

Deutsche Börse Group (DBG) is operating in the area of financial markets along the complete chain of trading, clearing, settlement and custody for securities, derivatives and other financial instruments.

As the rules of the BCBS are usually mirrored on European and national level of EU member states, we want to take the opportunity to address our comments to the consultative document "Principles for the supervision of financial conglomerates". The business of the different entities within DBG is quite different from that of most other financial sector undertakings / credit institutions. DBG companies are just acting in specific corners of the financial industry focused in the financial market infrastructure (i.e. Exchanges, Central Securities Depositories [CSDs], Central Counterparties [CCPs] or Multilateral Trading Facilities [MTFs]) and hence with risk-averse business-models not aiming to build up any large exposures and therewith risk concentrations.

According to Paragraph 2 of the consultative text, the revised principles intend to expand and supplement the 1999 Principles and are based on a revised, broader definition of a financial conglomerate.

We have carefully analysed the consultative document. In general we welcome and support the suggestions made by the BCBS.

In some areas though, we feel that the proposal is not clear enough and should be more precise taking recent regulatory developments in the financial sector into account.

Given the lack of precision in definition, a final judgement especially on the scope of application is not possible at this point in time.

Due to our general agreement of the proposed concept, we limit our comments to two areas which we feel need further clarification.

Scope of Application

According to paragraph 3 of the consultative document, a financial conglomerate is defined as any group of companies under common control or dominant influence including any financial holding company, which conducts material financial activities in at least two of the regulated banking, securities or insurance sectors.

These criteria for classification as a financial conglomerate are existing since 1999.¹ While the regulated banking and insurance sector seems reasonable clear to us, a precise definition regarding the "**securities**" sector seems necessary.

¹ Supervision of Financial Conglomerates, Papers prepared by the Joint Forum on Financial Conglomerates, February 1999.

On EU level Directive 2002/ 87/ EC is specifying the securities sector as being "investment firms" as defined in directive 2004/ 39/ EC (MiFID).

To our understanding, the EU implementation is in line with the intention of the BCBS. Investment firms are defined in MiFID based on a specific list of activities. As the activities as such might not be seen as comprehensive enough, it is according to our understanding nevertheless necessary that the BCBS defines the securities sector to a sufficient extend. Possibly even some exclusion might be useful in that context (companies being active in the securities sector only by issuing own securities or by operating an exchange, etc.). We feel that the EU approach is appropriate and precise in defining the regulated activities that form the "securities sector". It is therefore recommended, that the BCBS defines the securities sector in its final updated Principles like the following:

"The securities sector comprises companies which are regulated and supervised due to the execution of financial services and activities in the following areas:

- *Reception and transmission of orders in relation to one or more financial instruments*
- *Execution of orders on behalf of clients*
- *Dealing on own account*
- *Portfolio management*
- *Investment advice*
- *Underwriting of financial instruments and/ or placing of financial instruments on a firm commitment basis*
- *Placing of financial instruments without a firm commitment basis*
- *Operation of Multilateral Trading Facilities*
- *Any similar activity*

The operation of a regulated market and the issuance of own securities are not seen as a regulated financial service in that context."

The revised definition under paragraph 3 of the consultative document also extends the definition of a financial conglomerate to a group of companies that has material activities in one of the three sectors stated above **and in any other financial sector**. In that context, the desired scope is unclear. As this is also not limited to regulated activities – like in the case of the above mentioned three sectors – it is very difficult to derive a clear legal basis for national implementation. Again, we ask for a much more precise description (note: it is a description, not a definition we ask for) in order to identify those financial sectors the proposal is targeting at. This once more should contain inclusions as well as clear exclusions.

Furthermore, in order to comment on the proposal content wise, it is necessary to have the materiality threshold available. Without that threshold and a clear definition of entities in scope, any final judgement to the revised scope of application is hardly possible.

Corporate Governance

The wording of paragraph 12 (c) of the consultative document asks for some clarification regarding its applicability for different types of governance structures (unitary or dual board structure) as well as for a clarification on the term "independence".

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We hope that our comments given are useful in the further process and are taken up going forward. We are happy to discuss any question related to the comments made.

Eschborn

15 March 2012

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