

## **CRD POTENTIAL CHANGES ON SECURITISATION**

**This document is a working document of the Commission services for discussion and consultation purposes. It does not purport to represent or pre-judge the formal proposal of the Commission.**

**Second public consultation paper on possible changes to the Capital Requirements Directive  
(CRD, consisting of Directives 2006/48/EC and 2006/49/EC)**

The Commission services included in their first consultation paper on changes to the CRD a draft requirement for originators of securitisations to hold capital for at least 15% of the securitised exposures, regardless of the securitisation positions actually retained. This draft requirement intended to reduce the capital incentives for originators to transfer all risks of a securitisation to investors. Originators would remain exposed to the securitisation and their incentives would thus be more aligned with those of investors.

Responses to the consultation were very critical about this approach. Respondents said that such a requirement would be ineffective and place EU banks that originated securitisations at a global competitive disadvantage. The Commission services have reflected further on this feedback. The result of this is that the Commission services would like to consult on an alternative requirement (see attached draft text) that takes into account many of the consultation responses:

*First*, the draft requirement now aims at banks acting as investors. They should ensure that they invest only in credit risk transfer products if the originators and distributors of the credit risk retain some exposure themselves (10%) – irrespective of whether they are EU banks or not. This would address the level playing field concerns raised in the feedback process. (The Commission services might also consider proposing similar requirements for other institutional investors, such as insurance and UCITS to enhance the effectiveness of the requirement and to further address potential level playing field concerns.)

*Second*, the draft requirement would be broad in terms of product coverage, so as to exclude the structuring arbitrage that several respondents in the consultation have warned against. In addition, those active in the origination and distribution would need to be exposed to positions with the same risk profile so that their incentives would be aligned with those of investors.

*Third*, the draft requirement would provide for additional flexibility compared to the original approach: it would be left to either the originators or, alternatively, the sponsors/arrangers to retain exposure, whichever would be easier to implement, in particular if multiple originators are involved in a transaction.

The Commission would also welcome any assessment of the impact of such requirement on the business of firms in your jurisdiction or on the business of your member firms, respectively. Finally, we would also welcome any alternative views that would have an equivalent effect matching the intent of the measures above.

Responses should be sent to the following e-mail address:  
[markt-crd2008- survey@ec.europa.eu](mailto:markt-crd2008-survey@ec.europa.eu)

The deadline for contributions is 18 July 2008.

All contributions will be published on the web site

[http://circa.europa.eu/Public/irc/market/market\\_consultations/library?l=/financial\\_services/cross-sector\\_issues&vm=detailed&sb=Title](http://circa.europa.eu/Public/irc/market/market_consultations/library?l=/financial_services/cross-sector_issues&vm=detailed&sb=Title) unless the respondent indicates that the contribution shall be treated confidentially. General confidentiality disclaimers that often appear at the bottom of emails will be disregarded unless an explicit request for confidentiality is made in the body of the response.

## TECHNICAL AMENDMENTS SUBJECT TO THE CO-DECISION PROCEDURE

*Changes to Directive 2006/48/EC*

*Section 7 (new)*

Exposures to transferred credit risk

*Article 122a (new)*

1. A credit institutions shall only be exposed to the credit risk of an obligation or potential obligation or a pool of obligations or potential obligations where it was not involved in directly negotiating, structuring and documenting the original agreement which created the obligations or potential obligations if the persons or entities

- (a) that directly negotiated, structured and documented the original agreement with the obligor or potential obligor; or alternatively and where applicable
- (b) the persons or entities that manage and purchase such obligations or potential obligations directly or indirectly on behalf of the credit institution

have issued an explicit commitment to the credit institution to maintain, on an ongoing basis, a net economic interest of in sum at least 10% in positions having the same risk profile as the one that the credit institution is exposed to.

2. Paragraph 1 shall apply regardless of whether the credit institution is exposed directly or indirectly due to a securitisation, credit derivative, syndication or other risk transfer mechanisms.

3. For the purposes of paragraph 1, obligations or potential obligations shall not include claims or contingent claims on or guaranteed by

- (a) central governments or central banks;
- (b) institutions to which a credit quality step of 3 or better applies according to Annex VI, Part 3, point 29; and
- (c) multilateral development banks.

4. Paragraph 1 shall only apply to exposures incurred by the credit institution after 1 January 2011.

5. Competent authorities may decide to temporarily suspend the application of paragraph 1 during periods of general market liquidity stress.

