

A. Introduction

Deutsche Börse Group (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.

Among others, two companies acting as (I)CSD¹ are classified as credit institutions and are therefore within the scope of the Basel framework of the Basel Committee on Banking Supervision (BCBS) as implemented in national law based on the European Capital Requirements Directive (CRD). Furthermore, Eurex Clearing AG as the leading European Central Counterparty (CCP) is also implicitly affected by the CRD as it is treated as a credit institution under current German law and therefore is within the full scope of CRD. None of our group companies is a "Basel bank" and therefore the Basel framework is not directly governing our business. As the rules of the BCBS are usually mirrored on the European and national level of EU member states, we want to take the opportunity to address our comments to the consultative document "Definition of capital disclosure requirements". Despite being in general within the scope of the "Basel II" rules as described above, the business of the banks within DBG is quite different from that of most other banks. DBG companies are just acting in specific corners of the financial industry and the banking business with a customer basis focused on other banks and financial institutions only.

This paper consists of a management summary (part B) and detailed comments (part C).

B. Management summary of comments

We have carefully analysed the consultative document and see some benefits out of some of the suggestions made by the BCBS. Having in mind the main addressees of the BCBS, i.e. the large international active banking groups, a larger portion of the proposal seems to be meaningful.

Nevertheless, we want to raise our doubts, that yet another set of published figures will serve the intended purpose. Moreover, the increasing cost for regulatory reporting and publication is adding operational risk to the banks. Even today, the preparation of such figures has to be made under time pressure using capacities of staff which is increasingly difficult to hire due to market conditions. If published with substantial time delay, the information content of disclosures is getting hardly useful.

Having in mind the substantial disclosure requirements under national and international accounting standards (e.g. IFRS 7) and the already implemented disclosure requirements under pillar 3 of the Basel framework, we wonder why any public information deficit detected could not be integrated in either of the two existing frameworks. We furthermore disagree that there is really a public

¹ (International) Central Securities Depository

need for a disclosure on a semi-annual or even quarterly basis of the information proposed.

Especially duplications of disclosures, which are currently already included in the pillar 3 requirements, should be avoided (e.g. scope of consolidation, differences to the accounting scope of consolidation). In case the current pillar 3 requirements are deemed to be unclear or not sufficiently specific, this should be changed in the pillar 3 framework and not in a separate, potentially more frequent additional disclosure framework. In our view, an on-going reconciliation of regulatory capital and capital requirements with statutory figures is also not really creating additional transparency.

In total, we recommend rather to review and streamline current pillar 3 requirements than to set up additional disclosures.

C. Detailed comments

- **Paragraph 4 (section 2):** In principle, each credit institution is obliged to set up and publish stand-alone financial figures. Nevertheless, stand-alone statutory accounts are not mandatory in all countries (e.g. they are not common under US GAAP). Contrary, non-listed companies are often exempted from setting up consolidated financial statements especially if certain materiality thresholds are not surpassed. Moreover, regulatory groups might be part of larger groups and therefore not be required to set up sub-consolidated statutory accounts at all. In the EU for example, article 7 of the Seventh Council Directive (83/349/EEC) exempts – under certain conditions – the set up and publication of sub-consolidated accounts.

As there would be no statutory group accounts available, it needs to be clarified that the commercial balance sheet is also not to be set up for the mere purpose of reconciling against regulatory figures. Even though this might not be an issue for the intended audience of the BCBS proposal, it nevertheless should already be clearly stated (at least in a footnote) for national implementation.

- **Paragraph 7 (and 10):** According to paragraph 7, it is proposed that banks publish this disclosure with the same frequency as the publication of their financial statements. Although the proposal states as typical reporting period quarterly or half yearly, it is our understanding that e.g. for smaller banks that are only required to draw up annual financial statements, the reporting period would also be annually. This again raises the question, why this disclosure should be put outside the pillar 3 report.
- **Paragraph 10:** While we oppose to the proposed reporting frequencies and the publication of an additional document, we agree to the advantages of either a full inclusion of regulatory disclosures in the statutory accounts² **or** a clear reference to the website as the place of publication. Furthermore, we also support the idea of an archive. Additionally, we propose to fix the

² For limitations of this approach we refer to our comment related to paragraph 40.

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time horizon of such an archive, which for us should include the last five calendar years (no mandatory archive beyond this time period as information value is sharply decreasing over time).

- **Section 2:** It is our understanding that the application of the three-step-approach provided in the document leads to a combined table that will have to be reported. We consider the step-by-step description just as guidance towards the new methodology. If this is not the intention, we kindly ask for further clarification.

We nevertheless want to point out that, in our view, the combined table contains all necessary details and that a step-by-step publication would unduly increase preparation workload and would result in an information overload. Furthermore, the decreased readability of the information would potentially discourage receivers of the information to further use it.

- **Paragraph 16:** In our view, the requirements listed in paragraph 16 are already part of the existing Basel II framework. According to paragraph 822 of the Basel framework, institutions are already required to outline the differences in the basis for consolidation for accounting and regulatory purposes. We do not see the necessity for a quarterly disclosure, especially for information that is regularly not subject to fundamental changes within the financial year.

In case paragraph 822 does not seem to be precise or granular enough ("outline"), this may be sharpened and an annual reconciliation might be requested, if and only if statutory accounts are disclosed to the public on a consolidated level of the commercial group as well (we do not see a need for reconciliation with something, which is not publically available).

- **Paragraph 32:** We have doubts that an exhaustive list of features would really create additional transparency. We rather recommend requiring credit institutions to maintain a dedicated area on their website, containing a full description only for those equity instruments included in regulatory capital which have special conditions. We do not see any additional value in the disclosure of details for standard paid in capital, reserves, profit carried forward, intangibles (deductions) etc.

Furthermore, we want to point out that any list of issuer types should have clearly differentiated semantical levels (if possible just one) and should not mix definitions. For example, "Non-joint Stock Company" refers to the legal form, whereas "BHC", "Bank" and "SPV" refer to the kind of activity. This is representing different semantical levels within one hierarchical level.

Moreover, we do not understand, why section 3 asks for a "Main feature template" while section 4 asks for "Full terms and conditions" to be disclosed as well. We clearly do not see the need for the proposed "Main feature template" on that basis.

- **Paragraph 36:** The requirements laid down in paragraph 91 of the Basel III framework require a "comprehensive" explanation of the way how certain ratios are calculated. In our view, the publication of regulatory ratios with a clear explanation of the source of the rules (e.g. national law with precise reference to the section which defines the numbers / ratios shown) is

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sufficient and no lengthy explanation of the calculation rules as such should be required.

- **Paragraph 38:** By way of national implementation on a proportionate level, the Basel II / III rules apply with national terminology also to small and medium sized banks in a variety of countries. In transposition of the Basel II rules, pillar 3 information includes of course the national terminology. We support the current Basel III framework approach as outlined in paragraph 36 (clear labelling) including our understanding as stated above but disagree to an even more restrictive approach under paragraph 38.

Besides our concerns about language problems (i.e. how does this prohibition fit to different languages, especially to those, where the BCBS rules are not published in?), we want to raise concerns that it cannot be forbidden to use a terminology in the annual report which is part of national law the disclosing entity has to follow. As the BCBS rules are not binding law, the intended aim - to find out, who has implemented Basel III how - will not be reachable without putting the intention of paragraph 38 into national law. Contrary, this might put "Basel banks" into a conflict of rules. On the one hand they are obliged to publish figures and ratios under national law as defined there, whereas on the other hand the BCBS standards might exactly prohibit this.

- **Paragraph 39:** We support the idea of having a dedicated, clearly (and unique) labelled and easy to find place on the own website (if available) for regulatory disclosure purposes. We nevertheless see this as a more generic Basel III pillar 3 issue and not under the "header" of detailed equity disclosures. We want to point out that accounting standards already require some disclosures in the statutory accounts (e.g. IAS 1.135) and other items are self explanatory (ordinary stock, reserves). The additional disclosures therefore should be limited to information, which is not elsewhere publically available and necessary to understand the instruments taken into account for regulatory capital purposes. Cross referencing should be allowed in this context.
- **Paragraph 40:** While we see clear benefits in integrating statutory and regulatory disclosure information, we also see the limits due to differing addressees of both documents. The statutory accounts already show a substantial size and a significant complexity. For banks with complex portfolios and complex regulatory processes, information would just overload the statutory accounts. In our view, a mandatory complete inclusion of regulatory disclosure into the financial reports may distort the original intension of the report and seems unreasonable. In some cases, the regulatory disclosure section would be considerably more comprehensive than the financial reporting section. Therefore, we fully support the proposal, that published financial reports should direct users to the relevant section of their websites where the full set of required regulatory disclosure is provided, if not included in full in the statutory accounts.

In this context, we are totally in line with the proposed obligation to have one definite place with comprehensive information instead of information

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being spread all over different places (partially in the statutory accounts, partially on the website for example).

We nevertheless want to point out that both parts have different approval and auditing processes. Therefore, the disclosure information might only be available after the signing of the accounts or the concrete internet address might be given at a later point in time or change over time. We therefore strongly recommend focusing on path information only (relevant section of the website) and not on document level.

In summary, it needs to be noted that the proposed disclosure requirements impose disproportionate additional requirements to the banks. In regard of the already increasing cost for regulatory reporting and publication, the intended transparency benefits do, in our view, not justify the additional workload associated with the proposed requirements.

Finally, as outlined in detail above, some elements of the proposal seem to be unnecessary and overarching.

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