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1. Remarks to the body of CESR/10-1253

- Point 96, page 5: "... must not actively market their units". Should the industry interpret this as a closure of the subscription possibility, or is it acceptable to not promote the product explicitly with the distributors, on the internet, etc. The strict interpretation may have an impact on the pricing of the derivative counterparties as they know the direction of the trades in the secondary market (ie only sells).
- The payoff definition in examples 1 and 2 on page 6 seems to us erroneous because the payout formula is not closed. We think in the first clause "performance of one of the shares" should be replaced by "performance of all of the shares."
- We understand from the examples that the 10% rule is envisaged only.
- Page 8-9: The economic difference between Case 2 and Case 3 is very limited, but it makes a very significant difference in applicability of the alternative approach. Definitely in light of the current turmoil of EU Government paper, the definition of "risk free assets" becomes very challenging. We agree that having your cash invested in non-risk free assets, should lead to an increment of the product's global exposure, but do not agree that the difference between eligibility and non-eligibility is so digital, given the limited economic difference between both structures. For those that choose to structure products through route 3, this would make this extension of CESR/10-1253 of no use. Also, recalling our second remark: what if the risk-free asset starts to become non-risk free, no transition mechanism from one to the other calculation is included. Additionally, the demand to invest in a 3-month investment (defined as "risk free") creates a re-investment risk for the fund. This is also not taken into account in this calculation.
- We think that the difference between "risk free" and "high quality-low risk" is arbitrary and there is a risk this will not be stable in the future. On the other hand, since a total return swap for 100% of the fund is acceptable (Case 1), the fund might be exposed to 100% credit risk to one counterparty (covered by collateral, with far less strict rules). We do not see how this risk can be categorised as lower than the risk of a diversified portfolio of "high quality-low risk" assets.
- As the "global exposures" rules try to look at the total risk or market exposure of a fund, we are of the opinion that funds with a comparable payout formula have to be allowed (or not), no matter what structure is used.

For example: Lets take a 100% equity fund with a call option on top for 20% of notional of the fund. This construction would be perfectly acceptable (commitment approach for 20% notional, multiplied by delta (<1)) where as a structured fund (structured as Case 3) would not be acceptable. This seems strange, all the more since the structured fund in Case 3 gives capital protection (delivered by the low risk diversified portfolio) where the equity fund doesn't.

2. Responses to the questions on page 10 (using the question numbers)

1. We welcome that an alternative approach can be used for certain types of structured funds, but we consider the rules to be too restrictive. As stated, the difference between risk-free and low risk is not as digital as described in the document.
 2. Yes, we agree with the criteria, except for:
 - e) We think that 9 years is rather arbitrary
 - f) Closing a fund after the initial marketing period has an impact for investors in that a uniform market direction is shown towards the counterparties of the fund. Experience has shown that secondary market derivative transactions will become more expensive for the investor/fund.
 3. Yes we agree on the scope.
 4. No additional criteria necessary.
 5. We see the choice of 9 years as rather arbitrary, but do not object.
 6. We can accept this but would like to repeat the possible risk on biased pricing by counterparties. We would suggest formulating as “no longer actively marketed” rather than “closed for subscription.”
 7. We understand and agree with the rationale on limiting the amplitude of the barrier jumps.
 8. Yes we agree.
 9. Unfortunately, errors occurred in the examples 1 and 2 (see above). Assuming that the text “performance of one of the shares” should be replaced by “performance of all of the shares” then the examples clarify the cases, at least for the 10% rule. If other diversification rules are envisaged in addition, other examples should be provided.
 10. No, we agree with the approach.
 11. The approach in Case 2 does not really clarify, and, as stated earlier, we do not see the necessity of a different treatment for Case 2 versus Case 3.
 12. No.
 13. Yes.
 14. A number of criteria suggested in the rules, are not defined well enough, e.g. “high quality”, “low risk”. This leaves room for interpretation and divergence in the execution of the proposed regulation.
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