



## Ministerstvo financí České republiky Ministry of Finance of the Czech Republic

Prague, 30<sup>th</sup> June 2009

Dear colleagues,

we are thankful for having the opportunity to comment on the Consultation paper on the MiFID complex and non-complex financial instruments for the purposes of the Directive's appropriateness requirements. Please find below our responses to questions included in the review paper. These comments are only an indication of the possible approach by the Ministry of Finance of the Czech Republic and they are not meant as our final official policy position.

### **Section 1 – Shares**

#### **What types of shares are specifically covered under Art. 19(6) as being non-complex?**

*Question 1: Do you have any comments on CESR's view that Art. 19(6)'s reference to shares may best be read as capturing a particular range of shares and exclude other types of equity securities negotiable in the capital market?*

Yes, we agree with the CESR's interpretation. Art.19(6), first indent, is indeed an illustrative and non-exhaustive list of non-complex financial instruments and as far as types of shares are concerned, as non-complex shall be regarded only those shares within the range mentioned in Art. 19(6) or satisfying the criteria of Art. 38 of the Directive 2006/73/EC.

*Question 2: Do you have any comments on the approach to different interpretations of the category of "shares"*

No, there is nothing to add. We share the view expressed in the paper.

*Question 3: Do you have any comments on the discussion of shares under Art. 19(6) set out above?*

No, we have no other comments. We do not consider the above-mentioned questions as problem to be an issue.

#### **How should other types of equity securities be treated?**

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

Yes, we agree. Given the text of the Directives, we regard this fact as self-evident.

## **Do listed convertible shares fulfill the Art. 38 criteria for being non-complex?**

*Question 5: Do you agree with CESR's interpretation that convertible shares will always be complex under the appropriateness requirement as drafted?*

The CESR's interpretation seems to be right. Current Czech legislation does not support issuance of convertible shares. Therefore, we do not consider this to be an issue.

## **Do subscription rights/nil-paid rights fulfil the Art. 38 criteria for being non-complex?**

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

Yes, we agree. We think the subscription rights/nil-paid rights shall be always considered as complex instruments.

*Question 7: Do you have any further comments on CESR's consideration of the position of shares.*

No, we see the position of shares within the both Directives quite clear. Should any uncertainty arise, it could be solved by interpretation of the current text of both Directives. The current legal text, in our opinion, does not require any amendment.

*Question 8: Are there other specific types of such instruments that should be explicitly mentioned in a list for the purposes of CESR's exercise.*

No, we do not think that there are other specific types of instruments that should be explicitly mentioned in the list.

## **Section 2 – Money market instruments, bonds and other forms of securitised debt**

### **What does the category of money market instruments cover?**

*Question 9: Do you have any comments on CESR's view on the treatment of money market instruments?*

We believe that every money market instrument shall be generally considered as non-complex, according to the express wording of the Art. 19(6).

*Question 10: Are there other specific types of such instruments that should be explicitly mentioned in a list for the purposes of CESR's exercise?*

No, we think that the list is sufficient.

*Question 11: Do you have any comments on CESR's view on the treatment of Asset Backed Securities?*

The Asset Backed Securities are indeed instruments with more "complexity". However, as the paper mentions, it is hard to imagine that a retail investor would invest in the instruments such as ABS at his or her own initiative, i.e. without investment advice, which would automatically make the assessment compulsory. Therefore, it is not so important whether such instrument is complex or not.

Question 12: Do you think that this is a point on which MiFID could usefully be clarified?

No, with regard to our answer to the Question 11 we think that the current wording of the MiFID is sufficient.

**Is there a definition for bonds and other forms of securitised debt that embed a derivative?**

Question 13: Do you have any other comments on CESR's view of the treatment of bonds and other forms of securitised debt under Art. 19(6)?

We have no other comments.

Question 14: Do you have any other comments on MiFID's treatment of "other forms of securitised debt" for the purposes of the appropriateness requirements?

We have no other comments.

Question 15: Do you have any comments on this analysis of instruments that embed a derivative and its relevance to the same concept in MiFID Art. 19(6)?

Such an analysis could be helpful to assess whether the instrument embed the derivative or not. However, we believe that actual nature of that instrument shall be assessed on case-by-case basis.

Question 16: Do you agree with CESR's view that it is reasonable to categorise callable and puttable bonds as complex financial instruments for the purposes of the appropriateness test?

No, we do not agree. There is no reason to categorise callable and puttable bonds as complex financial instruments for the purposes of the appropriateness test. We also think that these bonds do not represent for their holder an increased investment risk and that a retail client would buy these bonds only when being advised to, which would automatically make the Assessment of Appropriateness compulsory.

**What is the categorisation of covered bonds?**

Question 17: Do you agree with CESR's distinction between traditional covered bonds and structured covered bonds? Is there a need for further distinctions in this space? If so, please provide details in your answers.

We agree basically with CESR's distinction. However, we do not find a need for further distinctions between these types of bonds, as we would consider them rather all as non-complex.

**What is the categorisation of subordinated bonds?**

**What is the categorisation of depositary receipts in respect of bonds or other forms of securitised debt?**

Question 18: Do you agree that there may be case to review MiFID's treatment of debt instruments for the purposes of the appropriateness requirements?

No, we do not agree. We think that more differentiated approach to bonds and other debt instruments on the MiFID level is not needed.

*Question 19: Do you have any further comments on CESR's consideration of the position of bonds and other forms of securitised debt?*

We have no other comments.

*Question 20: Are there other specific types of such instruments that should be explicitly mentioned in a list for the purposes of CESR's exercise?*

We have no other suggestions in this respect.

### **SECTION 3 - UCITS AND OTHER COLLECTIVE INVESTMENT UNDERTAKINGS**

*Question 21: Do you agree with CESR's view that non-UCITS undertakings should not automatically be categorized as complex instruments simply due to the fact that they invest in complex instruments?*

Yes, we agree with this conclusion.

*Question 22: Do you agree with CESR's analysis of the treatment of units in collective investment undertakings for the purposes of the appropriateness requirements?*

We consider the level of investor's protection granted by UCITS sufficient for the purposes of the appropriateness requirements of MiFID. We therefore do not agree with CESR's opinion that not all UCITS should be considered to be automatically non-complex. However we agree with the other points of CESR's analysis of units in collective investment undertakings.

*Question 23: Do you have any further comments on CESR's consideration of the position of these instruments?*

We have no other comments on CESR's consideration of the position of units in collective investment undertakings.

*Question 24: Are there other specific types of such instruments that should be explicitly mentioned in a list for the purposes of CESR's exercise?*

No, we do not feel this need.

### **SECTION 4 - „OTHER NON-COMPLEX FINANCIAL INSTRUMENTS“ UNDER ARTICLE 38 OF THE LEVEL 2 DIRECTIVE: ISSUES OF GENERAL INTERPRETATION**

*Question 25: Do you agree with CESR's view on the purpose of the Article 38?*

Yes, we agree with CESR's view and we find the chosen legislative solutions to be useful.

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.

Question 27: Do you agree with CESR's point of view on how prices should be determined and when it is considered that those prices are publicly available?

Yes, we agree with CESR's point of view on determination and public availability of prices.

Question 28: Do you agree that the lack of liquidity could undermine the compliance with article 38(b)?

Yes, we agree that the admission to trading of the product on a regulated market does not automatically ensure a compliance with the criterion of Article 38(b).

**38(c) Under what circumstances can it be considered that the client has an actual or potential liability that exceeds the cost of acquiring the instrument?**

Question 29: Do you agree with CESR's view? Do you think than any other clarification is required?

Yes, we agree with this interpretation. We find the explanation sufficient.

Question 30: Do you agree with CESR's view on what constitutes comprehensive and publicly available information?

In general, we agree with CESR's view on requirements on comprehensive and public available information. However, we recommend more extended clarification of the language regime. Concretely we find useful to state explicitly if the information should be presented in a language commonly used in the investor's country, or if the publication in the language commonly used in financial markets would be sufficient.

## **SECTION 5 - OTHER PRODUCTS**

**Do the appropriateness requirements apply to deposits, loans, mortgages or life insurance products?**

**What is the position of Exchange Traded Commodities (ETCs)?**

Question 31: Do you agree with CESR's analysis of the position of these instruments?

Yes, we agree with CESR's analysis.

Question 32: Are there other specific types of instruments that should be explicitly mentioned in a list for the purposes of CESR's exercise? If so, please provide us with comprehensive information about the type of instrument(s).

We have no suggestions in this respect.

**ANNEX I – SUMMARY LIST OF MiFID COMPLEX / NON-COMPLEX FINANCIAL INSTRUMENTS**

*Question 33: Do you have any further comments about this summary list of instruments?*

We have no comments about the summary list of instruments.

Once more we would like to thank you for an opportunity to express our opinions and to comment on the document.