JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

	Comments Template on EBA, EIOPA and ESMA's Joint Consultation Paper (JC CP 2012 01) on its proposed response to the European Commission Call for Advice on the fundamental Review of the Financial Conglomerates Directive	**Deadline: 13.08.2012 cob**
Stakeholder:	Deutsche Börse AG 60485 Frankfurt am Main	

The question numbers below correspond to Joint Consultation Paper JC CP 2012 01

Please follow the instructions for filling in the template:

- ⇨ Do **not** change the numbering in column "Question".
- ⇨ Please fill in your comment in the relevant row. If you have no comment on a question, keep the row empty.
- ⇨ There are in total 10 questions. Please restrict responses in the row "General comment" only to material which is not covered by these 10 questions.
  - If your comment refers to multiple questions, please insert your comment at the first relevant question and mention in your comment to which other questions this also applies.
  - If your comment refers to parts of a question, please indicate this in the comment itself.

Please send the completed template to joint-committee@eba.europa.eu, jointcommittee@eiopa.europa.eu, and joint.committee@esma.europa.eu**, in MSWord Format.**

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CFA Questions	Comments
General Comments	In general we support the aim and content of the consultation paper and mainly to intention to avoid possible regulatory arbitrage and loopholes. However, it is necessary to clearly distinguish between the sectoral supervision as regulated by CRD (CRD IV), Solvency II, etc. on the one hand and the cross-sectoral supervision given by FICOD. An overlap or even double regulation of both, sectoral and cross-sectoral supervision should be avoided. We already see the risk that holding companies (main activity is to acquire participations) which are on a stand-alone level also regulated e.g. as an insurance or re-insurance company are classified as "Financial Institution" and need to be considered for consolidated "banking" supervision under CRD. Moreover, they might also be classified as a Financial Holding Company under CRD and even be the top company of a "banking group". Finally, it might be classified as Mixed Financial Holidng Company and as such also being classified as a Financial Institution according to Article 3 CRR as it is currently proposed. In turn, cross-sectoral supervision is currently shifted down to a substantial degree and is already taking part within the (sectoral) banking framework. We clearly oppose to this and kindly ask to clean up this situation. EBA is therefore asked to advise the Commission to streamline the definition of "Financial Institutions" in CRR in order to take out such supervised entities like insurances, re-insurances, payment institutions etc. which have specified capital (and general supervisory) requirements in a dedicated legislation. As the specified capital requirements are tailored for their specific risk, an aggregation under sectoral supervison and capital rules in our view is not meaningful and any supervision on an aggregated level should fall within the scope of FICOD. In addition to our statement above, we cannot see any reason to supervise Mixed Activity Holding Companies (MAHC) or Mixed Activity Insurance Holding Companies (MAIHC) within the scope of FICOD or any sectoral legislation beyond ownership control. We do not understand why e.g. a MAHC with one single banking subsidiary (even with minor activities) should fall within the scope of (limited?) FICOD supervision. Taking the possibility to require for that purpose even an intermediate holding (Tool 1) which automatically would qualify as a financial institution and a financial holding company (similarly this is true in the insurance sector).
1.	Within Group Deutsche Börse (GDB) no special purpose vehicles/entities (SPVs) exist. Therefore the broader scope of financial sector in connection with SPVs does not affect GDB and hence GDB cannot judge on the recommendation 1 so that any comments to this point are not appropriate from our perspective. With regard to recommendation 2 we are clearly in favour to address any supervision to the top tier entity. This is not just true for Mixed financial holding companies but in the context of CRD / CRR also for financial holding companies. We therefore support recommendation 2.

	We however strongly disagree to recommendation 3, as we already feel that ownership control within the rules of sectoral supervision is sufficient to control the impact those entities or their ultimate owners have on regulated entities. The only additional item we could think of would be the possibility to receive certain information on an ad-hoc basis (conditions should be clearly defined) or on a regular basis. However, this is not a topic for FICOD but – if at all – for the sectoral legislative text only. Moreover, we clearly oppose to the proposed tool 1. In case such an **intermediate financial holding** is forced to be set up, it immediately would form a mixed financial holding company, a financial holding company or an insurance holding company and as such would fall in the scope of FICOD or even sectoral supervision which might not be or is not the case without that intermediate financial holding. It cannot be that a measure supposed to be "light" in order to have a better supervision on conglomerates or owners of regulated entities creates consolidated supervision which is seen as being a "strong" supervisory measure. In total, we disagree to tool 1 and agree to tool 2 and 3 for Mixed financial holding companies only. It is our view that this approach does not follow the general principle of proportionality, adds complexity and creates undesired supervisory effects, material impacts and overshoots the initial financial conglomerate framework aiming to the cross-sectoral financial supervision only. The potential consequences of the proposal – despite our general concerns described above – are best explained with an example: ***Given a MAHC with a huge number of subsidiaries of which one is a credit institution with limited activities and a reasonable small balance sheet and low revenues. Taking tool 1 into account, the MAHC might be forced to found a holding company which has the only purpose to hold the participation in that credit institution. According to the definitions in CRR (CRD) this intermediate holding would be a financial institution, a financial holding company and would form a financial holding group under consolidated supervision.*** To add further, the intermediate holding would not change anything with regard to the regulatory classification of the mother company (MAHC) and its own supervision. And also the supervision of one credit institution within a newly created group on a consolidated basis does not change anything related to supervision. Moreover, there would be a lot of practical question like (a) in which country is the holding to be set up, (b) who would become the lead regulator in case the country of residence of the ultimate parent and the (only) credit institution(s) in the group is different, (c) how to treat a group with some banking but also insurance activities of an overall minor size?
2.	We propose to apply in general the mother company on the top tier of any regulatory group – regardless of its own regulatory status and irrespective of its own stand alone supervision, as the responsible parent entity. This could be made a choice given to

	the group under supervision.
3.	Not applicable
4.	Not applicable
5.	We do not see any necessity to enlarge the scope of empowerment to the supervisors in the jurisdictions and consider the current supervisory tool kit as adequate.
Annex H Questions	
General Comments	In our Group no additional conglomerates would occur when considering SPVs and IORPs, hence we have no additional comments to Q1 to Q5. The questions are only related to a specific part of the proposals, recommendation 1 of Q1. When considering recommendations 2 to 3 in conjunction with Tools 1 of Q1, material additional costs for the set up of holdings would take place.
1.	No comments
2.	No comments
3.	No comments
4.	No comments
5.	No comments