

<b>Comments Template on EIOPA-CP 03-11</b>		<b>Deadline</b> <b>23.09.2011</b> <b>17.30 CET</b>
<b>EIOPA Draft Report - Equivalence assessment of the Swiss supervisory system in relation to articles 172, 227 and 260 of the Solvency II Directive</b>		
Name of Company:	Swiss Financial Market Supervisory Authority FINMA	
Disclosure comments:	of EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. 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"> <li>⇒ <u>Do not change the numbering</u> in the column "reference".</li> <li>⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph, keep the row <u>empty</u>.</li> <li>⇒ Our IT tool does not allow processing of comments which do not refer to the specific paragraph numbers below. <ul style="list-style-type: none"> <li>○ If your comment refers to multiple paragraphs, please insert your comment at the first relevant paragraph and mention in your comment to which other paragraphs this also applies.</li> <li>○ If your comment refers to sub bullets/subparagraphs, please indicate this in the comment itself.</li> </ul> </li> </ul> <p><b>Please send the completed template, in Word Format, to <a href="mailto:equivalence@eiopa.europa.eu">equivalence@eiopa.europa.eu</a> . Our IT tool does not allow processing of any other formats.</b></p> <p>The numbering of the paragraphs refers to Consultation Paper No. 03 (EIOPA-CP-03-11).</p>		

Reference	Comment
General Comment	<p>FINMA would like to thank EIOPA for its efforts and professionalism in handling the equivalence assessment.</p> <p>We are also grateful for the opportunity to comment on the Draft Report. Our comments below focus on certain issues regarding the governance of insurance groups, i.e. the compliance function and internal audit.</p> <p>Since to date we have focused more on the general approach adopted by FINMA on governance and we may not have sufficiently differentiated between solo and group level, we are of the opinion that the Draft Report treats insurance groups in a manner that does not correspond to the supervisory practice in Switzerland. For instance:</p> <p>All insurance groups or conglomerates (groups) are, according to FINMA's pronouncements and established supervisory practice, to have a compliance function <i>as a separate organisational unit</i> and an internal audit function.</p> <p>Compliance function: This practice is based on FINMA Circular 2008/32 on Corporate Governance which requires establishing a compliance function, depending on the size and scale of business (cf. margin no. 9). Under FINMA practice, this requirement is always affirmed for groups. In terms of the required compliance function, FINMA regularly conducts thematic on-site reviews for groups.</p> <p>Internal audit function: Article 27 para. 1 Insurance Supervision Act (ISA) requires an insurance company to establish an internal audit function. In exceptional circumstances, FINMA may exempt a supervised entity from this requirement if good cause is shown, i.e. if there are non-complex risk structures. Since groups are per se complex entities FINMA does not grant such exemptions to groups. So far FINMA has never received such an exemption request from a group. On the contrary in fact the requirement for groups to implement an internal audit function is explicitly specified in margin no. 3 of FINMA Circular 2008/35 "Internal audit - insurers".</p> <p>To this end, external auditors for groups have to confirm in their supervisory audit report that an effective and efficient internal audit function is in place which meets the required international standards. In particular, the external auditors have to confirm that they assessed the quality of the internal audit and have</p>

	<p>carefully considered its reports. Moreover, FINMA receives a summary report from the internal audit function of the group which is then analysed for both quality and risk-relevance by supervisors in a systematic and standardised process.</p> <p>The situation thus differs substantially from that at solo level, where FINMA can and has exempted under the principle of proportionality certain relatively small and non-complex insurance companies from the requirement to establish an internal audit function. FINMA only requires establishing a compliance function <i>as a separate organisational unit</i> where it is deemed appropriate to the size and scale of business.</p> <p>We suggest the above points be reflected in EIOPA's Final Report and hope that the Swiss regulations can be considered fully equivalent in terms of the compliance and internal audit function for groups.</p> <p>To conclude with a more general comment, we would like to draw your attention to the fact that Swiss insurance regulation does not, unlike the Solvency II Directive, provide for a general <i>de minimis</i> exemption for insurance companies which fall below certain thresholds.</p> <p>Considering the principle of proportionality, which is also enshrined in the Swiss Constitution, it should be possible to exempt very small insurance companies from certain requirements such as the internal audit function or establishing a compliance function <i>as a separate organisational unit</i>. In the meaning of equivalence being assessed only in relation to those entities covered by the scope of Solvency II, we propose that some clarification on this difference be inserted in the Final Report.</p>	
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