EUROPEAN COMMISSION
Internal Market and Services DG

Deputy Director-General

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CALL FOR TECHNICAL ADVICE FROM THE COMMITTEE OF EUROPEAN BANKING SUPERVISORS (CEBS)

Report on the effectiveness of the minimum retention requirement in Article 122a

Section A: Background

1. Article 122(a) of Directive 2006/48/EC aims at removing misalignments of incentives between the interests of investors in securitisations on the one hand and those that originate loans for securitisation and structure securitisations on the other hand (hereinafter collectively referred to as "issuers"). *Inter alia* this Article requires credit institutions to only invest in securitisations if the issuers retain an interest of not less than 5% in the securitisation ("retention requirement").
2. Paragraphs 1 to 3 of the same Article furthermore provide detail on the circumstances under which this retention requirement is met. On a more general level, recital 15 explains that securitisation transactions should not be structured in such a way as to avoid the application of the retention requirement, in particular through any fee or premium structure or both.
3. As set out in the same recital 15 and in Article 156, the Commission will decide before end 2009 and after consulting the Committee of European Banking Supervisors ("CEBS"), whether an increase of the retention requirement should be proposed, and whether the methods of calculating the retention requirement deliver the objective of better aligning the interests between originators or sponsors and investors.
4. The decision should be taken against the background of
   a) international developments following the declaration on Strengthening the Financial System of 2 April 2009 in which the leaders of the G20 requested the Basel Committee for Banking Supervision and competent authorities to consider due diligence and quantitative retention requirements for securitisation by 2010.
   b) the need to ensure financial stability and mitigate systemic risks arising from securitisation markets in the best possible way.

Section B: Specific Call for Technical Advice

5. CEBS is asked to advice on the following questions:

   a) Is the minimum level of the retention requirement of 5% adequate to avoid misaligned incentives and to mitigate systemic risks from securitisation markets going forward or is an increase of the percentage needed?

   b) Are the circumstances under which this retention requirement is met (detailed in Paragraphs 1 to 3 of Article 122a) conducive to meeting the objectives of the retention requirement? More specifically:

      i) Can they prevent securitisation transactions being structured in such a way as to avoid the application of the retention requirement, in particular through any fee or premium structure or both?

      ii) Can letters a) to d) in Paragraph 1 be considered equivalent in avoiding misaligned incentives, in particular considering the possibility for the issuers to receive payback on his exposure through fees or other means of the securitised assets in an early phase of the life of a securitisation?

      iii) Can the exemptions in paragraph 2 lead to securitisation transactions being structured in such a way as to avoid the application of the retention requirement?

   c) What further provisions and safeguards should be added to the wording of Article 122a in order to address the potential problems identified under letter b), if any?

   d) Does the possibility offered for group structures in paragraph 1bis achieve the desired alignment of interests?

Section C: Timetable

6. The Commission services would welcome the provision of the technical advice by 31 October 2009.

Thank you very much for your co-operation as usual. D

David WRIGHT