

Mr Jonathan Sepanski, Ms Dana Andreicut,
Prudential Policy Directorate
Prudential Regulation Authority
20 Moorgate
London, EC2R 6DA

CP44_15@bankofengland.co.uk

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AFME response to the PRA Consultation Paper: “The minimum requirement for own funds and eligible liabilities (MREL) – buffers and Threshold Conditions” (CP 44/15)

Dear Mr Sepanski and Ms Andreicut,

The Association for Financial Markets in Europe (AFME)¹ welcomes the opportunity to comment on the PRA’s proposals on the relationship between the minimum requirements for own funds and eligible liabilities (MREL) and capital buffers; and the relationship between MREL and the PRA’s Threshold Conditions.

We are broadly supportive of the PRA’s proposed approach set out in its consultation paper, subject to the need for clarification on certain aspects of this. As highlighted in the consultation paper, the purpose of capital buffers is to enable them to be utilised during periods of stress. We agree with this view and support the need to ensure that buffers are accessible without breaching a firm’s regulatory capital or MREL requirements. This will ensure that going concern loss absorbing resources are available to help achieve financial stability at the point where buffers are intended to be drawn upon. We welcome the proposed approach being consistent with the purpose of capital buffers and the Financial Stability Board’s standard on Total Loss-Absorbing Capacity (TLAC)².

We encourage the PRA and the Bank of England to recommend to other EU authorities to take a consistent approach to the interaction of MREL with capital buffers and for this to be clarified as part of the EBA’s review of MREL and any forthcoming legislative proposal on TLAC implementation.

However it is currently unclear it is unclear how the PRA’s proposed approach to capital buffers “sitting on top” of MREL would interact with the application of automatic restrictions on distributions for maximum distributable amounts (MDA) as required under CRDIV. In particular, while the consultation does not explicitly make reference to automatic restrictions on distributions, in our view the placement of buffers on top of MREL could potentially have the effect of very substantially increasing the threshold at which MDA restrictions could apply, and the potential impact of this should be assessed. We support the view that CET1 should not be double counted towards MREL and capital buffers.

¹ 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 Transparency Register, registration number 65110063986-76.

² FSB, Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution, Total Loss-absorbing Capacity (TLAC) Term Sheet, 9 November 2015 (TLAC Term Sheet)

Association for Financial Markets in Europe

London Office: 39th Floor, 25 Canada Square, London E14 5LQ, United Kingdom T: +44 (0)20 3828 2700

Brussels Office: Rue de la Loi 82, 1040 Brussels, Belgium T: +32 (0)2 788 3971

www.afme.eu

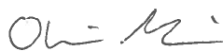
However, notwithstanding a breach of MREL requirements being treated as seriously as a breach of capital requirements, in our view it would not be appropriate for automatic MDA restrictions to be imposed by virtue of a bank breaching its combined buffer solely as a result of CET1 being used to meet a temporary MREL shortfall. This could occur, for example, due to a temporary debt refinancing issue rather than the bank facing any immediate solvency issues and would result in a substantially higher threshold at which MDA could apply. The interaction of internal MREL, capital buffers and MDA restrictions also requires clarification. We believe that these issues merit further consideration and we would welcome further discussion with the PRA in this regard.

We also consider that further consideration is needed as to how the interaction of MREL with capital buffers should be adapted for a group subject to a multiple point of entry (MPE) resolution strategy. Specifically, under MPE, in accordance with FSB TLAC principles, MREL would be expected to apply to resolution groups and not on a group consolidation basis. It is therefore vital to gain clarification on the interaction of the regulatory capital requirements which currently apply on a consolidated basis, with the MREL requirements which are expected to consist of aggregated local requirements applicable to resolution groups. The application of going concern group applicable buffers is necessary to consider, firstly in terms of interaction with locally applicable buffers and secondly from the perspective that these may not be relevant for individual resolution groups.

We also support the PRA's proposed approach regarding the relationship between MREL and the Threshold Conditions. We agree that while a breach of MREL requirements should clearly be taken seriously by the PRA and that a breach of MREL requirements should lead to the PRA investigating whether the firm is failing or likely to fail to satisfy the Threshold Conditions, there should be no automatic determination. Avoiding a mechanical approach, in favour of a judgement based approach, is consistent with the PRA's function and helps to avoid unnecessary or premature resolution action taking place.

AFME welcomes any questions or views you may have on this response, and as ever we remain open to further discussion.

Yours sincerely,



Oliver Moullin
Head of Recovery and Resolution, General Counsel



Charlie Bannister
Manager, Recovery and Resolution