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London
STOCK EXCHANGE

M. Fabrice Demarigny
CESR
11-13 avenue de Friedland
75008 PARIS
FRANCE

10 Paternoster Square
London EC4M 7LS
T +44 (0)20 7797 1000
www.londonstockexchange.com

Dear Fabrice

MODIFICATIONS TO THE UCITS DIRECTIVE – ELIGIBLE ASSETS

Thank you for the opportunity to comment on the Commission's mandate to CESR for advice on possible modifications to the UCITS directive in the form of clarification of definitions concerning eligible assets for investment of UCITS. We welcome the Commission's use of the Lamfalussy procedure to adapt legislation to meet the constantly developing needs of financial markets.

Transferable securities and the treatment of structured products

The issue of the definition of transferable securities is vital for the continued relevance of the directive and its ability to accommodate new structured products. Failure to adequately accommodate these products when they may be the most appropriate investment for a UCITS to gain a specific economic exposure will place authorised UCITS at a competitive disadvantage to other investment vehicles and may result in sub-optimal returns for their investors.

In considering this issue we believe that CESR's concerns should be threefold, namely:

- to expand the definition to allow for the use of new and future structured products;
- to ensure that those assets are liquid enough for the UCITS to be able to price accurately and dispose of them as necessary; and
- to ensure that the UCITS is not exposed to types of exposure that are elsewhere prohibited by the directive.

Firstly, we would therefore urge a flexible approach to defining transferable securities. Accordingly, a more appropriate definition for transferable security, and one that would ensure consistency across directives, is that contained within the Markets in Financial Instruments Directive, which better reflects the range of securities that are available to investors. That definition is found at Article 4(18) of the MiFID.

The issue of liquidity is addressed through the requirement that those securities are admitted to trading on a regulated market as defined by the ISD or other regulated markets as allowed for under the UCITS directive, where admission provides a ready market for those securities and allows for daily pricing.

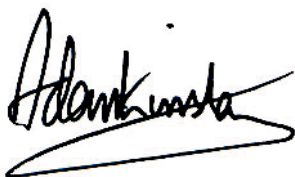
The issue of types of excluded economic exposure must be considered at the security level, rather than on the basis of the underlying, and could be added to the definition of transferable security. CESR should consider those types of economic exposure that are excluded by the directive and then test transferable securities against them. If the security does not give rise to a prohibited economic exposure, such as that created by uncovered sales, then it should be permitted, irrespective of the underlying instrument. In addition, where the security has an embedded derivative element, then that element must meet the requirements placed on financial derivatives by paragraph 1(g) of Article 19. In essence, if the embedded derivative is no less risky than the underlying then it should be permitted.

Closed end funds

Where units in closed end funds meet the definition of transferable securities then they should be treated as such. The tests outlined above for other transferable securities should be applied to ensure that investment by a UCITS would meet its objectives and would not be exposing itself to non-permitted economic exposures.

I hope that these thoughts help in CESR's consideration of this issue and I look forward to reading your first consultation paper on this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Adam Kinsley', with a stylized flourish at the end.

Adam Kinsley
Head of Regulatory Strategy
+44 20 7797 1241