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**Consultation paper of the Committee of European Securities Regulators (CESR) on
“CESR Technical Advice to the European Commission in the Context of the MiFID Review –
Investor Protection and Intermediaries”**

Dear Sirs,
in the aim of an effective review of the MiFID (Market in Financial Instruments Directive) I am pleased to provide my answers to the questions raised by the Consultation paper, hoping that they could be useful.

Q1. I agree.

Q2. I agree.

Q3. I agree.

Q5. I agree

Q6. I agree.

Q7. No. Exemptions for small firms could create forms of elusions. Moreover exemptions for small orders would be difficult to manage and would be more costly than universal recording.

Q8. I agree.

Q9. No.

Q10. Transparency and prevention/control of conflict of interests are the major benefits of a recording requirement.

Q13. I agree.

Q14. Quarterly.

Q15. No.

Q16. No.

Q17. I agree.

Q20. No. I think it is urgent to set a minimal requirement for execution venues to provide ex post data on the execution quality for OTC exchanges.

Q21. I think that art. 19(6) relates to shares admitted to trading on a regulated market or equivalent third country market. Preferred shares should be treated as ordinary shares provided that no embedded option is contractually included. Moreover, subscription rights or nil-paid rights received by the shareholders should be treated as the shares themselves.

More importantly, given the increasing importance of credit risk, **corporate bonds** should not be considered as non-complex securities and should therefore undergo the appropriateness requirement tests.

In financial terms, corporate bond is a simple form of asset backed security, to be treated consequently. Its risk could, at the same time, be substantial and largely overlooked by retail investors (see also Consultation paper CESR/08-1014).

It should be kept in mind that a **derivative** is an asset contractually linked (directly or not) to other asset or liability. A derivative embedded in one asset is a derivative **explicitly or implicitly** included in the contractual specification of the asset. In both cases, the asset's cash flows can be obtained by combining derivative and non-derivative assets.

Also in the light of recent turmoil concerning credit and liquidity risks, MiFID treatment of debt instruments should be revised. For example, subordinated bonds (or junior bonds) should be considered complex instruments because of even stronger arguments than corporate bonds.

Q22. All UCITS undertakings should be considered as complex instruments (exactly as proposed by CESR for non UCITS shares at point 167 of the Consultation paper) and level 3 standards should be consistently defined by ESMA. Indeed any mutual fund is a portfolio of assets whose financial structure can be modified over time (i.e. in terms of portfolio allocation) and appropriate rebalancing could easily induce complex structures and payoffs into the fund. It follows that they should be classified as complex for the purpose of appropriateness test.

Q24. I agree.

Q25. I agree.

Q26. I agree.

Q28. I agree.

With my best regards,

Riccardo Cesari

Bologna, May, 28, 2010

CESR Technical Advice to the European Commission in the Context of the MIFID
Review – Investor Protection and Intermediaries
Comments by
Prof. Umberto Cherubini – University of Bologna

I report here a comment on “Part 3: MIFID complex vs non complex financial instruments for the purposes of the Directive’s appropriateness requirements”.

I still find the definition of non-complex vs complex definition confusing as far as bonds are concerned. Namely:

- 1) point 151. “excluding those that embed a derivative such as convertible bond and exchangeable bonds, or incorporate a structure which makes it difficult for the client to understand the risk involved, such as structured covered bonds”. The definition only recalls cases in which the derivative is included in the repayment plan rather than in interest payments. Reverse floater are not reverse convertible? What about floating coupons with caps and floors? What is the difference between convertible and exchangeable bonds? I also remind the footnote of the 2009 consultation paper. “*A convertible bond is an instrument that gives the holder the option to convert the bond for other securities (usually shares issued at the time of conversion) offered by the issuer. An exchangeable bond (or reverse convertible bond) gives the holder the option to exchange the bond for securities of a company other than the issuer of the bond or for pre-existing securities of the issuer of the bond, at a future date under prescribed conditions.*” This definition is wrong.
- 2) Assuming exchangeable bonds are defined correctly for what they are, that is an option to change the repayment plan at a given date in the future, one also wonders why callable and puttable bonds are not considered as complex.
- 3) In many cases in the corporate bond market we find callable floating rate notes. It is clear to everyone who knows the basics of finance that this clause cannot have any meaning unless it refers to a change in the credit standing of the issuer: apart from credit risk, in fact, the floating rate note would trade at par on the day of payment of the coupon, when the prepayment option is typically exercised. So, there would be no point at all to include an option on a floating note unless it is an option on the credit spread. So, this clause can be seen as a credit derivative included in the product. It is by no means clear why this product should not be considered complex. More generally, it is by no means clear why corporate bonds, or the bonds issued by financial institutions, should not be considered and complex securities including a credit derivative.

Bologna, May 31 2010