

## A. Introduction

Deutsche Börse Group welcomes the opportunity to comment on EBA’s Consultation Paper “Draft Regulatory Technical Standards on Own Funds under Articles 33 (2), 69a (6) and 79 (3) of the Capital Requirements Regulation (CRR) – Part Three (EBA/CP/2013/17)” issued on 23 May 2013.

DBG is operating in the area of financial markets along the complete chain of trading, clearing, settlement and custody for securities, derivatives and other financial instruments and as such mainly active with regulated Financial Market Infrastructure providers.

Among others, Clearstream Banking AG, Frankfurt/Main (CBF) and Clearstream Banking S.A., Luxembourg (CBL), who act as (I)CSD<sup>1</sup>, are classified as credit institutions and are therefore within the scope of the European Capital Requirements Directive (CRD). Clearstream subgroup is supervised on a consolidated level as a financial holding group. Furthermore, Eurex Clearing AG as the leading European Central Counterparty (CCP) is also implicitly affected by CRD as it is treated as a credit institution under current German law and it will be within the full scope of CRD most likely also in the future.

In our responses we refer to the final articles of the Capital Requirements Regulation (Regulation (EU) No 575/2013), in the following CRR.

## B. Responses to the questions for consultation

1. Are the provisions of Article 14a sufficiently clear? Are there issues which need to be elaborated further?

No comment.

2. Provisions included in paragraph 1 of the following Article 14a refer in particular to pension funds. These provisions have to be read in conjunction with the deductions referred to in Article 33(e) of the CRR. Would you see any cases where there might be an overlap between the two types of deductions? Please describe precisely these situations and the nature of the problem.

Article 36 (1) lit. e CRR states that defined benefit pension fund assets on the balance sheet of an institution shall be deducted from common

---

<sup>1</sup> (International) Central Securities Depository

equity tier 1. Defined benefit pension fund assets arise in case assets in the pension scheme exceed current value of committed benefits.

As an example we use funded assets of 130 and a current value of committed benefits of 100 which result in a defined benefit pension fund asset of 30.

In addition to that, articles 36 (1) lit. h and lit. i CRR demand deduction of direct, indirect and synthetic holdings by the institution of common equity tier 1 instruments of financial sector entities.

The approach described in Article 14a now foresees a deduction of all direct and indirect holdings in financial sector entities, including defined benefit pension funds. This approach leads to a situation where double deductions appear in case the overfunded pension scheme is invested in financial sector entities because holdings in financial sector entities included in defined benefit pension fund assets are deducted twice, via Article 36 (1) lit. e CRR and Article 36 (1) lit. h or lit. i CRR as there is no specification that holdings in these entities already deducted via lit. e do not apply for lit. h or lit. i.

In the example above where defined benefit pension fund assets arise we anticipate that 10% of holdings are invested in financial sector entities. In case we follow Article 14a literally we have a deduction of 30 (defined benefit pension fund assets) acc. to Article 36 (1) lit. e CRR and 13 via deductions of holdings in financial sector entities (10% of 130) via Article 36 (1) lit. h or lit. i CRR.

In this case an overlap of 3 between the deduction for defined benefit pension fund assets of 30 and deductions for holdings in financial sector entities of 13 (130 as basis which included already deducted defined benefit pension fund assets multiplied by 10%) takes place as the 10% are also applied to the defined benefit pension fund assets already deducted. Aggregated, 43 would be deducted from own funds.

We propose that defined benefit pension fund assets already deducted are not applicable for that look-through-approach and respective deductions to prevent double deductions. Therefore deductions in our example described above would amount to 40 (30 direct deductions via Article 36 (1) lit. e CRR and 10 (10% of 100) via look-through of financial sector entities according to Article 36 (1) lit. h or lit. i CRR). In this case the overlap of 3 would be prevented.

In opposite to that we consider a situation where a defined benefit pension fund scheme is under-funded. For this we consider an example where 70 are funded and current value of committed benefits

are 100, so there is a liability of 30 on the balance sheet. A look-through for these assets would not lead into an overlap of deductions.

3. Please provide also some input on the potential impact? What would be the size of the deduction of defined benefit pension funds under the treatment proposed in the following Article? Would the treatment cause a change in the investment policy of the pension fund with regard to such holdings, or have any other consequences for the operation of the defined benefit pension scheme?

As examples on possible scenarios for overlapping deductions we refer to Q.2.

We do not participate in any speculations what impacts are to be expected out of this standards as the set-up of pension schemes of banks are very different and implications may vary a lot. Therefore we do not give a specific statement on that. Nevertheless we reject in general any treatment that leads to overlapping deductions. Therefore the proposed treatment of defined benefit pension fund assets (look-through for financial sector entities in addition to direct deductions) is not supported.

4. Do you agree with the examples of synthetic holdings provided in paragraph 2 of the following Article 14a? Should other examples be added to this list?

No comment.

5. Are the provisions contained regarding synthetic holdings in paragraph 2 of the following Article 14a and in Article 14e sufficiently clear? Do you agree that the amount to be deducted shall be the notional amount? Would you see any situations where another amount shall be used?

The provisions contained in Article 14a and Article 14e are sufficiently clear. Nevertheless we strongly disagree with the notional amount of the relevant instrument as basis for deductions (in case the underlying asset is meant) for all types on synthetic holdings. For Article 14a (2) lit. a (Total return swap), lit. b (guarantees or credit protection) and lit. e (forward purchase agreement) the notional amount to be deducted makes sense. For lit. c and lit. d the structure of these synthetic holdings varies a lot, therefore a specific treatment is required. For call options representing a synthetic holding the strike price and other

indicators have to be taken into account. Per se, the market value of the call option should be used as basis for deductions.

6. Are the provisions relating to the deduction of serial or parallel holdings through intermediate entities sufficiently clear? Do you see any unexpected consequences? Are there issues which need to be elaborated further?

Provisions relating to the deduction of serial or parallel holdings through intermediate entities are sufficiently clear, no further consequences are to be expected.

7. Are the provisions of Article 14d relating to a structure-based approach sufficiently clear? Are there issues which need to be elaborated further?

The provisions are sufficiently clear.

8. Are the provisions of Article 24b sufficiently clear? Are there issues which need to be elaborated further?

No comment.

9. What in your view is the best means for ensuring that the benchmark rate is not materially affected by the credit standing of an individual participating institution? The criterion of minimum number of contributors or that of minimum representativeness of the market or both?

No comment.

10. What would be the minimum number of contributors to ensure this absence of correlation? If a minimum representativeness of the market was chosen as an alternative route, how to ensure and calculate this representativeness? Would the percentage of 60% be sufficient?

No comment.

11. How would you treat minority interests arising from an institution permitted, under Article 8 of the CRR, to incorporate a subsidiary in the calculation of its solo requirement (individual consolidation method)?

We follow the example annexed to the consultation document as it is in line with Article 84 (1) CRR (final version). For the calculation of step 3 we calculate 7.60 as total eligible MI from A to M's, not 7.65.

12. How would you treat minority interests arising from a subsidiary not subject to supervision on a sub-consolidated basis although it is the parent undertaking of other institutions? If the subsidiary would be allowed to undertake the calculation referred to in Article 79(1) on the basis of its sub-consolidated situation, some conditions would have to apply in order to secure this calculation in the absence of supervision on a sub-consolidated basis. What would you propose as condition?

We support the approach to incorporate the minority interest arising from a subsidiary not subject to supervision on a sub-consolidated basis but which is the parent undertaking of another institution. It must be calculated what amount of minority interest of that institution can be allocated and this amount must be treated as there would be no intermediate company not subject to supervision on a sub-consolidated basis. As the look-through approach might lead into a situation where further deductions appear, the tool of look-through must also be applied in case further capital position can be used to enhance capital ratios, otherwise the approach is not consistent and over-prudent.

\*\*\*

We hope our comments are seen as a useful contribution to the discussion and final issuance on the respective RTS is reflecting our comments made.

Eschborn

18 July 2013

Jürgen Hillen

Matthias Oßmann