**ABI comments on EBA consultation Paper regarding draft guidelines on payment commitments under Directive 2014/49/EU on deposit guarantee schemes**

 *Introduction*

ABI is pleased to contribute to EBA’s Consultation Paper on the guidelines on payment commitments under Directive 2014/49/EU on deposit guarantee schemes. ABI supports the EBF position on this item. Nevertheless answers to some of the questions are provided below.

*Question 1. Apart from the admissibility requirements suggested in the present guidelines, which objective criteria do you think could be applied, notably in order to determine the overall amount of payments to be accepted in a given year, or to be applied to individual banks applying for the option?*

It is possible that individual credit institutions or groups of institutions will, for cost-related or other reasons, decide against using payment commitments. In this case, other institutions would be able to make use of a larger share of payment commitments, as long as their use by the banking sector as a whole does not exceed the 30% threshold. We therefore believe that each DGS should be allowed to split the use of payment commitments among its members, applying clear and objective criteria, even though we are aware that this will not be easy to achieve.

*Question* 2. Do you agree with these provisions to be included in Payment Commitment Arrangements? Do you think other provisions should be provided?

The unconditional right for a DGS to claim payments on demand is unnecessary and has a highly adverse effect on the accounting treatment for DGS members.

The power to call up funds on an ad hoc basis is unnecessary, since they are collateralised and generally available within 1-2 days. Revision to clarify that a payment by a credit institution can only be required following a pre-defined “trigger” event introducing contingency upon a future determinable event for which the likelihood of its occurrence can be assessed. As each payment commitment is secured by securities the proposed amendment would not result in an increase of funding risk for the DGS and will still be in line with the Directive’s objectives.

*Question 3. Do you agree that a credit institution should pay in cash the Payment Commitment Amount, when its obligation becomes due, within 2 working days at the latest?*

Looking at the availability period, a period of up to 2 days for honouring payment commitments appears reasonable. However, a requirement to settle payment commitment amounts in cash ignores the funding feature of payment commitments and the collateral that has to be provided for them. Payment in cash of the equivalent amount is therefore only one way of honouring payment commitments. Alternatively, the DGS could realise the collateral provided under the payment commitment and liquidate it by, for example, borrowing against it accordingly. This may be beneficial for the DGS. The guidelines should therefore stipulate liquidation within 2 days, though the manner of liquidation should be left to the DGS.

*Question 4. Do you agree with the option left to the DGS to enter into a Security Financial Collateral Arrangement (full ownership remains with the credit institution) or a Title Transfer Financial Collateral Arrangement (full transfer of ownership)?*

The provisions of Part 3 of the EBA guidelines should be revised to clarify that the existence of a payment commitment is linked to the risk that a credit institution contributes to the respective DGS. In other words, the payment commitment terminates without settlement in situations where the credit institution no longer has any deposits that are covered by the respective DGS. This would be the case where the credit institution discontinues its deposit business or joins a different DGS.

Where a credit institutions switches to a different DGS, this leads to a reduced exposure for the old DGS and an increased exposure for the new one. Hence, the new DGS has to increase funding to cover the higher exposure either by means of increased general levies contributions or a specific levy contribution on the new member. However, having to settle the payment commitment with the old DGS as well leads to a double payment for the same exposure in this situation.

In other words, this is an obstacle to the creation of a truly European market place, especially in the context of the banking union.

This assumption would further aid the accounting treatment under the IFRS Framework to treat payment commitments under a “going concern” assumption. According to Directives 59 and 49, under a going concern situation the conditions mentioned in paragraph 12.d). (iii, iv, and v) do not have economic substance, i.e. they are not “genuine”. In other terms there are no instances where the reporting entity would be required to accelerate the payment commitment in order to re-fund the DGS for an intervention aimed at covering its own depositors.

We accommodate a more favorable accounting treatment we suggest the following changes to paragraph 12 d (iii-v):

• to add “reflecting a situation of a gone concern for the institution” at the end of paragraph 12d iii, 12d iv and 12d v or “following a predefined trigger event, similar to a financial guarantee. In this case, the payment obligation would be contingent upon a future event that is determinable and for which the likelihood of its occurrence can be assessed.”

• In addition, we suggest a revision to clarify that the existence of a payment commitment is linked to the risk that a credit institution contributes to the respective DGS. The payment commitment would therefore terminate without settlement when the credit institution does no longer have any deposits covered by the respective DGS. The payment commitment can be reduced or even terminated given that this is in line with the contribution of the credit institution to the overall exposure of the DGS.

• We suggest to amend paragraph 12e as follows:

In case of (i) authorisation withdrawn and (ii) the institution ceasing to be member of DGS - other than reflecting a gone concern situation - the commitment is re-allocated to the other members of DGS, proportionally to their share of covered deposits on total deposits. The commitment of the institution is cancelled and the payment commitment amount is returned.

In this context, the requirement to annually amend or supplement payment commitments should be clarified so that it also allows for adjustment to reflect the actual current exposure contribution of a credit institution. In other words, the payment commitment can be reduced or even terminated given that this is in line with the contribution of the credit institution to the overall exposure of the DGS.

*Question 5. Do you think other requirements about the choice of the custodians should be provided under these guidelines?*

With regard to paragraph 14a, ABI agrees that, in the case of Security Financial Collateral Arrangements, the securities account used to hold the low-risk assets provided as collateral should be maintained by a custodian. Regarding the management of this account, we suggest making reference to the standard collateral management agreements, known as *Triparty Collateral Management (TCM)* services.

Requirements about the choice of custodians should be left to the national discretion of the DGS and national Authority*.* In addition, we propose that each DGS should prepare a list of possible custodians which the banks can choose.

*Question 6. Do you agree on the above mentioned requirements? Would you suggest other limits on concentration in exposures?*

ABI does not agree with the proposal in the consultation paper requiring each DGS to determine appropriate criteria for the eligibility of collateral. In order to avoid different treatments among European countries, the criteria should be those defined by the ECB or the relevant central bank for REPO transactions and the relevant central clearing house. As a subordinate proposal, we suggest making reference to the criteria introduced under CRD 4 for the Liquidity Cover Ratio, in the case of high-quality liquid assets (HQLA) that can be converted into cash easily and immediately in private markets in order to meet liquidity needs under a 30 calendar day liquidity stress scenario.

*Question 7. Is it in your view appropriate not to consider the currency of issuance when determining whether debt instruments are correlated to an event of DGS pay-out, be it inside or outside the euro area?*

ABI considers that, except for the ECB criteria or those of the relevant central bank governing the acceptable collateral for REPO transactions, no other criteria should be defined. Consequently, ABI does not agree with new criteria on collateral quality such as exposure limits and diversification based on the currency of issuance or on the sovereign risk.

The latter proposal also seems quite anachronistic, in view of the fact that the BRRD and other EU legislation (SSM, CRD etc.) are attempting to give a sense of uniformity to the legislative context and provide support for the European financial system. This is also intended to reduce the correlation between the credit risk of individual banks and their countries of origin, reducing national discretion and creating instruments and procedures on a European scale.

*Question 9. Do you agree with the criteria on the eligibility of the collateral provided in this Part 6? Do you think other requirements should be provided in these guidelines on this issue?*

 *Please see the answers to Question 6 and 7*

*Question 10. Do you agree with the criteria on the haircut provided in this Part 7? Do you think there are other requirements which should be provided under these guidelines about this issue?*

 ABI agrees that haircuts should be applied to collateral for payment commitments, but disagrees that the requirements should be defined in these guidelines. The Guidelines should refer to the haircut schedule of the respective central banks for accepting collateral for central bank lending to banks.