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## CRD IV

4 May 2012

### Countercyclical Capital Buffer

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AFME is proposing a number of changes in relation to the operation of the countercyclical capital buffer. Thematically AFME is suggesting that the role of the European Systemic Risk Board (ESRB) is strengthened, that there is more certainty around setting the buffer, and that unnecessary restrictions are removed.

#### **Strengthening the Role of the ESRB**

Central to AFME's proposals is strengthening the role of the ESRB, without necessarily reflecting any shift of powers away from member states (i.e. the proposals can be adopted independent of the outcome of the max/min harmonisation debate). This will bring more certainty to the setting of the buffer and increase the transparency of buffer levels for market participants. Thus, we propose the following changes to the Directive:

- The ESRB should be required to give guidance on setting countercyclical buffer rates to authorities designated by Member States ("shall"), rather than it being optional ("may"). This will aid in consistency of application.
- To define the ESRB as the unique authority for the publication and disclosure of all the countercyclical buffer rates applicable within the Union, in order to facilitate fluid information circulation.
- For third countries, the ESRB should be in charge of defining the applicable countercyclical buffer rate, either endorsing the rate set by that third country (if any), or modifying it to make it compliant with the ESRB methodology. There is no justification from a single market and financial stability perspective for designated authorities to differ in their assessment of third party countries. A single rate issued by the ESRB should be used. Note also a minor consequential change in Article 130(1).
- Third country announcements should be incorporated into the mechanism of ESRB publication.
- To remove national discretion to take account of "any variable that the designated authority considers relevant". The role of the ESRB in coordination with the EBA is of crucial importance in ensuring an effective cooperation among regulators across countries to overcome some of the shortfalls in coping with systemic risks at national level.

AFME supports the proposed amendment by Karas to Article 126(2), which strengthens the centrality of the ESRB's buffer guidance.

#### **Increasing the Certainty Around the Buffer**

AFME is proposing some changes to increase the certainty around how countercyclical buffer rates are set, both to streamline the process and to allow institutions to plan their capital needs. We propose the following changes to the Directive:

- To remove the assessment by EBA and the ESRB of national decisions. If this change is not made we suggest that amendments are made to articulate how the scenario will be dealt with where the EBA/ESRB assessment concludes that the designated authority is gold-plating and in breach of the principles of the buffer and internal market.

- As a compromise to the removal of the EBA and ESRB assessment above, EBA or ESRB approval is suggested where national authorities set a buffer that is significantly above the average across Member States, in order to harmonise the approach to application of the buffer across the EU.
- To put in place a maximum 'cap' on the level of quarterly and annual increases in the buffer. This will increase the certainty for firms and the markets by reducing the potential for volatility in capital requirements due to changes in the buffer.
- To align with the 2.5% ceiling for international reciprocity set by Basel III for all countries (Member States and third countries) and all institutions.

### **Increasing the Flexibility of the Buffer**

AFME is proposing to remove some unnecessary restrictions in the way the buffer is set. We propose the following changes to the Directive:

- The ESRB should be able to issue guidance on the basis of qualitative (and not merely quantitative) criteria on setting countercyclical buffer rates.
- To allow authorities to reduce the buffer prospectively to enable action in advance of an evident stressed situation. Waiting until a stress situation manifests itself in the data could be too late, inhibiting the effectiveness of a release of a buffer.

### **Other Proposals**

AFME is also proposing the following changes to the Directive:

- To clarify that reductions in the buffer take effect immediately.
- Suggestions to make compliance a practical requirement and to reduce compliance costs in periods where all relevant buffers are zero.
- The December 2014 deadline allows insufficient time for implementation and comes too late. We suggest that the Commission should publish the final standards by 31 December 2014, and the EBA should submit the draft by 30 June 2014.