ASSOCIATION FRANÇAISE DES SOCIÉTÉS FINANCIÈRES

Paris, le 22 février 2008

Le Délégué Général

Mrs Kerstin af Jochnick
Chair
Committee of European Banking supervisors
(CEBS)
Tower 42 (level 18)
25 Old Broad Street
LONDON EC2N 1HQ

Dear Mrs af Jochnick,

The ASF (Association Française des Sociétés Financières) is, according to the banking act of 24 January 1984, the representative body of all specialized financial institutions in France.

ASF currently has nearly 380 members one half are subsidiaries of major deposit banks and the other half from other sectors (insurers, financial organizations, manufacturers, major retailers...), with outstandings of funding to the economy approaching € 260 billion, nearly 20% of total outstanding private sector credits to the economy in France. The activity of the members of the Association may be divided in four major areas (credit to individuals, credit to companies and professionals and among them leasing transactions, other financial services and investment services) covering some 20 different financial products for companies and individuals.

We wish to draw your attention to two particuliar issues about the « Second consultation paper on CEBS'technical advice to the European Commission on the review of the large exposures rules, related firstly to leasing transactions concerning offices or other commercial premises, and second to the treatment of off-balance sheet items.

First of all, about leasing transactions concerning offices or other commercial premises (Q13).

Today, Directive 2006/48/EC, at article 113§3 (q), allows member states to exempt exposures related to leasing transactions concerning offices or other commercial premises, as follows :

- where they would receive a 50% risk weight under articles 78 to 83 of the directive, up to 50% of the value of the property concerned ;

- until 31 december 2011 the competent authorities of each member state may allow credit institutions to recognise 100% of the value of the property concerned.

We understand that CEBS could delete these national discretions (§ 148 of its consultation paper), and thus for leasing transactions concerning offices or other commercial premises full ownership of the lessor on the property as long as the lessee has not exercised his option to purchase will no more be a credit risk mitigation technique for large exposures regulation.

About that, we wish to point out the following concerns :

1 – These national discretions have been used for a long time in the States where real estate leasing concerning offices or or other commercial premises is well developed, and it does not seem important losses resulting from defaults by the lessee have been noted.

2 – To understand this situation, it is necessary to remind certain characteristics of leasing :

In a lease agreement, the guarantee provided for the lessor by ownership of the asset throughout the contract term, including up to the time the lease purchase option is actually exercised by the lessee, is paramount. Indeed, the lessor enjoys a genuine right – the right of ownership over the asset financed, thus providing him with the greatest possible degree of security in his dealings with the lessee and his creditors in fact, this offers even more security than traditional sureties.

In practice, the contract may be terminated by default, if there is, without the need to go to court to pronounce such termination, since a clause in the contract stipulates that it shall be rightfully terminated in the event that the lessee fails to meet his obligations, notably the obligation to pay rent. The lessor is then entitled to repossess the asset with a view to selling it – or hiring it out again – in order to obtain payment of the balance of his debt. If an amicable agreement cannot be negotiated with the lessee concerning the return of the asset, the lessor must then instigate legal proceedings involving the seeking expulsion, on which the judge will pronounce an emergency ruling.

Moreover it should be noted that a "penalty clause" specified in the contract obliges the lessee to pay substantial compensation if the contract has to be terminated as a result of his doing, so as to encourage him not to terminate the contract prematurely.

Where collective proceedings are instigated against the lessee, provisions are laid, in the French law, in order either the administrator to continue the payments of rentals, or the lessor to repossess the asset.

3 – Therefore it seems an easy and reasonable solution must be found, applicable in all cases whatever the method used for minimum level of own funds regulation. We suggest that for large exposures regulation, as in France, the effect of the credit risk mitigation technique related to these leasing transactions will be a weighting of the exposure of 50% of the total amount of the exposure, (as in the French regulation concerning the minimal capital requirements).

For the second issue (Q4 – Q5), to our opinion, all the items which, according to the capital requirements rules, have a specific exposure value should receive a credit conversion factor different of 100%.

We think indeed that no distorsion of treatment should be introduced between :

- the principle, as for solvability ratio, of a weighting which takes into account the quality of the other party,
- and the use of a different principle for large exposure risks.

If such was the case, a given exposure would have a different impact on capital needs, whereas the risk is the same. We can't see any logical justification in terms of solvability which could explain such a difference in the treatment.

We note that if large exposures regime was modified in the way suggested in paragraphs 107 and 108 (elimination of national discretions), several clients guaranteed by French « sociétés de caution » - which are specificly concerned given the specialization of their activity – would pass the limit of 25% whereas there would be no correspondance with the real evolution of the risk on these clients. Thus claims benefiting of the most important commitments – and which are often of great quality – could not be guaranteed any more.

The weighting of off-balance sheet items is a question of good sense : one cannot say that good risks and bad risks are the same and both have to be weighted in the same way : a 10 years commitment on a company having a quotation of 6, 7 or 81 should not be treated in the same way as a 10 months commitment on a company having a quotation 3+.

Consequently, the principle of the use of a systematic 100% conversion factor does not fit with the Basel II attempt to measure more acutely the risks.

Yours sincerely,

Jean-Claude NASSE

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1 *Quotation of the Banque de France*