



Brussels, 8 March 2007

CALL FOR TECHNICAL ADVICE (No.9) FROM THE COMMITTEE OF EUROPEAN BANKING SUPERVISORS (CEBS)

Subject: Supervision in third countries: Switzerland and the USA

1. Background

Article 143(1) of Directive 2006/48/EC¹ requires EU competent authorities to take decisions on whether, for banking groups with their head office outside the Community, there is equivalent supervision in place to the consolidated supervision required by Directive 2006/48/EC. These are generally known as "equivalence" decisions.

Individual competent authorities must, when making equivalence decisions, take into account any general guidance, issued by the European Banking Committee ('EBC'),² on the extent to which arrangements for consolidated supervision in a third country are likely to meet the objectives of consolidated supervision set out in Community legislation.

In July 2004, the Banking Advisory Committee, acting jointly with the European Financial Conglomerates Committee ('EFCC') (which has similar responsibilities under Directive 2002/87/EC³⁴) issued general guidance on supervision in Switzerland and the USA. It is now appropriate to review this general guidance.

The Committee of European Banking Supervisors ('CEBS') is asked to provide technical advice to assist the Commission services and the EBC in updating the general guidance.

¹ Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast).

² Article 143(2) of Directive 2006/48/EC gives the EBC the capacity to issue general guidance on the supervisory arrangements of third countries.

³ Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.

⁴ Article 18(1) of Directive 2002/87/EC requires individual EU competent authorities to take equivalence decisions for financial conglomerates headquartered in third countries. Article 21(5) of Directive 2002/87/EC gives the EFCC the capacity to issue general guidance on the supervisory arrangements of third countries.

2. Specific Call for Technical Advice

Following agreement in the EBC, the Commission services wish to seek the technical advice of CEBS on the following issues:

(a) Supervision of banking groups in Switzerland

The extent to which the consolidated supervision arrangements of the Swiss competent authorities are likely to achieve the objectives of consolidated supervision, as set out in Directive 2006/48/EC, for banking groups with their head office situated in Switzerland. The Commission services would welcome the receipt of this advice by *31 December 2007*.

(b) Supervision of banking groups in the USA

The extent to which the consolidated supervision arrangements of the US competent authorities are likely to achieve the objectives of consolidated supervision, as set out in Directive 2006/48/EC, for banking groups with their head office situated in the USA. The Commission services would welcome the receipt of this advice by *31 December 2007*.

(c) Issues to consider

The technical advice will need to take into account that the test under Article 143(1) of Directive 2006/48/EC refers to "*subject to consolidated supervision by a third-country competent authority which is equivalent to that governed by the principles laid down in this Directive.*" It is possible that this change in the legislative requirement will mean issues need to be considered, when looking at third country supervisory regimes, which have not previously been considered when preparing general guidance. CEBS should identify any relevant new issues and bring these to the attention of the Commission services.

In addition, as adequate exchange of information is a prerequisite for any decision on equivalence by an EU competent authority, CEBS will need to consider the experience to date of EU competent authorities with regard to the flow of information to, and from, competent authorities in Switzerland and the USA.

The success of the exercise will depend on CEBS establishing effective working relationships with Swiss and US competent authorities to obtain necessary information from them, to inform the technical advice. CEBS should inform the Commission services at an early point should delivery of the technical advice to the agreed timetable be threatened by difficulties in obtain information from Swiss and US competent authorities.

(d) Liaison with other groups

In parallel with the work requested from CEBS, the Commission services will also be asking the Interim Working Committee on Financial Conglomerates ('IWCF') to provide technical advice on the supervisory regimes in Switzerland and the USA as they relate to financial conglomerates under Articles 18 and 21 of Directive 2002/87/EC.

CEBS should work closely with the IWCFC to ensure that there is no duplication of work, and that contact with competent authorities in Switzerland and in the USA is managed effectively.

The Commission services have a strong preference to receive one integrated piece of technical advice, from CEBS and the IWCFC, in response to the two Calls for Advice⁵ on third country supervision in Switzerland and the USA.

⁵ CEBS CfA 9 and IWCFC CfA 2.