



Patrick Pearson  
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Dear Patrick

### Public Consultation on Possible Changes to the Capital Requirements Directive ("CRD")

The BBA, LIBA, ISDA and the ESF ("the Associations") are responding jointly to the European Commission consultation on proposed amendments to the CRD. The attached response comprises an executive summary, addressing the key issues in each of the main areas of the consultation, and a series of appendices covering our detailed comments on those main areas.

Overall, the Associations support many of the proposals made. Many of our detailed comments reflect our need for international consistency and clarity of regulatory intent. Our priority areas, listed below as they appear in the consultation document, are where we seek revision from the Commission before the proposals are finalised:

- ? **Large Exposures: connected clients** [Article 4 (45)]: we disagree with the introduction of the funding criterion within the definition of connected clients. This requirement will be extremely hard to implement and will merely identify concentrations more appropriately dealt with under Pillar 2.
- ? **Large Exposures: Inter-bank** [Article 111 (1)]: We strongly oppose the removal of the under 1 year exemption, because this artificial restriction on liquidity is likely to exacerbate firm failure rather than prevent it. There is no evidence to suggest that this exemption has caused problems in the last 15 years or more.
- ? **Large Exposures: Intra-group** [Article 113(f)]: We strongly support the proposed introduction of a conditional exemption (subject to Art 80.7 criteria) for Intra-Group Large Exposures. These transactions are essential to firms' liquidity and risk management. However, a number of changes to the text need to be made to make it operational.
- ? **Supervisory Arrangements**: Supervisory arrangements must be efficient and meet the needs of worldwide financial groups, not only the EU entities. We support the concept of "Colleges of Supervisors" but this needs to be clearly distinct from the concepts of "consolidating supervisor" and of "financial stability groups."
- ? **Securitisation: Retention of 15% of capital requirement** [Article 95]. This proposal will not deliver the improvements in risk management relating to the 'originate to distribute' model that regulators are seeking. A flat capital charge can provide no incentive to firms to improve their underwriting standards or target their contingent liquidity risks. As with the other market turbulence related securitisation issues, we believe that this amendment should be deferred pending a wider global assessment of a package of improvements.
- ? **Securitisation: Significant Risk Transfer (SRT)**. [Annex IX, Part 2, 1.1]. Defining SRT in the absence of global agreement will put EU firms at a competitive disadvantage. If a local approach must be found, it should focus on the principle that regulatory capital reduction should be broadly commensurate with risk reduction.

Taken together, these and the more detailed comments are driven by the following core principles, which we believe are shared by the Commission:

**International Dimension - Alignment with Basel** Global markets require global solutions. To deliver a functional, high quality regulatory framework, and consistent with the principle on which the CRD was designed, the Commission should continue to align its current and future proposals and timescales with the Basel Committee.

**A proportionate policy response:** we share the objectives of improving market confidence in the current environment. However, we believe that any proposals, now more than ever, should:

- ? Maintain the principles of better regulation, including market failure analysis and impact assessments.
- ? Ensure that there is full consideration of the consequences, both intended and unintended.

Taking both the principle of international dimension and proportionate policy development into account we note that the proposals being debated in Basel, including Securitisation, Liquidity Risk Management, Incremental Event Risk in the Trading Book and Definition of Capital must be subject to due policy process both in Basel and the EU. The impact of these proposals will be considerable but the Consultation Paper offers little hint of how these work streams will be taken forward in the EU. The resilience of the international financial system and the robustness of individual firms rests on the quality of these proposals which must not therefore be rushed through without proper exposure and analysis. Industry is able and willing to participate in policy development but two factors must be taken into account:

- ? Capital: potential future proposals, such as the suggestion (on page 22 question iii) of setting a minimum proportion of requirements to be met by core capital (which might disqualify current levels of Tier 2 and 3) could lead to considerable systemic impact as firms would have to reduce business or increase capital levels by some magnitude. This would have consequences for market liquidity, capital costs and economic activity.
- ? Implementation: major systems changes cannot be delivered overnight, so implementation timetables need to be realistic.

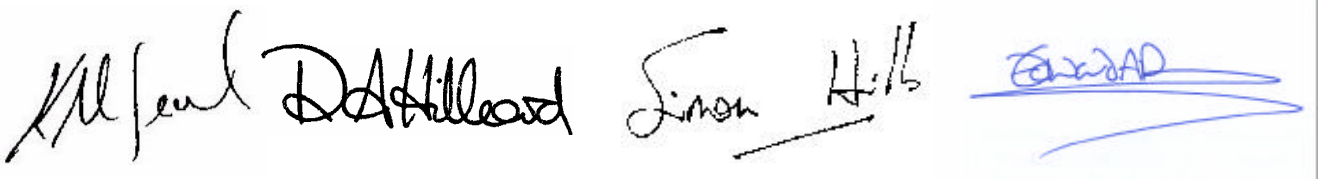
**Limit unnecessary change:** some changes are very minor and do not, on initial investigation, pass a cost-benefit test. In the small details as well as big picture, the Commission should consider the impact of its proposals on the resources and competitive status of the EU financial services system.

**Clarity:** in a number of instances, we do not understand what is being proposed. We know the Commission has recognised this concern in the past and we have suggested changes where possible. Without clarity there is a danger of unintended consequences, to the detriment of the EU financial services sector.

**Lamfalussy structure:** In addition, we ask that the Commission reviews and updates the CRD, according to the Lamfalussy structure, including greater use of Level 2 measures than at present. This revision will ensure the CRD can evolve efficiently and effectively with continued changes in the market.

The Associations would be happy to discuss all these issues in more detail and are committed to working with the Commission and other EU stakeholders to achieve a speedy acceptance and satisfactory resolution of the issues. Please do not hesitate to contact Katharine Seal ([Katharine.seal@liba.org.uk](mailto:Katharine.seal@liba.org.uk)), Diane Hilleard ([diane.hilleard@liba.org.uk](mailto:diane.hilleard@liba.org.uk)), Simon Hills ([simon.hills@bba.org.uk](mailto:simon.hills@bba.org.uk)), Ed Duncan ([eduncan@isda.org](mailto:eduncan@isda.org)) or Rick Watson ([rwatson@sifma.org](mailto:rwatson@sifma.org)).

Yours sincerely



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