

**Response to Basel Committee's Consultative
Document on Pillar 3 disclosure requirements for
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 necessarily 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 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公布的 《支柱三中薪酬制度的披露要求》征求意见稿

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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 December 2010 consultative document of *Pillar 3 disclosure requirements for remuneration* issued by the Basel Committee.

In contemplating the Financial Crisis, the international communities have reached many conclusions. The Basel committee's consultative document of *Pillar 3 disclosure requirements for 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 in the long run. The target of this remuneration aims at balancing the relationship between risks and performance in financial institutions. However, unfortunately it is perceived that the proposal neither pays enough attention to the value of financial competitive regime nor considers broadly the relationship between competition and remuneration in financial market.

This comment gives some suggestions on the relevant components

in the consultative document from the financial competitive regime.
It is hopeful that the Basel Committee can consider them in issuing
the final document of *Pillar 3 disclosure requirements for
remuneration*.

II. Comments and Suggestions in Detail

1. Paragraph 3 mentions “...the firm’s strategy”. Normally, the core strategy such as merger requires the competitive scrutiny by authority. In addition, it is possible to cause maturity mismatching of remuneration in financial institutions.¹

2. Paragraph 3 puts forward “...not requiring disclosure of sensitive or confidential information.” In order to keep a long-term cooperation with clients or protect the confidential information, financial institutions often adopt non-compete agreement, whereas anti-competitive terms should be refrained.

3. Although Paragraph 4 involves information in seven areas, embedding from “The governance/committee structures” to “The types of remuneration”. It neglects the factors on competitiveness in financial institutions. It is highly recommended to attach related information into this document from the perspective of financial competitive regime.

¹ Zhen Li, “Response to Basel Committee's Consultative Document on Range of Methodologies for Risk and Performance Alignment of Remuneration from Financial Competitive Regime Perspective”, December, 2010. Available at: <http://www.bis.org/publ/bcbs178/zhenli.pdf>

4. Paragraph 11 includes two main parts of disclosure requirements, but does not concern any factor regarding the non-compete agreement. It's suggested that such factors can be added in the "Qualitative disclosures" or the "Quantitative disclosures".²

² Ibid.

III. Miscellaneous

1. In 2009, *Enhancements to the Basel II framework* was issued by the Basel Committee, *Principles for Sound Compensation Practices* and *Principles for Sound Compensation Practices – Implementation Standards* were issued by the Financial Stability Board (formerly the Financial Stability Forum). All the documents directly or indirectly refer to the competition in financial markets. In issuing the final *Pillar 3 disclosure requirements for remuneration*, the Basel Committee should also align the financial competitive regime with the requirements.

2. Supplemental Pillar 2 Guidance in Enhancements to the Basel II framework

2.1 In paragraph 85, “Compensation practices at large financial institutions are one factor among many that contributed to the financial crisis that began in 2007.” In fact, compensation practices are not the main cause for the current financial crisis. According to *The Financial Crisis Inquiry Report* published by the Financial Crisis Inquiry Commission of the United States of America in January 2011, the financial crisis stemmed from the excessive

concentration in the financial industry.³ Acting as a key instrument to regulate the excessive concentration in the financial industry, the financial competitive regime can be effectively used to adjust the structure of financial industry and to guide market participants' behaviors, especially those of systemically important financial institutions, and furthermore to regulate the firms' compensation practices. Noticeably, implementation of financial competitive regime will play a significant role for the economic development in China as well.⁴

2.2 Paragraph 91 points out “variable compensation payments”. Such compensation practices relate to non-compete agreement and anti-competitive behavior, both of which are regulated by the utilization of the financial competitive regime.⁵

2.3 Paragraph 93 emphasizes the process of supervising compensation practices. In practice, on the one hand it is necessary to avoid the regulatory arbitrage, which is caused by competitive financial supervision and leads to deterioration of the regulatory effect. The competition between different financial supervisors hatches the competitive financial supervision. Once the coordination

³ The Financial Crisis Inquiry Committee, “The Financial Crisis Inquiry Report”, January 27, 2011. Available at: <http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf>

⁴ Zhen Li, “Enhancing the Financial Competition to Promote the Scientific Development in the 12th Five-Year National Plan”, *China Economic Herald*, December 21, 2010. Available at: http://www.ceh.com.cn:8080/epaper/ceh/20101221/B05/B05_56.htm

⁵ Zhen Li, “Response to Basel Committee's Consultative Document on Range of Methodologies for Risk and Performance Alignment of Remuneration from Financial Competitive Regime Perspective”, December, 2010. Available at: <http://www.bis.org/publ/bcbs178/zhenli.pdf>

system among these authorities works inefficiently, financial institutions will make full use of the functional overlaps or supervisory loopholes for regulatory arbitrage.⁶ On the other hand, it is essential to avert the competitive unbalance between nations, which is triggered by cross-border compensation supervision. In the course of enforcing compensation rule, profit-motivated financial institutions by nature are more prone to operate in the country with less supervision, which gives rise to imbalance at national financial competitiveness due to execution of distinct standards in various countries.

3. Principles for Sound Compensation Practices

3.1 The section of “Introduction” indicates “competitive pressures”. Competition in financial markets should be regulated by rigorously enforcing financial competitive regime, in order to prevent the occurrence of monopoly and unfair competition.

3.2 The section of “Commentary on the principles” demonstrates “Major financial institutions compete for talent in a global labour market...”, “...firms have many competing priorities”, and “...should coordinate at the global level”. In the context of globalization, the international community should endeavor to

⁶ Zhen Li, “Response to Basel Committee’s Consultative Document of Countercyclical Capital Buffer Proposal from the Perspective of Financial Competitive Regime”, September, 2010. Available at: <http://www.bis.org/publ/bcbs172/zhenli.pdf>

establish a set of uniform international financial competitive codes. Through implementation of these rules it is helpful to ease firms' anxiety over their loss of competitive advantage when voluntarily executing compensation reform as "first-mover".

3.3 "Rationale" of "Principle 1-3: Effective governance of compensation" in the section of "Commentary on the principles" states "Variable compensation ('bonus') has been substantially influenced ...by the levels of compensation offered by competitors". In order to ensure effectively executing compensation system reform, when setting the uniform compensation standard the relevant authorities or organizations should make full consideration of the financial competitive regime for the sake of enhancement of the confidence of financial institutions as first-mover for the reform.

4. Principles for Sound Compensation Practices – Implementation Standards

4.1 In executing *Implementation Standards* at the international level, authorities should contemplate prudentially how to maintain the sustainable competition in financial market on a level playing field.

4.2 "They are not to be used as a pretext to prevent or impede market entry or market access." Market entry or market access is one

of the main fields regulated by financial competitive regime.

Reference

1. Zhen Li, “Response to Basel Committee's Consultative Document on Range of Methodologies for Risk and Performance Alignment of Remuneration from Financial Competitive Regime Perspective”, December, 2010. Available at: <http://www.bis.org/publ/bcbs178/zhenli.pdf>
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一、介 绍

非常感谢有机会就巴塞尔银行委员会 2010 年 12 月公布的《支柱三中薪酬制度的披露要求（征求意见稿）》进行评论。

在深刻反思此轮金融危机后，国际社会达成了诸多共识。巴塞尔委员会公布的《支柱三中薪酬制度的披露要求》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。拟颁布实施的薪酬制度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，《支柱三中薪酬制度的披露要求》既未充分地关注金融竞争制度在设定薪酬时所发挥的重要作用，也未广泛地考虑金融市场竞争与银行业薪酬之间的密切关系。

本评论从金融竞争制度视角就征求意见稿的相关内容提出建议。希望巴塞尔银行委员会在最终颁布的制度中能够采纳。

二、具体评述和建议

（一）第 3 段提到了“公司战略（Strategy）”。通常情况下，诸如合并的核心战略往往需要通过当局的竞争性审查。另外，此类战略的实施有可能导致薪酬制定时的期限错配。⁷

（二）第 3 段提出了“不要求公开敏感或者机密信息”。为留住长期客户或者保护机密信息，金融机构往往会采用竞业禁止协议。但与此同时，应避免在竞业禁止协议中加入反竞争条款。

（三）第 4 段囊括了从“公司治理/薪酬委员会结构”到“薪酬种类”等七方面信息，但未涉及有关金融机构“竞争力”方面的要素。希望能从金融竞争制度视角考虑加入相关信息。⁸

（四）第 11 段包含了两部分主要披露要求的内容，却未包括“竞业禁止协议”的相关要素。希望能在“定性披露”或者“定量披露”部分中增加此类要素。

⁷ 参看：李震，“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》”，2010 年 12 月。网址：<http://www.bis.org/publ/bcbs178/zhenli.pdf>

⁸ 同上

三、其 他

（一）2009 年，巴塞尔银行委员会发布了《增强巴塞尔 II 框架体系》的文件，金融稳定理事会（前身是金融稳定论坛）发布了《健全薪酬制度实践的原则》及《健全薪酬制度实践的标准》。这些文件直接或间接地都谈及了金融竞争问题。在制定《支柱三中薪酬制度的披露要求》时，巴塞尔委员会也应一并考虑金融竞争制度问题。

（二）《增强巴塞尔 II 框架体系》中“支柱二的补充指引（Supplemental Pillar 2 Guidance）”部分

1、第 85 段指出了“大型金融机构薪酬制度的实践是导致 2007 年金融危机的诸多原因之一”。事实上，薪酬制度的实践并非此轮金融危机爆发的核心原因。根据美国金融危机调查委员会 2011 年 1 月发布的《金融危机调查报告》⁹，当前的金融危机源自金融产业的过度集中。作为规制金融产业过度集中重要手段的金融竞争制度，可以有效调整金融产业结构和金融市场竞争行为，特别是系统性重要金融机构的行为，进而有效规范金融机构实施的薪酬制度。值得注意的是，实施金融竞争制度对于中国经济的发展也将发挥不容忽视的重要作用。¹⁰

2、第 91 段指出了“可变薪酬的支付”。此类薪酬的支付会

⁹ 参看：美国金融危机调查委员会，《金融危机调查报告》，2011 年 1 月 27 日。网址：<http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf>

¹⁰ 参看：李震，《以金融竞争促“十二五”科学发展》，载于《中国经济导报》，2010 年 12 月 21 日，B05。网址：http://www.ceh.com.cn:8080/epaper/ceh/20101221/B05/B05_56.htm

涉及竞业禁止协议和反竞争行为，二者均需要金融竞争制度进行规范。¹¹

3、第 93 段强调了薪酬制度实施中的监管过程。实践中，一方面要避免由于竞争性金融监管引发的监管套利使得监管效率大打折扣。金融监管部门之间的竞争形成了竞争性金融监管。一旦金融监管协调机制不畅，金融机构就会利用监管部门的职责重叠或出现的监管盲区实施套利行为。¹² 另一方面还要避免跨境薪酬监管致使国家间金融竞争失衡。在执行薪酬制度过程中，由于逐利本性所致，金融机构往往倾向于选择在薪酬监管力度较轻的国家运营，这就会导致由于实施标准不一致而引发国家间金融竞争力失去平衡。

（三）《健全薪酬制度实践的原则》

1、“介绍”部分谈到了“竞争压力”。金融市场的竞争应由严格执行的金融竞争制度加以规范，从而避免垄断和不正当竞争的发生。

2、“关于原则的评论”部分指出：“主要金融机构在全球性劳动力市场中竞争人才……”，“……机构有许多竞争优先权（competing priorities）”，“……应当在全球层面进行协调”。全球化背景下，国际社会应尽快建立一套统一适用的国际金融竞争规范，通过实施这些规则以弱化金融机构对于主动实施薪酬制度改革

¹¹ 参看：李震，“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》”，2010 年 12 月。网址：<http://www.bis.org/publ/bcbs178/zhenli.pdf>

¹² 参看：李震，“从金融竞争制度角度对巴塞尔委员会颁布的《逆周期资本缓冲建议》进行评述”，2010 年 9 月。网址：<http://www.bis.org/publ/bcbs172/zhenli.pdf>

革会减损其竞争优势的担忧。

3、“关于原则的评论”部分中“原则 1-3：薪酬的有效治理”的“依据”提出：“可变薪酬（‘奖金’）受到……竞争者提供薪酬水平的巨大影响”。为保证薪酬制度改革顺利推进，在制定统一适用的薪酬标准时相关当局或组织应充分考虑金融竞争制度问题，增强金融机构主动实施薪酬制度改革的信心。

（四）《健全薪酬制度实践的标准》

1、在国际层面执行《实践标准》时，当局还需慎重考虑如何在一个公平竞争的平台维护金融市场竞争的可持续性。

2、《实践标准》不应作为阻止或限制市场准入的借口。金融市场准入是金融竞争制度规制的重要领域之一。

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