European Banking Federation

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

Introductory remarks

1. The EBF welcomes the opportunity to comment on CEBS' proposal on how to deal with the national options and discretions in the CRD. We have in the past regretted the large number of these options and discretions and have pointed to their negative effects at numerous occasions.

2. We have therefore also been involved in a number of discussions of these discretions and have already commented several times on each individual provision. We consider it of **utmost importance that the current round of discussion is a final one, which brings certainty to the market at the same time as resolving the various concerns** linked to the divergences in CRD implementation.

3. We reiterate that our concerns include not only level playing field distortions and the administrative burden from maintaining and consolidating different sets of rules for different jurisdictions, but also important links to Pillar 2 and Pillar 3. In particular, the national options and discretions have continuously been referred to as one reason that prevents the adoption of a single genuinely harmonised Common Reporting framework.

4. Whilst we recognise that it is the responsibility of the European Commission to set the timetable for amendments to the CRD, the EBF would welcome some **indications for the timing of making the envisaged changes**. CEBS might itself include its own, general views on the timing in its advice to the European Commission, apart from those discretions where it recommends a transition period. In addition, the EBF will look to the European Commission, after CEBS has delivered its advice, to make a swift announcement about next steps and its intentions in terms of timing. A clear timetable is in particular important for those provisions which cannot be addressed through the Comitology procedure.

General comments on CEBS' approach

5. We find **CEBS' general approach to addressing the issue much more consistent** than previous work. In particular the glossary is very helpful in clarifying the different options that CEBS proposes and reflects the concerns previously outlined by the industry.

6. At the same time, however, we feel that **many of CEBS' proposals rely on a purely pragmatic approach, which lacks the recognition of the broader problems linked to the large number of national discretions, as well as determination to find a real and determined solution to these problems.**

a.i.s.b.l.

10 rue Montoyer B- 1000 Brussels
+32 (0)2 508 37 11 phone
+32 (0)2 511 23 28 fax
http://www.ebf-fbe.eu

7. Accordingly, the EBF views CEBS' proposal as a partial improvement on the current situation. Indeed, we would agree or near-agree with CEBS' proposals for 91 out of the 152 provisions that are subject of the current consultation.

8. However, we also believe that more work is needed for a number of other aspects, and to arrive at a solution that would though not ideal, at least be acceptable to the EBF.

9. We are also less convinced by CEBS' approach to 'impact assessments', which in some cases seems to simply disguise general supervisory concerns around financial stability but does not give to consideration to the impact on the industry. At the same time, we have often pointed to **the indirect costs of the national discretions, in particular as regards the Pillars 2 and 3 of the Accord,** which have received little attention by CEBS in that context.

10. By way of overview, a broad classification of the EBF's proposals and CEBS' proposals, as well as of the agreement between both, can be made as follows:

Draft proposals		**EBF proposal (Number of the specific ND)**	**Total n° (EBF)**	**Total n° (CEBS)**	**(Near) Agreement between CEBS and EBF**
1) Options and discretions that should be kept in the current form	Need for broader political agreement		0	5	
	Expiration of the provision in the near future	(55), (69), 70, 80, 150, 151, 152	7	12	7, 70, 80, 150, 151, 152 (69)
	Local market conditions		0	7	
	Lack of practical experience/ objective criteria		0	11	
2) Mutual recognition	Binding	25, 26, (31), 45, 49, 51, 68, 102+103, 104+105, 110+111, 136, 138 and 140+141, 142+143,	20	10	68, 102+103, 104+105, 110+111, 142+143 138 and 140+141 (25, 26, 31)
	Non-binding		0	14	
3) Supervisory decision, to be applied case by case		*To be aligned with institutions' responsibility for their own models, or to be combined with mutual recognition*	0	37	(16)
4) General rules	General application of the provision,	2, 8, 9, 10, 11, 12, 14, 15, 16, 19, 20, 21, 28, 29, 30,	53	14	14, 20, 21, 28,

	respectively one of the options	31, 34, 37, 38, 39, 40, 41, 46, 47, 50, 51, 52, 55, (58, 59,) 66, 67, 71, 72, 77, 78, 79, 82, 93, 96, 97, 113, 114, (116), 124, 125, 126, 129, (133, 134, 135), 137, 139, 146, 147,			29, 36, 40, 47, 58, 59, 66, 81, 94, 97, 137 (19, 37, 48, 91, 124, 129, 146, 147)
	Deletion/removal of NDs	(16), 22, (30), 32, 33, 35, 36, (41), 42, 43, 44, (45), 48, 49, 57, (58), 69, 74, 75, 85, (86, 87, 89, 90, 98, 100), 88, 91, 99, 109, 112, 116	32	21	35, 57, 85, 88, 99, 109 (30, 33, 41, 44, 45, 86, 87, 89, 90, 98, 100)
5) Option for credit institutions		1, 3, 4, 5, 6, 7, 8, 13, (14), 17, 18, (47), 53, 54, 56, 58, 59, 60, 61, 62, 63, 64, 65, 73, 76, 81, 84, (86, 87, 89, 90, 98, 100), 92, 95, 101, 106, 107, 108, 115, 117, 118, 119, 127, 128, 144	45	22	1, 53, 54, 56, 60, 65, 76, 92, 101, 106, 107, 108, 128 (17, 95)
6) EU Joint Assessment process		23, 24, 27, 83, 130, 131, 132, 133, 134, 135, 145, 148, 149,	12	9	(23, 24, 27, 83, 130, 131, 132, 133, 134, 135, 145, 148, 149)
7) Out of scope		120, 121, 122, 123	4	12	(120, 121, 122, 123)

Comments on the 'Methodology'

11. CEBS notes that it received 16 responses to its call for evidence conducted last year, of which three from individual institutions. In its analysis of the individual options and discretions no difference is made between these respondents. In our view the scope of representation should however be taken into consideration.

12. We agree that there was a degree of confusion over what provisions should be considered national discretions. We welcome CEBS' decision to take into account all provisions raised by the industry. Even where CEBS confirms that certain provisions are effectively options for institutions, they were brought up by the industry for the very reason that this interpretation was not always endorsed by all supervisory authorities. CEBS' confirmation in this respect will therefore be helpful.

Comments on the 'High level considerations'

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

14. Whilst we agree, in principle, with the need to consider the practical impact of intended changes to the options and discretions, 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 disguise, in a number of cases, supervisors' general prudential concerns**. These concerns are certainly legitimate, but the idea of an impact assessment in our view is to consider also 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.

15. 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**. We also find that this argument is well reflected in a number of CEBS' individual recommendations.

16. We furthermore **welcome CEBS' openness to more joint assessment processes**, 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. We firmly believe, however, that such **processes must become binding**, and suggest that, against this background, CEBS makes a link between the current consultation paper and the ongoing discussions on the Lamfalussy process.

17. Whilst we recognise that the current consultation is limited to the issue of explicit national discretions in the CRD, we nevertheless note – against the backdrop of the EU's general efforts towards supervisory consistency and convergence – **that joint assessment process would also lend themselves to other areas** than those considered in CP 18. Besides the benefits in terms of convergence of supervisory practices, joint assessments would facilitate the process and bring an alleviation of administrative burden for both credit institutions and supervisory authorities. This is in particular with respect to the recognition of equivalency of third country regimes and the recognition of third country public sector entities for a treatment equivalent to that of the respective central government.

18. For example, one of these areas would be the categorisation of central counterparties whose transactions are fully collateralised on a daily basis (Annex III, Part 1, point 2 in conjunction with Article 78(4) of Directive 2006/48/EC), where we believe that a common approach within CEBS would be of great value.

19. CEBS states that non-binding **mutual recognition** should be used 'where there may be relevant information not available to the other competent authorities, or where the judgement on a market or individual entity relates to markets in various jurisdictions inside or outside of the EU'. We do not agree with this approach, which further enshrines divergent supervisory approaches and competitive distortions. Instead, we call on **CEBS to put processes in place that aim at**

consistently achieving common approaches and decisions. For example, where CEBS' identifies gaps in the information exchange between supervisors this should also be flagged to the political forces, in view of the appropriate development of the regulatory framework.

20. The discussions up to this stage have shown that the statement that solutions should be 'risk sensitive' and 'proportionate' have little practical value. The industry understands **'risk sensitive' solutions to mean that the prudential provisions are closely aligned with the risks** as they present themselves in statistical terms and based on sophisticated models. As opposed to this, risk sensitivity in the supervisors' minds is 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.

21. We also **question the argument of 'local market conditions' against the EU's objective of a single market in financial services**. Differences in national legal approaches are indeed relevant in some cases, but economic arguments are not convincing, as the counterargument would be that it is legislation that significantly shapes national economies. We welcome, on the other hand, CEBS' consideration that mutual recognition should be binding at least in the cases where specific 'local market conditions' are identified.

22. We also have some reservations on CEBS' argument that options and discretions should be maintained where there is little experience with their practical functioning. There is, naturally, little experience with the CRD as a whole but that is with regard to all of its provisions. However, this argument should not be used bluntly to maintain a situation that is clearly damaging to Europe's banking industry.

Comments on 'Impact assessment'

23. We have noted our important reservations on CEBS' approach to an impact assessment above. We 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'

24. 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 the European Banking Industry Committee, which represents the overwhelming majority of all banking business in Europe, has already made recommendations for all of these provisions which the EBIC believed have too important competitive implications to be maintained in the current form. It is true, on the other hand, that the outcome of the large exposures review should be awaited before changes to the

options and discretions in this area are suggested. The example of the provisions on Own Funds shows, though, that the argument is not universally valid but rather seems to be used to avoid difficult debates.

25. We do furthermore **not agree with CEBS' argumentation of 'legitimate' options and discretions, on the basis of 'local market conditions'**. In the cases where there are real and objectively acceptable local market conditions, we would argue that binding clauses of mutual recognition should apply.

26. We concur that for many options and discretions, it is a **pragmatic position to let provisions expire that were meant to be only temporary**, and we find 2011 an appropriate end date for that purpose. However, there are a number of provisions that were meant to help the introduction of the advanced approaches, which might still be necessary in some situations. We would request that these provisions be reviewed before their expiration, and might be retained as general rules.

27. We agree, conceptually, that there are cases of supervisory decisions, rather than national discretions, many of which are part of the model approval process. However, we are not convinced that all of the 'case-by-case' decisions that CEBS identifies should indeed be interpreted as such. 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 wording proposals made by CEBS. Finally, we remind CEBS of **one of the most important regulatory concerns of cross-border institutions, which lies in the divergent approaches to supervision that CEBS' members take in practice. We continuously call on CEBS to put more emphasis on achieving progress in this respect**.

28. On the same category of 'supervisory decisions' we understand CEBS' rationale in making a distinction between cases where there is a 'judgement' by the supervisor, but no separate choice as the criteria in themselves are sufficiently clear; and cases where there is both 'judgement and choice', as the criteria cannot be defined upfront in a sufficiently objective way. However, in order to avoid confusion, we would suggest that CEBS distinguishes between cases where the supervisor 'confirms' that the applicable, objective, criteria are met; and cases where it takes a 'judgement' as to whether or not they are. This would avoid the discretionary notion of 'choice'.

Comments on the 'Summary of findings'

29. We are **puzzled by CEBS' proposal of 'supervisory discretions'**, as well as its argument that the application of such supervisory decisions would 'reduce the costs associated to the existence of national discretions' for cross-border groups. As noted above, the industry rather urges CEBS to ensure more consistency in day-to-day supervision. In addition, we are concerned that the use of supervisory discretions would even lead to less, rather than more, transparency.

30. 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. CEBS' instant updating of the incomplete list of national discretions would also be an appreciated sign of commitment to the framework.

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

31. We **welcome CEBS' general statement 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 find back in CEBS' analysis.

32. 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. This is a very blunt argumentation that avoids the identification of really measurable costs and benefits, as opposed to mere speculation. It also disregards the fact that all possible options have already been validated as suited in principle in the Basel II framework.

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

(1) Own Funds, Article 57

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.

(2) Own Funds, Article 58

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 there should however not be a separate supervisory judgement.

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

(3) Own Funds, Article 59

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. The phrase that 'Member States shall allow their authorities' is redundant if the intention is to give the supervisory authorities the choice between methods 1, 2 and 3 of Annex I.

In addition, it is the view of the broader banking industry, as previously confirmed by the EBIC, that the choice between the three methods should rather be given directly to institutions.

(4) Own Funds, Article 60

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 now allow in our view to await the outcome of the review of the definition of own funds.

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

(5) Own Funds, Articles 61, 63.1, 64.3 and 65

CEBS rightly points to the significance of these provisions. The industry's conclusions are however opposed to those of CEBS. We believe that the implications from 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.

(6) Own Funds, Article 13.2

As for the previous discretion, the implications for 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.

(7) Own Funds, Article 13.5

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

(8) Own Funds, Article 14

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 institutions' overall business models as other important policy decisions to be taken by institutions.

(9) Scope of application, Article 69.1

The EBF is aware that the issues around this Article are linked to the general, difficult discussion on the right supervisory structures. However, **we strongly disagree with CEBS' assessment that the impact of the discretion is 'immaterial'**. Indeed, the current situation unduly penalises parent institutions with a larger number of subsidiaries outside the home jurisdiction, as opposed to those institutions whose subsidiaries are established in the same jurisdiction as the parent entity.

We would have sympathy for a conclusion that underlines in this specific case the fact that a political discussion is ongoing in parallel, and which CEBS is not able to solve in the context of the national discretions. As opposed to this, we cannot endorse CEBS' current argumentation and proposal.

The EBF continues to be of the view that within the EU's 'single market', all three Pillars of the CRD should be applied at consolidated level. This discretion, as well as the two treated below, should therefore be turned into general rules in the view of the EBF. We urge CEBS to ensure that the discussion is continued both amongst CEBS' members and with the involvement of the European Commission.

(10) Scope of application, Article 69.3

As for discretion (9).

(11) Scope of application, Article 70

It is correct that this option is not given to Member States, but to the supervisory authorities. However, points (c) and (d) of Article 69.1 are very clear and can be applied objectively. When it can be confirmed that the conditions are met there is no reason for this condition to be applied in a divergent way.

Instead, the condition should be applied as a general rule where the conditions are fulfilled.

(12) Scope of application, Article 72.3

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 the 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, of 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 the Pillar 3 disclosures are designed are indeed interested in the group-wide angle.

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

(13) Scope of application, Article 73.1

We agree with CEBS' estimation that it does not make sense for this provision to be applied as a 'national discretion'. However, we can also 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.

(14) Scope of application, Articles 22, 24 & 25

With regard to Article 22, we concur that this is currently a decision given to supervisors. Following from CEBS' own classification of two types of supervisory decisions, the criteria given **under part 1 are however clear and objective, i.e. the provision should be turned into a general rule** to be confirmed by the supervisor, without an additional discretionary element. The second part of this Article, on the other hand, does not have such clear criteria to it, i.e. indeed needs to be agreed between the supervisor and the firm.

As regards Articles 24 and 25, we recommended a general rule on the basis of the argumentation that all of the capital requirements set out in the Directive as general rules are minimum requirements, i.e. a firm can always choose to hold higher levels of capital if it deems them appropriate. **We would therefore find it consistent that also in this case, the provision be formulated as a general rule.**

(15) Counterparty risk in derivatives, Annex III, Part 3

We find CEBS' argumentation on this discretion not consistent. The question of whether an institution with significant commodities business should be using internal models is a general one on the institution's approach to business and risk management, which should be discussed with its supervisor in the normal process of supervisory review. When this up-front decision has been taken, the provision in question becomes relevant.

CEBS' argumentation, in the analysis of this provision, is that the provision cannot be turned into a general rule because it allows lower capital requirements. This argument ignores the fact that it is the clearly defined criteria for the application of this provision that justify lower capital requirements. We remind CEBS again of its own formulation of methodology that made a distinction between provisions with sufficiently objective criteria, where compliance just needs to be confirmed, and provisions where the supervisor indeed has to take a judgement as to whether the criteria are fulfilled.

We urge CEBS to apply this very helpful and important methodology to all of the options and discretions under consideration. For the present one, the logical consequence is to turn the provision into a general rule.

(16) Counterparty risk in derivatives, Annex III, Part 6, Point 7

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 parameter based on their own judgement of the risks they face and on the appropriate level of conservatisms to make provisions against losses. The model approval process gives supervisors the right to question the bank's approach and assumptions as a whole, and with a much more principles-based and general angle than by focusing on just α.

CEBS' argumentation seems to reflect this understanding in principle, although in our perception it focuses too much on the role of the supervisor as opposed to the firm itself.

However, the drafting proposal is a clear improvement to express the interaction between a bank and all its supervisors in the group in the model approval process.

(17) Counterparty risk in derivatives, Annex III, Part 6, Point 12

We **agree with CEBS' explanation 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

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

We are disappointed about CEBS' argumentation for this option for two reasons. First, we noted above that it is not appropriate to simply sum up responses received for an impression of the importance of discretions: representation has to be considered, as well. Besides the scope, it is in particular not appropriate to compare supervisors' responses on an equal footing with industry responses.

Yet more importantly, this is one of the examples where CEBS unduly equates a high level of conservatism with higher risk-sensitivity. Risk-sensitivity, in the spirit of the Basel II Accord, means however aligning capital requirements closely with actually incurred risks. CEBS' approach of now proposing the 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.**

(19) Standardised Approach, Article 80.3 and Annex VI, Part 1, Point 24

Given the significance of this provision in terms of both level playing field and consolidation difficulties for cross-border groups, the EBF cannot accept CEBS' proposal of leaving this discretion unchanged. **We confirm our strong view that this discretion must be turned into a general rule.** Against the backdrop of the long discussions that industry, supervisors and policy makers have had on the damaging effects of the national discretion, we would indeed perceive it as a major disappointment if there was at this stage still no agreement to address distortionary provisions like the present one.

Although CEBS' understanding of 'risk sensitivity' is in our view the correct one for this case – as opposed to the generally more conservative option – it would not be helpful in practice. As CEBS' rightly points out, external ratings exist in most countries only for a

minority of institutions, so option b) would in practice lead to further inconsistencies, rather than harmonisation of practices. In this case, we therefore give a clear **preference to option a),** i.e. calculating risk-weighted exposure amounts using a method based on the credit quality of the central government, and deleting the alternative option b) altogether.

(20) Standardised Approach, Article 80.7

We much welcome CEBS' proposal, as well as its recognition of the significance of this provision and its, at this occasion, consistent use of its generally defined classification criteria and glossary. It would be an important step that this provision will be universally applied to all institutions that meet the applicable criteria, as confirmed by their competent supervisor.

We also fully support CEBS' wording proposal.

(21) Standardised Approach, Article 80.8

A principal decision was taken, at the time of negotiation of the Directive, to treat institutional protection schemes in the same way as banking groups in respect of the exemption from capital requirements for 'intra-group' exposures. We did not believe this decision to be adequate. **However, we concur that it is consistent, following this initial decision, to align Article 80.8 with Article 80.7.**

(22) Standardised Approach, Article 83.2

The EBF recognises that the Directive gives the option of allowing institutions to use unsolicited ratings to the supervisory authorities, rather than to Member States. However, we do not believe that this is consistent, as it does not make sense to allow some institutions to use unsolicited ratings, but others not. Indeed, this consideration must be a general one.

Our reservation against the use of unsolicited ratings was indeed that the quality of such ratings is questionable. **In spite of CEBS' correct observation that the use of such a rating will in most cases lead to a more favourable outcome for the institution, we therefore confirm our recommendation of removing it.**

As a second best, however, we could agree with CEBS' recommendation of incorporating this provision into the general ECAI approval process. In this case, it might be possible to find a clearer wording than currently proposed by CEBS.

In any case, CEBS' proposal of leaving the discretion unchanged is unacceptable to us. We see in particular a false pretext in the explanation that it could be changed only when 'a common practice has developed' in the markets where unsolicited ratings are used more frequently. This is not an example of market differences that we would find acceptable or that should be safeguarded by legislation.

(23) Standardised Approach, Annex VI, Part 1, Point 5

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 was reached after the conducting of such a joint process. We therefore also do 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.

We even call on CEBS to also consider a binding outcome, which might have to be considered in conjunction with more general questions about supervisory cooperation and the role of CEBS.

In addition, we note that we would accept a positive outcome of the recognition check for at a minimum, the (non-EU) G10 countries of the General Agreements to Borrow, as well as for the member countries of the European Economic Area (EEA).

(24) Standardised Approach, Annex VI, Part 1, Point 11

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.

However, as in the previous case **we would perceive such a process to be of very limited use if it did not 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.

(25) Standardised Approach, Annex VI, Part 1, Point 14

We agree with CEBS' assessment that this provision is a decision that requires local judgement and must be taken case-by-case. We also recognise that binding mutual recognition is already now required in Point 16 of Annex VI, Part 1. In this context, we underline that the terminology of 'supervisory decision' should of course not be misunderstood to imply that there might be differences in the recognition of PSEs across institutions, but that the recognition of PSEs must be valid in the same way for all institutions with exposures to these entities.

In practice, it is 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 it should give a full list of all individual PSEs that have been recognised**.

(26) Standardised Approach, Annex VI, Part 1, Point 15

As for ND 25.

(27) Standardised Approach, Annex VI, Part 1, Point 17

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 **in a second step be considered, in alignment with general discussions about supervisory arrangements, whether the joint decision should be binding** or have the status of a 'strong recommendation.

(28) Standardised Approach, Annex VI, Part 1, Point 37

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.

(29) Standardised Approach, Annex VI, Part 1, Point 40

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.

(30) Standardised Approach, Annex VI, Part 1, Point 63

The EBF 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**.

(31) Standardised Approach, Annex VI, Part 1, Point 64

The EBF would prefer that this provision be turned into a general rule. However, CEBS' proposal of **maintaining the national discretion with an implicit binding mutual recognition clause would be an acceptable alternative** in our view. This would also take account of the fact that most authorities have already acknowledged the appropriateness of the 50% risk weight by applying the discretion.

(32) Standardised Approach, Annex VI, Part 1, Point 66

The EBF 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, the EBF 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. **The EBF therefore continues to believe that the discretion should be deleted altogether.**

(33) Standardised Approach, Annex VI, Part 1, Point 67

As the EBF continues to believe that Point 66 should be deleted, this Point should automatically also be removed from the CRD. **We could accept the transition period proposed by CEBS.**

(34) Standardised Approach, Annex VI, Part 1, Point 68(e)

CEBS justifies its proposal on the purely opportunistic grounds of 'split interests'. We believe that after three rounds of discussions of the national discretions, such an approach can no longer be justified.

As there are clear and objective criteria for the application of this discretion, it would be consistent to turn this discretion into a general rule.

(35) Standardised Approach, Annex VI, Part 1, Point 85

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

(36) Standardised Approach, Annex VI, Part 3, Point 17

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

(37) IRB, Article 84.2

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., the EBF agrees that it is in the responsibility of the supervisor – or, where applicable, the college of supervisors – to confirm their fulfilment. **Where they 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.

(38) IRB, Annex VII, Part 1, Point 6

We agree that this provision should be understood as part of the IRB approval process. Clearly, the precondition of 'substantially strong' underwriting characteristics and other risks characteristics is also not an objective criterion. **Our preference would therefore be that the provision be entirely incorporated into the model approval process.**

The alternative option would in our view not be to retain the wording as it stands, but to reformulate it in line with the general approach of allowing the use of internal models: '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 risks characteristics'.

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

The EBF recognises the divergences that exist in the use and set-up of local wage accounts. However, **where collateralised credit facilities can be, respectively are, linked to a wage account, the provision should apply as a general rule**, without a separate discretionary decision, and subject to meeting the applicable criteria.

(40) IRB, Annex VII, Part 1, Point 18

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

(41) IRB, Annex VII, Part 2, Point 5 & 7 and Annex VIII, Part 1, Point 26

We believe that the **possibility of recognising unfunded protection providers, subject to certain conditions, is important due to the continued evolution of the contract structures of personal guarantees**. This provision has a significant impact on, in particular, the factoring business. As personal guarantees may indeed differ between Member States, it is the right approach to leave the initial judgement to the home authority, i.e. to maintain this provision, but to combine it with **binding mutual recognition** so that institutions in other Member State could benefit from guarantees from the same protection provider.

(42) IRB, Annex VII, Part 2, Points 12 and 13

We strongly disagree with CEBS' argument that the use of this discretion is linked to "local market conditions and market practices". Indeed, this is a typical example of supervisors taking different approaches that penalise some institutions as opposed to others. Again, we also disagree with CEBS' blunt argument that the discretion cannot be deleted because it provides a more 'risk-sensitive' approach, which again confuses the progressive concept of risk-sensitivity with the contrary concept of the same level of conservatism applied to all institutions in one jurisdiction, irrespective of their risk profile.

It is our strong view that this discretion must be deleted.

(43) IRB, Annex VII, Part 2, Point 15, first sentence

Again, the EBF does not endorse the argument of 'local market conditions' for this case, which merely disguises political compromises that have been made in opposition to the risk-based approach intended by Basel II. **We would agree with the deletion of this provision after a transition period, but find ten years too long for that purpose. We would instead propose a transition period of five years.**

(44) IRB, Annex VII, Part 2, Point 15, last sentence

As for the previous ND, we do not accept the argument of local market conditions, but **could accept the proposal of deletion after a transition period. However, we do**

consider ten years an exceptionally long period for that purpose, and would instead suggest a transition period of five years.

(45) IRB, Annex VII, Part 2, Point 20 & Annex VIII, Part 1, Point 26

As for ND 41, we believe that this provision is important for certain businesses, and should be maintained in combination with **binding mutual recognition**.

(46) IRB, Annex VII, Part 4, Point 56

We agree that this provision requires a supervisory judgement that the equivalency 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 judgement, 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 MS.

(47) CRM, Annex VIII, Part 1, Point 15

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.**

(48) CRM, Annex VIII, Part 1, Point 20

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").

(49) CRM, Annex VIII, Part 1, Point 21

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**.

(50) CRM, Annex VIII, Part 1, Point 28

It is not clear to us in what way local market and business specificities play a role here, and we are frustrated that CEBS' again utilises 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**.

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

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 again argue 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.

(52) CRM, Annex VIII, Part 3, Point 12

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 has identified to be particularly problematic in the contexts of Pillar 2 and Pillar 3.

(53) CRM, Annex VIII, Part 3, Point 19

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").

(54) CRM, Annex VIII, Part 3, Point 43

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

(55) CRM, Annex VIII, Part 3, Point 72

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.

(56) CRM, Annex VIII, Part 3, Paragraph 89

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.

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

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

(58) Securitisation, Annex IX, Part 4, Paragraph 30

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

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

We agree with CEBS' proposal.

(60) Op risk, Article 102.4 & Annex X, Part 4, Points 1 and 2

We agree with CEBS' proposal.

(61) Op risk, Article 104.3

We agree that this provision requires a supervisory judgement. However, this judgement should be restricted to the criteria as set out in Annex X, Part 2, points 10-12 are sufficient in themselves. I.e., **the role of the supervisor should be to confirm that these conditions 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.

(62) Op risk, Article 105.4

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.

(63) Op risk, Annex X, Part 2, Point 3 and 5

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**. CEBS' call for estimates on the costs and benefits of this particular provision ignore 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.

(64) Op risk, Article 20.2

The EBF is **in particular concerned about inconsistent application of this provision**, which has significant level playing field implications. If CEBS does not consider it feasible to give this option consistently to all investment firms, then we would request that CEBS' members work closely together to ensure consistency of treatment. In addition, **CEBS' members should be required to publish, within the scope of the supervisory disclosure framework, the criteria according to which they choose or not to grant this option**.

(65) Op risk, Article 20.3

We welcome CEBS' acknowledgement that the clear criteria provided here allow that this discretion be turned into a general rule, respectively an option for credit institutions which effectively results in the same outcome. **We support CEBS' proposal.**

(66) Qualifying holdings, Article 122.1

We agree with CEBS' reasoning and proposed solution.

(67) Qualifying holdings, Article 122.2

It is not clear to us what concerns keeps 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**.

(68) Transitional, Article 153, First sentence

The **EBF 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.

(69) Transitional, Article 153, Second sentence

The EBF 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**.

(70) Transitional, Article 154.1

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

(71) Transitional, Article 154.2

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, e.g. for new acquisitions of credit institutions in the SA approach. In the short term, we are concerned to note that there are Member States that do not apply this discretion and u**rge CEBS 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 request that this **provision be reviewed before its expiration, to scrutinise whether it can be maintained in the form of a general rule**.

Should this legislative change not be made before end-2009, we furthermore call on the regulators to apply this provision with some flexibility. E.g. where institutions have applied for the use of the advanced approaches in due time, but the application cannot immediately treated, this provision should nevertheless find application.

(72) Transitional, Article 154.3

As for the previous ND, **we call on CEBS to ensure that this ND is used by all MS, and we suggest that the discretion be reviewed in respect of its maintenance as a general rule.**

(73) Transitional, Article 154.4

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 would therefore request that this provision be **reviewed before its expiration, with a view to maintaining it as an option for institutions** (to be confirmed by the supervisor).

(74) Transitional, Article 154.6

As opposed to the previous NDs, we believe that the expiration date of end-2017 is too long to maintain the competitive distortions that arise from this significant provision. Indeed, there is no prudential justification for such large divergences in the risk weightings of equity positions of between 100% and 400%. We therefore **maintain that this provision be turned into a permanent general rule**, and within a reasonably short period of time.

(75) Transitional, Article 155

We regret, again, the divergent implementation and the competitive distortions arising from this provision. Alternatively to its expiration **after 2012**, we believe however request that it could be **reviewed in due time to consider its maintenance in the form of a general rule**. We agree at the same time that any changes in calibration must be aligned with the Basel Committee.

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

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**.

(77) Transitional, Annex VII, Part 4, Points 66, 71, 86 and 95

This is an ND of great importance to facilitate the transfer towards the advanced approaches in general, and not only for a limited period of time. In turn, not being granted this 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 as for some segments and products, the evolution of the markets and changes in credit processes can lead to a 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 is sometimes preferable to a longer one.

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

(78) Transitional, Article 44

As for similar previous cases, we regret the current divergence in implementing this ND. As an alternative to its deletion **after expiration in 2012**, we believe however that it would be valuable to review in due time whether this more favourable risk weight has a permanent justification. In this case, it will however have to be ensured that the calibration at EU level is continuously in line with the rules agreed in the BCBS.

(79) Transitional, Article 46

We believe, again, that the more favourable risk weight might have a permanent justification, and that the provision should be reviewed before its expiration. If this review demonstrates that a permanent general rule is justified, any changes in calibration need to be in line with the BCBS.

(80) Transitional, Article 47

We **can agree that this ND be allowed to expire** after 2009.

(81) Trading book, Article 18.2 and 18.3

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**.

(82) Trading book, Article 19.2

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 it **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 to ensure a common approach. In order to support this commonality, it would be helpful that authorities be required to **publish the relevant criteria in the supervisory disclosure framework**.

(83) Trading book, Article 19.3 and Annex I, point 52

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**, with is paradoxically left out of CEBS' current proposal. From a prudential point of view, there is no prudential 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**. If that should at the current stage not be legally possible, then we would call on CEBS' to use peer pressure to this effect, and would furthermore suggest that a requirement to disclose recognised third-country CIUs in the supervisory disclosure framework.

(84) Trading book, Article 26

This provision has a significant level playing impact. We do also not see the rationale of allowing some institutions such offsetting, but not others, where both are managed on a consolidated basis. This is independent from 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**.

(85) Trading book, Article 33.3

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 be deleted from the CRD**.

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

For the NDs 86, 87, 89, 90, 98 and 100, the EBF can endorse CEBS' recommendation that the possibility of using margining requirements to calculate capital requirements be deleted.

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

For the NDs 86, 87, 89, 90, 98 and 100, the EBF can endorse CEBS' recommendation that the possibility of using margining requirements to calculate capital requirements be deleted.

(88) Trading book, Annex I, point 5, 2nd paragraph

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

(89) Trading book, Annex I, point 5, 3rd paragraph, first and second sentence

For the NDs 86, 87, 89, 90, 98 and 100, the EBF can endorse CEBS' recommendation that the possibility of using margining requirements to calculate capital requirements be deleted.

(90) Trading book, Annex I, point 5, 3rd paragraph, last sentence

For the NDs 86, 87, 89, 90, 98 and 100, the EBF can endorse CEBS' recommendation that the possibility of using margining requirements to calculate capital requirements be deleted.

(91) Trading book, Annex I, point 14, next to last paragraph

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.

(92) Trading book, Annex I, point 26

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

(93) Trading book, Annex I, point 35, 1st paragraph

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: (…)"**.

(94) Trading book, Annex I, point 35, 2nd paragraph

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

(95) Trading book, Annex III, point 2.1, last sentence

We would not see the rationale of 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 case-by-case. We rather **support the second option proposed by CEBS, i.e. to give the choice consistently to institutions**.

(96) Trading book, Annex III, point 3.1

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 institution which leads to the same outcome.

(97) Trading book, Annex IV, point 7

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

(98) Trading book, Annex IV, point 8

For the NDs 86, 87, 89, 90, 98 and 100, the EBF can endorse CEBS' recommendation that the possibility of using margining requirements to calculate capital requirements be deleted.

(99) Trading book, Annex IV, point 10, 2nd paragraph

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

(100) Trading book, Annex IV, point 10, three last paragraphs

For the NDs 86, 87, 89, 90, 98 and 100, the EBF can endorse CEBS' recommendation that the possibility of using margining requirements to calculate capital requirements be deleted.

(101) Trading book, Annex IV, point 14

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

(102) CRM, Annex VIII, Part 1, point 16, 1st sentence

We **agree that this provision be left unchanged and the following ND be changed into a requirement of binding mutual recognition**. We furthermore welcome CEBS' reference to the requirement for supervisors to disclose the manner in which they exercise this discretion in the supervisory disclosure framework.

(103) CRM, Annex VIII, Part 1, point 16, last sentence

We **agree in principle that this provision be turned into a requirement for binding mutual recognition**, in combination with ND 105. However, we note that there is an inconsistency between on the one hand, NDs 103 and 105, and on the other hand NDs 141 and 143 where CEBS recommends an 'option for institution' for the recognition of collateral located in other Member States. Please cf. also our comments on NDs 141 and 143.

(104) CRM, Annex VIII, Part 1, point 17

We **agree that this provision be left unchanged and the following ND be changed into a requirement of binding mutual recognition**. We furthermore welcome CEBS' reference to the requirement for supervisors to disclose the manner in which they exercise this discretion in the supervisory disclosure framework.

(105) CRM, Annex VIII, Part 1, point 19

We **agree that this provision be turned into a requirement for binding mutual recognition**.

(106) CRM, Annex VIII, Part 1, point 25

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.

(107) CRM, Annex VIII, Part 1, point 8

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.

(108) CRM, Annex VIII, Part 2, point 16

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

(109) CRM, Annex VIII, Part 3, point 59

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.

(110) CRM, Annex VIII, Part 3, point 73

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.

(111) CRM, Annex VIII, Part 3, point 75

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

(112) IRB, Annex VII, Part 4, point 44, last sentence

We **strongly object to CEBS' proposal as it is indeed the core business of banks to define risk parameters and the threshold above which an exposure should be considered past due**. This threshold will also vary between institutions. It appears inconsistent with the nature of Basel II that CEBS continues to suggest that the authorities should define such a threshold, in isolation of firms' specific models. It is an additional inconsistency that a different threshold would be defined by each authority.

We urge CEBS to recognise the core role that this concept plays in institutions' internal risk management systems, which should be recognised by CEBS by leaving it entirely to the interaction between firms and competent authorities. **The provision should therefore be as such deleted from the CRD, or it should state explicitly that it is up to firms to define the threshold.**

In this context, we furthermore note that divergent approaches are currently also taken by supervisors for the equivalent threshold for the STA approach (Annex VI, Part 1, 61). As, in contrast to the internal models, the STA should be applied in a uniform way to all institutions we would request that CEBS' members agree on a common definition of this threshold.

(113) IRB, Annex VII, Part 4, point 48, 1st and 2nd sentence

We are disappointed that CEBS recognises the significance of this provision, but does not make a clearer statement in favour of a single and harmonised definition of default. This is all the more incomprehensible to us as the possibility of setting the days of default at a higher number than 90 days is temporary for the simpler approaches, as well as for wholesale exposures under the IRB approach. There is clearly no justification to maintain the possibility of the higher number of days only for the IRB approach. Requiring another review would merely defer the discussion, to which the solution is clear in the view of the EBF, and conceptual rather than a question of experience.

We renew our call that this ND **be deleted after 2014, and a single 90 days definition of default be consistently applied for all exposures and under all approaches from 2015 onwards**.

(114) IRB, Annex VII, Part 4, point 48, last sentence

We firmly believe that there cannot be any discrepancies in the definition of default. **Until the end of 2014, the choice should be given to institutions** of using the definition of default of either the home state or the host state (but not higher than the number applicable in the host state). **From 2015 onwards, the possibility of setting the default threshold at a higher number than 90 days should be deleted, which will make the mutual recognition clause redundant.**

(115) IRB, Article 85.1 and 85.2

We **agree that this provision forms part of the model 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.

(116) IRB, Article 89.1 last sentence

The **EBF 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.

(117) IRB, Article 89.1

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 model 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.

(118) IRB, Article 89.1 (f)

See comments for ND 117.

(119) IRB, Article 89.1 (g)

See comments for ND 117.

(120) Large Exposures, Article 110.3

(121) Large Exposures, Article 114.1

(122) Large Exposures, Article 114.2

(123) Large Exposures, Article 114.4

(It was agreed to deal with the NDs 120 - 123 in the Large Exposures review.)

(124) Op risk, Annex X, Part 3, point 11

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…"

(125) Securitisation, Annex IX, Part 4, point 43

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**.

(126) Securitisation, Annex IX, Part 4, point 43, last sentence

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**.

(127) Securitisation, Annex IX, Part 4, point 58

The EBF 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**.

(128) Securitisation, Article 97.1

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

(129) Securitisation, Article 97.2
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.

(130) Securitisation, Article 97.3

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 is all the more reason to also set this process in its entirety out in the legal text. Conceptually, the outcome of this joint assessment process should also be binding.

(131) Securitisation, Article 98.1

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**.

(132) Securitisation, Article 98.2

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

(133) Standardised Approach, Annex VI, Part 1, point 29

The industry raised the provisions (133) – (135) to point to the very harmful potential for divergence in the assignments of risk weights. We reiterate that it is **essential that the assignment of risk weights be the same across all Member States**.

(134) Standardised Approach, Annex VI, Part 1, point 31

The industry raised the provisions (133) – (135) to point to the very harmful potential for divergence in the assignments of risk weights. We reiterate that it is essential that the assignment of risk weights be the same across all Member States.

(135) Standardised Approach, Annex VI, Part 1, point 41

The industry raised the provisions (133) – (135) to point to the very harmful potential for divergence in the assignments of risk weights. We reiterate that it is **essential that the assignment of risk weights be the same across all Member States**.

(136) Standardised Approach, Annex VI, Part 1, point 49

We agree 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 suggest that a **binding mutual recognition** clause be linked to this provision.

(137) Standardised Approach, Annex VI, Part 1, point 50
We **agree with CEBS' proposal of turning this provision into an option for credit institutions/ general rule**.

(138) Standardised Approach, Annex VI, Part 1, point 51

As for ND 136, we agree 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).

(139) Standardised Approach, Annex VI, Part 1, point 52

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 (respectively an option for institutions) where collateral has been recognised as eligible under the Finnish housing act**.

(140) Standardised Approach, Annex VI, Part 1, point 53

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).

(141) Standardised Approach, Annex VI, Part 1, point 57

As set out above, we agree conceptually on the solution proposed by CEBS for point 52, as well as on the automatic mutual recognition proposed here for points 51 and 53. However, CEBS' proposal does cause confusion in view of the apparent inconsistency between on the one hand, its proposals for NDs 103 and 105, and on the other hand its proposals for NDs 141 and 143. It is our understanding that the outcome would be the same in both cases, i.e. effectively binding mutual recognition. However, for the sake of clarity we would suggest that also the proposed wording as well as the substantiation of arguments be aligned for both the advanced approaches and the STA.

(142) Standardised Approach, Annex VI, Part 1, point 58

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).

(143) Standardised Approach, Annex VI, Part 1, point 60

We **agree with CEBS' proposal to convert point 60 into a clause of automatic mutual recognition** linked to point 58. Cf. also our comments for ND 141.

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

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 exactly for the present 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.

(145) Standardised Approach, Annex VI, Part 1, point 78

As for similar cases above, it is on prudential grounds 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.**

(146) Standardised Approach, Article 81.1

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.

(147) Standardised Approach, Article 81.2

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.

(148) Standardised Approach, Article 81.3

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

(149) Standardised Approach, Article 82.2

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

(150) Transitional provisions, Article 154.1, second paragraph

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

(151) Transitional provisions, Article 154.7, first two sentences

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

(152) Transitional provisions, Article 154.7, last sentence

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

European Banking Federation

Concluding remarks

33. CEBS has made **great progress in adapting a theoretically more coherent approach** to analysing the national discretions. Especially the 'glossary' is very helpful to substantiate CEBS' thinking.

34. At the same time, CEBS' **practical recommendations are built on a much more pragmatic approach**, which delivers a number of good proposals but fails to address in a broader and more determined way the problem of divergent application of the CRD, including its level playing field implications and the administrative burden for cross-border groups.

35. The EBF therefore **calls on CEBS to considerably review its current recommendation.** The banking industry is aware that it will take a considerable period of time to endorse all the necessary amendments to the CRD over the coming years, in different rounds and procedures of amendments, and including the different transition periods.

36. However, **the disappointment would be large if CEBS failed at this stage to deliver a really determined and comprehensive solution**. This is all the more so in consideration of the broad agreement and common voice from the banking industry, for which CEBS has previously called and which it considered the pre-condition to achieve a genuine solution to the problem of the national options and discretions.