European Association of Public Banks
– European Association of Public Banks and Funding Agencies AISBL –

CEBS

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EAPB comments on CEBS' consultation paper "Guidelines to Article 122a of the Capital Requirements Directive"

The EAPB welcomes the opportunity to participate in the CEBS consultation on guidelines to Article 122a of the Capital Requirements Directive.

General comments

In principle, the EAPB welcomes the intention of CEBS to develop implementation guidelines for the new Article 122a Directive 2006/48/EC, which can be applied to all types of securitisation transactions and every asset class. The remaining scope of discretion can be appropriately developed by national authorities, taking the existing national securitisation structures into account.

In our opinion, however, some of the guidelines suggested by CEBS will be difficult to implement, as these have many distinctive characteristics which differ from "classic" securitisations. Numerous problems would result from a transfer of the CEBS guidelines to ABCP programmes, which we will discuss in specific passages below. To secure financing and the provision of liquidity in the future, in particular for medium-sized companies, it is particularly important to find an appropriate interpretation of the requirements in Article 122a on ABCP conduits which securitise trade and leasing exposures of enterprises.

In this context we refer to recital 25 of the Directive. According to this recital, purchased exposures which arise from corporate activity and sold at a discount to finance this activity should not be subject to the retention requirement. According to reports, some supervisory authorities in the EU are of the opinion that this consideration excludes only the factoring transactions from the obligatory retention. We do not agree with this interpretation, as Article 122a should be applied to securitisations rather than factoring transactions. Creating

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an exception for a transaction which was not affected by the requirement in the first place would be pointless.

It should therefore be clarified that the exception from the retention requirements also applies to ABCP conduits with which the aforementioned corporate exposures are securitised. In our view, ABCP conduits are an instrument for corporate finance and do not involve conflicts of interest between originators and investors due to special transaction specifics. ABCP conduits therefore differ significantly from the securitisation of bank loans.

In general, when developing the guidelines it should be ensured that institutions are not prevented from making investments in securitisations of exposures to small and medium-sized companies due to the qualitative and quantitative requirements. This could lead to significant negative effects for the financing of medium-sized companies.

In the submitted guidelines, CEBS does not differentiate between the securitisation of granular and non-granular portfolios. Many of the qualitative requirements in paragraph 4 and the disclosure requirements of paragraph 7, Article 122a make the fundamental assumption that the underlying portfolio needs to be analysed and disclosed at the individual credit level. However, as granular portfolios often include more than 100,000 individual positions, we do not consider the analysis of each individual position or the publication of information about each individual position to be viable. At the very least, this would be associated with huge costs which are not in reasonable proportion to the supervisory benefits of this information. We therefore suggest that, in the case of highly granular portfolios, paragraphs 4, 5, 6 and 7 should be amended to involve the consideration of the entire portfolio.

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Special comments

General comments on Paragraphs 1 to 7

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)?

We fundamentally agree with the suggested differentiation of the requirements of article 122a for the various roles which institutions can assume within the scope of securitisations. The distinction made in the table is a good starting point, but this may need to be amended in the future due to market developments.

It is not clear from the table or subsections 3 to 10 that a credit institution can only take a supervisory role in each securitisation transaction and therefore only needs to fulfil the requirements for this role. An institution can be an originator, sponsor or investor. For example, if an institution acts as a "hedge counterparty" in a corporate finance ABCP programme, it is an investor in supervisory terms. However, if it simultaneously acts as a sponsor of this ABCP programme, it is a sponsor in supervisory terms and is no longer considered an investor in the programme. Consequently, the institution would have to apply the requirements of Article 122a for sponsors rather than investors. We request that this be clarified.

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)?

In the table on page 10, the "liquidity facility provider" is described as a participant in a securitisation transaction. This participant is subject to specific requirements of Article 122a. According to subsection 7, this will always be the case if the liquidity facility does not fulfil the criteria for qualified liquidity facilities in Directive 2006/48/EC, Annex IX, part 4, paragraph 2.4.1, subsection 13. We reject this reference to the definition of qualified liquidity facilities due to its excessive narrowness. In our opinion, the application of Article 122a should be based on whether or not a liquidity facility bears the risks of one or more security positions. "Liquidity facility providers" which are sponsors should be subject to the requirements for sponsors. "Liquidity facility providers" whose liquidity lines cover credit risks of securitisation positions and who are not the sponsors of the securitisation transactions should be treated like investors. They should correspondingly apply paragraphs

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1, 4 and 5. "Liquidity facility providers" whose liquidity lines do not involve credit risks and who are not sponsors of the securitisation transaction should not need 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 statements in subsection 8. However, it is not clear to us how the measurement basis for swaps is to be defined if a credit institution wants to recognise a swap provided as retention. In our opinion, a reduction to the nominal value in this case would not be appropriate. At this point we would also ask you to refer to our comments for Question 6 and subsection 25.

It should furthermore be clarified that interest and currency swaps are not an "exposure to credit risk". These are usually linked to the nominal profile of the portfolio. If this changes due to shortfalls in the securities portfolio, this can have positive or negative effects on the market value, depending on the structure of the swap and the market situation.

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 subsection 10, the sanctions listed in Art. 122a paragraph 5 Directive 2006/48/EC in the case of a breach of paragraphs 4, 5 and 7 also apply in the case of a breach of the ban on investment in paragraph 1. This is justified by referring to paragraph 1 in paragraph 4 lit. (a).

In our opinion, such a transfer of the sanction mechanisms to credit institutions which breach paragraph 1 is not possible. Paragraph 1 prohibits the acceptance of a securitisation position if the originator, sponsor or original credit provider has not disclosed that they will keep sufficient retention available at all times. Paragraph 4 lit. (a), on the other hand, refers only to the investor. They need to know the information disclosed according to paragraph 1. The sole purpose of mentioning paragraph 1 in paragraph 4 lit. (a) is therefore to define the obligation to provide evidence.

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It is also unclear who the originator would be if a small bank transferred its receivables synthetically to a controlling institution (Federal State Bank, Central Bank). This should be clarified.

In subsection 14, CEBS draws attention to the fact that the definition of a security position is mainly based on the fact that the credit risk of a receivables pool is being transferred. This is not disputed. However, the distinction of cases following this declaration is, however, incomprehensible. Securities are sufficiently defined in the Directive and an extension to include transactions with no transfer of risk to third parties should be rejected. The comprehensive requirements would also need to be adhered to in this case if, for instance, the bank were granted a reduction in capital requirements for a purely internal company transaction – either at an individual or group level – and where neither a third party investor nor refinancing transactions such as repos, among other things, are planned due to an allocation of a securitisation transaction. 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.

According to subsection 22, breaches of the originators', sponsors' or original credit providers' obligations relating to other securitisation transactions should be taken into account in advance and can therefore lead to higher risk weights. As a result, investors would be punished with the imposition of higher risk weights for their investments if the obligations assured by the originator, sponsor or original credit providers (retention or disclosure) are not fulfilled, as long as such breaches of obligations should have been identified within the scope of due diligence.

In our opinion, this interpretation goes too far. Investors should only be required to accept a higher risk weight if the assessment is verifiably incorrect or incomplete. We consider a retroactive assessment to determine whether something should have been identifiable to be subjective and therefore arbitrary.

With the exception of extraordinary circumstances, subsection 23 prohibits changes to the selected form of retention for the duration of the securitisation transaction. In our opinion, the banks should be given more flexibility when establishing the form of retention. Changing to another permissible form of retention during its life should be permissible if this is

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disclosed in detail to the investors before the investment. If this is not the case, the investors should be informed of the opportunity to cancel the security before a change to the retention.

This type of change to the form of retention should in particular be allowed if the conduit is adjusted or restructured, e.g. because the framework conditions have changed due to legal amendments or accounting decisions. Furthermore, we believe that a change between the forms of retention should be possible if a sufficiently large amount has been accumulated in a reserve account during the course of a transaction, so that this is a sufficient retention. According to subsection 45, only completely funded retention accounts can be recognised as retentions. Last but not least, a change should also be possible if conduits are combined within the scope of a merger, if the business policies of the sponsoring bank have changed or if the investor preferences or market uses have altered.

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, it should not be permitted for tranches with no outstanding loan amounts (which have no principal component) such as "excess spread" or "interest-only tranches" to be used to fulfil the retention requirements. In our opinion, this is not appropriate. It should be possible to recognise "excess spread" and "interest-only tranches" as retentions because in economic terms, holding these tranches is equal to retaining securitisation positions with nominal value.

The connection of the retention level to "nominal values" in subsection 25 is reasonable in the case of securitisation tranches or receivables and lines of credit. However, in our opinion the nominal value is not a suitable measurement basis for retention in the case of derivatives, such as currency and interest derivatives, and swaps. A similar problem exists when determining the retention for securities where the underlying portfolio consists of derivatives. Please establish an appropriate basis for valuation.

It is also unclear which assessment basis is to be used for possible liabilities such as letters of credit or liquidity facilities.

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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 as part of keeping these guidelines up to date and in annual reviews of compliance.

We consider the explanations in subsection 27 to be sufficient. Many institutions will publish the retention level in the regular investor reports, which are accessible to investors and other market participants. We are also of the opinion that a market standard will become established for publication 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.

Those forms of hedges which are permissible are to be listed in subsection 31. In our opinion, CEBS should only provide a conclusive list of hedges which are not permitted. The significance of hedges within the scope of the overall bank management system should be sufficiently acknowledged.

Furthermore, we would like to draw attention to the fact that the prohibition of direct hedges for securitisation position credit risks and for securitised positions as required in subsection 30 may be difficult to implement in practice. For example, many institutions have established a clear distinction (Chinese walls) between their investment and trade books for the purpose of risk management in order to prevent possible conflicts of interest. This separation of investment and trade books could, however, make it more difficult to identify existing connections between securitisations in the future. Furthermore, subsidiaries of internationally active institutions are constantly entering new positions around the world, where is not possible to directly check whether they are to be regarded as a securitisation or securitised position hedge. We therefore request an appropriate interpretation of subsection 30.

Insofar as CEBS intends to maintain the concept of a combined "negative" and "positive" list, it should at the very least also be clarified that hedges against other market risks (such as foreign currency or interest risks) which result from the retention are permitted.

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

The EAPB considers this interpretation as adequate. It also provides the banks with the option of recognising purchase price deductions agreed within the scope of ABCP programmes as the original credit provider's or originator's retention . Due to the existing market uses, however, a purchase price reduction of ten percent, which would be required in Germany due to stricter national implementation, would not be feasible in the majority of cases.

In our opinion, it is therefore of extreme importance that it be clarified in the guidelines that lines of liquidity provided within the scope of ABCP programmes, which effectively cover the credit risk of the issued ABCP, are recognised as retention in the sense of a "vertical slice retention".

In this context it is worth noting that the associated hedging of the ABCP already existed before the issue of the securities. In our opinion, subsection 33, according to which a risk share in a security which was repurchased synthetically after the sale (e.g. through credit default swaps, sureties or issued guarantees) must not be regarded as retention, does not preclude a recognition of the abovementioned lines of liquidity as retention.

If lines of liquidity which effectively cover the credit risk of the issued ABCP were not recognised as retention, this would result in major problems when applying Paragraph 1 of Article 122a to ABCP conduits of trading platforms in light of the prohibition of a combination of the permissible forms of retention as required in subsection 26. This would have significant negative effects on small and medium-sized company financing.

We are furthermore of the opinion that subsection 33 should be deleted. Article 122a aims to involve originators, sponsors or original credit providers in the risk of the securitisation (so-called skin in the game). In our opinion, funding aspects are irrelevant. Furthermore, the maintenance of the prohibition would also give rise to the question of how the form of retention could be applied to a) 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?

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With reference to our comments regarding Question 5, we welcome all efforts to make the permissible forms of retention more flexible. However, we are not completely clear about the scope of application for form (b) of the retention. We therefore request a clarification of the term "revolving exposure".

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?

According to subsection 40, the random selection of the positions to be retained when using the form of retention in (c) does not lead to higher concentrations in the portion to be retained or in the securitised portion. In our opinion, the random selection of the positions to be retained should have the same characteristics as the securitised positions. "Overly concentrated" can therefore not mean that a concentration exists due to a deliberate orientation of the securitisation transaction, e.g. to one country or in the case of CMBS to the business area "shopping centre". We request that this be clarified.

CEBS does not want to provide a conclusive list of securitisation positions which could act as a "first loss tranche" (subsection 44). In our opinion, guarantees (in the wider sense) and credit insurance should also be recognised as retention if these are already a part of the structure, are taken over by the reliable parties, include the hedging of the credit risk and require the quick payout of guarantees or insurance in the event of a shortfall. Only a subsequent synthetic takeover of the retention by the originator, sponsor or original credit provider in the form of an additional guarantee to, among other things, avoid a liquidity-freezing retention , should not be permitted.

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 items should be explained using an example.

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PARAGRAPH 4

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

In principle, the banks should use the same policies and procedures for securitisation positions for the trading and non-trading books. Differences between the intensity of the assessment should only be justified if justified due to the different risk profile. However, the "minimum requirements" in letters a) to g) should always be fulfilled. In our opinion, these instructions are too vague, particularly with regard to the analysis requirements for investors in the trade book. For example, it should be clarified that when trading within the flat rate limit, not all analyses need to be made before the acquisition of a position at the individual credit level. Otherwise, trade with securitisation positions would no longer be possible, in our opinion.

According to subsection 57, the requirements of paragraph 4 should be reviewed before investment in a securitisation position and under certain circumstances, e.g. in the event of a significant change in their performance, even during their life. We request a clarification of whether event-driven new evaluation also relates to changes to the risk profile of the affected tranche. In fact, we do not consider a new evaluation to be necessary for a new emission in the same tranche, as long as its risk profile has not changed. In the case of ABCP programmes, new commercial papers from the same tranche are sometimes purchased every 120 days.

With regard to the risk characteristics of the receivables underlying the transaction, CEBS wishes to draw attention to the characteristics listed in paragraph 5 clause 2 (subsection 66). We welcome this clarification. In our opinion, within the scope of the due diligence assessment referred to in paragraph 4, it should not be necessary to analyse any information about the receivables underlying the securitisation which does not also have to be constantly monitored in accordance with paragraph 5. We furthermore assume that the risk characteristics according to paragraph 4 (as in paragraph 5) only need to be analysed to the extent that such analyses are normally provided for securitisations of this type. It should also be clarified that it is not compulsory to analyse risk characteristics of the underlying receivables at individual credit level. This would not be possible in the case of ABCP securitisations in particular, as they are usually based on a very granular portfolio. An analysis of the risk characteristics which is independent from the form of the retention, both at the transaction and programme level, should be permissible for these securitisations.

According to subsection 68, the requirements in paragraph 4 do not refer to information which would represent a breach of law. This seems to be obvious. In our opinion, it should also be clarified that the originators, sponsors and original borrowers do not need to

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disclose any information relevant to competition which relates to the warning 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 for undertaking stress tests, CEBS makes reference to its consultation paper on stress tests (CP 32), here in particular to Annex II. After completing the corresponding guidelines on stress tests, reference should be made to these in the guidelines for Art. 122a Directive 2006/48/EC. In our opinion, no further guidance should be provided in addition to the guidelines on stress tests. As the regulations for stress tests applicable to all banks are already very comprehensive, further details for securitisation positions would probably result in requirements which are not suitable for individual cases, depending on the transaction structure. The supervisors should instead observe whether a market standard emerges during the execution of the stress test and intervene at a later stage.

We would also like to suggest that the information required to undertake the stress tests only need to be prepared at the portfolio level and not at the individual credit level. This should not involve more information than that monitored by the bank within the scope of ongoing supervision (paragraph 5).

The analysis of the risk characteristics for individual securitisation positions required in paragraph 4 should involve according to sub-section 65, an examination of the historical performance of similar tranches, among other things. Information about similar tranches not in the possession of the bank is usually not fully available to the bank. The requirements should therefore relate only to the tranche held.

PARAGRAPH 5

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

According to paragraph 5 clause 2, the frequency distribution of the scoring values or other creditworthiness measures should, if necessary, be observed within the scope of ongoing monitoring of the performance of the securitised receivables. This would also lead to problems in the case of ABCP conduits, e.g. if the bank has no scoring values for the acquired trade or leasing receivables and these cannot be provided by the "original credit

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provider" either. Many of the trade receivables have a short life, which would not provide enough time to obtain an appropriate score value. It should be clarified that the monitoring of the scoring values could be dispensed with in such cases.

According to subsection 79, it should "not be obligatory" to apply the additional risk weights to all securitisation positions in the event of non-fulfilment of the requirements in Art. 122a Directive 2006/48.EC for one securitisation position. It should be clarified that no increased risk weights positions need to be applied to securitisation positions where no breach exists.

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 additional risk premiums referred to in subsection 84 appear to be completely arbitrary. We believe that the suggested concept to establish risk premiums is particularly associated with the risk of a deviation from the principle of risk adequacy, as the scope of the breach is not taken into consideration in any way. Minor and insignificant breaches would incur the same penalty as serious process weaknesses. We therefore suggest that the severity of the breach should be considered when deciding upon the penalty.

In the opinion of CEBS, it should be possible to no longer apply an additional risk weight once the requirements are again fulfilled (subsection 86). In connection with this, CEBS suggests that the period when the additional risk weight needs to be applied should typically correspond to the period during which the bank has breached the requirements. This is not clear. It should be clarified that an additional risk weight may only be imposed until the breach of the conditions in Art. 122a Directive 2006/48/EC has been dealt with.

When reviewing their investment decisions, the banks should be aware that, under certain circumstances, the originator, sponsor or original credit provider may no longer be able to fulfil the retention exposures or may deliberately breach them (subsection 87). In our opinion, this is already covered by the requirements in paragraph 4 lit. d Art. 122a Directive 2006/48/EC which, among other things, requires the analysis of information about the reputation of the originator and sponsor from previous securitisations. Banks which breach these requirements should be charged an additional risk weight of 250 percent. Additional penalties are excessive.

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If a supervisory authority establishes that an institution has not introduced any appropriate official procedures and rules for the execution of its "due diligence" and consequently repeatedly breaches the due diligence requirements, the supervisory authority should double the additional risk weights according to subsection 88 and apply these weights to all of the institution's securitisation positions for at least 12 months. For the time being, we assume that such a scenario can be prevented in advance through appropriate monitoring processes by the supervisory authorities. Nevertheless, this passage should be deleted. In our opinion, such an extreme breach of the standards would already be covered by the SRP. The supervisory authorities already have diverse and extensive intervention options on the basis of existing regulations. The above-mentioned suggestion is also unclear about what would happen if the minimum capital rate was not reached as a result of the penalty measures and such a situation would ultimately place the responsibility of imposing reasonable measures in the hands of the national supervisory authorities. In our opinion, an individual decision by the national supervisory authorities would be more appropriate in such cases.

The EAPB rejects the disclosure of breaches of the qualitative requirements in the case of positions with an original risk weight of 1250% as required in subsection 89, as they are not covered by the specifications of Directive 2006/48/EC. Furthermore, this risk weighting already represents a complete reduction of the equity for this position. In our opinion, many of the requirements in paragraphs 4 and 5 no longer need to be applied to these positions, for example undertaking stress tests, as no deterioration can occur from a regulatory point of view.

We expressly welcome that total capital requirements are to be limited to the position value (subsection 81). This is correct, as the position value represents the maximum possible shortfall from a position. Higher rates would therefore be counterproductive. Any required additional measures could be imposed individually by the supervisory authorities within the scope 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?

In the opinion of CEB, an institution which securitises credit which was originally provided by another originator or original credit provider would inevitably only be able to apply the solid

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and clearly-defined criteria on the basis of limited information. However, the originators or sponsors in question should do their utmost to obtain all required information in accordance with subsection 94. We agree with this view. According to subsection 95, it is sufficient only for sponsors who themselves have no credit issuance standards, because they do not typically provide this type of credit, to obtain the criteria used by the originator or original credit provider. From this we conclude that CEBS does not intend this exception to the rule to apply to sponsors which have themselves issued this type of credit and therefore have rating systems. However, where sponsors did not hold or generate the individual exposures in the portfolio in their own accounts , they would be unable to review each individual exposure according to their credit approval standards. A review according to the bank's own credit approval standards would mean that each exposure would need to be assessed using the bank's own rating systems. Due to the significant number of exposures (e.g. private car credit securitisations with a minimum granularity of 100,000 debtors), this type of process would be neither practical nor appropriate. Furthermore, the application of internal bank credit processes would also make the securitisation transactions significantly more difficult and expensive for clients (particularly German medium-sized companies). It should therefore be possible for all sponsors to apply the alleviation of subsection 95.

Furthermore, we draw attention to the fact that requiring the same credit issuance standards for both securitised and non-securitised exposures for ABCP conduits cannot be interpreted as a concordance of these credit issuance standards. The companies define their own credit issuance standards, which may deviate from those of the sponsors. It is important that the sponsor assesses the appropriateness of the credit issuance standards applied by the respective company.

PARAGRAPH 8

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

In the opinion of CEBS, the requirement that no underlying exposures can be added or substituted from 31st December 2014 should be applied with no de minimis arrangement (subsection 107). Accordingly, the addition or substitution of only one exposure after the abovementioned date would result in the application of provisions of Art. 122a Directive 2006/48/EC to this transaction. In our opinion, a reasonable materiality threshold should be introduced here. Furthermore, cases should be excluded where exposures are substituted due to trustee guidelines which follow emission conditions or similar (e.g. if an exposure transferred into the portfolio no longer complies with the selection criteria when subsequently evaluated and therefore needs to be replaced).

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We also consider the explanation in subsection 106 to be incorrect. Paragraph 8 of the EU Directive intends for the provision to apply to all transactions which are concluded after 1.1.2001 (irrespective of whether an exchange of exposures has taken place or not). This will apply to existing securitisations from 31st December 2014 if exposures are substituted or added after this date. As it is already obligatory that the provision be applied for new transactions after 1.1.2011, the reference to "existing" transactions can, in our opinion, only apply to those which existed *before* 1.1.2011 and not, as stated in the explanation, those existing before or after 1.1.2011. The draft should be revised accordingly.

It is also unclear how the transitional provision should be applied to ABCP programmes. In our opinion it should be clarified that Art. 122a should only be applied to ABCP programmes if a new transaction is negotiated within the scope of this programme after 31st December 2014.

If an institution assumes exposure to a securitisation position before 1st January 2011 for which the originator, sponsor or original credit provider has not disclosed that they wish to fulfil the retention requirement, even though exposures are to be substituted or added after 31st December 2014, then an increased risk weight is to be imposed after 31st December 2014 (subsection 109). This provision applies to the investor (reference to paragraph 5) and is defensible for transactions which are structured and marketed after the standard comes into force. Applying this requirement to transactions which existed before the standard was released and which will continue until after 2014 is not acceptable. In such cases the investor would be penalised for circumstance which were not foreseeable when the transaction was agreed. Unless the sponsor, originator or original debtor intervened, this could only be avoided by selling the position, whereby losses may be incurred. Only non-regulated companies could be considered as buyers.

In case of questions please do not hesitate to contact us.

Best regards,

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The European Association of Public Banks (EAPB) represents the interests of 34 public banks, funding agencies and associations of public banks throughout Europe, which together represent some 100 public financial institutions. The latter have a combined balance sheet total of about EUR 3,500 billion and represent about 190,000 employees, i.e. covering a European market share of approximately 15%.

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