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**Our response to EBA consultation on the minimum requirement for own funds and eligible liabilities (MRELs), CP/ 2014/ 41**

The Building Societies Association is pleased to respond briefly to the EBA’s consultation. The BSA represents all 44 UK building societies. Building societies have total assets of over £330 billion and, together with their subsidiaries, hold residential mortgages of over £240 billion, 19% of the total outstanding in the UK. They hold over £240 billion of retail deposits, accounting for 19% of all such deposits in the UK. Building societies account for about 28% of all cash ISA balances. They employ approximately 39,000 full and part-time staff and operate through approximately 1,550 branches.

The BSA is registered on the EU Joint Transparency Register under ID 924933110421-64. The BSA also belongs to the European Association of Cooperative Banks, and the BSA endorses the general comments made by the EACB in their response.

**General observations**

We agree that risk-based regulatory capital requirements should be the starting point for determining the quantum of loss absorption, with no need for the resolution authority to second-guess or re-perform that assessment. We do not want a proliferation of measures all trying to capture much the same thing. Least of all do we want to see MRELs being used as a back-door way to jack up capital, or near-capital, requirements.

The advantage of established CRR capital requirements is that they are risk-based, and therefore relate to the real potential for losses. For that reason, and for others, the *leverage ratio* should be excluded. First, there is no Union leverage requirement, and there may not be, pending the completion of the process in CRR Article 511. Such decisions should not be pre-empted. Second, more importantly, the leverage ratio is explicitly, and deliberately, unrelated to any relative measure of risk or loss. So it is *prima facie* **unsuitable** to contribute to an assessment of loss absorption.

We are also concerned at the scope for inadvertent double-counting. In the feverish atmosphere of ever-increasing but different, and sometimes unconnected, requirements for capital or loss absorbency it would be all too easy for this to happen. The EBA, and national authorities, should be vigilant to prevent this happening.

The CP established a very important point in the second paragraph on page 9, illustrated very clearly in the Box 1 diagram on page 11, to be given effect in Article 3.2: if the resolvability assessment concludes that liquidation under normal insolvency processes is feasible, and no alternative preferred resolution strategy is identified, **the recapitalisation amount shall be zero**. We support this. BRRD Article 32.1 (c) establishes a high public interest threshold for the use of formal resolution tools rather than insolvency procedures, and this must be respected. We suggest that attention is drawn to this by a further Recital

“ Whereas the recapitalisation amount is only necessary for those institutions for which liquidation under normal insolvency processes, as envisaged by the BRRD, is assessed not be feasible or credible, for those banks that can be liquidated, the recapitalisation amount should *ex hypothesi* be zero.”

to underline the point in the context of MRELs.

**Answers to specific questions**

**Q.1** – We have no objection to any component, apart from the leverage ratio

**Q.2** – No, the text should say “adjust” not “increase”. There may well be circumstances where a reduction is appropriate (eg because of national gold plating under Pillar 2). In practice, total effective capital requirements, e.g. for systemic firms, may be set not only to capture the quantum of expected loss absorption, but even higher, so as to make the probability of loss even more remote. The drafting should also make clearer that the imposition of a higher amount should be truly exceptional, not routine.

**Q.3 –** We doubt this is susceptible to benchmarking – the range of circumstances is probably too diverse.

**Q.4** – Again, the leverage ratio should be excluded, for reasons given above. Also to be excluded is the combined buffer, as that is not a minimum requirement, but a buffer. Note that the FSB – TLAC approach excludes such buffers.

**Q5,6** – No building society is a G-SII, so the first part is not relevant to building societies. A building society could be an O-SII, but we doubt the peer group approach would work for O-SIIs – there are probably not enough in any jurisdiction, and the existing O-SIIs are too disparate. We also point out that BRRD does not envisage recapitalisation to full ex-ante status.

**Q.7** – Yes, this makes sense.

**Q.8** - Yes, this is probably necessary for systemic institutions.

**Q.9** – No, make it at least six years, and allowing up to ten years might be sensible. The early part of that period will anyway overlap with the build up to Basel 3 end point, so it cannot be sensible to concentrate demands to issue risk-bearing instruments for several purposes in that narrow window – the market’s capacity may be insufficient. Such demands should be capable of being spread out over a longer period

**Q.10** – Yes

**Q.11** – Broadly speaking, yes.

**Q.12** – No

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