A. Introduction

Deutsche Börse Group (DBG) welcomes the opportunity to comment on the consultation paper regarding the "adequacy of loss-absorbing capacity of global systemically important banks in resolution".

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 with regulated Financial Market Infrastructure providers.

Among others, Clearstream Banking S.A., Luxembourg and Clearstream Banking AG, Frankfurt/Main, who act as (I)CSD[1] as well as Eurex Clearing AG, Frankfurt/Main as the leading European Central Counterparty (CCP) are classified as credit institutions under EU law. Currently no entity or sub-group of DBG is classified as global systemically important bank (G-SIB) and as such, the FSB proposal is not directly relevant to the group and its legal entities.

However, as the EU Banking Recovery and Resolution Directive (BRRD) has introduced with MREL a similar concept for all credit institutions in the European Union the consultation and the final FSB approach have substantial impact on the future regulation and capital requirements of our group's companies.

In this context, it needs to be noted that both CSDs and CCPs are regulated primarily under the rules for financial market infrastructures such as the CPSS-IOSCO principles for financial market infrastructures[2] and EMIR[3] as well as (in the future) the CSD-Regulation[4] in the EU. The banking services both kinds of FMIs are offering (as in the case of our group's entities) are only ancillary to their functions as intermediaries to stabilise the financial markets. As such, cash positions resulting from its operations dominate the balance sheet and these are mainly driven by short-term cash liabilities. These are deposited cash collaterals (margins), cash

[1] (International) Central Securities Depository;

[2] CPSS-IOSCO No 101 – Principles for financial market infrastructures, published in April 2012;

[3] Regulation (EU) 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (known as EMIR - European Market Infrastructure Regulation), published on 4 July 2012;

[4] Regulation (EU) No 909/2014 of the European Parliament and of the Council, published on 23 July 2014.

contributions to the default funds, other cash deposits out of the CCP business and cash deposits for settlement or custody purposes respectively. All client depositions are in principle short-term. The only mid-term liabilities may be issued commercial papers which might be issued to improve short to medium-term liquidity. Such commercial papers are in general not long-term.

The balance sheets of our group entities are highly volatile depending on the cash amount placed by clients / clearing members with our group entities whereas the capital requirements due to investments with very low level of credit and market risk are fluctuating only marginally.

Capital requirements for CCPs and CSDs in question are mainly driven by capital charges for operational risk or additional capital charges for business risk or winding down / restructuring (see EMIR or CSD-Regulation). In line with CPSS-IOSCO principles for financial market infrastructures and relevant EU rules the potential credit and market risk is very limited and in general even the ancillary "banking" activities of CSDs (but in general by a matter of fact also CCPs) are restricted to short-term business in combination with their business model and based on the respective regulations. CCPs and CSDs are forced to maintain their liquidity position with short-term maturities.

B. Management Summary

(1) Although the FSB proposal is targeting to banks only and more precisely to - G-SIBs, we do want to point out that **the application of any similar concept like the proposed TLAC to FMIs like CCPs or CSDs either on their own or due to the fact of offering banking services ancillary to their main activity seems not to be appropriate**. For CCPs the concept does not take into account that the default waterfall already is a mechanism to take care of or better even avoid counterparties failure and the need to cover losses of the CCP (and its clearing member and their clients). To cover this multiple lines of defence with an additional safeguard like the proposed TLAC will counteract the whole function of a CCP. This nevertheless does not prohibit the setting of adequate levels of capital for CCPs which currently include already charges to allow for orderly winding down and restructuring. The structure of the TLAC proposal, however, does not fit to CCP business at all. Similar arguments are true for CSDs where cash deposits are held in order to fulfil settlement obligations and to secure settlement finality. For CSDs as well dedicated rules to cover costs of restructuring or winding down in the capital requirements are by far the better way than the proposed TLAC framework. The FSB should consider this point as a matter of setting its requirement both in finalising the current TLAC framework for banks which serves as a blue print for national rules to be applied to a wider group of entities with banking activities (which may include FMIs) as well as for setting similar requirements in the future tailored on FMIs.

(2) The FSB proposal of TLAC in our reading to some extent lacks clarity in a variety of points which lead to the need for educated guessing to some extent. The most important point in this regard is the point in time when the TLAC requirements are to be calculated and maintained. The consultation paper refers to "bank **IN** resolution" whereas we understand the requirements are foreseen for banks in a going-concern situation in order to allow for orderly resolution in case needed. As such, it needs to be recognised that banks in resolution will most likely need funds for recapitalisation **during resolution** which should not form part of capital during going-concern. We clearly understand that the concept of eligible liabilities which may be bailed-in is taking care of this aspect. However, dedicated business models like ours or

even the business model of small retail banks taking mainly insured (not bail-in able) deposits are not designed to have such eligible liabilities. As such, the pure TLAC requirement will increase the capital requirements in a going-concern situation while reducing the opportunities for recapitalisation in resolution (shareholders can only spend the money once!). Consequently, we feel that a generic level of TLAC in a range of 16% - 20% of total risk exposures plus the total buffer requirements and any potential pillar 2 adjustment (or at least twice the leverage ratio requirement in case it is higher) **seems to be too excessive** and is in any case **not taking the business models into account**.

(3) **Although the FSB proposal is limited to be applied to G-SIBs, this limitation will not hold in practise**. As there are O-SIBs / D-SIBs and international active banks which may become G-SIBs in the future, the likelihood of application to all banks being directly in scope of the Basel framework is regarded as very high (not to talk about the more than likely spill over to national rules for all banks, see below). Furthermore, as the G-SIB status is granted on a group level, already small and medium sized banks as well as specialised banks with a dedicated (short-term or protected) financing strategy being part of the group of that G-SIB may be impacted although not being the target of the general approach of TLAC (securing systemically important functions / parts of a bank to continue operations in case of a near to default situation of the bank). In addition parts of the proposal with regards to securing sufficient eligible liabilities and avoiding adverse effects or imbalanced financing structures are not adequate for such institutions as the strategies of such institutions is not performed in order to avoid bail-in but their current business models do not foresee or require bail-in able liabilities. The **TLAC concept in that regard is not business model neutral and is imposing potential changes of the business model.**

As the FSB / BCBS rules are often used (on purpose) as a blue print for national banking regulations, the TLAC concept will rapidly be used in various jurisdictions to serve for the overall banking community although we regret it clearly is not designed for this. In addition, in case the approach is not properly reflecting proportionality or specific business models, the national concepts may be even more stringent and demanding for all banks than the

TLAC concept designed for G-SIBs. The current EBA proposal for MREL for example in our understanding might lead to (far) higher MREL requirements for systemically important D-SIBs with e.g. very important infrastructure components (like our group companies) than the current TLAC proposal of FSB.

Thus, the FSB proposal should put more emphasis on the way the requirements are broken down (if at all) to non-systemically important entities within a G-SIB but also should clearly express the need of proportionality in case applied to non G-SIBs on a national level to avoid undue burden on non G-SIBs. In general it should indicate that the requirements for non G-SIBs should, to the extent possible, not be systemically higher or even not be on the same level as it is the case for G-SIBs. As such – and not excluding individual treatment for dedicated cases – the G-SIB framework for TLAC should be the upper limit for non G-SIBs (see our proposals to Question 1 and 4).

(4) For deriving the necessary TLAC level we clearly support a simple approach to calculate. Therefore we agree to the approach in setting adequate levels of capital and eligible liabilities in relation to the total risk exposures and add the capital buffer and any possible pillar 2 adjustments on top (but only once, not twice as proposed by EBA under MREL). However, as the total risk exposures consist of capital requirements for credit, market, operational and other risk, it is the **total risk exposures** and not only the **risk weighted assets** that should be taken into account as the basis for the TLAC requirements (see our response to Question 1).

(5) Having said this, the **point in time to determine the TLAC requirements** is not defined in the proposal and we interpret that this is a "once in a while" approach, i.e. this is set by the resolution authority most likely in the course of setting the resolution plan or reviewing the G-SIB status. In fact, this would lead to setting the TLAC requirements most likely more or less on an annual basis. We disagree to this approach as the underlying risk parameters are fluctuating daily and like the Basel III capital requirements the TLAC requirements and its fulfilment should be secured on an ongoing (dynamic) basis taken current (risk related) data into account in the same manner as the Basel III framework does. It needs to be noted that in the course of any annual

review data will be taken which already dates back to the last reporting period and its analysis also takes time. Thus, the fixing of the requirements is always supposed to run behind the actual situation. Consequently, **the TLAC requirements should be set as a percentage of the total risk exposures at least once a year but fulfilment should be secured on an ongoing basis taking that ratio into account.** As this will require in addition a certain amount of excess coverage, this should be taken into account when determining the final range of the TLAC requirements (see our criticism above on the proposed level of TLAC).

(6) Moreover, the idea of **linking the TLAC requirements with the consolidated balance sheet** in order to determine the basis for dynamic limit is not acceptable as well. The risk / capital requirements are not related to the total liabilities (this is leading in principle to argue that the Basel III leverage ratio is the one and only correct indicator of risk) and in that regard we already have raised our general concern regarding a (non-differentiated) leverage ratio as a Pillar I limit several times[5]. Especially in our business where the balance sheet (i.e. the total liabilities) fluctuates heavily based on client behaviour and decision while the total risk exposures are more or less not impacted by the volatility of the balance sheet the targeted nexus is more than inappropriate. Therefore it **should be removed**.

(7) In reflecting the limited use – if at all – of the leverage ratio in general, we clearly do not see a benefit from introducing twice the potential future leverage ratio (set up as a backstop regime only according to the Basel III framework) as a binding requirement for TLAC purposes. As we oppose to the introduction of a (undifferentiated) leverage ratio as binding minimum requirement in general, **we also oppose to the usage of the leverage ratio for TLAC purposes as a standard**. The leverage ratio could be used when calibrating the requirements with a pillar 2 adjustment but should not be put in place as a minimum requirement by default (see our response to Question 1).

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5 See inter alia DBG responses to:

- BCBS No 253 Discussion paper "The regulatory framework: balancing risk sensitivity, simplicity and comparability' published in July 2013;
- BCBS No 251 'Revised Basel III leverage ratio framework and disclosure requirements', published in June 2013.

DBG has also responded in a similar way to various consultations on EU level.

(8) In order to secure appropriate protection to avoid tax payers' involvements in ensuring continuity of critical / systemically important functions / parts of a bank in resolution the target of the proposal is to involve all relevant parties to contribute to the re-capitalisation. However, based on business profile, all deposits of banks may be either insured or necessary to secure the proper function of the financial market / industry (i.e. would disrupt provision critical functions for the financial markets, e.g. settlement finality) like the cash placed with Financial Market Infrastructures (CCPs and CSDs; see above). **Consequently, we disagree to any intention to introduce a minimum level of eligible liabilities.** Doing so would require business models like ours or the ones of a huge variety of retail banks to issue long-term debt which is not needed for the ongoing operations and which either lead to maturity mismatches or the need for long-term investments. In any case, **the risk profile and business model are forced to be changed with a clear tendency to increase risks** (and the underlying capital charge). This cannot be the intention of the FSB (It needs to be noted that already the fact of setting TLAC requirements beyond current Basel III capital levels will c.p. lead to the necessity to "invest" this additional funds which most likely will lead to higher risks and in turn to higher TLAC requirements).

(9) **In result**, we clearly believe that **the aim** to have an appropriate level of involvement of all intended parties in the resolution of a failing bank **will be reached also by not linking the TLAC requirements to total liabilities** (but dynamically to the total risk exposures) **and not introducing a generic threshold for eligible liabilities**. If deemed useful, the resolution authority may receive the right to set such a threshold if that might be necessary. However, it should not be a generic rule. It needs to be noted that in general equity is more expensive than debt and as such banks will tend to use eligible liabilities wherever possible and banks not being able to raise such funds be worse off. Possibly this should also be reflected when setting the level of TLAC requirements outside G-SIB groups.

(10) The need to prefund TLAC requirements is not taking into account **contingent but contractually fixed recapitalisation commitments**. Based on the national legal framework and the ownership structure a variety of such commitments exist like:

- Loss absorption agreements;
- Partially paid in shares with obligation to fund in full on demand;
- Additional funding obligations (in german: 'Nachschussverpflichtung'), e.g. for co-operatives;
- Parental guarantees;
- etc.

While the fulfilment of the contractual commitments / obligation in a crisis situation when a bank is close to fail is not assured despite legal binding agreements, it nevertheless may well occur and in principle may be part of a recovery or resolution plan **for recapitalisation purposes**. Consequently, **it should be taken into account** – at least to some extent and possible based on some discretion of the resolution authority – for TLAC purposes. As such, we could think of using any limited commitment to be included in the TLAC available (like eligible liabilities) and include unlimited commitments (e.g. loss absorption agreements) as a measure to reduce the TLAC requirements (e.g. to reduce the proposed 16% – 20% target). If deemed necessary to capture the uncertainty of the fulfilment of such commitments, adequate caps (e.g. a certain percentage of the limited commitments or a maximum percentage point level of the requirements reduction) could be set (see our response to Question 1).

(11) Finally, we want to point out that **current initiatives on the level of the BCBS** with the aim to adjust the standard methods to calculate the capital charge for operational and credit risk as well as the review of the market risk treatment **most likely will lead to (substantial) increases of the total risk exposures** and consequently **will gear up the proposed higher requirements resulting** from the current FSB proposal on TLAC. Having in mind our dedicated business model, all this will have to be covered by equity. In combination with an assumed unique leverage ratio of 3% to total assets and off-balance sheet items this will require a level of equity for financial market infrastructures (but also to normal banks) which will **make the business less and less economical attractive**. In turn, **it will reduce the ability to raise the necessary funding**, may lead to **reductions in services** (or for ordinary banks the reduction of provision of credit) and possibly will

make **the fulfilment of the requirements practically impossible**. Meeting all regulatory requirements at the same time is already very demanding and challenging. We see the probability to fulfil the requirements and to reach the target of TLAC to stabilise the financial system as being impaired by TLAC itself if the requirements are not proper calibrated. Thus, there will be negative impacts on financial markets and the fulfilment of G20 targets for well-functioning financial markets could be endangered.

Beside our general critics on the proposed approach, we would like to comment in detail in the following questions Section.

C. Question Section

Question 1: Is a common Pillar 1 Minimum TLAC requirement that is set within the range of 16–20% of risk-weighted assets (RWAs), and at a minimum twice the Basel III leverage requirement, adequate in the light of experiences from past failures to support the recapitalisation and resolution objectives set out in this proposal? What other factors should be taken into account in calibrating the Pillar 1 Minimum TLAC requirement?

We acknowledge the intention of the FSB to achieve an international level playing field of capital requirements to avoid bank resolutions and the involvement of tax payer's money to ensure the continued supply of critical functions for the financial markets. Nevertheless, the Pillar 1 Minimum TLAC requirement defined by the FSB principals is way too high compared to the current capital regimes.

As the Basel III capital requirements include mainly capital charges for credit, market and operational risk, in our mind the basis for TLAC requirements should be "total risk exposures" and not risk weighted assets. Capital requirements for banks vary between the different classes of covered risk depending on business models, risk appetite and other factors. Focussing on risk weighted assets only will favour proprietary traders and banks with large market risks compared to others. Moreover, the treatment of operational risk also should be appropriately reflected. As such, possibly the broader basis for calculating TLAC requirements may be a first indication to lower the required TLAC-levels.

The leverage ratio in our mind is only intended to be a backstop regime. We are continuous very sceptical to that concept and especially disagree to a unique and undifferentiated setting of pillar 1 minimum level which does not take into account different business models. Moreover, we continue to question the adequacy of setting any minimum level of leverage ratio as a pillar 1 measure at all. Having said this, the inclusion of the leverage ratio as a basis for TLAC is even more odd and therefore should not be considered further (see B. 7).

Beside our criticism regarding the magnitude of TLAC requirements we are also missing guidance for the calibration of additional capital requirements in order to avoid resolution. This potentially should fit not only for G-SIBs but also for other institutions in case of national implementation. This includes with regards to the G-SIBs a generic rule like the one for setting the Basel III buffer levels for G-SIBs also

for the calibration between 16% and 20% TLAC level based on the FSB-proposed levels. Moreover and in order to indicate a potential algorithm to use the TLAC approach on a national (but also a general BCBS level) and limit it for non-G-SIBs to the maximum entry level for G-SIBs as a standard, a more rule based approach on fixing and scaling the level of TLAC including an approach for non-G-SIBs seems to be more favourable. When analysing the current EBA proposal on the determination of the MREL requirement, we clearly see the disparity of the approaches and the potential for far higher requirements on national level. As such, we in general favour the underlying approach of the FSB to fix a (reasonable) level of TLAC over and above (or as the case on national level may be at) the minimum Basel III level and to add for solvency purposes any Basel III buffer requirement and pillar 2 add on only once to that requirement.

We suggest to determine the TLAC requirements with a floor of 8% as the Basel III minimum capital requirements and to add a first multiplier of α in a range of 1 to x (x being based on the FSB proposal 2) plus a second multiplier β in a range of 1 and y (y being 1.25 based on the FSB proposal). As such the TLAC requirement based on the proposed FSB-levels would be:

8% * α (between 1 and x) * β (between 1 and y)

whereby x is set to 2 for G-SIBs and y is set to 1 for non-.G-SIBs and as such the result would be 16% to 20% for G-SIBs and 8% – 16% for non G-SIBs.

In principle α reflects the percentage of risk which remains after resolution. An α of 1 is estimating that the bank may be liquidated completely and not resolved whereas an α of 2 is representing a full resolution as a matter of estimate. For G-SIBs, full resolution is assumed as a standard (adjustment via pillar 2 possible).

The calibration of β in this case should be done by brackets in a similar manner as for the G-SIB buffer under Basel III if needed with some room for discretion. In this context, the β coefficient is indicating the possible additional funding to resolve the very complex structures a G-SIB group may have which is supposed not to be the case for a non-G-SIB. However, as the Basel III capital buffers come on top and any (adjusted) additional requirement under pillar 2 to the discretion of the relevant authority may be added, we feel this would be an appropriate and scalable approach the FSB should consider (see our further adjustment proposals below).

Afterwards contingent funding agreements like loss-absorption contracts, parental guarantees and additional funding obligations as well obligations to pay in further amount to partially paid in shares have to be considered in an appropriate manner calibrating the additional capital requirement (under TLAC). Therefore resolution authorities should be in the position to take such agreements into account (even if resolution authorities would determine a haircut / limit for each of these like a maximum percentage for limited commitments), e.g. as part of their pillar 2 adjustments. Thus, the TLAC could fall below 16% of the total risk exposures. Any unlimited contractual commitment (e.g. loss-absorption agreement) should be used to reduce the necessary level of needed TLAC while limited contractual commitments (like limited parental guarantees) could be taken into account like eligible liabilities and increase the amount of available coverage.

On top the Basel III buffers and the proposed potential adjustment by pillar 2 have to be added. Following the FSB proposal the backstop of twice the leverage ratio could be added by the proposed pillar 2 adjustment only. Our general criticism regarding the leverage ratio, please see above.

In case, the FSB continues to use the leverage ratio requirement – if any – as a second basis for the minimum TLAC requirement (higher of) also α should be used to scale this as follows:

LR requirement * α (between 1 and x)

whereby x is set to 2 for G-SIBs but should be allowed for lower values for non G-SIBs.

Question 2: Does the initial exclusion of G-SIBs headquartered in emerging market economies (EMEs) from meeting the Common Pillar 1 Minimum TLAC requirement appropriately reflect the different market conditions affecting those G-SIBs? Under what circumstances should the exclusion end?

We cannot see any reason why G-SIBs headquartered in emerging market economies should not be included in the TLAC requirements. As they are classified as G-SIBs, they must be globally active and granting them a complete waiver would impair the global level playing field. In case deemed necessary, the calibration of the concrete TLAC requirements may take into account a lower weight for exposures in

such countries. However, the mere fact of the location of the headquarter should not be taken into account as a standard criterion. Additionally it could encourage G-SIBs to relocate only the headquarter to such countries in order to receive the advantages of lower capital requirements.

Question 3: What factors or considerations should be taken into account in calibrating any additional Pillar 2 requirements?

Pillar 2 capital requirements should consider any adjustment to the result of the pure formal driven calculation of the pillar 1 requirement. As such, adjustments may be additions but also reductions.

In our mind the following aspects inter alia could be factored in:

- Special business models (like FMIs);
- General refinancing structure depending on the business model;
- Contingent contractual commitments for funding;
- leverage ratio (as not deemed appropriate for pillar 1);
- Bail-in able liabilities being not eligible due to shorter maturities than one year.

Question 4: Should TLAC generally be distributed from the resolution entity to material subsidiaries in proportion to the size and risk of their exposures? Is this an appropriate means of supporting resolution under different resolution strategies? Which subsidiaries should be regarded as material for this purpose?

The inclusion of material subsidiaries makes in general sense. However, we rather propose to calculate the TLAC requirement on the level of regulated entities differentiating the requirements based on the systemic importance, business model etc. of any given entity. Material subsidiaries may get an additional charge to reflect the overall G-SIB status of the group via pillar 2. Overall, the total consolidated TLAC requirement of all single legal entities should not be higher than the consolidated TLAC requirement on the G-SIB group level.

When determining the TLAC requirements on any regulated banking entity and adding up (consolidating), the question of "material subsidiary" does not arise.

In case our approach is not followed, any threshold should be defined based on the total risk exposures instead of risk weighted assets.

Question 5: To what extent would pre-positioning of internal TLAC in material subsidiaries support the confidence of both home and host authorities that a G-SIB can be resolved in an orderly manner and diminish incentives to ring-fence assets? Is a requirement to preposition internal TLAC in the range of 75-90% of the TLAC requirement that would be applicable on a stand-alone basis, as set out in the term sheet (Section 22), appropriate to satisfy the goals of the proposal and ensure that TLAC is readily and reliably available to recapitalize subsidiaries as necessary to support resolution? Can this pre-positioning be achieved through other means such as collateralized guarantees?

As stated in our reply to answer 4, we are rather in favour to calculate the TLAC requirements on an entity by entity level and adjust overshooting requirements on a consolidated level via pillar 2. As such, we would abstain from the approach of internal TLAC.

Question 6: Are the eligibility criteria for TLAC as set out in the term sheet (Sections 8-17) appropriate?

We do not agree to the inclusion of such funds as defined in Section 8 of the term sheet. Pre-funded funds of the banking industry to support / recapitalise a failing bank in resolution should not count as a safeguard for the failing bank in advance. The bank should have sufficient levels of TLAC to avoid resolution and to execute conversion of eligible liabilities on its own rights towards its creditors.

Contrary, clearly contractually committed contingency funding arrangements (like parental guarantees) should count for TLAC purposes at least to a reasonable portion and possibly based on the discretion of the authorities although they are not prefunded.

The TLAC requirements are put to the banks and not to the industry. In following the FSB proposal to Section 8, the level playing field envisaged in the Basel III framework by requesting additional G-SIBs buffer to count for potential state aid would be off-set by financial commitment even paid by the other banks which suffered from the

uneven level playing field in the past. This makes the cook pay the bill. Rather than including any "resolution funds" contingent commitment the level of TLAC should be adjusted to take into account recapitalisation opportunities (not limited to "resolution funds").

Having said this, Section 8 does not really define what instruments are eligible. We cannot see any sense in the content of Section 8. We therefore propose to remove it.

Contrary, Section 9 labelled "issuer" contains a variety of elements defining "external TLAC" beyond the question of issuer. We clearly want to point out that deposits not being insured are in principle not "issued" but should be included in case not dedicatedly excluded via Section 12.

To our reading, Section 9 is not clear enough in explaining that of course all capital instruments being recognised under the Basel III framework as own funds are also recognised for TLAC purposes and that additional elements not eligible as Basel III own funds may be added under the conditions specified in TLAC. Section 9 therefore lacks substantially clarity. Having said this, we agree to the principles made that on top of regulatory own funds only such liabilities are eligible which are liabilities in the books of resolution entities. However, it needs to be clear that funds raised within a group by a dedicated issuance vehicle and then passed on via loan constructions to the resolution entities may well be eligible. Conditions may be further specified by FSB or the respective authorities. These may include that the issued debt instrument of the vehicle already provides in its issuance conditions clear hints that any bail-in loss for the loans granted to banking group companies may be passed on to the holders of the debt instruments.

Question 7: What considerations bear on the desirability of an expectation that a certain proportion of the common minimum Pillar 1 TLAC requirement consists of (i) tier 1 and tier 2 capital instruments in the form of debt plus (ii) other eligible TLAC that is not regulatory capital?

We can not agree to a certain proportion of common minimum Pillar 1 TLAC requirement being not regulatory capital. As explained in the introduction and in point 8 of chapter B of this position paper, there are multiple institutions including resolution entities being part of G-SIBs which by nature of their business have little or no such

eligible liabilities. As such, a generic percentage is inacceptable and any such limits may only be imposed by the relevant authority as a pillar 2 measure.

Question 8: Are the conditions specified in the term sheet (Section 8) under which pre-funded commitments from industry-financed resolution funds to provide resolution funding contribute to TLAC appropriate?

As stated above, the label of Section 8 is misleading and we disagree to the proposed approach (see our response to Question 6).

Question 9: Is the manner in which subordination of TLAC-eligible instruments to excluded liabilities is defined in the term sheet (Section 13) sufficient to provide certainty regarding the order in which creditors bear loss in resolution, and to avoid potentially successful legal challenges or compensation claims? Where there is scope for liabilities which are not subordinated to excluded liabilities to qualify for TLAC, are the transparency and disclosure requirements set out in Section 13 and 24 sufficient to ensure that holders of these instruments would be aware of the risk that they will absorb losses prior to other equally ranking but excluded liabilities? If not, what additional requirements should be adopted?

We have no specific comment to Section 13 and do not disagree to disclose the available TLAC as requested by Section 24. However, in order to avoid negative market impact, we tent to disagree to enhance the disclosure requirements also to the TLAC requirements and any information on the fulfilment of those requirements.

If the TLAC requirements with all their parts is not met investors would reduce their investments to the affected institution. Thus, disclosures and detailed information about the range of fulfilment of the TLAC requirements are intensifying the entry into resolution.

Question 10: Do you agree that the TLAC requirement for G-SIBs should be integrated with Basel III such that the minimum TLAC requirement should be met first, and only after TLAC is met should any surplus common equity tier 1 (CET1) be available to meet the Basel III buffers?

While we agree to the approach as such, we nevertheless ask for clear formulation. Moreover, the integration in the Basel III framework supports our argumentation that it most likely will spill over to other banks than G-SIBs. In this regards, we want to stress once more the need to include calibrations also for the use of non G-SIBs in case deemed appropriate on a national level.

In order to be more precise, it needs to be clearly expressed that the sequence of usage of available funds is as follows:

1. All regulatory capital in line with the Basel III requirements to fulfil first the Basel III minimum requirement of 8% of the total risk exposures and the underlying thresholds of 4.5% and 6% respectively for the different categories of equity;
2. Once the 8% of the total risk exposures is fulfilled, external eligible liabilities are taken into account to cover the TLAC minimum requirement;
3. In case there are not sufficient eligible liabilities, regulatory capital is used. This can be used in a decreasing sequence of regulatory quality (first tier 2, than tier 1 and finally common equity tier 1);
4. Any remaining core tier 1 may be used to fulfil Basel III buffer requirements;
5. Any remaining bit of eligible external liabilities or regulatory capital of different quality may be used to cover pillar 2 requirements for which it is eligible in a descending sequence of regulatory quality.

Having said this, it is unclear though how this applies to any potential leverage ratio requirement, which we overall reject as stated above. Here we would assume that the Basel III minimum requirement – if any –is to be covered by regulatory capital as defined – if at all – in the Basel III framework in the future and the additional TLAC requirement (if continued to be requested) may be covered first with eligible liabilities and then with regulator capital in descending quality.

Question 11: What disclosures (in particular in terms of the amount, nature and maturity of liabilities within each rank of the insolvency creditor hierarchy) should be required by resolution entities and material subsidiaries to ensure that the order and quantum of loss absorption in insolvency and resolution is clear to investors and other market participants?

As the level of disclosure is already very granular and the amount of disclosed information is getting far beyond and reasonable level, we propose to disclose aggregated date with reasonable but not extensive level of detail. As the details of regulatory capital have to be disclosed anyway, this should be limited to additional information on brackets / classes of eligible liabilities, brackets / classes of maturities and brackets / classes of seniority.

Question 12: What restrictions on the holdings of TLAC are appropriate to avoid the risk of contagion should those liabilities be exposed to loss in resolution?

As eligible liabilities are restricted to those with a remaining maturity of one year or more, the majority of interbank exposures are excluded from TLAC anyway. For shorter maturities, it is the relevant bail-in regime which determines any potential risk of contagion. For long term investments between banks, participations should be exempted from any dedicated limitation under TLAC as they are already receive a dedicated treatment under the Basel III framework.

Remaining exposures (mainly mid to long-term debt instruments) may be limited to a certain degree in order to avoid contagion. A full deduction as proposed in Section 18 of the term sheet may be too far reaching. However, we do not have a dedicated view on this.

In addition, already the Basel III framework disadvantages securities issued by banks in the liquidity framework. We therefore encourage the FSB not to put further restrictions or disadvantages on securities issued by banks for the purpose of collateralisation. It needs to be noted, that self-collateralisation disqualifies for regulatory usage as collateral.

Question 13: Should G-SIBs be required to conform to these requirements from 1 January 2019? Why or why not? What, within the range of 12 to 36 months following the identification as a G-SIB, should be the conformance period for banks identified as G-SIBs at a future date?

In our opinion, the impacts of the Basel III framework and its recently announced targeted changes related to the standardised approaches (and to some extent also to the model based approaches) should be implemented first. As the phasing in for Basel III lasts until 2019, we do not see a date prior to 1 Jan 2018 being appropriate to fix first time the TLAC requirements. However, we also do not see the possibility to just fix the TLAC requirement and expect to have it fulfilled the next day. As such, appropriate phasing in periods should be given. We suggest to apply fulfilment of TLAC not before 24 month of its first determination (i.e. not before 1 Jan 2020) and in general a phase in approach of up to 48 months (as proposed by EBA) in case of material changes, substantial usage of TLAC / resolution or change of the applicable framework / level of TLAC (e.g. first time classification as G-SIB). In any case, fulfilment of increased requirements due to a higher level of TLAC should in principle not be mandatory prior to a period of 12 months. However, reductions of the actual capital levels below an increased level (but still above the previous level) should only be allowed if it cannot legally or practically be avoided and subject review by the relevant authority.

Question 14: How far is the TLAC proposal, if implemented as proposed, likely to achieve the objective of providing sufficient loss-absorbing and recapitalization capacity to promote the orderly resolution of G-SIBs?

We support the objective of providing sufficient loss-absorbing capacity in order to avoid resolution. But we can not agree to the magnitude and composition of the TLAC requirements, especially regarding the availability of eligible liabilities as mentioned in the answers above. These new, additional capital requirements are overwhelming and the question of interaction which already and almost existing capital requirements (Basel III and MREL) remains open. Moreover, it is the ability to gain recapitalisation in the event of a necessary resolution that should be in focus. Requesting the funds to be prefunded in the institution brings the funds into the risks of the bank which c.p. will increase. The increasing demand for higher levels of capital will further deteriorate

the profitability (return on equity) of the banks and therefore make them less attractive for shareholders. The bail-in option makes investment in debt securities less attractive and will drive risk premiums up. As such, the TLAC concept in itself increases the risks for the banks and the balance between putting additional prefunded safeguards into the banks and increasing the inherent risk needs to be set by FSB.

Question 15: What will be the impact on G-SIB's overall funding costs of the adoption of a Pillar 1 Minimum TLAC requirement?

As state in Question 14 above, the overall funding costs will increase c.p. keeping the same level of activity and the same level of risk (and therefore risk / return ratio). However, the TLAC concept may also reduce the level of activity and / or increase risk / return ratio, i.e. the business may become more risky from an economical point of view but not lead to higher capital requirements. As such, we see lots of risks that the TLAC implementation will not just fail to reach its target but also to lead to exactly the opposite. Dedicatedly, we do want to mention the possible negative impacts on Financial Market Infrastructures like us being in scope or of small retail banks not having long term funding needs via debt issuance.

Increase funding costs will partially be passed on to clients for various businesses. The spill over effects cannot be estimated by us. In addition, it is unclear to what extent this can be rolled over to clients and to what extent that will not be possible and consequently will reduce profitability with the consequence of less willingness of investors to give capital or deliver contingent funding in recovery or even resolution situations. In addition it needs to be noted the resolution funds are being built up to which in many jurisdictions all banks have to contribute and which makes the business more costly already.

Question 16: What will be the impact on the financial system and its ability to provide financing to the real economy?

We refer to our answer to Question 15 above. In addition we see a high likelihood that provision of credit to real economy will decline especially when the concept is rolled out also to non G-SIBs without an appropriately calibration and the level of TLAC demand is kept at too high levels. As such, we disagree to the assumption of the FSB that TLAC will improve the provision of credit globally. We expect rather the contrary.

Depending on the calibration of the different levels of TLAC between G-SIBs and for non G-SIBs also possible movements of business between banks will occur. While this partially may be intended, impacts are hardly to predict and its benefits or sunk costs may only be judged backwards looking in the future.

Question 17: Do you have any comments on any other aspects of the proposals?

Following issues occur:

- The 'sufficiently early point' (page 10 point 4.) in the consultation where the resolution action has to be taken must be defined clearly;
- We also disagree to the FSB position (page 6, 4th paragraph) that with bail-in arrangements creditors will be incentivized to better monitors banks (G-SIBs). The volatility of financial markets changes the financial situations of banks rapidly. The recent turmoil on the currency markets damages some market participants massively in only 1 day and some even defaulted. The huge amount of available highly specialised information is not readable for consumers (which are broadly protected) and even difficult to judge for mid-sized or even big companies in its entirety. Many improvements on market transparency have been made in the past and a lot of regulations have been to the benefit of the public. However, we do not belief that TLAC levels as proposed, bail-in arrangements and massively enhanced disclosure requirements will incentivize creditors to better monitor banks. Contrary, the feeling of sufficient safeguards for all banks will prevail and as such, the reaction will rather be to look to regulators to having fulfilled its control function.

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We are happy to discuss the issues raised and proposals made if deemed useful.

Yours faithfully,

Jürgen Hillen
Executive Director
Financial Accounting and Controlling