



Financial Conglomerates Directive (FCD) review

Industry input to the consultation process

Nick Kitching

Chair of the JCFC FCD Review Working Group

8 July 2009

Calls for Advice to JCFC

- **April 2008** – request to undertake a stocktake of Member State practices in implementing the FCD, focusing on:
 - i. Use of definitions
 - ii. Scope
 - iii. Internal Control Requirements (including risk concentration and intra-group transactions)
- **February 2009** – request to identify policy options to address issues identified and to recommend solutions to the issues
- **May 2008** – draft advice published for consultation

Industry participation

- **September 2008** – firms and trade associations filled in qualitative questionnaire that was used as input to the stocktake
- **December 2009** – Industry hearing to discuss the issues identified by the FCD Review Working Group
- **May 2009** – The issues identified, possible solutions and recommendations to address the issues were discussed at CEIOPS and CEBS consultative panel meetings
- **8 July 2009** – Industry hearing to discuss the consultation paper published in May 2009
- **28 May - 28 August 2009** – Industry invited to submit responses to the consultation paper

Issues identified in stocktake

1. Definitions of different types of holding companies and their impact on the application of sectoral group supervision text
2. The definition of “financial sector” and the application of the threshold conditions in Article 3 of the FCD
3. Implications of different treatments of participations for the identification and scope of supplementary supervision of financial conglomerates
4. The treatment of ‘participations’ in respect of risk concentrations and intra-group transactions supervision and internal control mechanisms

Issue 1 (Chapter 2)

Issue

- A 'Mixed Financial Holding Company' (MFHC) cannot at the same time be a 'Financial Holding Company' (FHC) or 'Insurance Holding Company' (IHC)
- The scope of sectoral supervision may change or fall away depending on the structure of the group
- If this happens, supervisory tools that are available in the sectoral group directives, but not in the FCD, may no longer be used in supervision of the group

Recommendation

- To amend the definitions of IHC and FHC to allow an IHC or FHC to constitute a MFHC at the same time

Issue 2 (Chapter 3)

Issue

- Inclusion of Asset Management Companies (AMCs) in the identification process, as well as how they should be included
- Whether threshold conditions are sufficiently risk sensitive (small, heterogeneous groups in particular)

Recommendations

- A legal change to ensure the inclusion of AMCs in the identification process
- Level 3 guidance on how to treat AMCs for the purpose of identification and use the concepts of “off-balance sheet” and “income structure”
- A legal change to allow supervisors to waive small and heterogeneous groups if their risk profile justifies exemption. Consistency in the application of the waiver should be addressed through level 3 guidance

Issue 3 (Chapter 4)

Issue

- Different interpretations of the term durable link – component of the definition of participation
- Inclusion of a participation in the identification process when the entity would be the sole trigger for the identification of a group as financial conglomerate
- The basis on which a participation is included when calculating the sizes of the insurance and bank / investment firm sector during the identification process

Recommendations

- Level 3 guidance on how to interpret and apply the ‘durable link’ criterion.
- In cases where a group has only one non-controlled cross sector holding, a legal change introducing supervisory discretion not to treat a group as a conglomerate
- Level 3 guidance to clarify the basis on which participations should be included when calculating the sizes of the different sectors

Issue 4 (Chapter 5)

Issue

- Difficulties in accessing information from participations of which the group has no control
- How participations should be weighted for the purpose of inclusion in group reports on RC and IGT
- Difficulties in implementing risk management and internal controls in participations

Recommendations

- Level 3 guidance to clarify how participations should be weighted for the purpose of RC and IGT reporting
- Level 3 guidance to clarify how problems of obtaining information from and implementing risk management in non-controlled participations can be addressed

Timeline

18 June	1 st EFCC FCD working group meeting
7 July	Industry Hearing
8 July	JCFC plenary meeting
9 July	EFCC meeting
28 August	Consultation period ends
Sept / Oct	Final JCFC advice published

Questions?

Annex I - Recommendations

Legislative amendments

- To clarify that 'Insurance Holding Companies' (IHC) and 'Financial Holding Companies' (FHC) can also be 'Mixed Financial Holding Companies' (MFHC) at the same time
- To include asset management companies in the identification process
- To allow supervisors to waive small and heterogeneous groups if their risk profile justifies exemption
- To introduce a supervisory discretion not to treat a group as a conglomerate if the group has only a participation in another sector

Annex II - Recommendations

Level 3 Guidance

- On how to treat asset management companies for the purpose of identification and how to use the concepts of “off-balance sheet” and “income structure”
- Criteria for consistent application of the waiver to not treat a group as a financial conglomerate
- On the interpretation and application of the ‘durable link’ criterion in the definition of participation
- Clarifying how participations should be weighted in order to calculate the sizes of the different sectors
- Clarifying how participations should be weighted for the purpose of Risk Concentration and Intra Group Transaction reporting
- Clarifying how to address issues for obtaining information and implementing risk management in non-controlled participations