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**ESMA Consultation Paper: Draft technical advice on possible
Delegated Acts concerning the regulation on short selling and certain
aspects of credit default swaps ((EC) No XX/2012)**

Dear Sir or Madam

BVI¹ appreciates the opportunity to present its views on the ESMA's draft technical advice on possible Delegated Acts concerning the regulation on short selling and certain aspects of credit default swaps.

Our ensuing comments focus on selected aspects of the consultation paper which are of particular relevance to the German asset management industry.

¹ BVI Bundesverband Investment and Asset Management represents the interests of the German investment fund and asset management industry. Its 82 members currently handle assets of EUR 1.8 trillion in both investment funds and mandates. BVI's members directly and indirectly manage the capital of 50 million private clients in 21 million households. (BVI's ID number in the EU register of interest representatives is 96816064173-47). For more information, please visit www.bvi.de.

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Having a net short position and method of calculation

Q6: Do you agree with the above proposal? If not, please give reasons.

We would like to bring your attention to an aspect which in our view should be reconsidered. Article 3 paragraph 3 requires a “look through” in terms of baskets, exchange traded funds and indices for the purpose of calculating net short positions. Furthermore, the required information for “look through” cannot be comprehensively or cost-efficiently obtained from the publicly available sources. We think that “looking through” is not necessary in order to fulfill the regulatory purpose of preventing systemic risks as it appears not practicable to acquire economic ownership in a company via investment in diversified indices. Therefore we advocate the elimination of the “look through” approach. One might also consider limiting the “look through” approach to basket and index products and ETF with only a few components, especially less than five. Any participation in more diversified products is in its effect usually so marginal that its inclusion should be renounced from the legislative point of view.

Q8: Do you think it is practicable to measure correlation for sovereign debt with a liquid market price and a long price history on a historical basis using data for the 24 month period before the position in the sovereign debt is taken out? Do you consider that a 24 month reference period is the most appropriate one?

The historical data used for the correlation measurement should be 12 months (in line with the historical data for CDS correlations).

Q11: Do you think that there is a need for a buffer period addressing the issue of temporary fluctuations in the correlation of the sovereign debt (e.g. period of 3 months during which the correlation is less than the standard level (e.g. 90% or 80%) but at least met a prescribed lower threshold (e.g. 75% or 70%)?

Yes, we agree.



Q16: Is there any comment you would like to make in relation to the calculation of the position in sovereign debt of a sovereign issuer set out in Box 4?

We prefer the nominal method as it offers more flexibility.

Netting and aggregation

Q17: Do you agree with the approaches described above to cater for specific situations when different entities in a group have long or short positions or for fund management activities related to separate funds? If not, can you state your reasons and provide alternative method(s) of calculation?

Art. 3 (7) (c) of the Regulation states that the Commission shall adopt measures specifying the method of calculating the positions for fund management activities related to separate funds. To achieve maximum transparency ESMA suggests a three-layered approach for the calculation of net short positions (at the level of each individual fund/of all the funds with the same investment strategy/all of the funds managed by a fund management company).

According to the current German law, the calculation of net positions focuses solely on the individual fund managed by the fund management company. The three-layered approach leads to higher organizational efforts for fund management companies without any additional value. Such facts cannot be displayed by the current fund management systems. The costs and efforts for the establishment of such systems are quite formidable. We therefore advocate the elimination of that approach.

The requirement to calculate net short position should be at least waived for investment funds which due to their limited engagement through derivatives e.g. on indices or baskets will definitely not reach the relevant thresholds in terms of individual issuers.

Notably we believe it is quite unfortunate to require the aggregation of positions in respect of "the same investment strategy". This approach is not adequately designed for investment funds. Investment strategies for funds



are assigned on the basis of various influences and criteria and are usually attached with definitions such as “absolute return”. In a fund with an absolute return objective, the decision for taking a long/short position vis-à-vis an issuer is based on completely different considerations than in a benchmark orientated mandate, a value/growth approach, etc. Severe value in securities for portfolio management companies are being created in terms of the question which positions can or cannot be assigned to the same investment strategy with reference to a specific issuer. The complexity increases if, according to the decision maker concept, within the portfolio management companies one needs to differentiate between levels of particular portfolio managers, investment committees, etc. Distortions due to varying structures and estimates of facts would be the consequence.

When the management of funds has been delegated it also should be sufficient that the fund management company reports the relevant information to avoid duplication of information (from the fund management company and the investment manager).

Uncovered CDS

Q24: Do you think that a position that had become partially uncovered due to fluctuations in the value of the assets or liabilities being hedged and/or the CDS used as the hedge should be allowed only for a certain period of time? If so, what would be an appropriate time limit?

Based on the current German law, we suggest 10 days and in addition an appropriate buffer to avoid too many adjustments.

Q28: Do you consider that there should be different methods for calculating the value of the positions to be hedged by the sovereign CDS according to whether a static or dynamic hedging strategy is used?

Yes.



We hope that our suggestions are of help and are always committed to provide you with more information if needed.

We would like to assure you of our willingness to engage in further discussions on this subject.

Yours sincerely

Rudolf Siebel LL.M.

Alexander Kestler