February 25, 2011

Via Electronic Delivery

Secretariat of the Basel Committee on Banking Supervision
Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel
Switzerland

Re: Consultative Document Regarding Pillar 3 Disclosure Requirements for Remuneration ("Proposed Disclosure Requirements")

Gentlemen and Ladies:

The Securities Industry and Financial Markets Association ("SIFMA")[1] submits this letter in response to the request by the Basel Committee on Banking Supervision (the "BCBS") for comments regarding the Proposed Disclosure Requirements. The relationship between compensation practices and appropriate risk management is an important issue. We support disclosure of compensation information to supervisors and public disclosure of certain qualitative information to the public to the extent that it enhances prudent risk management. However, we are concerned that mandatory public disclosure of quantitative data is a new regulatory approach that should not be undertaken lightly, particularly given the inherent privacy, confidentiality and competitive concerns. While we do not agree that the public disclosure of confidential quantitative information will enhance prudent risk management, at a minimum, any decision to require such disclosure should be based on the actual experience over the next few years of the differing regulatory approaches that have been taken to address the very issues that the BCBS seeks to address. That experience will be a more trustworthy guide to the

[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

appropriate regulatory response than speculation as to the positive and negative effects of quantitative disclosures.

In more detail, our primary concerns with the Proposed Disclosure Requirements are that they would:

1. Pre-empt the steps that local jurisdictions have already begun to take to implement their own legislative and regulatory approaches to this issue by adopting a one size fits all approach to disclosure without an adequate factual basis to determine that it will be effective for the purposes of improving risk management;[2] and

2. Require, for the first time, annual disclosure to the public of qualitative and highly-confidential and detailed aggregate quantitative information regarding remuneration at banks subject to Pillar 3 of Basel II, including information on specific performance measures and capital allocations.

By way of background, Section I of the Proposed Disclosure Requirements ("Background and Objectives") states that the Proposed Disclosure Requirements were issued in response to a recommendation made by the Financial Stability Board (the "FSB") in its Peer Review Report on Compensation, published in March 2010 (the "Peer Review"). The Peer Review addressed the progress that had been made by various regulators in conjunction with the guidelines set forth in the FSB's Principles for Sound Compensation Practices, published in April 2009 (the "Principles") and the Principles' Implementation Standards, published in September 2009 (the "Standards"). The primary goal of the Principles and Standards is to "reduce incentives towards excessive risk taking that may arise from the structure of compensation schemes." The Proposed Disclosure Requirements should be judged solely on the basis of whether they will accomplish or impede achieving this goal.

There is an unstated premise in the Proposed Disclosure Requirements that the quantitative disclosure of compensation data to the public will improve risk management at financial institutions. While we believe such disclosure to regulators may be important in helping to promote appropriate risk management, it is not at all clear that disclosure to the public serves the same purpose. Assuring

[2] For example, the European Parliament has, through CRD3, determined that quantitative public disclosure should play a key role in a financial institution's risk management practices. U.S. regulators and legislators, on the other hand, have determined that quantitative disclosure regarding compensation should be made to regulators, while qualitative disclosure should be made to the public "to the extent that risks arising from the [public company's] compensation policies and practices for its employees are reasonably likely to have a material adverse effect." The quantitative disclosure requirements to regulators are contemplated by Section 956 of the Dodd Frank Wall Street Reform and Consumer Protection Act (the "Dodd Frank Act"), enacted in the U.S. in July 2010. Furthermore, we note that public compensation disclosure requirements for all public companies in the U.S. are traditionally the province of the U.S. Securities and Exchange Commission (the "SEC"), rather than banking regulators.

that financial institutions employ appropriate risk management is a task most effectively and appropriately undertaken by regulators who have access to sufficient quantitative data and are able to consult with the banks and guide them from a supervisory standpoint. The public will not have the same perspective or context as a regulator in which to consider the financial institution's disclosure to determine the appropriateness of a bank's risk management or compensation structure and thus is simply not equipped play a role in shaping financial institutions' risk management policies. Perhaps more importantly, without the proper perspective, the public is likely to misinterpret data in many cases, which could lead to unintended consequences (for example, a successful firm will likely have more sign-on bonuses than a firm that is failing, making the absolute dollar amount of sign-on bonuses an unhelpful relative indicator of a banks' safety and soundness). Requiring the type of quantitative disclosure called for in the Proposed Disclosure Requirements will not enhance financial institutions' risk management practices and in fact will make it more difficult for regulators to act effectively.

Public disclosure of compensation is not an area where multijurisdictional uniformity is either necessary or desirable. While the Standards do suggest guidelines for disclosure of compensation, the Standards are phrased in a precatory manner (using "should" rather than "must") and are illustrative, not mandatory. The precatory nature of the Standards is entirely appropriate in light of the importance of ensuring that local regulators and legislative bodies have sufficient flexibility to adopt public disclosure rules that appropriately address differing jurisdictional landscapes. By making compulsory virtually all of the suggested guidelines, the BCBS would eliminate this valuable flexibility in favour of a one-size-fits-all approach letting uniformity triumph over effectiveness. What may work in one jurisdiction may not, in the view of local legislators and regulators, be as effective in another jurisdiction. Public disclosure-related issues are matters that have historically been left to local governing law.[3] Indeed, certain jurisdictions already have adopted laws and/or regulations that articulate how best to use public disclosure as a means of fostering an appropriate link between balanced risk management and compensation structures.[4] In light of the different views of regulators and legislatures in different jurisdictions regarding the appropriate role of public disclosure in promoting financial institution safety and soundness, we think it is inappropriate for the BCBS to impose a highly prescriptive disclosure framework as part of a capital regime.

We are concerned that the Proposed Disclosure Requirements preempt the significant work accomplished to date by regulators and legislators in various jurisdictions around the world and miss the mark in terms of advancing the important goal of encouraging appropriate risk management practices, while at the same time causing a number of harmful consequences to the very institutions whose

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[3] For example, while the SEC has detailed public disclosure requirements regarding the compensation of public companies' "named executive officers," it generally does not apply those rules to foreign private issuers whose stock trades in the U.S.

[4] See footnote 2 above.

safety and soundness is the original cause for concern. The types of information required by the Proposed Disclosure Requirements would, for the first time, require a broad range of financial institutions to publicly disclose detailed aggregate quantitative information regarding compensation, risk measures and actual performance against those risk measures. This approach raises a number of concerns including the following:

- Covered institutions would be required to publicly disclose highly confidential information regarding remuneration, performance measures and capital allocations, leading to competitive harm. The FDIC recognized this key issue in its recently released proposed rules implementing Section 956 of the Dodd Frank Act, stating that disclosure to regulators regarding compensation structures "will be nonpublic to the extent permitted by law" since the information "likely will be sensitive for a variety of reasons, including competitive reasons."[5] For example, the Proposed Disclosure Requirements mandate public disclosure of the "numerical values" corresponding to each measure used in a bank's risk management framework (including the amount of economic capital allocated to key risks), which would give a bank's competitors insight into the bank's business strategies and its quantitative strengths and weaknesses. It is hard to understand how such a disclosure to the public (fully available to every competitor) either encourages prudent risk management or supports the safety and soundness of the institution.

- Comparative analysis of different institutions will be misleading because of the differences in local compensation practices, tax laws, and labor conventions. Even if those differences were not present, the Proposed Disclosure Regulations lack the extremely detailed definitions and supplemental rules regarding how such amounts are to be calculated for purposes of consistent disclosure. The Proposed Disclosure Requirements contemplate simple situations, but the reality of compensation practices is far more complicated. For example, if severance amounts are paid over a period of 18 months, how should they be reported? If stock is subject to vesting, a retention period or clawback, when is it actually "paid" for purposes of the Proposed Disclosure Requirements? The overtly stated premise that these rules will provide a basis for comparison among financial institutions is questionable at best.

Although the BCBS indicates that the Proposed Disclosure Requirements merely respond to suggestions made by the FSB in the Peer Review with respect to enhanced compensation disclosure, the Proposed Disclosure Requirements far exceed the FSB's suggestions in the Peer Review. The Peer Review recommended only that the BCBS "consider incorporating disclosure requirements for compensation into Pillar 3 of Basel II, to add greater specificity to the current requirements for compensation disclosure under Pillar 2." The Pillar 2 requirements, established in July 2009 by the BCBS, state:

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[5] Available at http://fdic.gov/news/board/2011rule2.pdf.

> Firms must disclose clear, comprehensive and timely information about their compensation practices to facilitate constructive engagement by all stakeholders, including in particular shareholders. Stakeholders need to be able to evaluate the quality of support for the firm's strategy and risk posture. Appropriate disclosure related to risk management and other control systems will enable a firm's counterparties to make informed decisions about their business relations with the firm. Supervisors should have access to all necessary information in order to evaluate banks' compensation practices.

Rather than "add greater specificity" to these existing requirements (which seem largely intended as a series of principles, rather than prescriptive rules), the Proposed Disclosure Requirements would implement an entirely new public disclosure regime on a worldwide basis in the area of financial institution compensation that would likely result in substantial additional costs in order to gather and prepare relevant data in a form that could be presented to the public.[6]

We urge the BCBS to reconsider its approach and redraft the Proposed Disclosure Requirements to take into account the numerous concerns outlined above. We would be happy to discuss with you any of the comments described above or any other matters you feel would be helpful in assessing the Proposed Disclosure Requirements. Please do not hesitate to contact me at 212-313-1053 if you would like to discuss these matters further.

Sincerely,

T. Timothy Ryan, Jr.
President and CEO

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[6] Items that were not contemplated by the Standards but that would be required to be publicly disclosed under the Proposed Disclosure Requirements include:

- Quantitative public disclosure regarding aggregate compensation amounts for financial and risk control staff;
- The "numerical values" used to take risk measurement into account in compensation decisions;
- Total annual bankwide remuneration, broken down into fixed and variable compensation amounts;
- The total number of employees receiving variable remuneration covered by a risk adjustment process;
- The number and total amount of guaranteed bonuses paid during the year;
- A breakdown of deferred compensation based on type of compensation (*e.g.*, cash, equity, etc.); and
- A breakdown of total remuneration expenses for the year showing the period to which each award relates.