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From: Prof. Alexander Kostyuk, Executive Director,
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Date: 10 June, 2010

To: Prudential Policy Unit
International Credit Institutions
Financial Regulator
PO Box 9138
College Green
Dublin 2

Subject: Comments to the Consultative Document
"**CORPORATE GOVERNANCE REQUIREMENTS FOR CREDIT INSTITUTIONS AND INSURANCE UNDERTAKINGS**"

Dear Sir/Madam.

I enclose our comments to your Consultative Document "**CORPORATE GOVERNANCE REQUIREMENTS FOR CREDIT INSTITUTIONS AND INSURANCE UNDERTAKINGS**". These comments have been prepared by the team of researchers at the International Research Center of Banking & Corporate Governance at Ukrainian Academy of Banking of the National Bank of Ukraine (Ukraine) consisting of Prof. Alexander Kostyuk, Ms. Maryna Brychko and Ms. Varvara Lysenko and Ms. Olga Neselevskaya. We hope that the comments would be taken into consideration when approving the final Paper. Your feedback would be appreciated by us.

With the best regards,
Prof. Alexander Kostyuk

Comments on the consultation paper

"CORPORATE GOVERNANCE REQUIREMENTS FOR CREDIT INSTITUTIONS AND INSURANCE UNDERTAKINGS"

Clause, page	Comments on the issue	Suggestions
c.1.5 (3rd point), p.3	"…Require that Board membership is reviewed at a minimum every 3 years…"	On the one hand, 3 years is not long enough term for reaching the strategic goals, as well as this term is in some cases too short to assess director efficiency. On the other, however, GSM is a body that could on the yearly basis review the Board membership. The issue is that shareholders now usually have relevant information. Thus, we believe it might be an option for the Chairman (according to the c.5.5 and c.5.6 p.18 – independent non-executive director, who shall not be CEO) to produce the part of the Annual report (or a separate report) with directors evaluation – both their achievements assess and criticism.
c.5.1, p.5	"It is proposed that when the Requirements are imposed institutions will be given a period of six months to introduce the necessary changes. Where changes to Board membership are necessary this period will be extended to twelve months in order to allow institutions to identify and assess candidates prior to making appointments"	We propose to set up an 18-month deadline (if the necessity could be proven or if the financial institution is willing to apply the Requirements in its foreign incorporated subsidiaries (c.3.1, p.4) that basically is a voluntary standard).
c.1.5 (Definitions), p.10-11	**"Director Independence:** Independence is defined as the ability to exercise sound judgement and decision making independent of the views of management, political interests or inappropriate outside interests"	Need to define "inappropriate outside interests".
c.1.5	"The following criteria ***shall be***	The criteria here propose only

(Definitions), p.10-11	***considered and given reasonable weight*** when determining if a director is independent: • any financial or other obligation the individual may have to the financial institution or its directors; • whether the individual is or has been employed by the financial institution or a group company in the past and the post(s) so held; • whether the individual has been a provider of professional services to the financial institution in the recent past*;* • whether the individual represents a significant shareholder; • circumstances where the individual has acted as an independent non-executive director of the financial institution for extended periods; • any additional remuneration received in addition to the director's fee, related directorships or shareholdings in the financial institution; and • any close business or personal relationship with any of the company's directors or senior employees".	the field to consider and do not propose any exact requirements (e.g. definition of "a significant shareholder" or a level of the "additional remuneration" etc) that need to be formulated.
c.3.3, p.13	"The system of governance shall be subject to regular internal review" (no specification of who will be responsible for it)	We propose the Chairman to be responsible and his/her reporting on the matter during the ASM.
c.4.1a, p.15	"…there shall be an independent chairman and a balance between independent and other directors…" (no specification what "balance" stands for)	We believe that important role of the independent directors should leads to the "majority of the independent directors" requirement.
c.4.11, p.17	"Directors shall not participate in any decision making/discussion where a reasonably perceived potential conflict of interest exists".	The consultation paper should provide the mechanism of "tracking" reasonably perceived potential conflict of interest.
c.7.1,	"...As an integral component of	A board should regularly re-

p.20	the Board, independent non-executive directors represent a key layer of oversight of the activities of an institution. It is essential for independent non-executive directors to bring an independent viewpoint to the deliberations of the Board that is objective and independent of the activities of the management and of the institution."	evaluate the mix of skills and experience it needs and be able and willing to change its membership in an orderly manner over time. According to our research, the current population of non-executive directors have been in their roles to date for an average of 4.6 years. This suggests that on average a non-executive director spends significantly longerin a post. A balance has to be struck on tenure between all these factors. We do not favour an initial appointment for a non-executive director of less than three years (subject to satisfactory performance) and it is reasonable to expect most non-executive directors also to serve a second term of three years. Beyond six years the possible benefits of a fresh appointee need more careful consideration, although there will be cases where the particular director continues to justify their place on the board over a full nine year period.
c.17.1, p.30	"The number of members of an Audit Committee shall be sufficient to handle the size and complexity of the business conducted by it."	Composition of the audit committee • Committee to include at least three members, all independent nonexecutive directors. • At least one member to have significant, recent and relevant financial experience.
c.18.1, p.31	"Institutions shall establish a Board Risk Committee separately from the Audit Committee with responsibility for oversight and advice to the board on the current risk exposures of the entity and future risk strategy. Smaller institutions or those involved in less complex business models may propose to the Financial Regulator that the Board itself carry out the functions which would otherwise be delegated to a Risk Committee. The Financial Regulator's	It should be mention the annual performance evaluation and charter review. We propose the annually, there shall be a performance evaluation of the Committee, which may be a self-evaluation or an evaluation employing such other resources or procedures as the Committee and the Corporate Governance and Nominating Committee may deem appropriate. The Committee will review and assess

	prior approval in writing shall be obtained if an institution wishes to fulfil this requirement without creating a separate committee of the Board.”	the adequacy of this Charter annually and recommend changes to the Board of Directors when necessary.
c.19.2, p.32	“Where possible, all members of the Remuneration Committee shall be independent non- executive directors but, in any event, the majority of members of the Committee shall be independent non-executive directors.”	We recommend that the Code should provide that all members of the remuneration committee should meet the test of independence. At a minimum, the committee should have delegated responsibility for setting remuneration for all executive directors and the chairman. The committee should also set the level and structure of compensation for senior executives. The committee should be responsible for appointing remuneration consultants. If executive directors or senior management support the remuneration committee, this role should be clearly separated from their executive role within the business.