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The Committee of European Securities Regulators
11-13 avenue de Friedland
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Dear Sirs

SUBMISSION CONCERNING ELIGIBLE ASSETS FOR INVESTMENTS OF UCITS

The Committee of European Securities Regulators ("CESR") has invited comments on its views regarding the issues raised in its second consultation paper dated October 2005 (the "Consultation Paper") on its draft technical advice to the European Commission regarding clarification of definitions concerning eligible assets for investments of UCITS.

ETF Securities is the holding company of Oil Securities Limited and is a part-owner (with the World Gold Council) of Gold Bullion Securities Limited. Both companies are listed on the main board of the London Stock Exchange and the latter also on Euronext Paris. The companies are both special purpose entities which issue securities designed to track the price of oil and gold respectively. The management of ETF Securities has been at the forefront of introducing to stock exchanges around the world securities which track the price of commodities - commencing with the launch of Gold Bullion Securities on the Australian Stock Exchange in 2003, followed by Gold Bullion Securities on the London Stock Exchange later that year and Oil Securities on the London Stock Exchange earlier this year. These securities have to date garnered more US$1 billion in assets.

We have been asked on numerous occasions whether our oil and gold securities are eligible investments for UCITS. The UK Financial Services Authority has concurred with our own legal advice that these securities are eligible for UCITS as they are transferable securities, however, other EU regulators have offered differing or equivocal opinion for various reasons. It would thus be helpful if, as part of the current consultation process, CESR can issue guidelines which clarify the position with regard to our securities.

For purposes of our discussion below, we note that Oil Securities are simply a financial instrument designed to track the price of oil, with the pricing marker being the daily settlement price of the near month futures contract traded on the International Petroleum Exchange in London. In particular, Oil Securities are:

- Admitted to trading on the main market of the LSE;

- Cash settled (they involve no holding or delivery of physical oil);
- A fully paid investment, with the price moving up and down directly with the price of oil; and
- Able to be created and redeemed by the Issuer on a daily basis, which process ensures the LSE price always closely tracks the oil price and ensures liquidity.

We believe an investment of this type is highly suitable for UCITS and is an eligible investment under the UCITS Directive. As such, we would hope that the consultation process will result in advice from CESR which clarifies any doubt about eligibility.

To this end, we would like to make the following comments on the Draft Level 2 advice and Level 3 guidelines in the Consultation Paper.

Box 1 – Transferable Securities

This sets out a suggested approach for determining whether a transferable security is sufficiently liquid and gives examples of the matters a UCITS may need to consider in determining liquidity. The examples include the volume and turnover in the transferable security.

This refers to secondary market liquidity. However, for Oil Securities and Exchange Traded Funds generally primary market liquidity is often of fundamental importance i.e. the creation and redemption procedures offered by the Issuer (including amounts, timing and pricing). Without regard to daily turnover on the LSE, Oil Securities can be created and redeemed daily in amounts of up to approx. US$180 million and this level of liquidity can be offered by market-makers to investors. This process makes Oil Securities potentially one of the most liquid securities traded on the LSE, notwithstanding the actual daily turnover.

We would therefore suggest CESR include as an example of liquidity, an additional bullet referring to the creation and redemption procedures offered by the Issuer

Box 11 – Embedded Derivatives

An Oil Security is not an embedded derivative – it simply moves up and down in line with the price of oil. It is not to be confused with the type of instrument referred to by CESR (at paragraph 105) - a capital guaranteed bond with the redemption price linked to the price of oil – which is a security with the oil component as an embedded derivative. More generally, a structured financial instrument may have its price "linked" to the price of some marker price but it may or may not be as an embedded derivative.

We think it would be helpful to clarify this and would suggest that the illustrative list of structured financial instruments which could be assumed to embed a derivative (point 5) make clear that linking of itself does not cause a security to have an embedded derivative

– there must be the combination of a host contract and a modification to those cash flows caused by the linking.

We note that in the Level 2 advice (at point 1) the words "commodity price" appear to have been deleted compared to the definition used in IAS 39 and this suggests to us confirmation of our suggestion above.

Box 13 - Financial Derivative Instruments

The Level 2 advice says eligible assets exclude commodities. The UCITS Directive does not actually exclude commodities but only "precious metals or certificates representing them". It may be that the presumed exclusion of all commodities is an extension of the exclusion of precious metals but we would respectfully submit that if that is what the legislator intended then the term "commodities" would have been used instead of "precious metals".

We believe the exclusion of precious metals arose from a concern to ensure that UCITS invested only in transferable securities and not in physical assets such as gold or silver, as was common at the time.

We do not believe it was the intention to exclude UCITS from having exposure to commodity prices (for otherwise they would not be permitted to invest in resource companies) but merely to exclude holdings of physical commodities. In fact the Level 2 advice at point 3 suggests exposure to commodity prices are eligible.

With the recent development of exchange traded and cash settled instruments such as Oil Securities, we think it important that CESR distinguish between:

- Investments in physical commodities (ineligible); and
- Securities which track the price of commodities which are cash settled (eligible).

We would strongly urge the Level 2 advice to be modified to make this distinction.

Yours sincerely

Graham Tuckwell
Chairman
ETF Securities Limited
(also Chairman of Oil Securities Limited and Gold Bullion Securities Limited)