

Bundesverband der Wertpapierfirmen e.V.
Schillerstraße 20, 60313 Frankfurt/Main

European Central Bank

Secretariat
„CP2 – ECB Regulation on Supervisory Fees Consultation“
Kaiserstraße 29
60311 Frankfurt am Main

your reference

your message of

city_date

Frankfurt/Main, 10.07.2014

via e-mail: SecretariatInbounde-mails@ecb.europa.eu

CP2 – ECB Regulation on Supervisory Fees Consultation

Dear Ms Zilioli, dear Mr Keuning,

the bwf is a nationwide trade association representing the common professional interests of securities trading firms in Germany on a national and European level. In this capacity, we expressly welcome the opportunity to participate in the consultation on the proposed ECB regulation on supervisory fees.

Following our discussion at the occasion of the ECB public hearing on this matter, held on 24 June 2014 in Frankfurt am Main, we have further elaborated in the enclosed consultation template our thoughts on certain issues which we consider to be of particular importance and which we kindly ask you to take into account in the course of finalizing the proposed regulation.

We have no objections regarding the publication of our comments on the ECB's website.

Yours sincerely,

Michael H. Sterzenbach
Secretary General

Attachement: Consultation Template

This document was issued electronically and therefore is valid without signature.

Bundesverband der Wertpapierfirmen e.V.

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PUBLIC CONSULTATION
DRAFT ECB REGULATION ON SUPERVISORY FEES
TEMPLATE FOR COMMENTS

Institution/Company	
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(Federal Association of Securities Trading Firms)	
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Please separate your comments per issue, citing the relevant article of the draft Regulation on supervisory fees where appropriate and indicating whether you are proposing an amendment, clarification or a deletion. If you require more space for your comments, please copy page 2.

PUBLIC CONSULTATION
DRAFT ECB REGULATION ON SUPERVISORY FEES
TEMPLATE FOR COMMENTS

Name of Institution/Company	Bundesverband der Wertpapierfirmen e.V.	Country	Germany
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COMMENTS ON THE DRAFT ECB REGULATION ON SUPERVISORY FEES

Issue	Article	Comment	Concise statement why your comment should be taken on board
Definition of “credit institution”, “financial holding company” and “mixed financial holding company” in accordance with Regulation (EU) No 1024/2013.	3(18)	Clarification	<p>In the ECB public hearing held on 24 June 2014 in Frankfurt am Main there was a common understanding between ECB representatives and the audience that Article 3 of the Draft Regulation of the European Central Bank on supervisory fees cannot and is not intended to alter the definitions contained in Regulation (EU) No 1024/2013.</p> <p>Therefore, in order to provide legal certainty and to avoid confusion regarding the definition of the term “supervised entity” which might arise from the introductory phrase of Article 3 “<i>For the purposes of this Regulation, the definitions contained in Regulation (EU) No 1024/2013 shall apply, unless otherwise provided for, <u>together with the following definitions:</u></i>” it should be expressly stated</p>

			<p>in Article 3(18) that</p> <ul style="list-style-type: none"> - a “credit institution” means a credit institution as defined in Article 2(3) of Regulation (EU) No 1024/2013, - a “financial holding company” means a financial holding company as defined in Article 2(4) of Regulation (EU) No 1024/2013 and - a “mixed financial holding company” means a mixed financial holding company as defined in Article 2(5) of Regulation (EU) No 1024/2013. <p>These clarifications would be in accordance with other paragraphs of Article 3 which expressly refer to the sources of legal definitions and are deemed necessary in order to avoid confusions with possible deviating definitions under national legal regimes within the Member States.</p>
<p>Qualification of “financial holding company” and “mixed financial holding company” as a “supervised entity”.</p>	<p>3(18)</p>	<p>Clarification</p>	<p>Subsequent to the discussion during the ECB public hearing, we would further like to allude to an missing differentiation with respect to the qualification of financial holding companies and mixed financial holding companies as supervised entities in the current wording of the Draft Regulation of the European Central Bank on supervisory fees.</p> <p>Article 4(g) of Regulation (EU) No 1024/2013 authorizes the ECB “<i>to carry out supervision on a consolidated basis over credit institutions’ parents established in one of the participating Member States, including over financial holding companies and mixed financial holding companies [...]</i>”.</p> <p>However, this authorization is clearly restricted to the supervision of financial holding companies and mixed financial holding companies in their capacity of “credit institutions’ parents” and does not apply to financial holding companies and mixed financial holding companies without credit institutions</p>



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			<p>among the companies which constitute the group.</p> <p>According to Article 2(20) of Regulation (EU) No 575/2012 (to which Article 2(4) of Regulation (EU) No 1024/2013 refers) a “financial holding company” <i>“means a financial institution, the subsidiaries of which are exclusively or mainly institutions or financial institutions, at least one of such subsidiaries being an institution, and which is not a mixed financial holding company”</i>. Since “Institution” is defined in Article 4(3) of Regulation (EU) No 575/2012 as <i>“a credit institution or an investment firm”</i> it becomes evident that a financial holding company not necessarily has one or more credit institutions among its subsidiaries but can be constituted by subsidiaries qualifying as investment firms as well.</p> <p>Also a “mixed financial holding company” which is defined in Article 2(15) of Directive 2002/87/EC (to which Article 2(5) of Regulation (EU) No 1024/2013 refers) as <i>“a parent undertaking, other than a regulated entity, which together with its subsidiaries, at least one of which is a regulated entity which has its head office in the Community, and other entities, constitutes a financial conglomerate”</i>, can be constituted without containing a credit institution. This circumstance results from the definition of a “regulated entity” in Article 2(4) of Directive 2002/87/EC, which can be either <i>“a credit institution, an insurance undertaking or an investment firm”</i>.</p> <p>Therefore, in order to avoid any misunderstanding or even the impression of an undue expansion of the scope of the definition of a “supervised entity”, it appears desirable and necessary to provide a clarification that financial holding companies and mixed financial holding companies qualify as a “supervised entity” – and therefore would be liable to pay supervisory fees – only under the constrictive condition that the group contains at least one credit institution.</p>
Deadline for fee factor reporting	10(4)	Amendment	Article 10(4) of the Draft Regulation of the European Central Bank on supervisory fees obliges supervised entities to <i>“provide fee factors with a reference date of 31 December of the preceding year</i>



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			<p><i>and submit the required data to the NCA concerned for the calculation of the annual supervisory fees by close of business on 1 March of the year following the said reference date or on the next business day if 1 March is not a business day”.</i></p> <p>In order to discourage any “window dressing” by the supervised entities when providing information as a basis for fee calculation, it appears desirable that the amount of “total assets” should be based on an audited financial statement.</p> <p>However, it must be noted that under existing national account rules, the intended reporting deadline appears to be too tight to insure that information can be provided on the basis of precise and audited financial figures.</p> <p>We therefore suggest to consider a prolongation of the reporting deadline or to provide for a corrective mechanism in case of a deviation of the reported figures from the audited financial statement.</p> <p>We further suggest that credit institutions with a business year other than the calendar year should be allowed to report figures for “total assets” based on the last available audited financial statement. Consequently, the “total risk exposure” should be calculated for the same date.</p>
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