	Comments Template on Consultation Paper on the proposal for implementing technical standards with regard to the procedures to be used for granting supervisory approval for the use of ancillary own-fund items	Deadline 30 June 2014 23:59 CET
Name of Company:	CFO Forum and CRO Forum	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
	Please follow the following instructions for filling in the template: ⇨ Do **not** change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇨ Leave the last column empty. ⇨ Please fill in your comment in the relevant row. If you have no comment on a paragraph or a cell, keep the row empty. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. **Please send the completed template, in Word Format, to CP-14-004@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.** The numbering refers to the Consultation Paper on the proposal for implementing technical standards with regard to the procedures to be used for granting supervisory approval for the use of ancillary own-fund items.	
Reference	**Comment**	
General Comments	Thank you for opportunity to comment on CP-14-04. The CFO Forum and CRO Forum welcome the publication of this consultation paper. We have set out our comments on the individual articles of the paper below, which are suggested to increase the flexibility of the approval process for Ancillary Own Funds items, in particular in times of stress. We also believe that the period within which a supervisory authority may decide on the application should be shortened, and that certainty is needed for undertakings should a decision not be reached by the supervisory authority within the prescribed period. We would also note in general that the references to the draft Delegated Acts in the ITS will need to be updated as the Delegated Acts are finalised and adopted.	

	Comments Template on Consultation Paper on the proposal for implementing technical standards with regard to the procedures to be used for granting supervisory approval for the use of ancillary own-fund items	Deadline 30 June 2014 23:59 CET
Recital (1)		
Recital (2)		
Recital (3)		
Recital (4)		
Recital (5)		
Recital (6)		
Recital (7)		
Recital (8)		
Recital (9)		
Article 1		
Article 2		
Article 3 (1)		
Article 3 (2)		
Article 3 (3)		
Article 3 (4)		
Article 3 (5)		
Article 4 (1)		
Article 4 (2)		
Article 5 (1)		
Article 5 (2)	Pre-approvals of items before signature must be allowed to allow flexibility in times of stress. Art. 5(2)a (regarding supporting evidence) requires the evidence that the counterparty has entered into the contract. In order to apply for approval of an item as AOF the regulation presupposes that the underlying contractual arrangements are signed and no application before signature is possible. This requirement together with long approval periods (see comments on Art. 7(5)) leads to a serious reduction in flexibility on how companies can react in a crisis situation. It should be	

	allowed that an application can be made once terms and conditions are fixed but the contract is not yet signed.	
Article 5 (3)	Calls of the AOF that are contingent on the Solvency ratio falling below a threshold must be allowed. Art. 5(3)a (regarding supporting evidence) requires confirmation that the AOF item does not contain disincentives to call upon the item or constraints to be called on demand and mentions as a specific example that the call must not be contingent on the occurrence of an event or criteria being met. A conceivable condition in the terms and conditions of an AOF item is that a call is contingent on the actual SCR ratio falling below a certain threshold. This condition is certainly not a disincentive to call the item in case it is needed. However under current wording this item seems to be disallowed.	
Article 5 (4)		
Article 5 (5)		
Article 5 (6)		
Article 5 (7)		
Article 5 (8)		
Article 6		
Article 7 (1)		
Article 7 (2)		
Article 7 (3)		
Article 7 (4)		
Article 7 (5)	We would suggest that the regular approval period for AOF of 3 months needs to be shortened to 2 weeks in order to facilitate effective capital management in times of stress. Art. 7(4) (regarding the assessment of the application) requires that the period of time for decision on the application by the supervisor is reasonable (a) and does not exceed 3 months (b) from the receipt of the complete application. Art. 7(5) regulates that even under exceptional circumstances the time taken should not exceed 6 months. • This approval periods need to be seen in conjunction with the requirements of Art. 138(3) of Directive 2009/138/EC, where undertakings after a breach of the SCR are required to	

	re-establish the level of eligible own funds within 6 months. Substantial lead time after the breach is required to find and negotiate with counterparties over AOF items before an application for AOF to cover the SCR is ready to be filed. • Once an SCR breach has occurred it is market expectation that undertakings act quickly and the regulatory framework should support a quick reaction. AOF are expected to become important in this respect: Art. 59 COF2 Nr.6 requires a write-down of Tier 1 instruments if the non-compliance extends over more than 3 months. This would be a reputationally significant event and could be avoided by raising additional AOF in a timely manner. • The supervisory authority therefore should be obliged to decide over the application within 2 weeks. This will increase the ability of undertakings to manage an SCR breach within the prescribed time limits.	
Article 7 (6)		
Article 7 (7)		
Article 7 (8)		
Article 7 (9)		
Article 7 (10)		
Article 8 (1)		
Article 8 (2)		
Article 8 (3)	The consequences of regulator's silence after the approval period needs to be laid out to avoid uncertainty. Art. 7(5) (regarding the assessment of the application) in conjunction with Art. 8(3) regulates that if the authority has not decided on the application within the required period (6 months) the undertakings must not consider the application as approved. The ITS leave open any further process steps after the authority has failed to meet the deadline. No incentive to the authority is given to accelerate the internal decision finding, resulting in prolonged legal uncertainty for the undertakings. This could result in deteriorating conditions for the undertaking to raise funds and increased likelihood of company failure. A potential solution could be to consider the approval as granted once an additional period of time has elapsed.	

	Comments Template on Consultation Paper on the proposal for implementing technical standards with regard to the procedures to be used for granting supervisory approval for the use of ancillary own-fund items	Deadline 30 June 2014 23:59 CET
Article 9 (1)		
Article 9 (2)		
Article 10 (1)		
Article 10 (2)		
Annex I Section 1		
Annex I Section 2		
Annex I Section 3		
Annex I Section 4		
Annex I Section 5		
Annex I Section 6		
Annex I Overall Conclusion		