

European Banking Authority
Tower 42
25 Old Broad Street
London EC2N 1HQ
United Kingdom
By email: EBA-CP-2013-14@eba.europa.eu

Group Chief Accountant's
Level 12
280 Bishopsgate
London EC2M 4RB
Telephone: 020 7672 0202
Facsimile: 020 7672 1424
www.rbs.com

22 August 2013

Dear Sirs,

I enclose The Royal Bank of Scotland Group's ('RBS') response to the above consultation paper and welcome the opportunity to comment. The key issues arising from RBS's review of the draft technical standards are set out below. RBS has also been an active participant in the joint trade association response, of which we are supportive.

Summary

The securitisation market within Europe has adapted to the retention requirements introduced under CRD2, the implementation of which was greatly enhanced by the CEBS guidance and EBA Q&A document provided on this matter. This existing additional guidance works well to supplement the Level 1 text and RBS believes that it meets the regulatory objectives. RBS would urge the EBA to replicate this guidance in the draft technical standards since the technical standards, as currently drafted, do not offer the same flexibility and clarity that the CEBS guidance provides.

Furthermore, certain aspects of the changes to the retention requirements introduced by the technical standards could have a negative impact on the securitisation market within Europe, and thereby European borrowers, and to European firms who trade in global markets, as well as to the overseas clients of European firms who have adapted their businesses and legal processes around established guidance.

Our key issues are outlined below and answers to the specific questions asked in the consultation have also been provided in an appendix to this letter where these are relevant to RBS.

Key Issues

Trading Book materiality exemption

The EBA Regulatory Technical Standard (RTS) does not explicitly include a trading book materiality exemption which currently exists. In particular, the CEBS guidance (paragraphs 8 & 9) and EBA Q&A (question 29) give a concession for immaterial trading book exposure to positions which would otherwise not meet the retention requirements, irrespective of the booking venue. The removal of this materiality threshold would have a significant impact on firms who operate in locations outside the EU, where part of their market making activity in the secondary market is in local securitisation positions. Whilst Article 14(2) of the CRR introduces the potential for materiality to be considered, for entities established in the third party countries which are subject to EU consolidation, it does not apply to entities on a cross-border basis e.g. US branches of EU banks.

The Implementing Technical Standards (ITS) gives competent authorities the ability to consider materiality when assessing whether to apply additional risk weights. This implies that the EBA does not

consider that the Level 1 text requires additional risk weights in all such circumstances. In order to ensure consistency within EU firms, and not to put such firms at a global competitive disadvantage, RBS would ask that the EBA amends the technical standards to permit limited trading book activity in branches of EU incorporated firms without the risk of additional risk weights.

This issue is further complicated when similar, but not identical risk retention rules, of other jurisdictions need to be considered, such as the US Volcker rule. Competing rules in this area could result in global silos within the securitisation market, where firms may only be able to operate in the jurisdiction in which they are regulated on a consolidated basis.

Transactions meeting current CEBS retention requirements, but not RTS

There are transactions which comply with the current CEBS guidance on retention, but do not comply with the EBA rules. RBS would urge the EBA to consider providing limited grandfathering to these positions which meet the existing CEBS guidance.

If the EBA is unable to provide such grandfathering protection, confirmation is sought that where such positions are currently held they will not be subject to additional infringement risk weights as the change in rules is outside the control of the firm holding the exposure. However even if this is confirmed, it should be noted that it will still impact upon the liquidity of such positions with a potential knock on impact on pricing, as firms may be unable to dispose such positions as purchasers may be subject to increased capital costs.

Additionally this issue will impact the recovery seen in recent months to certain securitisation markets such as the CLOs. There are transactions in the pipeline which are being structured to comply with the CEBS guidance. These can potentially be re-structured to meet the requirements in the RTS, however such transactions would then not comply with the current rules and therefore no such transactions will be able to close until the RTS is adopted.

Eligible Sponsor

RBS welcomes the widening of the definition of sponsors to include investment firms, but is concerned that the definition of investment firm in the text is too restrictive to provide a meaningful increase to potential retention providers. RBS would welcome clarity from the EBA on which institutions can satisfy the role of retention provider as sponsor, to ensure that such a list is not so restrictive that very few firms would meet the definition. For example, asset managers who manage CLO transactions may not meet the CRD legal definition of investment firm, but would otherwise meet the definition of sponsor with their interests aligned with that of the investor.

Pre 2011 transactions

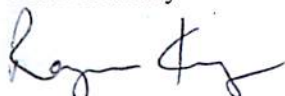
The current CEBS guidance provides helpful guidance on what constitutes an asset substitution and therefore provides clarity when transactions which existed prior to 2011 will need to comply with the retention rules post 31 December 2014. The RTS is silent on this matter which introduces uncertainty to the market. In order to prevent liquidity issues on pre-2011 transactions and ensure consistent interpretation, it would be useful if the EBA could clarify this position.

Retention by consolidated entities

It is not clear under the draft technical standards whether the retained interest may be held on a consolidated basis (i.e. by an entity within the eligible retaining entity's consolidated group for regulatory or accounting purposes) or by other related entities in all circumstances. RBS would ask that the EBA clarifies that retention can be made at a consolidated level for non-EU, as well as EU entities, and for regulated and non-regulated entities.

RBS would be happy to elaborate further on any of the points made and looks forward to engaging with the EBA.

Yours faithfully



Rajan Kapoor
Group Chief Accountant

Annex 1: Responses to Specific Questions

Q1: The EBA would like to know to what extent securitisations rely on paragraphs 25-26 of the CEBS Guidelines in order to achieve the retention commitment and would also like to understand if these transactions could also meet the requirements set out in Article 394(1) of the CRR without applying the criteria provided in Paragraphs 25 and 26 of the CEBS Guidelines on Articles 122a of Directive 2006/48/EC taking into account the definition of securitisation according to Article 4(37) of the CRR and the respective definitions of originator, sponsor or original lender.

RBS supports the answers provided to this question in the AFME and LMA responses.

Q2: The EBA would also like to understand if, for new securitisations there are transactions that are likely not to be able to meet the retention requirements following the CRR and associated draft RTS.

RBS supports the answers provided to this question in the AFME and LMA responses.

Q3: To the extent securitisations have relied on Paragraph 48 in the CEBS Guidelines on Article 122a of Directive 2006/48/EC to meet the retention requirements, would there be any material impact (be it economic, operational, etc.) to now complying with retention option (a) of Article 394(1) of the Regulation (EU) No xxx/2013 rather than relying on the provisions of Paragraph 48 in the CEBS Guidelines on Article 122a of Directive 2006/48/EC in order to meet the retention requirements?

Paragraph 48 of the CEBS Guidelines provides that retention via an appropriately sized originator interest is available not only to securitisations of revolving exposures, but also to revolving securitisations of non-revolving exposures. This importantly brings mortgage master trusts within the scope of the retention option. The proposals set out in the draft RTS do not specifically include this clarification. However as the definition of revolving securitisations has changed in Article 242 (13) of the CRD text to mean a securitisation where the securitisation structure itself revolves by exposures being added or removed from the pool of exposures irrespective of whether the exposures revolve or not, it is requested that the EBA confirms that originator interest can be used for all revolving securitisation, regardless of whether the underlying assets revolve themselves.

If this clarification is not made then the draft RTS suggests instead, that the originator interest should fall within the vertical slice holding option (ie option (a) of the Level 1 text). This change introduces significant uncertainty as to how compliance should be structured.

By way of general comment, most UK mortgage master trusts were established prior to 2011 and are therefore exempt from the retention requirements until after the end of 2014. Nonetheless, several market participants have endeavoured to structure their transactions in a manner that will allow them to seamlessly transition into compliance, when the grandfathering period ends. To this end market participants have relied on the existing CEBS Guidelines and RBS would urge the EBA to reconsider before cutting back on the available guidance. Mortgage master trusts are complex structures and the efforts made by issuers to date should be given some recognition, particularly as the underlying intention was very much to satisfy the retention requirements.

It is not readily apparent how an originator interest might be structured to fall within option (a) (the vertical slice option) and without the wording of paragraph 48, it is unclear whether mortgage master trusts would benefit from that anyway (given that they are revolving securitisations of non-revolving exposures). In the absence of a specific policy reason for excluding these structures and in the interests of regulatory certainty, this should be clarified expressly.

Additionally, the requirement in the draft RTS that the originator interest ranks at least *pari passu* with the securitised credit risk is assumed to be an unintentional mistake in the drafting which will be corrected. It makes more sense and is consistent with stated policy if the originator interest ranks *pari passu* with or subordinate to the securitised credit risk. This is how the majority of the originator interests in UK mortgage master trusts are structured.

Q4: Do you consider that this way to comply with the retention requirement under option (a) should be explicitly mentioned in the RTS?

Questions 4-7 answered together.

The regulations should make explicit the point implied by Article 8.3, that in the context of an ABCP conduit programme, the retention requirement is usually satisfied at the individual seller level, and that the retainer at that level will normally be the originator of the assets in that pool rather than the sponsor of the conduit programme.

If this clarification is made, the retention method described in Articles 6.1(b) and 8.1(b) is likely only to be applicable when the sponsor of the conduit is also the originator of a particular asset pool (or possibly all the asset pools in a programme, in an 'own-asset' or 'single seller' programme). Where the sponsor and originator are unconnected, it is unlikely that the retainer/originator will also be the liquidity facility provider.

Even in the context of an own-asset ABCP programme (or sponsor-originated assets in a multi-seller programme) it would be unusual for a programme or transaction to be structured so that the liquidity facility provided the sole form of credit enhancement for CP investors. Rather, it is likely that there would be retention of an interest in each asset pool such that the individual transaction was economically comparable to a transaction with unconnected sponsor and originator - not least because this would enhance the marketability of the CP.

Within the very limited applicability of Articles 6.1(b) and 8.1(b), and subject to the foregoing comments, the proposed conditions do appear correct and sufficient.

Q5: Do you consider that the conditions enumerated in Article 6.1(b) are correct and sufficient? If not, which conditions would you add/change/remove? Why?

Covered in response to question 4.

Q6: Do you consider that the retention option (d) under Article 8.1(b) via the provision of a liquidity facility should be explicitly mentioned in the RTS? Please also specify reasons why this provision should explicitly remain in the RTS?

Covered in response to question 4.

Q7: Do you consider that the conditions referenced in Article 8.1(b) are correct and sufficient? If not, which conditions would you add/change/remove? Why?

Covered in response to question 4.

Q8: Are there other ways to comply with the retention options set out in Art 394 of the CRR which should be included in this RTS? Please be specific in your description of any additional ways to comply.

Broadly, the market has adapted to the risk retention rules that came into force in January 2011. The four standard retention techniques, together with, and in reliance on, the existing guidance, have each been taken up and the market has been supportive of the policy intentions underpinning the retention requirement as a whole. Market participants have endeavoured to ensure that their structures fall within one of the existing options. That said the addition of a new fifth retention option in the Level 1 text is very useful and welcome. Beyond that, given the general acceptance of the existing retention options and our clients' efforts to ensure that each relevant transaction satisfies the requirements, it is not considered necessary to adopt any new basic retention options.

Having said that, there are a number of transactions where compliance (not just with the technical requirements of the legislation but of its spirit as well) has only been possible because of the careful guidance set out by CEBS and in the corresponding Q&A. Where clarificatory points made in the CEBS Guidelines have now fallen away, firms are left with increased difficulty in meeting the retention requirements as well as increased compliance uncertainty overall. For example, the CEBS Guidelines were very helpful in identifying certain types of arrangements which satisfy the "first loss" option of Article 122(d), by stating that the first loss piece can be held not just by holding the lowest tranche of notes directly but also via a subordinated note, a funded reserve account as well as over-collateralisation, letters of credit, guarantee etc. This flexibility is within the spirit of the legislation and allowed market participants to comply in a manner that is aligned with their commercial parameters.

RBS would request that this element of the guidance be included in the final RTS. If nothing else, the deletion of this guidance gives rise to genuine uncertainty as to whether it was intentional as a point of

substance or for other, more minor reasons. RBS see no policy reason why the identified arrangements should not be acceptable forms of retention. And whilst it is understood the EBA may be averse to setting out a finite list of "accepted" arrangements, a non-exhaustive list comprising of at least the arrangements identified in the CEBS Guidelines would still be within the policy objectives of the EBA.

Q9: Is the qualification "securitisation positions in the correlation trading portfolio containing only reference instruments satisfying the criterion in Article 327(1b) (ii) of Regulation (EU) No xxxx/201y" introduced in Article 13(1) correct/necessary? Should this qualification be removed? If not, why?

RBS supports the answers provided to this question in the AFME response.

Q10: Is the inclusion in the exemption of the cases that are eligible to be included in that part of the correlation trading portfolio but that do not pertain to it adequate? If not, why?

RBS supports the answers provided to this question in the AFME response.

Q11: Should the broad stress testing requirement that institutions have to undertake be part of the Internal Capital Adequacy Process, in accordance with Article 72 of CRD IV, or should it, where applicable, be in accordance with Article 173 of the CRR and follow the credit stress testing requirements for IRB banks?

RBS supports the answers provided to this question in the AFME response.

Q12: Is the qualification "...securitisation positions ... held in the correlation trading portfolio...as referred to in Article 327(1b) (ii) of Regulation (EU) No xxxx/201y" introduced in Article 20 correct/necessary? Should this qualification be removed? If not, why?

RBS supports the answers provided to this question in the AFME response.

Q13: Is the consideration of the cases that are eligible to be included in that part of the correlation trading portfolio but that do not pertain to it adequate? If not, why?

RBS supports the answers provided to this question in the AFME response.

Q14: For which type of underlying assets do you think that the information on a loan level basis is not necessary for complying with the due diligence requirements under Article 395 of the Regulation (EU) No xxxx/201y? What kind of information is required in those cases? Please specify by type of underlying asset.

The principle contained within the current guidance and the draft proposals is that loan level data is not necessarily required, providing all materially relevant data is provided. Providing firms receive adequate information to complete due diligence and satisfy their own risk management, the EBA should not look to change this principle with detailed or prescriptive guidance relating to loan level detail.

As an example the provision of loan level data may not be appropriate for the securitisation of credit card receivables. Securitisation of credit card receivables involves an aggregation of a very large number of small exposures. The provision of account level data does not provide benefits in terms of transparency of underlying exposures. In fact, the reliance on account level information for this asset class could be overly burdensome for investors as the quantum of information would be difficult to process without significant technological investment and could act as a barrier for investor to conduct meaningful due diligence on their investments. For credit card portfolios there is less reliance on individual account level analysis as both credit card exposures and credit card securitisations are revolving. As a result, and in conjunction with the highly granular nature of credit card portfolios, investors and rating agencies focus their analysis on key portfolio-level performance indicators.

In the case of credit card receivables, the provision of portfolio level information on performance (i.e. delinquency and charge off levels), geographical breakdown of obligors, seasoning of accounts, stratifications of balances and credit limits, along with information on gross and net yields generated by the credit card portfolio would be sufficient in place of account level information.

Q15: Do you consider that the information in existing templates (e.g. ECB ABS loan-level data template or Bank of England ABS transparency requirements) meet the relevant due diligence and disclosure

requirements under Article 395 and Article 398 of the Regulation (EU) No xxxx/201y, respectively? Please differentiate in your response in terms of the types of underlying assets, if applicable.

The central bank templates do provide an example of how data can be provided in order to meet the due diligence requirements, and these are considered sufficient to complete the due diligence. However it is important not to restrict templates which can be used for loan level data to those developed to meet the requirements of central banks for funding purposes. Transactions are structured for a variety of purposes and provided the information provided is sufficient for firms to complete the due diligence and on-going monitoring requirements then the actual template used should not be restricted.

Q16: Do you find the accessibility conditions (e.g. search, availability, costs) regarding the information provided in existing templates (e.g. ECB ABS loan-level data template or Bank of England ABS transparency requirements) adequate?

RBS supports the answers provided to this question in the AFME response.

Questions relating to Draft ITS Relating to the convergence of supervisory practices with regard to the implementation of additional risk weights (Article 396 of Regulation (EU) No [xx/2013]

Q1. Does the formula in Article 2 result in reasonable additional risk weights?

The formula is substantially the same as in the current CEBS guidance. However there is one aspect in the formula which may result in additional risk weights which are not reasonable.

The automatic increase in additional risk weights due to the passage of time can result in increases which are not proportionate, particularly when the investor is not in a position to cure the breach. The Level 1 text refers only to 'each subsequent infringement' not specifically to the passage of time. It would be more reasonable if this increase in risk weight was enforced on positions subsequently purchased from the same originator which suffer from the same infringement.

Q2. Would you suggest any changes to the formula that would lead to an improved framework for the application of additional risk weights? Do you believe the variable Article394ExemptionPct equal to 0.5 if the exemption in Article 394(3) [405(3)] applies is reasonable?

Please see comments above relating to the time factor.

It would also seem reasonable for the reduction in variable to be applied to transactions which are exempt in Article 405(4).

Q3. Would you suggest an alternative approach for calculating additional risk weights?

Please see comments above relating to the time factor.