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

Paris, 7 April 2009

## **AFG RESPONSE TO CESR'S CONSULTATION ON PROPOSALS FOR THE REVIEW PANEL WORK PLAN**

Dear Mr Comporti,

The Association Française de la Gestion financière (AFG)<sup>1</sup> welcomes CESR's consultation on proposals for the Review Panel Work Plan.

First, we want to congratulate CESR for having set up this Review Panel and a Work Plan for it. It is crucial for our industry – and probably for other types of market participants – to get a better supervisory convergence across the EU. As mentioned by CESR's paper, this action by

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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 409 management 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, making in particular the French industry *the leader in Europe in terms of financial management location* for collective investments (with nearly 1400 billion euros managed from France, i.e. 21% 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).

CESR is fully in line with the Commission decision which updated – and reinforced to some extent – CESR’s powers in January 2009, as well as with the ECOFIN conclusions of December 2007. This tool is today becoming even more important when the European Commission is at last considering reinforcing the Level 3 Committees, following the conclusions of the Larosière Report on Financial Supervision.

Second, on the content of the Work Plan, submitted to consultation, we wish to make the following remarks.

**1.** Regarding the general questions raised by CESR, and although this topic was not covered by any European text yet, *we have been facing very divergent practices regarding short selling* from one Member State to another since last year. For us, there is in principle no need to provide for restrictions on short selling: in many Member States (and more widely, in many jurisdictions across the world), there was no short selling restrictions until last year and the relevant financial markets were not troubled by this lack of restriction though. Conversely, the short selling restrictions imposed by a few regulators – and then followed by other regulators - last year did not prevent the market prices of the relevant shares to continue going down. So the measure appeared as largely useless.

But although short selling restrictions appeared useless, they were efficient enough to create trouble and legal uncertainty among market participants – including us, i.e. the buy-side. When investment managers have to face divergent national restrictions, it generates an important constraint in the way they trade from one country to another.

Although CESR has already worked recently on the short selling issue, we want therefore to stress such a topic which led to significant practical divergences. Of course this topic is not covered by European legislation – and we think it should not be submitted to any regulation (either national or regional), as mentioned right above. But if a majority of regulators want to bring some short selling restrictions, then we ask CESR to work on this issue in order to find an harmonised regime – which should be strictly limited to naked short selling only, although we think that no restrictions are needed in general.

**2.** Regarding the specific questions raised by CESR, in relation to the Transparency Directive, *we really need CESR to work on the issue of shareholding thresholds’ trespassing*. For our members, which are investment managers, it is very difficult to follow the national legislations and regulations when they invest in stock markets in the EU. Both the issue of access to translations of the national texts and the issue of moving regulations generate a permanent legal risk for our members when they take participations in the local listed companies. If the Commission and CESR wish to reinforce the Single Market in the future, they must find a solution to facilitate the access to local information by market participants who want to invest in local companies without being at legal risk for not having declared their participations. We therefore strongly reiterate our suggestion that at least CESR’s website should centralise and/or provide for access to local legislations, translated in a language customary in the sphere of international finance. In the longer term, it might be even envisaged to harmonise such regulatory thresholds across the EU. EFAMA’s answer, that we share, has developed this aspect further.

**3.** Regarding the table annexed by CESR, we agree with Subject 2 which spots out the divergences in passport notifications for the UCITS Directive, but we think that UCITS IV, currently under formal adoption, will solve this issue.

4. Last, still in relation with the annexed table, we strongly ask CESR to keep and to consider as a top priority its Subject number 8, named 'Divergence in liability regimes' in relation to the UCITS Directive. UCITS IV did not touch in particular the liability of the depositary, and the Madoff case shows clearly – as rightly stressed by CESR - that there is a need for better scrutiny – and more precise definition – of depositary definition, functions and related liability.

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If you need any further information, please don't hesitate to contact myself at +33 1 44 94 94 29 ([p.bollon@afg.asso.fr](mailto:p.bollon@afg.asso.fr)) or our Head of International Affairs Division, Stéphane Janin, at +33 1 44 94 94 04 ([s.janin@afg.asso.fr](mailto:s.janin@afg.asso.fr)) .

Sincerely Yours,

Pierre Bollon