July 15, 2010

Via email: cp40@c-ebs.org

Consultation paper on guidelines to Article 122A of the
Capital Requirements Directive (CP40)

Ladies and Gentlemen:

TYI, LLC appreciates the opportunity to submit this letter in response to the request of the Committee of European Bank Supervisors ("CEBS") for comments on its proposed implementation guidelines on the new Article 122a of the Capital Requirements Directive.

Conclusion

CEBS should provide guidance on the frequency with which information on the individual underlying exposures supporting securitisations should be disclosed by credit institutions. With respect to a loan or receivable that is an underlying exposure for a securitisation transaction, any observable event relating to such loan or receivable should be disclosed on the day the observable event occurs or as promptly thereafter as is possible. An "observable event" means, with respect to a loan or a receivable that is collateral for a securitisation, any of the following: 1) payment (and the amount thereof) by the obligor on such loan or receivable; 2) failure by the obligor to make payment in full on such loan or receivable; 3) amendment or other modification with respect to such loan or receivable; or 4) the billing and collecting party becomes aware that such obligor has become subject to a bankruptcy or insolvency proceeding.

Example Highlighting Choices Available for Frequency of Disclosure

Consider a securitisation that includes four loans as its underlying exposures. Each loan is scheduled to make principal and interest payments once per month. Loan 1 payments are due in week 1 of the month. Loan 2 payments are due in week 2 of the month. Loan 3 payments are due in week 3 of the month. Loan 4 payments are due in week 4 of the month. As of the end of last month, all the loans were current. This month, however, is a different story. Loan 1 made its payment in week 2 instead of in week 1. Loan 2 paid only 70% of its principal and interest in week 2 and nothing else during the remainder of the month. Loan 3 received a modification that reduced its payment by 50% and such 50% payment was made in week 3. Loan 4 made no payment at all.

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There are several ways to report the observable events for these loans.

At one extreme, which reflects current securitisation industry practices, the observable events for the four loans would be collected and then reported on a once per month or less frequent basis after the end of the month. This reporting frequency has a fundamental problem. It prevents investors from effectively monitoring and knowing what they own currently. Almost by definition, the timing of these reports renders them out of date when they are made available to investors. The lack of timeliness forces investors to guess historical facts that could be easily known.

At the other extreme, reports would be generated for all four loans on a daily basis. This reporting frequency also has a fundamental problem. Reporting every single loan every day would cause the creation of a significant amount of data that is useless. If there is no observable event, there is no new information for credit institutions or other investors. This much data would create its own form of opacity as credit institutions and other investors would have to sort through the data to find the loans that did have an observable event.

Between these two extremes is the alternative to link the timing of reporting to investors to the occurrence of an observable event by the individual underlying exposures. If a payment is received on loan 1 in week 1, then investors would be notified about only loan 1 on the day the payment is received or as promptly as is practicable thereafter. Similarly, investors would be notified on the applicable day that observable events occur on the loans or as promptly as is practicable thereafter. This reporting frequency has a fundamental advantage over the other reporting extremes described above. Observable event-based reporting would allow investors to monitor the performance of the individual underlying exposures as frequently as they would like and, when they do, to know what they own currently.

Recommendation

CEBS should require that in connection with securitisations for all asset types, the party that is directly involved in the billing and collecting of the individual underlying exposures in those securitisations provide reports to all investors on the day an observable event occurs with respect to an underlying exposure or as promptly thereafter as is practicable. The observable event-based reporting requirement should apply whether the securitisation is publicly traded or privately placed or is backed by a relatively small number of commercial mortgage loans or a large number of credit card receivables.

Credit institutions have considerable expertise in observable event-based reporting. In order for a credit institution to demonstrate that it has a comprehensive and thorough understanding of its on-balance sheet loan and

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receivable portfolios, it currently needs to receive and have in place systems to provide information on the day when observable events involving the individual exposures occur. This same expertise and frequently the same information systems can be used to support observable event-based reporting for securitisations.

If CEBS required observable event-based reporting over the life of each securitisation, how would such reporting be implemented? One method for implementing such reporting would be through a clearinghouse run by an independent third party with no actual or perceived conflicts of interest. Using existing information technology, the parties responsible for billing and collecting the underlying exposures for securitisation transactions would provide information on observable events relating to the applicable loans and receivables to the clearinghouse. The clearinghouse would not only manage the observable event database, but would also provide access to the observable events, the underlying loan and receivable exposures and structural features of the securitisation. All data held by the clearinghouse would be borrower privacy protected and would be available at no charge to investors and regulators. Based on the cost of comparable information technology services, the anticipated annual cost for linking a securitisation to the clearinghouse and providing access to the data would be five basis points (0.05%) or less of the aggregate amount of such securitisation and would be built into the flow of funds for each new securitisation transaction. This cost would be offset by the expected lower cost of funding that would apply to a securitisation for which observable event-based reporting was available.

Thank you again and I very much appreciate the opportunity to submit these comments. If you have any questions, please do not hesitate to contact me. You can reach me at (781) 453-0638 or at tyillc@comcast.net.

Sincerely,

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