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Draft Regulatory Technical Standard on the determination of the overall exposure to clients in respect of transactions with underlying assets (EBA/RTS/2013/07)

16 January 2014

Dear Mr Nava,

On 5 December 2013, the European Banking Authority (EBA) submitted to the European Commission the Draft Regulatory Technical Standards (RTS) aimed at specifying the look-through requirements under the large exposures regime.

First, we would like to point out that we welcome the fact that the EBA has taken into account a number of the concerns voiced by the banking industry during the public consultation of the draft standard such as the basic consideration of materiality aspects as well as the option of combining methods within the regulation. Notwithstanding the above, at the same time, the present draft leaves aspects that are important for banks unconsidered.

It is widely known that, as early as in December 2009, the Committee of European Banking Supervisors (CEBS) published guidelines on look-through matters pertaining to the large exposures regime implemented in Germany as well as other EU Member States. The CEBS guidelines also include a grandfathering rule for transactions concluded prior to 31 December 2010. Under this grandfathering regime, until 31 December 2015, said transactions may be treated under the prudential supervision rules that were in effect up to 31 December 2010.

Banks drew up their investment strategy on the understanding that these guidelines would remain valid. Moreover, transactions which are presently covered by the grandfathering rule lack information on the underlying assets meaning that a look-through approach would be unfeasible in most cases.

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During the public hearing on the draft standard, the banking industry articulated its request for a grandfathering rule concerning transactions concluded prior to the standard's effective date; as an alternative regulatory option, it suggested keeping the existing grandfathering rule. In response to this request, the EBA declared that such a rule was not covered by the scope of its mandate under Article 390(8) CRR. The rationale for such an approach is not immediately obvious to us; after all, also the CEBS adopted the initial grandfathering rule without any explicit mandate under the EU banking Directive.

As regards the importance of a grandfathering rule and the migration effort which - in the absence of any sufficient lead time - is unfeasible for banks as well as for fund companies (affecting approximately 330 funds with a total volume of EUR 55.6 billion in Germany alone) we would like to ask you to at least ensure the continued validity of the CEBS requirements.

On another note, we explicitly welcome the consideration of materiality aspects in the look-through to the underlying assets currently envisaged under the EBA standard. However, the 0.25% threshold for eligible capital is clearly too low. Even compared to the figure of 1.0% suggested by the Basel Committee for Banking Supervision (BCBS) in its Consultation Paper of March 2013, the proposed 0.25% materiality threshold is excessively restrictive. Compared to the existing legal requirements, the calibration proposed by the EBA would result in a direct increase of the restrictions by the factor of 5. Hence, we hold the view that it would be more appropriate to set the materiality threshold to at least 1.25% of eligible capital. This would ensure that the laborious look-through approach would become mandatory only for those transactions which are material from the point of view of the bank. Furthermore, there ought to be at least an incremental reduction of the threshold (e.g. from 2.5% in 2015 to 1.25% in 2019).

The final draft RTS include numerous departures from the existing CEBS rules. The proposed tightening of the look-through rules is complex and comprehensive. Its implementation involves major operational and technical hurdles for banks and fund companies (including but not limited to the introduction of a new process for querying data for the look-through to individual exposures). At the same time, this also gives rise to numerous implications for banks' business decisions.

Also, in order to allow banks to gradually familiarise themselves with the new rules and so as to avoid market turmoil as a result of ad-hoc sales, the RTS should come into force no earlier than 6 months after publication in the Official Journal of the European Union. However, given that an implementation in the banks and in the fund undertakings is virtually impossible within this short period of time, the new requirements should by no means become effective as early as the first-time reporting reference date of 31 March 2014.

Hence, we would be most grateful if you were to consider our concerns and issues raised during your deliberations on the draft submitted by the EBA. We would also appreciate an opportunity to further elaborate these matters in a personal discussion.

Yours sincerely,

For the German Banking Industry Committee
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