

CEBS draft proposals on options and discretions in the CRD

CEBS public hearing

Roel Theissen | 17 June 2008

CEBS

Committee of European
Banking Supervisors

Outline

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The role of CEBS (1)

Objectives:

Promote efficient and effective supervision and the safety and soundness of the EU financial system through:

- good supervisory practices
- efficient and cost-effective approaches to supervision of cross-border groups
- effective regulation
- level playing field and proportionality

Main tasks:

- Give advice to the Commission
- Promote consistent implementation/application of the EU legislation and enhance convergence of supervisory practices
- Exchange information and enhance supervisory cooperation
- Alerting on financial stability

The role of CEBS (2)

- Established in Nov 2003; first meeting in Jan 2004
- High level representatives from the banking supervisory authorities and central banks of the EU, including the ECB
- 27 Member States, 3 observers from EEA countries, the EU Commission, the ECB and the Banking Supervision Committee of European System for Central Banks



Chair

Kerstin af Jochnick
Finansinspektionen



Chair of Expert Group
on Capital Requirements

Thomas Huertas
UK FSA



Chair of WG on options
and national discretions

Roel Theissen
De Nederlandsche Bank

Call for Advice from the EU Commission

The COM asked CEBS to carry out a **technical analysis on the options and NDs identified in its supervisory disclosure framework:**

- i) Indication of the manner of exercise in each MS
- ii) whether CEBS deems it appropriate, with a view to achieving convergence of supervisory practices, to seek further harmonisation
- iii) where consensus may not be found on the deletion of an option or discretion or on the use of mutual recognition, the precise reason for this, including the views expressed by the majority and the minority of its members and
- iv) where appropriate, drafting proposals




How to take this challenge forward? (1)



- Reducing options and NDs is a difficult task; supervisors and industry are starting to implement the CRD and changes will cost them time and resources
- Options and NDs had been discussed in the past, which did not, *at the time*, lead to a definitive solution acceptable to supervisors and industry even though it diminished their number
- Options and NDs are still in the spotlight of discussion and are quoted as a true **obstacle to convergence**
- The call for advice from the COM was just the **trigger point**
- Their reduction is called for by the **Industry Operational Network Platform**
- CEBS is committed to reduce options and NDs in a **pragmatic and permanent way**

How to take this challenge forward? (2)

- **CEBS aimed to gain a full material understanding of the important issues** (a) for banks and investment firms with a cross border focus, (b) for banks and investment firms with a domestic focus, and (c) for members and observers
 - **Very positive response to CEBS questionnaire** from its members and observers and from a broad range of market participants
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- **General wish to reduce options and NDs** as much as possible
 - A number of other potential discretions were identified by the industry in their responses – they have been taken on board by CEBS

Total of 152 provisions!

How to take this challenge forward? (3)

- CEBS Consultative Panel and CEBS members nominated **industry experts for technical dialogue with CEBS WG**
[list of experts published on CEBS website: http://www.cebs.org/ConsultativePanel_IndustryExpertGroups_nat.htm]
- **Open, transparent and non-binding discussions** successful in bringing more clarity to the issues at stake
- **Different interests from the different stakeholders** have been considered in the draft proposals



Possibilities to solve options and NDs (1)

- delete the discretionary part of the provision or one of the options
- delete the provision completely from CRD (immediately or with a transitional clause)
- option is given to credit institutions or investment firms
- add mutual recognition (binding/non binding)
- add EU joint assessment process
- supervisory decision

Possibilities to solve options and NDs (2)

Supervisory decision:

- to be applied on a case by case basis by competent authorities
- it is a supervisory approval or authorisation process (on an individual basis)
 - where there is judgement by the supervisor, but no choice (if the criteria are fulfilled, has to agree with the choice of the CI or IF)
 - where there is judgement and choice by the supervisor (assess the fulfilment of the criteria + a subjective choice as to whether the application is a good idea in the specific case)

Possibilities to solve options and NDs (3)

Supervisory decision (ctd):

- should have been implemented by all MS
- the text from the Directive should be kept unchanged
- the MS should be urged to implement these provisions asap, but CEBS acknowledges differences:
 - in some jurisdictions the CA needs a legal provision to be able to take a supervisory decision; in other jurisdictions CA have wider powers and there is no need to implement the supervisory decision in the law
 - given the national non-supervisory legal environment the conditions set in some of the ND can never be satisfactorily fulfilled

CEBS draft proposals (1)

CEBS draft proposals are intended to:

- find the **right balance** between the wide range of concerns and preferences of both the industry (domestic vs cross border institutions) and supervisors
- be **transparent** as to its reasoning and open to comments from participants

Further input to the IA/CBA is welcome!



CEBS draft proposals in figures (2)

Draft proposals		Total
1) keep in the current form		35 (12 soon to expire)
2) add mutual recognition	binding	10
	non-binding	14
3) supervisory decision (case by case basis)		37
4) delete	becomes a rule	14
	completely from the CRD	21
5) option for CI or IF		22
6) add EU Joint assessment process		9
Out of scope		12
Options and discretions where more detailed feedback from respondents is invited		27

What about the options and NDs which are kept?

Why keep them in their current form?

- **15%** can only be changed as part of a future general overhaul of the subject-matter
- **35%** will expiry in a short period of time
- **20%** are rooted in features of a local market and national laws other than the banking supervision laws
- **30%** lack of practical experience and/or satisfactory common criteria or of other viable alternatives to keeping it

When and how this will come into practice?

- The EU COM is not planning to include the review of options and NDs in the 2008 CRD review (not included in the work programme and requires public consultation and IA). Details on EBC timeline under: http://ec.europa.eu/internal_market/bank/docs/ebc/ebc170308_en.pdf
- CEBS advice might be followed up to 2010/2011, but the EU COM can review options and NDs by:
 - modifying annexes to the CRD by Comitology - this will be discussed at the EBC after receiving CEBS final advice
 - receiving legislative amendments, where appropriate (e.g. at the Council or EU Parliament)



Input from participants is invited

CEBS wishes to hear from all interested parties their views on the proposals put forward in the consultation paper

In particular for:

- *IRB (reference number 38, 41, 43, 44, 45, 112, 113, 116, 117, 118 and 119) – in general, lack of experience in using these provisions*
- *Trading book (reference number 81, 82, 86, 87, 89, 90, 93, 95, 96, 98 and 100) – in general, further input for the CBA is necessary*
- *Other (reference number 3, 31, 33, 59, 61 and 63)*



Questions and suggestions?

- Today's public hearing for open discussion
- Written comments should be sent to the following email address: cp18@c-ebs.org by **15 August 2008**

Early responses will be greatly appreciated

- **CEBS final advice is expected by October 2008**

The logo consists of two five-pointed stars, one above the other, positioned on the left side of a vertical orange bar. The background of the logo area is a gradient of blue and green with a pattern of wavy lines.

CEBS

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