

### Comments on Review of FCD

**Name/ company: British Bankers' Association**

Please insert your comments and answers in the table below, and send it in word format to [fcdadvice@c-eps.org](mailto:fcdadvice@c-eps.org) and [secretariat@ceiops.eu](mailto:secretariat@ceiops.eu), indicating the reference "JCFC-09-10". In order to facilitate processing of your comments, we would appreciate if you could refer to the relevant section and/or paragraph in the Paper JCFC-09-10.

Reference	Comment and answers
General comment on the <b>whole</b> Review of FCD	<p>The British Bankers' Association (BBA) understands the concerns and objectives of the Commission. We are supportive of the Commission's aims.</p> <p>The Committee has provided an in-depth analysis of the issues and proposed appropriate solutions, which are pragmatic and flexible. This is helpful as flexibility is key when it comes to regulating financial conglomerates in a risk-sensitive manner. In addition, we would like the Committee to maintain and promote structure-neutral solutions.</p>
Chapter 2	Definitions of different types of holding companies and their impact on the application of sectoral group supervision
Q1 Do you agree with the above analysis?	Yes
Q2 Do you agree to the proposed recommendations? (Yes / No)	We agree with the analysis made by the JFCF as well as to the solution which it proposes. Extension of consolidated supervision to MFHC under the sectoral rules appropriate to the largest sector is fine provided that this extension of consolidated supervision to include the MFHC is proportionate and does not result in, for example, banking being shoehorned to capture insurance. We would also argue that this solution should not increase the reporting burden.

Comments on Review of FCD	
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If No, please elaborate on your alternative proposal	
Other comments on chapter 2	No other comments
Chapter 3	The definition of "financial sector" and the application of the threshold conditions in Article 3 of the FCD
Part 1	Inclusion of entities for the purposes of identifying a financial conglomerate
Q3 Do you agree with the above analysis?	Yes
Q4 Do you agree to the proposed recommendations? (Yes / No)  If No, please elaborate on your alternative proposal	Yes
Part 2	How to include AMCs in the identification process - Allocation of AMCs to a particular sector and criteria for using income structure and off-balance sheet activities to determine the significance of the various financial sectors of a group
Q5 Do you agree with	Yes

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the above analysis?	
Q6 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your alternative proposal	We agree with the view taken by the JCFC that the FCD would need to be changed so that AMCs are included for the purpose of identification as a financial conglomerate. We also agree with the proposed solution to including AMCs in the identification process, provided that flexibility is not lost. In addition, we support the proposed solutions to the threshold issue as these would provide for more flexibility. It's not clear how the inclusion of AMCs should be achieved. We look forward to the opportunity to comment on the Level 3 guidance as to how inclusion should be achieved.
Q7 Could you suggest what issues the guidance should address and provide evidence to support your suggestion?	-
Q8 Could you suggest what features could distinguish between an Asset Management Company (AMC) within a banking group and an AMC within an insurance group?	-

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Part 3	Should quantitative standard thresholds determine whether supplementary supervision applies to a group?
Q9 Do you agree with the above analysis?	Yes
Q10 Do you agree to the proposed recommendations? (Yes / No)  If No, please elaborate on your alternative proposal	Yes
Q11 Could you suggest what issues the guidance should address and provide evidence to support your suggestion?	-
Other comments on chapter 3	With regard to the mechanics of the threshold calculations referred to in Option 2, supervisors should look at the anomalous results for insurers whose CRR and asset totals tend to go down in a downturn. This means that external market conditions can influence whether a group is identified as a financial conglomerate.
Chapter 4	Implications of different treatments of participations for the identification and scope of supplementary supervision of financial conglomerates

### Comments on Review of FCD

**Name/ company: British Bankers' Association**

Q12 Do you agree with the above analysis?	Yes
Q13 Do you agree to the proposed recommendations? (Yes / No)  If No, please elaborate on your alternative proposal	Yes
Q14 Could you suggest what issues the guidance should address and provide evidence to support your suggestion?	-
Other comments on chapter 4	<p>From a conceptual perspective, we support the distinction made by the JCFC:</p> <ul style="list-style-type: none"> <li>- It needs to be examined how the concept of “participations” affects the identification of financial conglomerates;</li> <li>- It needs to be examined how participations should be treated. Although participations may be excluded from the identification process, this may not mean that they should be excluded when calculating supplementary capital requirements.</li> </ul>

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	We agree that implementing these proposals would be an improvement compared to the current situation. However, we are not convinced that they would result in an optimal situation. "Participation" is defined in the 4 <sup>th</sup> Company Law Directive as rights in capital which create a "durable link". We feel that the notion of a "durable link" is not bringing added value and introduces complexity. We feel that "factual control" should be used as a criterion instead: if there is no factual control, the entity should not be made subject of supplementary supervision.
Chapter 5	The treatment of "participations" in respect of risk concentrations (RC) and intra-group transactions (IGT) supervision and internal control mechanisms
Q15 Do you agree with the above analysis?	Yes
Q16 Do you agree to the proposed recommendations? (Yes / No) If No, please elaborate on your alternative proposal.	Yes
Q17 Could you suggest what issues the Level 3 guidance should address and provide evidence to support your	-

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suggestion?

Other comments on  
chapter 5

We are concerned with the concept of “intra-group transactions” which the FCD defines as “all transactions by which regulated entities within a financial conglomerate rely either directly or indirectly upon other undertakings within the same group or upon any natural or legal person linked to the undertakings within that group by “close links”, for the fulfillment of an obligation, whether or not contractual, and whether or not for payment”.

- The use of the word “transaction” is inappropriate as it is too broad. “Exposure” is more appropriate.
- The qualification made that the “regulated entities within a financial conglomerate” need to “rely upon another person or undertaking for the fulfillment of an obligation” is vague. Therefore, more guidance should be provided to clarify the concept.

NB: In the European Banking Federation’s 2008 comments to CEBS, which the BBA contributed to, the EBF had observed that the FCD is uncertain whether the concept covers inter-sectoral transactions as well as intra-sectoral transactions. The EBF had argued that, as intra-sectoral transactions are already covered under the Capital Requirements Directive (CRD), it would be appropriate that conglomerates report on inter-sectoral transactions (above a certain threshold) only.