

**Comments Template on
Consultation Paper on on the Proposal for Guidelines
on the System of Governance**

**Deadline
19 June 2013
12:00 CET**

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| Name of Company: | Lloyd's | |
| Disclosure of comments: | Please indicate if your comments should be treated as confidential: | Public |
| <p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Do not change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇒ Leave the last column <u>empty</u>. ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, in Word Format, to CP-13-008@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</p> <p>The numbering of the paragraphs refers to this Consultation Paper, the numbering of cells refers to the Technical Annexes II and III.</p> | | |
| Reference | Comment | Resolution |
| General Comment | <p>Lloyd's is generally supportive of EIOPA's approach to preparation for Solvency II and agrees that there are benefits in seeking consistency across member states in those preparations. It is sensible for EIOPA's guidelines to focus on Pillar 2 preparatory measures and for NCAs to ensure that undertakings take steps towards implementing relevant aspects of the regulatory framework.</p> <p>Lloyd's main general concern about the Guidelines on the system of governance is that they are not completely aligned with the Level 1 text (Directive 2009/138/EC; articles 41 to 50 – referred</p> | |

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to in this document as “the Directive”). There are three consequences:

- The Guidelines constitute a somewhat eclectic mixture of high-level and detailed requirements. Many of the detailed requirements are drawn from draft level 3 guidelines and technical standards that have not yet been publicly consulted upon; consequently undertakings may have legitimate reservations over the precise form that these measures take and may question the extent to which they really give effect to higher-level Level 1 principles. Applying these detailed requirements to undertakings before Solvency II comes into force is not therefore always appropriate.
- Although every paragraph commences with a reference to a Directive Article (“In accordance with Article xx...”), it is sometimes rather a stretch to see the connection between the Article referred to and the detailed requirement being imposed.
- It is not clear whether, in the interim period prior to full Solvency II implementation, undertakings are expected to comply with the Guidelines only or additionally with the Level 1 and draft Level 2 requirements on which they are based. Often the Guidelines do not explicitly require NCAs to apply a Level 1 requirement to undertakings, but do require NCAs to apply measures that pre-suppose a Level 1 requirement is in force. Further details are given in comments on the appropriate paragraphs.

We would therefore prefer the Guidelines to be based more closely on the Level 1 text, making clear which of those requirements NCAs should seek to apply pre-Solvency II implementation and providing guidance on what compliance with them entails.

We have concerns over the Explanatory Text (paper 13/26). There is certainly a role for an explanatory texts which, in the words of the Covernote, “*provide additional information and examples which may be useful to stakeholders*”. However, the Explanatory Text goes beyond this and contains numerous additional prescriptive requirements.

Explanatory Texts should not be used to impose additional regulations, particularly as they do not form part of the public consultation so are not open to challenge. We suggest that they are

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| | reviewed and revised, to ensure that they fulfil their stated objectives of providing “ <i>additional information and examples</i> ”. They should explain the requirements set out in the Guidelines, rather than operating as a second level of detailed rules. | |
| Introduction General Comment | | |
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| 1.10 | <p>Paragraph 4.3 of the Cover note sets out the «phasing-in » approach, which, according to paragraph 4.6, NCAs are expected to apply in a general manner to assessment of systems of governance.</p> <p>Consequently, as well as the reference in this paragraph to the principles of proportionality, the Introduction should refer to the application of phasing-in to systems of governance, to ensure that these Guidelines are fully in unison with the Cover note. The Cover note’s statement that « <i>NCAs and undertakings are expected to progress in their preparedness for Solvency II over time during the course of the preparatory phase</i> » should be repeated.</p> | |
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| Section I. General Comments | | |
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| Section II. General Comments | | |
| Chapter I General Comments | | |
| 1.16 | <p>Guideline 3 sets out preparatory requirements for an undertaking's administrative, management or supervisory body (AMSB). However, it does not refer to Directive Article 40, which requires the AMSB to have ultimate responsibility for compliance with laws, regulations and administrative provisions adopted pursuant to the Directive (presumably including these Guidelines).</p> <p>This raises the question : in the interim period, are NCAs required to ensure that AMSB's have such responsibility ? This would provide an appropriate context for the Guideline's existing text, such as the reference to « <i>appropriate interaction with any committee it establishes</i> ».</p> | |
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| 1.24 | <p>The « <i>risk management system</i> » referred to in this paragraph is a wide-ranging concept. There is no reference in either the Directive or draft Level 2 measures to the need to document how information from this system has been taken into account. We question whether it is appropriate to introduce a novel requirement such as this through preparatory Guidelines and suggest that the last part of this sentence (from « <i>...and how information from..</i> ») is deleted.</p> <p>In line with the principle of proportionality, this paragraph should refer to « material decisions ».</p> <p>This paragraph should therefore be e-drafted :</p> <p><i>« In accordance with Article 41 of Solvency II, national competent authorities should ensure that the undertaking appropriately documents material decisions taken at the level of the administrative, management or supervisory body of the undertaking. »</i></p> | |
| 1.25 | <p>Guideline 8 requires NCAs to ensure that an AMSB determines the scope and frequency of internal reviews of the system of governance. Although this is said to be « <i>in accordance with Article 41</i> », it does not say whether NCAs should apply the Article's requirement, that « <i>the system of governance shall be subject to regular internal review</i> », so it is not clear whether this applies to undertakings in the interim period (the Explanatory Text says that this is the case, reinforcing the impression that it is imposing requirements that do not appear in the Guidelines).</p> <p>We suggest that a new paragraph is inserted :</p> <p><i>«In accordance with Article 41 of Solvency II, national competent authorities should ensure that the undertaking's system of governance is subject to regular internal review ».</i></p> | |
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| Chapter II General Comments | | |
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| Chapter III General Comments | <p>This section imposes detailed and prescriptive rules relating to risk management on undertakings. We question whether these levels of detail and prescription are appropriate for preparatory Guidelines.</p> <p>The Chapter implies that NCAs will be required to apply Article 44 to undertakings, although it does not actually say so. It would aid clarity if there was an initial Guideline in this chapter, requiring undertakings to have effective risk management systems and setting out in the high-level language of Article 44(2) what they should cover.</p> | |
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| 1.40 | <p>Sub-paragraph (e) requires an undertaking's risk management policy to set out the frequency and content of regular stress tests. Although this is stated to be « <i>in accordance with Article 44</i> », in fact that Article does not mention stress testing and the only reference in the Directive to stress tests is to their use in reviews of group supervision under Article 242. Even the draft level 2</p> | |

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| | measures only require stress tests to be included « where appropriate ». Sub-paragraph (e) does not therefore appear to be an appropriate preparatory measure and we suggest that it is deleted. | |
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| Chapter IV General Comments | | |
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| Chapter V General Comments | <p>We have reservations about the inclusion of this Chapter in the Guidelines. Development of a Capital Management Policy is an entirely new regulatory requirement, not mentioned in the Directive or draft Level 2 measures. Articles 41 and 93 do not require such a Policy. It looks as though EIOPA could introduce any policy it wants and justify it as being « <i>in accordance with</i> » these Articles .</p> <p>We therefore suggest that this section is removed.</p> | |
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| Chapter VI General Comments | | |
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| Chapter VII General Comments | | |
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| Chapter VIII General Comments | | |
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| 1.85 | <p>We propose that Guideline 45, as well as the relevant section of the Explanatory Text, are excluded, for the reasons set out below.</p> <p>Guideline 45 goes beyond the requirements of Directive Article 48 by looking at the interrelations between underwriting, reinsurance and technical provisions. The Article requires the actuarial function to express an opinion on the underwriting policy and reinsurance arrangements, nothing more. This is an area where there is currently little consensus in the actuarial professions or industry on what should be required.</p> | |

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| | <p>Although not strictly part of the consultation, parts of the Explanatory Text appear to raise expectations way beyond the requirements. Examples are:</p> <p><i>“The skills and experience of the actuarial function can provide a different perspective from the underwriters’ or reinsurance teams’ perspectives”</i> – this assumes that the members of the actuarial function have different skills and experience from members of the underwriting team – we would expect actuaries with pricing experience to be core in both and so this indicates that non-pricing actuaries will be expected to opine on underwriting policy. This does not make sense or seem appropriate.</p> <p><i>“The opinions on the underwriting policy and reinsurance arrangements include, when necessary, recommendations regarding appropriate strategies to be followed by the undertaking in this matter.”</i> – it is very much beyond the scope (and possibly skill set) of the actuarial function to be recommending appropriate strategies for the underwriting of a firm.</p> <p><i>“The opinions of the actuarial function on the overall underwriting policy and reinsurance arrangements need to include descriptions and examinations of other possible options.”</i> – again, to expect the actuarial function to provide description and examination of alternative underwriting (and reinsurance) policies places far higher expectations on the function than the Directive or what is practically possible.</p> <p>These all confirm that the expected role of the actuarial function appears mis-interpreted and goes beyond Directive requirements in respect of underwriting and reinsurance opinions. This supports the suggestion that the guidelines should be silent on these issues until further clarification and consensus is reached.</p> | |
| 1.86 | <p>We propose that Guideline 46 is deleted.</p> <p>It refers to the actuarial function contributing to the assessment of risk and specifically <i>“...the risk relating to the terms on which business is written and how</i></p> | |

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| | <p><i>dependencies between risks are derived."</i></p> <p>This extends well beyond expectations of the actuarial function's remit. For example, dependencies are not mentioned in the Directive or draft level 2 text in this context at all. It is more appropriate for an undertaking's underwriting teams to consider the <i>"terms on which business is written"</i>.</p> | |
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| Chapter IX General Comments | | |
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| 1.89 | <p>The reference to "...outsourcing requirements" at the end of this paragraph is unclear. We assume that it refers to the requirements set out in this Chapter. If it is intended to refer to the full outsourcing requirements set out in the Directive and the draft level 2 measures, this would require the Guidelines to be redrafted. It would also mean the full set of requirements applying to underwriting only, not to other critical or important operational functions.</p> | |
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| Section III. General Comments | | |
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| Compliance and Reporting Rules General Comments | | |
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| Impact Assessment – General Coments | | |
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