

**Response to the Basel Committee's Consultative  
Document of *Core Principles for Effective Banking  
Supervision* from Financial Competitive Regime  
Perspective**

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

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# 从金融竞争制度视角评述巴塞尔银行委员会公布的《有效银行监管核心原则》征求意见稿

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

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# **I. General Comments**

Dear Sir or Madam:

I welcome the opportunity to provide comments on the December 2011 consultative document on *Core Principles for Effective Banking Supervision* issued by the Basel Committee.

In contemplating the Financial Crisis, the international communities have reached many conclusions. The Basel committee's consultative document of *Core Principles for Effective Banking Supervision* will play an important role for international banking supervisory system. However, unfortunately it should be perceived that the proposal neither pays enough attention to the value of Financial Competitive Regime (FCR), nor considers broadly the relationship between the competition and the banking supervision.

This comment integrating the FCR is submitted along with relevant suggestions and some key facts about Chinese FCR. It is hopeful that the Basel Committee can consider them in issuing the final document of *Core Principles for Effective Banking Supervision*.

## II. Executive Summary

1. Paragraph 4, “the Committee has sought to achieve the right balance... (from large internationally active banks to small, non-complex deposit-taking institutions)”.
- 1.1 **Comment:** Such effort centers on preserving a reasonable competitive balance between financial institutions ranging from the big banks to the small, non-complex deposit-taking institutions.
2. Paragraph 6, “...systemically important banks”.
- 2.1 **Comment:** Systemically importance banks normally are those “too-big-to-fail” financial giants with dominant position in the banking sector. Supervisory efficiency and effectiveness can be improved by implementing the FCR. Please see “*Response to the Financial Stability Board's Consultative Document of Effective Resolution of Systemically Important Financial Institutions from Financial Competitive Regime Perspective*”.

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<sup>1</sup> Zhen Li, “*Response to the Financial Stability Board's Consultative Document of Effective Resolution of Systemically Important Financial Institutions from Financial Competitive Regime Perspective*”, September 2011. Available at: [http://www.financialstabilityboard.org/press/c\\_110909fff.pdf](http://www.financialstabilityboard.org/press/c_110909fff.pdf)

3. Paragraph 6, “...resolution measures in reducing both the probability and impact of a bank failure”.

3.1 **Comment:** Sound exit program and state aid plan constitute important resolution measures during the period of current crisis. These two measures concern the long-term competition, and should be included in the FCR.

4. Paragraph 7, “...robust market discipline”.

4.1 **Comment:** Securing the healthy competitive environment safeguarded by implementing a regime or enforcing a set of rules is one of the fundamental market disciplines.

### III. Foreword to the Review

5. Footnote 6, “(iii) consumer protection.”

5.1 **Comment:** A key measure to protect consumers is to secure the fairly competitive financial market by implementing tough rules.

6. Footnote 6, “The banking supervisor might, for instance, in some jurisdictions be tasked with four responsibilities.”

6.1 **Comment:** It is highly recommended to add “financial competition” as the fifth responsibility. Some banking supervisors are empowered to apply rules or regulations to ensure the sustainable competition in financial market. Such as the Federal Reserve Board in US and the Financial Conduct Authority in UK.

7. Paragraph 16, “However, supervision should aim to reduce the probability and impact of a bank failure, including by working with resolution authorities, so that when failure occurs, it is in an orderly manner.”

7.1 **Comment:** To a large extent, resolution concerns designing a set of banking exit mechanism, which is a key component of

8. Footnote 8, “systemic importance” is determined by the size, interconnectedness, substitutability, global or cross-jurisdictional activity (if any), and complexity of the bank.”

8.1 **Comment:** These five indicators reflect the competitiveness conditions. Please see “*Response to the Financial Stability Board's Consultative Document of Effective Resolution of Systemically Important Financial Institutions from Financial Competitive Regime Perspective*”.<sup>2</sup>

9. Paragraph 19, “Therefore, it is unnecessary to include a specific stand-alone Core Principle for SIBs.”

9.1 **Comment:** Since a specific stand-alone core principle is unnecessary, authorities can extend the regulatory tool to the innovative FCR as an important complement.

10. Paragraph 20, “...concentration of risk across the banking sector”

10.1 **Comment:** Concentration of risk is largely based on the concentration of the banking industry. In another word, the

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<sup>2</sup> Zhen Li, “*Response to the Financial Stability Board's Consultative Document of Effective Resolution of Systemically Important Financial Institutions from Financial Competitive Regime Perspective*”, September 2011. Available at: [http://www.financialstabilityboard.org/press/c\\_110909fff.pdf](http://www.financialstabilityboard.org/press/c_110909fff.pdf)



11. Paragraph 22, “In supervising an individual bank which is part of a corporate group...”

11.1 **Comment:** Within such corporate group model, interconnected trade occurs occasionally, where tying arrangement, price fixing, and conspiracy might be regulated more effectively by enforcing the financial anti-monopoly rules.

12. Paragraph 24, “...and orderly resolution frameworks and measures are required.”

12.1 **Comment:** Orderly resolution, such as a healthier bank merges the failing banks<sup>3</sup>, can eliminate a competitor in banking sector. As a result, the resolution mechanism forms an integral part of the FCR.

13. Paragraph 25, “Such measures may be viewed from two perspectives”

13.1 **Comment:** Because these measures involve the avoidance of

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<sup>3</sup> Zhen Li, “*Optimizing Chinese Anti-monopoly Law in Financial Industry — Lessons from Lloyds Banking Group Merger and Acquisition*”, Financial and Economic Law Review, No. 21, June 2010.

competition distortion, above two perspectives are closely related to the competitive financial sector. For example, during the period of global financial crisis, European Commission has been rescuing troubled financial institutions and has examined Member States' aid programs from the competition perspective.<sup>4</sup>

14. Paragraph 26, “contingency arrangements”

14.1 **Comment:** Short-term contingency arrangements should not affect the long-run competitiveness environment.

15. Paragraph 37, “Core Principle 29 dealing with the Abuse of Financial Services”

15.1 **Comment:** Abuse of financial service from banks with a dominant position is closely monitored and toughly regulated by government agencies with the responsibility to enforce the financial anti-monopoly rules.

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<sup>4</sup> “*The effects of temporary State Aid rules adopted in the context of the financial and economic crisis*”, European Commission, July 2011.

## IV. The Core Principles

16. Paragraph 41, “29 Core Principles”

16.1 **Comment:** Principle1, Principle 3, Principle 5, Principle7, Principle8, Principle9, Principle11, Principle13, Principle14, Principle19, Principle20, Principle23 and Principle29 are all related with FCR.

17. Paragraph 44, “In a market economy, failures are part of risk-taking.”

17.1 **Comment:** Competition is a basic mechanism for the market economy and is a significant reason for the bank failure as well.

17.2 **Suggestion:** “In a market economy, failures are **main parts** of **competition and** risk-taking.”

## V. Preconditions for Effective Banking Supervision

18. Paragraph 47 identifies six preconditions.

18.1 **Comment:** The robust competition in financial market plays a critical role.

18.2 **Suggestion:** Add “a fair robust competition in financial market guaranteed by the FCR” as the seventh precondition.

19. Paragraph 50 covers a well developed public infrastructure.

19.1 **Comment:** FCR should be an important component in the financial market infrastructure. Please see “*Response to the CPSS and the Technical Committee of the IOSCO's Consultative Report on Principles for Financial Market Infrastructures from Financial Competitive Regime Perspective*”.<sup>5</sup>

20. Paragraph 52, “...minimising the distortion to market signals and discipline”

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<sup>5</sup> Zhen Li, “*Response to the CPSS and the Technical Committee of the IOSCO's Consultative Report on Principles for Financial Market Infrastructures from Financial Competitive Regime Perspective*”, July 2011. Available at: [www.bis.org/publ/cpss94/cacomments/zhenli.pdf](http://www.bis.org/publ/cpss94/cacomments/zhenli.pdf)

20.1 **Comment:** Supervisors should view the competition distortion as a narrowly-taken distortion to market signals and discipline.

21. Paragraph 53, “Market signals can be distorted and discipline undermined if governments ...”

21.1 **Comment:** The valid plan to avoid the competition distortion should be developed and enforced along with the administrative intervention.

## VI. Criteria for Assessing Compliance with the Core Principles

22. Principle 1, “Responsibilities, objectives and powers”, Essential criteria 2, “The primary objective of banking supervision is to promote the safety and soundness of banks and the banking system”.

22.1 **Comment:** Competition and stability in financial sector should be viewed as complementary rather than competing objectives. Financial competitive supervision should be taken as an innovative primary duty.

22.2 **Suggestion:** “The primary **objectives** of banking supervision **are to preserve the rational competition in banking sector,** and to promote the safety and soundness of banks and the banking system.”

23. Principle 3, “Cooperation and collaboration”, Essential criteria 1, “... with responsibility for the safety and soundness of banks and/or the stability of the financial system”.

23.1 **Comment:** Safety, soundness and stability are three indicators on the competitiveness of financial market.

24. Principle 5, “Licensing criteria”, “... the licensing process consists of ...”

24.1 **Comment:** Supervisor should adopt competition analysis in the licensing process. For example, the rural credit cooperative dominates Chinese rural financial market. If a rural credit cooperative sponsors to create a village bank, the licensing authority should take necessary measures to limit or avoid the competition distortion.

25. Principle 7, “Major acquisitions”, Essential criteria 1, “Laws or regulations clearly define: (a) and (b)”.

25.1 **Comment:** Acquisitions can lessen the competition in banking market. Consequently, the rules should define under what condition the acquisition will not distort the competition.

25.2 **Suggestion:** Add “ **conditions the acquisition will not lessen the competition in banking market**” as (c)

26. Principle 8, “Supervisory approach”, Essential criteria 3, “The supervisor assesses ... and other legal requirements”.

26.1 **Comment:** Legal requirements should include regulations relevant to financial anti-monopoly.

27. Principle 8, “Supervisory approach”, Essential criteria 5, “... the build-up of risks, trends and concentrations...”

27.1 **Comment:** Please see comment 10.1.

28. Principle 9, “Supervisory techniques and tools”, Essential criteria 4 (e), “analysis of corporate governance...”

28.1 **Comment:** When assessing corporate governance, the supervisor should pay more attention to toughly regulate the director inter-locking so as to mitigate excessive interconnectedness between banks.

29. Principle 11, “Corrective and sanctioning powers of supervisors”, Essential criteria 2, “... merger with a stronger institution”, and Essential criteria 4, “...merger with a healthier institution”.

29.1 **Comment:** Merger between banks will potentially reduce competitors in banking sector.

30. Principle 13, “Home-host relationships”, “Supervisors require the local operations of foreign banks to be conducted to the same standards as those required of domestic banks.”

30.1 **Comment:** Such requirement prohibits the super-national



31. Principle 14, “Corporate governance”, Essential criteria 7,

“...banking group’s compensation system.”

31.1 **Comment:** Compensation system should correspond with the competitiveness of the banking group. Please see “*Response to Basel Committee's Consultative Document on Range of Methodologies for Risk and Performance Alignment of Remuneration from Financial Competitive Regime Perspective*”.<sup>6</sup>

32. Principle 19, “Concentration risk and large exposure limits”,

“... mitigate concentrations of risk”.

32.1 **Comment:** Alleviating excessive concentration in the banking sector helps mitigate risk concentration.

33. Principle 20, “Transactions with related parties”, “In order to prevent abuses arising in transactions with related parties ...”

33.1 **Comment:** One primary objective on financial anti-monopoly

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<sup>6</sup> Zhen Li, “*Response to Basel Committee's Consultative Document on Range of Methodologies for Risk and Performance Alignment of Remuneration from Financial Competitive Regime Perspective*”, December 2010. Available at: <http://www.bis.org/publ/bcbs178/zhenli.pdf>

34. Principle 23, “Interest rate risk in the banking book”

34.1 **Comment:** Only under the precondition of sound competitive environment secured by the FCR can interest rate be rationally liberalized. In China, the FCR is a core system to defend interest rate liberalization.<sup>7</sup>

35. Principle 29, “Abuse of financial services”.

35.1 **Comment:** Please see comment 15.1. In addition, because competition in a market economy can bring better quality, lower price, greater choices and more innovation, preserving the competitive financial market by implementing the FCR will maximize the financial customers’ welfare.

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<sup>7</sup> Zhen Li, “Establishing protection system for interest rate liberalization”, China Economic Herald, January 22, 2011. Available at: [http://www.ceh.com.cn/search/content\\_show.asp?url=/ceh/xwpd/2011/1/22/74447.shtml](http://www.ceh.com.cn/search/content_show.asp?url=/ceh/xwpd/2011/1/22/74447.shtml)

## **VII. Key Facts about Financial Competition Regime in China**

Zhen Li submitted one proposal on establishing the FCR to the national decision makers in December 2010.<sup>8</sup> Finance is the lifeline of the national economy, modern economy is institutional one, and sufficient and effective financial market competition will play a significant role in fulfilling national strategies such as containing inflation, transforming the mode of economic growth, macroprudential supervision, job creation and stepping out. In conclusion, in the coming economic development of the twelfth Five-Year Plan period, the FCR should be established as soon as possible. After three months, “The National Economic and Social Development twelfth Five-Year Plan Compendium” was promulgated. The compendium adopts Zhen Li’s opinion and explicates the strategic principle of **Enhancing the Competition to Promote the Development**.

In March 2011, the fourth session of 11<sup>th</sup> NPC was convened in Beijing. During the period, Zhen Li helped Deputy Yang Xiaoping

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<sup>8</sup> Zhen Li, “*Enhancing the Financial Competition to Promote the Scientific Development in the 12th Five-Year National Plan*”, China Economic Herald, December 21, 2010. Available at: [http://www.ceh.com.cn:8080/epaper/ceh/20101221/B05/B05\\_56.htm](http://www.ceh.com.cn:8080/epaper/ceh/20101221/B05/B05_56.htm)

draft a proposal on setting up the FCR. In the proposal Mr. Yang analyzed realistic values of the FCR for Chinese economic development, suggested to amend the legal framework of the FCR, and sketched a new framework for the executive mechanism of the FCR.<sup>9</sup>

*National People's Congress of China*, an official journal of National People's Congress, published an article on "Establishing Financial Competitive Regime to Protect Financial Consumers" in November 2011. This indicates China's supreme legislature recognizes the realistic value of the FCR for the first time in history.<sup>10</sup>

The 4<sup>th</sup> National Financial Work Conference was convened on January 6<sup>th</sup> 2012 in China. Premier Wen Jiabao attended and announced to deepen financial institutions' reform and to break the monopoly effectively.<sup>11</sup> In fact, financial anti-monopoly is the core for the FCR.

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<sup>9</sup> Yang Xiaoping, "Proposal on Establishing Financial Competitive Regime", Financial News, March 11, 2011. Ou Yang and Dong Xiao, "Financial Representatives of NPC & CPPCC Discuss Over Domestic Issues", Financial Analyst, March 2011.

<sup>10</sup> "Establishing Financial Competitive Regime to Protect Financial Consumers", National People's Congress of China, issue 19, November 2011. Available at:

[http://www.npc.gov.cn/npc/zgrdzz/2011-10/27/content\\_1677259.htm](http://www.npc.gov.cn/npc/zgrdzz/2011-10/27/content_1677259.htm)

<sup>11</sup> "The National Financial Work Conference was convened in Beijing". Please visit China government website. Available at: [http://www.gov.cn/lhdh/2012-01/07/content\\_2038988.htm](http://www.gov.cn/lhdh/2012-01/07/content_2038988.htm)

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3. Zhen Li, “*Response to Basel Committee's Consultative Document on Range of Methodologies for Risk and Performance Alignment of Remuneration from Financial Competitive Regime Perspective*”, December 2010. Available at: <http://www.bis.org/publ/bcbs178/zhenli.pdf>
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- Important Financial Institutions from Financial Competitive Regime Perspective*”, September 2011. Available at: [http://www.financialstabilityboard.org/press/c\\_110909fff.pdf](http://www.financialstabilityboard.org/press/c_110909fff.pdf)
6. Zhen Li, “*Optimizing Chinese Anti-monopoly Law in Financial Industry — Lessons from Lloyds Banking Group Merger and Acquisition*”, Financial and Economic Law Review, No. 21, June 2010.
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  9. “*The effects of temporary State Aid rules adopted in the context of the financial and economic crisis*”, European Commission, July 2011.
  10. Yang Xiaoping, “*Proposal on Establishing Financial Competitive Regime*”, Financial News, March 11, 2011.

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## 一、总 评

尊敬的女士和先生：

非常感谢有机会就巴塞尔银行委员会 2011 年 12 月公布的《有效银行监管核心原则（“Core Principles for Effective Banking Supervision”）》征求意见稿进行评论。

在深刻反思此轮金融危机后，国际社会达成了诸多共识。巴塞尔委员会公布的《有效银行监管核心原则》将对国际银行监管体系发挥重要作用。但遗憾的是，《有效银行监管核心原则》既未充分地关注金融竞争制度的重要作用，也未广泛地考虑金融市场竞争与银行监管的密切关系。

本评论从金融竞争制度的视角就征求意见稿的相关内容提出建议，并简要介绍了中国金融竞争制度主要事件。希望巴塞尔银行委员会在最终颁布的《有效银行监管核心原则》中能够采纳。



## 二、小 结

1. 第 4 段，“委员会力求获得正确的平衡……（从大的在国际上活跃的银行到小的不复杂的存款机构）”。

1.1 评论：该努力以保持从大银行到小且简单的存款机构等金融机构间的合理竞争平衡为核心。

2. 第 6 段，“……系统性重要银行”。

2.1 评论：系统性重要银行通常是那些在银行业具有优势地位的“大而不倒”的金融巨头。监管效率和效果能通过实施金融竞争制度得到增强。<sup>12</sup>

3. 第 6 段，“……减少银行失败可能性和影响的处置措施”。

3.1 评论：良好的退出计划和国家救助方案构成了当前危机期间的重要处置措施。这两项措施事关长期竞争，应当归于金融竞争制度当中。

4. 第 7 段，“……强健的市场规律”。

4.1 评论：通过执行制度或者一整套规则确保健康的竞争环境是基本的市场规律之一。

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<sup>12</sup> 李震，“从金融竞争制度视角评述金融稳定理事会发布的《系统重要性金融机构有效处置》征求意见稿”，载于“金融稳定理事会”，2011 年 9 月。网址：[http://www.financialstabilityboard.org/press/c\\_110909fff.pdf](http://www.financialstabilityboard.org/press/c_110909fff.pdf)

### 三、前 言

5. 脚注 6, “(3) 消费者保护”

5.1 评论: 保护消费者的关键措施是通过执行严格的规范维护公平竞争的金融市场。

6. 脚注 6, “例如, 在一些管辖区域内, 银行监管当局可能有四项责任。”

6.1 评论: 建议增加“金融竞争”作为第五项责任。部分银行监管者被赋予了通过秩序相关规则来确保金融市场可持续竞争的职责。例如美国的美联储和英国的金融行为局。

7. 第 16 段, “然而, 监管应当锁定减少银行失败可能性和影响等两项目标, 包括当银行失败出现时, 以一种有序的方式与处置机构合作。”

7.1 评论: 在很大程度上, 处置事关设计出一套银行退出机制。这是金融竞争制度的关键组成部分。

8. 脚注 8, “‘系统重要性’由银行的规模、关联性、可替代性、全球或者跨管辖区活动（如果存在的话）、以及复杂程度决定”。

8.1 评论: 这五项指标反映了竞争状况。请阅“从金融竞争制度视角评述金融稳定理事会发布的《系统重要性金融机构有效处

置》征求意见稿”。<sup>13</sup>

9. 第 19 段，“所以，对于系统性重要银行没有必要包含一项具体且独立的核心原则。”

9.1 评论：既然具体且独立的核心原则没有必要，当局可以延伸监管手段至全新的金融竞争制度作为重要补充。

10. 第 20 段，“……在银行业间风险集中。”

10.1 评论：风险集中在很大程度上是基于银行产业集中度。也就是说，银行产业越集中，风险越集中。

11. 第 22 段，“监管属于一家公司集团旗下的单独银行……”

11.1 评论：在此银行集团模式下，关联交易时常发生。搭售、价格固定和共谋能够通过严格实施金融反垄断规则进行更加有效地规制。

12. 第 24 段，“……需要有序的处置框架和措施。”

12.1 评论：例如健康银行合并失败银行的有序处置能减少银行业的竞争者。<sup>14</sup> 所以，处置措施形成了金融竞争制度不可或缺的部分。

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<sup>13</sup> 李震，“从金融竞争制度视角评述金融稳定理事会发布的《系统重要性金融机构有效处置》征求意见稿”，载于“金融稳定理事会”，2011 年 9 月。网址：[http://www.financialstabilityboard.org/press/c\\_110909fff.pdf](http://www.financialstabilityboard.org/press/c_110909fff.pdf)

<sup>14</sup> 李震，“完善中国大陆金融反垄断制度—劳埃德银行集团并购案启示”，《月旦财经法杂志（台湾）》，第二十一期，2010 年 6 月。

13. 第 25 段，“这些措施可以从两个方面来看。”

13.1 评论：因为这些措施包括避免竞争扭曲，所以，以上的两个视角与竞争性金融领域密切相关。例如：在全球金融危机期间，欧委会救助问题金融机构，从竞争角度对成员国的国家救助计划进行审查。<sup>15</sup>

14. 第 26 段，“紧急措施安排”

14.1 评论：短期的紧急措施安排不应当影响长期的竞争环境。

15. 第 37 段，“解决金融服务滥用的第 29 项核心原则”

15.1 评论：来自具有优势地位的银行实施的金融服务滥用受到具有执行金融反垄断责任政府部门的严密监控和严格规制。

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<sup>15</sup> “金融经济危机背景下采取的临时性国家援助规则的影响”，欧委会，2011 年 7 月。

## 四、核心原则

16. 第 41 段，“29 项核心原则”。

16.1 评论：原则 1、3、5、7、8、9、11、13、14、19、20、23、29 都与金融竞争制度相关。

17. 第 44 段，“市场经济中，失败是风险承担的一部分。”

17.1 评论：竞争是市场经济的基础机制，同时，也是银行失败的一个重要原因。

17.2 建议：“市场经济中，失败是**竞争**和风险承担的重要部分。”

## 五、有效银行监管的前提

18. 第 47 段明确了 6 条前提。

18.1 评论：在金融市场中，强健的竞争发挥着关键作用。

18.2 建议：增加“由金融竞争制度确保的金融市场的公平强劲竞争”作为第 7 条前提。

19. 第 50 段涉及发展良好的公共基础设施。

19.1 评论：金融竞争制度应当是金融市场基础设施的重要组成部分。请阅“从金融竞争制度视角评述国际支付结算体系委员会和国际证监会组织共同公布的《金融市场基础设施原则》征求意见稿”。<sup>16</sup>

20. 第 52 段，“……使市场信号和规律的扭曲最小化”

20.1 评论：监管者应当将竞争扭曲视为是对市场信号和规律扭曲的狭义理解。

21. 第 53 段，“如果政府……，市场信号会被扭曲，市场规律会被破坏。”

21.1 评论：伴随着行政干预，应当研究并执行避免竞争扭曲的

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<sup>16</sup> 李震，“从金融竞争制度视角评述国际支付结算体系委员会和国际证监会组织共同公布的《金融市场基础设施原则》征求意见稿”，载于“巴塞尔委员会”，2011 年 7 月。网址：  
[www.bis.org/publ/cpss94/cacomments/zhenli.pdf](http://www.bis.org/publ/cpss94/cacomments/zhenli.pdf)

有效方案。

## 六、测评遵守核心原则的标准

22. 原则 1, “责任、目标和职权”, 标准 2, “银行监管的主要目标是促进银行和银行系统的安全和稳健。”

22.1 评论: 金融领域的竞争和稳定应当被视为互为补充的目标, 而不是相互冲突的目标。金融竞争性监管应当作为创新的主要职责。

22.2 建议: “银行监管的主要目标是维护银行业的理性竞争, 促进银行和银行系统的安全和稳健。”

23. 原则 3, “合作与协调”, 标准 1, “……责任是银行的安全、稳健和（或者）金融系统的稳定。”

23.1 评论: 安全、稳健和稳定是金融市场竞争力的三项指标。

24. 原则 5, “准入标准”, “……准入程序由……组成”

24.1 评论: 监管者应当在准入程序中采用竞争分析。例如, 农村信用社控制着中国农村金融市场。如果农村信用社发起设立村镇银行, 发证当局应采取必要措施加以限制或者避免竞争扭曲。

25. 原则 7, “重要收购”, 标准 1, “法律或者规定明确定义了 (a) 和 (b)。”

25.1 评论: 在银行市场, 收购会减弱竞争。所以, 规则应当界



定收购不会扭曲竞争的具体条件。

25.2 建议：增加“并购不会减弱银行市场竞争的条件”作为(c)。

26. 原则 8，“监管途径”，标准 3，“监管者测评……和其它法律要求”

26.1 评论：法律要求应当包括干预金融反垄断的有关规范。

27. 原则 8，“监管途径”，标准五，“风险、趋势和集中的积累”

27.1 评论：请阅评论 10.1。

28. 原则 9，“监管技术和工具”，标准 4 (e)，“分析公司治理”

28.1 评论：在测评公司治理时，为弱化银行间的过度关联性，监管者应当注意严格规制董事连锁。

29. 原则 11，“监管者的校正和制裁权”，标准 2 “与较强大的机构合并”，以及标准 4 “与健康的机构合并”

29.1 评论：银行间的合并将会潜在地减少银行领域的竞争者。

30. 原则 13，“母国与东道国的关系”，“监管者要求外资银行在东道国当地运营时应采取与本地银行相同的标准。”

30.1 评论：该要求禁止超国民待遇，使外资银行和内资银行按照相同的规矩运营，进而确保了国际层面的公平竞争平台。

31. 原则 14, “公司治理”, 标准 7, “……银行集团的薪酬体系”

31.1 评论: 薪酬体系应当与银行集团的竞争力相匹配。请阅“从金融竞争制度视角评述巴塞尔银行委员会拟颁布的《兼顾风险与绩效的薪酬制度》”。<sup>17</sup>

32. 原则 19, “风险集中和巨大敞口的限制”, “……减弱风险集中”

32.1 评论: 弱化银行产业的过度集中有助于减弱风险集中。

33. 原则 20, “与相关当事人交易”, “为了防止因与相关当事人交易而产生的滥用”。

33.1 评论: 金融反垄断制度的一个主要目标是防止滥用, 包括价格歧视、掠夺信贷和独占交易等。

34. 原则 24, “银行账簿中的利率风险”

34.1 评论: 利率只有在以金融竞争制度确保的良性竞争环境下才能实现理性自由化。在中国, 金融竞争制度是捍卫利率自由化的核心体系。<sup>18</sup>

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<sup>17</sup> 李震, “从金融竞争制度视角评述巴塞尔银行委员会拟颁布的《兼顾风险与绩效的薪酬制度》”, 载于“巴塞尔委员会”, 2010 年 12 月。网址: <http://www.bis.org/publ/bcbs178/zhenli.pdf>

<sup>18</sup> 李震, “建立利率市场化的保障制度”, 载于《中国经济导报》, 2011 年 1 月 22 日。网址: [http://www.ceh.com.cn/search/content\\_show.asp?url=/ceh/xwpd/2011/1/22/74447.shtml](http://www.ceh.com.cn/search/content_show.asp?url=/ceh/xwpd/2011/1/22/74447.shtml)

## 35. 原则 29，“金融服务滥用”

35.1 评论：请阅评论 15.1。此外，因为市场经济中的竞争可以带来更好的质量、更低的价格、更佳的选择和更多的创新，所以，通过实施金融竞争制度以确保竞争性金融市场将会实现金融消费者福利最大化。

## 七、中国金融竞争制度主要事件

2010年12月，李震向国家决策层提交了建立金融竞争制度的建议。金融是经济的命脉，现代经济又是制度经济，而充分且有效的金融竞争对于遏制通货膨胀、转变经济发展方式、实施宏观审慎监管、增加就业、执行“走出去”等国家战略有着不可或缺的重要作用。所以，在经济发展的第十二个五年规划阶段，应尽快考虑建立金融竞争制度。<sup>19</sup>三个月后，《国民经济和社会发展的第十二个五年规划纲要》出台，《规划纲要》采纳了李震的观点，明确了“以竞争促发展”的战略准则。

2011年3月，十一届全国人大四次会议在北京召开。其间，李震协助杨小平代表草拟并提出了建立金融竞争制度的建议。杨先生在建议中分析了金融竞争制度对于中国经济发展的现实价值，建议修改金融竞争制度的法制框架，并勾勒了金融竞争制度执法机制的新框架。<sup>20</sup>

2011年10月，《中国人大》杂志（2011年第19期）登载了“建立金融竞争制度 保障金融消费者权益”一文，标志着金融竞争制度的现实价值在历史上首次得到中国最高立法当局的

<sup>19</sup> 李震，“以金融竞争促‘十二五’科学发展”，载于《中国经济导报》，2010年12月21日，B05。网址：[http://www.ceh.com.cn:8080/epaper/ceh/20101221/B05/B05\\_56.htm](http://www.ceh.com.cn:8080/epaper/ceh/20101221/B05/B05_56.htm)

<sup>20</sup> 杨小平，“关于建立金融竞争制度的建议”，载于《金融时报》，2011年3月11日。

欧阳、冬晓，“金融界部分两会代表委员为‘十二五’建言献策”，载于《中国金融家》，2011年3月，第3期。

认可。<sup>21</sup>

2012 年 1 月 6 日，中国召开了第四次全国金融工作会议。温家宝总理出席并宣布，“深化金融机构改革……切实打破垄断”。<sup>22</sup> 事实上，金融反垄断是金融竞争制度的核心所在。

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<sup>21</sup> “建立金融竞争制度 保障金融消费者权益”，载于《中国人大》，2011 年 10 月，第 19 期。网址：[http://www.npc.gov.cn/npc/zgrdzz/2011-10/27/content\\_1677259.htm](http://www.npc.gov.cn/npc/zgrdzz/2011-10/27/content_1677259.htm)

<sup>22</sup> “全国金融工作会议在京召开”，中国政府网。网址：[http://www.gov.cn/jdhd/2012-01/07/content\\_2038988.htm](http://www.gov.cn/jdhd/2012-01/07/content_2038988.htm)

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