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European bank regulators issue guidelines on securitisation risk retention, due diligence and disclosure requirements

The Committee of European Banking Supervisors (CEBS)[1] of the European Union (EU) on 31 December 2010 issued final guidelines (the **"Guidelines"**)[2] on application of new Article 122a of the Capital Requirements Directive (CRD)[3] (**"Article 122a"**), which became effective 1 January 2011 for securitisations completed on or after that date (and will apply to existing securitisations with new underlying exposures on or after 1 January 2015).[4] Article 122a, part of a package of amendments known as CRD II,[5] applies (by way of national legislation or rulemaking) to credit institutions[6] regulated in the European Economic Area[7] when they invest in or otherwise acquire credit exposure to securitisation positions or when they act as sponsors or originators in relation to securitisations.[8] The Guidelines address a number of questions which had been raised in CEBS' July 2010 Consultation Paper on guidelines to Article 122a (**"CP40"**)[9] and in comments on CP40,[10] while leaving other points to be worked out in practice between institutions and national regulators. Highlights include the following:

- If a credit institution's subsidiary invests in or acquires credit exposure to a securitisation position, even if the subsidiary is not a credit institution, the credit institution must comply with Article 122a in relation to that exposure.
- Loan-level information is required "in principle" in order to meet the sponsor's or originator's disclosure requirement (and correspondingly the investor's due diligence requirement), though, in some limited cases, such as highly granular pools, stratification tables may be more appropriate.
- Where a credit institution has a non-investment exposure to a securitisation position, such as a liquidity facility or swap transaction, whether that exposure is subject to Article 122a depends on whether it subjects the credit institution to risk of principal losses of the securitisation position.
- Retention of credit exposure, in one of the four ways set out in paragraph 1 of Article 122a, may take a variety of forms, including provision of a guarantee or other unfunded commitment, over-collateralisation or a reserve account, if certain requirements are met.
- Asset-backed commercial paper (ABCP) conduits typically will be treated as securitisations subject to Article 122a, but in some cases "alignment of interests" between sponsor and investors may be met automatically, and liquidity facilities and program credit enhancement facilities, as well as originator retained interests, may satisfy the retention requirements if certain conditions are met.
- Though a sponsor or originator may not hedge or dispose of its retained economic interest, it may engage in broader risk management hedging, and may use retained exposures to obtain funding or in repo transactions provided it remains exposed to the credit risk of the exposures,
- Additional risk weights for non-compliance may be based on a formula that takes into account duration of non-compliance in terms of years, rather than individual instances of non-compliance. However, national regulators may modify the formula or use a different approach.

Roles and duties under Article 122a

Briefly, Article 122a requires a credit institution, in relation to a securitisation position:

(a) when investing in or otherwise assuming credit exposure to a securitisation position, to get confirmation from "the originator, sponsor or original lender" that that person has retained and will retain a material economic interest, not less than 5%, in the securitised exposures (the **"retention requirement"**);[11]

(b) when investing in a securitisation position (or, to a limited extent, when otherwise assuming credit exposure to a securitisation position), to have, and be able to show to its regulators, a comprehensive and thorough understanding of the securitisation positions, the underlying exposures and related risk elements (the **"due diligence requirement"**);[12] and

(c) when acting as a "sponsor"[13] or "originator":[14]

   (i) to apply the same credit criteria to exposures to be securitised as it applies to exposures to be held on its book, and apply the same analysis to securitisation positions acquired for the banking book or the trading book (the **"'same criteria' requirement"**);[15] and

   (ii) to disclose to investors the level of its retention commitment and other materially relevant data of the kind that would enable investors to meet the due diligence requirement (the **"disclosure requirement"**).[16]

We discuss below selected interpretations set out in the Guidelines.

Group application

In CP40, CEBS suggested that Article 122a would apply to credit institutions and their related entities on a consolidated basis,[17] even though BCD Article 71, which lists the BCD sections that apply on a consolidated basis, does not make reference to Article 122a. Some industry commentators argued that consolidated application would be inconsistent with the CRD, including Article 122a, and expressed particular concern about applying these requirements to trading activities of a credit institution's non-EU non-bank subsidiaries (such as a US broker-dealer).[18] Such application could put EU-based financial groups at a competitive disadvantage, subject institutions to inconsistent regulations of different jurisdictions and drive securitisation trading activities to non-regulated entities. However, the Guidelines reiterate that investments in or exposures to securitisations by a credit institution's subsidiary which is subject to consolidated supervision will be subject to Article 122a, on the basis that "a credit institution will also become exposed to credit risk of a securitisation position by virtue of the relevant activities of any related entity (authorised or unauthorised), which falls within the same scope of a group where consolidated supervision is applied."[19] The Guidelines allow for some flexibility of application in relation to investments or exposures in the subsidiary's trading book.[20]

Loan-level information

Article 122a requires a credit institution when investing in a securitisation position to understand "the risk characteristics of the exposures underlying the securitisation position",[21] and when acting as sponsor or originator to make available, among other things "all materially relevant data on the credit quality and performance of the *individual underlying exposures*, cash flows and collateral supporting a securitisation exposure as well as such information that is necessary to conduct comprehensive and well informed stress tests on the cash flows and collateral values supporting the underlying exposures" (emphasis added).[22] The Guidelines state that:

> The term "individual underlying exposures" ... will typically mean that such data should be provided on an individual exposure (or "loan-level") basis, as opposed to on a collective basis. However, it is recognised that there may be circumstances in which such loan-level disclosure is not appropriate; for instance, securitisations with a large volume of exposures that are highly granular. On the other hand, in many circumstances loan-level disclosure is a material necessity for the due diligence process; for instance, securitisations with large concentrations of non-granular exposures. In determining whether such information should be provided on an individual or aggregate basis, a credit institution, when acting as originator or sponsor, should consider the information that a credit institution when acting as investor would need in order to fulfil its [due diligence] requirements under [Article 122a] Paragraphs 4 and 5.[23]

The requirement "in principle" of loan-level data will present a challenge for sponsors or originators in that, although the European market is moving toward the provision of more loan-level data, except for residential

mortgage-backed securities, standard formats have yet to be worked out and many issues remain to be addressed.[24] Sponsors and many investors may read the guidance as requiring loan-level data, at least for the time being, mainly for non-granular pools and not for highly granular pools of assets such as auto loans or credit card receivables. As noted below, the requirement will pose a special challenge for sponsors of multi-seller ABCP conduits. The Guidelines also recognise, however, that the requirements of credit institutions, when acting as investors, to analyse and record information and, when acting as sponsors or originators, to provide information, may be limited by other legal requirements such as market abuse and confidentiality restrictions, including (in the case of a sponsor or originator) those related to clients and customers.[25]

Non-investment and non-credit exposures

The Guidelines recognise that certain kinds of exposures to securitisation positions do not involve exposure to principal losses due to credit risk and so will not be subject to Article 122a. In the case of a credit institution providing a liquidity facility to a securitisation, if the liquidity facility is an "eligible" liquidity facility that would qualify for favourable treatment under the standardised approach in the securitisation framework, then it will not be subject to Article 122a. Otherwise, the liquidity facility will be subject to Article 122a, unless "under exceptional circumstances, if the facility provider can demonstrate with robust evidence that the liquidity facilities are not assuming exposure to credit risk arising from principal losses on the securitised exposures or securitisation position(s)".[26]

In the case of a credit institution acting as counterparty under an interest rate and currency swap or other derivative transaction, application again depends on whether the counterparty is exposed to risk of principal losses on securitisation positions. Exposure under a total return swap or credit default swap providing credit enhancement to the securitisation would be subject to Article 122a. Exposure under a typical interest rate and currency swap transaction would not be subject to Article 122a, provided it "does not assume the credit risk of the securitised exposures (for instance, by only referencing performing receivables in its notional)".[27] Though such transactions typically have a senior positions in priorities of payments, going forward, credit institutions may want to modify documentation as suggested to exclude credit risk of underlying assets.

Forms of retention

The Guidelines provide comfort that the description of four types of retention set out in paragraph 1 of Article 122a[28] need not be read too restrictively, and in particular that retention of an economic net interest may take the form of an unfunded commitment, such as (in certain conditions) a liquidity facility, a standby letter of credit or a credit default swap, or the sale of receivables at a discount (provided the discount is refundable, or "deferred purchase price").[29] The commitment or other exposure must, however, relate to principal losses (corresponding to the "nominal amount" of securitisation positions or exposures); accordingly, exposure to excess spread or an interest-only strip will not qualify.[30] "Originator interest" retention (the second of the four options) may be applied in revolving securitisations of non-revolving exposures (or of both revolving and non-revolving exposures) as well as in securitisations of revolving exposures.[31] On the other hand, the minimum retention must be fulfilled by one of the four options and not by a combination of them, and by any one of the sponsor, the originator(s) or the original lender(s), but not by a combination of them,[32] and the form of retention may not ordinarily be changed during the life of a securitisation.[33]

ABCP conduits

Although Article 122a applies broadly to all securitisation positions, it was not clear how it should be applied to certain kinds of transactions such as ABCP conduits that may fall within the CRD definition of securitisation.[34] Industry comments on CP40 argued that the regulators should allow a practical and flexible approach, both as to risk retention and as to the due diligence and disclosure requirements.[35] The Guidelines address several questions on application of the retention requirement, indicating that sponsor-

provided liquidity facilities or program credit enhancement facilities or originator retained interests could, under certain conditions, meet the retention requirement.[36] On the other hand, the Guidelines make no specific reference to application of the due diligence and disclosure requirements, which may be especially difficult to apply and to satisfy in the context of multi-seller ABCP conduits (where, due to structural and operational features of the conduits, current market practice does not include detailed disclosure about underlying securitised exposures).

The Guidelines indicate that liquidity facilities or program credit enhancement facilities provided by the program sponsor (or by an originator or original lender) may meet the retention requirement under certain conditions. In each case, the facility must cover credit risk of the exposures, and not just liquidity, market disruption or other risks[37] – so an "eligible liquidity" facility or other "partial support" liquidity would not qualify, only "full wrap" liquidity would work for this purpose.[38] In the case of liquidity, the facility must cover 100% of the credit risk of the exposures (so long as the facility is senior to other obligations or has the same seniority as commercial paper).[39] In the case of program credit enhancement it must cover at least 5% of the nominal amount of exposures and be in a "first loss" position in the ABCP conduit (though CEBS recognises the program credit enhancement may be in a "second loss" position in relation to the underlying transactions).[40] The facility must remain available for so long as the sponsor must meet the retention requirement by means of that facility, that is, so long as the commercial paper is outstanding.[41] In each case, a credit institution investing in, or otherwise assuming exposure to, the program must have "sufficient access to appropriate documentation" to enable it to verify satisfaction of the other conditions,[42] and so sponsors may need to make copies of the relevant facility agreements available to investors.

The Guidelines also indicate that retention by originators of a 5% net economic interest in the underlying securitisation exposures could be used to meet the retention requirement, not only for commercial paper investors but for liquidity providers and others taking credit exposure to the conduit, again subject to some caveats.[43] The retention could be in the form of a purchase price discount, to the extent that the discount was refundable, or deferred purchase price (so that the originator had a continuing economic interest in the transferred receivables). The documentation must ensure that there will be at least 5% retained interest for credit risk alone, and so will need to distinguish between levels of discount required for credit risk, dilution, yield and other risks.[44] The Guidelines clarify that where affiliated originators are parties to a single transaction the retained interest can be held by any of them or their consolidated affiliates, and need not be held separately by each such originator.[45]

Apparently, the originator retention would have to be met for each and every transaction in the conduit, and the Guidelines do not address whether, for example, it would be sufficient to include retention provisions in new transactions completed on or after 1 January 2011 or taking new exposures on or after 1 January 2014. They also do not confirm whether the conduit sponsor, rather than each originator, could provide disclosure to investors of retention by originators.

Though the Guidelines provide conduit sponsors and originators with more clarity on how the risk retention requirements may be applied, they do not say anything specific about application of the due diligence and disclosure requirements to ABCP conduits. Industry commentators had argued that detailed disclosure to investors relating to the underlying exposures in each of an ABCP conduit's transactions would not be necessary or appropriate, and that current industry standards should be able to meet the due diligence and disclosure requirements if those requirements applied.[46] The Guidelines do not address these arguments, so ABCP conduit sponsors and investors are left with the Guidelines' general statements to the effect that typically loan-level disclosure is required, in some limited cases stratification tables may be appropriate,[47] and the disclosure obligation may be limited by legal and contractual restrictions. For multi-seller ABCP conduits, in the absence of favourable guidance, the due diligence and disclosure requirements are likely to cause more difficulties than the risk retention requirement.

The Guidelines also indicate that, where an ABCP conduit sponsor also acts as an investor or otherwise

assumes credit exposure to the conduit (which the sponsor typically does, by providing liquidity and credit enhancement facilities), it will be subject to the retention and due diligence requirements that apply to investors or persons taking exposure, as well as to the "same criteria" and disclosure requirements that apply to sponsors and originators. This seems inconsistent with wording in Article 122a that applies the retention requirement and at least part of the due diligence requirement to "a credit institution, other than when acting as a sponsor, originator or original lender".[48] In the case of a typical multi-seller conduit program, where the sponsor for its own reasons typically obtains and analyses detailed information about the originator and the underlying exposures, the retention and due diligence requirements seem unnecessary but, by the same token, sponsors will usually be able to meet them without much change to existing practice.

Hedging or sale of retained interest

Article 122a provides that the sponsor's, originator's or original lender's retained net economic interest "shall not be subject to any credit risk mitigation or any short positions or any other hedge".[49] The Guidelines recognise, however, that credit institutions' normal risk management practices should be permitted so long as they do not eliminate "a sponsor's, originator's or original lender's exposure to the credit quality of the specific exposures that have been securitised".[50] So, for example, an originator may not hedge "the credit risk of the securitisation positions [or exposures] that are retained specifically to fulfil the retention requirement",[51] but a hedge on an index of exposures of the same class as the securitised exposures could be permitted. An originator that purchases credit insurance for trade receivables, or mortgage guarantee insurance for mortgage loans, may continue to do so "as a legitimate and prudent element of credit granting" if the insurance applies equally to securitised and retained exposures and does not create a misalignment of interest between the originator and investors.[52] An originator, sponsor or original lender may also pledge retained exposures to obtain funding, or sell or lend them subject to securities repurchase or securities lending agreements, provided it effectively retains the credit risk of those exposures.[53]

Additional risk weights

If a credit institution "by negligence or omission" fails in any material respect (as an investor or person assuming credit exposure to a securitisation position) to comply with the retention requirement or the due diligence requirement or (as a sponsor or originator) to comply with the disclosure requirement, Article 122a requires that national regulators "impose a proportionate additional risk weight of no less than 250% of the risk weight (capped at 1,250%) which would, but for this paragraph, apply to the relevant securitisation positions under [the securitisation framework in the CRD], and shall progressively increase the risk weight with each subsequent infringement of the due diligence provisions." For securitisation transactions that were exempt from the retention requirement under paragraph 3 of Article 122a, regulators would reduce the additional risk weight that would otherwise apply. CP40 included an interpretation of this requirement that, while not the most onerous possible reading, prompted many questions and comments. The Guidelines adopt a milder proposal[54] under which:

(a) the total risk weight of a securitisation position, not only the additional risk weight, will effectively be capped at 1,250%;[55]

(b) for an instance of material non-compliance that lasts for less than one year, the additional risk weight will equal 250% of the "original" risk weight that would otherwise have applied to the position;[56]

(c) the additional risk weight will be increased by 250% of the original risk weight for each full year that the infringement has continued;[57] and

(d) for securitisation positions exempt from the retention requirement, the total risk weight (after adding the additional risk weight) will be reduced by 50% or 25% depending on the type of exempt transaction.[58]

However, the Guidelines indicate that, consistent with Article 122a, national regulators may use a starting point or increments higher than the minimum 250%, a different frequency of increasing risk weights for

"subsequent" violations, the number of instances rather than duration of non-compliance as a basis for such increases, different reduction percentages for exempt securitisations, or make other changes from the common approach.[59] The additional risk weights may be applied to a single position or a group or class of transactions as appropriate in the circumstances.[60] Article 122a requires that national regulators and CEBS[61] report to the European Commission annually on, respectively, national regulators' supervision of compliance by credit institutions and compliance by national regulators with Article 122a.[62] These annual reviews will give opportunities for adjustments or further clarifications to the Guidelines on penalties for non-compliance.[63]

Conclusion

The Guidelines provide much useful clarification on many questions concerning the application of Article 122a. Given the variety and complexity of transactions that may fall within the CRD definition of securitisation and thus within the scope of Article 122a, CEBS has not been able to address all the issues that industry commentators raised in the comments on CP40, and we may be sure that many more questions will arise as credit institutions and regulators start applying these rules to different kinds of transactions. In this regard, the retention requirement is relatively straightforward and mechanical, while the due diligence and disclosure requirements are open-ended, and it will be hard for credit institutions to know when they have complied. Investors, sponsors and originators will need to work together with their national regulators to develop practical and acceptable ways of addressing these requirements. That process may lead to the risk of regulatory arbitrage to the extent that, notwithstanding the general guidance set out in the Guidelines, national regulators apply Article 122a's broad due diligence and disclosure requirements to similar transactions in different ways.

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Endnotes

1 Issuing these Guidelines was one of CEBS' final acts. On 1 January 2011 the European Banking Authority (EBA) officially came into being and took over all CEBS' existing and ongoing tasks and responsibilities. The EBA was established by Regulation (EC) No. 1093/2010 of the European Parliament and of the Council of 24 Nov. 2010. EBA announcement at http://www.eba.europa.eu/.

2 CEBS, Guidelines to Article 122a of the Capital Requirements Directive (31 Dec. 2010), available at http://www.eba.europa.eu/cebs/media/Publications/Standards%20and%20Guidelines/2010/Application%20of%20Art.%20122a%20of%20the%20CRD/Guidelines.pdf.

3 The CRD consists of two directives, Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast), known as the Banking Consolidation Directive (the **"BCD"**), and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast), known as the Capital Adequacy Directive. Article 122a is part of the BCD.

4 Article 122a paragraph 8.

5 Article 122a was added by point 30 of Article 1 (*Amendments to Directive 2006/48/EC*) of Directive 2009/111/EC of the European Parliament and of the Council of 16 Sept. 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management.

6 The BCD defines "credit institution" to mean "(a) an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; or (b) an electronic money institution ... ." BCD Article 4(1). Article 122a does not apply to securities investment firms, insurance companies and other types of institutional investors. However, we understand that EU regulators intend to apply similar provisions to these other kinds of investors by separate legislation over the next several years.

7 EU member states plus Iceland, Lichtenstein and Norway.

8 For a description of Article 122a's provisions, see Mayer Brown Client Alert, "Amendments to the Capital Requirements Directive Adopted by European Parliament" (7 May 2009), available at http://www.mayerbrown.com/publications/article.asp?id=6620.

9 Committee of European Banking Supervisors, Consultation paper on guidelines to Article 122a of the Capital Requirements Directive (CP40) (1 July 2010); available at http://www.eba.europa.eu/cebs/media/Publications/Standards%20and%20Guidelines/2010/Application%20of%20Art.%20122a%20of%20the%20CRD/CP40.pdf.

10 CEBS also published a feedback document in which it responded to particular comments. CEBS, Feedback to the public consultation on Guidelines to Article 122a of the Capital Requirements Directive (31 Dec. 2010) (**"Feedback"**), available at http://www.eba.europa.eu/cebs/media/Publications/Standards%20and%20Guidelines/2010/Application%20of%20Art.%20122a%20of%20the%20CRD/Feedback-document.pdf.

11 Article 122a paragraph 1. Under Germany's version of Article 122a, for securitisations effected after 31 December 2014, the required retention will be 10% rather than 5%. German Banking Act (KWG) sections 18a, 64m.

12 Article 122a paragraphs 4 and 5. Article 122a paragraph 4 requires credit institutions "[b]efore investing, and as appropriate thereafter," among other things, to "have a comprehensive and thorough understanding of" such risk elements, including risk retention under Article 122a paragraph 1, and to perform their own stress tests appropriate to their securitisation positions. Article 122a paragraph 5 requires credit institutions, among other things, "to monitor on an ongoing basis and in a timely manner performance information on the exposures underlying their securitisation positions." The second paragraph of paragraph 5 provides that credit institutions "shall have a thorough understanding of all structural features of a securitisation transaction that would materially impact the performance of their exposures to the transaction such as the contractual waterfall and waterfall related triggers, credit enhancements, liquidity enhancements, market value triggers, and deal-specific definition of default." CEBS' interpretation, as set out in clause 11 of the Guidelines, is that the due diligence and stress testing requirements of paragraph 4 and the monitoring requirement of paragraph of paragraph 5 apply to credit institutions only when "investing" and not when otherwise "assuming exposure" to securitisation positions", but that the second paragraph of paragraph 5, requiring "thorough understanding of all structural features", applies to credit institutions whether "investing" or otherwise "assuming exposure".

13 The BCD defines "sponsor" as "a credit institution other than an originator credit institution that establishes and manages an asset backed commercial paper programme or other securitisation scheme that purchases exposures from third party entities". BCD Article 4(42).

14 The BCD defines an "originator" as either "(a) an entity which, either itself or through related entities, directly or indirectly, was involved in the original agreement which created the obligations or potential obligations of the debtor or potential debtor giving rise to the exposure being securitised; or (b) an entity which purchases a third party's exposures onto its balance sheet and then securitises them." BCD Article 4(41).

15 Article 122a paragraph 6.

16 Article 122a paragraph 7.

17 "A credit institution will become exposed to credit risk by virtue of the activities of any related entity which falls within the same scope where consolidated supervision is applied." CP40 page 3.

18 Allen & Overy, Response to CEBS CP40 Consultation Paper on Guidelines to Article 122a of the Capital Requirements Directive (CP40) (30 Sept. 2010), pages 2-3; Association for Financial Markets in Europe, British Bankers Association and International Swaps and Derivatives Association, Response to CEBS CP40 Consultation Paper on Guidelines to Article 122a of the Capital Requirements Directive (1 Oct. 2010) (**"Associations Letter"**), pages 5-6; French Banking Federation, FBF comments on the CEBS Consultative Paper 40 on guidelines to Article 122a of the Capital Requirements Directive (1 Oct. 2010) (**"FBF Letter"**), page 4. These and other responses to CP40 are available at http://www.eba.europa.eu/Publications/Consultation-Papers/All-consultations/CP31-CP40/CP40/Responses-to-CP40.aspx.

19 Guidelines clause 8.

20 Guidelines clause 9.

21 Article 122a paragraph 4.

22 Article 122a paragraph 7.

23 Guidelines clause 128.

24 The European Central Bank (ECB) recently announced that it will begin requiring loan-level data for asset-backed securities that the ECB and Eurozone national banks accept as collateral for Eurosystem credit operations. "The Eurosystem intends to introduce the loan-by loan information requirements for residential mortgage-backed securities (RMBSs) first and then gradually to other asset classes, such as commercial mortgage-backed securities (CMBSs) and small and medium-sized enterprise (SME) transactions. The requirements will apply to existing and newly issued ABSs and are expected to be introduced in the 18 months following the announcement on 16 December 2010." ECB announcement available at http://www.ecb.europa.eu/paym/coll/loanlevel/html/index.en.html

25 Guidelines clauses 91, 129.

26 Guidelines clause 12.

27 Guidelines clause 13.

28 The four kinds of retention are:

(a) **vertical slice:** "retention of no less than 5% of the nominal value of each of the tranches sold or transferred to the investors;"

(b) **originator interest:** "in the case of securitisations of revolving exposures, retention of the originator's interest of no less than 5% of the nominal value of the securitised exposures;"

(c) **similar exposures:** "retention of randomly selected exposures, equivalent to no less than 5% of the nominal amount of the securitised exposures, where such exposures would otherwise have been securitised in the securitisation, provided that the number of potentially securitised exposures is no less than 100 at origination" (the Guidelines refer to this option as "on-balance sheet"); and

(d) **first loss:** "retention of the first loss tranche and, if necessary, other tranches having the same or a more severe risk profile than those transferred or sold to investors and not maturing any earlier than those transferred or sold to investors, so that the retention equals in total no less than 5% of the nominal value of the securitised exposures."

The Guidelines provide some clarification on each of these methods.

29 Guidelines clauses 45-60.

30 Guidelines clause 35.

31 Guidelines clause 48.

32 Guidelines clause 36.

33 Guidelines clause 32.

34 Associations Letter page 4 and Annex 2; FBF Letter page 4; Lloyds Banking Group, Response to CEBS CP40 Consultation Paper on Guidelines to Article 122a of the Capital Requirements Directive (30 Sept. 2010) (**"Lloyds Bank Letter"**), page 1.

35 Associations Letter, page 4 and Annex 2.

36 CEBS' feedback document recognises that for some types of ABCP conduits "alignment of interest and retention is automatically met". Feedback clause 25. The Guidelines give an example of a securitisation of covered bond exposures, where the credit risk of underlying assets would not be transferred to investors. Guidelines clause 4 and footnote 4.

37 Guidelines clauses 47(i), 57(i).

38 Guidelines clause 47(i) also states that the capital requirement for the facility must be calculated accordingly.

39 Guidelines clause 47(ii) and footnote 11.

40 Guidelines clause 57(ii) and footnote 13.

41 Guidelines clause 47.

42 Guidelines clauses 47(v), 57(v).

43 Guidelines clause 60.

44 Guidelines clause 57. In a trade receivables purchase transaction, a typical combined loss and dilution reserve could be modified to require a reserve equal to the greatest of (i) a stated minimum percentage, (ii) the sum of the loss reserve and the dilution reserve and (iii) the sum of 5% plus the dilution reserve.

45 Guidelines clause 29.

46 FBF Letter page 4; Lloyds Bank Letter page 5.

47 Feedback clause 21.

48 Article 122a paragraphs 1, 5.

49 Article 122a paragraph 1.

50 Guidelines clause 39.

51 Guidelines clause 40.

52 Guidelines clause 41.

53 Guidelines clauses 66-68.

54 Guidelines clauses 101-106.

55 Guidelines clause 102(i).

56 Guidelines clause 102(i).

57 Guidelines clause 102(iii).

58 Guidelines clause 102(v).

59 Guidelines clause 105.

60 Guidelines clause 106.

61 Hereafter, EBA (see note 1).

62 Article 122a paragraph 10.

63 Guidelines clauses 102(v)-(vi), 139.

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