

**Response to the FSB about Guidance on Supervisory  
Interaction with Financial Institutions on Risk  
Culture from the Financial Competitive Regime  
Perspective**

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- 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.**

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January 2014

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从金融竞争制度视角评述金融稳定理事会公布的  
《金融机构风险文化监管互动指引》  
征求意见稿

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- 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。

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## I. General Comments

Dear Sir or Madam:

I welcome the opportunity to provide comments on the November 2013 consultative document and December 2013 questions for public consultation on *Guidance on Supervisory Interaction with Financial Institutions on Risk Culture (Guidance)* issued by the FSB.

Even though the consultative document contains foundational elements, indicators and general supervisory guidance, it neglects the important role that the competition secured by the Financial Competitive Regime (FCR) plays in the risk culture. **It is highly recommended that the FSB should consider the value of the competition and integrate the FCR into the final Guidance.**

## **II. Consultative Document on Increasing the Intensity and Effectiveness of Supervision**

The paragraph 2 of page 1 describes “LIBOR manipulation”. In this global egregious event dozens of international financial institutions including Barclay, UBS, RBS, Deutsche Bank, JPMorgan and Citigroup, colluded to rig the LIBOR and violated the competition codes, which prohibit the conspiracy among the competitors. Accordingly, the financial industry as a whole requires fostering the financial competitive ecological culture, which should be deemed as one of the pillars of the risk culture.

The paragraph 3 of page 1 describes “Differences in risk culture might be driven in part by differences in corporate and also national cultures.” Traditional Chinese culture lacks the competition culture ruled by law, and such weakness results in the operational risk in the domestic financial institutions. For example, WTO ruled against China UnionPay, an electronic payment services provider, for violating the Chinese GATS commitments on 31 August 2012.<sup>1</sup>

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<sup>1</sup> [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds413\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds413_e.htm)

The footnote 6 of page 1 describes “mergers and acquisitions”. In order to maintain the level playing field in the financial sector, the national competition agencies and financial supervisors should scrutinize the M&A to avoid distorting the competition.

3.1.13 of Page 6 describes “Assessment and communication of lessons learned from past errors is seen as an opportunity to strengthen the institution’s risk culture, and to enact real changes for the future.” Libor manipulation scandal is a typical event that systemically important financial institutions (SIFIs) have widely ignored the compliance to the competition rules. In another word, financial competition culture secured by the FCR should be fostered immediately as a key component of the traditional risk culture in the financial sector. According to *the Decision on Major Issues concerning Comprehensive Deepening Reforms* released on November 12, 2013, the CPC Central Committee decided to establish the National Security Committee. Because finance is the blood to the whole economy, it is urgent for China, as a sovereign state, to establish the National Financial Security Strategy Defense System (NFSSDS).<sup>2</sup>

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<sup>2</sup> Zhen Li, “An Innovative View on Financial Reform under the Background of Rule by Constitution”, *Study Times*, January 14, 2013.

### **III. Questions for Public Consultation**

**Question 1:** Are there areas not addressed in the Guidance that should be considered in assessing risk culture?

**Answer:** Yes. Firstly, the Guidance does not define the Risk Culture. Secondly, the financial competition culture secured by the FCR should be considered in the Guidance.

**Question 6:** What suggestions do you have to improve the engagement of supervisors with financial institutions on risk culture, in particular when discussing the underlying causes of behavioural weaknesses?

**Answer:** The whole society should fully respect the value of fair competition as Chinese president Xi Jinping underlined “to further cultivate a development environment of the fair competition” during the third Plenary Session of 18th CPC Central Committee in 2013. The regulators should consequently supervise the behaviors of the financial institutions from the FCR perspective.

**Question 12:** Are there useful descriptors of an institution’s risk culture, both good and bad, that would be helpful to include in an

attachment to the paper? For example “growth for growth’s sake” or “it’s someone else’s problem”.

**Answer:** Yes. “competition for competition’s sake”. In fact, both competition failure and excessive competition in the financial market are the root causes of the risk within the modern economy.



## **IV. LIBOR Scandal Slammed in China**

Along with global investigation into Libor rigging widening, a Chinese lawyer filed a complaint to 8 Chinese top agencies against UBS, RBS, and 10 other international leading financial institutions over manipulating Libor in December 2013. He accused that from at least 2006 through 2010 China possessed a large amount of US treasury bonds pegged to the Libor, and meanwhile thousands of Chinese consumers and investors purchased financial products referencing the same benchmark interest rate. As a result, both the national interest and the people's interest are badly infringed.

The lawyer emphasized 12 financial institutions, in order to reap higher profits, violated the Anti-monopoly Law of the People's Republic of China and the Criminal Law of the People's Republic of China by rigging Libor or colluding fixing Libor in a direction favorable to their trading positions. Accordingly, the complaint was posted to the anti-monopoly enforcement agencies and the judiciaries.

The anti-monopoly enforcement agencies are the State Council

Antimonopoly Commission, the Ministry of Commerce, the State Administration for Industry and Commerce, the National Development and Reform Commission, and the China Banking Regulatory Commission.

The judiciaries are the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security.

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## 第一部分：总评

尊敬的女士和先生：

非常感谢有机会对金融稳定理事会 2013 年 11 月公布的《金融机构风险文化监管互动指引（征求意见稿）》和 2013 年 12 月公布的《指引（公众征求问题）》发表评论。

虽然征求意见稿包含了基本要素、指标和一般监管指引等三部分，但却忽略了通过实施金融竞争制度来确保的竞争对于风险文化所起的重要作用。建议金融稳定理事会能考虑竞争的价值，并将金融竞争制度整合至最终的《指引》文件中。

## 第二部分：增加监管强度和效率的征求意见稿

第一页第 2 段指出：“伦敦银行间同业拆借利率（LIBOR）操纵”。在此全球性的恶劣事件中，包括巴克莱银行、瑞士银行、苏格兰皇家银行、德意志银行、摩根大通银行和花旗集团等在内的数家国际金融机构串谋操纵 LIBOR，违反了禁止竞争者合谋的竞争规则。所以，作为一个整体而言，金融业急需培育金融竞争生态文化，该生态文化应被视为是风险文化的支柱之一。

第一页第 3 段指出：“风险文化的差异可能部分是由企业和国家的文化差异所致。”传统中国文化缺乏法治竞争文化，此不足导致了国内金融机构的运行风险。例如：2012 年 8 月 31 日，世界贸易组织（WTO）裁定，电子支付服务商中国银联违反中国入世的《服务贸易总协定（GATS）》承诺<sup>3</sup>。

第一页脚注 6 指出：“并购”。为了维护金融市场的竞争平衡，国家竞争执法部门和金融监管当局应当审查并购以避免扭曲竞争。

第六页 3.1.13 指出：“对以往错误教训的测评和交流被视为是强化机构风险文化的机会，也是为未来真正变革采取行动的机会。”

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<sup>3</sup> [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds413\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds413_e.htm)

LIBOR操纵丑闻是系统重要性金融机构（SIFIs）广泛地漠视遵守竞争规则的典型事件。易言之，以金融竞争制度确保的金融竞争文化应当尽快培育，并作为金融领域内传统风险文化的关键组成部分。根据2013年11月12日发布的《关于全面深化改革若干重大问题的决定》，中共中央将建立国家安全委员会。由于金融是经济的命脉，对于作为主权国家的中国而言，加紧建立国家金融安全战略防御体系已迫在眉睫。<sup>4</sup>

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<sup>4</sup> 李震，“依宪治国背景下创新金融改革视角”，《学习时报》，2013年1月14日。

### 第三部分：面向公众征求问题

**问题 1：**《指引》是否有未提及但在测评风险文化时却应当考虑的领域？

**答案：**有的。第一，《指引》没有为风险文化下定义；第二，应当在《指引》中考虑由金融竞争制度所确保的金融竞争文化。

**问题 6：**对于提升监管者对金融机构竞争文化的参与您有何建议，尤其是当讨论行为弱点的潜在风险时？

**答案：**整个社会应当充分尊重公平竞争的价值，正如中国国家主席习近平在 2013 年 11 月中国共产党第十八届中央委员会第三次全体会议上强调的“进一步形成公平竞争的发展环境”。所以，当局应当从金融竞争制度的角度来监管金融机构的行为。

**问题 12：**是否存在包含在征求稿附件中有用的既好又坏的机构风险文化描述？例如：“为增长而增长”或者“这是别人的问题”

**答案：**有的。“为竞争而竞争”。事实上，金融市场内的竞争失败和过度竞争都是现代经济中的风险根源。



## 第四部分：LIBOR丑闻在中国备受指责

随着全球调查 LIBOR 操纵案的范围不断扩大，2013 年 12 月，一名中国律师向中国的八家顶层部门举报了瑞士银行、苏格兰皇家银行以及其他十家国际知名金融机构操纵 LIBOR。其指称，至少在 2006 年至 2010 年期间，中国持有大量与 LIBOR 挂钩的美国国债，数以万计的中国消费者和投资者同时还购买了参照相同基准利率的金融产品。所以，中国的国家利益和人民利益都受到了严重侵害。

该律师强调，为了获得更高的利润，十二家金融机构朝着有利于自己的交易仓位操纵 LIBOR 或者串谋固定 LIBOR，违反了《中华人民共和国反垄断法》和《中华人民共和国刑法》。所以，向反垄断执法部门和司法部门举报。

反垄断执法部门是：国务院反垄断委员会、商务部、国家工商行政管理总局、国家发展和改革委员会和中国银行业监督管理委员会。

司法部门是：最高人民法院、最高人民检察院和公安部。

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