European Banking Industry Committee

European Banking Federation (EBF) ● European Savings Banks Group (ESBG) ● European Association of Cooperative Banks (EACB) European Mortgage Federation (EMF) ● European Federation of Building Societies (EFBS)
European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

EBIC RESPONSE TO CEBS' CONSULTATION ON OPTIONS AND NATIONAL DISCRETIONS IN THE CRD

Introductory remarks

1. The European Banking Industry Committee (EBIC) welcomes the opportunity to comment on CEBS' proposal on how to deal with the options and national discretions in the CRD. We have in the past pointed out the need to review these options and discretions and have repeatedly expressed concerns about the negative effects caused by many of them.

2. EBIC therefore strived to give as comprehensive a view as possible of the responses of its member associations to the questionnaire that CEBS launched last year. We have again, in preparation of our response to CEBS' current consultation, closely worked together and have also involved the industry expert group nominated by CEBS. This group lends its explicit support to the present response.

3. On a general note, we wish to remind CEBS of the **importance that the industry attaches to the issue of national discretions**. We are not only concerned about **level playing field distortions and the administrative burden** from maintaining and consolidating different sets of rules for different jurisdictions, but also about important **links to Pillar 2 and Pillar 3**. This is without prejudice to our recognition that in a few cases to be considered carefully, the existence of certain local market conditions can explain some divergences in national approaches, as argued by CEBS.

4. Whilst we recognise that it is the responsibility of the European Commission to set the timelines for amendments to the CRD, EBIC would welcome some **indications for the timing of making the envisaged changes**, both from CEBS, and from the European Commission, in the follow-up to CEBS' advice.

General comments on CEBS' approach

5. Overall, we find **CEBS' general approach to analysing the discretions much more consistent** than previous work on the subject. In particular the glossary is very helpful in clarifying the different options that CEBS proposes and largely reflects the concerns previously outlined by the industry.

6. We are less convinced by CEBS' approach to 'impact assessments', which in some cases seems to simply refer to a general supervisory concern related to financial

stability but does not take into consideration the overall impact on the industry as regards e.g. the Pillars 2 and 3 of the Basel Accord.

7. Looking at the entire package of proposals, we find that CEBS has adopted a **pragmatic case-by-case approach which helps to resolve an important number of issues but stops short of delivering the solutions sought by the industry in a number of other cases**. We appreciate the efforts that CEBS has made at this time to propose real improvements. At the same time, there are still a number of inconsistencies and we believe that substantial further work is needed in a number of areas.

Comments on the 'High level considerations'

8. We find these high level considerations valuable in principle.

9. Whilst we agree, in principle, with the need to consider the practical impact of intended changes to the options and discretions (item c), we are less convinced as regards CEBS' use and understanding of an impact assessment in the analytical part. The argument of the 'impact' of changes rather seems to limit itself, in a number of cases, to supervisors' general prudential concerns. These concerns are certainly legitimate, but the idea of an impact assessment in our view involves also considering the direct costs on the industry. Instead, an argument stating that a certain provision will 'help to avoid financial crises' is too blunt for the purpose of an impact assessment.

10. On the other hand, we much welcome CEBS' endorsement of the industry's argument that the **discretionary part of an option or discretion should be deleted where the criteria to be applied by the institutions are sufficiently clear** (item d). However, we do not always find that this argument is well reflected in CEBS' individual recommendations.

11. We furthermore **welcome CEBS' openness to more joint assessment processes** (item e), which we also find important in view of CEBS' ongoing efforts to increase cooperation amongst its member authorities and to enhance convergence in supervisors' approaches to practical day-to-day supervision. However, such joint assessment processes must in the view of the industry also result in a **joint decision**, which CEBS has chosen to disregard entirely in its proposals.

12. The discussions up to this stage have shown that the statement that solutions should be 'risk sensitive' and 'proportionate' (item f) has little practical value. The industry understands 'risk sensitive' solutions to mean that the prudential provisions are closely aligned with the risks as assessed on the basis of their internal methods and practical experience. As opposed to this, risk sensitivity in the supervisors' minds seems to be another expression for systematically adopting the more conservative approach, as is also evidenced by CEBS' proposals in a number of specific cases. Similarly, there is certainly a general agreement that supervision must be proportionate, although it is less clear what that means in each specific case.

13. We agree that the argument of 'local market conditions' (item g) will be of significance in a number of cases, but would like to underline that this argument needs careful case-by-case scrutiny in order not to be misused. We welcome CEBS' consideration that **mutual recognition should be binding** at least in the cases where local market conditions are identified.

14. We also urge CEBS not to overstate the argument that options and discretions should be maintained where there is little experience with their practical functioning (item h). This argument should not be used for refusing generally to tackle some of the existing options and national discretions, when they have an obvious impact on the banking industry.

Comments on 'Impact assessment'

15. We have noted above our important reservations on CEBS' approach to its impact assessment. We would like to add that the expert group did not consider itself to have a role to play with regard to the impact assessment, which needs a much more systematic and broader approach than the set-up of the group allowed.

Comments on the 'Glossary'

16. We do not agree with the general argument that certain provisions 'can only be changed as part of a future overhaul of the subject matter', which CEBS uses to refrain from recommendations e.g. in the area of Own Funds. We remind CEBS that EBIC has already made recommendations for all of these provisions, which EBIC regards as having too important competitive implications to be maintained in their current form. This is true, for example, for all options and discretions dealing with Own Funds, which we urge CEBS to address as a matter of priority.

17. We concur in principle that it is a pragmatic position to let expire those provisions, which were meant to be only temporary. There are however a few cases where we believe that current options are of permanent significance for certain situations. These cases should be reviewed, in view of transforming them into general rules, where the supervisory authority confirms compliance with applicable conditions.

18. Objections on the arguments of 'local market conditions' and 'need for more practical experience' were already noted above.

19. We **cannot endorse CEBS' arguments for non-binding mutual recognition**. In particular, the consideration that relevant information might not be available to other authorities is not acceptable in view of the current general discussions on supervisory cooperation and information exchange. Indeed, **where information is relevant it should be shared between the supervisors**. The **banking industry should furthermore not be penalised for a lack of trust among the authorities. The onus is on CEBS to create the necessary circumstances for this trust**. Alternatively, regulation must change first to bring about the level of trust that CEBS believes is lacking now.

20. We agree, conceptually, that there are cases of supervisory decisions, rather than national discretions, many of which are part of the supervisory approval process, e.g. in the IRBA. However, we are **not convinced that all of the 'case-by-case' decisions that CEBS identifies should indeed be interpreted as such, and would also caution that this exercise should not be used to create a new level of discretion** that would be completely opaque to the industry. Furthermore, where decisions are part of the general approval process it must be clear that there is no separate decision, which is again not clear to us from all the wording proposals made by CEBS.

21. However, on the same category of 'supervisory decisions' we **welcome the idea behind CEBS' distinction between cases where there is a 'judgement' by the supervisor (assessing the fulfilment of the criteria), but no separate choice as the criteria in themselves are sufficiently clear; and cases where the criteria cannot be defined upfront** in a sufficiently objective way. We are however of the opinion that the notion of 'choice' should in these cases be avoided, as it implies an extra level of discretion. Instead, we would suggest that in cases where no objective criteria can be defined at this stage, **CEBS' member authorities' work together to establish a common understanding and approach to judging in which cases the conditions are met.** This should be combined with disclosure in the supervisory disclosure framework on how supervisors take their decisions in general. For cases where objective criteria exist, we understand that there is agreement with CEBS that supervisors' role is to verify that these criteria are met, and that no additional discretionary choice applies on top of that.

22. In this context, we would also like to comment on some proposals previously made by CEBS during discussions with the expert group and referring to 'supervisory discretions' in the sense of decisions that would be binding for all institutions in a jurisdiction, but taken by the competent authority instead of being enshrined into national law. We understand that CEBS' rationale for such a proposal would be the greater flexibility of changing such decisions. However, other problems linked to the national discretions would persist under such an approach. In addition, we are concerned that this would even lead to less, rather than more, transparency.

Comments on the 'Summary of findings'

23. We welcome CEBS' continuing efforts to upgrade and clarify the information in the supervisory disclosure framework, which has so far not delivered on the industry's expectations, also in the context of the above-mentioned divergence in practical supervision. The industry continuously believes in the great added value that this framework could have, if fully put to use. CEBS' instant updating of the incomplete list of national discretions would be an appreciated sign of commitment to the framework.

Comments on the 'Summary of findings from the Impact Assessment'

24. We welcome CEBS' theoretical consideration as regards not only the direct costs and benefits of certain provisions, but also the indirect costs and benefits to the market, which we do not however seem to find back in CEBS' more detailed analysis.

25. We do not find the argument of 'strong expectations or evidence that firms would manage their activities with a higher sensitivity to risk, which reduces the probability of default and leads to fewer bank failures' convincing in the context of an impact assessment. We regret that by using this argumentation, CEBS avoids the identification of really measurable costs and benefits. It also disregards the fact that all possible options have already been validated as suitable in principle in the Basel II framework.

Comments on the 'Comprehensive overview of the analysis and proposals on each option and national discretion'

Own Funds, Article 57 – ND 1

We **agree with CEBS' argumentation and proposal**, and especially with its recognition that there is no justification for a separate choice by the supervisor as the applicable criteria are sufficiently clearly defined.

Own Funds, Article 58 – ND 2

We agree that this provision will only apply in a limited number of cases. However, we have concerns that flow from our above comments on the classification. As suggested above, this is in our view a case where the **applicable criteria are sufficiently clear** for supervisors to confirm that they are fulfilled. When it is acknowledged that they are clear enough there should however not be a separate supervisory judgement.

We therefore suggest that CEBS change its recommendation and propose a general rule.

Own Funds, Article 59 – ND 3

We concur that alignment between the Financial Conglomerates Directive (FCD) and the CRD is desirable. However, we find the wording in the FCD unfortunate and are therefore not convinced that it should be copied. We rather take the view that institutions should themselves choose the relevant method in order to adequately reflect their organisational structure.

We reiterate that the choice between the three methods should be given directly to institutions.

Own Funds, Article 60 – ND 4

We disagree with CEBS' proposal of simply deferring a decision, in particular in view of the significance of the provisions on own funds which, does not allow in our view to await the outcome of the review of the definition of own funds.

We continuously believe that the application of this provision must follow the specific structure of each institution and should be the sole responsibility of the institution. Anything other than an option to institutions, as previously suggested by EBIC, would therefore be inconsistent.

Own Funds, Articles 61, 63.1, 64.3 and 65 – ND 5

CEBS rightly points to the significance of these provisions. The industry's conclusions are however opposed to those of CEBS. We believe that the negative implications resulting from a divergent treatment are too important to maintain such inconsistency, also with regard to the consolidation exercise for cross-border active institutions.

Institutions should therefore have the choice between the different options, to be applied consistently throughout the group.

Own Funds, Article 13.2 – ND 6

As for the previous discretion, the negative implications of divergent choices in line with this provision are too significant for the industry to maintain them.

Institutions should therefore have the choice between the different options, to be applied consistently throughout the group.

Own Funds, Article 13.5 – ND 7

We **agree with CEBS' argumentation and new wording proposal**.

Own Funds, Article 14 – ND 8

We concur that the CRD gives here the choice to the supervisory authority, rather than to Member States. As set out in our general comments, we believe however that CEBS should adopt a different and less discretionary understanding of 'supervisory decisions'. The industry previously proposed an option for institutions in recognition of managers' responsibilities for the soundness of their firms, which are reviewed, and challenged if necessary, by supervisors in the general Supervisory Review and Evaluation Process foreseen by the Basel Framework under Pillar 2.

We therefore ask CEBS to propose that this provision be turned into an option for institutions, which will be subject to supervisory review in the same way as the institutions' overall business models, as well as other important policy decisions to be taken by institutions.

Scope of application, Article 72.3 – ND 12

It is again true that the choice of agreeing that Pillar 3 is only applied at consolidated level is given to the supervisory authorities. However, there have already been long discussions on the feasibility and problems of applying Pillar 3 at sub-consolidated level. **Given that the format and setup of Pillar 3 disclosures are the responsibility of the institution, in interaction with the market, it is not clear to us why there would be a need to set up specific, separate criteria for assessing the comparability of the Pillar 3 disclosures.** We do furthermore not understand the 'main motivation for keeping the discretion', stated to be 'recognition of a group-wide approach while ensuring sufficient disclosure'. In our understanding, this option implies the opposite, namely not recognising the group-wide approach. **Supervisory authorities should also be satisfied that they receive 'sufficient disclosure' through the Common Reporting framework, whilst the markets for which Pillar 3 disclosures are designed are indeed interested in the group-wide angle.** Indeed, the additional benefit for other market participants from separate disclosure at sub-consolidated level is rather low, as opposed to the disclosure at consolidated level, which provides the most accurate picture of the institution's overall economic situation.

It is our strong belief that this discretion must be turned into a general rule.

Scope of application, Article 73.1 – ND 13

We agree with CEBS' estimation that it does not make sense for this provision to be applied as a 'national discretion'. However, we do not agree with CEBS' proposal of a 'supervisory decision', as this implies the supervisor might force an institution to include a participation in consolidation. Clearly, this decision can only be taken by the institution, as is already now the case in the large majority of the Member States.

The Member State option should therefore be turned into an option for institutions, to be reviewed by supervisors in the normal process of supervisory review.

Counterparty risk in derivatives, Annex III, Part 6, Point 7 – ND 16

CEBS rightly observes that this discretion is part of the overall process of the bank designing its model and having it approved by its supervisor. It is the nature of the entire process that banks set risk parameters based on their own judgement of the risks they face and on the appropriate level of conservatism to make provisions against losses. The model approval process gives supervisors the right to question the bank's approach and assumptions as a whole, thereby using a much more principles-based and general angle than when merely focusing on just α.

CEBS' argumentation also seems to reflect this understanding in principle. **We would therefore prefer that this ND be deleted altogether.**

Counterparty risk in derivatives, Annex III, Part 6, Point 12 – ND 17

We agree with CEBS' substantiation but do not believe that the proposed wording delivers the intended outcome. It is redundant and confusing to explicitly state in this provision that the use of own estimates for α is subject to the approval of the competent authorities, as it does indeed imply an approval process separate or in addition to the general process of model approval.

The formulation should be adjusted to make it clear that (all) institutions using the Internal Models Method may use their own estimates of α, subject to a floor of 1.2

Counterparty risk in derivatives, Annex III, Part 7c (ii) – ND 18

We are disappointed that CEBS unduly equates a high level of conservatism with higher risk-sensitivity. Risk-sensitivity, in the spirit of the Basel II Accord, means aligning capital requirements closely with actually incurred risks. CEBS' approach of now proposing a higher level of conservatism for each case in question undermines this spirit.

The other option considered by CEBS is to turn the Member State discretion into a supervisory decision. This ignores again the course of interaction between the firm and its supervisor, where it is in the first place up to the firm to design its models and methodologies, and then to discuss them with the supervisor. **We agree that there is a review element under this specific provision, but request that it be recognised in line with this correct course of events under the model approval process.**

Standardised Approach, Article 80.7 – ND 20

We agree and welcome CEBS' proposals for NDs 20 and 21, of transforming these provisions into general rules, subject to meeting the applicable criteria.

Standardised Approach, Article 80.8 – ND 21

We agree and welcome CEBS' proposals for NDs 20 and 21, of transforming these provisions into general rules, subject to meeting the applicable criteria.

Standardised Approach, Annex VI, Part 1, Point 5 – ND 23

We **welcome CEBS' openness for our proposal of a joint assessment and recognition process**. The enhanced use of such processes would be an important step towards more consistency in the application of the CRD and would support supervisors' efforts of more cooperation in practical, day-to-day tasks.

It would be both inconsistent and disappointing, though, if no common decision were reached after conducting such a joint process. We do therefore not understand CEBS' statement that following the joint assessment process, there will be individual judgements by all involved authorities. The joint process should logically lead to a common decision, which Member States should at least be much encouraged to endorse.

Standardised Approach, Annex VI, Part 1, Point 11 – ND 24

We support CEBS' proposal that the decision of recognising equivalency of third country arrangements should be given to supervisors if that allows a joint recognition process. Furthermore, we would request that the full list of recognised third country regional governments and local authorities be published in CEBS' supervisory disclosure framework.

However, as in the previous case **we would perceive such a process to be of very limited use if it were not to lead to a joint decision, or a jointly agreed strong recommendation at a minimum**. There is indeed no reason that the same borrowers be treated differently in different jurisdictions or for loans granted by different creditors.

Standardised Approach, Annex VI, Part 1, Point 14 – ND 25

We agree with CEBS' assessment that this provision is a decision that requires local judgement and must be taken case-by-case, although we would not want the terminology of 'supervisory decision' to be misunderstood in that there could be a difference in the recognition of PSEs as regards the institutions that provide the loans**.**

Whilst we recognise that binding mutual recognition is already now required in Point 16 of Annex VI, Part 1, it is in practice not transparent for institutions which PSEs have been recognised by the different authorities. The supervisory disclosure framework provides indeed a very useful tool for such disclosures. We regret though CEBS' proposal that supervisors might publish the 'criteria' that they apply. Indeed, the criteria as such should be consistent for all authorities. They might be stated in addition, but in order **to ensure that the information is of**

practical value to banks the supervisory disclosure framework should provide a full list of all individual PSEs that have been recognised.

Standardised Approach, Annex VI, Part 1, Point 15 – ND 26

As for ND 25.

Standardised Approach, Annex VI, Part 1, Point 17 – ND 27

As for NDs 23 and 24, we believe that a **joint assessment process should result in a joint decision**, rather than individual declarations from its member authorities. It should **be considered, as a second step and in alignment with general discussions about supervisory arrangements, whether the joint decision should be binding** or have the status of a strong recommendation.

Furthermore, we would request that the full list of recognised third country public sector entities be published in CEBS' supervisory disclosure framework.

Standardised Approach, Annex VI, Part 1, Point 37 – ND 28

We welcome CEBS' proposal, which is in line with the current implementing decisions of the majority of Member States and will eliminate the discriminatory effects on the institutions in the remaining countries.

Standardised Approach, Annex VI, Part 1, Point 40 – ND 29

We **welcome CEBS' proposal**, which flows from a consistent application of the criteria it sets out for turning discretions into general rules when they have clear, objective and verifiable criteria attached to them.

Standardised Approach, Annex VI, Part 1, Point 63 – ND 30

EBIC originally proposed turning this option into a general rule. However, given that the discretion is not applied by 83% of the MS, we **can support CEBS' proposal of deleting this provision entirely after a long transition period** (end-2019).

Standardised Approach, Annex VI, Part 1, Point 64 – ND 31

We cannot understand CEBS' rationale in considering the complete deletion of this provision, as **value adjustments of at least 20% and the existence of collateral that fully secures the nominal amount of the outstanding loan facility are strong safeguards**, that clearly lower the exposure at risk and justify lower risk weights. Furthermore, residential properties in well developed markets can be thoroughly valued, allowing a detailed calculation of proceeds from forced sale procedures.

We would therefore confirm that this **provision should apply as a general rule**, and should be combined with **binding mutual recognition** as considered by CEBS as one option.

Standardised Approach, Annex VI, Part 1, Point 66 – ND 32

EBIC agrees that this discretion is given to the supervisory authorities, rather than Member States. However, that does not solve the competitive distortions resulting from divergent application. CEBS states itself that this discretion will be applied to all institutions in the respective jurisdiction, i.e. it is not a supervisory case-by-case decision. In terms of a level playing field, EBIC can only concur on a difference between 'across-the-board' decisions taken by the supervisory authorities, rather than Member States, where they are linked to a joint process between the authorities that encourages convergence. This is not the case here. **EBIC therefore continues to believe that the discretion should be deleted altogether.**

Standardised Approach, Annex VI, Part 1, Point 85 – ND 35

We continue to support the entire deletion of this provision from the CRD, as now also proposed by CEBS.

Standardised Approach, Annex VI, Part 3, Point 17 – ND 36

We agree with CEBS' analysis and proposal of turning this discretion into a general rule.

IRB, Article 84.2 – ND 37

This is indeed a discretion given to supervisory authorities and not to Member States. However, the criteria for its application are sufficiently clear and objective – i.e., EBIC agrees that it is in the responsibility of the supervisor (or, where applicable, the college of supervisors) to confirm their fulfilment. **Where the criteria are fulfilled, the provision should be applied as a rule, and at the consolidated level, in line with the general principles set out by CEBS.** We underline the practical significance of this discretion, which makes divergent treatment particularly harmful.

IRB, Annex VII, Part 1, Point 6 – ND 38

We agree that this provision **forms part of the IRB approval process**, and that it should be consistently implemented in all Member States. We recognise that the precondition of 'substantially strong' underwriting characteristics and other risks characteristics is not an objective criterion. We **would therefore prefer that CEBS' members establish common criteria, respectively that by way of ongoing practical cooperation, CEBS establishes a common understanding of when these criteria can be deemed to be fulfilled**.

We would furthermore suggest that the wording be reformulated to reflect the fact that it is part of the model approval process: 'Institutions may generally assign preferential risk weights of 50% to exposures in category 1, and a 70% risk weight to exposures in category 2, where they can demonstrate to the competent authorities that this treatment is appropriate on the basis of the strengths of their underwriting characteristics and other risk characteristics'.

IRB, Annex VII, Part 1, Point 13 (last sentence) – ND 39

We disagree with CEBS' assessment that this provision should not be considered a 'high priority' for the only reason that it is more important in some countries than in others. This provision has indeed an important impact on certain parts of the industry.

Furthermore, we understand that local law diverges in the usage and set-up of wage accounts. However, **where collateralised credit facilities can be, respectively are, linked to a wage account, the provision should apply as a general rule**. E.g., to appropriately reflect this, the Directive text might read 'when collateralised credit facilities are linked to a wage account, the requirement that the exposure be unsecured may be waived'.

IRB, Annex VII, Part 1, Point 18 – ND 40

We agree with CEBS' analysis and with the proposal of deleting the discretionary part of the provision.

IRB, Annex VII, Part 2, Point 5 & 7 and Annex VIII, Part 1, Point 26 – ND 41

We do not **agree with CEBS' proposal of recommending the deletion of this provision**, in the absence of a better understanding of the potential impact. We therefore, instead, renew our assessment that it would be the most consistent approach to **combine this discretion with binding mutual recognition**, as sufficient impact assessment data is not yet available at this stage.

IRB, Annex VII, Part 2, Point 20 & Annex VIII, Part 1, Point 26 – ND 45

As for ND 41, we **cannot endorse CEBS' recommendation of deleting this provision** in spite of the lack of understanding of the potential impact. Instead, we would again call for **binding mutual recognition**.

IRB, Annex VII, Part 4, Point 56 – ND 46

We agree that this provision requires a supervisory judgement that the adjustments made by institutions are considered appropriate. However, this judgement is already implicit in the requirement that credit institutions "demonstrate" to the authorities that this is the case. The second step must therefore be automatic in our view, as also set out in CEBS' general explanation of a supervisory decision that involves mere judgement of the fulfilment of criteria, but no additional choice. I.e., **when institutions are able to demonstrate the adequacy of the adjustments made, then "competent authorities shall allow" flexibility in the application of the required data standards.**

In addition, we agree with CEBS' consideration that this provision must be implemented in all Member States.

CRM, Annex VIII, Part 1, Point 15 – ND 47

The proposals of a "general rule" and an "option for credit institution" in the way proposed by CEBS deliver the same result. **We can agree with CEBS' proposal.**

CRM, Annex VIII, Part 1, Point 20 – ND 48

We do not consider it appropriate that supervisors might recognise the same kind of collateral for some institutions, but not for others, and would therefore not agree that this provision should be exercised as a national decision. On the other hand, **CEBS' specific proposal of deleting the discretionary part of the provision would be acceptable to us**, although the proposed wording might be clarified (e.g. "institutions may use as eligible collateral collateral amounts…" or "collateral amounts receivable… are eligible as collateral").

CRM, Annex VIII, Part 1, Point 21 – ND 49

In this case, we would agree that market specificities may play a role. For example, liquid markets might exist for certain types of collateral in some countries, but not in others. However, this recognition is already implicit in the wording of the provision as it stands, which gives flexibility to each authority to check that liquid markets and publicly available market prices exist for the type of security in question. There is therefore no justification for an additional choice by supervisors – i.e., **where the two conditions are fulfilled, the collateral shall be recognised as a general rule**. We would find CEBS' proposal of **mutual recognition helpful as an addition, although there is no prudential justification that this recognition would not be binding**. Furthermore, we welcome CEBS' proposal that supervisors disclose the recognition of collateral in the supervisory disclosure framework. However, we are sceptical as to the usefulness of supervisors disclosing merely the 'criteria', rather than the list of physical items. Disclosure must be designed, on the one hand, to allow all banks across the EU to apply the same risk weights for the same circumstances; and on the other hand, to highlight any discrepancies between supervisors' practices and support the move to convergence in day-to-day supervisory practice.

CRM, Annex VIII, Part 1, Point 28 – ND 50

It is not clear to us in what way local market and business specificities play a role here, and we are disappointed that CEBS again evokes the argument of "risk sensitivity". Effectively, CEBS uses both terms as a catch-all for all provisions that it does not want to harmonise. In our view, **the requirement that the financial institution to be used as a protection provider is authorised and supervised under equivalent standards to those applied to credit institutions is a strong and sufficient safeguard, on top of which a general rule of recognition should apply**. For the sake of consistency of supervisory approaches, we also underline that in this case mutual recognition must be **binding** in the view of EBIC.

CRM; Annex VIII, Part 2, Point 9(a) (ii) – ND 51

We recognise that differences in insolvency law in different countries create different "local market conditions". However, this is again implicitly recognised in the wording of the provision itself ("the claims of preferential creditors provided for in legislative or implementing provisions"). It is therefore not tenable to argue again on the grounds of local market conditions for the implementation of the provision. **The provision should be implemented as a general rule, i.e. collateral should always be recognised where the claims are also recognised in national insolvency law.**

CEBS' proposal of mutual recognition is a helpful addition and should, on prudential grounds, be binding.

CRM, Annex VIII, Part 3, Point 12 – ND 52

We agree that these provisions should be seen as a part of the model approval process. However, the second part of the provision combines again a clear and objective criterion with an additional and unnecessary choice for the supervisor: **i.e. where transactions are covered under a bilateral master netting agreement, credit institutions should as a rule be allowed to use their internal models also for margin lending transactions**. We remind CEBS that this approach of deleting additional choices where the criteria are clear and objective is in line with the general criteria it sets out at the start of its paper.

Furthermore, although the impact of this individual discretion might not be substantial as such, we also remind CEBS that it is the large number of national discretions that leads to the important divergences of CRD implementation between countries and supervisors and that this has been identified to be particularly problematic in the contexts of Pillar 2 and Pillar 3.

CRM, Annex VIII, Part 3, Point 19 – ND 53

We agree with CEBS' proposal and would at the same time like to clarify that the supervisor will retain the competence to check its satisfaction as regards the adequacy of correlation measurements. We believe that it would be more consistent to rephrase the proposed wording ("credit institutions may use empirical correlations … if they demonstrate to the competent authorities that their system for measuring correlations is sound and implemented with integrity").

CRM, Annex VIII, Part 3, Point 43 – ND 54

As for the previous ND, we agree with CEBS' proposal.

CRM, Annex VIII, Part 3, Point 72 – ND 55

As this provision is due to expire at the end of 2012, we **agree that it is not necessary to change it at this stage**. However, CEBS' is right to point to the level playing field impact of this provision. We therefore believe that **if at the time of the review it is decided to maintain this discretion, this must be as a general rule**, rather than through the addition of a mutual recognition clause. In this context, we furthermore remind CEBS of the main rationale for reviewing the NDs, which was to harmonise the application of the CRD as much as possible. Mutual recognition can be helpful in some specific cases, but will enshrine the different CRD implementations rather than lead to more alignment.

CRM, Annex VIII, Part 3, Paragraph 89 – ND 56

We **agree with CEBS proposal** and would note at the same time, as regards CEBS' reference to a "supervisory decision", that it would not be justified to recognise the same kind of collateral for one institution, but not for another.

Securitisation, Article 152 (10) (b) – ND 57

This provision has already expired, and we **agree with CEBS that it should now be deleted** from the CRD.

Securitisation, Annex IX, Part 4, Paragraph 30 – ND 58

EBIC originally recommended an option for institutions. However, we **can endorse CEBS' analysis and recommendation**.

Securitisation, Annex IX, Part 4, Paragraph 53 (last sentence) – ND 59

We agree with CEBS' proposal.

Op risk, Article 102.4 & Annex X, Part 4, Points 1 and 2 – ND 60

We agree with CEBS' proposal.

Op risk, Article 104.3 – ND 61

We agree that this provision requires a supervisory judgement. However, this **judgement should be restricted to assessing whether the criteria as set out in Annex X, Part 2, points 10-12, are met, but there should be no additional choice**: where the criteria are met (as confirmed by the supervisor), institutions should automatically be allowed to use an alternative indicator.

Op risk, Article 105.4 – ND 62

We see this provision as part of the model approval process, where the competent authority first approves the overall model designed by the institution, including the level of application. **The level at which the criteria are to be met is intrinsically linked to that, i.e. as soon as AMA is applied at consolidated level, institutions should automatically be allowed to meet the applicable criteria at this level.** CEBS' concerns about turning this provision into a general rule are not clear to us, at this does not impede supervisors' competence to validate institutions' models.

Op risk, Annex X, Part 2, Point 3 and 5 – ND 63

As for ND 61, there should be **no additional choice for supervisors once that it can be confirmed that the clearly defined criteria are met** – i.e., this provision should be turned into a **general rule, effectively giving the choice to institutions** (i.e., credit institutions may use the ASA, as a general rule, subject to meeting the requirements set out in points 5 to 11). CEBS' call for estimates on the costs and benefits of this particular provision ignores the overall impact of the high number of national discretions, which has in our understanding been recognised by amongst others, the European Commission. I.e., turning an ND into a general rule or deleting it entirely should be the default option, unless there are strong arguments for another treatment.

Qualifying holdings, Article 122.1 – ND 66

We agree with CEBS' reasoning and proposed solution.

Qualifying holdings, Article 122.2 – ND 67

It is not clear to us what concerns keep CEBS from proposing a general rule in this case. In a first instance, there is no justification that this provision would be implemented in some countries, but not in others. Furthermore, the requirement of 100% capital coverage should alleviate any prudential concerns. We reiterate our suggestion **that this provision be turned into an automatic general rule, i.e. where institutions exceed the applicable limits, this excess must be fully covered**.

Transitional, Article 153, First sentence – ND 68

EBIC **agrees that the decision on recognising collateral should, in general, lie with the competent authority of the country where the collateral is located**, and should be combined with binding mutual recognition as proposed by CEBS. Furthermore, and equivalently to CEBS' proposals for ND 76, we would suggest that this provision be reviewed before its expiration.

Transitional, Article 153, Second sentence – ND 69

EBIC initially recommended that this provision be turned into a general rule. However, in recognition of the fact that it expires after 2010 and is only applied by a minority of Member States, we can **endorse CEBS' recommendation of deleting it after the end of the transition period**.

Transitional, Article 154.1 – ND 70

We **welcome CEBS' clarification that this very important ND should be deleted** after the end of the transition period.

Transitional, Article 154.2 – ND 71

We do not agree with CEBS' statement that this discretion will no longer be relevant after 2009. Indeed, the provision is of major importance at the present time and can be relevant for specific cases in the future. We therefore urge CEBS, in the short term, **to work with its member authorities to make sure that the possibility of a shorter use test be given to all institutions** in the EU. In addition, we would suggest that this **provision be reviewed before its expiration**, to scrutinise whether it can be maintained as a general rule.

Transitional, Article 154.3 – ND 72

As for the previous ND, we call on CEBS to ensure that this ND is **used by all Member States, and we would also request that the ND be reviewed in due course with a view to maintaining it as a general rule**.

Transitional, Article 154.4 – ND 73

We regret the divergent implementation of this quite significant provision and would once again object to CEBS' evocation of "market specificities" to explain these divergences. Furthermore, we believe that this discretion is important not just as a temporary clause, but also to facilitate in

general the transition to the advanced approaches. We suggest that it be **reviewed before its expiration, with a view to maintaining it as an option for institutions** (to be confirmed by the supervisor).

Transitional, Article 154.6 – ND 74

We believe that the expiration date of end-2017 is too long to maintain the competitive distortions that arise from this significant provision. We **maintain that this provision be turned into a general rule**.

Transitional, Article 155 – ND 75

We regret, again, the divergent implementation and the competitive distortions arising from this provision. **Alternatively to its expiration after 2012, we would however request that it be reviewed in due time to consider maintaining it in the form of a general rule**. However it should be ensured that calibration is in line with the work of the Basel Committee.

Transitional, Annex VII, Part 2, Point 8 (second subparagraph) – ND 76

We welcome CEBS' clarification that this provision is already an option given to credit institutions to facilitate the transfer to the IRB approach. We therefore **agree with CEBS' analysis and recommendation of reviewing the ND before its expiration**, but also wish to point to the fact that according to CEBS' analysis, 20% of Member States have not transposed this provision. This is in our understanding a breach of EU law to be in principle pursued by the European Commission. CEBS should however **urge the concerned member authorities to correct the national transposition at this stage**.

Transitional, Annex VII, Part 4, Points 66, 71, 86 and 95 – ND 77

This is **a ND of great importance for facilitating the transition towards the IRB approach in general, and not only for a limited period of time**. In turn, the absence of such a possibility would mean a major obstacle for institutions to adopt the more risk-sensitive approaches. In practice, this already seems to be recognised at this stage by the fact that the overwhelming majority of Member States exercise the discretion for all institutions in their jurisdictions, without any additional tests or discrimination between different institutions.

This is also appropriate in recognition of the fact that for some segments and products, the evolution of markets and changes in credit processes can lead to discontinuity in historical time series. Banks have to take account of such observations in the appropriate selection of the time span that generates the most meaningful sample data, where a shorter period can sometimes be preferable to a longer one.

Against this backdrop, we **do not see the rationale for attaching an additional supervisory choice to the provision, but we maintain that it should be turned into a general rule**, as was previously recognised by CEBS' working group.

Transitional, Article 47 – ND 80

Given that the **BCBS is currently still in the process of considering the rules for incremental risk in the Trading Book, we believe that this ND will have to be reviewed once that a decision has been taken**, and that there might be need for an additional transition period after 2009.

Trading book, Article 18.2 and 18.3 – ND 81

We **agree with both of CEBS' proposals of turning Article 18.2 into a general rule, respectively an option for institutions, and maintaining Article 18.3 in the current form**.

Trading book, Article 19.2 – ND 82

We recognise the technical difficulties of turning this provision into a general rule, in the absence of a specific definition of the risk requirement to adopt or the applicable criteria. However, a majority of Member States already applies this provision and have thus already identified solutions. We would suggest that **the initiative be left to institutions to propose the appropriate approach ("a specific risk requirement may be set for any bonds falling within points 68 to 70")**, and that **CEBS' member authorities cooperate in parallel to ensure a common approach**, also on the basis of the experience gathered by those authorities that have already exercised this option. In order to support this commonality, it would be helpful **that authorities be required to publish the applied criteria and the ways of exercising this provision in the supervisory disclosure framework**.

Trading book, Article 19.3 and Annex I, point 52 – ND 83

We welcome CEBS' proposal of a joint assessment process as a first step. However, the **second step must be to combine the process with a joint decision**, which is paradoxically left out of CEBS' current proposal. From a prudential point of view, there is no reason that third country CIUs be considered eligible in some countries, but not in others – i.e. conceptually, the **outcome of the joint process should be binding**. Furthermore, we would request that a **list of all recognised collective investment undertakings be included in CEBS' supervisory disclosure framework**.

Trading book, Article 26 – ND 84

This provision significantly affects the level playing field. We do also not see the rationale for allowing some institutions such offsetting, but not others, where both are managed on a consolidated basis. This is irrespective of any "market specificities" claimed by CEBS, but depends purely on the institution's internal management structure. It is therefore clear to the industry that this provision must be turned into an **explicit choice for institutions**.

Trading book, Article 33.3 – ND 85

We agree **with CEBS that this provision should be seen to be a mistake** in the CRD given that Annex VII already provides this option as a choice for institutions, and that **Article 33.3 should be deleted from the CRD**.

Trading book, Annex I, Point 4, 2nd paragraph (first sentence) – ND 86

For the NDs 86, 87, 89, 90, 98 and 100, we **can agree with CEBS' suggestion of altogether removing the possibility of using margining requirements** for the calculation of capital requirements.

Trading book, Annex I, Point 4, 2nd paragraph (second sentence) – ND 87

For the NDs 86, 87, 89, 90, 98 and 100, we **can agree with CEBS' suggestion of altogether removing the possibility of using margining requirements** for the calculation of capital requirements.

Trading book, Annex I, point 5, 2nd paragraph – ND 88

We **agree with CEBS' proposal of entirely deleting this provision**.

Trading book, Annex I, point 5, 3rd paragraph, first and second sentence – ND 89

For the NDs 86, 87, 89, 90, 98 and 100, we **can agree with CEBS' suggestion of altogether removing the possibility of using margining requirements** for the calculation of capital requirements.

Trading book, Annex I, point 5, 3rd paragraph, last sentence – ND 90

For the NDs 86, 87, 89, 90, 98 and 100, we **can agree with CEBS' suggestion of altogether removing the possibility of using margining requirements** for the calculation of capital requirements.

Trading book, Annex I, point 14, next to last paragraph – ND 91

We recognise the good intentions behind CEBS' current proposal of giving institutions the responsibility for their own models and model parameters. However, we do not believe that this proposal makes sense for the STA approach to which this provision refers. CEBS' proposed wording would rather create confusion as to who would be authorised, or not, to decide on a higher specific risk charge. **We therefore reiterate that this provision should be entirely deleted.**

Trading book, Annex I, point 26 – ND 92

We **agree with CEBS' proposal of turning this ND into an option for institutions**.

Trading book, Annex I, point 35, 1st paragraph – ND 93

We agree that the criteria currently set out in the CRD leave some scope for divergent views and understand CEBS' concern of ensuring that the provision is used appropriately. However, it should be clear that the authorities' role is restricted to checking in which way the applicable criteria are met, and that there is no choice which would be separate or in addition to this judgement. We therefore suggest that the provision be re-phrased in the following way: **"By**

derogation from point 34, institutions may hold capital of 2% rather than 4% (…) if they demonstrate to the competent authorities that the following conditions are met: (…)".

Trading book, Annex I, point 35, 2nd paragraph – ND 94

We **agree with CEBS' proposal of turning this ND into a general rule**.

Trading book, Annex III, point 2.1, last sentence – ND 95

We would not see the rationale for applying this ND divergently between different institutions, i.e. to allow some the calculation of open positions in net present value, but not others. It does therefore not make sense in our view to turn this ND into a supervisory decision to be taken on a case-by-case basis. We rather **support the second option proposed by CEBS, i.e. to give the choice consistently to institutions**.

Trading book, Annex III, point 3.1 – ND 96

It is the industry's collective experience that lower capital requirements are justified in the case of closely correlated currencies, i.e. to allow these lower capital levels also for supervisory purposes is the more "risk-sensitive" approach in the true sense of the word. Furthermore, we do **not see a rationale for adopting different approaches between institutions, where the same combination of currencies is concerned**. If two currencies are closely related, this relationship does not change its character from one institution to another. It is therefore neither justified to delete the provision entirely, nor to turn it into a "supervisory decision". **As previously also agreed by the CEBS working group, it should be turned into a general rule**, respectively an option for institutions which leads to the same outcome.

Trading book, Annex IV, point 7 – ND 97

We generally welcome CEBS' proposal of aligning competitive conditions by turning the ND into a general rule. Nevertheless we **prefer that this ND be turned into an option for institutions**. We would suggest that CEBS' wording be amended accordingly: "the following positions **may** be regarded as positions in the same commodity" (rather than shall be regarded).

Trading book, Annex IV, point 8 – ND 98

For the NDs 86, 87, 89, 90, 98 and 100, we **can agree with CEBS' suggestion of altogether removing the possibility of using margining requirements** for the calculation of capital requirements.

Trading book, Annex IV, point 10, 2nd paragraph – ND 99

We **agree with CEBS' proposal of deleting this provision entirely**.

Trading book, Annex IV, point 10, three last paragraphs – ND 100

For the NDs 86, 87, 89, 90, 98 and 100, we **can agree with CEBS' suggestion of altogether removing the possibility of using margining requirements** for the calculation of capital requirements.

Trading book, Annex IV, point 14 – ND 101

We **agree with CEBS' proposal of turning this ND into an option for institutions**.

CRM, Annex VIII, Part 1, point 16, 1st sentence – ND 102

We **agree that this provision be left unchanged and the following ND be changed into a requirement of binding mutual recognition**.

CRM, Annex VIII, Part 1, point 16, last sentence – ND 103

We **agree that this provision be combined with binding mutual recognition**, as suggested by CEBS for ND 105. However, we would request that the **present provision also be turned into a general rule**, whereby the requirement for institutions to comply with the condition in point 13(b) should always be waived when competent authorities are satisfied that the applicable criteria are met. Furthermore, we welcome in principle CEBS' proposal for supervisors to disclose in the supervisory disclosure framework how they make use of the waiver. Again, we note that this is not an end in itself, but that **disclosure must be effective to both provide the necessary clarity to institutions, and to support the promotion of a common approach across CEBS' member authorities.**

We furthermore note that there seems to be a conceptual inconsistency between, on the one hand, CEBS' proposals for NDs 102 to 105, and those for NDs 136-143 (please cf. our comments for ND 137).

CRM, Annex VIII, Part 1, point 17 – ND 104

We **agree that this provision be left unchanged and the following ND be changed into a requirement of binding mutual recognition**.

CRM, Annex VIII, Part 1, point 19 – ND 105

We **agree that this provision be turned into a requirement for binding mutual recognition**. For additional comments, please cf. ND 103.

CRM, Annex VIII, Part 1, point 25 – ND 106

We **welcome CEBS' clarification that this provision is already an option given to credit institutions**, and we agree with CEBS' proposal of re-wording the provision to express this more clearly.

CRM, Annex VIII, Part 1, point 8 – ND 107

We **welcome CEBS' clarification that this provision is already an option given to credit institutions**, and we agree with CEBS' proposal of re-wording the provision to express this more clearly.

CRM, Annex VIII, Part 2, point 16 – ND 108

We **agree with CEBS' analysis and welcome the clarification that this provision is an option given to institutions**.

CRM, Annex VIII, Part 3, point 59 – ND 109

We **agree that this provision is an error in the CRD**, given that the provision to which it refers is an option for institutions that does not need a mutual recognition clause. The provision should indeed be deleted from the CRD.

CRM, Annex VIII, Part 3, point 73 – ND 110

We **agree with CEBS' proposal of making the subsequent mutual recognition clause that refers to this provision binding, and of requiring competent authorities to disclose their practices** of exercising this provision in a meaningful way in the supervisory disclosure framework.

CRM, Annex VIII, Part 3, point 75 – ND 111

We **agree that this mutual recognition clause be made binding**.

IRB, Article 85.1 and 85.2 – ND 115

We **agree that this provision forms part of the IRBA approval process**. It should therefore, in our view, be understood as a choice to be made by institutions, and to be reviewed by the competent authorities under Pillar 2.

IRB, Article 89.1 last sentence – ND 116

EBIC **recommended deletion of this ND**, as it is an exception to a general rule. However, if CEBS wishes to maintain it then we would argue that this should be in the form of a **general rule**.

IRB, Article 89.1 – ND 117

The current wording of this provision makes it in our view very clear that this is an **option given to credit institutions** within the normal IRBA approval process. CEBS' question is not clear to us, as we understand that the choice for institutions applies without any differentiation to all of the listed exposure categories. We would request CEBS to confirm our understanding in this respect.

IRB, Article 89.1 (f) – ND 118

See comments for ND 117.

IRB, Article 89.1 (g) – ND 119

See comments for ND 117.

Large Exposures – NDs 120 - 123

(It was agreed to deal with these NDs in the Large Exposures review.)

Op risk, Annex X, Part 3, point 11 – ND 124

We **agree with CEBS' analysis, namely that this provision should be seen as part of the AMA approval process** and can be granted as a general rule, as the competent authorities retain overall competence to approve the model. We find it again misleading that CEBS argues on the basis of costs and benefits for this individual discretion, thereby disregarding the broader picture of the number of the NDs as a whole.

Furthermore, the **wording does in our reading not deliver on CEBS' objective**. As it is now proposed by CEBS, the authorities could indeed still not recognise the correlations, even though the institution demonstrates the adequacy of its systems. We would simply propose to state that "correlations … shall be recognised as part of the model approval process where credit institutions can demonstrate to the satisfaction of the competent authorities…"

Securitisation, Annex IX, Part 4, point 43 – ND 125

We regret that CEBS disregards once again the methodology/ general criteria it defines as a starting point for the classification of the NDs, where it clearly states that where a provision is subject to clear criteria, the authority's role is to check that the criteria are fulfilled but there is no additional choice on top of that. This is however what the first part the sentence seems to imply. Indeed, the role of the authorities is also explicitly mentioned in the criteria itself (e.g. (b), "the credit institution shall satisfy the competent authorities…"). The **seemingly discretionary part of this provision should therefore be deleted, so that it is clear that this provision applies as a general rule**.

Securitisation, Annex IX, Part 4, point 43, last sentence – ND 126

It is not clear to us why this provision should be subject to a separate supervisory decision. Where there is no publicly available ECAI assessment methodology it is clear that the criterion cannot be met. The provision should therefore **apply as a general rule, to be however confirmed by the competent authorities**.

Securitisation, Annex IX, Part 4, point 58 – ND 127

EBIC is concerned about the divergent application of this provision. Whilst we recognise that it is up to the competent authorities to ensure that prudent use is made of this provision, we **call on CEBS to enhance practical cooperation with a view to achieving consistency in the application of this and similar provisions**.

Securitisation, Article 97.1 – ND 128

We **welcome CEBS' clarification that this is an option for credit institutions**.

Securitisation, Article 97.2 – ND 129

We **agree with CEBS that this is a general rule**. We would **suggest that the word "only" be deleted** from the current text to clarify this interpretation.

Securitisation, Article 97.3 – ND 130

We are disappointed that CEBS, although referring to the joint assessment processes, again excludes the decision from this process. Indeed, the process has in practice already worked well, which all the more constitutes also a reason to set out this process in its entirety in the legal text. Conceptually, the outcome of this joint assessment process should also be binding.

Securitisation, Article 98.1 – ND 131

Although CEBS' proposal goes in the right direction, the logical next step is again missing. In order to ensure that the credit quality steps are assigned in all Member States, the **joint process must result in a joint outcome that should ideally be binding**.

Securitisation, Article 98.2 – ND 132

Ideally, this provision should be replaced, together with the previous one, by a full joint assessment process with a binding outcome.

Standardised Approach, Annex VI, Part 1, point 49 – ND 136

We agree that the application of this provision depends on local market conditions. However, we still believe that the provision itself could be turned into a general rule, by foreseeing that the **condition contained in point 48(b) always be dispensed where exposures are fully and completely secured by mortgages that fulfil the applicable criteria**.

Furthermore, whilst we find **CEBS' proposal of mandatory disclosure of the application of the provision in the supervisory disclosure framework helpful, we point again to the reservations that we articulated equivalently for ND 103**.

Standardised Approach, Annex VI, Part 1, point 50 – ND 137

We would **agree with CEBS' wording proposal, which would in our understanding effectively imply mutual recognition as a general rule**. However, we note that CEBS' classification of an 'option for credit institutions' has already led to misunderstandings, especially in contrast with CEBS' recommendations for NDs 102 – 105, i.e. the equivalent provisions for the advanced approaches, where CEBS' outright proposal is that of binding mutual recognition.

Standardised Approach, Annex VI, Part 1, point 51 – ND 138

As for ND 136, we agree that the application of this provision depends on local market conditions. We furthermore welcome **CEBS' reminder of the requirement for mandatory disclosure of the application of the provision in the supervisory disclosure framework,** as

most authorities have not so far complied with this obligation. We furthermore agree with the automatic mutual recognition as proposed below for ND (141), which will become much more effective when supported by full disclosure of the application of ND 138.

Standardised Approach, Annex VI, Part 1, point 52 – ND 139

As this provision already implicitly requires the recognition of collateral by the Finnish authority, we do not agree that there should be an additional decision by the national competent authority. We would suggest that **this ND be aligned with ND (47) for the IRB approach, implying a general rule where collateral has been recognised as eligible under the Finnish housing act**.

Standardised Approach, Annex VI, Part 1, point 53 – ND 140

We agree, again, that the application of this provision depends on local market conditions and find **CEBS' proposal of mandatory disclosure of the application of the provision in the supervisory disclosure framework helpful**. We furthermore agree with the automatic mutual recognition as proposed below for ND (141).

Standardised Approach, Annex VI, Part 1, point 57 – ND 141

We **agree, as set out above, on the solution proposed by CEBS for point 52, as well as on the automatic mutual recognition** proposed here for points 51 and 53.

Standardised Approach, Annex VI, Part 1, point 58 – ND 142

We **agree with CEBS' proposal of mandatory disclosure of the application of this provision in the supervisory disclosure framework, combined with automatic mutual recognition** under point 60/ ND (143).

Standardised Approach, Annex VI, Part 1, point 60 – ND 143

We **agree with CEBS' proposal to convert point 60 into a clause of automatic mutual recognition** linked to point 58.

Standardised Approach, Annex VI, Part 1, point 77 (a) – ND 144

Although we agree that no change is necessary in the wording of the CRD we would like to clarify that **this is an option given to institutions**. Indeed, it is for the very reason that supervisors often interpret this provision as a choice given to the authorities that the provision was raised in the context of the national discretions. The role of the authorities is to confirm that the applicable criteria are met.

Standardised Approach, Annex VI, Part 1, point 78 – ND 145

As for similar cases above, on prudential grounds, it is not clear to us why a third country CIU should be recognised in some Member States, but not in others. **Mutual recognition should therefore either be binding, or a joint assessment process be established that results in a joint decision.**

Standardised Approach, Article 81.1 – ND 146

We **agree with CEBS that provisions (146) and (147) are not NDs, but general rules**. In order to clarify that this is a general rule to apply always where an ECAI has been recognised, we would furthermore suggest deleting the word "only" from both provisions.

Standardised Approach, Article 81.2 – ND 147

We **agree with CEBS that provisions (146) and (147) are not NDs, but general rules**. In order to clarify that this is a general rule to apply always where an ECAI has been recognised, we would furthermore suggest deleting the word "only" from both provisions.

Standardised Approach, Article 81.3 – ND 148

We reiterate that **mutual recognition should be binding, or that the joint assessment process should explicitly also include a joint decision**.

Standardised Approach, Article 82.2 – ND 149

We reiterate that **mutual recognition should be binding, or that the joint assessment process should explicitly also include a joint decision**.

Transitional provisions, Article 154.1, second paragraph – ND 150

We **agree that this provision should be allowed to expire**, as currently foreseen in the CRD.

Transitional provisions, Article 154.7, first two sentences – ND 151

We **agree that this provision should be allowed to expire**, as currently foreseen in the CRD.

Transitional provisions, Article 154.7, last sentence – ND 152

We **agree that this provision should be allowed to expire**, as currently foreseen in the CRD.