Response to

Consultation paper on guidelines to Article 122a of the Capital Requirements Directive (CP 40)

No.	Question	Response
1	*Do you agree with this differentiation between the requirements of credit institutions when "investing" (leading to the applicability of Paragraphs 1, 4, and both sub-paragraphs of 5) as opposed to the lesser requirements when assuming "exposure" but not "investing" (leading to applicability of Paragraph 1 and sub-paragraph 2 of Paragraph 5)?*	
2	*Do you agree with this differentiation in the role of a credit institution as liquidity facility provider (based on the provisions of CRD Annex IX, part 4, paragraph 2.4.1, point 13)?*	
3	*Do you agree with this differentiation in the role of a credit institution as hedge counterparty, and what issues might arise when credit institutions seek to determine whether their role as hedge counterparty results in the assumption of credit risk or not?*	
	ADDITIONAL COMMENT	Para 9: the remainder of this paragraph is missing. The definition of warehouse relates to "more than one lender" and we are concerned that only a warehouse is a securitisation if at least two lenders/investors fund the warehouse. However, we argue that also a "single-lender" warehouse is a securitisation. If not, how would you classify such an exposure from an lender's/investor's point of view? We do not see any alternative approach than securitisation since it seems the only approach that allows for positive acknowledgement of the credit enhancement.
4	*Does this guidance adequately address means of fulfilling the retention requirement in the case of securitisations of exposures from multiple originators, sponsors, or original lenders? And if not, what suggestions do you have for additional clarity?*	
	ADDITIONAL COMMENT	Para 14 deals with the alignment of interest and stipulates that where "the originator is the final debtor" the economic interest is already aligned. Is this also true for structures where investors have a put option against the originators (e.g. as witnessed in UK master trust structures)?
5	*Do you agree that the form of retention should not be able to be changde*	We disagree. Originators should have the opportunity to change the way in which they

	during the life of the transaction, except under exceptional circumstances only, or alternatively should some additional flexibility be granted? Please provide evidence of exceptional circumstances which would justify a change in the form of retention.	retain 5%. We do not see a reason why originators can decide at closing on the retention method but not while the transaction is running.
6	*Should the definition of "net economic interest" in terms of "nominal" exposure be interpreted to mean that both excess spread tranches (i.e. where only residual interest cashflows are sold) and interest-only tranches (i.e. where all interest cashflows are sold) be excluded from the various means of fulfilling the retention requirement (as both have notional rather than nominal values), or should either be a valid means of fulfilling the retention requirement? If the retention requirement were allowed to be fulfilled by retention of a tranche with no principal component (for instance, an excess spread tranche or an interest-only tranche), how would the retention percentage be computed – with reference to the notional value, market value, or otherwise?*	
7	*Where Paragraph 1 indicates that a credit institution must ensure that retention has been "explicitly disclosed", is the guidance above sufficient? In particular, will the market evolve such that credit institutions would expect such disclosure by market participants to be of a binding nature, and therefore provide some means of enforcement or redress to them, or should such a requirement be part of the CEBS guidance? Feedback is welcome on the most effective means to assure that the commitment of the originator, sponsor or original lender is enforceable by credit institutions that invest. This is an area which CEBS is likely to pay particular attention to in as part of keeping these guidelines up to date and in annual reviews of compliance.*	The confirmation that 5% will be retained should be irrevocable and part of the reps and warranties.
	ADDITIONAL COMMENT	Para 30 (b): A prohibition to hedge single names is too harsh. One can think of a situation in which an Originator is buying protection through a CLO for a portfolio of corporate credits and the prop desk or another desk engages in a CDS on one of the names in the portfolio. Also, permanently reconciling the CLO and the trading book might lead to operational issues.
8	*Does this guidance address properly the subject of hedging of retained exposures? What specific types of hedge should be permitted? CEBS would welcome evidence and examples from respondents.*	
9	*Should retention of 5% of each securitised exposure fulfil the requirements*	Yes. This is market practice in synthetic transactions and perfectly aligns interest.

	of Paragraph 1 under option (a)?	
10	*Should option (b) be applicable equally to both securitisations of revolving exposures and revolving securitisations of non-revolving exposures4 (or revolving securitisations with a combination of revolving and non-revolving exposures) in fulfilling the requirements of Paragraph 1?*	We do not see why an interpretation of (b) is needed: If this clause also relates to revolving (replenishment) structures we do not understand how this can be fulfilled. Does this mean that only 95% of a specific loan is securitised? In that case this should not be limited to revolving structures and would already be captured by the answer to question 9. If it means that only 95% of all loans can be securitised and 5% need to stay on balance this is covered under option (c) of Paragraph 1.
11	*Do you agree with this interpretation of the phrase "there shall be no multiple applications of the retention requirement" to mean that there shall be no requirement for multiple application either by individual parties or at the level of individual SPVs, but that there may be multiple application at the overall transaction level (for instance, where a transaction is the resecuritisation of existing securitisations), and does the above lead to an effective and proportionate alignment of interest for resecuritisations?*	
12	*Does this interpretation of the phrase "net economic interest shall be determined by the notional value for off-balance sheet items" raise any potential issues with respect to application of the retention requirement?*	
13	*Given that Paragraph 1 specifies that "retained positions, interest or exposures are not hedged or sold", to what extent will it be possible for an originator, sponsor or original lender to use such retained interest for secured funding purposes without having "sold" such retained interest, for instance in cases where such funding is sought under a TBMA/ISMA Global Master Repurchase Agreement (GMRA) or alternatively under a bespoke repo agreement?*	Repo transactions should be possible without violating the retention requirements. Even if in some jurisdictions the legal title passes to the repo counterparty, in effect, it is a secured lending with the obligation of the originator to repurchase the bond. The repurchase price should be independent from the portfolio performance; therefore no credit risk is transferred.
14	*Is further clarification needed on the ability to differentiate between the trading book and the non-trading book?*	Yes. For example, would procedures be compliant in which each investment book position is analysed individually prior to each investment whereas for trading book positions it would be sufficient to establish trading limits (e,g. for UK RMBS, individual programms)? Please provide rreasons for differentiation between TB and NTB and how can this influence the intensity of the due diligence, what requirements are affected)?

		Same policies and procedures for both books are not workable since investment book analysis tend to focus on credit risk whereas trading book analysis tends to focus on market risk. Therefore, banks should be free to implement different processes for both books.
15	*Is the general guidance on securitisation stress testing in the document linked above sufficient, or is further guidance needed on how stress testing should be undertaken for the specific requirements of Article 122a, and if so what topics should such further guidance cover?*	
16	*Do you agree with this method of calculating the additional risk weight?*	
17	*Do you have any comments on this approach to achieving consistent implementation of application of the additional risk weights by competent authorities, including both the level and duration for which additional risk weights are applied? Do you agree that, notwithstanding the textual provisions of Paragraph 5, the cumulative result of applying such additional risk weights should not result in the capital required to be held against a securitisation position exceeding the exposure value of such securitisation position?*	Table of % requirements not clear (source?)
18	*If a credit institution is involved as sponsor in the securitisation of exposures on behalf of third parties in an asset class or business line in which such sponsor is not itself active in extending credit, is the guidance provided above a sufficiently high standard to hold such sponsor to?*	
19	*Is this interpretation or the requirement with respect to "participations and underwritings in securitisation issues" clear and unambiguous, or are there alternative interpretations possible or clarifications necessary?*	See our comments to question 14. Underwriting procedures should be similar to trading book procedures.
20	*Would disclosure templates that currently exist or are in the process of being prepared by trade associations, industry bodies, central banks, market participants or others fulfil these requirements on an adequate basis?*	
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