Shortcomings in New Regulations of the Sale and Solicitation of Derivative Products in Japan

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Abstract

A large number of derivative products (bundles of over–the–counter derivatives, complicated structured products similar to OTC derivatives–structured bonds, structured deposits, etc.) are sold around the world to unsophisticated customers of financial products, causing devastating losses. Distributors of these products are financial institutions including banks and securities companies. In Japan, rules of sales and solicitation, including accountability requirements, were changed in 2010 and 2011 to take into consideration the diversity of customers and products after serious damages caused by these products came to light. However, these modifications are insufficient.

In reviewing these rules, it is necessary to understand the context of the derivative products that have caused damage. First of all, conflict of interests remain undisclosed and the price of "over–the–counter" products remain opaque, which leads to extremely unfair transactions. In addition, since products consist of bundles of OTC derivatives, it is difficult to predict their movement and, at the same time, the volume of transactions can be very high. As a result of this, these trans-

actions often involve high risks for unsophisticated customers. In contrast, financial institutions hedge their risks. With unsophisticated customers, derivative products are sold by taking advantage of peoples' bounded rationality, which necessitates review of the transactions from the perspective of behavioral economics.

Considering these attributes, Japan's new rules of sales and solicitation based on accountability are insufficient to deal with the issue. At the very least, the reasonable basis suitability rule should be rigorously applied and the prohibition on unsolicited calls should be extended. Drastic measures are required.

Introduction

Damages that customers suffer from derivative products——bundles of over–the–counter derivatives and structured products——have created serious social problems in Japan. First, I will discuss these damages, current remedies for them, and related system reform. Then, I will review the characteristics of the products. In this way, I hope to make it clear that the current system reform is insufficient and ex–ante regulations should be applied.

1. Damages

1–1 World Wide Context

Bundles of over–the–counter derivatives (OTC derivatives) have been sold in Japan for years. In Japan from 2004 to 2008, a number of banks solicited borrowers, including small and medium-sized companies, to contract to purchase a bundle of OTC derivatives, including zero-cost options, coupon swaps, and interest-rate swaps. As a result of losses associated with these transactions, many small businesses have been plunged into serious financial crises. The numbers are so large as to be regarded as a social problem.

Similar problems have occurred around the world.

In the UK, derivative products, called structured collars, have been sold to small businesses as interest rate hedging products. They are typically sold alongside business loans from banks. They are a kind of zero-cost options. However, they can vary in complexity and can and have been miss-sold in many cases[1] .

In Germany, banks offered to small businesses interest rate swaps, called CMS Spread Ladder Swaps, resulting in significant losses for the businesses. Many related judicial decisions have been handed down, and the Federal Supreme Court ordered bank to compensate customers in 2011[2].

In Italy, criminal cases have resulted. In December 2012, Deutsche Bank AG, JPMorgan Chase & Co. , UBS AG and Depfa Bank Plc were convicted by a Milan judge for their role in overseeing fraud by their bankers in the sale of derivatives to the city of Milan[3].

In Korea, banks solicited to small businesses a product called

KIKO–bundles buying US dollar put options and writing double dose of US dollar call options–whose gain and loss chart were like zero–cost options. As a result of the US dollar's sharp climb against the Won, many small businesses were plunged into serious financial crises and many lawsuits filed. In 2013, the Supreme Court made decisions[4)].

Structured products are pre–packaged financial products based on derivatives, such as structured bonds in which derivatives are structured into bonds, structured deposits in which derivatives are structured into deposits and structured investment trusts (knock–in investment trust) which invest in one or two structured bonds.

In Japan, 1999 to 2000 brought the first wave of losses from structured products, which led to a number of judicial decisions that ordered sales companies to compensate consumers.

From 2004 to 2008, financial companies began to sell more complicated structured products in large numbers and damages from these products emerged after Lehman's fall. This is the second wave of damage in Japan caused by structured products. During this period, losses from these products, most typically by Lehman structured products occurred worldwide.

In the USA, for example, on 8 August 2013, UBS AG agreed to pay $120 million to settle a lawsuit filed with the U. S. District Court in Manhattan by investors who accused the Swiss bank of misleading them about the financial condition of Lehman Brothers Holdings Inc.

in connection with the sale of structured notes[5].

In the UK, in 2009, the Financial Services Authority (FSA) announced tough and wide–ranging action to help investors who received unsuitable advice or misleading promotional material when they bought Lehman–backed structured products, as well as new measures to address issues in the wider structured products market[6].

In Norway, in 2008, after the serious losses caused by structured products, the government tightened rules on the sale of structured products. The amendment to the Securities Trading Act prohibited financial advisers from promoting complex financial instruments[7].

In Switzerland[8], in 2009, Credit Suisse agreed to compensate 1,700 clients who invested in Lehman Brothers capital protected products. Credit Suisse reached an agreement with the Fédération Romande des Consommateurs (the French Federation of Consumers) to make redemption offers totaling approximately 50 million Swiss francs. Under the agreement the bank will make an offer to clients, who had assets of up to 500,000 Swiss francs.

Similar problems and responses have occurred in Taiwan[9] and in Hong Kong[10].

1–2 Damages Resulting from Bundling of Over–the–Counter Derivatives in Japan

In Japan, many small businesses have been solicited to buy OTC foreign exchange derivatives (zero-cost US dollar option sets, US dollar and Yen coupon swap sets), and suffered huge losses. These losses have been regarded as a serious social problem.

This problem was pointed out in the Diet[11] beginning the summer of 2009. As a result, the Financial Services Agency conducted a survey and reported the result[12] on March 11, 2011, coincidentally the day on which the Great East Japan Earthquake occurred. According the FSA survey, a total of 60,000 contracts were sold from 2004 to 2007. There were 40,000 remaining contracts and 19,000 contract companies as of September, 2010. This means two contracts remained per company. Average damage per contract was estimated to be about 6,000,000 yen, which shows anaverage appraisal loss per company of120,000,000 yen.

On July 12, 2011, at a meeting of the Committee on Financial Affairs of the House of Representatives[13], questions by a lower house member made clear thinking about damages caused by foreign exchange derivatives. The house member called for inspection and review that addresses intrinsic risks in the products, and surveillance in accordance with the characteristics of the products. He then stated that it is perverse that taking such gambles on transactions is recognized as a service by banks, quoting a report by the Financial Law Board, Bank of Japan. He ended his comments by saying that there are questions about economic rationality and inevitability in the financial derivatives themselves and their sales methods.

From that time to 2012, as the rise of the yen continued, many small businesses that contracted for OTC foreign exchange derivatives went into bankruptcy or came close. [14]. In 2014, because of the weak yen caused by Abenomics[15], many surviving small businesses have recovered some of those losses.

1-3 Damages from Structured Products in Japan

The second wave of damage occurred from structured products sold from 2004 to 2008. From 2005 to 2007 in particular, structured products with varied characteristics were sold in large numbers.

More specifically, they included:

i "Normal" structured products (stock index linked bonds, EB, etc. Even though their names are the same as the products that had caused the first wave of damage, these products included options which had been structured not only into principal redemption but also into interest and redemption time so that their structures became more complicated and risk increased.

ii Leveraged structured bonds (bonds linked to a two-fold rise rate of stock index, bonds linked to a 10-fold rise rate of stock prices of more than one brand, two indexes linked bonds, etc. All such bonds are more complicated than normal structured bonds.)

iii Long term structured products (foreign exchange derivative bonds whose expirations are as long as 30 years; PRDC bonds, FX TARN bonds, etc. In many cases they are called Eurobonds in documents)

iv Structured investment trusts (knock–in investment trusts) that invest in one or two structured bonds).

Banks and security companies sold i ii and iii to customers, including individuals, foundations, local governments, and school corporations. One contract commonly ranged from tens of millions to hundreds of millions of yen, and many customers purchased numerous contracts.

Around the same time, banks solicited elderly depositors to make contracts for structured investment trusts (knock–in investment trust) (iv) containing investment bonds, which were sold using deceptive explanatory leaflets for investment trusts showing limited risk. Many of these contracts ranged from several millions to ten to twenty million yen. Many lawsuits and financial ADR mediation claims were filed after the damages from these products surfaced in 2008. In particular, many judicial decisions were handed down after 2010.

2. Remedies in Japan

2–1 Bundling Interest Rate Swaps

The Supreme Court of Japan has decided two cases about plain vanilla interest rate swaps. They dismissed one case on March 7, 2013 and a second on March 26, 2013.

2–2 Bundling OTC Foreign Exchange Derivatives

2–2–1 Financial ADR

Financial ADR started full scale in Japan on October, 2010 following action by the Diet.　ADR organizations have accepted claims related to OTC derivative cases and has endeavored to settle the cases. Financial ADR of the Japanese Bankers Association has dealt with an especially large number of OTC foreign exchange derivative cases.　In the 2011 fiscal year（from April, 2011 to March, 2012）, the number of cases reached 749.　In 2012, the number of cases rose to almost the same number, of which approximately 60 percent reached settlement, resulting in banks accepting 20 to 50 percent of the face value of the contract as settlement in exchange for cancellation of the contract.

2–2–2 Lawsuits

There have been four published court decisions relating to OTC foreign exchange derivatives.　In each of the four cases, courts ordered compensation on charges of illegal acts violating Japan's accountability requirements.

- A court ruling by the Osaka district court on October 12, 2011（Bundle of OTC foreign exchange options.　Australian Dollar; comparative fault reducing damages by 70 percent）
- A court ruling by the Osaka district court on February 24, 2012（Bundle of coupon swaps, Australian Dollar and Yen; comparative fault reducing damages by 80 percent）
- A court ruling by the Osaka district court on April 25, 2012（Bundle of coupon swaps, Australian Dollar and Yen; comparative fault reducing damages by 50 percent）

- A court ruling by the Tokyo high court on March20, 2014 (Bundle of coupon swaps, US Dollar and Yen; comparative fault reducing damages by 60 percent)

Though many other cases have been settled, a considerable number of cases are thought to have been dismissed on the merits with prejudice.

2-3 Structured Products

More than 100court rulings on cases involving structured products have been handed down, as of October2014,according to a Japanese law database search. Though there are both judgments allowing the claim and judgments dismissing the claim, the latter have overwhelmed the former. Most cases that recognized the claim, or a part of the claim, and awarded damages were based on tort, with comparative fault determinations reducing the damages awarded by 20 to 80 percent.

Regarding this second wave of damage from structured products, since rulings that awarded relief were issued and posted in many official bulletins, rulings that dismissed claims later came to be posted as well. Any type of structured products, normal or leveraged structured products, long-term structured products and knock-in investment trusts, have both judgments allowing and dismissing investors' claims. A number of cases are still in dispute and rulings will come in 2014 and 2015.

3. System Reforms in Japan

3-1 Basic Rules

In Japan, derivative transactions are regulated by the Financial Instruments and Exchange Act and the Commodity Futures Transactions Act. The Financial Instruments and Exchange Act applies to securities and derivatives transactions, except for commodity derivative transactions, and the Commodity Futures Transactions Act applies to commodity derivative transactions. Regulation of sales and solicitation pursuant to these acts, includes application of a duty of good faith and fair dealing, prohibition of unsolicited calls (with the scope of the act depending a Cabinet Order), application of the principle of suitability, accountability, and so forth.

3-2 Prohibition of Unsolicited Calls

In response to losses by unsophisticated investors, regulations prohibiting unsolicited calls began to be applied to sales and solicitation of derivative transactions. First, as a result of large consumer losses in FX transactions, the prohibitionwas applied under the Financial Futures Trading Act in July, 2005 to financial futures transactions and financial option transactions. In September, 2007, when the Financial Futures Trading Act was incorporated into the Financial Instruments and Exchange Act, transactions to which prohibition of unsolicited calls was applied were limited to "OTC" financial futures transactions and "OTC" financial options. However, in response to a rash of losses by individuals from OTC CFD transactions, in April 1, 2011, prohibition of unsolicited calls came to be applied to OTC derivative transactions for individuals, excluding commodity derivative transactions[16). For individual, as opposed to businesses, the scope of underlying assets to which the prohibition applied was also expanded to include not only currency, but also interest, and transactions of swaps came to be included.

Bundles of derivatives which banks solicited and sold to many small businesses which caused huge losses also were included in the regulation prohibiting unsolicited calls[17) since they look more like derivative transactions than anything else. However, as for structured products, since they didn't appear to be derivatives and they are composed of financial products including bonds, deposits and so forth the prohibition was not applied.

3–3 Reform of Guidelines for Supervision in 2010

Many derivative products have been sold to which the Financial Instruments and Exchange Act is applied. For that reason, in April 2010, the Financial Services Agency's Guidelines for Supervision was reformed to become more effective in protecting customers by adding additional requirements: imposing on financial institutions a requirement to provide concrete descriptions about products, as well as ensuring effective confirmation of transactions in accordance with customers' needs.

3–4 Reforms of Self–Regulatory regulations in 2011

When the expansion of the scope of the prohibition on unsolicited calls was considered in 2011, the possibility of including structured products was also considered. The thinking was that they are actually included in derivative transactions so the same regulations should be applied. However, this thinking was rejected, leaving the subject to self-regulatory regulations by the Japan Securities Dealers Association[18]. So far, the prohibition of unsolicited calls has not yet been applied to structured products.

Accused of inaction, the Japan Securities Dealers Association changed its self- regulations in February, 2011, enforced from April, 2011. The reforms include additional rules regarding compliance with reasonable basis suitability requirements, standards for soliciting consumers by way of implementing the principle of suitability[19], and fulfilling accountability requirements for structured products.

4. Characteristics of Products

4-1 Problems with OTC Derivative Bundles

Problems with OTC derivatives bundles are not common to derivative transactions in general, but specific to OTC derivative transactions. With market derivative transactions, financial institutions mediate customers' orders to the market based on the premise that fair prices are set in an exchange or market. In comparison, OTC derivative transactions differ: 1) Transactions are made between customers and agencies with conflicting interests; if agencies make a profit, customers lose, and vice versa. 2) Since prices are determined transaction-by-transaction, when financial institutions make a contract with small businesses, victory or defeat is determined by their knowledge, that is to say, "financial engineering" by institutions versus "intuition" by customers (unfair game) determines winners and losers. These are the two biggest characteristics of OTC transactions.

The two biggest problems with OTC transactions are non–transparency, hidden costs are not revealed, and unfairness, setting prices that make it possible for agencies to swap products whose actual value is 60 yen with products valued at 100 yen as an "equivalent" exchange.

Next, there are problems caused by OTC derivatives bundles. Unlike OTC derivative transactions that are one–time transactions, these OTC derivatives bundles have periodic execution dates ranging from several to ten years, and one contract includes several executions. For example, there are transactions for bundles of interest swaps, coupon swaps, currency options, and so forth. Using the movement in the exchange rate or interest rate as an index, these transactions are made for period of 5 to 10 years. While predicting the movement of short periods, for half a year or a year, is difficult[20)], predicting long periods of movement present even greater risk. Often only banks have sufficient knowledge as to hedge their risk by covering transactions with a third party.

Banks have routinely used this superior knowledge to solicit small businesses to buy "unfair" derivatives whose risks were born by small businesses. The enormous losses that caused numerous small businesses to fail was not caused incidentally; it was a natural outcome resulting from the inherently flawed transactions.

4-2 Problems with Structured Products

Structured products also present problems with their cost, risk, and merchantability, including 1) significant costs hidden from customers (starting with negative values) and 2) high-risk (including liquidity risk). These problems are often unknown to the customer, which makes the transaction irrational and unfair in comparison with other transactions.

First, structured products have a large hidden cost, and their transactions involve selling products whose actual value is, e. g. 70 or 90 yen for 100 yen. The more complicated products become, the bigger these hidden costs become[21)].

Next, since premiums (consideration) for selling option are often included as interest in the structured products, customers receive premiums lower than the actual market value (for example, half), customers tend to think that structured products are lower risk products than their actual risk. The cause of this misunderstanding is that customers are not given sufficient information about the hidden cost nor about factors of behavioral economics[22)].

5. Conclusion

In addition to the inherent risks, OTC derivatives bundles and structured products present conflicting interests, information gaps (unfairness), and their prices tend to become significantly unfair due to their complicated structure. Furthermore, behavioral economics suggests that customers are likely to seriously misunderstand the balance between risk and return and to feel an unwarranted sense of safety. As a result, these products sell well, even with their large hidden costs. These products have sold well by taking advantage of customers' misunderstanding. This misunderstanding stems from an information gap between customers and institutions and bounded rationality.

There is no one in the world who would exchange two hundred million yen in cash for one hundred million yen in cash or who would buy stock worth eighty yen for a hundred yen. In the same way, there's most likely not a single consumer who would buy derivative products with large hidden costs if they were given an understandable explanation about their risk, return, and liquidity.

Current regulations are focused on explanations, which are insufficient given the characteristics of these products. Regulations prohibiting unsolicited calls to unsophisticated customers should apply to these derivative products, while setting product regulations that limit ratio and amount. In exceptional cases in which solicitation is allowed or unsolicited sales are completed, regulations should obligate agencies to explain any hidden costs or value at the time of sale.

In a case in which frequent disputes occur and the damages originate from the same cause, it is rational to introduce such regulation and a system like the one introduced in the UK: a supervisory authority that actively works toward investigating and finding a solution. It is time for Japan to construct such a system.

＊This article is revised version of the article for 14th Conference of the International Association of Consumer Law (June 2013 Sydney).

Notes

1) http://www.fsa.gov.uk/library/other_publications/interest-rate-swaps
2) BGHUeteilvom22. März 2011-XI ZR 33/10 http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=Aktuell&nr=55748&linked=urt&Blank=1&file=dokument.pdf
3) http://www.bloomberg.com/news/2012-12-19/deutsche-bank-ubs-convicted-by-milan-judge-for-role-in-fraud.htm
4) Supreme Court decision 28/11/2013
http://glaw.scourt.go.kr/wsjo/panre/sjo100.do?contId=2142462&q=kiko&nq=&w=total&section=&subw=&subsection=&subId=2&csq=&groups=&category=&outmax=1&msort=&onlycount=&sp=&d1=&d2=&d3=&d4=&d5=&pg=0&p1=&p2=&p3=&p4=&p5=&p6=&p7=&p8=0&p9=&p10=&p11=&p12=&sysCd=&tabGbnCd=&saNo=&joNo=&lawNm=&hanjaYn=N&userSrchHistNo=&poption=&srch=&range=&tabId=&save=Y&bubNm=
Supreme Court decision 26/9/2013 I
http://glaw.scourt.go.kr/wsjo/panre/sjo100.do?contId=2132394&q=kiko&nq=&w=total&section=&subw=&subsection=&subId=2&csq=&groups=&category=&outmax=1&msort=&onlycount=&sp=&d1=&d2=&d3

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Supreme Court decision 26/9/2013 Ⅱ

http://glaw.scourt.go.kr/wsjo/panre/sjo100.do?contId=2132396&q=kiko&nq=&w=total&section=&subw=&subsection=&subId=2&csq=&groups=&category=&outmax=1&msort=&onlycount=&sp=&d1=&d2=&d3=&d4=&d5=&pg=0&p1=&p2=&p3=&p4=&p5=&p6=&p7=&p8=0&p9=&p10=&p11=&p12=&sysCd=&tabGbnCd=&saNo=&joNo=&lawNm=&hanjaYn=N&userSrchHistNo=&poption=&srch=&range=&tabId=

Supreme Court decision 26/9/2013 Ⅲ

http://glaw.scourt.go.kr/wsjo/panre/sjo100.do?contId=2132397&q=kiko&nq=&w=total&section=&subw=&subsection=&subId=2&csq=&groups=&category=&outmax=1&msort=&onlycount=&sp=&d1=&d2=&d3=&d4=&d5=&pg=0&p1=&p2=&p3=&p4=&p5=&p6=&p7=&p8=0&p9=&p10=&p11=&p12=&sysCd=&tabGbnCd=&saNo=&joNo=&lawNm=&hanjaYn=N&userSrchHistNo=&poption=&srch=&range=&tabId=

Supreme Court decision 26/9/2013 Ⅳ

http://glaw.scourt. go.kr/wsjo/panre/sjo100.do?contId=2133819&q=kiko&nq=&w=total&section=&subw=&subsection=&subId=2&csq=&groups=&category=&outmax=1&msort=&onlycount=&sp=&d1=&d2=&d3=&d4=&d5=&pg=0&p1=&p2=&p3=&p4=&p5=&p6=&p7=&p8=0&p9=&p10=&p11=&p12=&sysCd=&tabGbnCd=&saNo=&joNo=&lawNm=&hanjaYn=N&userSrchHistNo=&poption=&srch=&range=&tabId=2013.9.26

5) http://www.reuters.com/article/2013/08/09/us-ubs-lehman-settlement-idUSBRE9780KP20130809

6) http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/144.shtml

7) http://uk.reuters.com/article/2008/02/11/norway-financial-idUKL1170675820080211

8) http://www.risk.net/structured-products/feature/1527702/credit-

suisse-agrees-compensate-lehman-product-investors#
http://www.swissinfo.ch/jpn/index.html?cid=7360136

9) Takeshi Muramoto "The true facts of financial trade damage in Taiwan and the system of the consumer protection" Consumer Law News№.94 2013

10) http://www.excite.co.jp/News/china/20090807/Searchina_20090807058.html

11) Conference minutes of the financial committee of the House of Councilors, The 171th of The Diet, June 25, 2009
http://kokkai.ndl.go.jp/SENTAKU/sangiin/171/0060/17106250060024a.html
Conference minutes of the financial committee of the House of Councilors, The 174th of The Diet, April 20, 2010　http://kokkai.ndl.go.jp/SENTAKU/sangiin/174/0060/main.html
Conference minutes of the financial committee of the House of Councilors, The 176th of The Diet, November 22, 2010
http://kokkai.ndl.go.jp/SENTAKU/sangiin/176/0014/17611220014008a.html

12) "Result of survey of foreign exchange (US dollar / JP yen) derivatives trading for small businesses" Financial Services Agency in Japan, March 11. 2011
http://www.fsa.go.jp/news/22/ginkou/20110311-2.html

13) Conference minutes of the Committee on Financial Affairs of the House of Representatives, The 177th of The Diet, July 12, 2011
http://kokkai.ndl.go.jp/SENTAKU/syugiin/177/0095/main.html

14) "6th Survey of Bankruptcy trend because of appreciation of the yen" July 26, 2012 Teikoku Databank
http://www.tdb.co.jp/report/watching/press/pdf/p120705.pdf

15) The economic policies advocated by Japanese prime minister Sinzo Abe since the December 2012 general election, Abenomics is based upon "three arrows" of fiscal stimulus, monetary easing and structural reforms. .

16) Prohibition of unsolicited calls began to be applied to sales and solicitation of commodity derivative transactions from January 1, 2011.

17) Though it is one type of derivative transactions, prohibition of unsolicited calls are not applied to sales and solicitation of swap transaction (Order for Enforcement of the Financial Instruments and Exchange Act 16-4). Therefore, banks and securities companies turned bundled currency options into the shape of bundled coupon swaps.

18) Financial Services Agency, September 13, 2010 “Prohibition of unsolicited call about derivative transaction”

19) Japan Securities Dealers Association “Rules Concerning Solicitation for Investments and Management of Customers, Etc. by Association Members” 5-2, Japanese Bankers Association “guide line concerning about structured deposit (in which complicated derivatives were structured)” 3.
Under these rules, When soliciting sale of Complex Structured Products Similar to OTC Derivatives Transactions to a customer, the Association Member shall establish the solicitation commencement standards for each sale, and shall not solicit customers who do not meet such standards:

20) Because of that reason, most terms of foreign exchange forward made by exporting company is within a year. 2008 Ministry of Internal Affairs and Communications company “economic and fiscal annual report”

21) Craig MaCann, DengpanLuo (2006) “Are Structured Products Suitable for Retail Investors?”
http://www.slcg.com/pdf/workingpapers/StructuredProducts.pdf
“Equity-linked notes are complex, opaque and expensive – and the more complex and opaque they are, the more expensive they are. Even with the best disclosure materials and the most thoroughly trained and supervised registered representatives, it is unlikely that retail investors can understand the risk-return tradeoff and the costs being incurred in some of the complex equity-linked notes and structured products currently being marketed.”

22）As an examination about Structured products from the viewpoint of Behavioral economics, see Thorsten Hens, Marc Oliver Rieger（2009·2·16、revised 2011·8·18）“Why do Investors Buy Structured Products?” http://papers.ssrn.com/sol3/papers.cfm?abstract_id＝1342360）
“If we want to understand why there is nevertheless a large demand for such products, we need to discuss potential behavioral factors. We showed that investors with prospect theory utility functions might perceive substantial utility gains from structured products. Other behavioral explanations, like systematic probability misestimation, also seem to play an important role. We conclude that the market for structured products （a highly profitable business for banks） offers mostly illusionary benefits for investors. — Our search for a reason to buy structured products has turned into a discovery of investment mistakes.”
About Prospect Theory, see Daniel Kahneman, Amos Tversky （1979） “Prospect Theory: An Analysis of Decision under Risk”, Econometrica, XLVII （1979）, 263-291