FEDERATION
BANCAIRE
FRANCAISE

*Banking supervision*
*And Accounting issues Unit*

*The Director*

Paris, March 20th 2012

**French Banking Federation response to the Basel Committee Consultative Document on Core Principles for Effective Banking Supervision (BCBS 213)**

Dear Sir,

The French Banking Federation (FBF) is the professional body representing the interests of the banking industry in France. Its membership is composed of all credit institutions authorized as banks and doing business in France, i.e. more than 450 commercial and cooperative banks. FBF member banks have 40,000 permanent branches in France. They employ 400,000 people, and service 60 million clients.

The FBF welcomes the revision and update of the previous Basel Committee on Banking Supervision's (BCBS) Core Principles. French banks observe that most of these principles are already implemented in French Banking regulation. Nevertheless, we appreciate the opportunity to comment on the BCBS's Consultative Document Core Principles for Effective Banking Supervision (December 2011).

We share most of the recommendations of the consultative paper and find those to be appropriate responses to the weaknesses revealed by the crisis. We welcome in particular the proposed reorganization, in a more logical way, of these principles. However, we still have concerns about some of them.

Our response is divided in two parts: first of all, a few general comments on issues we consider as structuring and/or which appear several times within the document and then some more specific remarks.

**Mr Xavier-Yves ZANOTA**
**Secretariat of the Basel Committee**
**on Banking Supervision**
**Bank for International Settlements**
**CH-4002 Basel**
**Switzerland**

We thank you for the consideration of our remarks and remain at your disposal for any questions or additional information you might have.

Yours sincerely,

Jean-Paul CAUDAL

## Annexe I: General comments

- "Minimum standards" versus "recommandations"

These Core Principles are presented throughout the document as "minimum standards" based on BCBS proposals or guidelines. It is important to remember that BCBS proposals and guidelines are not mandatory at the country level as long as they have not been adopted in its current legislation. Therefore, it seems to us that wording like "recommendations" would be more appropriate than "minimum standards".

Furthermore, it seems that some topics could be further discussed before being included in the Core Principles. For instance, it seems premature to refer to "risk appetite" in Core principles (n° 17, 22, 25). In particular, we observe that there is no clear definition of these terms in the Consultative Document except a short full footnote on page 39. "Risk appetite" is an expression widely used but it could be easily admitted that in practice or even in theory, this concept has very different meanings.

Moreover, we believe that the words "risk appetite" are not relevant for operational risk. We would prefer to use "risk tolerance" for operational risk.

In another vein, we do not agree with a general reference to "recovery plans" (Principle 15). First, we observe that discussions are pending on this topic. According to the Basel Committee, this obligation is applicable only for Systemic Financial Institutions. It could be inappropriate to include such rule in General Principles. Secondly, such regulation could be seen as very intrusive.

- Systemic importance of a bank

In this document, the potential systemic impact of the bank is always associated with its risk profile when assessing the adequacy of its risk management framework or of its capital and liquidity management processes. We agree that the importance of a bank requires a supervision adapted to its size and complexity but we also think that, rather than pointing specific banks, a proportionality principle should be stated at the very beginning of the document (as a Principle 0) in order not to impose too burdensome obligations for smaller banks.

Coming back on the perceived systemic importance of a bank, we would like to remind you that the Board and the senior management of the bank are naturally aware of the social responsibility of the firm. It is their responsibility to balance the specific interests of the bank and the general interest of the society, between short term and long term horizons, and to decide taking into account the shareholders interest. The supervisor cannot assume the responsibility and arbitrage as this would make him interfere too much in the bank's management process.

Last, having in mind the consequences of this qualification of "systemically important bank", it also seems to us very important that the document specifies that the qualification of a bank as a "systemic entity" should be determined exclusively at its consolidated level, by its home supervisor (qualifying it as "globally systemic"), and not at a subsidiary level, and even less at the branch level, by a host supervisor (qualifying them as "locally systemic"). Banking group operations and risks, and solidarity mechanisms, are nowadays too intertwined for efficiency grounds that assessing the systemic risk at a subsidiary level is likely to be flawed.

- Host supervisors initiatives

We remind you that branches are legal parts of the same entity (which means that they are legally inseparable from the legal entity). Therefore the supervision of branch operations can only be conceived as a delegated act from the home supervisor to the host supervisor.

It is clear that the host supervisor is particularly well positioned to assess the degree to which a local entity complies with local legislation. However he cannot make a global judgment founded on his limited view of the whole entity. As stressed above, the supervision of a branch can only be conceived as a delegated act from the home supervisor to the host supervisor, the home regulator having the global picture.

- Supervision and company law

As regards internal governance, we would like to remind you that a bank is a commercial firm and that, accordingly, its internal governance must be based on the Company Law applicable in the country. Supervision has to be exercised within this imposed framework.

We support the BCBS' initiative aiming at clarifying the use of the terms "board" and "senior management" (see footnote 27, page 25 of the Consultative Document): *"[...] Consequently, in this document, the terms "board" and "senior management" are only used as a way to refer to the oversight function and the management function in general and should be interpreted throughout the document in accordance with the applicable law within each jurisdiction"*. However, to avoid any misinterpretation, we would prefer to use terms referring to functions instead of term referring to a legal structure. Indeed, depending on the jurisdiction, a function can be associated with distinct governance structures or not. The term "governing body in its supervisory function" and "governing body in its executive function" could stand for "board" and "senior management" throughout the whole document.

- Disclosure of confidential information

It is of paramount importance that the disclosure to a third party of any confidential information received by a supervisor be covered by a MOU stating the level of the confidentiality which should not be weakened throughout the communication of information between different jurisdictions. In addition, this is particularly crucial in the context of stress situations and recovery and resolution plans.

Please remember that confidentiality of information is also a legal issue and that the disclosure of confidential information is usually constrained by the legal framework in each jurisdiction. This is particularly important for public companies, for which information sharing between a large numbers of people raises sensitive issues.

- The risk of conflict of interests and abuse of right

We express concern that the more supervisors intervene in the management of the bank and the more they put themselves at risk by being in a position of a potential conflict of interest. After a "light touch" supervision, the risk is to enforce an intrusive supervision leading to inefficient banks' operations due to inadequate or ill-informed requirements from banks.

## Annexe II: Specific comments

### Part I - Foreword to the review

- **General approach**

(page 5)

*18. It should be borne in mind that successive revisions to standards and guidance issued by the Committee will be designed to strengthen the regulatory regime. Supervisors are encouraged to move towards the adoption of updated international supervisory standards as they are issued.*

Comment:
The proposals that are issued by the Committee are not binding in each jurisdiction. Consequently, they should be considered as a reference but not the unique one.

- **Approach toward emerging trends and developments**

Suggested changes:

*"19. In the aftermath of the crisis, much attention has been focused on SIBs, and the regulations and supervisory powers needed to deal with them effectively. Consideration was given by the Committee to including a new Core Principle to cover SIBs. However, it was concluded that SIBs, which require greater intensity of supervision and hence resources, represent one end of the supervisory spectrum of banks. Each Core Principle applies to the supervision of all banks. The expectations on, and of, supervisors ~~will need to~~* ***should*** *be ~~of a higher order for SIBs,~~ commensurate with the risk profile and ~~systemic~~ importance of the~~se~~ banks. ~~Therefore, it is unnecessary to include a specific stand-alone Core Principle for SIBs."~~*

Justification:
Rather than pointing specific banks, a proportionality principle should underlie how supervisors should deal with banks: BCBS should articulate a "Principle 0: Proportionality Principle".
Additionally in order to ensure the playing field, quantitative regulatory requirement should be the same for all banks.

## Part II - The Core Principles

41. The 29 Core Principles are:

**Supervisory powers, responsibilities and functions**

[...]

Suggested changes:

- ***Principle 5 - Licensing criteria***

*"The licensing authority has the power to set criteria and reject applications for establishments that do not meet the criteria. At a minimum, the licensing process consists of an assessment of the ownership structure and governance ~~(including the fitness and propriety of Board members and senior management)~~ of the bank and its wider group, and its strategic and operating plan, internal controls, risk management and projected financial condition (including capital base). Where the proposed owner or parent organisation is a foreign bank, the prior consent of its home supervisor is obtained."*

[...]

**Prudential regulations and requirements**

- ***Principle 15 - Risk management process***

*"The supervisor determines that banks have a comprehensive risk management process ~~(including effective Board and senior management oversight)~~ to identify, measure, evaluate, monitor, report and control or mitigate all material risks on a timely basis and to assess the adequacy of their capital and liquidity in relation to their risk profile and market and macroeconomic conditions. ~~This extends to development and review of robust and credible recovery plans, which take into account the specific circumstances of the bank.~~ The risk management process is commensurate with the risk profile and ~~systemic~~ importance of the bank."*

## Part IV - Assessment methodology

- **Assessment of compliance**

Suggested changes:

*"65. The Core Principles are* ***references*** *~~minimum standards to be applied by~~* ***for*** *all banking supervisors. In implementing some of them, supervisors will need to take into account the risk profile and ~~systemic~~ importance of individual banks, particularly for those Core Principles where supervisors have to determine the adequacy of banks' risk management policies and processes."*

Justification:
BCBS proposals are not legally binding. Consequently, supervisors cannot be evaluated compared to a reference that they are not bound to apply. This would distort the evaluation process and would deny the need for adapting BCBS proposals to different jurisdiction, notably for their specificities.

## Part V – Criteria for assessing compliance with the Core Principles

- **Supervisory powers, responsibilities and functions**

**Principle 1: Responsibilities, objectives and powers**

An effective system of banking supervision has clear responsibilities and objectives for each authority involved in the supervision of banks and banking groups. A suitable legal framework for banking supervision is in place to provide each responsible authority with the necessary legal powers to authorise banks, conduct ongoing supervision, address compliance with laws and undertake timely corrective actions to address safety and soundness concerns.

| Principle 1: Responsibilities, objectives and powers | | |
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| I - Essential criteria | | Comments |
| 1 | The responsibilities and objectives of each of the authorities involved in banking supervision[21] are clearly defined in legislation and publicly disclosed. Where more than one authority is responsible for supervising the banking system, a credible and publicly available framework is in place to avoid regulatory and supervisory gaps. | |

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| 2 | The primary objective of banking supervision is to promote the safety and soundness of banks and the banking system. If the banking supervisor is assigned broader responsibilities, these are subordinate to the primary objective and do not conflict with it. | |
| 3 | Laws and regulations provide a framework for the supervisor to set and enforce minimum prudential standards for banks and banking groups. The supervisor has the power to increase **<u>or decrease</u>** the prudential requirements for individual banks and banking groups based on their risk profile and ~~systemic~~ importance. | |
| 4 | Banking laws, regulations and prudential standards are updated as necessary to ensure that they remain effective and relevant to changing industry and regulatory practices. These are subject to public consultation, as appropriate. | |
| 5<br>5 | The supervisor has the power to:<br>(a) have full access to banks' and banking groups' Boards, management, staff and records in order to review compliance with internal rules and limits as well as external laws and regulations;<br>(b) review the overall activities of a banking group, both domestic and crossborder; and<br>(c) supervise the foreign activities of banks incorporated in its jurisdiction. | The term "**governing body in its supervisory function**" should stand in for "board" throughout the whole document. |
| 6 | When, in a supervisor's judgment, a bank is not complying with laws or regulations, or it is or is likely to be engaging in unsafe or unsound practices or actions that have the potential to jeopardise the bank or the banking system, the supervisor has the power to:<br>(a) take (and/or require a bank to take) timely corrective action;<br>(b) impose a range of sanctions;<br>(c) revoke the bank's licence; and<br>(d) cooperate and collaborate with relevant authorities to achieve an orderly resolution of the bank, including triggering resolution where appropriate. | |
| 7 | The supervisor has the power to review the activities of parent companies and of companies affiliated with the parent companies to determine their impact on the safety and soundness of the bank and the banking group. | |
| II - Additional criteria | | Comments |
| - | No additional criteria | - |

**Principle 2: Independence, accountability, resourcing and legal protection for supervisors**

The supervisor possesses operational independence, transparent processes, sound governance and adequate resources, and is accountable for the discharge of its duties. The legal framework for banking supervision includes legal protection for the supervisor.

| Principle 2: Independence, accountability, resourcing and legal protection for supervisors | | |
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| I - Essential criteria | | Comments |
| 1 | The operational independence, accountability and governance structures of the supervisor are prescribed in legislation and publicly disclosed. There is no government or industry interference which compromises the operational independence of the supervisor. The supervisor has full discretion to take any supervisory actions or decisions on banks and banking groups under its supervision. | |
| 2 | The process for the appointment and removal of the head(s) of the supervisory authority and members of its governing body is transparent. The head(s) of the supervisory authority is (are) appointed for a minimum term and is removed from office during his/her term only for reasons specified in law or if (s)he is not physically or mentally capable of carrying out the role or has been found guilty of misconduct. The reason(s) for removal is publicly disclosed. | |
| 3 | The supervisor publishes its objectives and is accountable through a transparent framework for the discharge of its duties in relation to those objectives | |
| 4 | The supervisor has effective internal governance and communication processes that enable supervisory decisions to be taken at a level appropriate to the significance of the issue and timely decisions to be taken in the case of an emergency. The governing body is structured to avoid any real or perceived conflicts of interest. | |
| 5 | The supervisor and its staff have credibility based on their professionalism and integrity. There are rules on how to avoid conflicts of interest and on the appropriate use of information obtained through work, with sanctions in place if | |

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| 5 | these are not followed. | |
| 6 | The supervisor has adequate resources for the conduct of effective supervision and oversight. It is financed in a manner that does not undermine its autonomy or operational independence. This includes:<br>(a) a budget that provides for staff in sufficient numbers and with skills commensurate with the risk profile and ~~systemic~~ importance of the banks and banking groups supervised;<br>(b) salary scales that allow it to attract and retain qualified staff;<br>(c) the ability to commission external experts with the necessary professional skills and independence, and subject to necessary confidentiality restrictions to conduct supervisory tasks;<br>(d) a training budget and programme that provide regular technical training for staff;<br>(e) a technology budget sufficient to equip its staff with the tools needed to review the banking industry and assess individual banks and banking groups; and<br>(f) a travel budget that allows appropriate on-site work, effective cross-border cooperation and participation in domestic and international meetings of significant relevance (eg supervisory colleges). | |
| 7 | As part of their annual resource planning exercise, supervisors regularly take stock of existing skills and projected requirements over the short- and medium-term, and review and implement measures to bridge any gaps in numbers and/or skill-sets. | |
| 8 | In determining supervisory programmes and allocating resources, supervisors take into account the risk profile and ~~systemic~~ importance of individual banks and banking groups, and the different mitigation approaches available. | |
| 9 | Laws provide protection to the supervisor and its staff against lawsuits for actions taken and/or omissions made while discharging their duties in good faith. The supervisor and its staff are adequately protected against the costs of defending their actions and/or omissions made while discharging their duties in good faith. | |
| II - Additional criteria | | Comments |
| - | No additional criteria | - |

**Principle 3: Cooperation and collaboration**

Laws, regulations or other arrangements provide a framework for cooperation and collaboration with relevant domestic authorities and foreign supervisors. These arrangements reflect the need to protect confidential information.

<table>
<tr><th colspan="3">Principle 3: Cooperation and collaboration</th></tr>
<tr><th colspan="2">Essential criteria</th><th>Comments</th></tr>
<tr><td>1</td><td>Arrangements, formal or informal, are in place for cooperation, including analysis and sharing of information, and undertaking joint work, with all domestic authorities with responsibility for the safety and soundness of banks and/or the stability of the financial system. There is evidence that these arrangements work in practice, where necessary.</td><td rowspan="4">The disclosure to a third party of any confidential information received by a supervisor should be covered by a MOU fixing the level of the confidentiality which should not be weakened throughout the communication of information between different jurisdictions. In addition, this is particularly crucial in the context of stress situations not to say recovery and resolution plans.<br><br>Please remember that confidentiality of information is also a legal issue and that the disclosure of confidential information is usually constrained by the law in force in a country. Notably for public companies for which information sharing between a large numbers of people raises delicate issues.</td></tr>
<tr><td>2</td><td>Arrangements, formal or informal, are in place for cooperation, including analysis and sharing of information, and undertaking joint work, with relevant foreign supervisors of banks and banking groups. There is evidence that these arrangements work in practice, where necessary.</td></tr>
<tr><td>3</td><td>The supervisor may provide confidential information to another domestic authority or foreign supervisor but must take reasonable steps to determine that any confidential information so released will be used only for bank-specific or system-wide supervisory purposes and will be treated as confidential by the receiving party.</td></tr>
<tr><td>4</td><td>The supervisor receiving confidential information from other supervisors uses the confidential information for bank-specific or system-wide supervisory purposes only. The supervisor does not disclose confidential information received to third parties without the permission of the supervisor providing the information and is able to deny any demand (other than a court order or mandate from a legislative body) for confidential information in its possession. In the event that the supervisor is legally compelled to disclose confidential information it has received from another supervisor, the supervisor promptly notifies the originating supervisor, indicating what information it is compelled to release and the circumstances surrounding the release. Where consent to passing on confidential information is not given, the supervisor uses all</td></tr>
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| | reasonable means to resist such a demand or protect the confidentiality of the information. | |
| 5 | Processes are in place for the supervisor to support resolution authorities (eg central banks and finance ministries as appropriate) to undertake recovery and resolution planning and actions. | |
| Additional criteria | | Comments |
| - | No additional criteria | - |

**Principle 4: Permissible activities**

The permissible activities of institutions that are licensed and subject to supervision as banks are clearly defined and the use of the word "bank" in names is controlled.

**Principle 5: Licensing criteria**

Suggested changes

*"The licensing authority has the power to set criteria and reject applications for establishments that do not meet the criteria. At a minimum, the licensing process consists of an assessment of the ownership structure and governance ~~(including the fitness and propriety of Board members and senior management)~~ of the bank and its wider group, and its strategic and operating plan, internal controls, risk management and projected financial condition (including capital base). Where the proposed owner or parent organisation is a foreign bank, the prior consent of its home supervisor is obtained."*

| Principle 5: Licensing criteria | | |
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| Essential criteria | | Comments |
| 1 | The law identifies the authority responsible for granting and withdrawing a banking licence. The licensing authority could be the banking supervisor or another competent authority. If the licensing authority and the supervisor are not the same, the supervisor has the right to have its views on each application considered, and its concerns addressed. In addition, the licensing authority | |

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| | provides the supervisor with any information that may be material to the supervision of the licensed bank. The supervisor imposes prudential conditions or limitations on the newly licensed bank, where appropriate. | |
| 2 | Laws or regulations give the licensing authority the power to set criteria for licensing banks. If the criteria are not fulfilled or if the information provided is inadequate, the licensing authority has the power to reject an application. If the licensing authority or supervisor determines that the licence was based on false information, the licence can be revoked. | |
| 3 | The criteria for issuing licences are consistent with those applied in ongoing supervision. | |
| 4 | The licensing authority determines that the proposed legal, managerial, operational and ownership structures of the bank and its wider group will not hinder effective supervision on both a solo and a consolidated basis.[28] The licensing authority also determines, where appropriate, that these structures will not hinder effective implementation of corrective measures in the future. | |
| 5 | The licensing authority identifies and determines the suitability of the bank's major shareholders, including the ultimate beneficial owners, and others that may exert significant influence. It also assesses the transparency of the ownership structure, the sources of initial capital and the ability of shareholders to provide additional financial support, where needed. | |
| 6 | A minimum initial capital amount is stipulated for all banks. | |
| 7 | The licensing authority, at authorisation, evaluates the bank's proposed ***at least two "seniors managers"*** ~~Board members and senior management~~ as to expertise and integrity (fit and proper test), and any potential for conflicts of interest. The fit and proper criteria include: (i) skills and experience in relevant financial operations commensurate with the intended activities of the bank; and (ii) no record of criminal activities or adverse regulatory judgments that make a person unfit to uphold important positions in a bank. The licensing authority determines whether the bank's Board has collective sound knowledge of the material activities the bank intends to pursue, and the associated risks. | First of all, this principle currently applies only to the two "seniors managers" as defined by the French regulator ("*Autorité de Contrôle Prudentiel*") and not to the board members and senior management.<br><br>We suggest amending the following paragraph: *"The licensing authority, at authorisation, evaluates the bank's proposed* ***at least two "seniors managers"*** *as to expertise and integrity (fit and proper test), and any potential for conflicts of interest."*<br><br>Moreover under French law, board members are appointed by the general meeting which has detailed |

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| | | information on each candidate. Senior management is appointed by the Board.<br><br>Extending the licensing authority role beyond the "fit and proper test" would certainly be an error. The Board of Directors must assemble diversified competencies with regard to strategy, management, distribution, etc. The profile of board member and senior management must be defined by the Board of Directors in consideration of the characteristics of the institution and the balance of its composition at the time it decides to launch the process of recruiting a new board member.<br><br>In addition, licensing authority should not interfere with the shareholders' rights and, hence, with the Board's decision making and behaviour. Going into that direction would indeed create confusion and most certainly raise conflict of interest issues.<br><br>Licensing authority, board and executive management must fulfill distinct missions. We are strongly convinced that clear separation of duties is much more efficient than any interference with the Board's and the executive management's life to take into account the wider societal interest.<br><br>We are in favour of an effective and powerful supervision which means expertise, adequate resources and proper field investigations; any involvement in the shareholders' prerogatives would just be confusing and would distract the supervisor from its main responsibility. |

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| | | Confusion of responsibility must absolutely be avoided. The Board is an expression of entrepreneurship and its role cannot be shortened to a control function. |
| 8 | The licensing authority reviews the proposed strategic and operating plans of the bank. This includes determining that an appropriate system of corporate governance, risk management and internal controls, including those related to the detection and prevention of criminal activities, as well as the oversight of proposed outsourced functions, will be in place. The operational structure is required to reflect the scope and degree of sophistication of the proposed activities of the bank. | |
| 9 | The licensing authority reviews pro forma financial statements and projections of the proposed bank. This includes an assessment of the adequacy of the financial strength to support the proposed strategic plan as well as financial information on the principal shareholders of the bank. | |
| 10 | In the case of foreign banks establishing a branch or subsidiary, before issuing a licence, the host supervisor establishes that no objection (or a statement of no objection) from the home supervisor has been received. For cross-border banking operations in its country, the host supervisor determines whether the home supervisor practices global consolidated supervision. | |
| 11 | The supervisor has policies and processes to determine that supervisory requirements outlined in the licence approval are being met. | |
| Additional criterion | | Comments |
| 1 | The licensing authority or supervisor has policies and processes to monitor the progress of new entrants in meeting their business and strategic goals. | |

**Principle 6: Transfer of significant ownership**

The supervisor has the power to review, reject and impose prudential conditions on any proposals to transfer significant ownership or controlling interests held directly or indirectly in existing banks to other parties.

**Principle 7: Major acquisitions**

The supervisor has the power to approve or reject (or recommend to the responsible authority the approval or rejection of), and impose prudential conditions on, major acquisitions or investments by a bank, against prescribed criteria, including the establishment of cross-border operations, and to determine that corporate affiliations or structures do not expose the bank to undue risks or hinder effective supervision.

**Principle 8: Supervisory approach**

Suggested changes:

*"An effective system of banking supervision requires the supervisor to develop and maintain a forward-looking assessment of the risk profile of individual banks and banking groups, proportionate to their ~~systemic~~ importance; identify, assess and address risks emanating from banks and the banking system as a whole; have a framework in place for early intervention; and have plans in place, in partnership with other relevant authorities, to take action to resolve banks in an orderly manner if they become non-viable."*

| Principle 8: Supervisory approach | | |
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| Essential criteria | | Comments |
| 1 | The supervisor uses a methodology for determining and assessing on an ongoing basis the nature, impact and scope of the risks:<br>(a) which banks or banking groups are exposed to, including risks posed by entities in the wider group; and<br>(b) which banks or banking groups present to the safety and soundness of the banking system.<br>The methodology addresses, among other things, the business focus, group structure, risk profile, internal control environment and the resolvability of banks, and permits relevant comparisons between banks. The frequency and intensity of supervision of banks and banking groups reflect the outcome of this analysis. | |
| | The supervisor has processes to understand the risk profile of banks and | |

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| 2 | banking groups and employs a well defined methodology to establish a forward-looking view of the profile. The nature of the supervisory work on each bank is based on the results of this analysis. | |
| 3 | The supervisor assesses banks' and banking groups' compliance with prudential regulations and other legal requirements. | |
| 4 | The supervisor takes the macroeconomic environment into account in its risk assessment of banks and banking groups. The supervisor also takes into account cross-sectoral developments, for example in non-bank financial institutions, through frequent contact with their regulators. | |
| 5 | The supervisor, in conjunction with other relevant authorities, identifies monitors and assesses the build-up of risks, trends and concentrations within and across the banking system as a whole. This includes, among other things, banks' problem assets and sources of liquidity (such as domestic and foreign currency funding conditions, and costs). The supervisor incorporates this analysis into its assessment of banks and banking groups and addresses proactively any serious threat to the stability of the banking system. The supervisor communicates any significant trends or emerging risks identified to banks and to other relevant authorities with responsibilities for financial system stability. | |
| 6 | Drawing on information provided by the bank and other national supervisors, the supervisor, in conjunction with the resolution authority, assesses the bank's resolvability where appropriate, having regard to the bank's risk profile and ~~systemic~~ importance. When bank-specific barriers to orderly resolution are identified, the supervisor requires, where necessary, banks to adopt appropriate measures, such as changes to business strategies, managerial, operational and ownership structures, and internal procedures. Any such measures take into account their effect on the soundness and stability of ongoing business. | |
| 7 | The supervisor has a clear framework or process for handling banks in times of stress, such that any decisions to require or undertake recovery or resolution actions are made in a timely manner. | |
| 8 | Where the supervisor becomes aware of bank-like activities being performed fully or partially outside the regulatory perimeter, the supervisor takes appropriate steps to draw the matter to the attention of the responsible authority. Where the supervisor becomes aware of banks restructuring their | |

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| | activities to avoid the regulatory perimeter, the supervisor takes appropriate steps to address this. | |
| Additional criteria | | Comments |
| - | No additional criteria | - |

**Principle 9: Supervisory techniques and tools**

<u>Suggested changes</u>:

*"The supervisor uses an appropriate range of techniques and tools to implement the supervisory approach and deploys supervisory resources on a proportionate basis, taking into account the risk profile and ~~systemic~~ importance of banks."*

| Principle 9: Supervisory techniques and tools | | |
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| Essential criteria | | Comments |
| 1 | The supervisor employs an appropriate mix of on-site[34] and off-site supervision to evaluate the condition of banks and banking groups, their risk profile, and the corrective measures necessary to address supervisory concerns. The specific mix between on-site and off-site supervision may be determined by the particular conditions and circumstances of the country and the bank. The supervisor regularly assesses the quality, effectiveness and integration of its on-site and off-site functions, and amends its approach, as needed. | |
| 2 | The supervisor has a coherent process for planning and executing on-site and offsite activities. There are policies and processes to ensure that such activities are conducted on a thorough and consistent basis with clear responsibilities, objectives and outputs, and that there is effective coordination and information sharing between the on-site and off-site functions. | |
| 3 | The supervisor uses a variety of information to regularly review and assess the safety and soundness of banks, the evaluation of material risks, and the identification of necessary corrective actions and supervisory actions. This includes information, such as prudential reports, statistical returns, information | |

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| | on a bank's related entities, and publicly available information. The supervisor determines that information provided by banks is reliable and obtains, as necessary, additional information on the banks and their related entities | |
| 4 | The supervisor uses a variety of tools to regularly review and assess the safety and soundness of banks and the banking system, such as:<br>(a) analysis of financial statements and accounts;<br>(b) business model analysis;<br>(c) horizontal peer reviews;<br>(d) review of the outcome of stress tests undertaken by the bank; and<br>(e) analysis of corporate governance, including risk management and internal control systems.<br>The supervisor communicates its findings to the bank as appropriate and requires the bank to take action to mitigate any particular vulnerabilities that have the potential to affect its safety and soundness. The supervisor uses its analysis to determine follow-up work required, if any. | |
| 5 | The supervisor, in conjunction with other relevant authorities, seeks to identify, assess and mitigate any emerging risks across banks and to the banking system as a whole, potentially including conducting supervisory stress tests (on individual banks or system-wide). The supervisor communicates its findings as appropriate to either banks or the industry and requires banks to take action to mitigate any particular vulnerabilities that have the potential to affect the stability of the banking system where appropriate. The supervisor uses its analysis to determine follow-up work required, if any. | |
| 6 | The supervisor evaluates the work of the bank's internal audit function, and determines whether, and to what extent, it may rely on the internal auditors' work to identify areas of potential risk | |
| 7 | The supervisor maintains sufficiently frequent contacts as appropriate with the bank's Board, non-executive Board members and senior and middle management (including heads of individual business units and control functions) to develop an understanding of and assess matters such as strategy, group structure, corporate governance, performance, capital adequacy, liquidity, asset quality, risk management systems and internal controls. Where necessary, the supervisor challenges the bank's Board and senior management on the assumptions made in setting strategies and business models. | The term "**governing body in its executive function**" should stand in for "senior management" throughout the whole document. |

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| 8 | The supervisor communicates to the bank the findings of its on- and off-site supervisory analyses by means of written reports or through discussions or meetings with the bank's management. The supervisor meets with the bank's senior management ~~and the Board~~ to discuss the results of supervisory examinations and the external audits as appropriate. ~~The supervisor also meets separately with the bank's independent Board members, as necessary.~~ | The French regulation No 97-02 relating to internal control in credit institution and investment firms (Art. 41) provides that the reports drawn up following conducted control shall be provided to the senior management and, upon request, to the board of directors and audit committee if any.<br><br>We are strongly opposed to the meetings between the supervisor and the board.<br>Indeed, as mentioned above, the reports drawn up following the controls carried out by the supervisor are provided to senior management. It seems logical that the supervisor contacts senior management in order to discuss of the result of its examinations.<br>Senior management will, then, provide the relevant information to the board.<br>In our opinion, it would be far more effective for the supervisor to meet senior management rather than the board.<br>There should not be any confusion of responsibility between the supervisory role of the governing body ("the Board") and its executive component (General manager in charge).<br><br>According to this principle, we suggest amending the following paragraph :<br>*"The supervisor meets with the bank's senior management ~~and the Board~~ to discuss the results of supervisory examinations and the external audits as appropriate. ~~The supervisor also meets separately with the bank's independent Board members, as necessary.~~"* |
| 9 | The supervisor undertakes appropriate and timely follow-up to check that banks have addressed supervisory concerns or implemented requirements | |

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| | communicated to them. This includes early escalation to the appropriate level of the supervisory authority and to the bank's Board if action points are not addressed in an adequate or timely manner. | |
| 10 | The supervisor requires banks to notify it of any substantive changes in their activities, structure and overall condition, or as soon as they become aware of any material adverse developments, including breach of legal or prudential requirements. | |
| 11 | The supervisor may make use of independent third parties, such as auditors, provided there is a clear and detailed mandate for the work. However, the supervisor cannot outsource its prudential responsibilities to third parties. When using third parties, the supervisor assesses whether the output can be relied upon to the degree intended and takes into consideration the biases that may influence third parties. | |
| 12 | The supervisor has an adequate information system which facilitates the processing, monitoring and analysis of prudential information. The system aids the identification of areas requiring follow-up action | |
| Additional criterion | | Comments |
| 1 | The supervisor has a framework for periodic independent review, for example by an internal audit function or third party assessor, of the adequacy and effectiveness of the range of its available supervisory tools and their use, and makes changes as appropriate | |

**Principle 10: Supervisory reporting**

The supervisor collects, reviews and analyses prudential reports and statistical returns from banks on both a solo and a consolidated basis, and independently verifies these reports, through either on-site examinations or use of external experts.

Suggested changes:
"*The supervisor collects, reviews and analyses prudential reports and statistical returns from banks* ***it supervises*** ~~*on both a solo and a consolidated basis,*~~ *and independently verifies these reports, through either on-site examinations or use of external experts.*"

Justification:

As is, the wording is misleading since it seems to require a host supervisor to cover the reports on consolidated basis even when the consolidating bank is not in its jurisdiction.

| Principle 10: Supervisory reporting | | |
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| Essential criteria | | Comments |
| 1 | The supervisor has the power[38] to require banks to submit information on the entities or group of entities they supervise~~, on both a solo and a consolidated basis~~, on their financial condition, performance, and risks, on demand and at regular intervals. These reports provide information such as on and off-balance sheet assets and liabilities, profit and loss, capital adequacy, liquidity, large exposures, risk concentrations (including by economic sector, geography and currency), asset quality, loan loss provisioning, related party transactions, interest rate risk, and market risk. | The changes are to be consistent between the scope supervisor are responsible for supervising and the scope of the requirements that are mentioned in this paragraph. |
| 2 | The supervisor provides reporting instructions that clearly describe the accounting standards to be used in preparing supervisory reports. Such standards are based on accounting principles and rules that are widely accepted internationally. | |
| 3 | The supervisor requires banks to have sound governance structures and control processes for methodologies that produce valuations. The measurement of fair values maximises the use of relevant and reliable inputs and are consistently applied for risk management and reporting purposes. The valuation framework and control procedures are subject to adequate independent validation and verification, either internally or by an external expert. The supervisor assesses whether the valuation used for regulatory purposes is reliable and prudent. Where the supervisor determines that valuations are not sufficiently prudent, the supervisor requires the bank to make adjustments to its reporting for capital adequacy or regulatory reporting purposes. | |
| 4 | The supervisor collects and analyses information from banks at a frequency commensurate with the nature of the information requested, and the risk profile and ~~systemic~~ importance of the bank. | |
| 5 | In order to make meaningful comparisons between banks and banking groups, | |

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| | the supervisor collects data from all banks and all relevant entities covered by consolidated supervision on a comparable basis and related to the same dates (stock data) and periods (flow data). | |
| 6 | The **home** supervisor has the power to request and receive any relevant information from banks, as well as any entities in the wider group, irrespective of their activities, where the supervisor believes that it is material to the condition of the bank or banking group, or to the assessment of the risks of the bank or banking group or is needed to support resolution planning. This includes internal management information. | |
| 7 | The supervisor has the power to access all bank records for the furtherance of supervisory work. The supervisor also has similar access to the bank's Board, management and staff, when required. | |
| 8 | The supervisor has a means of enforcing compliance with the requirement that the information be submitted on a timely and accurate basis. The supervisor determines the appropriate level of the bank's senior management is responsible for the accuracy of supervisory returns, imposes sanctions for misreporting and persistent errors, and requires that inaccurate information be amended. | |
| 9 | The supervisor utilises policies and procedures to determine the validity and integrity of supervisory information. This includes a programme for the periodic verification of supervisory returns by means either of the supervisor's own staff or of external experts. | |
| 10 | The supervisor clearly defines and documents the roles and responsibilities of external experts,[41] including the scope of the work, when they are appointed to conduct supervisory tasks. The supervisor assesses the suitability of experts for the designated task(s) and the quality of the work and takes into consideration conflicts of interest that could influence the output/recommendations by external experts. External experts may be utilised for routine validation or to examine specific aspects of banks' operations. | |
| 11 | The supervisor requires that external experts bring to its attention promptly any material shortcomings identified during the course of any work undertaken by them for supervisory purposes. | |
| Additional criteria | | Comments |
| - | No additional criteria | - |

**Principle 11: Corrective and sanctioning powers of supervisors**

The supervisor acts at an early stage to address unsafe and unsound practices or activities that could pose risks to banks or to the banking system. The supervisor has at its disposal an adequate range of supervisory tools to bring about timely corrective actions. This includes the ability to revoke the banking licence or to recommend its revocation.

Reference document: *Parallel-owned banking structures*, January 2003.

| Principle 11: Corrective and sanctioning powers of supervisors | | |
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| Essential criteria | | Comments |
| 1 | The supervisor raises supervisory concerns with the bank's management or, where appropriate, the bank's Board, at an early stage, and requires that these concerns be addressed in a timely manner. Where the supervisor requires the bank to take significant corrective actions, these are addressed in a written document to the bank's Board. The supervisor requires the bank to submit regular written progress reports and checks that corrective actions are completed satisfactorily. The supervisor follows through conclusively and in a timely manner on matters that are identified. | These issues are the responsibility of at least two *"senior managers"* whose tasks are defined by French regulations.<br><br>All requests from the supervisor regarding significant corrective actions must be addressed to these two "senior managers" and not to the board. Indeed, these persons are responsible to the French regulator *("Autorité de Contrôle Prudentiel")* for the determination of the orientation of the bank's activity. |
| 2 | The supervisor cooperates and collaborates with relevant authorities in deciding when and how to effect the orderly resolution of a problem bank situation (which could include closure, or assisting in restructuring, or merger with a stronger institution). | |
| 3 | The supervisor has available[43] an appropriate range of supervisory tools for use when, in the supervisor's judgement, a bank is not complying with laws, regulations or supervisory actions, is engaged in unsafe or unsound practices | |

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| | or in activities that could pose risks to the bank or the banking system, or when the interests of depositors are otherwise threatened. | |
| 4<br><br>4 | The supervisor has available a broad range of possible measures to address, at an early stage, such scenarios as described in essential criterion 3 above. These measures include the ability to require a bank to take timely corrective action or to impose sanctions expeditiously. In practice, the range of measures is applied in accordance with the gravity of a situation. The supervisor provides clear prudential objectives or sets out the actions to be taken, which may include restricting the current activities of the bank, imposing more stringent prudential limits and requirements, withholding approval of new activities or acquisitions, restricting or suspending payments to shareholders or share repurchases, restricting asset transfers, barring individuals from the banking sector, replacing or restricting the powers of managers, Board members or controlling owners, facilitating a takeover by or merger with a healthier institution, providing for the interim management of the bank, and revoking or recommending the revocation of the banking licence. | |
| 5 | The supervisor has the power to act where a bank falls below established regulatory threshold requirements, including prescribed regulatory ratios or measurements. The supervisor also has the power to intervene at an early stage to require a bank to prevent its regulatory requirements from reaching the threshold. The supervisor has a range of options to address such scenarios. | |
| 6 | The supervisor applies sanctions not only to the bank but, when and if necessary, also to management and/or the Board, or individuals therein. | |
| 7 | The supervisor has the power to take corrective actions, including ring-fencing of the bank from the actions of parent companies, subsidiaries, parallel-owned banking structures and other related entities in matters that could impair the safety and soundness of the bank or the banking system. | |
| Additional criteria | | Comments |
| 1 | Laws or regulations guard against the supervisor unduly delaying appropriate corrective actions. | |
| 2 | When taking formal corrective action in relation to a bank, the supervisor informs the supervisor of non-bank related financial entities of its actions and, where appropriate, coordinates its actions with them. | |

**Principle 12: Consolidated supervision**

An essential element of banking supervision is that the supervisor supervises the banking group on a consolidated basis, adequately monitoring and, as appropriate, applying prudential standards to all aspects of the business conducted by the banking group worldwide.

Reference documents: *Home-host information sharing for effective Basel II implementation*, June 2006; *The supervision of cross-border banking*, October 1996; *Minimum standards for the supervision of international banking groups and their cross-border establishments*, July 1992; *Principles for the supervision of banks' foreign establishments*, May 1983; and *Consolidated supervision of banks' international activities*, March 1979

| Principle 12: Consolidated supervision | | |
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| Essential criteria | | Comments |
| 1 | The **home** supervisor understands the overall structure of the banking group and is familiar with all the material activities (including non-banking activities) conducted by entities in the wider group, both domestic and cross-border. The supervisor understands and assesses how group-wide risks are managed and takes action when risks arising from the banking group and other entities in the wider group, in particular contagion and reputation risks, may jeopardise the safety and soundness of the bank and the banking system. | |
| 2 | The supervisor imposes prudential standards and collects and analyses financial and other information on a consolidated basis for the banking group, covering areas such as capital adequacy, liquidity, large exposures, exposures to related parties, lending limits and group structure. | |
| 3 | The supervisor reviews whether the oversight of a bank's foreign operations by management (of the parent bank or head office and, where relevant, the holding company) is adequate having regard to their risk profile and ~~systemic~~ importance and there is no hindrance in host countries for the parent bank to have access to all the material information from their foreign branches and | |

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| 3 | subsidiaries. The supervisor also determines that banks' policies and processes require the local management of any cross-border operations to have the necessary expertise to manage those operations in a safe and sound manner, and in compliance with supervisory and regulatory requirements. The home supervisor takes into account the effectiveness of supervision conducted in the host countries in which its banks have material operations. | |
| 4 | The home supervisor visits the foreign offices periodically, the location and frequency being determined by the risk profile and ~~systemic~~ importance of the foreign operation. The supervisor meets the host supervisors during these visits. The supervisor has a policy for assessing whether it needs to conduct on-site examinations of a bank's foreign operations, or require additional reporting, and has the power and resources to take those steps as and when appropriate. | |
| 5 | The supervisor reviews the main activities of parent companies, and of companies affiliated with the parent companies, that have a material impact on the safety and soundness of the bank and the banking group, and takes appropriate supervisory action. | |
| 6 | The supervisor limits the range of activities the consolidated group may conduct and the locations in which activities can be conducted (including the closing of foreign offices) if it determines that:<br>(a) the safety and soundness of the bank and banking group is compromised because the activities expose the bank or banking group to excessive risk and/or are not properly managed;<br>(b) the supervision by other supervisors is not adequate relative to the risks the activities present; and/or<br>(c) the exercise of effective supervision on a consolidated basis is hindered. | |
| 7 | Notwithstanding consolidated supervision, supervisors must not lose sight of the legal status of individual banks in the group. The responsible supervisor supervises each bank on a stand-alone basis and understands its relationship with other members of the group. | |
| Additional criterion | | Comments |
| 1 | For countries which allow corporate ownership of banks, the supervisor has the power to establish and enforce fit and proper standards for owners and senior management of parent companies. | |

**Principle 13: Home-host relationships**

Home and host supervisors of cross-border banking groups share information and cooperate for effective supervision of the group and group entities, and effective handling of crisis situations. Supervisors require the local operations of foreign banks to be conducted to the same standards as those required of domestic banks.

Reference documents: FSB *Key Attributes for Effective Resolution Regimes,* November 2011; *Good practice principles on supervisory colleges,* October 2010; *Home-host information sharing for effective Basel II implementation*, June 2006 ; *The high-level principles for the cross-border implementation of the New Accord*, August 2003; *Shell banks and booking offices*, January 2003; *Report on Cross-Border Banking Supervision*, June 1996; *Information flows between Banking Supervisory Authorities*, April 1990; and *Principles for the supervision of banks' foreign establishments (Concordat)*, May 1983.

Suggested changes:

*"Home and host supervisors of cross-border banking groups share information and cooperate for effective supervision of the group and group entities, and effective handling of crisis situations.*~~*Supervisors require the local operations of foreign banks to be conducted to the same standards as those required of domestic banks."*~~

Justification:
As is, the wording would prevent to evaluate the risk at consolidated or sub-consolidated level and would impose a "solo-level" approach that could even be applied for branches. This would notably prevent waiver mechanism to be granted by regulators and applied. This would be highly disruptive for banks.

| Principle 13: Home-host relationships | | |
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| Essential criteria | | Comments |
| 1 | The home supervisor identifies and establishes bank-specific supervisory colleges for banking groups with material cross-border operations to enhance its effective oversight, taking into account the risk profile and ~~systemic~~ importance of the banking group and the corresponding needs of its supervisors. In its broadest sense, the host supervisor who has a relevant subsidiary or a significant branch in its jurisdiction and who, therefore, has a shared interest in the effective supervisory oversight of the banking group, is included in the college. The structure of the college reflects the nature of the banking group and the needs of its supervisors, and includes, for example, a core college, a general college and/or other variable structures such as according to business lines. | . See our "General Comments" document. |
| 2 | Home and host supervisors share appropriate information on a timely basis in line with their respective roles and responsibilities, both bilaterally and through colleges. This includes information both on the material risks and risk management practices of the banking group and on the supervisors' assessments on the safety and soundness of the relevant entity under their jurisdiction. Informal or formal arrangements (such as memoranda of understanding) are in place to enable the exchange of confidential information. | On disclosure of confidential information cf. Principle 3 |
| 3 | Home and host supervisors coordinate and plan supervisory activities or undertake joint work if common areas of interest are identified in order to improve the effectiveness and efficiency of supervision of cross-border banking groups. | |
| 4 | The home supervisor develops an agreed communication strategy with the relevant host supervisors. The scope and nature of the strategy reflects the risk profile and ~~systemic~~ importance of the cross-border operations of the bank or banking group. Home and host supervisors also agree on the communication of views and outcomes of joint activities and college meetings to banks where appropriate to ensure consistency of messages on group-wide issues. | |
| | Where appropriate, due to the bank's risk profile and ~~systemic~~ importance, the home supervisor, working with its national resolution authorities, develops a framework for cross-border crisis cooperation and coordination among the | On disclosure of confidential information cf. Principle 3 |

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| 5 | relevant home and host authorities. The relevant authorities share information on crisis preparations from an early stage in a way that does not materially compromise the prospect of a successful resolution and subject to the application of rules on confidentiality. | |
| 6 | Where appropriate, due to the bank's risk profile and ~~systemic~~ importance, the home supervisor, working with its national resolution authorities and relevant host authorities, develops a group resolution plan. The relevant authorities share any information necessary for the development and maintenance of a credible resolution plan. Supervisors also alert and consult relevant authorities and supervisors (both home and host) promptly when taking any recovery and resolution measures. | On disclosure of confidential information cf. Principle 3 |
| 7 | The host supervisor's national laws or regulations require that the cross-border operations of foreign banks are subject to prudential, inspection and regulatory reporting requirements similar to those for domestic banks. | Branches are legal parts of the same entity (which means that they are legally inseparable from the legal entity). Therefore the supervision of a branch can only be conceived as a delegated act from the home supervisor to the host supervisor.<br><br>It is clear that the host supervisor is particularly well positioned to assess the degree to which a local entity complies with local legislation. However he cannot make a global judgment founded on his limited view of the whole. As stressed above, the supervision of a branch can only be conceived as a delegated act from the home supervisor to the host supervisor, the home regulator having the global picture. |
| 8 | The home supervisor is given on-site access to local offices and subsidiaries of a banking group in order to facilitate their assessment of the group's safety and soundness and compliance with customer due diligence requirements. The home supervisor informs host supervisors of intended visits to local offices and subsidiaries of banking groups. | |
| 9 | The host supervisor supervises booking offices in a manner consistent with internationally agreed standards. The supervisor does not permit shell banks or the continued operation of shell banks. | |
| | A supervisor that takes consequential action on the basis of information | |

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| 10 | received from another supervisor consults with that supervisor, to the extent possible, before taking such action. | |
| Additional criteria | | Comments |
| - | No additional criteria | - |

**Principle 14: Corporate governance**

Suggested changes:

"*The supervisor determines that banks and banking groups have robust corporate governance policies and processes covering, for example, strategic direction, group and organisational structure, control environment~~, responsibilities of the banks' Boards and senior management,~~ and compensation. These policies and processes are commensurate with the risk profile and ~~systemic~~ importance of the bank.*"

Reference documents: *Principles for enhancing corporate governance*, October 2010 and *Compensation principles and standards assessment methodology*, January 2010.

| Principle 14: Corporate governance | | |
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| Essential criteria | | Comments |
| 1 | Laws, regulations or the supervisor establish the responsibilities of the bank's Board and senior management with respect to corporate governance to ensure there is effective control over the bank's entire business. The supervisor provides guidance to banks and banking groups on expectations for sound corporate governance. | |
| 2 | The supervisor regularly assesses a bank's corporate governance policies and practices, and their implementation, and determines that the bank has robust corporate governance policies and processes commensurate with its risk profile and ~~systemic~~ importance. The supervisor requires banks and banking groups to correct deficiencies in a timely manner. | According to French law (commercial code), listed companies are obliged to submit to the general shareholders meeting an annual report. This document is publicly available and thus accessible to the supervisor. Among other contents, this report describes the functioning of the Board and its different |

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| 2 | | committees.<br>More specifically, the Chairman of the Board reports on the Company's Corporate Governance to the General Meeting; this report is attached to the annual report.<br><br>Moreover, the Board of Directors reviews the main aspects of the risk policy. It also makes sure that the firm has built an efficient risk information and management system (French regulation CRB 97-02 amended on this point on January 14, 2009).<br><br>Based on extensive analyses and resources, the senior management defines the bank's risk acceptance that the Board reviews.<br><br>From a more general stand point, while we agree that the supervisory authority has to consider the internal governance rules, this assessment should be made without interfering with the Board's functioning. This would not be appropriate because of the nature of the deliberating body, which represents the shareholders and is appointed by their general meeting, to which it reports. Going farther would mean an in depth change in the organization of the society and an increasing confusion of the responsibilities between the private interest and public one represented by the state. |
| 3 | The supervisor determines that governance structures and processes for nominating and appointing a Board member are appropriate for the bank and across the banking group. Board membership includes experienced non-executive members, where appropriate. Commensurate with the risk profile and ~~systemic~~ importance, Board structures include audit, risk oversight and remuneration committees with experienced non-executive members. | One of the lessons of the financial crisis is that the companies that resisted best are those that had the most competent and committed directors. Above all, priority should be given to competence, experience and integrity in recruitment policies. The appointment committees must determine the necessary profiles, but this assessment can be done only on a case-by-case basis. In addition, since those skills must appreciate in |

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| 3 | | the long term, it is essential to develop information sessions or if needed, training activities. For example, directors must have a good knowledge of the reforms that have an impact on their activity: Solvency 2, Basel III, changes in IFRS standards, etc. The intensity and depth of the dialogue with the executive management, particularly on the occasion of the specialized committees of the board may also significantly contribute to the development of the Board members' expertise as well as representing a most welcome challenge for the management.<br><br>As a consequence, a recruitment policy is set up in general terms so that the board can respond to each particular situation. We are convinced that it is neither possible nor hopeful to set up too specific criteria because if a situation that has not been anticipated in the policy occurs, the board would be tied up without any possibility to adapt. |
| 4 | Board members are suitably qualified, effective and exercise their "duty of care" and "duty of loyalty". | |
| 5 | The supervisor determines that the bank's Board approves and oversees implementation of the bank's strategic direction, risk appetite and strategy, and related policies, establishes and communicates corporate culture and values (eg through a code of conduct), and establishes conflicts of interest policies and a strong control environment. | The wording "risk tolerance" seems more appropriate. |
| 6 | The supervisor determines that the bank's Board, except where required otherwise by laws or regulations, has established fit and proper standards in selecting senior management, plans for succession, and actively and critically oversees senior management's execution of Board strategies, including monitoring senior management's performance against standards established for them. | Extending the supervisory authority role beyond the "fit and proper test" would certainly be an error. The Board of Directors of financial institutions must assemble not only skills with regard to risk, but also diversified competencies with regard to strategy, management, distribution, etc. The profile of directors must be defined by the Board of Directors in consideration of the characteristics of the institution and the balance of its |

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| | | composition at the time it decides to launch the process of recruiting a new director.<br><br>Confusion of responsibility must absolutely be avoided. The Board is, first of all, an expression of entrepreneurship and its role cannot be shortened to a control function.<br><br>The independence requirement may easily become counterproductive if it is construed as an administrative process based on pure so-called objective criteria. Actually, the true and effective independence comes from the successful experience and the indisputable personality that Directors have shown during their life. In that respect, BNP Paribas has defined the criteria to be met to be considered as an independent director:<br><br>⇒ an outstanding professional with proven expertise built on experience and demonstrated ability to assess risks and issues;<br><br>⇒ strong enough to express his own opinion and analyses in any circumstances;<br><br>⇒ available and free to carry his duties with the required hindsight and involvement;<br><br>⇒ fully committed to the firm's fate and his "affectio societatis" makes him deeply associated to and supportive of its culture and ethics. |
| 7 | The supervisor determines that the bank's Board ~~actively~~ oversees the design and operation of the bank's and banking group's compensation system, and that it has appropriate incentives, which are aligned with prudent risk taking. The compensation system, and related performance standards, are consistent with long term objectives and financial soundness of the bank and is rectified if there are deficiencies. | We do not understand what does means the term "**actively** oversee".<br>We suggest deleting this term which is unclear:<br>*"The supervisor determines that the bank's Board ~~actively~~ oversees the design [...]"* |

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| 8 | The supervisor determines that the bank's Board and senior management know and understand the bank's and banking group's operational structure and its risks, including those arising from the use of structures that impede transparency (eg special-purpose or related structures). The supervisor determines that risks are effectively managed and mitigated, where appropriate. | We think that it is essential that the boards know and understand the group's operational structure and its risks. However, we find questionable that the authority determines that knowledge and understanding (What are the processes that will be used?). Indeed, members of the board are well aware of the group's main risk factors. Their knowledge is sufficient to allow them ensuring their responsibilities and asking senior management when needed. Such a requirement is all the more inappropriate that all the group's internal control functions are at their disposal. |
| 9 | The supervisor has the power to require changes in the composition of the bank's Board if it believes that any individuals are not fulfilling their duties related to the satisfaction of these criteria. | This principle is not required by French law and regulation.<br>The appointment of board members is the competence of the shareholders general meeting.<br><br>Moreover, the profile of board member and senior management must be defined by the Board in consideration of the characteristics of the institution. The appointment committees must determine the necessary profiles, but this assessment can be done only on a case-by-case.<br><br>Supervisory authorities should not interfere with the shareholders' rights and, hence, with the Board's decision making and behaviour. Supervisors should not encroach on the shareholders rights and duties. |
| Additional criterion | | Comments |
| 1 | Laws, regulations or the supervisor require banks to notify the supervisor as soon as they become aware of any material and bona fide information which may negatively affect the fitness and propriety of a bank's Board member or a member of the senior management. | Supervisors should not interfere with the Board organization and decision making while the Board must be fully cognizant of their assessment of the bank's strengths and weaknesses. |

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| | | It is unquestionable that the Board should be informed of the supervisory authority opinion of the bank's soundness and this authority may have identified in the course of its permanent monitoring and field examinations. This authority, as well, is entitled to have its own assessment of the governance of financial institutions, which is not limited to the Board's role and organization. However, turning that right into a legal obligation is not appropriate due to the nature of the deliberating body that represents the shareholders and is appointed by their General Meeting to which the Board reports.<br><br>Moreover, this issue does not appear to us to be the main supervisory priority. We are in favour of an effective and powerful supervision which means expertise, adequate resources and proper field investigations; any involvement in the shareholders' prerogatives would just be confusing and would distract the supervision body from its main responsibility. |

**Principle 15: Risk management process**

Suggested changes:

*"The supervisor determines that banks have a comprehensive risk management process ~~(including effective Board and senior management oversight)~~ to identify, measure, evaluate, monitor, report and control or mitigate all material risks on a timely basis and to assess the adequacy of their capital and liquidity in relation to their risk profile and market and macroeconomic conditions. ~~This extends to development and review of robust and credible recovery plans, which take into account the specific circumstances of the bank.~~ The risk management process is commensurate with the risk profile and ~~systemic~~ importance of the bank."*

Comments:

Under French law, the Board determines the orientation of the company's activity and oversee its implementation. The Board reviews the main aspect of risk policy. It also makes sure that the firm has built an efficient risk information and management system (French regulation CRB 97-

02). Senior management defines the bank's risk acceptance that the Board reviews. Indeed, there is a shared responsibility between the senior management and the Board based on their respective missions.
There is no universal consensus on the necessity to impose recovery plans to all and every bank, whatever it size. Furthermore the content of such plans should be more precise. Supervisory interventions in such area could be seen as very intrusive.

| Principle 15: Risk management process | | |
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| Essential criteria | | Comments |
| 1 | The supervisor determines that banks have appropriate risk management strategies that have been approved by the banks' Boards and that the Boards set a suitable risk appetite to define the level of risk the banks are willing to assume or tolerate. The supervisor also determines that the Board ensures that:<br>(a) a sound risk management culture is established throughout the bank;<br>(b) policies and processes are developed for risk-taking, that are consistent with the risk management strategy and the established risk appetite;<br>(c) uncertainties attached to risk measurement are recognised;<br>(d) appropriate limits are established that are consistent with the bank's risk appetite, risk profile and capital strength, and that are understood by, and regularly communicated to, relevant staff; and<br>(e) senior management takes the steps necessary to monitor and control all material risks consistent with the approved strategies and risk appetite. | |
| 2 | The supervisor requires banks to have comprehensive risk management policies and processes to identify, measure, evaluate, monitor, report and control or mitigate all material risks. The supervisor determines that these processes are adequate:<br>(a) to provide a comprehensive "bank-wide" view of risk across all material risk types;<br>(b) for the risk profile and ~~systemic~~ importance of the bank; and<br>(c) to assess risks arising from the macroeconomic environment affecting the markets in which the bank operates and to incorporate such assessments into the bank's risk management process. | |

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| 3 | The supervisor determines that risk management strategies, policies, processes and limits are:<br>(a) properly documented;<br>(b) regularly reviewed and appropriately adjusted to reflect changing risk appetites, risk profiles and market and macroeconomic conditions; and<br>(c) communicated within the bank.<br>The supervisor determines that exceptions to established policies, processes and limits receive the prompt attention of, and authorisation by, the appropriate level of management and the bank's Board where necessary. | |
| 4 | The supervisor determines that the bank's Board and senior management obtain sufficient information on, and understands the nature and level of risk being taken by the bank and how this risk relates to adequate levels of capital and liquidity. The supervisor also determines that the Board and senior management regularly review and understand the implications and limitations (including the risk measurement uncertainties) of the risk management information that they receive. | |
| 5 | The supervisor determines that banks have an appropriate internal process for assessing their overall capital and liquidity adequacy in relation to their risk appetite and risk profile. The supervisor reviews and evaluates banks' internal capital and liquidity adequacy assessments and strategies. | |
| 6 | Where banks use models to measure components of risk, the supervisor determines that:<br>(a) banks comply with supervisory standards on their use;<br>(b) the banks' Boards and senior management understand the limitations and uncertainties relating to the output of the models and the risk inherent in their use; and<br>(c) banks perform regular and independent validation and testing of the models.<br>The supervisor assesses whether the model outputs appear reasonable as a reflection of the risks assumed. | |
| 7 | The supervisor determines that banks have information systems that are adequate (both under normal circumstances and in periods of stress) for measuring, assessing and reporting on the size, composition and quality of exposures on a bank-wide basis across all risk types, products and counterparties. The supervisor also determines that these reports reflect the | |

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| | bank's risk profile and capital and liquidity needs, and are provided on a timely basis to the bank's Board and senior management in a form suitable for their use. | |
| 8 | The supervisor determines that banks have adequate policies and processes to ensure that the banks' Boards and senior management understand the risks inherent in new products,[56] material modifications to existing products, and major management initiatives (such as changes in systems, processes, business model and major acquisitions). The supervisor determines that the Board and senior management are able to monitor and manage these risks on an ongoing basis. The supervisor also determines that the bank's policies and processes require the undertaking of any major activities of this nature to be approved by the Board or a specific committee of the Board. | |
| 9 | The supervisor determines that banks have risk management functions covering all material risks with sufficient resources, independence, authority and access to the banks' Boards to perform their duties effectively. The supervisor determines that their duties are clearly segregated from risk-taking functions in the bank and that they report on risk exposures directly to the Board and senior management. The supervisor also determines that the risk management function is subject to regular review by the internal audit function. | |
| 10 | The supervisor requires larger and more complex banks to have a dedicated risk management unit overseen by a Chief Risk Officer or equivalent function. | |
| 11 | The supervisor issues standards related to, in particular, credit risk, market risk, liquidity risk, interest rate risk in the banking book and operational risk. | |
| 12<br>12 | The supervisor requires banks to have appropriate contingency arrangements, as an integral part of their risk management process, to address risks that may materialise and actions to be taken in stress conditions (including those that will pose a serious risk to their viability). If warranted by its risk profile and ~~systemic~~ importance, the contingency arrangements include robust and credible recovery plans, which take into account the specific circumstances of the bank. The supervisor, working with resolution authorities as appropriate, assesses the adequacy of banks' contingency arrangements in the light of their risk profile and ~~systemic~~ importance (including reviewing any recovery plans) and their likely feasibility during periods of stress. The supervisor seeks improvements if deficiencies are identified. | |
| | The supervisor requires banks to have ~~forward-looking~~ stress testing | |

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| 13 | programmes, commensurate with their risk profile and ~~systemic~~ importance, as an integral part of their risk management process. The supervisor regularly assesses a bank's stress testing programme and determines that it captures material sources of risk and adopts plausible adverse scenarios. The supervisor also determines that the bank integrates the results into its decision-making, risk management processes (including contingency arrangements) and the assessment of its capital and liquidity levels. Where appropriate, the scope of the supervisor's assessment includes the extent to which the stress testing programme:<br>(a) promotes risk identification and control, on a bank-wide basis;<br>(b) adopts suitably severe assumptions and seeks to address feedback effects and system-wide interaction between risks;<br>(c) benefits from the active involvement of the Board and senior management; and<br>(d) is appropriately documented and regularly maintained and updated.<br>The supervisor requires corrective action if material deficiencies are identified in a bank's stress testing programme or if the results of stress tests are not adequately taken into consideration in the bank's decision-making process. | |
| 14 | The supervisor assesses whether banks appropriately account for risks (including liquidity impacts) in their internal pricing, performance measurement and new product approval process for all significant business activities. | |
| Additional criterion | | Comments |
| 1 | The supervisor requires banks to have appropriate policies and processes for assessing other material risks not directly addressed in the subsequent Principles, such as reputational and strategic risks. | |

**Principle 16: Capital adequacy**

The supervisor sets prudent and appropriate capital adequacy requirements for banks that reflect the risks undertaken by, and presented by, a bank in the context of the markets and macroeconomic conditions in which it operates. The supervisor defines the components of capital, bearing in mind their ability to absorb losses.

Reference documents: *Revisions to the Basel II market risk framework (updated as of 31 December 2010)*, February 2011; *Minimum requirements to ensure loss absorbency at the point of non-viability*, January 2011; Consultative document on *Capitalisation of bank exposures to central counterparties*, December 2010 ***[to be updated when finalised]***; *Sound practices for backtesting counterparty credit risk models*,

December 2010; *Guidance for national authorities operating the countercyclical capital buffer*, December 2010; *Basel III: A global regulatory framework for more resilient banks and banking systems*, December 2010; *Guidelines for computing capital for incremental risk in the trading book*, July 2009; *Enhancements to the Basel II framework*, July 2009; *Range of practices and issues in economic capital frameworks*, March 2009; *International convergence of capital measurement and capital standards: a revised framework, comprehensive version*, June 2006; and *International convergence of capital measurement and capital standards*, July 1988.

| Principle 16: Capital adequacy | | |
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| Essential criteria | | Comments |
| 1 | Laws, regulations or the supervisor require banks to calculate and consistently observe prescribed capital requirements, including thresholds by reference to which a bank might be subject to supervisory action. Laws, regulations or the supervisor define the qualifying components of capital, ensuring that emphasis is given to those elements of capital permanently available to absorb losses on a going concern basis. | |
| 2 | At least for internationally active banks, the definition of capital, the risk coverage, the method of calculation and thresholds for the prescribed requirements are not lower than those established in the applicable Basel standard. | |
| 3 | The supervisor has the power to impose a specific capital charge and/or limits on all material risk exposures, if warranted, including in respect of risks which the supervisor considers not to have been adequately transferred or mitigated through transactions (eg securitisation transactions) entered into by the bank. Both on-balance sheet and off-balance sheet risks are included in the calculation of prescribed capital requirements. | |
| 4 | The prescribed capital requirements reflect the risk profile and ~~systemic~~ importance of banks in the context of the markets and macroeconomic conditions in which they operate and constrain the build-up of leverage in banks and the banking sector. Laws and regulations in a particular jurisdiction may set higher overall capital adequacy standards than the applicable Basel requirements. | *"Laws and regulations in a particular jurisdiction may set higher **overall** capital adequacy standards than the applicable Basel requirements":* We understand that you are addressing SIFIs' capital add-on issue. It seems to us very important that the document specifies (probably in Principle 13 - Home-host relationships) that the qualification of a bank as a |

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| | | "systemic entity" should be determined exclusively at its consolidated level, by its home regulator (qualifying it as "globally systemic"), and not at a subsidiary level, and even less at the branch level, by a host regulator (qualifying them as "locally systemic"). |
| 5 | The use of banks' internal assessments of risk as inputs to the calculation of regulatory capital is approved by the supervisor. If the supervisor approves such use:<br>(a) such assessments adhere to rigorous qualifying standards;<br>(b) any cessation of such use, or any material modification of the bank's processes and models for producing such internal assessments, are subject to the approval of the supervisor;<br>(c) the supervisor has the capacity to evaluate a bank's internal assessment process in order to determine that the relevant qualifying standards are met and that the bank's internal assessments can be relied upon as a reasonable reflection of the risks undertaken;<br>(d) the supervisor has the power to impose conditions on its approvals if the supervisor considers it prudent to do so; and<br>(e) if a bank does not continue to meet the qualifying standards or the conditions imposed by the supervisor on an ongoing basis, the supervisor has the power to revoke its approval. | |
| 6 | The supervisor has the power to require banks to adopt a forward-looking approach to capital management (including the conduct of appropriate stress testing). The supervisor has the power to require banks:<br>(a) to set capital levels and manage available capital in anticipation of possible events or changes in market conditions that could have an adverse effect; and<br>(b) to have in place feasible contingency arrangements to raise capital or reduce exposures in times of stress, as appropriate in the light of the risk profile and ~~systemic~~ importance of the bank | *"The supervisor has the power to require banks to adopt a* ***forward-looking approach*** *to capital management (including the conduct of appropriate stress testing). [...] (b) to have in place feasible contingency arrangements* ***to raise capital or reduce exposures in times of stress****"*.<br><br>The proximity of these two expressions in the same criterion makes it a bit inconsistent. We are well aware that raising capital in times of stress will increase the pro-cyclicality, in contradiction with the objective of a forward-looking approach. |
| Additional criteria | | Comments |

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| 1 | For non-internationally active banks, capital requirements, including the definition of capital, the risk coverage, the method of calculation, the scope of application and the capital required, are broadly consistent with the principles of the applicable Basel standard relevant to internationally active banks. | |
| 2 | The supervisor requires adequate distribution of capital within different entities of a banking group according to the allocation of risks. | |

**Principle 17: Credit risk**

Suggested changes:

*"The supervisor determines that banks have an adequate credit risk management process that takes into account their risk ~~appetite~~* ***tolerance****, risk profile and market and macroeconomic conditions. This includes prudent policies and processes to identify, measure, evaluate, monitor, report and control or mitigate credit risk (including counterparty credit risk) on a timely basis. The full credit lifecycle is covered including credit underwriting, credit evaluation, and the ongoing management of the bank's loan and investment portfolios."*

Reference documents: *Sound practices for back-testing counterparty credit risk models*, December 2010; FSB *Report on Principles for Reducing Reliance on CRA Ratings*, October 2010; *Enhancements to the Basel II framework*, July 2009; *Sound credit risk assessment and valuation for loans*, June 2006; and *Principles for the management of credit risk*, September 2000.

| Principle 17: Credit risk | | |
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| Essential criteria | | Comments |
| 1 | Laws, regulations or the supervisor require banks to have appropriate credit risk management processes that provide a comprehensive bank-wide view of credit risk exposure. The supervisor determines that the processes are consistent with the risk appetite, risk profile, ~~systemic~~ importance and capital strength of the bank, take into account market and macroeconomic conditions and result in prudent standards of credit underwriting, evaluation, administration and monitoring. | |
| 2 | The supervisor determines that a bank's Board approves, and regularly reviews, the credit risk management strategy and significant policies and processes for assuming,[66] identifying, measuring, evaluating, monitoring, reporting and controlling or mitigating credit risk (including counterparty credit risk and associated potential future exposure) and that these are consistent with the risk appetite set by the Board. The supervisor also determines that senior management implements the credit risk strategy approved by the Board and develops the aforementioned policies and processes | |
| | The supervisor requires, and regularly determines, that such policies and processes establish an appropriate and properly controlled credit risk | |

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| 3<br><br><br><br><br><br><br><br><br>3 | environment, including:<br>(a) a well documented and effectively implemented strategy and sound policies and processes for assuming credit risk, without undue reliance on external credit assessments;<br>(b) well defined criteria and policies and processes for approving new exposures (including prudent underwriting standards) as well as for renewing and refinancing existing exposures, and identifying the appropriate approval authority for the size and complexity of the exposures;<br>(c) effective credit administration policies and processes, including continued analysis of a borrower's ability and willingness to repay under the terms of the debt (including review of the performance of underlying assets in the case of securitisation exposures); monitoring of documentation, legal covenants, contractual requirements, collateral and other forms of credit risk mitigation; and an appropriate asset grading or classification system;<br>(d) effective information systems for accurate and timely identification, aggregation and reporting of credit risk exposure to the bank's Board and senior management on an ongoing basis;<br>(e) prudent and appropriate credit limits, consistent with the bank's risk appetite, risk profile and capital strength, which are understood by, and regularly communicated to, relevant staff;<br>(f) exception tracking and reporting processes which ensure prompt action at the appropriate level of the bank's senior management or Board where necessary; and<br>(g) effective controls (including in respect of the quality, reliability and relevancy of data and in respect of validation procedures) around the use of models to identify and measure credit risk and set limits. | |
| 4 | The supervisor determines that banks have policies and processes to monitor the total indebtedness of entities to which they extend credit and any risk factors that may result in default including significant unhedged foreign exchange risk. | This criterion is not understandable in the context of this document on Core Principles for supervision. Its content is not at the same level as the content of the rest of the document. |
| 5 | The supervisor requires that banks make credit decisions free of conflicts of interest and on an arm's length basis. | |
| 6 | The supervisor requires that the credit policy prescribes that major credit risk exposures exceeding a certain amount or percentage of the bank's capital are to be decided by the bank's senior management. The same applies to credit | |

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| | risk exposures that are especially risky or otherwise not in line with the mainstream of the bank's activities. | |
| 7 | The supervisor has full access to information in the credit and investment portfolios and to the bank officers involved in assuming, managing, controlling and reporting on credit risk. | |
| 8 | The supervisor requires banks to include their credit risk exposures into their stress testing programmes for risk management purposes. | |
| Additional criteria | | Comments |
| - | No additional criteria | - |

**Principle 18: Problem assets, provisions and reserves**

The supervisor determines that banks have adequate policies and processes for the early identification and management of problem assets, and the maintenance of adequate provisions and reserves.

Reference documents: *Sound credit risk assessment and valuation for loans*, June 2006 and *Principles for the management of credit risk*, September 2000.

| Principle 18: Problem assets, provisions and reserves | | |
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| Essential criteria | | Comments |
| 1 | Laws, regulations or the supervisor require banks to formulate policies and processes for identifying and managing problem assets. In addition, laws, regulations or the supervisor require regular review by banks of their problem assets (at an individual level or at a portfolio level for credits with homogenous characteristics) and asset classification, provisioning and write-offs. | |
| 2 | The supervisor determines the adequacy of a bank's policies and processes for grading and classifying its assets and establishing appropriate and robust provisioning levels. The reviews supporting the supervisor's opinion may be conducted by external experts, with the supervisor reviewing the work of the external experts to determine as to the adequacy of the bank's policies and | |

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| | processes. | |
| 3 | The supervisor determines that the bank's system for classification and provisioning takes into account off-balance sheet exposures. | |
| 4 | The supervisor determines that banks have appropriate policies and processes to ensure that provisions and write-offs are timely and reflect realistic repayment and recovery expectations, taking into account market and macroeconomic conditions. | The bank complies with accounting rules which are mandatory. Therefore, this issue is already addressed by these rules. |
| 5 | The supervisor determines that banks have appropriate policies and processes, and organisational resources for the early identification of deteriorating assets, for ongoing oversight of problem assets, and for collecting on past due obligations. For portfolios with uniform characteristics, loans are classified when payments are contractually in arrears for a minimum number of days (eg 30, 60, 90 days). The supervisor tests banks' treatment of assets with a view to identifying any material circumvention of the classification and provisioning standards (eg rescheduling, refinancing or reclassification of loans). | |
| 6 | The supervisor obtains information on a regular basis, and in relevant detail, or has full access to information concerning the classification of credits and assets and provisioning. The supervisor requires banks to have adequate documentation to support their classification and provisioning levels. | |
| 7 | The supervisor assesses whether the classification of the credits and assets and the provisioning is adequate for prudential purposes. If asset classifications are inaccurate or provisions are deemed to be inadequate for prudential purposes (eg if the supervisor considers existing or anticipated deterioration in asset quality to be of concern or if the provisions do not fully reflect losses expected to be incurred), the supervisor has the power to require the bank to adjust its classifications of individual assets, increase its levels of provisioning, reserves or capital and, if necessary, impose other remedial measures. | |
| 8 | The supervisor requires banks to have appropriate mechanisms in place for regularly assessing the value of risk mitigants, including guarantees, credit derivatives and collateral. The valuation of collateral reflects the net realisable value, taking into account prevailing market conditions. | |
| 9 | Laws, regulations or the supervisor establish criteria for assets to be:<br>(a) identified as impaired (eg loans are identified as impaired when there is | |

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| | reason to believe that all amounts due (including principal and interest) will not be collected in accordance with the contractual terms of the loan agreement); and<br>(b) reclassified as performing (eg loans are reclassified as performing when all arrears have been cleared and the loan has been brought fully current, repayments have been made in a timely manner over a continuous repayment period and continued collection, in accordance with the contractual terms, is expected). | |
| 10 | The supervisor determines that the bank's Board obtains timely and appropriate information on the condition of the bank's asset portfolio, including classification of credits and assets, the level of provisions and reserves and major problem assets. The information includes, at the minimum, summary results of the latest loan review process, comparative trends in the overall quality of problem assets, and measurements of existing or anticipated deterioration in asset quality and losses expected to be incurred. | |
| 11 | The supervisor requires that valuation, classification and provisioning at least for significant exposures are conducted on an individual item basis. For this purpose, supervisors require banks to set an appropriate threshold for the purpose of identifying significant exposures and to regularly review the level of the threshold. | |
| 12 | The supervisor regularly assesses any trends and concentrations in risk and risk build-up across the banking sector in relation to banks' problem assets and takes into account any observed concentration in the risk mitigation strategies adopted by banks and the potential effect on the efficacy of the mitigant in reducing loss. The supervisor considers the adequacy of provisions and reserves at bank and banking system level in the light of this assessment. | |
| Additional criteria | | Comments |
| - | No additional criteria | - |

**Principle 19: Concentration risk and large exposure limits**

The supervisor determines that banks have adequate policies and processes to identify, measure, evaluate, monitor, report and control or mitigate concentrations of risk on a timely basis. Supervisors set prudential limits to restrict bank exposures to single counterparties or groups of connected counterparties.

Reference documents: Joint Forum *Cross-sectoral review of group-wide identification and management of risk concentrations*, April 2008; *Sound credit risk assessment and for loans*, June 2006; *Principles for managing credit risk*, September 2000; and *Measuring and controlling large credit exposures*, January 1991.

| Principle 19: Concentration risk and large exposure limits | | |
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| Essential criteria | | Comments |
| 1 | Laws, regulations or the supervisor require banks to have policies and processes that provide a comprehensive bank-wide view of significant sources of concentration risk. Exposures arising from off-balance sheet as well as on-balance sheet items and from contingent liabilities are captured. | |
| 2 | The supervisor determines that a bank's information systems identify and aggregate on a timely basis, and facilitate active management of, exposures creating risk concentrations and large exposures [72] to single counterparties or groups of connected counterparties. | |
| 3 | The supervisor determines that a bank's risk management policies and processes establish thresholds for acceptable concentrations of risk, reflecting the bank's risk appetite, risk profile and capital strength, which are understood by, and regularly communicated to, relevant staff. The supervisor also determines that the bank's policies and processes require all material concentrations to be regularly reviewed and reported to the bank's Board. | Wording should be revised. The fact that a bank needs a set of rules to manage its concentrations does not mean that it should put in place a global framework of hard limits to manage them. Such a framework can be suitable for some specific portfolios but not for all of them.<br><br>Generally speaking, a risk management framework has to be operational and safe. Hard limits are often set at a level which makes them irrelevant so that the institution is not expected to reach them. Soft limits are more binding and their granularity can be adjusted. They make possible a better risk management in the respect |

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| | | of the general interest (economic consequences of hard limits are difficult to assess). |
| 4 | The supervisor regularly obtains information that enables concentrations within a bank's portfolio, including sectoral, geographical and currency exposures, to be reviewed. | |
| 5 | In respect of credit exposure to single counterparties or groups of connected counterparties, laws or regulations explicitly define, or the supervisor has the power to define, a "group of connected counterparties" to reflect actual risk exposure. The supervisor may exercise discretion in applying this definition on a case by case basis. | |
| 6 | Laws, regulations or the supervisor set prudent limits on large credit exposures to a single counterparty or a group of connected counterparties. "Exposures" for this purpose include all claims and transactions, on-balance sheet as well as off-balance sheet. The supervisor determines that senior management monitors these limits and that they are not exceeded on a solo or consolidated basis. | |
| 7 | The supervisor requires banks to include the impact of significant risk concentrations into their stress testing programmes for risk management purposes. | |
| Additional criterion | | Comments |
| 1 | In respect of credit exposure to single counterparties or groups of connected counterparties, banks are required to adhere to the following definitions:<br>(a) ten per cent or more of a bank's capital is defined as a large exposure; and<br>(b) twenty-five per cent of a bank's capital is the limit for an individual large exposure to a private sector non-bank counterparty or a group of connected counterparties.<br>Minor deviations from these limits may be acceptable, especially if explicitly temporary or related to very small or specialised banks. | |

**Principle 20: Transactions with related parties**

Suggested changes:

*"In order to prevent abuses arising in transactions with related parties and to address the risk of conflict of interest, the supervisor requires banks to enter into any transactions with related parties on an arm's length basis; to monitor these transactions; to take appropriate steps to control or mitigate the risks; and**, where necessary**, to write off exposures to related parties in accordance with standard policies and processes."*

Reference document: *Principles for the management of credit risk*, September 2000.

| Principle 20: Transactions with related parties | | |
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| Essential criteria | | Comments |
| 1 | Laws or regulations provide, or the supervisor has the power to prescribe, a comprehensive definition of "related parties". This considers the parties identified in the footnote to the Principle. The supervisor may exercise discretion in applying this definition on a case by case basis. | |
| 2 | Laws, regulations or the supervisor require that transactions with related parties are not undertaken on more favourable terms (eg in credit assessment, tenor, interest rates, fees, amortisation schedules, requirement for collateral) than corresponding transactions with non-related counterparties. | According to the French law, related party transactions are subject to a prior approval of the board when they are not at arm's length. The transaction must then be approved by the general shareholders meeting.<br><br>The person concerned by the related party transaction is not authorized to vote within such board meeting nor, as the case may be, within the shareholders general meeting. The existence of such rule participates in the protection of minority shareholders. |
| 3 | The supervisor requires that transactions with related parties and the write-off of related-party exposures exceeding specified amounts or otherwise posing special risks are subject to prior approval by the bank's Board. The supervisor requires that Board members with conflicts of interest are excluded from the approval process of granting and managing related party transactions. | National laws should deal with this issue and particularly the management of conflicts of interest. In the context of this document, this point should be raised only for countries where there are no such laws. |

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| 4 | The supervisor determines that banks have policies and processes to prevent persons benefiting from the transaction and/or persons related to such a person from being part of the process of granting and managing the transaction. | |
| 5 | Laws or regulations set, or the supervisor has the power to set on a general or case by case basis, limits for exposures to related parties, to deduct such exposures from capital when assessing capital adequacy, or to require collateralisation of such<br>exposures. When limits are set on aggregate exposures to related parties, those are at least as strict as those for single counterparties or groups of connected counterparties | Recall that the exposures to consolidated subsidiaries are already eliminated from the consolidated accounts according to the IFRS standards, on which supervision is based. Those exposures should not be subject to any particular capital treatment.<br>For non-consolidated subsidiaries, equity exposures are already deducted where relevant. We understand that the purpose of this criterion is to avoid regulatory arbitrage (substituting debt for capital): there is no justification in this context for any specific treatment of transactions with related parties which are performed at arm's length. For exposures which are not at arm's length (something that will be extremely infrequent as usually legal and tax constraints do not permit it, and the group is not willing to subsidize other shareholders of the related parties), a stricter regulatory treatment may be envisaged on a case by case basis.<br>We see no reason to set stricter (or as strict) limits for arm's length exposures to related parties than for exposures to unrelated third parties. Indeed, the group usually has better customer knowledge of related parties than of others.<br>Again, the reasoning may be different for exposures which are not at arm's length. |
| 6 | The supervisor determines that banks have policies and processes to identify individual exposures to and transactions with related parties as well as the total amount of exposures, and to monitor and report on them through an independent credit review or audit process. The supervisor determines that exceptions to policies, processes and limits are reported to the appropriate level of the bank's senior management and, if necessary, to the Board, for timely action. The supervisor also determines that senior management | |

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| | monitors related party transactions on an ongoing basis, and that the Board also provides oversight of these transactions. | |
| 7 | The supervisor obtains and reviews information on aggregate exposures to related parties. | |
| Additional criteria | | Comments |
| - | No additional criteria | - |

**Principle 21: Country and transfer risks**

The supervisor determines that banks have adequate policies and processes to identify, measure, evaluate, monitor, report and control or mitigate country risk and transfer risk in their international lending and investment activities on a timely basis.

Reference document: *Management of banks' international lending*, March 1982.

| Principle 21: Country and transfer risks | | |
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| Essential criteria | | Comments |
| 1 | The supervisor determines that a bank's policies and processes give due regard to the identification, measurement, evaluation, monitoring, reporting and control or mitigation of country risk and transfer risk. The supervisor also determines that the processes are consistent with the risk profile, ~~systemic~~ importance and risk appetite of the bank, take into account market and macroeconomic conditions and provide a comprehensive bank-wide view of country and transfer risk exposure. Exposures are identified, monitored and managed on a regional and an individual country basis (in addition to the end-borrower/end-counterparty basis). Banks are required to monitor and evaluate developments in country risk and in transfer risk and apply appropriate countermeasures. | |
| 2 | The supervisor determines that banks have information systems, risk management systems and internal control systems that accurately aggregate, monitor and report country exposures on a timely basis; and ensure adherence to established country exposure limits. | |
| | There is supervisory oversight of the setting of appropriate provisions against | It could be added that options (a) and (b) are relevant |

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| 3<br><br><br><br><br><br><br><br><br>3 | country risk and transfer risk. There are different international practices which are all acceptable as long as they lead to risk-based results. These include:<br>(a) The supervisor (or some other official authority) decides on appropriate minimum provisioning by regularly setting fixed percentages for exposures to each country taking into account prevailing conditions. The supervisor reviews minimum provisioning levels where appropriate.<br>(b) The supervisor (or some other official authority) regularly sets percentage ranges for each country, taking into account prevailing conditions and the banks may decide, within these ranges, which provisioning to apply for the individual exposures. The supervisor reviews percentage ranges for provisioning purposes where appropriate.<br>(c) The bank itself (or some other body such as the national bankers association) sets percentages or guidelines or even decides for each individual loan on the appropriate provisioning. The adequacy of the provisioning will then be judged by the external auditor and/or by the supervisor. | only for banks applying the Standardised approach for credit risk. Indeed, the level of country risk is already embedded in the IRB parameters for exposures on counterparties located in a particular country.<br><br>Options (a) and (b) raise the issue of an ex ante provisioning. Moreover, a bank cannot accept provisioning rules which would not comply with accounting standards. |
| 4 | The supervisor regularly obtains and reviews sufficient information on a timely basis on the country risk and transfer risk of banks. The supervisor also has the power to obtain additional information, as needed (eg in crisis situations). | |
| Additional criteria | | Comments |
| - | No additional criteria | - |

**Principle 22: Market risk**

Suggested changes:

*"The supervisor determines that banks have an adequate market risk management process that takes into account their risk ~~appetite~~* ***tolerance,*** *risk profile, and market and macroeconomic conditions and the risk of a significant deterioration in market liquidity. This includes prudent policies and processes to identify, measure, evaluate, monitor, report and control or mitigate market risks on a timely basis."*

Reference documents: *Revisions to the Basel II market risk framework (updated as of 31 December 2010)*, February 2011; *Interpretive issues with respect to the revisions to the market risk framework*, February 2011; *Guidelines for computing capital for incremental risk in the trading book*, July 2009; *Supervisory guidance for assessing banks' financial instrument fair value practices*, April 2009; and *Amendment to the Capital Accord to incorporate market risks*, January 2005.

| Principle 22: Market risk | | |
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| Essential criteria | | Comments |
| 1 | Laws, regulations or the supervisor require banks to have appropriate market risk management processes that provide a comprehensive bank-wide view of market risk exposure. The supervisor determines that these processes are consistent with the risk appetite, risk profile, ~~systemic~~ importance and capital strength of the bank; take into account market and macroeconomic conditions and the risk of a significant deterioration in market liquidity, and clearly articulate the roles and responsibilities for identification, measuring, monitoring and control of market risk. | |
| 2 | The supervisor determines that banks' strategies, policies and processes for the management of market risk have been approved by the banks' Boards and that the Boards oversee management in a way that ensures that these policies and processes are implemented effectively and fully integrated into the banks' overall risk management process. | |
| 3 | The supervisor determines that the bank's policies and processes establish an appropriate and properly controlled market risk environment including:<br>(a) effective information systems for accurate and timely identification, aggregation, monitoring and reporting of market risk exposure to the bank's Board and senior management;<br>(b) appropriate market risk limits consistent with the bank's risk appetite, risk profile and capital strength, and with management's ability to manage market risk and which are understood by, and regularly communicated to, relevant staff;<br>(c) exception tracking and reporting processes which ensure prompt action at the appropriate level of the bank's senior management or Board, where necessary;<br>(d) effective controls around the use of models to identify and measure market risk, and set limits; and<br>(e) sound policies and processes for allocation of exposures to the trading book. | |
| 4 | The supervisor determines that there are systems and controls to ensure that banks' marked to market positions are revalued frequently. The supervisor also | |

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| | determines that all transactions are captured on a timely basis and that the valuation process uses consistent and prudent practices, and reliable market data verified by a function independent of the relevant risk-taking business units (or, in the absence of market prices, internal or industry-accepted models). To the extent that the bank relies on modelling for the purposes of valuation, the bank is required to ensure that the model is validated by a function independent of the relevant risk-taking businesses units. The supervisor requires banks to establish and maintain policies and processes for considering valuation adjustments/reserves for positions that otherwise cannot be prudently valued, including concentrated, less liquid, and stale positions. | |
| 5 | The supervisor determines that banks hold appropriate levels of capital and/or reserves against unexpected losses in the event of a significant change in marked-to-market valuations. | |
| 6 | The supervisor requires banks to include market risk exposure into their stress testing programmes for risk management purposes. | |
| Additional criteria | | Comments |
| - | No additional criteria | - |

**Principle 23: Interest rate risk in the banking book**

Suggested changes:

"*The supervisor determines that banks have adequate systems to identify, measure, evaluate, monitor, report and control or mitigate interest rate risk in the banking book on a timely basis. These systems take into account the bank's risk ~~appetite~~ **tolerance**~~,~~ risk profile and market and macroeconomic conditions.*"

Reference document: *Principles for the management and supervision of interest rate risk*, July 2004.

| Principle 23: Interest rate risk in the banking book | | |
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| Essential criteria | | Comments |
| 1 | Laws, regulations or the supervisor require banks to have an appropriate interest rate risk strategy and interest rate risk management framework that provides a comprehensive bank-wide view of interest rate risk. This includes policies and processes to identify measure, evaluate, monitor, report and control or mitigate material sources of interest rate risk. The supervisor determines that the bank's strategy, policies and processes are consistent with the risk appetite, risk profile and ~~systemic~~ importance of the bank, take into account market and macroeconomic conditions, and are regularly reviewed and appropriately adjusted, where necessary, with the bank's changing risk profile and market developments. | Proportionality principle should apply rather than pointing specific banks. |
| 2 | The supervisor determines that a bank's strategy, policies and processes for the management of interest rate risk have been approved, and are regularly reviewed, by the bank's Board. The supervisor also determines that senior management ensures that the strategy, policies and processes are developed and implemented effectively. | |
| 3<br><br>3 | The supervisor determines that banks' policies and processes establish an appropriate and properly controlled interest rate risk environment including:<br>(a) comprehensive and appropriate interest rate risk measurement systems;<br>(b) regular review, and independent (internal or external) validation, of any models used by the functions tasked with managing interest rate risk (including review of key model assumptions);<br>(c) appropriate limits, approved by the banks' Boards and senior management, that reflect the banks' risk appetite, risk profile and capital strength, and are understood by, and regularly communicated to, relevant staff;<br>(d) effective exception tracking and reporting processes which ensure prompt action at the appropriate level of the banks' senior management or Boards where necessary; and<br>(e) effective information systems for accurate and timely identification, aggregation, monitoring and reporting of interest rate risk exposure to the banks' Boards and senior management. | |

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| 4 | The supervisor requires banks to include appropriate scenarios into their stress testing programmes to measure their vulnerability to loss under adverse interest rate movements. | |
| Additional criteria | | Comments |
| 1 | The supervisor obtains from banks the results of their internal interest rate risk measurement systems, expressed in terms of the threat to~~economic value~~ **<u>capital due to a loss</u>**, including using a standardised interest rate shock on the banking book. | As the economic value usually refers to the value for the stockholder of the bank, we recommend substituting 'threat to capital due to a loss' to 'threat to economic value'.<br>Indeed, a change in the economic value of the bank is a risk only to the extent that the capital may decrease. In other words, as the supervision aims at protecting the debt holders rather than the stock holders who have invested in stocks to bear and benefit from the risks left. |
| 2 | The supervisor assesses whether the internal capital measurement systems of banks adequately capture the interest rate risk in the banking book. | |

**Principle 24: Liquidity risk**

<u>Suggested changes</u>:

*"The supervisor sets prudent and appropriate liquidity requirements (which can include either quantitative or qualitative requirements or both) for banks that reflect the liquidity needs of the bank. The supervisor determines that banks have a strategy that enables prudent management of liquidity risk and compliance with liquidity requirements. The strategy takes into account the bank's risk profile as well as market and macroeconomic conditions and includes prudent policies and processes, consistent with the bank's risk ~~appetite~~ **<u>tolerance</u>**~~,~~, to identify, measure, evaluate, monitor, report and control or mitigate liquidity risk over an appropriate set of time horizons."*

Reference documents: *Basel III: International framework for liquidity risk measurement, standards and monitoring*, December 2010 and *Principles for Sound Liquidity Risk Management and Supervision*, September 2008.

<u>Comment:</u>
These changes in the wording are made to clarify this paragraph where different concepts are used (strategy, risk profile, risk appetite...) in a manner that is not consistent with the document "Principles for Sound Liquidity Management and Supervision, Sept 2008".

| Principle 24: Liquidity risk | | |
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| Essential criteria | | Comments |
| 1 | Laws, regulations or the supervisor require banks to consistently observe prescribed liquidity requirements ~~including thresholds by reference to which a bank is subject to supervisory action~~. ~~At least for internationally active banks, the prescribed requirements are not lower than, and~~ the supervisor uses a range of liquidity monitoring tools ~~no less extensive than, those prescribed in the applicable Basel standard~~. | The Basel proposals are not legally binding and are usually adapted, as they should, to local specificities. Consequently, supervisors should not be evaluated with a standard that they are not legally binding in their jurisdiction.<br>As is, this paragraph contradicts the role of the BCBS as a recommendation-building body but not a regulatory-binding body. |
| 2 | The prescribed liquidity requirements reflect the liquidity risk profile of banks (including on- and off-balance sheet risks) in the context of the markets and macroeconomic conditions in which they operate. | |
| 3 | The supervisor determines that banks have a robust liquidity management framework that requires the banks to maintain sufficient liquidity to withstand a range of stress events, and includes appropriate policies and processes for managing liquidity risk which have been approved by the banks' Boards. The supervisor also determines that these policies and processes provide a comprehensive bank-wide view of liquidity risk and are consistent with the banks' risk profile and ~~systemic~~ importance. | |
| 4 | The supervisor determines that banks' liquidity strategy, policies and processes establish an appropriate and properly controlled liquidity risk environment including:<br>(a) clear articulation of an overall liquidity risk appetite that is appropriate for the banks' business and their role in the financial system and that is approved by the banks' Boards;<br>(b) sound day-to-day, and where appropriate intraday, liquidity risk management practices;<br>(c) effective information systems to enable active identification, aggregation, monitoring and control of liquidity risk exposures and funding needs (including active management of collateral positions) bank-wide; | |

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| | (d) adequate oversight by the banks' Boards in ensuring that management effectively implements policies and processes for the management of liquidity risk in a manner consistent with the banks' liquidity risk appetite; and<br>(e) regular review by the banks' Boards (at least annually) and appropriate adjustment of the banks' strategy, policies and processes for the management of liquidity risk in the light of the banks' changing risk profile and external developments in the markets and macroeconomic conditions in which they operate. | |
| 5 | The supervisor requires banks to establish, and regularly review, funding strategies and policies and processes for the ongoing measurement and monitoring of funding requirements and the effective management of funding risk. The policies and processes include consideration of how other risks (eg credit, market, operational and reputation risk) may impact the bank's overall liquidity strategy, and include:<br>(a) an analysis of funding requirements under alternative scenarios;<br>(b) the maintenance of ~~a cushion of high quality,~~ unencumbered~~, liquid~~ assets which can be used, without impediment, to obtain funding in times of stress;<br>(c) diversification in the sources (including counterparties, instruments, currencies and markets) and tenor of funding, and regular review of concentration limits;<br>(d) regular efforts to establish and maintain relationships with liability holders;<br>(e) regular assessment of capacity to convert assets into liquidity. | The wording on the assets that could build up the liquidity buffer is too specific. We suggest a more general wording to accommodate differences between jurisdictions.<br><br>Moreover, assets that constitute the buffer are generally repoed and not sold in case of crisis. We therefore suggest making the wording in (e) more general. |
| 6<br><br>6 | The supervisor determines that banks have robust liquidity contingency funding plans to handle liquidity problems. The supervisor determines that the bank's contingency funding plan is formally articulated, adequately documented and sets out the bank's strategies for addressing liquidity shortfalls in a range of stress environments~~ without placing reliance on Lender of Last Resort support~~. The supervisor also determines that the bank's contingency funding plan establishes clear lines of responsibility, includes clear communication plans (including communication with the supervisor) and is regularly tested and updated to ensure it is operationally robust. The supervisor assesses whether, in the light of the bank's risk profile and ~~systemic~~ importance, the bank's contingency funding plan is feasible and requires the bank to address any deficiencies. | The wording *'Lender of Last Resort support'* is unclear. The role of the central banks in liquidity crises, even more so in systemic crises, to be the lender of last resort is the choice of each jurisdiction. The belief that capital market can be relied upon to provide market liquidity to assets that would be part of the liquidity buffer has been proved repeatedly wrong over the last few years.<br>We urge BCBS not to stick to a 'efficient market' belief and to acknowledge the role of central banks as having a role in mitigating liquidity crises, and not to impose, directly or indirectly, on jurisdiction this belief. |
| | The supervisor requires banks to include a variety of short-term and protracted | |

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| 7 | bank-specific and market-wide liquidity stress scenarios (individually and in combination), using conservative and regularly reviewed assumptions, into their stress testing programmes for risk management purposes. The supervisor determines that the results of the stress-tests are used by the bank to adjust its liquidity risk management strategies, policies and positions and to develop effective contingency funding plans. | |
| 8 | The supervisor identifies those banks carrying out ~~significant~~ ~~foreign currency~~ liquidity risks ~~transformation~~ in significant currency;~~. Where a bank's foreign currency business is significant, or the bank has significant exposure in a given currency, the supervisor~~ **and** requires the bank **(a)** to undertake separate analysis of its strategy and monitor its liquidity needs separately for each such significant currency. ~~This includes the use of stress testing to determine the appropriateness of mismatches in that currency and, where appropriate, the setting and regular review of limits on the size of its cash flow mismatches for foreign currencies in aggregate and for each significant currency individually. In such cases, the supervisor also~~ **(b) to** monitors the bank's liquidity needs in each significant currency, and **(c) to** evaluates the bank's ability to transfer liquidity from one currency to another across jurisdictions and legal entities. | The definition of 'foreign' is unclear in a globalized world.<br>Similarly, 'transformation' is not a risk in itself.<br>That is the reason why we suggest modifying the wording.<br><br>The second portion of this section is modified as it is far too prescriptive for a paper establishing principles. |
| Additional criterion | | Comments |
| 1<br><br>1 | The supervisor determines that banks' levels of ~~pledged~~ **encumbered** balance-sheet assets are managed within acceptable limits to mitigate the risks posed by excessive levels of encumbrance in terms of the impact on the banks' cost of funding and the implications for the sustainability of their long-term liquidity position. The supervisor requires banks to commit to adequate disclosure and set appropriate limits to mitigate the identified risks. | The word 'pledge' may refer to mechanism that doesn't prevent the bank from selling the assets. As an example, assets are pledged to the FED as a technical process to make sure that, should they be needed to access collateralized borrowing from the FED, they would be already known to the FED. While they are pledged but not used, those assets are unencumbered and can be used at will by the banks. |

**Principle 25: Operational risk**

Suggested changes:

*"The supervisor determines that banks have an adequate operational risk management framework that takes into account their risk ~~appetite~~* ***tolerance****, risk profile and market and macroeconomic conditions. This includes prudent policies and processes to identify, assess, evaluate, monitor, report and control or mitigate operational risk on a timely basis."*

Justification:
We believe that the word "risk appetite" is not relevant for operational risk. We would prefer to use "risk tolerance" instead.

| Principle 25: Operational risk | | |
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| Essential criteria | | Comments |
| 1 | Law, regulations or the supervisor require banks to have appropriate operational risk management strategies, policies and processes to identify, assess, evaluate, monitor, report and control or mitigate operational risk. The supervisor determines that the bank's strategy, policies and processes are consistent with the bank's risk profile, ~~systemic~~ importance, risk appetite and capital strength, take into account market and macroeconomic conditions, and address all major aspects of operational risk prevalent in the businesses of the bank on a bank-wide basis (including periods when operational risk could increase). | |
| 2 | The supervisor requires banks' strategies, policies and processes for the management of operational risk (including the banks' risk appetite for operational risk) to be approved and regularly reviewed by the banks' Boards. The supervisor also requires that the Board oversees management in ensuring that these policies and processes are implemented effectively. | |
| 3 | The supervisor determines that the approved strategy and significant policies and processes for the management of operational risk are implemented effectively by management and fully integrated into the bank's overall risk management process. | |
| 4 | The supervisor reviews the quality and comprehensiveness of the bank's disaster recovery and business continuity plans to assess their feasibility in scenarios of severe business disruption which might plausibly affect the bank. | |

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| | In so doing, the supervisor determines that the bank is able to operate as a going concern and minimise losses, including those that may arise from disturbances to payment and settlement systems, in the event of severe business disruption. | |
| 5 | The supervisor determines that banks have established appropriate information technology policies and processes to identify, assess, monitor and manage technology risks. The supervisor also determines that the bank has an appropriate and sound information technology infrastructure to meet its current and projected business requirements (under normal circumstances and in periods of stress), which ensures data and system integrity, security and availability and supports integrated and comprehensive risk management. | |
| 6 | The supervisor determines that banks have appropriate and effective information systems to:<br>(a) monitor operational risk;<br>(b) compile and analyse operational risk data; and<br>(c) facilitate appropriate reporting mechanisms at the banks' Boards, senior management and business line levels that support proactive management of operational risk. | |
| 7 | The supervisor requires that banks have appropriate reporting mechanisms to keep the supervisor apprised of developments affecting operational risk at banks in their jurisdictions. | |
| 8 | ~~The supervisor determines that legal risk is incorporated into the operational risk management processes of the bank~~. | When enough elements are available to qualify a future loss, accounting rules ask for a provision.<br>This criterion has nothing to do in this document. We suggest its deletion. |
| 9 | The supervisor determines that banks have established appropriate policies and processes to assess, manage and monitor outsourced activities. The outsourcing risk management programme covers:<br>(a) conducting appropriate due diligence for selecting potential service providers;<br>(b) structuring the outsourcing arrangement;<br>(c) managing and monitoring the risks associated with the outsourcing arrangement;<br>(d) ensuring an effective control environment; and<br>(e) establishing viable contingency planning. | |

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| 9 | Outsourcing policies and processes require the bank to have comprehensive contracts and/or service level agreements with a clear allocation of responsibilities between the outsourcing provider and the bank. | |
| Additional criterion | | Comments |
| 1 | The supervisor regularly identifies any common points of exposure to operational risk or potential vulnerability (eg outsourcing of key operations by many banks to a common service provider or service provider disruption in payment and settlement activities). | |

**Principle 26: Internal control and audit**

The supervisor determines that banks have adequate internal controls to establish and maintain a properly controlled operating environment for the conduct of their business taking into account their risk profile. These include clear arrangements for delegating authority and responsibility; separation of the functions that involve committing the bank, paying away its funds, and accounting for its assets and liabilities; reconciliation of these processes; safeguarding the bank's assets; and appropriate independent internal audit and compliance functions to test adherence to these controls as well as applicable laws and regulations.

| Principle 26: Internal control and audit | | |
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| Essential criteria | | Comments |
| 1 | Laws, regulations or the supervisor require banks to have internal controls which are adequate to establish a properly controlled operating environment for the conduct of their business taking into account their risk profile. These controls are the responsibility of the bank's Board and/or senior management and deal with organisational structure, accounting policies and processes, checks and balances, and the safeguarding of assets and investments (including measures for the prevention and early detection and reporting of misuse such as fraud, embezzlement unauthorised trading and computer intrusion). More specifically, these controls address:<br>(a) organisational structure: definitions of duties and responsibilities, including clear delegation of authority (eg clear loan approval limits), decision-making policies and processes, separation of critical functions (eg business | |

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| 1 | origination, payments, reconciliation, risk management, accounting, audit and compliance);<br>(b) accounting policies and processes: reconciliation of accounts, control lists, information for management;<br>(c) checks and balances (or "four eyes principle"): segregation of duties, crosschecking,<br>dual control of assets, double signatures; and<br>(d) safeguarding assets and investments: including physical control and computer access. | |
| 2 | The supervisor determines that there is an appropriate balance in the skills and resources of the back office and control functions relative to the front office/business origination units. The supervisor also determines that the staff of the back office and control functions have sufficient expertise and authority within the organisation (and where appropriate, in the case of control functions, sufficient access to the bank's Board) to be an effective check and balance to the front office/business origination units. | |
| 3 | The supervisor determines that banks have an adequately staffed, permanent and independent compliance function [81] that assists senior management in managing effectively the compliance risks faced by the bank. The supervisor determines that staffs within the compliance function are suitably trained, have relevant experience and have sufficient authority within the bank to perform their role effectively. The supervisor determines that the bank's Board exercises oversight of the management of the compliance function. | |
| 4 | The supervisor determines that banks have an independent, permanent and effective internal audit function[82] charged with:<br>(a) assessing whether existing policies, processes and internal controls (including risk management, compliance and corporate governance processes) are effective, appropriate and remain sufficient for the bank's business; and<br>(b) ensuring that policies and processes are complied with. | |
| 5 | The supervisor determines that the internal audit function:<br>(a) has sufficient resources, and staff that are suitably trained and have relevant experience to understand and evaluate the business they are auditing;<br><br>~~(b) has appropriate independence with reporting lines to the bank's Board or to an audit committee of the Board, and has status within the bank to ensure that~~ | Point 5 (b): we disagree with the principle which states that "Internal audit function has an appropriate |

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| | ~~senior management reacts to and acts upon its recommendations~~;<br><br>(c) is kept informed in a timely manner of any material changes made to the bank's risk management strategy, policies or processes;<br>(d) has full access to and communication with any member of staff as well as full access to records, files or data of the bank and its affiliates, whenever relevant to the performance of its duties;<br>(e) employs a methodology that identifies the material risks run by the bank;<br>(f) prepares an audit plan, which is reviewed regularly, based on its own risk assessment and allocates its resources accordingly; and<br>(g) has the authority to assess any outsourced functions. | independence with reporting lines to the Bank's Board or to an audit Committee of the Board.<br>Any other organization where the supervisory and the executive functions may be perceived being in competition would inevitably lead to conflicting situations.<br><br>The wording should be the following:<br>***"[the Internal audit function] reports to the governing body in its executive function and provide through it the material or the testimony needed by governing body in its the supervisory function. The head of internal audit should provide the audit committee or the governing body in its supervisory function with information taken from the one prepared for the use of the governing body in its executive function."*** |
| Additional criteria | | Comments |
| - | No additional criteria | - |

**Principle 27: Financial reporting and external audit**

The supervisor determines that banks and banking groups maintain adequate and reliable records, prepare financial statements in accordance with accounting policies and practices that are widely accepted internationally and annually publish information that fairly reflects their financial condition and performance and bears an independent external auditor's opinion. The supervisor also determines that banks and parent companies of banking groups have adequate governance and oversight of the external audit function.

**Principle 28: Disclosure and transparency**

The supervisor determines that banks and banking groups regularly publish information on a consolidated and, where appropriate, solo basis that is easily accessible and fairly reflects their financial condition, performance, risk exposures, risk management strategies and corporate governance policies and processes.

| Principle 28: Disclosure and transparency | | |
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| Essential criteria | | Comments |
| 1 | Laws, regulations or the supervisor require periodic public disclosures [84] of information by banks on a consolidated and, where appropriate, solo basis that adequately reflect the bank's true financial condition and performance, and adhere to standards promoting comparability, relevance, reliability and timeliness of the information disclosed. | |
| 2 | The supervisor determines that the required disclosures include both qualitative and quantitative information on a bank's financial performance, financial position, risk management strategies and practices, risk exposures, aggregate exposures to related parties, transactions with related parties, accounting policies, and basic business, management, governance and remuneration. The scope and content of information provided and the level of disaggregation and detail is commensurate with the risk profile and ~~systemic~~ importance of the bank. | |
| 3 | Laws, regulations or the supervisor require banks to disclose all material entities in the group structure. | |
| 4 | The supervisor or another government agency effectively reviews and enforces compliance with disclosure standards | |
| 5 | The supervisor or other relevant bodies regularly publish information on the banking system in aggregate to facilitate public understanding of the banking system and the exercise of market discipline. Such information includes aggregate data on balance sheet indicators and statistical parameters that reflect the principal aspects of banks' operations (balance sheet structure, | |

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| | capital ratios, income earning capacity, and risk profiles). | |
| Additional criterion | | Comments |
| 1 | The disclosure requirements imposed promote disclosure of information that will help in understanding a bank's risk exposures during a financial reporting period, for example on average exposures or turnover during the reporting period. | |

**Principle 29: Abuse of financial services**

Suggested changes:

*"The supervisor determines that banks have adequate policies and processes, including strict customer due diligence (CDD) rules to promote high ethical and professional standards in the financial sector and prevent the bank from being used, ~~intentionally or unintentionally~~, for criminal activities."*

Reference documents: *FATF AML/CFT Methodology*, 2004, as updated; *FATF 40 + IX*, 2003; *Consolidated KYC risk management*, October 2004; *Shell banks and booking offices*, January 2003; and *Customer due diligence for banks*, October 2001.

| Principle 29: Abuse of financial services | | |
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| Essential criteria | | Comments |
| 1 | Laws or regulations establish the duties, responsibilities and powers of the supervisor related to the supervision of banks' internal controls and enforcement of the relevant laws and regulations regarding criminal activities. | |
| 2 | The supervisor determines that banks have adequate policies and processes that promote high ethical and professional standards and prevent the bank from being used, ~~intentionally or unintentionally~~, for criminal activities. This includes the prevention and detection of criminal activity, and reporting of such suspected activities to the appropriate authorities. | We suggest deleting the word "unintentionally" in this paragraph because this concept is not compatible with the legal definition of criminal activities (which implies an intent) and therefore it creates confusion. |

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| 3 | In addition to reporting to the financial intelligence unit or other designated authorities, banks report to the banking supervisor suspicious activities and incidents of fraud when such activities/incidents are material to the safety, soundness or reputation of the bank | |
| 4 | The supervisor determines that banks establish CDD policies and processes which are well documented and communicated to all relevant staff. The supervisor also determines that such policies and processes are integrated into the bank's overall risk management and there are appropriate steps to identify, assess, monitor, manage and mitigate risks of money laundering and the financing of terrorism with respect to customers, countries and regions, as well as to products, services, transactions and delivery channels on an ongoing basis. The CDD management programme, on a group-wide basis, has as its essential elements:<br>(a) a customer acceptance policy that identifies business relationships that the bank will not accept based on identified risks;<br>(b) a customer identification, verification and due diligence programme on an ongoing basis; this encompasses verification of beneficial ownership, understanding the purpose and nature of the business relationship, and risk based reviews to ensure that records are updated and relevant;<br>(c) policies and processes to monitor and recognise unusual or potentially suspicious transactions;<br>(d) enhanced due diligence on high-risk accounts (eg escalation to the bank's senior management level of decisions on entering into business relationships with these accounts or maintaining such relationships when an existing relationship becomes high-risk);<br>(e) enhanced due diligence on politically exposed persons (including, among other things, escalation to the bank's senior management level of decisions on entering into business relationships with these persons), and<br>(f) clear rules on what records must be kept on CDD and individual transactions and their retention period. Such records have at least a five year retention period. | |
| 5 | The supervisor determines that banks have in addition to normal due diligence, specific policies and processes regarding correspondent banking. Such policies and processes include:<br>(a) gathering sufficient information about their respondent banks to understand | |

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| | fully the nature of their business and customer base, and how they are supervised; and<br>(b) not establishing or continuing correspondent relationships with those that do not have adequate controls against criminal activities or that are not effectively supervised by the relevant authorities, or with those banks that are considered to be shell banks. | |
| 6 | The supervisor determines that banks have sufficient controls and systems to prevent, identify and report potential abuses of financial services, including money laundering and the financing of terrorism. | |
| 7 | The supervisor has adequate powers to take action against a bank that does not comply with its obligations related to relevant laws and regulations regarding criminal activities. | |
| 8 | The supervisor determines that banks have:<br>(a) requirements for internal audit and/or external experts to independently evaluate the relevant risk management policies, processes and controls. The supervisor has access to their reports;<br>(b) established policies and processes to designate compliance officers at the banks' management level, and appoint a relevant dedicated officer to whom potential abuses of the banks' financial services (including suspicious transactions) is reported;<br>(c) adequate screening policies and processes to ensure high ethical and professional standards when hiring staff; or when entering into agency or outsourcing relationship; and<br>(d) on going training programmes for their staff, including on CDD and methods tomonitor and detect criminal and suspicious activities. | |
| 9 | The supervisor determines that banks have and follow clear policies and processes for staff to report any problems related to the abuse of the banks' financial services to either local management or the relevant dedicated officer or to both. The supervisor also determines that banks have and utilise adequate management information systems to provide the banks' Boards, management and the dedicated officers with timely and appropriate information on such activities. | |
| 10 | Laws provide that a member of a bank's staff who reports suspicious activity in good faith either internally or directly to the relevant authority cannot be held liable. | |

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| 11 | The supervisor informs the financial intelligence unit and, if applicable, other designated authority of any suspicious transactions. In addition, it, directly or indirectly, shares information related to suspected or actual criminal activities with relevant authorities. | |
| 12 | The supervisor, directly or indirectly, cooperates with the relevant domestic and foreign financial sector supervisory authorities or shares with them information related to suspected or actual criminal activities where this information is for supervisory purposes. | |
| 13 | Unless done by another authority, the supervisor has in-house resources with specialist expertise for addressing criminal activities. In this case, the supervisor regularly provides information on risks of money laundering and the financing of terrorism to the banks. | |
| Additional criteria | | Comments |
| - | No additional criteria | - |