SJ – n° 2593/Div.

Mr Greg Tanzer
Secretary General
International Organization of
Securities Commissions
C/ Oquendo 12
28006 Madrid
Spain

4th June, 2009

Re: ASSOCIATION FRANCAISE DE LA GESTION (AFG)'s comments on IOSCO Consultation Report regarding Unregulated Financial Markets and Products

Dear Mr Tanzer:

The ASSOCIATION FRANCAISE DE LA GESTION (AFG)[1] would like to thank IOSCO for having solicited comments on its Technical Committee Report regarding Unregulated Financial Markets and Products.

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[1] 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 409 management companies and 660 investment 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. In terms of financial management location, it makes the French industry the leader in Europe for collective investments (with 1300 billion euros managed by French companies, i.e. 23% 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 second in Europe and third at worldwide level. Regarding product interests, our association

General Comments

1. We take note that, at this stage, IOSCO has concentrated its work on securitisation and CDS. We think that in the future IOSCO could widen its thoughts in several additional directions:

   a. Wouldn't there be a need for *clearing other types of financial instruments* than CDS? The Lehman case showed that the counterparty risk is real and may apply to products different from CDS, including cash debt securities;

   b. Wouldn't there be a need for *getting multilateral trading systems for some bond securities*? From at least two perspectives, getting such trading systems could bring at least two advantages:

      i. From a (professional) investor perspective, it would give a better knowledge of prices and overall liquidity related to the relevant financial instruments, as compared to the existing situation where, more often than not, trading places on a single security are fragmented;

      ii. From a valuation perspective, it would also facilitate the valuation of the relevant instruments.

2. On the content of the paper itself, although we are largely supportive of its draft recommendations, we want to stress that there is some ambiguity on the notions of '*buy-side*' or '*investor*' mentioned in the report. The report rightly mentions that some investors are better equipped than others to make an independent investment choice, but we consider that per se investment managers already belong to such a category: we consider that investment managers are already regulated – and also very often submitted to specific 'activity programmes' (this is the case, for instance, in France) which require reinforced human, organisational and technical means before being authorised to invest in securitised products. We want IOSCO not to go beyond these existing requirements applying to investment managers.

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Detailed comments

Wrong incentives: TC interim recommendation #1

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represents – besides UCITS – the employee saving scheme 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).

1. We support requiring originators and/or sponsors to retain a long-term economic exposure the securitisation; for instance the Capital Requirement Directive (CRD) in the EU is currently under review with a similar approach;

2. We strongly support enhancing transparency through disclosure by issuers of all checks, assessments and duties that have been performed or risk practices that have been undertaken by the underwriter, sponsor and/or originator. It will obviously improve the quality of information made accessible to investors;

3. We are not per se against the requirement of independent experts to be used by issuers, but we have strong concerns on the potential difficulties such a notion may imply. The notion of 'independence', although very appealing at a political level, is very ambiguous in practice and could therefore, at the end of the day, mislead investors. Who could be considered as an expert? Which degree of requirement regarding regulation and monitoring would be required? Which level of responsibility? Should this notion be approached from a Chinese Wall perspective within an issuer, or should it for instance require a capitalistically fully independent entity? In some cases effective Chinese Walls within a single entity guarantee a higher degree of independence than a fully separated, external entity with no link in capital with the relevant issuer.

4. More importantly, this request for independent experts might lead de facto or de jure to reducing the level of liability of the issuers themselves. We are strongly opposed to this possible outcome: issuers must remain fully responsible of the ultimate assessment disclosed to investors.

Inadequate risk management practices: TC interim recommendation #2

5. Before commenting on the recommendation itself, <u>we strongly contest the under-statement by IOSCO that investors in general do not undertake appropriate risk assessment and management of the securitised products they acquire</u>. We want to recall that in many jurisdictions over the world, investment managers (which are part of professional investors acting on behalf of third parties) and other types of 'qualified investors' already comply with stringent specific sets of rules (e.g. under the form of particular 'activity programmes', such as in France for investment managers) which have to be approved by their national regulator before being allowed to invest in securitised products. Such activity programmes cover among others managers' skills and organisation skills (including risk management).

6. On that basis, <u>we contest the need for requesting distributors to check if the product being sold complies with certain financial requirements and is suitable to investors' risk profile, as long as it is aimed at investment managers</u>. Investment managers are regulated in general, and very often even more precisely regarding investment in securitised products, and therefore they should not be refused access to some securitised products by distributors.

7. We agree on improving disclosure by issuers including initial and ongoing information on underlying asset pool performance and the review practices of underwriters, sponsors and/or originators including all checks, assessments and duties that have been performed or risk practices that have been undertaken.

Credit default swaps: TC interim recommendation #4

8. We fully support TC interim recommendation #4. In particular, we think that beyond the mere establishment of CCPs, there is a strong need for getting better transaction and market information for market participants – including investment managers.

9. From this latter perspective, we wonder if it would not be appropriate to further develop reflections on getting multilateral trading systems not only for CDS, but also in the future for other interest rate financial instruments such as debt securities, as consequently investment managers would have both an easier knowledge of prices and market liquidity (as compared to existing fragmented markets for some interest rate financial instruments) and an easier tool for valuating such products.

10. And from a counterparty risk perspective, it might be appropriate as well to think about developing CCPs covering interest rate financial instruments other than just CDS, including cash products (following the Lehman case).

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We thank you in advance for your attention to the views expressed above.

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) or Stéphane Janin, Director, Head of International Affairs Division at +33 1 44 94 94 04 (e-mail: s.janin@afg.asso.fr).

Sincerely,

Pierre BOLLON