



10 June 2009

Mr. Carlos Montalvo Rebuelta  
Secretary General  
CEIOPS  
Westhafen Tower  
Westhafenplatz 1  
D-60327 Frankfurt Am Main

Ref.: *CEIOPS-CP-29-09*

Our Ref.: INS/HvD/LF/SR

Dear Mr. Montalvo Rebuelta,

**Re: FEE Comments to CEIOPS on Consultation Paper No. 29 Draft CEIOPS' Advice for Level 2 Implementing Measures on Solvency II: Own funds – Supervisory approval of ancillary own funds**

(1) FEE (the Federation of European Accountants) is pleased to provide you below with its comments on the CEIOPS Consultation Paper No. 29 Draft CEIOPS' Advice for Level 2 Implementing Measures on Solvency II: Own funds – Supervisory approval of ancillary own funds ("the Paper").

**General comments**

(2) We agree with CEIOPS' recommendation of a principles-based approach at level 2 in the guidance for supervisory approval of ancillary own funds.

(3) The eligibility of ancillary own funds depends on:

1. The ability of the undertaking to call such own funds under the circumstances agreed upon; and
2. The ability of the counterparty to fulfil its commitments when called. The particular legal circumstances, which may vary by jurisdiction and, within one jurisdiction, by category of instrument, will impact upon the undertaking's ability. In addition to default risk and liquidity risk referred to in the Paper, market risk is also relevant to the counterparty's ability to fulfil its commitment. The second point will relate to default risk and liquidity risk as mentioned in the paper, but may also relate to market risk and other types of risk.

- (4) We are not sure that we understand why the evaluation of the “contingent asset” against a particular ancillary own fund would not be subject to the same evaluation as the undertaking’s eligible assets and liabilities according to the Solvency II balance sheet. The (tail) correlation between the movement of the undertaking’s eligible net assets and the counterparty’s ability to transfer cash or eligible assets would be of particular significance.
- (5) We recommend CEIOPS to consider in their advice the following:
  - To require the undertaking to perform a periodic analysis of the sensitivity of the “contingent asset” that can be called from the counterparty under agreed circumstances. Ideally, the basis for this analysis would be consistent with that of the Solvency II standard model or the undertaking’s internal model;
  - To require an analysis of the correlation between the undertaking’s risk of having to call on ancillary own funds and changes in liquidity of the counterparty.
- (6) This would make the process on which the approval of the ancillary own funds is reconsidered from time to time more transparent. In our opinion, this transparency is needed in order to avoid surprises for the undertaking under stressed circumstances.

### **Detailed comments**

#### ***Paragraph 3.23***

- (7) Paragraph 3.23 requires disclosure of ancillary own funds unless there are legal obstacles. We are not sure we understand in which case there would be legal obstacles disclosing the details of ancillary own funds, where these obstacles would not in some way restrict calling on such funds when needed (which would mean that these legal obstacles would be a potential disqualifier for the acceptance of the relating ancillary own funds). We would therefore recommend being very restrictive in allowing exceptions on providing the disclosures that are necessary for market transparency.

For further information on this letter, please contact Ms. Saskia Slomp from the FEE Secretariat.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Hans van Damme', written over a horizontal line.

Hans van Damme  
President