



- 1.5 The requirements set out in Articles 213 – 215 CRR are not the only requirements that the CRR imposes on credit protection products or the use thereof. The CRR also provides, amongst other requirements, for certain operational requirements (such as those set out in Article 213(2) and (3) CRR) and the requirement to have a recent opinion on the legal effectiveness and enforceability of the credit protection product in all relevant jurisdictions (see Article 194(1) CRR). The valuation of unfunded credit protection is also subject to certain requirements (see Articles 233 – 236 CRR). These other requirements fall outside the scope of this memorandum. It is up to every institution within the meaning of the CRR to meet those requirements in order to be allowed to use the National Mortgage Guarantee as credit protection. Given the nature of some of those requirements, their exact implementation may differ from one institution to the next.
- 1.6 This memorandum is based on the scenario that an institution wishes to apply the National Mortgage Guarantee as unfunded credit protection in conformity with the CRR.<sup>2</sup> To that end, the National Mortgage Guarantee must be applicable to the relevant loan. In our analysis, we assume that the National Mortgage Guarantee, in the form described in section 2, is applicable to the loan.

## 2 THE NHG PRODUCT

- 2.1 This section describes the structure of the National Mortgage Guarantee and how it operates.

### NHG product: suretyship and payment of expected loss

- 2.2 Where this memorandum refers to the National Mortgage Guarantee or the NHG product, we mean the contract of suretyship (the "**Contract**") concluded between the WEW and a lender and the Conditions & Norms declared applicable therein. The NHG product serves, among other things, as security for the fulfilment of the payment obligations ensuing from loans taken out by natural persons for the purpose of purchasing dwellings located in the Netherlands.
- 2.3 The Conditions & Norms, version 2020-2 ("**C&N**") amend the NHG product. The C&N no longer pertain just to suretyships, but now also provide for a payment of expected loss. The payment of expected loss is set out in Article B11 C&N and offers lenders the possibility of receiving

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<sup>2</sup> This could be the case both when the institution has provided the loan and the claim against the borrower is included on its balance sheet, and when the institution has invested in the loan (e.g. through securitisation or an investment fund) and for CRR purposes looks through to the exposure under the claim against the borrower. This memorandum does not discuss whether and to what extent an institution may in the latter case under the CRR look through to the exposure under the claim against the borrower.

a provisional payment from the WEW. This concerns a payment in the amount of the loss to be expected under one or more loans for which WEW has granted suretyship, that are provided by the lender to a borrower and under which the borrower is in default.

- 2.4 Pursuant to the Contract, the C&N are applicable to the relationship between the WEW and a lender. The Contract says the following about the applicability of the C&N: "*suretyship for a loan is subject to the [C&N] as applicable at the time of the offering of that loan.*" As the payment of expected loss is part of the C&N, and the C&N are applicable to suretyship pursuant to the Contract, it can be argued that the payment of expected loss also forms part of the Contract (like the rest of the C&N). The WEW has confirmed this by letter to every lender. In that letter, the WEW also confirmed that the payment of expected loss, in addition to the premise in the Contract that the C&N apply as they were applicable at the time of the offering of the loan, may also be invoked with retroactive effect with regard to loans already provided. Lenders may therefore also claim a payment of expected loss for loans with a suretyship granted by the WEW that were offered under previous versions of the C&N (see also section 2.7).
- 2.5 The fact that the C&N and thus the payment of expected loss are deemed to be part of the Contract does not mean that the payment of expected loss also constitutes a suretyship. The payment of expected loss is an independent, separate obligation of the WEW towards the lenders. However, like the obligation under the suretyship, this obligation follows from the Contract and the applicable C&N. As we understand, the decision to construct the payment of expected loss as a separate obligation and not as a suretyship was made in order to prevent that the WEW would already subrogate in the lender's rights in respect of the borrower upon making the payment of expected loss.
- 2.6 The payment of expected loss also does not otherwise affect the suretyship granted by the WEW. The WEW will however set off a payment of expected loss against a payment under the suretyship as compensation for the ultimate loss under that loan. Only at the time of payment under the suretyship (whether or not wholly or partly through the set-off) does subrogation occur.
- 2.7 The C&N (2020-2) will take effect on 1 June 2020. However, the WEW has already granted lenders the right to the payment of expected loss with effect from 31 March 2020 and, as stated, with retroactive effect, making this option available for currently outstanding loans as well. To make this possible, lenders can already use the C&N, to the extent that they concern or are related to the payment of expected loss, with effect from 31 March

2020 and with retroactive effect.

Backstop Agreement

- 2.8 The backstop function of the Dutch State and (for loans offered prior to 1 January 2011) participating Dutch municipalities is another aspect that is relevant to the analysis of whether the NHG product meets the eligibility requirements under the CRR. Based on largely identical agreements between the WEW and the Dutch State (the "**State Backstop Agreement**") and between the WEW and every participating Municipality (a "**Municipality Backstop Agreement**", and together with the State Backstop Agreement, a "**Backstop Agreement**"), the State and the participating Municipalities have committed themselves to ensuring that the WEW is able to meet its payment obligations to lenders. This means that, in the event of an imminent liquidity shortfall, the WEW can apply for subordinated, interest-free loans from the State and, possibly, the Municipalities. Those loans need to be repaid only once the assets of the WEW are restored to their usual level.
- 2.9 While some clauses from the Backstop Agreement imply a broader scope, it can in our view be derived from the Backstop Agreement in its entirety that the backstop function is limited to the obligations of the WEW under the Contracts. As in the relationship with the lenders, it is therefore important that in the relationship with the State and the Municipalities the payment of expected loss forms part of the Contract as well.
- 2.10 We indicated above that the payment of expected loss is part of the Contract. We believe that the Backstop Agreement thus also serves as a backstop for the obligations of the WEW under a payment of expected loss. We are strengthened in our view by the fact that, as we understand, the State – in the capacity of the Minister of Finance and the Minister of the Interior and Kingdom Relations – was closely involved in the drafting of the C&N. It was not considered necessary to amend the State Backstop Agreement in connection with the introduction of the payment of expected loss in the C&N. The Municipalities have been informed by the WEW about the C&N and the potential consequences for the Municipalities of the payment of expected loss.

**3 LEGAL FRAMEWORK**

- 3.1 The NHG product must meet the relevant eligibility requirements set out in Articles 213 – 215 CRR in order to qualify as unfunded credit protection. The CRR recognises two types of unfunded credit protection: guarantees and credit derivatives. The NHG product purports to qualify as a guarantee. The requirements applicable in that respect will be summarised below.

Article 213 CRR

3.2 Article 213(1) CRR provides that a guarantee shall qualify as eligible unfunded credit protection where all the following conditions are met:

- a. the guarantee is direct;
- b. the extent of the guarantee is clear and incontrovertible;
- c. the guarantee does not contain any clause, the fulfilment of which is outside the direct control of the lender, that, briefly put, may affect the guarantee;
- d. the guarantee is legally effective and enforceable.

Article 215 CRR

3.3 Article 215(1) CRR lays down additional conditions to be met by the NHG product in order to qualify as eligible unfunded credit protection:

- a. on a qualifying default or non-payment by the borrower, the lender may invoke the guarantee in a timely manner without first having to pursue the borrower.  
In the case of residential mortgage loans, this requirement (as well as the requirement of payment in a timely manner laid down in Article 213) has to be satisfied within 24 months;
- b. the guarantee is an explicitly documented obligation;
- c. either of the following conditions is met:
  - i. the guarantee covers all types of payments the borrower is expected to make;
  - ii. where certain types of payment are excluded from the guarantee, the lender has adjusted the value of the guarantee to reflect the limited coverage.

3.4 It follows from Article 215(2) CRR that, in the case of guarantees covered by a valid counter-guarantee (in conformity with Article 214 CRR; see section 3.5 below), the requirement in Article 215(1)(a) CRR shall be considered to be satisfied where the lender has the right to obtain a provisional payment. That provisional payment must meet either of the following conditions:

- a. the lender has the right to obtain in a timely manner a provisional payment by the guarantor that meets both the following conditions:
  - i. it represents a robust estimate of the loss that the lender is likely to incur, including the non-payment of interest and other types of payment which the borrower is obliged to make; and
  - ii. it is proportional to the coverage of the guarantee;
- b. the lender can demonstrate that the effects of the guarantee justify such treatment.

Article 214 CRR

- 3.5 Article 215(2) CRR can only be used if there is a valid counter-guarantee. Article 214 CRR prescribes the conditions to be satisfied by a counter-guarantee. It must be a guarantee provided by an entity listed in paragraph 2, such as a central or regional government. The counter-guarantee itself must meet the following conditions (paragraph 1):
- a. the counter-guarantee covers all credit risk elements of the claim;
  - b. both the original guarantee and the counter-guarantee meet the requirements set out in Articles 213 and 215(1);
  - c. the cover is robust and nothing in the historical evidence suggests that the coverage of the counter-guarantee is less than effectively equivalent to that of a direct guarantee by the entity in question.

**4 ANALYSIS AND CONCLUSION**

- 4.1 We have assessed the NHG product against the relevant eligibility requirements for guarantees set out in Articles 213 – 215 CRR. Because of the relevance of Article 215(2) for the eligibility of the NHG product, we have also assessed whether the Backstop Agreement constitutes a valid counter-guarantee. We have set out our analysis in the Annex.
- 4.2 Based on the analysis below, we are of the view that the NHG product meets the relevant eligibility requirements for guarantees set out in Articles 213 – 215 CRR.

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**ANNEX**

## Annex to the memorandum on the eligibility of the NHG product for credit protection purposes

This is the Annex to the memorandum on the eligibility of the NHG product under the CRR for credit protection purposes. In this Annex, we will assess the NHG product against the relevant eligibility requirements under Articles 213 – 215 CRR. Our analysis here is based on the description of the NHG product as included in section 2 of the memorandum.

A number of defined terms are used in this Annex:

- **"Backstop Agreement"** – a Municipality Backstop Agreement and/or the State Backstop Agreement
- **"Municipality Backstop Agreement"** – the agreement between the municipality and the WEW to secure performance of the payment obligations of the WEW (*overeenkomst tussen de gemeente en de stichting tot zekerstelling voor de nakoming van betalingsverplichtingen van de stichting*) (also referred to as the 2011 Municipality Backstop Agreement)\*
- **"State Backstop Agreement"** – the agreement between the State of the Netherlands and Stichting Waarborgfonds Eigen Woningen to secure performance of payment obligations (*overeenkomst tot zekerstelling voor de nakoming van betalingsverplichtingen tussen de Staat der Nederlanden en Stichting Waarborgfonds Eigen Woningen*), dated 22 December 2014 (also referred to as the 2015 State Backstop Agreement)
- **"DCC"** – Dutch Civil Code
- **"CRM"** – unfunded credit protection within the meaning of Article 4(1)(59) CRR
- **"CRR"** – Regulation (EU) No 575/2013
- **"Lender"** – the party with whom the WEW has concluded a standard contract of suretyship within the meaning of Article 7:850 DCC in respect of loans to borrowers
- **"Municipality"** – a municipality with whom the WEW has concluded a Municipality Backstop Agreement
- **"IMCG"** – Intensive Management Conduct Guideline
- **"NHG product"** – the suretyship and the payment of expected loss, as laid down in the Contract and the C&N declared applicable therein
- **"Contract"** – the standard contract of suretyship between the WEW and the Lender, as approved by the Minister of Housing, Spatial Planning and the Environment on 20 May 1998 and by the Association of Netherlands Municipalities on 15 May 1998
- **"State"** – the State of the Netherlands
- **"WEW"** – Stichting Waarborgfonds Eigen Woningen
- **"C&N"** – the Conditions & Norms 2020-2

\* *The Municipality Backstop Agreement applies only to loans with suretyship that were offered prior to 1 January 2011. The State and the Municipalities have agreed upon a division in the event of recourse to the backstop for such loans.*

**Article 213 CRR**

**A guarantee must meet the conditions under (a) – (d) (paragraph 1) in order to qualify as eligible CRM.**

<p>a) Direct guarantee;</p>	<p><b><u>NHG product</u></b></p> <p>Pursuant to the Contract in combination with the C&amp;N, the WEW directly undertakes towards the Lender to both stand surety and make a payment of expected loss (article 1(1) Contract and Article B11 C&amp;N).</p>	<p><b><u>Backstop Agreement</u></b></p> <p><i>Not applicable. Based on Article 214(1)(b) CRR, the counter-guarantee under the Backstop Agreement – in deviation from the requirement under Article 213(1)(a) CRR – need not be direct.</i></p>
<p>b) The extent of the guarantee is clearly defined and incontrovertible;</p>	<p><b><u>NHG product</u></b></p> <p>The extent of the suretyship follows from article 1 of the Contract, in combination with Article A1(1) and Article B12A C&amp;N. The amount of the payment of expected loss is described in Articles B11 and B11A C&amp;N.</p> <p><i>Exceptions</i></p> <p>The articles mentioned above set out the components of the loss or expected loss, respectively, to be paid by the WEW. In both cases, this includes a 10% deduction ('excess'), the application of an annuity-based depreciation (regardless of the type of loan) and taking into account a housing costs facility, if any (which is, to a certain extent, unaffected by the annuity-based depreciation). The excess mentioned above does not apply to loans that were offered prior to 1 January 2014.</p> <p>As regards both the extent of the suretyship and the payment of expected loss, it is furthermore noted that a deduction may be applied to the compensation for the loss</p>	<p><b><u>Backstop Agreement</u></b></p> <p>Article 5 of the State Backstop Agreement describes the State's obligation to provide subordinated interest-free loans to the WEW. For the Municipalities, a similar obligation follows from article 4 of the Municipality Backstop Agreement.</p>

	<p>based on Article B16 if the conditions described in Article B16 have not been satisfied.</p> <p>Finally, the C&amp;N contain a number of penalty provisions (B11 and B12 C&amp;N) as a result of which the Lender may not be eligible for full compensation of the loss or expected loss, respectively, if it turns out that the Lender has not satisfied the relevant conditions of the C&amp;N.</p>	
<p>c) The guarantee does not contain any clause, the fulfilment of which is outside the direct control of the lender, that:</p> <ul style="list-style-type: none"> <li>(i) would allow the guarantor to cancel the guarantee unilaterally;</li> <li>(ii) would increase the effective cost of the guarantee as a result of a deterioration in the credit quality of the protected exposure;</li> <li>(iii) could prevent the guarantor from being obliged to pay out in a timely manner in the event that the borrower fails to make any</li> </ul>	<p><b><u>NHG product</u></b></p> <p>For the purposes of the NHG product as a guarantee, we regard the Lender as the 'lender' and the WEW as the 'guarantor' within the meaning of Article 213(1)(c) CRR as presented in the left-hand column.</p> <p>Below, we will first explore in general whether there are any clauses in the Contract or C&amp;N that could qualify as clauses outside the control of the Lender. We will confine ourselves to the clauses that might be deemed to entail one or several of the consequences stated under (i) to (iv). Subsequently, we will discuss each of those consequences in more detail.</p> <p><i>General</i> The Lender must meet the Norms adopted by the WEW and the General Terms &amp; Conditions for Suretyship (as laid down in the C&amp;N) in respect of both the suretyship (Article B12 C&amp;N) and the payment of expected loss (Article B11 C&amp;N).</p> <p>As regards the payment of expected loss, this only concerns the Norms and the General Terms &amp; Conditions that the Lender could have complied with at the time of</p>	<p><b><u>Backstop Agreement</u></b></p> <p>For the purposes of the Backstop Agreement as a counter-guarantee, we regard the WEW as the 'lender' and the State and the participating Municipalities as the 'guarantor' within the meaning of Article 213(1)(c) CRR as presented in the left-hand column.</p> <p>Below, we will first explore in general whether there are any clauses in the Backstop Agreement that could qualify as clauses outside the control of the WEW. We will confine ourselves to the clauses that might be deemed to entail one or several of the consequences stated under (i) to (iv). Subsequently, we will discuss each of those consequences in more detail.</p> <p><i>General</i> Pursuant to the Backstop Agreement, the provision of subordinated interest-free loans by the State or a Municipality depends on the amount of the net assets of the WEW in relation to the level of loss (article 5(3) State Backstop Agreement and article 4(3) Municipality Backstop Agreement).</p>

<p>(iv) payments due; could allow the maturity of the guarantee to be reduced by the guarantor.</p>	<p>making the request for a payment of expected loss.</p> <p><i>Best efforts obligations</i> The C&amp;N contain best efforts obligations for the Lender, the details of which are in part provided by the IMCG (Intensive Management Conduct Guideline) adopted by the WEW. By their nature, best efforts obligations leave more room for discussion than obligations of result. Nevertheless, these are obligations that, in our view, should be considered obligations within the control of the Lender. The best efforts obligations are not subject to any conditions that the Lender could not independently satisfy.</p> <p><i>Requirements for approval</i> Certain acts by the Lender require prior approval from the WEW. See, in particular, Articles B9 to B10 of the C&amp;N, which deal with the private sale or sale under execution of the dwelling.</p> <p>The IMCG (chapter 8) sets out a number of criteria against which the WEW will assess a request for approval in conformity with Articles B9 to B10. According to the C&amp;N, the failure to obtain approval may lead to a penalty consisting of a 10% reduction of the compensation for the loss under the suretyship. However, a payment of expected loss is not subject to those requirements for approval, as such a payment is made prior to the sale of the dwelling. Moreover, we are of the view that, while the requirements are broadly formulated, these requirements should be deemed to be within the control of the Lender. As we understand from the WEW, its method of assessing these requirements in practice is in line with this.</p>	<p><i>Best efforts obligations</i> Pursuant to the Backstop Agreement, the WEW undertakes to do everything necessary to collect the amounts to be claimed from the Municipalities and the State under agreements similar to the Backstop Agreement (article 6 State Backstop Agreement and article 5 Municipality Backstop Agreement).</p> <p>In addition, the WEW is obliged to use its best efforts to achieve the highest possible proceeds in the event of a forced sale of a dwelling. The WEW will also do everything necessary to use the right of recourse ensuing from the suretyship (article 7 State Backstop Agreement and article 6 Municipality Backstop Agreement).</p> <p>While these are best efforts obligations, which, by their nature, leave more room for discussion than obligations of result, these are obligations that, in our view, should be considered obligations within the control of the WEW. The best efforts obligations are not subject to any conditions that the WEW could not independently satisfy. Moreover, the Backstop Agreement does not give rise to any explicit consequences of a failure to satisfy these conditions.</p> <p><i>(i) Termination</i> The Backstop Agreement will only be rescinded once (among other things) all the obligations under the Backstop Agreement have been met (article 17 State Backstop Agreement and article 15 Municipality Backstop Agreement).</p> <p><i>(ii) Costs</i> The WEW pays the State a backstop fee. The fee is equal</p>
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While there are a few more actions that require approval according to the C&N, such as a release from liability or the release of security, these are actions that could be omitted in order to qualify for a payment of expected loss and payment of the loss. In our view, the fact that a Lender that does intend to carry out these actions requires prior approval from the WEW pursuant the C&N does not mean that these are actions outside the control of the Lender and would entail disqualification of the NHG product. The Lender may independently decide whether or not to carry out the actions.

*(i) Termination*

The WEW may notify the Lender at any time, stating reasons, that the Lender may no longer offer any new loans under suretyship of the WEW (article 2(4) Contract). However, according to the Contract, termination of the Contract or submission of a notification of termination does not have any consequences for (i) existing suretyships or (ii) the creation of suretyships for loans that have already been offered (article 2(5) of the Contract).

The payment of expected loss ensues from the C&N. The C&N do not include any separate termination clause. It's obvious that reference should be made to the Contract, as this is the contract by virtue of which the C&N are applicable in the relationship WEW-Lender. This means that termination will not affect the right to obtain the payment of expected loss with regard to loans already offered, as the WEW has also expressly confirmed by letter to all Lenders.

*(ii) Costs*

The costs of the suretyship consist of a suretyship fee

to the total suretyship fee received by the WEW to the extent that it relates to the backstop fee (recitals of the State Backstop Agreement).

This has been laid down in a further agreement between the WEW and the State. That agreement does not in any way show that the amount is linked to the credit quality of the WEW, or the Lenders' exposure to the WEW under the NHG product.

The WEW does not pay a fee to the Municipalities pursuant to the Municipality Backstop Agreement.

*(iii) Payment in a timely manner*

Pursuant to the Backstop Agreement, the State or a Municipality, respectively, must provide interest-free loans to the WEW no later than on the fifteenth day of the second calendar month following the month in which the net assets of the WEW dropped below a certain threshold value (briefly put: one and a half times the level of loss) (article 5(3) State Backstop Agreement and article 4(3) Municipality Backstop Agreement).

This is a clear period within which the State and/or a Municipality must effect payment and will – in view of EBA Q&A 2015\_2306 – qualify as a period for payment in a timely manner. After all, the period is clearly defined and the State and/or a Municipality may not postpone the payment. The fact that the moment of payment is linked to a development of the (net) assets of the WEW instead of a specific non-payment under the loan does not detract from this, in our view. The purpose of a counter-guarantee is to ensure that the guarantor is able to meet its obligations

(article A5 in combination with Norm 1.5 C&N).

Neither the C&N nor the Contract indicate that the suretyship fee is linked to the borrower's creditworthiness. Article 13(4) of the Articles of Association of the WEW indicate that the Minister may instruct the WEW under certain circumstances to determine a particular suretyship fee. However, this is unrelated to the borrower's creditworthiness or the Lender's exposure in respect of the borrower. Moreover, the suretyship fee is paid by the borrower, not by the Lender.

No (additional) costs are charged for the payment of expected loss.

*(iii) Payment in a timely manner*

Pursuant to the C&N, the WEW, after having received a request to that end, must effect payment of the expected loss within one month (Article B11 C&N) and payment of the loss within two months (Article B12 C&N).

The conditions in both cases are that the Lender (i) has provided the WEW with all the relevant information for the assessment of the loss or expected loss (as applicable) and (ii) has complied with the applicable Norms and/or General Terms & Conditions. If these conditions have been satisfied, the WEW must effect payment within the aforementioned period.

One of the General Terms & Conditions to qualify for a payment of expected loss is that there must be a period of default of 20 months or more, without there having been a recovery from default.

under the guarantee. The purpose of the Backstop Agreement is exactly that, and the Backstop Agreement's effect is in line with that.

*(iv) Term*

The Backstop Agreement has no term, and will – as stated – only be rescinded once (among other things) all the obligations of the Backstop Agreement have been met (article 17 State Backstop Agreement and article 15 Municipality Backstop Agreement).

According to the C&N, a default exists if a material obligation under the loan has not been paid for more than 90 days. A material obligation is an obligation in excess of €100 and 1% of the total obligation under the loan.

The definition of default in the C&N corresponds to the definition of default in Article 178 CRR. As we understand, this decision was prompted by the absence of any definition of default in the context of Articles 213 and 215 CRR. Those articles mention a borrower who 'fails to make any payments due' and a 'qualifying default' or 'non-payment', respectively. No further details are given, which leaves room for interpretation.

A strict interpretation could be that every non-payment of any obligation (regardless of its nature or amount) would qualify as a failure to make a payment due (Article 213(1)(c)(iii) CRR) or as non-payment (Article 215(1)(a) CRR).

However, we doubt that the European legislature had such a strict interpretation in mind. After all, it would disregard the various civil-law regimes applicable to events of default (failure to perform) in the Member States and the statutory thresholds for creditors to take subsequent action (for example, a right of pledge cannot be exercised under Dutch law unless there has been a default, which is not automatically the case in each event of 'non-payment'). In addition, such an interpretation would entail that common features in financial contacts such as grace periods and materiality thresholds would not be permitted. Cf. Articles 216 and 234 CRR, which in fact acknowledge the use of

grace periods and materiality thresholds, respectively. The definition of 'unfunded credit protection' (Article 4(1)(59) CRR) also refers to a default, not to a non-payment.

We take the view that the intention for the C&N to be consistent with the definition of default in Article 178 CRR is appropriate to the requirements under Article 213(1)(c)(iii) CRR and those under Article 215 CRR, which will be discussed below.

The 20-month period should likewise not be regarded as a clause that is outside the control of the Lender and that could prevent payment being effected in a timely manner. To that end, reference is made to the analysis regarding Article 215 CRR, specifically the exception applicable under Article 215(1)(a) CRR to guarantees provided for residential mortgage loans. That exception entails that a 24-month period may be observed before payment must be effected in a timely manner. According to Article 215(1)(a) CRR, that exception also applies to Article 213(1)(c)(iii) CRR.

*(iv) Term*

The Contract is concluded for an indefinite period of time (article 2). The C&N do not include any clause to reduce the term of the payment of expected loss or suretyship.

As set out above, the Contract may be terminated under certain circumstances, but without this having any consequences for loans already offered.

<p>d) The guarantee agreement is legally effective and enforceable in all jurisdictions which are relevant at the time of the conclusion of the credit agreement.</p>	<p><b><u>NHG product</u></b></p> <p>There is no provision in the Contract or C&amp;N that affects the effectiveness and enforceability of the NHG product under Dutch law.</p>	<p><b><u>Backstop Agreement</u></b></p> <p>There is no provision in the Backstop Agreement that affects its effectiveness and enforceability under Dutch law.</p>
<p><b>Article 214 CRR</b>  <b>In order to qualify for treatment as a guarantee which is counter-guaranteed by a central or regional government (paragraph 2), a guarantee must meet the conditions under (a) – (c) (paragraph 1).</b></p>		
<p>a) The counter-guarantee covers all credit risk elements of the claim;</p>	<p><b><u>NHG product</u></b></p> <p><i>This requirement is not applicable to the NHG product.</i></p>	<p><b><u>Backstop Agreement</u></b></p> <p>Pursuant to the Backstop Agreement, the State or a Municipality, respectively, must provide interest-free loans to the WEW no later than on the fifteenth day of the second calendar month following the month in which the net assets of the WEW dropped below a certain threshold value (briefly put: one and a half times the level of loss) (article 5(3) State Backstop Agreement and article 4(3) Municipality Backstop Agreement).</p> <p>The counter-guarantee thus pertains to the total net assets of the WEW, not just to the individual Contracts.</p> <p>Reference is also made to article 16 State Backstop Agreement, which states that the State, by means of the Backstop Agreement, undertakes to enable the WEW at all times to meet its obligations to the Lenders under or in relation to the contracts of suretyship. A similar obligation applies to the Municipalities under the Municipality Backstop Agreement (article 14).</p>

		<p>The Backstop Agreement thus covers all of the obligations of the WEW under the Contracts.</p>
<p>b) Both the guarantee and the counter-guarantee meet the requirements set out in Article 213(1) CRR (as mentioned above) and Article 215(1) CRR;</p> <p>Please note: the counter-guarantee need not be direct.</p>	<p><b><u>NHG product</u></b></p> <p><i>We already assessed the NHG product against the requirements of Article 213(1) CRR above. Below, we will discuss the requirements of Article 215(1) CRR.</i></p>	<p><b><u>Backstop Agreement</u></b></p> <p><i>We already assessed the Backstop Agreement against the requirements of Article 213(1) CRR above. Below, we will discuss the requirements of Article 215(1) CRR.</i></p>
<p>c) The cover is robust and nothing in the historical evidence suggests that the coverage of the counter-guarantee is less than effectively equivalent to that of a direct guarantee by the guarantor under the counter-guarantee.</p>	<p><b><u>NHG product</u></b></p> <p><i>This requirement is not applicable to the NHG product.</i></p>	<p><b><u>Backstop Agreement</u></b></p> <p>As far as we can assess, there is no historical evidence that suggests that the coverage ensuing from the Backstop Agreement is less than equivalent to a direct guarantee by the State or a Municipality.</p>
<p><b>Article 215 CRR – paragraph 1</b>  <b>In order to qualify as eligible CRM, a guarantee must meet all the conditions set out in Article 213 CRR (see above) <u>and</u> the following conditions under (a) – (c).</b></p>		
<p>a) On the qualifying default of or non-payment by the counterparty, the lender</p>	<p><b><u>NHG product</u></b></p> <p><i>The NHG product meets this requirement based by virtue</i></p>	<p><b><u>Backstop Agreement</u></b></p> <p>For the purposes of the Backstop Agreement as a counter-</p>

has the right to pursue, in a timely manner, the guarantor for the claim in respect of which the guarantee is provided. This shall not be subject to the lender first having to pursue the borrower;

In the case of a guarantee covering residential mortgage loans, the above requirement and the requirement in Article 213(1)(c)(iii) have to be satisfied within 24 months.

*of Article 215(2) CRR. Article 215(2) CRR will be discussed below.*

guarantee, we regard the WEW as the 'lender' and the State and/or the participating Municipalities as the 'guarantor' within the meaning of Article 215(1)(a) CRR as presented in the left-hand column.

Pursuant to the Backstop Agreement, the State or a Municipality, respectively, must provide interest-free loans to the WEW no later than on the fifteenth day of the second calendar month following the month in which the net assets of the WEW dropped below a certain threshold value (briefly put: one and a half times the level of loss) (article 5(3) State Backstop Agreement and article 4(3) Municipality Backstop Agreement).

This is a clear period within which the State and/or a Municipality must effect payment and will – in view of EBA Q&A 2015\_2306 – qualify as a period for payment in a timely manner. After all, the period is clearly defined and the State and/or a Municipality may not postpone the payment. The fact that the moment of payment is linked to a development of (net) assets of the WEW instead of a specific non-payment under the loan does not detract from this, in our view. The same is true with regard to the fact that this concerns a loan that may have to be repaid only when the total net assets of the WEW have recovered (briefly put: to more than twice the level of loss). After all, the purpose of a counter-guarantee is to ensure that the guarantor is able to meet its obligations under the guarantee. The purpose of the Backstop Agreement is exactly that, and the Backstop Agreement's effect is in line with that.

Pursuant to the Backstop Agreement, the WEW undertakes to do everything necessary to collect the amounts to be

		<p>claimed from the Municipalities and the State under agreements similar to the Backstop Agreement (article 6 State Backstop Agreement and article 5 Municipality Backstop Agreement).</p> <p>In addition, the WEW is obliged to use its best efforts to achieve the highest possible proceeds in the event of a forced sale of a dwelling. The WEW will also do everything necessary to use the right of recourse ensuing from the suretyship (article 7 State Backstop Agreement and article 6 Municipality Backstop Agreement).</p> <p>In our view, these are not actions that should qualify as pursuing the borrower.</p>
<p>b) The guarantee is an explicitly documented obligation assumed by the guarantor;</p>	<p><b><u>NHG product</u></b></p> <p>Pursuant to the Contract in combination with the C&amp;N, the WEW undertakes towards the Lender to stand surety and to make a payment of expected loss. The extent of the suretyship and the amount of the payment of expected loss are set out in the Contract and C&amp;N.</p>	<p><b><u>Backstop Agreement</u></b></p> <p>The counter-guarantee (backstop) agreed by the State and Municipalities with the WEW is laid down in the Backstop Agreement.</p>
<p>c) Either of the following conditions is met:</p> <p>(i) The guarantee covers all types of payments the borrower is expected to make in respect of the claim;</p>	<p><b><u>NHG product</u></b></p> <p>The C&amp;N describe what is understood to form part of the expected loss (B11A) and the loss (B12A). It follows from both articles that, briefly put, the loss consists of the principal (as residual debt after a sale), the interest in arrears and the interest payable due to late payment of interest and repayment.</p> <p>In addition, the suretyship also covers a number of cost</p>	<p><b><u>Backstop Agreement</u></b></p> <p>Pursuant to the Backstop Agreement, the State or a Municipality, respectively, must provide interest-free loans to the WEW no later than on the fifteenth day of the second calendar month following the month in which the net assets of the WEW dropped below a certain threshold value (briefly put: one and a half times the level of loss) (article 5(3) State Backstop Agreement and article 4(3) Municipality Backstop Agreement).</p>

<p>(ii) Where (i) does not apply, the lender must adjust the value of the guarantee to reflect the limited coverage.</p>	<p>items that could qualify as loss. However, these items will not be payments the borrower is expected to make under the loan. In our view, therefore, these items need not be taken into account in respect of the payment of expected loss.</p> <p>For CRR purposes, the lender's exposure generally consists of the principal plus interest due by the borrower. Thus the condition under Article 215(1)(c)(i) has been satisfied and no assessment against (ii) needs to be made. However, in calculating the effect of the NHG product on the exposure resulting from the claim, a lender will have to take into account the 10% deduction ('excess'), an annuity-based depreciation is applied (regardless of the type of loan) and a housing costs facility, if any (which is, to a certain extent, unaffected by the annuity-based depreciation). The aforementioned excess does not apply to loans that were offered prior to 1 January 2014.</p>	<p>The net assets consist of the sum of the assets of the WEW less the sum of its liabilities, to the extent that these consist of payables and accruals and loan capital. Payables and accruals include in any event the obligations under the Contracts, but do not appear to be limited to that.</p> <p>Reference is also made to article 16 State Backstop Agreement, which states that the State, by means of the Backstop Agreement, undertakes to enable the WEW at all times to meet its obligations to the Lenders under or in relation to the contracts of suretyship. A similar obligation applies under the Municipality Backstop Agreement (article 14).</p> <p>The Backstop Agreement thus covers all of the obligations of the WEW under the Contracts.</p>
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**Article 215 CRR – paragraph 2**  
**In the case of guarantees covered by a valid counter-guarantee (Article 214 CRR), the requirement in Article 215(1)(a) CRR shall be considered to be satisfied where either of the following conditions in (a) or (b) is met:**

<p>a) The lender has the right to obtain in a timely manner a provisional payment by the guarantor that meets the following conditions:</p> <p>(i) The provisional payment represents a robust estimate of</p>	<p><b><u>NHG product</u></b></p> <p><i>Payment in a timely manner</i></p> <p>Based on Article B11(2) and (3) C&amp;N, the WEW will make the payment of expected loss in the event of a default lasting 20 months or more and the Lender has made a request for a payment of expected loss. The WEW will make the payment within one month, provided that the Lender has provided the WEW with all the relevant information for the</p>	<p><b><u>Backstop Agreement</u></b></p> <p><i>Not applicable.</i></p>
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the amount of the loss that the lender is likely to incur, including the losses resulting from the non-payment of interest and other types of payment which the borrower is obliged to make;

(ii) The provisional payment is proportional to the coverage of the guarantee.

assessment of the expected loss and the applicable conditions have been complied with.

As to what constitutes 'payment in a timely manner', alignment was sought with Article 215(1) CRR, which provides in respect of residential mortgage loans that payment must be effected within 24 months. While not explicitly apparent from the CRR, this period should in our view equally apply to the provisional payment in connection with a residential mortgage loan.

There are no guidelines available that provide a conclusive answer to the question of when the 24-month period must be deemed to have commenced. Accordingly, thoughts may vary on this point. The C&N are based on the objective default threshold provided for in Article 178 CRR, instead of, for example, any form of non-payment (regardless of its nature or amount). We understand the choice made in the C&N and consider it to be in line with both Article 215 CRR and Article 213(1)(c)(iii) CRR, which use similar multi-interpretable terminology. For a further analysis, reference is made to our assessment in the context of Article 213(1)(c)(iii) CRR under '*Payment in a timely manner*'.

As a result of the definition of default, the 20-month period and the obligation for the WEW to effect the payment of expected loss within one month of a request to that end, the payment of expected loss will be effected within 24 months.

*Robust estimate*

Briefly put, the payment of expected loss covers (i) the principal not yet repaid, (ii) the interest in arrears and (iii) the interest payable due to late payment of interest and

repayment (Article B11A C&N). These are the payments generally taken into account for CRR purposes to calculate the exposure. The principal not yet repaid is reduced by the dwelling's market value unencumbered by tenancy and use as established by an appraisal report. In addition, an excess of 10% is deducted (for loans after 1 January 2014). There is no reason to assume that this cannot be considered a robust estimate of the ultimate loss.

*Proportional to the guarantee*

The extent of the suretyship corresponds to the amount of the payment of expected loss as described above, as the loss (Article B12A C&N) is based on (i) the residual debt after sale of the dwelling, (ii) the interest in arrears and (iii) the interest payable due to late payment of interest and repayment. Also in the case of suretyship, an excess amount of 10% is deducted (for loans after 1 January 2014).

The extent of the suretyship is however not identical to the amount of the payment of expected loss. This is, because certain costs can be considered part of the loss, but not of the expected loss. However, these are costs that (i) do not result from the borrower's payment obligations and (ii) can only be established to have actually been incurred upon the sale of the collateral. This should not affect the proportionality of the payment of the expected loss in relation to the suretyship, as item (i) is generally disregarded in the calculation of the CRR exposure and item (ii) cannot be estimated at the time of the payment of expected loss.

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b) The lender can demonstrate to the satisfaction of the competent authorities that the effects of the guarantee justify such treatment.	<b><u>NHG product</u></b> <i>The requirements under (a) and (b) of Article 215(2) CRR are not cumulative requirements. In our view, (a) has been met, making an assessment against (b) redundant.</i>	<b><u>Backstop Agreement</u></b> <i>Not applicable.</i>
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