

January 9, 2015

Secretariat of the Basel Committee on Banking Supervision
Bank for International Settlements
CH-4002 Basel
Switzerland
baselcommittee@bis.org

Re: Comments in Response to the Consultative Document: *Corporate Governance Principles for Banks*

Ladies and Gentlemen:

The Clearing House Association L.L.C. (“**The Clearing House**”),¹ an association of major commercial banks, appreciates the opportunity to comment on the consultative document by the Basel Committee on Banking Supervision (the “**Committee**”) entitled “Corporate Governance Principles for Banks” (the “**Consultative Document**”). The Clearing House has undertaken significant efforts to promote prudent management practices and confidence in the banking industry through enhancements to U.S. bank corporate governance, and, as such, we are pleased to comment on the Consultative Document.

Against the backdrop of our long tradition of engagement in corporate governance issues, we agree with the Committee’s assessment that since 2010 the industry has “witnessed banks strengthening their overall governance practices and supervisors enhancing their oversight processes” (Para. 6), but also share the view of the Committee that there is a need to maintain a strong focus on the principles of corporate governance at banking organizations in light of ongoing developments in law, regulation and practice. The Clearing House itself published its “Guiding Principles for Enhancing Banking Organization Corporate Governance” (the “**TCH Principles**”) in June 2012, with an updated exposure draft published for

¹ Established in 1853, The Clearing House is the oldest banking association and payments company in the United States. It is owned by the world’s largest commercial banks, which collectively hold more than half of all U.S. deposits and which employ over one million people in the United States and more than two million people worldwide. The Clearing House Association L.L.C. is a nonpartisan advocacy organization that represents the interests of its owner banks by promoting and developing policies to support a safe, sound and competitive banking system that serves customers and communities. Its affiliate, The Clearing House Payments Company L.L.C., monitors payment, clearing and settlement services to its member banks and other financial institutions. It clears almost \$2 trillion each day, representing nearly half of all automated clearing-house, funds transfer and check-image payments made in the United States. See The Clearing House’s web page at www.theclearinghouse.org.

public comment in September 2014.² The exposure draft updated the TCH Principles to reflect a number of legal and regulatory developments as well as evolving governance practices. We believe that the TCH Principles and the Committee's Consultative Document share the same ultimate goals: to develop a common understanding of basic principles for corporate governance that will facilitate the execution of the board's and senior management's governance functions, enhance bank safety and soundness, promote confidence in banking organizations and encourage consistent supervisory guidance.

Among the most fundamental challenges in addressing the corporate governance at banking organizations is the need for flexibility, in light of the significant variations in size, complexity, structure, economic significance, history and risk profile of banking organizations, as well as the differing laws, regulations and practices in various jurisdictions. We commend the Committee for reflecting in the Consultative Document the need for an understanding of jurisdictional differences (Para. 12) and entity-specific differences (Para. 13) that may inform the application of the Consultative Document in practice. In particular, one of the most critical variations in the structure of banking organizations is the manner in which multiple bank and non-bank entities may be operated in a group structure. We appreciate the Committee's recognition of the importance of governance at the enterprise-wide level (Principle 5), and believe that the Consultative Document provides suitable flexibility for an organization to manage governance consistently throughout the organization, using the parent company framework to the extent appropriate, and avoiding the need for duplicative entity-level structures and processes.³

We discuss below certain ways in which we believe that the Consultative Document can be improved, focusing primarily on the following themes:

- the importance of recognizing distinct roles and responsibilities of the board of directors and management;
- fiduciary duties and excessive risk of liability for directors; and
- the importance of flexibility and the danger of overly prescriptive mandates.

The balance of the body of this letter discusses the above thematic concerns, which we believe should be addressed in the final Consultative Document, and Annex A to this comment letter sets out specific wording changes that we believe the Committee should consider in the final version to address these thematic concerns, to avoid ambiguities and internal inconsistencies, and to further advance what we perceive to be the primary goals of the Consultative Document.

² The September 2014 exposure draft of the updated TCH Principles is available on our website at <https://www.theclearinghouse.org/publications>.

³ We do have certain concerns that, in places, the wording of the Consultative Document does not appropriately reflect the need for flexibility in board structure and certain other matters (including the role of the chair and the process for board and director evaluation), given the diversity of practices and requirements across jurisdictions and among organizations. We have included in Annex A suggested wording changes throughout the Consultative Document that are intended to address these, and other, concerns.

I. Importance of Recognizing Distinct Roles and Responsibilities of the Board of Directors and Management

We believe the Consultative Document would benefit from a greater recognition of the distinction between the roles and responsibilities of the board of directors and those of senior management, and the related risks of imposing executive and administrative responsibilities on the board in a way that can undermine the board's independence and effectiveness as an oversight body.

We are concerned that certain aspects of the Consultative Document could be read to impose management responsibilities on the board, rather than recognizing the board's crucial role as an overseer and supervisor of management. Although we appreciate the Committee's efforts to create a forum in which to consider the proper allocation of responsibility between boards and management, we respectfully submit that the Consultative Document may have the effect of modifying the nature of board responsibilities in certain respects to the detriment of banking organizations and their effective corporate governance.

In particular, we are concerned that the Committee's focus, at times, on active management by the board – rather than active or engaged board oversight – blurs the lines between the board and management, risks overburdening the board of directors with detailed compliance responsibilities, and may contribute to a “checklist” mentality that distracts the board from its larger role of providing oversight and focusing on strategy. As articulated in the preamble to the TCH Principles, we believe that a central tenet of good corporate governance is the distinction between the board's responsibility for oversight of the business and the affairs of a banking organization and management's responsibility for the day-to-day operations.⁴ Absent extraordinary circumstances, the board should not involve itself in day-to-day operations as this likely will reduce efficiency, impair the board's ability to perform its critical oversight role objectively, and create uncertainty as to roles and responsibilities. Indeed, board involvement in the day-to-day affairs of a banking organization could compromise the board's independence, which is a hallmark of sound corporate governance. We maintain that it is important for board members, shareholders, management and those government officials charged with overseeing banking organizations to recognize and understand the crucial distinction between oversight and management, particularly as increasing demands are made on boards. Regulatory requirements that prescribe for a board highly detailed responsibilities, and in some cases also the manner of executing them, can in fact impede directors' proper discharge of their duties and oversight. Moreover, consistent with our views expressed in the preamble to the TCH Principles, we believe that experience has shown that detailed prescriptions that seem apposite

⁴ We recognize that, as noted in paragraph 15 of the Consultative Document, some non-U.S. jurisdictions employ a two-tier board structure where the function of the board, as contemplated by this comment letter, is performed by a separate supervisory board. Regardless of jurisdictional approach to corporate governance structure, however, the critical distinction between the oversight function and the managerial function remains essential to sound corporate governance. We support the manner in which the Committee has accounted for the differences in structural approaches to corporate governance, by clarifying in paragraph 16 of the Consultative Document that “[t]he term board of directors is used as a way to refer to the oversight function and the term senior management [is used] as a way to refer to the management function in general.”

for an issue at a point in time often lose their relevance with changing circumstances, and hamper the board's ability to determine how to allocate its finite amount of time and resources to address the issues facing a particular organization at a particular time.

We believe that this understanding of the board's oversight role is not antithetical to the basic views embodied in the Consultative Document – in fact, the Consultative Document expressly defines the “board of directors” as the “group structure that supervises management” and defines an “independent director” and “non-executive director” as having no “management responsibilities.” As noted previously, the Consultative Document also states, appropriately, that “The term board of directors is used as a way to refer to the oversight function and the term senior management as a way to refer to the management function in general.” However, the Consultative Document often uses language that, intentionally or not, contemplates more active direct involvement by the board in managerial operations than we believe is typical or appropriate.

In most cases, we agree that the board duties specified by the Consultative Document relate to necessary and appropriate areas for board oversight, and our comments primarily relate to the wording and tone, rather than the scope, of the relevant principles, which often can be read to suggest that the board is the active developing and implementing party for various policies and structures, rather than an oversight body. For example, in paragraph 22 of the Consultative Document, board responsibilities include “actively engaging in the major matters of the bank,” and paragraph 23 states that the board should “establish and monitor the bank's business objectives and strategy,” “establish the bank's corporate culture and values” and “develop, along with senior management and the CRO, the bank's risk appetite.” Likewise, the level of the responsibilities ascribed to the parent company board in paragraph 95, which directs the board to affirmatively “establish a group structure...and a governance framework” and “define an appropriate subsidiary board and management structure,” would be more appropriately phrased to reflect the administration of these practices by senior management, with strong board oversight. The active management role of the board, as may be suggested by the wording and tone of the Consultative Document, could result in the board embroiling itself in so many details that it interferes with management prerogatives or is limited in performing its own oversight role.⁵

The importance of maintaining a distinction between approved roles of the board and that of management is articulated in Section 1 of the TCH Principles, and has been recognized by multiple regulatory and supervisory bodies and personnel. For example:

- In its 2012 publication, *Toward Effective Governance of Financial Institutions*, the Group of Thirty stated that “it is essential that the board remain independent and allow management to execute the day-to-day activities of the organization” and that “boards may make a critical mistake if they permit their time and attention to be diverted disproportionately into compliance and advisory activities at the expense of strategy, risk governance, and talent

⁵ These are merely non-exclusive examples. Our specific wording comments in Annex A address other instances in which we believe that the Consultative Document could be read to impose management responsibilities on the board, and suggest alternative language.

issues.”⁶ Moreover, that publication addressed the concern from a regulatory and supervisory perspective as follows: “It is one thing to support and encourage an active and engaged board that is properly familiar with the risks being taken by the organization; it is another to drive boards to an excessive focus on detailed operational matters that are more properly the purview of management.”⁷

- Governor Daniel Tarullo of the U.S. Board of Governors of the Federal Reserve (the “**Federal Reserve Board**”) addressed this concern in a June 2014 speech, noting that “it has perhaps become a little too reflexive a reaction on the part of regulators to jump from the observation that a regulation is important to the conclusion that the board must certify compliance through its own processes. We should probably be somewhat more selective in creating the regulatory checklist for board compliance and regular consideration.”
- The U.S. Office of the Comptroller of the Currency (the “**OCC**”), in adopting in September 2014 its final guidelines on heightened risk and corporate governance standards for large banking organizations subject to its supervision, took note of comments that its earlier proposal could be read to “impose administrative burdens on a bank’s board of directors and inappropriately place operational management responsibilities on the board” and made changes in the final guidance to “reduce the operational burdens on the board of directors while maintaining appropriate board oversight.”⁸
- The Federal Reserve Board, in adopting its final enhanced prudential standards for banking organizations in March 2014, noted that it received comments that the proposed board-level responsibilities relating to liquidity risk “would interfere with directors’ oversight duties, perhaps shifting their focus from areas presenting more significant risks.”⁹ Accordingly, in adopting the final rules, the Federal Reserve Board stated its view that “the board of directors should have responsibility for oversight of liquidity risk management because the directors have ultimate responsibility for the direction of the entire company, but that certain risk management responsibilities are appropriately assigned to senior management.”¹⁰

Recognition of the concern about imposing excessive administrative and managerial responsibilities on the board is critical to the maintenance of sound bank governance and the ability to recruit and retain qualified directors, and we believe the

⁶ Group of Thirty, *Toward Effective Governance of Financial Institutions* (April 2012), at 40 & 42.

⁷ *Id.* at 66.

⁸ Office of the Comptroller of the Currency, *Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Integration of Regulations*, 79 Fed. Reg. 54518, 54535 (September 11, 2014).

⁹ Board of Governors of the Federal Reserve System, *Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations*, 79 Fed. Reg. 17240, 17253 (March 27, 2014).

¹⁰ *Id.*

Consultative Document would benefit from the addition of language that expressly recognizes this concern. In addition, we believe that certain language in the Consultative Document could be read to actually exacerbate this concern. Examples of suggested wording changes are discussed in more detail in Annex A, but one notable example throughout the Consultative Document is the use of the word “ensure” to describe the board’s duties. The Committee asserts in the Consultative Document that the board should “ensure” (among many other things) that related-party transactions “are reviewed to assess risk and are subject to appropriate restrictions” (Para. 24), that the bank “maintains an effective relationship with its supervisors” (Para. 26) and “that the risk management, compliance and audit functions are properly positioned, staffed and resourced and carry out their responsibilities independently and effectively” (Para. 42). These are only a few examples, and throughout the Consultative Document the board is tasked with “ensuring” that certain specific results are achieved.

Although the relevant duties are, in most cases, appropriate areas of the board’s oversight focus, the term “ensure” connotes a guarantee of results of the function or objective described, and such a guarantee could imply that directors could be liable for adverse outcomes, or, at least, evaluated by regulators against such a test, even where the directors’ oversight has been reasonable. The Committee’s definition of “ensure”¹¹ may be intended to alleviate this concern, but merely reinforces the board’s “ultimate responsibility” in a way that does not appear to recognize the limits on the ability of the board (or any governance structure for that matter) to “ensure” specific outcomes. As used throughout, the term might be understood to imply that the board must be deeply involved in the day-to-day activities of the bank to “ensure” that certain results are achieved, thereby transforming the board’s core oversight function into a management function. To avoid any unintended consequences, we urge the Committee to replace the word “ensure” with another appropriate term – depending on the circumstances, these could include “oversee,” “actively oversee,” “monitor,” “review,” “seek assurance” or “assess.” These terms would eliminate any notion of strict liability or guaranteed results, and would also more accurately reflect the oversight function that is the core of a director’s duties.

The concern over the term “ensure” was specifically noted in a 2013 report of the Group of Thirty, which stated that regulatory and supervisory guidance “needs to respect the role of the board as separate from management. For example, it should avoid the use of the words ‘the board ensure,’ in recognition of the role of the board, which is overseeing and satisfying itself through reasonable procedures that management is implementing board direction. ‘Ensure’ is too high a bar to judge effectiveness and misunderstands the role of the board.”¹²

We urge the Committee to take steps to address these concerns in the final Consultative Document, with the goal of clarifying the board’s role and avoiding the imposition

¹¹ As defined in footnote 10 of the Consultative Document, “the phrase ‘the board should ensure’ is used to convey the Committee’s view that a board of directors has ultimate responsibility for the bank’s adoption of the necessary processes, policies, procedures, controls and hiring of sufficient staff to achieve the function or objective described.”

¹² Group of Thirty, *A New Paradigm: Financial Institution Boards and Supervisors* (October 2013), at 28.

on the board of additional responsibilities and standards of performance that may blur managerial and director functions and prevent the board from optimally performing its critical oversight role.

II. Fiduciary Duties and Excessive Risk of Liability for Directors

The Clearing House is concerned that the Consultative Document has not adequately addressed the nature and scope of liability for individual directors that will arise under the law of jurisdiction of the banking organization and the impact on director recruiting and retention if new or heightened fiduciary duties are created for directors. As discussed in Section 1 of the TCH Principles, we believe that the specific obligations imposed on directors of banking organizations by statutes, regulations and pronouncements are largely intended to protect the safety and soundness of banking organizations, and should not be viewed as altering the directors' traditional duties or creating new or heightened fiduciary duties. Instead, we believe that such provisions should inform the manner in which directors undertake their traditional duties of care and loyalty, which are created and defined by the laws of the organization's home jurisdiction, commonly by a combination of statute, regulation and case law.

In places, the Consultative Document appears to reflect this basic idea of deference to the home jurisdiction's standard for a director's duties. Notably, paragraph 22 states that "members of the board should exercise their 'duty of care' and 'duty of loyalty' to the bank under applicable national laws and supervisory standards." The Consultative Document then goes on to state, however, that a director's compliance with the duty of care and duty of loyalty includes "actively engaging in the major matters of the bank and keeping up with material changes in the bank's business and the external environment as well as acting in a timely manner to protect the long-term interests of the bank." It may well be the case that this is an accurate summation of the relevant standard in many jurisdictions, but the phrasing seems to contemplate that this is additive to the baseline home country legal standards in a way that we do not believe is intended and, in any event, could be inappropriate.

Similarly, we do not believe that the Consultative Document should include definitions for "duty of care" and "duty of loyalty," as this suggests an attempt to impose standards of behavior that differ from those established by the home country legal regime. Because, in many jurisdictions, directors can be personally liable for breaches of fiduciary duties, any language that can be deemed to expand or alter traditional fiduciary duties can have significant (and, presumably, unintended) consequences in terms of board operations and the ability to recruit and retain qualified directors.

This concern is related to that described in the preceding section. The combination of (i) the statements in the Consultative Document that appear to ascribe managerial responsibilities to the board, (ii) the use of terms such as "ensure" to describe the board's responsibilities, and (iii) the implication that traditional fiduciary duties for corporate directors apply more expansively to bank directors, collectively create significant concerns of expanded personal liability for bank directors. We respectfully urge the Committee to consider these comments in developing the final Consultative Document. Again, we have included in Annex A specific suggested wording changes that are intended in part to address this issue.

III. The Importance of Flexibility and the Danger of Overly Prescriptive Mandates

The Clearing House is concerned that certain aspects of the Consultative Document could be read to impose overly prescriptive mandates on banking organizations, rather than reflecting the need to maintain a more flexible approach to corporate governance. As articulated in the preamble to the TCH Principles, we believe that corporate governance principles prove most useful when intended to help guide banking organizations as they deal with corporate governance issues in their individual circumstances, rather than designed to be a prescriptive set of minimum requirements or best practices applicable to all banking organizations. Each banking organization should be allowed the flexibility to tailor its governance practices in a manner that appropriately suits its own particular circumstances. We believe that highly detailed mandates may lose their relevance over time as governance practices evolve in response to market and industry practice, the regulatory and supervisory environment and the collective and individual experiences of market participants.

Broadly, the Committee appears to appreciate the necessity of flexibility within the context of corporate governance. In fact, the Committee advocates for an understanding of jurisdictional differences (Para. 12) as well as entity-specific differences (Para. 13) when it expressly recognizes that the implementation of the Consultative Document “should be commensurate with the size, complexity, structure, economic significance and risk profile” of the banking organization (Para. 13). In places, however, the Consultative Document provides detailed prescriptions that we believe could be detrimental to effective corporate governance. As indicated above, we have included in Annex A suggested wording changes that are intended to address this concern. A few specific illustrations of requirements that we believe are overly prescriptive are highlighted below.

Board Committees

The Consultative Document is particularly prescriptive as it relates to board committees, and we urge the Committee to take a more flexible approach to guidance issued in regard to the composition, leadership and practices of committees. For example, in paragraph 66 of the Consultative Document, a committee chair is directed to be an “independent, non-executive board member.” While we agree that an independent committee requires an independent, non-executive committee chair, we believe that boards should be allowed the flexibility to establish other committees to which this mandate will not apply. As discussed in Section 5 of the TCH Principles, many corporations, including banking organizations, have an executive committee and committees at the subsidiary level, and we believe that the structure and function of these committees should be determined by the board based on the individualized circumstances of a particular banking organization.

Likewise, paragraph 67 mandates that the audit committee should include members who have experience in audit practices and financial literacy of banks. We believe that this mandate is too prescriptive. As articulated in Section 6 of the TCH Principles, we agree that the members of an audit committee collectively should have appropriate accounting, banking and related financial expertise and experience; however, we do not agree that expertise must necessarily be drawn from past experience at a bank, as the most qualified individuals may have as relevant experience in other industries.

Paragraphs 67 and 70 of the Consultative Document could, in certain cases, impede the effective leadership of committees by preventing the chairs of the risk and audit committees from also serving as the chair of the board or any other committee. Consistent with our views promoted in the TCH Principles, we maintain that a bank should be permitted the flexibility to determine that its oversight functions will be best served by having the same director serve as board chair and audit or risk committee chair, or serve on similar committees at subsidiaries.

Paragraph 74 directs the risk committee to “meet periodically with the audit and other risk-relevant committees to ensure” effective risk management. Beyond our concern with the term “ensure” (as discussed in the preceding section), experience has shown that effective risk management may be achieved by an appropriate level of coordination between relevant committees, and mechanisms for effectuating coordination between committees could include meetings between committee chairs, discussion at the full board level and joint membership on committees. Joint meetings between the risk committee and the audit and other risk-relevant committees may be useful in appropriate cases, but are not the exclusive means by which information can be exchanged and risks effectively covered.

Group Structures

Similarly, we are concerned that certain responsibilities ascribed to the parent company board in the Consultative Document could undermine the board’s effectiveness as an oversight body. As discussed in the TCH Principles, we believe that, subject to specific regulatory or legal requirements at the bank level, a banking organization should generally have flexibility in coordinating oversight responsibilities between the bank subsidiary board and the parent company board. For example, we do not believe that responsibilities such as to “establish a group structure,” “define an appropriate subsidiary board and management structure” and “ensure the group’s corporate governance framework includes appropriate processes and controls to identify and address...conflicts of interest” (Para. 95) should be specifically assigned to the board of the parent company; instead, the board of the parent company should be tasked with overseeing the steps taken by management to achieve these goals. In light of the diversity of group and governance structures among banking organizations, we respectfully recommend that the Committee address the high level of prescription throughout the Consultative Document by authorizing a more flexible approach to the role of the parent company board.

Managing Complex Structures

In places, the Consultative Document appears to ascribe to banking organizations prescriptive mandates that we believe could undermine effective governance of group structures. For example, senior management and the board could be severely restricted in their ability to effectuate individualized processes for their banking organization by the guidance imposed by paragraph 100, which could have the effect of dictating structures and biasing the analysis in regard to the establishment of new banking group entities. In that paragraph, senior management and the board (as appropriate) are directed to avoid or mitigate risks posed by operating through complex or non-transparent structures by “having a centralised process for approving the creation of new legal entities.” We urge the Committee to

consider that some business units may create entities in the ordinary course of business on a frequent basis, and the approval process for these need not be “centralised” so long as it is pursuant to policies approved at an appropriate level, which will necessarily vary depending on the circumstances of the banking organization.

More broadly, we believe the discussion in paragraphs 98 through 102 reflects an inherent bias against multi-faceted structures that is inappropriately prescriptive. Multi-faceted structures, or those that may seem complex or opaque to some observers, often have important legal, governance, regulatory or other functions and are not *per se* objectionable. We agree with the language in these paragraphs noting that such structures should be accompanied by appropriate oversight, but (as noted further in Annex A) would avoid suggesting that there is some level of complexity that should in all cases be avoided.

Board Qualifications, Composition and Structure

We are also concerned that the level of prescription throughout the Consultative Document could unnecessarily limit those qualified to serve on boards and could also unduly restrict board practices. For example, the bullets following the introductory statement in paragraph 50 pose concern in that they imply that an individual should be disqualified from board candidacy if that individual is affiliated with a shareholder or has held a past position with a bank or institution. These same bullets also imply that all board candidates must be independent, which is assuredly not the case given current practice and law in the area. The Consultative Document further limits the board’s flexibility when the Committee asserts that “the chair of the board should be a non-executive board member and not serve as chair of any board committee” (Para. 60). We respectfully urge the committee to remove this paragraph as it is inconsistent with the first sentence of paragraph 61, and unduly limits the board’s flexibility in assigning chair roles in a manner that may well be most advantageous to the board’s oversight function. As discussed in Section 11 of the TCH Principles, experience has shown that board leadership structures evolve over time, and we believe that it would be a mistake for overly prescriptive guidance to impede this process of evolution by limiting flexibility.

* * *

The Clearing House appreciates the opportunity to comment on the Consultative Document. We would be pleased for the opportunity to meet with representatives of the Committee to discuss these comments and the topic of bank governance more broadly if the Committee believes it would be helpful. If the Committee would like additional information regarding these comments, please contact Leel Sinai of The Clearing House, at (212) 612-9235 (email: Leel.Sinai@theclearinghouse.org) or the undersigned at (212) 612- 9220 (email: Gregg.Rozansky@theclearinghouse.org).

Respectfully submitted,

A handwritten signature in black ink that reads "Gregg Rozansky". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Gregg Rozansky
Managing Director and Senior
Associate General Counsel
The Clearing House Association L.L.C.

SUGGESTED LANGUAGE CHANGES: ANNEX A

Glossary

“Corporate governance” – in the first line, change “between” to **“among”** to emphasize that the relationships are not solely bilateral.

“Control functions” – change “a responsibility independent from management” to **“an independent responsibility,”** as we believe this is clearer.

“Duty of care” and “Duty of loyalty” – These terms should not be defined, as the applicable definition will arise from the law of the jurisdiction of organization. If retained, add **“Generally, depending on the law of the jurisdiction of organisation,”** to the beginning of each. While the content of these definitions is not necessarily objectionable as a general matter, as discussed in Section II of the accompanying comment letter, we do not believe that the specific obligations imposed on directors of banking organizations should be viewed as fundamentally altering the directors’ home country fiduciary duties.

“Independent director” – replace the words beginning with “is not under” through the end of the sentence with **“is deemed independent under the stock exchange or other rules applicable to the organisation”** to avoid the implication that this document adds an alternative or conflicting definition of independence from that otherwise applicable to the organization under the relevant regulatory regime.

“Risk appetite” and “Risk appetite statement” – change “level” to **“levels,”** as there may be separate levels for different categories of risk.

“Risk capacity” – delete “amount of” to avoid the implication that this is necessarily expressed as a single number.

“Risk limits” – change “allocate” to **“apply”** and delete the word “aggregate,” to reflect that the RAS (as defined above) is not solely quantitative.

“Risk management” – change the definition to **“The processes designed to identify, measure, limit, control, mitigate and report all material risks and risk concentrations on a timely and comprehensive basis.”** No process can “ensure” any particular outcome.

Introduction

Paragraph 11 – in the third sentence, add **“identifies,”** before “acknowledges” to highlight the role of business lines to identify risks (and to align with “further identifying” in the next sentence).

Jurisdictional differences

Paragraph 12 – in the second sentence, change “legislative and regulatory” to “**legislative, regulatory and legal.**” This encompasses, for example, state case law or common law that may govern corporate governance responsibilities.

Applicability, proportionality and differences in governance approaches

Paragraph 13 – in the second sentence, change “higher risks” to “**differing risks,**” as it is not invariably the case that larger or publicly listed entities are inherently riskier.

Paragraph 15 – in the third sentence, change “no executive functions” to “**no executive members.**” We believe this is what is intended – even a board that does have executive members does not, in its capacity as a board, have “executive functions.”

Paragraph 15 – in the fourth sentence, change “has a broader role” to “**may have both executive and non-executive members.**” The current language suggests that in a one-tier structure, the board of directors has “executive functions” which is very definitively not the case.

Paragraph 16 – in the fourth sentence, change “across countries” to “**across, and even within, countries.**” For example, within the U.S., the corporate law of different states and the regulations and guidance of different bank regulators may embody, or lead to, somewhat varying governance approaches.

Principle 1: Board’s overall responsibilities

Introductory language – in the bolded introductory language, change “the implementation” to “**management’s implementation**” and delete the word “also” from the second sentence. The oversight of senior management is not an additional responsibility of the board but is the manner in which the board accomplishes its responsibilities set forth in the first sentence.

Paragraph 20 – add “**oversight of**” after “responsibility for” to describe the role of the board more accurately.

Paragraph 21 (Footnote 10) – to the extent that the word “ensure” remains in the document, change “has ultimate responsibility for the bank’s adoption of” to “**has the responsibility for oversight of management’s establishment and implementation of.**” This better describes the role of the board, as described in the accompanying comment letter.

Paragraphs 21, 24, 26, 42, 44 (penultimate bullet) – change “ensure that” to “**assess whether.**” Generally, this change should be made throughout, as the context requires, to more accurately describe the role of the board.

Paragraph 22 – delete the second sentence. It is not appropriate to seek to define the contours of the “duty of care,” which is a legal concept that arises from and is defined under the law of the jurisdiction of organization.

Paragraph 23 – in the first bullet, replace “establish and monitor” with “**review and approve,**” to describe the role of the board more accurately.

Paragraph 23 – in the second bullet, replace “establish” with “**oversee, evaluate and promote,**” to describe the role of the board more accurately.

Paragraph 23 – in the fourth bullet, change “develop, along with senior management and the CRO, the bank’s risk appetite” to “**review and approve the risk appetite developed by senior management and the CRO,**” as this more accurately describes the traditional and appropriate roles of the various parties.

Paragraph 23 – the penultimate bullet should be revised to be consistent with Paragraph 43, which indicates that the board should select the CEO and may select other senior personnel (key members of senior management and heads of control functions).

Paragraph 23 – in the final bullet, change “oversee the design and operation of the bank’s compensation system, and monitor and review the system to ensure that” to “**oversee the bank’s approach to compensation, including monitoring and reviewing executive compensation, and assessing whether,**” as this better describes the role of the board with respect to compensation.

Paragraph 27 – delete “demonstrated” before “corporate culture” as it is unclear what this means or what sort of “demonstration” is contemplated.

Paragraph 28 – replace “take the lead in establishing” with “**reinforce,**” to describe the board’s role more accurately.

Paragraph 28 – in the second bullet, change “helping ensure that the bank operates” to “**helping the bank operate.**”

Paragraph 28 – in the third and fourth bullets, change “ensuring that” to “**confirming that,**” as this better describes the role of the board.

Paragraph 29 – in the first bullet, delete “behaviour that could lead to any reputation risks or” and instead add “**and to give due consideration to reputation risks in performing their duties,**” after the word “ethically.” There is a wide range of behavior that *could* lead to reputation risks; the goal of a risk management strategy is to manage and consider those risks in an appropriate manner.

Paragraph 30 – in the final bullet, change “determine” to “**oversee,**” to reflect the appropriate role of the board.

Paragraph 32 – in the second sentence, change “The board” to “**The risk governance framework,**” as we believe this is what was intended (it is not “the board” that outlines actions, outside of the framework).

Paragraph 33 – change “developing” to “**reviewing and approving**” and change “ensuring” to “**assessing,**” to reflect the board’s role more accurately.

Paragraph 40 – in the third sentence change “approve” to “**oversee management’s establishment of.**” It is neither feasible nor appropriate for the board to specifically approve all of the voluminous policies that apply to the day-to-day operations of a banking organization. If desired, add to the end of the sentence “**and should approve critical policies as it deems appropriate or as required by applicable regulation.**”

Paragraph 40 – in the fourth sentence, change “ensure that” to “**assess the extent to which,**” to reflect the board’s role more accurately.

Paragraph 44 – in the introductory language delete “regardless of financial gain or loss to the bank.” This seems confusing, and the sentence is clearer without it.

Paragraph 44 – replace the final bullet with “**approve succession plans for the CEO and, as the board deems appropriate, other senior employees.**” We believe this is a better description of the board’s appropriate role in this context.

Principle 2: Board qualifications and composition

Paragraph 45 – replace the words “must be suitable to carry out its responsibilities and” with “**should.**” The balance of the sentence seems to describe the point sufficiently, without introducing a concept of “suitability” that could be read as some new undefined standard, and the word “should” is consistent with the following sentence and the following paragraphs.

Paragraph 45 – add to the end “**and the means to employ experts outside the Board as needed.**” The ability of the board to employ outside experts is sufficiently important to address with more prominence.

Paragraph 47 – replace “collective suitability” with “**composition.**” As noted above, “suitability” could otherwise be seen as a new undefined standard, which we do not believe is intended.

Paragraph 47 – in the first bullet, add the word “**may**” after “competence” as this will necessarily vary by entity. For example, skills in areas such as technology or operations may be equally relevant (and could, if desired, be added to the list).

Paragraph 47 – in the final bullet, delete the words before the comma. The board should always be able to employ independent experts, and doing so does not imply that “board expertise is insufficient.”

Paragraph 48 – delete “identifies and” (because candidates may be initially identified by any number of sources), replace “and ensures” with “**to promote,**” and delete “and senior management” because it is inapposite to this principle.

Paragraph 50 – delete “from:” and the bullets that follow. The bullets are too prescriptive and imply that no director may be affiliated with a shareholder (contrary to common practice and U.S. stock exchange regulations) or have a “past position” with the bank or another institution. These also imply that all directors must be independent, which is not the case.

Paragraph 53 – at the end of the first sentence add “, **which may involve internal or external resources.**” Often, the most effective training on matters pertinent to the company can take the form of presentations from internal experts within the company.

Paragraph 54 – in the last sentence, change “ensure” to “**facilitate,**” to describe more accurately the board’s ability to promote appropriate discharge of responsibilities by board members.

Principle 3: Board’s own structure and practices

Paragraph 57 – delete the reference to “and individual board members” in the first sentence, and delete the second bullet. The assessment of the board and its committees, and the board’s regular determinations as to renomination of directors and committee appointments, necessarily take into account the various contributions of the members, and many banks take the view that it is not appropriate or meaningful to have a supplemental individual assessment process outside of those contexts.

Paragraph 57 – in the final bullet, delete “and, where required by the supervisor, share results with the supervisor.” It seems tautological to say that if disclosure is required, then disclosure should be made, and this language could be read to recommend greater supervisor involvement in board assessments than would otherwise be the case.

Paragraph 58 – change “when required” to “**as required**” to reflect that the provision of this information to supervisors would typically be upon the supervisors’ request.

Paragraph 60 – delete this paragraph, as it is inconsistent with the first sentence of Paragraph 61, and unduly limits the board’s flexibility in assigning chair roles in a way that it believes will best advance the board’s oversight function. We support the concept set out in Paragraph 61 that if an organization does not have an independent chair, then it should consider appropriate counterbalancing structures. The TCH Principles promote the idea of a lead independent director in these circumstances.

Paragraph 62 – in the first sentence, delete the clause beginning with “unless,” because the creation of committees is a matter for the board’s judgment.

Paragraph 62 – consider adding here the general statement that “**References in this document to actions to be taken by “the board” should be read to include action taken by a duly appointed board committee with an appropriate mandate.**” This will prevent the need for references throughout to possible action by committee.

Paragraph 65 – in the final sentence, replace the words “and help the supervisor or those responsible to assess the effectiveness of these committees” with “**and should be made available to the supervisor as required.**” This language is consistent with that used in Paragraph 58. While minutes are among the sources of information for supervisors (along with board materials and direct interactions with board members), they are not designed for that purpose.

Paragraph 66 – delete this paragraph, in order to avoid limiting the board’s flexibility as to committee composition. While this will necessarily be true of any independent committee,

a board may have other committees (for example, an executive committee, or committees at the subsidiary level) to which this will not necessarily apply.

Paragraph 67 – in the third bullet, delete “and is not the chair of the board or any other committee.” A bank may very well determine that its oversight functions will be best served by having the same director serve as board chair and audit or risk committee chair, or serve on similar committees at subsidiaries.

Paragraph 67 – in the final bullet delete “at banks” and instead insert “**appropriate**” before “experience.” Other experience – for example, at non-bank financial institutions – may be deemed appropriate by the board.

Paragraphs 67 and 70 – delete the second “strongly,” as it is unclear what the difference is between “strongly advised” and “strongly recommended.”

Paragraph 68 – add “**overseeing**” at the start of the first bullet, as the committee’s role is one of oversight.

Paragraph 68 – in the fifth bullet, change “ensuring” to “**confirming**,” to describe the committee’s role more accurately.

Paragraph 68 – in the final bullet, change “reviewing the” to “**to the extent applicable, reviewing any**.” The construct of third-party risk governance assessments is not applicable in all jurisdictions.

Paragraph 70 – in the third bullet, delete “and not the chair of the board, or any other committee.” As noted above, a bank may very well determine that its oversight functions will be best served by having the same director serve as board chair and audit or risk committee chair, or serve on similar committees at subsidiaries.

Paragraph 70 – in the penultimate bullet, add “**material**” before “risk policies” as a company may have a significant number of immaterial administrative risk-related policies at various levels that would not rise to the level of risk committee review.

Paragraph 70 – delete “at least annually” as unnecessarily prescriptive – the risk committee should determine the appropriate review cycle, which may vary depending on the policy at issue.

Paragraph 70 – in the final bullet, change “ensure” to “**promote**,” since no process can ensure particular outcomes in all situations.

Paragraph 71 – change “reporting on” to “**overseeing**,” to address more clearly the scope of the committee’s oversight rather than focusing on the details of committee reporting to the board.

Paragraph 72 – add “**relating to all relevant risks to the bank**” after “oversight” and delete “of the strategies for capital and liquidity management, as well as for all relevant risks of the bank,” to clarify the scope of the committee’s oversight role.

Paragraph 72 – delete “compliance” from the non-exclusive list of risks, as compliance oversight is often the responsibility of the audit committee (and is a required audit committee function under NYSE rules).

Paragraph 72 – add “**(coordinating, as appropriate, with other relevant board committees)**” after “reputational risks” to highlight that other board committees may have significant roles in the oversight of certain risk-related areas.

Paragraph 72 – change “ensure” to “**confirm,**” to describe more accurately the committee’s role.

Paragraph 72 – add “**and align with strategies for capital and liquidity management**” after “stated risk appetite,” as this language clarifies the relationship between risk oversight and strategy.

Paragraph 74 – change “meet periodically” to “**coordinate,**” and change “ensure” to “**facilitate.**” Joint meetings are not the exclusive mechanism for coordination among committees; others could include meetings between the committee chairs, discussion at the full board level and joint memberships on committees.

Paragraph 75 – change “**ensure**” to “confirm,” to describe more accurately the committee’s role.

Paragraph 76 – in the first bullet, delete “and members of senior management.” Consistent with paragraph 43, the board does not necessarily directly appoint members of senior management other than the CEO, and the board may determine that the selection of the CEO is a task for the whole board, not an action for a committee recommendation in the first instance.

Paragraph 76 – in the second bullet, change “ensures that the bank has the appropriate means” to “**oversees the bank’s processes,**” and delete the language after the semi-colon, as it is duplicative of the language that comes before.

Paragraph 77 – change “optimal” to “**appropriate,**” as this seems to be a clearer way of describing the desired mix of skills and expertise.

Paragraph 78 – change “work to ensure the needed objectivity in” to “**assess the appropriate level of independence of,**” and delete the language after the word “committee.” There may very well be committees that do not need to be independent for regulatory, business or other reasons.

Paragraph 81 – change “ensure that” to “**oversee the implementation and operation of,**” to describe more accurately the board’s role.

Paragraph 82 – change “ensure” to “**confirm,**” as no policy can ensure a particular outcome in all situations.

Paragraph 83 – change “ensure that” to “**oversee the process by which,**” to describe more accurately the board’s role.

Paragraph 83 – change “appropriate” to “**any required,**” to avoid the implication that the Consultative Document is purporting to supersede home-country public disclosure requirements.

Principle 5: Governance of group structures

Introductory language – change “ensuring that there is” to “**overseeing the establishment and operation of,**” to describe more accurately the board’s role.

Paragraph 94 – change “both the bank as a whole and its subsidiaries” to “**the bank and its subsidiaries as a whole.**” The current language could be read to pick up a risk that is material to a small subsidiary, even if immaterial at the enterprise-wide level.

Paragraph 95 – at the end of the introductory language, add “**oversee the steps taken by management to**” after “should,” as this more accurately describes the board’s role.

Paragraph 95 – in the fourth bullet, change “ensure” to “**assess whether,**” to describe appropriately the process that should be undertaken.

Paragraph 95 – in the fifth bullet, replace “, and ensure that they are” with “**in a manner.**” We believe this is clearer.

Paragraph 95 – in the final bullet, add “**material**” before “regulators,” in order to avoid capturing regulators that have a more remote connection to the organization.

Change the subtitle before Paragraph 98 to “**Managing complex structures.**” The paragraphs that follow are largely about complexity, not opacity (the two terms are not synonymous), and it is not clear what it means for a structure to be “opaque” to those who formed and manage it.

Paragraph 98 – change “can lead to challenges in” to “**should be taken into account in designing the processes for,**” because the important point is not the mere existence of challenges, but the consideration of them in designing oversight processes.

Paragraph 99 – change the first sentence to “**The complexity and multiplicity of intercompany structures should be taken into account in designing risk management processes.**” This seems to be a clearer way of introducing the topic without suggesting that complexity (which is, in many cases, unavoidable) is to be avoided or that multiplicity necessarily equates to “complexity.”

Paragraph 99 – begin the second sentence with “**Unless appropriate risk management structures are in place, such complexity**” (rather than “It”) to avoid the implication that complex or multi-faceted structures are *per se* inappropriate.

Paragraph 100 – delete the first bullet. This discussion is about the management of complex structures that are created, not the decision as to whether or how to create internal structures, which will be driven by a variety of legal, business, operational and other considerations. In addition, it is far from clear what types of structures would be “unnecessarily complicated” or what number of legal entities would be “inordinate.”

Paragraph 100 – in the second bullet, add “**regularly**” before “reviewing” to avoid the implication that “continuous review” is needed.

Paragraph 100 – in the third bullet, change “having a centralised process” to “**overseeing the establishment of processes at a firmwide or business level.**” Some business units may create entities on a frequent basis in an ordinary course manner, and the approval process for these need not be “centralised” so long as it is pursuant to policies approved at an appropriate level, which will vary depending on the circumstances.

Paragraph 100 – in the fourth bullet, in two places change “material risks” to “**risks that are material to the bank,**” as we believe this is clearer.

Paragraph 100 – in the final bullet, change “ensure that the activities and structure are subject” to “**subjecting the activities and structure,**” as this is a clearer and more direct way of making the point.

Paragraph 102 – replace “the policies and strategies adopted regarding” with “**the manner in which the board oversees,**” as this is a more appropriate level of oversight for the board to discuss with supervisors.

Principle 6: Risk management

Paragraph 103 – in the first bullet, change “identifying” to “**monitoring**” and after “emerging risks” add “**and identifying these risks as appropriate in view of applicable bank risk-management strategies, policies and procedures.**” It is generally the business units, as the first line of defense, that are initially identifying risks.

Paragraph 103 – in the third bullet, change “supporting the board in its implementation, review and approval” to “**subject to review and approval of the board, develop and implement,**” to describe more accurately the relative roles of the parties.

Paragraph 103 – in the fourth bullet, delete “to ensure they are,” as we believe the language is clearer and more accurate without it.

Paragraph 107 – in the second sentence, change “supporting the board in its development of” to “**developing, and presenting to the board for review,**” to describe more accurately the relative roles of the parties.

Paragraph 109 – delete the second sentence (and the word “also” from the third sentence). Public disclosure requirements relating to changes in senior management vary from jurisdiction to jurisdiction. For example, for U.S. public companies, the chief risk officer is not one of the specified officers whose termination is required to be disclosed on a

Form 8-K.¹³ We do not believe the Consultative Document is intended to, or should, dictate public reporting requirements in a manner that deviates from applicable law.

Principle 7: Risk identification, monitoring and controlling

Paragraphs 110, 113 and 120 – replace “ensure” with “**confirm.**” As noted previously, no structure can definitively “ensure” a particular outcome in all situations.

Paragraphs 112 and 122 – replace “measurement” and “measure” with “**management**” and “**manage.**” This is a more appropriate manner of referencing the approach to risk, particularly those that are not readily amenable to quantification.

Paragraph 113 – replace “other measure” with “**other mechanism**” in two places, as we believe this is clearer.

Paragraph 123 – change “ensure that” to “**assess whether,**” as this better describes the appropriate process.

Principle 8: Risk communication

Paragraph 126 – in the final sentence, replace “institute periodic reviews of” with “**assess.**” Board evaluation of the sufficiency of material presented is a continual aspect of their oversight function, not a matter for discrete periodic review.

Paragraph 126 – add “**the process for maintaining the**” before “accuracy of information,” as this better describes the role of the board with respect to risk communication.

Paragraph 127 – delete the final sentence. By their nature, ad hoc situations are not amenable to a formal policy and procedure. For these non-routine matters, the control framework should be able to elevate issues that fall outside policies, as necessary. The first sentence suitably addresses the desired outcome.

Paragraph 128 – change “ensure that bank-wide, individual portfolio and other risks are conveyed” to “**convey bank-wide, individual portfolio and other risks,**” as this is a more direct and accurate phrasing of the point.

Paragraph 129 – replace “risk residing in subsidiaries that could be considered significant” with “**material risk residing in subsidiaries.**” The concept of a “significant subsidiary” is a common U.S. accounting term that is not, we believe, intended to be invoked here.

Paragraph 129 – add a new sentence to the end to the effect that “**Risk reporting to the board should be coordinated with other relevant review and approval items at the board level,**

¹³ Item 5.02(b) of the SEC’s Form 8-K provides as follows: If the registrant’s principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or any person performing similar functions, or any named executive officer, retires, resigns or is terminated from that position . . . disclose the fact that the event has occurred and the date of the event.”

including stress testing and resolution/recovery planning at the parent and bank subsidiary levels, in order to facilitate a consistent understanding of the organisation’s risk profile and related considerations.”

Paragraph 130 and Footnote 25 – consider deleting the concept of “organisational silos,” which we believe will not be clear or familiar to many readers, and instead reference the need to establish effective mechanisms to allow for communication and information-sharing between different organizational groups.

Principle 9: Compliance

Paragraph 133 – delete “senior” before “management” in the first line, as the responsibility for compliance policies and procedures may include not only senior management, but also management of business lines and compliance personnel more broadly.

Paragraph 135 – change “compliance laws” to “**material laws**” in two places, as this seems to be clearer.

Paragraph 136 – replace “management” with “**management of business lines and units,**” as we believe this is what is intended. As noted above, management more broadly could refer to executives with oversight over the compliance function.

Principle 10: Internal audit

Paragraphs 142 and 143 – change “ensuring that” to “**assessing whether,**” to reflect more accurately the process undertaken by the board and senior management.

Principle 11: Compensation

Paragraph 144 – in the second sentence, add “**of management’s implementation**” before “of the compensation system.” In the final sentence, change “compensation policy” to “**compensation plans, processes and outcomes.**” “Compensation policy” is not a term that it described in the document, and at many banks there is not a single, identifiable “compensation policy.”

Paragraph 144 – change “ensure that” to “**assess whether,**” to describe more accurately the role of the board.

Paragraph 148 – consider adding to the end that “**Compensation levels for these individuals should be commensurate with their key roles within the institution.**” This would be consistent with, for example, the Financial Stability Forum Principles for Sound Compensation Practices (April 2009) and other regulatory guidance.

Paragraph 150 – change “ensure” to “**confirm,**” as no compensation system can definitively “ensure” that all risks are reflected.

Paragraph 150 – for emphasis, we would move the last sentence of this paragraph up to be the first introductory sentence.

Paragraph 150 – replace “the full range of current and potential risks an employee takes as well as realised risks” with “**risks associated with an employee’s activities,**” as it may not be possible to anticipate the “full range” of current and potential unrealized risks.

Paragraph 151 – In connection with the discussion on “malus/forfeiture” and “clawback” provisions, consider adding that banks should take action as soon as practicable to recover forfeitable or recoupable amounts to improve the likelihood of successful recovery.

Principle 12: Disclosure and transparency

Paragraph 152 – in this paragraph, or elsewhere in Principle 12, include language that recognizes that certain disclosures may be prohibited by the applicable bank regulatory regime (i.e., confidential supervisory information).

Paragraph 153 – in this paragraph, or elsewhere in Principle 12, include clarification that the specified disclosure requirements are not intended to apply separately to bank subsidiaries within a holding company structure where the parent company makes group level disclosures. More broadly, the concept of “disclosure” as applied to entities that are not public reporting companies is inherently confusing; consider adding language that this Principle is intended to inform the content of required disclosure, not to create public disclosure requirements that don’t otherwise exist under home country law.

Paragraph 154 – delete the second bullet, as it is unclear what disclosure this is seeking beyond that referenced in the first bullet. If necessary, consider adding a reference to “**appropriate diversity of skills, backgrounds and viewpoints**” in the first bullet.

Paragraph 154 – in the third bullet, replace “these committees” with “**key standing committees.**” The bank may act through committees or otherwise through delegation in many ways, including through pricing, investigative, transaction-related or similar committees set up for specific purposes, but disclosure of such granular board operational matters is not common or meaningful, and may in fact have a chilling effect on the formation of committees. In particular, required disclosure as to the formation or operation of investigative or litigation committees may lead to undue concern or adversely affect a bank’s negotiation position in litigation, and disclosure with regard to committees formed to consider potential transactions may lead to confidentiality concerns.

Paragraph 155 – in the first sentence, change “the bank” to “**publicly traded banks.**” The OECD principles are expressly focused on publicly traded companies (and only note that they may be a useful tool for non-public companies).

Paragraph 156 – add “**material**” before “complex,” to avoid suggesting disclosure of immaterial matters.

Principle 13: The role of supervisors

Introductory language –at the end of the introductory language, add “, **subject in all cases to applicable law**” after “supervisors.” For example, in many jurisdictions, the sharing of

corporate governance information with other supervisors must be approved by national supervisors (as is recognized at the end of Paragraph 169).

Paragraph 158 – change “hold them accountable for this” to “**assess the processes by which they accomplish this.**” The concept of “holding them accountable” could be read as a statement of personal liability, which we assume is not intended.

Paragraph 159 – in the first line, add “, **in special cases,**” before “rules,” to reflect that (consistent with the wording throughout Principle 13) the issuance of guidance, rather than rule-making, is a more appropriate mechanism for supervising and evaluating governance structures, in order to preserve the requisite flexibility.

Paragraph 159 – in the second sentence, change “not sufficient to address the unique corporate governance needs of banks” to “**not drafted with a view toward their application to banks in particular.**” All corporations, not just banks, must apply relevant home country standards to their practices in a manner appropriate to their circumstance. Supervisory guidance is intended to help banks to do so, but not to suggest that home country standards are otherwise “not sufficient” in any fundamental way or that banks are “unique” in a way that makes traditional corporate law principles less applicable.

Paragraph 159 – add to the end “**Such supervisory guidance should, however, recognize the appropriateness of variation in governance structures and processes across different organisations, and should not evolve into de facto regulation.**” As discussed in Section III of the accompanying comment letter, we believe that it is important to maintain a flexible approach to corporate governance, both in the Consultative Document and as a matter of bank supervision more generally, given the varying circumstances and characteristics of banking organizations.

Paragraph 163 – change “ensure that” to “**assess whether,**” as this reflects more accurately the ability of supervisors to produce particular outcomes.

Paragraph 167 – add “**Subject in all cases to applicable law,**” to the beginning of the third sentence. For example, in many jurisdictions, the removal of directors may be accomplished only by a shareholder vote.