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Mr Gabriel Bernardino
CEIOPS
Westhafenplatz 1
60327 Frankfurt am Main
Germany

Dear Mr Bernardino,

I would like to reiterate my thanks to CEIOPS for the final advice on the list of third countries supervisory regimes to be assessed prior to the introduction of Solvency II that was provided in August this year.

The second part of the Commission's June 2010 Call for Advice asked CEIOPS to provide fully consulted upon final advice on the extent to which the third countries listed below satisfy the general criteria for assessing third country equivalence. This assessment should be carried out using the latest draft implementing measures that have been tabled by the Commission for discussion at the Solvency Expert Group. Once the Commission's proposal on the general criteria is published (June 2011), CEIOPS should check that the final published proposals are consistent with its advice.

The assessment of the third countries should include an analysis of the extent to which the criteria are fulfilled. It should examine the legislation in place, supervisory practices, implementation and application of that legislation within the third country's supervisory regime. In addition, where a third country is in the process of making legislative amendments that will enter into force at the same time or before Solvency II becomes applicable, then these should be taken into account when assessing whether the criteria have been met. Subject to the discussions on the Omnibus II Directive, Solvency II will become applicable from 1 January 2013, and it is only fair that third countries are assessed looking at the solvency regime that will be in place as of this date.

The Commission expects the final CEIOPS advice to indicate whether it is possible for the Commission to adopt a positive equivalence finding in relation to the third countries listed below. Where it is not possible, CEIOPS should identify which aspects of the third country's solvency regime could be deemed equivalent and what additional steps would need to be taken in order for the remaining criteria to be met.

The Commission has considered CEIOPS' final advice on the list of third countries, as well as its draft advice and stakeholders' comments and has come to the view that CEIOPS should carry out equivalence assessments on the following third countries:

Third Country	Article 172 (Reinsurance)	Article 227 (Group solvency)	Article 260 (Group supervision)
Bermuda	✓	✓	✓
Japan	✓	x	x
Switzerland	✓	✓	✓

The Commission acknowledges that this list does not reflect all the third countries for which a Solvency II equivalence finding is relevant. However, the Commission is equally aware that equivalence assessments will be resource and time intensive and that the resource constraints of CEIOPS mean that requesting a greater number of equivalence assessments than that proposed above would not be practicable. Given this, the Commission's view is that an alternative solution must be found and that this solution lies in the form of a transitional regime for equivalence.

A transitional regime for equivalence is not foreseen in the current Framework Directive. However, the Omnibus II Directive would provide the Commission with an opportunity to amend the Framework Directive to allow for the development of transitional measures in level 2 implementing measures. It is foreseen that the transitional measures would be introduced for each of the three equivalence articles (Article 172, Article 227 and Article 260). Third countries eligible for inclusion in the transitional regime would receive the same benefits from equivalence as they would do had there been a positive equivalence finding. However, transitional measures would be time limited and those third countries included in the transitional regime would need to be in a position to fully satisfy all of the equivalence criteria at the end of the transitional period in order for a positive equivalence finding to be reached and for the benefits of Solvency II equivalence to be retained on a permanent basis. In order for a third country to be eligible for inclusion in the transitional regime, that third country would need to satisfy certain criteria that will be prescribed in implementing measures and commit to converging towards a solvency regime capable of meeting the equivalence assessment criteria by the end of the transitional period.

It would not be appropriate for the Commission to pre-judge the outcome of the political discussions with Member States and the European Parliament on the possibility of having transitional measures for equivalence. However, the European insurance industry has indicated that the United States would be a primary candidate for which a transitional regime would be relevant.

In the event that a positive equivalence finding cannot be reached with respect to any one of the third countries listed above (Bermuda, Switzerland and Japan), then the Commission will also consider whether that third country could be included within the transitional regime to give that third country more time to adapt and implement a solvency regime that would be capable of satisfying the equivalence criteria.

Once a decision has been taken on the third countries that would be eligible for inclusion in a transitional regime, it is likely that the Commission will seek further technical input from CEIOPS in order to determine what measures those third countries would need to take in order to be capable of being found equivalent. It is not anticipated that this input

would require CEIOPS to undertake a full equivalence assessment in respect of those third countries.

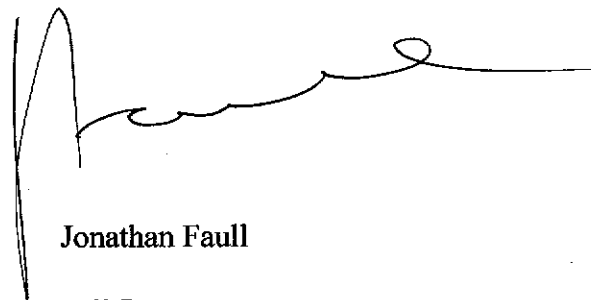
The Commission notes that CEIOPS issued a public consultation in September on the methodology to be used for equivalence assessments. I appreciate that CEIOPS will now reconsider its draft methodology in light of comments received from stakeholders. However, I would like to take this opportunity to make some general observations.

- 1) The Commission recognises the need to use indicators as a guide when considering whether criteria have been met and we understand that it is not CEIOPS intention for this to result in a "tick-box" approach. We would, therefore, like to urge CEIOPS to adhere to the overarching principle that equivalence should be a flexible process based on principles and objectives.
- 2) The Commission believes that where a third country has legislative amendments pending that will enter into force at the same time or before Solvency II becomes applicable, then these should be taken into account.
- 3) The Commission notes CEIOPS intention to consider information provided under a Call for Evidence. Where such information is provided and deemed by CEIOPS to be relevant for its consideration, then the Commission considers that the third country to which the evidence relates should be given the opportunity to review and respond to the evidence in question.
- 4) The Commission's view is that the timeline proposed by CEIOPS should remain flexible and only be indicative. The complexity of the solvency regimes in some third countries may justify a 40/42 week assessment. However, the possibility of a shorter assessment for some third countries should not be excluded.

Finally, I am aware of CEIOPS' concerns over the timeline for assessment of the third countries listed above. The Commission's June 2010 Call for Advice asked for CEIOPS' final advice to be provided by July 2011. The Commission intends to publish its level 2 implementing measures proposal, including the criteria for assessing equivalence, in June 2011. In order to give CEIOPS sufficient time to review its advice in light of the published level 2 implementing measures, the Commission proposes extending the deadline for CEIOPS to provide its final advice to end September 2011. I recognise that this timeline remains challenging. However, any further extension would not be possible given the Commission's commitment to publish decisions on equivalence by July 2012.

In conclusion, I would like to thank you and your colleagues again for the work that you have undertaken so far on equivalence.

Yours sincerely,



Jonathan Faull

Contact:

Charlotte Russell, Telephone: (32-2) 296 34 60, charlotte.russell@ec.europa.eu