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Committee of European Securities
Regulators (CESR)
11-13, Avenue de Friedland
75008 Paris

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AFG RESPONSE TO CESR CONSULTATION PAPER ON MIFID COMPLEX AND NON COMPLEX FINANCIAL INSTRUMENTS FOR THE PURPOSES OF THE DIRECTIVE'S APPROPRIATENESS REQUIREMENTS

The Association Française de la Gestion financière (AFG)¹ welcomes CESR's consultation on MiFID complex and non complex financial instruments for the purposes of the directive's appropriateness requirements.

This consultation raises a number of issues and criticisms. AFG has not prepared detailed answers to the many questions asked in the paper; however, it wishes to highlight the following points:

- This classification has not been called for by investment service providers, and in particular not by asset management companies. Most of these entities have set their

¹ The Association Française de la Gestion financière (AFG)¹ represents the France-based investment management industry, both for collective and discretionary individual portfolio managements.

Our members include 409 management companies. They are entrepreneurial or belong to French or foreign banking or insurance groups.

AFG members are managing 2300 billion euros in the field of investment management, making in particular the French industry *the leader in Europe in terms of financial management location* for collective investments (with nearly 1300 billion euros managed from France, i.e. 23% of all EU investment funds assets under management), wherever the funds are domiciled in the EU, *and second at worldwide level after the US*. In the field of collective investment, our industry includes – beside UCITS – the employee savings schemes and products such as regulated 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 Investment 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).

own classification internally and tailor their offer to the specificities of local markets; however, there are major differences in points of view among the Member States.

- The proposed classification of non-complex financial instruments is only relevant when the following criteria are met:
 - The investment service consists of execution only and/or reception and transmission of client orders
 - The investment service is provided at the initiative of the client
 - The investment service relates to non-complex instruments

The appropriateness test does not apply only in such specific case. Hence the potential need for a formal classification. However, the complexity of the product (as per MiFID Article 19, paragraph 4 & 5) can only be assessed based on the client's knowledge. Under this condition, no formal classification can possibly be designed. Therefore, it should be left up to the professional's appreciation.

- The multiplication of product « classifications » (based on risk indicators shown in the KID for instance...) might reduce the quality of information given to investors. The exercise is not only dangerous but probably also useless: it is not realistic to think that such a classification could be exhaustive, which would inevitably raise many interpretation issues, which would in turn imply inequalities among investors.
- The articulation of this classification with the future horizontal Directive on retail investment products, whose main aim will be the harmonisation of the application of the duty of information and investment advice, raises a number of issues. The question of the articulation with the AIFM Directive will also have to be addressed.
- The proposed classification (please refer to annex I, page 30 of the consultation) itself is complex. Nevertheless, it seems that this classification is to be used as a basis for the Commission to reshape the concept of duty of investment advice as defined by MiFID. This complexity will generate additional difficulties for both service providers and investors, without guaranteeing any additional protection to either of them. As a result, it will be source, just under two years after the implementation of MiFID, of legal uncertainty.
- Above all, AFG is opposed to a tightening of the current rules that allow considering UCITS as non complex instruments (please refer to page 20, paragraph 83 of the consultation: "CESR believes that not all UCITS should be regarded as automatically non-complex..."). This attempt to reconsider MiFID, less than two years after its implementation, is by no means justified, it will be the source of legal uncertainty and will not bring any additional effective protection to investors.

We thank CESR very much for taking into consideration our comments and remain at your disposal for any further questions. Please feel free to contact myself at 33 1 44 94 94 14 (e-mail: p.bollon@afg.asso.fr).

Yours sincerely,

(signed)
Pierre Bollon