A. Introduction

Deutsche Börse Group welcomes the opportunity to comment on EBA’s Consultation Paper “Draft Implementing Technical Standards on Asset Encumbrance Reporting under Article 95a (EBA/CP/2013/05)” issued on 26 March 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[1], 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, as the future need for a banking license is currently also seen as being necessary in the context of EMIR, it will be within the full scope of CRD most likely also in the future.

This paper consists of a management summary / general comments (part B), responses to the questions for consultation (part C).

B. Management summary / general comments

The proposed implementing technical standard (ITS) marks a further step towards a harmonized implementation of a uniform European reporting system. In view of the tight overall schedule regarding the implementation of the CRD IV requirements, we welcome EBA’s approach of an early consultation on the ITS. From an institution’s point of view, it is highly desirable to have a finalized ITS specified as soon as possible.

CRD II (Directive 2009/111/EC) already stated in Article 111 (2) that the competent authorities should apply uniform formats, frequencies and dates of reporting from 31 December 2012. To facilitate this, the Committee of European Banking Supervisors has been requested to elaborate guidelines to introduce a uniform reporting format within the community before 1 January 2012. In this context the reporting formats should be proportionate to the

[1] (International) Central Securities Depository

nature, scale and complexity of the credit institutions' activities. CEBS has taken up this responsibility and issued in 2009 respective guidelines[2]. These CEBS guidelines now form the solid basis for CP 51.
Therefore, the proposed revised large exposure guidelines in principle do not address unexpected fundamental changes. However, some additional aspects have been incorporated into the proposal which differentiates it from the former CEBS guidelines. This is creating additional reporting burden and some topics for clarification. Furthermore, CRD IV in its current status proposes some (minor) changes content wise and the current CRD IV proposal still includes some rules for national discretion. In addition, late changes to CRD IV / CRR as well as changes to the technical standards / formats are expected. Those changes in relation to the underlying business and the technical requirements for data transmission and report structure will entail additional effort and implementation time.

In addition, as it is the intention of EBA to put forward an integrated ITS (related to the Article 95, 96 and 383 CRR), we propose to align the first reporting reference date with the requirements of COREP (especially in case national interim solutions are introduced for COREP). Given the limited resources in regulatory reporting departments as well as the given cycles for any IT implementation, we want to point out that any change in reporting requirements leads to additional burden for the institutions and that implementation risks increase disproportionate the more the implementation time is reduced. In consequence, any reporting requirement should be limited to the content absolutely essential for supervisory purposes. Information requests for statistical purposes – which we see not being covered by CRD – should also be limited to the extent absolutely necessary. A more coordinated approach of regulators and supervisors of any kind as well as central banks and other requestors for statistical data with a long-range roadmap and an integrated reporting would be desirable in that context.

[2] CEBS guidelines on reporting requirements for the revised large exposures regime issued 11 December 2009.

C. Responses to the questions for consultation

1. Is the definition of asset encumbrance sufficiently clear?

   In general we agree that asset encumbrance is sufficiently clear defined. In the consultation paper it is said that the definition is not based on an explicit legal definition, such as title transfer, but rather on economic principles, as the legal framework may differ in this respect across countries. The general principle is that assets which are being placed at facilities that are not used and can be freely withdrawn should not be considered encumbered. While we agree with that methodology, a further specification of the other economic principles might be helpful to prevent confusion.
   In addition collateral placed at clearing systems, CCPs and other infrastructure institutions are considered encumbered, even default fund contributions and initial margins. It should be discussed to excluded initial margins and default fund contributions for not dis-incentivise clearing via a qualified CCP.

2. Do you agree with the decision to follow the level of application as set out for prudential requirements? If not, what other level of application would be appropriate?

   No comment.

3. Do you believe the chosen definition of asset encumbrance ratio is appropriate? If not, would you prefer a measure that is based solely on on-balance sheet activities (collateral received and re-used, for instance from derivatives transactions would not be included) or a liability?

   We support the first alternative which excludes off-balance sheet assets from the asset encumbrance ratio. The calculation of the asset encumbrance ratio based on on-balance sheet AND off-balance sheet items seems too burdensome for institutions. Nevertheless the second alternative should be used as further option in case institutions prefer that method due to their data structure.

4. Do you agree with the thresholds of respectively 30 bn. € in total assets or material asset encumbrance as defined as 5% of on- and off-balance sheet assets encumbered? If not, why are the levels not

appropriate and what would be an appropriate level? Should additional proportionality criteria be introduced for the smallest institutions?

Concerning the thresholds of respectively 30 bn EUR in total assets or material asset encumbrance as defined as 5% on- and off-balance sheet assets encumbered we ask for a specification whether total assets in this context mean on-balance sheet assets or off-balance sheet assets included.
Further we state that the strict either/or approach should be slightly adjusted to prevent medium sized banks (between 30 bn total assets (including off-balance sheet assets) and 50 bn total assets with a very low level of assets encumbered, e.g. below 1% of total assets encumbered) from a burdensome reporting obligation without any further benefit for competent authorities.

Therefore following ruling for Article XX (5) lit a) to lit c) should be applied:
Institutions are only required to report the information referred in point b of paragraph 1 or the information referred in paragraph 2 and 3 if they meet one of the following conditions:

a) They have total assets, calculated in accordance with Section 1.6 of Annex II, of more than EUR [50 billion.].

b) They have asset encumbrance levels, as defined in Part Section 1.6 of Annex II, above [5] %.

c) They have total assets, calculated in accordance with Section 1.6 of Annex II, of more than EUR [30 billion.] and they have asset encumbrance levels, as defined in Part Section 1.6 of Annex II, above [1] %.

5. Under what circumstances might unencumbered assets of the types of loans on demand, equity instruments, debt securities and loans and advances other than loans on demand not be available for encumbrance?

At least in Germany exist so called registered shares with restricted transferability (vinkulierte Namensaktien). These shares are not encumbered, but due to their legal structure they are not available for encumbrance because the issuer must approve any transfer of title. Another example might be shares on blocked or frozen accounts.

6. What additional sources of material asset encumbrance beyond the one listed in rows 20 to 110 and 130 to 150 in template AE-Source do you see?

   Derivatives far in the money representing synthetic securities might be encumbered as well in case both counterparties agree. Another example might be physicals, e.g. gold. For the retail banking sector consumer loans or title's of leased cars might be another source of material asset encumbrance.

7. Do you believe the central bank repo eligibility criteria is an appropriate marketability criteria or should other criteria, such as risk weights, be used? If other criteria should be used, what could be the alternative?

   We consider central bank repo eligibility as the most appropriate marketability criteria as it guarantees a funding possibility with a counterparty (ECB) which has unlimited liquidity resources with the ability and willingness, especially in stressed market conditions, to ease liquidity burden for institutions.

   Beside, we consider the proposed criteria from the liquidity reporting package as appropriate as soon as clear liquidity metrics in the LCR regime have been defined and agreed.

   Further it seems reasonable to use risk weights as marketability criteria, e.g. in case risk weights are 20% or 0%. Acceptability of these instruments is highest due to low capital requirements; therefore their marketability should be most simple. Nevertheless this approach contains some downsides as well. Some issuers might stick in a certain cluster of risk weights, but their issues have lost market confidence and therefore suffer from low liquidity. As a prominent example can be mentioned the Hellenic Republic of Greece in 2011 and 2012. Although their risk weight has been at 0%, debt securities could not be considered liquid. The ruling should be complemented with the criteria to have a bid/ask spread of below 100 points (spread should be calibrated).

8. Do you believe the chosen scenarios are appropriately defined? What alternative definitions would you apply?

   In general the two scenarios in their effect might be appropriate scenarios. Nevertheless the consideration of a flat scenario does not incentivise an approach to manage encumbered assets in a sufficient manner. In case you anticipate a flat scenario for all assets there is no consideration of specific stress event and does not promote diversification in encumbered assets to minimise negative effects on the respective institution. Therefore we consider an approach as more appropriate which is handling certain stress events. Institutions shall consider their downside risk in case all scenarios become true.

Annex II

9. Do the instructions provide a clear description of the reporting framework? If not, which parts should be clarified?

   No comment.

10. Do you identify any overlaps with the existing reporting framework, which could be mitigated?

    No comment

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

Eschborn

24 June 2013

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