

17 July 2009

CESR
11-13 Avenue de Friedland
75008 Paris
France

Dear Sirs

MIFID complex and non-complex financial instruments

The IMA represents the asset management industry operating in the UK. Our Members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of £3 trillion of assets, which are invested on behalf of clients globally. These include authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles.

We are responding to Section 3 of the paper, on UCITS and other collective investment undertakings.

Question 21: Do you agree with CESR's view that non-UCITS undertakings should not automatically be categorized as complex instruments simply due to the fact that they invest in complex instruments?

Yes, we agree that non-UCITS schemes should not automatically be categorised as complex investments.

To categorise non-UCITS in such a way without consideration of the fund's aspects in relation to Article 38 of the Level 2 Directive would seem to fly in the face of what the consultation is trying to achieve.

Question 22: Do you agree with CESR's analysis of the treatment of units in collective investment undertakings for the purposes of the appropriateness requirements?

We disagree with CESR's comments in paragraph 83 and we believe that this new interpretation is contradictory to MiFID. We cannot understand any CESR interpretation differing from the relevant Level 1/2 directives.

UCITS clearly meet the four tests set out in MIFID implementing measures. Counterparty rules apply to UCITS and there are requirements relating to

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liquidity contained in the Eligible Assets Directive. If ever it is decided to reopen the discussion on the Level 2 implementing measures, the existing rules and guidance relating to UCITS should be taken into account and it is likely that such rules would meet any liquidity or counterparty requirements.

Question 23: Do you have any further comments on CESR's consideration of the position of these instruments?

A key test in this area is what is meant by Article 38(b) - frequent opportunities to dispose/redeem. CESR should acknowledge that UCITS are daily dealt in general and cannot have dealing periods more infrequent than twice a month. Any guidance as to what is meant by 'frequent opportunities' could therefore look to the UCITS parameters in providing a little more specificity to the term. The result would be that a fund that has dealing less frequently than this is likely to fall into the complex definition and thus be subject to appropriateness tests. This would provide more certainty to non-UCITS fund providers and is directly relevant to the discussion of the AIFM proposal. ***That proposal suggests all AIF are complex (proposed Article 52) which appears directly opposed to CESR's stated view in relation to Question 21.*** Any guidance would, if the AIFM Article 52 is deleted, provide a better regulatory approach for differentiating between those nationally regulated non-UCITS retail schemes caught by the AIFM and other alternative funds aimed at professional investors. [Although we would note that in the context of the AIFM proposals, we are arguing that nationally regulated non-UCITS retail schemes should be out of scope with opt in.]

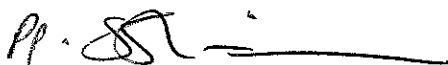
Also, in relation to the AIFM proposal, our members are concerned about the potential impact on UK "investment trusts", which are listed, closed-ended investment companies. Under MiFID these are currently classed as non-complex since their shares are dealt on a regulated market. We believe that this should continue to be the case notwithstanding the outcome of the AIFM negotiations.

Question 24: Are there other specific types of such instruments that should be explicitly mentioned in a list for the purposes of CESR's exercise?

No comments.

Should you wish to discuss this response, please do not hesitate to contact me.

Yours sincerely



Alwine Jones
Adviser, Regulation