



**EUROPEAN COMMISSION**  
Internal Market DG  
**FINANCIAL INSTITUTIONS**  
**Banking and financial conglomerates**

**30 July 2008**

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

**Summary of responses received**

## Section 1 - Introduction

1. Responses to the Commission services' first consultation paper on changes to the CRD were very critical of the approach for originators of securitisations to hold capital for at least 15% of the securitised exposures, regardless of the securitisation positions actually retained. The Commission services reflected on this feedback and consulted on an alternative requirement that takes into account concerns raised in many of the responses to the original consultation. The alternative would consist of requiring an investing bank to be satisfied that an originator retains at least 10% of the securitized assets, while the scope of this requirement would be expanded to all credit risk transfer instruments (including e.g. syndicated loans, credit derivatives etc).
2. The Commission also welcomed feedback on the potential impact of such a requirement on the business of firms in respective member states and any alternative suggestions that would have an equivalent effect, matching the intent of the measures above.
3. By 24 July 2008, 49 responses were received from various stakeholders, including 35 from industry participants (including the banking and fund management sectors) and 14 from Member State authorities (A full list is provided in Annex I). These responses will be published on the Commission services' website, except where confidentiality has been requested.

## Section 2 – Comments on Commission's draft proposal

4. Responses received are on the whole, supportive of the general objective of the Commission's draft proposals. However, the unanimous response has been that the proposed approach is not appropriate to meet these objectives.
5. Concerns raised include:
  - a) **Unintended consequences** due to a lack of proper impact assessment which, in the view of many respondents, given the shortness of time and the lack of drafting precision, would be literally incalculable.

Many industry respondents would also be uncomfortable with any of the draft changes at this stage, while the Basel Committee is still considering the appropriate measures to incorporate the regulatory lessons drawn from the current crisis. Some believe that as risk is still in the process of being re-priced and markets still adjusting, this proposal may in time be seen as an inappropriate response and would require further change. Many respondents raised fears about the potential extensive economic impact of the draft proposals, which could depress asset prices and result in additional pressure on firms. The effect on the balance sheet of originators would further restrict the liquidity and capacity of markets. This would be exacerbated by the broad scope, covering all risk transfer instruments.

- b) **The draft proposal does not effectively address the incentive problem.** Many argued that a greater effort must be put into ensuring increased transparency over originators' standards and collaterals. Disclosures of roles and responsibilities with regard to the credit risk transfer, improved risk management procedures, improved availability of information to investors and better due diligence, would comprise a more effective response to the concerns around the OTD model.
- c) **Loss of competitiveness for EU regulated institutions** in view of the fact that no other regulatory body outside of the EU has announced any similar regulatory intentions.
- d) **Impractical to implement** and, in addition, these proposals would have a serious and significant impact on the ability to invest in major asset categories. Some respondents note that they will be denied the opportunity to invest in certain instruments, whereas these opportunities would be available to non-EU firms and investors. In respect of implementation, many firms and authorities were concerned that it would be very difficult, and costly, to monitor compliance with the requirements.

- e) **Inconsistent with the risk-based approach underpinning the CRD.**  
Some respondents believed that observed weaknesses with regard to credit granting and risk management should be dealt with under "Pillar II" of the CRD.

## **Annex I:**

Association of British Industry  
AXA Investment Managers  
Bank of America\*  
Barclays  
BNP Paribas  
Citigroup  
Clifford Chance  
Credit Suisse  
Division Bank and Insurance of the Austrian Federal Economic Chamber  
EACB  
EAPB  
EBIC  
EFAMA  
ESBG  
European Mortgage Federation  
Febelfin  
Genworth Financial  
German Insurance Association  
Groupe GTI  
ICMA  
IIF  
Investment Association of Credit Portfolio Managers  
Investment Management Association  
Irish Banking Federation  
Joint Association (BBA, CMSA-Europe, the EBF, the ESF, ISDA, IACPM, LIBA, and SIFMA)  
Legal and General\*  
Loan Market Association  
Loan Syndication and Trading Association  
Morgan Stanley  
Royal Bank of Scotland  
Société Générale  
Standard Chartered  
True Sale International  
UniCredit  
Zentraler Kreditausschuss  
Department of Finance, Ireland  
Financial Supervision Authority, Poland  
Ministry of Economy and Finance, Italy  
Ministry of Economy and Finance, Netherlands  
Ministry of Finance, Austria  
Ministry of Finance, Belgium  
Ministry of Finance, Finland  
Ministry of Finance, France  
Ministry of Finance, Germany  
Ministry of Finance, LUX  
Ministry of Finance, Portugal  
Ministry of Finance, Spain  
Ministry of Finance, Sweden  
Ministry of Finance, UK\*

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