



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

Consultation Paper | CP10/17

Compliance with the EBA's Guidelines on disclosure: Composition of collateral for exposures to counterparty credit risk

June 2017



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Responses are requested by Monday 21 August 2017.

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1 Overview

1.1 In this consultation paper (CP), the Prudential Regulation Authority (PRA) sets out a proposal for the threshold for, and objective criteria to waive the requirement to disclose the template 'EU CCR5-B – Composition of collateral for exposures to CCR' (CCR5-B) of the European Banking Authority's (EBA's) Guidelines on disclosure requirements under Part Eight of Regulation (EU) No 575/2013¹ ('the EBA Guidelines'). This CP also sets out a proposal to remove Supervisory Statement (SS) 11/14 'CRD IV: compliance with the European Banking Authority's Guidelines on disclosure of encumbered and unencumbered assets'², to align with new EBA Regulatory Technical Standards (RTS).

1.2 The draft SS in the Appendix sets out the proposed waiver condition for the disclosure of CCR5-B, as well as the PRA's expectations relating to firms' monitoring of the waiver condition and discretion regarding disclosure. The SS is not intended to set the PRA's expectations on meeting disclosure obligations, other than those covered by the EBA Guidelines.

1.3 This CP is relevant to PRA-authorized institutions to which Part Eight of the Capital Requirements Regulation (CRR)³ applies. It is directly relevant to firms within the scope of the EBA Guidelines, which include global systemically important institutions (G-SIIs), other systemically important institutions (O-SIIs) and any other institution that has been opted into the scope of the EBA Guidelines on the basis of a supervisory decision.

Background

1.4 The EBA Guidelines aim to assist firms in implementing the Basel Committee on Banking Supervision's (BCBS) revised Pillar 3 Framework in a manner that is consistent with the CRR. The EBA Guidelines introduce more specific guidance on the formats of disclosure through the use of templates and tables, with the aim of enhancing the consistency and comparability of disclosures.

1.5 The counterparty credit risk disclosure requirements of the EBA Guidelines contain the template CCR5-B. CCR5-B requires firms in scope to disclose the composition of collateral received and posted, by collateral type, with additional granular disclosure required by derivative and structured finance transaction type. The level of disclosure granularity contained in CCR5-B has the potential to reveal the existence of central bank liquidity assistance where this is provided in the form of collateral swaps. To address this, Section 2.2.10 (c) of the EBA Guidelines allows national competent authorities to waive the requirement to disclose CCR5-B where publicly disclosed threshold and objective criteria are set.

1.6 This waiver is similar to that issued in the EBA's Guidelines on disclosure of encumbered and unencumbered assets.⁴ In December 2014, the PRA published SS11/14, which set a threshold and objective criteria for waiving the requirement to disclose Template B, which discloses collateral received by an institution, by broad categories of product type. These guidelines will be replaced by the new EBA RTS on disclosure of encumbered and unencumbered assets under Article 443 of the CRR (RTS). In March 2017, the EBA published the final draft of the RTS.⁵ This draft of the RTS includes a disclosure template which contains specific mechanisms to ensure that the level and evolution of

1 EBA/GL/2016/11, December, 2016: www.eba.europa.eu/regulation-and-policy/transparency-and-pillar-3/guidelines-on-disclosure-requirements-under-part-eight-of-regulation-eu-.

2 December 2014: www.bankofengland.co.uk/pr/Pages/publications/ss/2014/ss1114.aspx.

3 Regulation (EU) No 575/2013 (CRR).

4 EBA/GL/2014/03, June 2014 are available at www.eba.europa.eu/regulation-and-policy/transparency-and-pillar-3/guidelines-on-disclosure-of-encumbered-and-unencumbered-assets.

5 The final draft is available at www.eba.europa.eu/documents/10180/1771929/Final+draft+RTS+on+Encumbered+and+Unencumbered+Assets+%28EBA-RTS-2017-03%29.pdf/8b3f847a-4f7c-4ad9-a058-92f1209b0e3d.

assets encumbered to central banks and the amount of liquidity assistance provided by central banks cannot be detected. As a result, the option for national competent authorities to waive the disclosure of Template B is expected to be removed. When this happens SS11/14 will no longer be applicable and will need to be removed. The final draft of the RTS is awaiting European Commission endorsement.

Purpose

1.7 The purpose of the draft SS in the Appendix is to advance the PRA's general objective to promote the safety and soundness of firms that it regulates by seeking to reduce the risk that firms' compliance with the EBA Guidelines could enable the use, or non-use, of liquidity assistance to be deduced. This risk varies between firms due to differing business models, which may result in the detection of liquidity assistance through CCR5-B disclosure where firms do not receive or post sufficiently high levels of collateral in the form of debt securities to effectively conceal liquidity assistance.

1.8 The draft SS sets out the proposed condition for the PRA's waiver of the disclosure of CCR5-B permitted under the EBA Guidelines. The draft SS also sets out the PRA's expectations of the monitoring of this threshold as well as considerations for firms in determining the appropriate level of disclosure.

Implementation

1.9 The implementation date of the EBA Guidelines is 31 December 2017. The proposed waiver applies to disclosures from this date.

1.10 This policy has been designed in the context of the current UK and EU regulatory framework. The PRA will keep the policy under review to assess whether any changes would be required due to changes in the UK regulatory framework, including those arising once any new arrangements with the European Union take effect.

Responses and next steps

1.11 This consultation closes on Monday 21 August 2017. The PRA invites feedback on the proposals set out in this consultation. Please address any comments or enquiries to CP10_17@bankofengland.co.uk.

2 Proposals

2.1 The PRA presents four proposals:

- (i) the establishment of a quantitative threshold waiving disclosure of CCR5-B for firms when either collateral received or collateral posted is below the threshold;
- (ii) the PRA'S expectation on the measure to be used to monitor compliance with the threshold;
- (iii) the establishment of principles for firms to consider when determining whether to exercise discretions on disclosure, including the effectiveness of covert liquidity assistance and the benefits of the lag in disclosure of liquidity assistance; and
- (iv) the removal of SS11/14 when the RTS comes into force following the current European Commission endorsement process.

Waiver threshold

2.2 The PRA proposes to introduce an absolute monetary threshold, set at £100 billion of either the fair value of collateral received or collateral posted in the form of debt securities. Firms operating below either of these amounts will have the requirement to disclose CCR5-B waived. This threshold captures the risk that liquidity assistance may be detectable in both collateral received through securities lent by the Bank of England, and collateral posted where these securities are re-pledged by the firm.

2.3 The proposed threshold has been calibrated using submitted regulatory return data on collateral received and posted, as well as modelled liquidity assistance needs. The use of an absolute threshold provides a clear reference point to firms and users of firms' public disclosures on the waiver condition. It is more stable than a relative threshold, such as one that is set as a percentage of liabilities.

Monitoring the threshold

2.4 The disclosure of CCR5-B requires point-in-time data as at the disclosure reference date; however the waiver threshold is sensitive to volatility in collateral levels around the disclosure reference date. This makes it susceptible to either temporary changes in collateral activity from normal business operations or the receipt of liquidity assistance. The PRA therefore proposes that firms monitor the threshold based on the twelve month rolling mean using quarter-end data.

2.5 The PRA does not anticipate that firms will need to prepare additional data to monitor the threshold. The use of quarterly data drawn from existing CRR regulatory reporting would represent an appropriate data source from which to monitor the threshold. The incremental cost of monitoring compliance with the threshold is not expected to be significant.

Discretionary disclosure

2.6 Firms out of scope of the application of the EBA Guidelines may voluntarily choose to disclose the templates provided, including CCR5-B. In addition, the EBA Guidelines also leave the format of CCR5-B fully flexible to allow firms to adjust the presentation of the disclosure. In making these decisions, the PRA sets out principles it expects firms to consider regarding the impact on the effectiveness of covert liquidity assistance that voluntary disclosure may have as well as the benefits associated with a lag in the disclosure of liquidity assistance.

Removal of SS11/14

2.7 Following the adoption of the RTS, the EBA Guidelines on disclosure of encumbered and unencumbered assets, and the disclosure waiver issued by the PRA in relation to Template B of these guidelines, will cease to apply to firms. The PRA therefore proposes to remove SS11/14 when the RTS comes into force.

3 The PRA's statutory obligations

Compatibility with the PRA's objectives

3.1 The PRA considers that the proposals set out in the draft SS are compatible with the PRA's statutory objectives under the Financial Services and Markets Act 2000 (FSMA).¹ The proposals would advance the PRA's general objective to promote the safety and soundness of firms by

¹ Sections 2B and 2C.

ensuring that compliance with the EBA Guidelines does not put the effectiveness of liquidity support operations for firms receiving liquidity assistance at risk. The proposed waiver would contribute to the effectiveness of the assistance by keeping the assistance covert and in turn improve the confidence in financial stability. However, the limited disclosure under the waiver may lower the transparency of firms' funding sources and, consequently, reduce the effectiveness of market discipline to some extents. The PRA expects that the benefits of enhanced financial stability will exceed the cost of lowered transparency.

3.2 When determining the general policy and principles by reference to which it performs particular functions, the PRA is legally required, so far as is reasonably possible, to facilitate effective competition in the markets for services provided by PRA-authorized persons in carrying out regulated activities. In supporting the general objective of promoting the safety and soundness of the firms that the PRA regulates, the proposals in the draft SS are aligned with the secondary competition objective. The PRA considers that the potential threat that disclosure of CRR5-B poses to a firm's safety and soundness may depend on the firm's business model. The proposed waiver would ensure diversity of business models within the industry by mitigating possible adverse impact on some smaller firms with business models requiring collateral. The differentiated treatment may also lower a barrier to entry and in turn facilitate the effective competition in the sector. Therefore, the PRA does not expect any material adverse effects on competition from this differentiated treatment.

Regulatory principles

3.3 In discharging its general functions, the PRA must have regard to the regulatory principles as set out in FSMA.¹ The PRA considers that the regulatory principles of most relevance to the proposals are:

- the need to use resources in the most efficient way. The PRA believes that the proposals in the statement are compatible with this principle and does not expect the proposals in this statement to give rise to significant costs for firms. The proposed threshold does not impose additional requirements and the incremental cost of monitoring compliance with the threshold is not expected to be significant;
- the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction. The consultation seeks to strike a balance between transparency and financial stability; and
- the principle that the PRA should exercise its functions as transparently as possible. The SS sets a clear, publicly disclosed threshold under which the PRA proposes to waive disclosure of the template.

HM Treasury recommendation letter

3.4 HM Treasury made recommendations to the Prudential Regulation Committee ('the Committee')² about aspects of the Government's economic policy to which the Committee should have regard when considering how to advance the objectives of the PRA and apply the regulatory principles set out in FSMA.

¹ Sections 2H and 3B.

² March 2017: www.bankofengland.co.uk/pr/Documents/chancellorletter080317.pdf.

3.5 The PRA has considered the impact of the proposals on the Government's economic policy objective to achieve strong, sustainable and balanced growth, and that price and financial stability are prerequisites to achieving this objective. The PRA considers that the proposals in the draft SS, which are designed to promote the safety and soundness of firms, supports financial stability prerequisite of the Government's economic policy objective.

3.6 The PRA has considered the implications of the proposals in the draft SS on the aspects of the Government's economic policy to which the Committee should have regard. The competition aspect is considered to be most relevant. The PRA considers that the proposals are consistent its secondary competition objective, as well as the Government's economic policy consideration to see more competition in retail banking. As set out in paragraph 3.2, the proposals in the draft SS are not expected to adversely impact competition.

Impact on mutuals

3.7 When making general policy, the PRA considers whether, in its opinion, the impact of the draft SS on mutuals will be significantly different from the impact on other firms. It is not expected that the effect of the draft SS on mutuals will be different to that of other firms.

Equality and diversity

3.8 The PRA may not act in an unlawfully discriminatory manner. It is required, under the Equality Act 2010, to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies. The PRA does not consider that the proposals in the draft SS give rise to any equality and diversity issues.

Appendix: Draft Supervisory Statement 'Compliance with the EBA's Guidelines on disclosure: Composition of collateral for exposures to counterparty credit risk'

1 Introduction

1.1 In this supervisory statement (SS), the Prudential Regulation Authority (PRA) sets out a waiver for the requirement to disclose template 'EU CCR5-B – Composition of Collateral for exposures to CCR' (CCR5-B) in the European Banking Authority's (EBA's) disclosure requirements under Part Eight of Regulation (EU) No 575/2013¹ (the EBA Guidelines)². It also sets out the PRA's expectations in respect of certain aspects of firms' compliance with the waiver.

1.2 The purpose of the SS is to help the PRA meet its primary objective of promoting the safety and soundness of firms. The ability of central banks to undertake liquidity assistance effectively, including the orderly disclosure of that assistance, is regarded as critical to financial stability. To address financial stability concerns, the EBA Guidelines allow competent authorities to waive the requirement to disclose template CCR5-B. This SS seeks to reduce the risk that firms' compliance with the EBA Guidelines could enable the use, or non-use, of liquidity assistance to be deduced.

1.3 This SS is relevant to firms to which Part Eight of the Capital Requirements Regulation (CRR)³ applies. It is directly relevant to firms within the scope of application of the EBA Guidelines which is limited to global systemically important institutions (G-SIIs), other systemically important institutions (O-SIIs),⁴ and to any other institution opted into these guidelines on the basis of a supervisory decision.

2 Waiver of disclosure of template CCR5-B of the EBA Guidelines

1.4 Section 2.2.10 (c) of the EBA Guidelines allows competent authorities to waive the requirement to disclose template CCR5-B if disclosure of this template 'would allow, now or in the future, for the recognition of liquidity assistance provided by central banks via collateral swaps'.

1.5 The PRA considers that such disclosure could have this result for some firms. The PRA therefore waives the requirement to disclose template CCR5-B for firms where the fair value of collateral received or the fair value of collateral posted in the form of debt securities has not exceeded £100 billion (as reported by the firm in accordance with CRR Article 100).

1.6 This waiver threshold is based on the twelve month rolling arithmetic mean of the fair value of collateral received or posted by the firm in the form of debt securities. The PRA expects firms to calculate this using quarterly data, covering the twelve months immediately preceding the disclosure reference date. The quarterly data used should be calculated in a manner that is consistent with the data reported in accordance with CRR Article 100.

1 EBA/GL/2016/11, December, 2016: www.eba.europa.eu/regulation-and-policy/transparency-and-pillar-3/guidelines-on-disclosure-requirements-under-part-eight-of-regulation-eu-.

2 The Guidelines on disclosure requirements under Part Eight of Regulation (EU) No 575/2013 (published on 16 December 2016) are available at www.eba.europa.eu/regulation-and-policy/transparency-and-pillar-3/guidelines-on-disclosure-requirements-under-part-eight-of-regulation-eu-.

3 Regulation (EU) No 575/2013 (CRR).

4 The scope of application of the EBA Guidelines for O-SIIs is subject to paragraph 8 of the EBA guidelines.

1.7 If a firm is satisfied it meets the threshold set out in paragraph 2.2, at the EBA Guidelines disclosure reference date, it does not need to apply for the waiver.

3 The use of discretion available to firms in complying with the EBA Guidelines

1.8 In the context of complying with the EBA Guidelines, firms have various discretions. These include determining whether to apply all or part of the guidelines (for firms outside the scope of application) and the granularity of disclosure. The PRA expects firms to exercise these discretions in a manner that is consistent with the PRA's primary objective of promoting the safety and soundness of firms, by seeking to reduce the risk that the disclosure of CRR5-B reveals information about the use or non-use of liquidity assistance provided by the Bank of England.

Disclosure considerations

1.9 In determining whether to voluntarily disclose CRR5-B as well as the level of granularity with which to present the template, the PRA expects firms to consider the principles underlying the following reports regarding the effectiveness of covert liquidity assistance and the benefit associated with a disclosure lag:

- The European Systemic Risk Board (ESRB) Recommendation ESRB/2012/2 of 20 December 2012¹ 'to ensure that the level and evolution of assets encumbered to central banks, as well as the amount of liquidity assistance given by central banks, cannot be detected'.
- Recommendation 23 of the Plenderleith report² that 'to the extent possible the standard requirements for disclosure do not, in a crisis, counterproductively compromise the wider public interest in maintaining financial stability'.
- The Bank of England has noted in the Quarterly Bulletin³ that "in relation to liquidity support operations, the conflict between transparency and the financial stability benefit of keeping that assistance covert is only temporary. With a sufficient lag, disclosure that a firm had received temporary liquidity support from the Bank should not undermine confidence in that firm or the financial system as a whole".
- The Bank of England highlighted in its Sterling Monetary Framework Annual Report 2013–14⁴ that "The Bank sought to reduce the financial stability risks posed by premature disclosure of Discount Window Facility drawings by extending its own disclosure lag and ensuring that firms have the capacity to turn over their liquid assets in repo markets regularly. The Bank continues to argue the case for ensuring that new national and international liquidity disclosure regimes do not increase that risk".

1 Recommendation of the European Systemic Risk Board of 20 December 2012 on funding of credit institutions (ESRB/2012/2) is available at www.esrb.europa.eu/pub/recommendations/html/index.en.html.

2 The Review of the Bank of England's Provision of Emergency Liquidity Assistance in 2008–09 report available at www.bankofengland.co.uk/publications/Documents/news/2012/cr1plenderleith.pdf.

3 Bank of England Quarterly Bulletin, Vol. 54, No. 3, 'Changes to the Bank's weekly reporting regime', available at www.bankofengland.co.uk/publications/Documents/quarterlybulletin/2014/qb14q309.pdf.

4 Recommendation of the European Systemic Risk Board of 20 December 2012 on funding of credit institutions. (ESRB/2012/2) is available at www.esrb.europa.eu/pub/recommendations/html/index.en.html.