Comments Template on EIOPA-CP-11/006 Response to Call for Advice on the review of Directive 2003/41/EC: second consultation		Deadline 02.01.2012 18:00 CET
Company name:	State Street Corporation	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. *Please indicate if your comments on this CP should be treated as confidential, by deleting the word **Public** in the column to the left and by inserting the word **Confidential**.*	Public
	The question numbers below correspond to Consultation Paper No. 06 (EIOPA-CP-11/006). **Please follow the instructions for filling in the template:** ⇨ Do **not** change the numbering in column "Question". ⇨ Please fill in your comment in the relevant row. If you have no comment on a question, keep the row empty. ⇨ There are 96 questions for respondents. Please restrict responses in the row "General comment" only to material which is not covered by these 96 questions. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific question numbers below. ○ If your comment refers to multiple questions, please insert your comment at the first relevant question and mention in your comment to which other questions this also applies. ○ If your comment refers to parts of a question, please indicate this in the comment itself. **Please send the completed template to *CP-006@eiopa.europa.eu*, in MSWord Format, (our IT tool does not allow processing of any other formats).**	
Question	**Comment**	

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General comment	State Street Corporation ("State Street")[1] appreciates the opportunity to comment on the SECOND Consultation Paper ("Consultation") issued by the European Insurance and Occupation Pensions Authority ("EIOPA") on its Call for Advice ("CfA") on the review of Directive 2003/41/EC on Institutions for Occupational Retirement Provision ("IORPs"). Headquartered in Boston, Massachusetts, with branches and subsidiaries throughout the European Union ("EU"), State Street specializes in providing institutional investors with investment servicing, investment management and investment research and trading. With $21.5 trillion in assets under custody and administration, as well as $1.9 trillion in assets under management, we operate in 26 countries and in more than 100 markets worldwide.[2] Our European workforce of over 8,700 employees provides services to our clients from offices in ten EU Member States. We are authorized to operate as a depositary in seven national jurisdictions, namely Austria, France, Germany, Ireland, Italy, Luxembourg and the United Kingdom. In keeping with our industry leading position as providers of financial services to institutional investors and our commitment to EU financial markets, we welcome the opportunity to comment on EIOPA's CfA. EIOPA's advice will play a crucial role in the review of the IORP Directive and thereby in determining the future framework for occupational pensions in the EU. Our response is focusing solely on CfA 21: Custodian/ depositary in the context of question 83.	
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[1] State Street's identification number in the European Transparency Register is 2428270908-83.

[2] As of September 30, 2011.

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83.	State Street does not wish to comment on the three options suggested by EIOPA with regards to the question of requiring the appointment of a depositary. However, we would like to offer some comments and observations with regards to the regime applicable to depositaries should EIOPA decide to introduce an obligation for Institutions for Occupational Retirement Provision ("IORPs") to appoint a depositary. In general, State Street welcomes the thorough assessment that EIOPA has undertaken with regards to the depositary by looking at existing depositary provisions in the Directive on Undertakings for Collective Investment in Transferable Securities ("UCITS") IV as well as in the Alternative Investment Fund Managers ("AIFM") Directive. We generally support the framework that EIOPA has set out for depositaries and would like to offer specific comments with regards to the envisaged depositary liability regime, eligible institutions, the depositary passport as well as depositary oversight duties. On liability, EIOPA recommends, as set out in paragraph 26.3.53 of the Call for Advice, to follow the provisions laid down in Article 24 of the UCITS IV Directive and not the stricter standard as introduced by the AIFM Directive. According to the UCITS IV provisions, the depositary would be liable for any losses as a result of its unjustifiable failure to perform its obligations or its improper performance of them. State Street strongly supports this approach as this standard is well understood by industry participants and has worked well. We also agree with EIOPA's assessment that the increased liability regime under the AIFM Directive would be inappropriate, as it could impose significant costs on IORPs to the detriment of the scheme members and beneficiaries. Not only would depositaries have to reserve against an increased potential for liability, but would also be confronted with higher operational and legal costs. In addition, the AIFM Directive's liability standard could result in capital requirements which may reduce	

the choice of available service providers. This would have important implications for potential systemic risk.

We therefore welcome that EIOPA has given due weight to the fact that increased costs resulting from a depositary liability regime based on the AIFM Directive could undermine the supply of affordable occupational pensions. We would also add that an unduly burdensome liability regime is likely to adversely impact beneficiaries through increased costs and the resultant reduction in pension returns in cases of defined contribution ("DC") pension schemes where beneficiaries bear those costs.

Furthermore, we welcome and strongly support EIOPA's recommendation to allow IORPs to appoint a depositary in another Member State, subject to cooperation amongst relevant supervisory authorities. Such a *de facto* depositary passport allows for a more efficient provision of depositary services which is ultimately beneficial to the pension scheme members and beneficiaries. State Street would also strongly encourage the European legislators to consider the application of such a passport for depositaries of UCITS and alternative investment funds.

With regards to the entities eligible to provide depositary services, EIOPA expresses in paragraph 26.3.51 its preference for the approach chosen in the AIFM Directive, rather than the broader definition used in the UCITS IV Directive. Whilst this approach is workable, it is imperative that the requirement under Article 23.3 of the UCITS IV Directive is carried forward in order to ensure Member State flexibility for determining categories of institution that may be eligible without any trade-off vis-à-vis investor protection.

Lastly, with regards to oversight functions, EIOPA considers that not all functions as laid down in the UCITS IV Directive and the AIFM Directive are appropriate in the context of IORPs. In addition, EIOPA suggests that Member States should have the flexibility to lay down additional oversight tasks that a depositary should perform. Whilst we agree with EIOPA that not all oversight functions as set out by UCITS IV and the AIFM Directive should apply in the context of IORPs, State Street would favour a

	harmonized set of oversight functions to be performed by the depositary. A fully harmonized pan-European approach would ensure consistency, clarity with regards to the functions a depositary undertakes and equal levels of investor protection across EU Member States.	
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