

## OCBF General Comments

January 27, 2017

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### Consultations on ESMA EBA's Guidelines on Internal Governance and Suitability of Management Body

The Office de Coordination Bancaire et Financière (OCBF) is an organization that joins together 135 financial institutions, most of which are small and medium-sized French entities, subsidiaries or branches of major French or foreign groups. The organization's distinguishing characteristic is the willingness and commitment of its members to work together and to share ideas. The OCBF provides expertise in monitoring banking regulation in order to help its members and facilitate their operations.

The OCBF is a professional association primarily aimed at promoting discussions among the management teams of its members and at considering the impact of upcoming changes. It is also an intermediary between local authorities and medium-sized financial institutions, facilitating dialogue, interaction and the inclusion of the latter's concerns.

The OCBF thanks the EBA and ESMA for consulting the European banking profession on its guidelines concerning internal governance and suitability of management bodies. This contribution supplements the one addressed by the French Banking Federation (FBF), many aspects of which are completely relevant for OCBF members. Due to our limited means, the OCBF chose to highlight the following items related to the draft guidelines:

#### 1) **Justifications with the present approach of reinforcement of the normative framework**

The OCBF does not understand why the authorities have chosen to modify the legal framework applicable to banks at this time. If this initiative is brought to fruition, it would not only raise questions regarding competence, but generate disproportionate upheaval and an unjustified workload for small and medium-sized banks.

The consultation documents do not explain the regulating authorities' reasoning for modifying the current law applicable to governance of financial institutions. We do not dispute the prerogatives of the various authorities, but request that they more clearly explain their objectives. This would allow top EU authorities (Commission, Parliament, and even Court of justice) to ensure that this approach is the most suitable one.

On analysis, it does not seem that the authorities having launched the consultation processes were invited the delegating bodies to modify the current legal framework. Indeed, imposing substantial modifications amidst discussions within the Basle committee on the evolution of the overall prudential framework would generate risks for the European Union.

To the best of our knowledge, it appears that banks are implementing the rules recently enacted by the CRD4 without any major difficulties. Consequently, it would seem somewhat hasty to modify the rules without a broad assessment of the impact implementation of the existing framework is generating. In the event of proven difficulties, it would be advisable to work together to analyze the causes, as well as dangers which would arise from potential significant divergences from regulatory standards.

We are not disputing the legitimacy of the power exercised. However, although we support oversight for the banking sector, we wish to ensure that this sectoral normative activity is consistent with entrepreneurial freedom, which makes it possible for players of diverse sizes and legal structures to participate in the market and stands out as one of the fundamental bases of the freedoms promoted by the European Union.

For this reason, we recall that pursuant to article 54.2 of the Treaty of the Union, EU authorities must respect corporate diversity. Sectoral regulatory authorities should also bear in mind that diversity contributes significantly to the resilience of the banking sector.

## **2) Legal consequences of the ESMA/EBA guidelines for the national authorities of supervision**

In addition, the documents presented for this consultation lead us to request clarification regarding the legal scope of the draft guidelines with regard to national authorities who undertake to verify the competence and honorability of corporate directors, particularly by way of the administrative approval mechanism. Although these guidelines purport not to create new obligations for operators, it would seem that the allocation of powers provided for therein would lead to changes for national authorities. If the guidelines were to have a prescriptive function for the national authorities, even if only procedural, this could lead to inappropriate procedures being imposed should the guidelines address issues that fall within the sole purview of Member States.

## **3) Principle of proportionality and harmonization**

Although the two documents presented for consultation evoke the Principle of Proportionality it is very difficult to assess the degree to which this principle would be applied when drafting the regulations and procedures that the banking industry would be obliged to follow.

We believe that the will to desire for harmonize must not overshadow all other principles. Thus, it seems sensible to us to entrust the management bodies of each entity with the responsibility of applying and adapting its own internal control mechanism (paragraphs 70 and 76), fully consistent with the principle of proportionality (paragraphs 110 and 111). Within a consolidated group, the majority shareholder enjoys full latitude to impose its own rules. It appears superfluous to enshrine this reality in a specific legislative act.

The OCBF believes that an excessive focus on the principle of an even playing field has led European regulatory authorities to lose sight of their obligations with regard to respect for the competence of Member States to set out their own corporate regulations. More basically, this approach would undermine respect for diversity of participants in the banking system as a whole.

In view of existing precedents in other supervisory systems, it would seem possible that European regulatory authorities could have reflected on this important issue and considered the advantages and disadvantages of

an in-depth individual examination of all SMEs, as is the case for systemically important institutions. This focus on exhaustiveness and uniformity is said to clog the system, and may ultimately create more disadvantages than benefits. European regulatory authorities would do well to recall the proverb “Don’t bite off more than you can chew.”

It is our belief that incorporating a truly proportional approach would not jeopardize the effectiveness of the overall supervisory system. It could even make for a more concrete and less formal range.

#### **4) Respect for rights associated with ownership**

Lastly, considering the nature of its members, the OCBF wishes to recall that although oversight of the banking sector is legitimate, the manner in which it is implemented must respect the basic principles that the European Union is obliged to protect and even promote: entrepreneurial freedom and property rights.

It seems important to recall that property rights comprise other dimensions than mere ownership. In particular, voting rights and the associated right to be appointed or elected to participate in governance bodies must not be stripped of their practical meaning, compared to companies operating in other sectors, because of a vague reference to conflict of interest rules directed at equity owners of the banks, be they shareholders of private banks or members of cooperative banks.

We also urge European regulatory authorities to seek greater coherence between what is stated in the governance standard framework on the one hand, and their desire to give capital owners a larger role in the bank resolution mechanisms, on the other hand. It seems critical to align the rights and obligations associated with capital ownership of a bank.

## List of Institutions OCBF Members

as of 17 January 2017

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### Banking Institutions

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| <ul style="list-style-type: none"> <li>▪ Agence France Locale</li> <li>▪ Allianz Banque</li> <li>▪ Al Khaliji France</li> <li>▪ American Express Carte France SA</li> <li>▪ Arkea Banking Services</li> <li>▪ Arkea Direct Bank SA</li> <li>▪ Attijariwafa Bank Europe</li> <li>▪ Axa Banque</li> <li>▪ Banca Carige S.p.A.</li> <li>▪ Banco Bilbao Vizcaya Argentaria SA</li> <li>▪ Banco BPI</li> <li>▪ Banco de Sabadell</li> <li>▪ Banco Santander</li> <li>▪ Bank Audi France</li> <li>▪ Banque BCP</li> <li>▪ Banque BIA</li> <li>▪ Banque Cantonale de Genève France SA</li> <li>▪ Banque Chaabi du Maroc</li> <li>▪ Banque Chabrières</li> <li>▪ Banque Courtois</li> <li>▪ Banque de la Réunion</li> <li>▪ Banque Degroof Petercam France</li> <li>▪ Banque Delubac et Cie</li> <li>▪ Banque Dupuy de Parseval</li> <li>▪ Banque Edel SNC</li> <li>▪ Banque Espirito Santo &amp; de la Venetie</li> <li>▪ Banque Fiducial</li> <li>▪ Banque Française Mutualiste</li> <li>▪ Banque Kolb SA</li> <li>▪ Banque Laydernier</li> <li>▪ Banque Leonardo</li> <li>▪ Banque Martin Maurel</li> <li>▪ Banque Marze</li> <li>▪ Banque Michel Inchauspé - Bami</li> <li>▪ Banque Neufelize OBC</li> <li>▪ Banque Nuger</li> <li>▪ Banque Palatine</li> <li>▪ Banque Patrimoine et Immobilier</li> <li>▪ Banque Pictet et Cie</li> <li>▪ Banque Populaire Rives de Paris</li> </ul> | <ul style="list-style-type: none"> <li>▪ Banque Pouyenne</li> <li>▪ Banque Privée 1818</li> <li>▪ Banque Rhône-Alpes</li> <li>▪ Banque SBA</li> <li>▪ Banque Socredo</li> <li>▪ Banque Tarneaud</li> <li>▪ Banque Wormser Frères</li> <li>▪ Barclays Bank PLC</li> <li>▪ Barclays Bank PLC - Monaco</li> <li>▪ Bayerische Landesbank</li> <li>▪ BforBank</li> <li>▪ BGFI Bank Europe</li> <li>▪ BinckBank NV</li> <li>▪ Blom Bank France</li> <li>▪ BNC SA</li> <li>▪ Boursorama</li> <li>▪ BPE</li> <li>▪ Bred Banque Populaire</li> <li>▪ Brink's France Finance</li> <li>▪ Caisse d'Epargne Rhône-Alpes</li> <li>▪ Caixa Geral de Depósitos</li> <li>▪ Carrefour Banque</li> <li>▪ CMP-Banque</li> <li>▪ Commerzbank AG</li> <li>▪ Commerzbank Holdings France</li> <li>▪ CPoR Devises</li> <li>▪ Crédit Coopératif</li> <li>▪ Crédit du Nord</li> <li>▪ Crédit et Services Financiers - Créserfi</li> <li>▪ Crédit Foncier de France</li> <li>▪ Crédit Logement</li> <li>▪ Crédit Municipal de Paris</li> <li>▪ Crédit Mutuel Arkéa</li> <li>▪ Crédit Suisse (Luxembourg) SA, Succursale en France</li> <li>▪ Deutsche Bank AG</li> <li>▪ EBI SA Groupe Ecobank</li> <li>▪ Edmond de Rothschild (France)</li> <li>▪ Euroclear France</li> </ul> |
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| <ul style="list-style-type: none"> <li>▪ Europe Arab Bank PLC</li> <li>▪ FBN Bank (UK) Ltd</li> <li>▪ Financière des Paiements Electroniques « Compte Nickel »</li> <li>▪ Orange Bank</li> <li>▪ Helaba Landesbank Hessen-Thuringen</li> <li>▪ ING Bank NV</li> <li>▪ Intesa Sanpaolo S.p.A</li> <li>▪ J.P. Morgan Chase Bank National Association</li> <li>▪ KBC Bank SA</li> <li>▪ KBL Richelieu Banque Privée</li> <li>▪ Kutxabank</li> <li>▪ La Banque Postale</li> <li>▪ La Française AM</li> <li>▪ Landesbank Saar (Saarlb)</li> <li>▪ Lazard Frères Banque</li> <li>▪ Lombard Odier Gestion (France)</li> <li>▪ Martin Maurel Sella – Banque Privée Monaco</li> <li>▪ Meeschaert Gestion Privée</li> <li>▪ Meilleurtaux</li> <li>▪ Mirabaud &amp; Cie (Europe) SA</li> <li>▪ Monabanq.</li> <li>▪ Monte Paschi Banque SA</li> <li>▪ National Bank of Abu Dhabi</li> <li>▪ Oddo &amp; Cie</li> <li>▪ Oney Bank</li> <li>▪ OPS</li> <li>▪ Orange Bank</li> </ul> | <ul style="list-style-type: none"> <li>▪ Paytop</li> <li>▪ Primonial</li> <li>▪ Qatar National Bank SAQ</li> <li>▪ Quilvest Banque Privée</li> <li>▪ Rabobank International</li> <li>▪ RBC Investor Services Bank France SA</li> <li>▪ RCI Banque</li> <li>▪ Rothschild &amp; Cie Banque</li> <li>▪ Saxo Banque (France)</li> <li>▪ Sicavonline</li> <li>▪ Slimpay</li> <li>▪ Société Marseillaise de Crédit</li> <li>▪ Socram Banque</li> <li>▪ State Street Banque SA</li> <li>▪ Svenska Handelsbanken AB</li> <li>▪ Swisslife Banque Privée</li> <li>▪ The Bank of Tokyo - Mitsubishi UFJ, Ltd.</li> <li>▪ Tunisian Foreign Bank</li> <li>▪ Turenne Capital Partenaires SA</li> <li>▪ UBS France SA</li> <li>▪ Unilend</li> <li>▪ Union de Banques Arabes et Françaises – UBAF</li> <li>▪ Union Financière de France Banque- UFFB</li> <li>▪ Unigrains</li> <li>▪ Viel &amp; Cie</li> <li>▪ Volkswagen Bank</li> <li>▪ VTB Bank (France) SA</li> <li>▪ W-HA</li> </ul> |
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## Others

Ailancy  
AT Kearney  
Bank Melli Iran  
Bank Tejarat  
E.F.M.A.  
Eurogroup Consulting  
EY  
Harvest  
Hello Bank!  
Mazars  
Paris Europlace  
PwC