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European Banking Authority
Tower 42
25 Old Broad Street
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By email: EBA-CP-2013-14@eba.europa.eu

Re: Consultation paper on Draft Regulatory Technical Standards on the retention of net economic interest and other requirements related to exposure to transferred credit risk – EBA/CP/2013/14

Dear EBA members,

We first would like to thank you for offering us the opportunity to comment on the consultation paper (EBA/CP/2013/14) (the "**Consultation Paper**") on the draft technical standards with respect to the securitisation retention rules under the Capital Requirements Regulation (the "**CRR**").

Introduction

As a general background, AXA Investment Managers is a multi-expert asset management company in the AXA Group with EUR 562 billion of assets under management across all asset classes for AXA insurance companies and for other institutional and retail clients, from 22 countries in Europe, USA and Asia. More specifically, AXA IM owns one of the most diversified structured finance platform, AXA Structured Finance, launched in 2000 and currently managing more than EUR 20 billion of assets with 65 professionals. AXA Structured Finance manages notably EUR 4 billion of US and European loans through multiple formats (open-ended funds, mandates, CLO) and has invested in close to EUR 7 billion in CLO tranches (from Senior tranches down to Equity tranches) and has a long term and successful track record in credit markets across various cycles.

Furthermore, AXA Investment Managers is a thought leader and contributor to strategic developments in the European financial industry through various positions within the main national and European asset management and investors associations.

We have been working closely with the Association for Financial Markets in Europe ("**AFME**") on our understanding of the CRR, the draft RTS and their implications. Risk retention principles provide a useful framework to restore confidence in the securitisation markets though this new regulation has a direct impact both from a CLO manager as well as a CLO investor perspective.

Regarding the Consultation paper, we generally adhere to the responses provided by AFME and the Loan Market Association (the "LMA") and to their analysis on the European corporate borrowers market and the consequences that the proposed changes in the Consultation Paper will have on this market. In particular, we are very concerned that the current wording will jeopardize the future of managed securitisation transactions with syndicated loans as underlying assets, and therefore would trigger the necessity to find new financial sources for EU corporate and notably SME loans funding provided by such independently

managed CLOs. In this respect, loan funds which are not an adequate financing tool for every type of investors, will only be able to provide a relatively small portion of these financial sources.

Summary of main issues

The current proposal on securitisation retention rules may have some unintended consequences:

- from a CLO manager point of view, (i) the "investment firm" definition contained in the CCR not only makes impossible for CLO managers regulated under the AIFM Directive to be sponsor in their own CLO going forward but also would increase the required capital above the retention level and (ii) the lack of clarity around the ability to consolidate the retention piece with affiliates, including parent companies, makes the retention structure even more difficult; and
- from a CLO investor point of view, the "investment firm" definition contained in the CRR prevents EU investors from investing in the US CLO market through US CLO managers and hinders such investors to select the best CLO managers by reducing the scope of managers to the biggest ones.

Key comments

We have set out below the key concerns that we have with the Consultation Paper:

- ***Definition of "sponsor":***

The definition of "sponsor" in the CRR refers to investment firms which are defined as institutions which are subject to the requirements of MiFID and authorised to provide the investment service of "*Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management*" and which are allowed to hold client monies. AXA IM sees three main issues relative to this definition:

- To our knowledge, in case where Collateral Managers are regulated under MiFID, only a few of them have authorization to hold clients monies and to perform custodial services and as such, would not qualify as "investment firms" under the CRR definition.
- Many European collateral managers, such as AXA IM, will seek an authorization to become AIFMs under AIFM Directive. As a consequence, they will not be able to apply for a MiFID license.
- A collateral manager that is not subject to the requirements of MiFID, such as a US asset manager of a US managed CLO, cannot qualify as an "investment firm" and therefore cannot be an eligible retainer. The CRR provides that certain of its articles apply to "recognised third-country investment firms" which are investment firms that are not established in the European Union. Nonetheless, it is not clear whether the "recognised third-country investment firm" also applies to Articles 394 to 398 (finalised as articles 405 to 409) of the CRR. If a "recognised third-country investment firm" could qualify as an eligible retainer, a clarification of the requirement to have "*prudential rules considered by the competent authorities as at least as stringent as those laid down by this Regulation or by Directive*" (as required under the "recognised third-country investment firm" CRR definition) would be very much appreciated. If a "recognised third-country investment firm" does not qualify as an eligible retainer, then this will likely lead to the exclusion of EU investors from the US CLO market which is an important asset class.

These points will not only constrain European Corporate Loan financing but also the ability for European regulated investors to make investments in an asset class that performed as marketed.

As a global CLO manager and investor, AXA IM would welcome a broadening of the ”sponsor” definition to encompass (i) firms which are regulated under the AIFM Directive without any obligation to provide custodian services or safekeeping, in order to take into account the European regulatory environment; and (ii) ”recognised third country investment firms” in order to align the scope of eligible asset managers to the credit institutions definition which is not limited to EU-regulated credit institutions.

- ***Retention on a consolidated basis:***

Paragraph 2 of article 394 (finalised as article 405) of the CRR indicates that the retention requirement may be satisfied on a consolidated basis as long as the exposures are securitized by institutions that are included in the scope of supervision of the originator or sponsor on a consolidated basis.

Question 21 of the Q&A paper issued on September 29th, 2011 by the EBA (the "**Q&A**") provides that as long as the parent/affiliate of the collateral manager is consolidated at group level, the retention requirement can be met by the parent/affiliate.

In the context of managed CLOs where collateral managers do not securitise exposures, it is not clear that a parent undertaking or a affiliated entity within the same consolidated group (either for regulatory or accounting purposes) of the collateral manager could hold the retained interest.

In addition, we understand that the retention on a consolidated basis from a regulatory perspective is permitted; however, it is not clear that the retention on a consolidated basis from an accounting perspective is also permitted.

As a consequence, we would welcome a clarification on the two following very important points:

- the CLO manager should be allowed to involve any entity of its group (i.e., without limitation, its parent companies and/or its affiliates, etc…), to satisfy the retention requirement as long as the CLO manager and the relevant entity belong to the same accounting consolidated group, regardless of whether such relevant entity is subject to supervision within the EU; and
- a fund/SPV held directly or indirectly by the CLO manager and/or its relevant parent companies and/or affiliates should also be allowed to satisfy the retention requirement for eligibility purposes.

- ***Status of existing transactions:***

The Q&A was helpful in clarifying that managed CLOs may continue to invest the sale proceeds of credit impaired obligations and unscheduled principal proceeds received on their underlying portfolio after 2014 i.e. after the expiry of their reinvestment periods, without the requirement to comply with the retention requirements, provided that this entitlement was in accordance with pre-defined contractual terms of the relevant transaction.

Moreover, the Q&A and the CEBS Guidelines of 31 December 2010 (the "**Guidelines**" and together with the Q&A, the "**EBA Guidance**") were useful references which have been widely relied upon by the CLO industry until the date of publication of the Consultation Paper. As a result, the EBA Guidance should constitute the basis for assessing the compliance of the retention requirements for transactions issued between January 2011 and May 2013, as these transactions were structured in good faith to comply with the EBA Guidance.

Though EBA mandate was limited to specify in greater details articles 394 to 398 (finalised as articles 405 to 409) of the CRR, clarification on the status of securitisations issued starting from January 2011 and which sought to comply (in good faith) with the EBA Guidance as well as existing securitisations where new underlying exposures are added or substituted after that date would contribute to the general objective of financial stability.

In order to avoid forced sales, market instability and reduced liquidity, our proposal is that the EBA clarifies that:

- transactions issued before January 2011 and having reinvestment capabilities after December 2014 are out of the scope of the retention requirements; and
- the EBA Guidance constitutes the basis for assessing the compliance of the retention requirements for transactions issued between January 2011 and May 2013.

- ***Originator within the context of CLOs:***

"Originators" are defined in the CRR as entities (i) being involved in the original agreement which created the obligations of the debtor giving rise to the exposure being securitized, or (ii) purchasing third party's exposures for its own account and then securitise them. The impact assessment section of the Consultation Paper on Managed CLOs clearly states that "*the assets of a CLO are usually multiple syndicated loans purchased by a manager on the secondary market and not originated by any of the parties involved in the CLO*". This wording could suggest that the EBA considers that only the collateral manager of a managed CLO transaction can act as an eligible retainer in such transaction and that no "originator" can act in such capacity in this type of transaction. However, in certain managed CLO transactions, some entities (which may be credit institutions or not) are purchasing third parties exposures before selling them to the securitization vehicle. As such and on the basis of the CRR, these entities could qualify as "originators" in the context of managed CLOs and satisfy the retention requirement.

As a result, we would welcome a clarification from the EBA on the fact that an entity (being a credit institution or not) acting as originator in the context of a managed CLO would fit the alignment of interest principle within the CLO context and as such, be a eligible retainer under the CRR.

Conclusion

We, together with the end investors we exchanged views with, strongly believe that the changes proposed above in our response to the Consultation paper are crucial to allow the financing to the European corporates and notably SME, which are the heart of the European economy's growth.

Yours sincerely,

AXA Investment Mangers Paris