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Dear Mr. Farkas,
Dear Mrs. Vaillant,

Commerzbank Response to EBA consultation paper on Regulatory Technical Standards for Own Funds (EBA / CP / 2012/02) – Focus: Additional Tier 1 with temporary write-down

Commerzbank welcomes the opportunity to comment on the EBA's draft Regulatory Technical Standards for Own Funds ("RTS"). This letter covers specifically our high-level comments and concerns in response to the proposals in the RTS with respect to the mechanism for temporary for Additional Tier 1 as defined in TITLE II Chapter 2 Section 2 Article 20 of RTS. Our detailed note on temporary write-down for Additional Tier 1 ("AT1") instruments is included in Annex to this letter.

The note however does not include our response to the other detailed questions outside Article 20 set out in the draft RTS. For this we have contributed to the work of the trade associations examining the RTS and to the more granular responses submitted by the European Banking Federation (EBF) and Die Deutsche Kreditwirtschaft, which we generally support.

The clarity provided in the RTS on the nature of the write-down of the principal amount under Article 49(1)(n) of the Capital Requirements Regulation ("CRR") is very helpful. In particular, we see the feasibility of a temporary write-down of AT1 instruments complying with the requirements of the CRR as an important element for the implementation of banks capital issuance plans in light of the strengthened requirements under the CRR.

- **Importance of overall capital structure**

  Reinstalling the AT1 layer gives similar protection to equity as investors in AT1 solely carry losses below the 5.125% trigger, even giving up their claim in insolvency at that point.

  The possibility to issue AT1 with temporary write-down targeting debt investors benefits shareholders and other investors due to the fact that the 1,5% AT1 layer, within the minimum capital ratios defined by CRR, either needs to be filled by AT1 or, if not possible, by Common Equity Tier 1 (“CET1”) prior to the “combined capital buffer” (“CCB”) being filled.

- **Capital hierarchy and market capacity for Additional Tier 1 subject to temporary write-down**

  The “hierarchy of capital instruments” shall be properly reflected. Hence, when an institution has suffered losses and written-down an instrument and shows strong revenue in the recovery phase, AT1 instruments should be promptly brought in a position to fulfill regular payments.

  The situation where AT1 instruments after a write-down or in general do not receive any payments while lower ranking capital instruments (i.e. shares) already receive dividends should be avoided.

- **Proposed amendments to TITLE II Chapter 2 Section 2 Article 20 of RTS**

  Given the considerations above, the RTS, in our opinion, require adjustment to reflect the capital hierarchy and to ensure that there is no detrimental treatment of AT1 holders with temporary write-down compared to other holders of capital instruments.

From a prudential perspective, the proposed amendments should ensure the fastest possible rebuild of Tier 1 capital and the combined capital buffer while also ensuring that the capital hierarchy as outlined in our note is reflected.

If this approach is not achieved, the consequence would be that a) issuance capacity for AT1 instruments might be significantly reduced as a sizeable portion of fixed income investors stay away and b) the institution is required to issue more CET1 in excess of the CET1 minimum requirements and CCB. Point b) would result in a higher dilution of existing or new shareholders and to possible restrictions on dividends due to the CCB not being met hereby leading to a more pronounced situation of hindering recapitalization.

We look forward to continued dialogue with the EBA on these important issues.
Yours sincerely,

Commerzbank AG

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Appendix