

**Circular addressed to the financial services industry  
regarding complex / non-complex instruments for the purposes of the Markets in  
Financial Instruments Directive (“MiFID”)**

**24<sup>th</sup> November 2009**

On 3<sup>rd</sup> November 2009, the Committee of European Securities Regulators (‘CESR’) issued a Questions and Answers paper (‘Q&A’) on MiFID complex and non-complex financial instruments for the purposes of the Directive’s appropriateness requirements. The objective of this Q&A is to clarify the categorisation of financial instruments as complex or non-complex for the purposes of MiFID’s appropriateness requirements. This document which may be downloaded from <http://www.cesr.eu>, highlights that the central aim of the MiFID appropriateness test is to prevent complex products from being sold on an ‘execution-only’ basis to retail clients, who do not have the experience and/or knowledge to understand the risks of such products.

CESR takes the view that instruments such as *inter alia*, convertible shares, asset-backed securities and other structured instruments that embed a derivative or incorporate structures which make it difficult for the investor to understand the risk attached to the product, are examples of ‘complex’ financial instruments. Complex financial instruments should **not** be transacted for retail clients on an ‘execution-only’ or ‘non-advisory’ basis without the appropriateness test being carried out – i.e. without a firm assessing a retail client’s knowledge/experience to understand the nature of the instrument and related risks and if necessary, without giving the client a warning in the instance the client wishes to proceed with the investment despite not having passed the appropriateness test.

CESR’s conclusions on asset-backed securities are consistent with the approach taken by the Authority in its circular of the 11<sup>th</sup> February, 2009 and in its recent public notice issued in the media, wherein it expressed the view that these products are generally considered appropriate for investors who have the experience and knowledge to understand how these financial instruments work.

This CESR Q&A document should assist Licence Holders in determining the ‘complex’ versus ‘non-complex’ nature of financial instruments they sell to retail clients and accordingly the need or otherwise of the appropriateness test.

### **Contacts**

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