

**Response to the Joint Forum's Consultative  
Document of *Principles for the Supervision of  
Financial Conglomerates* from Financial  
Competitive Regime Perspective**

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- 1. All views in this submission are presented on behalf on the writer, and may not necessarily be construed as those of the People's Bank of China.**
- 2. For the writing tradition and reading convenience, this paper is drafted in English and Chinese. The meaning shall be construed as the same.**

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# 从金融竞争制度视角评述联合论坛公布的《金融集团监管原则》征求意见稿

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- 1、 本文仅代表作者个人观点，并不必然代表中国人民银行观点。
- 2、 考虑到行文传统和阅读方便，文章以英文和中文书写，核心内容一致。

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二〇一二年 三月

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# I. General Comments

Dear Sir or Madam:

I welcome the opportunity to provide comments on the December 2011 consultative document on *Principles for the Supervision of Financial Conglomerates* issued by the Joint Forum.

In contemplating the Financial Crisis, the international communities have reached many conclusions. The Joint Forum's consultative document of *Principles for the Supervision of Financial Conglomerates* will play a crucial role for the financial supervisory system. However, unfortunately it should be perceived that the proposal neither pays enough attention to the value of the Financial Competitive Regime (FCR), nor considers broadly the relationship between the competition and the banking supervision.

This comment integrating the FCR is submitted along with relevant suggestions and some key affairs about the FCR in China. It is hopeful that the Joint Forum can consider them in issuing the final document of *Principles for the Supervision of Financial Conglomerates*.

## II. Background

1. Page 1, “In hindsight, the crisis exposed situations in which regulatory requirements and oversight did not fully capture all the activities of financial conglomerates...”

1.1 **Comment:** To a large extent, these complex activities aim at enhancing the competitiveness of financial conglomerates. As a result, the international communities should set up the internationally accepted FCR in a short run to strengthen the supervisory efficiency and effectiveness.

2. Page 1, “...the holding companies of financial conglomerates.”

2.1 **Comment:** Before licensing a financial conglomerate, its affiliate or its legal entities, the authorities should assess the impact on competition arising from licensing a new participant in order to avoid excessive concentration or competition distortion in the financial sector.

3. Footnote 4, “(iii) provide a basis for increased intensity of supervision and regulation of financial groups, particularly when a group or any of its institutions is identified as systemically important”.

3.1 **Comment:** The supervisors can regulate financial groups more effectively by implementing the FCR. If a group, its institution or its legal entity is identified as a systemically important financial institution, the implementation of the FCR will play a critical role. Please see “*Response to the Financial Stability Board's Consultative Document of Effective Resolution of Systemically Important Financial Institutions from Financial Competitive Regime Perspective*”.<sup>1</sup>

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<sup>1</sup> Zhen Li, “*Response to the Financial Stability Board's Consultative Document of Effective Resolution of Systemically Important Financial Institutions from Financial Competitive Regime Perspective*”, September 2011. Available at: [http://www.financialstabilityboard.org/press/c\\_110909fff.pdf](http://www.financialstabilityboard.org/press/c_110909fff.pdf)

### III. Objective

4. Page 3, "... policymakers to ensure that supervisors are provided with the necessary powers, authority and resources to perform comprehensive group-wide supervision of financial conglomerates".
  - 4.1 **Comment:** The powers, authority and resources should include those to perform the financial competitive supervision.

## IV. Scope of Application

5. Page 6, “interconnectedness”.

5.1 **Comment:** Interconnectedness is a significant indicator for the competitiveness of a financial conglomerate. The more interconnected a group is, the stronger the competitiveness of a financial conglomerate is. As a result, the financial competitive supervision should be taken as an indispensable component to the modern financial supervisory system.



## V. Principle

6. Principle 1, “Supervisory powers and authority”.

6.1 **Comment:** It is important that supervisors are empowered to investigate monopoly activities, punish anti-competitive practices, preserve the competitive financial market, and protect investors and financial consumers.

7. Paragraph 1.2, “The legal framework should provide sufficient enforcement powers to the supervisors to address any concerns or issues related to the financial conglomerate ranging from regulatory compliance to safety and soundness and resolution.”

7.1 **Comment:** Compliance to the competition rules or the FCR makes great contribution to the resilience of the financial market.

7.2 **Suggestion:** “The legal framework should provide sufficient enforcement powers to the supervisors to address any concerns or issues related to the financial conglomerate ranging from regulatory compliance to **competition**, safety and soundness and resolution.”

8. Principle 2, “Group-level Supervisor”.

8.1 **Comment:** In the context of multiple supervisors, different supervisory objectives are provided to various supervisors. These objectives diverge occasionally and result in a supervisory arbitrage. Consequently, it is crucial to confirm the leading supervisor. In China, national policymakers should establish the Financial Competition Commission at the State Council level as soon as possible, and confirm the central bank as the leading body for the cross-sector cooperation, coordination and information exchange between supervisors, regulators or agencies.

9. Paragraph 11.3, “Where a financial conglomerate creates many legal entities ...”

9.1 **Comment:** Before licensing legal entities to be created by a financial conglomerate, the authority should take effective measures to avoid the occurrence of anti-competitive practices and the competition distortion.

10. Paragraph 14, “Remuneration in a financial conglomerate”, “Supervisors should require that the financial conglomerate has and implements an appropriate remuneration policy that is consistent with internationally agreed standards as well as with

10.1 **Comment:** Remuneration should correspond with the competitiveness of a financial conglomerate. Please see “*Response to Basel Committee's Consultative Document on Range of Methodologies for Risk and Performance Alignment of Remuneration from Financial Competitive Regime Perspective*”.<sup>2</sup>

10.2 **Suggestion:** “Supervisors should require that the financial conglomerate has and implements an appropriate remuneration policy that is consistent with internationally agreed standards as well as with its **competitiveness** and risk profile”

11. Paragraph 28, “Risk concentrations and intra-group transactions and exposures”.

11.1 **Comment:** The more concentrated a financial industry is, the more interconnected financial institutions are, the more concentrated the risk is for a financial conglomerate as a whole.

12. Paragraph 28.1, “... Supervisors should deal effectively with ... intra-group transactions ... are considered to have a detrimental

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<sup>2</sup> Zhen Li, “*Response to Basel Committee's Consultative Document on Range of Methodologies for Risk and Performance Alignment of Remuneration from Financial Competitive Regime Perspective*”, December 2010. Available at: <http://www.bis.org/publ/bcbs178/zhenli.pdf>

12.1 **Comment:** Large fines or damages imposed on a financial conglomerate or its related entities for breach of the competition policy or antitrust rules have a significant detrimental effect.

## **VI. Key Affairs about Financial Competitive Regime in China**

Zhen Li submitted one proposal on establishing the FCR to the national decision makers in December 2010.<sup>3</sup> Finance is the lifeline of the national economy, modern economy is institutional one, and sufficient and effective financial market competition will play a significant role in fulfilling national strategies such as containing inflation, transforming the mode of economic growth, macroprudential supervision, job creation and stepping out. In conclusion, in the coming economic development of the twelfth Five-Year Plan period, the FCR should be established as soon as possible. After three months, “The National Economic and Social Development twelfth Five-Year Plan Compendium” was promulgated. The compendium adopts Zhen Li’s opinion and explicates the strategic principle of **Enhancing the Competition to Promote the Development**.

In March 2011, the fourth session of 11<sup>th</sup> NPC was convened in Beijing. During the period, Zhen Li helped Deputy Yang Xiaoping

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<sup>3</sup> Zhen Li, “*Enhancing the Financial Competition to Promote the Scientific Development in the 12th Five-Year National Plan*”, China Economic Herald, December 21, 2010. Available at: [http://www.ceh.com.cn:8080/epaper/ceh/20101221/B05/B05\\_56.htm](http://www.ceh.com.cn:8080/epaper/ceh/20101221/B05/B05_56.htm)

draft a proposal on setting up the FCR. In the proposal Mr. Yang analyzed realistic values of the FCR for Chinese economic development, suggested to amend the legal framework of the FCR, and sketched a new framework for the executive mechanism of the FCR.<sup>4</sup>

National People's Congress of China, an official journal of National People's Congress, published an article on "Establishing Financial Competitive Regime to Protect Financial Consumers" in November 2011, which indicates China's supreme legislature recognizes the realistic values of the FCR for the first in history.<sup>5</sup>

The 4<sup>th</sup> National Financial Work Conference was convened on January 6<sup>th</sup> 2012 in China. Premier Wen Jiabao attended and announced to deepen financial institutions' reform and to break the monopoly effectively.<sup>6</sup> In fact, the financial anti-monopoly is the core for the FCR.

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<sup>4</sup> Yang Xiaoping, "Proposal on Establishing Financial Competitive Regime", Financial News, March 11, 2011. Ou Yang and Dong Xiao, "Financial Representatives of NPC & CPPCC Discuss Over Domestic Issues", Financial Analyst, March 2011.

<sup>5</sup> "Establishing Financial Competitive Regime to Protect Financial Consumers", National People's Congress of China, issue 19, November 2011. Available at:

[http://www.npc.gov.cn/npc/zgrdzz/2011-10/27/content\\_1677259.htm](http://www.npc.gov.cn/npc/zgrdzz/2011-10/27/content_1677259.htm)

<sup>6</sup> "The National Financial Work Conference was convened in Beijing". Please visit China government website. Available at: [http://www.gov.cn/lhdh/2012-01/07/content\\_2038988.htm](http://www.gov.cn/lhdh/2012-01/07/content_2038988.htm)

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6. Yang Xiaoping, “*Proposal on Establishing Financial Competitive Regime*”, Financial News, March 11, 2011.
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## 一、总 评

尊敬的女士和先生：

非常感谢有机会对联合论坛 2011 年 12 月发布的《金融集团监管原则（“Principles for the Supervision of Financial Conglomerates”）》征求意见稿发表评论。

在深刻反思此轮金融危机后，国际社会达成了诸多共识。联合论坛公布的《金融集团监管原则》将对银行监管体系发挥至关重要的作用。但遗憾的是，《金融集团监管原则》既未充分地关注金融竞争制度的重要作用，也未广泛地考虑金融市场竞争与银行监管的密切关系。

本评论从金融竞争制度的视角就征求意见稿的相关内容提出建议，并简要介绍了中国金融竞争制度主要事件。希望联合论坛在最终颁布的《金融集团监管原则》中能够采纳。

## 二、背景

1. 第 1 页，“……事后看来，危机暴露出了规制要求和监管并没有覆盖金融集团的所有行为。”

1.1 **评论：**在很大程度上，这些行为是以增强金融集团竞争力为目标。所以，国际社会应迅速建立起国际接受的金融竞争制度，增强监管效率和效果。

2. 第 1 页，“……金融集团的控股公司。”

2.1 **评论：**在批准设立金融集团或者其附属企业或者其法人时，当局应就批准新参与者会对竞争带来的影响进行测评，避免金融领域的过度集中或者是竞争扭曲。

3. 脚注 4，“(3) 为对金融集团持续增强的监管和规制提供基础，尤其是当集团或者其机构被认定为具有系统重要性之时。”

3.1 **评论：**监管者可通过执行金融竞争制度更加有效地规制金融集团。如果集团或者其机构或者其法律实体被认定是系统重要性金融机构，实施金融竞争制度将发挥关键作用。请阅“从金融竞争制度视角评述金融稳定理事会发布的《系统重要性金融机构有效处置》征求意见稿”。<sup>7</sup>

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<sup>7</sup> 李震，“从金融竞争制度视角评述金融稳定理事会发布的《系统重要性金融机构有效处置》征求意见稿”，载于“金融稳定理事会”，2011年9月。网址：[http://www.financialstabilityboard.org/press/c\\_110909fff.pdf](http://www.financialstabilityboard.org/press/c_110909fff.pdf)

### 三、目 标

4. 第 3 页，“政策制定者要确保监管者有必要的权力、职责和资源以实施对金融集团在集团范围内的广泛监管。”

4.1 评论：应当包括执行金融竞争性监管的权力、职责和资源。

## 四、实施范围

### 5. 第 6 页，“关联性”

**5.1 评论：**关联性对于金融集团而言是一项重要的竞争力指标。金融集团越关联，金融集团的竞争力越强。所以，金融竞争性监管应当作为现代金融监管体系内必不可少的组成部分。

## 五、原 则

### 6. 原则 1，“监管权和职责”

6.1 评论：非常重要的一点是，授权监管者调查金融垄断行为、处罚反竞争行为、维护竞争性金融市场、保护投资者和金融消费者。

7. 第 1.2 段，“法律框架应当就金融集团从规则执行到安全、稳健和处置等方面为监管者配备必要的执法权。”

7.1 评论：遵守竞争规则和金融竞争制度有助于金融市场的稳健。

7.2 建议：“法律框架应当就金融集团从规则执行到竞争、安全、稳健和处置等方面为监管者配备必要的执法权。”

### 8. 原则 2，“集团层面的监管者”

8.1 评论：在多重监管者背景下，不同的监管目标被赋予了不同的监管者。这些目标有时会发生分歧，导致监管套利。所以，明确牵头监管者非常关键。在中国，国家决策者应尽快在国务院层面建立金融竞争委员会，明确中央银行作为不同监管者或部门在跨领域方面合作、协调及信息交流的牵头机构。

### 9. 第 11.3 段，“金融集团设立多家法人实体……”

9.1 评论：在批准金融集团设立法人实体之前，当局应当采取有

效措施避免出现反竞争行为以及竞争扭曲。

10. 第 14 段，“金融集团的薪酬”，“监管者应当要求金融集团具有并实施与国际通行标准及与其风险状况相一致的适当薪酬政策”。

10.1 评论：薪酬应当与金融集团竞争力相一致。请阅“从金融竞争制度视角评述巴塞尔银行委员会拟颁布的《兼顾风险与绩效的薪酬制度》”。<sup>8</sup>

10.2 建议：“监管者应当要求金融集团实施与国际标准及其竞争力、风险状况一致的适当薪酬政策。”

11. 第 28 段，“风险集中和集团内部交易与敞口”

11.1 评论：从总体上看，对于金融集团而言，金融产业越集中，金融机构越关联，金融集团整体的风险越集中。

12. 第 28.1 段，“……监管者应有效处理……被视为有损害影响的……集团内部交易……”

12.1 评论：金融集团或者其相关实体因触犯竞争政策或者反垄断规则而被处以的大额罚金或者损害赔偿具有巨大的损害影响。

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<sup>8</sup> 李震，“从金融竞争制度视角评述巴塞尔银行委员会拟颁布的《兼顾风险与绩效的薪酬制度》”，载于“巴塞尔委员会”，2010 年 12 月。网址：<http://www.bis.org/publ/bcbs178/zhenli.pdf>

## 六、中国金融竞争制度主要事件

2010年12月，李震向国家决策层提交了建立金融竞争制度的建议。金融是经济的命脉，现代经济又是制度经济，而充分且有效的金融竞争对于遏制通货膨胀、转变经济发展方式、实施宏观审慎监管、增加就业、执行“走出去”等国家战略有着不可或缺的重要作用。所以，在经济发展的第十二个五年规划阶段，应尽快考虑建立金融竞争制度。<sup>9</sup>三个月后，《国民经济和社会发展的第十二个五年规划纲要》出台，《规划纲要》采纳了李震的观点，明确了“以竞争促发展”的战略准则。

2011年3月，十一届全国人大四次会议在北京召开。其间，李震协助杨小平代表草拟并提出了建立金融竞争制度的建议。杨先生在建议中分析了金融竞争制度对于中国经济发展的现实价值，建议修改金融竞争制度的法制框架，并勾勒了金融竞争制度执法机制的新框架。<sup>10</sup>

2011年10月，《中国人大》杂志（2011年第19期）登载了“建立金融竞争制度 保障金融消费者权益”一文，标志着中

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<sup>9</sup> 李震，“以金融竞争促‘十二五’科学发展”，载于《中国经济导报》，2010年12月21日，B05。网址：[http://www.ceh.com.cn:8080/epaper/ceh/20101221/B05/B05\\_56.htm](http://www.ceh.com.cn:8080/epaper/ceh/20101221/B05/B05_56.htm)

<sup>10</sup> 杨小平，“关于建立金融竞争制度的建议”，载于《金融时报》，2011年3月11日。

欧阳、冬晓，“金融界部分两会代表委员为‘十二五’建言献策”，载于《中国金融家》，2011年3月，第3期。

国最高立法当局在历史上首次认可金融竞争制度的现实价值。<sup>11</sup>

2012年1月6日，中国召开了第四次全国金融工作会议。温家宝总理出席并宣布，“深化金融机构改革……切实打破垄断”。<sup>12</sup>事实上，金融反垄断是金融竞争制度的核心所在。

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<sup>11</sup> “建立金融竞争制度 保障金融消费者权益”，在于《中国人大》杂志，2011年10月，第19期。网址：[http://www.npc.gov.cn/npc/zgrdzz/2011-10/27/content\\_1677259.htm](http://www.npc.gov.cn/npc/zgrdzz/2011-10/27/content_1677259.htm)

<sup>12</sup> “全国金融工作会议在京召开”，中国政府网。网址：[http://www.gov.cn/lhdh/2012-01/07/content\\_2038988.htm](http://www.gov.cn/lhdh/2012-01/07/content_2038988.htm)



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