International Banking Federation

Pinners Hall
105-108 Old Broad Street
London EC2N 1EX

tel: + 44 (0)20 7216 8947
fax: + 44 (2)20 7216 8928
web: www.ibfed.org

16 March 2012

Secretariat of the Basel Committee on Banking Supervision
Bank for International Settlements
CH-4002 Basel
Switzerland

Sent via email: baselcommittee@bis.org

IBFED COMMENTS ON THE CONSULTATION ENTITLED PRINCIPLES FOR THE SUPERVISON OF FINANCIAL CONGLOMERATES

---

1. We welcome the flexibility of the proposed supervisory framework. At the same time, however, the need for supervisors to have sufficient flexibility should be duly reconciled with the needs of financial conglomerates. This is particularly true where the identification of a "Group-level Supervisor" is concerned as it is also in the interest of financial conglomerates to be supervised by only one supervisor.

Against this backdrop, we do not agree with the approach proposed in the consultation document. The determination of the Group-level Supervisor should not depend on a type of negotiating process between various supervisors acting in good faith. As the Joint Forum highlighted in its May 1998 Coordination paper, the main factors determining supervisory oversight are of a legal nature and concern, more specifically, "*the legal framework, statutory authorities of individual supervisors and accountabilities to legislative and other bodies*". Experience gained during the recent financial crisis largely demonstrated that, in times of crisis, 'gentleman's agreements' which supervisors have entered into are often disregarded as each of the supervisors involved tends to be solely focused on its own country's national interests. This is logical taking into account that, whatever the agreement supervisors of different countries may enter into, each supervisor remains legally obliged to decide firstly on the basis of its national legislation if it is indeed empowered to delegate supervision to authorities located in another jurisdiction.

We believe, therefore, that the identification of the Group-level supervisor should rely on objective, written criteria which are determined at the global level, and that these criteria should supersede any rules that may be applicable locally.

If such an approach is not feasible, a mechanism, such as an arbitration clause, needs to be in place to overcome possible divergent views amongst supervisors on who the "Group-level Supervisor" will be.

2. The consultation paper starts with making a clear distinction between the supervisory responsibilities. The responsibility of the Group-level Supervisor is to focus on group-level supervision and to facilitate coordination whilst the other supervisors are responsible for the specific regulated components. We agree that such an approach is sound and appropriate.

However, the distinction becomes blurred as the document continues. The Section on Corporate Governance, in particular, refers to "supervisors" only and, therefore, restrains from specifying any allocation of responsibilities. We believe that the final version of the paper should be more explicit: responsibility for the corporate governance of the financial conglomerate as a whole should exclusively lie with the Group-level supervisor – taking into account that the legal entity supervisors remain responsible for corporate governance arrangements which apply to the legal entities.

There are many other instances where the consultation paper fails to clearly allocate the appropriate responsibilities. This is not likely to foster effective supervision, particularly keeping in mind that the supervisors involved may come from differing backgrounds (banking, insurance and securities regulators) and, therefore, are not likely to share a common supervisory culture.

3. We support global supervisory oversight of financial conglomerates, including the suggestion made in the consultation document of making use, if need be, of a "Pillar 2"-type of approach as used for banking. This being said, we believe that the capital requirements which are being imposed on a financial conglomerate should be determined first and foremost on the basis of a capitalisation by risk type, determined by confidence levels set at sectoral levels.

Furthermore, we recognise that there may be instances where the capital requirement for a financial conglomerate as a whole may be higher than the sum of the capital requirements for its component parts (see page 27, Paragraph 16.2). At the same time, however, the final version of the consultation paper would be more balanced if it were to also highlight the possible diversification benefits realized by financial conglomerates from having operations in various sectors. The final version of the paper should, therefore, encourage supervisors to take diversification benefits into account.

4. We share the view that supervisors need to take into account double or multiple gearing in assessing the capital adequacy of a financial conglomerate.

We welcome the statement in the Consultation Paper, "in general, where a group is subject to capital requirements on a fully consolidated basis and the subsidiaries are also subject to consolidated capital requirements, the conglomerate derives no regulatory capital benefit from double gearing and, accordingly, supervisory concerns are mitigated." This means that, whenever a jurisdiction organises the supplementary supervision of financial conglomerates in such a way that supplementary supervision directly addresses the double gearing of capital within a financial conglomerate, this should suffice.

This implies, amongst others, that banks should not be required to deduct investments in insurance undertakings if the application of methods provided for in the supplementary supervision framework have already been put in place to address the double counting of capital.

5. The consultation paper rightly emphasises that the supervisors involved should ensure efficient and effective information sharing, cooperation and coordination in the supervision of the financial conglomerate.

It would be heplful if the final version of the paper were to confirm that supervisors who are involved in the supervision of a financial conglomerate and its entities are expected to observe all the "Good practice principles on supervisory colleges" which the BCBS published in October 2010. It is essential that requests for information to the financial conglomerate be coordinated by a central point of contact, with common reporting formats, requirements and deadlines aligned. There is also a strong case for the submission of ICAAP reports being synchronised and their content aligned.

Furthermore, the consultation paper fails to pay sufficient regard to the need for confidentiality. Our members place the highest priority on the confidentiality of their data being preserved and therefore wish to see appropriate safeguards utilised. Whilst confidentiality agreements can go some way towards this, we believe some data to be so sensitive that it would be inappropriate for it to be shared, for example, outside the core group. The final version of the paper should elaborate more on this.

6. We note that the consultation paper calls for the legal framework to ensure that supervisors are protected from liability for acts taken in good faith.

We presume, however, that making such a general statement may not suffice to convince national legislators to follow-up on the recommendation made. This is because, in democratic societies, it considered essential for all citizens and organisations to be equal before the Law. As a result, national legislators need to be provided with convincing arguments explaining why it would be necessary to exempt supervisors from the legal principle that citizens and organisations should be held accountable and legally liable for any negligence or breach of legal duty. This would be particularly helpful in respect of those jurisdictions where legislation can be challenged in court for being unconstitutional.

We would, therefore, like to suggest that the final version of the paper elaborate on this issue.

We hope that you will find our comment useful. Please contact us should you require further information.

Yours sincerely

Sally Scutt
Managing Director