The voice of banking
& financial services

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31 July 2012

Dear Sirs

BBA response to EBA consultation paper on Draft Regulatory Technical Standards (RTS) on Own Funds – Part Two

The British Bankers' Association ("BBA") is the leading association for UK banking and financial services for the UK banking and financial services sector, speaking for over 220 banking members from 60 countries on the full range of the UK and international banking issues. All the major banking players in the UK are members of our association as are the large international EU banks, the US banks operating in the UK and financial entities from around the world. The integrated nature of banking means that our members are engaged in activities ranging widely across the financial spectrum encompassing services and products as diverse as primary and secondary securities trading, insurance, investment banking and wealth management, as well as deposit taking and other conventional forms of banking.

The BBA is pleased to respond to the EBA's consultation on own funds – part two.

Key messages

The BBA supports the aim of achieving greater transparency and the availability of better information for market participants. However, we do have some concerns as to whether the templates in their current form will achieve this goal.

Balance Sheet Reconciliation Methodology

While supporting the objective of achieving comparability of disclosures, we have serious doubts concerning the overall benefit and practicality of implementing such a detailed reconciliation methodology. Accounting and regulatory information is not always presented in a uniform format, so comparing the numbers mechanically may not produce the most useful information, and risks confusing and misleading users.

A reconciliation as requested in these templates would produce a substantial volume of data, particularly for large, diverse institutions. Institutions would require considerable time and resources to produce the data, and users would find it similarly burdensome to analyse the information.

Investors would be better served by being provided with both sets of information, with the onus then placed on firms to explain the principal differences between the two, highlighting the key topics for consideration. In a competitive market firms would be required to do this in a fair and accurate way (as we believe they already do), if they want to retain business; this would achieve the aim of providing investors with the information they need without going through a time-consuming and burdensome process for all.

While we understand why the authorities would like to reconcile accounting and regulatory data, in practice it will not be possible to do so in a useful way. Any benefits that would be obtained from the reconciliation would be entirely disproportionate to the resources required to complete the task.

We recommend that this reconciliation requirement be removed.

Granularity

We support initiatives to promote high-quality, decision-useful disclosure which assists users to make informed decisions. However, in our view the level of granularity proposed in these templates (requiring disclosure of data that is both detailed and highly technical), will not in fulfil the intended purpose. The complexity of the data, combined with volume, especially with quarterly publication, risks obscuring key information.

We accept the template for main features of capital instruments and the general and transitional composition of capital templates. Even so, the latter will require considerable commentary by banks to contextualise the numbers presented and minimise the risk of inadvertent misinterpretation by users.

However, in regards to the Annex 1 template, we suggest that a minimum level of standardised disclosures be required, focussed on the capital account instead of the full financial and regulatory balance sheets. Banks should be allowed the flexibility to apply appropriate materiality parameters and integrate their disclosures under these requirements with those that they make elsewhere.

As an example, the EBA has asked for significant subsidiaries of EU parents institutions to disclose detailed information on an individual or sub-consolidated basis. As the term “significant” has not been defined the effect of this request cannot be quantified exactly, but based on previous regulatory definitions of “significant” the outcome is likely to be a significant increase in regulatory burden which will not be proportionate to the benefits received from this extra reporting. We understand that users may require information on subsidiaries, which IFRS 12 *Disclosure of Interests in Other Entities* and IAS 1 *Presentation of Financial Statements* has sought to address. However to minimise confusion amongst users and to make the reporting burden on firms proportionate we recommend that reporting by subsidiaries should only be required in exceptional circumstances.

COREP and the regulatory agenda

The information being asked for by the own funds disclosures and COREP is very similar, yet will be reported very differently. In fact, the difference in the reporting requirements between the two will be significant enough to make it very difficult for firms to reconcile the two reporting requirements in their systems. In effect, firms will not only be asked to report the same thing twice, but they will also be asked to report it differently.

This is particularly pertinent when put in the context of the wider regulatory agenda. In the coming years firms will be required to report on a wide range of initiatives, many of which will require the use of similar data; for example, Recovery and Resolution Plans, the FSB data gaps initiative, and the G-SIB/D-SIB loss absorbency requirements to name just a few. This also does not take into account the enormous variety of unrelated regulatory disclosures requirements firms will be required to meet. Considering that the own funds disclosures and COREP templates ask for such similar information, it is only reasonable for the industry to expect a far greater level of alignment between the two in order to increase efficiency and spare valuable resources. We strongly recommend the EBA look closely at this issue and ensure there is alignment between the templates.

Relationship between Own Funds and Basel 3 templates

We note that the templates published in this consultation paper are very similar to those published by the Basel Committee on Banking Supervision (BCBS). The industry provided significant feedback on the BCBS consultation, very little of which has been taken into account in the final templates. As a result we reiterate our earlier comments sent to the BCBS (we have included a copy of this letter in the Annex for your convenience).

Furthermore, if the EBA templates remain so similar to those in Basel 3, firms will to some extent effectively be reporting Basel 3 figures. While this may not literally be the case, in reality the market may well make assumptions on how well firms are progressing in their Basel 3 implementation. This would not be a desirable outcome, and it would in effect negate the whole purpose of the transitional arrangements that have been put in place leading up to the final Basel 3 deadline.

Implementation timetable

The own funds requirements set out in this paper are expected to be applicable as of 1 January 2013. However, as there is currently uncertainty over the timetable of the CRR/CRD IV, given that the text is unlikely to be finalised before October and the very short amount of time between now and 1 January, we do not believe it is realistic for firms to meet this deadline. This also needs to be considered in the extensive wider regulatory agenda (examples of which are provided above), and based on this we believe 1 January 2014 is a more appropriate date for implementation of these requirements.

Conclusion

The BBA agrees that there needs to be an increase in the quality and transparency of the information provided to investors. The templates in this paper are a step in the right direction, but the issues highlighted in this response will need to be acted on in order to ensure they are successfully implemented in practice.

We hope these comments are useful and the BBA would be delighted to provide any future assistance we can.

Yours sincerely

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Annex

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14 February 2012

Dear Sirs,

Definition of capital disclosure requirements

This is the British Bankers' Association's response to the consultation on the above topic; we welcome the opportunity to comment.

We are supportive of the Basel III objective of using disclosure requirements to improve transparency of regulatory capital and enhance market discipline. In this context, we broadly support the underlying objectives as set out in the paper believing that they will go some way towards ensuring that market participants receive comparable information about the capital positions of globally active banks during and post the transition to Basel III. That being said, we are conscious that templates are rarely the optimal vehicle through which to deliver high-quality, decision-useful information and warn that they have the potential to stand in the way of the development of market-led initiatives. As such, we recommend that the Committee engages with market participants to ensure that the proposed format meets their requirements both now and going forward.

It is not entirely clear to us how the proposed requirements are intended to relate to existing regulatory requirements or Pillar 3 of Basel II. While the introduction suggests that the paper sets out the more detailed Pillar 3 requirements promised by the Basel Committee, the intention appears to be that the disclosures are either included in the bank's published financial reports or at a minimum included in a link directly to the bank's website. If such a detailed data set is to be required, we suggest that it is best located in the Pillar 3 document or only included on the website. A more succinct reconciliation of accounting capital to regulatory capital which is better suited to the needs of the majority of the users of financial reports, such as that provided by UK banks, could then be provided in the annual report.

Similarly, we are not convinced that the detailed reconciliation should be published with the same frequency as the publication of financial statements. Interim reporting is intended to update the market for events which have occurred since the publication of the last annual report. If there are material changes to regulatory capital, then we agree that it would be useful to provide an updated detailed data set but this should not always be a requirement. It should also be noted that some jurisdictions require quarterly reporting and others half yearly.

Given that the Committee's mandate extends only to the development of guidance, it would also be helpful to understand the mechanism through which the Committee hopes to promote consistent implementation by national supervisors. In our view, there is an important role for the Financial Stability Board to play in monitoring implementation but also a place for the Standards Implementation Group to identify examples of where local requirements overlap with what is proposed. Furthermore, we stress that failure by local supervisors to implement the standards in a common way will greatly increase the cost of compliance for internationally active banks subject to multiple supervisory regimes.

We note that the Committee intends that banks comply with the proposed disclosure requirements from the date of publication of their first set of financial statements relating to a balance sheet on or after 1 January 2013. We would caution, however, that there may still be a lack of clarity over the definition of a number of capital instruments at this point, not least within the European Union. Whilst we recognise that the template is partly designed to highlight such differences, this may hinder comparability and exacerbate the costs of compliance for banks.

Before turning to the specifics of the proposals, we also wish to highlight the importance of the disclosures being prepared through the lens of materiality. The templates are extensive and it will therefore be important for management to have the discretion to tailor the disclosures to the circumstances of their business by omitting or combining lines where appropriate.

Post 1 January 2018 disclosure template

We would envisage that many institutions will publish much of the detailed disclosure on their websites and provide more succinct summaries in their published financial reports. We do not interpret the statement that the disclosure should be located in the bank's published financial reports as a requirement to locate the disclosure within the audited financial statements. Market practice in the UK is for headline capital numbers within the audited financial statements to be broken down into a more granular disclosure in the non-audited part of the annual report. We understand this is acceptable to the analyst community on the basis that they can link the figures back to those provided within the audited financial statements and view this as a pragmatic solution given the practical difficulties of auditing internal models and their inputs to a true and fair standard.

Reconciliation requirements

We believe that the UK banks have a reputation for providing high-quality reconciliations of their regulatory capital to their accounting balance sheets and note they will go further with their 2011 year-end financial reports by adopting a standard disclosure format to assist market participants to compare their positions.

Against this backdrop, we view the proposed reconciliation requirements as somewhat cumbersome and caution that they are likely to result in the provision of significant volumes of data, some of which may be of questionable decision-usefulness. For example, a decision to require a bank to list the legal entities that are included within the accounting scope of

consolidation but excluded from the regulatory scope of consolidation by itself will have very little value. Given the pressure all listed companies are under to reduce the 'clutter' in their financial reports we question whether this is proportionate.

We suggest it may be more meaningful to the users of this data if the Basel Committee was to require banks to provide quantitative disclosures detailing the principal differences between Accounting and Regulatory balance sheets, both in terms of material amounts and significant topics of interest to users, together with a narrative explanation of the reasons behind those differences. This would meet the objective of providing users with decision-useful information whilst ensuring that important points are not obscured by excessive detail.

Given the difference between accounting standards and degrees of regulatory consolidation across jurisdictions, we agree that it would not be desirable – and potentially misleading - to require banks to use a common template to disclose the reconciliation between their balance sheets and statutory capital.

Main features template

Given the adjustments which will be made to capital instruments during the transition to Basel III, it will be important for market participants to have full information of how terms and conditions will evolve. We accept that existing prospectuses are not always user friendly and that there is merit in promoting a minimum level of summary disclosure, although we would want market participants to determine whether it is necessary to have a standard template. We also caution that the summary should not be used as an alternative to the prospectus to make investment decisions about particular instruments and suggest it may be helpful for the summary to carry an explicit statement to this effect. If the objective is global consistency then we would question whether it is appropriate to explicitly identify a list of features which individual supervisors may wish to add to their templates.

In terms of the substance of the template, there are still significant policy and implementation uncertainties relating to a number of the headings which may lead to a false sense of comparability. For example, lines 26 to 30 require a bank to detail the write-down features of an instrument. However, resolution regimes are still to be implemented in many jurisdictions and there is as yet no common definition of the point of non-viability. It seems somewhat premature to require the publication of details such as this before the frameworks to which they refer have been agreed and implemented. At the very least, the disclosures will need to be accompanied by qualitative reporting to assist users to understand such differences.

Further consideration may also need to be given to the frequency of reporting and whether the aim is to retain a historic record of the capital instruments at points in time or just a continually updated record. This will have implications for the web and data storage requirements.

Other disclosure requirements

We concur with the proposal that banks be prohibited from using terms such as 'Common Equity Tier 1' if they are not calculated in accordance with Basel III once the new disclosure format has been implemented. This will reduce the scope for uncertainty during the transition period.

We agree that banks should make available the full terms and conditions of all instruments included within regulatory capital on their website. We would, however, dispute the assertion that 'the benefit of Pillar 3 disclosures is severely diminished by the challenge of finding the

disclosure in the first place'. In our experience all our members have clearly labelled sections within their investor relations websites where current and historical Pillar 3 disclosures can be found. They are also published via RNS.

Template during transition

We agree that the transition to Basel III will introduce an additional degree of complexity which will heighten the importance of banks providing high-quality disclosure. The proposal to modify the post 1 January 2018 templates appears pragmatic in that it will maintain comparability over time and minimise systems costs to banks. We can see merit, however, in the Basel Committee reconsidering its proposals that the required disclosure be provided as soon as the transition to Basel III begins. Requiring banks to effectively disclose their capital position under Basel III at this point in time may have significant consequences for the economy and financial stability.

Yours sincerely,

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