Deutsche Bank

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Dear Ms Garcia

Consultation paper on CEBS's Guidelines for the operational functioning of colleges (CP 34)

Deutsche Bank (DB) welcomes this opportunity to respond to this consultation on the operational functioning of colleges. The review of the supervisory architecture in Europe and the changes pending under the European Commission's draft Omnibus Directive, provide a unique opportunity to move the use of Colleges in Europe to a more formalised setting. We believe the Guidelines as proposed are a good basis for achieving that and we are broadly aligned with CEBS' thinking.

DB also supports the creation of the EBA (European Banking Authority) and we expect it to play a key role monitoring the functioning of colleges and promoting supervisory convergence. The Commission's proposals on the powers of the new European Agencies are a minimum step forward in Europe. We believe that there needs to be a much greater level of decision making at a European level in relation to complex cross-border institutions.

The Guidelines could go further in some areas to ensure that Colleges, both European and global, form a central part of the supervisory decision-making process for complex global groups. In particular, to work effectively, colleges need to operate on principles of:

- trust, whereby supervisors share information and experiences openly with each other; and
- maximum co-operation between supervisors.

The operational Guidelines should support these principles and enhance the convergence of supervisory practices.

Although Supervisory Colleges and have proven a useful vehicle for information exchange and enhancing supervisory co-operation, they have not been a fully effective part of the supervisory decision-making process for EU groups. DB supports a move towards greater reliance on Colleges and in this context the strong role for the consolidating supervisor as set out in the CEBS' guidelines is essential.

Under the leadership of the consolidating supervisor, a pragmatic use of Core and General Colleges, and senior-level engagement from all authorities involved (as mentioned in Guideline 47), Colleges should significantly streamline the currently complex supervisory system, reduce risk for both supervisors and the institution, and allow a better understanding of the risk profile of the group. The strong leadership of the consolidating supervisor is essential. The consolidating supervisor must be the process leader and central point of contact, driving the supervisory activities of the College for the entire group.

Whilst CEBS can only develop a framework on a European basis, and has acknowledged the importance of non-EEA supervisors in the guidelines, DB believes that more work is needed to ensure that key supervisors for global groups are not excluded from the framework. Global and European arrangements need to be integrated to the greatest extent possible notwithstanding the lack of a global legal framework and cross-border legal restrictions on information sharing.

Specific comments on the draft guidelines are attached in Annex 1.

Yours sincerely

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Annex 1

DB Specific comments on CEBS Guidelines for the operational functioning of Colleges

Chapter 1 Operational organisation of colleges

Section 1 Operational organisation of colleges

Guideline 3: Where it leads to a more effective functioning of the college, (e.g. by streamlining the participation to college activities where the number of college members is large) the consolidating supervisor should establish several settings within the college encompassing a "core college", involving supervisors of the most relevant entities, or a limited number of supervisors depending on the topic to be discussed, and a "general college".

DB fully supports the pragmatic concept of a "core college" for complex groups, in line with CEBS first guideline on proportionality. It will also be essential to have clear roles and responsibilities assigned within the core college to avoid delay and to reduce the scope for disagreement or confusion.

Guideline 4: For the purposes of reaching a joint decision on model validation, the college shall involve all EEA supervisors of the subsidiaries included in the application for the use of internal models. The college shall involve all EEA supervisors of subsidiaries, for the purposes of reaching a joint decision on the levels of own funds under Pillar 2.

DB feels strongly that responsibility for model validation should rest first and foremost with the core college. The consolidating supervisor should present the decision of the core college to the general college once it has been fully formulated and agreed. Host supervisors within the general college should have the opportunity to communicate concerns to the core college via the consolidating supervisor and challenge the core college decision if necessary. In our view, including all EEA supervisors of subsidiaries using the internal model in the process from the outset would be unwieldy and inefficient.

Guideline 5: With a view to enhancing group-wide supervision, the consolidating supervisor should reach agreement with the supervisors of non-EEA entities, who are members of the college, on the extent of their individual contributions to its activities.

DB supports in principle CEBS' thinking on non-EEA supervisors and the need for them to be included in the process through bilateral dialogue with the consolidating supervisor. We also acknowledge that this needs to be done while avoiding any disruption to a legal framework that can only work on an EU-level. As mentioned in our introductory letter, we feel that there is more work to be done to ensure that European and global frameworks for colleges are compatible. We feel strongly that supervisory authorities in key jurisdictions, should be included in the discussions of the core college and not just the general college. Their exclusion from the core college would risk excluding a major part of the risk profile of the group from key supervisory discussions and agreements even with bilateral arrangements in place. It is also likely to lead to a duplication of requests and supervisory actions, placing an unnecessary burden on banks.

Guideline 6: The members of the college should agree on the written arrangements laying out the basis for their co-operation. These arrangements should be based on the CEBS template.

Paragraph 36 proposes that non-EEA supervisors can be party to the written agreements where appropriate in the opinion of "all EEA members of the college". The decision on inclusion of non-EEA supervisors should be made by the consolidating supervisor and core college, allowing objections from other members within a specified timeframe. As this is similar to the process set out in paragraph 51 under Guideline 9, consistency or cross-referencing between these guidelines would be helpful.

Section 2 Membership and participation in colleges

DB agrees with CEBS proposals for determining the materiality of entities level of participation in the core and general college. The proposal here is pragmatic and achieves a sensible balance between the materiality of entities to group activities and risk, and their importance in individual jurisdictions.

Guideline 8: When EEA branches are recognised as significant, the host supervisor should be considered as a member of the college. The consolidating supervisor should involve the host supervisor in the meetings or activities of the college to the extent it achieves the objective of efficient exchange of information. The host supervisor should also be part of the co-ordination of supervisory activities under emergency situations.

DB agrees in principle with Guideline 8 and certainly agrees that host supervisors of significant branches should be involved in the college discussions where appropriate and in particular with respect to emergency planning.

Paragraph 43 proposes that the host supervisor should set out argumentation for its inclusion in the college and suggests three points that would be particularly relevant (also repeated in paragraph 46). We would suggest that many of the principles used in paragraphs 39 and 40 are also relevant in the context of determining the level of participation of a branch supervisor.

Where a host supervisor of an EEA branch does become a member of the college, it is important that the consolidating supervisor ensures that the level of participation of the host remains commensurate with their role as supervisor of a branch. It is important to keep EU Single Market passporting provisions in mind in this context.

Guideline 9: The membership of non-EEA supervisors is determined by the consolidating supervisor taking into account the relevance of the entity within the group and the equivalence to the CRD of confidentiality requirements as assessed together with EEA members of the college.

DB fully supports the process for membership of non-EEA supervisors as set out in paragraph 51. A short timeframe should be specified for members of the general college to raise concerns about equivalence. The consolidating supervisor will have Memoranda of Understanding in place with certain non-EEA supervisors. It would be interesting to examine whether these bilateral agreements with the consolidating supervisor could address some of the concerns around confidentiality.

Guideline 10: Supervisors of related banking undertakings that are not subsidiaries, in addition to supervisors of non-banking sectors, as well as central banks, may participate in the meetings or activities of a college when deemed appropriate, by the consolidating supervisor, to fulfil the college tasks.

The inclusion of non-supervisory bodies in the general colleges for certain discussions has been raised as part of the restructuring of the EU supervisory architecture. In principle, DB believes this could be a very constructive mechanism to ensure a strong link between the micro- and macroprudential levels provided confidentiality is properly respected. The frequency with which other bodies are invited to college discussions will need to be reviewed over time to ensure that the link is maintained without disrupting the core work of the college.

In the context of the establishment of the European Systemic Risk Board (ESRB), it may also be worth considering whether the macroprudential supervisors could request an invitation to a core college from the consolidating supervisor where a macroeconomic alert or action by the ESRB may have a significant impact on an individual group.

Section 3: Governance of the colleges

DB fully supports and welcomes the proposals on governance of the colleges and the central role of the consolidating supervisor in ensuring efficient management of the core and general college. This Section will be particularly helpful in ensuring a degree of consistency in the use and structure of colleges across institutions.

Section 4: Information to CEBS

Guideline 16: CEBS should be invited to participate in the meetings of the college as an observer. The consolidating supervisor should inform CEBS of the activities of the college of supervisors, including those related to emergency situations, as well as making it privy to all the information of particular relevance for the purposes of supervisory convergence, such as the structure of the college, and, where appropriate, the existence of divergent views between college members. The agenda and the general outcome of the work of the colleges should be made available to CEBS.

DB supports the need for clear information flow to CEBS on the functioning of the college and the enhancement of supervisory convergence. CEBS acknowledges in the guideline that this information needs to properly respect to confidentiality. Whilst CEBS (or the EBA) are independent bodies, it is important to keep in mind that they are ultimately comprised of national supervisors. Not all of those supervisors are members of the college for all institutions and care has to be taken that institution-specific information is not shared with supervisors that are not part of the college in their capacity as members of CEBS. In that context, we would have some reservations about CEBS participating in college meetings as an observer where confidential data is discussed.

Chapter 2: Exchange of information among supervisors and communication with the supervised institutions.

DB supports the Guidelines on information exchange. We particularly support the proportionate approach that is taken to determining the relevance of entities within the group and within their local markets and the central role of the consolidating supervisor in ensuring an efficient exchange.

The acknowledgement of the role of non-EEA supervisors in the core college in Guideline 19, paragraph 75 is important as are the restrictions on information flow from non-EEA supervisors.

Information exchange within colleges should reduce duplicative requirements. For example, global firms face a multitude of similar but distinct liquidity reporting requirements. Colleges could be instrumental in eliminating multiple liquidity reports by commonly selecting one set of relevant liquidity data requirements for individual cross-border banks and jointly monitoring and sharing these with other college members. CEBS' liquidity score card is a step in the right direction.

Guideline 20: The members of the college should consider the usage of the full range of communication channels to ensure efficient information sharing, to support the work of the college and its integration into day-to-day supervisory activities.

It was our understanding from the draft legislation currently under negotiation, that the EBA would be responsible for establishing an IT infrastructure for exchange of information within supervisory colleges. There is no reference to such an infrastructure in the Guidelines. We would support a standardised platform developed at EU level which could be used for individual colleges.

Section 2: Communication with the supervised institutions

We are encouraged by the emphasis in the Guidelines upon communication with the supervised institutions. Colleges work best when there is close dialogue between the consolidating supervisor and the group on preparation for college meetings and follow up. Meetings with senior management as proposed under Guideline 25 are also an excellent mechanism for embedding the concept of colleges in supervisory and bank culture.

Guideline 23: The members of the college should co-ordinate, to the greatest extent possible, information requests to the parent company and to the local entities of the group.

We fully support this principle. We would also add here or under Guideline 24 that host supervisors should request information relating to the group from the consolidating supervisor and not from local entities. Although this is an established principle in home-host relationships, the reality on the ground is that local entities constantly deal with such requests.

Chapter 3: Voluntary sharing and delegation of tasks

DB is supportive of the sharing and delegation of tasks as a good mechanism for building supervisory trust and convergence and reducing the risks posed by a complex and duplicative cross-border supervisory system in Europe. To date we have seen little evidence of voluntary delegation of tasks. We accept that there are still legal limitations in moving to a more binding framework, but we believe the emphasis on this in the Guidelines is important.

Chapter 4: Joint decision on model validation

DB agrees with the pragmatic approach to the joint decision making on model validation as set out in the Guidelines and in accordance with Article 129 as it currently stands. We also support the amendments to Article 129 under the proposed Omnibus Directive which will place the final decision, in case of dispute, with the EBA.

Chapter 5: Joint decision on risk-based capital adequacy

Guideline 47: After the report containing the risk assessment of the group has been circulated by the consolidating supervisor to the host supervisors, the college, with an appropriate degree of seniority, should be convened in order to reach a joint decision on the adequacy of own funds at the consolidated and individual levels.

One of the problems that industry in general has had with colleges is the level of seniority of those attending. DB appreciates CEBS' reference here to the importance of appropriate seniority.

Chapter 6: Macro-prudential risks

Guideline 50: In assessing the risk profile of the group, the college members should assess macro-economic or financial developments as well as sectoral vulnerabilities that may impact the financial situation of the group. This macroprudential assessment should also identify risks specific to the group that may have a systemic impact on the financial system.

As previously mentioned, DB fully supports a clear link between macro- and micro-prudential supervision. Colleges provide an appropriate mechanism for such analysis and the occasional participation of macroprudential authorities is welcome to facilitate this.

It may help to clarify the process to be followed where the college assessment of macroprudential risk is not consistent with conclusions reached by the ESRB, the European Agencies, or any global macroprudential body. It will be important to avoid the colleges becoming a third level of macroprudential assessment.

Chapter 8: Planning and co-ordination of supervisory activities in emergency situations

DB fully supports the Guidelines set out in Chapter 8. The College should serve as a central co-ordinator for crisis management planning. In this context, DB welcomes the Basel Committee's Consultative Document on 'Good Practice Principles on Supervisory Colleges' (March 2010). These principles articulate that effective crisis management will require streamlined interaction. Information sharing and effective decision making will be essential to crisis management as emphasised in this Chapter.

A co-ordinated college approach to crisis management should also limit the need for unilateral actions by individual Member States. Ring-fencing by individual supervisors will lead to trapped pools of capital and liquidity and could worsen the problems of a group. Fragmented supervisory action generally undermine financial stability.