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## AFME Consultation Response

### Consultation on EBA Guidelines regarding the exposures to be associated with high risk

16 July 2018

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The Association for Financial Markets in Europe (AFME) welcomes the opportunity to contribute to Consultation on **'EBA Guidelines regarding the exposures to be associated with high risk'**.

AFME understand the EBA intends these guidelines to provide clarity on the treatment of exposures as a transitory measure before the new Basel III framework is implemented. We also note that this exposure class is currently being considered in the context of CRR2 negotiations which may significantly amend the scope of Article 128. While the EBA committed at its public hearing on 4 May 2018 to reflecting on the drafting of these Guidelines in the context of ongoing CRR2 deliberations, we therefore strongly consider the process of consultation on these Guidelines should pause until the level 1 legislation has been agreed by co-legislators. Indeed, the introduction for example of a notification process under paragraph 6 would only add regulatory burden through the introduction of new processes for very little added value (given that it will only be in place for two years) at a time when banks are already having to implement multiple other regulations and prepare for implementing the forthcoming finalisation of Basel III.

Should the EBA continue to finalise these Guidelines, it would be helpful if the definitions were aligned at least with those of Basel III Standardised approach for Credit Risk, and in particular the speculative unlisted exposures and other subordinated debt, capital and equity exposures (paragraphs 50-53 of Basel III agreement December 2017).

We would also recommend that for all investments where the institution intends to develop a strategic business relationship with the enterprise in question, these should not be considered as private equity for the purposes of these Guidelines and should not be subject to the conditions of section 4.2. In this instance we note the asset classification cannot be considered simultaneously under 'private equity' or 'other' typology. Such investments are acknowledged as long-term positions aimed at supporting regular business activities.

In addition, we note the two categories set out in points 5(a) and 5(b), speculative investments in financial and non-financial assets other than real estate and specialized lending, overlap in several instances, particularly in regard to asset financing. We would also note in relation to the point 5(a), the assessment of high risk is not needed when, in line with the statements reported under 5(b), a specific external rating is available.

Finally, regarding Private Equity Funds compliant with the AIF Article 4(1)(a) of Directive 2011/61/EU and where the mandate of the fund does not allow a leverage higher than that required under Article 51(3) of Directive 2009/65/EC, these should be explicitly excluded from the high-risk classification in alignment with the interpretation of the current CRR.

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AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.