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Bundesverband deutscher Banken e. V.
Bundesverband Öffentlicher Banken Deutschlands e. V.
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Die Deutsche Kreditwirtschaft

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German Banking Industry Committee Comments on the Consultative Document "Principles for the supervision of financial conglomerates"

Dear Sir or Madam,

We are grateful for the present opportunity to comment on the Consultative Document "Principles for the supervision of financial conglomerates" published by the Basel Committee on Banking Supervision (BCBS) in December 2011.

Generally speaking, we support the BCBS' orientation towards principles and its plans for a risk-based application of said principles. In terms of Basel III, the newly added principles on capital adequacy and liquidity are essentially plausible and point into the right direction as far as the standards for supervisory oversight of banks and insurance firms are concerned. However, at the same time we would like to point out that the scope of the principles should explicitly be limited to the oversight of specific, additional aspects of financial conglomerates. In cases where an adequate sectoral supervision is already in place, they shall and must not lead to any duplication of supervisory requirements.

In our view, the scope of the principles ends whenever there are mandatory provisions under company law or *de facto* circumstances which constitute an impediment to the implementation of these principles. Whenever a company is involved in two financial conglomerates this will regularly be the case. At this juncture, the minority shareholder's possible influence on risk management, remuneration levels as well as capital and liquidity requirements is clearly limited. Hence, the principles should explicitly only take effect within the framework of other regulatory provisions. This applies especially, but is not limited to, company law. Furthermore, in such special cases (e.g. like in the case of mere minority interests) national supervisors should therefore be given the right to

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exempt the minority shareholders from the full application of the principles or, moreover, from the comprehensive application of individual principles.

Prudential supervision of financial conglomerates constitutes, by its very nature, group-level supervision. Under 5.3, the present Consultative Document points out that the sectoral supervisors shall remain responsible for the respective legal entities. We would like to endorse this explanatory comment because it is correct. However, this responsibility cannot be extrapolated to include the entire financial conglomerate. Yet, in most of its statements, the Consultative Document generically refers to "supervisors". This term was probably chosen as an antipode to the employed terminology "Group-level Supervisor" (cf. for instance item 5. of the Consultative Document). As but one example where the text does not disambiguate which supervisor it actually refers to suffice it to mention item 10 of the Consultative Document. When it comes to financial conglomerates as a whole, the responsibility for corporate governance should be exclusively incumbent upon the Group-level Supervisor. In this context, the generic reference to the "supervisor" tends to be confusing. It is self-evident that the legal entity supervisor shall remain in charge of this aspect if and when this concerns the supervised legal entity, notwithstanding whether this concerns a financial conglomerate or not. In order to prevent any misunderstandings, there should be a clear and unambiguous statement concerning the supervisor addressed in the respective presentations and we therefore suggest a specific clarification as to which supervisor shall be meant by specific provisions in the Consultative Document.

We have certain reservations over the expectations expressed with regard to the capital adequacy assessments undertaken by the financial conglomerate (Principle 16). Whilst Basel II/III as well as Solvency II indeed stipulates supervisory requirements for the various sectors with regard to an (external) capital adequacy assessment we feel that a comparison between both provisions is hardly possible. Based on the foregoing, there should be a more detailed specification whether the capital adequacy assessment shall be informed by the prudential supervisory provisions or by the methodologies internally developed by banks. Depending on said specification, sub-principles 16b and 16d would require a corresponding review.

Furthermore, under the current prudential provisions on a European level, banks do not have to deduct from their regulatory capital participations in companies which are identified and included in the assessment at the level of the conglomerates if said companies belong to the insurance sector. This allows an adequate capital allocation within the two sectors. We feel that it is necessary to preserve this option by way of analogy also under the provisions of principle 17 at the level of Basel.

Principle 20 covers the issue of "Liquidity". We should like to point out that under Basel III there already are existing adequate provisions on liquidity measurement and liquidity control for banks or, moreover, banking groups. Currently, we do not know whether comparable provisions exist for the insurance industry. Therefore, the requirement of having to carry out corresponding risk measurement and risk control also at the level of conglomerates goes beyond the requirements currently in existence at the level of the individual sectors. Therefore, at the level of conglomerates, we would assume that the application of said Principle will not take place prior to the promulgation of corresponding prudential supervisory provisions for the insurance sector. This will allow monitoring across sectoral boundaries based on uniform prudential oversight requirements. Concerning the management of liquidity risks at the level of conglomerates, we would like to point out that an intervention on the part of the head of the financial conglomerate can only be assumed if, also at the level of conglomerate, there is compliance with

corresponding waiver policies like the ones which exist or which are being envisaged for the banking industry. Otherwise, there would be a lack of legal options for central liquidity controls.

Principle 24 covers the requirements for potential conglomerate-wide new product processes/market processes. Here, we would appreciate a clarification that compliance with the respective sector-specific requirements pertaining to individual companies will generally be regarded as compliance with Principle 24. The extension at the level of conglomerates shall not prejudice the respective sectoral sub-company's individual responsibility (without being instructed from above) as defined under company law as well as under the applicable provisions of prudential supervision rules and regulations. Any centralised process would, furthermore, only generate but an extremely moderate value added. This is due to the general absence of homogenous products.

Concerning the requirements with regard to group-wide stress test calculations (Principle 26) we feel that there is an urgent need for comprehensive lead-times in order to implement the corresponding scenarios. In view of the fact that the current risk structure can best be assessed by the conglomerate itself, we feel that the flexibility and variety of the analyses requested in the Consultative Document is too comprehensive and hardly feasible on practical grounds. Consequently, it should be sufficient to analyse the scenarios implemented at sector-level also for the level of conglomerates. In this case, however, it also remains unclear which influence the stress-test results shall/may have on the control of the conglomerate's solvency. After all, under company law, a central control and allocation of conglomerate-level capital adequacy will not always be possible.

We would appreciate it if our views were taken into account in the ongoing consultation process. We would be happy to provide further information about any of the issues raised.

Yours faithfully,
on behalf of the German Banking Industry Committee
Federal Association of German Cooperative Banks

Gerhard Hofmann

Thorsten Reinicke