31 March 2010

AFME Response
CEBS CP34 on guidelines for supervisory colleges

Introduction

AFME (Association for Financial Markets in Europe) was formed on November 1st 2009 following the merger of LIBA (the London Investment Banking Association) and the European operation of SIFMA (the Securities Industry and Financial Markets Association). AFME represents a broad array of European and global participants in the wholesale financial markets, and its 197 members comprise all pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME participates in a global alliance with SIFMA in the US, and the Asian Securities Industry and Financial Markets Association through the GFMA (Global Financial Markets Association), and provides members with an effective and influential voice through which to communicate the industry standpoint on issues affecting the international, European, and UK capital markets. For more information please visit the AFME website, www.AFME.eu

General comments

In general firms consider that the draft CEBS guidelines are a comprehensive and practical statement of how colleges should operate. We have the following general observations:

Colleges need to operate in a way that optimises cooperation and streamlining of supervisory tasks. That optimisation needs to take account of the global, third country dimension, as well as within the EU/EEA. College arrangements need to be adaptable enough to enable global colleges in which EEA supervisors participate to work seamlessly with the EU college and its members, so that there is well-balanced and well-informed supervision of the group as a whole. In this context, it is important for CEBS guidelines to dovetail well with the Basel Committeeǿs draft Good Practice Principles on Supervisory Colleges, published for consultation on 30th March.

We support the role of the consolidating supervisor as taking the lead in the collegeǿs activities, acting as the point of contact, and facilitating more efficient communication

We note that the European Commissionǿs Omnibus Proposal, currently in codecision, foresees the possibility of technical standards on the operation of colleges, put forward by the proposed European Banking Authority (CEBSǿs planned successor), to be adopted by the European Commission, possibly as European Regulations, with binding effect. We consider that the detailed operation of colleges is a matter which involves a great deal of judgement and diplomacy, in particular, as noted above, where third countries are concerned. The level of detail of any technical standards in this area, and the extent to which they continue to allow flexibility for supervisory judgement will therefore be crucial. There is likely to continue to be a need for Level 3 Guidelines to guide judgemental aspects. The dividing line will need to be drawn in a way that carefully balances the need for consistent operation of colleges with the ability of the consolidating supervisor to exercise judgement.

A particular area of sensitivity vis a vis third countries is the confidentiality of market-sensitive information. Particular care is needed for this aspect in relation to CEBSôs proposals on CEBS participation in colleges, in the context, for example, of model validation, to ensure that the confidentiality of information is properly protected.

As a supplement to the meetings with senior officers of the supervised group envisaged under Guideline 14, firms would welcome notification, in advance of college meetings to which they are invited, information on the work programme and likely data requests, to enable planning. Firms would also welcome fuller feedback after college meetings on the outcome of the college. We recommend that under Chapter 2 of the Guidelines CEBS should pay particular attention to this aspect.

Comments on specific draft guidelines

Chapter 1: Operational organisation of colleges

We have the following comments on specific Guidelines in Chapter 1:

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".**

We support the distinction between general and core colleges, which combines efficiency with full participation. In some cases it may be appropriate to allow broader participation within the core college in the interests of efficiency and effective decision making if the issue warrants it.

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.**

We suggest that the guidelines provide more granularity on the types of model validation decisions that are made by the college. Firmsô internal models continuously evolve, and are amended or upgraded. So it is necessary to have a system that ensures that material decisions on validation are made collectively, but approvals of less material adjustments are not unnecessarily delayed. To avoid over-burdening the college and the firm, we suggest that CEBS should include in the Guideline a system of pre-validation by the college of the initial approval of the model and material changes, and after the event validation of non-material changes approved by the consolidating supervisor. Furthermore, it is important to ensure that the approval process is not unnecessarily delayed, and where the college agrees it should be possible for model validation decisions to be made exclusively by the core college.

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

We welcome CEBSô s recognition of the importance of the global dimension of supervisory cooperation and coordination. While this Guideline focuses on the operation of the EEA college, it is important to ensure that the principles allow for effective and streamlined interaction between EEA and third country authorities, either in the EEA college, or in the separate global college, in a way that maximises the efficiency of coordination and cooperation between the two. As noted in our general comments, it is important for CEBS guidelines to dovetail well with the Basel Committeeô s draft Good Practice Priniciples on Supervisory Colleges, published for consultation on 30th March.

Confidentiality of data is an important consideration, and we support the inclusion of the guidance in paragraph 33 regarding the assessment of supervisory confidentiality requirements.

<u>Guideline 9:</u> 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.

As CEBS notes, it will be important to take into account the ECô s publication of a list of countries with equivalent confidentiality requirements when it occurs. We support the implementation of a process to decide on the equivalence to CRD of provisions applicable in third countries, and the process to determine membership of a non-EEA country in the EU college in paragraph 51. Our comments under Guideline 5 on the importance of optimising the effectiveness of cooperation with third country supervisors through the global college are also important in this context.

__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.**

Because of the confidentiality implications, it will be important to limit central bank participation in colleges to cases of identified and justified need or concern. Central banks should not be regular members of colleges.

__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.**

We agree that CEBS, and its proposed successor EBA, has a valuable role in monitoring the activity of EU colleges, comparing practices, encouraging consistency and convergence of approach across EU colleges, and ensuring that EU colleges continue to be able to work smoothly and consistently with global colleges. To enable it to fulfil these roles, we agree that CEBS should participate as an observer in meetings of the college. However, CEBS should be sensitive to confidentiality concerns. Some firms consider that CEBS should withdraw its participation as an observer where confidentiality issues arise, e.g. in relation to model approvals; other firms consider that, in order that it can maintain a strong central role as monitor of divergent practices, CEBSôs participation should not be subject to such a limitation, but should instead be subject to strict confidentiality requirements. All firms are agreed that, given the potential market sensitivity of the information that is made available and discussed in the college, there is a need to include in the Guideline more stringent wording on arrangements to secure the confidentiality of any information provided by the consolidating supervisor to CEBS. Assurances are needed that information discussed in the college should remain confidential; firms should be provided with information on which entities the information has been passed to; and any observation of sensitive or confidential discussions should be by CEBS secretariat, not by CEBS members that do not have a direct interest in the issue.

__Chapter 2: Exchange of information among supervisors and communication with the supervised institutions__

Guideline 22: Arrangements concerning communication with the supervised institutions (parent company and other entities) should be agreed upon by the members of the college. Communication with the group should cover, at a minimum, the key activities of the college.

We strongly support this guideline, which encourages communication with the group about the key activities of the college. The better the group is informed about the activities and discussions of the college, the better it will be able to cooperate and provide the information requested by supervisors. Moreover, when the group receives feedback about areas of supervisory concern, it helps the group to work on these issues.

Guideline 25: With a view to enhancing the dialogue between the group and the supervisors involved in group-wide supervision, the consolidating supervisor should organise meetings between college members and the senior management or other representatives of the supervised group.

As noted in our general comments above, we stress the importance under Guideline 25 of fuller feedback to firms on the outcome of college meetings, to maximize the benefit of the collegesô work and the quality of engagement with the supervised group. We strongly support paragraph 84: it is essential that the consolidating supervisor organises meetings between college members and the senior management of the group for this purpose. It is important for the group to receive information on areas of supervisory concern in advance of such meetings to allow a proper exchange of views during the meeting.

Chapter 3: Voluntary sharing and delegation of tasks

We agree with the suggested Guidelines in Chapter 3, and have no particular comments.

Chapter 4: Joint decision on model validation

We have the following comments on specific Guidelines in Chapter 4:

Guideline 37: The college members involved in the joint decision process should agree on the structure of the application form and on the details of the review and validation plan.

We stress the importance of avoiding duplication, the importance of a single waiver applying for all models, and the need for good dialogue between firm and supervisor to ensure that the process is as smooth as possible (e.g. paragraph 123).

Guideline 38: The college members involved in the joint decision process, under the lead of the consolidating supervisor, should coordinate and review the execution of the supervisory action plan. The college members involved should discuss the draft joint decision prepared by the consolidating supervisor.

We suggest that the Guidelines should stress the importance of rationalisation of information requirements ï including content, deadlines, reporting formats - and the importance of minimising the number of multiple requests. We suggest that the consolidating supervisor should take the lead in this task, in coordination with the parent company.

<u>Chaper 5: Joint decision on risk-based capital adequacy</u>

<u>Guideline 44</u>: In order to reach a joint assessment of the risk profile of the group and its entities, the college members should use commonly agreed templates for reporting information and assessments.

We welcome this guideline, which should enable easier assessment and comparison, though it is important that the agreed templates focus on essential information rather than being an aggregate of diverse requirements.

The CRD 4 Proposal introduces an home/host framework for EEA firms that should allow liquidity to be reported at the consolidated level. A common EU liquidity reporting framework is also on the EBA's proposed agenda. So we suggest that colleges could be instrumental in eliminating multiple liquidity reports by choosing to use a single set of relevant liquidity data elements, and jointly monitoring and sharing them with other college members

<u>Guideline 45</u>: Information requests on ICAAP, at the group and solo level, should be coordinated within the college.

We support in particular paragraphs 173 and 174.

<u>Chapter 6: Macro-prudential risks.</u>

We have the following comments on specific Guidelines in Chapter 6:

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.

We agree that the college should have a role in both assessing and responding, as regards particular groups, to the recommendations of the ESRB, and in informing the ESAs and ESRB where they identify issues in the supervision of the group which may have systemic significance. We assume this is what is meant, though some of the detailed wording is opaque: it would be helpful if CEBS could clarify the respective roles in the process. We support a clear link between macro- and micro-prudential supervision and the colleges provide an appropriate mechanism for such analysis. There needs to be a transparent dialogue to provide clarity on how the CEBS guidelines would be applied if the macroprudential assessment of risk made by the college were different from the conclusions reached by the ESRB, the ESAs, third country macroprudential supervisors, or the Financial Stability Board or IMF.

<u>Chapter 7: Planning and coordination of supervisory activities in going concern situations</u>

We have the following comments on specific Guidelines in Chapter 7:

<u>Guideline 51</u>**: Under the coordination of the consolidating supervisor, the college of supervisors should draw up a coordinated supervisory action plan17 (hereafter 'the plan') for the entire group that is, for the parent company and the main activities/entities within the group.**

We refer again to our comments above on the importance of ensuring that arrangements for the EEA college enable smooth interaction with third country supervisors in the supervision of the global group.

<u>Guideline 57</u>**: College members should agree on the possibility of communicating the planning to the supervised group.**

We stress the importance of collegesô sharing supervisory plans with firms to ensure transparency and efficiency.

<u>Chapter 8: Planning and coordination of supervisory activities in emergency situations</u>

We have the following comments on specific Guidelines in Chapter 8:

<u>Guideline 59</u>**: Members of the college shall cooperate closely, whenever necessary, with other relevant authorities (e.g. central banks, finance ministries, deposit guarantee schemes) and, if applicable, other networks (e.g. Cross-Border Stability Groups).**

We support the call for closer cooperation among the parties mentioned in this guideline, and stress the importance of respecting the confidential requirements in Directive 2006/48/EC. We welcome the proposal in paragraph 232 that the college infrastructure can be used for facilitating cooperation between supervisory authorities, central banks, and finance ministries or through other networks where established. This infrastructure should not be confused with the college itself, which is only one of the groupings that would be involved in the management of a crisis.

<u>Guideline 61</u>**: Where a potential emergency situation has been identified, and the college members have been alerted, they should assess its potential impact on the financial soundness of the group, on the market liquidity and on the stability of the financial system of the Member States where the bank is present.**

We suggest that the Guidelines should say more about how the existence of a potential emergency situation is identified, and by whom. Our comments above on the importance of effective and efficient cooperation with third country supervisors are also pertinent in this context.

Yours sincerely,

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