NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

500 New Jersey Avenue, N.W.
Washington, DC 20001-2020
202.383.1194 Fax 202.383.7580
www.realtors.org/governmentaffairs

Vicki Cox Golder
CRB
President

Dale A. Stinton
CAE, CPA, CMA, RCE
Chief Executive Officer

GOVERNMENT AFFAIRS DIVISION
Jerry Giovaniello, Senior Vice President
Gary Weaver, Vice President
Joe Ventrone, Vice President
Jamie Gregory, Deputy Chief Lobbyist

April 15, 2010

Secretariat
Basel Committee on Banking Supervision
Bank for International Settlements
CH-4002
Basel, Switzerland

Re: Consultative Document: *Strengthening the resilience of the banking sector*

Transmitted by email to: baselcommittee@bis.org

Dear Sir or Madam:

I am writing on behalf of the 1.2 million members of the National Association of REALTORS® (NAR) to provide comments on Basel Committee's Consultative Document entitled "Strengthening the Resilience of the Banking Sector." We have submitted our comments on the Consultative Document entitled "International Framework for Liquidity Risk Measurement, Standards and Monitoring" in a separate letter.

The National Association of REALTORS® is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®. REALTORS® have a strong stake in the health and vitality of the financial system, and in ensuring the responsible availability of credit on reasonable terms to creditworthy consumers.

The Basel Committee's Consultative Document would make fundamental changes in the capital framework applicable to both large and community size financial institutions and is therefore of vital interest to our Association. NAR appreciates very much this opportunity to submit comments.

The recent disruption in the credit markets around the world demonstrates that our current system of regulation of financial institutions must be reformed. We applaud the Basel Committee for publishing this proposal relating to capital, as well as the concurrent proposal relating to liquidity. We have submitted a comment letter regarding the liquidity proposal separately.

With regard to the capital proposal, NAR understands the role of capital in protecting banking institutions, the deposit insurance funds, and ultimately the taxpayer. The inadequacy of the current capital framework was made clear during the financial crisis. We agree that capital levels need to be adjusted to reflect the risks that exist in our financial system, including the risks of mortgage lending. However, at the present time the problem is not innovative mortgage lending, but rather the lack of private sector credit for housing finance. Due to the extraordinary actions of the Treasury Department and the Federal Reserve, mortgage funds are available to very well qualified consumers, especially if the loan qualifies for purchase by Fannie Mae or Freddie Mac. However, there are many creditworthy consumers who are finding it difficult to obtain mortgage loans, in particular if the amount of the loan exceeds Fannie Mae and Freddie Mac limits. Further, now that the Federal Reserve has pulled out of the market for mortgage-backed securities, the need for private sector funding will only increase.

NAR has a serious concern that, in reaction to the financial meltdown, new regulatory requirements will be imposed on our financial system that will go beyond the reforms needed. Taken together, these new rules and standards could unnecessarily impede credit availability. Recent changes to the accounting rules, that will be phased in this year, will make an important source of mortgage financing, loan securitization, much less attractive for mortgage lenders.   Additional regulatory and supervisory changes are being discussed by the Congress, the banking regulators, and even the Securities and Exchange Commission.

The Basel Committee's Consultative Document should not be considered separately from all of these other developments. As proposed, the Committee's new capital framework will dramatically increase capital requirements for both large banks and community banks. This will further decrease the availability of mortgage credit. We therefore urge that careful consideration be given to all of the regulatory and supervisory changes currently under discussion, and that the development of a new capital framework be coordinated with other prudential changes being initiated in this country and around the world.

We also note that some of the specific changes raised in the Consultative Document are of particular concern. For example, it appears that all U.S. depository institutions, large or small, would have to comply with a new definition of Tier 1 capital. The new definition would require that the predominate form of Tier 1 capital must be common shares and retained earnings, and that innovative capital instruments will be restricted or not included at all as a component of Tier 1.

In the United States, certain innovative capital instruments, such as Real Estate Investment Trust (REIT) preferred shares, are allowed to be used to satisfy Tier 1 capital requirements subject to certain regulatory limitations. These instruments provide a tax advantaged method for banks to raise capital, and have been shown to provide real support for financial institutions during the latest crisis. We believe that, subject to prudential regulatory requirements, these instruments should be allowed to continue to count toward Tier 1 capital.

Another issue of concern to NAR is the proposed mandatory deduction of mortgage servicing rights from Tier 1 capital. Under U.S. regulations, mortgage servicing rights are subject to frequent mark-to-market valuation and supervisory haircuts. The market for these assets is deep and the value of these assets held up well during the recent market disruptions. If these assets are required to be deducted from Tier 1 capital, the result would be to make mortgage lending less efficient and more expensive for the consumer, without a corresponding public benefit. We therefore urge that the Committee continue the current conservative treatment of these assets under the new capital framework.

Another area of specific concern relates the proposed capital treatment of interest rate swaps. NAR recognizes that unregulated credit default swaps and other derivative contracts were misused by too many financial companies, and contributed to the financial turmoil. However, some interest rate swaps play an critical role in making mortgage loans more affordable to consumers, and the non-speculative use of these products to hedge against interest rate risk is particularly important for mortgage lending. As you know, a lender holding a 30 year fixed-rate mortgage loan is taking on considerable interest rate risk. Under the Committee's proposal, a significant capital penalty would be imposed on institutions that enter into interest rate swaps, even if the institution is an end-user, and is entering into the contracts to hedge against interest rate risk and not for speculation. This will result in increased costs to consumers and is not consistent with the overall goal of advancing the safe and sound operation of our financial system.

NAR appreciates that hard work and effort that went into producing the Consultative Document regarding resilience of the banking sector. We believe that the document raises important issues that need to be considered as we reform the regulation of the financial system. However, as with any far reaching reform proposal, it is important to consider all of the possible consequences of suggested regulatory action. In this regard, we believe that providing an opportunity for public comment is extremely important. We hope that you will consider these comments as you prepare the next version of this document. We strongly suggest that the public comments should be invited on the revised proposal, rather than move directly to a final agreement.

If you would like to discuss our comments and concerns, please contact Jeff Lischer, NAR's Managing Director for Regulatory Policy, at 202.383.1117 or jlischer@realtors.org.

Sincerely,

Vicki Cox Golder

Vicki Cox Golder, CRB
2010 President
National Association of REALTORS®