A. Introduction

Deutsche Börse Group (DBG) welcomes the opportunity to comment on EBA's consultation paper "Draft regulatory technical standards on the method for the identification of the geographical location of the relevant credit exposures under Article 140(7) of the Capital Requirements Directive (CRD)" - EBA/CP/2013/35 - issued on 2 September 2013.

DBG is operating in the area of financial markets along the complete chain of trading, clearing, settlement and custody for securities, derivatives and other financial instruments and as such mainly active with regulated Financial Market Infrastructure providers.

Among others, Clearstream Banking S.A., Luxembourg (CBL) and Clearstream Banking AG, Frankfurt/Main (CBF), who act as (I)CSD[1] as well as Eurex Clearing AG as the leading European Central Counterparty (CCP), are classified as credit institutions and are therefore within the scope of the European Capital Requirements Directive (CRD) and Capital Requirements Regulation (CRR) which transpose i.a. the Basel III rules into European law. Clearstream subgroup is supervised on a consolidated level as a financial holding group.

As part of our business activities we grant loans that serve to facilitate the settlement of securities transactions. These loans are short-term in their nature and are almost fully collateralised. In addition we offer securities lending on a matched principal broking basis as well as substantial amounts of cash placements mainly resulting from client cash deposited in the course of our settlement business or as cash collateral. Moreover, the collateral received consists of securities and does not contain tangible assets such as real estate collaterals. Counterparties of these transactions are central banks, banks and financial institutions with generally good to excellent credit ratings. In consequence, nearly all of our exposures are towards counterparties which are not considered as "relevant credit exposures" according to Article 140 paragraph 4 CRD.

Our position paper consists of general comments which brings our thoughts on the proposals made in draft RTS (part B) and additional concerns to countercyclical capital buffer rules according to CRD/CRR (part C).

B. General Comments

We share the view of EBA with regards to the fact that identifying the geographical location of credit exposures for the purpose of calculating the institution-specific countercyclical capital buffer should depend on the geographical location of the obligators in the sense of the country of

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[1] (International) Central Securities Depository

registration and therefore support the proposed "obligor principle" for credit exposures independent of the location of possible (physical) collateral.

Additionally, we are very supportive for the approach of EBA to introduce a threshold for institutions with limited cross-border activities as well as limited trading book as defined in Articles 2 and 3 of the draft RTS in order to reflect a proportionality principle and to ease the operational burden for those institutions.

However, the definitions laid down in Article 1 of draft RTS need to be properly reflected in Article 2 and 3 of the draft RTS. In addition, we think that the concept should be based on unweighted exposures (as indicated in the definitions of Article 1 draft RTS) instead of risk-weighted once (as we understand Articles 2 and 3 of the draft RTS):

- Article 1 No. 8 and No. 9 draft RTS defines "foreign exposure" and "domestic exposure". However, Article 2 No. 4 draft RTS is referring to "foreign credit exposures". We kindly ask to align the wording and use in Article 2 No. 4 RTS the term "foreign exposures".
- Article 1 No. 1 draft RTS defines "credit exposure" without referring to any risk weight. This is in our mind the right approach. Contrary, Article 2 No. 4 and Article 3 No. 4 of draft RTS refer to "risk-weighted exposures". We ask to remove any reference to risk weights here, as we believe that the distribution / portion of exposures should matter as criterion for the size and not its related risk weight.

Finally, draft RTS should clarify the geographical location of branches of the obligator or debtor which engage into any exposure. There are in principle two concepts possible: country of registration of the Headquarter (legal register address, country of registration) or country of location / operation of the branch entering into the transaction legally (country of operations).

As ultimately only the company as a whole is liable and in line with general principles for solvency purposes as we see them, we are clearly in favour of the "headquarter" principle. As an example for this approach, a transaction with a French branch of one corporate with residence in United Kingdom would lead to UK as the relevant geographical location for the purposes of calculation of countercyclical buffer requirements.

C. Additional remarks to countercyclical capital buffer rules of CRD/CRR

According to Article 140 paragraph 1 CRD, the countercyclical capital buffer requirement is to be calculated as weighted average of the buffers that are being applied in jurisdictions to which institutions have **(<u>any</u>) credit exposures**. The institution-specific countercyclical buffer could be easily calculated as multiplication of the country specific buffer rates times risk weighted assets

in that country. The institution-specific buffer rate could than be derived by division of this buffer requirement by total risk weighted assets of the institution.

However, according to CRD/CRR, it is foreseen, that institutions have to calculate institution-specific countercyclical capital buffer rate as described in article 140 paragraph 1 second sub-paragraph CRD (by dividing the weighted average of the countercyclical buffer rates that apply in the jurisdictions where the "relevant credit exposures" are located by its total own funds requirements for credit risk that relates to all of its "**relevant credit exposures**") and then multiply it with "**total** risk exposure" as required in article 130 paragraph 1 CRD to determine the buffer amount required.

This approach, which in first step excludes multiple exposure classes from the calculation of countercyclical buffer requirement rate and then requires the multiplication with "total risk exposure" which reflects **all** exposure classes as defined in Article 112 CRR, is in our view not adequate. This leads to the result that dependant on the structure of credit exposures classes and buffer rates in concerned geographical locations, the resulting capital buffer requirements could be higher or even lower than the requirements calculated without considering "relevant exposure classes". In particular this approach does not suit business models like ours, where nearly all exposures are located in exposure classes which are not classified as "relevant credit exposures". In consequence only very limited exposures most likely concentrated in few countries will determine the buffer rate for substantial exposure amounts spread all over the world.

As a conclusion, we would like to encourage EBA to consider our concerns raised above during future development of supervisory regulations and address the topic both on European and international level.

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We hope that our comments submitted are useful in the further consultation process and are taken into account while going forward. We are happy to discuss any question related to the comments made.

Eschborn

1 November 2013

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