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Mr. Werner Bijkerk
Senior Policy Advisor
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid
Spain

29th July, 2011

Re: ASSOCIATION FRANCAISE DE LA GESTION (AFG)'s comments on IOSCO Consultation Report regarding Regulatory Issues Raised by the Impact of Technological Changes on Market Integrity and Efficiency

Dear Mr Bijkerk:

The ASSOCIATION FRANCAISE DE LA GESTION FINANCIERE (AFG) – French Asset Management Association[1] would like to thank the International Organization of Securities

[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 416 management companies, 558 investment companies as well as 56 affiliated members. Our management company members are boutiques or belong to French or foreign banking or insurance groups (among which 4 in the top 20 at worldwide level).

AFG members are managing more than 2600 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 more than 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 represents – besides UCITS – the employee saving schemes, 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).

Commissions (IOSCO) for providing the opportunity to submit comments on the Consultation Report regarding 'Regulatory Issues Raised by the Impact of Technological Changes on Market Integrity and Efficiency', issued in July.

We would like to express the following general comments as well as our responses to the questions raised within the IOSCO Report on pages 41 and 42.

First, we think that IOSCO is right in pointing out the flesh crash event of May 6, 2010. As a case-study in the real life, it is a good starting point to see what works and does not work in the smooth functioning of financial markets. Instead of looking for scapegoats among financial market participants – except of course if they are responsible for market abuse, for which they have to be strictly sanctioned then – it is crucial to think one step above, at the level of the organisation of financial markets, in order to reduce as much as possible the risk of disordered markets.

In our view, two general comments have to be mentioned here.

On the one hand, the issue of market disruptors and surveillance: regarding market disruptors, it seems obvious for us that circuit-breakers must be put in place on all markets, in particular as it is a temporary way to "calm" the market participants instead of creating a snowball rolling down the hill with unpredictable effects. As a complement of such compulsory circuit-breakers, it is fundamental that national regulators have a clear responsibility in the area of market surveillance: regulators have to be supervisors (which is not the case in all countries), both by having – *ex ante* - market rules, market price limits and associated circuit-breaker processes submitted (but not necessarily agreed – at least for information) to the regulators, and by giving – *daily* - direct and permanent access to market data information to regulators. Otherwise, once a crash occurs, the relevant national regulator loses time in trying to collect the data afterwards in order to understand what happened – generally too late.

On the other hand, in order to get the smoothest functioning of this organisation at regulator level, it implies a clear responsibility of regulators/supervisors vis-à-vis market operators. That is why ex ante submission of market rules and processes and daily access to market information by regulators/supervisors is fundamental.

Regarding the questions raised by IOSCO, we give the following responses.

Q1:

Regard the financial markets in general, it is clear that technological developments have brought faster processes and execution of orders very often. But does faster execution mean systematically better execution? Not always.

In addition, for us, the top issue is to get better *transparency*. For portfolio managers' perspective, what is crucial is to get data transparency, when they look for getting the best

price/execution – and also for valuating investor porfolios at the most meaningful price. In this approach, the speed of execution has few impacts, while on the contrary we often suffer from the fragmentation of markets which generates a fragmentation of market information as well as a lack of transparency for some markets (see for instance the issue in Europe about the shortcomings of the Markets in Financial Instruments Directive – MiFID).

Q2:

We think that proprietary trading firms (including HFT firms) should not have to be *authorised* by regulators, in particular as they just invest their own money and therefore they don't need to be protected from their own actions. What is crucial for market order is to have stringent market abuse rules and enforcement, applicable to all market participants, in order to ensure market integrity and a smooth functioning of these markets.

In addition, we don't have to forget that the main market players doing proprietary trading are already regulated and authorised: we are speaking here about banks, which in aggregated terms have the largest proprietary trading volumes.

But conversely, for the orderly functioning of markets, it would make sense that any proprietary trading firm (including HFT firms), beyond a threshold defined in terms of amount invested, should be merely *registered* at the level of a regulator – in order to be identified and therefore easily/promptly accessible by the regulator in case of market disorder.

Regarding the sub-question of differentiating direct market members from customers with DEA, we think that in the first case authorisation is obviously required, while in the second case a mere registration at the level of regulator is enough as the relevant intermediary has already been authorised: it is the responsibility of the relevant intermediary to give a DEA to whichever customer, and this intermediary is responsible before the regulator for this decision.

Q3:

As mentioned above, and in particular here in order to improve pre- and post-trade controls, requiring the mere registration of proprietary trading firms as well as customers with DEA above a threshold in terms of trading volume would probably improve them. It should go along with direct data reporting from these registered entities to regulators, in order for regulators to better monitor their activities (in particular if such firms or customers trade through different channels or intermediaries).

Q4:

Yes, the use of trading control mechanisms such as circuit breakers and limit-up/limit-down systems by trading venues should be mandated.

In addition, we have no problem with having venue operators be permitted to design their own controls – *as long as* such controls are submitted to their relevant regulators.

Q5:

Yes, market maker schemes offered by trading venues should be subject to mandatory minimum criteria. Such criteria could be determined by the relevant trading venue alone, but *as long as* they are submitted to the relevant regulator.

Regarding stub quotes, we are not against the principle that they should be prohibited, as in practice they are very close to (if not part of) market manipulation.

Q6:

As mentioned above:

- submission to regulators of price limits by trading venues and market operators
- registration of proprietary trading firms (including HFT firms) as well as DEA customers above volume thresholds

In addition, we think that there is a need for a better direct access to market data information by regulators, while in many countries currently the relevant national regulators rely on market operators and/or SROs – which creates a big risk of delay for access by regulators to this market data information by regulators when a crash occurs.

In our view, the cost of investing in such capabilities and the cost of operating and supervising the markets in order to ensure fairness among market participants should be borne by those registered/authorised entities, i.e. proprietary trading firms (including HFT firms) as well as trading venues/market operators and customers with DEA.

Q7:

Regarding the major causes of settlement indiscipline and settlement failures, and even if it is probably very difficult to find miracle solutions, we think that at least reducing in terms of number of days the cycle of settlement, and harmonising that number at international level, could already be an improvement.

Q8:

Regarding the limitation or management of conflicts of interest for investment firms having proprietary trading activities, we can just bring the case of Management Companies, which in many parts of the world (for instance in France) are prohibited from having proprietary trading activities as they must act in the best interests of their third party clients. Of course, an alternative can be Information Barriers, but very often the regulators do not enforce them in practice.

However, in any case and as already mentioned above, very often the main issues of proprietary trading do not only come from investment firms but also from banks.

Q9:

Existing laws and rules on market abuse and disorderly trading usually cover de facto computer generated orders and are relevant in today's market environment, as long as their wording is wide enough to cover them.

However, it could be useful to get an non-exhaustive list of market manipulation schemes which should explicitly include some types of prohibited trades linked to HFT or flash trading.

Let's recall that IOSCO produced a Report on "Investigating and Prosecuting Market Manipulation" in May 2000, with examples included. Maybe this Report could be updated.

Let's also recall that for instance at European Level, the Market Abuse Directive 2003/6/EC mentions in Article 1 para 2 last indent that "*the definitions of market manipulation shall be adapted so as to ensure that new patterns of activity that in practice constitute market manipulation can be included.*"

Q10:

N/A.

Q11:

We are not against imposing charges or fees on messages, cancellations or high order-to-trade rations. If such a path was followed, these charges or fees could be determined on the basis of criteria such as the electronic cost of treatment, the cost of misleading information or in proportion with the volume introduced.

Q12:

N/A.

Q13:

We are not against requiring market operators to provide testing environments to enable participants to stress test their algorithms.

Q14:

As already mentioned above, our main issues are:

- market transparency - in particular price transparency, both for improving trading but also investor portfolio valuations;

- ongoing enforcement of existing rules by regulators;

- submission of price limits and circuit-breaker processes to regulators

- direct daily access by regulators to market data as well as an immediate power to stop the markets if necessary.

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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), Stéphane Janin, Head of International Affairs Division, at +33 1 44 94 94 04 (e-mail: s.janin@afg.asso.fr), or Adina Gurau-Audibert, Management Techniques Advisor, at +33 1 44 94 94 31 (a.gurau.audibert@afg.asso.fr).

Sincerely,

(signed)

Pierre BOLLON