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

30th January 2015

Dear Sirs/Mesdames,

Re: Corporate Governance Principles for Banks

The International Banking Federation (IBFed) is the representative body for national and international banking associations 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, **[Febraban]**, the Japanese Bankers Association, the China Banking Association, the Indian Banks' Association, the Korean Federation of Banks, the Association of Russian Banks, and the Banking Association of South Africa. This worldwide reach enables the IBFed to function as the key international forum for considering legislative, regulatory, and other issues of interest to the banking industry and to our customers.

The IBFed appreciates the opportunity to comment on the following Consultative Document issued by the Basel Committee on Banking Supervision in October 2014: *Corporate governance principles for banks* (the **Consultative Document**).

Overall, it is the view of the IBFed that sound corporate and risk governance practices are essential for successful business and reinforce a strong corporate and risk culture. Below, we provide a number of comments highlighting some interpretation difficulties and practical considerations in connection with the Consultative Document.

Guiding Principle

As noted in the press release accompanying the Consultative Document, the principles in the document are intended to update the *Principles for Enhancing Corporate Governance* that were issued by the Basel Committee in October 2010.

As the Consultative Document notes, since 2010, banks globally have made progress in various areas of corporate governance and national regulatory authorities have taken measures to improve regulatory and supervisory oversight of corporate and risk governance at banks. We understand that the updated expectations in the Consultative Document are intended to take into account the peer review recommendations made by the Financial Stability Board (**FSB**) and other recent guidance addressing corporate governance issues.

It is our view that the fundamental guiding principle that should be used by the Basel Committee in connection with the Consultative Document is one of flexibility, recognising the nature, scale and complexity of the banking business and with appropriate deference to local legal and regulatory regimes on matters dealing with the legal responsibilities and liabilities of directors and senior management.

Guidance issued by the Basel Committee comprehends banks in member jurisdictions around the world. Within each jurisdiction, there is a range of banks that vary widely in asset size, complexity of structure and the nature of activities and risk profile of the bank. Additionally, member jurisdictions themselves vary widely in terms of the legislative and regulatory requirements that are in place, as well as the legal and policy environments in which financial regulation is shaped.

For these reasons, we are pleased to see that the Consultative Document notes the significance of jurisdictional differences, as well as the importance of considering proportionality, taking into account the nature, scale and complexity of the business models of affected banks. We suggest that the Committee's view in this respect be further confirmed and emphasized in the final Consultative Document.

Additionally, we believe that the Committee should clarify that flexibility in the roles of the Board and senior management may be appropriately addressed under local law and practice. That also is true with regard to senior management and members of the board of subsidiaries within a corporate group

Furthermore, we are concerned that the Consultative Document is ambiguous concerning the legal responsibilities and standards applicable to members of the Board. On one hand, Paragraph 22 notes that the directors' "duty of loyalty" and "duty of care" are matters of national law and supervisory standards. On the other hand, however, Paragraphs 22 and 23 then outline detailed activities supposedly required under those duties, which may or may not agree with national law in every or even most jurisdictions. National jurisdictions have an existing (and usually significant) body of law, promulgated by statute and judicial action, as well as by financial industry supervisory and regulatory authorities. The Consultative Document should not, therefore, expand or purport to interpret these standards.

We suggest, therefore, that any identification of particular standards should be by way of example only and adequately explained. Without this qualification, there may be interpretation difficulties and practical issues for some banks in some jurisdictions where there are divergences between those standards and local law and practice.

Board's Qualifications, Composition, Structure and Practices

Overall, we support the principles relating to the qualifications, composition, structure and practices of the Board, as appropriate to the nature, scale and complexity of the bank's business. It is important that Boards are able to carry out their role and facilitate effective oversight. In part, this requires that Board members have competence, probity, and knowledge and experience in relevant areas. Part of this is also being able to engage with other functions, including senior management. With this in mind, we make some specific comments about certain aspects of the Board's supervisory role.

Board's Supervisory Role

We are concerned that the implementation of the principles set out in the Consultative Document could result in a significant increase in the responsibilities of a bank's Board of directors such that the directors' ability to carry out their responsibilities could be compromised. Further, we are concerned that, in some instances, the language in the Consultative Document appears to blur the roles of the Board and senior management.

The Committee's guidance provides that the Board has "the ultimate responsibility for the bank's business strategy and financial soundness, key personnel decisions, internal organization and governance structure and practices, and risk management and compliance decisions". Although we agree that the Board has ultimate responsibility for the bank's business strategy, as well as for oversight of management's actions that may affect the bank's financial soundness, we are concerned that the language of the Consultative Document could be read as imposing a guarantee or assurance of the bank's financial condition. In particular, we have concerns that the frequent use of the term "ensure"¹ suggests a degree of certainty, significantly in excess of the legal standards applicable to directors in many major jurisdictions.

In addition, although the Board's role clearly encompasses oversight and a focus on strategy, placing the responsibility on the Board as a whole to be proactively involved in matters relating to the day-to-day operations of the bank might not be tenable in practice and may result in unclear delineation of responsibilities and/or conflicting obligations with senior management. In particular, we have concerns about the following responsibilities being placed on the Board.

The Consultative Document states that the Board should monitor the bank's adherence to the risk appetite statement, risk policy and risk limits. It is difficult to see how a Board could

¹ See, e.g., Paragraphs 24, 26 and 42. We note that in one jurisdiction, this issue has been carefully addressed by regulators and the banking industry. The United States Office of the Comptroller of the Currency ("OCC") explicitly defines the role of the board of directors in "ensuring" the bank's compliance with certain enforcement orders as to: "(a) Require timely reporting by Bank management of such actions directed by the Board to be taken under this Order; (b) Follow-up on any non-compliance with such actions in a timely and appropriate manner; and (c) Require corrective action be taken in a timely manner for any noncompliance with such actions."

proactively monitor the bank's risk management functions, especially since the term "monitor" implies this action would have to be taken on an ongoing basis. Further, this proposed function may cause disruption to the function and responsibilities of the Chief Risk Officer and committee structure.

We believe that the Board should be able to carry out its oversight and supervisory role in respect of the bank's risk management function, in reliance on assurances from delegated committees of the Board and, on the basis of appropriately detailed reporting, from senior management.

The Consultative Document also states that the Board should oversee the operation of the bank's compensation system. The reference to the "operation" of the compensation system suggests that the Board's oversight responsibility should be exercised on an ongoing basis.

We recommend that, as noted above, the Board be permitted to rely on the assurances of delegated committees of the Board and/or senior management, rather than requiring Boards to be directly involved in the operation of a compensation system.

Risk Management, Identification, Monitoring, Controlling and Communication

Overall, we support the principles relating to risk management, risk identification, monitoring and controlling of risk, and risk communication. It is important that banks and banking groups maintain an independent risk management function. The risk management function should be responsible for overseeing risk-taking activities across the bank and/or banking group and should be sufficiently independent of the business units. A Chief Risk Officer or similar, should be allotted overall responsibility for the risk management function and overseeing the development and implementation of the bank's risk management function. Open communication between senior management, control functions and the Board is essential in fostering a strong risk culture. Assurances from senior management should be facilitated via effective risk reporting to the Board and transparent decision making by the Board.

Compliance

Overall, we support the assertion that compliance "starts at the top". The senior management is responsible for establishing the compliance culture across the bank, which not just encapsulates legal and regulatory obligations, but also standards of honesty, integrity and probity. The compliance function should be responsible for advising the senior management on how the bank is managing compliance risk as well as areas which may raise ethical or reputational issues.

We hope you find our comments on the Consultative Document useful. Please let us know if you have any further questions or would like to discuss our recommendations in further detail.

Yours sincerely,



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IBFed



Bill Randle
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