JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

	Comments Template on EBA, EIOPA and ESMA's Joint Consultation Paper on its proposed response to the European Commission Call for Advice on the Fundamental Review of the Financial Conglomerates Directive	**Deadline: 13.08.2012 cob**
Stakeholder:	Lieve Lowet, Partner, ICODA European Affairs, Robert Schumanlein 9, 1040 Brussel (reply as individual)	

The question numbers below correspond to Joint Consultation Paper JC CP 2012 01

Please follow the instructions for filling in the template:

- ⇨ Do **not** change the numbering in column "Question".
- ⇨ Please fill in your comment in the relevant row. If you have no comment on a question, keep the row empty.
- ⇨ There are in total 10 questions. Please restrict responses in the row "General comment" only to material which is not covered by these 10 questions.
  - If your comment refers to multiple questions, please insert your comment at the first relevant question and mention in your comment to which other questions this also applies.
  - If your comment refers to parts of a question, please indicate this in the comment itself.

Please send the completed template to joint-committee@eba.europa.eu, jointcommittee@eiopa.europa.eu, and joint.committee@esma.europa.eu**, in MSWord Format, (our IT tool does not allow processing of other formats).**

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CFA Questions	**Comments**
General Comments	Not all financial conglomerates are large. The principle of proportionality should also here apply and especially in case the scope is extended (or the threshold removed). When the ESA's refer in a public consultation to a non-publicly available draft legislation, can the ESA's be so kind as to include in a note or otherwise of the public consultation the full text of such article or articles in the draft legislation to which is referred?
1.	Reply to Q1 CFA: perimeter of supervision On point 3: The definition of a financial conglomerate should be enlarged to include insurance ancillary services; are they not already included in the insurance group consolidated supervision? (see art 323 bis SCG3) *Without prejudice to Article 221(2) of Directive 2009/138/EC, consolidated data for the calculation of group solvency according to method 1 shall include:* *(a) full consolidation of data of all the insurance or reinsurance undertakings, third-country insurance or reinsurance undertakings, insurance holding companies and ancillary services undertakings which are subsidiaries of the parent undertaking;* Provided that this text is adopted, and as a matter of principle, is such inclusion then not superfluous? The inclusion of insurance ancillary services (which are proposed to be "non-regulated undertaking the principal activity of which consists in owning or managing property, managing data-processing services, health and care services, or any other similar activity which is ancillary to the principal activity of one or more insurance or reinsurance undertakings") in SII has consequences for pillar 1,2, and 3 requirements. Or would such separate inclusion imply that an insurance sector can consist only of insurance ancillary services (see the 'or' in article 2,(8) (a) ? On point 4: Is there not another option? In case IORPs are not included within the definition of the financial sector (e.g. as a new article 1, 8 e)), or in case the status quo is maintained, and if the IORP is not classified as a regulated entity for the purposes of FICOD, if an IORP is owning/acquiring a bank,

	insurer, reinsurer or other regulated entity for the purposes of FICOD, can they be subject to supplementary supervision as mixed financial holding companies or as mixed activity insurance holding companies? On point 6: agreed Observation regarding to the perimeter of supervision: does the Financial conglomerates directive intend to cover banks with many banking subsidiaries, of which several own an insurance subsidiary, but where there is no insurance holding company anywhere in the group, and where if all these insurance companies would be managed together on a consolidated basis, or regrouped, the bank would surely be a financial conglomerate? (see for example list of all financial conglomerates as published by the ESAs on 20 July 2012 and a list of major insurance groups).
2.	Reply to Q2 CFA: which legal entity should be the responsible parent entity in case of non-operating holding company (FHC, IHC, MAHC, MAIHC, MFHC)? 3 tools are consulted upon, proposed as not being mutually exclusive: - Tool 1 : request to set up an intermediate financial holding responsible for all regulated entities. If such option is proposed, there should be only one such intermediate financial holding on EU level. This option should be exceptional and only if the risks are deemed to be material (some threshold). Would such intermediate financial holding in turn not become a MAHC or MAIHC or MFHC? - Tool 2: this proposal creates multiple questions about ultimate professional responsibility; supervisors supervise legal entities, not teams. The division legal person/employee should be maintained. Surely as a would-be global solution such solution would be fraught by a myriad of legal responsibility questions. Is this in line with company law? - Tool 3: a regulated entity is proposed to be designed, which may not be the top entity as proposed by the JF. Can the ultimate parent undertaking on EU level, a concept introduced in article 215 and following of the SII directive (as amended by FICOD I) be of inspiration? Questions remain regarding the extent at which designated top entities (regulated entities) can be made responsible for sister companies in which they do not hold stakes? Is this in line with company law?
3.	Reply to Q3 CFA: which requirements? TBSA. ORSA. Governance. The requirements should address the loopholes in sectoral legislation: whereas the insurance sectoral legislation in its SII directive uses the total balance sheet approach principle, coupled with a requirement to conduct its own risk and solvency assessment, banking sectoral legislation still

	approaches risks piecemeal and does not use a total balance sheet approach (thus needing to revise at every crisis the list of risks for which banks need to provide regulatory capital and the like). If not, the following different FICOs will result: - insurance headed financial conglomerates (including regulated entities such as credit institutions, asset managers…): all subject to ORSA - bank headed financial conglomerates (including regulated entities such as insurers, asset managers, …): only the insurers subject to ORSA, all other regulated entities not. In case legislators would decide to maintain such difference, can the mention 'FICO not subject to TBSA and ORSA' become an *epitheton ornans* for such qualified parent entity, to make this transparent for the consumer? As mentioned in points 91 it is essential that governance requirements are made equivalent regardless of the sector; this implies that for all sectors concerned this would also mean that the requirements are made via the same legal instruments, namely on directive or L1 level, and not one sector on L1 and another sector via L2 or L3 measures. Regarding reporting requirements and transparency, would it be possible to indicate in the list of authorized undertakings, as published by the different supervisors, whether an authorized undertaking is a regulated entity in the meaning of the financial conglomerates directive, for example with an asterix (so as to make clear that these undertakings are subject to supplementary supervision)? Agree with 136 but invite to respect proportionality principle
4.	Reply to Q4 CFA: which incentives? Agree that the incentives under a financial conglomerates regime should be directed to the ultimate responsible entity (tbd) and its AMSB. The enforcement powers towards the individual entities for their respective responsibilities should be based on sectoral legislation. Is that what is meant by the dual approach? Agree with supervisory responsibilities as described in point 100 (would it not be better to refer to AMSB, see box 2 instead of management board or body?)
5.	Reply to Q5 CFA: which empowerment? Agree that European Commission should take into account sectoral differences

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Annex H Questions		
General Comments		
1.		
2.		
3.		
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5.		