



15 April 2010

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Committee of European Banking Supervisors

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Dear Mr Rummel

Consultation Paper on the management of operational risk in market-related activities (CEBS CP 35)

Deutsche Bank appreciates the opportunity to comment on CEBS Consultation Paper on Operational Risk in Market Related Activities (CP 35). The consultation paper is timely and confirms well-established industry practices. However, we also feel that there are parts in CP 35 where terminology or scope require clarification and that certain parts overlap with rules established under European legislation related to trading. Please find our comments below.

General comments

In general, we note that many of the objectives of CP35 - which seems to have their basis in art. 22 of the CRD - are driven by European Directives, in particular the Markets in Financial Instruments Directive (MiFID) and the Market Abuse Directive (MAD). While we appreciate any guidance on the implementation of safe internal controls and best practices, we would stress the importance of clarity of the legal basis of any requirements, which may also determine when "home" or "host" supervision applies. For example, voice recording is addressed by CP 35 and also by MiFID where it falls under the supervisory responsibility of the host supervisor. In contrast, Paragraph 1 in CP 35 implies that the contents of the guidelines would fall under the responsibility of the home supervisor as per art. 22 of the CRD. We would welcome further clarity in this respect.

We welcome CEBS proposals on the downward delegation by the management body to a committee of certain aspects of the framework, as proposed under Principle 1. We believe that sharing some responsibilities with the control functions, makes the management and oversight of operational risk in market related activities more efficient.



Specific comments

Principle 4

Paragraph 21

The term “operational risk exposure” in this context is not clear. Instead, we suggest allowing financial institutions to set own targets and objectives for business managers and traders in terms of employing operational risk controls.

Principle 5

Paragraph 23

While we fully support the use of scenarios to increase the understanding of how fraud might occur, in our view there are many other ways banks can improve fraud prevention. Scenarios should be viewed as just one example. We recommend deleting paragraph 23, and merging the wording into the second bullet point in paragraph 24.

Paragraph 24

In principle we agree with the proposal to use an “alert and warning system” to monitor fraud as set out under the fourth bullet point. However, in practice the implementation of such system may present various challenges. We propose replacing the final sentence in the bullet point with the following: “...allowing management to identify and respond to any fraudulent activity in a timely manner”.

Paragraph 31

One of the areas under review by the European Commission in MiFID is tape recording requirements. We recommend waiting for the final outcome of this review, and referring to the implementing measures of MiFID to avoid overlap. We also note that some EEA countries have Data Protection Laws in place that make blanket recording requirements onerous.

Principle 10

Paragraph 39

While we agree with the general need to review the relationship between front office staff and their counterparts and clients, we note that the terminology used in this recommendation is ill-defined. For example: “market counterparties” is not a defined term under MiFID or MAD. We would refer to professional clients and eligible counterparties. We also ask CEBS to clarify what is meant by “commercial issues” and why these would have to be handled by control functions.

Principle 14

Paragraphs 58 to 60

We ask CEBS to clarify the definition and description of the terms “net amounts” and “gross notional amounts”.



We trust you find these comments useful. Please do not hesitate to contact us should you have any questions.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'A. Procter', with a long horizontal line extending to the right.

Andrew Procter
Global Head of Government & Regulatory Affairs
Deutsche Bank AG