



CENTER FOR CAPITAL MARKETS COMPETITIVENESS

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Secretariat of the Basel Committee on Banking Supervision
Bank for International Settlements
CH-4002 Basel
Switzerland

Re: Guidance on the application of the Core principles for effective banking supervision to the regulation and supervision of institutions relevant to financial inclusion

Dear Sir or Madam:

The U.S. Chamber of Commerce (the “Chamber”) created the Center for Capital Markets Competitiveness (“CCMC”) to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy.¹ The CCMC appreciates the opportunity to comment on the Basel Committee on Banking Supervision’s (the “Basel Committee”) consultation on Guidance on the application of the Core principles for effective banking supervision to the regulation and supervision of institutions relevant to financial inclusion (the “Guidance”).

CCMC believes that sensible regulation of consumer financial products and services is a cornerstone of a well-regulated 21st century economy. . We support government’s establishment of clear rules of the road that permits conscientious businesses to grow, innovate, and serve markets within well-defined boundaries and complementary efforts to promote financial innovation and financial inclusion. Unfortunately, the regulation of the consumer financial market in the United States by the Consumer Financial Protection Bureau (the “Bureau”) in recent years has varied from this approach. The result has been an industry fraught with confusion, uncertainty, and stifled innovation—none of which is ultimately good for the consumer. CCMC has repeatedly expressed our concerns to the Bureau.

¹ The Chamber is the world’s largest federation of businesses and associations, representing the interests of more than three million U.S. businesses and professional organizations of every size and in every economic sector.

Consequently, our comments on the Guidance are focused specifically on those principles that should be strengthened and clarified so that issues similar to those that pertain to the CFPB are less likely to arise in other jurisdictions throughout the world. We believe that mandating transparency in the rulemaking, supervisory, and enforcement actions of the relevant consumer protection supervisors is a key element to achieving these important consumer protection goals.

Discussion

Principle 1: Responsibilities, objectives and powers

CCMC strongly agrees with the Basel Committee that “an effective system of banking supervision has clear responsibilities and objectives for each authority involved in the supervision of banks and banking groups.” In the United States, we have unfortunately seen supervisory duplication—and, at times, dissonance—among different prudential and consumer protection banking regulators, causing confusion in the marketplace and conflicting standards for supervision, enforcement, and accountability.

We believe that the Guidance can be improved to avoid these mistakes. More specifically, the standards contained in Appendix A can be strengthened to further encourage transparency and clear standards for financial consumer protection policies. For example, Principle 6 of Appendix A should specify that, if a “suitability” standard is in place for products, there should be clearly defined and easily understood methods, fashioned with input from consumers, service providers, and legislators, for determining whether a product or service meets the standard. Principle 9 of Appendix A could also be strengthened by clarifying that mechanisms to address consumer complaints should include methods to identify “false positive” or duplicative complaints. This will permit supervisors to allocate limited resources more efficiently..

Overall, however, we stress that Principle 1 (and related principles) should incorporate additional direction to ensure a proportional approach in regulating financial institutions. We believe that the application of the Guidance should recognize differences in the size of regulated institutions, as well as geographical and regulatory variations that may call for a more tailored application of the Guidance.

Principles 2: Independence, accountability, resourcing and legal protection for supervisors

We believe that a consumer protection regulator can be effective only with a clear mandate, and that a regulator's actions in enforcing that mandate must be held accountable by a legislature or other democratically elected bodies. In the United States, we strongly believe that the Bureau's structure, designed to be immune from these critical checks and balances, fails these basic tests.

As we have repeated in the past, no other entity in our federal government has a single director who serves for a fixed term and receives its funding without any congressional approval. Moreover, the regulatory and enforcement authority exercised by the director of the Bureau is extraordinarily broad. The Bureau has the power to regulate a number of consumer products and services that are common sources of financing for Main Street businesses and to prevent "unfair, deceptive, or abusive acts or practices"—an unusually vague standard—in the market for consumer financial products.

Thus, we recommend that Principle 2 be amended to reflect a greater emphasis on accountability. Additionally, we believe that the legal framework for banking supervision should explicitly incorporate the measures by which those supervisors may be held accountable.

Principles 8, 9, and 11: Supervisory Approach, Supervisory technique and tools, and Corrective and sanctioning powers of supervisors

CCMC also believes that, to the extent the examination and supervision process is a key tool for enforcing compliance with consumer protection laws, transparency and a consistent outcome in all cases should be guaranteed.

For example, while several companies in the United States have reported good experiences with individual examiners or examination teams, the majority has reported that the examination process is confusing, unnecessarily duplicative, inconsistent, and open-ended; in fact, the "process" is difficult to discern. This significant inexperience with supervision has revealed a number of areas in which improvement is greatly needed.

In this respect, we believe our recommendations to the Bureau for improvements in supervision and examination should also be considered by the Basel Committee. In particular, the Guidance should incorporate the following recommendations:

1. Improving the Training of Supervision Staff;
2. Applying Consistent Approaches to Examinations;
3. Ensuring that Examinations Should Have an End Point and With a Sensible, Uniform Closing Letter Process;
4. Prohibiting the Misuse of the Supervision Process to Demand Huge Amounts of Data;
5. Prohibiting the Use of the Supervision Process to Provide Guidance Regarding Its View of Statutory Requirements Or To Impose Non-public Interpretations Of Statutory Requirements.²

Conclusion

CCMC reiterates its appreciation to the Basel Committee for moving forward on guidance to national regulators on the regulation and supervision of financial inclusion. These are important issues that, when properly addressed, promote financial stability and assist unserved and underserved people to receive the financial services that are key to economic advancement. However, it is for that reason that we urge the Basel Committee to incorporate additional transparency and accountability into the regulatory and supervisory process of financial consumer protection regulators. An easily understood and well-defined legal system identifying the scope of consumer protection law will allow the marketplace to best serve underserved and unserved individuals.

Sincerely,

A handwritten signature in black ink, appearing to be 'TK' followed by a long, sweeping horizontal stroke.

Tom Quaadman

² See Letter to Director Cordray from U.S. Chamber of Commerce Center for Capital Markets Competitiveness, (Feb. 14, 2013), available at <http://www.centerforcapitalmarkets.com/wp-content/uploads/2013/08/2013-2-14-CFPB-supervision-letter.pdf>.