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European Banking Authority

Response to the EBA Consultation on Draft RTS on the allocation of off-balance sheet items and UCC considerations under art. 111(8) of Regulation (EU) No 575/2013

General remarks

In the consultation the EBA provides examples for allocating specific off-balance sheet items to the different buckets in annex I. In point 16 of the consultation EBA provides an example with a mortgage loan offer provided by a bank but not yet accepted by the client, where the contractual arrangement specifies a certain amount that must be drawn at a future point in time. In this context EBA notes that several banks may have extended mortgage loan offers to the same client. EBA is of the opinion, point 17 in the consultation, that the appropriate allocation for the amount that must be drawn would be bucket 1 considering that Article 111(4) of the CRR clarifies that contractual arrangements not yet accepted by the client fall under the scope of commitments and should receive the same treatment as if accepted.

The Swedish Bankers Association is not aware of any mortgage loan offers where the contractual arrangement specifies a certain amount that must be drawn at a future point in time. To us it also sounds odd that several banks may have extended mortgage loan offers with such “must draw clauses” to the same client. Which one of the banks would, in that case, after the drawings have first lien and which ones would accept to have second or potentially third lien?

According to CRR3 article 111.2 and Annex I commitments shall be allocated to bucket 3 and assigned 40 %. Furthermore, in article 111.4 CRR3 it is stated that “Contractual arrangements offered by an institution, but not yet accepted by the client, that would become commitments if accepted by the client, shall be treated as commitments and the percentage applicable shall be the one provided for in accordance with paragraph 2”.

For a loan mortgage offer to meet the definition of a commitment in CRR3 Article 5 point (b) (9) and contractual arrangement in article 111(4) it should include a specified amount, price and future pay-out date that has been offered to the client. Our understanding is that it is not even common that several banks have extended such commitments to the same client.

The Swedish Bankers Association opinion is that the treatment of binding mortgage loan offers is regulated in the CRR3 level 1 text through articles 111.2, 111.4 and Annex 1. Hence, such commitments should be allocated to bucket 3 and receive a conversion factor of 40%.

This view is further supported by EBA:s opinion in the answers to Q&A 2022_6602 as well as in Q&A 2017_3376 , states that a “mortgage loan offer” (term used in this consultation point 16) or “binding proposals for mortgage offers” (term used by EBA in Q&A 2022_6602) should be allocated to bucket “medium/low risk item” (20% conversion factor) under the current framework even if it has been accepted by the client, as EBA states:

“With particular regard to the binding proposals pursuant to Article 14(6) of Directive 2014/17/EU, during the period where the consumer can exercise a right of withdrawal (after the conclusion of the credit agreement’ but before funds have been released) or during the reflection period (‘before the conclusion of the credit agreement), although the offer is binding on the creditor), binding mortgage proposals qualify for the creditor as agreements to lend, and therefore have to be classified as a medium/low risk item under point (3.)(b)(i) of Annex I CRR, provided that the maturity is less than one year.”

Answers to the questions in the consultation paper

Question 1. Do you have any comment on the non-exhaustive list of examples provided?

According to CRR3 article 111.8 the EBA is mandated to specify the criteria that institutions shall use to assign off-balance sheet items, with the exception of items already included in Annex I, to the buckets 1 to 5 referred to in Annex I. EBA does not have a mandate to provide a list with examples of off-balance sheet item allocation. It does not matter that the list is not in the actual RTS. The list will be considered by the supervisory authority when assessing if institutions are compliant with the RTS. Thus, the list will be regulating how the bank applies the RTS.

Question 2. Which is the average period of time given to the client to accept the mortgage loan offer?

The time customers are given to accept (sign and return) a mortgage offer varies between banks but is generally 14–30 days. After the acceptance period is passed, the agreement expires and is no longer valid. However, for practical reasons, the customer may wish to have the money paid earlier, i.e. the acquisition of the property takes place before the stated acceptance period has expired.

Question 3. What is the applicable percentage that institution currently apply to these commitments?

Currently a 20% CCF is applied in accordance with EBA Q&A 2022_6602, [2022_6602 Estimation of a conversion factor for binding mortgage offers under the IRB Approach | European Banking Authority \(europa.eu\)](#)

Question 4. What is the average acceptance rate by the client of a mortgage loan offered by the bank?

For loan mortgage offers that meet the definition of a commitment in CRR3 i.e. where a contractual arrangement has been offered to the client, which is an offer for a mortgage that is binding for the bank, there is a very high acceptance rate.

Question 5. Do you have any comment on the allocation criteria proposed under Article 1?

In point 2 it is unclear what is meant by "non-credit risk related event that has yet to occur".

Question 6. Do you have any suggestion regarding allocation criteria for buckets 4 and 5?

It should be stated that all trade finance off-balance sheet items shall be allocated to bucket 4 since this is the intention of the CRR3 level 1 text.

Question 7. Do you have any comment on the factors that may constrain unconditionally cancellable commitments proposed under Article 2?

The proposed factors are very broad, which makes it likely that bucket 5 will not be able to be used at all. We are of the opinion that these factors are discretionary and subjective, and potentially incapable of being met, which creates regulatory uncertainty for institutions in case of disagreement with their supervisors.

Regarding the proposed point a), it is unclear how the point is supposed to be applied by institutions. Is the intention that the institute itself shall acknowledge deficiencies in these areas. We don't consider that's reasonable. The national

competent authorities control within the supervisory process that the institute has good risk management processes, etc.

Regarding point c) we are of the opinion that the inclusion of reputation risk as a factor will have the consequence that it is impossible to perceive any off-balance items at all as unconditionally cancellable commitments. This cannot be de intention of the CRR3.

Also, regarding points b) and c) int is unclear if it refers to type of product or individual exposures.

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