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Committee of European Securities
Regulators (CESR)
11-13, Avenue de Friedland
75008 Paris

Paris, 4 September 2009

AFG RESPONSE TO CESR CALL FOR EVIDENCE ON MUTUAL RECOGNITION WITH NON-EU JURISDICTIONS

The Association Française de la Gestion financière (AFG)¹ welcomes CESR's call for evidence on mutual recognition with non-EU jurisdictions.

General comments

We are glad to see that CESR tackles this topic through a public call for evidence. As financial services are more and more globalised, this issue becomes more and more critical for market participants, including management companies.

In addition, considering the forthcoming increased role which will be played by CESR in the coming years through the welcomed institutional reform of the three Level 3 committees, the external dimension of CESR will be reinforced and has to be anticipated through one of the main dimensions that CESR will have to tackle in its external role, i.e. obtaining, where and when needed, mutual recognition agreements with non-EU counterparts.

From a French asset management perspective, this topic is very important as we are the second on-shore investment fund management centre in the world after the US, and as

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 411 management companies. They are entrepreneurial or belong to French or foreign banking or insurance groups.

AFG members are managing more than 2300 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 more than 1300 billion euros managed from France, i.e. 23% 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 Investment 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).

therefore our management company members export a lot of their funds and asset management services all over the world, not mentioning that several French asset management groups are in the world top league.

We can express the comments below, which relate to collective investment schemes and which are focused on some specific questions of the call for evidence.

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Questions to market participants

Q1: No, we don't see the need for adding other relevant topics in the mentioned regulatory areas. But we think that beyond the mere topic of mutual recognition with non-EU jurisdictions, the forthcoming CESR consultation should put more in perspective the external role that it intends to play in the context of the future European regulatory framework which will be set up next year.

Q2: Regarding the areas and topics identified in CESR call for evidence, we want to concentrate our comments on collective investment schemes.

On the one hand, we could of course expect benefits of mutual recognition frameworks for the businesses of our members, as by definition it would ease the cross-border marketing of EU funds in some parts of the world.

But on the other hand, the main existing obstacles to export outside Europe are not necessarily regulatory obstacles as such.

For instance, very often, the main obstacles are:

- tax obstacles: in many countries, the taxation as applied to foreign funds is higher than for domestic funds;
- practical obstacles linked to the existing distribution landscape: in many countries, the distribution landscape is already set up and it is difficult for producers to offer foreign funds;
- other obstacles such as high legal costs, possible exposure to litigation;

The result of mutual recognition could then very well be that we open our markets without gaining in practice real access to non-European ones.

Indeed, many management companies have frequently decided to buy or to develop joint ventures with local players (management companies and/or distributors) in order to develop their local business through the circumvention of these obstacles, by launching local funds and/or distributing funds through local entities.

3. Products including collective investment schemes

Q16: see above. We think that taxation issues should be regarded as well and that in any case practical obstacles like the organisation of national distribution networks and legal and compliance costs are of primary relevance.

Q17: French asset management companies distribute shares of collective investment schemes in all parts of the world. Depending of the existence or not of important connections/ownerships/joint-ventures with local distributors, the distribution is more retail or institutional oriented. And depending on the local restrictions vis-à-vis foreign funds like taxation issues, the distribution regards more local funds or European UCITS.

Q18: Regarding the most significant obstacles for the European asset management industry in respect to efficient cross-border marketing of collective investment schemes in third countries, see our answer to Question 2.

Q19: A mutual agreement between EU and third countries should cover first European funds, i.e. UCITS and in the future AIFs covered by the AIFM Directive such as European hedge funds/funds of hedge funds, private equity funds and real estate funds. The existence of an EU regulatory framework for such funds would represent a strong safety for third countries. But once again we are not really convinced that such mutual recognition agreements would be sufficient to facilitate the cross-border distribution of EU funds.

Q20: see our response to Q19 right above.

Q21: We are not sure that a particular type of asset management companies would benefit from a mutual recognition agreement between EU and third countries. But it is clear that today it is easier for bigger companies to distribute their funds worldwide as their higher financial means ease the ownership or participation in capital of local distributors or managers, in particular in targeting retail investors and/or entails them to pay the high cost of legal advice necessary to meet local rules. When institutional investors/high net worth individuals are targeted, as the issue of ownership of distribution networks is less important then, smaller players may compete more easily with bigger players to some extent.

Q22: Of course potential risks could result from a system of mutual recognition between EU and third countries. If mutual recognition agreements are badly negotiated, they could for instance facilitate the entry of funds in the EU without the sufficient safety needed in order to ensure that European investors could get their money back at the end of the day if they have to go before a third country judge.

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Sincerely Yours,

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