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UniCredit's reply to the FSB Consultative Document on Strengthening Oversight and Regulation on Shadow Banking. An integrated Overview of Policy Recommendations

UniCredit Group is a major international financial institution with strong roots in 22 European countries, active in approximately 50 markets, with about 9.500 branches and more than 157.000 employees. UniCredit Group is among the top market players in Italy, Austria, Poland and Germany. In the CEE region, UniCredit Group operates the largest international banking network with around 4.000 branches and outlets. UniCredit Group is a market leader in the CEE region. Furthermore UniCredit Group was recently recognized as Global Systemically Important Bank.

General Considerations

We overall appreciate the FSB note on the recommendations for strengthened oversight and regulation of shadow banking. In particular, we appreciate the recommendation for a proportionate, targeted approach, complemented by an adequate framework for monitoring the shadow banking system via a system of "*embedded vigilance*" through on-going review and the ability to evolve in response to market changes.

We also appreciate the recognition of the positive contribution of specific forms of shadow banking to the real economy where the FSB affirms that "*non-bank financial entities can also be sources of long-term and short-term credit to businesses and households"*; and "*where non-bank financial entities have specialised expertise in assessing risks, they may provide these functions in a cost-efficient manner, and provide competition, innovation and lower borrowing costs".*

We also appreciate that several of the main concerns or considerations on shadow banking which UniCredit has previously expressed to the authority are duly taken into account in this FSB Consultative Document. We refer in particular to the following concerns / considerations:

1. Risks of market distortions and of fostering shadow banking due to unbalanced regulation. We appreciate the reference to the risk that "*by strengthening the capital and liquidity requirements applying to banks (an essential pillar of the G20's financial reform programme), the Basel III framework may increase the incentives for some bank-like activities to migrate to the non-bank financial space*".

We are in fact strongly concerned that the inconsistency between banking regulation and insurance/pension funds regulation, especially regarding capital charges for credit, is an important element in the development of shadow banking, which could distort the banking (credit) market.

Moreover, the existence of deposit-like funding structures, namely of activities financed by short-term funding and exposed to similar financial risks as banks, without being subject to the same regulation is of particular concern to us. If banks are not able to compete with non-banks for certain activities because of regulatory burden, these will automatically shift to the non-banking sector.

Preserving the level playing field between banks and non-banks providing identical financial services is hence of crucial importance to contain such a risk.

Shadow banking often represents the natural/unintended by-product of regulatory requirements for banks. Hence, the introduction of any new regulatory initiative should be duly calibrated in order to account for its potential unintended consequences. Lack of transparency in markets can lead to abusive behaviour and facilitate violations of competition rules.

2. Need of an impact assessment analysis, especially on market liquidity, in case of regulatory intervention. We recommend that a fully fledged assessment is run to assess all cumulative costs and benefits. We therefore appreciate that "*the final recommendations should also take into account results of a quantitative impact assessment and include an implementation timetable that take due consideration of current market conditions as well as the need for authorities and market participants to adjust their systems and controls*". Among the costs, a crucial perspective, which is often not taken into duly consideration in our view, is the potential impact on market liquidity. For instance, the proposal to introduce minimum common haircuts in the interbank repo market can have unnecessary far reaching consequences in terms of additional needs of collateral or procyclicality. Further elements on the repo market are provided below in the dedicated section.

3. Need of an adequate set of data availability for proper monitoring at supranational level. A fully fledged impact assessment analysis could be run if sufficient and adequate data is available. We appreciate the improvements in data granularity, as signaled by the FSB. In line with the FSB, we agree that "*further improvements are needed in a few jurisdictions*". In our view in fact, data availability for the analysis at global level is far from being adequate. When reading the Global Shadow Banking Monitoring Report 2012, we sense that the compilation exercise, albeit improved, remains very weak, especially in terms of data granularity. We think it is currently far from adequate to allow a proper regulation and effective supervision without unforeseen consequences.

4. Need of effective supranational intervention and coordination. Following the ongoing monitoring, the policy recommendations are addressed to "Authorities". We assume that the intended perimeter is national and therefore far from being adequate and effective. In the EU, we are of the view that a clear allocation of responsibility to monitor and cope with the shadow banking system is allocated at supranational level, in particular to the European Systemic Risk Board.
The FSB has to decide which preferred and feasible route is to address shadow banking concerns. First, to leave to market discipline the monitoring of excesses, by substantially reducing the scope for opacity in the shadow banking. Second, to exercise its potential superior capability, at global level, to oversee and cope with phenomena and excesses. We assume a combination of the two is to be pursued including the FSB ability to issue forms of early warnings and recommendations. Moreover, it is likely that in some cases this will require joint interventions by national authorities which implies a crucial coordination role by the FSB.

5. CCPs to be included in shadow banking. Proper global systemic risk management requires including the shadow banking activities undertaken by the Central Counterparties (CCPs) under

close oversight and embedded vigilance. We appreciate that FSB Recommendation 12 Section 4 starts considering this case. In view of their systemic relevance, CCPs should be subject to global regulation and supervision by supranational competent authorities. Moreover, CCPs' risk control framework should satisfy specific guidelines with the aim to avoid pro-cyclical effects, excessive risk concentration and leverage.

We normally encourage and practice the use of CCPs, for standardised derivatives and repos based on standardised contracts (such as GRMA and EMA), that take place in the interbank markets. Nevertheless, we stress the need for an adequate capitalisation of CCPs. CCPs are in fact massively under capitalized when compared to the banks' requirements.

6. Identification of criteria to judge systemic relevance of shadow banking. In our view, the criteria which the competent authority should adopt to judge the systemic relevance of shadow banking should be based on activities. In particular, it is crucial assessing how market activities are performed and the existence of agreed common[1] market standards on transparency and quality, leading to more effective market discipline. If well organised, easy to monitor and supervise, shadow banking is beneficial to the economy and should be promoted. This is important, especially with reference to conduits, repo and securitisations. For instance, securitisations whose underlying assets are of high quality and which are brought back on banks' balance sheet for regulatory and accounting consolidated purposes should not be penalised with stricter regulation. Rather, we are in favour of a stronger and more effective oversight by international / European authorities aimed at ensuring level playing field across borders and also allowing better systemic risk management by market participants. To provide additional incentives to effective market-led initiatives, the competent authorities could draft a list of financial instruments which reflect the requirements of common market standards on quality and transparency. With reference to the European Union, such a list for instance could include:

- securitisations which comply with the Prime Collateralised Securities (PCS) common transparency market standards (www.pcsmarket.org); The lack of a regulatory framework for vehicles other than securitisations and conduits may amplify the leverage and the systemic risk of the system and is of particular concern to us; *[Section 1.2.4 of the FSB consultation];*
- conduits to raise short term funding which comply with the Short Term European Paper (STEP) common market standards on transparency (www.stepmarket.org); *[section 1.2.4 of the FSB consultation];*
- repos transactions that take place in the interbank market[2], based on standardised contracts, such as GRMA and EMA, and preferably settled via regulated Central Counterparties (CCPs); *[section1.2.5 of the FSB consultation];*
- UCITS Money Market Funds, which are highly regulated and standardised. *[Section 1.2.2 of the FSB consultation].*

7. Scope of consolidation. We appreciate that the BCBS will try to improve the international consistency of the scope of consolidation for prudential regulatory purposes. While a clear regulatory framework, at least in EU, exists with reference to securitisations and conduits (with A/L matching), consistent regulatory guidelines across countries for vehicles performing activities other than securitisation are highly needed. Most special purpose vehicles/conduits are sponsored by banks but are nevertheless representing a substantial part of the shadow banking since they are not

[1] It is important to emphasise the term "**common**" which should imply:

i) a functional approach (not a legal / jurisdiction approach) across countries;
ii) a scrutiny and reality check of a sufficiently broad range and variety of wholesale market participants;
iii) a sound governance and a consensus building approach, preferably under the oversight of international/European competent authorities.

[2] "*Most of the repo transactions in the Euro area take place in the interbank markets [...]. The Euro area repo market may therefore differ from the US, where before the crisis, investment banks were among the most active players*" ECB, "*Shadow Banking in the Euro area*", Occasion Paper Series N. 133, April 2011.

consolidated from a regulatory perspective onto the banks' balance sheets. A crucial role from that perspective was played by those vehicles investing in long term assets and issuing short-term Asset Backed Commercial Papers (ABCPs).
In this context, the EC is in process of evaluating the endorsement of IFRS 10 which relates to consolidation and, more specifically, consolidation of entities through which shadow banking activities are carried out. This standard is deemed to replace SIC 12 which currently requires consolidation by the entity that assumes the majority of risks and benefits arising from their activity. Conversely, the new standard requires consolidation when both the following criteria are met:: power to govern relevant activities and exposure to variability of returns.
Such new standard might potentially lead to de-consolidation when the entity (usually the sponsoring bank), which is actually exposed to the risks of a shadow banking vehicle, is not able to control its relevant activity through structuring its governance. This might lead to structuring opportunities in order to achieve de-consolidation of such entities (which are consolidated according current standard) from the financial statements.
In our opinion, the results of applying the new standard might contradict the objective of introducing more regulation and achieving more transparency for shadow banking.
While IASB (through IFRS 12) proposes to enhance the disclosure to be provided for the non-consolidated entity, we observe that:

- disclosure is not a substitute of consolidation, as analysts give more weight to the main schemes (balance sheet and P&L);
- the disclosure required, even if enhanced, is far from sufficient when compared to the one that has to be provided for assets and liabilities subject to consolidation.

8. International consistency of the legislative frameworks. The BCBS has recently released a consultative document on revisions to the Basel Securitisation Framework. We noted that this document neither makes any reference to the IOSCO work on securitisation nor to this FSB work on shadow banking. We are concerned that an uncoordinated approach between this and other works risks having unintentionally adverse consequences on the securitisation market.

9. Business and risk aversion diversity is positive. The work stream 3 on shadow banking entities "*observed a high degree of heterogeneity and diversity in business models and risk profiles not only across the various sectors in the non-bank financial space, but also within the same entity-type. This is exacerbated by the different legal and regulatory frameworks across jurisdictions as well as by constant innovation and the dynamic nature of the non-bank financial sectors*." We agree that differences driven from legal and regulatory frameworks should be dismantled. On the other hand, the differences driven by the business models, strategies, risk tolerances and appetites should be preserved, being a pre-condition for a smooth and liquid financial market.

Specific Considerations on:

A) Securitisation

Regulators have introduced several new rules and the industry has worked constructively on their implementation. However, in our view, **the cumulative impact of a number of recent regulatory initiatives on the sustainability of the securitisation market is not currently taken into due consideration**. The ongoing regulatory debate is becoming more sensitive to the benefits which instruments such as securitisations may bring to the financing of the real economy We strongly encourage this trend. In particular, the discussion on the regulation to implement the Basel III framework has recently accepted the inclusion of some forms of securitisations for the purpose of calculating the liquidity coverage ratio. Furthermore, we fully appreciate the IOSCO's intention of encouraging standardisation of securitisation products through, for example, development of standard detailed disclosure templates on the basis of existing initiatives such as those developed by

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the industry. In this regard, we strongly support and appreciate the IOSCO' inclusion of the **Prime Collateralised Securities, PCS** as a relevant market-led initiative.
We believe that regulators' acknowledgment of the benefits of the **PCS market** for European securitisations would contribute to: expand the investor base; support market liquidity; and as a consequence, improve the ability of European financial institutions to gather funding which would be used to finance economic growth.

B) Repo and Securities Lending

1) With reference to the need of improving transparency in the repo market [See in particular Recommendations 1 to 5, Section 3.1 of the consultation specifically dedicated to shadow banking risks in securities lending and repo].

UniCredit generally supports the recommendations to **enhance transparency using trade repositories (TR)**, which can be valid tools as non profit entities operating across borders. Concerning **disclosure to the authorities**, UniCredit is open to provide all the proposed data but we are strongly concerned about the ability of the competent authorities (e.g. ESRB, ESMA) to process in an effective manner such an enormous set of information, since most of the data have a very short-term maturity and complexity linked to the peculiarities of securities lending activities (cash and collateral transactions are reported separately). In this regard, before defining in detail which data are to be reported, we would encourage the FSB and other European authorities to define what their objectives and concerns are. Money market players could subsequently be asked to perform internally a first aggregation of their individual transactions, in order to build the set of indicators requested by the authorities. This would substantially enhance the analytical capabilities of the competent authorities and more importantly their effectiveness in signaling vulnerabilities, systemic risks, or intervening.
Concerning **market transparency**, we agree with the FSB that further aggregation is needed. The TR could be engaged to produce reports concerning for instance volumes, trends, major movements, concentrations etc. Also in this case, a close consultation with market participants should help focusing on relevant information to be produced and disclosed, with the proper time delay and frequency. Transparency may have more benefits but a careful calibration is needed to avoid unintended consequences, such as adverse effects by the markets due to the release of sensitive data.
Finally, we deem that requirements should be consistent across national jurisdictions and coordinated by the FSB, possibly in cooperation with international standard setting bodies. As recalled in Annex 2, the proposal by the ECB to investigate a TR for information on repo and securities lending is in our view appealing.

2) With reference to the proposal on minimum haircuts [See in particular Recommendations 6 to 7, Section 3.2 of the consultation specifically dedicated to shadow banking risks in securities lending and repo].

UniCredit **strongly doubts this is the appropriate solution to the problem raised by the authorities, especially because it will further exacerbate the need for (good) collateral, and this risks particularly hampering the repo market segment in the interbank market.**
Financial institutions will have to obtain and deploy additional liquidity resources to meet collateral requirements that exceed current practices. Moreover, the liquidity impact cannot be considered in isolation but needs to be assessed together with ongoing and parallel regulatory reforms on collateral margin requirements which have or are expected to have significant liquidity impacts.
Therefore, with a view to avoid overburdened collateral requirements, we would suggest that **banks covered by Basel rules should be exempted from the mandate to use minimum haircuts. In any case, we would recommend exemptions for transactions among affiliates within the same cross border financial group.**
The repo market segment in the interbank market is a well-tested and standardised technique which follows relatively homogenous and transparent worldwide market standards. The collateral used is

usually quite liquid and characterised by an underlying deep market. In view of these characteristics, repo activities per se - *ceteris paribus* - are a far less risky financing source. Also, repo activities, where the underlying collateral has been purchased by the party providing the collateral – as usually happens in the interbank market - is not a source of leverage compared to unsecured lending and securities lending. Hence, UniCredit does not see the need for minimum haircuts.

3) With reference to the proposal on Rehypothecation [See also Recommendations 9 to 10, Section 3.3 of the consultation specifically dedicated to shadow banking risks in securities lending and repo].
As a general principle, UniCredit considers appropriate to increase transparency but not impose quantitative constraints which may further exacerbate the need for collateral. Again this is particularly true for the repo market segment in the interbank market.

4) With reference to Central Clearing [See also Recommendations 12, Section 4.1 of the consultation specifically dedicated to shadow banking risks in securities lending and repo].

We agree with the consideration the FSB is devoting to the CCPs in the context of shadow banking. UniCredit recalls that proper global systemic risk management requires including the shadow banking activities undertaken by the Central Counterparties (CCPs) under close oversight and embedded vigilance. In view of their systemic relevance, they should be subject to global regulation and supervision by supranational competent authorities. Moreover, CCPs' risk control framework should satisfy specific guidelines with the aim to avoid pro-cyclical effects, excessive risk concentration and leverage. UniCredit normally encourages and practices the use of CCPs for repos, based on standardised contracts (such as GRMA and EMA), especially concerning the transactions which take place in the interbank markets. Nevertheless, we stress the need of an adequate capitalisation of CCPs. As said in the general considerations, when compared to the banks' requirements, there is a presumption that they are massively under capitalized.

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