

IRISH STOCK EXCHANGE

Response to the Committee of European Securities Regulators (CESR's) Consultation Paper on MiFID complex and non-complex financial instruments for the purposes of the Directive's appropriateness requirements

The Irish Stock Exchange welcomes the opportunity to comment on this consultation paper. Our comments are restricted to a few key points.

II Section 1 – Shares

Question 4: Do you agree that other equity securities should be assessed as per the criteria in Art. 38 of the Level 2 Directive?

Article 19(6) specifically refers to “shares admitted to trading on a regulated market or in an equivalent third country market”, implying that shares admitted to trading on a market other than a regulated market, such as on an MTF operated by a market operator, would not be automatically deemed to be “non-complex”. However, as discussed by CESR in Paragraph 7 of this consultation paper, the Commission’s Background Note of February 2006, states that:

- the complexity of a financial instrument per se is not necessarily synonymous with the risk associated with that instrument and,
- it is determined by the manner in which the instrument is structured.

Our view is that, as a share admitted to trading on an MTF operated by a market operator is no more complex than a share admitted to trading on a regulated market, these shares should be automatically deemed to be “non-complex”. While an investment in any particular share may be more risky than in another share there is no difference in the complexity of either instrument.

While we appreciate that this interpretation that all shares are automatically deemed to be non-complex may not be possible given the wording of Article 19(6) we would ask CESR to consider whether it is possible to make this clarification in the Level 3 guidance.

Question 6: Do you agree with an interpretation that subscription rights/nil-paid rights for shares would be complex under the appropriateness requirement?

Our strong preference is for the interpretation as outlined in paragraph 37 to be adopted, i.e. for the treatment of these rights as “non-complex” instruments. We understand from market feedback that the treatment of these rights as “complex” would be problematic for the market and could result in investors being disadvantaged by being unable to take up these rights within the required timeframe. We think that if the underlying investment has been deemed to be “non-complex” and appropriate for the client, it would be logical to determine that the corporate action issued shares are also deemed to be “non-complex”.

V Section 4 – “Other non-complex financial instruments” under Article 38 of the Level 2 Directive: Issues of general interpretation

Question 26: Do you agree with CESR’s interpretation of what constitutes frequent opportunities dispose of, redeem, or otherwise realise that instrument?

Yes, we agree with CESR’s interpretation of what constitutes frequent opportunities to trade.