	Comments Template on CEIOPS-CP 46 Consultation Paper on the Draft L2 Advice on Own Funds – Classification and Eligibility	Deadline 11.09.2009 4 p.m. CET
Name of Company:		
Disclosure of comments:	CEIOPS 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:	No. The CFO Forum comments are not confidential.
	Please follow the following instructions for filling in the template: ⇨ Do **not** change the numbering in the column "reference". ⇨ Please fill in your comment in the relevant row. If you have no comment on a paragraph, keep the row empty. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific paragraph numbers below. o 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. If your comment refers to sub bullets/subparagraphs, please indicate this in the comment itself. **Please send the completed template, in Word Format, to secretariat@ceiops.eu. Our IT tool does not allow processing of any other formats.** The numbering of the paragraphs refers to Consultation Paper No. 46 (CEIOPS-CP-46/09).	
Reference	**Comment**	
General Comment	**The level 2 Tiering requirements are significantly more restrictive than those set out in the Solvency II Directive and CRD banking requirements. Implementation measures must not contradict or significantly deviate from the Directives. We believe that many hybrid capital**	

instruments are as good as equity and should be included as part of Tier 1 capital.

The consultation paper sets Tiering requirements which are more stringent than those originally requested by the Directive, in some cases also grounding them on principles which conflict with core elements of the Solvency II approach, such as excluding all hybrid capital from Tier 1. This will likely lead to competitive distortions, regulatory arbitrage and higher capital cost of insurers, ultimately leading to a higher cost to the policyholder.

With CEIOPS diverging from bank regulations and including maturity thresholds based on insurance obligations, three different classes of hybrid securities (bank, life and non-life) will be created. Hybrid will no longer be a reliable form of capital.

While we acknowledge that these implementation measures need to provide further details in certain areas, we do not believe that they should go beyond the requirements of the Solvency II Directive.

The principles adopted in the consultation paper conflict with core elements of the Solvency II Directive.

The Directive requires a market value approach so that in adverse scenarios, sufficient assets remain to transfer the liability to a third party.

However, the consultation paper imposes additional limitations based on IFRS or local GAAP valuation approaches. For example, profit recognition issues and prudential principles lead to reserving requirements which are higher than those under the market value approach.

Using different local accounting bases as a starting point contradicts the idea of a harmonised approach and does not create a level playing field for all financial institutions.

In addition, parts of the proposed implementation measures deviate from the economic principles underlying Solvency II, for example the treatment of equalisation reserves in 3.96. We recommend that the economic principles underlying Solvency II are upheld so items such as net deferred tax assets are given their true economic value.

The proposed guidance would require significant changes to insurers' capital arrangements

which would have an undesirable impact on financial markets.

If CP46 is implemented as proposed, many insurers would need to significantly change their capital arrangements which would have an undesirable impact on financial markets as companies sought to close out positions and move own funds in line with the CP46 requirements.

Grandfathering of existing capital instruments is a critical issue which requires consideration in CP46.

Grandfathering arrangements will be required if CP46 is implemented as currently imposed in order to avoid undesirable market activity and significant adverse financial impact to the insurance industry.

It is important that instruments issued in the past can rely on grandfathering. This grandfathering should be applicable to all instruments placed in the market before the Solvency II adoption date. The level 2 measures should provide guidance around this process.

The proposed guidance would require companies to revise terms and conditions of existing policies and communicate these changes to policyholders.

In some territories the basis for calculating discretionary benefits is based on conditions specified in contracts associated with the own funds of the company issuing those contracts. The proposed changes under CP46 will require companies to reissue a very large number of contracts to policyholders and explanations of the changes in terms and conditions due to Solvency II.

CP46 implies that own funds are being considered from a run-off perspective. The CFO Forum believes that a going concern basis is more appropriate.

The overall tone of CP46 seems to imply that own funds are being considered from a run-off perspective, which is inconsistent with the transfer concept in the Directive.

	The CFO Forum considers that since the Solvency II measurement basis is to transfer liabilities to another entity, a going concern basis is most appropriate. The going concern basis applies both before and after significant financial shocks since the acquirer in the transfer concept would be a going concern. **Maturity of capital instrument should not be related to the insurer's liabilities.** Some life insurance liabilities are very long-dated, such that the minimum maturity can be 50 years or more. Paragraph 3.73 states that the duration of the capital instrument is defined as the first contractual possibility of repayment. In other words, a hybrid Tier 1 instrument would need a call date in, say 50 years or thereafter (versus 5-10 years today), another reasons that effectively means that no marketable hybrid Tier 1 instruments will exist if it needs to be constructed according to CP 46. We suggest to delete paragraph 3.76 as the idea to link the minimum "duration" of certain own funds items to the longest dated liability is very blunt. The relevant liability may be negligible compared to total liabilities, but would still determine the minimum term. We are of the view that a regulatory lock-in is fully sufficient to address CEIOPS' concerns. **There is a lack of clarity on group implications in CP46. These should be considered throughout.**	
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1.4.	**Guidance is required on the treatment of "ring fenced funds" in the level 2 implementing measures.** Guidance on the treatment of "ring fenced funds" is not included in the level 2 implementing measures.	

	As the QIS4 specifications were not clear on how undertakings should deal with this issue, postponing it to level 3 is not appropriate. We recommend that further guidance be provided as part of level 2.	
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3.4.	**Reserves and provisions based on a book value type approach should not be considered.** The assessment of assets and liabilities under Solvency II is market consistent and as a result the classification of reserves and provisions is defined under economic principles. The concept of equalisation reserves in our view relates to a book value type approach (i.e. they would not exist in a market consistent approach) and therefore should not be considered here.	
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3.15.	**Guidance on grandfathering for hybrid capital instruments is required.** The level 2 implementing measures are silent on the treatment of grandfathering of hybrid capital instruments. Guidance covering implementation and timescales is required.	
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3.28.	**New criteria should not apply to existing hybrid capital instruments. This paragraph therefore requires updating.** The new criteria should not apply to existing issues of hybrid capital instruments as these should be grandfathered (see comments in 3.15). Therefore, the words "have issued" should be removed from this paragraph.	
3.29.	**We disagree with the assertion that hybrid capital instruments are not used for loss absorption. We believe that many hybrid capital instruments are as good as equity and should be included as part of Tier 1 capital.** The last sentence includes the statement: "CEIOPS has observed virtually no deferral of interest on hybrid capital instruments." This statement is used as an observation that hybrid capital instruments are not used for loss absorption. We do not agree with this conclusion. In stressed markets, management examine the options available to maintain capital at a sufficient level and balance the interests of stakeholders. The fact that some measures are not taken initially does not mean that they will not be taken when things significantly worsen. Further, deferral is triggered on a contractual basis whereas equity dividend payments, cited in the paragraph as being loss absorbing, are not. Therefore the two are not comparable.	
3.30.	**We disagree with the observation that "undertakings with a strong common equity base have in general been able to withstand the crisis better".** Most current accounts are on a book value basis and hence we query how this could have been observed under a market consistent approach, as is required for Solvency II. This observation does not provide an argument for requiring a higher common equity base under the market consistent Solvency II framework.	

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3.31.	**The requirement to further increase the minimum proportion of Tier 1 will place European insurance companies at a significant cost disadvantage vis-à-vis their non-European peers as well as other financial institutions.**	
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3.33.	**Tier 1 definition should allow for the inclusion of hybrid capital instruments.** Excluding hybrid capital instruments from Tier 1 would put insurance companies at a disadvantage compared to other financial institutions, for example banks. Capital costs would increase and these would ultimately be born by policyholders. Trigger points should be set at a level lower than the SCR. A trigger point set at the SCR level would, in order for the hybrid capital instrument to be marketable to investors, require insurance companies to hold significant buffers above the SCR thus in effect introducing a third capital requirement. Therefore, a lower trigger point would be more appropriate.	
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3.36.	**The "lock-in clause" in the text needs to be clearly defined to be transparent for the benefit of investors.** The "lock-in clause" in the text needs to be clearly defined by specific conditions. These conditions should define when hybrid capital instruments/subordinated liabilities get locked-in in Tier 1 and when redemption takes place. Only such a clear definition will make this mechanism transparent for investors. This is particular important because investors are generally not familiar with the described new clauses. In case these clauses prevent a functioning capital market for lower Tier instruments it is likely that the capital costs will increase and pure equity is the remaining funding source. This might be likely if the conditions for prohibiting redemption are not transparent. Importantly, we believe this is a controversial topic as far as the regulators are concerned, since there will always be much debate over whether the prohibition was justifiable. In general, we do not think that the intervention rights for the insurance regulators should exceed the ones for banking regulators, because this would bring disadvantages in terms of higher capital costs for	

	insurance / reinsurance companies, preventing a levelled playing field. **The text "a breach could occur within the next twelve months" should be changed to "three months" in line with the level 1 text.**	
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3.40.	**Further clarification is required as to why the minimum maturity for Tier 3 capital instruments should be more than 1 year.** We agree with the principle of supervisory approval for redemption as set out in this paragraph. However, the rationale for having a minimum maturity of more than one year is not clear. Further clarification of this point is requested.	
3.41.		
3.42.	**The CFO Forum disagrees with the statement made in this paragraph.** For example, the recently implemented CRD allows for Tier 1 with incentives to redeem. Also, the initially planned CRD foresaw many of the features that CP 46 foresees now, which have been dropped in the final text following extensive market feedback.	
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3.48.	**The proportion of Tiered capital in eligible own funds required for compliance has changed from those stated in the Directives without justification.** In the Directive, the proportion of Tier 1 capital in eligible own funds is required to be at least 33%. In the level 2 implementation measures, this has changed to 50%. However, there is no justification for the change. We do not believe there is any reason to deviate from the Directive. Similarly, the proportion of Tier 3 elements required has been reduced below the 33% stated in the Directive to be a maximum of 15%. Again, there is no justification for the change and we do not believe it to be appropriate. Also, the value of Tier 1 capital items can be very volatile in times of stressed markets with the Tier 2 and 3 elements relatively more stable. This warrants a more flexible approach (as included in the Directive) and we believe the suggested approaches are too restrictive. It is difficult to comment upon limits before all own funds items have been classified into Tiers in detail. However it seems that with the very narrow interpretation of the term "substantially" in 3.27 and the very narrow interpretation in 3.98 and 3.99, several own funds items run the risk of being completely excluded from Tier 1 (equalisation and similar reserves, hybrid capital items). The harsher limits imposed for own funds in the implementing measures compared to the Directive might be unjustifiable and improper in relation to the risks covered.	
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3.52.	**MCR and SCR should be examined in total rather than as a percentage of Tiered capital.** We agree that there should be a minimum ratio for MCR relative to SCR to allow a sufficient useful ladder of intervention approach. However we recommend that this is examined in total rather than as a percentage of Tiered capital.	

	Comments in 3.48 are also relevant here.	
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3.61.	We agree with this statement however, we note that ordinary shareholders have the ability to force the undertaking to unwind.	
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3.63.	**Own funds should not be required to have the same duration as the longest liabilities.** We do not interpret Article 93 (2) of the level 1 text to mean that own funds should have the same duration as the longest liability. We believe the purpose of available surplus is to act as a buffer in the case of deterioration - it is an addition to the amount of assets backing insurance liabilities. The discussion on the Tiers views own funds as an additional amount of assets backing the technical provisions and as a result defines the sufficiency of, for example, Tier 1 capital in relation to matching the liability durations. The underlying concept of Solvency II is that the SCR is an amount that represents the effect of a one-year shock with an occurrence of 1 in 200 years. When such an event occurs, the insurer should have	

	sufficient assets to transfer its liabilities to another party. Conceptually, this means that the funds available should remain available for at least one year. While we agree that available surplus needs to be available to fully absorb losses on a going concern basis as well as in the case of winding-up (article 93 (1a) of Level 1 text), we do not interpret this as a requirement that Tier 1 capital should have a duration equal to the longest dated insurance liability. Also, for any duration mismatch between assets and liabilities, an SCR charge has to be taken and as such this issue should not be considered under the calculation of own funds. Further, we note that the reference to duration is made in the context of a book value type approach. We believe this concept and requirements are not valid when applying as market consistent approach. In addition, we note that the requirements as drafted indicate that full Tier 1 capital needs to be held at the longest liability duration, and not having regard to the fact that a portfolio will run-off gradually. Hence a weighting based on maturity durations would be more appropriate.	
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3.68.	Comments in 3.63, 3.73 and 3.85 are also relevant here.	
3.69.	**The duration of liabilities should be based on projected cash flows for non-life insurance companies.** For non-life insurance companies, an approach based on projected cash flows is most appropriate as a large proportion of the liabilities are IBNR (incurred but not reported) reserves and as such based on statistical estimates rather than contract by contract consideration.	
3.70.	Comments in 3.63 and 3.69 are also relevant here.	

3.71.	Comments in 3.69 are also relevant here.	
3.72.	Comments in 3.69 are also relevant here.	
3.73.	**The duration of the capital instrument should be defined as the time to maturity.** As the first call date is completely optional and subject to approval from supervisory authorities, the duration of the capital instrument should be taken as the time to maturity.	
3.74.		
3.75.	**The approach suggested to define minimum terms per Tier with a link to the longest-dated liability (Tier 1) or average weighted life of liabilities is inappropriate** Firstly, some life insurance liabilities are very long-dated (e.g. 50 years). Thus it appears impossible to allow for a level playing field for life insurance/ multi-line insurance companies. Only very few investors would buy instruments with a minimum life of greater or equal to 10 years, making these instruments either non-sellable or rather expensive Moreover, the term structure of liabilities of insurance companies can change significantly over a time frame of a few years, yet the minimum life of the hybrid capital instrument would have to be determined at launch Furthermore, it seems inappropriate to solely focus on the longest dated liability, since this particular liability may represent only a miniscule fraction for the issuer's total liabilities In addition, market standardization for hybrid capital trades is the key to bringing down costs - it is not helpful to have different minimum terms for different issuers, or even different minimum terms for the same issuer as the maturity profile changes over life. Instead, the minimum term should be defined clearly in numbers of years as suggested by CEIOPS, but with no link to the minimum duration. Flexibility and regulatory prudence can be maintained by requiring regulatory consent (with as clearly as possible defined preconditions for when it is not granted) prior to any redemption.	

	The CFO Forum views 3 years and 5 years as acceptable minimum lives for Tier 3 and Tier 2 respectively. Given the requirement for regulatory consent, we cannot see why hybrid Tier 1 should have a minimum life of 10 years. The typical Tier 1 structure tailored for retail investors has a first call date after year 5, but no step-up. In the past, several issuers have refrained from exercising their call rights after year 5, because it was not economic to do so at the time, with no negative reputational impact. We are worried that a minimum life of 10 years would significantly reduce access to this significant investor pocket.	
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3.78.	Comments in 3.63 are also relevant here.	
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3.84.	**The degree of subordination does not impact the loss absorbency characteristics in a going concern.** There appears to be confusion between issuers access to liquidity versus capital at a time of stress. For access to liquidity (in senior format), various levels of subordination for hybrid debt are of no concern to the potential providers of liquidity. For access to new capital, requiring additional levels of subordination makes it less likely that the investors will be prepared to provide fresh capital. At best, investors are indifferent, since in the case of insolvency, investors can expect to receive no cash whether they are only simply subordinated, or more deeply subordinated. Importantly, the level of	

	subordination has nothing to do with "investors' appetite to absorb losses". Investors never have an appetite to absorb losses. If hybrid investors are required to bear a greater degree of risk, the insurance company will need to compensate investors, implying a higher cost of funding. There is no apparent reason for additional levels of subordination in our view.	
3.85.	**3.85 (i):** Given that Tier 1 capital is the capital generally required in the case of a going concern, more clarity is required in the description of subordination. **3.85 (ii):** Loss absorbency should be defined in terms of market value rather than book value. This should be clearly stated in the text. **3.85 (iv):** The text states that there should be no incentive to redeem. However, we recommend that a moderate coupon step-up (for example the maximum between 100bp and half of the spread at issue) should be allowed after 10 years from the issue date. Any redemption will require supervisory authority approval and the solvency of the issuer will be examined independently before the application of the step-up. The issuer would retain the option to redeem as the call date is optional. **3.85 (v):** We agree that "at all times coupons/dividends must be able to be cancelled". The additional requirements around fixed rates are unnecessary and should be removed. **3.85 (v): Deferral Trigger and linkage to the SCR are too conservative.** Upon a breach of the SCR, CEIOPS suggests mandatory deferral in cases of a breach of the SCR for both Tier 1 (3.85 v.) and Tier 2 (3.113), and regulatory approval to all cash flows on Tier 3 (3.123). We view this as much too conservative, given the volatility that the SCR is likely to display. **3.85 (vi): Tier 1 & 2 shall be free of encumbrances.** The CFO Forum agrees with this in general. According to the text in CP 46, only net financing (own funds received from a party A minus "back- funding" provided to that same party A) is considered as eligible own funds. We would argue for corresponding deductions to be made only in case the "back-funding" qualifies as own funds for party A. In addition, we note that this clause should relate only to inter-group funding-relationships, and not to intra-group funding-relationships.	
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3.89.	**"Excess of assets over liabilities" should be based on a market consistent valuation and recognised as Tier 1 capital.** "Excess of assets over liabilities" should always be based on a valuation approach that is market consistent. This treatment should be stated with a sentence added to say that a correction is required for any asset or liability that is not valued at a market consistent basis. Comments in 3.101 are also relevant here.	
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3.96.	**It is inappropriate to set limitations based on IFRS or local GAAP bases.** Limitations should be set with reference to the market value approach underpinning Solvency II and not with reference to IFRS or local GAAP bases. Using different local accounting bases as a starting point contradicts the idea of a harmonised approach and does not create a level playing field for all financial institutions. **3.96 (a):** The CP sets limitations based on equalisation reserves. These are measured at book value and based on local GAAP accounting methodologies. These are not relevant in the context of a market value approach under Solvency II and the reference should be removed.	

	Article 93 (1) talks about the general "availability to fully absorb losses". Solvency II has a holistic balance sheet approach, and does not allocate valuation adjustments to its sources. This principle must be applied consistently. **3.96(b):** The CP sets limitations on the loss absorption capacity of the difference between the value of the technical provisions calculated in accordance with the Directive and the liability in case of winding-up with no transfer of portfolios. The winding-up with no transfer of portfolios is not consistent with a market consistent approach and is therefore not relevant here and should be removed. Solvency II requires capital calibrated to a one-year VaR approach such that after the occurrence of the shock event, the undertaking has sufficient assets to be able to transfer its liabilities to a third party. As a result, it is not clear why there would be a difference in value between winding-up and going concern. The SCR already includes the ability to transfer and therefore we believe that including a "winding-up gap" result is effectively double counting. **3.96(c):** The excess of assets over liabilities includes deferred tax assets as well as deferred tax liabilities. It does not make economic sense to exclude the first while maintaining the second. Net deferred tax assets, to the extent they are recoverable, must be classified as Tier 1 capital.	
3.97.	Comments in 3.96 are also relevant here.	
3.98.	**This paragraph requires updating as the current interpretation completely ignores Article 94(1) of level 1 text, where Tier 1 own fund items should "substantially" possess these characteristics.** Comments in 3.96 are also relevant here.	
3.99.	Comments in 3.96 and 3.98 are also relevant here.	
3.100.	**The use of equalisation reserves is not relevant in an economic balance sheet.** The concept of equalisation reserves in our view relates to a book value type approach (i.e. they would not exist in a market consistent approach) and therefore should not be considered here. **It is inappropriate to mix economic principles and local GAAP bases.**	

	In line with our comments in 3.96, we note that the proposed reduction of basic own funds mixes economic principles and local GAAP bases. This resulting in double counting of catastrophe insurance – once through requiring holding a Catastrophe SCR and then by removing economic own funds. This does not create a level playing field for all financial institutions. **The notion of winding-up gap contradicts the economic balance sheet approach.** In a winding-up, the insurance company will transfer its liabilities at economic values. Therefore the winding-up gap will be nil. The notion of winding-up gap is therefore not appropriate. **Net deferred tax assets must be part of Tier 1 capital.** To the extent they are recoverable over time, which should not be restricted to the next 12 months, net deferred tax assets must be classified as Tier 1 capital. It should be noted that deferred tax assets can only be included in the balance sheet if both the firm and its auditors believe these deferred tax assets are recoverable. Therefore, net deferred tax assets should be recognised as having loss absorbing capacity. Comments in 3.96, 3.195 and 3.197 are also relevant here.	
3.101.	**Profit at inception should be included in basic own funds.** We believe that profit at inception is available capital for regulatory solvency purposes as it goes beyond the economic value of the liabilities and will not be paid to policyholders. It should therefore be classified as Tier 1 capital consistent with any other assets that are in excess of economic liabilities.	
3.102.	**This paragraph refers to discussions around using local GAAP for solvency purposes. We reiterate that this is not appropriate (see comments in 3.96) and recommend that this paragraph is reworded to improve clarity.**	

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3.113.	Comments in 3.85(v) are also relevant here.	
3.114.	**The CFO Forum views subordination to be relevant in liquidation only (see also CEIOPS' own statement in CP 46 paragraph 3.119). While we are opposed to the line of argumentation, we do concur with the conclusion that Tier 2 and Tier 3 ((and Tier 1) shall be pari passu ranking.**	
3.115.	Comments in 3.85(vi) are also relevant here.	
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3.123.	Comments in 3.85(v) are also relevant here.	
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3.158.	**We recommend CEIOPS to address the issue of cross sector consistency as a matter of urgency.** We agree with the observations of CEIOPS regarding inconsistency. However, we note that is it is important to achieve as much harmonisation between financial institutions as possible, in particular those working in the insurance and related business. In that respect we note that there are important differences between the regulatory regimes for insurance business and pension fund business. We recommend that CEIOPS address these differences as a matter of urgency.	
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3.167.	**The requirements around own funds are much more onerous in this consultation paper than those set out in the Directive. It is not clear why the original principles have been amended.** This CP sets much more onerous requirements around own funds than set out in the Directive. There is no clear reason why the CP should change the original principles. The insurance industry was not severely impacted by the financial crisis and these revised requirements appear to be an over-reaction. Solvency II should not seek to take away key economic decisions from companies such as capital raising. CP46 should set level 2 implementing measures that provide principle based guidance on which funds fall into Tier 1, two or three, particularly for complex instruments. It should not, however, seek to change the basis for using own funds to support the SCR and MCR in the Directive. Further, Solvency II should not prevent insurers from making commercially viable decisions. Comments in 3.48 and 3.98 are also relevant here.	
3.168.	Comments in 3.48 and 3.167 are also relevant here.	
3.169.	**The requirements to increase the quality of own funds contradict the level 1 text and are not appropriate.** The quality of own funds as proposed in the level 1 text is sufficiently high to justify eligibility. There is no justification to increase this further.	
3.170.	**Tier 1 capital should not be restricted to ordinary share capital and reserves; hybrid capital should also be included within the definition.** Restriction of Tier 1 capital to include only ordinary share capital would mean a huge disadvantage for insurance companies compared to the banking industry, where Tier 1 capital also includes hybrid capital. We recommend that hybrid capital is also included within this definition.	

	The requirements for subordination go beyond those outlined in the level 1 text. The level 1 treatment should be maintained. The requirements for subordination go beyond those outlined in the level 1 text as level 1 only asks for a minimum subordination to all claims of policyholders and other senior creditors. Loss absorption ranking pari passu with shareholders would not be acceptable for hybrid investors. Such instruments would not be marketable, as hybrid investors would bear the same downside risk as shareholders, but would not participate in any upside. Apart from conversion and write-down, other means to absorb losses should be accepted. Therefore instruments without conversion into equity features or write-down should not be automatically excluded from Tier 1. **The choice of trigger point is not appropriate.** Setting the trigger point at the SCR level is too low. This would increase the risk for investors and therefore would have a negative impact on marketability and pricing. We recommend that the trigger point be very close to the MCR. Comments in 3.33 and 3.195 are also relevant here.	
3.171.	The CFO Forum agrees with the point made in this paragraph.	
3.172.	**The requirements go beyond those outlined in the level 1 text. The level 1 treatment should be maintained.** Level 1 only requires subordination for Tier 3 instruments whereas level 2 requires Tier 3 instruments to "contribute to avoiding insolvency". We recommend that the level 1 text is maintained.	

3.173.	**The wording contrasts with Article 98.1 (a) of the level 1 text. The level 1 treatment should be maintained.** Comments in 3.48 are also relevant here.	
3.174.	**The wording contrasts with Article 98.2 of the level 1 text. The level 1 treatment should be maintained.** Comments in 3.48 are also relevant here.	
3.175.	Comments in 3.48 are also relevant here.	
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3.177.	**The definition of "deteriorating" and "foreseen to deteriorate" is not clear.** The references to "deteriorating" and "foreseen to deteriorate" are confusing. The definitions are not clear and there is no reference to the level of solvency required. Further clarity around this is requested.	
3.178.	Comments in 3.33 and 3.85 are also relevant here.	
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3.180.	**The timescales for supervisory approval should be defined.** We recommend that the duration of the supervisory approval process be no more than one month. Further clarification is required as to why redemption should be subject to prior supervisory approval in non-stressed situations.	
3.181.	**CEIOPS should not place so much importance on the ability to defer interest; other measures are used by insurers following major loss events.** CP46 places a high priority on the ability to defer interest however this is not the only way of taking a	

	loss and other approaches such as restructuring and capital raising are used by insurers following major loss events. CEIOPS should not place so much importance on the ability to defer interest. This is only one component of capital management. Comments in 3.69 are also relevant here.	
3.182.	Comments in 3.69 and 3.181 are also relevant here.	
3.183.	**Duration should not be defined as the maturity of the longest dated insurance liability as it would lead to an overstatement of duration.** Defining the duration as the maturity of the longest date insurance liability is not economic and would lead to an overstated duration. The proposition stated in 3.184 is a more appropriate method. Comments in 3.63, 3.69 and 3.181 are also relevant here.	
3.184.	Comments in 3.69, 3.73, 3.85 and 3.181 are also relevant here.	
3.185.	**The duration of the capital instrument should be defined as the time to maturity.** Duration should be defined as the legal maturity of the instrument rather then the first call date. Incentives to redeem (e.g. coupon step-ups) should be allowed in order to increase the marketability of hybrid instruments. The crisis has shown that despite coupon step-ups, some companies have decided not to call subordinated bonds. As banks are explicitly allowed incentives to redeem, the current CEIOPS proposal would not create a level playing field. Comments in 3.73, 3.85 and 3.181 are also relevant here.	
3.186.	If the duration of the liabilities is longer then 10 years the text suggests that 10 years from the issue	

	date, hybrid capital is not eligible. Further clarification of this point is requested. Comments in 3.69 and 3.181 are also relevant here.	
3.187.	Comments in 3.69 and 3.181 are also relevant here.	
3.188.	Comments in 3.181 are also relevant here.	
3.189.	Comments in 3.181 are also relevant here.	
3.190.	**The value of in-force ('VIF') should be treated as Tier 1 capital.** These proposals appear to put the value of in-force ('VIF') in Tier 2 – for QIS 4 it was in Tier 1. The VIF is a kin to retained earnings so should be treated as Tier 1 capital. **Generally hybrid capital instruments should be classified as Tier 1 capital, depending on its terms and conditions.** The word "potentially" should be removed as hybrid capital should be part of Tier 1 otherwise insurance companies would be at a significant disadvantage to the banking sector. Level 1 text accepts hybrid instruments as part of Tier 1 and we recommend that this treatment is maintained. Comments in 3.33, 3.170 and 3.195 are also relevant here.	
3.191.	**A less restrictive basis for Tier 1 capital should be established.** Tier 1 issued debt should be longer dated than the longest liabilities; however, such liabilities would not be attractive to investors and could not be sold. Whilst there clearly should be a link between the maturity of own funds and the duration of the insurance liabilities, as required by the Directive, it is not necessary for all Tier 1 debt to be longer dated than the longest insurance liabilities. A less restrictive basis for Tier 1 capital should be established based on the overall profile of liability durations and the overall profile of maturities of issued debts and equity such that the level of own funds would remain satisfactory over the run-off of the liabilities.	

	Contradictions within the paper should be resolved. 3.182 interprets the duration to mean the remaining maturity whereas 3.191 talks about a sufficient duration, i.e. a legal maturity of more than 10 years at issue date. This inconsistency should be removed. 3.191 requires that any redemption should be subject to the approval of the supervisor. It is not clear how this approval process fits in when the capital instrument has a legal maturity. Further clarification is required. **Alternative Coupon Settlement (ACSM) is not referenced. Clarification of their treatment should be added.** ACSM is not mentioned in 3.191. According to current market standards, ACSM should be allowed, as this mechanism would be important to attract hybrid capital investors. Therefore, the current proposal does not allow a level playing field with banks. The mechanism of a “dividend pusher” has to be allowed because a Company can, for strategic reasons stop the payments of dividends, but this does not necessarily mean that a Company is having difficultly meeting its SCR or MCR. Provided that a Company is not in breach of its Solvency position it has discretion over the payment of dividends to hybrid holders within the terms of the instrument. Comments in 3.33, 3.98, 3.170, 3.85 and 3.190 are also relevant here.	
3.192.	Comments in 3.98 and 3.190 are also relevant here.	
3.193.	Comments in 3.190 are also relevant here.	
3.194.	Comments in 3.190 are also relevant here.	
3.195.	**The use of equalisation reserves is not relevant in the context of an economic balance sheet as the Solvency II requirements are underpinned by economic principles.** The CFO Forum does not consider the use of equalisation reserves to be relevant in the context of an	

	economic balance sheet. The assessment of assets and liabilities under Solvency II is market consistent and as a result the classification of reserves and provisions is defined under economic principles. Local accounting bases should not be used as they relate to non-economic values. Equalisation, legal and statutory reserves identified in local GAAP, tax or regulatory requirements, are effectively split where part may form a component of the technical provisions, whilst the remainder is released to capital in the Solvency II balance sheet. Consequently the guidance in the second sub-paragraph (a) under "Excluded from Tier 1 excess of assets over liabilities are:" is irrelevant and should be deleted. The proposals set limitations on the loss absorption capacity of the difference between the value of the technical provisions calculated in accordance with the Directive and the liability in case of winding-up with no transfer of portfolios. The winding-up with no transfer of portfolios is not consistent with a market consistent approach and is therefore not relevant here and should be removed. Solvency II requires capital calibrated to a one-year VaR approach such that after the occurrence of the shock event, the undertaking has sufficient assets to be able to transfer its liabilities to a third party. As a result, it is not clear why there would be a difference in value between winding-up and going concern. The SCR already includes the ability to transfer and therefore we believe that including a "winding-up gap" result is effectively double counting. The excess of assets over liabilities includes deferred tax assets as well as deferred tax liabilities. It does not make economic sense to exclude the first while maintaining the second. Net deferred tax assets, to the extent they are recoverable, must be classified as Tier 1 capital. Comments in 3.33, 3.85, 3.96, 3.100 and 3.190 are also relevant here.	
3.196.	Comments in 3.98, 3.100, 3.190, and 3.195 are also relevant here.	
3.197.	Comments in 3.100 and 3.190 are also relevant here.	
3.198.	Comments in 3.190 are also relevant here.	
3.199.	Comments in 3.190 are also relevant here.	
3.200.	Comments in 3.170 and 3.190 are also relevant here.	

3.201.	**Clear guidance to explain the conditions under which supervisors could refuse redemption is requested.** Comments in 3.33, 3.63, 3.183 and 3.190 are also relevant here.	
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3.205.	Comments in 3.33 are also relevant here.	
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3.212.	**Supervisory approval is only required for classification and not assessment. The paragraph should be amended to reflect the stance adopted in level 1.** The level 2 implementing measures suggest that both the assessment and classification requires supervisory approval. However in the level 1 text, the assessment is performed by the company and only the classification is subject to approval. There is no justification for the change in process. We recommend reverting back to the level 1 stance; the words “assessment and” should be removed and “requires supervisory judgement” should be replaced by “requires clear criteria”.	

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	Further, supervisory approval is only required for items not covered by the list of own funds according to Article 97. This should be clarified in the text.	
3.213.		
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3.217.	**The own fund item classification is approved and then the limits apply. Therefore we suggest deleting the remainder of the sentence "and whether the…"**	
3.218.		
3.219.	**Supervisory reporting is defined in CP 58 and therefore we recommend that the first sentence be deleted.**	
3.220.	**The own fund item classification is approved and then the limits apply. Therefore we suggest deleting step 3.** **We recommend adding a maximum time for the supervisory approval process of no more than one month.**	
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	Comments Template on CEIOPS-CP 46 **Consultation Paper on the Draft L2 Advice on Own Funds – Classification and Eligibility**	**Deadline** **11.09.2009** **4 p.m. CET**
3.226.	**Banking rules should be examined in the light of Solvency II implementing measures. Therefore add the words "and vice versa" to the last sentence.**	
3.227.	**We would expect the consistency check with IAIS to be part of the impact assessment performed by CEIOPS when developing its advice.**	
3.228.		