 365 management companies and 772 investment companies. They are entrepreneurial or belong to French or foreign banking or insurance groups.

AFG members are managing more than 2500 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 more than 1500 billion euros managed by French companies, i.e. 22% 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 respectively second in Europe and third at worldwide level. In terms of product interests, our association represents – besides UCITS – the employee savings schemes 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).

On the general relationship between IOSCO and the industry:

1. We wish to have regular meetings similar to the one we had in Madrid, for instance twice a year (as expected for 2007: March + November), but which should remain informal at this stage. We found the Madrid meeting very fruitful, by reinforcing the practical exchanges of views, and therefore allowing for going beyond mere expressions of written positions in formal contributions;
2. We think that “theme expert groups” (for each Standing Committee) could be set up, as it is currently the case for CESR for instance. We have tested very successfully such an approach with CESR, and we think it might be appropriate to follow such an approach at IOSCO level as well;
3. In any case, we also think that IOSCO should improve its way of communicating and disclosing information, both when launching new consultations and when setting up public events like public conferences. In the latter case, it happened that we were informed by chance and very late of some public conferences – and in some cases, it has been therefore difficult or even impossible for us to participate and thus provide input;

On the working methodology of IOSCO:

1. *We clearly warn on the danger for IOSCO to look only for “quick wins”, which are sometimes requested by the industry of some countries. As a paradox, looking just for “quick wins” could finally end up with delaying the launch of the really needed actions.*

First of all, should we speak about “legal quick wins” or “practical quick wins”? Getting a “legal quick win” can be rather easy; but it would not guarantee getting any quick wins *in practice*. For instance, in our opinion, regarding the current EU debate on private placement, we do support getting a legal framework for private placement of non-harmonised funds – that some players consider as a “quick win” – but we think that in practice it will only facilitate the *selling* of such funds: it will not facilitate the *buying* of such funds by some types of qualified investors, as long as their investment rules prevent them from buying such funds (e.g. insurance companies, pension funds, etc.). As long as the EU legislative action on private placement is not accompanied in parallel by a similar action to ease the faculty from the demand side to invest in such products, we will not have any quick win *in practice*. Not linking the two parallel actions would end up with launching at a later stage such an action on the demand side – which would mean having wasted time by just focusing in the short term on legal, but incomplete, “quick wins”. Therefore, IOSCO should identify, topic by topic, quick wins to be delivered *in practice*.

Second, and even more widely than just looking for practical quick wins, the approach to be followed by IOSCO should be *pro-active*. In this view, IOSCO should consider how regulation could facilitate innovation and industry developments. It should not wait for scandals, which always imply the risk of “scandal-driven regulation” (such as SOX in the US for instance) which can destabilise or over-constraint a whole national or sectorial industry. Neither should IOSCO rush to only act for one part of the financial industry without considering the whole picture since it could create an unlevel playing field. It has often appeared to us that actions have only been decided

for our industry because it better known to the regulators and already more transparent than the other parts of the industry.

2. *Regarding the debate on mutual recognition, we clearly favour the search for harmonising principles (through a principle-based approach) rather than looking for mutual recognition: the limits of mutual recognition have already been tested unsuccessfully many times and in many areas in the context of cross-border activities. In addition, once harmonised principles have been achieved, they have a pedagogic virtue for less advanced financial centres all around the world, by helping them to make their own national regulation converging towards such already harmonised principles;*

On the substance of IOSCO's Consultation Report:

1. *As a new and essential topic, we strongly wish that the 2007-2008 IOSCO working programme explicitly deals with the issue of level playing field between financial products (in particular in the case of unfair competition between investment funds on the one hand and capital market products – such as notes or certificates - on the other hand, as the latter are for instance less transparent for investors and benefit from regulations ensuring faster legal processes for domestic and cross-border registrations);*
2. *Generally speaking, we are reluctant to any approach differentiating systematically wholesale from retail. For instance, such an approach does not fit with the fund industry, where there is a blurred line between the two categories very often (e.g. many pure professional/qualified investors, like corporate, invest in products which can be sold to retail investors as well; on the contrary, many retail investors get access to complex/risky products through professional investors). It is not by chance if the UCITS Directive never made any different treatment between retail and wholesale – and it is also probably the reason why only very few misselling scandals occurred in the field of funds, at least in continental Europe;*
3. *As a consequence of the two previous remarks, we do contest the statement and the approach by IOSCO regarding the “Point of sale disclosure and customer suitability” (D.1.2 of the Consultation Report). Why stating: “many retail investors who buy investment products, particularly interests in a collective investment scheme and possibly similar products, may not clearly understand the products or the layers of costs associated with those products”? On the contrary, CISs are the most transparent investment vehicles: for instance, the expenses are disclosed through Total Expense Ratios (TERs), and CIS are fee-based instruments and not spread-based instruments (in the latter case, investors are not able to know the real final cost of their investment). In addition, CIS are usually less risky (through mandatory risk spreading rules – as compared to a single share for instance) and in many jurisdictions the provision of fund prospectuses to investors is mandatory. The statement by IOSCO is therefore very concerning for our members;*
4. *More generally, we wish that the 2007-2008 IOSCO working programme makes clearer the split of responsibility between the distributors and the producers – but*

avoid to only focusing on funds (following the request for a better level playing field that we mentioned above). If regulators, intentionally or not, still continue to focus on fund production and distribution, they will finally contribute de facto to push investors towards risky and less transparent other types of financial products – leading therefore to less investor protection, contrarily to the official mission regulators have to fulfil;

5. *In the same vein, we dispute the fact that soft commissions and incentives are only tackled in the field of asset management (E.1.3 of the Consultation Report) : soft commissions and incentives may occur in other financial sectors and for other financial products as well;*
6. *Beyond the so-called “Valuation of Hedge Fund Portfolios” (E.1.1) and “Elements of regulation for hedge” (E.1.2), we clearly wish that the 2007-2008 IOSCO working programme insists even more on the topic of hedge funds (even though IOSCO is already working actively on it) and not only funds of hedge funds, in order to provide for a light but real regulation of the relevant players in the value chain for the two types of funds (at least for on-shore funds), which would facilitate the cross-border marketing and subscription of such products – which is very difficult today in many parts of the world as the regulations are very fragmented;*
7. *Regarding Credit Rating Agencies (CRAS) (A.4 of the Consultation Report), we strongly support the will of IOSCO to continue to monitor new developments of CRAS’s activities and their impact on the market, as we consider that CRAs are still currently increasing their role on the markets, in particular through the continuous development of structured products (in which many investment funds invest on behalf of their investors, for which they have a fiduciary duty): the need for a high degree of reliance in CRAs’ ratings is crucial for us.*
8. *Regarding Audit Quality and Audit Contingency Planning (B.3 and B.4 of the Consultation Report), we consider that auditor liability should not constitute an issue as such: some jurisdictions have already capped or are currently capping auditor liability, when other jurisdictions do not see any need to do so. Therefore, this specific issue should be left open at this stage by IOSCO.*

**
*

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), Stéphane Janin, Head of International Affairs Division at +33 1 44 94 94 04 (e-mail: s.janin@afg.asso.fr) or his deputy Catherine Jasserand at +33 1 44 94 96 58 (e-mail: c.jasserand@afg.asso.fr).

Sincerely,

Pierre BOLLON