

Mr Giovanni Carosio, Chairman  
Committee for European Banking Supervisors  
(CEBS)  
Tower 42 (level 18)  
25 Old Broad Street  
London EC2N 1HQ  
United Kingdom

By email: [cp40@c-ebs.org](mailto:cp40@c-ebs.org)

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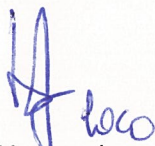
**CEBS guidelines on article 122a of the CRD, Febelfin comment**

Febelfin, i.e. the Federation which regroups four trade associations from the Belgian financial industry<sup>1</sup>, welcomes the opportunity to express its views on the consultation document mentioned above.

We welcome the proposed clarifications to the retention requirement foreseen in the CRD, as well as the intention of CEBS to ensure supervisory convergence in the application of these guidelines.

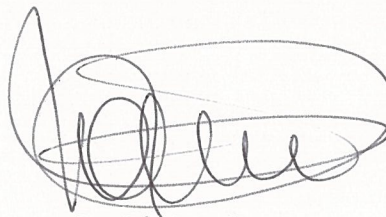
With our comments, which can be found in the annex of this letter, we would like to ask for additional detailed clarifications. We hope this demand can be taken into account. Please do not hesitate to contact our services and our working group, should you want any further information.

Yours sincerely,



Michel Vermaerke  
Chief Executive Officer

Enclosure



Daniel Mareels  
Director General

cc. Mr Jean-Paul Servais, Chairman, Banking, Finance and Insurance Commission (CBFA)

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<sup>1</sup> The following trade associations are constituents of Febelfin: the Belgian Bankers' and Stockbroking Firms' Association (ABB/BVB); the Professional Union of Credit Providers (UPC/BVK); the Belgian Asset Management Association (BEAMA), the Belgian Leasing Association (BLA). In addition, the following federations have joined Febelfin as associate members : the Belgian Private Banking Association, the Belgian Private Equity and Joint Venture Association. Equally, other financial market infrastructure providers, such as Euroclear, SWIFT and Euronext have taken the status of associate members.



## CEBS guidelines on article 122a of the CRD, Febelfin comment, annex

***Question 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)?***

We wonder whether a credit institution investing in a synthetic securitization is also considered as an investing credit institution?

We wonder why the monitoring (para 5, subpara 1) is also applicable to the liquidity facility providers as these have normally no risk exposure on the transaction.

We wonder whether para 4 is also applicable on IRS and forex counterparties, or only those parties which use credit derivatives.

It is unclear whether repo's/securities lending/TRS funding trades are captured by 122a. This would dry up completely the liquidity of ABS repo's if all repo counterparts (incl overnight or tri-party) would need to conform to 122a. In our opinion, one should not be considered as "investor" when he receives ABS bond as collateral and then one should not have to be subject to the requirements mentioned in the CP 40 document.

***Question 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)?***

We agree with the differentiation in the role of a credit institution as a liquidity provider depending on whether the credit institution as derivative/hedge counterparty is exposed to the credit risk arising from securitized exposures or securitization positions. For these cases we support a case by case analysis in order to assess should the provisions of art.122a be applicable.

***Question 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?***

We welcome this distinction and we consider that interest rates and currency swaps which are used as hedge instruments against forex and interest rates should not be considered as bearing credit risk.

***Question 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?***

The paragraph 20's requirements should not apply to ABCP transactions where multiple originators (which are not credit institutions) sell receivables to a securitization vehicle. The retention requirement could be satisfied by a full support liquidity line or program-wide credit enhancement



of 5% of notional or by a seller's retention of a 5% of notional. Therefore more clarity and guidance is required for ABCP transactions.

***Question 5: Do you agree that the form of retention should not be able to be changed 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.***

In some cases (such as for accounting or regulatory reasons) flexibility should be granted for changing the form of retention during the life of the transaction.

***Question 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?***

We are of the opinion only the nominal value should be used.

***Question 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.***

We prefer that the disclosure is done in the original transaction documents (prospectus) and afterwards the communication is done through the trustee, which is the permanent link between the originator and the investor.

Second, one could use Swift messages through Clearstream, however the follow up of these messages may be operationally difficult for the back office of investors.

In any case, we would welcome that the guidelines define clearly which party has to execute the disclosures.

Guidelines shall be adapted in order to avoid that investors are at the mercy of the originator. We are of the opinion that a **legal binding** regarding the originator's disclosure/retention requirements and then a further regulation is necessary on this point.



***Question 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.***

We consider that the restriction on hedging should be limited to hedges with identical characteristics to the exposures to the exposures retained as originator or sponsor; otherwise the credit institution would not be able to manage the risk in its investment portfolio. The aim of the art. 122 a is not to prevent trading book activities (and therefore hedging of the risk) but to ensure that the retention requirement is satisfied by the retaining party.

***Question 9: Should retention of 5% of each securitised exposure fulfil the requirements of Paragraph 1 under option (a)?***

We welcome the alternative option set up under (a).

***Question 10: Should option (b) be applicable equally to both securitisations of revolving exposures and revolving securitisations of non-revolving exposures<sup>4</sup> (or revolving securitisations with a combination of revolving and non-revolving exposures) in fulfilling the requirements of Paragraph 1?***

We agree that option (b) should be applicable equally to both securitizations of revolving exposures and revolving securitizations of non-revolving exposures.

***Question 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?***

No comment.

***Question 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?***

We do not agree that undrawn lines such as liquidity facilities are to be taken into account.

***Question 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?***

In case of a failure, repos are concluded. Investors can receive in these cases securities of an equivalent nature but this is very vague and not always advantageous for investors.

***Question 14: Is further clarification needed on the ability to differentiate between the trading book and the non-trading book?***



Whilst we welcome the principle of "intensity of the due diligence" put forward by the CP40 (paragraph 59) we plead for further clarification on this issue with regard to trading book positions. Paragraph 63 of the CP40 suggests that trading book in contrast to non-trading book have to additionally adjust due-diligence efforts to secondary market circumstances. We understand that trading books may have to satisfy a higher due-diligence standard and will suffer penalties at least as high as those applied to non-trading books. This can lead to unintended consequences for the secondary trading activity, investors or dealers being reluctant to invest in securitization positions, which could dry up the liquidity of the secondary market.

Therefore we consider that the policies and procedures which are required in the proposal and which have to satisfy the criteria put forward by the proposal should allow complying with these criteria on a "reasonable efforts" basis for trading book positions.

***Question 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?***

We are of the opinion that a list of financial models which is regulatory approved should exist, which is also regularly updated and published by supervisors and this to avoid an oligopoly of financial models.

***Question 16: Do you agree with this method of calculating the additional risk weight?***

The penalties in the form of escalating risk-weights are more severe than the CRD 2 requirements. This issue raises several concerns:

- The use of various terms used in CP, such as "subsequent infringement" lacks clarity,
- The proposal allows for multiple simultaneous infringements, which can lead to a very rapid and significant escalation of penalties.

Considering that the investors are highly dependent on the originator/ servicer for avoiding penalties, clarification on the penalties framework (how this will work in practice) is paramount for any credit institution willing to invest in securitization positions. Moreover, too heavy and non-risk based penalties could discourage investors and would inhibit the revival of the healthy "originate-to-distribute" financing of the economy.

***Question 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?***

First question: The Directive states that the additional risk weight should be "proportionate". However we want to outline that according to the additional risk weights' framework the cap of 1250% will be reached very quickly without having room for progressive increases. This will lead to



situations where investors would be required to deduct from capital bonds that were brought in full compliance with the rules, which are performing and which were not downgraded. This not seems to be proportionate with the requirements of the art.122a. Therefore we request the Committee to review the additive characteristic of the additional capital requirements.

Second question: we agree.

***Question 18: If a credit institution is involved as sponsor in the securitization 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?***

If the sponsor does not grant credits or does not possess assets of the same types that the one under securitisation, paragraph 6 should not apply, and this should be specified within paragraph 94. If not, we agree with the principles defined in paragraph 91-93

***Question 19: Is this interpretation or the requirement with respect to "participations and underwritings in securitization issues" clear and unambiguous, or are there alternative interpretations possible or clarifications necessary?***

No comment.

***Question 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 fulfill these requirements on an adequate basis?***

We fear that, as the deadline for introduction of these new requirements is close by, that small sponsors and promoters will not be ready to fulfill the reporting timely. Consequently, this can lead to illiquidity losses on the positions held in these structures.

***Question 21: 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 fulfill these requirements on an adequate basis?***

No comment.

***Question 22: Would such implementation without a materiality threshold create complications or be overly burdensome?***

A threshold is in our view not preferable and this for the following reason: when an originator does not retain the full 5%, then this position will become illiquid for the investor and, without the retention requirement, the investor has no other means of obliging the originator to take up responsibility for the structure.

We also wonder how the 5% retention will be applied on a CLO portfolio, as managers of loans have these loans not on their balance sheet, but remain responsible towards the investors. We wonder therefore if the retention should also be applied to the managers of CLO portfolios.

We would like the following situation clarified: in case of a CLO with a 5% retention which can be bought, but where eventually no retention at all is bought, we wonder if the threshold is crossed.