ASSOGESTIONI
associazione del risparmio gestito

Milan, 2012 march 9

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

Our Ref. N. 183/12
Your Ref. ESMA/2012/98

Reply to ESMA's consultation on draft technical standards 2012/98 on the Regulation (EU) xxxx/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps.

Assogestioni([1]) is grateful for the opportunity to comment on ESMA's consultation on draft technical standards on the Regulation on short selling and certain aspects of credit default swaps. However we have strong concerns on the very short deadline which makes the analysis of the impact very difficult in consideration of the complexity of the technical standards.

The level 2 measures under consultation have important effects on the fund management company imposing administrative, risk and compliance burdens for their organization and implementation, even if UCITS funds are not allowed to short sale, as defined in art. 2(1)(b) of the Regulation. Further the definition of uncovered sovereign credit default swap transaction, coming into force from 1 November 2011, except transitional provision, will influence the eligibility of CDS in the management of an investment funds.

It is essential that the method of calculation applying the definition set in the Regulation and implemented through the draft advice are not detrimental to investment funds' investors, also when an Authorities impose, on exceptionally circumstances, restrictive measures, such as the constitution of new net short position created also by the use of derivatives.

In this context, the support of a homogeneous definition across legislations to ensure greater consistency across Europe should also take into account the

[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.

principals set in UCITS Directive and in the relative implementing measures and guidelines. In particular, we refer to the detailed methodologies developed by CESR in the area of risk measurement for the identification of the hedging criteria and the calculation of global exposure with the commitment approach (CESR/10-788).

We ask in particular a simplification of the method for calculating positions for fund management activities related to separate funds in order to reduce administrative burdens and to simplify reporting (Box 5); in order to align the method of calculation of the position (long, short, net short) in financial derivatives with UCITS regulation, we suggest to adopt the criteria described in Box 2 of CESR/10-788 that indicates detailed methodologies for calculating the equivalent position in financial derivatives instruments (Box 4). In view of possible exceptional restrictive measures, we deem it also very important, that in setting said restrictions Authorities pay due regard to the principle of proportionality to avoid potential adverse effect on the yield of the final investor (Box 11). In particular, in case of ban of constitution of new net short positions, we propose that net short positions arising from hedging compliant strategies under CESR/10-788 are not considered an infringement of the ban.

Here below Assogestioni replies in detail to the consultation documents.

BOX 1: Draft advice on "owning" a financial instrument for the purpose of the definition of short sale

Q1: Do you agree with the proposal concerning Article 2(1)(r) of the Regulation?
We agree with the proposal

Q2: Are there other cases which need to be excluded from the definition of a short sale?
We have no further suggestions.

Q3: Are there other definitions in Article 2(1), which need further clarification? Please explain which one(s) and why further clarification is required.
We do not think that other definitions need further clarification.

BOX 2: Draft advice on "holding" a share or sovereign debt for the purpose of determining a long position

Q4: Do you agree with the above proposal? If not, please give reasons.
We agree with the proposal, but we suggest including in the calculation of long position in shares also subscription rights, convertible bonds and other comparable instruments.

Q5: Do you have any suggestions on possible further criteria to describe the holding of a share or sovereign debt?

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We have no further suggestions.

BOX 3: Draft advice on cases in which a natural or legal person has a net short position in shares or sovereign debt

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

In general, we agree with the proposal but we have some observations.

Q6.1: Investment fund

It is not clear from the consultation paper whether in the calculation of long, short and net short position, the investment in a fund should be considered or not as "*a financial instrument that confers a financial advantage or disadvantage to a person in the event of a change in price or value of the financial instruments held*".

Although the investment fund is not explicitly mentioned in point (i)(2), the product "investment funds" can fall under the general definition of PRIPS "packaged retail or professional investment products".

We deem it important that a natural or legal person investing in a fund (target fund) should not make the look-through of the financial instruments held to calculate its long, short and net short positions. In particular, the fund management company must not include the equities, bond and other relevant financial instruments such as financial derivatives held by target fund. It is the management company of the target fund that has to make sure to be compliant with the obligations set in the Regulation. Similarly, the positions taken by investment funds to hedge indirect exposure obtained through target fund have also to be excluded from the calculation of the short and net short positions. As regard hedging definition, we suggest using the criteria set in CESR/10-788 ([2]).

The only exception to these general criteria is when the fund management company invests in ETFs that are passively managed and replicate a financial index, where not in contrast with the above general hedging criteria. For example, an investment fund that invest both in investment funds that are not exchanged on a trading venue and in investment funds that are exchanged on a trading venue (ETFs) and it takes hedging position to reduce its exposure through financial derivatives neither the long position nor the short hedging position should be included in the calculation.

We support the proposal with the following considerations:

- the consultation does not indicate the criteria of the look-through in case of investment funds, except where the composition of the relevant index could be known with reasonable accuracy, such as an ETF, having regard to the publicly available information;

[2] CESR/10-788. Box 8: "*1. Hedging arrangements may only take [...] if they comply with all the criteria below: (a) investment strategies that aim to generate a return should not be considered as hedging arrangements, (b) there should a verifiable reduction of risk at the UCITS level, (c) the risks linked to financial derivatives instruments [...] should be offset; (d) they should relate to the same asset class and they should be efficient in stressed market conditions.*"

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- in a fund of funds there are two distinct decision-makers, the manager of the target fund for long positions (and possibly short) and the manager of the fund of funds for short positions. The final effect on any net short position derives from the choice of these two distinct decision-makers. In case of funds that invests in third party funds, these decision-makers are independent;
- the purpose of a manager of a fund of funds, that invests also in ETFs, and decides to hedge market exposure through financial derivatives, is not to have a bearish position on a single issuer but rather to hedge the market risk coming from indirect exposure through investment funds. To this aim, the fund manager uses its procedures, based on qualitative/qualitative criteria, to verify if the short position is a hedging position;
- there could be a duplication of net position reporting where both the decision maker (natural or legal person) and the target fund are subject to transparency disclosure. For example, if a person or an investment fund has only long positions in an reverse ETFs, the net short position should have to be notified both by the person and by the reverse ETFs.

Q6.2 Sovereign debt
We invite ESMA to publish a list of issuers that respect the definition set in art. 2 (1)(d) and 2 (1)(f). This list could help fund management companies to define the new procedures requested by Regulation avoiding doubts regarding the identification of which are the debt instrument issued by each sovereign issuers. As indicated in the Regulation the definition of sovereign issuer is very tight and debt instrument issued by regional or local bodies or quasi-public bodies should not be treated as sovereign issuer.

Q6.3Basket and index related instruments
We suggest using different criteria for financial derivatives index and basket of financial instruments. In line with UCITS Directive, Eligible Asset Directive([3]) and related implementing measures, we propose excluding derivatives on financial indices in the calculation of short hedging position where the index is sufficiently diversified([4]), it represents an adequate benchmark for the market and it is published in an appropriate manner.

As regard hedging definition, we propose using the criteria set in CESR/10-788.

The proposal of a simplified method of calculation for hedging short position in index financial derivatives would overcome the compliance problems that could arise, when, in exceptional circumstances, an Authority decides to introduce the ban on taking or increasing net short position in financial instruments. Please refer to our answer to Q55.

[3] Commission Directive 2007/16/EC of 19 march 2077 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions.
[4] As regard diversification, if the index is composed of eligible assets, the components of the index must comply with the limits in Article 53 of the UCITS Directive i.e. 20/35% of assets in a single issuer

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Q7: Do you agree with setting a quantitative threshold for high correlation? If so, what would be the best correlation coefficient to use for this purpose ?
We agree with setting a quantitative threshold for high correlation that provides a clear, objective and measurable standard against which regulators and markets participants could judge whether the condition set in the Regulation is or is not met.

As regard the threshold, we think that a correlation coefficient of 80% would be appropriate. An 82% level implies that the amount of the variance explained by the correlated sovereign debt is at least 2/3 of the total variance of the given sovereign debt, as expressed by a coefficient of determination R^2 not lower than 66%. Even if there's no clear indication in statistical literature of what constitutes a high level of correlation, a coefficient of determination higher than 66% should be sufficient to grant that the correlation is not spurious.

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?
We don't have any objections in considering 24 months. Our preference would be to use weekly data.

Q9: Do you think it is practicable to measure correlation for assets with no liquid market price or with no sufficiently long price history by using a proxy? What could be a good proxy? What criteria do you think are necessary?
We think that the correlation could be calculated not considering price returns of single issues but using a proxy in all the cases to try to carve out the impact of differences in the duration of the issues. It is a common risk management practice to calculate the correlation of debt instruments considering a "theoretical" price, in order to try to carve out distortions in correlation estimation due to the different duration of the single issues (pull to par effect), or due to temporary changes in the liquidity level of the issues.

The proposed correlation calculation methodology would be also expensive to implement.

Q10: Do you consider that this Delegated Act needs to provide further specifications on the calculation of whether the high correlation test is met? Do you have any suggestions on what they may contain (e.g. use of a maturity bucket)?
The approaches used can be different and the delegated act could provide further specification only as exemplification. As an example we suggest calculating the correlation among different sovereign issuers considering the variation in "generic government rates", as provided by the main infoProvider (Bloomberg page "GGR") with the same maturity.

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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%)?
In addressing the issue of temporary fluctuations in the correlation, we deem the principle indicated by ESMA important, but we do not support an introduction of specific thresholds. Concerns come from the effect of these set constrains in case of emergency measures taken by Authorities. In that situation the rebalancing of the position deriving from temporary fluctuations could be against the best interest of the fund and of investors.

BOX 4: Draft advice on the method of calculation of net short position

Q12: Do you think it is appropriate the "delta adjusted method" for the calculation of short position for shares? Q13: Is there any comment you would like to make in relation to the calculation of the position in shares set out in Box 4?
Please refer to our answer to Q14. In any case, we have no further comments on the delta adjusted method.

Q14: Is there any additional method of calculation for shares that you would suggest ESMA to consider?
In line with the UCITS regulation, we propose considering calculating the derivatives position in financial instruments using the commitment conversion methodology for standard derivatives set in Box 2 of the CESR Guidelines (CESR/10-788). It proposes a detailed methodology of calculation of the market value of the equivalent position in the underlying asset.

Where the proposal can not be implemented for all stakeholders, we suggest introducing a specific regime only for fund management companies. These criteria will reduce administrative and compliance burdens for the organization and implementation of the calculations.

Q15: Which in your view is the most appropriate method for the calculation of short position for debt instruments of a sovereign issuer? Are there methods other than the nominal or sensitivity adjusted ones outlined above which you think ESMA should consider?
Please refer to our answer to Q14 question for derivatives.

For cash position we propose using the value of the mark to market than the nominal value. This value is much more coherent in case of hedging arrangements.

Where such proposal is not in line with ESMA objectives, we suggest setting criteria that are easy to apply. We suggest therefore using the nominal model and not the sensitivity adjusted method.

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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?
Please refer to our reply to Q6 point 3 for the method of calculation of short position in index financial derivatives.

BOX 5: Draft Advice on the method of calculating positions when different entities in a group have long or short positions or for fund management activities related to separate funds

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?

Q17.1 General issues
We strongly disagree with this draft advice. We are concerned about the cost to fund management companies of the implementation of the procedures indicated in the Box. Based on the experience of the implementation of the disclosure regime on significant net short position in shares, that was set by some national Authorities in line with CESR Guidelines 10/088 and 10/453, we disagree with the criteria 2b, that require aggregating the net position held by individual fund by decision maker. We find that the use of the 2010 CESR decision-maker concept is too complex and suggest using a proxy approach. We disagree also with points 5 and 6 that require including in the calculation of the short net position also the position of the fund delegated to a third party investment manager. Doubts come also from the proposal of identifying which position is to be notified to Authorities or disclosed to public based on which is the highest figure resulting from the 3 criteria (point. 4).

We deem it important to point out the need for a simplification of the method for calculating long, short and net position in order to reduce administrative burdens for the organization and implementation of the calculations for fund management companies. We suggest therefore considering a simplified alternative approach such as that described in the proposal A (please refer to Q17.3).

Q17.2 Specific issues
Regarding the aggregation of the positions by decision maker, it seems that this concept is not requested or expressly mentioned in Regulation. Under article 3(7)(c) it is envisaged only the concept of investment strategy in order to cater for specific cases to be considered in the method of calculation. We ask therefore to propose a proxy of this concept and eliminate criterion 2b from the criteria to be used to calculate the net short position. The request is supported by the considerations that follow.

Firstly we noted that the process to identify the decision maker for investments funds is subjective and could be difficult, even with the new definition of investment strategy. ESMA indicates in fact that a decision maker can be a single natural person

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(e.g. fund manager managing the portfolios of separate legal entities or a portfolio manager) or several natural persons (e.g. two or more fund managers following the same investment strategy for the funds they manage individually), a body within a legal entity (e.g. investment committee of a fund management company) or a legal entity within a group pursuing the same investment strategy. Secondly, fund management companies may need to identify a number of combinations of decision maker because the investment process for equities and for bond is usually different. Third, the combination changes over time and have to be monitored.

Further we think that is not strictly essential for Authorities or for public to have information on investment funds aggregated by an intermediate level (decision maker). Where the aim of the Regulation is to monitor "abusive purpose" of the net short position taken on a specific issuer with reference to investment funds, the criterion 2a satisfies the request; where the aim is investigating short selling that could create systemic risk the criteria 2c satisfies the request.

The aggregation by decision maker is an intermediate position that introduce elements of subjectivity and involves a substantial increase in costs for processing of this type of information. The criteria 2a and 2c may not fully capture all conducts or those who wants "elude" the Regulation, but obliging all fund management companies to incur in major costs to identify those case appears to be against the criteria of proportionality. Also the Regulation acknowledges that intra-day positions that breach a disclosure threshold but return below that same threshold before the end of the trading day will not be captured by this disclosure.

Regarding the indication of including in the calculation of the position of the investment fund also the position coming from the asset of the funds delegated to a third party (point 5 and 6), we deem that investment decision that are taken from third party decision maker should only be included in the calculation of that third party. This party is the "decision maker" of the fund, even if the responsibility of the fund is on the delegating fund management company and this one gives indication on the investment policy. If the aim of the regulation is to indentify those who have net short position in financial instrument, independently of who is the legal owner of the position, we believe that is correct to add these positions to the positions of those who have implemented the investment strategy in line with their received mandate i.e. to the third party manager. In any case we ask to clarify where these positions should be included. It seems that its should be considered in all the three criteria: in 2a, as investment fund promoted by the fund management company; in 2b, as aggregation by decision maker; in 2c, as aggregating position of the whole fund management company. It should also be clarified whether this position should also be included by the "real" asset management company when it calculates its asset management position (investment fund and discretionary mandate). In this case the aggregation of the position on the delegating and delegated fund management company could also lead to a duplication of the notification of the net short position. For example, where a third investment manager is selected on his/her stock picking strategy and this investment manager decides to take net short positions on a single issuers, with high probability both the fund management

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company that promote the fund and the delegating company that manage the fund have to notify a net short position on the issuer, when in reality there is only one net short position on the market.

Point 4 states, that the fund management company shall report the highest of the net short positions determined under the three criteria indicated in point 3 when more than one of them reaches or crosses relevant notification thresholds. Notifying the highest positions could create confusion and uncertainty over the notification forms posted over time as inconsistencies would emerge. The position to be notified depends not only on the investment strategy but also from on source of the calculation. For example, for one day the highest position comes from the strategy of the single investment fund (criteria 2a) and the day after it comes from the cumulated position hold from all funds under responsibility of fund management company (criteria 2c). The change of the criteria could lead to a jump of position notified which would be difficult to understand for Authorities and for the public.

As indicated above, we suggest considering alternative approaches that simplifies Box 5; in particular we support the proposal A.

Q17.3 Alternative proposal

Proposal A

Our first proposal adapts some of the criteria indicated in the Box 5 with the aim of making objective and simple the implementation of the calculation, of the notification while at the same time providing information for the monitoring of the systemic risk. We believe that our proposal allows highlighting, in a simple way, the possible net short selling position generated by fund management company relatively to its whole management activities (investment funds and, where applicable, discretionary portfolio mandate) and the hypothetical pressure on single equities or on the single sovereign bond issuers.

The fund management company shall report, or disclose, where relevant, the net short positions that results from the aggregation of net short and long position resulting in a particular issuer from all decision maker. For investment fund, irrespective of its legal form, as a proxy of the concept of decision maker, we propose to assume that each fund managed by the fund management company have a different decision maker.

In the calculation of positions should be taken into account the funds/discretionary mandated delegated to the fund management company from third party and should be excluded the funds/discretionary mandated delegated from the fund management company to a third party.

Proposal B

Our second proposal adapts two of the three criteria indicated in point 3 of Box 5 with the aim of making objective and simple the implementation of the calculation while, at the same time, providing information for the monitoring of net short selling positions both for “abusive purpose” and for systemic risk. Compared to

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proposal A, proposal B requires higher compliance burden because it requires that investment companies notify, where relevant, different net short position on the same issuers: for different funds, for decision maker of discretionary mandate, for the whole investment company.

Based on the experience of the implementation of rules on the disclosure regime on significant net short position in shares, we are of the opinion that this reporting would impose an acceptable compliance burden for the majority of fund management companies that manage UCITS funds. The on going base cost of disclosure depends to a large degree on the level at which threshold are set, and the ones set for equities have generate until now a proportionate compliance burden.

On the contrary the compliance burden with the implementation of Box 5 is estimated to be significant. Again, the definition of who is a decision maker and its maintenance over time is based on complex work that needs to be done by people and could not be automated.

We believe that the fund management company shall report, or disclose, where relevant, the net short positions that results from:

- the calculation of the net short position in a particular issuer for each individual fund, irrespective of its legal form, managed by the fund management company and
- the calculation of the net short position in a particular issuer for discretionary mandate aggregate by decision maker managed by the fund management company and
- the aggregation of net short and long position resulting from of all decision maker in a particular issuer.

For investment fund, irrespective of its legal form, as a proxy of the concept of decision maker, we propose that each fund managed by the fund management company is assumed to have a different decision maker. In the calculation of the net short position the funds/discretionary mandated delegated to the fund management company from third party should be taken in account and the funds/discretionary mandated delegated from the fund management company to a third party should be excluded.

For this proposal we suggest providing additional guidance on the information to be given in the notification form for a fund management company that has to notify the Authority about different net short positions, as also indicated in our answer to the FAQ 13 of consultation ESMA/2012/30. In particular, we asked to clarify whether in these situations it could be possible to integrate the field identifier "*position holder: full name [...]*" with an indication, for example, of the name of the fund or with a generic reference of the "source" of the positions or these positions should be managed with the field identifier "*comment*".

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Proposal C

We propose to emend the Box 5 in line with the paragraph n. 19 of the CESR/10-453 Guidelines "Technical detail of the pan-European short selling disclosure regime" ([5]) and take care of the suggestions listed in proposal B for definition of managed investment fund, discretionary portfolio mandate and guidance for disclosure.

Q17.4 Method of calculation of the positions when different entities in a group have long or short position

As regards the method of calculation of the positions when different entities in a group have long or short position (point 7, 8, 10 and 11), we ask to clarify that the fund management company that belongs to a group could not be considered as legal entities within the group for the scope of this Regulation. In particular, the positions of fund management company could not be taken into account when the group has to report, where relevant, the highest positions.

Our proposal relies on the fact that a fund management company pursues its business as an independent concern, acting in the interests of its shareholders and protecting the interests of participants in line with the investment policy set in the rules of the investment fund. Basically there is no coordination within the group for investment strategies.

Excluding the reporting of the position/s of the fund management company to the group will reduce also administrative burdens.

We suggest therefore that the parent company of one or more management companies is not required to aggregate its position with the position managed of the fund management company when these position are managed independently from the parent or by a company controlled by the same.

Q18: Which do you consider the better definition of a group for the purpose of this Regulation?

Please, see our answer to Q17. In any case we propose Alternative 2.

Q19: Are there other situations that should be taken into account?

We have no further suggestion.

[5] Extract from CESR/10-453, paragraph n.19: "*A first example relates to funds (UCITS or non UCITS, whether in corporate or contractual form). In this context, CESR considers that, where different investment strategies are pursued in relation to a particular issuer's shares through separate funds, calculation and disclosure of net short positions should take place at the level of each fund. CESR believes that it is not appropriate to be able to offset positions in the different funds as these positions will represent different activities and strategies. Conversely, where the same investment strategy is pursued in relation to a particular issuer's shares through more than one fund, the positions in each of those funds should be aggregated for the purposes of disclosure.*"

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BOX 6: Draft Advice on cases in which a sovereign CDS transaction is considered to be hedging against a default risk or a risk in the decline of the value of assets or liabilities correlated with the value of the referenced sovereign debt

Q20: Do you agree with the general conditions proposed for determining when a sovereign CDS position can be considered covered? Are there any modifications you would propose?
ESMA set that a sovereign CDS position can be considered covered when the risk being hedged is in the same Member State as the referenced sovereign debt. We ask to clarify better this issue as regards non single name CDS such as index CDS. It seems that long position on index CDS are not allowed, except when investment funds have long position on all financial instruments included in the index CDS. Where our interpretation is correct, we propose to reconsider this issue that have an impact on the hedging arrangements implemented by UCITS funds. We propose that where an index CDS position is eligible for hedging for CESR/10-788 it should also be considered compliant with art. 14 of the Regulation.

As regards the correlation criteria set in point 1. b, we propose eliminating the indication of the specification that the correlation should be "significant positive". Art. 4(1) of the Regulation sets a general test about correlation; it simply indicates "correlation" without adjectives.

Q21: Do you have any comments or alternative suggestions on the proposed test for correlation? Do you have any estimates of the costs which applying the qualitative test envisaged by ESMA would entail for market participants or the costs which would be associated with the imposition of a quantitative test? Q22: Do you consider the proposals for demonstrating correlation provide a workable framework for market participants? Q23: Are any changes required to the proposals for determining whether a sovereign CDS position is proportionate? 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? Q25: Do you agree that sovereign CDS positions which are obtained involuntarily as a result of the operations of a CCP clearing sovereign CDS should not fall to be considered as entering into a CDS transaction for the purposes of the Regulation? Q26: Do you consider there are any other illustrative cases of a risk which would be eligible to be hedged by a sovereign CDS position which should be included in the indicative list?
We are in favour of not prescribing the use of market prices for liquid asset with 12 months of history, leaving the possibility to consider a proxy in any case. It is a common risk management practice to calculate the correlation of debt instruments considering a "theoretical" price, in order to try to carve out distortions in correlation estimation due to the different duration of the single issues (pull to par effect), or due to temporary changes in the liquidity level of the issues.

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The proposed correlation calculation methodology would be also expensive to implement. Again, we suggest the possibility of using different method of calculation, when these one are coherent with CESR 10/788 for hedging criteria and calculation of the exposure.

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. In particular for UCITS funds, we do not suggest to set a specific period of time but allow rebalancing the position in the best interest of the fund holders.

We agree that sovereign CDS positions which are obtained involuntarily as a result of the operations of a CCP clearing sovereign CDS should not fall to be considered as entering into a CDS transaction for the purposes of the Regulation. These positions should be considered only after the maturity of the derivatives.

BOX 7: Draft Advice on method of calculation of an uncovered sovereign CDS position

Q27: Do you agree that the net CDS position is the correct one to use in the calculations? 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?
Please refer to answers for Box 6.
In any case, to avoid ambiguities, we ask to clarify the meaning of the "jump to default" with an example. In particular it is not clear if the "jump to default" metric is equivalent to using the criteria indicated by CESR/10-788 for the calculation of the global exposure with the commitment approach (market value of the underlying reference asset).

Q29: Are there refinements which can be made to the proposed methodology? Are there any standard calculation formulae which can be used when applying risk adjustments which we should include in the draft advice? Q30: Do you agree with the proposed method of treating indirect exposures?
We have no comments.

BOX 8: Draft Advice on the amounts and incremental levels of notification thresholds for net short positions relating to the issued sovereign debt of a sovereign issuer

Q31: Do you agree that the relevant notification threshold should be based on a percentage of the total amount of outstanding issued sovereign debt for each sovereign issuer? Q32: Do you agree with the proposal to convert these percentages into monetary amounts which would be updated quarterly to reflect changes in the issued sovereign debt? If not, what other arrangement would you suggest? Q33: Do you agree with ESMA's proposal to group

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sovereign issuers into categories for the purposes of setting the notification thresholds or would you prefer an alternative approach (e.g. a single threshold for all sovereign issuers or setting individual thresholds for each sovereign issuer)? Please state your reasons. Q34: If you support grouping sovereign issuers into categories, do you agree with ESMA's proposal to set the three categories of notification thresholds suggested above? If not, what other grouping would you suggest and why? Q35: Do you consider the proposed initial amounts and the incremental levels as reason-able and optimal? If not, what amounts and incremental levels do you consider as more appropriate and why?
In line with our answer to Q15, for calculating the relevant measure for the threshold that triggers notification we suggest setting a corresponding monetary amounts (and then additional incremental levels) rather than a percentages of total issued sovereign debt (that is bases on a nominal amount of the debt outstanding).

Should our proposal not be accepted, we agree with the proposal to convert these percentages into monetary amounts which would be update quarterly to reflect changes in the issued sovereign debt. We support also the proposal to group sovereign issuers into categories. We appreciate in particular that the total outstanding sovereign debt would be recalculated by competent Authorities. And to this aim we ask ESMA to publish also a list with the name of individual sovereign issuers (please refer to point 2 of our answer to Q.6).

Q36: If given the thresholds ESMA has proposed above are implemented, how many notifications do you expect to make in a month to each relevant competent authority? Q37: What level of net short position do you regard as significant for the particular sovereign debt markets?
We have no comments.

<u>BOX 9: Draft advice on the parameters and methods for calculating the threshold of liquidity of the issued sovereign debt for suspending restrictions on short sales</u>
Q38: Do you agree with the general proposal suggested by ESMA for setting the parameters and methods for calculating the threshold of liquidity of the issued sovereign debt for suspending restrictions on short sales? If not, please state your reason and explain what could be an appropriate alternative. Q39: In particular, do you agree that a measure in percentiles of the monthly volume traded in the last twelve months is suitable to define a threshold that represents a significant decline relative to the average level of liquidity for the sovereign debt concerned? Q40: In light of your response to the question above, do you think that a threshold of a) the 5th percentile, b) 2nd percentile or c) 1st percentile would best represent a sig-nificant decline relative to the average level of liquidity for sovereign debt? Please explain why providing data if possible.
We have no comments.

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BOX 10: Draft advice on what constitute a significant fall in value for financial instruments other than liquid shares

Q41: Do you agree that three categories are necessary? If not please state you reasons. Q42: For the more illiquid shares, do you agree that EUR 0.50 is the correct cut off point to use? If not please state you reasons. Q43: Do you agree that 10%, 20% and 30% are the correct percentages to use in relation to the fall in value? If not, what other levels would you propose; please state your reasons.

We have no comments.

BOX 11: Draft advice on criteria and factors to be taken into account in determining when adverse events or developments and threats arise

Q55: Do you agree with the proposal for qualitative criteria should be set out? Q56: Are there any additional criteria or factor that you would suggest adding to the list?

A competent Authority will take in exceptional circumstances restrictive measures and it could ban some operations.

Therefore it is very important that the method of the calculation of the definition set in the Regulation and implemented through the draft advice are not potentially detrimental to investment funds' investors, when an Authorities may take such type of restrictive measures. We ask that these measures pay due regard to the principle of proportionality.

In particular, we would like to point out that where the prohibition of taking or increasing net short positions in financial instruments is introduced, it should be possible for investment fund to have marginality net short positions arising from hedging strategies where such position is hedging compliant under CESR/10-788.

These short positions come from the use of financial derivatives to hedge the market risk of the portfolio and are not driven by the intention of the decision maker to elude the ban introduced by the competent Authority. For example when UCITS fund is hedging market risk through shorting financial derivative index, it could be possible that not all components of the index are held. The proposal seems consistent with explanatory test n. 87 where ESMA recognises, when defines an uncovered CDS transaction, that obtaining a perfectly hedged position may not be possible.

In any case, it should not be considered an infringement of the ban when the increase of the net short position comes from a change in market valuations without any active change of position held by the funds. Similarly, if the constituents of an index change but the investment fund has not a long position in such financial instrument, it should not be considered an infringement of the ban since that net short position does not stem from a specific management decisions. The request is to avoid the compulsory purchase of financial instruments that besides influencing the relative price (all investors that have a short position on that index have to buy

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the new constituent) would create a disadvantage for investors who would see the fund's portfolio include a financial instrument not strictly coherent with the aim of the investment manager and at a price higher than it would bought in "normal" market conditions.

We hope that our observations will be of help and remain at your disposal for any clarification on the comments made in this response.

Yours sincerely

IL DIRETTORE GENERALE

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