

March 1, 2016

The Honorable Blaine Luetkemeyer
Chairman

The Honorable Emanuel Cleaver, II
Ranking Member

Subcommittee on Housing and Insurance
Committee on Financial Services
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Luetkemeyer and Ranking Member Cleaver:

The American Bankers Association¹ applauds the work of the Subcommittee on Housing and Insurance to bring more attention to the problems of accountability and transparency involved in the development of financial regulatory standards by international organizations. The Subcommittee's February 25, 2016, oversight hearing is important and valuable in demonstrating how U.S. customers of financial services, and the firms that provide those services, are affected by regulatory schemes developed by international bodies. The Basel III capital rules are a prominent example of how well-intentioned ideas can go wrong when global schemes are applied to our localities. We understand that there is consideration of possible legislative steps. We would also recommend consideration of an important administrative step that can be taken even while legislative measures are considered.

Global cooperation on financial regulatory issues can be valuable and important. When these global exercises stray into creating standards accorded the force of law (through implementing rules and regulations), binding on U.S. firms and their customers, serious problems of accountability and transparency arise. The participation of U.S. regulators' in the work of these global groups should be conducted within a framework consistent with law and accessible to full congressional oversight and public review.

International bodies, such as the Basel Committee, issue standards that do not have the formal legal standing of law or treaty, and yet they are accorded nearly inviolable treatment by U.S. regulators. These standards have not been subjected to the important legislative review applied to treaties or trade agreements. They are developed in a murky international process that does not even offer the safeguards and transparency provided in domestic rulemakings by the Administrative Procedure Act (APA). While APA strictures may be applied to follow-on regulations, by that time the regulators have already made up their minds and committed themselves to the global blueprint, the APA

¹ The American Bankers Association is the voice of the nation's \$16 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$12 trillion in deposits and extend more than \$8 trillion in loans.

process effectively made little more than a formality. Yet, despite these shortcomings, international bodies occupy an increasingly important place in setting U.S. domestic policy affecting our entire financial system.

We believe that it is time to revisit how financial regulators interact with international bodies. An essential first step would be to require that our financial regulators provide notice and comment before an international standards negotiation gets underway. This can be done by relying on an important transparency and accountability process that is already part of U.S. administrative process. Specifically, we believe that U.S. regulators should clearly present for public review, including oversight by Congress, the substance and potential scope of a nascent international standard using an Advance Notice of Proposed Rulemaking (ANPR). The ANPR process would allow for broad public input on the clearly outlined goals of the discussion. The ANPR should include a clear statement of the problem or issue to be addressed, the potential approaches for addressing the issue, and the impact of the various approaches on the U.S. economy, on financial institutions, and on their customers.

An example of the importance of such advance public exposure of planned global standard setting would be the adoption of the Basel III capital standards in the United States. Basel III left many smaller banks surprised and frustrated that those standards applied to them and involved mandates and excess complexity inappropriate for the risk involved in their business models.

Prior public discussion of the concepts involved in international standards would increase the possibility for national consensus and provide for better-informed regulatory representation in development of standards that reach across the whole economy. We believe it is essential for the U.S. regulators to publish in an ANPR the following items, among other pertinent matters—

- The issues or problems to be addressed by international standards;
- The nature of the standards being considered for application in the U.S. or affecting U.S. citizens or businesses;²
- The various options likely to be considered; and,
- The anticipated impact of such options on U.S. persons, businesses, and the economy in general.

We recognize that some international bodies, such as the Basel Committee, often do issue proposals for some degree of comment. However, these efforts often come relatively late in the process, after the basic framework has been substantially developed, options have been narrowed, compromises have been made, and a strong degree of international commitment to a new regulatory regime has been reached by the regulatory participants. Moreover, because the discussions usually take place outside of the United States and are usually described as intended to affect institutions that compete at the *global level*, the vast majority of U.S. banks, and the American public in general, are unaware

² ABA also believes that the U.S. regulators should identify which consultative documents, or portions of consultative documents, are *not* being considered for domestic implementation.

of the international proposals and do not monitor or participate in any international comment process. Neither does it appear that Congress is brought actively into the process before U.S. regulators take up domestic implementation of the international agreement.

It is no surprise, then, that the final international Basel III capital standards raised a storm of controversy in the U.S., inasmuch as they were formed without input from Congress, provided very little exposure to comment from much of the U.S. banking industry, and sought no input from millions of bank customers who would be significantly affected by higher costs for and reduced access to banking products and services. Policymakers and the public alike are still trying to address problems in the Basel III accord.

As U.S. regulators prepare to discuss developing standards, they should have a much clearer understanding of to whom and how the standard could apply domestically, and that understanding should be shared with affected banks and their customers. Use of the ANPR process would alert the public that an international standard setter is considering standards, offering the public the critical opportunity to raise important issues with both the U.S. regulators and the international body before global negotiations eliminate options and coalesce around suboptimal approaches.

Improving the accountability and transparency by publishing an ANPR would build upon past precedent of the U.S. banking agencies. In 2003, during the development of the Basel II capital standards, the agencies issued an ANPR that clearly outlined scope, potential regulatory requirements, and asked for comments so that the agencies could “seek appropriate modifications” at the international level. As a result of the Basel II ANPR, bankers throughout the industry knew whether the Basel project would affect them and their customers and with that information could decide whether to participate in the comment process. That in turn stimulated the development of a more tailored approach for the United States, with various options better adapted to the variety in size, complexity, and business models of U.S. banks. Importantly, the public discussion forestalled the unwise implementation of proposed Basel II capital reductions on the eve of the financial crisis of 2008-2009.

We would note that this reform does not require legislation and could be adopted by the regulators immediately. Of course, legislation could also make this standard an important part of American administrative law. Through either approach, we believe that the increased transparency and accountability would improve the quality of international financial standard setting and reduce the likelihood of global standards that are a poor fit for the American economy and the customers of American financial institutions.

Sincerely,



Hugh C. Carney
Vice President of Capital Policy