



BNP PARIBAS

BNP PARIBAS RESPONSE TO THE CONSULTATIVE PAPER N° 168 ON CORPORATE GOVERNANCE

The financial crisis has shown how relevant sound governance could be for the banks' resilience. We therefore welcome the updating and strengthening of the Basel Committee's guidance published in 1999. Although we share most of the recommendations of the related consultative paper and found them to be appropriate responses to the governance weaknesses revealed by the crisis, we still have some reservations on some of them.

These "Principles for Enhancing Corporate Governance" will hopefully promote converging regulation and increasing involvement from both the senior management and the board but we also believe they should remain high level and flexible principles so that they can accommodate different national laws and cultures as well as different kinds of financial institutions. Actually, our main concerns are focused on the operating role the Committee wants to give to the Board of Directors and on the need to keep the implementation of the contemplated rules proportionate to the size and complexity of the considered financial institutions.

A. Board and senior management role

The respective role of the board of directors and the senior management is often a source of confusion in the international debates. There is no unique definition of these two bodies as laws, cultures and practices vary across the world. This is rightly outlined once in the consultative paper but we are under the impression that in reality is then underestimated thereafter. As far as we are concerned, we have strong convictions on the matter.

- The primary role of the board is to ensure that the bank can survive outside shocks and prosper in good times. This is a responsibility it assumes on behalf of the shareholders. Enlarging this responsibility to stakeholders, as the consultative paper tentatively does, does not appear appropriate. On the one hand, this does not fit with the legal responsibility of the board and, on the other hand, this concern is already indirectly addressed as the board is taking into account the long term interest of the institution. Going beyond this societal consideration is taking the risk to make emerge unintended expectations and blur the fundamentals of the corporate law.
- The board's role is also to rise above the technicalities of the business development, the risk management and the operation administration. The board must keep their eyes wide open to the world and also to the senior management performance. It oversees the senior management; it does not stand in for it. This separation of duties is crucial.
- The board should remain free to determine the best suitable organization in order to meet its responsibilities considering the size and specificities of the firm. As far as we are concerned, we believe that setting up specialized committees of the board is very helpful. We however believe that there is no universal standard and the mission statements and names of these committees may vary. In our case and in relation with the present topic, we found adequate to have an Account Committee,

in charge of the financial statements and a separate Internal Control, Compliance and Risk Committee in charge of risks and controls. They meet together at least once a year in order to deal with overlapping issues.

- We do not support any direct reporting to the board even though we believe it is a good practice for the board to have unfiltered contact with senior managers, particularly heads of internal control functions, be it for example the Chief Risk Officer, the Chief Financial Officer, the Chief Compliance Officer or the Chief Internal Auditor.
- We do not support either direct relations between the supervisor and the board in normal circumstances, even though, again, the board may hear the supervisor and is copied of its observations and examination reports.
- It should be up to the executive body to select, appoint and dismiss senior management members, determine the bank's risk tolerance/appetite, approve and monitor the operating of the bank's business on a day-to-day basis. It is its duty to inform the Board of the main decisions and orientations and to get its approval as appropriate. Conversely, the board oversees the executive body and senior management. The internal control functions support the board to exercise its oversight duty.
- Finally, we would be rather prudent when it comes to the board member qualifications. Sound judgment, Socrates curiosity, integrity, commitment are probably more critical than technical knowledge. Moreover a good mix of qualification and experience is the best mean to benefit from diverse origins and experiences, in that avoiding the danger of narrow group think. The ability to work collectively and the leadership of the chair person is also a major ingredient of an effective Board. We do not discount the need of expertise, particularly in the banking context and as far as the chair person is concerned, but we would not either over estimate its importance.

B. Proportionate and flexible principles

With the caveats expressed above, the principles make a lot of sense but appear sometimes quite detailed. Their implementation may be possible for medium sized banks but also very burdensome if not out of reach for large international banks with multiple subsidiaries. It is true that the Consultative Paper refers to a proportionality principle but here again the temptation for the field supervisor to forget it is high.

The executive body of a large international banking group (we are using here intentionally this term in lieu of senior management) cannot be involved in the day to day management nor be fully cognizant of the activity and structure of the thousand(s) entities that constitute it. We do not mean that no one in the organization should; we mean that the role of the executive body is rather to make sure that there are processes and resources to monitor these issues and keep it informed of deviations from the banking group policy.

Finally and obviously, local laws and circumstances may call for adaptations of the principles. A comply or explain statement would be welcome in that kind of document.

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To conclude, we would like to underline that beyond corporate governance rules, the benefits of which cannot be denied, the personal behaviour of the directors and senior management staff members are clearly critical for efficient governance. The leadership of the chair person and the qualification of the Chief Executive as well as their ability to work together are determinant in that respect. Applying the proposed principles would not guarantee sound governance but sound governance would certainly be built on these principles.

We take the liberty to propose you some amendments reflecting these concerns directly in the attached modified Consultative Paper (in a tracked mode). We would also like to indicate our support to the comments made by the IIF and the FBF (French Banking Federation) that we contributed to. Our answer must be read as supplementary to the latter ones or expressing nuances that we believe useful to single out.

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