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Response to the Committee of European Banking Supervisors

CEBS' implementation guidelines on Article 106(2)(c) and (d) of Directive 2006/48/EC (CP38)

The Association for Financial Markets in Europe ("AFME"), the British Bankers' Association ("BBA") and the International Swaps and Derivatives Association ("ISDA") are pleased to respond to the consultation on the draft updated guidance on concentration risk.

Our key messages are in section 1. Section 2, contains answers to the questions in the consultation.

1 Key messages

We are very supportive of the inclusion of the exemptions in Article 106(2)(c) and (d) within Directive 2006/48/EC as necessary provisions to facilitate the provision of normal banking services provided by our members. We are supportive of the proposed guidelines and think that they are generally clear. However, we would like to raise one key issue:

Securities settlement: We believe that the exemptions were originally developed with money transmission services in mind rather than securities settlement to which they also apply. As a result we think there is a lack of clarity around the point at which an exposure should be recorded for large exposures purposes. We would like to confirm that exposure should be recorded in accordance with the point at which capital requirements would be charged under Annex II, points 1 to 4 of 2006/49/EC for transactions that fall within the scope of Article 106(2)(d) and plus an additional day for transactions within Article 106(2)(c). It is important that this interpretation is taken because due delivery dates are usually several days after transaction date but also because settlement problems arising at that point may take several days to resolve. It is, however, extremely rare that settlement problems are not resolved within the further grace period provided by the Directive. If this interpretation regarding the further grace period is not accepted then we think that it is vital that Article 106(2) should be reviewed to ensure that securities markets are not unduly penalised by the large exposures regime in relation to risks that are not present.

2 Responses to questions

Part IV, Article 106(2)(c)

1. Is the definition of exempted exposures in relation to transaction type clear and do they cover all relevant exposures?

Yes

2. Is the description of client activity sufficiently clear? Would practical problems related to the identification of activity arise and, if so, how could they be solved?

No comment

3. Are the specifications regarding the available time for the reduction of the exempted exposures sufficiently clear?

Yes. However, please see our comments in the key messages regarding the point at which an exposure is recorded in relation to securities settlement.

Part V, Article 106(2)(d)

4. Are the definitions of exempted exposures in relation to transaction type clear and do they cover all relevant exposures?

Yes.

5. Is the description of specific service providers sufficiently clear?

No comment

6. Are the specifications regarding the available time for the reduction of the exempted sufficiently clear?

Yes. However see our comments in the key messages section regarding the point at which an exposure is recorded for securities settlement.

If you have any comments or questions regarding this response please contact either, Diane Hilleard (diane.hilleard@afme.eu), Irving Henry, (irving.henry@bba.org.uk), or David Murphy (dmurphy@isda.org) should you require further information.

Yours sincerely,



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Sent via e-mail to CP38@cebs.org and vera.luz@c-eps.org

The Association for Financial Markets in Europe (AFME) represents a broad array of European and global participants in the wholesale financial markets, and its 197 members comprise all pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME was formed on 1st November 2009 by the merger of the London Investment Banking Association and the European operations of the Securities Industry and Financial Markets Association.

The BBA is the leading association for the UK banking and financial services sector, speaking for over 200 banking members from 60 countries on the full range of UK or international banking issues and engaging with 35 associated professional firms. Collectively providing the full range of services, our member banks make up the world's largest international banking centre, operating some 150 million accounts and contributing £50 billion annually to the UK economy.

ISDA represents participants in the privately negotiated derivatives industry, and has over 810 member institutions from 57 countries on six continents. These members include most of the world's major institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the financial market risks inherent in their core economic activities