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**Basel Committee on Banking Supervision
Consultative Document on Principles for Enhancing Corporate Governance**

Comments from the International Banking Federation

We write with regard to the publication of the above consultative document (the "Consultative Document"). The International Banking Federation ("IBFed") is the representative body for national and international banking federations from leading financial nations around the world. Its membership includes the American Bankers Association, the Australian Bankers' Association, the Canadian Bankers Association, the European Banking Federation, the Japanese Bankers' Association, the China Banking Association, Indian Banks' Association, Korean Federation of Banks and the Banking Association South Africa. This worldwide reach enables the Federation to function as the key private sector international forum for considering legislative, regulatory and other issues of interest to the banking industry and to our customers. We welcome the opportunity to comment.

Our member federations share the Basel Committee's goal of promoting effective corporate governance practices for banking organizations and therefore support the policy intent underlying the principles articulated in the Consultative Document. The financial crisis has made banks aware of the need to basically review their corporate governance practices and our understanding is that most banks are already in the process of doing so. We have set out below our general comments, as well as recommendations regarding specific principles for your consideration.

General Comments

As an overarching principle, we believe that guidance regarding effective corporate governance should be principles-based, balanced and adequately flexible to reflect different national structures and business models. Adopting such an approach would allow the guidance to be used by the widest range of banking institutions as banking institutions around the world have significant differences in size, structure and environment. It would also allow corporate governance principles to function in an optimal manner.

We welcome the broad nature of the Consultative Document, which incorporates a wide range of issues falling within the general rubric of governance. We believe that this will make

implementation more feasible, with various elements of corporate governance considered together. However, elements of the Consultative Document may also be considered excessive for smaller institutions such as small subsidiaries of international banks located outside of the home country. Therefore, we were pleased to see the concept of proportionality being emphasized throughout the Consultative Document, in alignment with other guidance issued by the Basel Committee. We emphasize that the principle of proportionality must be applied in practice so that the corporate governance framework is workable for smaller banking institutions.

The Consultative Document places substantial emphasis on the risk management component of corporate governance, with which we are in general agreement. However, we note that those banks working with limited resources will have to strive to achieve a balance between the competing demands of corporate governance, audit, risk management and compliance.

While we acknowledge the importance of regulating corporate governance at banks, we note that regulation can only go so far. Corporate culture, values and attitudes are also very significant to how a bank conducts itself from a governance perspective, and these elements are not as susceptible to being regulated. We note that Paragraphs 29 to 32 of the Consultative Document reflect the Basel Committee's recognition of these elements of corporate culture and we welcome further efforts to incorporate such a philosophy into the Consultative Document.

Scope of Application

As the 2004 OECD Principles of Corporate Governance have highlighted, the division of responsibilities among different authorities in a jurisdiction should be clearly articulated. Such guidance is particularly valuable for the banking industry as banks increasingly operate in multiple jurisdictions and may, therefore, be confronted with diverging and even conflicting corporate governance requirements.

Our understanding is that the corporate governance principles set out in the Consultative Document should basically be applied on a bank group level, and on a subsidiary level only where appropriate. It would in any event be helpful if the final version of the Basel Committee's Principles would recognise that banking groups should have the possibility to call upon their supervisory college to discuss - and, if possible, resolve - ambiguities which may exist concerning the scope of application of national requirements.

Recommendations Regarding Specific Principles

Principle 1 – Oversight of Strategic Planning

Principle 1 also discusses the board's responsibilities regarding the bank's overall business and risk strategies, which we support. Currently, the drafting of this section suggests that the board's oversight of strategic planning is a one-time exercise that involves approving and overseeing the setting of the relevant strategies. We suggest modifying this section to more clearly articulate that the board's oversight of strategic planning is an ongoing responsibility that includes monitoring changes in financial products, markets, the political environment, etc.

Principle 2 – Proportionality in Assessing Board Qualifications

As noted above, we believe that the principle of proportionality is very important in the corporate governance context, especially as it is applied to smaller banking institutions or those institutions operating in smaller markets. Smaller banks, and those operating in markets where the pool of potential candidates for directorship is smaller, have difficulty in recruiting and retaining qualified individuals to board positions. This difficulty would be exacerbated if cross-membership on boards were discouraged. We believe that the concerns of the Basel Committee regarding the possible compromise of independent judgement where there is cross-membership can be adequately addressed by establishing special policies, procedures and internal controls to monitor and prevent conflicts of interests. We recommend that this aspect of Principle 2 be modified to better reflect the principle of proportionality as it applies to smaller institutions or those institutions operating in smaller markets.

Principle 5 – Relationships between Risk Management and Business Units

Paragraph 75 of Principle 5 of the Consultative Document provides that the risk management function should be sufficiently independent of the business units whose activities and exposures it reviews, while not being so isolated that it cannot understand the business or access necessary information. We agree with this principle but note that the risk management function needs to have robust relationships with individual business units in order to achieve its own objectives, i.e. acquire the comprehensive knowledge and understanding of the unit's responsibilities, operations and internal controls required to assess risks. At the same time, the relationships between the risk management function and the individual business units should in no way impact the direct reporting line that the risk management function has to the board nor should the relationships compromise the ability of the risk management function to escalate any concerns regarding the business units. Paragraph 30 under Principle 1 of the Consultative Document speaks to the need for the bank's code of conduct to articulate acceptable and unacceptable behaviours. In addition to a code of conduct, we note that the bank would also need to have mechanisms in place to ensure that the terms of the code are being followed. Where the code of conduct speaks to discouraging risk taking activities, it would be helpful to have in place communication and collaboration between the risk management function and individual business units in order to ensure the development of appropriate mechanisms to discourage excessive risk taking at the business level. Robust relationships between the risk management function and individual business units would also facilitate the achievement of the goal articulated in paragraph 89 of the Consultative Document which provides that ultimately all bank employees bear responsibility for managing risk.

Principle 12 – Corporate Structure and Supervisors

Paragraph 116 of Principle 12 provides that the bank should discuss with and/or report to its supervisors regarding the policies and procedures for the creation of new structures and the complexity of the group.

We agree that boards of directors can be expected to enter into a dialogue with banking supervisors on the way in which they have implemented corporate governance principles within their organisation. We also acknowledge that banking supervisors may on the basis of banking supervision legislation seek to require banks to prepare resolution plans intended to facilitate the rapid resolution or wind-down of the bank, should that prove necessary, taking into account cross-border dependencies, implications of legal separateness of entities for resolution and the possible exercise of intervention and resolution powers.

However, the guidance which is proposed in Paragraph 116 is over-reaching in that it suggests supervisors could make decisions regarding banks' corporate structures when such decisions properly lie within the responsibilities of the board and senior management. While it is important that supervisors understand the rationale for how the bank has structured its operations, especially where the structure is complex or opaque, there should not be any inference that supervisors are in a position to decide how the bank should structure its operations.

We conclude from this that the guidance which is proposed in Paragraph 116 cannot possibly be considered as a principle of corporate governance as it exclusively pertains to banking supervision legislation. Therefore, we recommend that Paragraph 116 be deleted as the Consultative Document is meant to address (internal) corporate governance principles, and not banking supervision.

Principle 13 – Special-Purpose/Related Structures and Supervisors

Paragraph 122 of Principle 13 provides that the board should be prepared to discuss with, and report to, the bank's supervisor the policies and strategies adopted regarding the establishment and maintenance of special-purpose and related structures and their operations.

Our concerns with Paragraph 122 are similar to those set out above in our discussion of Paragraph 116 of Principle 12. We agree that boards of directors should be prepared to dialogue with supervisors regarding any special-purpose and related structures which pose unique risks as part of the board's responsibility to have appropriate knowledge of the risks associated with the bank's operations. However, we believe that by including a "reporting" obligation on boards, this paragraph is over-reaching in its scope. Like Paragraph 116, Paragraph 122 does not appear to be a principle of internal corporate governance as it relates directly to supervisory expectations. Therefore, we recommend that Paragraph 122 be deleted as the bank's obligations vis-à-vis its supervisor is not intended to be the focus of the Consultative Document.

In closing, we have appreciated the opportunity to comment on the Consultative Document. Corporate governance is a critical aspect of the management of banks and we support the Basel Committee's efforts to articulate principles that facilitate appropriate and effective corporate governance.