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To: NIKOPOULOS Sofia; LUZ Vera
Subject: Fw: EBA-CP-2012-03

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Sent: Wednesday, July 18, 2012 05:52 PM
To: EBA-CP03
Subject: EBA-CP-2012-03

Please find below the Italian Banking Association's remarks on the a.m. consultation.
Best regards
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EBA consultation paper on draft Guidelines for assessing the suitability of members of the management body and key functions holders of a credit institution (EBA/CP/2013/03)

Italian Banking Association's remarks

The Italian Banking Association welcomes the opportunity of expressing its views on the a.m. consultation document.

General remarks

The document introduces significant new requirements on reputation and experience criteria for management/control bodies and key managers.

The proposed rules provide a very pervasive criteria for defining the requirements. This could determine large discretionary evaluation powers for supervisors, providing more than the mere consequence of termination. As for the

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reputation, the principles expressed by EBA would need an overall evaluation, without any per se dishonorable effect. They are in line with the Italian administrative law, which admits taking administrative measures on the basis of non irrevocable criminal findings.

Given this broad discretion, we believe it is important that EBA states, within its guidelines, objective parameters of intervention to allow banks to foresee its evaluation before appointing directors and key managers, so avoiding further intervention.

In any case, the document expresses a consolidated approach at UE level (see the joint paper of 2008 of CEBS, CESR and CEIOPS "Guidelines for prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007 / 44/EC ") and it is therefore generally welcomed.

Particularly, we appreciate the effort to overcome, with a harmonized approach, the different level of assessment which nowadays is ordinarily conducted in the appointment of board members and in the case of acquisition of equity interests in banks.

First open question

It seems that the principle of proportionality exists under EBA exclusively for the assessment of the experience criteria of members and key managers and not for the assessment of (good) reputation.

In this sense, it seems consistent to provide differentiated professional requirements, taking into account the nature, size and complexity of the business of credit institutions, and above all the existence of a center of direction and coordination in a holding company. It is therefore to welcome the principle that, within the same banking group, experience requirements may be calibrated and differentiated according to the different activity carried out by each company of the group.

A possible differentiation parameter could be the circumstance of being the credit institution the holding of the group, the domestic or international relevance of the group, the fact that the group has financial or insurance components, etc.

Regarding "reputation criteria" (Article 13), they should not be set according to the size and complexity of the bank, but should be the same for the entire sector.

Second open question

We favor a prior assessment, conducted by supervisory Authority, of suitability of the internal policies adopted by the bank, on the requirements of both "function key holders", and management/supervisory function members.

Indeed, given the greater range of criteria developed by EBA (which also leads to a greater degree of autonomy and discretion for the bank in setting the internal rules), it seems that a prior "validation" by the competent Authority would expose the bank to a lower risk of non compliance (remedial measures or sanctions by the Authority), because it would increase certainty in the enforcement evaluation

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by the Authority.

This assessment could be an additional tool, together with the adoption of ad hoc guidelines, to provide banks with clear and objective indications on the Authority's will.

Further remarks

Some other remarks can be raised on the following aspects.

Supervisory corrective measures should be better detailed and motivated, with a risk oriented approach, to avoid a case by case evaluation

As for the adoption of corrective measures, they should be decided by the general meeting.

The Authority could therefore intervene, if necessary, with measures softer than termination, except for the case of serious harm for investors and severe risk indicators. Furthermore, public intervention in support of equity may justify more pervasive powers.

Finally, we believe that any position that may harm shareholders' voice in the selection and appointment of the management and control bodies should be avoided.