

July 18th 2012

**EBA consultation paper on Draft Guidelines for Assessing the Suitability of
Members of the Management Body and Key Function Holders of a Credit
Institution (EBA/CP/2013/03).**

We welcome the opportunity to comment on this consultation. Recent years have removed any remaining doubts that the governance of credit institutions and the suitability of individual members of management bodies are of major significance, both to the success of the institution itself and to economic growth more generally.

By way of background, Hermes is a leading asset manager in the City of London. As part of our Equity Ownership Service, we also respond to consultations on behalf of many clients from across Europe and around the world. In all, EOS advises clients with regard to assets worth a total of €106 billion.

On behalf of these clients, which as long-term owners of credit institutions wish to see those businesses succeed and flourish over the long run, and also as long-term investors across markets have a significant interest in systemic stability and economic security, we have been actively engaged in public policy debates in relation to the structure and culture of the banking system. We are also recognised for our active contribution to discussions about governance both within the financial sector and more broadly. We are thus pleased to have the opportunity to extend this work on behalf of our clients by responding to this consultation.

We note that the experience and skills of a single member of a management body are of less importance than the mix of skills and experience across the management board as a whole. In this respect, we firmly disagree with the proposal in Article 14 paragraph 2 that each member of the management body must have experience from a managerial position in a credit institution. While clearly we would agree that it is vital that a sufficient number of members of the management body (say, at a minimum one third or three individuals, whichever is less) must have this experience. Actually, we believe that value is brought to management bodies by having a mix of skills and experience so that having individuals with a broader range of backgrounds is necessary to their proper functioning. We would welcome EBA giving greater consideration to the overall management body, not just the individual.

As well as this general comment, below we answer the two specific questions asked in the consultation before making some further comments on the draft principles.



Q1: While the principle of proportionality is a general principle within European legislation, it may be desirable to spell out this principle in more detail for the application of the Guidelines. Which criteria could be applied by institutions and competent authorities to differentiate the assessment process and the assessment criteria regarding the nature, scale and complexity of the business of the credit institution and how should such a differentiation look like?

We would welcome a closer articulation of proportionality in relation to these standards: smaller credit institutions with lesser systemic impacts will not need individuals of the same level of experience and expertise on their management bodies as larger institutions. And this may be the best place to address this issue: by highlighting within Article 14 that the experience of the individuals should be commensurate with the scale of the organisation that they are proposed to be overseeing through a position on its management board. Indeed, in many respects individuals with experience of smaller organisations may be better at supervising smaller institutions because of their awareness of the resourcing limitations which naturally arise within such businesses and their experience of managing effectively notwithstanding those limitations.

Q2: Should competent authorities be required by the Guidelines to assess the policies of institutions for assessing the suitability of key function holders aiming to ensure that institutions have appropriate policies in place ensuring that key function holders would fulfil the suitability requirements?

Yes. We firmly believe that this is the most appropriate role for the competent authorities. The authorities should not assume the responsibility for the initial assessment of key function-holders; that role must sit initially with the management bodies themselves because they must own the nomination process and take on the initial burden of assessments both of their needs and of the competence and abilities of candidates. To do otherwise would risk disempowering the management bodies. But the competent authorities must clearly oversee this process to ensure that the approach of individual institutions is appropriate and effective.

More general comments

Background and rationale

We note the statement (in paragraph 7) that legal persons can be members of the management bodies of credit institutions. We do not favour this structure; it risks meaning that individual representatives of the legal person who is a director may not have the requisite skills and experience. It also reduces the sense in which individuals feel their duties as a director personally and keenly. We would suggest that the EBA consider whether it is appropriate for credit institutions in some countries to continue to appoint legal persons as members of management bodies.

Article 4

We note the framing of paragraph 2, that it should apply 'if a nomination committee exists'. We believe that the formality and discipline that are necessary portions of the existence of a nominations committee offer real value in credit institutions having effective processes for nominating, assessing and appointing individuals to their

management boards. We therefore believe that the EBA should be more active in encouraging credit institutions to put such committees in place in order to ensure that the processes and approach considered in this consultation paper generally have a greater chance of being implemented fully.

Article 6

This article rightly points out, in paragraph 3, that what matters is not so much the position of individual members but the weakness or strength of the management body as a whole. We refer to our over-arching comment on the importance of the EBA giving greater consideration to the overall management body, not just the individual member.

Article 12

We strongly endorse Article 12 and believe that it is important and necessary for these guidelines to be in place and actively carried forward by regulators.

Article 13

It is implicit here, but we think that it should be made fully explicit, that any assessment needs to consider the individual's past record as a member of a management body of a credit institution or other major company.

Article 14

As noted in our over-arching comments, we strongly disagree with the proposal that all members of management bodies must have experience as managers of a credit institution or equivalent. We would argue that the EBA needs to give greater consideration to the overall management body, not just the individual, and would welcome discussions about how this can best be carried forwards.