

Brussels, 22 August 2013

Set up in 1960, the European Banking Federation (EBF) is the voice of the European banking sector (European Union & European Free Trade Association countries). The EBF represents the interests of some 4,500 European banks: large and small, wholesale and retail, local and cross-border financial institutions.

The EBF is committed to supporting EU policies to promote the single market in financial services, in general, and in banking activities, in particular. It advocates free and fair competition in the EU and world markets and supports the banks' efforts to increase their efficiency and competitiveness.

Subject : EBF response to the EBA consultation on securitisation retention (EBA/CP/2013/14)

General remarks

The EBF attaches great importance to regulatory proposals in the scope of securitisation as it represents a central part of the EU financial system. Securitisations should be duly regulated and safely backed with capital requirements. Yet securitisations should still make economic sense for banks. For this reason, changes to the regulatory framework should be assessed not only on a piecemeal basis but also with a broader view.

We understand that the mandate of EBA to conduct an impact assessment of the proposed regulatory technical standards may be circumscribed to the effects of the RTS on the EU securitisation market. However the key question, whether securitisations make economic sense under the proposed regulatory framework, will remain unanswered until the Basel Committee revision of the securitisation framework is taken into account.

Regarding the content of the proposed RTS, the following aspects should deserve further consideration in the EBA's final text:

- The impact on existing transactions due to the absence of grandfathering clauses.

The EBF urges the EBA to smoothen the impact on transactions that have been structured in good faith to avoid penalising investors. Grandfathering clauses or similar arrangements would prevent from a quick liquidation of exposures.

- The removal of the flexibility regarding the holder of the retention should be carefully assessed to consider the cases of other specific entities. Likewise the definition of sponsor.

The previous guidelines and the Q&A allow the collateral manager or an involved subordinated investor to satisfy the retention requirement. The RTS draft proposal departs from the current guidance which provides flexibility for an entity other than the originator, sponsor or original lender to satisfy the retention requirements in certain circumstances.

Nevertheless, according to the article 4(1) of the draft RTS the retention must be fulfilled in full by either the originator, the sponsor or the original lender, with no exceptions. Therefore, an involved subordinated investor such as a third party investor in a CLO, under some specific cases, will no longer satisfy the retention requirement and only collateral managers subject to the requirements of the MiFID can satisfy the retention requirement.

- The definition of investment firm

Article 4(43) of the CRR stipulates that a sponsor is either a credit institution or an investment firm (compliant with the MiFID definition), “other than an originator institution that establishes and manages another securitisation scheme that purchases exposures from third party entities”. The new reference to investment firms in the sponsor definition does not provide the expected flexibility in the identification of an eligible retaining entity in some specific cases (including the context of managed CLOs) because of the MiFID investment firm’s definition technical constraints. For example, while the definition of “investment firm” picks up MIFID regulated asset managers, it excludes MIFID firms not authorised to undertake certain services and which are not allowed to hold client monies.

Further, EU alternative asset managers authorised under the Alternative Investment Fund Managers Directive (AIFMD) do not fall within the definition of “investment firm”. Many collateral managers currently regulated under MIFID will be obliged to be re-authorised under AIFMD in July 2013 and, consequently, will cease to be regulated under MIFID (a firm is not permitted to hold both authorisations).

- Also, a clarification should be made as to the definition of consolidated group where the retention requirement must be satisfied:

Article 394 (2) contemplates compliance with retention requirement on a consolidated basis only by entities acting as originator or sponsor which are subject of consolidated supervision and this ability is available only where “exposures from several credit institutions, investment firms or other financial institutions which are included in the scope of supervision on a consolidated basis” are securitised:

“Where an EU parent credit institution, an EU financial holding company, an EU mixed financial holding company or one of its subsidiaries, as an originator or a sponsor, securitises exposures from several credit institutions, investment firms or other financial institutions which are included in the scope of supervision on a consolidated basis, the

requirement referred to in paragraph 1 may be satisfied on the basis of the consolidated situation of the related EU parent credit institution, EU financial holding company, or EU mixed financial holding company.”

According to both CRR and 122a texts, the definition of “originator” encompasses the use of other group entities, including “related entities” involved in the creation of assets while it is not specified that such entities need to be in the scope of relevant entities.

Paragraph 21 of the Q&A seems to provide some flexibility for collateral managers as seems to imply that the retention requirement could be met by a parent or affiliate consolidated within the accounting group of a collateral manager rather than within its regulatory capital group (considering that many asset managers may have the benefit of waivers from the CRD consolidation requirements).

The removal of the former guidelines and the Q&A leads to a situation where only those institutions in a group whose regulatory capital requirements are supervised on a consolidated basis may satisfy requirements on a consolidated basis. The guidelines and the Q&A allow the retention requirement to be met by the parent or affiliate of the collateral manager. The draft RTS is silent on this issue, while, in our view, it requires clarification.

Therefore, there is a concern that satisfying the retention requirement on a consolidated rather than solo basis may be granted to entities under regulatory capital supervision and to assets sourced from entities under regulatory capital supervision on a consolidated basis. This conservative approach would put the group assessment option at risk by limiting the scope for cases where all the exposures are originated by a single group, potentially limiting its application to balance sheet securitisations.

We point out that the Article 394(2) is not explicitly mentioned in the RTS (other than in relation to a retention holder leaving the group) and is not the subject of a question from the EBA.

Specific questions

Q1. *The EBA would like to know to what extent securitisations rely on paragraphs 25-26 of the CEBS Guidelines in order to achieve the retention commitment and would also like to understand if these transactions could also meet the requirements set out in Article 394(1) of the CRR without applying the criteria provided in Paragraphs 25 and 26 of the CEBS Guidelines on Articles 122a of Directive 2006/48/EC taking into account the definition of securitisation according to Article 4(37) of the CRR and the respective definitions of originator, sponsor or original lender.*

The (limited) flexibility provided by paragraphs 25 and 26 of the CEBS guidelines for another appropriate entity to retain is a key element of the existing framework and is essential for the well-functioning of the retention framework in general.

Some securitization transactions, such as the existing stand-alone RMBS transactions typically do not rely on paragraphs 25-26 of the CEBS guidelines. However, the CRR and RTS/ITS offer limited flexibility for other securitisation structures, such as Master Trust RMBS, CMBS, ABCP and especially CLO's.

The loss of the wording in the current CEBS guideline, as also discussed in question 3, would further decrease the already limited flexibility.

In our view, the RTS should incorporate the substance of the paragraphs 25 and 26 and of the answers in the Q&A Section II.C, by including at least provisions regarding the fulfillment of the “retention by whatever party would most appropriately fulfill this role” and “retention ultimately met by an entity with which alignment of interest is optimally achieved”. In this context due consideration should be given to CLO managers as severely restricting their ability to act as a retainer seems to us very punitive. In addition, we respectfully demand EBA to reconsider the possibility that an originator SPV, a third party involved in structuring the transaction and selecting the exposures be possible as an eligible retainer. Overall, we consider that the current guidance better achieves the objectives of the risk retention regime by allowing another “most appropriate” entity to retain in certain circumstances.

Q2: *The EBA would also like to understand if, for new securitisations there are transactions that are likely not to be able to meet the retention requirements following the CRR and associated draft RTS.*

Under the recast retention regime we consider that compliance issues would appear for several types of new securitization transactions, as following:

- Managed CLOs transactions

- For third market participants in the context where the sponsor recognition would not be available for non-EU regulated investment firms. In addition, the retention risk requirements will apply regardless of the jurisdiction of the relevant securitization whilst the investment firm definition constraints the scope of the eligible sponsors.

Q3: To the extent securitisations have relied on Paragraph 48 in the CEBS Guidelines on Article 122a of Directive 2006/48/EC to meet the retention requirements, would there be any material impact (be it economic, operational, etc.) to now complying with retention option (a) of Article 394(1) of the Regulation (EU) No xxxx/2013 rather than relying on the provisions of Paragraph 48 in the CEBS Guidelines on Article 122a of Directive 2006/48/EC in order to meet the retention requirements?

The paragraph 48 of the CEBS Guidelines provides guidance for use of the originator interest holding option in the context of revolving securitisations of non-revolving exposures: as such, the originator interest the option (b) may be used in the context of revolving securitisations of non- revolving exposures.

This current guidance is not replicated within the RTS which will generate in this context compliance uncertainty. We recommend that EBA includes the existing guidance (retention through an originator interest (i.e. option (b)) remains available for revolving securitisations of non-revolving exposures.

Q4: Do you consider that this way to comply with the retention requirement under option (a) should be explicitly mentioned in the RTS?

Although this option may not be widely applied, we recommend mentioning this option explicitly for the sake of clarity and for future reference (i.e. that the vertical slice holding option may be held in the form of a liquidity facility in the context of ABCP programs provided the fulfillment of some requirements) .

We consider that the relevant liquidity facilities may be used to satisfy the retention requirements. Therefore, we respectfully recommend EBA to explicitly mention this provision into the RTS.

Q5: Do you consider that the conditions enumerated in Article 6.1(b) are correct and sufficient? If not, which conditions would you add/change/remove? Why?

The conditions enumerated in Article 6.1(b) are correct as they are the same those formulated under the section 47 of current EBA guidelines.

Q6: Do you consider that the retention option (d) under Article 8.1(b) via the provision of a liquidity facility should be explicitly mentioned in the RTS? Please also specify reasons why this provision should explicitly remain in the RTS?

We consider that the inclusion of this guidance in the RTS would be very helpful.

In addition, we would like to remind that the situation described in article 6 1. b) should not constitute a new securitisation exposure. Indeed, in ABCP conduit structures, the existence of full support liquidity lines provided by the sponsor to underlying exposure means that all the credit risk of the securitisation tranche held in the conduit is borne by the institution providing the liquidity facility as a consequence, there is no need for program wide letter of credit creating an additional tranching at the level of the conduit.

In this situation, the conduit doesn't create a re-securitisation structure and thus no retention should be required at the level of the conduit if the retention has been performed at the level of each underlying securitisation exposure by the original lender (ie : the seller for the securitisation of purchased receivables for instance). If an institution providing a full support liquidity line to a securitisation tranche held on a conduit could constitute a form of retention, we insist on the fact that this retention is not necessary if the retention is performed by the originator/original lender of the securitisation structure.

Q7: Do you consider that the conditions referenced in Article 8.1(b) are correct and sufficient? If not, which conditions would you add/change/remove? Why?

They are sufficient, subject to the point mentioned under question 6).

Q8: Are there other ways to comply with the retention options set out in Art 394 of the CRR which should be included in this RTS? Please be specific in your description of any additional ways to comply.

We note that, while certain options for retention in CMBS and ABCP are explicitly mentioned, no workable retention options for managed CLO's are available (please also refer to our answer on question 1 with regards to paragraph 25-26 of the CEBS guidelines), assuming that most asset managers will not be sufficiently capitalised to fulfil the retention requirements.

Furthermore, we note that Art 10(d) prescribes that the form of the retention may not be changed during the life of the transaction, unless such change is required due to exceptional circumstances and is not used as a means to reduce the amount of retained interest. As long as changing the form of retention is not used to reduce the amount of retained interest, changing the form of retention should also be allowed under normal circumstances; sometimes the amount of retention can even be increased over time, at a lower cost to party that is retaining the net economic interest.

Q9: Is the qualification “securitisation positions in the correlation trading portfolio containing only reference instruments satisfying the criterion in Article 327(1b)(ii) of Regulation (EU) No xxxx/201y” introduced in Article 13(1) correct/necessary? Should this qualification be removed? If not, why?

The current guidance clarifies the exemption and confirms that concerns all positions that are encompassed by the correlation trading portfolio as defined in CRD 3:

"The exemptions provided under Paragraph 3 where “transactions [are] based on a clear, transparent and accessible index [...] or are other tradable securities other than securitisation positions” are assumed to constitute a scope that equates with the definition of a “correlation trading portfolio” as described under the Directive 2010/76/EU amendments to Directive 2006/49/EC (“CRD 3”). The exemptions provided in Paragraph 3 extend to all positions that are encompassed by the correlation trading activities as described in the above amendments."

In contrast, the draft RTS (article 13) refers only to a portion of the correlation trading portfolio definition, i.e. those based on commonly traded indices (i.e. Art.327 (1b) (ii) :

"1. The exemption in Article 394(4) of Regulation (EU) No xxxx/201y shall include securitisation positions in the correlation trading portfolio containing only reference instruments satisfying the criterion in Article 327(1b)(ii) of Regulation (EU) No xxxx/2013. The exemption shall also apply to any securitisation position which is eligible for inclusion in such part of the correlation trading portfolio but has not been assigned thereto for risk management or similar reasons."

In conclusion, trades on bespoke baskets (as described in article 338 (1) (b) (i), meaning “single-name instruments, including single name credit derivatives, for which a liquid two-way market exists”) seems not to be included into the scope of the exemption, which would be not adequate.

With regards to the retention requirement there is no justification for providing distinct regulatory approaches. Therefore we request EBA to maintain the exemption provided by the current Guidelines. We propose therefore to modify the related RTS provision as follows:

"1. The exemption in Article 394(4) of Regulation (EU) No xxxx/201y shall include securitisation positions in the correlation trading portfolio containing only reference instruments satisfying the criterion in Article 327(1b)(~~ii~~) of Regulation (EU) No xxxx/2013. The exemption shall also apply to any securitisation position which is eligible for inclusion in such part of the correlation trading portfolio but has not been assigned thereto for risk management or similar reasons."

Q10: Is the inclusion in the exemption of the cases that are eligible to be included in that part of the correlation trading portfolio but that do not pertain to it adequate? If not, why?

This appears adequate.

Q11: Should the broad stress testing requirement that institutions have to undertake be part of the Internal Capital Adequacy Process, in accordance with Article 72 of CRD IV, or should it, where applicable, be in accordance with Article 173 of the CRR and follow the credit stress testing requirements for IRB banks?

We consider that the best way to address the stress testing requirements is through ICAAP process which allows correctly identifying and measuring all the risks incurred by the credit institution. .

Q12: Is the qualification “...securitisation positions ... held in the correlation trading portfolio...as referred to in Article 327(1b)(ii) of Regulation (EU) No xxx/201y” introduced in Article 20 correct/necessary? Should this qualification be removed? If not, why?

Please refer to our answer to question 9. Accordingly, the exemption for the correlation trading portfolio should encompass both correlation trading activities based on both indices and bespoke baskets.

Q13: Is the consideration of the cases that are eligible to be included in that part of the correlation trading portfolio but that do not pertain to it adequate? If not, why?

Please refer to our answer to question 10.

Q14: For which type of underlying assets do you think that the information on a loan level basis is not necessary for complying with the due diligence requirements under Article 395 of the Regulation (EU) No xxx/201y? What kind of information is required in those cases? Please specify by type of underlying asset.

In our view, the loan level information requirement should not become binding for transactions involving highly granular asset pools (such as, but not limited to: consumer loans, mortgage loans, credit cards, auto loans etc.).

In such cases, information on the underlying assets however is burdensome to obtain and having this information does not add a lot of value. The availability of pool level information is in line with current market practices and investor requirements. More specifically, “loan-level” data on asset types, such as trade receivables do not provide a lot of insight, as the composition of the debtor group is permanently subject to change. In other words, not just the pool revolves, but the actual debtors/borrowers revolve as well.

Q15: Do you consider that the information in existing templates (e.g. ECB ABS loan-level data template or Bank of England ABS transparency requirements) meet the relevant due diligence

and disclosure requirements under Article 395 and Article 398 of the Regulation (EU) No xxx/201y, respectively? Please differentiate in your response in terms of the types of underlying assets, if applicable.

The ECB loan level data templates could theoretically be one means of disclosure. However, the CB loan level template is targeted at securities that are intended to be eligible for ECB repo purposes. In addition, the electronic format proposed is not in line with the requirements which apply under the risk retention framework. Moreover, for transactions that are not intended to be ECB eligible, such as synthetic securitizations, the ECB loan level template does not seem appropriate.

We consider that in formulating disclosure requirements, EBA should take into consideration, as a principle, the level of information available and disclosed by the originators.

Please also refer to our answer to question 14.

Q16: Do you find the accessibility conditions (e.g. search, availability, costs) regarding the information provided in existing templates (e.g. ECB ABS loan-level data template or Bank of England ABS transparency requirements) adequate?

The accessibility conditions are adequate.

Questions relating to Draft ITS Relating to the convergence of supervisory practices with regard to the implementation of additional risk weights (Article 396 of Regulation (EU) No [xx/2013]

Q1. Does the formula in Article 2 result in reasonable additional risk weights?

We have no comments regarding the formula. However, under the newly proposed BCBS securitisation rules, risk weights may increase dramatically. This could be translated in a more benign calibration of this formula (or otherwise the 12.5 would become the de-facto penalty rate).

Q2. Would you suggest any changes to the formula that would lead to an improved framework for the application of additional risk weights? Do you believe the variable Article394ExemptionPct equal to 0.5 if the exemption in Article 394(3) applies is reasonable?

Please refer to our answer to question 1.

Q3. Would you suggest an alternative approach for calculating additional risk weights?

Please refer to our answer to question 1.
