

**EFAMA REPLY TO CESR'S CONSULTATION PAPER ON
MIFID COMPLEX AND NON-COMPLEX FINANCIAL INSTRUMENTS
FOR THE PURPOSES OF THE DIRECTIVE'S APPROPRIATENESS
REQUIREMENTS**

EFAMA¹ welcomes the opportunity to reply to CESR's consultation paper on MiFID complex and non-complex financial instruments. We will limit our comments to Section 3 of the Consultation Paper (UCITS and other collective investment undertakings –Questions 21-22-23-24).

We agree with CESR's analysis of the classification according to the existing provisions of MiFID, and in particular we agree that:

1. UCITS should be categorized as non-complex, according to Art. 19 (6).
2. Non-UCITS should not automatically be classified as complex simply due to the fact that they invest in complex instruments or that they belong to a certain fund category, but they have to fulfill the criteria in Art. 38 of MiFID Level 2. EFAMA is also of the opinion that many funds regulated at national level similarly to UCITS fulfill the criteria of Art. 38 and a categorization as non-complex would therefore be justified.

However, EFAMA members disagree with CESR's statement (para. 83) that not all UCITS should be regarded as automatically non-complex, and believe that UCITS should continue to be categorized as such, as they are conceived as retail products, are very strictly regulated and provide a high degree of investor protection. UCITS are also very liquid (redemptions possible usually daily, but at least twice a month), do not involve any liability exceeding the acquisition cost, provide a very high level of disclosure to retail investors (which will be further improved with the introduction of the KII under UCITS IV), are subject to stringent risk management rules and, above all, are well diversified.

¹ EFAMA is the representative association for the European investment management industry. EFAMA represents through its 26 member associations and 44 corporate members about EUR 11 trillion in assets under management of which EUR 6.1 trillion managed by around 54,000 investment funds at end 2008. For more information, please visit www.efama.org.

In view of the above, EFAMA does not consider that a revision of MiFID rules with respect to the classification of UCITS and other collective investment undertakings is necessary or appropriate.

We hope our comments will be of assistance and remain at your disposal for any clarification.

Peter De Proft
Director General

17 July 2009