A. Introduction

On 12 June 2009, CEBS has opened a consultation on guidelines to ensure harmonised implementation on the revised large exposure regime of the Capital Requirements Directive (CRD) across the Member States.

CEBS has asked to comment until 11 September 2009 and invited for a public hearing for 07 September 2009. Deutsche Börse Group wants to contribute to this discussion.

Deutsche Börse Group is operating in the area of financial markets and operates along the complete chain of trading, clearing, settlement and custody for securities, derivatives and other financial instruments. Based on national laws in Germany and Luxembourg, two companies acting as (I)CSD are classified as credit institutions as they settle in commercial bank money and one CCP is classified as credit institution under German law. Nevertheless, the business of these institutions is quite different from those of most of the other banks in the EU. They are just acting in a specific corner of the banking business and their customer basis is focused on other institutions. As a consequence, just some aspects of the three items of the current consultation have impacts on the group's large exposure monitoring and reporting. As a consequence, we will just comment on some aspects of the consultation paper.

In general, we belief that the proposals of the guideline as proposed by CEBS pointing to the right direction. Nevertheless, we feel that in some areas particular aspects need to be added to the document and in other areas, we would like to propose some changes and / or amendments to the text.

Overall, we want to point out, that the changes in the CRD related to (economical) Interconnectedness and the treatment of exposures to schemes with underlying assets increase the difficulties in getting the correct data for large exposure purposes.

B. Connected clients

1. Introduction of a relief for small exposures.

As stated above and explained in paragraph 60 of the CEBS proposal, the identification of (economical) interconnectedness is not an easy task and the effort needed might be huge. Nevertheless, even with the best effort possible certain relations will most likely be never detected. We therefore strongly support the CEBS idea of paragraph 61 to introduce a threshold for gross exposures which need not to be analysed in case there is no indication of

interconnectedness. Taken the related effort and especially the size of small institutions into account, we propose to have (a) the percentage raised to 3 per cent and b) to introduce a second threshold with an absolute amount of e.g. 1.5 millions € or equivalent in other currency.

2. Common source of funds

It is the essential role of the central bank to provide as a lender of last resort liquidity to banks. Similarly certain central institutions e.g. in the German savings or co-operative banking industry have the function as a central liquidity pool. We suggest including a paragraph on the handling of at least these two special items for inter-bank arrangements.

3. Independent judgement of interconnectedness between different banks

Credit institutions will have relations to the same customers but, might judge the interconnectedness – especially when having differing information available – in a different manner. It should be clearly stated, that the proper founded judgement of the institution might not be challenged by the supervisor based on information received from non-public resources including information received for the purposes of large exposures monitoring from other credit institutions. In this respect we see therefore inter alia the need to adopt the current German scheme of delivering back customer groupings to the institutions.

C. Treatment of exposures to schemes with underlying assets according to Article 106 (3) of the CRD

1. Guiding principles

In principle we support the proposal of CEBS. But, we would like to get an even better guidance, as to when either the “scheme” or “its underlying assets” or “both” should be considered. In other words a clearer guidance on

(a) when locking through in general is not necessary AND

(b) when looking through is seen as an appropriate measure to replace the consideration of the scheme.

Based on our business, we focus in the following on exposures towards investment funds only.

2. Problems with cascading investments though investments in funds of funds (Dachfonds)

In addition to the guidance given, we would like to get clarification on the handling of cascading investments of investment funds into other investment funds (funds of funds). Depending on the number of cascades, the effort needed to get the necessary information is getting more and more burdensome and more and more difficult.

On top of that, an original exposure towards the fund might be increased to a multiple of its original exposure in case, where the exposure is reported towards the fund originally invested in plus the investment on each step of the cascade (this is also true for other e.g. tranched – products).

We acknowledge the possibility to bypass the intention of the directive in investing in cascading fund of funds concept in order to avoid large exposure regulations. Nevertheless, we suggest introducing a boundary of the locking through principle by means of a certain number of levels. We refer in this context to our next remarks.

3. Investment in public investment funds

The investment in public available (non-tailored) investment funds is usually done to diversify and reduce the efforts for diversification by means of direct investments. Based on the legal framework for public investment funds falling within the scope of EU legislation or similar third country regulations diversification is in principle required for the funds itself by law.

We therefore suggest allowing the discretion of the institutions to use the (public) investment fund as being the only counterparty to be looked at. This should be at least the case if the investing institution does not held directly and indirectly more than 10 % of the issued / circulating shares.

To grant the discretion to use looking through to the institutions seems to be appropriate for the following reasons:

In general the investment is managed from a credit perspective based on the investment policy of the fund and the overall size. In cases, where the investment is reaching close to 25 % of liable assets, a closer look into the assets within the fund is considered as being reasonable and risk sensitive. As this is in the intention of the institution to avoid a breach of the large exposure limits, it will either reduce its investment or adopt looking through.

4. Investment in tailored investment funds (“Spezialfonds”)

The investment in tailored investment funds which are based on the legal framework provided in the EU or similar third country regulations foresee as well diversification. Nevertheless, the investor can influence the investment and therefore the same treatment as for public investment funds would not be appropriate. Based on our arguments above, we suggest limiting the looking through in this case to one level unless the investment is done in another tailored fund.

5. Unknown exposures.

In general, the proposal of CEBS as stated in paragraphs 83 and 84 seems to be reasonable. But, the grouping of all “unknown exposures” resulting from the looking through principle into one single exposure has the tendency to overstate the concentration risk. With regard to the investment in investment funds, our proposals No. 3 and 4 above should reduce this to an acceptable level.

D. Reporting Requirements

1. Reporting approach (paragraph 108, question 20)

In order to calculate the exposure towards a group of connected clients, it is necessary in any case to have the complete information requested available on a single counterparty level. In order to reach this level, a huge IT effort is needed to get this data into a database. As the reporting structure (at least for the group) needed to be reported anyway, we feel that the production of just one template is least costly in the development phase and during production. Therefore we prefer the 1-Template-Approach.

Nevertheless, we are aware that the amount of data to be transferred is higher.

2. Clarification on items to be reported prior to CRM

Article 74 of directive 2006/48/EC is just referring to assets and off- balance sheet items. There is no separate mentioning of derivates. Article 29 of the same directive does not refer to this item at all. Finally, indirect exposures are referred to in article 117 only. Therefore the introduction text of paragraph 120 should be rephrased with proper reasoning for the introduction of the details requested.

We support the general idea to reuse the structure of the COREP reporting for solvency purposes wherever possible.

Therefore we suggest clearly defining the intended split and justifying it. The references made in annex 4 show the intention but do not justify the split proposed.

3. Indirect exposures

Credit risk might be collateralised by either guarantees or any other type of collateral which is issued by Central Governments, central banks and other third parties as stated in article 113 (3) (c), (d) and (h).

We ask for clarification, if

- these items need to be reported in column LE 1.8 towards the guaranteeing Central Government etc. or if these items need not to be reported as exposure towards those counterparties.

- these items should be deducted in column LE 1.12 or LE 1.13 respectively as being “credit protection”.

We propose not to include these exposures in column LE 1.8.

4. Credit Risk Mitigation

In order to align COREP for solvency purposes and for large exposure reporting, it seems to be necessary to include the items listed above as well as other measures (e.g. article 113 (3) (g)) in the exposure value after CRM. It is therefore necessary to asses, in which position the items listed should be reported (LE 1.12 – 1.14 or in a separate column?).

As a consequence, the title of column LE 1.16 need to be adjusted (e.g. “(-) other Article 113 (3) and (4) exemptions if applicable” or “(-) Article 113 (3) and (4) exemptions and weight reductions other than CRM”

We want to point out, that the respective text in paragraph 133 need to be adopted accordingly and that the items in article 113 (3) do not perform a national discretion. Therefore the current wording should be clarified with regard to the use of the phrase “national implementation”. The reference in this context to article 113 (3) seems to be misleading.

5. National reporting on exposures exceeding a certain amount

While the European directives 2006/48/EC and 2006/49/EC define rules for large exposures only, a number of EU member states introduced for different reasons (e.g. measuring the debt of major debtors) additional reporting requirements for exposures of a certain amount independent from the equity rationale. The respective amounts differ in the various countries (e.g. Germany 1.5 Mio €, Luxembourg 12.5 Mio. €; reporting will be referred to as “million loan reporting”). Some of the EU member states have concluded agreements between each other about the data exchange of the respective

information. The collection of this data is usually done via a combined reporting for both large exposure and million loan reporting.

Even if the million loan reporting is not based on the CRD or any other EU wide foundation, we encourage CEBS to propose to the member states the inclusion of the million loan reports in the same template and in an integrated reporting. Any additional information on top of the data required for large exposures might be put into a second template.

6. Clients to be reported

In accordance with article 110 of directive 2006/48/EC a credit institution has to report every large exposure to the competent authority. Currently in certain member states, e.g. in Germany, the large exposures have to be reported at the reporting date for exposures above the 10 % threshold at least once during the last reporting period independent from exceeding this threshold at reporting date.

The wording in article 110 does not clearly indicate if the reporting duty is to be fulfilled with the situation as per reporting date or in relation to the reporting period. This furthermore leads to the question, if the maximum usage or the situation as per reporting date needs to be reported. As one of the aims of the revised article 110 (2) is harmonization, we would like to get guidance on this topic.

As for the purpose of the solvency ratio the reporting is on the situation as per reporting date only, we propose to have the same approach for Large Exposures as well. Therefore we would like to introduce this into the guidance by CEBS as a rule either in the paragraph 103 or in a separate paragraph:

“The exposures to be reported shall take into account the situation on reporting date only. Exposures which exceed the 10 % threshold during the period but not at reporting date shall not be considered for reporting. Furthermore, only the values at reporting date are to be reported whereas higher values during the reporting period are not part of the regular reporting.”

E. Final remarks

Overall, we see the draft CEBS guidelines already as a good basis for the final documents. The main items described – at least taken our limited business into account – are addressed in an appropriate manner.

Related to the new reporting scheme, we would like to emphasis, that finalisation of the new reporting scheme until end of 2009 should be targeted in order to allow national implementation in parallel to the implementation of

the revised CRD rules until the end of 2010. This would allow starting changed reporting (content wise) in parallel to changed reporting formats and would ease the burden of an intermediate solution for 2011 with double implementation effort for the institutions (and for the national authorities).

We acknowledge the burden for the regulators and the national legislation processes during 2010. But the complete usage of the timeframe given in the CRD (i.e. unique reporting formats until 2012) will increase the workload on the banks even more. Regulators will be forced to issue guidance for the mapping of new rules to old forms or are in the position to issue new forms for one year only.

Frankfurt / Main

11 September 2009