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Association for Financial Markets in Europe

Consultation Paper Response

Draft Guidelines on retail deposits subject to different outflows for purposes of liquidity reporting under Regulation (EU) No 575/2013 (Capital Requirements Regulation – CRR).

1 October 2013

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the EBA's recent consultation paper on draft guidelines on retail deposits subject to different outflows for purposes of liquidity reporting under Regulation (EU) No 575/2013 (Capital Requirements Regulation – CRR). AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

We summarise below our over-arching response to the consultation paper, which is followed by a section with more detailed thinking around some of the main topics and questions asked. As usual, AFME and its members would be available and keen to engage on further work with the EBA on this topic.

Overarching Comments

AFME and its members have noted that the consultation paper does not prescribe outflow rates but that firms are required instead to apply their own estimates of outflow rates for each of the three higher outflow buckets in accordance with historical and expected assessments of volatility. While we would support the possibility of more detailed and firm specific Pillar 2 type assessments, the linkage of firms' own assessments of outflow factors with the scorecard methodology and assignment of exposures to higher risk buckets based upon combinations of prescribed risk factors

appears conceptually inconsistent and may give rise to inappropriate and inconsistent treatments. We would therefore favour increased discretion to allow the application of more granular and accurate outflow rates with the possibility of a 'peer review' process to ensure consistency in application.

We continue to appreciate that the EBA are charged by the CRR with developing technical standards for circumstances under which different outflows for retail deposits might be applicable. However, we are still concerned that unless these are aligned with global standards, in particular with Basel Committee for Banking Supervision requirements, the standards could disadvantage European banks in bidding for this important source of stable funding.

In the meantime, the practical approach to be taken when seeking to identify deposits which might be subject to higher outflows is not clear from the consultation paper. We understand from the recent EBA public hearing that the following is an appropriate process for firms to follow:

(a) Ascertain the "natural person" retail deposit base, in accordance with Article 411.2 which entails excluding any Private Institutional Client (PICs) and Trust clients, which may be retail in nature but are not captured by this definition.

(b) Consider whether these "natural person" deposits might meet the necessary risk factors to qualify for the assignment of higher outflows with the scorecard approach proposed by the guidelines. Where deposits meet this criteria, bucket them within the three categories and apply appropriate outflows rates (as the institution sees fit) providing they are higher than the standard outflow rate (e.g. greater than 10%).

(c) Only if they do not qualify for higher outflow rates, as per step two, should consideration be given as to whether they meet the definition of an 'established relationship' or 'transactional account' under CRR Article 421.

We would, however, question this approach and suggest that retail deposits that are covered by a deposit guarantee scheme which are either part of an established relationship making withdrawal unlikely or held in a transactional account, should not be subject to higher outflows. We would suggest also that the benefit provided by a deposit guarantee scheme should still be recognised when a deposit is not part of an established relationship or does not have transactional characteristics.

In the meantime, with regard to step 1 of the current process discussed above, the EBA stated in the public hearing that they removed the 'High Net Worth Individual' indicator from the scorecard methodology, in recognition that trusts and private wealth wrapper structures are not considered "natural persons" in accordance with Article 411.2 of the CRR and would not therefore fall within the scope of these guidelines.

Traditionally in various European locations, trust and wrapper structures are set up for tax reasons, on behalf of individuals or families at the upper end of the private wealth range. The CRR would seem to indicate that, because they cannot be treated as retail customers, they must be financial institutions and therefore subject to a 100% outflow rate. This would be excessively punitive given the liquidity risk posed by this depositor type. In our experience, these structures show behaviour

aligned very closely with private wealth clients and the legal nature of the structures creates significant obstacles to withdrawal of funds in a 30 day period.

Treating these customers synonymously with larger financial institutions would be unwarranted from risk standpoint. We would therefore urge the EBA, as part of their broader review of the LCR (as per Article 509 of CRR), to consider carving out a differentiated treatment for these structures. As the Level 1 legislation can no longer be altered, the EBA could alternatively propose a reduced outflow rate for a sub-set of financial institutions category which is particular to the family trust and private wealth wrapper structures.

Finally, the distribution channel indicator appears to capture all accounts which have access to internet banking services. The EBA clarified within the public hearing that this was not the intention and that it referred purely to internet only banks that do nto have a branch network. We would appreciate if this could be made clear within the finalised guidelines, as the latter would be a more appropriate application in our view.

More detailed considerations/responses to questions

Question 1

In terms of the identification of an 'established relationship' it is not entirely clear what might be meant by an 'active contractual relationship' or what might constitute a 'minimum duration' or 'active products'. Further analysis and guidance in these areas would be useful. In particular, it is not clear whether the EBA is referring to the tenure of an existing customer relationship (i.e. how long the bank has had a relationship with a particular customer) or the contractual duration of a product. Moreover, we do not believe that duration is an indicator of stability, particularly in relation to retail customers who change their banking service providers' infrequently, and we would support the view that 'active' means 'not dormant'.

Question 2

For the identification of transactional accounts, it might be more effective in some cases to consider whether the account provides the capability to carry out particular types of transaction, for example the existence of a debit card or cheque book, direct debits and standing orders, rather than seeking to establish whether salaries are paid to the account. For example, it would be particularly difficult to identify the receipt of salaries where they are paid by cheque or in cash. In addition, clients often have more than one transactional account – Typically, they have only one account for salaries to be paid into but additional accounts to be credited or debited for other purposes, e.g. receiving rental, dividend and pension payments etc. And for paying loans, rent etc.

Question 3

Instead of seeking to assess a minimum number of active products it may be more straight-forward and relevant to set a different criteria such as the existence of a current account plus another product. AFME and its members have noted in particular the difficulty of seeking to establish whether a savings account might be 'active'.

Question 4

AFME and its members consider that the value of the local deposit guarantee scheme is the main driver of customer behaviour rather than an arbitrary figure of €100k. The suggested definitions might also to lead to issues arising from a data collection perspective as balances will vary from day to day and it is not clear how fluctuations around the limits should be treated.

We disagree also with the proposed granular categorisation of deposits as it is not commensurate with the experience banks have had in practice. In particular, it has been noted that a deposit exceeding the amount covered by a deposit guarantee scheme may not necessarily be less stable than a smaller deposit, and that there can sometimes be factors that mean higher value deposits might in fact be very stable. More widely, it is noted that the discussion paper suggests that over-reliance on high value deposits is not desirable. There is, however, a wider issue in relation to the diversification of firms' deposit bases and other measures would be needed to consider this.

According to article 421(2) all amounts which are not covered by the Deposit Guarantee Scheme are already factored in with a higher outflow rate. Therefore an additional volume-based surcharge should not apply.

In order to avoid 'cliff effects' we would also prefer higher threshold amounts such as >200k for high value deposits and >1m for very high value deposits. This is consistent with the treatment in Basel and therefore already reflected within some banks reporting systems.

Once again we would like to note that we have not observed any behaviour of clients nor proven evidence that clients with higher deposits have been less stable than clients with deposits covered by the DGS.

Question 5

It is in practice difficult and costly for firms to identify products that have preferential conditions and there would be additional complications for firms in having to try to monitor back books as market conditions change. There is the added challenge also of monitoring rate-driven products over time. The comparison of the rate on a particular deposit versus a benchmark rate/peer average will change over time, meaning that the classification of a particular deposit could change over the tenor of the deposit. It may be the intention of the EBA only to classify those deposits which are rate driven at inception and this is an area that needs clarification.

Banks are also likely to experience challenges in identifying connected and product linked accounts. In addition, it might be noted that the take-up of a good offer by a customer with an existing relationship with the bank may not automatically result in a higher risk of funds being withdrawn.

In addition we think it is difficult to define an appropriate peer group. For example, comparing globally operating banks does not factor in circumstances in the respective home country such as the economy, house banking relationship or individual/ voluntary DGS. Also defining a peer within the respective home country seems to be challenging since business models might differ very significantly.

Furthermore, we would highlight that given the current low interest rate environment only a few basis points difference might trigger a change in the regulatory treatment and classify a certain

product as rate-driven. In addition, a significant population of products have a combination of various components which makes it almost impossible to compare (i.e. is this particular product comparable to other products, is the respective spread an indicator for a rate-driven product).

Question 6

Although we appreciate the view that non-resident deposits might be less sticky compared to resident deposits, from our point of view this only applies more exclusively to locally operating banks focussing on their respective home country. Globally operating banks one the other hand operate a defined business model which is explicitly dedicated to serve global clients – i.e. clients can have various accounts in different countries with different currencies related to their personnel lifestyle (e.g. multiple residences). The presence of this client type for a global institution does not necessarily represent a greater risk from a liquidity viewpoint.