

Response to Basel Committee's Consultative Document on Range of Methodologies for Risk and Performance Alignment of Remuneration from Financial Competitive Regime Perspective

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- 1. All views in this submission are presented on behalf on the writer, and may not necessary be construed as those of the People's Bank of China.**
- 2. For the writing tradition and reading convenience, this paper is drafted in English and Chinese. The core meaning shall be construed as the same.**

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从金融竞争制度视角评述巴塞尔银行委员会 拟颁布的《兼顾风险与绩效的薪酬制度》

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- 1、 本文仅代表作者个人观点，并不必然代表中国人民银行观点。
- 2、 考虑到行文传统和阅读方便，文章以英文和中文书写，核心内容一致。

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I. Introduction

I welcome the opportunity to provide comments on the October 2010 consultative document of *Range of Methodologies for Risk and Performance Alignment of Remuneration* by the Basel Committee.

In contemplating the Financial Crisis, the international communities have reached many conclusions. The Basel committee's consultative document of *Range of Methodologies for Risk and Performance Alignment of Remuneration* will play an important role for the regulation of senior managers in financial institutions in the global financial supervisory system, and it will help avoid huge bonuses to those senior managers only based on the aggressive performance at the cost of outstanding risk exposures in financial companies. The target of this remuneration aims at balance of the relationship between risks and performance in financial institutions. However, unfortunately it should be perceived that the proposal neither pays enough attention to the value of financial competitive regime nor considers broadly the relationship between the competition and the remuneration in financial market.

This comment integrating the financial competitive regime is

submitted along with relevant suggestions and overview on the reform for regulation of bank remuneration in China. It is hopeful that the Basel Committee can consider them in issuing the final document of *Range of Methodologies for Risk and Performance Alignment of Remuneration*.

II. Comments and Suggestions in Detail

1. The design of remuneration in financial institutions is correlated with financial competition closely. At first glance, Paragraph 3 definitely points out that in designing remuneration all financial institutions face “the competitive challenges in the industry”. In addition, section iii in Paragraph 3, Paragraph 74, 75 and 78, and the illustrative example in Paragraph 77 emphasize the effects of size and/or complexity in institutions. In essence, these contents implicitly state that the authorities can use the financial competitive system as an alternative method to design the remuneration in financial institutions. The reason is that the access, operation and exit of financial institutions can be regulated by supervisors through utilizing financial competitive regime in order to adjust the structure of financial markets and control the size and complexity of financial institutions, finally leading to setting reasonable expectations for remuneration in banking. For example, the stockholding often affects the complexity in financial institutions. However, the financial anti-monopoly system, as one of the important parts of financial competitive regime, can prevent director interlocking and hence construct “Firewall” against complexity.

2. Paragraph 4, “... the adjustment of remuneration to risk and

performance is a key element to reduce incentive for excessive risk-taking in banks”.

Analysis: As a matter of fact, to a large extent the excessive risk-taking results from excessive competition in banks and excessive concentration in banking industry. Take the excessive concentration for instance. When the concentration rate of bank market rises, banks are induced by the idea of “too big to fail” spontaneously and tend to take excessive credit risk. As a result, the “moral hazard” is significant. Financial competitive regime is one of the important mechanisms to weaken the high concentration. The use of such mechanism can split off systemically important financial institutions, balance the market powers among different institutions, and accordingly weaken the banks’ incentives to take excessive risk.

Amendment: “... the adjustment of remuneration to risk and performance is a key element to reduce incentive for excessive risk-taking in banks, which is triggered by *excessive competition in banks and high concentration in banking industry. Combined with the financial competitive regime, the remuneration can take effect on the regulation of excessive risk-taking activities in banks.* ”

3. Paragraph 4 states that “(ii) the challenges or elements influencing the effectiveness of risk alignment”. The fact that some systemically important financial institutions recklessly paid huge bonuses to

senior managers implies that “too-big-to-fail” financial institutions, during the process of selling financial products embedded with unpredictable risks, abused their influences on the financial stability in host country, even that in the world. Once liquidity crunch happens, tax payers are compelled to foot the bill. And the financial monopoly institutions unscrupulously paid high bonuses to employees for their risk-taking activities. At present, international communities should consider the application of financial competitive regime to necessarily intervene and restrain the financial monopoly.

4. Paragraph 14 states that “More and more firms tend to use economic efficiency measures....Other frequently used measures....”

Analysis: These economic efficiency measures in Paragraph 14 are demonstrated from the aspect of microeconomy. If taken from macroeconomic perspective, these measures represent the competitiveness of individual institution in the whole industry. In another word, performance is the direct reflection of competitive capability.

Amendment: “More and more firms tend to use economic efficiency measures *reflecting competitive capability*....Other frequently used measures....”

5. From the perspective of function, “variable remuneration” in Paragraph 23 takes on a role as the competitive remuneration to ensure financial institutions can attract and retain excellent employees compared with competitors, and such remuneration is the important content of “specific quantitative risk adjustments”. One typical example is described in Case 2 of Paragraph 146. “large bank with traditional retail activity”, “...the comparison with competitors”.

6. Paragraph 26 mentions “systemically important financial institutions”. In supervising these giant institutions, authorities can strictly apply financial competitive regime to avoid occurrence of systemic risk.^①

7. Paragraph 53 points out “strategy”. Looking from the perspective of history, merger and acquisition (M&A) are the most important strategies applied by financial institutions. Normally, the activities of M&A should require the competitive review by authorities in order to avoid distorting competition and financial monopoly. In the vision of remuneration, the economic benefits associated with M&A, such as high stock gain, would flow to the institutions and individuals in short term. However, on the other hand, M&A conceal great potential risk during the realization of uncertain synergy in the long

^① <http://www.bis.org/publ/bcbs165/zhenli.pdf>

run. If M&A finally fail, the basis for high remuneration in long time will evaporate, which cause unavoidable maturity mismatching of remuneration in financial institutions.

8. Paragraph 99 states “... non-financial risks (such as market, reputational ... risks”. Presence of such risks is closely related with the violation of financial consumers’ benefits, and especially infringing the interest of financial consumers brings about the negative effects on financial institutions’ goodwill. It is considered that the most effective method to protect the financial consumer is to implement the financial competitive regime. For example, the financial institutions will abuse their information dominant position to defraud the financial consumers, but one of the key functions of financial competitive regime is to prevent abuse of dominant position.

9. Non-compete agreement exists from viewpoints of “Background: the origins of deferred remuneration” in Paragraph 159 and “transfer restriction” in Paragraph 164. In order to retain the long-term clients or protect business secrets, financial institutions have the legitimate discretion to enforce the non-compete agreement in the limited period and/or in the limited region. But they are forbidden to exercise the agreement as an anti-competitive tool to restrict financial market competition.

10. The example in footnote 11 demonstrates the implementation of deferred remuneration to employee will give financial institutions an incentive to take differentiation on competitive strategies with different competitors. Whether such action is legitimate or not can be judged from the point of the financial competitive regime.

11. In Annex 1, the size thresholds on FSB principles implementation standard in Argentina, Canada and Italy represent the concentration in banking industry (or insurance industry). The authority can implement the financial competitive regime to adjust the thresholds.

III. Overview on Reform for the Regulation of Banking

Remuneration in China

1. Characteristics of Reform

In the Financial Crisis, many countries including China accelerate financial system reform, and strengthen the supervision of remuneration in financial institutions. Among these reforms, since income distribution system requires improvements, and financial industry belongs to those sectors with high compensation, reform on remuneration in financial industry will play a crucial role in sustaining Chinese economic development and keeping social stability. Summarized from the overview of reform process, the characteristics of the remuneration reform are: *beginning from the succession of the global reform, learning from the international code, ensuring market competition as a tool, and aiming at realization of reasonable income distribution.*

1.1 Following the trend of international reform on the remuneration system. Chinese government comes forward with the international communities' request for the remuneration reform in financial institutions and enhances regulation on the traditional income system. Main rules include "Notice of the Ministry of Finance on the Issues Relevant to the Remunerations Paid to the Senior

Management of the State-owned Financial Institutions for the Year of 2008” on April 7th 2009, “Opinions about Further Regulation on Leaders’ Income of Central Financial Institutions” issued by Ministry of Human Resources and Social Security of China and other five ministries on September 16th 2009, and “Measures of Review on Income of Central Financial Institutions’ Leaders” issued by Ministry of Finance of China on February 8th 2010. However, these directives did not refer to the competitive remuneration.

1.2 Matching remuneration and competitive capability is the new horizon for regulation reform. On February 21st 2010, China Banking Regulatory Commission issued “Supervisory Guidelines on Compensation Practices of Commercial Banks” in the light of the international standard. Article 4 emphasizes that “The incentives provided by compensation practices are consistent with the bank’s competitiveness....” Because the financial competitive regime acts as the legal defense to cultivate the competitive capability in financial industry, this article actually indicates that remuneration system should be aligned with sound financial competitive regime.

1.3 Taking the remuneration reform as the key to adjust national income distribution system. In the 3rd session of the 11th National People’s Congress, Premier Wen Jiabao delivered “Report on the

Work of the Government 2010” on March 5th 2010. In the section of “Vigorously ensuring and improving people's wellbeing, and promoting social harmony and progress”, Premier Wen Jiabao said “we will deepen the reform of the income distribution system of monopoly industries. We will improve the policy of dual control over total payroll and wage scales in these industries. We will set strict standards for the income of executives, especially senior ones, of state-owned enterprises and financial institutions, and improve related oversight and supervision rules.” This statement means that Chinese government will take strong measures on supervision of the financial industry, which falls into monopoly sectors with high income, in order to promote competition and reduce income gaps. In such supervisory process, financial competitive regime will play an important role in advancing reform on financial industry and strengthening remuneration regulation on Chinese financial institutions, including banks.

2. Outlook

2.1 In the “12th Five-Year National Plan” for the period from 2011 to 2015, ensuring and improving people’s wellbeing is the fundamental aim and outcome of all the works to accelerate transformation of the mode of economic development. Unreasonable income distribution system stands out as the bottleneck to be broken necessarily in the

national economic and social development. Since the social community keeps doubts on the current income of Chinese financial industry, it is inevitable to modify the income distribution system. However, due to the short-term marketization of financial industry and inexperience of market operation, it is difficult to make the remuneration reform aiming at enhancing competitiveness. Benefiting from this overwhelming international remuneration reform on financial institutions in the context of the current global financial crisis, Chinese government has an unprecedented opportunity to implement financial competitive regime to adjust the remuneration structure in financial industry with more initiatives.

2.2 On the one hand, the implementation of financial competitive regime will nourish more market participants, accelerate the pace to build up the reasonably competitive financial market, weaken high bonus concentration by the dual control of market mechanism and administrative regulation, and accomplish matching the remuneration structure with the competitiveness of financial institutions. On the other hand, under the background of economic financialization, the implementation will stimulate the competitiveness, protect the interests of consumers, furthermore enhance people's consuming willingness and confidence, and finally cooperated with other economic policies optimize the structure of

income distribution among different business sectors.

2.3 Fortunately in the 11th National People's Congress, some representatives have submitted bills or advices on *Financial Anti-monopoly*, *Financial Competitive Supervision* and *Financial Consumer Protection*, which are important components of financial competitive regime. It is predictable that financial competitive regime with Chinese characteristics will become the key breakthrough in the reform on the entire financial regulatory system, including the remuneration in the future.

一、介 绍

非常感谢有机会就巴塞尔银行委员会 2010 年 10 月公布的《兼顾风险与绩效的薪酬制度》征求意见稿进行评论。

在深刻反思此轮金融危机后，国际社会对于确立兼顾风险与绩效的薪酬制度达成了诸多共识。巴塞尔委员会公布的《兼顾风险与绩效的薪酬制度》将对全球金融监管制度中针对金融机构高管的监控发挥重要作用，长远来看它将有助于避免金融机构实行单方面绩效考核为基础的薪酬制度。此薪酬制度的评价标准旨在让金融机构平衡好风险与收益的关系。但令人遗憾的是，《兼顾风险与绩效的薪酬制度》既未充分地关注金融竞争制度在设定薪酬时发挥着重要作用，也未广泛地考虑金融市场竞争与银行业薪酬的密切关系。

本评论从金融竞争制度的视角就意见稿的相关内容提出建议，并简要评述中国银行业薪酬制度的改革。希望巴塞尔银行委员会在最终颁布的薪酬制度中能够采纳。

二、具体评述和建议

（一）金融机构薪酬设定与金融竞争密切相关。直观地看，第3段明确指出了金融机构制定薪酬时的大背景是面临着“产业内竞争的挑战”。此外，第3段的（iii）、第74段、75段、78段、以及第77段的例子，都强调了规模和（或）复杂程度。本质而言，它们较为隐晦地指出了金融竞争制度是当局可用来引导金融机构制定薪酬的有效辅助方式。这是因为当局能运用金融竞争制度来规范金融机构的准入、运营及退出，调整金融市场结构，顺利实现调控金融机构规模和复杂程度^①，最终引导金融机构合理设定薪酬预期。例如：金融机构的复杂程度经常是通过持股实现，而作为金融竞争制度重要组成部分的金融反垄断制度能禁止股东连锁，对金融机构的过度关联设置“防火墙”。

（二）第4段中“兼顾风险与绩效的薪酬调整是减弱激励银行过度承担风险的一个关键因素”。

分析：实际上，过度的风险承担在很大程度上是由于银行业过度竞争和银行产业过度集中所致。以产业过度集中为例：在银行市场高度集中时，银行容易受“大而不倒”观念诱导，从事信贷业务时承担过度风险，此时，道德风险较大。金融竞争制度是弱化市场集中度过高的重要方式，其能分拆系统重要性金融机构，实现金融市场竞争力量的均衡，削弱银行主动承担过度风险

^① <http://www.bis.org/publ/bcbs165/zhenli.pdf>

的冲动。

修改：“兼顾风险与绩效的薪酬调整是减弱因银行业过度竞争及银行产业过度集中而激励银行过度承担风险的一个关键因素。融合了金融竞争制度的薪酬模式，可对银行过度承担风险的行为进行有效规范。”

（三）第 4 段涉及了“(ii)影响风险调控效果的挑战或要素”。部分系统重要性金融机构在这场危机中执意分发巨额薪酬表明，“大而不倒”的金融机构在出售难以预测风险的金融产品过程中滥用其对母国甚至是世界金融系统稳定的影响力。一旦出现流动性危机，为了维护整个金融体系稳定，纳税人被迫埋单。而金融垄断力量却为这恣意妄为的冒险行为大肆奖励员工。此时，国际社会应考虑适用金融竞争制度对金融垄断力量进行必要地干预和遏制。

（四）第 14 段指出“越来越多的机构倾向于使用经济效能作为薪酬制定标准……，以及其它经常使用的定薪标准”。

分析：第 14 段所列的技术指标是从企业的微观角度来看，若置于宏观产业视角，这些指标体现了个体金融机构在整个金融产业群中的竞争力。易言之，绩效是竞争能力高低的直接反映。

修改：“越来越多的机构倾向于使用反映竞争能力的经济效能指标作为薪酬制定标准……，以及其它经常使用的定薪标准。”

（五）从功能视角来看，第 23 段指出的“可变薪酬”是一种为确保金融机构与其它竞争对手相比更能吸引优秀人才的竞

竞争性薪酬，而竞争性薪酬是“具体量化风险调整”的重要内容。典型的实例请见第 146 段的案例二，“从事传统零售活动的大银行”中“……与竞争者相比”。

（六）第 26 段涉及了“系统重要性金融机构”。在监管此类巨型金融机构时，当局可严格适用金融竞争制度，防范系统性金融风险发生。^①

（七）第 53 段提到了“战略”。历史表明，并购是金融机构牵一发而动全身的最重要战略部署。正常情况下，金融业并购须通过当局的竞争性审查，目的在于避免并购扭曲金融市场竞争，引发金融垄断。从薪酬角度看，金融机构的并购在初期往往会给机构和个人带来收益，例如股价上涨，但另一方面，并购也潜藏着巨大风险，并购能否真正顺利实现协同效率有待于长期观察。若并购失败，从长远出发而确定的高薪基础消失，金融机构薪酬制定时的期限错配将不可避免。

（八）第 99 段指出了“法律、名誉……等非财务风险”。这两类风险的存在往往与侵犯金融消费者利益息息相关，特别是侵害金融消费者利益的事件会对金融机构的名誉带来负面影响。而保护金融消费者最有力的措施是有效实施金融竞争制度。例如，金融机构欺诈金融消费者往往是金融机构滥用其在信息方面的优势地位，而防范优势滥用则是金融竞争制度的重要内容之一。

^① <http://www.bis.org/publ/bcbs165/zhenli.pdf>

（九）第 159 段“背景：延期薪酬起源”（2）和第 164 段的“转移限制”指明了金融机构存在竞业禁止协议。金融机构出于留住长期客户或者保护机密信息而在特定时段或区域加以竞业禁止纯属正当，但不应将竞业禁止协议作为反竞争手段去限制金融市场竞争。

（十）第 11 脚注的例子表明，由于执行雇员延期薪酬可能会激励金融机构对不同竞争者实施差异化的竞争行为。此类行为正当与否可以从金融竞争制度角度进行判断。

（十一）附录 1 中阿根廷、加拿大和意大利三国实施 FSB 原则的门槛均是以银行产业（或保险产业）的集中度为标准，而当局可以运用金融竞争制度来调控 FSB 原则的门槛——金融产业集中度。

三、中国银行业薪酬制度改革概述

（一）制度改革特征

金融危机期间，包括中国在内的许多国家加快制度改革，加强对金融机构薪酬的监管。由于中国收入分配体制有待优化，而银行业又属于高收入行业，改革金融业薪酬制度对于中国经济发展和社会稳定将起到重要作用。纵观改革脉络，中国银行业薪酬制度改革特征为：以顺应国际改革大潮为开端、以参照国际准则为范本、以确保竞争为手段、以实现合理收入分配为目标。

1、薪酬制度改革紧随国际潮流。中国政府为响应国际社会对金融机构薪酬改革的呼声，加强了对传统薪酬制度的规范。主要规定包括：财政部 2009 年 4 月 7 日发布的《关于国有金融机构 2008 年度高管人员薪酬分配有关问题的通知》，人力资源和社会保障部等六部委 2009 年 9 月 16 日联合发布的《进一步规范中央金融企业负责人薪酬管理的指导意见》，以及财政部 2010 年 2 月 8 日发布的《中央金融企业负责人薪酬审核管理办法》。但这些规范都未涉及到“竞争性薪酬”的问题。

2、薪酬与竞争能力的匹配成为制度改革新视角。2010 年 2 月 21 日，中国银行业监督管理委员会参照国际准则发布了《商业银行稳健薪酬监管指引》，《指引》第 4 条强调“薪酬机制原则要兼顾薪酬激励与银行竞争能力的关系。”因为金融竞争制度是培育金融竞争能力的法律保障，所以，该条实则表明薪酬制度应

与健全的金融竞争制度相匹配。

3、薪酬制度改革成为调整收入分配机制的重点。2010 年 3 月 5 日，温家宝总理在十一届全国人大三次会议上作《2010 年政府工作报告》，在“着力保障和改善民生，促进社会和谐进步”部分，温家宝总理表示：“要深化垄断行业收入分配制度改革。完善对垄断行业工资总额和工资水平的双重调控政策。严格规范国有企业、金融机构经营管理人员特别是高管的收入，完善监管办法。”。这意味着中国将对隶属高收入垄断行业的金融业实施促竞争、控收入的监管。在此监管过程中，金融竞争制度将对加快推进金融行业的改革、加强中国金融机构（含银行）薪酬制度的规范发挥重要作用。

（二）展望

在 2011 年至 2015 年中国“十二五”规划期间，保障和改善民生已明确作为加快转变经济发展方式的根本出发点和落脚点。不合理的收入分配方式已上升为国民经济和社会发展不得不突破的瓶颈。中国金融业当前的薪酬分配机制早已引发了社会广泛质疑，对其进行制度调整势在必行。但由于中国金融业市场化进程历史较短，市场化运作经验欠缺，以竞争力为导向的薪酬改革难度较大。在此次金融危机背景之下，国际层面的金融机构薪酬改革已势不可挡，为中国当局创新地实施金融竞争制度以有效调控金融机构薪酬创造了难得的历史机遇。

一方面，实施金融竞争制度可培育更多的市场参与者，促进

合理竞争性金融市场的形成，通过市场机制与行政调控的双重调节以弱化金融业红利过度集中，实现金融机构的薪酬结构与其竞争能力的匹配。另一方面，在经济金融化背景下,有效实施金融竞争制度还可激活金融市场的竞争活力，保障消费者权益，增强民众消费意愿和信心，最终在其它经济制度、措施的合力下，优化行业间收入分配布局。

值得幸运的是，在第十一届中华人民共和国全国人民代表大会期间，作为金融竞争制度重要组成部分的**金融反垄断、金融竞争性监管和金融消费者权益保护**的议案或建议已由人大代表提交全国人大审议研究。可预见的是，具有中国特色的金融竞争制度势必会在不久的将来成为改革包含薪酬制度在内的整个金融制度体系的重要突破口。