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Consultative Document "CEBS Guidelines to Article 122a of the Capital Requirements Directive" (CP40)

Dear Sir or Madam,

CEBS published a consultative document concerning the **"**Guidelines to Article 122a of the CRD**"** on July 1, 2010. We would like to take the opportunity now to state our position.

Before we address the questions posed in the paper, we would like to make some general comments.

General Remarks

We are generally in favor of CEBS' intention to develop recommendations for the newly added Article 122a of the Directive 2006/48/EC, which can be applied to all types of securitisation transactions and all asset classes. The national supervisory authorities are entitled to individualise the remaining scope of discretion in a reasonable manner while taking the existing national securitisation structures into account.

In our opinion, it will sometimes prove difficult to apply the guidelines proposed by CEBS to ABCP programs of the kind in common international use, since these have a wide variety of special features compared to “classic” securitisations. Applying the CEBS guidelines to ABCP programs will lead to a number of problems, which we will address below at the relevant points in the text. In order to be able to safeguard financing and the procurement of liquidity especially for small and medium-sized enterprises in the future, a proper interpretation of the requirements of Article 122a is especially necessary with regard to ABCP programs, which securitises trade or lease exposures of enterprises, for example.

In this context, we also point out recital 25 of the directive. According to that, purchased exposures, which arise from corporate activity and are sold at a discount to finance this activity of the company, should not be subject to the retention requirement. According to reports, several supervisory authorities in the EU are of the opinion that with this recital only factoring transactions should be excluded from the retention requirement. We are not able to concur with this interpretation, since Article 122a does not apply to factoring transactions but rather applies to securitisations. Making an exception for a transaction that was not affected by the regulations in the first place would be pointless. Accordingly, it should be made clear that the exemption from the retention requirements also applies to ABCP programs, with which the aforementioned corporate exposures are securitised. In our opinion, ABCP programs represent an instrument for corporate finance, which should not lead to a conflict of interests between originators and investors as a result of special transaction specifics. In this regard, ABCP programs differ considerably from securitisations of bank loans.

Furthermore it should be clarified in the guidelines that regardless of the form or extent of the collateralisation multi seller ABCP structures are not to be counted for as re-securitisation positions as this makes no sense economically. From our point of view the classification of re-securitisation exposures should be predominantly based on economic considerations and not on structural features alone. Otherwise the application of article 122a to ABCP programmes would be exacerbated even further.

While developing the guidelines, particular attention should generally be placed on the fact that institutions are not precluded from investments in securitisations of exposures to small to medium-sized companies as a result of the qualitative and quantitative requirements. This could lead to significant negative effects on the financing of these enterprises

especially in light of the circumstance that a greater level of retention was agreed upon in Germany.

In the presented guidelines, CEBS does not differ between the securitisation of granular and non-granular portfolios. Many of the qualitative requirements of Para. 4 and the disclosure prerequisites of Para. 7 of Article 122a relate to an analysis of the risk characteristics of the underlying exposures. Since granular portfolios do include several thousands of individual positions, we believe that neither the analysis of every individual position nor the disclosure of details for every individual position would be possible. Furthermore the value added of an analysis at a single loan level decreases as the granularity of the underlying portfolio increases. In several cases even more information can be extracted from processed portfolio data. We therefore ask for a clarification that the analysis and the disclosure of the risk characteristics for Para. 4, 5, 6 and 7 can be performed at a portfolio level.

Special Comments

Question 1: Do you agree with this differentiation between the requirements of credit institutions when "investing" (leading to the applicability of Paragraphs 1, 4, and both sub-paragraphs of 5) as opposed to the lesser requirements when assuming "exposure" but not "investing" (leading to applicability of Paragraph 1 and sub-paragraph 2 of Paragraph 5)?

In principle, we agree with the proposed distinction of the requirements set forth in Article 122a for the various roles that the institutions can assume within the framework of securitisations. The distinction provided in the table represents a good starting point, which should be adapted, if necessary, based on future market developments.

Neither the table nor points 3 to 10 clearly show that a financial institution can assume only one regulatory-defined role with regard to every securitisation transaction and thus must comply exclusively with the requirements for this role. An institution can be an originator, sponsor or investor. If an institution acts, for instance, as a hedge counterparty in a Corporate Finance ABCP program, it is regarded as investor in terms of regulatory requirements. If it is at the same time active as sponsor of this ABCP program, it is viewed as sponsor in terms of regulatory requirements and thus no longer as an investor in the program. Consequently, the institution should have to apply the requirements of Article 122a for sponsors and not for investors. We kindly ask for corresponding clarification in this regard.

Question 2: Do you agree with this differentiation in the role of a credit institution as liquidity facility provider (based on the provisions of CRD Annex IX, part 4, paragraph 2.4.1, point 13)?

The liquidity facility provider is added as a participant in a securitisation transaction in the table on page 10. He should be subject to specific requirements of Article 122a. According to point 7, this would always be the case if the liquidity facility does not meet the criteria for eligible liquidity facilities set forth in the Directive 2006/48/EC, Annex IX, Part 4, Para. 2.4.1, point 13. We reject this reference to the definition of eligible liquidity facilities as being too narrow. In our opinion, the application of Article 122a should be based on whether a liquidity facility bears any credit risk of one or more securitisation positions or not. Liquidity facility providers, which are treated as sponsors, should be subject to the requirements for sponsors and thus should not have to apply Para. 1. Liquidity

facility providers, whose liquidity facilities cover any credit risk of securitisation positions, and which are not sponsors of the securitisation transaction, should be treated as investors. They should apply Paragraphs 1, 4 and 5 accordingly. Liquidity facility providers, whose liquidity facilities do not bear any credit risks and which are not sponsors of securitisation transaction, should not have to apply Article 122a.

Question 3: Do you agree with this differentiation in the role of a credit institution as hedge counterparty, and what issues might arise when credit institutions seek to determine whether their role as hedge counterparty results in the assumption of credit risk or not?

We agree with the differentiation of institutions, which assume the role of a hedge counterparty. However, it is not clear to us how the exposure value shall be defined with regard to swaps if a financial institution wants to recognise a swap as retention. We are of the opinion that focusing on the nominal value is not appropriate in this case. Here we would like to make reference to our comments relating question 6 and point 25.

Moreover, it is necessary to clarify that the interest rate swaps and currency swaps do not represent an “exposure to credit risk”, since they only cover market risks.

PARAGRAPH 1

Question 4: Does this guidance adequately address means of fulfilling the retention requirement in the case of securitisations of exposures from multiple originators, sponsors, or original lenders? And if not, what suggestions do you have for additional clarity?

According to point 10, the sanctions cited in Article 122a Para. 5 of Directive 2006/48/EC in the event of a violation of Paragraphs 4, 5 and 7 should apply even in case of a violation of the investment ban in Para. 1. This is established with the reference made to Para. 1 in Para. 4 (a).

In our opinion, applying sanction mechanisms to institutions that fail to comply with Para. 1 is not possible. Para. 1 prohibits the entering into a securitisation position if the originator, sponsor or original lender has not disclosed that it will constantly maintain a sufficient retention. Para. 4 (a), on the other hand, pertains only to the investor, which must know the information disclosed under Para. 1. The citation of Para. 1 in Para. 4 (a) should only be construed as to define the burden of proof.

Moreover, it is unclear from the guidelines who is responsible for the retention if one institution transfers its receivables synthetically to an other institution, that securitises the receivables. Clarification should be provided in this case.

In point 14 CEBS points out that based on the definition of a securitisation position it is important that the credit risk of a pool of receivables is transferred. That is beyond dispute. The explanation for distinguishing between different cases that follows this statement is incomprehensible, however. Securitisations are defined sufficiently in the directive; we would like to object an extension to transactions without any transfer of risks to a third party. The comprehensive requirements would have to be complied with in this case even if due to a tranching a securitisation transaction would result from an intra-group transaction which does not provide the institution, either on an individual level or on a group level, a reduction in capital requirements and where neither a third party investor nor refinancing transactions such as repos or similar are envisaged. The resulting costs would be completely disproportionate.

Question 5: Do you agree that the form of retention should not be able to be changed during the life of the transaction, except under exceptional circumstances only, or alternatively should some additional flexibility be granted? Please provide evidence of exceptional circumstances which would justify a change in the form of retention.

Point 23 does not allow a change in the selected form of the retention during the term of a securitisation transaction except for extraordinary circumstances. In our opinion, institutions must be given a larger scope of flexibility for determining the form of retention. Such a change in the form of retention should be especially possible if an adaptation or restructuring of the conduit has taken place, e.g., because the underlying conditions have changed due to legal changes or judgments concerning accounting. Moreover, a change between the forms of retention should be, in our opinion, permissible, if a sufficiently large amount is accumulated on a reserve account during the course of a transaction such that this is sufficient as retention. According to point 45, funded reserve accounts alone are eligible for recognition as retention. Finally, a change should also be possible if conduits are combined as part of a merger, the business policies of the sponsor bank have changed or the investor preferences or market practices have changed.

A change into a different acceptable form of retention during the term should only be permissible if this is accurately disclosed to the investors prior to the investment or if the change is in line with what has been contractually agreed. If this is not the case, the inves-

tors should be given the opportunity to cancel the securitisation prior to a change of the form of retention.

According to point 22, violations in the originator's, sponsor's or original lender's obligations should be taken into account in advance for other securitisation transactions and thus may lead to higher risk weights. This would mean that investors should be penalised with higher risk weights for their investments in the event of non-fulfilment of the obligations assured by the originator, sponsor or original lender (retention or disclosure) if such a violation of obligation should have been recognised during the due diligence process.

We are of the opinion that this interpretation goes too far. Investors should only be obligated to accept a higher risk weight in case of demonstrably deficient or incomplete examination. A subsequent assessment as to whether something should have been noticeable is in our opinion fairly subjective and thus arbitrary.

Question 6: Should the definition of "net economic interest" in terms of "nominal" exposure be interpreted to mean that both excess spread tranches (i.e. where only residual interest cashflows are sold) and interest-only tranches (i.e. where all interest cashflows are sold) be excluded from the various means of fulfilling the retention requirement (as both have notional rather than nominal values), or should either be a valid means of fulfilling the retention requirement? If the retention requirement were allowed to be fulfilled by retention of a tranche with no principal component (for instance, an excess spread tranche or an interest-only tranche), how would the retention percentage be computed – with reference to the notional value, market value, or otherwise?

According to CEBS, tranches which have no principal component such as "excess spread tranches" or "interest-only tranches" should not be able to be used for fulfilling the retention requirements. That is not appropriate in our opinion. "Excess spread tranches" and "interest-only tranches" should be eligible for recognition as retention, since the maintenance of these tranches is economically equivalent to a retention of securitisation positions with a nominal value.

Linking the amount of the retention with nominal values in point 25 is appropriate if securitisation tranches or exposures or credit lines are involved. In our opinion, the nominal value does not form the appropriate assessment basis for the retention for derivatives, however. A similar problem for determining the retention exists in the case of securitisations, where the underlying portfolio consists of derivatives. We ask that an appropriate exposure value be determined.

It also remains unclear what exposure value shall be applied for contingent liabilities such as letters of credit.

Question 7: Where Paragraph 1 indicates that a credit institution must ensure that retention has been "explicitly disclosed", is the guidance above sufficient? In particular, will the market evolve such that credit institutions would expect such disclosure by market participants to be of a binding nature, and therefore provide some means of enforcement or redress to them, or should such a requirement be part of the CEBS guidance? Feedback is welcome on the most effective means to assure that the commitment of the originator, sponsor or original lender is enforceable by credit institutions that invest. This is an area which CEBS is likely to pay particular attention to in as part of keeping these guidelines up to date and in annual reviews of compliance.

We consider the statements in point 27 for adequate. The investors must be able to rely on the contents of the information disclosed regarding retention, unless they have positive proof that the content is inaccurate.

Many institutions publish the amount of the retention in regularly published investor reports that are available to investors and other market participants. In addition, we are of the opinion that a market standard will evolve for the disclosure of the retention.

Question 8: Does this guidance address properly the subject of hedging of retained exposures? What specific types of hedge should be permitted? CEBS would welcome evidence and examples from respondents.

Point 31 lists the forms of hedges that should be acceptable. In our opinion, CEBS should only prepare a conclusive list of hedges that are not permitted ('negative list'). In doing so, the importance of hedges within the framework of bank-wide risk management should be given adequate recognition.

Moreover, we would like to point out that the ban set forth in point 30 on direct hedges of credit risks of securitisation positions and securitised positions could be difficult to implement in practice. For instance, many institutions have set up a clear delimitation (Chinese Walls) between banking book and trading book for risk management purposes in order to prevent any possible conflicts of interest. This segregation between banking book and trading book can complicate the identification of existing hedge interrelations in the future, however. Furthermore, subsidiaries of internationally active institutions are constantly accepting new positions worldwide, where it is not possible to directly check

whether they could be regarded as hedge of a securitisation position or securitised position. That's why we request an appropriate interpretation of point 30.

If CEBS wants to adhere to the concept of a combined 'negative list' and 'positive list', it should be made clear at least that hedges on other market risks (such as foreign exchange risks or interest rate risks) that are the result of the retention are permitted.

Question 9: Should retention of 5% of each securitised exposure fulfil the requirements of Paragraph 1 under option (a)?

Yes, this interpretation is adequate. It also provides banks with the opportunity to recognise purchase price discounts agreed within the framework of ABCP programs as retention of the original lender or the originator. However, based on the existing market practices, a purchase price discount may not be enforceable in most cases to the extent of 10% that is necessary due to the stricter national implementation in Germany.

In our opinion, it is thus extremely important that the guidelines should specify clearly that liquidity facilities that are provided as part of ABCP programs and which effectively cover the credit risk of issued ABCPs are recognised as retention within the meaning of a 'vertical slice retention'.

In this context, it is worth mentioning that the protection of an ABCP program is already in place before the papers are issued. Consequently, we are of the opinion that point 33, according to which a securitisation position, which was recreated synthetically after sale (e.g. by credit default swaps, sureties or provided guarantees), may not serve as retention, does not contradict a recognition of the aforementioned liquidity facilities as retention.

If liquidity facilities that effectively cover credit risk of issued ABCPs, would not be recognised as retention, in light of the ban called for in point 26 regarding the combination of acceptable forms of retention this may lead to significant difficulties for the application of Para. 1 of Article 122a to ABCP programs of trade receivables . That would have significant negative effects on SME financing.

We are also of the opinion that point 33 should be omitted. Article 122a aims at ensuring that originators, sponsors or original lenders participate in the risk of securitisation (so called skin in the game). Funding aspects are in our opinion insignificant. Moreover, maintaining the ban gives rise to the question as to how the form of the retention in a) could be applied to synthetic securitisations.

Question 10: Should option (b) be applicable equally to both securitisations of revolving exposures and revolving securitisations of non-revolving exposures (or revolving securitisations with a combination of revolving and non-revolving exposures) in fulfilling the requirements of Paragraph 1?

In reference to our comments concerning question 5, we welcome every effort toward flexibility in terms of the acceptable forms of retention. Nonetheless, the area of application of form (b) of the retention is not entirely clear to us. Thus, we ask for clarification of what the concept 'revolving exposure' entails.

Question 11: Do you agree with this interpretation of the phrase "there shall be no multiple applications of the retention requirement" to mean that there shall be no requirement for multiple application either by individual parties or at the level of individual SPVs, but that there may be multiple application at the overall transaction level (for instance, where a transaction is the resecuritisation of existing securitisations), and does the above lead to an effective and proportionate alignment of interest for resecuritisations?

It should be made clear that multi-level securitisation structures that are chosen because the securitisation legislation of individual countries (e.g. "Law 130" in Italy or "FTC" in France) or the financing structures (e.g. co-funding structures, where two separate conduits of two banks jointly fund a preceding SPV) make it necessary, are not qualified as re-securitisations. In any case, such structures should be excluded from the multiple application of the retention.

According to point 40, the random selection of positions to be retained for use of the form of retention in (c) may not lead to excessive concentrations in the portion to be retained nor in the securitised portion of the overall portfolio. In case randomly determining the positions to be retained, we are of the opinion that these should have the same attributes as the securitised positions. "Overly concentrated" cannot be construed to imply that there is a concentration, e.g., on a country or in case of CMBS on the business segment "shopping center" due to a conscious orientation of the securitisation transaction. We kindly ask for corresponding clarification in this regard.

CEBS do not intend to draw up a conclusive list of securitisation positions that may apply as 'first loss tranche' (point 44). In our opinion, guarantees (in the wider sense) and credit protection should be recognised as retention if these are part of the structure, are assumed by one of the accepted parties, include the hedging of credit risk and allow for a near-current payment of the guarantor or the insurer in case of default.

Question 12: Does this interpretation of the phrase "net economic interest shall be determined by the notional value for off-balance sheet items" raise any potential issues with respect to application of the retention requirement?

The calculation of the "net economic interests" for off-balance-sheet assets should be explained with an example.

Question 13: Given that Paragraph 1 specifies that "retained positions, interest or exposures are not hedged or sold", to what extent will it be possible for an originator, sponsor or original lender to use such retained interest for secured funding purposes without having "sold" such retained interest, for instance in cases where such funding is sought under a TBMA/ISMA Global Master Repurchase Agreement (GMRA) or alternatively under a bespoke repo agreement?

According to point 52 originators, sponsors or original lenders who are holding the retention, are not permitted to use these positions as collateral within the framework of a repurchase agreement. That is in our opinion inappropriate, since the economic credit risk remains with the party which sold the securities during the course of such a transaction.

PARAGRAPH 4

Question 14: Is further clarification needed on the ability to differentiate between the trading book and the non-trading book?

The banks should generally apply the same polices and procedures for securitisation positions in the trading book and in the banking book. Differences in the intensity of the due diligence should only be justified if this is justified as a result of the different risk profile. In this respect, the "minimum requirements" set forth in a) to g) should not be fallen short of, however. In our opinion, the statements relating in particular to the investors' analysis requirements in the trading book are too vague.

According to point 57, the requirements of Para. 4 should be checked prior to investing in a securitisation position and under certain circumstances, e.g. in case of a material change in their performance, during their term. We would kindly ask to explain that the event-related reassessment relates to changes in the risk profile of the respective tranche. A reassessment should, in our opinion, not be necessary for a new issuance of the same tranche, as long as its risk profile has not changed. In case of ABCP programs, new commercial papers of the same tranche are sometimes bought every 120 days.

With regard to the risk characteristics of the underlying exposures, CEBS makes reference to the characteristics cited in Para. 5 clause 2 (point 66). We welcome this clarification. In our opinion, information concerning the underlying exposures which does not have to be monitored continuously according to Para. 5, should not have to be analysed as part of the due diligence audit of Para. 4. In addition to that, we assume that the risk characteristics must be analysed in accordance to Para. 4 (like in Para. 5) only to the extent that these are usually present for this type of securitisations. Moreover, clarification should be provided that the risk characteristics of the underlying exposures do not have to be analysed mandatorily for individual loans. This would not be possible in particular for ABCP programs, which are frequently based on a very granular portfolio. In any case the required depth of analysis should not exceed the analysis usually performed by a recognised rating agency. In case of such securitisations, an analysis of the risk characteristics should be permissible both on the transaction level and the program level depending on the form of the retention.

According to point 68, the prerequisites described in Para. 4 should not relate to information, the investigation of which would represent a legal breach for the institution. That seems self-evident. In our opinion, it should be made clear that the originators, sponsors and original lenders do not have to disclose any competition-related information, e.g., with regard to dunning or collection policies.

Question 15: Is the general guidance on securitisation stress testing in the document linked above sufficient, or is further guidance needed on how stress testing should be undertaken for the specific requirements of Article 122a, and if so what topics should such further guidance cover?

With regard to the general requirements on the performance of stress tests, CEBS would like to make reference to its consultative document on stress tests (CP 32), particularly annex II in this context. After completing the corresponding stress test guidelines, reference should be made to these in the guidelines on Article 122a of Directive 2006/48/EC.

In our opinion, the requirements should not go beyond the requirements set forth by the stress test guidelines. The regulations for institution-wide stress tests are already very comprehensive such that further details regarding securitisation positions would most probably result in the requirements being inappropriate on an individual basis depending on the structure of transactions. Instead, the supervisors should observe whether a market standard evolves during the performance of the stress test and intervene later on, if necessary.

We welcome clarification on part of CEBS that banks may utilise models of other service providers for the performance of stress tests besides the models developed by credit rating agencies.

In addition, we would advocate the provision of information that is necessary for performing stress tests only on the portfolio level and not on the level of individual loans. It should not go beyond the information which institutions observe within the framework of ongoing monitoring (Para. 5).

The analysis of risk characteristics of the individual securitisation positions that is called for in Para. 4 should encompass, among other things, the review of historic performance of similar tranches in accordance with point 65. Information for similar tranches that are not held by the institution is in most cases not available to this institution in full. That's why the requirement should relate solely to the tranche held by the institution.

ABCP programs should be exempt from the stress test requirements, since the requirements are not applicable to such programs. For ABCP transactions, investors are not capable of performing stress tests, because the necessary information is not present (trade receivables) or is not available to a sufficient extent. In addition, such ABCPs have a short term. If the credit risk of the outstanding ABCPs is assumed effectively by the sponsor (by a liquidity facility), attention should be placed on the sponsor for practical reasons within the framework of the stress test.

PARAGRAPH 5

Question 16: Do you agree with this method of calculating the additional risk weight?

According to Para. 5 (2), the frequency distribution of the credit scores or other credit assessment parameters should be observed as part of the ongoing monitoring of the performance of securitised exposures, if necessary. In the case of ABCP programs this requirement would lead to problems if the sponsor institution does not have any credit scores at its disposal for the purchased trade exposures or lease demands and the original lender is also unable to provide such information. Many of the trade receivables have a short term, which would not be sufficient for determining a reasonable credit score. It should be made clear that it is possible to waive a monitoring of the credit scores in this case.

According to point 79, the additional risk weights should “not necessarily” be applied to all securitisation positions in the event of failing to fulfil the requirements of Article 122a of Directive 2006/48/EC for one securitisation position. It should be made clear that the increased risk weights do not have to be applied to securitisation positions, where there is no violation.

Question 17: Do you have any comments on this approach to achieving consistent implementation of application of the additional risk weights by competent authorities, including both the level and duration for which additional risk weights are applied? Do you agree that, notwithstanding the textual provisions of Paragraph 5, the cumulative result of applying such additional risk weights should not result in the capital required to be held against a securitisation position exceeding the exposure value of such securitisation position?

The cited additional risk weighting in the point 84 seem absolutely arbitrary. With regard to the proposed concept for defining the risk surcharges, we see the danger of a shift from the principle of risk adequacy, since the scope of the violation is in no way taken into account. Minor and immaterial breaches would involve the same penalty as in-depth process weaknesses. That’s why we are in favour of taking into account the severity of the breach while determining the penalty.

According to CEBS, it should be possible that an additional risk weight does not have to be applied if the requirements are fulfilled again (point 86). CEBS proposes in this context that the time period, in which the additional risk weight must be applied, should typically correspond with the time period, which the bank had violated the requirements. This is not clear. It should be made clear that an additional risk weight may only be imposed until the violation of the provisions of Article 122a of Directive 2006/48/EC has been remedied.

The institutions should notice during the review of its investment decisions that the originator, sponsor or original lender can no longer fulfil the retention requirements under circumstances or deliberately violates them (point 87). In our opinion this is already covered by the requirement set forth in Para. 4 d) Article 122a of Directive 2006/48/EC, which requires, among other things, the analysis of information regarding the reputation of the originator and sponsor based on earlier securitisations. Institutions that breach these requirements should be subject to an additional risk weight of 250%. Any further penalties are superfluous.

If a supervisory authority determines that an institution has not introduced any suitable formal procedures and regulations for performing its due diligence and has thus violated the due diligence requirements repeatedly, the regulatory authority should double the additional risk weights according point 88 and should apply to all the institution's securitisation positions for at least 12 months. We assume that such a scenario can be prevented in advance by suitable monitoring processes of the supervisory authority. Notwithstanding that, this passage should be omitted. Such an extreme breach of the standards would be covered in our opinion by way of the supervisory review process. According to existing regulations, the supervisory authority would have diverse and far-reaching possibilities of intervention. The aforementioned proposal leaves open what should happen as a result of the penalty in case of falling below the minimum capital ratio such that the national supervisory authority is responsible in the end for imposing suitable measures. In our opinion an individual decision of the national supervisory regulatory authority would be justified in such case.

We reject the publication of violations against qualitative requirements for positions with an original risk weight of 1250% as required in point 89, since it is not covered by the Directive 2006/48/EC. In addition, this risk weighting already implies a complete deduction from equity for this position. That's why, in our opinion, many requirements of Para. 4 and 5 no longer have to be applied to these positions, for instance the performance of stress tests, since further deterioration can no longer occur from a regulatory perspective. What is more, it is not feasible to apply many of the requirements to these positions, especially those relating to stress tests.

We expressly welcome that the entire capital requirements should be limited to the exposure value of the position (point 81). This is correct, since the exposure value of the position represents the maximum possible loss of a position. Higher rates would thus be absurd. The supervisory authority could impose any more stringent measures that may be necessary individually as part of the supervisory review process.

PARAGRAPH 6

Question 18: If a credit institution is involved as sponsor in the securitisation of exposures on behalf of third parties in an asset class or business line in which such sponsor is not itself active in extending credit, is the guidance provided above a sufficiently high standard to hold such sponsor to?

Please supplement point 93 by adding examples.

From the point of view of CEBS, an institution, which securitises loans that were issued by a different originator or an original lender, can use the sound and clearly defined criteria necessarily with less information. The originators or sponsors in question should do their utmost in accordance with point 94 to obtain all the necessary information. We agree with this position. According to point 95 it should be sufficient for one sponsor, which itself does not have any criteria for credit-granting for the securitised loans, since it typically does not grant such loans, when it acquires knowledge about the criteria applied by the originator or the original lender. This leads us to conclude that according to CEBS this exemption regulation does not apply to sponsors which grant such loans on their own and thus have their own rating systems. Since the sponsor does not hold or has not generated the individual exposures of the portfolio on its own book in the aforementioned situation, it is not able to check every individual exposure that is to be securitised in accordance with its criteria for credit-granting. A review based on the bank's own criteria for credit-granting would imply that every exposure must be valued using the bank's own rating systems. Based on the large number of receivables (e.g. private car loan securitisations with a minimum granularity of 100,000 debtors), such a procedure would neither be practical nor reasonable. Moreover, the application of bank-internal credit processes would noticeably complicate and further increase the costs of securitisation transactions for customers (especially SMEs in Germany). The relief described in point 95 should thus be allowed to be implemented by all sponsors.

In addition, we would like to point out that the demand for uniform criteria for credit-granting for securitised and un-securitised exposures involving the ABCP programs may not be interpreted as convergence of these criteria for credit-granting. The companies define their own loan-granting standards, which may deviate from those of the sponsor. It is important that the sponsor checks the suitability of the loan-granting criteria of the relevant companies.

Question 19: Is this interpretation or the requirement with respect to "participations and underwritings in securitisation issues" clear and unambiguous, or are there alternative interpretations possible or clarifications necessary?

In addition to point 96, we require further clarification as to which requirements must be applied by the institutions to participating in or underwriting a securitisation position that is acquired by third parties (so-called "participations or underwritings"). According to the German regulations, an institution, which participates in a securitisation tranche or underwrites a securitisation tranche, is classified as investor. The third clause of Article 122a

Para. 6 describes the role of an investor. However, the first two clauses of Para. 6 relate to originators and sponsors. We kindly ask for more extensive explanations.

PARAGRAPH 7

Question 20: Would disclosure templates that currently exist or are in the process of being prepared by trade associations, industry bodies, central banks, market participants or others fulfil these requirements on an adequate basis?

We would in general welcome standardised “disclosure templates”. Nonetheless, these should be established by the market and not by the regulatory authorities.

Question 21: Would disclosure templates that currently exist or are in the process of being prepared by trade associations, industry bodies, central banks, market participants or others fulfil these requirements on an adequate basis?

Similar to our response to question 20, the market should be responsible for establishing the corresponding standard and not the regulatory authorities. Since institutions strive to achieve greater market transparency, it is likely that this will be implemented in practice.

PARAGRAPH 8

Question 22: Would such implementation without a materiality threshold create complications or be overly burdensome?

The request that no new underlying exposures may be added or substituted after December 31, 2014 should be applied without a *de minimis* regulation according to CEBS (point 107). Correspondingly, the addition or substitution of only one exposure after the aforementioned date would result in the fact that this transaction would be subject to the regulations of Article 122a of Directive 2006/48/EC. In our opinion, a suitable materiality threshold should be introduced in this regard. In addition, such instances, where there is an exchange of exposures based on the information of the trustee, the issuing conditions or similar (e.g. if an exposure that is transferred to the portfolio does not fulfil the selection criteria during a subsequent review and thus must be substituted) should be excluded.

Moreover, the explanation in point 106 is wrong in our opinion. Para. 8 of the EU Directive envisages that the regulation applies to all transactions, which were concluded after Jan. 1, 2011 (thus regardless of whether a substitution of exposures has occurred or not).

As of December 31, 2014, an application is envisaged for existing securitisations if exposures are substituted or added after this date. Since an application of the regulations is in any case mandatory for new transactions as of January 1, 2011, we assume that “existing” only implies securitisations that *existed prior to* January 1, 2011 and not securitisations, as explained in the draft, which existed on or after January 1, 2011. The draft should be reworded accordingly.

If an institution invests into a securitisation position prior to January 1, 2011, for which the originator, sponsor or original lender did not disclose that it wants to fulfil the retention requirements, even though exposures should be substituted or added after December 31, 2014, then an increased risk weight should be applied after December 31, 2014 (point 109). This regulation concerns the investor (reference to Para. 5) and is acceptable for transactions that are structured and marketed after the standard takes effect. The application to transactions which existed prior to the publication of the standard and will continue to apply after 2014 is unacceptable. In such case the investor would be penalised for a circumstance that was not foreseeable at the time of entering into the transaction. Without the collaboration of sponsors, originators or original debtors this could be prevented only by selling the position, where losses could possibly be realised. Only unregulated companies would be eligible as buyers. And even in this case, investors should be subject to point 87.

We are, of course, at your disposal to answer any questions.

Best regards,

On behalf of
ZENTRALER KREDITAUSSCHUSS

i.A. Silvio Andrae

i.A. Hartmut Kämpfer