



# Public consultation

Draft guidance of the European Central Bank on leveraged transactions

Template for comments

Contact details (will not be published)

Institution/Company

The Governor and Company of the Bank of Ireland

Contact person

Mr  Ms

First name

██████████

Surname

██████████

Email address

██

Telephone number

Please tick here if you do not wish your personal data to be published.

Please make sure that each comment only deals with a single issue.

In each comment, please indicate:

- the relevant article/chapter/paragraph, where appropriate
- whether your comment is a proposed amendment, clarification or deletion.

If you require more space for your comments, please copy page 2.

# Public consultation

Draft guidance of the European Central Bank on leveraged transactions.

Template for comments

Name of Institution/Company      Bank of Ireland

Country      Ireland

## Comments

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Guide	Issue	Guidance (Include number)	Comment	Concise statement of why your comment should be taken on board
<input type="checkbox"/>	Limitation of scope of applicability to significant European credit institutions.	Section 2.	Amendment	A significant proportion of credit institution exposure in the European market will not be subject to the guidelines in Europe (e.g. US, UK, Asian banks) resulting in an uneven playing field in Europe and a material limitation on the effectiveness of the guidelines. Furthermore, it is proposed that European credit institutions will be subject to the guidelines in the US, in addition to the Fed Guidelines already in place, so to the extent the guidelines place restrictions on European credit institutions over and above those in place by the Fed (see examples below) this will also result in the European credit institutions

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				being at a competitive disadvantage in the US market. Therefore we suggest that the applicability of the guidelines should be expanded to include all credit institutions operating in the European market (as is the case with the Fed Guidelines) and the guidelines should be aligned with the Fed Guidelines in all material respects.
<input type="checkbox"/>	Limitation of scope of applicability to significant European credit institutions.	Section 2.	Amendment	Furthermore, given non-regulated entities such as private debt funds are not subject to the guidelines, this could result in a further acceleration of the growth of the unregulated/less regulated market and resulting in significantly increased potential for systemic risk.
<input type="checkbox"/>	Definition of Leveraged Transactions / Calculation of Leverage	Section 3.	Amendment	Calculation of Total Debt should be net of cash. The issue of monitoring balance sheet cash levels raised at the December Workshop should not be a problem as the cash level can be clearly tracked at origination and on an ongoing basis via the regular financial accounts required to be provided to lenders under the loan documentation (including for covenant lite transactions). Furthermore, it is the accepted position in standard Loan Market Association documentation (specifically the Facilities Agreement) that leverage covenants are tracked and tested net of cash.
<input type="checkbox"/>	Definition of Leveraged Transactions / Calculation of Leverage	Section 3.	Amendment	Adjustments to EBITDA should be permitted in the calculation of Total Leverage if clearly outlined and reasonable and supported by due diligence. Pro-forma adjustments in relation to acquisitions / disposals and one-off or non-recurring costs allow for appropriate assessment and tracking of the underlying leverage and repayment capacity of the business. These adjustments may be upwards or downwards (e.g. as

				<p>drafted the guidelines could result in leverage being presented based on reported EBITDA including the earnings of a divested entity). Permitting reasonable adjustments to EBITDA is consistent with the Fed Guidelines.</p>
<input type="checkbox"/>	Definition of Leveraged Transactions / Calculation of Leverage	Section 3.	Clarification	<p>We will assume that deeply subordinated, non-cash interest bearing facilities (e.g. Shareholder Loans) are to be excluded from Total Leverage calculations in order to exclude equity like instruments.</p> <p>We will assume that contingent liabilities are to be excluded from Total Leverage calculations.</p>
<input type="checkbox"/>	Definition of Leveraged Transactions / Calculation of Leverage	Section 3.	Clarification	<p>Can you confirm that the reference to “all gross direct commitments to a leveraged borrower, including drawn and undrawn...” relates to the calculation of exposure of the credit institution to that borrower rather than the calculation of Total Debt to EBITDA. It does not make sense to include undrawn facilities in the calculation of Total Debt to EBITDA (e.g. including an Acquisition Facility as “drawn” in the calculation but assuming no associated EBITDA uplift) and could have the unintended consequence of discouraging companies from obtaining liquidity facilities, which would generally be perceived to be credit enhancing.</p>
<input type="checkbox"/>	Definition of Leveraged Transactions	Section 3.	Amendment	<p>Due to the fact that the low credit exposure threshold currently proposed (&lt;€5m) would result in a significant amount of SME companies (which are not financed by the leveraged finance market) being included we would suggest the threshold is increased to &lt;€20m.</p>

				Furthermore, we would suggest that SMEs are specifically excluded by reference to the current ECB definition of same and therefore companies where (i) turnover is <€50m, (ii) balance sheet is <€43m and (iii) staff headcount is <250 are excluded.
<input type="checkbox"/>	Definition of Leveraged Transactions	Section 3.	Clarification	We will assume that exclusions incorporate lending such as Hotel and Nursing Home loans where secured (in part or whole) by commercial real estate collateral and provided subject to independent valuations and ongoing active monitoring.
<input type="checkbox"/>	Definition of Leveraged Transactions	Section 3.	Amendment	We suggest that loans extended to Government or Government sponsored agencies or entities e.g. local councils, public hospitals, universities etc. are excluded.
<input type="checkbox"/>	Definition of Leveraged Transactions	Section 3.	Deletion	The rationale for inclusion of lowly leveraged transactions which are owned by financial sponsors is not clear. Ownership by a financial sponsor in itself does not mean a company is leveraged and we would suggest this should not be a reason for inclusion.
<input type="checkbox"/>	Definition of Leveraged Transactions	Section 3.	Amendment	We believe the definition should specify the types of activities which are considered as leveraged lending as this is a key identifying factor of leveraged transactions – for example “Proceeds used for buyouts, acquisitions or capital distributions” as specified in the Fed Guidelines.

<input type="checkbox"/>	Definition of Leveraged Transactions	Section 3.	Amendment	The definition should exclude assets which become highly leveraged due to underperformance subsequent to origination (in line with the Fed Guidelines).
<input type="checkbox"/>	Underwriting and Syndication	Section 5.	Amendment	Currently there is no reference to materiality to be applied to the requirement for detailed analysis of the market's ability to absorb an issuance and related pricing risk – we would suggest this should relate to underwrite exposures of >€15m per underwriting institution for a particular transaction.
<input type="checkbox"/>	Underwriting and Syndication	Section 5.	Clarification	Can you provide clarity on what content/form is expected in relation to the requirement for “a stress-testing framework aimed at capturing the impact of market-wide disruptions on the underwriting and syndication pipeline”?
<input type="checkbox"/>	Underwriting and Syndication	Section 5.	Clarification	We will assume that a deal will not be considered as a “hung” deal if not syndicated within 90 days, provided appropriate rationale is provided for same and the required independent risk function approval is sought for a reasonable extension to the sell down period.
<input type="checkbox"/>	Policies and Procedures...	Section 6.	Clarification	Can you define “material modification” and “renewal” (does this mean “extension”)?
<input type="checkbox"/>	Policies and	Section 6.	Clarification	Can you clarify that the requirements outlined in Section 6. (i) are not intended to cover existing under-performing transactions that undergo

	Procedures...			material modification? For example, in the case of a covenant reset due to underperformance it is unlikely to be possible to demonstrate >50% of debt repayment in 5-7 years (however this would be captured by the separate requirement to complete an impairment test as outlined under Section 6. (ii) Ongoing Monitoring).
<input type="checkbox"/>	Policies and Procedures...	Section 6.	Clarification	We will assume that the analysis required for new transactions, renewals, refinancings, or material modifications of an existing transaction can be carried out by a front office function (origination or portfolio). As currently drafted, this refers solely to the “originating function” but in practice it is also carried out by the portfolio function where an existing deal is concerned.
<input type="checkbox"/>	Policies and Procedures...	Section 6.	Clarification	Can you outline what is meant by capturing “tail end market events” in relation to the borrower Stress Test?
<input type="checkbox"/>	Policies and Procedures...	Section 6.	Clarification	We will assume that the risk/credit function review/validation of the enterprise valuation can be considered an “independent unit other than the origination unit”.
<input type="checkbox"/>	Policies and Procedures...	Section 6.	Clarification	In our view the requirement to run an impairment test for (i) the refinancing of a borrower at an increased leverage level and (ii) the refinancing of a borrower that was granted a bullet facility should only be for non-performing scenarios (which will be clearly identifiable by the banks internal rating of the borrower). Refinancings of performing borrowers will be subject to the relevant tests under Section 6. (i) (ie including the requirement to demonstrate the ability to repay >50% of

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total debt in 5-7 years) and therefore an impairment test is not relevant in such cases.

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Choose one optic

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