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Alan Ball and Niklas Frykström
Basel Committee on Banking Supervision
Bank for international Settlements
CH-4002 Basel
Switzerland

BCBS Consultative Document: Pillar 3 Disclosure requirements – consolidated and enhanced framework.

Dear Messrs. Ball and Frykström:

The Institute of International Finance (IIF), the International Swaps and Derivatives Association (ISDA), and the Global Financial Market Associations (GFMA)(the "Associations") appreciate the opportunity to comment on the second phase of the development of the revised Pillar 3.

Executive Summary

While the Associations strongly back the goals of Pillar 3 and banks are working hard to improve their overall disclosures to make themselves better understood in the challenging post-crisis environment, the present proposal raises a number of serious concerns, which are developed in more detail in the main part of these comments. A Pillar 3 framework that is relevant and meaningful to users is important to establish market discipline and reinforce financial stability.

Without diminishing the importance of the detailed comments, the following points seem especially worth noting:

- There is overall concern about the quantity and granularity of information proposed to be disclosed. The Basel Committee on Banking Supervision (the "Committee") shares the perception of a need to avoid information overload, but there are certainly opportunities to do more to pare down the proposal to what would really be useful.
- Disclosure should not preempt substantive debate (including on such matters as TLAC implementation, Operational Risk, the issues related to the possible changes in the IRB and Standardized Approaches, and the issues still being discussed on market risk). It is recognized that it is the intent to retrofit the current proposal to final substantive requirements, but discussing disclosure in advance of finalization has been disconcerting, to say the least. Therefore, any further statements on Pillar 3 should await substantive finalization of each topic.
- The hypothetical disclosures need to be reconsidered. There is serious concern they will be misunderstood and lead to misperceptions that would be damaging to banks but also the credibility of the regulatory framework. Hypothetical disclosures are unlikely to capture true risks, yet *are* likely to induce users to believe that simple comparisons are possible, when in fact they are not. Hypotheticals (and the necessary additional explanations) would contribute to the volume of disclosures overall. Large amounts of narrative explanation would undermine the ostensible goal of comparability.

- A number of specific issues need attention to make the TLAC disclosure proposals useful and feasible, especially for MPE banks. Banks are concerned both as issuers and users of TLAC disclosures, but see a need for a number of detailed adjustments.
- The market risk proposals raise a number of concerns about desk-level disclosures that seem unduly complex and may compromise proprietary and confidential information; the proposed disclosures also reflect the serious issues about the P&L attribution test that need clarification at the least.
- Operational risk has been especially difficult to analyze, given the substantive discussions to date. In particular, the current look-back requirements are likely to be more misleading than helpful, given that they take no account of changes of business mix, termination or disposal of businesses, changes in controls, or other factors that may make historical losses less than relevant.

The detailed comments make a number of other suggestions intended to address the very concerning problem of information overload in the market – an issue with which the Committee is quite familiar, of course -- and ways to streamline Pillar 3 and make it more useful, including expanding the scope of signposting.

General Comments

The Associations strongly endorse the goals of Pillar 3 to enhance market understanding of banks' capital and risk profiles, and offer these comments in hopes of contributing constructively to the development of better market understanding of the strengths and exposures of post-crisis banks, and to the furtherance of effective market discipline.

Furthermore, the Associations endorse the concept that the disclosure requirements in Pillar 3 "… need to continue to be relevant and meaningful to users in light of policy developments". As discussed further in these comments, that implies that some of the current proposals need to be revised to reflect the final versions or interpretations of currently open Basel issues; that they may need reconsideration from the users' point of view; and that the BCBS should plan on continued periodic review of Pillar 3 to update requirements over time (cf. section 1.2 re. future reviews of Pillar 3). To maximize the effectiveness of such reviews, the BCBS should continue to consult with the industry and users on the usefulness of Pillar 3 disclosures. The Enhanced Disclosure Task Force (EDTF) provides a good model of concerted and focused review of disclosures.

As a general comment, many of the proposed disclosures are highly granular and of questionable utility to users. At a time when even vocal users question the quantity and technical detail of banks' disclosures, to the point that the density of disclosures is even considered an impediment to investment in bank obligations, the great amounts of technical detail required by Pillar 3 deserve to be rethought.[1] This is especially true of areas such as market risk (as discussed further), but the overall package should be assessed from that point of view. There is the danger that the revised Pillar 3, like the original Pillar 3, will devolve into a voluminous compliance exercise, rather than becoming a real tool for communication.[2] Market participants often complain that volumes of disclosure continue to balloon with little or no incremental benefit to them as users.

[1] See Simon Samuels, *"Too much company information makes finance hard to grasp"*, *Financial Times*, April 24, 2016, https://next.ft.com/content/5cfdf96c-0877-11e6-a623-b84d06a39ec2.

[2] In assessing the impact of the volume of the new disclosures, consideration should also be given to the other new disclosures coming on line, including the ongoing uptake of the EDTF recommendations and the still-to-be-determined but quite possibly voluminous disclosures in connection with Expected Credit Loss accounting under IFRS 9 and the corresponding US CECL requirements.

The Associations agree with the broad goal of improving comparability across banking institutions; however, the current proposals may sow confusion or create false comparatives that will ultimately damage, rather than facilitate, market discipline. Importantly, they do not factor in differences in national implementation driven by differences in accounting standards and regulatory definitions (and in some instances the differences are becoming greater rather than diminishing).[3]

Moreover, as discussed further below, hypothetical and other highly artificial disclosures are unlikely to capture true risks, yet are likely to induce users to believe that simple comparisons are possible, when in fact they are not.

A further, related point, is that in some cases the disclosures mandated will require substantial additional IT investment or substantial additional work on an ongoing basis, specifically for Pillar 3 reporting purposes, which in several respects go beyond reflecting information otherwise generated for management, accounting, or regulatory purposes, which would be more commonly expected for disclosures.[4] Especially where Pillar 3 generates additional expenditure or ongoing work burdens solely for reporting requirements, incremental usefulness to private-sector users should be evaluated carefully. The Associations appreciate the statements at the April 15 meeting to the effect that the Committee is sensitive to not increasing burdens on the industry, and hope that some reevaluation of requirements will take that into account.[5]

Furthermore, it needs to be recognized that much of the highly technical information required by the present draft (particularly but not only on market risk) will only be of interest to, or comprehensible by, a very small group of well-staffed institutional investors, analysts and rating agencies. While that may make sense for purposes of giving such users more input for market-discipline discussions, if it corresponds to the actual interests of such investors, it does raise questions about the level playing field among investors, between the largest players and smaller and less sophisticated institutions, and of course individual investors.

So saying, the Associations do not wish to dilute the disclosure made available to investors for market-discipline purposes that is truly useful, but consider that the weight and density of the package needs to be reevaluated against what investors can plausibly be expected to use effectively.

Phase 1 implementation already puts a good deal of pressure on banks' ability to deliver an expanded Pillar 3 document, along with financials reflecting changing accounting requirements, within a compressed time frame. The volume of additional disclosure places significant burdens on banks' ability to meet external reporting time lines required by investors and securities regulators (e.g. requirements to

[3] As an example, the following are certain differences with European regulations that will presumably need to be addressed by European regulators, unless ways to remove the gaps are found in the final Basel Pillar 3:

- Templates OV1, HYP1, HYP2 - The standardised approach for counterparty credit risk (SA-CCR) is not incorporated in EU legislation.
- Template PV1 - The suggested Pillar 3 disclosure of prudent valuation adjustments is of another format than the COREP disclosure requirements put forward for consultation by the EBA in March.
- TLAC disclosures - TLAC-eligible instruments governed by foreign law in the BCBS's interpretation refers to the governing law of an EU country other than the home jurisdiction of the bank. In the EU implementation of TLAC, however, the term "foreign law" refers to non-EU countries.

[4] For example, the requirement of hypothetical RWA would require IRB banks to run parallel calculations under two approaches, and would require redesign of the RWA calculation engine, as well as additional reporting and disclosure infrastructure developments.

[5] In addition, production problems, risks and burdens are increased to the extent that the requirements diverge from other supervisory or accounting requirements, such as FINREP and COREP in the EU and the corresponding reporting requirements in the US and other countries.

report by 30 days of quarter-end). This is already an issue with current requirements, which will be compounded by the ambitious new requirements. In all cases, it is not just a matter of producing the numbers but of organizing on an initial and ongoing basis the rigorous internal review required for any external disclosures. Therefore, more time should be granted to allow phase 1 to bed down, and phase 2 implementation schedules adjusted as a function of phase 1.

As always with Basel frameworks, a great deal will depend on implementation. The industry shares the Committee's goals of harmonization, consistency and comparability, but achievement of them will easily be compromised if local implementation varies or reflects different interpretations, especially in the major markets.

Issues still under development

As the consultative document indicates, several Pillar 3 disclosure proposals reflect policy developments that are still subject to substantive debate. It is difficult to think about, and plan for, disclosures before the substantive requirements are complete (as with internal models, operational risk, etc.).

The industry remains convinced that it is important that the Pillar 3 disclosure proposals not front-run the fundamental debate about important issues such as the future of the IRB approach, the revision of the operational risk framework, TLAC holdings, or the application of MPE or SPE strategies for resolution, or the significant open questions about the implementation of the revised Trading Book rules. An example is template OV1, which includes standards that are not yet implemented, and which may be subject to differences of local implementation, both as to timing and substance. Importantly, the hypothetical Templates appear to preempt policy making in very important spheres such as credit risk (both as to the Standardized and the IRB approaches) and possibly as to the proposed capital floors.

Disclosure should not preempt policy. Although the intent is to adjust Pillar 3 to the ultimate outcome of that debate, further publication of the proposals may create misperceptions or false expectations in the market, or prejudice that debate. At the least, the Committee should make very clear in subsequent publications, more emphatically than in the current proposal, that the Pillar 3 proposals are subject to the outcome of that debate.

In summary, the industry is concerned that Pillar 3 disclosures should not be finalized until after the substantive requirements are finalized and understood. Premature publication may confuse the market or spark ultimately unproductive investments by banks. It would make more sense to defer proposing any disclosure language on the topics that are not yet fully settled until the next phase of Pillar 3 proposals.

Proprietary and confidential information

Section 4.5 is unchanged from the previous version of Pillar 3, but the industry finds that the provisions on sensitive information need to be reconsidered in light of the new material introduced in phase 2, which seems likely to raise more and more challenging issues of proprietary and confidential information, rendering the narrow standard of Section 4.5 not appropriate in light of the new material. That standard assumes that the required disclosures would generally not compromise proprietary or confidential information, possibly subject to "exceptional cases", but the assumption needs to be reevaluated.

As further discussed herein, the section on operational risk may raise issues of confidentiality that are more than exceptional. Similarly, especially if maintained with the level of granularity currently proposed, the market risk sections may expose significant positions taken by specific desks, especially given that the disclosures required seem particularly aimed at (and only useful to) highly sophisticated

investors who may be counterparties or competitors in the market. See the market risk discussion below for more details.

For some of such situations, the requirement that a bank that does not disclose a specific position "must disclose more general information about the subject matter of the requirement instead" could itself tip off the market in ways that would be damaging. The final version of phase 2 should remove the "exceptional cases" qualification, which may not be factually accurate, and should make clear that the "more general information about the subject matter" that would be disclosed instead need not relate to specific disclosure subject-matter requirements (e.g. specific-loss or desk-level information) where that could reveal sensitive information.

Signposting

Section 5.4 does not state new requirements and actually responds partially to earlier industry comments, which is appreciated; however, phase 2 requires reconsideration and broadening of the sign-posting option, given the volume and nature of the new disclosures, and given technological change.

The criteria for putting fixed-format Templates in separate documents seem unduly limited and less than reasonable. (Flexibility is only available where the disclosure in the signposted document is "*mandatory* and *the supervisory authority responsible … is subject to legal constraints in its ability to require the reporting of duplicative information."*)

Sign-posting should instead be available to be used as much as possible to avoid duplicative disclosures and to reduce the overall volume of disclosures. Technology will rapidly reduce any slight inconvenience that might arise from sign-posting as opposed to restating duplicative information.

Does it still make sense to require "a web link where relevant *and* page and paragraph numbers" for sign-posted materials? Rapid changes in the available technology may make the page and paragraph references redundant. Further, it can be operationally cumbersome and risky to signpost in documents that tend to change constantly until the last minute prior to publication, especially when simultaneous publication is required; therefore, reconsideration is requested for practical reasons, especially as to page and paragraph numbers.

Retrospective information

Retrospective information is now addressed explicitly only in Footnote 27, at page 17**.** This footnote (stating that no retrospective data is required) applies only to KM1 and KM2. OV1, OR1, OR2, and OR3 seem to require retrospective data (cf. MR 4 as well).

The Associations believe that, as a general principle, no retrospective data ought to be required as Pillar 3 is phased in, unless there is a compelling reason with respect to specific, identified items. If retrospective data is contemplated to be required, there should be a careful and specific examination of the disclosure benefit in light of the costs to banks of providing the information.

Frequency and timing of disclosures

As the Committee states in Section 1.2 that frequency of reporting will be considered along with implementation dates when the disclosure requirements have been finalized, the Associations suggest that the requirement of Section 4.2 that banks publish Pillar 3 reports concurrently with financial reporting where applicable be reconsidered. Especially in light of the voluminous new requirements of this second phase of Pillar 2, it would be more appropriate in a global standard to allow time for compilation and

review of Pillar 3 information after issuance of financial information in accordance with local norms, especially if the Committee ultimately decides to retain significant elements of the proposed quarterly information requirements. A reasonable window would allow firms time to ensure consistency of qualitative and quantitative information and to operate robust internal controls (see also the comment above about the practical difficulty of managing signposting when simultaneous publication is required).

Some relatively minor adjustments of the frequency and timing of disclosures would ease reporting burdens and create greater coherence in overall reporting and data requirements. For example:

- Leverage ratios and exposure measures are required to be disclosed on a quarterly basis in LM1, which should be sufficient to provide the market with short-term insights. It is not clear that there is actual demand or need for more than that on a quarterly basis. The rest of what is proposed for quarterly reporting could be move to an annual or semi-annual basis without a great deal of loss of disclosure value for users, but with a good deal of gain for production quality and efficiency for banks.
- Similarly, LR1 and LR 2 seem to be out of synch with CC1 and CC2, which call for semi-annual reporting (but are related capital matters).
- Template KM2 is required on a quarterly basis, which is out of synch with the other TLAC templates, which are required on a semiannual basis.

Part 2: overview

Template KM 2: TLAC at resolution group level

MPE banks have multiple resolution groups and the proposal would result in frequent, extensive disclosure under KM2. In the absence of a materiality threshold for disclosure, there is a risk that a large volume of detailed information will obscure what is genuinely useful.

It is suggested that only material resolution groups (with appropriate narrative on the basis on which such groups are selected) be disclosed, and only on a semiannual basis. Consideration should be given to omitting non-material resolution groups altogether, but if disclosure is required, disclosure should be required less frequently for resolution groups that constitute less than 5% of group RWA.

Template OV1: Overview of RWA

For Template OV1, clarification is needed as to implementation timing. The implementation requirement is stated as “End-2017” on page 15 and as “End-2016” on page 91 of the consultative document. More substantively, the OV1 Template includes the new securitization framework and the non-finalized operational risk framework, both of which have scheduled implementation targets later than the end of 2016, which would make either date impracticable. Banks should be able to continue using the phase 1 version of Pillar 3 until these new requirements are fully implemented under applicable law.

Re. Row 5, given that the SA-CCR relates only to derivative instruments, what about SFTs under the comprehensive approach? A suggestion would be to delete the reference to “SA-CCR” to avoid confusion, and to add explanations on the handling of SFTs in the definitions and instructions, for clarity’s sake.

Template HYP1: Hypothetical RWA as benchmarks to internally modeled RWA

The Associations understand from the April 15 meeting that it is not the intent for disclosure of the Standardized Approach to replace the IRB approach de facto, rather just to make variability more apparent to users. But there is clearly a danger that it will be misunderstood or abused, with the result that

the IRB would be undermined, and the "hypothetical" Standardized version would become the de-facto standard or floor for capital, at least from a market perspective.

The comparison seems likely to create unnecessary investor, analyst and rating-agency uncertainty about future capitalization, and might lead some critics of the industry and of the Basel regulatory process to conclude that banks face a substantial capital shortfall or that the system "isn't working", when in fact the opposite is the case – the industry is much better capitalized, more robust and resilient, than in the past, and benefits from risk-management practices that have been improving constantly. In the Eurozone in particular, the resulting unwarranted speculation could result in substantial market disruption and even contribute to economic dislocation. The comparison would thus contribute to market uncertainty about the utility and finality of regulatory requirements and not increase the kind of true transparency that contributes to stability.

Assuming a standardized floor is put in place, the need for hypothetical disclosure would become even more questionable because the floor would be the operative constraint. Therefore, it would be difficult to see the point of disclosing different results from the IRB models that continue to run (other, perhaps, than to call the validity of the floor into question).

Although the Committee indicated in its recent IRB consultation that one of the options is to calibrate a capital floor in the range of 60-90% of Standardized RWA, it is evident that the hypothetical RWA, if maintained in the final requirements, would likely establish a de-facto floor of 100%, at least for credit risk[6], regardless of how the Committee ultimately defines the floors (contravening the reasons why a floor if adopted should be set at less than 100%).

Fundamentally, the industry considers that the idea of using the standardized approach for benchmarking should be reconsidered, not only because the hypotheticals would not truly reflect a bank's position (and therefore, the comparisons would be specious to a large degree) and because the hypothetical comparison can so readily be misunderstood or misused as the "true" point of reference (as was apparent from some user remarks at the April 15 meeting), but because it is not the most appropriate or direct form of disclosure of significant variances, and will create disincentives to further development of sophisticated risk management techniques.[7]

The hypotheticals (and the necessary additional explanations) would furthermore contribute to the volume of disclosures overall, increasing the burdens on both banks as issuers and on users. Large amounts of

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[6] Results might be different for counterparty credit risk and market risk owing to netting and diversification effects, however similar directional distortion seems likely.

[7] The Associations are addressing the substantive issues around RWA separately, but note that the standardized approach does not take into account differing management controls, credit experience, and business and market conditions encountered by different banks. It may lead investors to think that internal models are inaccurate and unreliable, whereas in fact banks continue to improve risk management and it is much better to reflect the measures to which banks manage than arbitrary external measures. Therefore, the Associations are urging the Committee carefully to weigh the pros and cons of imposing the mandatory disclosure of the standard method and to consider alternative approaches to the enhancement of the reliability, transparency and comparability of internal models. The extensive work carried out by the industry and the Associations over the past many months could be used to help formulate such alternatives. The IIF is working on a proposal to reduce unwarranted discrepancies across banks' RWA while maintaining the principle of risk-based capital. Any changes should reflect the ultimate outcome of the debate on those subjects. Furthermore, there are numerous other measures (revised market risk standards, operational risk proposals, the IRB proposals themselves, etc.), that address RWA variability and comparability. As stated in the introduction to this response, the Committee should defer finalization of the disclosure measures until all these other measures are finalized and can be evaluated as a whole.

narrative explanation would undermine the ostensible goal of comparability, and would put banks – and regulators – in the awkward position of having to discuss why the detailed hypothetical tables that regulators have mandated are wrong or misleading, which would ultimately be damaging for the regulatory framework as well, given that the IRB models to which banks would still be managing would have had supervisory approval. The hypotheticals without appropriate discussion and context would be misleading, and potentially even destabilizing, whether at the microprudential or the macroprudential level.

If, contrary to the industry's strong preference, the current hypotheticals are not deleted from the final version of Pillar 3, the Associations are convinced that the Committee will need to provide clear and forceful guidance to the market that benchmarking against the standardized approach should *not* be taken to mean that the approach is necessarily the "correct" measure, given that it is a much rougher and less-risk sensitive measure; rather, the hypotheticals are just intended as points for comparison and should not be taken to represent banks' true risk exposures, which was the stated intent at the April 15 meeting, but which may not be well-understood or well-accepted in the market.

Finally, as under OV1, guidance for the treatment of SFTs seems to be missing in the definitions and instructions.

Template HYP1: ***Market-risk aspects***

The industry believes that the current requirements in Template HYP1 may prove more punitive for advanced risk management frameworks than the Committee may have realized. As discussed in general terms above, there is a danger that risk management standards may be perceived by the investor community as "higher quality" when internal model and standard approach metrics converge. This assumption is likely to be misleading: for example, a bank that has heavily invested in reducing its non-modellable risk factor (NMRF) charge by improving the quality of data feeds, and therefore obtains a lower internal model capital charge, might experience an adverse perception by investors when in fact it actually provides superior risk management. More granular disclosure does not necessarily contribute to determining the quality of risk management.

Additionally, increasing divergence between risk measures computed only for regulatory disclosure purposes versus measures that are used internally for strategic decision-making carries significant risk owing to the adverse incentives or lack of clarity in internal discussions that may be created. Furthermore, such divergence would not serve the purpose of improving users' understanding of each bank's risk management.

Finally, disclosure requirements in isolation should not lead to additional operational burdens for banks. The Associations note that the proposed disclosures in Template HYP1 have the potential to increase the operational burden by creating processes and controls that are incremental to the information that is produced and utilized for decision making internally by the banks.

Template HYP2 Hypothetical RWA calculated according to the standardized approach for credit risk (excluding counterparty credit risk) at the asset class level.

Again, the industry questions both the utility of any hypothetical disclosures and the advisability of defining hypothetical disclosure (if retained at the end of the day) at this stage, pending finalization of the debate. Finalization of any hypothetical disclosures would best be deferred to the third stage.

If, contrary to the industry's recommendation, it is decided to retain a version of the proposed hypothetical disclosures of the type proposed in HYP1 and HYP2, a simplified, less-detailed approach

should be considered. This is important both for managing the preparation burden on banks and to avoid information overload for users. HYP2 in particular requires a great deal of detail on IRB portfolios, which would be of supervisory interest, but which seems likely to be excessive for most users. It should be possible to provide a much condensed version, which, although it would still carry the risks that hypothetical disclosure creates, as discussed above, might at least mitigate the impression of false precision that the current draft may create for users.

Part 3: Linkages

Template PV1 Prudent Valuation Adjustments

It would be helpful if the final wording of Pillar 3 were clear at the start that the definitions are intended to match those used for the calculation of prudent valuation adjustment capital charges and that the disclosed amounts should represent the actual adjustments deducted from Tier 1.

The proposed Pillar 3 Template should only be required where the Prudent Valuation is calculated under the Core method. The final version of Pillar 3 should make clear that any institution calculating a Prudent Valuation adjustment under the simplified method does not need to use the Template, or provide a very simple alternative for such institutions

Row 2, "Mid-market value", should be amended to say "Market value". "Mid" should be deleted, as for many positions firms will calculate a bid or ask price uncertainty directly (especially cash positions), so the current proposal is incorrect and would require disclosure to diverge from practice.

There should be flexibility around the column headings to allow for how Prudent Valuation numbers are calculated. As the "format" discussion addresses only row numbers, there is ambiguity about this point at the moment; but there is a substantive need for flexibility as well.

As the Prudent Valuation only covers fair-valued positions, there is no reason for a distinction between trading and banking books. In addition to not providing appropriate disclosure that describes the way the business is conducted, the split between the trading and non-trading books would also cause undue difficulties for most institutions. The separation is generally not built into existing systems. Stripping out the netting benefit (in addition to being unrepresentative of the business as actually conducted) is also likely to require calculations' being performed on a group netted basis and on a portfolio basis, with a corresponding impact on banks' resources. The final Pillar 3 should therefore clarify that banking book products that are related to a trading or capital market activity or offering do not need to be separated out into the non-trading book category. The granularity required is not feasible using current processes and systems in many banks, pursuant to which additional valuation adjustments are made on a portfolio basis, not broken down across products.

A member noted that PV1 is set up to respond to Basel II paragraphs 698-701 but does not seem to take account of Basel III paragraphs 105-134. This should be reviewed and adjusted.

Although the goal is to set an international standard, conflict with similar national or European standards should be avoided. In particular, this Template as applied to EU banks should be reconciled to the EBA requirements on PVA.

Part 4: Composition of Capital: *TLAC*

The goals of the Committee in proposing TLAC disclosures are highly important: investors want to know what their exposures are. There is, however, a fundamental, pervasive issue about how the market will

know whether an instrument is TLAC or not. There is concern about how the market will evolve and the extent to which different issuers will use different language or different contractual terms for TLAC purposes. However, the fact that there will be variations across jurisdictions and across issuers, subject to some convergence via market convention, suggests that the present, highly prescriptive proposals may deliver more real than apparent comparability, so more flexibility for issuers to explain their capital and TLAC structures would be in order.

There is still great uncertainty in the national and European implementations of the TLAC concepts, despite general agreement at the FSB level. Furthermore, the many issues raised by the industry with respect to TLAC holdings remain unresolved. It would be helpful to introduce additional flexibility across all TLAC Templates to take local specifics of implementation into account, and, of course, the eventual shape of the TLAC holdings rules may require adjustments. Not all countries have adopted the FSB Key Attributes or TLAC term sheet, nor have all adopted Basel III; even among those that have, there are substantial differences: any reasonable disclosure requirements will need to accommodate these differences.

Furthermore, MPE banks especially (but other banks as well) question the approach of building up TLAC disclosure from capital Templates, given problems of the perimeter and of computation: Thus:

- Perimeter:
  - Capital disclosures apply at solo and consolidated level, whereas
  - External TLAC applies at the level of the resolution entity, which may correspond to specific sub-consolidated units in many cases, not corresponding to capital-disclosure units.
- Differing computation criteria:
  - The TLAC termsheet is being implemented in different ways that will have an effect on computation and disclosure.

Divergences of local implementation of TLAC and the effects of varying insolvency laws are likely to require narrative disclosures that will differ and be hard to compare. While Section 5.5 of the consultative document makes clear (appropriately) that qualitative disclosures are at the bank's discretion, with respect to differences arising from differences of resolution regimes or differences of resolution plans, this will not be straightforward. For example, while the US requires banks to publish summaries of their resolution plans under Title 1 of the Dodd-Frank Act (bankruptcy), it does not require the same with respect to Title 2 (Orderly Liquidation Authority), and the EU regime is clear that resolution plans are owned by the resolution authority, subject to strict confidentiality requirements. Therefore, qualitative disclosures as to the approach that would be taken in resolution, including the preferred resolution strategy, would be problematic.

One way to address this problem would be to encourage resolution authorities to provide more clarity on their approaches to resolution.[8] While some have published helpful documents outlining their approaches (including the Bank of England, FNMA, the FDIC and the JFSA), not all home resolution authorities have done so, and some of these statements may require further specification to be fully useful to users now that TLAC is being implemented. Given that these questions touch upon the critical issues where investor certainty is crucial, such as liabilities that may be excluded from bail-in, more transparency from the official sector will often be needed to achieve the full market-clarity goals of Pillar 3.

[8] See: Andrew Gracie, *"Ending too big to fail: getting the job done"*, pp. 2-3, May 26, 2016, http://www.bankofengland.co.uk/publications/Pages/speeches/2016/912.aspx.

Template CC1: Composition of Regulatory Capital

The provisions on TLAC cross-holdings will need to be adjusted for the final TLAC holdings rules (Rows 52-55 and fn. 34). The present versions do not reflect necessary changes recommended in industry comments on the TLAC holdings proposals.[9]

In light of the further comments below on TLAC 1, MPE G-SIBs should continue to report on CC1 at the group consolidated level, instead of on TLAC1. This is because regulatory capital requirements will continue to apply on a consolidated basis, whereas TLAC will only apply on a resolution-group basis. This distinction should be reflected consistently within disclosures, and as a result TLAC disclosures need to be differentiated from capital disclosures for MPE banks.

Row 64, the definition of the buffer requirement is not appropriate: "institution specific buffer requirements (minimum CET1 requirement plus capital conservation buffer plus countercyclical buffer requirements plus D-SIB buffer requirement, expressed as a percentage of risk weighted assets)." The minimum 4.5% CET1 requirement is not a buffer requirement. If, however, the intention of this Row is to set out what the headroom is above the regulatory minimum, i.e. the point at which automatic restrictions occur, the Row should be labeled "minimum requirements plus buffers".

Table CCA: Main features of regulatory capital instruments and other TLAC instruments

This proposal is based on existing capital-instruments disclosures, with additional rows added for TLAC instruments; however, the approach taken does not clearly demonstrate how such instruments are eligible for TLAC purposes and where they are eligible for capital purposes. The Associations believe it is necessary to define a separate section that clearly indicates whether an instrument counts toward meeting the TLAC requirement – given the different eligibility requirements for regulatory capital and TLAC purposes – both on a transitional and a full-implementation basis, and explains subordination.

It is not clear whether this Table is intended to be at the group consolidated level or not (see "scope of application").

It is also not clear whether it excludes internal TLAC. The working assumption is that it applies to external issuances only, but this needs to be confirmed. Disclosure of internal instruments would not add any value as external users would only be affected by, and require, information on external issuances. Therefore, this Table should be marked clearly as only applicable to external issuances.

Row 3a (and instructions): "means of enforceability": While the Associations see the reasons for this Row on the means of enforceability, it would often require banks to make sophisticated legal judgments behind an ostensibly simple "yes/no" choice. This may sometimes be misleading and may require additional explanation. Consideration should be given as to how to reduce banks' potential liability for good-faith disclosure on this issue.

Further, an NA response as well as Yes and No, to cover cases where the governing law of the instrument is the same as that of the country of incorporation of the resolution entity, would be helpful. The question only applies to foreign-law instruments, so strictly speaking the NA option may not be necessary, but perhaps an NA response would make the disclosure clearer.

[9] As noted in the IIF response on TLAC holdings, deduction thresholds for TLAC should be adjusted and deductions should be made from TLAC resources; however, where TLAC deductions exceed TLAC resources, the remaining incremental deductions will need to be taken against other regulatory capital resources; this will need to be reflected in CC1.

Row 34a (with the related instructions) raises the same issue about legal judgments as Row 3a. Can banks reasonably make statements as to "type of subordination", especially when based on statute? These points will sometimes be hard to answer and a lot of judgment will be required; market practice will have develop and, it is hoped, converge over time; but it should be recognized that Row 34a in some cases will require squeezing sophisticated legal analysis into an over-simplified form. Furthermore, the concept of "exemption from subordination" is not clear, given the complexity of the FSB term sheet, and should be explained fully.

Row 34a appears to require an instrument-by-instrument response where the applicable types of subordination differ. Reasonable aggregation should be allowed, where instruments have the same characteristics.

In case the applicable option is structural subordination, is it necessary to fill in Row 35? In such cases, TLAC investors are structurally subordinated to all liabilities of subsidiaries of the issuer, but with respect to the issuer itself and its liabilities, TLAC instruments are not subordinated, but have their normal level of seniority.

More generally, as Table CCA is required for *each* instrument, the reporting volume will be a concern to users as well as issuers. The volume of disclosure required will be substantially greater than for regulatory capital instruments. It would be very useful to introduce a materiality threshold for CCA reporting (or include only benchmark issuances). Transactions below a threshold could be aggregated.

Private Placements (for subordinated and senior debt) should be aggregated, to manage down the volume of disclosures and to provide reasonable confidentiality, both as to the firm's financing strategy and for lenders. The principles of aggregation need to be discussed, but reasonable aggregation should allow other lenders to see the general position of private placements in the stack. Private-placement lenders are presumably in a position to negotiate comprehensive disclosure of their exposures as part of the placement process and so would not need to rely on public disclosures to ascertain their own exposures to bail-in.

The frequency requirement of Table CCA is that "Table CCA should be updated on a bank's website whenever the bank issues or repays a capital or TLAC instrument or whenever there is redemption, conversion, write-down or other material change in the nature of an existing instrument."

Given that CCA requires including "the main features of a bank's regulatory capital instruments and other TLAC-eligible instruments," the frequency requirement would amount to daily or nearly daily updating of public disclosure for larger institutions. This would surely be burdensome and it is difficult to see any value added for investors, while the complexity of website disclosure would increase substantially, which should be taken into account. This is especially the case for debt redemption at contractual or expected maturities.

Except for material and extraordinary events that would have to be disclosed in any case under other bodies of regulation and law, it should be entirely sufficient to provide the CCA disclosures on a semi-annual basis, consistently with the bulk of Pillar 3 as proposed. Furthermore, existing capital-instruments disclosures are required on an annual basis (e.g. in the EU); therefore, it is unclear why the full extent of CCA disclosures would be needed any more frequently.

In order, on the one hand, to manage the volume of disclosures required and, on the other, to assure that investors (including banks needing to identify TLAC for purposes of managing TLAC holdings

restrictions) have timely information, it might be useful to require a condensed version of the Table, including a list of TLAC instruments, with ISINs and nominal values only, on a quarterly basis.

Template TLAC1: Capital and TLAC Composition for G-SIBs

The disclosure of TLAC and regulatory capital should be differentiated given their different bases of preparation. Many banks would prefer separate statements for TLAC and capital, because capital and resolution are different and some instruments do not count for both; some instruments count as capital but not TLAC, for example; MREL and the EU implementation raise further questions. Moreover, MPE banks have regulatory capital but not TLAC requirements at the group level, as discussed further below, which suggests that combining the two for such groups, would be particularly confusing.

There is major issue about the scope of TLAC1: for MPE firms, it is stated to be "at the level of the G-SIB regulatory consolidated group" *and* at the level of "each resolution group." For an MPE bank, it is necessary that disclosures only be required on the basis of resolution groups (and reflecting the requirements applicable thereto). Disclosure of TLAC on a consolidated basis in TLAC1 would be inconsistent with the final FSB TLAC term sheet, which does not include a group requirement for MPE banks.

More fundamentally, it is not clear what a "group" would entail for an MPE bank. The simple aggregation of TLAC requirements and resources across a group would not yield a meaningful number as TLAC resources are calculated (according to local rules) at the resolution-group level. A consolidated TLAC disclosure requirement for MPE banks would be misleading without significant and rather superfluous explanation; indeed, stating a group requirement could be misleading and induce users to believe that group-wide resources are available to an extent that may not be correct under local law and applicable resolution plans.

The introduction to TLAC1 refers (under "content") to "carrying values"; however, nominal amounts indicate the amount of loss-absorbing capacity available from an instrument, not carrying values for accounting purposes. Current carrying values are not relevant to the issue of available loss-absorbing capacity and in fact may cause confusion or mislead investors as to the actual situation. Therefore, the requirement should be for disclosure of nominal values only.

Row 54 applies the 10% threshold as defined under the pending TLAC holdings proposal. This Row will need to be adapted to the final version of the TLAC holdings rules.

Row 59j: the interpretation of "funding vehicles" could use further explanation: would external TLAC instruments issued by funding vehicles prior to January 1, 2022 include trust preferred securities for US banks, or other such instruments for other banks?

Questions addressed to MPE banks

The notes below the Template make reference to deductions of intra-group capital holdings. TLAC requirements as set out in the FSB term sheet should not affect the existing regime for regulatory capital deductions, nor are regulatory capital deductions between entities in the same group included in the scope of Basel III or covered in the proposed treatment for TLAC holdings that was consulted upon by the Committee. Disclosure of national approaches to intra-group deductions would undermine the instruction for "common templates to remain comparable between banks" and to have "no adjustments to the version banks use to disclosure their regulatory capital position".

Rows 59l-59o: Deduction of TLAC holdings between resolution groups in the same banking group was not included in the TLAC holdings consultation. As a result, the Associations are concerned (as stated above) that the Committee is putting forward proposals on specific TLAC disclosures before the regulatory framework is finalized. Furthermore, Section 3 of the FSB term sheet recognizes the possibility of deductions between resolution groups in the same banking group but notes that this is to be agreed in the G-SIB's Crisis Management Group ("CMG"). Additionally, reference to the allocation of deductions between "parent resolution entities" and "subsidiary resolution entities" requires further elaboration. It is therefore unclear why the Committee is seeking views on disclosure of a policy area where the Associations are currently unaware of any formal or harmonized requirements, and where the treatment is likely to differ across G-SIBs. It is important that disclosures reflect finalized policy on intra-group deductions of TLAC holdings between resolution groups in the same banking group.

It is vital to reconsider the approach for deduction treatment between resolution groups in the same G-SIB, so as to ensure that any related disclosures provide useful information to the market and that can be interpreted correctly. Whilst pre- and post- deduction information might be considered helpful for investors to understand where TLAC has been issued and invested in the group, there is a risk that lack of homogeneity in approaches taken by CMGs, together with the fact that the TLAC term sheet remains open in some concrete aspects, will in fact undermine comparability and therefore render harmonized disclosures ineffective at best and misleading at worst. In addition, it seems questionable whether this degree of detail will really be of interest to investors.

Rows 59r and 59s: RWA for a resolution group should be calculated and disclosed based on locally applicable requirements and not group requirements. The Associations understand that reference to pre- and post- adjusted RWA is to reflect Section 3 of the FSB term sheet, which sets out the possibility for an adjustment to MPE requirements in aggregate across resolution groups so as not to exceed requirements that would apply under an SPE approach. However, this is subject to CMG agreement; therefore banks cannot comment on disclosure without understanding the finalized approach. Furthermore, in the absence of any harmonized approach to the adjustment, it is unclear why harmonized disclosure Templates are needed. Disclosure of bank-specific adjustments may result in inaccurate inferences and require significant explanations.

Furthermore, in relation to both deductions and RWA adjustments, disclosures related to CMG agreement will need to adhere to confidentiality restrictions.

Rows 64 to 68**:** group-applicable buffers will not apply to individual resolution groups. Therefore it is important that the labels and accompanying instructions clearly indicate that disclosures should reflect any local buffers that may apply to individual resolution groups.

Some European banks find that the consistent reference to "national authority" may create confusion in the European (especially Eurozone) context; therefore, consideration should be given to making reference to the consolidated supervisor of the relevant entity. See, e.g., the instructions for Row 68 and the note on page 52.

Template TLAC2: Material subgroup entity: creditor ranking at the legal entity level

The "purpose" statement is unclear and potentially confusing, as this Template is about internal TLAC but the "purpose" statement refers to providing creditors with information on "their ranking".

The Associations question the value of TLAC2, given that losses will be imposed on external creditors at the level of the resolution entity and not at the material entity level, so information relevant to them will be with respect to external TLAC rather than internal TLAC. It is not easy to see why information other

than on external TLAC issues would be of interest to most users, although of course it would be of interest to supervisors and resolution authorities, who could obtain it otherwise than by a public disclosure requirement. Thus it appears that the volume of disclosures would be inflated with little added value for users.

For both TLAC2 and TLAC3, the applicable creditor hierarchy will depend on national insolvency law and TLAC loss absorption will depend on national implementation of TLAC requirements and national powers in respect of bail-in, so it is unclear that comparable and harmonized disclosures would be possible or why these disclosures are required. Furthermore, specific requirements are not yet available in many instances, so it is hard to evaluate the disclosures.

If TLAC2 and TLAC3 are nevertheless introduced, a number of issues need to be addressed. Specifically, these Templates may sometimes require banks to make statements about difficult legal issues or points of interpretation (e.g. in the "accompanying narrative": providing jurisdiction-specific information relating to credit hierarchies). Consideration should be given as to whether the authorities could provide statements on which banks could rely in preparing this disclosure, as discussed above.

Additionally, disclosure should not include every individual liability, but rather each relevant class of securities should be disclosed. This is to make a clear distinction between liabilities that are i) eligible for TLAC; ii) not eligible but still subject to being bailed-in under relevant national powers; and iii) liabilities that cannot be bailed in. Specifically, reference to "liabilities potentially TLAC eligible" is unhelpful without further explanation and could be confusing for creditors or investors.

Classes of securities could potentially include:

i) CET1
ii) AT1
iii) Tier 2 (assuming this ranks junior to TLAC eligible debt)
iv) Subordinated debt other than regulatory capital which is TLAC eligible
v) Liabilities which rank pari-passu with TLAC eligible liabilities but do not meet TLAC eligibility criteria (e.g. liabilities which used to be TLAC but remaining maturity <12 months)
vi) Senior debt which ranks senior to regulatory capital and TLAC liabilities and can still be bailed in (e.g. senior unsecured term debt, structured notes)
vii) All other liabilities which cannot be bailed in (e.g. preferred deposits).

But, while it would be well to cite such examples, the list should not be exclusive or prescriptive, in order to allow for the evolution of the market.

Clarification is needed for Row 3 – It is assumed that "net of credit risk mitigation" relates to liabilities such as derivatives where the institution has rights to set off or net under contractual arrangements, and therefore only the net value of the liability is available to absorb losses, or where any other form of credit-risk mitigation such as collateral or public guarantees applies.

Template TLAC3: Resolution entity – creditor ranking at legal entity level

[See the discussion of TLAC 1 and TLAC 2 above.]

Part 5: Macroprudential

Template CCyB1: Geographical distribution of credit exposures used in the countercyclical capital buffer

As it is unlikely that the information captured in CCyB1 will be prone to significant fluctuation, annual disclosure, perhaps with quarterly disclosure of a high-level buffer amount quarterly with an explanation of significant movements should provide all relevant information, rather than the semi-annual disclosure now required. This would avoid some unnecessary disclosure that would burden the overall Pillar 3 package with little incremental benefit to users.

Part 11: Market Risk

Desk-level disclosures in Tables MRA, MRB and MRC and Template MR2

Firstly, the industry would like to note that desk-level information, as institutions are asked to provide in the current Pillar 3 proposal, belongs to the category of "proprietary" and "confidential". This type of disclosure may undermine the commercial interests of a bank and jeopardize the competitive advantage that a bank may have in a particular product or market. For example, the Basel rules themselves rightly acknowledged that information such as that "about a bank's customer base, details on internal arrangements, methodologies used and parameter estimates and data" is considered proprietary. Desk-level disclosures can be considered to "reveal the position of a bank", and therefore seem to be in contradiction with the principles of the Pillar 3 framework. Therefore, the Pillar 3 disclosure principles (January 2015 framework) state that where disclosures "may reveal the positions of a bank … by making public information that is proprietary or confidential in nature, in such cases, the bank does not need to disclose those specific items, but must disclose more general information about the subject matter of the requirement instead." [10]

See the discussion of Section 4.5 of the consultative document, in the General Comments, for discussion of ways in which those principles should be broadened.

There is further ambiguity around the amount of data and details required to be disclosed. An "exhaustive list of desks" as referred to in Table MRA stands in contrast to the "representative" selection referred to in Table MRC or the "main significant desks" as required in Template MR2.

Secondly, the Associations would like to point out that for the investor community, total capital and RWA figures matter rather than the level of charges presented in MR2. Generally, investors do not invest in a separate desk of a bank but in the capital or debt instruments of the bank itself.

The total market risk capital requirement that the banks must comply with according to the New Market Risk Framework (FRTB) and which is an input into the capital ratios is ultimately a firm-level portfolio measure. Put differently, the framework establishes that the capitalization of relevant risk factors spans across IMA-approved desks (as described in Section 9 of the Framework). Therefore, the desk level calculation of market risk capital components (Expected shortfall, Default risk charge and Non-modellable risk factors charge) will inevitably be misleading to the public, as their sum will not converge with the total market risk RWA reported elsewhere in the disclosures, creating a risk of misinterpretation.

[10] Paragraph 819 of the original Basel II text (http://www.bis.org/publ/bcbs128c.pdf) has a useful discussion of the many types of information that may be proprietary or confidential. While the Associations do not propose a prescriptive catalogue of what may be proprietary or confidential, that discussion illustrates why an expansive, rather than a narrow, concept is necessary.

The sum of parts in this case will not be representative of the true market risk capital requirement of the bank.

Similarly, the decision of a market participant counterparty to engage in transactions with a bank is unlikely to be driven by desk-specific characteristics, but by the overall reputation of the bank and the competitiveness of pricing offered by the bank, amongst other things.

The correct interpretation of the results requires an understanding of technical intricacies of the underlying market risk calculations as these are set out in the Minimum Capital Requirements for Market Risk. That raises the question of usefulness of disclosures that require specialist knowledge in order to understand them.

Thirdly, introducing more granularities compromises the comparability of data and adds complexity to their understanding. Desk structures will inevitably vary across different banks, leading to spurious attempts at comparisons on the part of the reader. It should be noted that a regulatory attempt to standardize desk structures might lead to more homogenous business models across banks, resulting in higher systemic risks. It would of course not be appropriate to drive such a requirement through disclosure.

Further, desk-level disclosure without showing firm-wide netting effects would be misleading. Banks would have to publish extensive explanations or reconciliations including netting to reflect the true state of their books and make their disclosures relevant and meaningful. Again, the Associations question the usefulness of proposing disclosure that is likely to mislead and confuse rather than explain.

Importantly, the proposed disclosure requirements for profit and loss attribution and backtesting in MR2 might also be misleading where desks' risk profiles are heavily skewed or test failures occur. For example, for a bank with two desks, desk A might carry 90% of all risk in the portfolio and pass the test, while desk B might only carry 10% of the overall risk and fail the test. Disclosing that one desk fails and one passes would not accurately reflect the quality of the model that actually captures 90% of the institution's risk.

As an alternative, the Associations suggest providing the disclosure of RWA and capital figures by major risk classes (general interest rate, equity, FX, commodities, etc.) as proposed in MR3 with modifications discussed below. This would strike the right balance in terms of usefulness, comparability and consistency with other parts of the disclosures (such as the RWA overview section) and would also be in line with both the overarching Pillar 3 principles and the spirit of the Minimum Capital Requirements for Market Risk.

In summary, the industry questions whether the current disclosure requirements, which appear to see every desk as a separate entity, achieve the broad objectives of Pillar 3. A similar approach is not required in other areas, e.g. credit risk, and creates a divergence from standard practices, leading to a distorted view of bank-wide risk. Nor is it apparent that desk-level disclosure is likely to be of any use to investors. Which takes us back to the first point made above: the current proposal risks seriously compromising confidential and proprietary information, for no apparent benefit to users. If supervisors need desk-level information, it can of course always be made available under the normal supervisory provisions.

Table MRA: General information about market risk

The level of disclosure required (i.e. desk structure of the bank, types of instruments, description of all desks using the standardized approach) is too granular and might reveal confidential information. In particular, the industry is concerned that disclosure of which trading desks are on the internal models

approach (IMA) or sensitivity based approach (SBA) may impact pricing and risk management by revealing market-leader positions, or provide competitors an unfair advantage in pricing new activity.

Similarly, the industry notes that the disclosure of "stale" risk inventory may reveal illiquid positions, which may in turn subject the banks to market manipulation. This is obviously to be avoided.

The Associations propose revision of Table MRA to focus on its stated purpose (general qualitative disclosure requirements related to market risk). The revision should remove the specifics now required under part (A), and not require lists of desks or specific figures, which may include sensitive or proprietary information. The goals of the Table could be achieved through broad descriptions of policies and structures that would not get into such details, which may be competitively damaging to banks and contribute to information overload for users.

Template MR1: Market risk under SA

The industry is concerned that this Template might prove particularly misleading for the investor community while still opening up a bank to market manipulation against its positions.

Given the current calculation method for correlation structure and the curvature component for nonlinear exposures, the SBA is generally perceived as a conservative measure. The inclusion of the breakdown for delta, vega and curvature components might lead investors to question whether SBA is in fact conservative or another attempt at capturing the "correct" risk profile for a bank's portfolio. Such an interpretation would be misleading to investors, and add to the complexity of the narrative that would become necessary.

In addition, the highly technical detail required is likely to be of interest only to the very most sophisticated investors, and of questionable use even to them. This Template appears to be translating information of interest to supervisors in their review of banks' market-risk compliance into the public sphere, thereby generating additional disclosure of a highly technical nature that will not contribute to users' ability to understand or evaluate banks in which they invest. Rather, the detail and technical complexity of the information is likely to contribute to the false but common impression that banks are too complex to invest in, whereas much simpler disclosures should be sufficient.

The Associations therefore recommend removal of the breakdown of delta, vega and curvature components. Discussion of the capital charge should be more than sufficient.

Furthermore, the Associations propose adjusting the "accompanying narrative" section to add the materiality concept, as follows:

> […] In particular, banks must inform about any positions assigned to the trading or banking book in contradiction of the general presumptions of their instrument categories […] as well as about any ***material*** positions that have been moved from one book to the other […] .

Concentrating on material positions would ensure that the main drivers will be highlighted and results are focused, and information of little value to users will be avoided.

Table MRC: The structure of desks for banks using IMA

As stated previously, banks have different trading business structures in line with their business segments, business models and strategies. Convergence across industry participants, which appears to some to be a goal of this Table, might give rise to higher systemic risk.

The industry further notes that the number of desks can be large, which, even with the selection of representative desks called for by the draft Table, would result in more than a significant number of Rows for some banks.

As a result, the current granular representation of banks' trading desk structures should be removed and disclosure at a much higher level of aggregation permitted.

Template MR2: Market risk IMA per desk

The industry is concerned that the granularity of the Template and requested information has a high potential of revealing sensitive information and possibly even desk-level strategies to competitors, while the information provided could not function as a basis of comparison between banks.

Analogously to Table MRC, Template MR2 requires a large amount of data that might be misleading if published as outlined in the proposal, e.g. aggregated desk level failures vs. actual (much smaller) desk level failures. We would like to highlight that, in this case, the number of failures would be driven by desk structures as disclosed rather than the quality of the risk management system. For example, a potential failure in a trading desk with a lower overall risk profile may lead to an entire representative desk set's failing under the proposed disclosures.

Additionally and given that there are often organizational changes that affect trading desk structure, comparison between reporting dates might also become difficult.

Given that diversification benefits of the overall portfolio are not reflected, sensitive information for a particular trading desk could become public. Furthermore, any disclosure that does not reflect the overall netting benefits of the portfolio can be misleading for the investor community.

Disclosing backtesting and P&L Attribution exceptions could reveal which desks have model approval and which are close to losing model approval. This information is subject to being exploited by other market participants.

Given the current, hair-trigger formulation of the P&L Attribution test in the final rules, a large number of false breaches could occur and therefore mislead investors. This has been a subject of extensive discussion between the industry and the relevant Basel working group.

A better approach would be to use asset class reporting (IR, FX, equity, commodities and credit) providing the following advantages:

- It would be more comparable across banks providing contribution of each risk class to the total capital.
- It would help as well comparability in time as the categories are stable, and
- It would be in line with the FRTB required computation.

Template MR3: Market risk IMA per risk type

The Associations have concluded that Template MR3 (subject to two changes) can be considered as a positive example for disclosure requirements. The changes would be as follows:

1. The current design of MR3 would result in the disclosure of the multiplier used in calculating IMA capital requirements. The setting of the multiplication factor involves supervisory judgment,

the degree of which varies significantly across jurisdictions. Supervisory authorities adopt different practices in making decisions which lead to the setting of the regulatory multiplier and therefore the results are not directly comparable across banks. In many jurisdictions, multiplier is of confidential nature and should not be disclosed. The fact that it is not comparable confirms that there would be little value in making such disclosure.

2. The Associations suggest replacing columns a and b with a single column named "Risk measure used in capital charge calculation" as well as removing Row 10 in the proposed Template. That would safeguard the confidentiality of the regulatory multiplier.

The industry acknowledges that there may be differences across jurisdictions regarding the confidentiality or other disclosure requirements of the multiplier, but the design of Pillar 3 should protect the confidentiality of this measure in all cases.

The Associations also question the usefulness for the end user of having two risk measures in Template MR3 – the most recent and the average. It is only the final number (the maximum of the two) that matters for the calculation of market risk RWA (which is disclosed in Template OV1) and affects the level of the capital ratio directly. Therefore, the Associations suggest simplifying this disclosure to include only information that is truly useful and provides an appropriate level of detail by major risk categories (interest rate, equity, commodity, FX, credit spread risk):

			Risk measure used in capital charge calculation
1	Unconstrained expected shortfall (ES)		
2	ES for the regulatory risk classes	General interest rate risk	
3		Credit spread risk	
4		Equity risk	
5		Commodity risk	
6		Foreign exchange risk	
7	Weighted average of the constrained and unconstrained expected shortfall (IMCC) (Rho*Unconstrained ES+(1-Rho)*aggregated risk class ES)		
8	Capital charge for non-modellable risk factors (SES)		
9	Default risk charge (DRC)		
11	Total capital charge		
12	RWA (total capital charge *12.5)		*[equals Row 18 OV1]*

Template MR4: RWA flow statements of market risk exposures under an IMA

The industry is concerned that the disclosed figures from this Template would be highly inconsistent. The industry has analyzed various instruments (e.g. pricing of a European Call option where the exact same total change in the option value can be achieved through six different "walks", each with a different driver of change) and concluded that such a granular decomposition is not suitable and would lead to a distorted representation. More details on such examples can be made available on request.

The Associations point out again that, given granular desk level approval, and given the hypersensitivity of the P&L Attribution tests and the ongoing discussion of the properties of the test, desks can become ineligible and then eligible again in a short period of time. This may result in “noise” in the disclosures that will not contribute to investors’ understanding, or may cause a misperception of the actual quality of risk management.

Regulatory changes can occur at different points in time within a quarter, in parallel to model changes, and portfolio composition may also change substantially during a quarter. These effects are not additive. Further, attributing RWA movements to individual drivers is partially judgmental, as banks must base the decision on their own interpretations of the causal relationships among factors leading to RWA changes. As a result, at quarter end, it might not be feasible to return to previous versions of the model (before changes) in order to perform the requested decomposition. Analogously with the initial example above, there would not be one unique decomposition as the order in which changes occur will influence the mathematical result (please refer to the European Option example for further details). Thus, it will often be very difficult to produce quarter-end comparisons, which, in any case, will often not be truly comparable.

An increase in the number of categories in comparison to current Pillar 3 disclosure requirements is burdensome and will pose operational challenges to implement.

This discussion has highlighted the challenges of a quantitative disclosure for MR4 and leads to the conclusion that qualitative assessment would be more useful. However, as this requirement is already covered by Template MR3, the Associations propose to remove Template MR4.

- **Part 12: Operational risk**

Table ORA: General qualitative information about operational risk management

The Associations welcome Table ORA, which offers the opportunity to provide additional information on the main characteristics and elements of their operational risks and operational risk management, in an appropriately flexible manner. This information should prove beneficial to users and useful to banks as they explain the quality of their operational risk management to users.

Templates OR1, OR2 and OR3: Historical losses used for SMA calculation; SMA -- business indicator and subcomponents; Historical losses

It is especially difficult to comment on disclosure of the current operational risk proposals, including among other things the ten-year data requirement, given that the SMA calculation is not final and the industry is seeking clarity on the fundamental scope and definitional aspects of the operational risk proposal in the separate consultation on the substantive operational risk requirements.

The industry’s comments on the operational risk proposal raise significant issues of non-comparability and volatility in the proposal, which would flow through to affect the quality of related disclosures.
A basic, and important comment is that any operational risk disclosures should be subject to a reasonable *materiality* threshold for OR1, OR2 and OR3 that should be much more substantial than the EUR 1 million stated in OR3. The threshold should be related to the size of the institution, as the current approach could call for tiny and essentially irrelevant disclosures for most large institutions. The

industry's substantive comments on the current operational risk consultation similarly call for normalization of the operational risk calculation in relation to bank size.[11]

In preference to the current approach, it would be more telling of a bank's actual risk management and operational risk to break down losses by categories, and to show a percentage breakdown of risk categories, rather than giving absolute amounts subject to the low EUR 1 million materiality threshold. Many members believe percentages and trends, rather than absolute amounts, would be more useful and less likely to raise problems of confidentiality.

A further basic question, which also reflects the industry comments on the substantive operational risk proposals, is whether the ten-year look-back for Template OR1 and the three-year look-back for OR3 are meaningful as proposed.[12] Going back ten years, especially, may pick up losses from businesses that have been sold or discontinued, or have become much less material to the bank overall, or which are highly unlikely to recur because of subsequent remedial action. Appropriate adjustments should be permitted, to avoid misleading and inaccurate disclosures. The disclosures should follow the final version of the substantive requirements insofar as possible, but even if the change being requested is not picked up for regulatory capital purposes, consideration should be given to allowing adjustments in the Pillar 3 disclosures, to avoid the need to provide misleading information or lengthy explanations.[13]

Similarly, the industry's substantive comments on the operational risk proposals note the volatility of the SMA as currently proposed. This is not the place to discuss this issue in detail; suffice it to say that it is hoped the industry's suggestions as to substance are accepted, and, in case they are not, the finalization of Pillar 3 should consider whether the resulting disclosures would be appropriate or would carry over undue "noise" from the volatility of the measure, which would not be of much use or significance to investors.

Given that different banks are at different levels as to the quality and quantity of their loss information, to what extent are Templates OR1 and OR3 are meaningful and comparable among banks? The bald information required could lead to wrong conclusions and therefore establish an unlevel playing field, especially while banks are implementing the SMA proposals, and especially if there is not an appropriate materiality threshold.

A partial solution to this problem, in addition to adding a materiality threshold and appropriate adjustments of the look-backs, might be to provide a further phase-in period, which would require banks to describe their progress on developing the SMA (or whatever the final version of the operational risk rules requires) for a period before beginning the more specific disclosures now proposed in the Template.

As the Committee in effect recognizes in its current separate consultation on non-performing exposures and forbearance, it is questionable how comparable the disclosures would be when definitions of default and other specifics vary across jurisdictions. There may also be a variety of other differences in the way banks collect and calculate losses; for example, there may be differences in how operational losses are

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[11] In addition, there is a gap between the disclosure requirement of the Pillar 3 proposal and the EUR 100 million and EUR 10 million breakdowns required in the operational risk consultative document *"Standardised Measurement Approach for operational risk",* March 2016 (http://www.bis.org/bcbs/publ/d355.pdf). It would make sense to align the requirements. See paragraphs 32 and 45 of the consultative document.

[12] Furthermore, the operational risk consultative document (cited above) requires a minimum of five years of losses if ten years' losses are not available. There is thus a discrepancy between the substantive requirement and the Pillar 3 proposal, which needs to be reconciled. See paragraph 32 of the operational risk consultative document.

[13] It seems odd that Pillar 3 might be so intensively focused on backward-looking information when Expected Credit Loss provisioning under IFRS9 and the US GAAP CECL proposal will shift the emphasis to projected losses (with appropriate disclosure being defined by the accounting standards in that context).

defined between institutions; as an example, some banks would deduct severance payments from an employee lawsuit claim while others would not. At the very least, appropriate caveats will be required.

Subject to the outcome of the substantive operational risk consultation, disclosure of operational risk under the SMA could lead to unintended requirements for disclosure of confidential information, especially related to ongoing litigation. Therefore, it will be important to revisit the disclosure requirements (as the current draft makes clear is intended) once the SMA is finalized and there is more clarity on which components are to be included in the calculation of the loss multiplier.

Members have expressed concern that the current draft Templates might require the disclosure of confidential information, especially about pending litigation. Templates OR1 and OR3 in particular could be interpreted to call for confidential and very sensitive information, given that it may include legal provisions. Information about pending business or legal reserves may be defined internally in a very conservative manner for capital management purposes. If, as has happened frequently, the actual outcome of a legal proceeding is favorable to the bank or substantially less than the worst-case amount reserved (say 20%), then disclosure based on reserves taken while the case is pending may easily be misconstrued. Although the Template does not specifically call for case-by-case information, analysts could easily track actual losses during a year and see the difference between such losses and actual disclosures as reflecting actual potential losses, rather than very conservative worst-case estimates of outcomes that are still highly contingent.[14]

It might, therefore, be better to show percentages and trends of losses by Basel risk categories to highlight where banks' are seeing the largest losses, rather than the potentially misleading information now required by OR1 and OR 3.

It would also help to make clear that information about pending legal cases and associated losses is highly sensitive and can be excluded in accordance with the principles stated in Section 4.5 (see the discussion above).

OR1 and OR3 are largely repetitive. The Associations propose that, if these Templates are retained, either:

- Banks that use historical losses be required only to populate OR1, while all other banks populate OR3; or that

- The two Templates be merged into one, allowing banks that use historical losses to populate the full requirement under the final operational risk framework, while other banks populate three years only,

[14] A member suggests this example: A bank has a pending legal case which is rather important. The bank pleads not guilty and argues that it acted legally and in good faith. However, the accounting rules of the bank require booking a significant provision for this legal dispute. With the proposed Pillar 3 changes, the bank might have to disclose significant information about this provision. This new disclosure requirement is more detailed than the current disclosure requirements for such provisions in the applicable accounting standards, which do not require disaggregated disclosure, although banks often voluntarily provide qualitative disclosure (not including the amount of provisions) for major matters. See US GAAP 450-20-50-1B. Hence, the proposal would oblige a bank to disclose more information about its best estimate for the potential cost. For the lawyers of the bank it becomes difficult to argue that the bank should be granted a full discharge by the court, or that damages or fines should be determined on a reasonable and proportionate basis, if there is more and more disclosure about the significant provisions of the bank for this case. The new disclosure requirements could have a severe negative impact for the bank on the court ruling of pending legal cases.

depending on how the final standard is defined. The combined Template should also be made "flexible" to allow for appropriate reflection of differences among institutions.

As with other issues in Pillar 3, every effort should be made to avoid divergences between the criteria for information required for disclosure and that required for other purposes, such as QISs, stress tests, or local supervisory returns, such as COREP in Europe or the equivalent FRY 14Q and similar reporting in the US or other countries.

Finally, OR2 provides for accompanying narrative, whereas OR1 and OR3 do not. This seems anomalous on its face. Although banks can always provide additional disclosure as needed under general principles, it is likely that, especially if the proposals are finalized unmodified, a good deal of explanation of any distortions resulting from the bald historical loss disclosures would be required. Therefore, explicit provision for high-level narrative that would allow a bank to provide explanations it deems necessary should be made.

Template OR2 – Business Indicator and subcomponents

Several members have noted that similar information is covered in annual reports and financials, and that OR2 as proposed would add little of actual use to users. It is thus questionable whether OR2 should be retained at all.

As a specific comment, paragraph 23 of the operational risk consultative document says, "To compute the BI for year t, a bank must determine the three-year average of the BI, as the sum of the three-year average of its components: …", which means BI =Interestavg + Serviceavg + Financialavg. Given this approach, it would not be coherent for banks to disclose the subcomponents (interest, services, and financial) at T-1 and T-2 as indicated in the Pillar 3 consultative document ,because these require T-3 and T-4 numbers for their drivers (the required averages require further inputs).

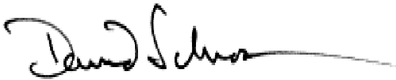
If retained, the Template should be modified so that banks would be required to disclose the averages of the subcomponents of BI that are actually used for operational risk capital purposes (depending, of course, on the outcome of the final operational risk requirements).

Further, the Interest subcomponent is "Interest, Lease and Dividend Component" in the operational risk consultative document and consists of Interest income/expenses, Lease income/expenses, Dividend income and Interest Earning Assets as its drivers. It is not clear why the OR2 doesn't include Lease Income/Expenses and Interest Earning Assets parts.

Conclusion

In conclusion, the Associations hope that the suggestions made will contribute to a final version of Pillar 3 that is more manageable for both banks and users, achieving the goal of robust risk disclosure without unnecessarily increasing the information overload suffered by the whole market. The Associations would appreciate the opportunity to discuss any of these matters further. Any questions or requests for further information may be addressed to David Schraa (dschraa@iif.com), Panayiotis Dionysopoulos (pdionysopoulos@isda.org), or Mark Bearman (Mark.Bearman@afme.eu).

Very truly yours,



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