GUIDELINES

GUIDELINE OF THE EUROPEAN CENTRAL BANK

of 13 December 2010

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

(ECB/2010/30)

(2010/794/EU)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular to the first indent of Article 127(2) thereof,

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 thereof,

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 whose currency is the euro (hereinafter the 'participating Member States') and the European Central Bank (ECB), in order to implement such a 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 monetary policy and the NCBs have an obligation to act in accordance with such guidelines.

(3) Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem [1], should be amended to reflect changes to the Eurosystem's monetary policy framework, in particular: (a) to introduce the eligibility criteria for the own use of non-UCITS compliant covered bank bonds with commercial mortgages as the underlying assets; (b) to add fixed-term deposits as eligible collateral for Eurosystem monetary policy operations and intraday credit; and (c) to amend Appendix 5 to Annex I to reflect the fact that Estonia will adopt the euro on 1 January 2011 and that the name of the Central Bank and Financial Services Authority of Ireland has changed,

HAS ADOPTED THIS GUIDELINE:

Article 1

Amendments to Annex I

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

Article 2

Verification

1. The NCBs shall forward details of the texts and means by which they intend to comply with paragraphs 1, 3 and 4 of the Annex to this Guideline to the ECB by 31 December 2010 at the latest.

2. The NCBs shall forward details of the texts and means by which they intend to comply with paragraph 2 of the Annex to this Guideline to the ECB by 8 January 2011 at the latest.

Article 3

Entry into force

1. This Guideline shall enter into force 2 days after its adoption.

2. Paragraphs 1, 3 and 4 of the Annex to this Guideline shall apply from 1 January 2011.

3. Paragraph 2 of the Annex to this Guideline shall apply from 1 February 2011.

[1] OJ L 310, 11.12.2000, p. 1.

Article 4

Addressees

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

Done at Frankfurt am Main, 13 December 2010.

For the Governing Council of the ECB

The President of the ECB

Jean-Claude TRICHET

ANNEX

Annex I to Guideline ECB/2000/7 is amended as follows:

1. In Section 6.2.2, the first paragraph is replaced by the following:

'Three types of non-marketable assets are eligible as collateral in the single framework for eligible assets: fixed-term deposits from eligible counterparties, credit claims and non-marketable retail mortgage-backed debt instruments (RMBDs) (*).

(*) Between 1 January 2007 and 31 December 2011, an intermediate regime is in place for credit claims, allowing each NCB to choose the minimum threshold for the size of credit claims eligible for collateral purposes, apart from cross-border use, and to decide whether a handling fee should be applied. From 1 January 2012, a fully unified regime will be in place.'

2. Section 6.2.3 is amended as follows:

(a) The seventh paragraph (the fifth paragraph under the heading 'Rules for the use of eligible assets') is replaced by the following:

'The above provisions concerning close links do not apply to: (a) close links between the counterparty and an EEA public sector entity which has the right to levy taxes, or in the case where a debt instrument is guaranteed by an EEA public sector entity which has the right to levy taxes; (b) covered bank bonds issued in accordance with the criteria set out in Article 22(4) of the UCITS Directive; or (c) cases in which debt instruments are protected by specific legal safeguards comparable to those instruments given under (b) such as in the case of (i) non-marketable RMBDs which are not securities; or (ii) residential real estate loan-backed structured covered bank bonds or commercial mortgage loan-backed structured covered bank bonds, i.e. certain covered bank bonds not declared UCITS compliant by the European Commission, that fulfil all the criteria that apply to asset-backed securities, as set out in Sections 6.2 and 6.3 and the following additional criteria (*):

In the case of residential real estate loan-backed structured covered bank bonds:

— Any residential real estate loans underlying the structured covered bank bonds must be denominated in euro; the issuer (and the debtor and guarantor, if they are legal persons) must be incorporated in a Member State, their underlying assets must be located in a Member State, and the law governing the loan must be that of a Member State.

— Residential real estate loans are eligible for the cover pool of relevant structured covered bank bonds, if they are guaranteed by an eligible guarantee or secured by a mortgage. An eligible guarantee must be payable within 24 months upon default. Eligible guarantees for the purposes of such guaranteed loans can be provided in different contractual formats, including contracts of insurance, provided that they are granted by a public sector entity or a financial institution subject to public supervision. The guarantor for the purposes of such guaranteed loans must not have close links to the issuer of the covered bank bonds, and must be rated at least [A+/A1/AH] by an accepted ECAI over the life of the transaction.

— High quality substitute collateral up to 10 % of the cover pool is accepted. This threshold can only be exceeded after an in-depth review by the relevant NCB.

— The maximum portion of each individual eligible loan that can be funded through the structured covered bank bond issuance is 80 % loan-to-value (LTV). The LTV calculation must be based on a conservative market valuation.

— The minimum mandatory over-collateralisation is 8 %.

— The maximum loan amount for residential real estate loans is EUR 1 million.

— The stand-alone credit assessment of the cover pool must correspond to an annual PD level of 10 basis points in line with the "single A" threshold (see Section 6.3.1).

— A long-term minimum threshold of “single A” (“A-” by Fitch or Standard & Poor’s, or “A3” by Moody’s, or “AL” by DBRS) must be applied to the issuer and related entities which are part of or relevant to the transaction relating to the structured covered bank bond.

In the case of commercial mortgage loan-backed structured covered bank bonds:

— Any commercial mortgage loans underlying the structured covered bank bonds must be denominated in euro; the issuer (and the debtor and guarantor, if they are legal persons) must be incorporated in a Member State, their underlying assets must be located in a Member State, and the law governing the loan must be that of a Member State.

— High quality substitute collateral up to 10 % of the cover pool is accepted. This threshold can only be exceeded after an in-depth review by the relevant NCB.

— The maximum portion of each individual eligible loan that can be funded through the structured covered bank bond issuance is 60 % LTV. The LTV calculation must be based on a conservative market valuation.

— The minimum mandatory over-collateralisation is 10 %.

— The share of each borrower in the cover pool, after aggregating all individual loan amounts outstanding from a given borrower, must not exceed 5 % of the cover pool’s total.

— The stand-alone credit assessment of the cover pool must correspond to credit quality step 1 in line with the Eurosystem rating scale (see Section 6.3.1).

— Credit quality step 2 must be applied to the issuer and related entities which are part of or relevant to the transaction relating to the structured covered bank bond.

— All underlying commercial mortgage loans need to be revalued at least on an annual basis. Price decreases of properties must be fully reflected in the revaluation. In the case of price increases, a 15 % haircut is applied. Loans that do not fulfil the LTV threshold requirement must be replaced by new loans, or must be over-collateralised, subject to the relevant NCB’s approval. The primary valuation methodology to be applied is the market value, i.e. the estimated price that would be obtained if the assets were sold on the market using reasonable efforts. This estimation must be based on the most conservative assumption. Statistical methods can also be applied but only as a secondary valuation methodology.

— Liquidity cushion in the form of cash in euro deposited with an eligible counterparty must be maintained at all times to cover all interest payments related to covered bank bonds for the subsequent six-month period.

— Whenever the short-term credit rating of the borrower of an underlying commercial mortgage loan falls below credit quality step 2 in the 9 months before a hard bullet covered bank bond matures, such borrower must post an amount of cash in euro sufficient to cover the relevant part of the covered bank bond principal payment as well as related expenses scheduled to be paid by the issuer under the covered bank bond to the liquidity cushion.

— In case of liquidity stress, the original maturity date can be extended up to 12 months to compensate for maturity mismatches between the amortising loans in the cover pool and the bullet redemption of the covered bank bond. However, the covered bank bond will become ineligible for own use after the original maturity date.

(*) Residential real estate loan-backed structured covered bank bonds submitted before 10 October 2010 that do not comply with these criteria can continue to be used until 31 March 2011. Commercial mortgage loan-backed structured covered bank bonds submitted before 1 February 2011 that do not comply with these criteria can continue to be used until 31 March 2011.’

(b) The eighth paragraph (the sixth paragraph under the heading ‘Rules for the use of eligible assets’) is replaced by the following:

‘Furthermore, for residential real estate loan-backed structured covered bank bonds or commercial mortgage loan-backed structured covered bank bonds, counterparties have to provide legal confirmation from a reputable law firm confirming the fulfilment of the following conditions:

— The issuer of the covered bank bonds is a credit institution incorporated in an EU Member State, and is not a special-purpose vehicle, even if such covered bank bonds are guaranteed by a credit institution incorporated in an EU Member State.

— The issuer/issue of the covered bank bonds is subject, by the law of the Member State where the issuer is incorporated or where the covered bank bonds were issued, to special public supervision designed to protect covered bank bond holders.

— In the event of the insolvency of the issuer, covered bank bond holders have priority as regards reimbursement of the principal and payment of interest deriving from the (underlying) eligible assets.

— Sums deriving from the issue of the covered bank bonds must be invested (according to the investment rules set out by the covered bank bond documentation) in conformity with the relevant national covered bank bond legislation or other legislation applicable to the assets in question.'

3. In Section 6.4.3 the following sub-section is added:

'**Fixed-term deposits**

Fixed-term deposits are not subject to any valuation haircut.'

4. The table in Appendix 5 is replaced by the following:

'**The Eurosystem websites**

Central Bank	Website
European Central Bank	www.ecb.europa.eu
Nationale Bank van België/Banque Nationale de Belgique	www.nbb.be or www.bnb.be
Deutsche Bundesbank	www.bundesbank.de
Eesti Pank	www.eestipank.ee
Central Bank of Ireland	www.centralbank.ie
Bank of Greece	www.bankofgreece.gr
Banco de España	www.bde.es
Banque de France	www.banque-france.fr
Banca d'Italia	www.bancaditalia.it
Central Bank of Cyprus	www.centralbank.gov.cy
Banque centrale du Luxembourg	www.bcl.lu
Central Bank of Malta	www.centralbankmalta.org
De Nederlandsche Bank	www.dnb.nl
Oesterreichische Nationalbank	www.oenb.at
Banco de Portugal	www.bportugal.pt
Národná banka Slovenska	www.nbs.sk
Banka Slovenije	www.bsi.si
Suomen Pankki	www.bof.fi'