

Deutsche Börse Group Response

to EBA/CP/2017/20

‘Draft Regulatory Technical Standards on the methods of prudential consolidation under Article 18 of Regulation (EU) No 575/2013 (Capital Requirements Regulation - CRR)’

published for consultation on 9 November 2017

Eschborn, 6 February 2018

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A. Introduction

Deutsche Börse Group (DBG) welcomes the opportunity to comment on EBA consultative document 'Draft Regulatory Technical Standards on the methods of prudential consolidation under Article 18 of Regulation (EU) No 575/2013 (Capital Requirements Regulation - CRR)' published 9 November 2017.

DBG operates in the area of financial markets along the complete chain of trading, clearing, settlement and custody for securities, derivatives and other financial instruments and acts as such as a provider of highly regulated financial market infrastructures.

Among others, Clearstream Banking S.A., Luxembourg and Clearstream Banking AG, Frankfurt/Main, acting as (I)CSD¹, as well as Eurex Clearing AG as a leading European Central Counterparty (CCP), are authorised as credit institutions within the meaning of point 1 of Article 4 (1) of the Capital Requirements Regulation (CRR). Moreover, the Clearstream subgroup is supervised on a consolidated level as a financial holding group but is not obliged to set up annual consolidated financial statements as it is included in the consolidated (and published) accounts of DBG which is a mixed activity group. Furthermore, there are no legal requirements for the regulated banking entities of the group to publish interim accounts as none of them is listed on an exchange or issues listed securities.

Beside the above mentioned Financial Market Infrastructures which are for various reasons also credit institutions, and among the companies of DBG there are various regulated financial services undertakings which follow different regulations depending on their dedicated business to support the soundness and stability of financial markets: regulated markets, market operators, trade repositories, index providers, data reporting services providers, etc. At present, for those and other entities (e.g. rating agencies) the rules on consolidated banking supervision and thus the treatment for consolidation are not defined.

Due to the specific accounting situation as described above and the dedicated activities as Financial Market Infrastructure providers, GDB has a dedicated interest to contribute to the current consultation.

The document at hand contains our executive summary and general comments on the draft regulatory technical standards (Part B), a detailed proposal on how full consolidation could be addressed under regulatory terms (Part C) as well as dedicated response to some of the questions raised in the consultative document (Part D).

¹ (International) Central Securities Depository

B. Executive summary

DBG in general welcomes the approach on the methods of prudential consolidation as proposed with the draft RTS.

As such, we appreciate to use the same method of consolidation for regulatory purposes as well as under the respective accounting framework. However, as the group of consolidated entities differ under regulatory and accounting views, the alignment of consolidation methods needs to be balanced out against the efforts that are necessary to adjust for these differences in the scope of consolidation. In any case, the necessity to have “fully consolidated” figures for a supervised (sub)group should in no case force the mandatory creation of full consolidated accounts under accounting rules which are neither required by the accounting rules itself nor prepared on a voluntary basis.

As such, full alignment of accounting and regulatory full consolidation should only be mandatory in case the scope of consolidation is identical. It should in general be the starting point in case consolidated accounts are set up based on mandatory requirements or on a voluntary basis. For any adjustments needed to these accounts, the institutions should have the right to choose between two methods:

- (1) Consolidation / deconsolidation according to the accounting standards (i.e. including the elimination / de-elimination of any interim profit from transactions between the involved parties) or
- (2) Eliminating / adding back the payables / receivables between the parties and netting / adding back the corresponding participation / equity positions (regulatory aggregation / subtraction method to be defined within the EBA RTS).

For regulated groups, which do not set up consolidated accounts for their accounting purposes, the same choice should be given in order to determine the ‘fully consolidated accounts’, i.e. according to the accounting standards or via the regulatory aggregation method. For further details on the method please see Part C of our response at hand.

It is to be noted, that regardless of the consolidation method differences between accounting frameworks within one group (i.e. different national accounting standards applicable on the stand-alone accounts of the group entities) have to be aligned in case they are material. This is not further discussed in our response.

Over the past years, the financial service legislation has introduced a substantial number of regulated financial service undertakings. The nature of their service(s) does not always exclude that they may fall within the definition of financial institution or ancillary service undertaking of CRD IV / CRR unintendedly. Different from asset managers, insurance holding companies and mixed-activity insurance holding companies no dedicated rules exist to clarify if such financial service undertakings should be in scope of consolidated supervision or not. While we assume that CSDs should fall in scope of supervisory consolidation due to their custody business as it matches to the activity of Annex I number 12 CRD IV (‘safekeeping and administration of securities’). We regard the other regulated financial service undertakings should be excluded from the prudential consolidation. Such financial service undertakings are at least payment systems, securities settlement systems, central

counterparties, trade repositories, regulated markets, data reporting services providers, index providers, market operators and rating agencies as defined in Directive 98/26/EC, Regulation (EU) No 648/2012, Directive 2014/65/EU, Regulation (EU) 2016/1011 and Regulation (EC) No 1060/2009.

In regard of the background of our proposed approach, we are only answering questions 1 and 6 in Part C of our response at hand.

C. Proposal of full prudential consolidation

In the following, we want to illustrate our proposal of full consolidation under regulatory terms, considering several choices and conditions: a) Do consolidated financial statements exist? b) Are there deviations between the accounting and regulatory scope of consolidation? c) How shall deviations be adjusted in the consolidated financial statements?

- a) Do consolidated financial statements for accounting purposes exist?

Institutions shall use such consolidated financial statements as starting point for the prudential consolidation. If consolidated financial statements are mandatory for the institution, it has to go further to step b).

- b) Are there deviations between the accounting and regulatory scope of consolidation?

In case of no differences between the accounting and regulatory scope the consolidation according to the accounting rules shall be used for regulatory purposes as well. In the opposite circumstance, the institution has to choose how to tackle the differences according to step c).

- c) How shall deviations be adjusted in the consolidated financial statements?

In case of deviations between the accounting and regulatory scope of consolidation, the differences have to be considered by adjusting the consolidated accounts. Therefore, the institutions have the right to choose one of both following methods:

(1) Consolidation / deconsolidation according to the accounting standards or

(2) Regulatory aggregation / subtraction method to be defined within the EBA RTS.

If the institution chooses the first option, additional entities only in scope of regulatory consolidation have to be consolidated on top while the entities not in scope of regulatory consolidation have to be deconsolidated. In both cases, any interim profit from transactions between the involved parties have to be adjusted via eliminating and de-eliminating them, respectively.

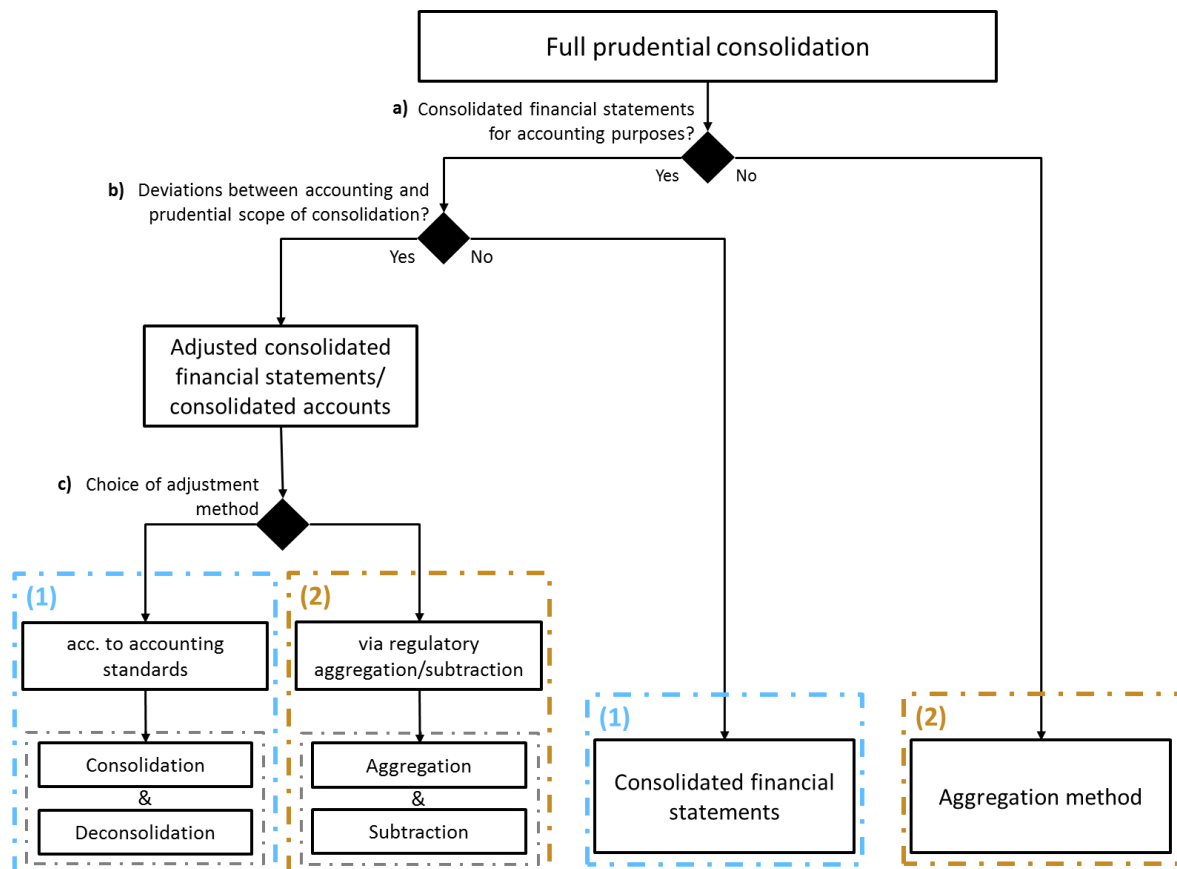
In case the institution chooses to adjust the consolidated accounts via regulatory aggregation / subtraction method (as shown on page 24 et seq. of the consultative document), additional entities relevant for the prudential consolidation have to be aggregated on top of the consolidated accounts. Therefore, intragroup transactions and cross-holding participations shall be eliminated, while interim profits are included and not eliminated. The subtraction method is used in the opposite case where regulatory not relevant entities included in the consolidated accounts have to be removed. Then, the receivables between the entities have

to be added back to the accounts as well as the corresponding participation while the payables have to be eliminated from the accounts.

In case the institution does not set up consolidated accounts the institution shall use the aggregation method as described in step c) and the draft RTS for prudential consolidation.

Institutions choosing one of the approaches shown above, the chosen approach shall be used for every undertaking being considered (or not considered) in the prudential consolidation. Thus, cherry picking for every entity being inside or outside the scope of prudential consolidation shall be avoided. In addition, the responsible national competent authority shall get the power to judge if the method chosen seems reasonable and adequate.

The following table summarises the approaches of full consolidation for regulatory purposes:



(1) Consolidated accounts set up according to accounting standards.

(2) Consolidated accounts set up via aggregation/subtraction.

D. Response to selected questions raised in the consultative document

Q1. Are there undertakings which do not comply with the definition of a financial institution or ancillary services undertaking of Regulation (EU) 575/2013 which should be included in the prudential scope of consolidation? Please explain and provide examples of these entities.

CSDs shall be included explicitly in the prudential consolidation due to their custody business that corresponds to the activity listed in Annex I number 12 CRD IV. The implicit inclusion as financial institution seems not to be appropriate. In contrast, in order to ensure that several regulated financial service undertakings do not fall unintendedly under the definition of financial institution or ancillary service undertaking as a consequence of their activities, these undertakings shall be excluded explicitly from the scope of prudential consolidation. In detail, these entities are i.a. payment systems, securities settlement systems, central counterparties, trade repositories, regulated markets, data reporting services providers, index providers, market operators and rating agencies. In case one undertaking is classified as credit institution or investment firm, any additional activity shall not lead to any such exclusion from consolidated supervision.

In addition, Article 2 of the draft RTS gives a definition of 'undertakings'. Following this definition, 'undertakings' also include ancillary service undertakings being part of the prudential consolidation. Including ancillary service undertakings according to Article 18 Paragraph 8 CRR for the prudential consolidation seems reasonable. Asset management companies are also referred to in the aforementioned paragraph but are not considered in the current draft RTS. We kindly ask EBA to validate its approach against Article 18 Paragraph 8 CRR.

Q6. Do you have any comment on the elements included in this Consultation Paper for the application of the 'aggregation method' pursuant to Articles 18(3) and (6)(b) of Regulation (EU) No 575/2013? Please explain.

Article 9 Paragraph 1 of the draft RTS obliges institutions (meeting certain conditions) to set up consolidated financial statements ("(...) shall prepare consolidated financial statements (...)"). As already stated above, institutions shall not be forced by regulatory requirements preparing consolidated financial accounts for statutory purposes. We further refer to our proposal described in Part C of this response.

We are at your disposal to discuss the issues raised and proposals made if deemed useful.

Faithfully,

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