

RESPONSE TO CALL FOR EVIDENCE ON DIRECTIVE 1997/9/EC ON INVESTOR-COMPENSATION SCHEMES

1) Should the operation of multilateral trading facilities be excluded from the scope of the ICSD?

No, on the basis that retail investors could conceivably suffer loss through fraud or misconduct by an insolvent MTF, they should not be excluded from the scope of the ICSD. Even if this is considered an unlikely event, it is better to provide for the possibility now rather than when it is too late. There may be a case for special provisions at the Member State level concerning funding and cross-subsidies of claims between MTF's and other investment services.

2) Would it be appropriate to include in the scope of the ICSD all investment firms seeking authorisation to the provision of investment services, although their authorisation would not allow holding clients' assets?

Yes, as retail investors may suffer loss either as a result of the unauthorised holding of client assets by such firms, or as a result of claims arising through other misconduct (on the basis that such claims should also become compensatable, for as we argue below, investors are concerned with and should be able to claim for any loss arising from insolvency or misconduct, and not only for misappropriation of assets).

3) Would it be appropriate to include in the scope of the ICSD all investment firms seeking authorisation to the provision of investment services, although they provide their services only to non-retail clients?

No. Although the boundaries between retail and non-retail clients are in some cases blurred, particularly where retail clients' exposure to a firm is indirect, the principle should be maintained that compensation schemes are intended only for the protection of retail investors. To extend compensation to all investors would increase moral hazard and lead to excessive potential scheme liabilities.

4a) Should investors be able to claim compensation in the case of default of the third party where their assets had been deposited?

Yes, retail investors should be protected if they suffer loss through the actions of any regulated entity, even if they do not have a direct relationship with that entity. Usually they will not be party to the decision to be exposed to that third party, and it would be inequitable if investors with a direct exposure to the third party were covered whereas those with an indirect exposure were not.

4b) Should investors (such as UCITS or a UCITS unit holder) be able to claim compensation for loss of assets under the ISCD in those cases where the UCITS depositary or the institution which has been mandated to safe keep the assets, fail to perform its duty?

Yes. UCITS are designed and promoted as an investment vehicle suitable for retail investors. Both UCITS management companies and UCITS depositaries should fall within the ISCD to ensure that retail investors have the maximum level of protection.

5) Should loss events include also any losses suffered by (retail) investors as a consequence of the violation of conduct of business rules?

Yes. A retail investor who has lost his investment through the misconduct and failure of an investment firm is concerned with the effect and the amount of the loss. For him the outcome is the same whether that loss was due to misappropriation of the assets or unsuitable investment in a worthless asset.

6) Do you agree with the idea that the amount covered by the ICSD should be adapted following the updating of the DGSD?

Yes. There should be a level playing field in terms of the amounts of compensation covered by compensation schemes in the banking, insurance and investment sectors, otherwise this creates a distortion between these markets. The directives should mandate a minimum level of compensation to be provided. We are aware of the arguments for harmonisation of the maximum amount covered under compensation schemes, such as the effect of capital flight in times of difficulty to branches in States with the most generous compensation arrangements, but believe that Member States should be free to provide higher levels of compensation above an EU minimum provided these are the same for each industry sector.

7) The ICSD does not harmonize the funding systems of the schemes. Should the ICSD provide for some general principles concerning the funding of the schemes?

No, the ICSD should be concerned with the outcome rather than the means. However, we believe that pre-funding is desirable, both to smooth the costs of claims for the industry, and to ensure confidence that all schemes are able to meet compensation claims on a timely basis when they arise.

8a) Does the legislation of the Member State you know the best provide mechanisms aimed at limiting compensation schemes' obligations over time? If yes, how many clients saw their compensation unpaid as a result of such mechanisms?

We come under multiple schemes in different Member States and do not have this information available.

8b) Should this kind of mechanisms be prohibited?

Yes. There should not be a cap on the aggregate compensation payable in a period where this could lead to some investors not receiving compensation because the pot is exhausted due to other claims.

9a) Should the process of recognizing the eligibility of the claim be regulated for the purposes of the ICSD?

Yes, there should be a regulated mechanism for determining that an investor has a claim on the compensation scheme, and the amount of that claim.

9b) Should, at least, a mechanism be introduced providing for provisional partial compensation based on a summary assessment of clients' positions?

Compensation schemes should be able to make partial payments to investors and take over their claims against the defaulting firm.

9c) Irrespective of the harmonisation of their funding systems, should compensation schemes ensure that they have minimum reserve funds in order to comply rapidly with any immediate needs?

As a general principle, compensation schemes should not build up reserves of funds (which are levied on the financial services industry) to meet unspecified future claims. These funds belong to the industry and are better left on the industry balance sheet than that of the compensation scheme. Such reserves can also result in cross subsidy between firms and sectors. However, some reserves of a fixed maximum amount should be retained to ensure schemes can make prompt payments when due, and schemes should have access to borrowing facilities, secured against future contributions, to cover any immediate shortfalls.

10) Do you think special attention should be given to money market funds?

Money market funds should be subject to a harmonised compensation regime that is equivalent to that available for both UCITS funds and bank deposits. This should not extend to compensation investors in such funds for a fall in the value of their capital where the fund has been managed in accordance with current regulations.

11) Based on the concrete application of the ICSD do you see further issues other than the ones mentioned in the present document that might be of relevance to this analysis?

No.

**AXA Investment Managers
Coeur Défense - Tour B - La Défense 4
100 Esplanade du Général de Gaulle
92932 Paris la Défense cedex**

9 April 2009