

REGULATORY BOARD COMMUNIQUÉ NO. 1/2011 OF 17 JUNE 2011

Treatment of cross and upstream guarantees with respect to the alternative fulfilment of capital requirements for issuers within the meaning of Art. 8 of the Additional Rules for the Listing of Bonds

Decision of the Regulatory Board of 28 February 2011

I. BACKGROUND

In accordance with Art. 8 Additional Rules Bonds (ARLB), the requirements on issuers under Arts. 11 and 15 LR (duration and capital resources) may be waived if, instead of the issuer, a third party that fulfils those requirements (guarantor) provides a guarantee commitment in respect of the obligations associated with the securities. In most cases, the **parent company** of the issuer acts as the guarantor within the meaning of Art. 8 ARLB (downstream guarantee). With respect to the listing of a bond, the Issuer Committee of the Regulatory Board had to decide whether within the meaning of the provision in question, the third party may also be a **subsidiary or affiliate company** of the issuer (cross or upstream guarantee).

II. DECISION

The Issuer Committee of the Regulatory Board decided that cross and upstream guarantees by subsidiary or affiliate companies of the issuer may **not** be invoked for the **alternative fulfilment by a guarantor with respect to capital resources** in accordance with Art. 8 ARLB. Given the relationship between the issuer and guarantor, in such cases it would not be possible to ensure the value of the guarantee commitment at all times and any potential alternative fulfilment by the guarantor with respect to capital resources would not be in accordance with Art. 8 ARLB. In general, subsidiary and affiliate companies are not deemed to be third parties that fulfil these requirements in accordance with Art. 8 ARLB. Exceptions within the meaning of Art. 7 LR may be addressed on an individual basis.

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