

**Summary of Comments on Consultation Paper 03 - EIOPA-CP-11/03**  
**CP No.3 - Draft Report - Swiss Equivalence**

**EIOPA-BoS-11-031**  
**10.10.2011**

EIOPA would like to thank ABI, ECIROA, FINMA and SIA

The numbering of the paragraphs refers to Consultation Paper No. 03 (EIOPA-CP-11/03)

<b>No.</b>	<b>Name</b>	<b>Reference</b>	<b>Comment</b>	<b>Resolution</b>
1.	ABI	General Comment	<p>The ABI welcomes the work done to date by EIOPA on the subject of equivalence and is grateful for the opportunity to comment on EIOPA's draft report. The strengthening of supervisory cooperation internationally and the implementation of an appropriate equivalence regime is an extremely important facet in the success of the Solvency II programme. The ABI notes the progress made in relation to the equivalence of the Swiss supervisory system and strongly encourages continued cooperation between the relevant parties in order to deal with the outstanding points outlined in the draft report. Where such caveats exist, they should be addressed through an assessment of the adherence to principles and outcomes, as opposed to the application of detailed rules.</p> <p>Where the equivalence assessment is caveated, or where changes are needed for the supervisory regime to be deemed equivalent, it is not entirely clear what the process and timeline is from here on in to achieve equivalence (or not). Full clarity should be provided on the processes and timeline to achieve equivalence where caveats or prescribed changes are stated.</p>	<p>Noted.</p> <p>Consistent with EC Call for Advice, each of the reports will be revisited by EIOPA once the Level 2 criteria are agreed.</p> <p>EIOPA's approach of has been determined by the</p>

Resolutions on Comments on EIOPA-CP-11/03

				<p>EC CfA which also asked that the assessments identify "which aspects of the third country solvency regime could be deemed equivalent and what additional steps would need to be taken in order for the remaining criteria to be met".</p> <p>EIOPA is providing technical advice to the EC. The Equivalence Decision will ultimately be taken by the EC.</p>
2.	ECIROA	General Comment	<p>ECIROA welcomes the opportunity to comment on this Consultation Paper.</p> <p>For more information please visit our website on <a href="http://www.eciroa.org">www.eciroa.org</a></p> <p>It is important to recognise the particular nature of captive companies which differ from commercial insurance and reinsurance undertakings in that:-</p> <ol style="list-style-type: none"> <li>1. They write a restricted number of lines of insurance business (e.g. property damage &amp; liability) and normally issue a small number of policies (e.g. global programmes with only one policy per insurance class);</li> <li>2. They insure or reinsure a restricted number of risk units (e.g. sites, premises, vehicles);</li> <li>3. They have a restricted number of insureds / clients;</li> <li>4. They often outsource up to 100% of their administration to other</li> </ol>	<p>Noted.</p> <p>Please see EIOPA's detailed presentation on application of proportionality principle, including how it applies to captives in SII, in par. 9 to 11 of the Report.</p> <p>Equivalence assessments reflect the provisions of the EU regulatory regime.</p>

			<p>professional companies. This outsourcing is done to ensure that a broader and more appropriate level of expertise is brought to bear on the company's activities, if needed;</p> <p>5. The purpose of the captive is to add flexibility to the tools available to the group risk manager in managing and mitigating the risk of the parent group in a cost efficient manner.</p> <p>Please note that where a comment has not been made on a particular paragraph, this does not indicate that we agree with the paragraph.</p>	<p>Level 1 text of SII Framework sets out the approach to captives. L2 implementing measures currently being drafted will also set out how the proportionality principle applies in certain cases (for example: simplifications that can be applied by captives).</p>
3	FINMA	General comment	<p>FINMA would like to thank EIOPA for its efforts and professionalism in handling the equivalence assessment.</p> <p>We are also grateful for the opportunity to comment on the Draft Report. Our comments below focus on certain issues regarding the governance of insurance groups, i.e. the compliance function and internal audit.</p> <p>Since to date we have focused more on the general approach adopted by FINMA on governance and we may not have sufficiently differentiated between solo and group level, we are of the opinion that the Draft Report treats insurance groups in a manner that does not correspond to the supervisory practice in Switzerland. For instance:</p> <p>All insurance groups or conglomerates (groups) are, according to FINMA's pronouncements and established supervisory practice, to have a compliance function as a separate organisational unit and an internal audit function.</p> <p>Compliance function: This practice is based on FINMA Circular 2008/32 on Corporate Governance which requires establishing a compliance</p>	<p>EIOPA acknowledges that while Swiss law is not explicit in this case,</p>

		<p>function, depending on the size and scale of business (cf. margin no. 9). Under FINMA practice, this requirement is always affirmed for groups. In terms of the required compliance function, FINMA regularly conducts thematic on-site reviews for groups.</p> <p>Internal audit function: Article 27 para. 1 Insurance Supervision Act (ISA) requires an insurance company to establish an internal audit function. In exceptional circumstances, FINMA may exempt a supervised entity from this requirement if good cause is shown, i.e. if there are non-complex risk structures. Since groups are per se complex entities FINMA does not grant such exemptions to groups. So far FINMA has never received such an exemption request from a group. On the contrary in fact the requirement for groups to implement an internal audit function is explicitly specified in margin no. 3 of FINMA Circular 2008/35 "Internal audit - insurers".</p> <p>To this end, external auditors for groups have to confirm in their supervisory audit report that an effective and efficient internal audit function is in place which meets the required international standards. In particular, the external auditors have to confirm that they assessed the quality of the internal audit and have carefully considered its reports. Moreover, FINMA receives a summary report from the internal audit function of the group which is then analysed for both quality and risk-relevance by supervisors in a systematic and standardised process.</p> <p>The situation thus differs substantially from that at solo level, where FINMA can and has exempted under the principle of proportionality</p>	<p>FINMA reports that in practice the exemption from the compliance function never applies to the group compliance function. We accept FINMA's position and please see amendments in the revised Report</p> <p>EIOPA acknowledges that while Swiss law is not explicit in this case, FINMA reports that in practice the exemption from the internal audit function never applies to the group internal audit function. We accept FINMA's position and please see amendments in the revised Report.</p> <p>We also note that FINMA has recognised that at solo level, due to CH interpretation of the proportionality principle certain small, non-complex undertakings which do not belong to a CH group can be</p>
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			<p>certain relatively small and non-complex insurance companies from the requirement to establish an internal audit function. FINMA only requires establishing a compliance function as a separate organisational unit where it is deemed appropriate to the size and scale of business.</p> <p>We suggest the above points be reflected in EIOPA's Final Report and hope that the Swiss regulations can be considered fully equivalent in terms of the compliance and internal audit function for groups.</p> <p>To conclude with a more general comment, we would like to draw your attention to the fact that Swiss insurance regulation does not, unlike the Solvency II Directive, provide for a general de minimis exemption for insurance companies which fall below certain thresholds.</p> <p>Considering the principle of proportionality, which is also enshrined in the Swiss Constitution, it should be possible to exempt very small insurance companies from certain requirements such as the internal audit function or establishing a compliance function as a separate organisational unit. In the meaning of equivalence being assessed only in relation to those entities covered by the scope of Solvency II, we propose that some clarification on this difference be inserted in the Final Report.</p>	<p>exempted from the requirement to provide an internal audit function.</p> <p>We note the comments put forward by FINMA and note that the scope of certain exemptions in CH framework at solo level is still wider than the one of SII.</p>
4.	SIA	General Comment	<p>The Swiss Insurance Industry appreciates and welcomes the EIOPA draft Report regarding the equivalence assessment of the Swiss insurance supervisory system. We believe that the EIOPA draft report is an important step. The positive EIOPA recommendations reflect our experience of the closeness of the Swiss and EU supervisory approaches and the advanced regulatory practices applied by FINMA. The positive findings reflect the constant efforts within Switzerland to establish and maintain a fruitful cooperation between the Swiss and EU supervisory regimes. We trust that the in-depth dialogue between EIOPA and FINMA in this equivalence process will continue.</p> <p>We are aware that FINMA is currently reviewing the issue of public</p>	Noted. These

			<p>disclosures and support that this point should be revisited once the internal review in Switzerland is concluded and common practices have been established taking also international accounting standards as well as public listing rules into account. There is already an emerging market practice towards the disclosure of certain key SST numbers, which we consider to be in line with the spirit of the Solvency II framework.</p> <p>Finally, from an industry perspective, we are not aware of dispensations being granted for the audit or compliance functions at the group level, so this possibility should be idle regulation in practice. We would recommend focusing on the supervisory practice in this regard when assessing the equivalence of the Swiss insurance supervisory regime.</p> <p>We are confident that the dialogue with FINMA and continued public transparency of the process, will allow for full equivalence. This will be an important step to achieve the ultimate goal to strengthen supervisory cooperation at the international level.</p>	<p>developments will be reviewed as part of the review following L2 text agreement.</p> <p>Noted, please see above replies on FINMA comments.</p>
5.	ECIROA	28.	<p>The Solvency II Directive requires insurance and reinsurance undertakings to have in place an effective internal control system which shall include a compliance function and an internal audit function. In accordance with the Principle of Proportionality, these functions can be carried out by a member of the Captive Board. The administration of these functions can be carried out either by using the compliance function of their parent or group company or by outsourcing this function to a company which has appropriate and relevant experience. This is also the case for the internal audit function. The responsibility for internal control remains with the Board of the Captive.</p>	<p>Level 1 text of SII Framework sets out the approach to captives. This framework has also been presented in detail in par. 9 to 11 of the CH report.</p> <p>We note that equivalence assessments reflect the provisions of the EU regulatory regime.</p> <p>The internal audit function needs to be established as fully objective and</p>

				independent (please see art. 47 of SII).
6.	ECIROA	39.	Where captives are insuring only the risks of their parent or group company (and where there are no third party insureds), a proportionate approach should be applied to public disclosure requirements. The Policyholder (parent or group company) and the Supervisor has full access to all information. Publication of detailed information can be harmful where captives are underwriting a limited number of policies and claims reserves are therefore easily identifiable by claimants (which is not the case for larger Insurers underwriting a wide spread of insurance business).	Equivalence assessments reflect the provisions of the EU regulatory regime.  Level 1 text of SII Framework sets out the approach to captives. L2 implementing measures currently being drafted will also set out how the proportionality principle applies in certain cases (for example simplifications that can be applied by captives). Art. 53 of SII regulates the situations where exemptions from the public disclosure obligation are allowed.
7.	ECIROA	47.	Please see our comments in 28.	Please see our response under comment 5.
8.	ECIROA	257.	We find that the comments of the EIOPA comparing the 99,5% SII VaR to the 97,5% Swiss VaR not totally comparable because under SII one compares the 99,5 VaR of a max scenario per event to a 97,5% VaR of an annual limit.	EIOPA's assessment is based on principles and objectives to assess whether the third country solvency regime provides equivalent outcomes.

