ASSOGESTIONI
associazione del risparmio gestito

Milan, 2012 September 25th

ESMA
European Securities and
Market Authority
103 Rue de Grenelle
75007 Paris

Our Ref. N. 499/12
Your Ref. ESMA/2012/474

Reply to ESMA's consultation on the treatment of repurchase and reverse repurchase agreements.

Assogestioni([1]) is grateful for the opportunity to comment on ESMA's consultation on the treatment of repurchase and reverse repurchase agreements.

Here below our response.

Q1: What is the average percentage of assets of UCITS that are subject to repurchase and reverse repurchase agreements? For the purposes of this question, please have regard to arrangements covered by the provisions of Article 51(2) of the UCITS Directive and Article 11 of the Eligible Assets Directive (i.e. those arrangements which do not fall under the definitions of transferable securities and money market instruments, in accordance with recital 13 of the Eligible Assets Directive). In addition, please provide input on the following elements:

i) the extent to which assets under such arrangements are not recallable at any time at the initiative of the UCITS.

ii) the maximum and average maturity of repo and reverse arrangements into which UCITS currently enter. Please provide a breakdown of the maturities with reference to the proportion of the assets of the UCITS.

In Italy, the techniques applied by UCITS are based on sell/buy or buy/sell back transaction. Such arrangements typically are not recallable forward transaction. Usually, early terminations are managed by engaging in a new opposite transactions.

[1] Assogestioni is the Italian association of the investment fund and asset management industry and represents the interest of members who currently manage assets whose value is close to 900 billion euro in open ended UCITS and non UCITS funds, real estate fund and discretionary mandate.

We have no information on the use of such arrangements; these could vary due to different reasons, for example yield, liquidity management or UCITS strategy.

2: Do you agree with the proposed guidelines for the treatment of repo and reverse repo agreements? If not, please justify your position.

We appreciate that ESMA is considering setting a distinct regime for repo and reverse repo that would allow a proportion of the UCITS to be non-recallable at any time to initiative of the UCITS, but we have some observations.

First of all, we ask to clarify the scope of the guidelines and in particular if these guidelines are applicable also to sell/buy or buy/sell back transaction. From a financial point of view the latter are equivalent to a repo or reverse repo, but differences comes from a legal or accounting point of view. As our understanding of the published guidelines, the section X applies to all EPM techniques that have similar financial effects, even if these have different impact on the UCITS[2].

As regard the proposed guidelines, we strongly agree with point 1a. A UCITS should ensure that repo and reverse repo do not compromise its ability to execute redemption requests, but we disagree with point 1b namely the identification of a threshold for not recallable assets, especially when these operations are "short-term".

This threshold would effectively restrict UCITS from entering into fixed-term reverse repo or buy/sell back contracts and as such would restrict the return available from this technique. It could also have a domino effect on the repo market.

EPM techniques should be one of the several factors that the management company should consider in performing its liquidity risk management process. This process should be an adaptive one and reflect the investment strategy, the current circumstances as well as the redemption policy laid down in the funds rules or the type of investors and distribution channel. Risk management must therefore ensure that also the risks of repo and reverse repo transactions are adequately captured and managed. This in line with Article 40 (3) of Directive 2010/43 and with point 31 of the published Guidelines on ETF and other UCITS.

Furthermore, we deem that the risk profile of a reverse repo could be assimilated to a guarantee deposit. Where deposits repayable on demand or with a notice period of

[2] It seems that in different countries EPM techniques have different regime depending from the definition of these operations in term of economic, accounting or legal terms. For example, in Italy, in a buy & sell back transaction, the securities, bought spot (and sold forward at the same time and at a prefixed price) as collateral, are not considered as UCITS asset while credits to the third counterparty are. In sell/buy back transaction, the funding is included in the UCITS asset, and the securities given as collateral to third party remain in portfolio. Instead, in other countries, it seems that with a repo transactions securities are not longer considered portfolio assets and not accounted for in the calculation of investments limit.

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less than 15 days are admitted (UCITS can invest in deposit "*which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months*" (Article 50(1)(f) of Directive 2009/65), reverse repo and buy/sell back transaction on asset non recallable should be admitted without limitations too.

Should our consideration not be in line with ESMA's, we deem important, in any case, enlarging the list of arrangement on term that should be considered as arrangement that allow assets to be recalled at any time by the UCITS.

In particular, a buy/sell back transaction with trade date T, and settlement date T+2, T+3 should be considered equivalent to a overnight buy/sell back transaction. In addition also transactions that are liquidated within a short period (for example within seven business days) should be admitted without limitation. To draw a parallel, in CESR's guidelines concerning eligible assets for investment by UCITS (CES/07-044b) is indicated that "*when assessing the liquidity of a money market instrument*s [...] *at the instrument level* [have to be taken in account] *possibility to repurchase, redeem or sell MMI in a short period (e.g. seven business days)*"

As regards point 3b (appropriate diversification of the counterparties) we deem that the management company should diversify the counterparties only where it is appropriate and it should not be a general rule. Risk management process and due diligence should valuate where such diversification is necessary. Where our considerations are not in line with ESMA's, it should be cleared that no diversification is request when UCITS concludes fixed-term repos only in relation to a small part of its assets.

As regards point 3c (reference to the criteria set out in paragraph 40 of the guidelines) we have some observations for "repo and reverse repo transaction" and, more in general, for all EPM techniques:

- point 40.e) (collateral diversification):
    - we disagree with the 20% limit concentration on a single issuer for securities and money market instruments issued or guaranteed by OCSE Member States, public international body or local authorities. We deem that UCITS could easier breach this limit because to the calculation contribute different baskets of collateral: OTC derivatives, reverse repo/buy and sell back transactions, repo/sell and buy back transactions and securities lending. The 20% threshold reduces therefore the possibility for example of receiving governments bonds of high quality as collateral. We suggest therefore not introducing for the aforementioned securities a limit or otherwise we suggest setting a higher one.
    - as regard limit calculation, we suggest to clarify that in case of roll over transaction, it should be possible exclude from the computation of limits the securities resulting from the roll over transaction (even when the roll over transaction are of different amounts). For example, for a buy and sell back transaction, for days 10 and 11 march the amount subject to the limit of 20% should be always 10.000.000.

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Trade date (T)	Settlement Date T+2	Settlement Date T+3	Amount
9 march	11 march	12 march	10.000.000
10 march	12 march	13 march	10.000.000
11 march	13 march	14 march	10.000.000

  - o 20% limit breach. The aggregation of different baskets of collateral coming from different counterparties could bring UCITS to breach the 20% limit. We suggest ESMA to valuate introducing an exception if a breach comes due for technical reason (for example by operational reasons connected with the method of selection of the title as collateral). We suggest, where such a breach occurs, that UCITS is obliged to return to the exposure limits of 20% as soon as possible and, in any case, no later than 5 working days.
- point 40.j) (use of cash collateral): it should be cleared if it is possible using cash collateral coming, from example, from repo to pay redemption to subscribers.

Even if not in the scope of the consultation, we noted that in the published guidelines is not provided a transitional period for the implementation of the rules on collateral for new funds while it has introduced a 12 month period for the existing funds (point n. 62). We deem unworkable maintain two different procedures for new and existing funds, but we noted that the time necessary for implementing the collateral rules for new funds is too short. We ask therefore ESMA to valuate the introduction of a transitional period for the implementation of the rules of collateral also for new funds (i.e within 4-6 months of the application date of the guidelines). However any reinvestment of cash collateral after the application date of the guidelines should comply with the guidelines immediately.

Q3: What are your views on the appropriate percentage of assets of the UCITS that could be subject to repurchase and reverse repurchase agreements on terms that do not allow the assets to be recalled by the UCITS at any time and that would not compromise the ability of the UCITS to execute redemption requests?

As indicated in our answer to Q2 we disagree with the introduction of a percent limit of UCITS' assets that could be subject to repurchase and reverse repurchase agreements on terms that do not allow the assets to be recalled by the UCITS at any time. Where a limit should be indicated it should only be for medium-term arrangement and take into account the effect that this could have on the repo market.

Q4: Do you consider that UCITS should be prohibited from entering into repo and reverse repo arrangements on terms that do not allow the assets to be recalled by the UCITS at any time? If not, please indicate possible mitigating

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measures that could be envisaged in order to permit UCITS to use repo and reverse repo arrangements on terms that do not allow the assets to be recalled by the UCITS at any time.

A UCITS should enter into repo and reverse repo on terms that do not allow the assets to be recalled by the UCITS at any time. The liquidity risk management process is the principle measure to use. We do not have further suggestion for possible further mitigating measures.

Q5: Do you think that there should be a minimum number of counterparties of arrange-ments under which the assets are not recallable at any time? If yes, what should be the minimum number? To answer this question, you are invited to take into account your re-sponse to question 2 above.

We do not think that there should be a minimum number of counterparties. We deem important the due diligence for selecting a single counterparty than the number of counterparties.

The Director General

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