	Comments Template on the Consultation Paper on Call for evidence concerning the request to EIOPA for further technical advice on the identification and calibration of other infrastructure investment risk categories i.e. infrastructure corporates	**Deadline 10 12 2015 23:59 CET**
Name of Company:	Association Française de la Gestion Financière (AFG)	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
	Please follow the following instructions for filling in the template: ⇨ Do **not** change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇨ Leave the last column empty. ⇨ Please fill in your comment in the relevant row. If you have no comment on a paragraph or a cell, keep the row empty. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. **Please send the completed template, in Word Format, to CP-15-009@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.** The numbering refers to the Consultation Paper on the Call for evidence concerning the request to EIOPA for further technical advice on the identification and calibration of other infrastructure investment risk categories i.e. infrastructure corporates.	
Reference	**Comment**	
General comments	We argue that the intrinsic qualities (an associated risks) of infrastructure investing are related to the quality of the asset and its features (eg. predictability of cash flows, contractual framework, barriers to entry) and less related to structural features of the investment vehicle. As also suggested by OECD research [1], investing in project equity or infrastructure debt is only but one of the ways investors can get exposure in infrastructure assets. *Note 1: Della Croce, R. (2012) , Trends in Large Pension Fund Investment in Infrastructure », OECD working papers on Finance, Insurance and Private*	

	Pension, No 29, OECD Publishing	
Question 1	Generally speaking the structure of the infrastructure entity (corporate vs project SPV) is not a matter of choice to be made by the investors. It is rather determined by the nature of the activities undertaken and their stage of maturity and development. Project finance SPVs prevail for single-asset projects, especially in case of grrenfield projects. Corporate structures prevail in the following situations: • entities where the operation, maintenance and development of the infrastructure asset is not separated from the ownership the asset base. • When Multiple projects can be combined in one entity to generate scale and efficiencies. For example investing in renewable energy companies that operate existing plants –usually project financed- and develop more assets • going concern entities that own and manage infrastructure assets but also actively seek to deploy know how and expertise in acquiring or building more assets For the reasons mentioned above, empirical evidence suggests that with the exception of social infrastructure where project infrastructure is prevailing, infrastructure corporates are present or prevailing in all other infrastructure sectors : • The regulated utility space. For example water companies in the UK are today mostly privately owned PLCs. Grid companies are also typically corporate entities (eg. Terna and Snam in Italy) and typically financed with corporate facilities rather than project finance • Transportation • Airports. Ports and port terminals • Communication infrastructure: For example fiber companies, telecom tower companies	

Question 2

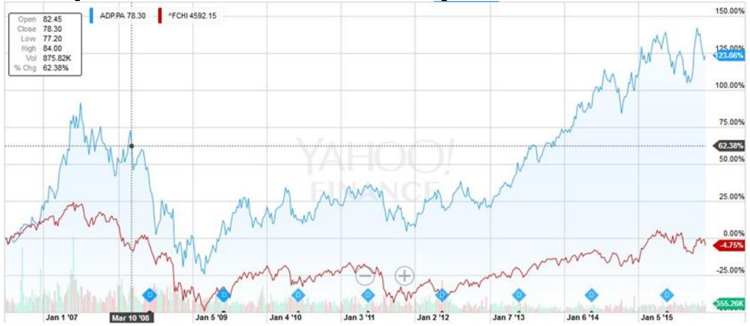
Companies that operate essential infrastructure services, with high barriers for entry, where revenues that are either regulated, contracted or predictable in view of the low demand risks.

Setors include the following:

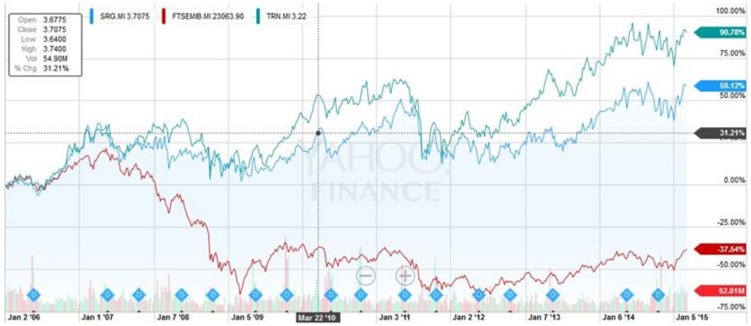
- Utilities including power generation, electric and gas transmission and distribution networks, energy pipelines, water and wastewater companies.
- Transport systems (roads, airports, ports, rail systems…)
- Telecom infrastructure (fiber networks, telecom towers…)

By way of empirical evidence of the resilience of such companies to the economical cycles, please see below examples of listed such corporates and their stock performance vs the relevant national indices over the past 10 years.

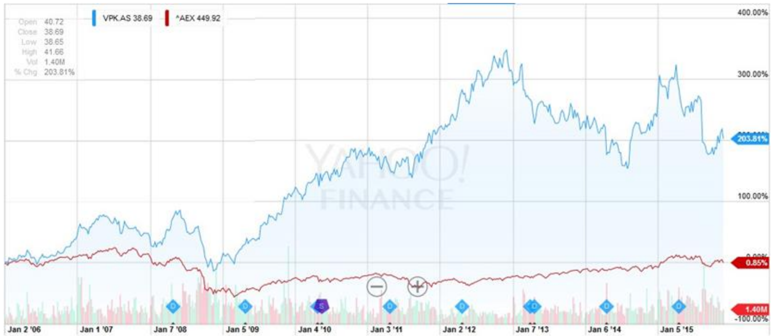
Aéroport de Paris Vs CAC 40 (01/01/2006 until 03.12.2015)



Terna Energy and SNAM Rete Gas vs. FTSE MIB (01/01/2006 until 03.12.2015)



Vopak vs.AEX (01/01/2006 until 03.12.2015)



Question 3

For the purposes of facilitating the illustration of examples, the entities listed above are mostly infrastructure corporates listed in regulated exchanges. Through empirical evidence, we argue that the same observations apply for unlisted infrastructure corporate entities. In fact, as a result of being able to apply bespoke governance arrangements, unlisted infrastructure equity has more defensive covenants than listed corporates.

Question 4

To our knowledge there is no legislation distinguishing infrastructure corporates from infrastructure project structures. Arguably as mentioned above, this is probably the case as a project structure is only a way of procuring and financing an infrastructure asset rather than a prerequisite feature of the asset class. Empirically, the OECD has done substantial work[2] to define infrastructure investments and ways for institutional investors (including insurance) to access the asset class.

FTSE Russel, the index company, has issued a series of indices that in our view comprise a fairly accurate market perception of infrastructure corporates[3]. FTSE distinguishes between Core Infrastructure and Infrastructure related sectors. FTSE's Core infrastructure indices are comprised of companies (listed only) which generate a minimum of 65% of their overall revenues from infrastructure. Please refer to the table for the subsectors included in each category.

Infrastructure sector: Companies which generate a minimum of **65% of their overall revenues** from infrastructure	
Transportation Infrastructure:	Companies that own operate, manage and maintain roads, bridges, tunnels, railway lines, urban transportation systems (tramways, metros), waterways, ports, airport terminals and depots
Energy Infrastructure:	Companies that own, operate, manage and maintain oil, gas or water- supply pipelines and electricity transmission and distribution networks, regulated utilities, energy generation with mitigated commodity

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<tr><td></td><td>price risk</td></tr>
<tr><td>Telecommunications infrastructure:</td><td>Companies that own, operate, manage and maintain fixed telephony and data networks (not the commercial se, operate or lease to third parties transmission lines or towers to others and transmission satellites</td></tr>
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<tr><td colspan="2">Infrastructure related sectors: companies that utilise infrastructure facilities but do not own, manage, operate or maintain them</td></tr>
<tr><td>Infrastructure related Conveyance Services:</td><td>Companies that operate passenger rail services, passenger or freight airlines, bus services, ferries, passenger or bulk and container shipping, trucking or delivery services</td></tr>
<tr><td>Infrastructure related Materials and Engineering:</td><td>Companies that provide support services and materials to builders of infrastructure</td></tr>
<tr><td>Infrastructure related Communication Services:</td><td>Companies that provide general voice and data services to consumers</td></tr>
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From our perspective entities included by FTSE Russell in infrastructure relted sectors should fall out oft he definition of infrastructrue entities as per the EIOPA criteria.

One can also refer to the definition of infrastructure corporates provided by Moody’s in their March 2015 report on Infrastructure Default and Recovery Rates 1983-2014.

Note 2: OECD (2015), Pooling of Institutional investors capital – selected case studies in unlisted equity infrastructure
Note 3: FTSE Russel, the FTSE infrastructure Index Series, Defining Infrastructure 2015
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<td>Question 5</td>
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Areas where the currently proposed criteria would not qualify for infrastructure corporates:
• Definitions:
•“Public services” shall not be interpreted as providing services to governmental entities exclusively
•As already suggested in our answers to previous consultations, “project entity” concept may exclude implictely corporate entities managing a portfolio of infrastructure assets (directly or through entities)
• Contractual Framework:
•Proviso a): contraftual arrangements with a single off-taker providing for
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	protection in case of termination requirement which refers to single purpose entity (PPP/concession type of contract) narrows significantly the scope of infrastructure. Such types of contractual arrangments are not available/necessary where the revenues comes from a large number of users or termination is unlikely due to high barriers to entry (monopolotic or quasi monopolistic situation of the infrastructure) •Proviso b): debt providers typically have securities on some assets or rights that are critical for the protection of their credit positions (for example peldge of shares in operating companies when the borrower is a holding entity), but seldom on all assets of the borrower. The relevance of the security package can only be assessed transaction by transaction. •Proviso d): an infrastructure corporate is typically a going concern entity that unlike a concession, after repaying debt will pursue using its financial resources to create value for shareholders either by pursuing diversification or expansion growth or by repaying excess cash back to shareholders •Proviso e):with regards to additional debt, there are typically covenants and financial ratios restricting the extent and terms of additional debt rather than a forbiddance to raise any additional debt •Proviso f): infrastructure corporates may not have funded reserve accounts in their debt package. Absence of reserve accounts can be acceptable when revenues are strong enough (in view of historical track recod and stress scenarii) to comfortably cover debt servive obligations without the need for such liquidity facilities. • Structural requirements: •condition 1:. As indicated in question 1, multiple infrastructures may be combined to generate scale and efficiencies than decreasing the risk of operating one single infrastructure. Portfolio of infrastructures shall be considered within the scope of eligible infrastructures. •condition 3: usually the sponsor is the corporate entity itself which has expertise internally rather than having an external party overseeing the infrastructure project • Construction Risk: •condition 2 a) infrastructure corporates undertake ongoing capex programs, including for maintenance activities. It is not always economically advantageous to procure capex on a take or pay basis, particularly for noncomplex ongoing tasks (for example replacing parts of pipelines for a water distribution corporate)	

Question 6	• Definitions:
	  ○ “Infrastructure assets” means physical structures or facilities, systems, or networks that provide or support essential services *delivered to the public, communities and businesses.”*
	  ○ “Infrastructure ~~project~~ entity” means an entity ~~which is not permitted to perform any other function than~~ *whose main purpose consists in* owning, financing, developing, *maintaining* or operating infrastructure assets, where *a substantial part* of the primary source of payments to debt providers and equity investors is the income generated by the assets being financed.
	• Predictability of cash flows:
	  ○ The cash flows that the infrastructure project entity generates for debt providers conditions are satisfied with respect to *a substantial part of the revenues* ~~all but an immaterial part of the revenues~~
	• Contractual Framework:
	  ○ a) if revenues are not funded by payment from a large number of users or the concurrential enrironment does not provide a monopolistic, quasi monopolistic situation or significant barriers to entry, provisions that effectively protect debt providers and equity investors against losses resulting from *a material part of the off-takers* terminating the project;
	  ○ ~~b) debt providers have security to the extent permitted by law or regulation in all assets and contracts necessary to operate the project~~; For the qualification of investments in infrastructure debt, debt providers have security on assets that are critical for the protection of their credit ors’ rights and to the extent permitted by law
	  ○ c) equity and *where applicable assets are* pledged to debt providers such that they are able to take control over the infrastructure ~~project~~ entity prior to default;
	  ○ d) the ability of the infrastructure project entity to use financial resources before ~~for purposes other than making~~ *completing due payments* to debt providers is significantly restricted;
	  ○ e) a covenant package that effectively restricts the infrastructure ~~project~~ entity from performing activities that may be detrimental to debt providers, including *raising more debt beyond an agreed covenant level* ~~that new debt cannot be issued without the consent of existing debt providers~~;
	  ○ f) *if applicable to the financing*, the reserve funds of the infrastructure ~~project~~ entity have a sufficient coverage period and are fully funded in cash or letters of credit from a counterparty with a very low risk of default	

	• Structural Requirements: ○ 1. The assets and cash flows of the infrastructure ~~project~~ entity are effectively separated from other entities. ○ 2. During the construction phase of the project, the infrastructure ~~project~~ entity has a suitable sponsor *(which may be the entity itself)* ○ 3. The infrastructure ~~project~~ entity shall not be considered as having a suitable sponsor unless, *where applicable*, the following conditions are met: • Construction risk: ○ 2a) *for material projects and where* the infrastructure entity *does not have the internal construction expertise the entity* enters into fixed-price date-certain contractual arrangements with one or more construction companies;	
Question 7	We believe there should be no distinction between old and new debt	
Question 8	Corporate infrastructure entities have often ancillary revenues directly or indirectly related to the operation of the infrastructure: commercial activities in an airport, area services for motorways…These revenues, regardless their materiality, shall pass the stress tests and predictability of cash flows requirements already defined by EIOPA. The criteria we suggest is to ensure that equity or debt providers enjoy governance rights and covenants allowing them to control what activities the entity is entitled to exercice.	
Question 9	As discussed in previous questions, holding companies owning several operating entities shall be eligible to the extent they comply with all the requirements proposed by EIOPA, taking into account the adjustments suggested in our responses.to this call for evidence.	
Question 10	The arrangement we suggest is to require that equity and debt providers enjoy control rights over the scope of activities of the infrastrcture corporate (cf Q7)	
Question 11		
Question 12		
Question 13		
Question 14		
Question 15		
Question 16		
Question 17		