

12 October 2012

baselcommittee@bis.org

c/o the Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel
Switzerland

Dear Sirs,

Consultative document 229 – Supervisory guidance for managing risks associated with the settlement of foreign exchange transactions

The British Bankers' Association (BBA) is pleased to respond to the Basel Committee on Banking Supervision's consultation¹.

The BBA is the leading association for UK banking and financial services representing members on the full range of UK and international banking issues. It represents over 200 banking members active in the UK, which are headquartered in 50 countries and have operations in 180 countries worldwide. All the major banking groups in the UK are members of our association as are large international EU banks, US and Canadian banks operating in the UK as well as a range of other banks from Asia, including China, the Middle East, Africa and South America. The integrated nature of banking means that our members are engaged in activities ranging widely across the financial spectrum from deposit taking and other more conventional forms of retail and commercial banking to products and services as diverse as trade and project finance, primary and secondary securities trading, insurance, investment banking and wealth management. Members include banks headquartered in the UK, as well as UK subsidiaries and branches of foreign banks – all of which are potentially impacted by this Consultation Paper.

Key messages

We support the update of the guidelines and the continuation of efforts to minimise the risks from foreign exchange (FX) settlement.

Risk management, and its scrutiny by the authorities, have improved in recent years. This applies to all aspects of banking but particularly so in the FX arena, where the advent of CLS Bank 10 years ago represented a major step forward in the mitigation of the risks associated with FX settlement. This was an industry generated solution to a risk that has been recognised by regulators and banks alike – in our view an excellent example of the industry and its supervisors working together to overcome a commonly recognised issue.

We welcome the commitment to proportionality (2.1 and 2.7). All regulation should take into account the nature scale and complexity of an institution's activity

¹ <http://www.bis.org/publ/bcbs229.pdf>

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Conclusion

Annex 1 to our letter contains our formal response to the consultation, and further specific observations and questions arising from the proposals.

We hope that you will find our comment useful. Please contact me by way of e-mail (simon.hills@bba.org.uk) or telephone on (00 44) 20 7216 8861 should you require further information.

Yours faithfully,

A handwritten signature in black ink that reads "Simon Hills". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Simon Hills
Executive Director, Prudential Capital and Risk

Annex 1

Guideline 1: Governance

We support the need for board oversight of risk management, but it is not realistic to expect the boards to have a meeting focus exclusively on FX risks. These should be considered as one element of a board's regular assessment of the risks an institution is facing although we would expect this process to be lead by the Board's risk oversight sub committee, informed by key members of the executive, including the chief risk officer.

3.1.4: Limits

We support limits, but wish to remind the Committee that there are large exposure limits in many jurisdictions (the European Union and the USA), and that banks have their complementary and probably higher in-house restrictions. These cover not just individual counterparties but also limits to central clearing counterparties too.

3.1.7: Escalation

We support these arrangements, but as with guideline 1, we do not think that the board is the appropriate level to help resolve the vast majority of these matters which are better dealt with through by staged escalation to senior management depending on the nature of the incident.

Guideline 2: Principal Risk, 3.2.4 – 7: Limits

We support the use of limits, which are long established in the community of FX trading banks but should which also take into account the existence of large exposure requirements, as we note above in 3.1.4..

Guideline 6: Legal risk

A bank should ensure that agreements and contracts are legally enforceable for each aspect of its activities in all relevant jurisdictions.

The proposals regarding Legal risk may not be aligned with current industry practice, in particular the proposed requirement for legal opinions to support enforceability of settlement netting arrangements in all relevant jurisdictions. Industry practice is to obtain legal opinions for close out netting, not settlement netting, which in our view is the more relevant question.