Recommendations for New Core Principles

I am recommending adding an essential criterion to CP 1 and/or CP11, dealing with fines/sanctions/other penalties and who they apply to.

Fines (Monetary Penalties)

In many countries I have worked, except for the United States, laws for who can be fined for irregularities in a bank are not consistent. In some countries, there is no allowance for providing fines to certain individuals such as principal shareholders, and perhaps even directors and managers cannot be fined (but the fine will be assessed to the bank). At times, "controlling" parties, or those with "significant influence," or "beneficial owners" cannot be penalized monetarily if and when you determine who they are.

I also have noticed that the fines are usually very small against both banks and individuals (perhaps for banks a small portion of assets as a maximum, while for individuals, usually some multiple of "average" wage, in some cases, only maximum $1000 perhaps) and will not act as a deterrent and will not be punitive.

In many cases, such as for a holding company or other corporate shareholder, there may be no written law for fines at all as well.

I have spoken with management of banks who look at fines, such as those for violating the liquidity normative, as a "cost of doing business" and will gladly pay them to maintain less liquidity, realizing that they can more than offset the fine by investing the funds into some other instrument that pays interest. Therefore, fines should also be proportionate and for repeat violations, should carry a higher cost or other penalties.

In short, when looking at sanctions during FSAP or other reviews, fines should be reviewed to make sure the law allows for them to be effective, proportionate and dissuasive, and that they can be applied to both individuals and corporates, no matter what their legal standing is, if they are responsible for violating laws and regulations. The BCPs should reflect that the fines must be allowed to cover all persons that could cause harm to a bank and that they carry an effective penalty amount. Otherwise, there is a big loophole in enforcement.

Sanctions

Again, in many countries I have worked, sanctions, such as removal of individuals, regardless of legal status, i.e. may not be allowed for certain individuals (e.g. for shareholders, whether principal shareholders, for controlling parties, for beneficial owners, for those with significant influence, etc., whether any shares are held by that person or not). In some countries, even directors may not be able to be removed by the regulator without board approval. You have somewhat addressed this in CP11, EC4, but it does not say anything except for "barring individuals from the banking sector." This should

be more explicit to include examples, to make it clear it applies to all parties, including beneficial owners, controlling parties, those with significant influence, directors, and other persons. Corporate shareholders or those associated with them should also be included, not just physical persons in this regard, when violations are noted that warrant sanctions.

Transparency of Sanctions Taken

When sanctions are applied against banks, corporate, or individuals, a public database of actions taken can provide information to the public, improving transparency and market discipline. Many countries do not have a means to find such information. As long as it is not going to cause a "run" on a bank or a banking sector, there is no reason not to publish this information. It also serves as a basis for providing information as to whether a regulator is taking actions when needed, i.e. no actions taken could signal a weak regulator in a "normal" banking system.

Suggestion

Add an essential criterion number 8 to CP 1 to bring importance to not only being able to "impose a range of sanctions," but to also look at what the sanctions are and if they are sufficient to deal with problems at banks and act as a deterrent, are proportionate and are effective.

> 8. The range of sanctions that are available are applied to banks, managers, directors, shareholders, beneficial owners, those with "significant influence," or controlling interests, and are sufficient in size to encourage compliance with laws and regulations, and/or to discourage unsafe and unsound behaviors at banks. These sanctions also allow the regulator or the appropriate institution to apply sanctions to corporate entities as well, if applicable.

and an additional criterion,

1. Actions taken against banks, individuals or corporate shareholders, or other related interests, are disclosed to encourage transparency and market discipline in the sector, unless doing so would cause harm to the bank or the banking sector.

CP 9

Many supervisors, for whatever reason (resources, lack of efficiency), do not transmit reports of examination in a timely manner. In an extreme case, a bank in a country I was working stated that they had still not received a report and it had been 6 months since the regulator left. As a result, I am suggesting that CP 9, part 8, include the following edits:

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, **in a timely manner, and requires a response from management and/or the board within 30 days, except for in unusual circumstances. Note: Timely manner can be defined as well for on-site,**

especially since the "as of" date is usually a date that is prior to the beginning of the on-site examination, 45 days should be a benchmark (after leaving the examination).

CPs 5 and 6 – Licensing and Transfer of Significant Ownership

As the banks may not always know of a change in ownership (e.g. "raids on banks"), although they should, I propose an EC that states that the law should allow for accountability of shareholders (either individuals or other) to put some responsibility on them to provide notification and/or receive approval for significant changes in ownership (both buyer and seller of significant ownership positions should be required to disclose to regulator). Sanctions, such as monetary penalties, should also apply, in every form possible, to allow the regulator to take action against these parties for failure to notify the bank and/or regulator, in addition to being able to modify, reverse, or reject a change in ownership when it comes to light. These should be codified in banking laws, and should be in addition to the notifications/approvals required by banks.

Other Suggestions/Clarifications Needed

I am also recommending the following:

1. Make it clear when a regulator chooses to be graded on both essential and additional criteria, whether they have to publish their compliance with both, if they choose to publish? In other words, if they get a good review on essential, but are not as compliant with additional criteria, can they only publish results of essential?
2. When they make the voluntary decision to be graded on additional criteria, can they renege on that decision if they see, during the FSAP review, that they will not meet many of them? Please clarify.
3. On page 18, please clarify why you believe that, according to footnote 17, "in the case of self-assessments, gradings have virtually no relevance." I believe that, on the contrary, regulators that perform a self-assessment can use the gradings as a baseline for measurement against future assessments (either self or FSAP) and it also allows the FSAP or other third party assessor to see the regulator's rationale behind a certain grade and may indicate whether the regulator has a general understanding of CPs and how they are viewed.

   As an example, if a regulator grades a CP "Compliant" and an assessor determines that it is another grade, this can help open up a discussion about that particular core principle and the general Basel requirements (such as the notion that putting laws and regulations into practice is very important, not just having the laws and regulations on paper). I would suggest clarifying this point and/or encouraging regulators to grade themselves for the reasons discussed above.

4. The level of transparency with remuneration prescribed by Basel has always seemed vague, and I have looked at many articles on this, including your "Compensation principles and standards assessment methodology" (2010), which seems to emphasize the disclosure mainly for "significant financial institutions." Clarification should be provided once and for all in the new Core Principles document. Should all banks have to disclose general remuneration policies and

incentives, should they be providing information discussed in your 2010 document referenced above, or should only SFIs have to disclose? What specifically should each bank have to disclose? From the standpoint of a depositor, the size of the bank should not matter in his/her ability to obtain information on remuneration.

Thank you for being progressive in so many matters to improve banking supervision in the world, and I appreciate you taking the time to read these suggestions as well.