A. Introduction

Deutsche Börse Group (DBG) welcomes the opportunity to comment on BCBS consultative document "Fundamental review of the trading book" issued on 3 May 2012.

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 through regulated Financial Market Infrastructure providers.

Among others, Clearstream Banking AG, Frankfurt/Main (CBF) and Clearstream Banking S.A., Luxembourg (CBL), who act as (I)CSDs[1], are classified as credit institutions according to the respective national banking regulations and are therefore within the scope of the European Capital Requirements Directive (CRD). Clearstream Holding AG acts as a financial holding company under German banking law being recognised by the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) as the superordinated company. The figures for Clearstream Holding Group currently follow the consolidation provisions set out in § 10a (6) German Banking Act (KWG) and the German Generally Accepted Accounting Principles (German GAAP) rules based on the German Commercial Code (Handelsgesetzbuch, HGB).

Furthermore, Eurex Clearing AG as the leading European Central Counterparty (CCP) is also implicitly affected by the CRD as it is currently treated as a credit institution under German law and, as the future need for a banking license is currently also deemed necessary in the context of EMIR, it will most likely also be fully within scope of CRD in the future.

We have therefore prepared our comments with particular focus on the effects on our companies in scope of the regulations which are not comparable to the majority of other banks.

[1] (International) Central Securities Depository.

B. General comments

The consultative document sets out the direction the Committee intends to take in addressing shortcomings in the current regime as well as weaknesses in risk measurement, focusing on several key areas. DBG is currently exempted by national law from the application of the provisions concerning trading book business, as paragraph 2 (11) of the German Banking Act foresees certain thresholds which are not passed by DBG. For this reason, the key element from our perspective is the proposed modification of the trading book / banking book boundary.

We assume that for reasons of proportionality the above mentioned national thresholds will be available also in the future. Thus, DBG would remain exempted from the application of the provisions concerning trading book business. Nevertheless we have analysed the proposal and would like to summarise our specific remarks on the alternative approaches: The “trading evidence”-based boundary and the “valuation”-based boundary.

1. <u>The trading evidence-based boundary</u>

This approach is an enhancement of the current boundary and foresees that for purposes of the boundary not just the banks` intent, but also the evidence of any ability to trade and risk-manage the instrument on a trading desk is of significance. As much of the content of this approach is already foreseen in the current regime (for example the requirements for trading policies and procedures), we see at least no real implementation burden for institutions. We therefore share the Committees view that relative to valuation-based approaches the trading evidence-based approach requires fewer modifications of the current boundary and would not lead to significant disruption upon introduction. However, we do not share the Committees view that it is a disadvantage that some fair valued instruments would still remain in the banking book of institutions, as we think that fair valued instruments without real trade intent should not lead directly to a trading book–obligation. In the following section we would like to elaborate this issue.

2. The valuation-based boundary

This approach considers that market price fluctuations in instruments held at fair value could have a direct impact on the solvency of banks. Therefore, it is proposed that the trading book should include all financial instruments held at fair value (where a movement in their value could lead to a reduction in capital resources, e.g. excluding capital hedges).

In consequence, a large number of positions, which are not assigned to the trading book according to current legislation, would have to be reassigned. In this context, the question arises why a general rule should apply imposing the trading book rules to all fair value measured financial instruments. It is true that the intention behind fair value measurement under IFRS is to show the amount which could potentially be realised in a transaction. But this does by no means imply that there has to be a real trading intention. Otherwise one of the principles of a balance sheet - the so called "going concern" - would be meaningless.

Regarding the current IAS 39 "held for trading" category, a link to the trading book indeed makes sense. In contrast, the "available for sale"-category is in many aspects the "default" category of IAS 39. Our intention is in principle to invest in debt securities until their maturity and not to trade with them. In case of premature sales, these are generally driven by concerns about the credit quality of counterparty and not by any profit-realisation strategy.

We also absolutely share the Committee`s concerns about the difficulties resulting from the jurisdictional differences in accounting standards. In this context, the large dependency on accounting standard setters – created by the valuation-based approach – cannot be the intention of the Committee.

Finally, we would like to mention that the "potential adjustment to the valuation-based boundary" on page 18 seems not sufficiently clear to us. The description gives no clear guidance on what would qualify as banking book as a result of this possibility.

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From our point of view any new boundary definition should in principle consider the trading intent in an appropriate way. As we do not see any benefit in a general rule that imposes the trading book rules to all fair valued instruments (irrespective of any trading intent), we would prefer the trading evidence-based boundary.

We hope that our comments are useful and will be considered in the further process. We are happy to discuss any related questions.

Eschborn, 6 September 2012

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