



## **Interim Report of the IIF Committee on Market Best Practices**

**April 2008**



On behalf of the Institute of International Finance Committee on Market Best Practices, we are pleased to present this Interim Report of the Committee.

This Interim Report is a critical step in the work of the IIF Committee on Market Best Practices. Announced during the Institute's 25th Anniversary Membership Meeting in Washington last October by Dr. Josef Ackermann as Chairman of the IIF Board, the Committee has been focused on developing an industry consensus on tangible ways to address market weaknesses to rebuild market confidence via best-practice recommendations.

This Interim Report represents the culmination of the work to date of the Committee and its Working Groups, and reflects extensive input provided by the IIF Board and others. This Interim Report reviews the fundamental issues posed by the recent market stress and provides clear indications of the direction of our thinking for best-practice recommendations. Our goal is to develop these recommendations, which, when adopted, can contribute not only to orderly management of the market stress, but importantly, to preventing recurrences of similar crises in the future. The discussion is organized around the areas of risk management; incentives; conduits and liquidity risk; valuation; credit underwriting standards; ratings process; transparency and disclosure; and the role of efficient and effective regulation.

On the basis of this Interim Report, the Committee will proceed to finalize recommendations for publication this summer. The Committee and the Working Groups would welcome comments or suggestions from all interested parties on this Interim Report as we move into this next phase of our work.

This Interim Report has benefited greatly from discussions with key members of the official and regulatory communities in recent months. The Institute looks forward to continuing the dialogue with the public sector, as both the public and the private sectors move forward with their respective efforts to rebuild market confidence.

The Institute is grateful for the remarkable commitment of time and resources by member firms in the development of this Interim Report. A list of Committee and Working Group representatives accompanies this Interim Report.

With the completion of this Interim Report, the Committee and its Working Groups now plan to turn to the preparation of a full report of the Committee, which will include definitive recommendations for best practices in the areas discussed above. We look forward to releasing this final report by June.



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## Interim Report of the IIF Committee on Market Best Practices

1. In response to the strains that originated from the deterioration of the US subprime mortgage market, the IIF has convened a Committee on Market Best Practices (the “Committee”).<sup>1</sup> Rapidly developing ramifications of market stress have revealed major points of weaknesses in business practices and market dynamics, particularly but not exclusively related to the dramatic growth of complex structured products.
2. The areas of weakness revealed include deteriorating lending standards by certain originators of credit prior to summer 2007; a decline of underwriting standards both with respect to the packaging of structured products and leveraged loans; excessive reliance on poorly understood, poorly performing, and less than adequate ratings of structured products; valuation difficulties as assets shifted quickly from liquid to illiquid; purchase of structured products without full appreciation of the risks; liquidity risk and reputational risk exposure of conduits and structured investment vehicles with major adverse implications for sponsoring banks; and difficulties in identifying where exposures reside in a world of widely dispersed risks.
3. There were significant differences in the ways these weaknesses affected different products and different firms and indeed many financial institutions, especially those in emerging markets, were able to avoid the major consequences of the market stress. But the overall effects have, to date, largely been broad and deep both financially and economically. The industry as a whole recognizes its responsibility and is fully determined to address them in ways that will rebuild market confidence and head off recurrences. This report looks at the issues primarily from an investment-banking and commercial-banking point of view, with reference to investor, insurance, and rating-agency perspectives (subject to the caveat in the Rating Process Issues section below). As we develop the final report, consideration will be given as to how to

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<sup>1</sup> The Committee, chaired by Rick Waugh, President and CEO, Scotiabank; and Cees Maas, Honorary Vice-Chairman and Former Chief Financial Officer, ING, has established five Working Groups to address the most relevant issues to the market stress: **Risk Management and Credit Underwriting Practices**, chaired by Koos Timmermans, Executive Board and Chief Risk Officer, ING; **Conduits and Liquidity Risk Issues**, chaired by Bob Brooks, Vice-Chairman and Group Treasurer, Scotiabank; **Valuation Issues**, chaired by Darryll Hendricks, Managing Director and Global Head of Quantitative Risk Control, UBS; **Ratings Process Issues**, chaired by Patricia Jackson, Partner, Ernst & Young; and **Transparency and Disclosure**, chaired by Didier Hauguel, Chief Risk Officer, Société Générale.

incorporate better the views of insurance and other important non-bank financial institutions.

4. The objective of the Committee is to arrive at broad agreement and commitment to implement changes in practices to address weaknesses in the form of best-practice recommendations or possible codes of conduct. This Interim Report summarizes voluminous work in progress that will lead to publication of detailed recommendations this summer, and which has benefited from dialogue with the official and regulatory community. That final report will take full advantage of the work that is becoming available from public-sector bodies such as the Financial Stability Forum, the Senior Supervisors Group and national bodies such as the UK FSA and the US President's Working Group on Financial Markets. The IIF Board of Directors reviewed and endorsed the overall direction of the work being done and looks forward to the Committee's final report.
5. This Interim Report briefly reviews fundamental issues of market turmoil and gives indications about the best-practice recommendations being developed, the adoption of which by the industry should contribute to preventing a recurrence of the turmoil experienced over the past several months and strengthen the overall framework for sound risk management. It should be underscored that the present document makes broad generalizations based on developing understanding of principles that need to be applied across the board. It should not be understood to imply that issues arise with the same intensity for all firms and all products. Indeed, sound practice was applied by many firms, but without sufficient consistency or breadth across the industry to correct the negative dynamics that have spread through so many credit market sectors.

#### **I. Analysis of Market Events: The Financial Stress and its Key Features**

6. The developments that led to the strain since last summer are familiar, but worth recalling. An extended period of ample global liquidity and low interest rates provided a fertile ground for financial excesses. Large amounts of money available for investment led to compressed spreads, and increasingly aggressive and sometimes lax lending and underwriting standards became notable as the credit cycle reached mature stages in 2005-2006. Particularly in the US subprime mortgage market, mortgages were written with progressively more aggressive terms, often offered by substantially unregulated mortgage originators. There appears to have been a widespread assumption of continued escalation of real estate prices, and there are indications there was increasing fraud, at a time of generally declining due diligence. Indeed, the terms implied in a "subprime" mortgage changed over time, and, equally importantly, consumer behavior with respect to default on mortgage debt changed in ways that were not anticipated by rating-agency or industry analysts.
7. In addition, some structural factors within the changing global financial market landscape have been at work to give the current episode something of an

unprecedented nature. Over a number of years, the markets shifted to an “originate-to-distribute” model in which credit that once would have been retained by banks on their own books was converted into market products of increasing sophistication and complexity. Banks sought to optimize use of capital by getting assets off their books, and accounting and regulatory standards encouraged more recognition of upfront fee income.

8. The ability to distribute credit risk away from the banking system – through the use of structured products – to investors with an appetite for it has produced significant benefits for the functioning of financial markets, with positive economic impact. A shift of the dominant business model from “buy and hold” toward “originate-to-distribute” has allowed investors to gain access to a wider range of financial products, including tailor-made products, thus facilitating portfolio optimization through diversification and risk management through hedging.
9. For the “originate-to-distribute” model to work effectively, however, all participants must observe high standards of risk management and disclosure and have in place sound incentive structures. Also, credible and well-understood ratings are essential to help gauge relative risks. In the context of the unusually accommodating financial conditions of the few years through 2007, however, those basic requirements for a viable “originate-to-distribute” model were too often not met.
10. The ongoing turmoil is the result, calling into question many aspects of the “originate-to-distribute” model and structured products. It is clear that realizing the full constructive potential of that model will require focused attention to address shortcomings in market practices that were seen in the run-up to the turmoil. The Committee’s five Working Groups are dealing squarely with those issues, taking into account the steps that individual firms have already started taking to remedy the situation.
11. Mortgages were the segment of the financial market where the “originate-to-distribute” model developed earliest and most extensively. In the United States, where subprime mortgages progressively came to assume an increasing share of the whole market in the past few years, such mortgages were securitized into a significant volume of structured products. Those developments reflected investors’ search for yield and market pressure by analysts and investors on firms for short-term results. In many cases, firms’ behavior was driven by incentive structures focused on short-term performance.
12. Since last summer, ratings of structured products have proved very volatile relative to their past performance and that of ratings on corporate and sovereign bonds. This reflects particular features (such as event triggers) of complex structures, the implications of which have been underestimated by firms, investors and the rating agencies.

13. A rise in subprime delinquencies that accelerated toward summer 2007, along with multi-notch ratings downgrades in many mortgage-linked securities, led to elevated uncertainty about ratings, asset values and creditworthiness of counterparties. This, in turn, contributed to plummeting liquidity for subprime-linked products and tainted the much larger markets for other structured products. Markets' attention then focused on conduits and SIVs, many of which were set up by banks to warehouse undistributed CDO tranches and funded by short-term ABCP. Investors in money-market funds moved out of ABCP and other structured assets to such safer assets as Treasury bills or bank deposits. Denied funding and faced with very tight "triggers" potentially requiring wide liquidations of assets, certain conduits and SIVs came to the point where they had to draw upon backstop bank lending lines or their sponsors chose to take the assets onto their balance sheets.
14. Disappearing marketability and sharply increased doubts about valuations of complex products and structured vehicles fed each other to bring markets in certain asset classes to a virtual halt, with transactions that have taken place marked by huge discounts. Leading banks faced a surge in potential liquidity demands and were sometimes led, despite the lack of legal obligation, to bring assets onto their own balance sheets for reputational risk reasons or to avoid firesales. Faced with highly uncertain potential demands for liquidity, banks became reluctant to participate in money markets beyond very short terms. At the same time, non-bank participants in the money markets became highly averse to investing in credit instruments of private issuers beyond very short terms. With this, subprime credit problems turned into a systemic liquidity crunch, with term money markets being the center of the storm. Meanwhile, leading financial firms faced substantial writedowns, inducing some of them to replenish capital.
15. Sustained and increasingly coordinated liquidity infusion by central banks has reduced the tension in term money markets. However, financial markets more generally remain under stress, weighed down by continuing uncertainties about problems that could suddenly emerge, which could lead to additional substantial markdowns. The recent event involving a major US non-bank financial firm had potential systemic implications, prompting the Federal Reserve to take exceptional steps to deal with it. There are also growing signs that financing of operations by hedge funds and others has become problematic and that margin calls have had an increasing impact on the market. Highly precarious global growth and inflation prospects are magnifying financial market anxiety.

## **II. Development of Best-Practice Recommendations: Current Thinking and Direction of Efforts**

16. What follows reflects current thinking out of which specific, actionable recommendations are being developed in detail and with specificity. As this is an Interim Report, much thinking reflected here will be amplified going forward and it is

quite possible that some ideas will be changed or found not productive as they are taken forward toward the final report.

17. Financial innovation has created new credit and new real wealth, but to address the deficiencies in the system, the industry must raise standards that will be applied rigorously in all firms and to all products. In so doing, it must strengthen risk management within firms and also with respect to conduits and other vehicles; revise incentive structures; enhance transparency of the rating system; provide more useful disclosure; and address the valuation problems faced in a mark-to-market world in times of low liquidity, which exacerbates volatility.
18. Taking the view that consistent achievement of high standards requires a shared sense of norms and yardsticks to help avoid backsliding, the IIF will recommend a suite of best practices to be embraced voluntarily, perhaps in the context of a “code of conduct” to which the world’s leading financial institutions could subscribe. Because there are substantial differences in business models, mix of business, exposures, regulatory oversight and culture, there is unlikely to be a single solution to any issue that would be optimal for all firms and all circumstances. Thus, “best practice” as used here is not a legal obligation but a high standard for firms to apply in developing solutions appropriate to their own situations.
19. The IIF will also consider ways to monitor industry performance against these yardsticks over time, to identify areas where standards may be slipping and to consider new recommendations if the need arises.

## **RISK MANAGEMENT**

20. While most major firms have extensive risk management frameworks and procedures, gaps in their design or implementation by some firms have clearly emerged and contributed to recent market strains; in others, aggressive risk-taking decisions appear to have been made despite sound risk-management inputs. Events have raised questions about the ability of certain Boards properly to oversee senior managements and to understand and monitor the business itself. The industry as a whole will benefit from attention to concrete standards in three areas: risk-management governance; technical risk-management issues; and stress testing.

### ***A. Governance and Risk Culture***

21. Beyond specific techniques and procedures, a solid risk culture throughout the firm is essential. Making sure that the firm has in place adequate risk management is ultimately the responsibility of each institution’s senior management, in particular the

CEO, subject to the oversight of the Board.<sup>2</sup> There appears to be a need to reemphasize their respective roles in the risk management process in many firms.

22. The growing demands on Boards as well as senior managements present a challenge, especially given the need to attract incisive persons of diverse viewpoints to Boards. It is important to stress, however, that the suggestions below for strengthening Board oversight of risk issues are in no way intended to diminish the basic responsibility of management for the risk management process, or to change the roles of managements and Boards as understood in different jurisdictions; rather they are intended to suggest ways to achieve enhanced attention to risk in the environment firms now face.

- As already incorporated in Basel II and set forth in legal requirements in some jurisdictions, Boards need to be educated on risk issues and to be given the means to understand risk appetite and the firm's performance against it.
- The suggestion has been made that some firms would find it useful to have at least as a portion of members of the risk committee of the Board (or equivalent) individuals with technical financial sophistication in risk disciplines, or with solid business experience giving clear perspectives on risk issues, consistently with the overall need for the Board to have the skills necessary to conduct meaningful review of management's actions to manage risk, as to manage other aspects of the business.
- Certain firms have concluded that the differing skills required indicate it would be appropriate for them to have separate audit and risk committees, though each Board must retain the autonomy to determine its own structure.
- Even more basically – but this did not exist at all firms – Boards need to understand the firm's business strategy from a forward-looking perspective, not just to review current risk issues and audit reports. It should be the duty of senior management to review with the Board how that strategy is evolving over time, and when and to what extent the firm is deviating from that strategy (e.g., when a strategy morphed into heavy dependence on conduits or on structured products).

23. A strong, pervasive risk culture includes mutually reinforcing roles within each organization, known as the “three lines of defense”: business management, risk management and audit and control functions. Risk management should not be focused only on particular business areas, or made a purely quantitative oversight process or audit or control function. Some firms distinguish between a “risk control” function, responsible for the quantitative measures, and a “risk management” function, which has a more strategic focus.

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<sup>2</sup> The principles apply regardless of firm structure. In a dual-board structure both the management and the supervisory boards will have appropriate roles to play.

24. Regardless of organization, it is no longer appropriate for risk management to be only a monitoring function. It needs to be included in development of firm strategy. CROs should not just be risk managers but also risk strategists.
25. A particularly important governance technique is for senior management to adopt and periodically to affirm the firm's risk appetite (understood as the risk of loss that the firm is willing to accept over a specified time horizon at a given level of confidence, taking into account its business mix and strategy, earnings goals, culture, and competitive position). This involves understanding the firm's current risk profile and trends vis-à-vis that risk appetite, and monitoring the firm's ongoing performance against its risk appetite as determined. The Board should understand the general outlines of the risk appetite as established and assure itself that management has properly considered the firm's risks and has applied appropriate processes and resources to manage those risks.
26. The firm's risk appetite should be clearly connected to its overall business strategy and capital plan. There is a strong sense that business planning, which tends to be driven by earnings goals in a competitive environment, needs to involve the risk management function from the beginning of the planning process, to test how targets fit with the firm's risk appetite, and to assess potential downsides. Equally important is clear communication throughout the firm of the firm's risk appetite and risk position.
27. To assure a strategic focus on risk management at a high level, each institution should assign senior management responsibility for risk management across the entire organization and, in most cases, this would be to a CRO. The CRO should be independent of line business management and have sufficient internal voice to have a meaningful impact on decisions.
28. How to achieve a strong internal voice is something that each firm must determine, but this has been done successfully where the CRO reports directly to the CEO, or where the CRO has a seat on the Board or management committee. In many cases, the CRO will be engaged directly on a regular basis with a risk committee of the Board. Some firms make it a practice for the CRO to report regularly to the full Board to review risk issues and exposures, as well as more frequently to the risk committee. A strong, independent voice will mean that the CRO will have a mandate to bring to the attention of both line and senior management or the Board any situation that could materially violate risk-appetite guidelines.
29. A basic but essential need is for risk management to have a sufficient amount and quality of resources to fulfill its roles, and it is the responsibility of senior management and ultimately the Board to ensure that it does.

## ***B. Risk Management Issues***

30. Recent market events have shown that certain risk-management practices and methodologies in each organization require further improvement. Risk-identification, integration of risk-management approaches, and issues arising from complex products often need to be addressed. Risk managers need to manage and measure risks on the basis of the firm's approved risk parameters, independently of regulatory requirements and categories, and of ratings of transactions, which may not address the firm's specific issues or be calibrated to the firm's standards and risk-management goals.
31. Close cooperation is required between control functions, including Treasury, and the risk-management department, to control balance sheet growth and assure a robust overall assessment of risk. It is clear that many firms need to do more to integrate risk-management systems and groups, breaking down silos that may result in missed issues across credit, market, operational and liquidity risk areas.
32. An integrated look at risk is critical in the new-product process, as is widely implemented already, but it also needs to extend to the post-approval life of new products. Migration of underlying assets or other relatively subtle changes in a product over time can affect the risk implications of a product or business, but can be missed if care is not taken. More generally, risk identification in some firms may need to be approached more systematically and using additional analytical tools and approaches.
33. For complex, structured products, a number of product-design issues require risk-management examination, and a robust new product approval and monitoring process including oversight from the most senior levels of the firm. For example, the "triggers" in structured products – ratings, asset-performance or other tests that suddenly require credit enhancement or liquidation of a vehicle – may, in some cases, have been treated as essentially drafting issues, with insufficient analysis of their potential cumulative effect on the product, holders of interests, or the firm. It is also important to consider the implications of payment "waterfalls" through tranches, both for own account and for investors, and to analyze a firm's holdings of all tranches of a given deal on a consolidated basis. As a general matter, the various disciplines involved in developing complex transactions (business, legal, compliance, risk, operations, accounting, tax, etc.) may more often than has sometimes been the case need to step back and look at transactions from an integrated, economic point of view over its development from inception to maturity, rather than from a series of specialists' viewpoints.
34. Similarly, regardless of whether the business involves only a specific portion of a securitization or other product chain, risk management should assess risks on an integrated basis, recognizing the interdependencies along the product chain, including those aspects in which the firm is not directly involved (e.g., the firm may not be involved in the origination of debt underlying the products it handles).

35. In some firms more than others, there seems to be a need for the risk-control/risk-management function to be more transparent about the limitations of risk metrics and models that are used in the firm. Metrics, much less internal or external ratings, should never be the end of risk-management thinking. Models are powerful tools but necessarily involve simplifications and must be approached critically. Expert judgment and critical analysis are always needed, and the metrics, models and ratings themselves should not be allowed to become ends in themselves or obstacles to risk-identification. Similarly, hedges should not be taken at face value without disciplined examination of which risks can be hedged and consideration of how hedges would perform in stressed conditions.
36. A Board will not benefit from extensive technical descriptions of risk metrics as the sole output of the risk function. They and senior management will benefit from a plain-language description of how the firm's risk appetite is being applied; how its risk profile is changing; what the implications of those changes are; and what strategic recommendations the risk function would make.

### *C. Stress Testing*

37. Stress testing is an effective risk-management technique to deal with changing market and financial conditions. However, it is important to approach stress testing as one aspect of a multifaceted program to prevent future financial crises. Properly applied, it is a critical diagnostic and risk-identification tool, but it can be counterproductive if it becomes too mechanical or if it consumes resources unproductively.
38. There is a very strong perception that stress tests must be carefully designed to gauge the business strengths and weaknesses of each individual firm, and that there can be no "one-size-fits-all" scenarios or techniques. Moreover, experience has shown that externally conceived stress tests can consume disproportionate resources for little benefit and crowd out stress-testing efforts that are actually useful to the firm. Both the possibilities and limitations of stress testing need to be understood by the public and private sectors.
39. Recent events have shown weaknesses in some firms' stress-testing practices, which were not sufficiently consistent or comprehensive. Firms need to work on improving their diagnostic stress testing to support their own capital assessment processes under Pillar 2 of the Basel Accord. While the Committee is developing a number of detailed recommendations on stress testing, it is clear that firms need to ensure that stress-testing methodologies and policies are consistently applied throughout the firm, evaluating multiple risk factors as well as multiple business units; adequately deal with correlations between different risk factors; and form an integral part of the management culture so that results have a meaningful impact on business decisions.
40. Most importantly, stress testing needs to be part of a dialogue between senior management and the risk function as to the types of stresses, the most relevant

scenarios and impact assessment. Scenarios should generally be “severe but plausible,” meaning they should provide solid grounds for judgment and should be challenging to business units. If formulaic responses to tests can be avoided, some scenarios that stretch the bounds of plausibility may also be included in an exploratory process that, without triggering specific results, may help think through implications of multiple exposures.

#### ***D. Basel II***

41. The general view in the industry is that, if Basel II had been fully implemented, it would have made a difference and that it will add to resilience of the system. It will correct many flaws of Basel I, especially flat treatment of risk and consequent adverse-selection problems. While securitization has increased the credit-creation capacity of the system, Basel I did create regulatory-arbitrage opportunities. The zero risk weight for 364-day conditional exposures clearly contributed to the “conduits problem” in some jurisdictions.
42. Basel II has made a major contribution by catalyzing widespread implementation of modern risk management and focusing attention on more robust risk systems, despite very real resource burdens. Pillar 2 will institutionalize sound internal capital adequacy assessment and, if well coordinated among regulators, the supervision thereof. The impact of Pillar 3 is not known except for initial experiences in Japan but, subject to developing good market understanding of its disclosures, it should have a beneficial effect.
43. Significant issues remain that require continued dialogue. Resolution of home-host issues will be even more important in the new environment, but the dialogue with the supervisors about the cross-border application of Pillars 2 and 3 is far from complete. Recent experience of international market stresses has shown a clear need to enhance coordination through home supervisors and to minimize stand-alone regulation of subsidiaries. Technical details of Basel II will be reviewed appropriately in the coming months. This review needs to be done carefully, and will present opportunities to improve the Accord; for example, by providing an option for firms to use internal ratings in lieu of or in conjunction with external ratings with respect to securitization exposures, reflecting developing risk management capabilities.
44. Liquidity regulatory issues outside of the Accord are discussed elsewhere but it is important to reiterate the point made in the IIF *Principles of Liquidity Risk Management* that requiring Pillar 2 capital is not – with rare exceptions – a useful response to liquidity issues.
45. Basel II can make a substantial difference to the stability of regulated institutions. One of its main strengths is sensitivity to risk. However, it is important to recognize that as currently structured, the Accord will have procyclical effects, especially as banks reduce internal ratings and adjust models for current events. Therefore, further

consideration will be needed as how to mitigate these effects, including broadening the use of through-the-cycle rating methodologies.

46. It is recognized that circumstances will require market-based steps to rebuild capital in certain firms. It is necessary, however, to avoid adding more conservatism to an already-conservative international capital Accord. In particular, as the Institute's report on *Principles of Liquidity Risk Management* stated last year, requiring capital is generally not an effective response to liquidity-risk issues, which need to be addressed by the measures described in that report, except perhaps in rare circumstances where Pillar 2 capital might appropriately be required in response to serious deficiencies in a particular firm.
47. In general, regulators and firms should focus on the types of measures discussed in this report to enhance management of liquidity and credit risks. Such measures, rather than imposing across-the-board add-on capital requirements, as suggested by some, would better contribute to restoring profitability to underpin solvency and liquidity. Additional generally applicable capital requirements would, moreover, be a drag on firms' credit capabilities and impede recovery from present conditions.
48. The above comments apply to the Basel II process as framed for banks. We note, however, that the Committee also supports efforts to develop risk sensitivities for the insurance industry and looks to the IIF Committee on International Insurance Regulatory Issues to further dialogue with the relevant authorities.
49. The Institute's Steering Committee on Regulatory Capital looks forward to continuing long-standing dialogue with the Basel Committee on these and other issues.

### ***E. Internal Controls***

50. As part of the Basel II process, many firms have refined their development and application of operational risk and control systems. But these systems are not foolproof. Experience has shown that an environment of increased risk and volatility gives rise to increased risk of "rogue trader" incidents. Firms and the Institute's working groups are looking at additional means to counter such risks.

## **INCENTIVES**

51. Market changes that have both catalyzed and resulted from the growth of the "originate-to-distribute" business model have created incentives for both firms and individual employees that have, in some cases, conflicted with sound underwriting practices, realization of risk-management goals, or the long-term interests of shareholders, reflecting, in part, the emphasis on short-term profitability in financial reporting and bonus payouts. This section addresses incentives for individuals focusing on compensation structure issues; firms' incentives are discussed in later

sections, noting the pervasive emphasis on short-term results. Of course, this brief discussion employs very broad generalities, overlooking substantial differences in the incentives structures and recent experiences of different firms.

52. There is a strong sense that externally mandated compensation policies would be at odds with the need to forge competitive, efficient firms that serve the interests of consumer and corporate clients. While recognizing that compensation policies should remain subject to the discretion of the CEO and the oversight of the Board, there is strong support for the view that the incentive compensation model should be closely related by deferrals or other means to shareholders' interests and long-term, firm-wide profitability. Focus on the longer term implies that compensation programs ought as a general matter to take better into account cost of capital, not just revenues. Consideration should be given to ways through which the financial targets against which compensation is assessed can be measured on a risk-adjusted basis. The principle of making the compensation model consistent with shareholders' interests is well established in some contexts but has been unevenly applied across the industry, especially with respect to compensation of sales and trading functions.
53. Severance pay packages should be tied to performance, consistently with the general principle of alignment with the long-term interests of shareholders.
54. Transparency and proper disclosure to shareholders of compensation policies and criteria, including appropriate alignment of such policies with the firm's business strategy, is important. Due to competitive issues, disclosure should be focused on principles and process.

## **CONDUITS AND LIQUIDITY RISK ISSUES**

### ***A. Liquidity Risk Issues***

55. Initial reviews indicate that the recommendations made in the IIF *Principles of Liquidity Risk Management* appear to have been validated and the Committee is in the process of determining whether new or modified recommendations are needed. Firms should assure implementation of the recommendations made in the report through a continuous review and critical assessment process as appropriate for their businesses, using the recommendations as a benchmark.
56. As firms and the official sector consider the best way to move forward, it is important to focus on one of the key messages of the report: that liquidity risk management practices need to be tailored to each firm's business model and market participation. There are no simple metrics or quantitative measures with prescribed assumptions that can provide useful disclosure or adequate liquidity safeguards, either in the form of internal measures or regulatory requirements. Instead, each firm must be able to determine its own risk tolerance and the best way to combine the prudent

management of risks within its business strategy. Supervision and regulation should recognize these tailored approaches and focus on their overall effectiveness.

57. As further discussed in the report, firms' managements need to consider the risk of overdependence on any form of funding, including access to securities markets, in their day-to-day liquidity-risk management, stress testing, and contingency planning. In examining assumptions used in liquidity management and stress testing, including with respect to off-balance sheet vehicles, firms should periodically reevaluate appropriateness of the metrics employed and use a variety of firm-specific and market-related scenarios and sensitivity analyses. Firms should include in the analysis a series of possible funding alternatives, to help avoid undue concentrations. Stress tests should include the effects of contingent calls of liquidity on pricing and determination of liquidity needs, and firms should consider various sets of their actual liquidity models in formulating such tests.
58. Mandates for assets held to back a firm's liquidity positions need to be set not only in relation to credit ratings but also in relation to the anticipated liquidity and denomination of the instruments. The depth and sustainability of the capital markets must be carefully considered.

#### ***B. Structured Finance Vehicles***

59. The Committee is conducting a rigorous analysis of the problems encountered with structured finance vehicles in order to preserve the benefits available from use of properly managed vehicles while avoiding the risk of the recurrence of the problems being experienced now. Effective risk management should be strengthened to ensure that exposure to conduits and other vehicles is captured in liquidity planning and management and that there is sufficient transparency, capital and proper disclosure by sponsoring banks and firms.
60. Firms' senior managements should carefully assess the risks of their vehicles, including focusing on the size and stability of the vehicles relative to their own financial, liquidity and regulatory capital positions. They should monitor their structural and risk characteristics, notably covenants and triggers, and their implications for projected liquidity and solvency. (For example, were trigger events to occur, cash might have to be invested into a vehicle to maintain any seller's share at the minimum amount, settle short-term financial obligations when due, prevent early amortization of liabilities or avoid break costs being incurred on derivative instruments.) Such characteristics should also form an integral part of each firm's liquidity stress testing. Boards need to understand the risks of vehicles, and be fully cognizant of their implications for the firm's overall risk appetite.
61. Recent events highlight the need for firms to address the proper assessment of non-legal reputational risk of off-balance sheet vehicles and other potential exposures. Such analysis should include consideration of whether risk of reputation damage could lead a firm to take exposures back onto its balance sheet with adverse liquidity

and capital implications. Senior management must be confident that such return of assets would not happen if these exposures are treated as off-balance sheet for regulatory purposes, and Boards should assure themselves that management is properly attentive to this issue. And, on the other hand, supervisors should not take firms' internal assessment of such risk as necessary grounds to require consolidation for accounting or capital purposes.

### *C. Considerations for the Official Sector*

62. Central banks' measures, especially those taken since December 12, 2007, have been essential in meeting the challenges in global term money markets and contributed to rebuilding confidence in those markets. The new term facilities, including their augmentation and reinforcement by the Federal Reserve and other central banks in March 2008 have made and can continue to make a substantial difference in preventing blockage in the system and, with appropriate offsetting actions, should not have inflationary effects. Expansion of measures to combat liquidity pressures in the funding markets on a term secured lending basis, extending coverage to a new category of market participants and accepting a wide range of eligible collateral, is highly encouraging. As important are the contemporaneous and coordinated measures of international central banks to provide new reciprocal currency arrangements. The case for such facilities, including longer tenors, remains compelling. While fully acknowledging the central banks' accomplishments to date, the Committee will offer suggestions for actions that central banks could consider to build on that success. In particular:
- As is increasingly the case, accepting broader and generally consistent types of collateral across central bank systems on a readily useable basis is increasingly important to international market health.
  - Central banks should continue to foster and institutionalize cooperation among themselves, including harmonization of operational procedures.
63. Additionally, central banks should provide greater clarity of their roles as lenders of last resort in both firm-specific and market-related crises, and the official sector should be willing to participate in a firm's contingency planning, including periodic testing of lender-of-last-resort facilities. It is especially important that central banks continue to pay attention to the "stigma" problem associated with use of certain traditional central bank facilities.
64. While the debate on "constructive ambiguity" versus "constructive clarity" is likely to continue for some time, central banks should continue to work with the industry to provide increased feasible advance transparency of future technical requirements for using facilities.

## VALUATION ISSUES

65. Valuation issues are complex and need to be addressed on three levels:

- Practical day-to-day problems of how to effect valuations in a difficult environment;
- Whether there are ways to correct specific difficulties with fair value widely encountered in recent markets; and
- A perceived need for broad dialogue on the long-term implications of fair-value accounting.

### *A. Immediate Practical Issues*

66. Valuation-related issues confronted by market participants since the second half of 2007 include uncertainty resulting from sudden loss of market activity in many products; sudden increase in dependence on model-related assumptions and/or unobservable model inputs; migration of asset classes from liquid to illiquid; doubts about the quality of the market information used as inputs; multi-notch downgrades of structured products by rating agencies; and ultimately, investor questions regarding the reliability of valuations. Several key elements caused these issues to arise as forcefully as they did. One was that the affected positions at several market participants were quite large. As many positions also had substantial embedded leverage, modest changes in inputs could result in large changes in valuation.

67. It may be that some firms prior to the turmoil did not use a valuation model for certain instruments and solely relied instead on market quotes. This meant that following a reduction in the ability to obtain reliable quotes, they needed to act quickly to develop alternative valuation approaches and, moreover, faced challenges to calibrate such approaches for reduced market liquidity. The complexity of some asset classes and the lack of readily available data limited the ability of analysts and other third parties to assess the valuations applied by individual institutions.

68. The use of fair-value accounting raises pressing technical concerns from sudden shifts of inputs in a mark-to-market environment. The Committee proposes, as an urgent priority, a technical dialogue among firms and with auditors, rating agencies, investors, analysts, and supervisors, to enhance understanding of valuations and to discuss how best to summarize for disclosure the uncertainties, assumptions, adjustments, risk sensitivities and other limitations of valuations in the mark-to-market environment, especially where indirect inputs are used or valuations are based on models. This may need to take place under official auspices to address legal concerns that could inhibit communications among firms on valuation questions. The expectation is that dialogue and improved disclosure will be the way to achieve greater convergence in valuation approaches and greater confidence in the results of the valuation process.

69. Pending broader consideration of refined valuation methodologies, such a technical dialogue would be helpful in further clarifying and interpreting the principles that underlie existing accounting standards in several areas:
- Guidance, perhaps via examples, on the boundaries between levels in the valuation hierarchy, especially indirect inputs or mark-to-model (i.e., “level 2” and “level 3” of the FASB hierarchy) to improve the understanding of the hierarchy among firms, auditors and, most importantly, the market.
  - Additional principles-based guidance on valuation in highly volatile or illiquid markets (especially using indirect inputs or mark-to-model) or when there is a migration of assets from liquid to illiquid status because of market change. Guidance should cover practical issues, such as determining when there is an “active market,” or when it is appropriate to use small volumes of secondary-market trading as valuation inputs.
  - Guidance on how fair-value valuations based on indirect inputs or models are to be audited.
70. Firms should have a governance framework around valuation processes that incorporates risk, finance and accounting policy input to ensure proper product and risk control. Procedures need to be in place for times of market stress – how to recognize and react when changes in market liquidity or volatility require changes in valuation approaches for individual assets.
71. Internal governance should ensure independence of those responsible for valuations and validation of valuations from line businesses, in order to assure they have an independent voice, avoiding the problems that may arise when valuation groups are too remote from market functions to understand developments or when valuation groups are too close to the front office and in danger of being captured by it.
72. Firms should recognize that ratings, dealer quotes and market prices that may be stale provide only relative indications of valuations, which may be approximate; firms should devote the analytical resources necessary to assess valuations made on such a basis. Further development of market infrastructure should be helpful to this end, as discussed in the Transparency and Disclosure section.

### ***B. Widely Encountered Problems***

73. Over the past decade, fair-value/mark-to-market accounting has generally proven highly valuable in promoting transparency and market discipline, and continues to be an effective and reliable accounting method for securities in liquid markets. When there is no or severely limited liquidity in secondary markets, however, it has the potential to create serious and self-reinforcing challenges that both make valuation more difficult and increase the uncertainties around those valuations. In addition, there is a wide perception that mark-to-market accounting in circumstances of

widespread illiquidity deviates from underlying fundamental values. There are questions about whether fair-value accounting approaches have increased the severity of the market stress relative to other possible alternatives and, if so, whether this reflects a fundamental feature of such approaches or weaknesses in the current state of their implementation. In light of the magnitudes of the writedowns and their systemic impact, it is essential that these broadly encountered questions be addressed.

74. A critical subset of issues revolves around whether mark-to-market exacerbates the overall degree of risk aversion in the marketplace and thereby contributes in a procyclical manner to the continuation and possible worsening of market stress. The effect of these issues in the context of a fair-value accounting regime that covers a much wider scope of instruments than ever before has created the potential for confusion and even for possible misreading by investors. In circumstances where doubts about products and underlying credit quality undermine valuations inducing extensive margin calls, there is the danger of a precipitous and destructive downward spiral, which reinforces the procyclical impact.
75. For these reasons, the Committee believes that broad thinking is needed on how to address such consequences, whether through means to switch to modified valuation techniques in thin markets, or ways to implement some form of “circuit breaker” in the process that could cut short damaging feedback effects while remaining consistent with the basics of fair-value accounting. And, while there is no desire to move away from the fundamentals of fair-value accounting, the Committee feels that it is nonetheless essential to consider promptly whether there are viable sound proposals that could limit the destabilizing downward spiral of forced liquidations, writedowns and higher risk and liquidity premia. The Committee is developing specific proposals for consideration in a timely fashion.
76. The Committee recognizes that these are not new issues, but believes that the interactions observed between market liquidity and announced or anticipated writedowns are concerning and provide evidence of potentially destabilizing feedback effects. The Committee’s discussions on this topic have also noted the arguments that forbearance in assessing the scale of losses may prolong a crisis and worsen its ultimate impact. Moreover, the Committee stresses that any “circuit breaker” would be intended to address situations where the market fails substantially to provide inputs for valuations reasonably in line with underlying values; such a “circuit breaker” would not affect recognition of actual losses. Use of any “circuit breaker” would have to be subject to clear disclosures and would include provisions to prevent arbitrage or other abuse.

### ***C. Need for Lessons-Learned Review***

77. There is also concern about distortions that can arise under the present accounting regime because, for example, of different treatment of similar assets in different contexts and different treatment of hedges from assets. These differences may lessen

comparability across firms, raise disclosure issues and potentially add to investor confusion.

78. The Committee therefore suggests that financial and monetary authorities should lend their support to the establishment of a group to include all relevant parties to explore ways of addressing the foregoing and other concerns. All parties should engage in a high-level dialogue with the standard setters in accordance with due process to consider all of the potential lessons learned of the effects of fair-value accounting, mark-to-market requirements and the mixed-attribute model during times of illiquid markets and to discuss necessary changes in standards on the basis thereof. The dialogue should not detract from the current work on convergence being undertaken by the US and international accounting standard setters.

## **CREDIT UNDERWRITING STANDARDS**

79. Mortgage-origination standards in the US and structured-product underwriting standards contributed to the turmoil of the last several months. Specific recommendations in this area, on the issues listed below, are currently being developed and will be forthcoming in the final report.
80. Essentially, the industry needs to ensure that robust and broadly consistent standards of due diligence are employed regardless of whether assets such as structured securities are held or distributed to third parties. Additionally, well-controlled adjustments need to be made where an offer is to meet the risk demand of specific purchasers or types of purchasers (including whether such risk demand is well understood and articulated).
81. The Committee is considering specific recommendations for minimum origination standards that might include guidance on review and verification of loans; standards for basing deal documentation on credible representations and warranties; percentages of underlying loans that should be sampled; Probability of Default (PD) and Loss Given Default (LGD) analysis; and monitoring and periodic reports on performance of underlying assets, including performance of underlying loans, arrears, defaults and recoveries.
82. The Committee is looking at the feasibility of standardized offer documents for various structured products. Changes to the standard structure in the offer document would be highlighted to alert investors to any unusual terms. Information in offer documents should be enhanced to include quantitative information on underlying pools such as exposures by PD band and weighted average LGD. There is also a need to provide more clarity on structures and default or acceleration triggers and the implications thereof.
83. While firms are responsible under applicable law for assessment of the suitability of products of specific retail customers, firms should not be held to a suitability

obligation to assess the investment ability or goals of an institutional investor, but they should consider the general appropriateness of products for specific types of investors. Issues regarding appropriateness of products can be effectively addressed through disclosure.

84. *Consideration for the Official Sector:* to prevent a recurrence of the trigger issue of recent turmoil, home-loan mortgage originators not currently regulated as banks should be regulated to be held to the same standards as banks on duty of care to borrowers and standards of due diligence, representations and warranties, credit assessment and continuing loan management. All mortgage originators should be required to comply with basic credit principles such as reasonable assessment of the borrower's ability to pay and proper documentation.

### **RATINGS PROCESS ISSUES<sup>3</sup>**

85. The Committee has analyzed the rating of asset-backed structured products from origination to risk assessment of securities by the rating agencies and the assignment of final ratings. The Committee has considered what due diligence is carried out on underlying borrower quality, the possible conflicts of interests in the firms and the rating agencies, as well as the amount of information disclosed. Discussions have also been carried out with the investor community to assess their needs.
86. Many investors relied on the rating when making credit decisions. More sophisticated investors were able to make their own assessments to a degree but many less sophisticated investing institutions relied on investment mandates where the rating was the paramount feature. The Committee finds that though rating agencies make their models available to investors, without detailed underlying loan-back data from the banks, additional information on stress testing and the underlying assumptions of the model, it is not possible for investors to verify the accuracy of the ratings models. It would in any case also be beyond the capacity of many investors to validate independently the rating agency models. More detailed loan data needs to be made more readily available and more information on stress testing particularly from a credit perspective will be released by the rating agencies, but for many investors the ratings models will remain a black box. Given this, ratings models should be subject to standards of independent review and external validation (akin to those in Basel II for Internal Ratings-Based Models).

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<sup>3</sup> While the Committee as a whole believes that additional steps and measures must be taken for confidence to return to the rating agency industry and that rating agencies should be subject to market scrutiny and review, the rating agencies have indicated that they cannot fully support certain recommendations and statements in this report. The rating agencies note that they are working actively with the Committee and others, including regulators, on measures they believe will enhance their processes and increase transparency. The Committee shares the hope that the rating agencies and the financial institutions will find common ground on these issues.

87. The growth of securitized transactions and structured finance has provided strong revenue incentives for rating agencies. The fact that the rating agencies are paid by the originators and issuers of securities rather than investors has raised questions about the integrity of the ratings system, although many feel that alternative payment structures such as payment by investors (if practical) would create other potential conflicts. Given the problem of conflicts, it is essential to strengthen oversight and governance to address them. Further discussion of fee issues is needed but the preliminary suggestion is that the fee for a particular rating (relative to set ranges) should be disclosed in the offer document. In a related matter, the rating agencies have reiterated their commitment to the IOSCO code of conduct for rating agencies, including a proposed provision prohibiting their providing consulting or advisory services in structuring transactions that they subsequently rate.
88. To regain investor confidence in the ratings process there is a need to establish a mechanism or process that would enable the independent external review of the methodologies, models or internal governance processes of rating agencies and generally improve understanding both of ratings and of products themselves.

*a. Rating agencies processes*

The Committee proposes that industry standards should be developed regarding the governance, monitoring and independent validation of models within the rating agencies. The agencies would have external audit of their processes relative to these standards. The agencies would attest that they met the standards laid down.

The Committee is of the view that models should be externally validated against the standards – but it should be emphasized that there would be no intent to harmonize them across agencies, nor to validate rating outcomes. The results would be communicated to the appropriate oversight bodies in the rating agencies, not to the public.

It is recommended that the issue of whether an SRO should be established to provide detailed standards and oversight be explored going forward.

Greater clarity needs to be provided regarding the target behind the ratings (the definition and probability of default). More focus by all agencies is needed on loss given default, which has been fundamentally different in different structures. Also, more clarity should be provided regarding the factors that could lead to a downgrade.

As with internal risk management resources within firms, it is important that rating agencies have a sufficient amount and quality of resources to fulfill their roles.

*b. Rating assumptions and sensitivity*

On individual securities, more information is needed on the assumptions lying behind the rating models and the sensitivity of the outcomes to small changes in assumptions, for example on correlation, as well as the stress tests. This would be particularly important for some of the synthetic structures.

*c. Rating scales*

There is a growing consensus to reconsider current rating scales and therefore the Committee supports exploration of different or additional rating scales for structured products (compared to debt). There is interest in separate or additional rating scales on the part of many in the industry and in the official sector, although not all share this view. Efforts including by rating agencies should continue to obtain and evaluate feedback from market participants on the idea of separate or additional scales. Whatever approach is finally developed here, the Committee underscores the need for rating agencies to better articulate the various factors that are taken into account when considering a rating and provide additional information pertaining to risk attributes in addition to credit risk such as volatility and migration risks.

*d. Educational efforts*

The Committee will consider recommendations for a broad investment by all market participants in education of employees, analysts and the public covering issues of liquidity, the potential effects of leverage, risks generally, the meaning of ratings scales and critical thinking about such matters.

89. Many investors rely only on the ratings of structured products when making credit decisions and rely on governance processes where the rating is the paramount feature. The Committee believes that there is a need to develop Market Best Practices for investors, which will help reduce excessive reliance on ratings and enable investors to consider additional criteria in their investment decision-making process. For example, the Market Best Practices might suggest that investors, making use of enhanced disclosures suggested elsewhere in this paper:

- *Understand vehicles clearly*, including the position of rated tranches and cash flows in the structure.
- *Conduct their own due diligence* before investing in a structured product by considering the material triggers and their effect on volatility and liquidity, information on stress testing carried out by rating agencies, and taking into account the quality of the underlying assets, degree of transparency of the overall structure and underlying exposures and their future liquidity.
- *Monitor data released on ongoing performance* of the underlying pool and information from rating agencies on the performance of ratings.

## TRANSPARENCY AND DISCLOSURE ISSUES

90. Concerns about transparency of products and firms have been widely discussed, and the Committee is looking at practical measures that could be taken to improve the information available in the market. The Committee's work on transparency and disclosure takes into account and in some cases is expected to endorse similar efforts including those of the European Securitisation Forum (ESF), Securities Industry and Financial Markets Association and the European Banking Federation.

91. Key issues that need attention at the level of the structured product include:

- a. Quality of information provided in offer documents for structured products varies significantly based on the originating firm, country of origination and type of product. Offer documents can range from five pages to more than fifty pages and sometimes are difficult to read. The Committee is assessing the feasibility of introducing a one-page summary of risk factors for different types of structured products in the prospectus. This would have two important functions: first, it should help investors identify key risk drivers, enabling them to evaluate the risks of structured products; and second, it should provide investment committees with reference points in addition to ratings that could be used in investment mandates.
- b. The Committee is evaluating a proposal that would suggest originators and underwriters disclose at the time of issuance whether they carry a particular structured product on their books or have sold the entire issue. In the event they retain a portion of an issue, they would disclose at that time what percentage of the offering they hold economically and their policies with respect to holding or hedging such interests, including whether any subsequent change of such policy would be disclosed to investors in the issue.
- c. It may also suggest that originating firms disclose whether it is their intention to make a market in the product or otherwise support its liquidity throughout its life. This does not imply that originating firms have an obligation to make a market.
- d. The Committee is also reviewing various other regulatory or structural issues concerning providing information to investors such as:
  - Standardization of market definitions and structures, and clarification and standardization of the roles of agents. This would need to be coordinated globally. Standardized term sheets and new-issue disclosure would be important in restarting the issuance market. The ESF is looking at the issues of standardizing definitions for a number of products.
  - Improving price discovery through widely available and easily accessible price utilities or similar services.

- Suitability and ability of existing and proposed infrastructure to support the industry's initiatives to make more data on underlying pools of assets and instruments widely available in the market.
- The industry may wish to consider developing a transaction portal as well as improved data availability.
- The provision of information in private-placement offer documents for structured products is inconsistent; while it is appropriate to avoid formal regulatory requirements, the Committee is considering current practices to encourage better and more consistent disclosure for structured products on a principles basis.
- One of the impediments to wider circulation of information on structured product transactions is private-placement restrictions, both contractual and regulatory (notably SEC Rule 144A). Along with relevant market participants, the Committee will recommend reconsideration of these restrictions to achieve a better balance between security-law concern and overall market transparency.

92. The Committee is assessing the types of information at the institutional level about firms to be provided to investors and formats for public disclosure, intending to make disclosures more useful and to avoid excessive volume. This would include disclosure of issues required under Pillar 3 of Basel II and possibly additional recommended disclosures pertaining to:

- Valuation processes and methodologies including adjustments, assumptions, risk sensitivities and uncertainties, especially where indirect inputs are used or valuations are based on models, and the differences between valuations of assets carried on an accrual basis and those carried on a mark-to-market basis; and
- Origination and underwriting standards of structured products such as the verification process, percent of loan sampling and disclosure of material changes of underlying assets and changes to underwriting standards.

### **III. Need for Focus on Efficient and Effective Regulation**

93. In December 2006, the IIF published a *Proposal for a Strategic Dialogue on Effective Regulation*. Events since August 2007 have clearly shown that the financial system is even more tightly woven across markets, across sectors, and across products than might have been realized eighteen months ago. Therefore, the Proposal's Guiding Principles, particularly those for global coordination of regulation, dynamic assessment of new policy initiatives, and contingency planning as a shared, cross-border obligation of the public and private sectors, have become all the more pressing. It is understandably difficult to focus on the broad problem of achieving more effective and efficient international regulation while dealing with the vexing

problems of the moment; however, it is equally clear from recent events that well coordinated cross-border regulation that is proportionate, principles-, risk- and incentives-based will be essential to sustaining resilient and productive markets in the future.

94. While the Committee on Market Best Practices will work to develop the Recommendations set out in this Interim Report into a final report later this year, the Special Committee on Effective Regulation, which wrote the Strategic Dialogue report, is now continuing its work. It will strive to keep that fundamental, longer-term agenda in front of the industry and the public sector in the months to come.

#### **IV. Market Monitoring Group**

95. The Committee believes there could be significant benefits in a well-structured Market Monitoring Group, an industry group with the goal of providing a forum for member firms to monitor global financial markets for early detection of vulnerabilities having systemic implications and examination of market dynamics, which could lead to major financial market strains.
96. The Group would have 10-20 members, ideally drawn from different disciplines and markets and involve participants ranging from operational to senior levels, and those with long and wide-ranging experiences. The chairs should be senior financial statesmen to assure credibility of the Group.
97. The Group could meet on a periodic basis to discuss major developments and potential stress points in global financial markets. At the end of the meeting, summary minutes of the meeting could be published on the IIF website and shared with other interested parties in the private and official sectors.
98. The Market Monitoring Group could usefully compare notes or enter into active liaison with existing or future, ad-hoc financial stability groups in the official sector, thus contributing to a wide-ranging monitoring of risks to financial stability.



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