Nederlandse Vereniging van Banken

Onno Steins
Advisor Risk Management
t +31 20 55 02 816
m +31 6 39 57 10 30
e steins@nvb.nl

CEBS
Mr. Arnoud Vossen
cp40@c-ebs.org

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Reference BR1242

Subject: NVB Reaction to CEBS CP40 - Guidelines on article 122a of the CRD

Dear Mr. Vossen,

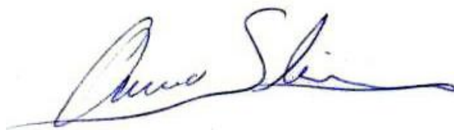
The Dutch Banking Association[1] (NVB) welcomes the opportunity to comment on Consultation Paper 40, which provides guidelines on article 122a of the CRD. As we support the joint reaction provided by AFME, ISDA and the EBF we will limit our comments and questions to those areas where we feel additional guidance would be beneficial.

We welcome the work done by CEBS in CP40, as this provides very useful guidance regarding the retention- and due diligence requirements for securitisation products. Although the requirements have become a lot clearer, a number of concerns and questions remain, which we will cover in this letter.

We share the concerns relating to the impact on the ABCP market and underline the importance of the wholesale markets to European banks, which are addressed in the joint AFME, ISDA, and EBF reaction.

Should you have any questions relating to our feedback, please feel free to contact me at your convenience.

Kind regards,



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[1] The Nederlandse Vereniging van Banken (NVB) is the representative voice of the Dutch banking community with over 90 member firms, large and small, domestic and international, carrying out business in the Dutch market and overseas. The NVB strives towards a strong, healthy and internationally competitive banking industry in the Netherlands, whilst working towards wider single market aims in Europe.

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General remark regarding Article 122a
CEBS is providing guidance on Article 122a of the CRD. In this article, paragraph 1, section 2 (d) provides banks with the option to satisfy the retention requirement by holding no less than 5 % of the nominal value of the securitised exposures, if it chooses to use this method. Although we are aware that CEBS is not in a position to change the CRD, we feel this article should be corrected to take into account the risk weight of the first loss tranche, and not to simply express the 5% retention as a nominal amount. For instance in the case of mortgages, where losses are typically less than 5% - due to low default rates and low LGD's - a retention of 5% of the total risk would have been more appropriate. Transferring a significant portion of risk, while keeping a 5% first loss tranche, might not be possible in the current context.

Specific questions regarding the consultative paper
At this point, we would like to raise a number of additional questions that relate to specific elements covered in the consultation paper:

-It is unclear how an originally retained securitisation position that has been pledged with the ECB should be treated. In our view, pledging retained securitisation positions at the ECB should not have an impact on the retention levels, as the economic risk still sits with the originator. We request CEBS to clarify the treatment of pledged retained positions in its final guidance.

-How are programs that have the same type of underlying assets treated in terms of the retention requirement? An example: a bank has three internal securitisation programs that are all notes (thereby all risks are retained by the originator) and one program where risk is transferred to outside investors. On top of this, the underlying assets are of the same type (such as mortgages). Can the internal securitisations in this example be used to satisfy the retention requirement for the external securitisation, or does the retention requirement only pertain to the external securitisation? How does this work if there are multiple transactions in a program and how is a new issuance under an existing program treated?

-If the originator of an ABCP program sells assets at a discount, may the discount be included in the retention requirement, as the discount has the features of a first loss tranche? Can the program wide credit enhancement (PWCE) of the sponsor be added to this discount, basing the retention requirement on the cumulative position (discount + PWCE > 5%)?

-In case the originator of a securitisation retains more than the required 5% and has disclosed to its investors it will retain 5%, the originator should in our view be allowed to hedge the excess retention over the 5% threshold. For instance, if the originator retains 20%, it should be allowed to hedge 15% of the exposure (i.e. 75% of its current retention), bringing the total retention to 5%. We request CEBS to clarify this point in its final guidance.

-Regarding the monitoring of the 5% retention requirement, if there are no structural features that could deplete the 5%, it is not clear there will not be a monitoring requirement. In our view there should not be one in this case. For instance, if a bank chooses to retain the first loss tranche - which satisfies the 5% retention requirement – and this tranche is subsequently decreased as a result of the occurrence of losses, it should not be required to monitor the decreasing retention.

-It is not clear to us if an institution, satisfying its the retention requirements by keeping assets that are eligible for the program on the balance sheet (in a large enough quantity), should ring fence these assets. For instance, should a bank that securitised a part of its mortgage portfolio, ring fence a quantity of mortgages with comparable origination standards that would be eligible for the securitisation program?

-We are unsure how paragraph seven of article 122a should be read in conjunction with paragraph one. According to paragraph one, banks may only invest in securitisation positions if the originator, sponsor or original lender has explicitly disclosed they will retain at least a 5% net economic interest. Paragraph seven requires sponsors and originator credit institutions to disclose to investors their commitment under paragraph 1. What requirements of paragraph 7 remain if the sponsor and originator credit institutions do not retain a net economic interest, i.e. if they sell the securitisation to professional investors that do not fall under CRD and therefore are not required to comply with paragraph 1, 4 and 5?

-We are unclear about the scope of the exemption under paragraph 3(b) "*...or credit default swaps where these instruments are not used to package a securitisation that is covered by paragraph 1*". We are under the impression that 122a is aimed at securitisations where legal title to exposures have been transferred to an SPV (a "traditional securitisation" as defined in art 4(36) of Directive 2006/48/EC) and not to "synthetic securitisations". This impression is based on the wording where CDSes are exempt, unless they are based on a (traditional) securitisation and this is put in place so as to prevent originator and credit institutions to (a) establish a traditional securitisation that they retain in full and then (b) establish a synthetic securitisation covering all losses on the former securitisation. Is this impression correct?