A. Introduction

Deutsche Börse Group (DBG) welcomes the opportunity to comment on BCBS consultative document "A framework for dealing with domestic systemically important banks" issued in June 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.

Financial Market Infrastructures (FMI) play a material role in the financial system and the broader economy and are hence managed by the "Principles for financial market infrastructures" issued by the BCBS. To address respective risks the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of International Organization of Securities Commissions (IOSCO) have established international risk management standards for payment systems that are systemically important (CSDs and CCPs, etc.). The FMI principles are broadly designed to apply to all payment systems that have been classified systemically important by national authorities. These principles are designed to apply to domestic, cross-boarder, and multicurrency FMIs. All FMIs are encouraged to meet these principles. In addition, these criteria for systemic importance mirror those outlined in the Core Principles for Systemically Important Payment Systems (CPSIPS).

CPSS-IOSCO recommendations are the binding regulation for DBG at the moment. In Germany Clearstream Banking Frankfurt (CBF) and Eurex Clearing AG (ECAG), in Luxembourg Clearstream Banking Luxembourg (CBL) are classified as systemically important institutions according to the respective national authorities' relevance assessment. DBG adheres to the FMI principles to ensure that its entities operate as smoothly as possible under "normal" circumstances and in times of market stress.

DBG companies - among others – CBL and CBF, who act as (I)CSDs[1] and 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).

Furthermore, with ECAG DBG also incorporates the leading European central counterparty (CCP) that is also implicitly affected by the CRD as it is currently (and probably in future) treated as a credit institution under German Banking Act (Kreditwesengesetz – KWG).

Overall, several DBG entities are acting in specific corners of the financial industry but are subject to multiple regulations by various authorities (such as CRD, CSD-

[1] (International) Central Securities Depository.

Regulation or European Market Infrastructure Regulation [EMIR]). Even if the business might be quite different from most other financial sector undertakings DBG welcomes the opportunity to comment on Basel Committee on Banking Supervision (BCBS) consultation paper on the "framework for dealing with domestic systematically important banks" issued in June 2012.

The document at hand contains general comments in part B as well as specific explanatory notes to the principles mentioned in the consultation paper in part C.

B. General comments

In general, we do concur with the necessary discussion on capital requirements for systematically important financial institutions from both perspectives, the international (G-SIBs) one as well as the domestic one (D-SIBs).

However, as already stated in Part A above DBG entities are classified by competent authorities (e.g. Federal Financial Supervisory Authority – Bundesanstalt für Finanzdienstleistungsaufsicht [BaFin]) as systemically important institutions and hence adhere to the principles for financial market infrastructures as the binding regulation.

From our point of view the principles for financial market infrastructures are the dominating binding framework for managing systemic risks for DBG and its affiliated entities.

We are aware that the framework for dealing with domestic systemically important banks is connected to the BCBS rules text from November 2011 concerning global systemically important banks which is in turn in consultation with the CPSS and IOSCO in drawing on relevant qualitative and quantitative indicators. Nevertheless and according to our understanding, DBG is only remotely affected by this consultation paper since some of its entities within the FMI are classified as credit institutions .

While the international perspective is addressed by the BCBS rules from November 2011 by the BCBS, the BCBS' domestic view gives more room for discretion to the national authorities. On the one hand we appreciate the flexibility given to the national authorities. On the other hand we also see the need to align both perspectives to the extent possible to balance both initiatives and to avoid discrepancies in the level playing field among different jurisdictions. This applies to the assessment methodology as well as to the specification of levels of Higher Loss Absorbency (HLA). Below, this issue will be highlighted accordingly.

In addition, we would like to make some suggestions concerning unclear definitions. The consultation paper refers to banks in general, to consolidated groups and financial groups in particular as well as to sub-consolidated levels. In this context, the consultation paper should use terms unambiguously as there are specific definitions for credit institutions, investment firms and other financial entities available on Basel

III level as well as on CRD IV level. In Basel III and in CRD IV, the terms "banking institutions" or "credit institutions" are separated from investment firms and other financial entities.

In our opinion the consultative document does not clearly highlight the requirements and scope of application. Therefore, we expect that a development and concretion of the framework for dealing with domestic systemically important banks will also be discussed with the finance industry in a further consultation

C. Specific explanatory notes on the principles

Principle 1 - National authorities should establish a methodology for assessing the degree to which banks are systemically important in a domestic context.

Principle 5 - The impact of a D-SIB's failure on the domestic economy should, in principle, be assessed having regard to bank-specific factors (…). In addition, national authorities can consider other measures/data that would inform these bank-specific indicators within each of the above factors, such as size of the domestic economy.

We acknowledge the general approach of these principles to give national authorities room for discretion since the domestic systematically importance of an institution is – of course related to the domestic economy of a Member State. However, in order to guarantee an international level playing field as well as to avoid unduly administrative burden we ask for clear and harmonised requirements.

In addition, regarding principle 5, we see clear imbalances between Member States when different criteria are put in place. Measures may vary from jurisdiction to jurisdiction and will probably not be comparable due to different data and calibration of the assessment methodology, e.g. weighting of bank-specific factors.

Principle 4 - Home authorities should assess banks for their degree of systemic importance at the consolidated group level, while host authorities should assess subsidiaries in their jurisdictions, consolidated to include any of their own downstream subsidiaries, for their degree of systemic importance.

Principle 10 - National authorities should ensure that the application of the G-SIB and D-SIB frameworks is compatible within their jurisdictions. Home authorities should impose HLA requirements that they calibrate at the parent and/or consolidated level, and host authorities should impose HLA requirements that they calibrate at the sub-consolidated/ subsidiary level. The home authority should test that the parent bank is adequately capitalised on a standalone basis, including cases in which a D-SIB HLA requirement is applied at the subsidiary level. Home authorities should impose the higher of either the D-SIB or G-SIB HLA requirements in the case where the banking group has been identified as a D-SIB in the home jurisdiction as well as a G-SIB.

The idea behind Principle 4 seems reasonable. However, it would mean that different assessment methodologies might be applied to different entities by different authorities but all affecting the same group. This would preclude a harmonized oversight on consolidated level and establish a contrast to the basic idea of Basel II / III. In this context, we kindly ask for aligned definitions of terms with respect to consolidated groups as well as to financial groups as mentioned in no. 18 of the consultation paper.

While the assessment methodology of Principle 4 allows for different classifications within the same group, Principle 10 enables authorities to call for different HLA requirements on different levels of the group. This does not seem reasonable from an economic point of view and complicates operational procedures.

Furthermore, authorities might hold back the introduction of a domestic buffer just to avoid displeasing investors even if the host and home authorities coordinate and communicate as mentioned in Principle 11 and no. 42 of the consultation paper respectively.

Overall, different methodologies and HLA requirements on the different levels of a consolidated group should be avoided and rather harmonised to the extent possible.

Principle 6 - National authorities should undertake regular assessments of the systemic importance of the banks in their jurisdictions to ensure that their assessment reflects the current state of the relevant financial systems and that the interval between D-SIB assessments not be significantly longer than the G-SIB assessment frequency.

Continuity and alignment across all jurisdictions is necessary for planning reliability. So far, there is no indication that there is a lead time for the introduction of a domestic surcharge or how and when changes to an existing decision might take effect. This should be clearly specified and aligned e.g. with the provisions for the countercyclical buffer since the acquisition of additional eligible capital is nearly impossible on short notice.

Principle 8 - National authorities should document the methodologies and considerations used to calibrate the level of HLA that the framework would require for D-SIBs in their jurisdiction. The level of HLA calibrated for D-SIBs should be informed by quantitative methodologies (where available) and country-specific factors without prejudice to the use of supervisory judgment.

This principle allows authorities to set a domestic buffer to an "unlimited" amount that could exceed the buffer required for G-SIBs. As G-SIBs are obviously seen as a greater threat to the general financial stability this should be reflected by a limitation of the domestic buffer to a specific percentage. Otherwise, this would be a door opener for extensive capital requirements that might significantly differ in the individual jurisdictions and contradict a level playing field on international level.

Principle 12 - The HLA requirement should be met fully by Common Equity Tier 1 (CET1). In addition, national authorities should put in place any additional requirements and other policy measures they consider to be appropriate to address the risks posed by a D-SIB.

This principle might also mark a door opener for additional requirements that are not specified to any extent and unpredictable for institutions. Existing regulations, at least under Pillar II, already give adequate possibilities to authorities to tighten several provisions, if deemed necessary. Therefore, we ask for a specification what additional requirements might be possible under Principle 12, at least by means of examples, or to give up the principle entirely.

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We hope that our comments given are useful in the further process and are taken up going forward. We are happy to discuss any question related to the comments made.

Eschborn

1 August 2012

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