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Mr. Carlo Comporti
Secretary General
CESR the Committee of European
Securities Regulators
11-13 avenue de Friedland
75008 Paris

FRANCE

CESR´s Guidelines on Risk Measurement and the Calculation of Global Exposure for certain types of structured UCITS
BVI response on Consultation Paper, Ref.: CESR/10-1253

Dear Mr. Comporti,

BVI[1] gladly takes the opportunity to express its views on CESR's proposed approach to risk measurement and the calculation of global exposure and counterparty risk for UCITS.

General remarks

In our view, all structured UCITS must comply with the CESR's Guidelines for the calculation of global exposure and there should be made no distinction in the calculation of global exposure for certain types of structured UCITS. More important from our point of view is the existence of an adequate and sufficient monitoring process – developed on a case by case basis – to secure the communicated payoff structure.

In case it would be unfeasible to implement this position in CESR's Guidelines, we kindly ask CESR to define further alternative risk measurement principles acceptable for actively managed structured funds.

[1] BVI Bundesverband Investment und Asset Management e. V. represents the interest of the German investment fund and asset management industry. Its 92 members manage currently assets of nearly EUR 1.5 trillion both in mutual funds and mandates. For more information, please visit www.bvi.de.

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In this case, we believe not only passively managed funds should be able to benefit from the possibility to have a different calculation approach.

Specific remarks

As regards questions posed by CESR, we would like to submit the following remarks:

1. Do you agree with the proposed approach for the calculation of global exposure by certain types of structured UCITS which satisfy the criteria in paragraph 2 of Box 29?

BVI does not share the proposal for the way the commitment approach is supposed to be adjusted to structured UCITS. The proposed calculation mechanism for structured funds would create an exceptional case for the calculation of global exposure.

We disagree to this proposal in general as

a) we do not share the view that a scenario analysis captures the potential market risks of structured funds completely and sufficiently and

b) it could set a precedent for other type of funds to deviate from the commitment approach calculation.

In our view, an adequate and sufficient monitoring process – developed on a case by case basis – should be established to secure the communicated payoff structure. The most important thing regarding the risk of structured funds is to keep the payoff function, because this is the amount the investor expects to achieve, and to ensure that the NAV could not be less 0. Sufficient and appropriate safeguards for this are the coverage rules and the limitation of counterparty and concentration risk. Compliance of the payoff function should be monitored regularly, too.

2. Do you agree with the proposed criteria for these structured UCITS?

3. Do you agree with the scope of the application of the alternative approach that derives from the criteria and global exposure calculation approach laid down in paragraph 2 of Box 29? If there are any specific criteria which could present difficulties for certain UCITS, could you elaborate on the reasons for your views and describe the types of UCITS concerned?

4. Can you suggest any alternative criteria?

5. Do you agree with the proposal to limit the maturity of structured UCITS which may apply the provisions of Box 29 to 9 years? Do you have any alternative suggestions?

6. Do you agree with the proposal to prohibit these structured UCITS from accepting new subscriptions after the initial offer period?

7. Do you agree with the proposed criteria to limit the maximum loss the UCITS can suffer under any individual scenario on any given day? Can you suggest any methods by which this loss can be limited or other safeguards which would deal with the risks posed by barrier-type features as described in Box 29?

8. Do you agree with the proposals regarding structured UCITS which were authorised before 1 July 2011? Do you have any alternative suggestions?

9. Are the examples provided in paragraph 97 useful in illustrating the diversification requirement?

10. Can you suggest alternative examples?

11. Do you think the examples in paragraph 98 correctly explain how global exposure is calculated in different scenarios?

12. Do you have alternative examples?

13. Do you agree with the proposed prospectus disclosure requirements in Box 30?

14. Is the terminology used in the guidelines clear? Are there any terms used for which you feel it would be helpful to have a definition?

In Germany, however, there are no structured UCITS which have the described characteristics in Box 29.

In our view, not only passively managed funds should be able to benefit from the possibility to have a different calculation approach. In this case, we kindly ask CESR to define alternative risk measurement principles acceptable for actively managed structured funds.

However, the criteria for defining structured funds in Box 29 paragraph 2 seem to be too strict:

Paragraph 2 b: There are also funds with a structured/passive investment approach aiming to generate a clearly described pay-off which does not have a maturity – i.e. the definition of structured funds should be defined more broadly.

Paragraph 2 e: The limitation of the fund maturity date to 9 years is not appropriate as a general investor safeguard. Such limitation should be considered on a case-by-case basis depending on the exact structure of the fund and disclosed to the investors.

We hope that our suggestions will help CESR in refining its guidance on risk measurement and the calculation of global exposure for certain types of structured UCITS. We remain at your disposal for any questions or further clarification.

Yours sincerely

BVI Bundesverband Investment und Asset Management e.V.

(signed)
Alexander Kestler

(signed)
Peggy Steffen