Response to the CPSS and the IOSCO's Consultative Documents of *Disclosure framework for financial market infrastructures* and *Assessment methodology for the principles for FMIs and the responsibilities of authorities* from Financial Competitive Regime Perspective

Zhen Li*

Kunming Sub-branch of the People's Bank of China

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

For further information, please contact the author freely:

Business Telephone: 0086 871 3212220

Mobile Telephone: 0086 15987109277

Email: leezeng1220@gmail.com

June 2012

---

* Zhen Li is an economic analyst and attorney

从金融竞争制度视角评述国际支付结算体系委员会和国际证监会组织技术委员会联合公布的《金融市场基础设施公开框架》及《金融市场基础设施原则和当局责任测评方式》征求意见稿

李　震*

【中国人民银行昆明中心支行】

1、　本文仅代表作者个人观点，并不必然代表中国人民银行观点。

2、　考虑到行文传统和阅读方便，文章以英文和中文书写，核心内容一致。

联系方式如下：

工作电话：0086 871 3212220

移动电话：0086 15987109277

电子信箱：leezeng1220@gmail.com

二〇一二年 六月

* 李震是经济师、律师

CONTENTS

（目　　录）

I. General Comments 1

II. Disclosure framework for financial market infrastructures... 3

III. Assessment methodology for the principles for FMIs and the responsibilities of authorities 6

IV. Key Affairs about Financial Competitive Regime in China... 9

Reference 12

一、总　评 **..... 15**

二、金融市场基础设施公开框架 **..... 16**

三、金融市场基础设施原则和当局责任测评方式 **..... 18**

四、中国金融竞争制度主要事件 **..... 20**

参考文献 **..... 22**

I. General Comments

Dear Sir or Madam:

I welcome the opportunity to provide comments on the April 2012 consultative documents on *Disclosure framework for financial market infrastructures* and *Assessment methodology for the principles for FMIs and the responsibilities of authorities* issued by the CPSS and the IOSCO.

In July 2011 I provided comments on the March 2011 consultative report on *Principles for financial market infrastructures* issued by the CPSS and the technical committee of the IOSCO. Please see *Response to the CPSS and the Technical Committee of the IOSCO's Consultative Report on Principles for Financial Market Infrastructures from Financial Competitive Regime Perspective*.[1]

This comment integrating the Financial Competitive Regime (FCR) is submitted along with relevant suggestions on two consultative documents and some key affairs about the FCR in China. It is hopeful that the CPSS and the IOSCO can consider them in issuing

[1] Zhen Li, "*Response to the CPSS and the Technical Committee of the IOSCO's Consultative Report on Principles for Financial Market Infrastructures from Financial Competitive Regime Perspective*", July 2011. Available at: www.bis.org/publ/cpss94/cacomments/zhenli.pdf or http://www.iosco.org/library/pubdocs/pdf/IOSCOPD357.pdf

the final document of *Disclosure framework for financial market infrastructures* and *Assessment methodology for the principles for FMIs and the responsibilities of authorities*.

II. Disclosure framework for financial market infrastructures

1. Page 1, paragraph1, "…limit systemic risk and foster financial stability and transparency."

1.1 **Comment:** Since competition plays an essential role in the financial market, fostering competition should be considered as well.

1.2 **Amendment:** "…limit systemic risk and foster financial stability**, competition** and transparency."

2. Page 4, "Principle 1: Legal basis"

2.1 **Comment:** A level playing field is indispensable for the sustainable and inclusive growth of financial market. As a result, ensuring a fair and effective competition environment is the first priority for the legal system.

3. Page 10, "…the size or concentration of positions held by a CCP's participants increases significantly".

3.1 **Comment:** Significant increase in the positions probably results from manipulation and insider trading, which are the

4. Page 27, “Principle 15: General business risk”.

4.1 Comment: Fierce competition is the main business risk for a financial institution.

5. Page 32, “Principle 18: Access and participation requirements”.

5.1 Comment: In general, access means potential participators enter the financial market and compete fairly. Therefore, participation requirements form an integral part of the FCR.

6. Page 34, “Principle 20: FMI links”.

6.1 Comment: When FMI establishes a link between FMIs, the same linking standard should be implemented. Anticompetitive practices such as discrimination and group boycott should be prohibited.

7. Page 36, “Key consideration 3: An FMI should have established mechanisms for the regular review of its efficiency and effectiveness”.

7.1 Comment: These mechanisms should include the one to

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

regularly review the efficiency and effectiveness in the competitive market.

8. Page 38, "…operations, as well as the FMI's and participants' rights and obligations,"

8.1 Comment: The rights should cover the privilege of fair competition, and meanwhile the obligations should cover the prevention against anticompetitive behaviors.

III. Assessment methodology for the principles for FMIs and the responsibilities of authorities

9. Page 3, paragraph 1.2. “This AM is designed to cover all of the types of FMIs to which the principles apply, that is, systemically important payment systems…”

9.1 **Comment:** Systemically important payment systems often enjoy the dominant position. Authorities should enforce the FCR so as to prevent the abuse of a dominant position and the occurrence of any “too-big-to-fail” systemically important payment system.

10. Page 6. “Which authorities to assess”

10.1 **Comment:** The assessment performed by financial supervisor from the risk perspective likely differs from the one by competition authority from the competition perspective. It is crucial for these government agencies to establish a coordination mechanism.

11. Page 12, paragraph 3.2. “In general, the assessment report

11.1 **Comment:** The impact on competition should be included likewise.

11.2 **Amendment:** "In general, the assessment report should identify the main areas of concern that impact financial sector stability, **competition** …"

12. Page 74, KE 1. "Access policies of the FMI"

12.1 **Comment:** Access policies should be fair, open and non-discriminatory.

13. Appendix 4: "Questions by key considerations for the responsibilities of central banks, market regulators, and other relevant authorities for FMIs"

13.1 **Comment:** Competition authorities act as important regulators. For more details, please see *Response to the CPSS and the Technical Committee of the IOSCO's Consultative Report on Principles for Financial Market Infrastructures from Financial Competitive Regime Perspective*.[3]

[3] Zhen Li, "*Response to the CPSS and the Technical Committee of the IOSCO's Consultative Report on Principles for Financial Market Infrastructures from Financial Competitive Regime Perspective*", July 2011. Available at: www.bis.org/publ/cpss94/cacomments/zhenli.pdf or http://www.iosco.org/library/pubdocs/pdf/IOSCOPD357.pdf

14. Page 92, KC E.1 “…wind-down, or resolution of an FMI.”

14.1 **Comment:** Because wind-down and resolution are closely related to the competition in financial market, financial supervisors and competition authorities should intensify cooperation to promote a reasonable competition environment.

14.2 **Addition:** Q.E.1.6: How does the cooperation between financial supervisors and competition authorities promote the reasonable competition environment?

IV. Key Affairs about Financial Competitive Regime in China

Zhen Li submitted one proposal on establishing the FCR to the national decision makers in December 2010. [4] Finance is the lifeline of the national economy, modern economy is institutional one, and sufficient and effective financial market competition will play a significant role in fulfilling national strategies such as containing inflation, transforming the mode of economic growth, macroprudential supervision, job creation and stepping out. In conclusion, in the coming economic development of the twelfth Five-Year Plan period, the FCR should be established as soon as possible. After three months, "The National Economic and Social Development twelfth Five-Year Plan Compendium" was promulgated. The compendium adopts Zhen Li's opinion and explicates the strategic principle of **Enhancing the Competition to Promote the Development**.

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

[4] Zhen Li, "*Enhancing the Financial Competition to Promote the Scientific Development in the 12th Five-Year National Plan*", China Economic Herald, December 21, 2010. Available at: http://www.ceh.com.cn:8080/epaper/ceh/20101221/B05/B05_56.htm

draft a proposal on setting up the FCR. In the proposal Mr. Yang analyzed realistic values of the FCR for Chinese economic development, suggested to amend the legal framework of the FCR, and sketched a new framework for the executive mechanism of the FCR. [5]

National People's Congress of China, an official journal of National People's Congress, published an article on "Establishing Financial Competitive Regime to Protect Financial Consumers" in November 2011, which indicates China's supreme legislature recognizes the realistic values of the FCR for the first in history. [6]

The 4th National Financial Work Conference was convened on January 6th 2012 in China. Premier Wen Jiabao attended and announced to deepen financial institutions' reform and to break the monopoly effectively. [7] In fact, the financial anti-monopoly is the core for the FCR.

On 28th March 2012 China State Council approved Wenzhou

---

[5] Yang Xiaoping, "*Proposal on Establishing Financial Competitive Regime*", Financial News, March 11, 2011. Ou Yang and Dong Xiao, "*Financial Representatives of NPC & CPPCC Discuss Over Domestic Issues*", Financial Analyst, March 2011.

[6] "*Establishing Financial Competitive Regime to Protect Financial Consumers*", National People's Congress of China, issue 19, November 2011. Available at: http://www.npc.gov.cn/npc/zgrdzz/2011-10/27/content_1677259.htm

[7] "*The National Financial Work Conference was convened in Beijing*". Please visit China government website. Available at: http://www.gov.cn/ldhd/2012-01/07/content_2038988.htm

financial reform zone. From on 1st April through 3rd April Chinese Premier Wen Jiabao conducted a field research in Fujian province and emphasized the Central Committee of the Communist Party of China and Central Government have already reached consensus over breaking the monopoly in financial sector. In essence, the Wenzhou financial reform program encourages private capital into the financial sector with the ultimate intent to unprecedentedly break up bank monopoly by enforcing financial antimonopoly policy.[8]

[8] Zhen Li, "*Establishing Wenzhou financial zone to explore a path to Chinese financial reform*", the Study Times affiliated with the Party School of the Communist Party of China Central Committee, April 9, 2012. Available at: http://www.studytimes.com.cn:9999/epaper/xxsb/html/2012/04/09/01/01_40.htm

Reference

1. Zhen Li, "*Response to Basel Committee's Consultative Proposals to Strengthen the Resilience of the Banking Sector from Financial Competitive System Perspective*", April 2010. Available at: http://www.bis.org/publ/bcbs165/zhenli.pdf
2. Zhen Li, "*Response to Basel Committee's Consultative Document of Countercyclical Capital Buffer Proposal from the Perspective of Financial Competitive Regime*", September 2010. Available at: http://www.bis.org/publ/bcbs172/zhenli.pdf
3. Zhen Li, "*Response to Basel Committee's Consultative Document on Range of Methodologies for Risk and Performance Alignment of Remuneration from Financial Competitive Regime Perspective*", December 2010. Available at: http://www.bis.org/publ/bcbs178/zhenli.pdf
4. Zhen Li, "*Response to the CPSS and the Technical Committee of the IOSCO's Consultative Report on Principles for Financial Market Infrastructures from Financial Competitive Regime Perspective*", July 2011. Available at: www.bis.org/publ/cpss94/cacomments/zhenli.pdf or http://www.iosco.org/library/pubdocs/pdf/IOSCOPD357.pdf
5. Zhen Li, "*Response to the Financial Stability Board's*

Consultative Document of Effective Resolution of Systemically Important Financial Institutions from Financial Competitive Regime Perspective", September 2011. Available at: http://www.financialstabilityboard.org/press/c_110909fff.pdf

6. Zhen Li, "*Enhancing the Financial Competition to Promote the Scientific Development in the 12th Five-Year National Plan*", China Economic Herald, December 21, 2010. Available at: http://www.ceh.com.cn:8080/epaper/ceh/20101221/B05/B05_56.htm
7. Yang Xiaoping, "*Proposal on Establishing Financial Competitive Regime*", Financial News, March 11, 2011.
8. Ou Yang and Dong Xiao, "*Financial Representatives of NPC & CPPCC Discuss Over Domestic Issues*", Financial Analyst, March 2011.
9. "*Establishing Financial Competitive Regime to Protect Financial Consumers*", National People's Congress of China, issue 19, November 2011. Available at: http://www.npc.gov.cn/npc/zgrdzz/2011-10/27/content_1677259.htm
10. "*The National Financial Work Conference was convened in Beijing*". Please visit China government website. Available at: http://www.gov.cn/ldhd/2012-01/07/content_2038988.htm

11. Zhen Li, "*Establishing Wenzhou financial zone to explore a path to Chinese financial reform*", the Study Times affiliated with the Party School of the Communist Party of China Central Committee, April 9, 2012. Available at: http://www.studytimes.com.cn:9999/epaper/xxsb/html/2012/04/09/01/01_40.htm

一、总　评

尊敬的女士和先生：

非常感谢有机会对国际支付结算体系委员会和国际证监会组织技术委员会在 2012 年 4 月联合公布的《金融市场基础设施公开框架》及《金融市场基础设施原则和当局责任测评方式》征求意见稿发表评论。

我曾在 2011 年 7 月就国际支付结算体系委员会和国际证监会组织技术委员会在 2011 年 3 月联合公布的《金融市场基础设施准则（征求意见稿）》进行评论。请见《从金融竞争制度视角评述国际支付结算体系委员会和国际证监会组织技术委员会联合公布的<金融市场基础设施准则>征求意见稿》。[9]

本评论从金融竞争制度的视角分别就两份征求意见稿的相关内容提出建议，并简要介绍了中国金融竞争制度主要事件，希望国际支付结算体系委员会和国际证监会组织技术委员会在最终颁布《金融市场基础设施公开框架》及《金融市场基础设施原则和当局责任测评方式》时能够采纳。

[9] 李震，“从金融竞争制度视角评述国际支付结算体系委员会和国际证监会组织共同公布的《金融市场基础设施原则》征求意见报告”，载于“巴塞尔委员会”和“国际证监会”，2011 年 7 月。网址：http://www.bis.org/publ/cpss94/cacomments/zhenli.pdf 或者 http://www.iosco.org/library/pubdocs/pdf/IOSCOPD357.pdf

二、金融市场基础设施公开框架

1. 第 1 页，第 1 段，“……限制系统风险，培育金融稳定和透明。”

1.1 评论：因为竞争对于金融市场起到了关键的作用，还应当考虑培育竞争。

1.2 修改：“……限制系统风险，培育金融稳定、竞争和透明。”

2. 第 4 页，“原则 1：法律基础”

2.1 **评论：**公平的竞争平台对于金融市场的可持续包容发展至关重要。所以，培育公平有效的竞争环境是法律体系的第一要务。

3. 第 10 页，“中央结算对手参与者大幅增加持有头寸的规模或者集中度。”

3.1 **评论：**头寸的大幅增加有可能是由于操纵或者内幕交易所致。而操纵及内幕交易是金融反垄断规制目标。

4. 第 27 页，“原则 15：总体的商业风险”

4.1 **评论：**对于金融机构而言，激烈竞争是主要的商业风险之一。

5. 第 32 页，“原则 18：准入和参与条件”

5.1 **评论：**总体而言，准入意味着潜在参与者进入金融市场公平竞争。所以参与条件形成了金融竞争制度的组成部分。

6. 第 34 页，“原则 20：金融市场基础设施连接”

6.1 **评论：**在金融市场基础设施相互连接时，应当执行相同的连接标准。诸如“歧视”和集体抵制等的反竞争行为应被禁止。

7. 第 36 页，“关键考虑 3：金融市场基础设施应当建立对效率和效果的定期审查机制”

7.1 **评论：**该机制应包括对竞争性市场的效率和效果的定期审查机制。

8. 第 38 页，“关键考虑 2：……，以及金融市场基础设施和参与者的权利义务”

8.1 **评论：**权利包括公平竞争的基本权利；义务包括防止实施反竞争行为。

三、金融市场基础设施原则和当局责任测评方式

9. 第 3 页，第 1.2.段，“设计本测评方式覆盖原则使用的所有金融市场基础设施种类，那就是，系统重要性支付系统，……”

9.1 **评论：**系统重要性支付系统享有市场支配地位，应通过实施金融竞争制度，防止系统重要性支付系统滥用支配地位，同时，防止任何“大而不倒”系统重要性支付系统的出现。

10. 第 6 页，“测评当局”

10.1 **评论：**金融当局从风险角度进行的测评可能与竞争当局从竞争角度进行的测评出现分歧。这些政府部门间建立协调机制是非常关键的。

11. 第 12 页，第 3.2.段“通常，测评报告应当明确影响金融业稳定……等主要领域的问题”

11.1 **评论：**也应包括影响金融市场竞争

11.2 **修改：**“通常，测评报告应当明确影响金融业稳定，金融市场竞争……等主要领域的问题”

12. 第 74 页，KE1.“金融市场基础设施准入政策”

12.1 **评论：**准入政策应当公平、公开，且非歧视。

13. 附录 4，“中央银行、市场监管者和金融市场基础设施其它当局主要考虑的责任问题”

13.1 **评论：**竞争监管部门是重要的市场监管者。其它内容请参考《从金融竞争制度视角评述国际支付结算体系委员会和国际证监会组织技术委员会联合公布的<金融市场基础设施准则>征求意见稿》。[10]

14. 第 92 页，KC E1. “……金融市场基础设施的停业或者处置”

14.1 **评论：**停业或者处置与金融市场竞争关系密切，所以，金融当局与竞争部门应加强合作促进合理的竞争环境。

14.2 **增加：**Q.E.1.6:金融当局和竞争当局的合作是如何促进合理的竞争的环境？

[10] 李震，“从金融竞争制度视角评述国际支付结算体系委员会和国际证监会组织共同公布的《金融市场基础设施原则》征求意见报告”，载于“巴塞尔委员会”和“国际证监会”，2011 年 7 月。网址：http://www.bis.org/publ/cpss94/cacomments/zhenli.pdf 或者 http://www.iosco.org/library/pubdocs/pdf/IOSCOPD357.pdf

四、中国金融竞争制度主要事件

2010 年 12 月，李震向国家决策层提交了建立金融竞争制度的建议。金融是经济的命脉，现代经济又是制度经济，而充分且有效的金融竞争对于遏制通货膨胀、转变经济发展方式、实施宏观审慎监管、增加就业、执行“走出去”等国家战略有着不可或缺的重要作用。所以，在经济发展的第十二个五年规划阶段，应尽快考虑建立金融竞争制度。[11] 三个月后，《国民经济和社会发展第十二个五年规划纲要》出台，《规划纲要》采纳了李震的观点，明确了“**以竞争促发展**”的战略准则。

2011 年 3 月，十一届全国人大四次会议在北京召开。其间，李震协助杨小平代表草拟并提出了建立金融竞争制度的建议。杨先生在建议中分析了金融竞争制度对于中国经济发展的现实价值，建议修改金融竞争制度的法制框架，并勾勒了金融竞争制度执法机制的新框架。[12]

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

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

[12] 杨小平，“关于建立金融竞争制度的建议”，载于《金融时报》，2011 年 3 月 11 日。
欧阳、冬晓，“金融界部分两会代表委员为‘十二五’建言献策”，载于《中国金融家》，2011 年 3 月，第 3 期。

国最高立法当局在历史上首次认可金融竞争制度的现实价值。[13]

2012 年 1 月 6 日，中国召开了第四次全国金融工作会议。温加宝总理出席并宣布，“深化金融机构改革……切实打破垄断”。[14] 事实上，金融反垄断是金融竞争制度的核心所在。

2012 年 3 月 28 日，中国国务院批准温州金融综合改革试验区。4 月 1 日至 3 日，温家宝总理在福建省调研时强调，中央已经统一思想要打破金融垄断。本质上看，温州金融改革计划鼓励民间资本进入金融领域，其最终目标就是通过实施金融反垄断政策来史无前例地打破银行垄断。[15]

[13] “建立金融竞争制度 保障金融消费者权益”，载于《中国人大》杂志， 2011 年 10 月，第 19 期。网址：http://www.npc.gov.cn/npc/zgrdzz/2011-10/27/content_1677259.htm

[14] “全国金融工作会议在京召开”，中国政府网。网址：http://www.gov.cn/ldhd/2012-01/07/content_2038988.htm

[15] 李震，“设立温州金融试验区为金融改革探路”，载于《中共中央党校学习时报》，2012 年 4 月 9 日，第 1 版。网址：http://www.studytimes.com.cn:9999/epaper/xxsb/html/2012/04/09/01/01_40.htm

参考文献

1. 李震，“从强化金融竞争制度视角入手对巴塞尔委员会公布的有关增强银行体系稳健性的一揽子政策建议草案提出改进建议”，载于“巴塞尔委员会”，2010 年 4 月。网址：http://www.bis.org/publ/bcbs165/zhenli.pdf
2. 李震，“从金融竞争制度角度对巴塞尔委员会颁布的《逆周期资本缓冲建议》进行评述”， 载于“巴塞尔委员会”，2010 年 9 月。网址：http://www.bis.org/publ/bcbs172/zhenli.pdf
3. 李震，“从金融竞争制度视角评述巴塞尔银行委员会拟颁布的《兼顾风险与绩效的薪酬制度》”，载于“巴塞尔委员会”，2010 年 12 月。网址：http://www.bis.org/publ/bcbs178/zhenli.pdf
4. 李震， “从金融竞争制度视角评述国际支付结算体系委员会和国际证监会组织共同公布的《金融市场基础设施原则》征求意见报告”，载于“巴塞尔委员会”和“国际证监会”，2011 年 7 月。网址：http://www.bis.org/publ/cpss94/cacomments/zhenli.pdf 或者 http://www.iosco.org/library/pubdocs/pdf/IOSCOPD357.pdf
5. 李震，“从金融竞争制度视角评述金融稳定理事会发布的《系统重要性金融机构有效处置》征求意见稿”，载于“金融稳定理事会”，2011 年 9 月。网址：http://www.financialstabilityboard.org/press/c_110909fff.pdf

6. 李震，“以金融竞争促‘十二五’科学发展”，载于《中国经济导报》，2010 年 12 月 21 日，第B05 版。网址：http://www.ceh.com.cn:8080/epaper/ceh/20101221/B05/B05_56.htm
7. 杨小平，“关于建立金融竞争制度的建议”，载于《金融时报》，2011 年 3 月 11 日。
8. 欧阳、冬晓，“金融界部分两会代表委员为‘十二五’建言献策”，载于《中国金融家》，2011 年 3 月，第 3 期。
9. “建立金融竞争制度 保障金融消费者权益”，在于《中国人大》杂志，2011 年 10 月，第 19 期。网址：http://www.npc.gov.cn/npc/zgrdzz/2011-10/27/content_1677259.htm
10. “全国金融工作会议在京召开”，中国政府网。网址：http://www.gov.cn/ldhd/2012-01/07/content_2038988.htm
11. 李震，“设立温州金融试验区为金融改革探路”，载于《中共中央党校学习时报》，2012 年 4 月 9 日，第 1 版。网址：http://www.studytimes.com.cn:9999/epaper/xxsb/html/2012/04/09/01/01_40.htm