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AFG's answer to the consultation of IOSCO on Cross-border Regulation

General comments:

The AFG, i.e. the ASSOCIATION FRANCAISE DE LA GESTION FINANCIERE – the French Asset Management Association – welcomes the opportunity given by IOSCO to answer the consultation on Cross-border Regulation.

AFG represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. Our members include 413 management companies, out of slightly more than 600 asset management companies domiciled in France. They are entrepreneurial or belong to French or foreign banking or insurance groups. AFG members manage more than 3,000 billion euros in the field of investment management as of end December 2014, making in particular the Paris Fund Industry a leader in Europe for the financial management of collective investments.

AFG supports IOSCO in its efforts to achieve a better coordination of regulations, as we believe it contributes to fighting the still important forms of remaining protectionism, reducing transaction costs, fostering competitive markets and enhancing cross-border investments.

AFG appreciates IOSCO's report as it manages to present a panorama of existing tools and challenges related to cross- border regulation, while being balanced in its approach.

Aside of the tools mentioned in the report, AFG would like to highlight the importance of international trade agreements as a tool to tackle problems of cross-border regulations and to ensure market access. For example, AFG strongly supports the will of the European Commission to include financial services in the scope of the TTIP negotiations.

Identified tools

National treatment

AFG concurs with IOSCO where they see the “national treatment” as one of the existing tools regulators might use, but we fail to see how it could be a tool to address regulatory coordination.

Mutual recognition

If unilateral recognition is a way to express a host-country’s view that the home-country of an actor or a product has adopted appropriate regulations, we consider that it is not an effective tool to develop cross border activities. An international development would in our view require an active dialogue between regulators and should lead to such concepts as mutual recognition, reliance on external supervision and, at its best, reciprocity and peer review among regulators.

Thus, mutual recognition seems the most efficient and operational tool so far. An effective mutual recognition agreement needs to come with a great level of “equal market access”. AFG regrets that this concept is not put forward in this report.

In addition, this tool is a way to make progress in a relatively short term, while real harmonization through IOSCO Standards is more applicable in the long term.

Passporting

At first sight, passporting is the ultimate tool to achieve a greater market access and a regional legislative coordination. Indeed, passporting works under the main idea that underlying regulatory requirements are established centrally and that national/host authorities are no longer able to impose extra specific requirements.

However, AFG would like to highlight that it is not necessarily a straightforward process, as many of our members are facing extra specific requirements from host regulators (e.g. the AIFMD passport among EU Member States). Among the main problems encountered, we have identified:

- The lack of harmonization of fees taken by host regulators
- The lack of transparency when it comes to fees and processes followed by host regulators in order to assess passports’ requests
- Complementary requests and questions asked by host regulators.

Role of IOSCO

International standards

AFG most welcomes the work of IOSCO in this matter. But the compliance requirement with those principles for non-EU regimes can be very difficult to satisfy in practice, given that major jurisdictions don’t have yet legislative frameworks equivalent to these international standards, or as we observe discrepancy in the interpretations of those high-level principles and standards at national level.

However, we believe that IOSCO's standards and principles, e.g. the Principles of Financial Benchmarks, contribute to create a real consciousness at EU level on the necessity to have a global approach on cross-border issues and on the competition and operational issues that can result from one having a drastic solo approach on a specific question.

We believe that granularity of standards and principles should be in the long-term progressively reinforced on areas where national jurisdictions are already active and when it can help achieving reciprocity via mutual recognition agreement, but that they should remain broad and less prescriptive when it comes to areas with no or little existing national legislation.

Conflict of regulations" framework and technical assistance

AFG supports the idea of IOSCO playing a role of technical assistance (when it comes to cross-border issues) and having a role in dispute settlement that would be informal and non-binding. We believe this role at EU level would need to be coordinated with ESMA, which plays a significant cross-border role (e.g. See MoUs signed by ESMA with third countries under AIFMD).

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Would you need any further information, please feel free to contact our EU Institutions Relationship Manager Arthur Carabia, at + 33 1 44 94 96 58 (a.carabia@afg.asso.fr).