Position of

Österreichischer Genossenschaftsverband (Schulze-Delitzsch)

on

<u>Consultation paper</u>

<u>ESMA's guidelines on ETFs and other UCITS issues</u>

Ref.: ESMA/2012/44 (30 January 2012)

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<u>Index-tracking UCITS:</u>

Q 1: Yes, but ex-ante-level of target error should be subject to probabilities (e.g. "We would not state, that the tracking error is always lower than 7%, but that the target tracking error of 7% can be accompanied by exceptions due to market circumstances (exotic markets)")

Q 2: Yes. Criteria could be 1-Year-History with arithmetic outperformance.

Q 3: Only at the Fund Companies choice.

<u>Index-tracking leveraged UCITS:</u>

Q 4: Yes

Q 5: No

<u>UCITS Exchange Traded Funds</u>

Q 6: Yes

Q 7: Yes

Q 8: No

Q 9: Yes

Q 10: Yes

Q 11: First Question: Yes. Second Question: No.

Q 12: Option 2 is preferred.

Q 13: No

Q 14: No

Q 15: No

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VI. Efficient portfolio management techniques (Page 17):

Q 16: Yes

Q 17: Yes

Q 18: No.

Q 19: No. If ESMA wants us, that the answer should be yes, we would vote for the opportunity to compensate a higher volatility with a stricter haircut-policy. ("The lower the correlation, the higher the haircut should be").
In our point of view, a high correlation could mean, that in certain volatile market scenarios, the collateral management could be forced to replace the collateral with something else. In this highly volatile market scenario, a downward spiral could be triggered.

Q 20: No

Q 21: We vote for an indicative list, which should also include corporate bonds. Especially the recent situation in Europe has demonstrated in a highly apparently way, that there is no reason to believe, that only government bonds could be qualified for collateral reasons. In our point of view, it would be consequent to argue, that if the collateral should meet the requirements of the UCITS-directive (-> Box 6, point 7), any security that is available for a UCITS should be qualified as collateral. Otherwise there would be the strange situation, that on the one hand an OGAW investing in e.g. corporate bonds is qualified as collateral, on the other hand corporate bonds do not meet the requirements.

Q 22: No

Q 23: Yes

Q 24: Yes

Q 25: No.

Q 26: In Austria only 30% of the UCITS portfolio can be subject to securities lending activities, notwithstanding the requirements of Article 52 (2) of the UCITS Directive (-> Q 27).

Q 27: Yes. Especially in cases, the borrower complies with Article 50 (f) of the UCITS Directive and uses the loaned securities as security in the context of refinancing transactions with the European Central Bank, with a Central Bank of a Member State of the EEA, with SNB (Swiss

National Bank) or with the US Federal Reserve, there should be not limits. In our point of view, there should be a limitation of 50% of the UCITS portfolio in other cases.
Referring to Point 56 of ESMAs consultation paper, we vote for second option (quantitative limits set at the level of the UCITS portfolio as a whole).

Q 28: No

Q 29: Once a year would be ok. In addition to that, it would be appropriate to identify the counterparties on special occasions determined by the regulator. The UCITS Managers Homepage or the KID could be the medium.

Q 30: Potential conflicts of interest could arise out of different valuations of the collaterals by the depository, the borrower and the UCITS. In our point of view, the collaterals mentioned in ESMAs indicative list in point 52 are not problematic. In some scenarios, the nomination of a third party as calculation agent could be an opportunity as well as a strict haircut policy.

Q 31: No, in our point of view, this would be an operational risk.

Strategy indices Box 8:

Q 39: In the past, several UCITS in certain countries were founded, which do not meet the requirements of Box 7. Box 7 would prolongate the status of different regulatory approaches to this question finally and would mean a benefit for those UCITS-industries, in which such UCITS currently are managed. Especially the possibility of UCITS ETFs could mean that UCITS could be distributed and bought via exchange in the future. In our point of view, the UCITS conformity of strategy indices should be preconditioned, if physical settlement is excluded.

Contact

The ÖGV trusts that its comments will be taken into consideration. Should there be any need for further information any questions on this paper, please contact:

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