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To:      Members of the Executive Board

From:    The Acting Secretary

Subject: **Supporting Document to the Code of Good Practices on Transparency in  
Monetary and Financial Policies**

Attached for the convenience of Executive Directors is a copy of the final (unredlined) version (Part III of III) of the Supporting Document to the Code of Good Practices on Transparency in Monetary and Financial Policies, which was approved by the Executive Board on July 24, 2000 for posting to the Fund's external website.

One copy only is being provided to each Executive Director's office, but additional copies may be obtained on request from Documents Distribution (ext. 34630).

Mr. Sundararajan (ext. 38573) and Mr. Siegman (ext. 37906) are available to answer questions related to this document.

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**Supporting Document to the *Code of  
Good Practices on Transparency in  
Monetary and Financial Policies***

**Part 3—Good Transparency Practices for Financial  
Policies by Financial Agencies**

**(Approved by the Executive Board on July 24, 2000)**



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**Monetary and Exchange Affairs Department**

**INTERNATIONAL MONETARY FUND**

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## GOOD TRANSPARENCY PRACTICES FOR FINANCIAL POLICIES BY FINANCIAL AGENCIES<sup>1</sup>

The terms “financial policy” and “financial agency” refer to the policies of institutions, agencies, or government bodies that are responsible for the regulation, supervision, and oversight of the financial and payment systems, including markets and institutions, with the view to promoting financial stability, market efficiency, and client-asset and consumer protection. A central bank can be considered a financial agency if it has responsibility for the regulation, supervision, or oversight of some part of the financial and payment system. For a fuller description of these terms, see the Annex to the *Code of Good Practices on Transparency in Monetary and Financial Policies* in Appendix I.

### V. CLARITY OF ROLES, RESPONSIBILITIES AND OBJECTIVES OF FINANCIAL AGENCIES RESPONSIBLE FOR FINANCIAL POLICIES

**5.1 The broad objective(s) and institutional framework of financial agencies should be clearly defined, preferably in relevant legislation or regulation.**

#### Explanation and rationale

The broad objectives of a financial agency are important long-term goals that can be achieved using financial policy, such as promoting the stability of the financial system, ensuring the safety and efficiency of the payment systems, or providing a credible deposit insurance guarantee. Financial agencies may have one or more ultimate objectives. The *Basel Core Principles for Effective Banking Supervision*<sup>2</sup> as well as the *IOSCO Objectives and Principles of Securities Regulation*<sup>3</sup> and the draft *Core Principles for Systemically Important*

<sup>1</sup> Where the central bank carries responsibility for financial policies, the transparency issue set out in practices in Sections V-VIII of the *MFP Transparency Code* is in general covered by the parallel transparency practices for the central bank as a whole in Sections I-IV of the *MFP Transparency Code* and elaborated on in the relevant practices for those sections in the *Supporting Document*.

<sup>2</sup> Principle 1(1): An effective system of banking supervision will have clear responsibilities and objectives for each agency involved in the supervision of banks, page 4. See [www.bis.org/publ/bcbs30a.pdf](http://www.bis.org/publ/bcbs30a.pdf)

<sup>3</sup> Principle 1: The responsibilities of the regulator should be clear and objectively stated, page 10. See [www.iosco.org/download/pdf/1998-objectives-eng.pdf](http://www.iosco.org/download/pdf/1998-objectives-eng.pdf)

*Payment Systems by the Committee on Payment and Settlement Systems*<sup>4</sup> by the Committee on Payments and Settlement Systems all stress the importance of clarity of objectives. The institutional framework of financial agencies refers to the basic conceptual structure governing the institutions involved in the preparation and implementation of financial policies and the nature of the relationships between different agencies.

A clear statement of the ultimate objectives and institutional framework of financial policy identifies the mandate and the extent of the responsibilities of the financial agency. Specifying these key elements in authorizing legislation or regulations gives them particular prominence, and avoids ad hoc and frequent changes to these important aspects of the operations of an agency. Specifying the objectives in legislation or regulation also ensures that the goals of financial policy are codified in the legal framework to which the authorities and the public can readily refer. Giving the objectives a firm basis in legislation or regulation enhances transparency by ensuring that there is some degree of constancy in the objectives, enabling the public to form expectations about financial policy operations and to assess the performance of the institution in achieving its objectives. Similarly, by defining the institutional framework in legislation or regulation, the financial agency responsible for achieving the objectives can be held accountable, as the public is able to compare outcomes to goals.

### **Application**

For nearly all financial agency respondents—across types of financial agencies—the objectives and institutional framework are defined in legislation; for some, in addition, regulation and other documents are used. The established practice in some countries is to define certain key elements of the institutional framework and objectives in general terms in legislation and provide specificity in a non-legislative context, for example in regulation or a memorandum of understanding.

### ***Central banks (banking supervision)***

In both the Central African Economic and Monetary Community (CAEMC) and the West African Economic and Monetary Union (WAEMU), the institutional framework for the banking commission in charge of banking supervision is laid out in international treaties and related conventions that are part of the public record.

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<sup>4</sup> Principle I: The system should have a well-founded legal basis under all relevant jurisdictions, page 3. See [www.bis.org/publ/cpss34.pdf](http://www.bis.org/publ/cpss34.pdf)

Responsibility A of the central bank in applying the core principles: The central bank should define clearly its payment system objectives and should disclose publicly its role and major policies with respect to systemically important payment systems, page 11. See [www.bis.org/publ/cpss34.pdf](http://www.bis.org/publ/cpss34.pdf)

In the case of the Hong Kong Monetary Authority (HKMA), the legal and policy framework for the supervisory regime is defined in the Banking Ordinance. In addition, the HKMA issues a “Guide to Applicants for Authorization under the Banking Ordinance,” which contains a chapter on the legal and supervisory framework.

The 1993 Banking Law provides the institutional framework of the banking supervision function of the Bank of Italy, including the organizational structure, its purposes and scope, and the procedures of cooperation between authorities.

### ***Central banks (payment system oversight)***

In the Eurosystem, central bank laws are compatible with the Treaty and the ESCB statute, with respect to the tasks of the Eurosystem, including payment systems oversight. On June 21, 2000, the European Central Bank issued a policy statement, “Role of the Eurosystem in the field of payment system oversight.”<sup>5</sup> The statement outlines the objectives of oversight and the role of the Eurosystem, the legal basis for such oversight activities, and implementation of payment system oversight principles. As an example among Eurosystem national central banks, subsequent to being entrusted with the oversight of payment and clearing systems, the National Bank of Belgium issued a seven-page press release in December 1999, “The National Bank of Belgium and Oversight of Payment Systems,”<sup>6</sup> which summarizes the central bank’s role in oversight, its legal authority, the Bank’s oversight arrangements, the scope of oversight, the systems covered, and the relationship with the activities of the Belgian Banking and Finance Commission. It also notes that the Bank plans to disclose its actions in this field in its Annual Report. In addition, the release contains a listing of international reports (by the Committee on Payment and Settlement Systems and the European Central Bank) relevant to payment system oversight arrangements.

### ***Composite financial supervisory agencies***

The Australian Prudential Regulation Authority Act of 1998 defines the institutional framework for the prudential regulation of deposit-taking institutions, insurance companies, and pension funds.

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<sup>5</sup> See [www.ecb.int/press/00/pr000621\\_2.htm](http://www.ecb.int/press/00/pr000621_2.htm)

<sup>6</sup>See [www.nbb.be](http://www.nbb.be) under Press-Press Releases-December 20, 1999. The press release notes that the issuance of the press release was motivated by the internationally accepted principle that central banks should disclose key aspects of their policy on oversight, as enunciated in the *MFP Transparency Code* and in the *Consultative Paper on Core Principles for Systemically Important Payment Systems* prepared by the Committee on Payment and Settlement Systems.

***Deposit insurance agencies***

The institutional framework for the Swedish Deposit Guarantee Board is set forth in the 1995 Deposit Guarantee Scheme Act and the 1996 Investor Compensation Scheme Act.

***Securities regulatory agencies***

The institutional framework for securities regulation, market integrity and consumer protection is set forth in the 1989 Australian Securities and Investments Commission Act.

**Implementation considerations**

Financial agencies need to have a clear view of their objectives. Objectives could and do have different meanings for different agencies—they can be principles of operation, such as fairness, they can be procedures, or they can be results, such as lowering risk or reducing the number of failures. Financial agencies need to convey to the public the specific objectives of their agency.

Some laws or regulations specify multiple objectives for a financial agency. As changes in financial markets evolve and depending on financial conditions at particular times, the emphasis a financial agency places on the different objectives may change. In the presence of such multiple objectives, it is important for a financial agency to disclose and explain each objective, so that the public is aware of any potential tradeoffs between them. Transparency can be enhanced if the relative priorities of the different objectives are clarified.

Defining the objectives of a financial agency involves some tradeoff between permanence and flexibility. Since laws may be difficult to change at short notice, and the objectives of financial agencies may evolve over time, it may be prudent to avoid being overly specific in defining the objectives in legislation so that agencies will have the flexibility to deal with different circumstances, by supplementing the basic legislation with updated regulations, for example. Changing the legislation or regulation too frequently can be counterproductive if it results in the public's perception of the policymaking process being in a state of flux. On the other hand, defining the objectives quite specifically means that changes in the overall legal framework periodically will require amendments to the legislation, and the process of periodically altering the governing laws can promote transparency through a public discussion on the merits of the issue. Defining the objectives of financial agencies in a treaty (e.g., the Bank of Central African States) makes it more difficult to change the objectives, because of the greater degree of consensus required to amend these forms of legislation.



**5.1.1 The broad objective(s) of financial agencies should be publicly disclosed and explained.**

**Explanation and rationale**

Public disclosure of financial policy objectives of a particular financial agency involves making information on them accessible and readily available to all interested parties. It also involves explaining the broad objectives giving detailed information about the respective agency's objectives in a format or style that is readily understood. The objectives of financial agencies active in different financial sectors vary. For some (e.g., securities regulatory agencies), the objective stresses market efficiency, for others, (e.g., banking supervisory and payment system oversight agencies) the focus is on market and systemic stability, while for others (e.g., insurance regulatory and deposit insurance agencies) the principal consideration is client-asset protection. Some agencies have multiple objectives.

Disclosing the ultimate objectives in publications and public statements and explaining them to the public raises the awareness and understanding of the policymaking process beyond the legislative framework.

**Application**

The broad objectives of nearly all responding financial agencies—across financial agency types—are usually disclosed through legislation; for some agencies, in addition regulations and other documents are used to specify objectives. Principal methods for disclosing and explaining the objectives include the annual report, the official gazette, web sites, public speeches, and releases to the media.

***Deposit insurance agencies***

The objectives of the Canada Deposit Insurance Corporation are specified in legislation, and explained in various manners, including in pamphlets distributed bylaw by covered depository institutions.

***Securities regulatory agencies***

The objectives of the Securities Market Commission of Latvia are specified in the Law on the Securities Market Commission.<sup>7</sup> The Commission discloses and explains its objectives to

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<sup>7</sup> The objectives of the Commission are “to facilitate the development and sustainability of the securities market; to protect investors’ interests and to ensure equal competition opportunities in the securities market.” See Article 5 of the Law at [www.vtk.gov.lv/laws/SMC%20with%20Amendments.htm](http://www.vtk.gov.lv/laws/SMC%20with%20Amendments.htm)

the public through regulations, press releases, publications (such as the Annual Report), through appearances by officials before the legislature, and through public releases on its website.<sup>8</sup>

The mission statement of the Securities Commission of Malaysia states the objectives of the Commission.<sup>9</sup> The Commission discloses and explains its objectives in its publications (Annual Report, business plan, and information pamphlets), in written reports submitted to the legislature, through appearances by officials, and in postings on its website.<sup>10</sup>

### **Implementation considerations**

Some financial agency laws or mandates specify multiple objectives for an agency. As the analytical and operating framework of the financial agency evolves, the emphasis that an agency places on the different objectives may change. In the presence of multiple objectives, it is important for the financial agency to disclose and explain each objective, in order that the public is aware of potential tradeoffs between them.

<p><b>5.1.2 The responsibilities of the financial agencies and the authority to conduct financial policies should be publicly disclosed.</b></p>
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### **Explanation and rationale**

The responsibilities of a financial agency are the specific duties and functions it may be required to perform and for which it can be held accountable. For example, a financial agency may be responsible for the prudential supervision of banks, or for licensing and supervising insurance companies, or for overseeing the payment system, or for the oversight of deposit insurance schemes, or for bank restructuring programs, or for the regulation of the securities industry. Some financial agencies may have supervisory or oversight responsibilities for multiple financial sectors. The authority to conduct financial policies refers to having a clear mandate to utilize the various policy instruments at the disposal of the financial agency.

Publicly disclosing the responsibilities and authority of the financial agency provides the public with an understanding of the agency's mandate and the scope of its operations, as well as how it relates to the rest of the financial system. A clear understanding of the

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<sup>8</sup>See [www.vtk.gov.lv/Kom\\_EN6.html](http://www.vtk.gov.lv/Kom_EN6.html)

<sup>9</sup> The objectives are "to promote and maintain fair, efficient, secure and transparent securities and futures markets and to facilitate the orderly development of an innovative and competitive capital market." See [www.sc.com.my/html/organisation/mission.html](http://www.sc.com.my/html/organisation/mission.html)

<sup>10</sup>See [www.bnm.gov.my](http://www.bnm.gov.my)

responsibilities of the financial agency is necessary for the public to be able to assess its performance, understand the limits of its powers, and hold it accountable for its responsibilities.

## **Application**

The responsibilities as well as the authority to conduct financial policies of nearly all financial agency respondents—across financial agency types—are defined in legislation, and for some also in regulation and other documents. Overall, there seems to be a trend towards making authority of financial agencies to conduct financial policies more explicit and clearer. There is little differentiation in the manner of disclosure across the various types of financial agencies. Public disclosure of the responsibilities of financial agencies is most common through the official gazette, mission statements included in the annual report and web sites, and releases through the media.

### ***Central banks (banking supervision)***

The Annual Report of the Danish National Bank contains an Appendix on the statutory basis for the financial sector that summarizes legal developments and changes during the year affecting the financial sector in Denmark.

### ***Securities regulatory agencies***

In Thailand, the Securities and Exchange Commission Act states “The SEC shall have the power and duty to formulate policies to promote and develop, as well as to supervise, matters concerning securities...”<sup>11</sup> The SEC discloses its responsibilities to the public through various publications, including the Annual Report and postings on its website.<sup>12</sup>

The Securities Act of 1933 states that the U.S. Securities and Exchange Commission has the authority to “make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this title, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting, technical, and trade terms used in this title.”<sup>13</sup> The Commission has similar rulemaking authority under the five additional statutes that it administers. The SEC publicly

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<sup>11</sup> See [www.sec.or.th/mis/act/act.html](http://www.sec.or.th/mis/act/act.html)

<sup>12</sup> See [www.sec.or.th/public.html](http://www.sec.or.th/public.html)

<sup>13</sup> See 15 U.S.C. §775 (1999) Section 19: [www.law.uc.edu/CCL/sldtoc.html](http://www.law.uc.edu/CCL/sldtoc.html)

discloses its responsibilities and the authority to conduct financial policies in its publications, in statements and public appearances by officials, and on its website.<sup>14</sup>

### **Implementation considerations**

There may be circumstances where financial agencies are required to assume new responsibilities outside the scope of their regular activities or beyond their mandate as specified in the law or regulation. Under such circumstances, the legislative or regulatory mandate can be amended to include the new responsibility, or separate legislation or regulation can be passed or issued. Alternatively, if the new responsibility is only temporary, does not conflict with existing laws or regulations, and does not interfere with the primary mission of the financial agency, then there may be no need to specify the responsibility in legislation or regulation. Nevertheless, a publicly disclosed memorandum of understanding between the financial agency and the unit of government (legislature or a government ministry) assigning or designating the new responsibility may be an appropriate form of disclosure.

#### **5.1.3 Where applicable, the broad modalities of accountability for financial agencies should be publicly disclosed.**

### **Explanation and rationale**

Modalities of accountability refer to the means, methods, and procedures (including frequency) used by a financial agency to account for its actions and report on its activities.<sup>15</sup>

Publicly disclosing the modalities of accountability establishes a standard of disclosure that the financial agency is expected to meet on an ongoing basis. Public reporting by the financial agency on a regular and consistent basis establishes the principle of public accountability and initiates a tradition of reporting that can foster an ongoing practice of transparent policymaking.

### **Application**

The broad modalities of accountability of nearly all financial agency respondents are defined in legislation or regulation. The most common modalities of accountability are the annual report, a written report to a government ministry or legislature, or public appearances before the legislature. These broad modalities are disclosed most frequently through the annual

<sup>14</sup>See [www.sec.gov/asec/wwwsec.htm](http://www.sec.gov/asec/wwwsec.htm) for a description of the role and responsibilities of the SEC and the relevant legislation.

<sup>15</sup> See the relevant entries in Section VIII of this document for further treatment of transparency practices related to accountability of financial agencies.

report and the official gazette. Financial agencies in a wide range of countries disclose the broad modalities of accountability in different forms, including periodic reviews, through websites, and through public releases to the media.

### *Securities regulatory agencies*

In Canada, the Ontario Securities Act specifies that every five years the Ontario Securities Commission (OSC) and the Minister of Finance of Ontario agree to a publicly disclosed Memorandum of Understanding setting forth (i) the respective roles and responsibilities; (ii) the accountability relationship; and (iii) the responsibility of the Commission to provide the Minister with plans and budgets for upcoming activities.<sup>16</sup>

**5.1.4 Where applicable, the procedures for appointment, terms of office, and any general criteria for removal of the heads and members of the governing bodies of financial agencies should be publicly disclosed.**

### **Explanation and rationale**

Procedures for appointment refer to the processes used to select a person for a position, such as the attributes or requirements of the office holder. The procedures for appointment include the steps required before a person selected for a position is appointed, such as confirmation hearings or requirements to cease outside activities. The terms of office relate to the tenure of the position, such as whether the term that the appointee serves is fixed or at the discretion of some other office holder, any restrictions on appointment and re-appointment, and whether the position is held by virtue of holding some other office. The criteria for removal cover possible grounds for dismissal from the position. The phrase “heads and members of the governing body of financial agencies” refers to executive officials in the financial agency who have decision making authority, such as the chief executive and outside appointed deputies, as well as appointed members of the governing board or the body that oversees the operations of the financial agency. These aspects of the appointment process should be publicly disclosed.

Public disclosure of appointment procedures promotes the transparency of policymaking by revealing the constraints and incentives facing policymakers. This can deepen public understanding of how decisions on financial policy matters are made. Disclosure of the procedures of appointment can also enhance awareness of who are the key policymakers and the extent of their decisionmaking autonomy and authority. Public understanding of the criteria for dismissal of appointed heads and members of the governing board allows the public and markets to make better judgments of the finality of policy decisions, where there is a disagreement between the financial agency and other units of government. Public

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<sup>16</sup> The provinces mainly carry out securities regulation and supervision in Canada. The OSC plays a primary role, since the majority of Canada's securities activity takes place in Ontario.

disclosure of terms of appointment and criteria for removal is also relevant for the promotion of accountability, and has implications for the enforceability and administration of regulations.

### **Application**

Where applicable, procedures for appointment, terms of office, and general criteria for removal of the heads and members of the governing body of nearly all financial agency respondents are defined and disclosed in the relevant legislation or regulation establishing the agency. The procedures are often recorded in the official gazette; announcements of appointment are also recorded in the official gazette, and released to the media, often accompanied by the legal context of the appointment. Where no such formal procedures exist, appointments of senior officials are often announced through media releases.

### **Implementation considerations**

There are two types of approaches to setting criteria for removal from office of heads or members of the governing body: specific or general. The more specific the criteria for removal, the less possibility for misinterpretation or judgment in the application of the criteria. However, listing specific criteria may risk excluding valid grounds for dismissal. Excessive discretion in decisions is not consistent with transparency. On the other hand, confirmation of any removal decision by other bodies involved in the nomination process promotes transparency. For some agencies, there is no discretion in appointments or removals, since all members of the governing board are members on account of a position they hold elsewhere.<sup>17</sup>

## **5.2 The relationship between financial agencies should be publicly disclosed.**

### **Explanation and rationale**

The relationship between financial agencies refers to the demarcation of roles and responsibilities among different agencies of government. Public disclosure of this relationship involves giving the public a clear description of their respective competencies and areas of authority, as well as an understanding of how different agencies interact and work together. There is considerable variation in the complexity of relationships between financial agencies across countries, and hence the need to disclose such relationships.

Public disclosure of the relationship between financial agencies ensures that the public understands the extent of each agency's responsibilities. It also prevents the loss of

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<sup>17</sup> An example is the Board of Directors of Hungary's Deposit Guarantee Scheme, whose members are all appointed ex officio from other government agencies.

accountability on issues that span the jurisdictions of several agencies.<sup>18</sup> This ensures that the appropriate agency is accountable for its actions and that policies are implemented in the most effective manner.

## **Application**

The relationships among financial agencies are typically disclosed. Most often, this disclosure is handled through legislation, or regulation, or a memorandum of understanding. Other methods that are often employed include the annual report, media releases, and websites. Items covered in such agreements typically include information-sharing arrangements and general cooperation procedures.

### ***Banking supervisory agencies***

In the United States, the relationship between the different financial agencies with responsibility for the supervision of banks and financial institutions (other than securities firms) is managed within the framework of the Federal Financial Institutions Examination Council (FFIEC). The Council was established on March 10, 1979, pursuant to the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (FIRA).<sup>19</sup> The Council is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions, and to make recommendations to promote uniformity in the supervision of financial institutions. The FFIEC discloses its role and the relationship between the various federal agencies to the public through its mission statement, press releases and publications in the Federal Register (the U.S. government gazette), the Annual Report, and publications available on its website.<sup>20</sup> In addition, in certain cases in which jurisdictional boundaries are unclear, agencies may negotiate among themselves or appeal to Congress to further define those boundaries; jurisdiction may also be coordinated in some instances through disclosed inter-agency letters and agreements.

### ***Central banks (payment system oversight)***

In the area of payment systems, as for all the tasks of the Eurosystem, relationships between the national central banks and the European Central Bank can be inferred from Article 12.1 and Article 14.3 of the ESCB/ECB Statute. These articles state, respectively, that “The Governing Council shall adopt the guidelines and take the decisions necessary to ensure the performance of the tasks entrusted to the ESCB under this Treaty and this Statute [...] To

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<sup>18</sup> See 6.1.5 below for a discussion of public disclosure of procedures for information sharing and consultation between financial agencies.

<sup>19</sup> For a summary, see Title X of the Act (Public Law 95-630) at [www.thomas.loc.gov](http://www.thomas.loc.gov)

<sup>20</sup> See [www.ffiec.gov](http://www.ffiec.gov)

the extent deemed possible and appropriate [...], the ECB shall have recourse to the national central banks to carry out operations which form part of the tasks of the ESCB” and that “The national central banks are an integral part of the ESCB and shall take the necessary steps to ensure compliance with the Guidelines and instructions of the ECB and shall require that any necessary information be given to it.”

### *Composite financial supervisory agencies*

In Australia, the relationships between the Reserve Bank of Australia, the Australian Prudential Regulation Authority (APRA), and the Australian Securities and Investments Commission (ASIC), the three main financial sector regulatory agencies, are defined by legislation,<sup>21</sup> publicly disclosed memoranda of understanding,<sup>22</sup> as well as through press releases<sup>23</sup>, bulletin articles, and annual reports<sup>24</sup>.

In the United Kingdom, the relationship between the Bank of England, which has explicit responsibility for financial stability, the Financial Services Authority (FSA) and HM Treasury is set forth in a publicly released memorandum of understanding.<sup>25</sup> This establishes a framework of responsibilities, accountability, transparency and information exchange that are applicable for support operations.

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<sup>21</sup> Sections 10A, B, and C of the Reserve Bank Act define the relationship between the Reserve Bank and the Payment Systems Board. For text of the Act, see [www.scaletext.law.gov.au/html/pasteact/0/310/top.htm](http://www.scaletext.law.gov.au/html/pasteact/0/310/top.htm)

Section 19 of the Australian Prudential Regulation Authority Act defines, to a certain extent, the relationship between the Reserve Bank, APRA, and ASIC. For example, this section provides that the Board of APRA includes members of the Reserve Bank of Australia and ASIC. For this section and text of whole Act see [www.scaletext.law.gov.au/html/pasteact/2/3134/top.htm](http://www.scaletext.law.gov.au/html/pasteact/2/3134/top.htm)

<sup>22</sup> See [www.apra.gov.au/mediareleases/rbamou\\_12\\_10\\_98.htm](http://www.apra.gov.au/mediareleases/rbamou_12_10_98.htm)

<sup>23</sup> For example, consider the media releases available at [www.apra.gov.au/mediareleases/first\\_annual\\_report.htm](http://www.apra.gov.au/mediareleases/first_annual_report.htm)

<sup>24</sup> See [www.apra.gov.au/CorporateInfo/annual\\_report\\_1999/annual\\_report\\_contents.htm](http://www.apra.gov.au/CorporateInfo/annual_report_1999/annual_report_contents.htm)

<sup>25</sup> This Memorandum of Understanding is cited in Peter Rodgers, “The Bank of England Act,” in *Bank of England Quarterly Bulletin*, Vol. 38, May, 1998, pp. 93–99; it is also available at [www.sib.co.uk/pressrel/jointmou.htm](http://www.sib.co.uk/pressrel/jointmou.htm)



### ***Securities regulatory agencies***

In Thailand, the Securities and Exchange Commission Act defines the relationship between the Minister of Finance and the SEC: “The Minister of Finance shall be in charge of the enforcement of this Act and shall have the power to issue ministerial regulations and appoint competent officers to perform duties in accordance with this Act. Such ministerial regulations shall come into force upon publication in the Government Gazette.”<sup>26</sup>

### **Implementation considerations**

When there is no relationship between financial agencies, and the public may have a perception that there is, it may be useful to publicly disclose the absence of any relationship.

<b>5.3 The role of oversight agencies with regard to payment systems should be publicly disclosed.</b>
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### **Explanation and rationale**

The role of oversight agencies refers to the activities that a financial agency performs and the responsibilities that it holds in overseeing payment systems as a whole. The Committee on Payment and Settlement Systems' draft *Core Principles for Systemically Important Payment Systems* explicitly addresses the role of central banks with regard to the oversight of systemically important payment systems.<sup>27</sup>

A stable and efficient payment system is a key element of any well-functioning financial system. Public disclosure of the oversight role of a central bank or of the role of any other agency with an interest in the safety and efficiency of payment systems enables designers and operators of private sector payment systems, along with participants and users of all systems and other interested parties, to have a clear understanding of the role, responsibilities, and objectives of the oversight agency. Disclosure also helps the public to understand the adequacy of oversight and form a more accurate assessment of the systemic risks facing the payment system. Where the central bank provides major parts of the payment system as well as performs oversight of the payment system, such disclosure may bring to light any conflict of interest issues.

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<sup>26</sup> See Section 7: [www.sec.or.th/mis/act/chap0.html](http://www.sec.or.th/mis/act/chap0.html)

<sup>27</sup> The report of the Task Force on Payment Systems Principles and Practices, in which the *Core Principles* are set out, is available on the BIS website [www.bis.org/publ/cpss34e.htm](http://www.bis.org/publ/cpss34e.htm)

## Application

The role of the financial agency with responsibility for payment systems is nearly always disclosed. Most frequently, this disclosure takes place through legislation or regulation, supplemented by disclosure through the annual report of the institution that carries such responsibilities and/or the official gazette.

### *Central banks (payment system oversight)*

As noted in 5.1, on June 21, 2000, the European Central Bank issued a five-page policy statement on the role of the Eurosystem in the payments system. As examples among Eurosystem national central banks, the oversight role of the National Bank of Belgium in the country's payment system is described in the seven-page press release, "National Bank of Belgium and Oversight of Payment Systems," noted in 5.1. The Bank of Italy's objectives, methods and role in payment system oversight are described in its "White Paper."<sup>28</sup>

The Bank of Canada's role in designating payment systems for oversight and the way in which the Bank will carry out its oversight responsibilities are disclosed in the Payment Clearing and Settlement Act, as well as in other publications.

In the United Kingdom, the Bank of England's current oversight role with respect to the payment systems is described in the Bank's Core Purposes statement and associated publicly released memoranda of understanding.

**5.3.1 The agencies overseeing the payment system should promote the timely public disclosure of general policy principles (including risk management policies) that affect the robustness of systemically important payment systems.**

### Explanation and rationale

General policy principles (including risk management policies) refer to the policies that are put in place to reduce the systemic risk or likelihood of a major interruption to the functioning of the payment system. The robustness of the payment system refers to the susceptibility to different shocks and the fragility of the system to unforeseen disturbances. A payment system is systemically important if it could trigger or transmit systemic disruptions in the financial area, because of the size or nature of individual payments that it processes or because of the aggregate value of the payments processed.<sup>29</sup> Timely public disclosure refers to the availability of reliable information within a short time frame so that it is useful to

<sup>28</sup> Bank of Italy, *White Paper on Payment System Oversight: Objectives, Methods, Areas of Interest*, Rome, November 1999.

<sup>29</sup> *Core Principles for Systemically Important Payment Systems*, Report of the Task Force on Payment System Principles and Practices, Section 3.2. See [www.bis.org/publ/cpss34e.pdf](http://www.bis.org/publ/cpss34e.pdf)

participants in the payment system and not outdated by new developments. The draft Report of the Task Force on Payment Systems Principles and Practices addresses the role of central banks as oversight agencies responsible for the safety and efficiency of systemically important payment systems.

### **Application**

Most of the financial agency respondents responsible for payment systems oversight disclose the general policy principles that relate to the stability of payment systems. In some cases, these are disclosed through regulations, with many of these agencies also reporting through their publications and the media. Many of the central banks that carry oversight responsibility for one or more types of payment systems include a chapter or section on payment system issues in their annual report (e.g., Danish National Bank, Bank of Japan, Bank Al-Maghrib (Morocco), National Bank of Slovenia, and the Swiss National Bank).

### ***Central banks (payment system oversight)***

In the Eurosystem, according to Article 105(2) of the Treaty and Article 3 of the ESCB/ECB Statute, one of the tasks of the Eurosystem is to promote the smooth operation of payment systems. The ECB Annual Report devotes a chapter to payment systems, and the ECB offers on its website a range of publications and information on payment systems. The annual reports of some of the national central banks of the Eurosystem also contain a separate chapter covering payment system issues and developments in their country.

The Central Bank of Iceland has issued occasional reports dealing with certain aspects of the payment system. Starting in 2000, the Bank's Quarterly Monetary Bulletin includes a semi-annual review of payment system issues in its coverage of issues relating to financial stability.

The Swedish Riksbank gives an account of how it fulfills its responsibility for payment systems oversight (and other measures to promote a safe and efficient payment system) in its bi-annual publication Financial Stability Report.

### **Implementation considerations**

In those countries where the systemically important payment systems are run by private entities, oversight agencies may still need to play a role in promoting the timely disclosure of general policies and procedures of such systems.

**5.4 Where financial agencies have oversight responsibilities for self-regulatory organizations (e.g., payment systems), the relationship between them should be publicly disclosed.**

**Explanation and rationale**

In some countries, public financial agencies have oversight responsibility for private self-regulatory organizations (SROs). Oversight responsibility refers to an obligation to ensure that the activities of the supervised body are conducted in a manner that is consistent with their objectives, responsibilities, and authority. Oversight responsibility implies some form of regular surveillance over the broad activities of the supervised body, but generally does not imply involvement in day-to-day operations.

SROs are autonomous non-public bodies that regulate and monitor the behavior of affiliated participants in financial markets. SROs may have formal powers delegated to them by financial agencies, and often have some form of relationship with financial agencies. Examples of SROs include stock exchanges, commodity exchanges, and dealer associations for securities markets.

Public disclosure of oversight responsibilities involves providing the public a clear description of the roles of both the agency and the self-regulatory organization, as well as an understanding of how the two bodies interact and work together. Disclosure should also include a description of the nature and extent of the oversight responsibilities.

Disclosure helps to promote confidence in the overall framework of regulation and oversight, by reassuring the public that there are no gaps in the regulatory framework, and that the responsibilities of each party are publicly revealed. In turn, this helps to ensure that respective roles and responsibilities are clearly specified, understood, and performed. Disclosure of oversight responsibilities also promotes the accountability of the oversight agency and the SRO.

**Application**

Most financial agency respondents responsible for securities regulation have oversight responsibilities for SROs. If an agency has such oversight responsibility, in a significant majority of cases, the relationship with the SROs is disclosed, typically in legislation or regulation, as well as through the annual report and web sites.

***Central banks (payment system oversight)***

The Committee on Payment and Settlement Systems in 1997 issued a Disclosure Framework for Securities Settlement Systems.<sup>30</sup> The Disclosure Framework has been completed by over

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<sup>30</sup> See [www.bis.org/publ/cpss20.htm](http://www.bis.org/publ/cpss20.htm)

60 securities settlement systems. Of particular interest in the context of this transparency practice is the disclosure of supervising or oversight arrangements (I.G of Disclosure Framework).

### ***Securities regulatory agencies***

In Canada, provincial securities regulators oversee a range of SROs, from dealer associations and settlement systems to securities exchanges. The relationship between regulators and SROs—which covers the recognition process, reporting and communication processes, the bylaw review process, and overview through compliance examinations of SROs and its members—is disclosed through legislation and regulation, memoranda of understanding, the official gazette, the regulator’s official bulletin, and the Annual Report.

The U.S. Commodity Futures Trading Commission (CFTC) has responsibility for the regulation and oversight of commodity futures and option markets through the National Futures Association (NFA), a self-regulatory organization approved by the Commission. The activities of the Commission and its relationship to the NFA are disclosed to the public through the publications of the Commission, including an annual report, press releases, background papers, a Strategic Plan, weekly and quarterly bulletins, and through publications on its website.<sup>31</sup>

The U.S. Securities and Exchange Commission (SEC) oversees the securities exchanges and markets, under the Exchange Act, to prevent inequitable and unfair practices. Exchange Act Rule 19b-4 delineates a transparent process by which the SEC exercises oversight of SROs. Under the rule, SROs file proposed rule changes with the SEC. The SEC reviews the proposals, and publishes them in the *Federal Register* to provide notice to the public and to solicit comments. The SEC considers the comments, and solicits a response to the comments from the SRO. In order for the new rule language to become effective, the SEC must grant approval to the proposed rule change.

**5.5 Where self-regulatory organizations are authorized to perform part of the regulatory and supervisory process, they should be guided by the same good transparency practices specified for financial agencies.**

### **Explanation and rationale**

In some countries, non-government and private SROs perform the role of public financial agencies by regulating or guiding the behavior of markets and institutions. For example,

<sup>31</sup> Commodity exchanges that are members of the NFA complement Federal regulation with rules of their own, subject to approval by the Commission. The Commission regularly audits each exchange’s compliance program as part of its oversight responsibilities, and it may also direct an exchange to alter its rules or practices. For a list of CFTC publications, see [www.cftc.gov/reports.htm](http://www.cftc.gov/reports.htm)

some private associations of securities dealers monitor their members' compliance with a code of conduct that governs market behavior.

There are two types of SROs—de jure SROs and de facto SROs. The former has official statutory or regulatory recognition, performing quasi-public functions delegated to them. These SROs are typically subject to government-wide administrative procedures such as public access to information under “freedom of information” type procedures, employee conduct standards, and legal protection in performance of duties. De facto SROs, prevalent among stock exchanges, while performing important self-regulatory functions, have no statutory basis for their operations. They, however, often are subject to some public oversight agency in rulemaking and rule-enforcement to help prevent anti-competitive behavior.

Good transparency practices are equally important for de jure SROs and financial agencies, as transparency practices are most effective when applied uniformly and consistently across markets and jurisdictions, irrespective of the type of regulator. Encouraging self-regulatory organizations to follow good transparency practices removes the possibility of gaps in the regulatory structure and ensures a uniform standard of disclosure and accountability. Transparency regarding the financial condition and operational integrity of SROs can contribute to systemic stability. Promoting a common approach to disclosure and accountability may enhance the efficiency of the financial system if firms and agencies are able to adopt similar approaches in different jurisdictions and thereby reduce the costs of observing transparency requirements. Transparency by de facto SROs may be more limited, focusing primarily on its rulemaking and rule-enforcement activities.<sup>32</sup>

## **Application**

A significant majority of SROs that perform supervisory or regulatory functions have a set of policies on transparency. In most cases, these policies originate in regulation, but in many instances, they have been developed internally by the SRO, or jointly with the oversight agency. In some countries, e.g., Portugal and Turkey, there is a legal requirement that internal regulations of SROs be published.

## ***Securities regulatory agencies***

In Malaysia, SROs observe transparency through codification of organizational and management structure—including terms of office—in the SROs' constitutional documents, with open process practices through disclosure of internal regulations, and with public availability of information through the annual report.

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<sup>32</sup> See Biagio Bossone and Larry Promisel, “The Role of Financial Self-Regulation in Developing Economies,” (Washington: The World Bank Group), 1999, ([www1.worldbank.org/finance/html/policy\\_issues\\_debates\\_pubs.html](http://www1.worldbank.org/finance/html/policy_issues_debates_pubs.html)) for rationale, features, and limitations of financial SROs.

**Implementation considerations**

Fully private self-regulatory agencies may have incentives for less disclosure than public agencies. In countries where trading systems and clearing and settlement organizations are quasi-monopolies, there may be reluctance to disclose, for competitive reasons, information on members (e.g., disciplinary actions). SROs themselves may be hesitant to provide information on their activities when such information reflects negatively on the integrity of their operations or financial conditions, which may cause problems with regulations or oversight agencies or market participants. Public agencies may have limited powers to induce the SRO to follow the same good transparency practices, and may have to rely on moral suasion to encourage their adoption. Public agencies may also encourage SROs to adopt good transparency practices as an alternative to more formal regulation or oversight that may be imposed by legislation or regulation.

## VI. OPEN PROCESS FOR FORMULATING AND REPORTING OF FINANCIAL POLICIES

**6.1 The conduct of policies by financial agencies should be transparent, compatible with confidentiality considerations and the need to preserve the effectiveness of actions by regulatory and oversight agencies.**

**6.1.1 The regulatory framework and operating procedures governing the conduct of financial policies should be publicly disclosed and explained**

### Explanation and rationale

The term regulatory framework covers the agency assigned responsibility for conducting financial sector policies, the character of financial supervision (rules and regulations versus oversight), specific rules, norms, and procedures, including applicable standards,<sup>33</sup> the status of the agency (an independent agency or a sub-unit of the government), and its relationship with other government and nongovernment bodies (including consultation procedures with these bodies, both national and international). Operating procedures refer to any procedures guiding the implementation of policies.

Knowledge of the regulatory framework enables the public to identify the agencies responsible for conducting financial policies and supervision, thereby leading to a better understanding of the “rules of the game” for various financial agencies and greater confidence in supervised institutions. Such knowledge promotes accountability of these agencies to the public. Disclosure and explanation of the operating procedures of financial agencies allow the public to assess the appropriateness and adequacy of these procedures and to measure the actions of these agencies against their operating procedures. Disclosure of consultation procedures among regulatory bodies allows the public to comprehend better the responsibilities of the different agencies and their relationships to each other.

### Application

Nearly all financial agency respondents publicly disclose and explain their regulatory framework. Most of them specify their regulatory framework in legislation and/or regulation, supplemented in many cases by further disclosure and explanation through annual reports, websites and official bulletins. A significant majority of the respondents also publicly disclose and explain their operating procedures. Most of them do so through legislation

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<sup>33</sup> For example, the *Core Principles for Effective Banking Supervision* (Basel Committee on Banking Supervision, [www.bis.org](http://www.bis.org)); *The Objective and Principles of Securities Regulation* (International Organization of Securities Commissions, [www.iosco.org](http://www.iosco.org)); *Insurance Supervisory Principles* (International Association of Insurance Supervisors, [www.iaisweb.org](http://www.iaisweb.org)); *Core Principles for Systemically Important Payment Systems* (Committee on Payment and Settlement Systems, [www.bis.org/publ/cpss34e.pdf](http://www.bis.org/publ/cpss34e.pdf))



and/or regulation, which, in turn, are often disseminated in their official publications, typically bulletins and annual reports.

### ***Composite financial supervisory agencies***

The U.K. Financial Services Authority makes extensive use of its website to issue reports, and has published, inter alia, on the open approach to regulation and a new approach to the coordinated supervision of groups.

### **6.1.2 The regulations for financial reporting by financial institutions to financial agencies should be publicly disclosed.**

#### **Explanation and rationale**

The requirements by various financial agencies for financial reporting often are issued in the form of regulations. The required reporting by financial institutions could include any institution-specific data and information (e.g., balance sheets and income statements), compliance with prudential and other standards, and market activities.

Disclosure of regulations for financial reporting helps assure the public that financial institutions are being supervised and that their financial reporting requirements are not arbitrary, sporadic, and selective, and it also shows that financial institutions are being held accountable to meeting established standards. Disclosure of these regulations also enables the public to assess the extent of the financial agencies' awareness of the institutions they regulate and supervise (i.e., whether these agencies have sufficient information to carry out their jurisdictional responsibilities). With such disclosure, the public can make better judgments about the operations of the financial institutions and of the functioning of financial markets in their country.

#### **Application**

Nearly all financial agency respondents disclose the regulations for financial reporting by financial institutions. Most of these them do so through publishing their legislation and regulations in this regard. Disclosure in this manner typically indicates the legal authority for financial agencies to require financial reporting requirement by financial institutions. In addition, some respondents also do so through their official bulletins, annual reports, and on their websites. Disclosure through these forms provides the public with information of the current list of financial reporting regulations, where to obtain these regulations, and at times the text of the regulations. Some respondents disclose their regulations for financial reporting by financial institutions under its jurisdiction through a combination of means. For example, the Capital Market Authority of Egypt, the Banking, Insurance and Securities Commission of Norway, and the Central Bank of Trinidad and Tobago disclose their regulations for financial reporting by financial institutions through legislation, regulation, official bulletin, and annual reports.

### ***Central bank (banking supervision)***

In the United States, requirements on data reporting by financial institutions are publicly disclosed in written reports submitted to Congress and on the Federal Reserve Board's website, as well as being available from the Federal Reserve Board's Freedom of Information Office. Reporting forms are shown on the Federal Reserve website.<sup>34</sup> In order to monitor new reporting requirements and contain reporting burdens on the public, new reporting requirements are reported to the Federal Government's Office of Management and Budget, which in turn submits them to Congress for information but not for approval.

The Central Bank of West African States makes available a comprehensive package containing the financial and accounting reporting framework applying to banking institutions in the West African Economic and Monetary Union. A small fee is charged.

**6.1.3 The regulations for the operation of organized financial markets (including those for issuers of traded financial instruments) should be publicly disclosed.**

#### **Explanation and rationale**

Securities and foreign exchange markets are examples of organized markets. Traded financial instruments refer to those financial assets (such as bonds, stocks, futures, options, and foreign exchange) that are traded in these markets. Regulations for the operation of organized financial markets include firewall regulations (securities regulations), disclosure rules (securities and foreign exchange regulations), and licensing requirements (securities and foreign exchange regulations).

Disclosure of regulations for the operation of organized financial markets assists in furthering adherence to them. Moreover, the disclosure and explanation of these regulations provide the public the assurance that organized markets are subject to standards and an understanding of the "rules of the game." Finally, disclosure of these regulations strengthens the accountability of financial agencies overseeing the regulations of organized financial markets by allowing the public to assess the extent of compliance to the regulations.

#### **Application**

Nearly all of the financial agency respondents responsible for the supervision of organized financial markets disclose the regulations for the operation of these markets. Most of them do so through legislation and/or regulation. Disclosure in this manner typically indicates the legal authority of financial agencies to regulate activities in these markets. In addition, about half of the respondents also disclose the regulations for the operation of financial markets under their supervision through government publication, gazette, register, or press releases. Some respondents also do so on their websites, through their official bulletins and annual

<sup>34</sup> See [www.federalreserve.gov/boarddocs/reportforms/default.cfm](http://www.federalreserve.gov/boarddocs/reportforms/default.cfm)

reports. Some respondents disclose and explain the regulations for their operations through all of the above means (e.g., the Banking and Finance Commission of Belgium, the National Bank of Georgia, and the South African Financial Services Board).

**6.1.4 Where financial agencies charge fees to financial institutions, the structure of such fees should be publicly disclosed.**

**Explanation and rationale**

Fees charged to financial institutions can range from licensing fees (banks, securities and insurance companies), fees for on-site supervision by financial agencies (banks, securities and insurance companies) to premia contributions to a deposit insurance program. The structure of fees refers to the form these fees take and the criteria on which the fees are calculated (based on size of institution, asset size, uniformity of fees).

The disclosure of a structure of fees charged to financial institutions helps ensure that the fees are not levied arbitrarily, discourages favoritism, and identifies sources of revenue of financial agencies.

**Application**

Most financial agency respondents charge fees to the financial institutions under their jurisdiction and most of them publicly disclose the structure of such fees. A majority of them do so through issuance of regulations or publication in the official government publication, gazette, or register. Some respondents also make available the information through press releases, their annual reports, and on their websites.

***Composite financial supervisory agencies***

The Australian Prudential Regulation Authority (APRA) is mainly funded by levies on the regulated industry. The APRA's power to levy fees is based on legislation for different financial sectors under its supervision.<sup>35</sup> The structure of these APRA fees is disclosed through written reports submitted to the legislature, publication in official government

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<sup>35</sup> The legislation includes: Authorized Deposit-taking Institutions Supervisory Levy Imposition Act 1998; Authorized Non-operating Holding Companies Supervisory Levy Imposition Act 1998; Banking Act 1959; Financial Institutions Supervisory Levies Collection Act 1998; General Insurance Supervisory Levy Imposition Act 1998; Insurance Act 1973; Life Insurance Act 1995; Life Insurance Supervisory Levy Imposition Act 1998; Retirement Savings Account Act 1997; Retirement Savings Account Providers Supervisory Levy Imposition Act 1991; Superannuation (Excluded Funds) Levy Imposition Act 1991; Superannuation (Excluded Funds) Taxation Act 1987; Superannuation (Financial Assistance Funding) Levy Act 1993; Superannuation Industry (Supervision) Act 1993; and Superannuation Supervisory Levy Imposition Act 1998.

publications, in the APRA Annual Report, on APRA's website, public releases to the media, and Levy Consultation Papers that are available to the public.

### *Security regulatory agencies*

The Securities Commission of Malaysia (SCM) discloses the structure of fees charged to securities firms through the Commission's Policies and Guidelines on Issue/Offer of Securities; Securities Industry Regulations (1987), Securities Industry Regulations (1996) for the licensing of fund manager and fund manager's representative, Securities Commission Regulations (1996) for unit trusts, and Futures Industry Regulations (1995). All these regulatory documents are available on the SCM's website.<sup>36</sup>

**6.1.5 Where applicable, formal procedures for information sharing and consultation between financial agencies (including central banks), domestic and international, should be publicly disclosed.**

### **Explanation and rationale**

Formal procedures for information sharing and consultation by financial agencies (often set forth in legislation or regulation or expressed in publicly disclosed memoranda of understanding or other formal agreements between financial agencies) are generally intended to specify the mechanisms of information sharing and consultation between agencies (e.g., composition of interagency consultation groups, frequency of meetings, and the type of information expected to be shared). These procedures could exist between domestic government and regulatory bodies as well as between domestic and foreign bodies.

The disclosure of information sharing and consultation procedures enables the public to determine the extent of "regulatory gaps" and whether financial agencies have access to information critical to the fulfillment of their jurisdictional responsibilities. Disclosure of consultation procedures between domestic regulatory bodies allows the public to comprehend better the responsibilities of the different agencies and their relationships with each other and provides the public with some assurance that financial agencies have established mechanisms to deal with regulatory issues and financial problems that cut across the mandates of different financial agencies. Knowledge of consultation procedures between domestic and international financial agencies provides the public with similar assurances, allowing the public to make better decisions regarding the institutions they deal with for their international transactions.

### **Application**

A significant majority of the financial agency respondents have formal information sharing and consultation arrangements and the majority of them publicly disclose these

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<sup>36</sup>See [www.sc.com.my](http://www.sc.com.my)

arrangements. Most of the respondents disclose these arrangements through legislation, publication in official government publications, gazette, register, or regulations. Many respondents also do so through publication of the memorandum of understanding for information sharing and consultation. In addition, some agencies also disclose their information sharing and consultation arrangements in their annual reports, press releases, or on their websites.

In 1997, the U.S. Securities and Exchange Commission (SEC), the U.S. Commodity Future Trading Commission (CFTC), and the Bank of England (BOE) signed a memorandum of understanding (MOU) setting forth the terms for cooperating and sharing supervisory information. The Financial Service Authority (FSA) also signed the MOU to confirm that its provision will continue upon the transfer of banking supervision from the BOE to the FSA. The signing of the MOU is disclosed at the website of the BOE.<sup>37</sup>

The Stock Exchange Commission of Mauritius discloses its formal procedures for information sharing and consultation with other institutions by publicly disclosing various memoranda of understanding. Currently, the Stock Exchange Commission has such a memorandum of understanding with the U.S. Securities and Exchange Commission, the Financial Services Board of South Africa, and the Stock Exchange Commission of Zambia.

In Mexico, there are formal and informal interagency relationships that facilitate coordination. Among the formal relationship there are three main mechanisms<sup>38</sup> that the Commission Nacional Bancaria y de Valores (CNBV) has for achieving coordination among financial agencies in Mexico. These arrangements are publicly disclosed through legislation.

In the United States, the regulators for banking, insurance and securities disclose their formal information sharing and consultation procedures. For example, the Federal Deposit Insurance

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<sup>37</sup> See [www.bankofengland.co.uk/pr97074.htm](http://www.bankofengland.co.uk/pr97074.htm)

<sup>38</sup> The first mechanism is through the Board of Directors of the National Banking and Securities Commission (NBSC); composed of five representatives of the Ministry of Finance, three representatives of the Bank of Mexico, one representative from the National Insurance and Bonding Commission (CNSF), and one from the National Retirement and Savings Commission (CONSAR). The NBSC's President and two Vice Presidents are also members. The second of these mechanisms is through formal petitions. For example, the Bank of Mexico may ask the NBSC to carry out on-site supervision to intermediaries, for the purpose of verifying the information submitted by financial intermediaries to the Bank. During these on-sites visits, the staff of the Bank of Mexico can join the supervisors of the NBSC. The third mechanism is through formal requests, foreseen in the Law, made by one authority for the purpose of knowing the opinion of another authority in specific matters. For instance, the Ministry of Finance has to request the opinion of the NBSC and the Bank of Mexico when granting authorizations to incorporate financial intermediaries, in revoking such authorizations, and in issuing capital adequacy and provisioning regulations.

Corporation (FDIC) discloses its formal information sharing and consultation procedures. Interagency consultation procedures in connection with the consideration of certain applications, such as bank mergers or changes of controlling ownership, are specified in federal statutes contained in the United States Code. Memoranda of understanding or statements of cooperation between the FDIC and other U.S. banking regulatory bodies (for example, the Federal Reserve Board and the Office of the Comptroller of the Currency) on information and consultation procedures are posted on the FDIC's website.<sup>39</sup> In other cases, FDIC Statements of Policy that address coordination with other federal banking regulators on topics such as enforcement actions and examination are published in the Federal Register upon their adoption. The procedures for information sharing and consultation between state and federal banking regulators, such as the Nationwide Cooperative Agreement and the State-Federal Foreign Banking Organization Agreement, are publicly available on the website of the Conference of State Bank Supervisors.

### **Implementation considerations**

When there are legal impediments to information sharing between agencies (especially regarding privileged information),<sup>40</sup> these impediments should be disclosed together with the information sharing procedures to provide the public with a realistic view about the constraints regarding information sharing.

**6.2 Significant changes in financial policies should be publicly announced and explained in a timely manner.**

### **Explanation and rationale**

Significant changes in financial policies are changes that affect the regulatory environment and how policies are conducted. Examples of such changes include the adoption or major modification of the Basel Capital Standard for banking, a significant change in the solvency margin standard for insurance companies, a change in the coverage of deposit insurance guarantee, the adoption of new standards for the payment system, or a change in margin requirement.

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<sup>39</sup>See [www.fdic.gov](http://www.fdic.gov)

<sup>40</sup> In Thailand, the law does not permit information sharing and consultation between financial agencies. Section 46 of the Commercial Banking Act B.E.2505 specifies that "Whoever, in the performance of his duty under the authority prescribed by this Act, having acquired knowledge of the affairs of a commercial bank which, in normal business, is to be held in confidence, reveal such knowledge, except in the performance of his duty or for the purpose of investigation of trial, should be liable to imprisonment for a term not exceeding one year or a fine exceeding Baht 100,000 or both."

Public announcement of changes in the regulatory environment provides all affected and interested parties with information about such changes and their applicability on an equal basis. Explanation of such changes provides the public with the reasons and objectives, thereby promoting better understanding, acceptance, and support. Timely announcement of the changes, particularly those that take effect on a later date, allows market participants to adapt to the new regime and to do so with sufficient preparation.

### **Application**

Nearly all the financial agency respondents announce and explain significant changes in their financial policies in a timely manner. A significant majority of them do so immediately after a decision has been made, and some do so within one month. Most of the respondents publicly announce and explain significant changes in financial policies through public releases to the media, publication in official government publications, gazette, register, and on their websites. In addition, many of them also elaborate and explain the change in financial policies in their official bulletins and annual reports.

### ***Composite financial supervisory agencies***

The Monetary Authority of Singapore (MAS) has active and ongoing consultations with the banking, insurance and securities industries during the policy formulation process. The MAS has established a Financial Sector Advisory Group, consisting of 12 leaders in banking, insurance and securities, to act as a sounding board on supervisory issues.

The U.K. Financial Services Authority, in order to facilitate public understanding of the rationale of the policy changes, in addition to announcing significant changes in policies in a timely manner, also publishes cost-benefit analyses of any such changes.

<b>6.3 Financial agencies should issue periodic public reports on how their overall policy objectives are being pursued.</b>
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### **Explanation and rationale**

Periodic public reports on how a financial agency's objectives are being pursued could take a variety of forms. For example, the report could be issued in the institution's published review or bulletin, or to a parliamentary committee and released to the public, or to some publicly recognized forum and released to the public. Meaningful transparency implies that these reports are issued on a regularly scheduled basis, and at least annually. When financial markets are sizable and active, more frequent issuance of such reports by financial agencies supervising these markets may be appropriate.

Periodic public reports on how the overall objectives of financial agencies are being pursued provide an additional mechanism for enhancing the credibility of the actions of financial agencies by enabling the public to assess the extent to which these agencies are fulfilling

their jurisdictional responsibilities. Such reports also foster the accountability of these agencies to the public.

### **Application**

Nearly all financial agency respondents issue periodic public reports on how their policy objectives are being pursued. More than half of them do so in their annual report. Some respondents also do so more frequently on their websites, through official bulletins and periodic public appearances by officials before legislature and public audiences

### ***Central banks (financial policies)***

In the United Kingdom, the Bank of England Act 1998 requires a sub-committee of Non-Executive Directors of the Bank of England to keep under review the Bank's performance in relation to its monetary policy and financial stability objectives and strategy. This review is published in the Bank of England's Annual Report.

### ***Insurance and securities regulatory agencies***

The Ontario (Canada) Securities Commission (OSC), in addition to explaining how its overall objectives are being pursued in its quarterly official bulletin, annual report, releases to the media, and its website, also issues annually a separate statement of priorities. The OSC also issues a quarterly publication ("Perspectives") and sponsors an annual conference/forum ("Dialogue with the OSC").<sup>41</sup>

The New Zealand Ministry of Economic Development and the New Zealand Securities Commission, responsible for securities regulation and insurance regulation report to the legislature on an annual basis and periodically to the insurance industries and to the general public through their respective newsletters.

**6.4 For proposed substantive technical changes to the structure of financial regulations, there should be a presumption in favor of public consultations, within an appropriate period.**

### **Explanation and rationale**

Substantive technical changes to the structure of financial regulations refer to major modifications in the regulatory framework and environment. A substantive technical change to the structure of financial regulations could be a change from off-site bank examinations to on-site bank examinations, a change in the actuarial reserve calculation methods for insurance companies, a change in the coverage of the deposit insurance scheme, a change in the circuit breakers that a financial agency sets in securities markets, or an overhaul in the

<sup>41</sup> See [www.osc.gov.on.ca/en/About/News/PublicEvents/dialogue.html](http://www.osc.gov.on.ca/en/About/News/PublicEvents/dialogue.html)



clearing and settlement procedures. For technical changes of this sort, there should be a presumption in favor of public consultations. Such consultations could range from public hearings (with or without an opportunity for public intervention), an open period for submission of written comments, posting on website, or meetings with parties most directly affected by the changes. To be meaningful, there should be adequate advance notice for such consultations. Box 3-1 outlines the basic forms of public consultations.

Public consultations for proposed substantive technical changes in the structure of financial regulations within an appropriate period give financial institutions and other market participants in financial markets that are most directly affected by such changes notice of pending modifications in the environment in which they conduct business, thereby minimizing the costs for financial institutions of having to change operations and procedures in a short period of time. Public consultations also give the public the opportunity to propose changes, including providing an opportunity to present reservations and expected problems in advance. Public consultations also help to promote public support for such changes. In addition, public consultations on substantive technical changes to the structure of financial regulations contribute to good governance since consultations with the public, and particularly affected parties, may lead to additional input, and therefore, to better policies.

#### **Box 3-1. Forms of Public Consultations**

Public consultation allows constructive public views to be reflected in the formation of policies, provides advance notice of pending policy changes, and helps promote public support for the changes. There are three broad forms of public consultations:

- Notice and a public commenting period, with opportunity for written comments
- Public hearing (with or without direct public interventions)
- Discussion with affected parties (e.g., meetings at financial sector associations)

#### **Application**

A significant majority of the financial agency respondents indicate that they have a presumption in favor of public consultations for proposed substantive technical changes to the structure of financial regulations. Most of them report that the length of their consultation period is between one to three months, and some of them report that the length for such period is more than three months. The majority of respondents note that the new regulations take effect between one and three months following the end of public consultation and some of them report that the new regulations take effect more than three months following the end of public consultation. Many respondents undertake public consultation by allowing a public commenting period, while others do so by holding public hearings (with or without opportunity for public intervention). Some respondents do both.

In some countries, financial agencies are subject to government-wide requirements to undertake public consultation. In the United States, rulemaking of financial agencies is generally subject to the notice and public comment requirement of the Administrative

Procedure Act (APA). The APA requires agencies to publish notice of proposed rulemakings in the Federal Register. After notice, agencies must give interested parties opportunity to submit their views on the proposed rules. The agency must consider relevant matters presented and then incorporate in the adopted rules a statement of their basis and purpose.<sup>42</sup>

### ***Central banks (banking supervision)***

It is common practice for the Bank of Italy, regarding major policy changes, to request comments from banks, market participants, academics, and experts of banking legislation. Such a practice was applied on the occasion of the draft of the 1993 Banking Law and the 1998 Code on Financial Intermediation.

In New Zealand, government officials are required to include in any recommendation for changes in regulations submitted to cabinet ministers a regulatory impact statement that outlines the new regulations, the problem to be addressed, the policy objective, the option considered, a cost/benefit analysis, an indication of the nature of consultations with interested parties undertaken, and a summary of the results of those consultations. In addition to this general requirement, the Reserve Bank of New Zealand is required by its statute to consult affected parties and to have regard to their views before introducing or amending prudential requirements.

### ***Composite supervisory agencies***

The Monetary Authority of Singapore consults with professional bodies (the Association of Banks, the Merchant Bank Association, and the Academy of Law) on banking policies before regulatory guidelines are issued for public comment.

### ***Securities regulatory agencies***

The Czech Securities Commission on May 9, 2000, issued a press release informing the public that it is submitting for public discussion a draft of principles of best practices for the Czech securities industry.<sup>43</sup>

The U.S. Securities and Exchange Commission (SEC) holds meetings or hosts “roundtable” discussions on important regulatory topics. A list of all pending SEC rulemaking proposals that have not yet been adopted is periodically published in the Unified Agenda of Federal Regulatory and Deregulatory Actions available to the public. The length of the SEC’s consultation period generally is generally between one and three months. New regulations usually take effect between one and three months after the end of public consultations.

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<sup>42</sup> US Code 553

<sup>43</sup> See [www.sec.cz/texty/en/tisk\\_zpravy/0036.htm](http://www.sec.cz/texty/en/tisk_zpravy/0036.htm)

**Implementation considerations**

If a regulation is adopted to deal with emergency situations, it may not be feasible or appropriate to have public consultations. In many instances, limits to those consulted may be necessary to have efficient and meaningful public consultations. While it may be more efficient to limit consultations to “interested parties,” it could run the risk of insiders unduly influencing the regulatory framework, and could place potential entrants into the credit or financial markets at a disadvantage.

## VII. PUBLIC AVAILABILITY OF INFORMATION ON FINANCIAL POLICIES

**7.1 Financial agencies should issue a periodic public report on the major developments of the sectors of the financial system for which they carry designated responsibility.**

### **Explanation and rationale**

The publication of periodic reports of financial agencies on the major developments in their sectors will strengthen public awareness and understanding of the functioning of these agencies, strengthen accountability and ultimately promote market stability.<sup>44</sup> Sound and stable banking, insurance and securities markets, and well-functioning payment systems and deposit protection schemes promote economic growth and personal wealth.

At a minimum, reports should be issued annually, outlining, for instance, developments in market structure, condition of the sectors, number of new entrants, number of exited institutions, and the competitive environment. Special sections could be devoted to regulatory measures, interpretations, guidelines, exemptions, administrative law proceedings, important mergers, rescue operations, special administrations, bankruptcies, and emerging risks.

### **Application**

Nearly all financial agencies in all of the principal financial sectors publish periodic reports. A significant majority does so on an annual basis. Many central banks include a special chapter or section in their annual report on developments as they relate to their bank supervisory or payment system oversight responsibilities. A number of financial agencies also issue quarterly reports and official bulletins. Approximately half of the responding financial agencies publish reports on the major developments in their sector of responsibility directly in the media and place them on their website.

### ***Central banks (financial stability)***

The Czech National Bank issues an annual, Report on Banking Supervision in the Czech Republic, which discusses timely regulatory issues and indicators in the banking system.<sup>45</sup>

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<sup>44</sup> Also see the recommendations contained in the report of the Working Group on Capital Flows of the Financial Stability Forum ([www.fsforum.org/Reports/RepCF.html](http://www.fsforum.org/Reports/RepCF.html)), which stress the need for disclosure by market participants, for transparency of risk and liquidity, management changes and operations of national authorities, for annual assessments of liquidity conditions in the economy, and for disclosure of the composition of liabilities and financial assets in audited reports and accounts of companies.

<sup>45</sup> See [www.cnb.cz/en/index](http://www.cnb.cz/en/index)

In the United Kingdom, twice a year, the Bank of England<sup>46</sup> publishes the *Financial Stability Review*, which is sent directly to public and private sector institutions, international financial institutions, other central banks, and academic institutions.

On a quarterly basis the Central Bank of the Russian Federation<sup>47</sup> publishes reviews and analytical documents on the condition of the banking sector in Russia.

#### ***Central banks (payment system oversight)***

The Reserve Bank of Australia publishes a separate report on the state of the payment system.

The South Africa Reserve Bank<sup>48</sup> issues a quarterly report on the payment system.

In the United Kingdom, the Bank of England publishes articles on developments in payment systems and payment system risks in its *Financial Stability Review*.

#### ***Composite financial supervisory agencies***

The Superintendency of the Financial System of El Salvador<sup>49</sup> publishes periodic reviews of the main developments in the financial sectors. For instance, the banking sector bulletin describes the developments in aggregate assets, loans and liabilities of the banking sector, deposits, lending and borrowing rates, as well as impaired assets, earnings and bank capital. For the insurance sector, summaries are prepared on premiums collected, insured amounts, claims and their distribution, and on assets and liabilities.

#### ***Deposit insurance agencies***

The U.S. Federal Deposit Insurance Corporation (FDIC) publishes numerous periodic public reports on major developments on its website,<sup>50</sup> or makes them obtainable from the FDIC Public Information Center. Publications include the *Annual Report of the FDIC*, *Quarterly Banking Profile*, *Survey of Real Estate Trends*, *Report on Underwriting Practices*, *Regional*

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<sup>46</sup> See [www.bankofengland.co.uk](http://www.bankofengland.co.uk)

<sup>47</sup> See [www.cbr.ru](http://www.cbr.ru)

<sup>48</sup> See [www.resbank.co.za](http://www.resbank.co.za)

<sup>49</sup> See [www.ssf.gob.sv/](http://www.ssf.gob.sv/)

<sup>50</sup> See [www.fdic.gov](http://www.fdic.gov)

*Outlook, FDIC Banking Review, Bank Trends*, and a series of working papers of the FDIC's Division of Research and Statistics.

#### ***Insurance regulatory agencies***

In addition to a monthly Official Bulletin, the Insurance Supervisory Authority of Estonia issues ad hoc press notes after the occurrence of important developments (for example, the withdrawal of licenses, mergers, or transfer of portfolios).

#### ***Securities regulatory agencies***

The Canadian Ontario Securities Commission (OSC)<sup>51</sup> publishes a quarterly report, *Perspectives*, on the developments in its sector.

In Spain, the National Securities Commission<sup>52</sup> publishes a weekly information bulletin, *La CNMV Informa*, monthly reports on securities exchanges, and a monthly review of economic conditions and markets. Also, occasional papers are published on current issues.

#### **Implementation considerations**

An important practical consideration is whether periodic public reports by financial agencies on major financial developments of the sectors of the financial system for which they carry designated responsibilities should include advice and caution about emerging risks or whether such advice and caution should be conveyed to affected financial firms in private. Some financial agencies are providing comments of caution in public as a means of reducing moral hazard. Those doing so maintain that by issuing a public warning, both management and shareholders of financial firms are made aware of how the financial firm's activities are being perceived by the regulatory agency, thereby encouraging good operation practices by financial institutions. The Financial Supervision Authority of Finland (FSA) has recently adopted to provide cautions in public. In early 2000, the FSA issued a general letter to banks in Finland warning of the problems that could come from rapid growth of bank exposure.<sup>53</sup> Similarly, the Swedish Riksbank publishes in its half-yearly *Financial Stability Review* an assessment of risks in particular financial sectors—focusing over time on different issues (e.g., operational risk or settlement risk).

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<sup>51</sup> The securities industry in Canada is regulated at the provincial level. The Canadian Securities Administrators, comprised of the thirteen provincial and territorial securities regulators and authorities, provide a forum for cooperation to give Canada a securities regulatory system that seeks to protect investors and foster a fair and efficient securities market. The OSC is the lead commission, overseeing approximately 80 percent of securities operations in Canada. See [www.osc.gov.on.ca](http://www.osc.gov.on.ca)

<sup>52</sup> See [www.cnmv.es/english/cnmv.htm](http://www.cnmv.es/english/cnmv.htm)

<sup>53</sup> See [www.rata.bof.fi](http://www.rata.bof.fi)

Presentation of the information in periodic public reports could be targeted at different audiences, both informed and less informed. In addition to detailed analysis for specialists, periodic and less technical reports could be considered for the public at large.

**7.2 Financial agencies should seek to ensure that, consistent with confidentiality requirements, there is public reporting of aggregate data related to their jurisdictional responsibilities on a timely and regular basis.**

### **Explanation and rationale**

To supplement more qualitative reports on the development of the sectors, as described under 7.1, and to support policy development and implementation and economic decision-making, authorities and markets need aggregate quantitative data, such as information on market volume, capitalization, risk profile, profitability, and liquidity. Timeliness and periodicity of publication may vary for different agencies. For instance, for securities markets high frequency might be needed, possibly daily, whereas the banking sector and insurance sectors could accept lower frequency. Annual data could be sufficient for deposit insurance, although interim reports may be needed when the system has been activated in cases of banking distress. Periodicity needs to be clearly and openly established and maintained, to reinforce discipline and enhance predictability of the availability of new data. To safeguard individual interests, the structure of the data should not permit identification of individual institutions, particularly for data that the institutions do not release to the public themselves.

### **Application**

Nearly all financial agency respondents provide the public with aggregate data related to their jurisdictional responsibilities on a timely and regular basis, in a significant majority of cases by means of the agency's annual report, although many publish on a monthly or quarterly basis. A significant majority of agencies present this information in an official bulletin. Many use websites as a disclosure medium and many inform the media directly.

### ***Central banks (banking supervision)***

The Bank of Israel<sup>54</sup> publishes and updates on a monthly, quarterly and annual basis aggregate data on banks' assets and liabilities liquidity position, interest rates on loans and deposits, income statements, and sectoral distribution of loans. It does not provide a qualitative analysis of the data.

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<sup>54</sup> See [www.bankisrael.gov.il](http://www.bankisrael.gov.il)

The Bank of Mexico<sup>55</sup> publishes monthly aggregate data on banks' assets and liabilities, equity and reserves, as well as financing to the nonbank commercial sector, including by development banks.

The Reserve Bank of New Zealand<sup>56</sup> publishes monthly credit aggregates. Individual bank prudential information (drawn from banks' public disclosure statements) is disclosed quarterly.

The Central Bank of the Russian Federation<sup>57</sup> publishes monthly aggregate data of the 30 largest banks in the Gazette of the Bank of Russia (*Vyesnik Banka Rossii*), including an aggregate balance sheet, average capital adequacy ratio, foreign exchange position, foreign bank liabilities, and the composition of the loan portfolio.

#### ***Central banks (payment system oversight)***

The European Central Bank<sup>58</sup> publishes on its website and, on a quarterly basis, in its bulletin, data on volume and value of payments instructions processed by TARGET and other selected interbank funds transfer systems in euro (i.e., the major payment system currently processing the euro).

The Bank of Japan<sup>59</sup> releases monthly data on the volume and value of payment instructions processed by the Bank of Japan-NET and major private sector payment systems. Data are available on the Bank's website as well as its monthly bulletin.

#### ***Composite financial supervisory agencies***

The Financial System Department of the Ministry of Finance of Slovenia<sup>60</sup> discloses the number of proceedings against financial institutions, and the nature of the infringements, the number of cases pending, carried over, and closed.

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<sup>55</sup> See [www.banxico.org.mx](http://www.banxico.org.mx)

<sup>56</sup> See [www.rbnz.govt.nz](http://www.rbnz.govt.nz)

<sup>57</sup> See [www.cbr.ru](http://www.cbr.ru)

<sup>58</sup> See [www.ecb.int](http://www.ecb.int)

<sup>59</sup> See [www.boj.or.jp/en/index.htm](http://www.boj.or.jp/en/index.htm)

<sup>60</sup> See [www.sigov.si/mf/angl/apredmfl.html](http://www.sigov.si/mf/angl/apredmfl.html)



### ***Deposit insurance agencies***

In Italy, the Interbank Deposit Protection Fund<sup>61</sup> makes publicly available in its Annual Report the distribution of seven soundness indicators for the banks over the banking population, allowing an overview of the soundness of the system.

### ***Securities regulatory agencies***

The Cyprus Securities and Exchange Commission provides information on quoted companies by sector, and aggregate data on investigations and types of contravention of stock exchange regulations are given in the agency's Annual Report.

The Federal Securities Commission of Russia publishes a monthly information bulletin with statistical data on market participants, new issues, a register of mutual funds and other licensed institutions. More detailed information is published on the Commission's website.<sup>62</sup>

In Spain, the National Securities Commission releases quarterly aggregate data on commercial paper, investment institutions and brokerage houses, and earnings of listed companies. Weekly information is published on economic and financial data of listed companies.

### **Implementation considerations**

Care should be taken not to publish an overload of data without analysis to help readers to distill information properly. Information should be presented in a user-friendly manner. Data should be readily available to the public at large, and not depend on individual requests from the public. Care needs also to be taken that the information is presented in a way that allows analysis and comparison over time. Frequency, accessibility, format and scope of the published data need to be consistent across agencies. A qualitative analysis could supplement the raw data, including providing an assessment on the risks that have been and are being run by the financial institutions.

**7.3 Where applicable, financial agencies should publicly disclose their balance sheets on a preannounced schedule and after a predetermined interval publicly disclose information on aggregate market transactions.**

### **Explanation and rationale**

A preannounced schedule for disclosure of balance sheets imposes discipline on the agency and allows the public and the authorities to take into account the availability of new

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<sup>61</sup> See [www.fitd.it](http://www.fitd.it)

<sup>62</sup> See [www.fscm.ru/fscm/ewelcome.html](http://www.fscm.ru/fscm/ewelcome.html)

information in their decision making. This financial information helps the public assess the financial condition of the agency and the cost effectiveness of the agencies and hold them accountable. The information needs to include aggregate market transactions by the agencies, as applicable.

Public disclosure of a financial agency's balance sheet on a preannounced schedule, together with information on its aggregate market transactions, assists in promoting accountability, supporting good governance and transparency and builds the credibility of the financial agency. Disclosure of aggregate market transactions helps to reduce market uncertainty relating to financial agency operations, and allows market participants to determine the consistency of financial agency operations over time.

### **Application**

Many financial agencies and regulators do not have a separate balance sheet and income statement, as their financial data are included in those of the central bank, ministry of finance or other body. Nearly all respondents of financial agencies that are separate administrative entities and have separate financial statements publish their balance sheets according to a preannounced schedule, in a significant majority of cases in the agency's annual report. Many also publish their balance sheets in a government publication, an official bulletin, or through websites, whereas some provide the information directly to the media. A few agencies, for instance the Deposit Insurance Corporation of Argentina, the Superintendency of Banks of Paraguay, the Ministry of Finance of Tajikistan, and the Ministry of Finance and Industry of the United Arab Emirates, publish balance sheets on a monthly basis. A few publish aggregate data on a monthly basis. In a significant majority of cases the interval between the end of the reporting period and publication is predetermined, and in almost all these cases publication takes place at least within one quarter after the end of the reporting period.

### ***Deposit insurance agencies***

The U.S. Federal Deposit Insurance Corporation (FDIC) releases its *Executive Management Report* and *Unaudited Financial Results of the FDIC* on a monthly basis. This publication contains balance sheets and income statements, aggregate data on transactions as well as significant operational information. The FDIC Annual Report contains full financial statements, the auditors' statement, as well as operational information. These reports are available on the FDIC website.<sup>63</sup>

### ***Securities regulatory agencies***

In Morocco, the Securities Council (Conseil Déontologique des Valeurs Mobilières) actively disseminates its balance sheet by fax and electronic mail to subscribers.

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<sup>63</sup>See [www.fdic.gov](http://www.fdic.gov)

## Implementation considerations

In countries where supervisory functions are not performed by a separate distinct agency, but is assigned to the central bank, an agency covering several financial sectors, or a unit of a government ministry, the financial statements of the central bank, composite agency, or government ministry may not differentiate between functions. In those cases, disaggregated financial accounts for different sectors could be considered. Similarly, disaggregated information could be appropriate when the central bank or a government agency operates a deposit insurance system.

**7.3.1 Consistent with confidentiality and privacy of information on individual firms aggregate information on emergency financial support by financial agencies should be publicly disclosed through an appropriate statement when such disclosure will not be disruptive to financial stability.**

## Explanation and rationale

Emergency financial support, mainly intended to provide funding to problem banks, but also in cases where there is threat of severe liquidity pressures, are carried out on exceptional basis and generally tend to differ from the normal short- and medium-term accommodation to the liquidity needs of banks via refinance and other discount facilities. While giving due recognition to concerns relating to stability of financial markets, confidentiality, and moral hazard, financial agencies should disclose aggregate information on the emergency credit facilities, exercising judgment on the timing and of the disclosure nature of information.

Such disclosure enhances policy efficiency and accountability of the use of public funds. Properly documented disclosure of emergency lending could provide market participants assurance of the capacity and intent of the financial agency to deal with financial emergencies of a systemic nature that could have an impact on the stability of the financial system as a whole. Information reported could include amounts, terms, follow-up developments, amount outstanding, and repayments made. Ex post disclosure provides the opportunity to enhance credibility of the financial agency, as markets are assured that the financial agency is willing and able to perform its role in emergency situations and does so in an accountable manner. Since emergency financial support is provided from public resources, good governance practices require the disclosure of the use of public funds. Public disclosure of emergency financial support could also reduce the likelihood of favoritism, and perception of such, to particular institutions.

## Application

In most cases, financial agencies do not disclose aggregate information on emergency support. When disclosure does take place, information on emergency financial support is published in annual reports, and/or the agency informs the media directly. In some cases,

written reports on the provision of emergency financial support are sent to the legislature or published in an official bulletin or other official publication.

### ***Central banks (banking supervision)***

See 3.2.3 in Part 2 of the *Supporting Document* for examples of public disclosure of information on emergency financial support by central banks.

### ***Deposit insurance agencies***

The U.S. Federal Deposit Insurance Corporation (FDIC) has rarely provided direct emergency support to an ailing institution. It has sometimes financially supported the takeover of the deposit business of an ailing institution by a healthy institution. The FDIC announces the payment of emergency support to the media and on the website when the public is informed of the closing of the institution. In the rare cases where the FDIC has provided support to ailing banks that remained open, the FDIC has informed the media, also on the amounts involved, at the time the payment was made. The FDIC also provides periodic reports on defaults by supervised institutions and associated FDIC payments, to be accessed through the FDIC's website. Some of the reports are also submitted to Congress and mailed to interested parties. These reports include annual *Failed Bank Cost Analysis*, *Annual Report of the FDIC*, and a book, *Managing the Crisis* on the FDIC and Resolution Trust Corporation's experiences with failing banks and savings and loans institutions during the 1980s and 1990s.

### **Implementation considerations**

Financial agencies may prefer to maintain some constructive ambiguity surrounding the likelihood of providing emergency financial support, especially where the support is being provided to a particular financial institution. Such a stance can mitigate the moral hazard problem, since financial institutions will assume less risk if they are uncertain about receiving emergency support. However, undue considerations of systemic stability concerns leading to untimely and incomplete disclosure could itself fuel market speculation and endanger market stability.

## **7.4 Financial agencies should establish and maintain public information services.**

### **Explanation and rationale**

Public information services allow the public to be kept informed on the policies and actions of financial agencies, thereby enabling firms, financial institutions, and markets to know the environment, policies, regulations and procedures under which they operate. They provide the agency with an effective means to communicate their objectives and policies to the public. A better-informed public enhances accountability and contributes to better-functioning markets, more balanced public reactions to market developments, and better decisions by the financial agency.

A public information system improves the access to and dissemination of timely and reliable information and data that help to build public understanding of, and support for, the financial agency's operations and policies. It also serves to provide information to the general public via the media, including the financial agency's views and perspectives on issues that concern or involve the financial agency, and offering an effective mechanism for market and institutional responses to news that concern or involve the financial agency. A public information service could interact with the press, parliamentarians, non-governmental organizations, and the public in general, using a variety of means to disseminate information among the key audiences, including the internet, written and broadcast media, and speaking engagements by senior financial agency officials and staff. The system also could play a public education role by arranging visits to the financial agency by the general public and visits by financial agency officials and staff to public institutions, including schools and community gatherings; and organizing conferences on issues of relevance to financial policies for professional and occasionally diverse public audiences.

### **Application**

A significant majority of financial agency respondents maintain structured public information services. These services are mostly used for the dissemination of policy decisions and announcements, how objectives are met, speeches and data. In a majority of cases, research results are disseminated. A substantial majority of agencies have websites and maintain active contacts with media representatives.<sup>64</sup> Websites have the capacity of making a great variety of information available to the public. For instance, they could publish laws regulating the agency, regulations issued by the agency, decisions, financial information, organizational charts, and lists of publications. Also, they could post quarterly bulletins, press releases, research papers and other public information material.

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<sup>64</sup> For a listing of supervisory agencies in the field of insurance, including websites, see [www.iaisweb.org/1/about/014.html](http://www.iaisweb.org/1/about/014.html)

For a listing of supervisory agencies in the securities field, including websites, see [www.iosco.org/members\\_ordin.html](http://www.iosco.org/members_ordin.html)

For a listing of deposit insurers, central banks, and other entities involved in deposit insurance functions, see [www.fdic.gov/news/publications/public/international/intguide.pdf](http://www.fdic.gov/news/publications/public/international/intguide.pdf)

Payment system oversight is typically assigned to the central bank, as is in many cases banking supervision. For a listing of central banks, including websites, see [www.bis.org/cbanks.htm](http://www.bis.org/cbanks.htm) and Governments on the WWW, [www.gksoft.com/govt/en/currency.html](http://www.gksoft.com/govt/en/currency.html)

Appendix IV contains a listing of composite financial supervisory agencies, including websites.

### ***Central banks (banking supervision)***

The Bank of Israel has an “Information and Public Relations Unit,” which also serves the banking supervision function of the Bank.

At the Bank of Lebanon, the Foreign Studies Department disseminates information on the regulations applicable to banks and financial institutions through pamphlets (e.g., establishment and activities of a Lebanese commercial bank, establishment and activities of a Lebanese financial institution); the Financial Markets Department issues the Financial Markets Handbook twice a year. All of the Bank’s departments contribute to the development of the central bank's website and respond to inquiries through e-mail.<sup>65</sup>

The Netherlands Bank routinely issues all its prudential regulations, its annual report and quarterly bulletin in English as well as in Dutch, in light of the large number of foreign financial institutions operating in the Netherlands as well as the international nature of the business of the largest Dutch banks.

### ***Composite financial supervisory agencies***

The Financial Services Board of South Africa publishes draft legislation, the strategic plan of the agency, as well as information on pension plan adjudications, and supervision of conglomerates.

### ***Deposit insurance agencies***

The Italian Interbank Deposit Protection Fund is in the process of introducing a toll-free telephone number for public information purposes.

### ***Financial restructuring agency***

The Financial Sector Restructuring Authority of Thailand<sup>66</sup> provides information on the operating framework of the agency and research by staff.

### ***Securities regulatory agencies***

The website of the Australian Securities and Investment Commission<sup>67</sup> contains all legal and regulatory texts, as well as corporate information. It provides useful links to other regulatory,

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<sup>65</sup> See [www.bdl.gov.lb](http://www.bdl.gov.lb) and [www.bdliban.com](http://www.bdliban.com)

<sup>66</sup> See [www.fra.or.th](http://www.fra.or.th)

<sup>67</sup> See [www.asic.gov.au](http://www.asic.gov.au)

industry and government bodies. The Commission also publishes research by staff, personnel information, and career opportunities.

The Capital Markets Board of Turkey uses a public information office for policy announcements, descriptions of policy frameworks, targets and instruments, as well as for personnel information and career opportunities. It also provides specific education-oriented and consumer/investor protection information.

The U.S. Securities and Exchange Commission has several offices that provide public information services. The Publications Department, the Public Reference Room, the SEC Library, the SEC's website,<sup>68</sup> the Office of Investor Education and Assistance and the Office of Public Affairs, all play an important role in providing information to the public.

### **Implementation considerations**

Public demand for information is growing rapidly and is expected to be met promptly. A specific public affairs office could be created, staffed by designated officials, accessible in person and by toll-free telephone, fax and e-mail. The contact numbers and names of this office need to be clearly publicized. Information on websites needs to be kept current, and sites need to be user friendly. In case an agency has multiple financial sector responsibilities, consideration might be given to separate websites for each sector or clearly identified sub-sites for individual sectors. Issuance of information in a foreign language can be considered if foreign financial institutions are active in the country or queries from abroad are expected. A reading room could be established, with general research material. Information specifically tailored for educational purposes could be made available.

#### **7.4.1 Financial agencies should have a publications program, including a periodic public report on their principal activities issued at least annually.**

### **Explanation and rationale**

A publications program consists of preparation and dissemination of reports, studies, pamphlets, and papers that report and explain to a broad audience the policies and workings of the financial agency, as well as the financial agency's views on current economic and financial topics. An annual report could provide an account of the working and operations of the financial agency and could include a statement of its financial affairs. Annual reports also could provide details relating to the internal organization, including the activities of the governing body.

A financial agency's publication program allows it to make available to a wider audience and general public, papers, commentaries, research work and opinions of the institution on its

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<sup>68</sup>See [www.sec.gov](http://www.sec.gov)

activities and its staff. The public at large should have access to the analysis and research work performed at these agencies. A publications program acts as a locus for the collection and exchange of information on financial policies and problems. Publication of non-technical descriptions of financial agency operations helps to generate better public understanding and support of financial agency policies and activities. The annual report is a principal accountability document. It facilitates performance monitoring by the general public and allows the financial agency to report on its operations in the context of the overall economy over a relevant time period and provides information and assessments that help to place financial policy in perspective.

A defined program for production and dissemination of a publications program allows the public a structured overview of sources of information, resulting in a better-informed public. Ready access to information on the financial agency's activities promotes a better public understanding of the agency's policies and regulations as well as the accountability of the agency, its policies and practices.

### **Application**

Almost all financial agency respondents maintain a publications program. A significant majority of financial agency respondents are under a legal obligation to publish periodic reports, in almost all cases by means of an annual report that is typically made public within the quarter following closure of the reporting period. Many central banks that have banking supervision and payment system oversight responsibilities have separate sections in their annual reports on these fields. A significant majority of agencies also publish an official bulletin or review. Almost all the agencies publish nontechnical descriptions of their role and functions. Many agencies provide public information free of charge or at nominal cost.

### ***Banking supervisory agencies***

The Banking Superintendency of Colombia<sup>69</sup> maintains a website on which detailed financial sector information is published monthly, including the balance sheets of all institutions supervised by the agency, as well as aggregated data for the financial system. The agency also publishes reports containing both statistical and qualitative information on the financial system, as well as information on actions taken by the agency.

### ***Deposit insurance agencies***

The Bank Guarantee Fund of Poland issues an annual report that is submitted to Parliament. The report provides information on financial assistance to banks, data on the financial condition of banks, financial statements of the agency, and an organizational chart of the agency. Also, more frequent reports are issued on the main responsibilities of the Fund, its actions and achievements.

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<sup>69</sup> See [www.superbancaria.gov.co](http://www.superbancaria.gov.co)



### *Securities supervisory agencies*

The Canadian Ontario Securities Commission provides non-technical descriptions of its role and functions, and issues a quarterly publication *Perspectives*. The Commission's bulletins contain information on current proceedings before the Commission, notices of proposed rules, decisions, orders and rulings, orders to cease trading, insider reporting information, legislation, public filings, initial public offerings, new issues, registrations, and disciplinary decisions.

### **Implementation considerations**

A publications program could encompass a written guideline on the types and frequency of publications. The program could describe the range of publications, including at least an annual report and a statistical annex, but also in many cases quarterly bulletins and ad hoc reports relating to specific events, press releases, public statements, books, articles, and brochures. The program could provide a description of the methods of making material available, and the agency's pricing policy. The public could also be made aware of the issue of new publications, and occasionally, the agency can publicize its public information services, for instance, by means of an advertisement in a widely read newspaper, providing information on accessing the website, highlighting a selection of publications, and listing new issues.

**7.4.2 Senior financial agency officials should be ready to explain their institution's objective(s) and performance to the public and have a presumption in favor of releasing the text of their statements to the public.**

### **Explanation and rationale**

Public appearances by senior financial agency officials responsible for financial agency policies and operations to a variety of audiences provide an opportunity to explain the role, functions, purpose and performance of the financial agency's policies and operations. A better-informed public is able to make more rational financial decisions, with the result that it often forms a constituency in support of financial agency policies, thus improving the agency's credibility. Market participants are also able to confirm their own assessments with those of the official statements and also identify the gaps in financial agency actions and the possible lack of consistency. Public statements by financial agency officials also help to provide an indication of the medium-to-long-term view the market could adopt, thus removing some of the uncertainties relating to the policy process. Periodic public discussion of the conduct of a financial agency's policies and operations relative to its goals and targets promote greater transparency and accountability of the agency's operations. The release of such explanations makes the information available to the public at large on a uniform basis and broadens the audience base.

## **Application**

In almost all financial agencies, senior officials explain their agencies' objectives and performance to the public, typically by means of interviews or media and public appearances. Nearly all agencies give media interviews, and a significant majority have their officials give speeches at public meetings. Many agencies post speeches and similar information on their website. A majority of financial agencies have their officials appear before the legislature (see 8.1). A majority of financial agencies publish the statements made before the legislature. In almost all cases, agencies have a presumption in favor of release of statements to the public.

### ***Central banks and banking supervisory agencies***

The president of the Superintendency of Banks of Guatemala,<sup>70</sup> in addition to making presentations to the Congress of the Republic on current developments, participates in different public forums dealing with current financial and banking issues, and provides frequent interviews.

The Supervisor of Banks of the Bank of Israel appears once a year, after the publication by banks of their annual reports, before a group of bankers, economists, and academics, to present his views on developments in the banking sector and to explain policies. He is periodically invited to appear before parliamentary committees on matters of current interest with regard to the banking system.

### ***Deposit insurance agencies***

The chairman of the U.S. Federal Deposit Insurance Corporation (FDIC) makes numerous public speeches and announcements each year and has several opportunities to testify before Congress. The texts of these speeches are released to the media and posted on the FDIC's website. Other senior officials of the FDIC also make similar presentations, which are also disclosed to the public.

### ***Financial restructuring agencies***

Representatives of the Financial Sector Restructuring Authority of Thailand appear three to four times per month before financial market participants to explain their policies and actions.

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<sup>70</sup> See [www.sib.gob.gt](http://www.sib.gob.gt)

### ***Insurance regulatory agencies***

The president of Germany's Federal Office for Insurance Supervision<sup>71</sup> appears in public on average once a week. He gives interviews, attends different conferences, makes speeches and publishes articles.

### ***Securities regulatory agencies***

The Canadian Ontario Securities Commission organizes an annual conference to report on recent developments with regard to the Commission's responsibilities over the year. Attendees include lawyers, bankers, accountants and other market participants. In the recent past, the OSC, along with other provincial securities commissions and the Council of Securities Regulators of the Americas, participated in an investor education week to heighten public awareness of the capital markets, the role of regulators, and the information resources available to investors.

In Portugal, the Board of the Stock Exchange Commission (Comissao do Mercado de Valores Mobiliarios)<sup>72</sup> calls press conferences whenever there is a need for public disclosure of policy initiatives, for instance when the euro was introduced. Also, texts of statements are provided to the media.

### **Implementation considerations**

Suitable occasions for public appearances are, for instance, when an annual report is published, or when major incidents occur, such as interventions in financial institutions. In times of market stress or developments affecting important individual financial institutions, the number and timing of public statements need to be carefully considered. Openness and disclosure even at a sensitive time can be appropriate, since rumors can be as damaging as unpleasant truths. Availability of public affairs officers and knowledgeable line officials of the agency could be helpful in this context.

**7.5 Texts of regulations and any other generally applicable directives and guidelines issued by financial agencies should be readily available to the public.**

### **Explanation and rationale**

Regulation, sometimes referred to as subsidiary legislation or secondary legislation, is a rule or an order having a legal status, usually issued by an executive authority (financial agency) established by legislation. The public should have easy and prompt access to texts of such regulations.

<sup>71</sup> See [www.bav-bund.de](http://www.bav-bund.de)

<sup>72</sup> See [www.cmvm.pt](http://www.cmvm.pt)

Availability and easy access to regulations improve transparency and impose accountability on both the issuing authority as well as the financial institutions affected by the regulation. Awareness of the rules and regulations supports informed market decisions. Market participants also need to know by which rules they are to play. Public availability of texts of regulatory and general directions and guidelines provides an even-playing field for new entrants. Box 3-2 summarizes the characteristics of transparent regulations.

**Box 3-2. Characteristics of Transparent Regulations**

- Regulations should have clearly identified policy goals, should be expressed in clear, simple terms, and should have a sound legal basis.
- Public consultation on new regulations will often be desirable (see 2.5 and 6.4 of *MFP Transparency Code*).
- Procedures for applying regulations should be nondiscriminatory.
- Overlapping responsibilities among regulatory authorities should be minimized, and, if present, spelled out and publicly disclosed (see 5.2 of *MFP Transparency Code*).
- Regulations, their impact, and effectiveness should be reviewed periodically in published reports.
- Sources of texts of regulations should be publicized and, when feasible, posted on the agency's website and appropriately updated.

## **Application**

Almost all financial agencies publicly disclose the texts of regulations and guidelines and other generally applicable rules, such as interpretations, guidelines, and exemptions. Almost all do so through government publications and/or official bulletins. A majority of agencies make the texts of regulations or a listing of where they can be obtained available on their website, or report this information in their annual report and official bulletin. Most texts of regulations are provided free of charge or at nominal cost.

### ***Central banks and banking supervisory agencies***

The Banking Superintendency of Colombia issues and regularly updates a compendium of all banking laws and regulations.

The U.S. Federal Reserve Board provides copies of individual regulations free of charge through its Publications Services Section. The Board also publishes the Federal Reserve Regulatory Services (FRRS) containing all regulations, statutes, and staff commentaries, available on a subscription basis. The FRRS, which has four modules, is also published separately as handbooks on monetary policy and reserve requirements, securities credit and transactions, consumer and community affairs, and payment systems. The FRRS is updated

on a monthly basis and is available in loose-leaf volumes. It is also provided on a CD-ROM by subscription.

The Banking Commission of the West African Monetary Union<sup>73</sup> publishes a guide, primarily intended for top management of banks, which presents in a readily accessible manner the main rules and regulations governing the banking activities in the West African Economic and Monetary Union.

### **Implementation considerations**

The coordinates of the sources of texts of regulations, applicable directives and guidelines should be well publicized, and could be routinely identified in agency publications and posted on agency websites. Timeliness and reliability are key considerations. Websites should, therefore, be updated on a regular basis. The agency can periodically issue articles to explain its rules and regulations. Consideration could also be given to have summaries of regulations available in non-technical language.

**7.6 Where there are deposit guarantees, policy holder guarantees and any other client asset protection schemes, information on the nature and form of such protections, on the operating procedures, on how the guarantee is financed, and on the performance of the arrangement, should be publicly disclosed.**

### **Explanation and rationale**

Broad public understanding and confidence in such schemes encourages participation in the financial markets. The public needs information on what protection is available, what values are covered by the schemes, how they are financed, and which procedures apply. Specific information is needed when institutions fail and the schemes are activated, and when changes are introduced. When these mechanisms are activated information is required on how claims can be presented, what documentation must be presented, how claims are decided, and when payout takes place. Public disclosure is needed of the financial condition of the agencies and their ability to meet their obligations. After a scheme has been applied, public disclosure should be given of the financial results of the operation.

### **Application**

A significant majority of countries operate deposit protection, policy protection and/or asset protection schemes. Some countries have a system for protection of claims on insurance companies, for example Austria, Egypt, Estonia, and Norway. Most agencies publicly disclose information on the nature and form, operating procedures, financing and performance of the arrangements. A majority of agencies disclose information through

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<sup>73</sup> See [www.bceao.int](http://www.bceao.int)

annual reports, bulletins and other official government publications, as well as websites and direct information to the media.

***Central banks and deposit insurance agencies***

In Canada, deposit-taking institutions must place signs in each branch indicating whether the Canada Deposit Insurance Corporation insures the institution.<sup>74</sup> All branches must provide brochures explaining the system. Each branch must have a register showing which products are covered and which are not.

The Central Bank of the Dominican Republic<sup>75</sup> requires that information on deposit protection be provided on the back of savings certificates or in savings booklets.

In the European Union,<sup>76</sup> the directive on deposit protection, as well as all other directives and regulatory instruments, are published on the EU website, and are also published in hard copy in the *Official Journal* of the EU.

In Portugal, the chart of accounts used by the Deposit Guarantee Fund (DGF) is designed to allow clear identification of all the transactions carried out by the Fund. The DGF separately publishes its annual accounts in the media and the annual report. The Annual Report of the DGF is approved by the Minister of Finance and submitted to the Court of Audit. It is widely distributed, and it is available free of charge. The list of credit institutions that are members of the DGF is published in the news media.

The U.S. Federal Deposit Insurance Corporation (FDIC) issues on its website<sup>77</sup> *Financial Institution Letters* that advise financial institutions of new regulations, policies, special alerts and other matters of principal interest to those responsible for operating a bank or savings institution. It also organizes nationwide training programs for employees of insured institutions; it also maintains a toll-free telephone hotline. Depositors can obtain case-specific or general information on deposit insurance by e-mail or regular mail. The FDIC also organizes media “call in” shows and operates information booths at trade association meetings. Institutions with FDIC deposit insurance coverage are required to display emblems showing that they are insured by the FDIC.

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<sup>74</sup> See [www.cdic.ca](http://www.cdic.ca)

<sup>75</sup> See [www.bancentral.gov.do](http://www.bancentral.gov.do)

<sup>76</sup> See [www.eurunion.org](http://www.eurunion.org)

<sup>77</sup> See [www.fdic.gov/news/news/index.html](http://www.fdic.gov/news/news/index.html)

### ***Securities regulatory agencies***

In Italy, the National Stock Exchange Commission<sup>78</sup> provides information on the nature and form of asset protection and how the scheme is financed, all of which is provided in the agency's Annual Report. Financial intermediaries must inform clients on the scheme before entering into any contract.

In Portugal, the arrangements for the protection of investors are laid down in a decree-law. The Investor Compensation Scheme and the Lisbon and Oporto Stock Exchange Investor Guarantee Fund disclose information to the public on the nature of cover, financing, and performance. The stock exchange operates an investor information service and one for mediation of investment conflicts between investors and dealers. A simplified system for payment of damages to investors has been instituted.

### **Implementation considerations**

Public information about deposit protection, policy and asset protection schemes and their financial operations and condition needs to be clear, reliable and timely. Publications concerning the different schemes should be comparable and user friendly. Annual publication on the arrangements and their performance could be sufficient. More frequent publication may be needed when the schemes have been activated.

**7.7 Where financial agencies oversee consumer protection arrangements (such as dispute settlement processes), information on such arrangements should be publicly disclosed.**

### **Explanation and rationale**

Fair and efficient mechanisms to deal with customer complaints can stimulate participation in the markets and thus improve their intermediation capacity. Sufficient disclosure and transparency can significantly enhance the effectiveness of dispute settlement and complaint procedures, particularly when parties are aware that these mechanisms are monitored by an independent agency. Information on the resolution of concrete cases can encourage customers and be an incentive for financial service providers to treat their customers fairly.

### **Application**

A majority of central banks and financial agencies do not have responsibilities in the area of consumer protection. A significant majority of agencies that do have such responsibilities publicly disclose the arrangements. Most use official government publications for disclosure

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<sup>78</sup> See [www.consob.it](http://www.consob.it)

purposes, and over half of the agencies disclose directly to the media and/or use annual reports. Many use websites, and some, such as the Central Bank of Egypt and the National Bank of Slovakia,<sup>79</sup> also use mission statements or descriptive documents.

### ***Central banks and banking supervisory agencies***

The Banking Ombudsman set up by the Reserve Bank of India facilitates settlement of disputes among banks and the public. The Reserve Bank has also set up regional Grievances Redressal facilities, the operations of which are disclosed through advertisements in leading newspapers.

The Superintendency of Banks of Paraguay processes and answers all consumer queries and complaints, although there are no formal procedures in place. In consultation with the Superintendency of Banks, the central bank seeks to enhance transparency of information on customer rights. The central bank requires that the public receive information on effective interest rates, other charges, and other relevant information.

The Bank of Portugal,<sup>80</sup> when expressly requested, analyzes claims submitted by the supervised institutions or their customers, and seeks out-of-court solutions.

### ***Composite financial supervisory agencies***

The Financial Supervision Authority of Finland<sup>81</sup> is responsible for certain consumer protection arrangements. It provides advice to individual consumers and issues statements on best practices. It monitors whether financial institutions provide accurate information to customers, apply reasonable terms, and provide well-organized consultation for their customers. It gives rulings on, for instance, treatment of loan applications, and on how to deal with loan default.

### ***Deposit insurance agencies***

The U.S. Federal Deposit Insurance Corporation (FDIC) is required to track, investigate and respond to consumer complaints of unfair or deceptive practices by insured institutions. The FDIC has instituted a Consumer Affairs Program to implement this. The FDIC issues a newsletter, the "FDIC Consumer News." The FDIC also maintains an Office of the Ombudsman. Details on how to access these services are posted on the FDIC's website.<sup>82</sup>

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<sup>79</sup> See [www.nbs.sk](http://www.nbs.sk)

<sup>80</sup> See [www.bportugal.pt](http://www.bportugal.pt)

<sup>81</sup> See [www.rata.bof.fi](http://www.rata.bof.fi)

<sup>82</sup> See [www.fdic.gov](http://www.fdic.gov)



***Insurance regulatory agencies***

The Insurance Supervisory Authority of Estonia has a cooperation contract with the Consumer Protection Office on consumer matters.

Germany's Federal Office for Insurance Supervision (FOIS), on the basis of the published Insurance Supervision Law, has the authority to receive complaints from customers of insurance companies. The FOIS is obliged to inform the customer in writing how the complaint has been dealt with, although the customer cannot demand a decision from the FOIS, nor an explanation of the reasoning behind the FOIS' treatment of the case. Statistics and general information on this system are published in the FOIS' bulletin and in the media.

***Securities regulatory agencies***

The Australian Securities and Investments Commission<sup>83</sup> operates a phone information service, the "Financial Complaints Referral Center."

**Implementation considerations**

Agencies with consumer protection responsibilities could have a dedicated consumer affairs office and website or an identified section of its general website for customer complaints. The agency could publish the e-mail, telephone, telefax and physical coordinates of its customer complaint monitoring service, for instance on documents concluded between the consumer and the financial institution. The agency could satisfy itself that the providers of financial services give sufficient publicity to their customers of such mechanisms. Periodic reports of the agency can devote sections to consumer complaints and their resolution. To enhance public awareness, the agency can periodically publish articles on consumer protection in its own publications as well as external ones.

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<sup>83</sup> See [www.asic.gov.au](http://www.asic.gov.au)

## VIII. ACCOUNTABILITY AND ASSURANCES OF INTEGRITY BY FINANCIAL AGENCIES

**8.1 Officials of financial agencies should be available to appear before a designated public authority to report on the conduct of financial policies, explain the policy objective(s) of their institution, describe their performance in pursuing their objective(s), and, as appropriate, exchange views on the state of the financial system.**

### **Explanation and rationale**

Appearances by financial agency officials before a designated public authority, typically elected government bodies (parliaments or parliamentary committees), promote the accountability of the financial agencies, especially when the agencies are granted a high degree of autonomy. The officials can also use such appearances to clarify the financial agencies' policy intentions and thus help to guide market behavior.

### **Application**

Most of the financial agency respondents are required by law to have officials of their agencies appear before a designated public authority. However, for those respondents that do not have such a legal requirement, in nearly all cases their officials are available to appear before such an authority. The officials of a significant majority of the respondents appear regularly before a designated public authority at least annually.

### ***Central banks (financial policies)***

While officials of the U.S. Federal Reserve Board are not required by law to testify on financial policies, in practice the Chairman of the Federal Reserve Board, other Federal Reserve Board Members, regional bank officials and senior staff testify frequently before Congress on financial issues. In 1999, the Chairman testified five times on specific financial policy-related issues, and other Federal Reserve officials testified 12 times on financial issues.

### ***Insurance regulatory agencies***

The President of the Insurance and Sureties National Commission of Mexico is required by the internal regulations of the Commission (published in the Federation's official gazette) to appear before the Government Board (comprising the Minister of Finance, the Governor of the Bank of Mexico and the heads of other financial agencies) on a quarterly basis.

### **Implementation considerations**

It is desirable for officials of financial agencies to appear before a designated public authority at least once a year, and more often should there be major new developments affecting the

conduct of financial policies. The purpose of these appearances is to focus on broad financial developments and policy issues rather than on the day-to-day conduct of financial policy and supervision. To appraise the market about these appearances, there should be a prespecified regular schedule (e.g., a particular month of the year) rather than the appearances being called whenever the public authority feels it necessary. Where the “financial agency” is part of a larger ministry (e.g., ministry of finance), the question of which officials (the head of the ministry or key officials of the financial agency) would be appropriate to be available before a designated public authority needs to be addressed.

<p><b>8.2 Where applicable, financial agencies should publicly disclose audited financial statements of their operations on a preannounced schedule.</b></p>
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**Explanation and rationale**

Financial statements of the financial agencies’ operations include the audited balance sheets and income statements of the agencies as well as records of transactions with other parties (including with market participants). A preannounced schedule calls for specific dates known to the public in advance of when these financial statements are issued.

Regular disclosure of the financial agencies’ audited financial statements of their operations promotes ex post accountability of the agencies with regards to the rationale and effectiveness of their operations. When industry levies and fees fund financial agencies, such disclosure practice will also promote accountability of these agencies. A preannounced schedule will assure that disclosure is on a set and predictable basis and thus not subject to a timing of disclosure that is convenient or favorable to the agencies.

**Application**

A significant majority of the financial agency respondents publicly disclose audited financial statements of their operations. Of those that do, nearly all of them do so annually, with the majority issuing their audited statements no later than three months following the end of their financial year. The majority of the respondents that disclose their audited financial statements do so in their annual reports. In addition, some respondents also do so on their website and through statements submitted to legislature or other public body. Some respondents disseminate their audited financial statements through a combination of means. For example, the Deposit Guarantee Fund of Denmark provides access to its audited financial statements through hard copies available at headquarters, annual reports, press releases to the media, and on its website.

**8.2.1 Financial statements, if any, should be audited by an independent auditor. Information on accounting policies and any qualification to the statements should be an integral part of the publicly disclosed financial statements.**

**Explanation and rationale**

An independent auditor is someone from either a private accounting firm or an auditor designated by the government. Disclosed financial statements should be prepared using high quality, internationally acceptable accounting standards. The financial statements should include an indication of which accounting standard was used for their preparation. Qualifications to financial statements include indications of any questionable transactions, missing information or accounting irregularities.<sup>84</sup>

Public access to information about the independent auditor and the public disclosure of accounting policies and qualification of the financial statements by the auditor provide the public with a means to ascertain the quality of the financial agencies, discourage irregularities and concealment of information and thus give more credibility to the financial agencies' financial statements and enhance its accountability.

**Application**

A significant majority of the financial agency respondents report that independent auditors audit their financial statements. The auditors of most of the respondents are employed in a government ministry or official agency and some of them are private sector firms. Some of the respondents indicate that information on accounting policies and any qualification to the statements are an integral part of their publicly disclosed financial statements. For many respondents, the accounting policies used in the preparation of their financial statements are prescribed by government ministries or official agencies, while independent advisory bodies (e.g., an association of auditors or accountants) prescribe these policies for more than a quarter of the respondents. The accounting policies of many respondents follow the IASC's International Accounting Standards (IAS) or a modification of the IAS.

***Deposit insurance agencies***

The financial statements of the National Institute of Guarantee of Deposit (NIGD) of Lebanon are audited by an independent private international accounting firm appointed by the annual general assembly of the shareholders of the NIGD. The accounting practice follows the International Accounting Standards (IAS) and the Lebanese Code of Accounting. The NIGD discloses its financial statements on an annual basis in its Annual Report, which is issued no later than six months following the end of its financial year.

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<sup>84</sup> See Box 2-4 in 3.2.1 in Part 2 of the *Supporting Document* that summarizes the basic elements of accounting and auditing arrangements.

## Implementation considerations

To ensure the integrity of the auditing process, setting a term limit for the auditor may be an important consideration.

### **8.2.2 Internal governance procedures necessary to ensure the integrity of operations, including internal audit arrangements, should be publicly disclosed.**

#### Explanation and rationale

Internal governance implies mechanisms in place to control activities in an organization, and relationships within the organizational structure (between the various departments and units and the management and its board) that encompass the way the organizational objectives are set, decisions are made and accountability for actions is maintained.<sup>85</sup> Integrity of operations consists of adherence to the established procedures for internal operations, consistent with the objectives of the organization and compliant with the applicable laws and regulations. Internal audit involves an internal appraisal activity that includes examining, evaluating and monitoring the adequacy and effectiveness of the accounting and internal control systems and compliance with internal governance procedures.<sup>86; 87</sup>

Public disclosure of the internal governance procedures of a financial agency provides the basis for consistency, reliability and completeness of information, such as on operational results and policy actions. Such disclosure serves as a mechanism to ensure that the quality of operations maintains the integrity of a financial agency's internal processes and strengthens the overall institutional credibility of the financial agency. Political authorities, market participants and the general public are thus able to have confidence in the care with which the financial agency performs its functions, especially if it handles public funds. Disclosure of internal governance procedures enhances a financial agency's accountability.

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<sup>85</sup> See American Institute of CPAs, 1998, *Framework for Internal Control*; for banking supervisory agencies: Basel Committee on Banking Supervision, September 1998, *Framework for Internal Control Systems in Banking Organizations* ([www.aicpa.org](http://www.aicpa.org)).

<sup>86</sup> See International Federation of Accountants, 1997, *Codification of International Standards on Auditing and International Auditing Practices Statements*; Institute of Internal Auditors, 1998, *Statements on Internal Auditing Standards* ([www.ifac.org](http://www.ifac.org)).

<sup>87</sup> See Box 2-5 in 4.2.2 in Part 2 of the *Supporting Document* that summarizes the main elements of internal governance procedures and audit arrangements.

## **Application**

Some financial agencies either do not have explicit internal governance procedures or do not publish and disclose them. Where the document and guidelines on internal governance and control are publicly disclosed, financial agencies publish them in the official gazette, register, and other government publications, as well as the agency's website and provide them to the media. Some financial agencies have an "inspector general" or an equivalent office whose principal responsibility is to monitor internal governance procedures. The role of such officials is typically disclosed in the financial agency's annual report. Some inspector generals or offices of internal control issue periodic reports on their activities and findings (for example, the Australian Securities and Investments Commission and the Italian Securities Commission). Several financial agencies that publish their internal governance procedures also publish periodic reports on the outcome of internal audit reports in their annual reports on compliance with procedures relating to internal governance and internal control and the corrective actions undertaken. Senior officials of several financial agencies also make references in official statements and public speeches to the role of internal audit, internal control, and internal governance procedures in maintaining integrity of operations.

### ***Central banks and banking supervisory agencies***

The audit and internal control systems of Germany's Federal Banking Supervisory Office are the same as those used by other German State entities. The audit comprises a specialized and an independent audit by the Federal Audit Office, which has ministerial status.

The banking supervision function carried out by the Bank of Israel as a departmental operation is subject to the audit of the State Comptroller and to the internal audit existing in the central bank.

### ***Deposit insurance agencies***

In the case of the U.S. Federal Deposit Insurance Corporation (FDIC), the Chief Financial Officers Act of 1990 provides the core principles for the FDIC's internal governance procedures. The FDIC prepares an annual report on its internal governance procedures, as required by the Chief Financial Officers Act, for submission to Congress and the Executive Branch. Copies of this annual report are available upon request from the FDIC's Public Information Office.

### ***Insurance regulatory agencies***

The internal governance procedures of the Insurance Supervisory Authority of Slovenia are determined through special legislation and are publicly disclosed by publication in the Official Gazette. Governance procedures internal to the Authority are determined in the special regulations issued by the Insurance Supervisory Authority according to the regulations and legislative acts of the Ministry of Finance and the Government.

### *Securities regulatory agencies*

The internal governance procedures and the operating responsibilities of each division of the Securities and Exchange Commission, Argentina are provided under a publicly disclosed administrative order approved by the Council of Ministers.

The Australian Securities and Investment Commission, which publishes its internal governance procedures, submits periodic written reports to the legislature on compliance with internal control procedures.

The Ontario Securities Commission, Canada publishes its bylaws relating to governance and conflict of interest in its bulletin.

The internal governance procedures of the U.S. Securities and Exchange Commission (SEC) are published in federal statutes and executive orders. The SEC also maintains an Office of Inspector General that serves as an internal monitor of the integrity of operations within the organization.

### **Implementation and considerations**

Periodic reports issued by the financial agency could mention where documents related to internal governance can be located. The financial agency could also periodically publish articles on its functions and issues related to governance, internal control, and the integrity of its operations.

### **8.3 Where applicable, information on the operating expenses and revenues of financial agencies should be publicly disclosed annually.**

### **Explanation and rationale**

Insofar as the financial agency or financial regulator has been set up as a separate entity that is not a part of the central bank or the government with independent sources of revenues, relevant components of revenues and expenses pertaining to its operations should be publicly disclosed. These could be disclosed separately or through periodic reports on their financial operations consisting of the audited financial statements, including a balance sheet, an income statement and notes to the accounts. The income statement should group income and expenses and disclose the amounts of the principal types of income and expenses including salaries, premises and office expenses, and the notes to the accounts.<sup>88</sup>

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<sup>88</sup> See International Federation of Accountants [www.ifac.org](http://www.ifac.org)  
International Accounting Standards Committee (IASC) [www.iasc.org.uk](http://www.iasc.org.uk)

Disclosure of information by financial agencies on their operating expenses and services on a periodic basis has an important role in achieving financial transparency, good governance and accountability. Availability of such financial information promotes accountability and comparability of operations with previous performance and similar agencies, including providing a measurement of the proper assignment of human and financial resources. Publication of the details of the operating expenses and revenues could also improve accountability of the agency's operations, contribute to the market's and public confidence in the integrity of the agency, and its ability to discharge its functions effectively. A breakdown of operating expenses and revenues would help to dispel doubts in the minds of the public as to the openness of the financial agency with regard to the use of funds entrusted to it and the sources of its revenues.

### **Application**

Most financial agencies publish the information on operating expenses on an annual basis in the agency's annual report, and in several instances the information is also made public semi-annually. In some cases this is published in official government publications, gazette, or register as well as posted on the agency's website and provided to the media. In some cases a written report is also required to be submitted to the legislature (Australian Prudential Regulation Authority, Credit Guarantee Fund, Brazil, Superintendent of Insurance and Securities, Chile, National Bank of Georgia, and Financial Sector Restructuring Authority, Thailand).

### ***Dependent financial supervisory agencies or departments***

Where financial agencies are in effect departments or sub-units of governmental ministries (e.g., the ministry of finance), or departments or sub-units of central banks, in most such countries, the operating expenses and revenues of the statements are integrated or appended in the ministry's or central bank's budget reporting. Some central banks provide explicit information that break down the expenses (and revenue sources where applicable) of certain financial sector functions, such as banking supervision or payment systems oversight (Reserve Bank of Australia; Bank of England, and Reserve Bank of New Zealand).

The Thailand Asset Management Corporation submits the account of operating revenues and expenses to the Ministry of Finance, which in turn makes a public announcement of the accounts.

The U.S. Office of the Comptroller of the Currency (OCC) publicly discloses the agency's operating expenses and revenues separately from the accounts of the U.S. Treasury, under whose jurisdiction the OCC falls.



### ***Independent financial supervisory agencies***

The income and expenditure statements of independent financial agencies are normally published along with the periodic reports on their activities in the financial agency's bulletin or annual reports.

The Office of the Superintendent of Financial Institutions, Canada, which covers most of its supervision-related costs from financial institutions, in addition to publishing its financial statements containing information on operating expenses and revenues, discloses its revenues and expenditures by periodically presenting a summary position to the key financial institution industry groups and gatherings.

On a quarterly basis, the U.S. Federal Deposit Insurance Corporation (FDIC) releases its "Executive Management Report and Unaudited Financial Results of the FDIC." This contains unaudited balance sheet and income statement information, including certain expense information. Current editions of all such reports may be viewed directly on the FDIC's website, and previous editions are available either on the FDIC's website or may be obtained by request from the FDIC's Public Information Center.<sup>89</sup> Some of the reports are submitted to the Congress and are also distributed by postal mail to interested parties.

The U.S. Securities and Exchange Commission provides detailed information about its revenues and expenses on an annual basis when preparing its budget for the approval of the Congress.

### **Implementation and considerations**

The income statement should disclose the amounts of the principal types of income and expenses, including salaries, premises and office expenses, and the notes to the accounts.<sup>90</sup> For the publication of the statement itself and any explanatory notes, in addition to making this information available on the agency's website and having it included in the agency's annual report, newspaper advertisements could be used. The management of the financial agency can use news conferences at the time of issue of the annual report to disclose details on the expenses and revenues of the institution. The presentation of the income statement could be structured to allow a reasonable comparison with the expense levels of other government agencies.

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<sup>89</sup> See [www.fdic.gov/about/strategic/corporate](http://www.fdic.gov/about/strategic/corporate)

<sup>90</sup> See International Federation of Accountants, [www.ifac.org](http://www.ifac.org)  
International Accounting Standards Committee (IASC), [www.iasc.org.uk](http://www.iasc.org.uk)

**8.4 Standards for the conduct of personal financial affairs of officials and staff of financial agencies and rules to prevent exploitation of conflicts of interest, including any general fiduciary obligation, should be publicly disclosed.**

**Explanation and rationale**

Guidelines, rules and regulations setting out the principles for the conduct of personal financial affairs and reporting of financial and business interest of officials and staff of financial agencies should be made available to the general public. Exploitation of general fiduciary obligations implies taking advantage of the actions taken on behalf of the public or dealing with matters of public “trust” in a manner that benefits officials and the staff of a financial agency. The standards for the conduct of personal affairs of officials and staff of financial agencies often include provisions on what constitutes conflict of interest, how the agency monitors possible conflicts of interests of officials and staff, and specifies sanctions in case of violations of these rules and the procedures for recourse.<sup>91</sup>

Officials and selected staff of financial agencies have access to privileged/confidential financial-related information that could be used for their personal financial gain. By providing public access to the standards for the conduct of personal financial affairs, the general public is informed that officials and staff of financial agencies are subject to rules relating to their personal finances. Disclosure of such standards implies that the financial agency has made clear the required standards of financial conduct for its officials and staff and has defined the ethical implications of their actions. Disclosure of such standards strengthens the credibility of the financial agency since it provides the public with information about the standards under which the officials and staff are bound to conduct their personal financial affairs. Public access and knowledge of the rules of conduct for the officials of the financial agencies are also ways of making the financial agencies accountable. Without trust in the financial probity and freedom from conflict of interest of the officials and staff of the agency, the authority and ability of a financial agency to perform its functions would be severely hindered. It would affect its effectiveness to interact with the financial institutions under its jurisdiction, and the general public would not trust the impartiality of its operations and decisions. The legislation or regulation that establishes the financial agency or the bylaws of the agency can contain specific provisions on avoidance of conflict of interest, including obligations to report on a regular basis any relations, including personal investments, between officials and staff of financial agency and entities under its supervision or with which it interacts. These provisions oblige officials and staff to abstain from policymaking and operational activities relating to entities in which the staff member has a pecuniary or other form of interest.

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<sup>91</sup> See Box 2-6 in 4.4 in Part 2 of the *Supporting Document* that summarizes the United Nations’ *International Code of Conduct for Public Officials*.

## **Application**

In many cases, rules related to the conduct of personal financial affairs as applicable to the government employees also apply to officials and staff of financial agencies. For example, the Government of Canada has general conflict of interests guidelines, which are applicable to every public servant and are publicly disclosed through the Treasury Board website. The codes of conduct for public servants are part of the public record. Some financial agencies reconfirm or supplement the government-wide rules of conduct in their publicly available bylaws or similar internal governance procedures.

Most financial agencies document the rules and standards in the employee handbook or state them in employee contracts. A practice gaining wide prevalence is for financial agencies to have specified codes of conduct for their officials. While these are typically internal and not public documents—although in some cases the employee handbooks are available upon request through freedom of information-type arrangements—several financial agencies place the articles and bylaws of the agency relevant for the conduct of affairs on their websites, official government publications and gazette.

### ***Banking supervisory agencies***

The Superintendency of Banks and Financial Institutions, Bolivia is governed by the Organic Law of the Superintendency under which the officials of the agency are not permitted to accept loans from the supervised agencies except for those expressly authorized by the superintendent. In addition, the relevant regulations specify that all officials must comply in contracting loans with the financial institutions, subject to express authorization by the Superintendent.

The staff of the Federal Banking Supervisory Office, Germany, besides observing the rules and regulations governing public officials, are required additionally to obey the law against the use of insider information.

The employees of the U.S. Office of the Comptroller of Currency (OCC) are subject to conflict of interest statutes covering such topics as bribery, personal financial interests, and post-employment restrictions. Employees are also required to adhere to the Government-wide Standards of Ethical Conduct for Employees of the Executive Branch and supplemental standards, which cover additional topics such as gifts, outside employment, and misuse of position. Other applicable ethics rules are contained in Treasury Department regulations, under whose jurisdiction the OCC falls, which inter alia, prohibit OCC employees from owning bank securities or borrowing from national banks. In addition, most OCC employees, including all OCC bank examiners, are subject to financial disclosure requirements. Senior OCC executives are required to file publicly available financial disclosure reports. Applicable statutes, rules, and policies can be found in an agency publication, the *OCC*

*Ethics Policy.* A brief summary of these ethics standards is also available in the *OCC Ethics Rules: A Plain English Guide*, which is accessible on the OCC's website.<sup>92</sup>

### ***Composite financial supervisory agencies***

The law establishing the Australian Prudential Regulation Authority (APRA) outlines the types of conduct that could lead to dismissal of the employee of the agency, e.g., an employee becomes a director or an employee of an entity regulated by the agency. A provision also exists in the employee handbook and employment contracts/disclosure statements relating to holdings of interests in the financial entities regulated by APRA.

The Office of the Superintendent of Financial Institutions (OSFI), Canada, which provides its guidelines for the conduct of personal financial affairs of its officials and staff to the general public upon request, requires its officials and staff not to place themselves in a position where their private interests are, appear or might appear to be in conflict with OSFI's objectives. Staff is prohibited from beneficially owning, directly or indirectly, shares in regulated financial institutions.

### ***Deposit insurance agencies***

The employee ethics regulations that govern employees of the U.S. Federal Deposit Insurance Corporation (FDIC) are covered by the Government-wide Standards of Ethical Conduct for Employees of the Executive Branch, and Supplemental Standards of Ethical Conduct for Federal Deposit Insurance Corporation Employees. The FDIC has also promulgated conflict of interest regulations that establish minimum standards of competence, experience, integrity, and fitness required of independent contractors, and outline the provisions governing conflicts of interest, ethical responsibilities, and the use of confidential information. The regulations that apply to independent contractors are identified as Contractor Conflicts of Interest Regulations and Suspension and Exclusion of Contractors and Termination of Contractors Regulations. Both are available on the FDIC's website.<sup>93</sup>

### ***Insurance regulatory agencies***

In the case of Germany's Federal Insurance Office, an agency responsible for insurance regulation and supervision, a prohibition exists for information available to its officials and staff to be used for personal gain, and personnel is required to obey the law against the use of insider information.

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<sup>92</sup>See [www.occ.ustreas.gov/ethics.htm](http://www.occ.ustreas.gov/ethics.htm)

<sup>93</sup>See [www.fdic.gov/buying/goods/index.html](http://www.fdic.gov/buying/goods/index.html)

The law on incompatibility of performing public employment with profitable activity determines standards for the conduct of officials of the Insurance Supervisory Authority, Slovenia. This law is published in the Official Gazette of the Republic of Slovenia No 48/92 and 50/92.

### ***Securities regulatory agencies***

The law establishing the Cyprus Securities and Exchange Commission (SEC) defines the extent to which officials and members of the SEC and the Stock Exchange may or may not trade, including trades by relatives and provisions relating to confidentiality, responsibility and disclosure.

The staff of the Securities Commission of Malaysia is required to adhere to the standards set out in the Commission's publicly disclosed Code of Conduct. The Code is formulated to ensure that the staff practices professional and ethical behavior while in the service of the Commission. The Code covers areas such as conflict of interest, the accumulation of assets, obligation of secrecy, misuse of information, political activities and general misconduct.

All members of staff and officials of the U.S. Securities and Exchange Commission (SEC) are subject to publicly disclosed government-wide and agency-specific ethics laws and regulations designed to prevent exploitation of conflicts of interest. These laws and regulations are publicly available. The SEC requires detailed disclosure of financial interests and reporting of securities-related financial transactions of all Commissioners and SEC staff.

### **Implementation considerations**

The requirement of staff disclosure of their personal financial affairs raises issues of confidentiality. In the implementation of this practice, a balance must be found between disclosure and confidentiality. Thus, the objective requirement for this transparency practice is to disclose the content and purpose of the standards for the conduct of personal financial affairs of officials and staff of financial agencies and not necessarily calling for disclosing the information the financial agency obtains in the process of implementing these standards.

<b>8.4.1 Information about legal protections for officials and staff of financial agencies in the conduct of their official duties should be publicly disclosed.</b>
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### **Explanation and rationale**

Legal protection for officials and staff of financial agencies in the discharge of their official duties refers to the need to assure that such officials and staff can perform their official duties

without fear of being personally subjected to legal action.<sup>94</sup> Legal protection typically involves giving officials and staff of financial agencies general immunity against civil lawsuits on any acts or omissions committed by them in the exercise of their official duties in good faith, barring gross negligence. Such official activities include granting, denying and withdrawing licenses, imposition of penalties for breaches in regulatory and licensing requirements, and any form of supervisory intervention, such as license revocation or closure. Legal protection shields the officials and staff in the performance of their official duties from civil damages. The constant threat of legal action against officials and staff of the financial agencies would affect policymaking particularly in controversial areas. This could significantly undermine the effectiveness of the agency, particularly in situations involving bank insolvencies and stringent enforcement of remedial measures.

Information about legal protection of officials and staff of financial agencies should be publicly disclosed through publication of the scope and procedure for such protection in order to deter unwarranted lawsuits against such officials and staff. Public knowledge about the prevailing legal protection for the officials and staff of the financial agencies would allow them to determine whether particular actions by the officials and staff of these agencies are subject to legal suit.

### **Application**

In many countries, government officials and staff enjoy immunity against lawsuits, and in most cases these provisions cover officials and staff of financial agencies (see Box 3-3).<sup>95</sup> Some financial agencies have specific statutory protection in their bylaws, which are part of the public record, which reconfirm or supplement these government-wide provisions. In most countries the law specifies that the employee act in good faith in order to be covered by the protection of law. Certain laws even protect the agents of the financial agency, such as the auditors and accountants hired under contract to perform a specific task, such as regulatory and supervisory examination. In the case of Germany, the primary source of legal protection for financial agencies is the same as applicable to all government employees found in the Basic Law (the Constitution of Germany). New Zealand and the Philippines provide an

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<sup>94</sup> Principle 1 of the *Basel Core Principles for Effective Banking Supervision* provides that “[a] suitable legal framework for banking supervision is ... necessary, including legal protection for supervisors.”

<sup>95</sup> See Ross S. Delston, *Statutory Protections for Banking Supervisors*, (Washington: World Bank Group), 1999, ([www1.worldbank.org/finance/html/policy\\_issues\\_debates\\_pubs.html](http://www1.worldbank.org/finance/html/policy_issues_debates_pubs.html)). The paper provides a summary of statutory protection for banking supervisors of central banks and of deposit insurance agencies based on a survey of 20 countries (Australia, Canada, Denmark, Ecuador, Germany, Hong Kong SAR, India, Ireland, Japan, Malaysia, New Zealand, Norway, Philippines, Singapore, South Africa, Spain, Sweden, Switzerland, the United Kingdom, and the United States).

### Box 3-3. Statutory Protection for Officials and Staff of Financial Agencies

In a survey of statutory protection for banking supervisors (includes all directors, officers, and employees of the central bank, the banking regulator, and the deposit insurance corporation, and not only those who are directly associated with banking supervision and examination) the following have been identified as the common elements of such statutory protection<sup>96</sup>:

- **Twelve of the twenty jurisdictions surveyed have specific statutory protections for banking supervisors (as opposed to all government employees).**
  - a) Of those 12, (i) 10 are Commonwealth or former Commonwealth jurisdictions that provide comprehensive coverage: Australia, Canada, Hong Kong, India, Ireland, Malaysia, New Zealand, Singapore, South Africa, and the United Kingdom; (ii) the 11th, the Philippines, has both generic protection for all government employees as well as specific protection for banking supervisors, and (iii) the 12th, Ecuador, has procedural protections that are more limited in nature and apply only to certain officials.<sup>1/</sup>
  - b) The protection extends to all employees of the central bank or banking regulator, with the exception of Ecuador, New Zealand, and the Philippines, which protect only certain officials.<sup>2/</sup>
  - c) In 7 of the 12 such jurisdictions, the government, central bank, or banking regulator itself is protected from civil suit, in addition to the employees of such entities.
- **Of the eight European countries surveyed,**
  - a) six—Denmark, Germany, Norway, Spain,<sup>3/</sup> Sweden, and Switzerland—have generic legal protection for all government employees.
  - b) two—Ireland and the United Kingdom—have specific protection for banking supervisors.
- **Most of the statutes provide that in order for the legal protections to be effective,**
  - a) the employee's work must be performed within the scope of his or her official authority or pursuant to the law that is being administered by the employee, and
  - b) the employee must be acting in good faith or there must be an absence of bad faith. Note that: (i) in the case of Australia, there must be an absence of negligence as well as the presence of good faith in order for the protection to be effective and (ii) in the case of Germany, good faith is an implied condition, and in Switzerland, the Confederation is liable only if the tort was committed unlawfully.
- **Both acts and omissions of employees are typically covered.**
- **All actions by employees under the laws being administered are typically covered.**
- **Regarding coverage of agents (for example, accountants hired under contract to perform a specific task, such as to assist in a bank examination):**
  - a) in 5 of the 20 jurisdictions—Australia, Canada, Ireland, Malaysia, and Singapore—agents or others operating under the direction of the central bank or banking regulator are explicitly covered by the law.
  - b) in 5 others—Germany, Japan, Spain, Switzerland, and the United States—research indicates that the law has been or would be interpreted as covering agents.
- **In two jurisdictions—New Zealand and the Philippines—a limited statutory indemnity is provided in addition to other statutory protections.** Indemnity in this case means protection in law that provide for reimbursement of expenses to defend lawsuits, and, in some cases, the damages themselves, as distinguished from statutory protection that limit the ability of an injured party to bring suit against the government employee or banking supervisor.

<sup>1/</sup> In the case of Ecuador, certain officials of the Central Bank and Deposit Guarantee Agency are protected from civil and criminal liability through the use of specialized administrative procedures to screen accusations, and the process of bank interventions is protected by preventing any legal action brought by third parties from suspending the process until final judgment is rendered.

<sup>2/</sup> With respect to New Zealand and Philippine law, it is the indemnity provisions that contain such limitations.

<sup>3/</sup> Spanish law provides that government agencies may be sued for actions of employees, but does not explicitly protect employees themselves from civil suit.

<sup>96</sup> Adapted from Ross S. Delston, *Statutory Protections for Banking Supervision*, 1999 (see footnote 95).

explicit statutory indemnity for certain banking supervisors. These examples about the legal protection of officials and staff of these agencies are part of the public record and readily accessible to the general public.

### ***Banking regulatory agencies***

In the case of the Superintendency of Banks of Colombia, under the Charter Statute of the Financial System, the Legal Office of the Banking Superintendency is to provide appropriate legal assistance to employees of the Superintendency upon request, whenever, as a result of their duties, authorities of any jurisdiction require them to appear, provided such appearance is not for disciplinary reasons. In addition, the Superintendency has an insurance policy that covers employees who deal with money and assets (those authorizing expenditure), and there is also an insurance policy to cover the costs of legal representation and possible compensation, should the Banking Superintendent be sued.

### ***Composite financial supervisory agencies***

In some countries, laws protect the financial agency itself from any liability. The Australian Prudential Regulation Authority (APRA) is protected along with its employees. The APRA Act also provides protection from liability to APRA, its Board members and its staff members if their actions/omissions were exercised in good faith in the performance of their powers, functions and duties conferred by the Act or any other Commonwealth Law.

### ***Deposit insurance agencies***

Applicable U.S. federal statutes impose criminal penalties on any person threatening, impeding, or harming a banking agency employee who is attempting to carry out the employee's official functions. Applicable federal statutes also protect federal employees from being sued in their individual capacity in a civil action for acts carried out in good faith in the course of their official duties. Applicable "whistleblower" provisions of the U.S. Federal Deposit Insurance Act protect banking agency employees against any inappropriate measures which the person's employer or a bank might take in response to the employee's execution of his or her official duties. The FDIC also has a policy whereby employees subjected to suit arising out of their official duties will be indemnified.

### ***Securities regulatory agencies***

In the case of the Quebec Securities Commission, Canada, governed by the Securities Act of Quebec, a separate provision protects the members and personnel of the Commission, including agents and persons working on behalf of the Commission, from prosecution for official acts carried out in good faith.



### **Implementation considerations**

The system of immunities and protection should be explained thoroughly so as to avoid a market perception that the financial agency staff and officials are above the law. Periodic articles in bulletins and other reports and official statements could be used as a vehicle to disseminate and clarify issues relating to legal protection available to officials and staff of the financial agency in the discharge of their official duties.

