



CJ/SJ – n°2352/Div.

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

Paris, February 19, 2008

## **AFG RESPONSE TO CESR CONSULTATION ON THE 3L3 MEDIUM TERM WORK PROGRAMME**

Dear Mr Comporti,

The Association Française de la Gestion financière (AFG)<sup>1</sup> welcomes the CESR's consultation paper on the 3L3 medium term work programme.

As a preliminary remark, AFG considers it is highly important to coordinate the work of the 3 Committees to ensure a smooth and well functioning Single Market, going beyond what has been already proposed by the 3L3 and the ECOFIN at the end of last year. For instance, the retirement schemes are currently tackled by CEIOPS, however, the defined-contribution structures –which are growing faster than the defined-benefit ones- are closer to the schemes dealt by CESR (investment funds).

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<sup>1</sup> The Association Française de la Gestion financière (AFG)<sup>1</sup> represents the France-based investment management industry, both for collective and discretionary individual portfolio managements.

Our members include 405 management 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, making in particular the French industry *the leader in Europe in terms of financial management location* for collective investments (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 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).

We also believe that as soon as possible, it will be necessary to create single European regulators in each sector ((i) securities including asset management, (ii) banks and (iii) insurance). Furthermore, we want to recall that the convergence of the 3L3 practices would be greatly helped if L1 and L2 measures were only Regulations (and not Directives) to avoid any national legislative transposition creating divergent national rules and practices.

Regarding the list of cross-sector areas that the three Committees have identified, we will only comment on the key issues spotted and not on the whole list of areas.

#### 1. Home-Host/Delegation of Tasks:

Increasing cooperation among national supervisors is a major issue. As far as the asset management is concerned, the cooperation between the home and the host regulator is already crucial and will become even more crucial in the context of the future revision of the UCITS Directive and of the actual implementation of the MiFID.

Regarding the revision of the UCITS Directive, to ensure a full working management company passport –i.e. a passport where a management company based in country A could easily set up funds in country B -, the regulator of country A and the regulator of country B will have to work *hand in hand*. It can be easily solved –contrary to what is said by those who wish no change to the present situation that favours them - amending the UCITS Directive following the cooperation of regulators provisions already drafted for several Directives (MiFID, Market Abuse Directive, Prospectus Directive, Banking Directive, etc.). The regulator of country A would be responsible for monitoring the management company itself (since the management company is based in country A) and the regulator of country B would be responsible for monitoring the relevant funds (since the funds are domiciled in country B); each of them reporting to the other in case of irregularities. Thanks to such cooperation between the two regulators, the management company passport will not only work but prove to favour competitiveness of the European funds industry and the implementation of efficient risk-management procedures.

More broadly, beyond this specific example, regulators of different Member States will have to cooperate on a daily basis within the Single European Market. However, it would be dramatically improved if a single securities European regulator were to be set up (in addition to the adoption of Regulations instead of Directives to avoid national divergent rules and practices).

#### 2. Competing Products:

We are happy to see that the three Committees will work together on the issue of competing products. The European Commission is currently working on this topic and as said in the consultation paper of the 3 Committees a cooperation between the Committees and the European Commission is necessary.

The Committees should not only assess whether the existing regulatory regimes are sufficient but also whether they are not creating distortions of competition. We are of opinion that UCITS are well-framed products but are subject to heavy constraints in terms of notification, prospectus format and content, eligible assets and product disclosure, which prevent them from being managed and sold as easily as other competing products.

#### 3. Credit Rating Agencies:

On this issue, we invite the 3 Committees to coordinate their action with IOSCO.

#### 4. Internal Governance

On this issue, we recall our position i.e. we consider that the existing governance requirements applicable to UCITS and management companies are already very high today, and do not need further regulation. We contest that for UCITS “the internal governance requirements are as of yet underdeveloped at the EU level, resulting in differences across borders”. On the contrary, the success of UCITS at EU and worldwide levels and the lack of market failures on the funds and the management companies (in comparison to market failures for many other financial instruments at distributor level) show clearly no specific need for working on governance of UCITS and management companies. Some work has clearly to be done, though, to harmonise the responsibilities of depositaries, which play a crucial role in the control of funds.

#### 5. Valuation of financial instruments

We bring to the attention of the 3 Committees that EFAMA, the European Fund and Asset Management Association, has set up a working group on this topic. We wait for the results and invite the Committees to contact EFAMA.

#### 6. Other comments

We have not understood para 59 on 3<sup>rd</sup> countries supervisory regimes. We ask the 3L3 Committees to clarify this point. In any case, we want to stress there is a potential risk in assessing 3<sup>rd</sup> countries supervisory regimes since they are closely linked to national regulatory regimes, which differ a lot at worldwide level. We ask the 3L3 Committees to first work on making progress on European convergence of supervisory regimes, which in our view requires at least the use of Regulations rather than Directives and also the creation, in the medium term, of single sector-based European Regulators.

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We thank CESR very much for taking into consideration our comments and remain at your disposal for any further questions. Please feel free to contact myself at 01 44 94 94 14 (e-mail: [p.bollon@afg.asso.fr](mailto:p.bollon@afg.asso.fr)), our Head of International Affairs Stéphane Janin at 00 33 1 44 94 94 04 (e-mail: [s.janin@afg.asso.fr](mailto:s.janin@afg.asso.fr)) or his deputy Catherine Jasserand at 00 33 1 44 94 96 58 (e-mail: [c.jasserand@afg.asso.fr](mailto:c.jasserand@afg.asso.fr)).

Yours sincerely,

(signed)  
Pierre Bollon