

Comments Template on Implementing Technical Standards On the procedures to be followed for the approval of the application of a matching adjustment		Deadline 30 June 2014
Name of Company:	CFO Forum and CRO Forum	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
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Reference	Comment	
General Comment	<p>Thank you for opportunity to comment on CP-14-07. The CFO Forum and CRO Forum welcome the publication of this consultation paper. We have set out our comments on the individual articles of the paper below. However, and as reflected in our comments, in our view the Implementing Technical Standard as currently drafted introduces new requirements that are not included in Articles 77b and 77c the Solvency II Directive (as modified by the Omnibus II Directive), and in effect creates a "Use Test" for the application of the Matching Adjustment.</p> <p>The role of the Implementing Technical Standard is to set out process in relation to the approval of applications to use the Matching Adjustment. We therefore consider the creation of new</p>	

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	<p>requirements to be beyond its scope, and have proposed the deletion of the additional requirements to restore consistency with the Level 1 text.</p> <p>We are also also concerned that the ITS as drafted may leave undertakings in a position of uncertainty if a decision has not been reached by the supervisory authority within the prescribed period, and believe that clarity is needed to provide certainty to undertakings.</p> <p>We would also note in general that the references to the draft Delegated Acts in the ITS will need to be updated as the Delegated Acts are finalised and adopted.</p>	
Recital (1)		
Recital (2)		
Recital (3)		
Recital (4)		
Recital (5)		
Recital (6)		
Recital (7)		
Recital (8)		
Article 1 (1)		
Article 2 (1)		
Article 2 (3)	We consider that the documentation of the application should not be required to extend beyond that specified in this Implementing Technical Standard. See also our comment on Article 8(2).	
Article 2 (4)	Once the authorisation is approved, we consider that it should be possible to apply the same authorisation to future products with similar features without entering into another approval process, which would be unduly burdensome for both supervisors and undertakings. The supervisory review process could be used to supervise fulfilment of the relevant requirements.	
Article 2 (5)		

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Article 3 (1) a		
Article 3 (1) b	We believe that the requirement for line-by-line asset information on Matching Adjustment portfolios is inappropriate and unduly onerous. Instead, providing details of the asset portfolio grouped by asset class, credit quality and duration, along with the criteria used to select such assets for inclusion in the Matching Adjustment should be sufficient to enable the supervisory authority to form a judgment on the approach used by firms to construct and manage Matching Adjustment portfolios.	
Article 3 (1) c		
Article 4 (1) a		
Article 4 (1) b		
Article 5 (1) a		
Article 5 (1) b		
Article 5 (1) c	The application of restrictions to own funds arising from matching adjustment portfolios does not reflect how portfolios are managed and technical provisions calculated in practice, and restrictions should therefore only be required once the use of the matching adjustment is approved. Requiring a recalculation of restricted own funds in the absence of approval would be beyond the requirements of the Directive and Delegated Acts. We therefore consider that this paragraph should be deleted.	
Article 5 (1) d	The adjustment of the SCR as a result of matching adjustment portfolios does not reflect how portfolios are managed and technical provisions and capital needs calculated in practice, and adjustments should therefore only be required once the use of the matching adjustment is approved. Requiring a recalculation of the SCR based on restricted assumptions in the absence of approval would be beyond the requirements of the Directive and Delegated Acts. We therefore consider that this paragraph should be deleted.	
Article 6 (1) a	We would welcome clarity on whether the contents of the written application set out in Article 6 will be required for both Solo and Group levels separately.	

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	Specifically on subparagraph 1(a), the use of the Volatility adjustment where the use of the matching adjustment is not approved is permitted by the Omnibus II Directive, and this Implementing Technical Standard should not be more restrictive. We therefore consider that this paragraph should be deleted.	
Article 6 (1) b	The approval for the use of the Matching Adjustment is restricted to the satisfaction of the requirements included in articles 77b and 77c of the Omnibus II Directive. The requirement in Article 44(2) referred to applies only once the use of the Matching Adjustment is approved. Omnibus II does not require a “Use Test” for the Matching Adjustment, and the Implementing Technical Standard should not introduce this requirement. We therefore consider that this paragraph should be deleted.	
Article 6 (1) c	The approval of the use of the Matching Adjustment is restricted to the satisfaction of the requirements included in articles 77b and 77c of the Omnibus II Directive. The requirement in article 44(2a)(b) referred to applies only once the use of the Matching Adjustment is approved, and it does not make sense to require analysis of the sensitivity of technical provisions and own funds to assumptions underlying the calculation of the Matching Adjustment where the Matching Adjustment is not used to calculate technical provisions or own funds. Omnibus II does not require the “Use Test” for the Matching Adjustment, and the Implementing Technical Standard should not introduce this requirement. We therefore consider that this paragraph should be deleted.	
Article 6 (1) d	The approval of the use of the Matching Adjustment is restricted to the satisfaction of the requirements included in articles 77b and 77c of the Omnibus II Directive. The requirement in article 45(2a) referred to applies only once the use of the Matching Adjustment is approved, and prior to approval the ORSA based on regulatory requirements should be performed without including the Matching Adjustment. Our understanding is that ORSA carried out to comply with Article 45(1)(b) of the Solvency II Directive should be based on measures approved by the supervisory authority, without assuming that applications for alternative treatment were already granted. Omnibus II does not require a “Use Test” for the Matching Adjustment, and the Implementing Technical Standard should not introduce this requirement. We therefore consider that this paragraph should be deleted.	

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Article 6 (1) e		
Article 6 (1) f		
Article 7 (1)		
Article 7 (2)		
Article 7 (3)	It should be clarified that adjustments only refer to bringing the application in line with requirements.	
Article 7 (4)	We would consider a time period shorter than six months to be sufficient for approval of the use of the Matching Adjustment. For comparison, six months is specified in the Solvency II Directive as the maximum time period that a supervisor could use to consider an application for approval of an internal model, which is a more complex approval process.	
Article 7 (5)	We are concerned that the provisions of this paragraph may substantially slow down the approval process.	
Article 7 (6)		
Article 7 (7)		
Article 7 (8)		
Article 7 (9)	A simplified procedure should be included where adjustments to the application are made in order to take account of the views of supervisory authorities. We welcome the provision for supervisory authorities to decide not to treat changes made as creating a new application.	
Article 7 (10)	It should be clarified that a withdrawal is without further consequences.	
Article 8 (1)		
Article 8 (2)	This paragraph potentially allows for an unlimited list of extra requirements beyond those required in the Solvency II regulations. We consider information to be required should be restricted to verifying the fulfilment of the requirements included in articles 77b and 77c of the Solvency II Directive. The requirement for supervisory authorities to specify the reasons for rejection of an application as set out in Article 8(5) is not sufficient to address this concern.	
Article 8 (3)		
Article 8 (4)	We welcome provision for supervisory authorities to approve subsets of the portfolios included in an application, rather than being required to approve or reject the entire application.	

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Article 8 (5)		
Article 8 (6)	The consequences of regulator's silence after the approval period needs to be laid out to avoid uncertainty. Art. 7 (5) (regarding the assessment of the application) in conjunction with Art. 8(6) (regarding the decision on the application) regulate that if the authority has not decided on the application within the required period (6 months) the undertakings must not consider the application as approved and are not allowed to use the matching adjustment. The ITS leaves open any further process steps after the authority has failed to meet the deadline. The resulting uncertainty would require companies to maintain two calculations at the same time over an undefined period of time. No incentive to the authority is given to accelerate the internal decision finding, resulting in prolonged legal uncertainty for the undertakings. This could result in increased operational cost and capital cost eventually increasing cost of insurance products. A potential solution could be to consider the approval as granted once an additional period of time (e.g. 30 days) has elapsed.	
Article 9 (1) a	We would suggest a longer period be provided within which to restore compliance, and would suggest a period of four months, so that at least one quarter close is included in the period which facilitates the demonstration of compliance by the quarter close information.	
Article 9 (1) b		
Article 9 (1) c		
Article 9 (2)	We understand from this paragraph that breach of the specified conditions with respect to a Matching Adjustment portfolio does not affect an entity or group's ability to the use the Matching Adjustment as approved for other portfolios. We would welcome clarification of this point.	
Article 10 (1)		
Annex I: Problem definition	We agree that the presence of different interpretations between member states would be a negative outcome and hinder competition. Notwithstanding the planned Implementing Technical Standard, differences in interpretation are still possible. It will remain important that such differences are considered to prevent the chosen interpretations having unduly positive or negative outcomes for insurers in specific Member States.	
Annex I: Baseline		

