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VERBAND DEUTSCHER PFANDBRIEFBANKEN E.V. BERLIN

Committee of European Banking Supervisors
Tower 42 (level 18)
25 Old Broad Street
London EC2N 1HQ
United Kingdom
CP35@c-eps.org

23 July 2010

"Revised Consultation Paper on the Management of Operational Risks in Market-related Activities" (CP35 revised)

Dear Sir or Madam,

On 23 June 2010, CEBS published a revised consultation paper concerning "Management of Operational Risks in Market-related Activities". We would like to take this opportunity to send you our comments.

The revised consultation paper took into consideration the main points of our first remarks. As a result, the subsequent comments concentrate primarily on the additions made to the consultation paper.

Principle 2, Para. 15

We welcome the elaborations made to Para. 15. However, it is necessary to further clarify in sentence 2 that these are examples. In this respect, we propose the following amendment to sentence 2: "This could include developing and implementing, ...".

In addition, we would like to see some examples of possible communication channels with regard to the notification of material infringements of the desired risk culture. If institutions have whistle blowing in place as described in Principle 16, Para. 64, we would suggest that these be used as a channel for reporting material violations of the desired risk culture.

Principle 3, Para. 17

According to the requirements of Para. 17, senior management should be capable of understanding potential and actual operational risks that may occur or have already occurred in the institution: That includes operational risks in transactions and encumbrances in market-related activities and operational risks in new products and processes. We fully support this requirement.

We regard, however, the statement as too far-reaching that the senior management should possess good knowledge of products and techniques that relate in particular to the product evaluation and risk assessment. That's why we recommend omitting sentence 3.

Principle 5, Para. 22, 23

Para. 22 sentence 1 requires in general that the institution should analyze possible sources of fraud and should define countermeasures in relation to the fraud consequences resulting from the business activities. Reference to market-related activities is not made until the second sentence, however.

In our opinion, there is some overlapping between the first sentence and the already existing fraud management regulations. In Germany, these are stipulated in Sect. 25c of KWG (*Germany's Banking Act*) especially paragraph 1), which is currently extended by the "Gesetz zur Umsetzung der Zweiten E-Geld-Richtlinie" (*Law on Implementing the Second E-Money Directive*) with regard to fraud management.

Therefore we recommend focusing exclusively on fraud in market-related activities in Para. 22 and revising the first sentence as follows: "Institutions should analyse possible sources of fraud and define anti-fraud measures, taking into account the fraud exposure resulting from their market-related activities."

The "appropriate physical separation of the infrastructure used for trading and post-trading processes" is presented in Para. 23 as an example for identifying and preventing fraud. We think that such a requirement is too far-reaching, particularly from the point of view of IT costs. The objective of fraud prevention could be attained by means of program-specific

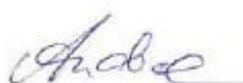
authorisation guidelines for the areas of responsibility of trading and post-trading processes. In this respect, we request that the example is omitted.

Should you have any questions, please do not hesitate to contact us.

Best regards,

On behalf of

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Dr. Silvio Andrae



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Diana Huber