SwissBanking

Basel Committee on Banking Supervision
c/o Bank for International Settlements
CH-4002 Basel

Basel, 1 June 2010
CWI/JSA

Your Consultative Document:
Principles for enhancing corporate governance

Ladies and Gentlemen

We refer to your Consultative Document „Principles for enhancing corporate governance", open for comment until 15 June, 2010, and thank you for the possibility to submit you our members' position this paper.

1. General Remarks

Repeatedly in your paper, there appears a tendency to favour legal-entity structures over the actual management or business-line organization. We think that this approach is dangerously restrictive for any cross-border activity. It also contradicts the development that regulators, in response to the appearance of globally active firms, have taken great efforts to increase cooperation and communication among themselves (e.g., the establishment of „Supervisory Colleges" in the European Union). A recognition of this development is lacking throughout your paper.

We think that your paper should, rather than promote a very narrow, entity-by-entity-oriented view with a restricted national regulatory perspective for each jurisdiction, give credit to the principle of the lead supervisor and strengthen his role vis-à-vis host supervisors, including the possibility of mutual reliance and delegation among the authorities. Moreover, regulators should be encouraged to request and share information in the same reporting format rather than ask for separate reports on single entities, which cannot reflect the true economic standing of a subsidiary within a group.

In addition, we think that your paper ignores the difference of non-listed, fully-owned subsidiaries, embedded in a group structure and serving auxiliary purposes (e.g., accounting or tax) on one side and operating entities in which a bank or group holds a controlling interest on the other side.

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Finally, we are of the opinion that one regulatory approach does not fit all sizes of banks. There should remain a possibility to differentiate between locally, nationally and internationally active banks.

2. Priciples 1-4 (pages 7-14)

In general, principles 1-4 seem to be very much in line with prevailing standards on corporate governance, e.g., recommendations and requirements as set out in the Swiss Code of Corporate Governance, the FINMA Circular 2008/24 (supervison and internal controls of banks), or NYSE rules on corporate governance.

Under Principle 3, paragraphs 53-57 we think that functional information barriers (previously „Chinese Walls") deserve explicitly to be mentioned as one of the possible measures to prevent conflict-of-interest situations within a bank or group.

Principle 4 (on group structures and ensuring adequate corporate governance within subsidiaries) needs to be streamlined as it is too prescriptive in what the duties of the parent company board are in a group structure (assigning too much or too granular duties to the parent-company board with respect to its subsidiaries or putting too much emphasis on governance at the subsidiary level as such). It is not the task of a board to generally supervise the subsidiaries but to supervise the management in a more focused way. Particularly, the specifics of non-listed, fully-owned subsidiaries have not been sufficiently taken into consideration; a regulatory treatment as if such subsidiaries were stand-alone entities would clearly be disruptive to international groups.

A parent-company board has to ensure that the management exercises its obligations in relation to corporate housekeeping and setting clear responsibilities. The framework for day-to-day compliance with the guidelines set by the board is to be designed and implemented by the management. The board only needs to oversee the implementation on the management-level.

3. Principles 5-8 (pages 15-21)

While duties and responsibilities of the risk-management function are adequately reflected in your paper, we suggest to deal with the principle of internal controls – as relevant for all areas of a bank – separately from Risk Management.

With a view to principle 6 (risk management and internal controls), we suggest to better adjust this paper to your existing principles and recommendations in the area of risk management.

4. Principles 10-11 (pages 24-25)

We note that there was already a communication of Principles and Implementation Standards on the topic by the FSB. A closer coordination between the two organizations would be desirable in order to avoid duplicity and ambiguity.

5. Principles 12-13 (pages 25-28)
(see also comments 1. General Remarks)

The last sentence of Principle 12, paragraph 116 contains wording that seems to imply regulatory guidance with regard to the establishment of new entities. Both for practical reasons and in order not to blur management responsibilities, we are of the opinion that an actual say of regulators in the creation of subsidiaries other than for licensing reasons is unnecessary and certainly not helpful. We propose that this sentence ("This should provide [...] its operational structure") be deleted from the paper.

Yours sincerely,
Swiss Bankers Association

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