



Committee of European Banking Supervisors	CEBS/2008/04 IWCFC/DOC/08/01
Interim Working Committee on Financial Conglomerates	

IWCFC and CEBS advice to the EU Commission on whether the supervisory arrangements of relevant US supervisors are likely to achieve the objectives of consolidated and supplementary supervision as set out in Directives 2002/87/EC, 2006/48/EC AND 2002/49/EC

February 2008

Executive Summary

1. Article 143 of Directive 2006/48/EC (referred to hereafter as the 'Capital Requirements Directive' or 'CRD') and Articles 18 and 21 of Directive 2002/87/EC (referred to hereafter as the 'Financial Conglomerates Directive' or 'FCD') require EU member states' supervisors to assess whether the third country parent institutions of EU subsidiaries¹ are subject to 'equivalent' supervision by third country supervisory authorities. The test for 'equivalence' is in respect of the consolidated and supplementary supervision provided for in the CRD or FCD respectively.
2. Each assessment of equivalence must be taken on a case by case basis for each EU banking and investment group or financial conglomerate with a parent institution in a third country. When carrying out these assessments supervisors shall take into account any guidance which may have been provided by the Level 2 committees² in relation to the supervisory arrangements of third country supervisors. The Level 2 committees are obliged to keep this guidance under review. The current guidance is limited to US and Swiss supervisory authorities and was published in 2004³.
3. In June 2007 the Commission formally issued two parallel Calls for Advice to the Committee of European Banking Supervisors (hereafter referred to as 'CEBS') and the Interim Working Committee on Financial Conglomerates (hereafter referred to as the 'IWCFC') in relation to reviewing the 2004 guidance. These Calls for Advice request that CEBS and the IWCFC work together to minimise duplication of work and to produce an integrated piece of advice in respect of consolidated and supplementary supervision for the US and Swiss authorities. CEBS and the IWCFC were specifically directed to consider the changes in consolidated supervision resulting from the adoption of the CRD; any changes to the supervisory regimes or practices in the US or Switzerland since the 2004 exercise; and EU supervisory authorities' experience of co-operating with the relevant US and Swiss supervisory authorities.
4. To tackle the Commission's Calls for Advice CEBS and the IWCFC worked together to formulate a questionnaire on supervisory practices and arrangements for completion by the relevant US and Swiss supervisory authorities and a survey of CEBS and IWCFC members' experiences.
5. The present advice provides CEBS' and the IWCFC's response in relation to the US only. The advice relating to Switzerland is provided in a separate document.

Structure

¹ Banking and investment groups or financial conglomerates.

² European Banking Committee and European Financial Conglomerate Committee respectively.

³ See http://ec.europa.eu/internal_market/financial-conglomerates/supervision_en.htm and http://ec.europa.eu/internal_market/bank/thirdcountries/index_en.htm

6. Chapter 1 provides the background and rationale to the exercise.
7. Chapter 2 sets out the working methodology adopted to produce the advice.
8. Chapter 3 provides the basis for the analysis and a summary of the current supervisory arrangements in the US.
9. Chapter 4 sets out the IWCFC's and CEBS' conclusions and recommendations in respect of each of the US supervisory authorities.

Advice

10. All five supervisory authorities (Fed, OCC, OTS, NYSBD and the SEC) were found to be equivalent notwithstanding limited caveats, as set out in Chapter 4. It was not possible to provide a statement on equivalence for the NAIC, as it is not a supervisory authority itself but an assessment of the model framework was conducted, which is also set out in Chapter 4.



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Chapter 1 – Background

1.1 Rationale and history to the exercise

11. Article 21(5) of the Financial Conglomerates Directive states that the European Financial Conglomerates Committee (hereafter referred to as the 'EFCC') "may give general guidance as to whether the supplementary supervision arrangements of Competent Authorities in third countries are likely to achieve the objectives of the supplementary supervision as defined in this Directive. The Committee shall keep any such guidance under review and take into account any changes to the supplementary supervision carried out by such competent authorities." Article 18 (1) requires that this guidance is taken into account by the competent authority (the 'coordinator') responsible for exercising supplementary supervision when verifying – in consultation with other relevant competent authorities - whether a regulated entity with its parent headquartered outside the Community, is subject to 'equivalent' supervision in its home country.
12. Similarly, Article 143 of the Capital Requirements Directive requires that the general guidance produced by the European Banking Committee (hereafter referred to as the 'EBC') is taken into account by the competent authority which would be responsible for exercising consolidated supervision when verifying – in consultation with the other competent authorities involved - whether a credit institution not subject to consolidated supervision in the EU and having its parent headquartered outside the Community, is subject to 'equivalent' supervision in its home country. Art 143 also requires that this guidance is kept under review.
13. In 2004 the Mixed Technical Group prepared technical advice for the EFCC and the Banking Advisory Committee (the precursor to the European Banking Committee) on the equivalence of supervisory regimes for financial conglomerates and banking and investment groups in Switzerland and the US. These jurisdictions were specified because of the economic importance of US and Swiss financial groups to the European Union. This advice provided the basis for the joint Banking Advisory Committee and EFCC Guidance which was published on 6 July 2004⁴.
14. The resulting 2004 Guidance stated whether the supervisory arrangements of the relevant US supervisory authorities were likely to achieve the objectives of consolidated supervision as required in the EU. The Guidance also noted any caveats which an EU supervisory authority should take into account when conducting an equivalence assessment. The ultimate decision as to equivalence however remains with the relevant supervisory authority and must be taken on a case by case basis in relation to each EU subsidiary of a US banking and investment group or financial conglomerate.
15. The Directives require that the Guidance is kept under review. To this end, the Commission issued parallel calls for advice to the IWCF and CEBS on

⁴ See http://ec.europa.eu/internal_market/financial-conglomerates/supervision_en.htm and http://ec.europa.eu/internal_market/bank/thirdcountries/index_en.htm



June 12, 2007⁵ as to the supervisory arrangements in place for financial conglomerates and banking and investment groups in the United States with a request that, as in 2004, consolidated and supplementary supervision be considered together. This joint advice will provide the basis for the review of the Guidance to be prepared by the EBC and the EFCC.

16. As in 2004, separate advices have been produced for the US and Switzerland: this advice applies only to the US⁶.

1.2 Summary of Call for Advices to both IWCFC and CEBS

17. In June 2007 the Commission formally issued two parallel Calls for Advice to CEBS and the IWCFC on the review of the Guidance in relation to the 'equivalence' of US and Swiss supervisory authorities. CEBS and the IWCFC were requested to provide advice on the extent to which the supervision arrangements of the Swiss and US supervisory authorities are likely to achieve the objectives of consolidated and supplementary supervision as laid out in the relevant EU Directives. In providing this advice, CEBS and the IWCFC were specifically asked to consider changes in the EU legislation since 2004 and the practical experience of member states' supervisory authorities in relation to information flows between themselves and the Swiss and US supervisory authorities.

18. As the objectives of supplementary supervision under the FCD and the objectives of consolidated supervision under the CRD are deemed to be sufficiently close⁷, the present advice is relevant to both financial conglomerates and banking and investment groups.

19. This advice addresses the arrangements in place for group-wide supervision and does not specifically review arrangements for solo supervision.

Chapter 2 - Methodology

20. CEBS and the IWCFC created a joint Working Group to carry out the analysis required to enable them to respond to the calls for advice. The Working Group used the MTG advice and the 2004 BAC/EFCC Guidance as a starting point.

21. The review seeks to take account of the implementation of the Capital Requirements Directive within the EU and possible changes to legislation or practices in the US since 2004.

22. In addition, the practical experiences of EEA Member States' supervisory authorities in relation to supervisory co-operation with the US authorities have been taken into account.

2.1 Third Country supervisory authorities questionnaire

⁵ http://ec.europa.eu/internal_market/financial-conglomerates/docs/20070612_IWCFC_and_CEBS-supervision_en.pdf

⁶ http://ec.europa.eu/internal_market/bank/docs/calls/070612_call_for_tech_advice_en.pdf

⁶ A separate advice, reference IWCFC 08 05iii [and CEBS 08 05], exists for the Swiss Federal Banking Commission and the Federal Office for Private Insurance.

⁷ By definition, the objectives of consolidated and supplementary supervision are interrelated.

23. As in 2004, the primary source of information for the current assessment was a questionnaire completed by the following US regulatory authorities:

- The Board of Governors of the Federal Reserve System ('Fed') and The Office of the Comptroller of the Currency ('OCC') jointly;
- The New York State Banking Department ('NYSBD');
- The Office of Thrift Supervision ('OTS');
- The Securities & Exchange Commission ('SEC'); and
- The National Association of Insurance Commissioners ('NAIC')⁸.

24. The 2007 questionnaire was based on the original questionnaire circulated in 2004, updated in particular to reflect the implementation of Basel II in the EEA through the CRD. The questionnaire was designed to cover the full breadth of consolidated and supplementary supervision: supervisory co-operation and information sharing; qualitative and quantitative group assessments; disclosure; and enforcement.

25. Each third country supervisory authority listed above was asked to complete the questionnaire and the responses (together with any supporting documents) were analysed by the working group. Where necessary, follow up questions or requests for further information or clarification were actioned. In addition, publicly available information was taken into account to obtain a complete picture of the US Basel II implementation process.

26. The IWCFC and CEBS recognise that the completion of the questionnaire together with the follow up work, represented a fairly time and resource intensive engagement from the third country supervisors.

2.2 EEA supervisory authorities experience

27. As requested in the Calls for Advice particular emphasis was put on co-operation between EEA and US supervisory authorities. Members of the Interim Working Committee on Financial Conglomerates and CEBS' Groupe de Contact were therefore surveyed on their practical experience of dealing with the third country supervisory authorities. The survey sought to discover whether the cooperation between the EEA supervisory authorities and their US counterparts was effective and productive, and whether any problems had been encountered in relation to the transparency of rules or the exchange of information.

28. EEA competent authorities reported a positive relationship and good level of cooperation with the US authorities since 2004. Where difficulties, usually of an individual nature, had been reported the Secretariat followed these up with the respective EEA supervisory authorities in order to better understand the nature of the issue.

⁸ The NAIC is not itself a supervisor but rather a committee of state insurance supervisors. However for the purposes of this document it will be included in the meaning of the term "US supervisory authorities" unless stated otherwise.

2.3 Analysis and comparison

29. In order to capture the key changes since the 2004 exercise the focus of the IWCF and CEBS' assessment has been on areas where:
- the standard against which equivalence is measured has changed (in particular the CRD)⁹; and/or
 - the US regulatory regime under consideration has changed and
 - caveats which existed in 2004 may still exist or may have been addressed by changes to the US regimes, and whether new ones have emerged.
30. In limiting the analysis to these three areas in the assessment of equivalence, the Working Group sought to focus its review on what had changed (in terms of requirements or practice) rather than 're-do' the Guidance from first principles.

2.4 Fact checking

31. The factual analysis, on which the IWCF and CEBS' recommendations¹⁰ are based, was shared with the relevant US authorities who were asked to check its accuracy.

Chapter 3 – Analysis

32. In order to assess whether a third country supervisory authority is likely to achieve the objectives of consolidated and supplementary supervision as per the CRD and FCD, it is first necessary to be clear what the criteria and objectives are.
33. Given the relatively complex regulatory structure in the US some work was done to establish how the various supervisory authorities and regulatory bodies interact and fit together to achieve a comprehensive supervisory picture.
34. The analysis takes account of both the current supervisory regime and what is known about how the US will implement Basel II.

3.1 Criteria and objectives for assessing third country consolidated and supplementary supervision

35. The Directives describe equivalent supervision in terms of the objectives and results achieved from it¹¹. It is important to note that this does not require third country supervision regimes to be *identical* to those in the EEA; rather that the same or similar regulatory outcomes are achieved. Recital 14 of the FCD also adds that such equivalent supervision can, however, only exist

⁹ The FCD has not changed in relation to this exercise since 2004.

¹⁰ See Chapter 4.

¹¹ Articles 18 and 21 of the FCD, Article 143 of the CRD and Recital 13 of the FCD.

where "third-country supervisory authorities have agreed to co-operate with the Competent Authorities concerned on the means and objectives of exercising supplementary supervision of the regulated entities of a financial conglomerate". These two principles form the basis of the analysis and ultimately the advice produced below.

36. Specifically, the criteria and the underlying objectives of consolidated and supplementary supervision as provided for by the CRD and FCD were summarised thus:

- Supervisory co-operation and information sharing.
Objective: To ensure co-ordination and proper exchange of information between the supervisory authorities involved in the supervision of a financial conglomerate's component parts
- Qualitative group assessment.
Objective: To prevent disorderly failure due to poor controls at group level and contagion to EU regulated firms with costs to market confidence and/or consumers
- Quantitative group assessment.
Objective: To prevent disorderly failure due to lack of group financial resources and contagion to EU regulated firms with costs to market confidence and/or consumers
- Disclosure requirements.
Objective: To strengthen market discipline in order to stimulate credit institutions to improve their market strategy, risk control and internal management organisation
- Enforcement.
Objective: To ensure that supervisors are able to take appropriate remedial action to address concerns in relation to the functioning of the group

37. It was against these criteria and objectives that the US supervisory arrangements were measured.

3.2 General overview of US regulatory system

38. As explained in the 2004 Guidance, the US regulatory system is based around a number of functional supervisors (i.e. different supervisors for banking, securities and insurance firms). The main supervisory agencies are those covered by this advice and the distribution of responsibilities between these regulators has not changed significantly since 2004.

39. In respect of the banking sector, the US operates a "dual banking system." A bank may choose to be chartered by a state or by the federal government, and consequently supervision may be undertaken at the state as well as the federal level. In the case of insurance firms, all supervision is undertaken by state insurance commissioners. In the case of securities firms, supervision is undertaken at the federal level. There can also be multiple regulators for a



given sector; this is most notable in banking, where there are five federal agencies responsible for commercial banks, savings banks and credit unions.

40. This multiplicity of regulators means that diversified financial groups may be subject to the oversight of several regulators, albeit with a clear lead in most cases (see below). There are mechanisms that provide for co-ordination, such as the Federal Financial Institutions Examination Council (FFIEC) which prescribes uniform principles, standards and report forms for federal examination of depository institutions and makes recommendations to promote uniformity in the supervision of depository institutions. For some time now, state banking supervisors have been represented in the council, and a representative of the state banking supervisors has been given full voting rights on the council, leading to a further strengthening of cooperation between state and federal banking supervisors.
41. The NAIC, which is not itself a supervisory authority, provides a common framework for analysing insurance groups which contributes to the promotion of cooperation and coordination between supervisory authorities. In recent years initiatives have also been taken to provide for lead supervision for diversified groups.
42. Under the Gramm-Leach-Bliley Act 1999, the Federal Reserve has powers to act as umbrella supervisor for all bank holding companies, including financial holding companies. The OTS has similar authority to provide consolidated supervision to thrift holding company enterprises. The SEC has established a programme to provide consolidated supervision to certain holding companies predominately engaged in broker-dealer activities, and the NYSBD exercises supervision over Article XII banking companies, which are typically holding companies for foreign banking entities.

3.3 US Supervisory arrangements as at end 2007

43. The IWCFC and CEBS have been asked to prepare their advice ahead of implementation of Basel II in the US. The assessment provided therefore reflects the current supervisory regimes of US regulators and, where appropriate, takes into account, their Basel II implementation plans current as at the publication in November 2007 of the final rule on the Risk-based Capital Standards (Advanced Capital Adequacy Framework - Basel II). It should be noted however that due to the timing of the conclusion of this exercise it was not possible to undertake any detailed analysis of the final rule and so the following conclusions re the impact of Basel II must be considered as preliminary only.
44. Phased implementation of Basel II would not in itself be a bar to US supervisory authorities being considered 'equivalent' but the lack of experience as to what Basel II will eventually involve in practical terms does create some uncertainty in terms of the conclusions and recommendations contained in this advice. As such, when taking group-specific equivalence decisions as regards US supervisory authorities, each Competent Authority will need to make its assessment taking into account any changes to the particular regulatory regime which may have occurred since end 2007.

45. Specifically:

- The introduction of Basel II impacts most obviously on the quantitative aspects of any equivalence decision, principally in respect of the approaches to Pillar 1 risks (credit, market and operational risk). Provided that supervisory techniques are aligned in terms of qualitative approach, enforcement, communication, cooperation, disclosure etc, the capital requirements arising even from less risk-sensitive approaches may, in determining minimum regulatory capital on a group-by-group basis, achieve an equivalent outcome.
- Under the CRD, Pillar 2 does not necessarily result in a change to capital requirements, rather, requires that supervisors consider the extent to which Pillar 1 risks and the additional risks which exist within the group have been covered. Competent authorities charged with the verification of equivalence should consider the extent to which the supervisor of the group is implicitly considering Pillar 2 risks within their approach.
- This assessment also considers Pillar 3 disclosure requirements, albeit on a high-level only. Institutions' disclosure of key financial information is an important instrument for encouraging sound risk management practices and fostering financial stability. Although some disclosure requirements will be newly introduced via Basel II, a significant amount of the proposed disclosure requirements are already required by or consistent with existing GAAP, SEC disclosure requirements, or regulatory reporting requirements.¹²

46. It should be noted that in designing the CSE regime (concurrently with the development of Basel II), the SEC took the opportunity to factor a number of the key features of Basel II and therefore our observations on US Basel II implementation do not apply in the same way to the SEC¹³.

3.4 Supervisors' experience

47. The greater majority of EEA supervisory authorities reported no problems in terms of co-operation with their US counterparts. Some did report individual instances where the relationship might have been better but the overall experience was resoundingly positive.

Chapter 4 – Conclusions and Recommendations

48. In 2004 it was concluded that, on balance, there was broad equivalence in the US approaches to consolidated and supplementary supervision of banks and financial conglomerates respectively, notwithstanding some caveats in the area of practical cooperation, the supervisory structure, the actual implementation of the reform in the securities and investment banking

¹² Risk-Based Capital Standards: Advanced Capital Adequacy Framework - Basel II; Final Rule, Federal Register / Vol. 72, No. 235 / Friday, December 7, 2007

¹³ The SEC might consider adjustments to the CSE regime following the Fed's regulation on Basel II implementation.



supervision, and new supervisory approaches by some US supervisors in relation to group supervision.

49. The key observations and conclusions of the 2007 exercise in respect of each of the US supervisory authorities are set out below.

4.1 Fed/OCC

50. It is the IWCFC's and CEBS' opinion that the supervisory arrangements of the Fed/OCC would achieve the objectives and deliver similar outcomes to those provided for by the CRD and FCD. There were no caveats in 2004 and there are no new caveats to note. EEA States' authorities should however follow-up the implementation process of Basel II, and in particular in the second transitional period.

51. When taking individual equivalence decisions supervisors may wish have regard to the following:

Supervisory cooperation and information sharing

- The Fed/OCC have the authority to conclude cooperation and coordination agreements with other supervisors of group entities, and have continued to demonstrate their willingness to strengthen cooperation and foster exchange of information with US and EEA supervisors.
- Supervisory information provided to the Fed/OCC is subject to adequate professional secrecy rules, which have been further enhanced recently.

Qualitative group assessment

- The Fed/OCC perform consolidated supervision of banking groups, and group-wide supervision of financial conglomerates, and assess the fitness and propriety of management and the suitability of shareholding, in line with international (i.e. Basel) standards.
- The Fed/OCC take a risk based approach to qualitative supervision, relying on on-site exams and off-site reviews. This approach has not changed materially since 2004 and continues to present no concerns.

Quantitative group assessment

- The approach regarding quantitative group assessment by the Fed/OCC has not changed materially since 2004 and as such continues to present no concerns. The Basel II Risk-Based Capital Standards will be applied to the major international banking groups in a phased way from 2008 on.
- The Fed/OCC monitors significant risk concentrations at group level as well as intra-group transactions/exposures. Banks are subject to quantitative limits on risk concentration, and certain intra-group transactions are restricted.
- Large and complex organisations are expected to have in place internal capital management processes, which are subject to

Fed/OCC review (the objective of which is close to Pillar 2 of the Basel II capital adequacy framework.

- Although Basel II has not been implemented in the US yet, the approach currently taken by the Fed/OCC in respect of the review of internal capital management processes appears to be sufficiently comprehensive to capture the objective envisaged under the CRD in this respect, in particular when taken into account the planned changes as a result of the implementation of Basel II.

Disclosure

- The information currently disclosed by the Fed/OCC is mainly financial in nature although, to some extent, prudential information is provided, too, as envisaged under the CRD. Furthermore, when assessing the Fed's/OCC's approach, one should take into account the planned changes as a result of the implementation of Basel II.

Enforcement

- The Fed/OCC have a broad range of enforcement powers available. The scope and type of action has not changed materially since the previous assessment and continues to present no concerns.

4.2 OTS

52. It is the IWCF and CEBS' opinion that the supervisory arrangements of the OTS would meet the objectives and deliver similar outcomes to those provided for by the CRD and FCD. The caveat of 2004 (non-standardised application of quantitative supervision) remains although, as in 2004, this is not considered sufficiently material to change the overall conclusion. EEA competent authorities charged with the verification of equivalence should assess the requirements in place for the specific group before reaching a view on equivalence.

53. When taking individual equivalence decisions supervisors may wish have regard to the following:

Supervisory cooperation and information sharing

- The OTS has demonstrated willingness to strengthen cooperation and foster exchange of information with US and EEA supervisors.
- Supervisory information provided to the OTS is subject to adequate professional secrecy rules, which have been further enhanced recently.

Qualitative group assessment

- The OTS has implemented the approach to qualitative supervision proposed in 2004. It has adopted a flexible, risk focused examination programme, employing continuous on-site supervision for its largest, most complex institutions.
- The OTS performs a risk focused examination program in order to assess group structure, organisation, strategy, risk management and

internal control (called "CORE"). From 2008 on the OTS will place greater emphasis on the review of risk management and organisational structure.

- The OTS supervisory review includes the assessment of a thrift holding company's management, as well as the assessment of the major shareholders.

Quantitative group assessment

- The OTS continues to assess capital adequacy at the thrift holding company level on a case-by-case basis, taking into account the overall risk profile of the institution. Competent Authorities will therefore need to understand the specific requirements for the group in question when considering equivalence for the OTS and ensure that international standards are met.
- The OTS primarily monitors significant risk concentrations and intra-group transactions through its continuous onsite examination process. The OTS approach to risk concentration and intra-group transactions is also based on a case-by-case basis, but generally has the necessary tools available to adequately address the risks involved.
- Large and complex organisations are expected to have in place board approved capital adequacy processes, which are subject to OTS review (the objective of which is close to Pillar 2 of the Basel II capital adequacy framework). The Basel II Risk-Based Capital Standards will be applied to the major international banking groups in a phased way from 2008 on.

Disclosure

- The information currently disclosed at the holding company level is mainly financial in nature, although some prudential information is provided, too, as envisaged under the CRD. The OTS perceives disclosure as key component of the proposed US Basel II framework and expects that it will be in line with international standards.

Enforcement

- The OTS has extensive enforcement powers. The approach taken in this respect has not changed in general since the previous exercise and continues to present no concerns.

4.3 NYSBD

54. It is the IWCF and CEBS' opinion that the supervisory arrangements of the NYSBD would achieve the objectives and deliver similar outcomes to those provided for by the CRD and FCD. The caveat of 2004 (non-standardised application of quantitative supervision) remains although, as in 2004, this is not considered sufficiently material to change the overall conclusion. However since the technical analysis can only relate to the general framework Competent authorities charged with verification of equivalence should assess the specific requirements in place for each group. It should also be noted that the NYSBD does not currently supervise a conglomerate at the ultimate parent level.



55. When taking individual equivalence decisions supervisors may wish have regard to the following:

Supervisory cooperation and information sharing

- The NYSBD has the authority to conclude cooperation and coordination arrangements with other supervisors of group entities and to share information with other supervisors. The NYSBD has shown willingness to further strengthen cooperation and foster exchange of information with US and EEA supervisors.
- The NYSBD is subject to professional secrecy rules, although in some cases it can be forced to release supervisory information.

Qualitative group assessment

- The NYSBD uses a risk-based approach to qualitative supervision, relying on continuous / on-site supervision for its largest, internationally active institutions. This includes group-wide supervisory oversight of group structure, organisation, strategy, risk management and internal control systems. The approach has not changed materially since 2004 and continues to present no concerns.
- The NYSBD reviews the suitability of the holding company's management, as well as the suitability of major shareholders.

Quantitative group assessment

- The NYSBD's approach to assessing capital adequacy had not changed since materially since 2004. Capital requirements continue to be defined on the basis of an individual, written agreement for an each group. Competent Authorities will therefore need to understand the specific requirements and their practical application for the group in question when considering equivalence for the OTS and ensure that international standards are met.
- The standards for risk concentrations and intra-group transactions are set out in the supervisory agreements. Limits may be imposed. Internal reports are reviewed.
- The NYSBD requires groups to have in place strategies and processes for the assessment of risks and internal capital. The arrangements are subject to review by the NYSBD. Although Basel II has not been implemented in the US yet, the approach currently taken by the NYSBD might be sufficiently comprehensive to generally capture the objective envisaged under the CRD in this respect, in particular when taken into account the planned changes as a result of the implementation of Basel II.

Disclosure

- Disclosure at the top entity level supervised by the NYSBD is currently not envisaged, although in practice SEC disclosure requirements apply. EU / EEA supervisors do therefore have to understand the scope and depth of information disclosed at the ultimate top-top tier level.



Enforcement

- The NYSBD has the authority to apply appropriate enforcement measures. They have not changed in a meaningful sense compared to 2004 and continue to present no concerns.

4.4 SEC

56. It is the IWCFC and CEBS' opinion that the supervisory arrangements of the SEC would meet the objectives and deliver similar outcomes to those provided for by the CRD and FCD. The caveats of 2004 no longer apply as the SEC has been undertaking consolidated supervision for over two years now and experience of this has been positive overall. The transitional arrangements for the use of unsubordinated debt as capital will also expire at the end of 2008. There are no new caveats to note.

57. When taking individual equivalence decisions supervisors may wish have regard to the following:

Supervisory cooperation and information sharing

- There is now two years' experience of the SEC's approach to supervisory co-operation and information sharing and this has generally been found to be positive. There had been no experience at the time of the 2004 exercise. The SEC has the authority to cooperate and share information with other supervisory authorities (including the conclusion of co-operation arrangements), and has demonstrated its willingness to do so.
- Supervisory information that has been provided to the SEC is, generally, protected by professional secrecy rules.

Qualitative group assessment

- The SEC's approach taken in respect of qualitative group assessments is as was proposed in 2004 and, based on experiences since then, presents no concerns as regards the CSE regime.
- The SEC approach to group-wide supervision includes a group-wide supervisory oversight (including the top tier holding company), the assessment of the holding company's management, as well as the assessment of the major shareholders.

Quantitative group assessment

- As proposed in 2004 the SEC has introduced quantitative group capital adequacy requirements to ensure that group capital is prudently measured and monitored, taking into account the full range of the group's financial activities. The transitional arrangement on the use of long term unsubordinated debt as capital is being phased out.
- The SEC monitors significant risk concentrations at a group level adequately. Although there is no systematic supervisory approach to the risk management of intra-group exposures, this is not felt to be of a material concern.
- The SEC approach taken in respect of assessment of risks and internal capital is in line with Basel standards.



Disclosure

- Disclosure is expected to start in 2008. The current proposal is as under Basel II and consequently should not present concerns.

Enforcement

- The SEC has appropriate enforcement powers. In particular, it can withdraw CSE status.

4.5 NAIC

58. The NAIC is one of the entities that was also involved in the 2003/2004 equivalence exercise and has been invited to participate in the update under the current review. The main reason for this is to understand US insurance supervisors' approaches in general where EU regulated entities are part of a financial conglomerate for which a US state insurance supervisor would be the group-wide supervisor (although currently no financial conglomerate is supervised at the top level by an insurance state supervisor).

59. The conclusion of the 2004 exercise was that a general statement of equivalence for the NAIC was, in effect, not possible. While the NAIC undertakes valuable work in setting out model arrangements which state supervisors may wish to follow in their supervision of insurance groups, it is not itself a supervisor and the question of whether it can be deemed to undertake consolidated or supplementary supervision to an equivalent standard does not arise.

60. Firstly, although the NAIC has set out a model framework that may be implemented by the US insurance state supervisors, the NAIC is not a supervisor in itself. Secondly, there has been no assessment of the practical implementation of the framework across the 50 US states. Thirdly, taking into account the developments in the European Union of the recent years in both the banking and insurance sector towards a more consolidated approach of supervision, it cannot be concluded that implementation by states of the model framework of the NAIC would result in their being fully equivalent to the approach set out in the Financial Conglomerates Directive. In particular, the quantitative requirements of the model framework of the NAIC do not extend to consolidated supervision, notwithstanding the fact that individual state supervisors may have implemented a more consolidated approach than the NAIC model sets out.

61. In 2006, in the field of information exchange between EEA and US supervisors, a model MoU was agreed between the NAIC and CEIOPS which may be used as a basis for information exchange between US state authorities and EEA supervisory authorities. 4 MoUs have been concluded which allow for the exchange of confidential information under secrecy rules.

62. The conclusion of the 2004 exercise that a general statement of equivalence for the NAIC and the US insurance state supervisors cannot be given still



holds. EEA supervisory authorities must therefore conduct all equivalence assessments on a State by State and firm by firm basis.

Annex I - Supervisory structure in US

Bank supervision	
State Banking Departments	Each of the 50 states has a banking authority that charters banks under its own laws and regulations and these banks are generally referred to as “state banks”. A state bank has a state banking department as its primary regulator and consolidated supervisor. There are around 6000 state chartered banks. Through the Conference of State Bank Supervisors (CSBS), state banking departments have achieved some uniformity in their regulation. A state bank also has a an “appropriate” (i.e. secondary) federal banking regulator, either the Board of Governors of the Federal Reserve System or the Federal Deposit Insurance Corporation.
Office of Comptroller of the Currency (OCC)	The OCC operates as a bureau within the US Treasury Department, which is subject to Treasury's oversight of broad policy issues but acts independently. It is responsible for the supervision of around 2100 commercial banks with national charters. Under US law, the OCC is also the appropriate and consolidated supervisor of a banking group where a national bank is the top parent (there are currently no such US banking groups that operate in the EU).
Federal Reserve Board (Fed)	In addition to being the US central bank, the Fed acts as the appropriate federal banking agency and consolidated supervisor of all bank holding companies, including financial holding companies covering diversified financial groups. The Fed is also the federal supervisor of state-chartered banks that choose to become members of the Federal Reserve System.
Office of Thrift Supervision (THE OTS)	The OTS is an office within the US Treasury Department, which is subject to Treasury's oversight of broad policy issues but acts independently. It is the appropriate federal banking agency responsible for supervising thrift institutions (including savings banks and savings & loan associations) and their holding companies. The OTS supervises all federally chartered thrifts and shares supervisory responsibility with state authorities in regards to state chartered

	<p>thrifts. Under U.S. law the OTS also acts as the consolidated supervisor of savings and loan holding companies, the holding companies of thrift institutions (where these holding companies do not also own a bank.)</p>
<p>Federal Deposit Insurance Corporation (FDIC)</p>	<p>The FDIC, an independent federal agency, runs the deposit insurance scheme for all banks. It also oversees the winding-up of failed insured banks and thrifts and acts as the appropriate (secondary) Federal banking supervisor for over 5000 state-chartered banks that are not member banks; the Fed acts as Federal supervisor for the remaining state banks that are members of the Federal Reserve System.</p>
<p>Capital Markets Supervision</p>	
<p>Securities and Exchange Commission</p>	<p>The SEC has wide responsibilities covering (i) conduct of business on capital markets, (ii) prudential standards for securities firms and (iii) financial reporting standards. The SEC undertakes comprehensive consolidated supervision of larger US broker-dealer groups which have applied for the 'Consolidated Supervised Entity' regime ('CSE'). A second regime for group-wide supervision, the SIBHC, also exists; however, to date, no applications have been received and therefore this has not been evaluated.</p>
<p>Self regulatory organisations (SROs)</p>	<p>The SEC recognises a number of self-regulatory organisations that play a major role in enforcing conduct of business requirements in securities markets. These include the Financial Industry Regulatory Authority (FINRA). The SEC validates SRO rules.</p>
<p>State authorities</p>	<p>Each state has a securities regulator. Federal law may take priority over (pre-empt) state law with respect to certain types of issues and activities, however.</p>
<p>Commodity Futures Trading Commission (CFTC)</p>	<p>The CFTC is an independent federal agency that supervises the commodities futures and options markets. Although they retain some authority, the Federal banking agencies generally must defer to the CFTC's supervision of bank or thrift affiliates that are engaged in commodities activities.</p>
<p>Insurance Supervision</p>	
<p>State insurance commissions</p>	<p>Insurance regulation is undertaken at state level, and predominantly on a legal entity basis. The National Association of Insurance Commissioners (NAIC) aims to achieve some common minimum standards, including on group-wide supervision. Under U.S. law</p>



	<p>a Federal banking agency generally must defer to the state insurance commission's regulation of a bank or thrift affiliate that is engaged in insurance activities. However, the Federal banking agency retains some authority over the insurance.</p>
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