GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 30 December 2005

amending Guideline ECB/2000/7 on monetary policy instruments and procedures of the Eurosystem

(ECB/2005/17)

(2006/44/EC)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty establishing the European Community and in particular to the first indent of Article 105(2),

Having regard to the Statute of the European System of Central Banks and of the European Central Bank and in particular Articles 12.1 and 14.3 in conjunction with the first indent of Article 3.1, Article 18.2 and the first paragraph of Article 20,

Whereas:

(1) Achieving a single monetary policy entails defining the instruments and procedures to be used by the Eurosystem, consisting of the national central banks (NCBs) of Member States that have adopted the euro (hereinafter the participating Member States) and the European Central Bank (ECB), in order to implement such policy in a uniform manner throughout the participating Member States.

(2) The ECB has the authority to establish the necessary guidelines to implement the Eurosystem's single monetary policy and the NCBs have an obligation to act in accordance with such guidelines.

(3) Chapter 6 of Annex I to Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem [1] needs to be amended in two respects. First, the eligibility criteria for tier one and tier two assets need to be made more specific in relation to asset-backed securities. Asset-backed securities which are currently eligible but do not fulfil the new eligibility criteria will remain eligible for a transitional period. Second, in the case of structured issues, the rule under which subordinated debt instruments are excluded from tier one needs to be refined.

(4) In accordance with Articles 12.1 and 14.3 of the Statute, ECB guidelines form an integral part of Community law,

HAS ADOPTED THIS GUIDELINE:

Article 1

Annex I to Guideline ECB/2000/7 is amended in accordance with the Annex to this Guideline.

Article 2

The NCBs of participating Member States shall forward details of the texts and means by which they intend to comply with this Guideline to the ECB by 1 March 2006 at the latest.

Article 3

This Guideline shall enter into force two days after its adoption. Article 1 shall apply from 1 May 2006.

Article 4

This Guideline is addressed to the NCBs of participating Member States.

Done at Frankfurt am Main, 30 December 2005.

For the Governing Council of the ECB
The President of the ECB
Jean-Claude TRICHET

[1] OJ L 310, 11.12.2000, p. 1. Guideline as last amended by Guideline ECB/2005/2 (OJ L 111, 2.5.2005, p. 1).

ANNEX

Annex I is amended as follows ([1]):

1. In the third paragraph of Section 6.2, the first indent is replaced by the following:

'— They must be debt instruments having: (a) a fixed, unconditional principal amount; and (b) a coupon that cannot result in a negative cash flow. In addition, the coupon should be one of the following: (i) a zero coupon; (ii) a fixed rate coupon; or (iii) a floating rate coupon linked to an interest rate reference. The coupon may be linked to a change in the rating of the issuer itself. Furthermore, inflation-indexed bonds are also eligible. These features must be maintained until the redemption of the obligation ([*]).

Requirement (a) does not apply to asset-backed securities with the exception of bonds issued by credit institutions in accordance with the criteria set out in Article 22(4) of the UCITS Directive ([**]) (covered bank bonds). The Eurosystem assesses the eligibility of asset-backed securities other than covered bank bonds against the following criteria.

The cash flow generating assets must:

(a) be legally acquired in accordance with the laws of a Member State from the originator or an intermediary by the securitisation special purpose vehicle in a manner which the Eurosystem considers to be a "true sale" that is enforceable against any third party, and be beyond the reach of the originator and its creditors, including in the event of the originator's insolvency;

and

(b) not consist, in whole or in part, actually or potentially, of credit-linked notes or similar claims resulting from the transfer of credit risk by means of credit derivatives.

The Eurosystem reserves the right to request from any relevant third party (such as the issuer, the originator or the arranger) any clarification and/or legal confirmation that it considers necessary to assess the eligibility of asset-backed securities.

Asset-backed securities which are eligible pursuant to Guideline ECB/2005/2 but do not fulfil the above criteria will remain eligible for a transitional period until 15 October 2006.

([*]) Debt instruments affording rights to the principal and/or the interest that are subordinated to the rights of holders of other debt instruments of the same issuer (or, within a structured issue, subordinated to other tranches of the same issue) are excluded from tier one. A tranche (or sub-tranche) is considered to be non-subordinated vis-à-vis other tranches (or sub-tranches) of the same issue and is "senior" if, in accordance with the priority of payment applicable after the delivery of an enforcement notice, as set out in the offering circular, that tranche (or sub-tranche) receives payment (principal and interest) in priority to other tranches or other sub-tranches or is last in incurring losses in relation to underlying assets.

([**]) Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 375, 31.12.1985, p. 3). Directive as last amended by Directive 2005/1/EC (OJ L 79, 24.3.2005, p. 9).'

2. The following sentence is added to the end of the sixth indent of the third paragraph of Section 6.2:

'Asset-backed securities issued by non-EEA G10 entities are not eligible.'

([1]) Amendments follow the format and footnote numbering in Annex I as adopted by the Governing Council on 3 February 2005 and published on the ECB's website.

3. In the second paragraph of Section 6.3, the first indent is replaced by the following:

'— They must be debt instruments (marketable or non-marketable) having: (a) a fixed, unconditional principal amount; and (b) a coupon that cannot result in a negative cash flow. In addition, the coupon should be one of the following: (i) a zero coupon; (ii) a fixed rate coupon; or (iii) a floating rate coupon linked to an interest rate reference. The coupon may be linked to a change in the rating of the issuer itself. Furthermore, inflation-indexed bonds are also eligible. These features must be maintained until the redemption of the obligation.

Requirement (a) does not apply to asset-backed securities with the exception of bonds issued by credit institutions in accordance with the criteria set out in Article 22(4) of the UCITS Directive (covered bank bonds). The Eurosystem assesses the eligibility of asset-backed securities other than covered bank bonds against the following criteria.

The cash flow generating assets must:

(a) be legally acquired in accordance with the laws of a Member State from the originator or an intermediary by the securitisation special purpose vehicle in a manner which the Eurosystem considers to be a "true sale" that is enforceable against any third party, and be beyond the reach of the originator and its creditors, including in the event of the originator's insolvency;

and

(b) not consist, in whole or in part, actually or potentially, of credit-linked notes or similar claims resulting from the transfer of credit risk by means of credit derivatives.

The Eurosystem reserves the right to request from any relevant third party (such as the issuer, the originator or the arranger) any clarification and/or legal confirmation that it considers necessary to assess the eligibility of asset-backed securities.

Asset-backed securities which are eligible pursuant to Guideline ECB/2005/2 but do not fulfil the above criteria will remain eligible for a transitional period until 15 October 2006.'

4. Footnotes 1 and 2 to Table 4 in Chapter 6 are replaced by the following:

'([1]) They must have both: (a) a fixed, unconditional principal amount; and (b) a coupon that cannot result in a negative cash flow. In addition, the coupon should be one of the following: (i) a zero coupon; (ii) a fixed rate coupon; or (iii) a floating rate coupon linked to an interest rate reference. The coupon may be linked to a change in the rating of the issuer itself. Furthermore, inflation-indexed bonds are eligible. These features must be maintained until the redemption of the obligation.

Requirement (a) does not apply to asset-backed securities with the exception of bonds issued by credit institutions in accordance with the criteria set out in Article 22(4) of the UCITS Directive (covered bank bonds). The Eurosystem assesses the eligibility of asset-backed securities other than covered bank bonds against the following criteria.

The cash flow generating assets must:

(a) be legally acquired in accordance with the laws of a Member State from the originator or an intermediary by the securitisation special purpose vehicle in a manner which the Eurosystem considers to be a "true sale" that is enforceable against any third party, and be beyond the reach of the originator and its creditors, including in the event of the originator's insolvency;

and

(b) not consist, in whole or in part, actually or potentially, of credit-linked notes or similar claims resulting from the transfer of credit risk by means of credit derivatives.

The Eurosystem reserves the right to request from any relevant third party (such as the issuer, the originator or the arranger) any clarification and/or legal confirmation that it considers necessary to assess the eligibility of asset-backed securities.

Asset-backed securities which are eligible pursuant to Guideline ECB/2005/2 but do not fulfil the above criteria will remain eligible for a transitional period until 15 October 2006.

([2]) Debt instruments affording rights to the principal and/or the interest that are subordinated to the rights of holders of other debt instruments of the same issuer (or, within a structured issue, subordinated to other tranches of the same issue) are excluded from tier one. A tranche (or sub-tranche) is considered to be non-subordinated vis-à-vis other tranches (or sub-tranches) of the same issue and is "senior" if, in accordance with the priority of payment applicable after the delivery of an enforcement notice, as set out in the offering circular, that tranche (or sub-tranche) receives payment (principal and interest) in priority to other tranches or other sub-tranches or is last in incurring losses in relation to underlying assets.'