

INTERNATIONAL MONETARY FUND

IMF Membership in the Financial Stability Board

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in consultation with other departments

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I. INTRODUCTION

1. **In light of the recent establishment of the Financial Stability Board (FSB) as an association under Swiss law, this paper proposes Fund membership in the new association.**¹ The FSB was formed in 2009 and the Fund's Executive Board approved the Fund's membership in 2010, which has provided the Fund with the necessary scope to engage and collaborate with the FSB on a wide range of issues of mutual interest. Recently, in response to a request by the G-20 to establish the FSB with a well-defined "legal personality," the FSB was established as an association under Swiss law. In light of this change, an Executive Board decision is required for the Fund to formally join the Association.
2. **This paper is organized as follows:** Part II describes the background to the establishment of the Association and the Fund's membership in the FSB. Part III discusses the implications of Fund membership in the Association. Part IV sets out a proposed decision for Executive Board approval.

II. THE FINANCIAL STABILITY BOARD—BACKGROUND

A. The Fund's Participation in the FSB

3. **The FSB was formed in April 2009 in the wake of the financial crisis to strengthen international cooperation in the area of financial regulation.**² Under the FSB's Charter (attached as Appendix I), the FSB's objective is to coordinate, at the international level, the work of national financial authorities and international standard setting bodies in order to develop and promote the implementation of effective regulatory, supervisory and other financial sector policies in the interest of financial stability (Article 1). Amongst the FSB's functions (Article 2) are to assess vulnerabilities affecting the global financial system, promote coordination and information exchange among authorities responsible for financial stability, advise on and monitor best practice in meeting regulatory standards, and collaborate with the Fund in the conduct of the Early Warning Exercise (Box 1). The FSB Secretariat is located in the headquarters of the Bank for International

¹ This paper was prepared by a staff team led by Ross Leckow (LEG) and Christopher Towe (MCM), and comprising Damien Eastman and Amanda Kosonen (LEG) and Elena Loukoianova and Marina Moretti (MCM). The sections of the paper describing the FSB's legal framework have been reviewed by and discussed with staff of the FSB Secretariat. In preparing this paper, Fund staff also consulted with Swiss legal counsel, Dr. Felix Dasser of the Homburger law firm in Zurich, on the Swiss law implications of Fund membership in the Association.

² The FSB is the successor to the Financial Stability Forum (FSF), which was convened in 1999 to bring together national and international bodies responsible for financial stability.

Settlements (BIS) in Basel, Switzerland. The FSB’s membership includes national authorities (central banks, finance ministries, and regulatory authorities), international financial institutions, and international financial standard-setting bodies.

4. **At the time of its establishment, the FSB relied on a relatively informal institutional framework.** The FSB was not originally established as a legal entity and it did not have a separate legal personality.³ While the FSB was formed on the basis of a “Charter” that set out its objectives, functions, and decision-making structures, the Charter was explicit in its non-binding legal character. Moreover, the Charter expressly provided that the international financial institutions (including the Fund) “participate as members in the FSB in accordance with their respective legal frameworks and policies” (Article 6 (4)). The FSB was not a separate institution but essentially an informal grouping of its members who cooperated on a non-legally binding basis in pursuing the objectives of the FSB.⁴

³ Staff of the FSB Secretariat are formally employed by other bodies (primarily the BIS) rather than the FSB itself.

⁴ In 2010, the Fund Board paper on membership in the FSB characterized the FSB as a “transnational or transgovernmental regulatory network” (TRN)—i.e., an informal multilateral forum that engages in cooperation in regulatory areas at the supranational level. See *IMF Membership in the Financial Stability Board* <http://www.imf.org/external/np/pp/eng/2010/081010.pdf>, paragraph 14.

Box 1: Functions of the FSB

The FSB Charter specifies the FSB’s objectives and tasks. It states in Article 1 that the FSB is established “to coordinate at the international level the work of national financial authorities and international standard setting bodies (SSBs) in order to develop and promote the implementation of effective regulatory, supervisory and other financial sector policies. In collaboration with the international financial institutions, the FSB will address vulnerabilities affecting financial systems in the interest of global financial stability.”

The FSB’s tasks, set out in Article 2 of the Charter, are to:

- assess vulnerabilities affecting the global financial system and identify and review on a timely and ongoing basis within a macroprudential perspective, the regulatory, supervisory and related actions needed to address them, and their outcomes;
- promote coordination and information exchange among authorities responsible for financial stability;
- monitor and advise on market developments and their implications for regulatory policy;
- advise on and monitor best practice in meeting regulatory standards;
- undertake joint strategic reviews of and coordinate the policy development work of the international standard setting bodies to ensure their work is timely, coordinated, focused on priorities and addressing gaps;
- set guidelines for and support the establishment of supervisory colleges;
- support contingency planning for cross-border crisis management, particularly with respect to systemically important firms;
- collaborate with the Fund to conduct Early Warning Exercises;
- promote member jurisdictions’ implementation of agreed commitments, standards and policy recommendations through monitoring of implementation, peer review and disclosure; and undertake any other tasks agreed by its Members in the course of its activities and within the framework of the Charter.

5. **Notwithstanding this informal legal foundation, the FSB has put in place a well-defined framework for decision-making and policy development.** Under the FSB’s Charter (Article 9), the sole decision making body is the Plenary in which all members are entitled to participate.⁵ The Plenary adopts a wide range of decisions on matters of policy respecting the regulation of the financial sector and on jurisdictions’ observance of international financial standards.

⁵ The members of the FSB are listed in the attachment to the FSB Charter that is reproduced in Appendix I.

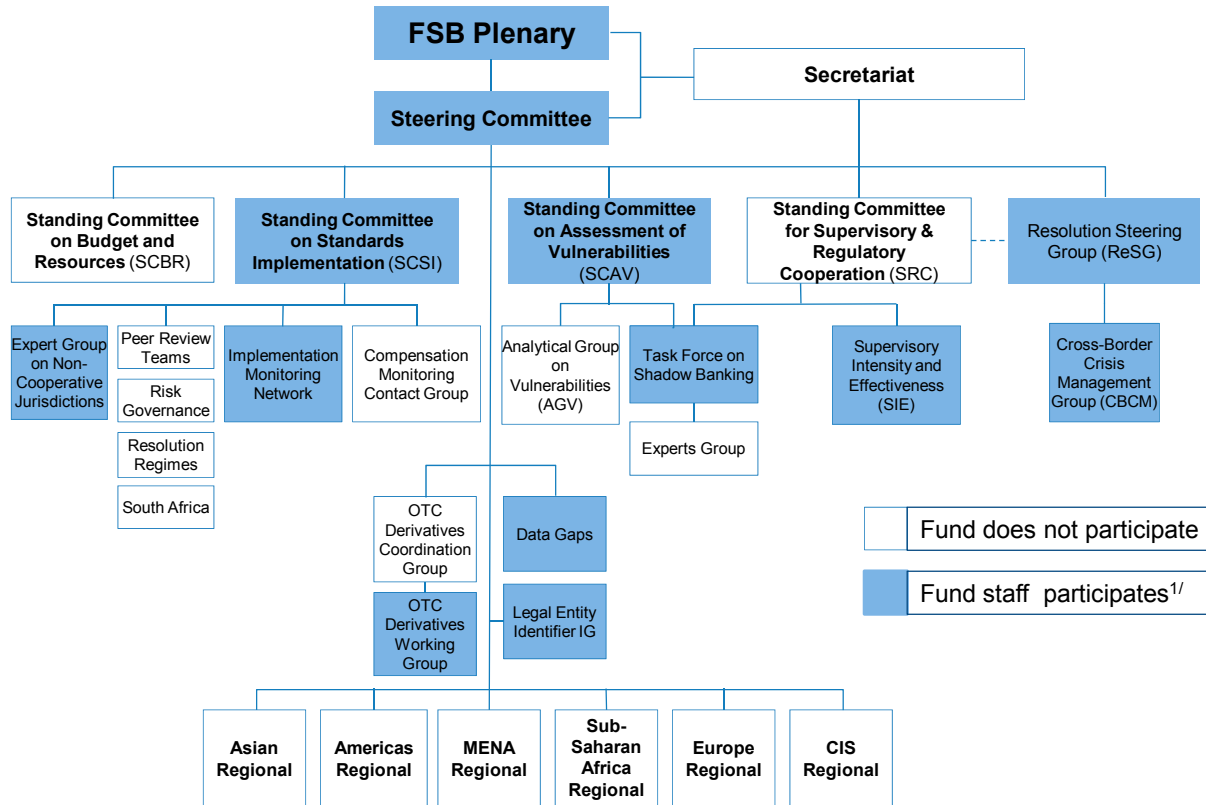
6. **Decisions in the Plenary are adopted by “consensus.”** While this term has not been formally defined, the FSB has developed practices for reaching consensus under which

“the Chair makes clear on what issue a decision is being sought, and then asks for the views of members. If there is no immediate convergence of views, the different points of view are discussed and attempts are made to reconcile competing or conflicting views. In practice, a consensus, in the sense of general agreement, is reached when there is no sustained opposition to the Chair’s proposal for decision.”

7. **The FSB has put in place a Steering Committee and a number of standing committees whose work is ultimately subject to review by and endorsement of the Plenary** (Table 1). Several sub-groups, in turn, feed streams of work to the upper committees.⁶

⁶ The FSB has also established a network of Regional Consultative Groups to provide a structured mechanism, inter alia, for the interaction of FSB members with non-members regarding FSB initiatives.

Table 1. FSB Committee Structure



^{1/}Fund staff has also taken part in some of the peer review teams, e.g. on resolution regimes.

8. **The Fund formally accepted membership in the FSB in September 2010.**⁷ Given the common areas of interest and complementarities in responsibilities between the Fund and the FSB, it was believed important for the Fund to become a member of the FSB and to participate fully in its activities.

9. **At the same time, the Fund established explicit understandings that were designed to ensure no diminution of the Fund's independence or its privileges and immunities.** The Executive Board's decision approving membership in the FSB specifically provided that:

⁷ See *IMF Membership in the Financial Stability Board*, <http://www.imf.org/external/np/pp/eng/2010/081010.pdf>; *IMF Executive Board Approves Fund Membership in the Financial Stability Board* (PIN No. 10/133), <http://www.imf.org/external/np/sec/pn/2010/pn10133.htm>.

- The acceptance of membership in the FSB would not give rise to any legal rights or obligations for the Fund;
- The Fund would participate in the FSB in accordance with its legal framework and policies;
- The Fund would reserve the right in specific circumstances not to take part in the decision-making of the FSB where such participation would not be consistent with its legal or policy framework;⁸ and
- In the event that the FSB reached a decision by consensus that its members would be expected to implement, the Fund would only be prepared to do so to the extent that, and for so long as, it is consistent with its legal and policy framework.

These understandings were communicated to the FSB at the time of the Fund's acceptance of membership (see Appendix III). A similar approach was taken by the World Bank and the OECD.

10. **The Fund has participated actively in the work of the FSB.** Fund staff participates on an ongoing basis in meetings of the FSB Plenary and on a number of high-level standing committees and groups (see Table 1).

- ***Fund staff is a member of the Steering Committee and the Standing Committees on Standards Implementation and Assessment of Vulnerabilities.*** Membership in the Steering Committee is by invitation, and all FSB members are permitted to participate in two standing committees.
- ***Fund staff and the FSB collaborate on an ongoing basis on a range of policy-related issues, often in response to requests by the G-20.*** Examples include the *Recommendations on Supervisory Intensity and Effectiveness* (2010), developed by the FSB in consultation with the Fund; the joint Fund/FSB/BIS paper on *Macprudential Policy and Tools* (2011); and work with the FSB and the World

⁸ Of particular concern was the FSB's "initiative on international cooperation and information exchange" that contemplated the imposition of coercive measures, in certain circumstances, against jurisdictions that are found to be taking insufficient action to bring their frameworks for financial regulation into line with international standards. As such measures are viewed to be inconsistent with the voluntary, cooperative approach underlying the ROSC program, the Fund has refrained from direct involvement in the decision-making on, or any resulting publication of, "noncooperative jurisdictions" (NCJs). This approach has been consistent with the principles endorsed by the Executive Board on the Fund's participation in these processes and would not change under the FSB's new institutional framework. See *2011 Review of the Standards and Code Initiative*, <http://www.imf.org/external/np/pp/eng/2011/021611.pdf>; *IMF Executive Board Concludes Review of Standards and Codes Initiative*, <http://www.imf.org/external/np/sec/pn/2011/pn1138.htm>.

Bank on *Financial Stability Issues in Emerging Markets and Developing Economies* (2011) and on *Identifying the Effects of Regulatory Reforms on Emerging Market and Developing Economies: A Review of Potential Unintended Consequences* (2012). Fund staff has worked with the FSB and BIS on benchmarking the macroeconomic impact of regulatory reform, including Basel III through the Macroeconomic Assessment Group, and is currently working on developing an integrated macro-assessment of the impact of different over-the-counter derivatives reforms.

- ***Fund staff is actively contributing to the FSB’s work on resolution regimes.*** This has encompassed work on the emerging new international standard on resolution, the *FSB Key Attributes of Effective Resolution Regimes for Financial Institutions* (2011);⁹ on the assessment methodology for the Key Attributes, which is to be finalized by end-2013; and on the FSB thematic peer review on resolution regimes to assess the degree of implementation of the Key Attributes across the FSB membership. Pilot assessments of the Key Attributes, to be undertaken jointly by the Fund, World Bank, and FSB, will be launched in the spring and will form the basis for further improvements in the Key Attributes Methodology.
- ***The Fund and FSB continue to collaborate on the joint Early Warning Exercise,*** with the Fund generally taking the lead on economic, macro-financial, and sovereign risk analysis, and the FSB on regulatory and supervisory issues.
- ***Fund staff has been actively involved in FSB Data Initiatives.*** In particular, Fund and FSB staff have cooperated closely on initiating and then implementing the G-20 Data Gaps Initiative and have jointly submitted progress reports on this initiative to the G-20 Finance Ministers and Central Bank Governors. Within this initiative, staff has also worked closely with the FSB Secretariat on developing common templates for the Global Systemically Important Financial Institutions (G-SIFIs). Fund staff has also played an important role in the development of the FSB Legal Entity Identifier (LEI) Initiative. The LEI initiative aims to put in place a uniform system to deliver unique identifiers to all legal entities participating in financial markets across the globe. The initiative has broad public and private sector participation and is intended to promote transparency and reduce risks in the financial system.

11. Collaboration between the Fund and the FSB continues to be guided by a joint letter signed by the Fund’s Managing Director and the Chairman of the Financial

⁹ See *The Key Attributes of Effective Resolution Regimes for Financial Institutions—Progress to Date and Next Steps*, <http://www.imf.org/external/np/pp/eng/2012/082712.pdf>.

Stability Forum (the FSB’s predecessor) in November 2008.¹⁰ That letter, in particular, noted that the Fund is responsible for surveillance of the global financial system and the assessment of countries’ implementation of international financial sector supervisory and regulatory policies and standards through FSAPs, ROSCs, and Article IV consultations. The letter also noted that the FSB is responsible for the elaboration of international financial sector regulatory and supervisory policies, for collaboration across the various standard setting bodies, and for the assessment of financial system vulnerabilities.

12. **Fund membership in the FSB has helped ensure that the work of the Fund and the FSB is mutually complementary.** The Fund’s involvement as a member of the FSB has helped identify important synergies and ensure an effective division of labor. Close working relations between Fund staff and the FSB Secretariat will continue to assist in this regard.

B. Institutional Reform in the FSB

13. **Given the growing importance of the FSB and its work, steps have been taken to strengthen its institutional framework.** At the November 2011 G-20 Cannes Summit, the G-20 Leaders agreed to strengthen the FSB’s “capacity, resources, and governance” to keep pace with the FSB’s growing role, including through its establishment “on an enduring organizational footing ... with legal personality and greater financial autonomy”.¹¹ The FSB subsequently established a high-level FSB working group that made several recommendations that were directed towards these objectives (Box 2). In particular, the working group recommended the formal establishment of the FSB as an “association” under Swiss law.¹²

14. **The establishment of a Swiss association was regarded as the most appropriate institutional model for the FSB.** While consideration was given to the establishment of the FSB as an international organization on the basis of a multilateral treaty (i.e., like the Fund and the World Bank), this approach was considered to be “not to be an appropriate legal form at this juncture.”¹³ Rather, it was concluded that the establishment of a corporate body in the form of an association under Swiss law offered the FSB a sufficiently firm institutional basis to meet its needs. The FSB Plenary adopted the Working Group’s recommendations in

¹⁰ See http://www.financialstabilityboard.org/publications/r_081113.pdf. A copy of the letter is attached as Appendix IV.

¹¹ G-20 Cannes Summit Final Declaration, November 4, 2011, paragraph 38.

¹² FSB Report to the G20 Los Cabos Summit on Strengthening FSB Capacity, Resources and Governance, June 12, 2012, www.financialstabilityboard.org/publications/r_120619c.pdf.

¹³ Id.

May 2012, and the recommendations were endorsed by G-20 Leaders at the Los Cabos Summit in June 2012.¹⁴

Box 2. Recommendations of High-Level Working Group on FSB Capacity, Resources, and Governance

The principal recommendations of the High-Level Working Group on FSB Capacity, Resources and Governance (the “working group”) for putting the FSB on sound permanent institutional footing included:

- The FSB considers a treaty-based inter-governmental organization not to be an appropriate legal form at this juncture.
- For vesting the FSB with a legal personality, creating an association under Swiss law would be an appropriate option. Appropriate Articles of Association should be formulated for this purpose, the draft of which is under review that will recognize that policy making activities will continue to be governed by the Charter.
- The FSB should adopt a gradual approach towards its institutionalization and, at this stage obtain the needed immunities by operating as an association under the BIS Headquarters Agreement. However, the FSB should evaluate towards the end of a period of five years, in light of experience and needs at that time, whether to vest the FSB with specific immunities and privileges by negotiating a separate HQA with Swiss authorities or go beyond this.
- The FSB should not introduce a membership fee at this stage for augmenting the resource pool of the FSB. Instead, it should continue to rely on the BIS for its entire funding as well as other support-service needs, through an appropriate agreement with the BIS. On the expiration of the service agreement, the FSB could, however, consider introduction of a membership fee.
- Once established as an association under Swiss law, the FSB should conclude a multiyear service agreement with the BIS that regulates the provision of financial and service support by the BIS, to provide continuity and greater planning certainty both for the FSB and the BIS.
- The FSB and the BIS have agreed to develop a multi-year service agreement, which will be finalized in the course of implementation of the recommendation.

The FSB Plenary adopted the working group’s recommendations in May 2012, and the recommendations were endorsed by G-20 Leaders at the Los Cabos Summit in June 2012.

15. **The FSB has moved forward to implement these recommendations.** On January 28, 2013, the FSB was formally established as an association under Swiss law domiciled in Basel, Switzerland. The FSB Secretariat will continue to be based in the

¹⁴ Los Cabos G-20 Leaders Declaration, June 19, 2012, paragraph 46.

headquarters of the BIS. Pursuant to a multi-year services agreement, the BIS will provide the FSB with all of its funding and most of its personnel.

16. **The FSB’s new Articles of Association are the constituent document through which the FSB was established as an association under Swiss law** (the “FSB Articles,” attached as Appendix II). The FSB Articles set out the purpose, membership criteria, and governing structure of the Association.

- The purpose of the Association is “to promote international financial stability.”¹⁵ In particular, it is given the purpose to further the objectives stipulated in the FSB Charter in its respective current version” (Article 2).
- Categories of eligible members are the same as under the FSB Charter (Article 3):
 - (a) authorities from jurisdictions that are responsible for maintaining financial stability, such as ministries of finance, central banks, and supervisory and regulatory authorities;
 - (b) international financial institutions, including the Fund, the World Bank, the OECD, and the BIS; and
 - (c) international standard setting, regulatory, supervisory and central bank bodies, including the Basel Committee on Banking Supervision (BCBS), the Committee on Payment and Settlement Systems (CPSS), the Committee on the Global Financial System (CGFS), the International Accounting Standards Board (IASB), the International Association of Insurance Supervisors (IAIS), and the International Organization of Securities Commissions (IOSCO).
- The governance framework set out in the FSB Articles closely resembles the arrangements that the FSB has relied on since its formation, and before its establishment as an association (Articles 4-5). It consists of (i) a Plenary and (ii) an Executive. The Plenary is the Association’s sole decision-making body and consists of representatives of all members of the Association and is presided over by the Chair of the FSB. The Executive of the FSB is comprised of the Chair of the FSB and the Secretary General who are authorized to represent the Association in its dealing with third parties.¹⁵
- The Plenary takes all decisions by “consensus” which is not defined in the Articles. The FSB Secretariat has clarified that, in the absence of a formal definition of

¹⁵ The Executive can only legally commit the Association with the approval of the Plenary.

- consensus, decisions will continue to be taken and a consensus reached using the same approach that has been used in the past (see paragraph 6 above).
- While the FSB is a domestically-incorporated association subject to Swiss law, its status in Switzerland will be governed by reference to the status of the BIS under the headquarters agreement concluded between the BIS and Switzerland. The FSB intends to operate under the privileges and immunities of the BIS in Switzerland.¹⁶

17. Several features of the FSB’s new institutional framework are of particular importance to the Fund.

- ***The FSB’s policy making activities will continue to be governed by the non-binding FSB Charter.*** The FSB’s non-binding Charter remains in place, and the FSB Articles explicitly state that all policy making will be governed by the FSB Charter and will not give rise to any legal rights or obligations (Article 10). Accordingly, FSB activities will be governed by two separate documents that will co-exist: (i) the FSB Articles that are subject to Swiss law, and (ii) the FSB Charter that remains a non-legally binding document.¹⁷
- ***Members’ own legal and policy frameworks cannot be modified by virtue of the acceptance of membership in or by decisions of the Association.*** More specifically, the FSB Articles provide that “members participate in the Association in accordance with their respective legal and policy frameworks, which may not be modified or superseded by these Articles or any decision of the Association” (Article 3 (3)).

18. In addition to adopting the Articles of Association, the FSB’s members, as part of the FSB’s institutional reform, made a number of changes to the FSB Charter.¹⁸ The revised Charter (attached as Appendix I) seeks to strengthen the FSB’s role in coordinating international standard setting and in monitoring the implementation of agreed policies and international standards at the national level. It expands the mandate of the FSB to include: (i) coordination of the policy development work of international standard setting bodies; (ii) promoting member jurisdictions’ implementation of agreed commitments, standards, and policy recommendations through monitoring of implementation, peer review, and disclosure;

¹⁶ While consideration was given to the possibility of the FSB entering into a headquarters agreement with the Swiss authorities under which the FSB would be accorded on Swiss territory privileges and immunities that are similar to those which apply to an international organization, it was decided not to pursue this approach.

¹⁷ In addition, the FSB has introduced Procedural Guidelines, which are intended as a non-binding reference document for guidance of the FSB Secretariat and members to improve transparency and consistency of practice in the operational activities of the FSB under the FSB Charter.

¹⁸ Los Cabos G-20 Leaders Declaration, June 19, 2012, paragraph 46.

and (iii) addressing regulatory gaps that pose a risk to financial stability by developing or coordinating the development of standards and principles, in collaboration with standard setting bodies, in areas that do not fall within the functional domain of another international standard setting body, or on issues that have cross sectoral implications. However, the revised Charter does not modify the relationship or existing roles and competencies as between the Fund and the FSB. Rather, the revised Charter continues to provide that the Charter is not intended to create any legal rights or obligations, and that the international financial institutions participate in accordance with their respective legal frameworks and policies (Article 6 (4)).

III. FUND MEMBERSHIP IN THE ASSOCIATION

A. Legal Basis for Fund Membership in the Association

19. **In light of its new institutional structure, the FSB has invited all of its members to join the new FSB Association.** As of February 13, 2013, 60 of the FSB's 64 members had already accepted membership, and the remaining members were taking the steps necessary to do so.

20. **Membership in the Association would be the most effective mechanism for continued cooperation between the Fund and the FSB.** The FSB's new governance framework does not contemplate any form of effective participation in the FSB's activities other than as a member of the Association. For example, no provision is made for "observer" status or for forms of special association. As such, there is no basis upon which the Fund could effectively participate in the FSB's activities other than as a member of the new Association. In any event, full membership would allow the Fund to represent its interests and those of its broader membership by participating fully in the FSB's governance structure, and to continue to build on its already effective relationship with the FSB.

21. **It is legally possible for the Fund to become a member of the Association.** Under Article IX, Section 2 of the Fund's Articles, the Fund possesses "full juridical personality" and, in particular, the capacity to contract, to acquire and dispose of property and to institute legal proceedings. While the Fund has never become a member of a domestically-incorporated legal entity, the Fund has the legal capacity to do so.¹⁹ The activities in which

¹⁹ To date, the Fund has accepted membership in two international organizations that pursue policies that complement the Fund's objectives: (i) the Joint Vienna Institute; and (iii) the African Capacity Building Foundation. The Fund is no longer participating in the African Capacity Building Foundation as a member. On two other occasions, the Fund sponsored the formation of domestically-incorporated entities, but did not itself become a member, the Bretton Woods Recreation Center, Inc. as a Maryland company and the Per Jacobsson Foundation as a District of Columbia non-profit corporation..

the Fund engages as a member of the FSB are consistent with the Fund’s purposes, and support all of the Fund’s functions, including the provision of technical assistance and Fund surveillance under Article IV. However, for the Fund to accept membership, Executive Board approval is required.

B. Legal Implications of Fund Membership in the Association

22. **In examining the implications of Fund membership in the Association, a number of legal and policy issues need to be considered.** The key points may be summarized as follows:

- ***Would the Fund continue to be protected by its own privileges and immunities?*** In its activities as a member of the Association, the Fund would continue to be protected by its own privileges and immunities under Swiss law. While the Fund would accept membership in a domestically-incorporated association that is subject to Swiss law, the Fund would not thereby waive its own privileges or immunities for any purpose in Switzerland or elsewhere. In particular, Swiss law respects the immunities of Fund in Switzerland. Moreover, the FSB Articles explicitly state that “membership in the Association shall not constitute a waiver of the sovereign immunity of any Member or the privileges and immunities of international financial institutions participating as Members provided for by their respective constitutive texts and as provided for under international and national law” (Article 9 (3)).²⁰
- ***Would membership in the Association expose the Fund to the risk of liability for actions of the Association?*** While it is possible that the FSB may be subject to litigation in domestic courts as a result of actions it takes, there would be little risk that the Fund itself would be subject to liability for any such actions. Under principles of corporate law that are common to most jurisdictions, the actions of a corporation generally may give rise to liability for the corporation itself but not its members.²¹ Reflecting a principle of the laws of Switzerland and of many other jurisdictions, the FSB Articles explicitly provide that the liability of the Association is limited to the extent of its own assets and members and their representatives shall not be responsible for the liabilities of the Association (Article 9). In any event and as noted above, the Fund will continue to be protected by its own privileges and immunities in its own activities as a member of the Association.

²⁰ In addition, the FSB Articles note that “Members participate in accordance with their respective legal and policy frameworks, which may not be modified or superseded by these Articles or any decision of the Association” (Article 3 (3)).

²¹ The circumstances in which the corporate law of most jurisdictions would “pierce the corporate veil” and impose liability on members of a corporation for the actions of the corporation itself are extremely limited and would not appear to be relevant for the Fund’s membership in the Association.

- ***To what extent would Fund employees be at risk of legal liability?*** Fund employees who participate on behalf of the Fund in the activities of the FSB would be protected by the Fund’s privileges and immunities. Under the Fund’s Articles, Fund employees are protected by the Fund’s privileges and immunities for acts performed in their official capacity. Such duties would extend to participation in FSB activities as representatives of the Fund.
- ***Would the decisions of the Association give rise to legal obligations for the Fund as a member?*** Under the FSB Articles, the Plenary will take two types of decisions, neither of which will give rise to legal obligations for members:
 - (i) The Plenary will take decisions related to the administration of the Association, including the appointment of the Executive and external auditors for the annual financial statements. Such decisions will legally bind the Association in its relations with third parties whether or not a particular member supported the relevant decision. However, such decisions would not, in themselves, give rise to legal obligations for members.
 - (ii) The Plenary will also take decisions on policy matters including the articulation of international best practices on issues of financial sector regulation and assessments of individual jurisdictions’ compliance with international financial standards. These decisions are not legally binding on members.²² Article 10 of the FSB Articles notes that “the policy making and related activities of the Association shall be governed by the FSB Charter” and that “these activities, including any decisions reached in their context, shall not be binding or give rise to any legal rights or obligations under the present Articles.”
- ***Would the Fund otherwise be bound by policy decisions of the FSB?*** The FSB Articles ensure that policy-related decisions will, as a matter not only of law but of policy as well, not be binding on members. While it certainly may be expected that FSB members will generally support decisions that the institution adopts, the FSB Articles expressly preclude the possibility that decisions of the Association could supersede or modify the legal or policy framework of an FSB member.²³ Moreover, the FSB Articles permit members to decline to participate in any activity or decision of the Association that is not consistent with the member’s legal or policy

²² With respect to the FSB’s process for dealing with non-cooperative jurisdictions (see footnote 8 above), the new FSB Association will not result in any changes to the nature of such policy decisions, and they will remain non-binding.

²³ Specifically, the FSB Articles (Article 3 (3)) provide that “members participate in the Association in accordance with their respective legal and policy frameworks, which may not be modified or superseded by these Articles or any decision of the Association.”

framework.²⁴ Accordingly, the Fund would retain the right not to participate in or be bound by any policy making or related activities that the Fund considers inconsistent with the Fund’s legal or policy framework, and it could do so at any time in the process. Moreover, there is nothing in the FSB’s new institutional framework that would preclude the Fund from publicly objecting to a decision adopted by the Plenary that is inconsistent with the Fund’s own policies.

C. Operational Implications of Fund Membership in the Association

23. **The FSB’s new legal framework is not expected to lead to significant changes in the FSB’s work processes or its interactions with its members.** For the Fund’s part, it is proposed that the Fund’s internal work processes on FSB matters continue with little change. Since the Fund’s acceptance of membership in the FSB in 2010, Fund participation in FSB activities has remained within the control of Fund management. In practice, management has delegated Fund representation in the Plenary and relevant FSB committees to staff. Moreover, procedures are in place for the Financial Counsellor to informally brief the Executive Board on the Fund’s activities in the FSB on a periodic basis. It is proposed that management would continue to guide Fund participation in the FSB’s activities and staff would continue to report to the Executive Board on the Fund’s work in the Association.

D. Financial Implications of Fund Membership in the Association

24. **Membership in the Association would not require any financial contribution from the Fund.** The FSB Articles do not impose any obligation on members to make financial contributions to the Association. Rather, they provide that the Association will be funded by voluntary contributions from members and by the BIS on the basis of a multi-year agreement. Moreover and, as noted above, the Fund would not be held responsible for the liabilities of the Association.

25. **The Fund’s continued collaboration with the FSB—regardless of its form—will still have resource implications.** These costs reflect largely: (i) staff participation in FSB meetings (plenary, committees, working groups, etc.), including travel; and (ii) the preparation of briefings and other substantive contributions to FSB working groups. Owing to the increased involvement of the FSB in delivering on the G20 financial regulatory reform agenda, these costs have grown since the FSB’s inception in FY 2010 to reach an estimated 3.5-4 .5 FTEs of staff time (plus associated travel costs of around US\$200,000–

²⁴ Specifically, the FSB Articles (Article 10) provide that “members can recuse themselves at any time from ... activities or decision-making where such activities or decision-making are not consistent with their legal or policy frameworks.”

US\$250,000, in FY 2013), and could be expected to remain close to this level going forward.²⁵

IV. PROPOSED DECISION

26. **Given the growing and effective working relationship that has developed between the Fund and the FSB, it is proposed that the Fund accept membership in the new Association.** Membership in the Association would enable the Fund to continue to participate actively in the work of the FSB and to cooperate closely with the FSB and its members. Moreover, the Fund could participate as a member without compromising its independence, its privileges and immunities or its legal or policy framework. The FSB's Articles of Association have been structured in a manner that ensures that this will be the case.

27. **In accepting membership in the Association, it is proposed that the Fund note that its participation will continue to be guided by understandings that closely resemble those which formed the basis of Fund membership in 2010.** The Fund would note that (i) it will participate in the Association in accordance with the Fund's legal framework and policies, (ii) it will reserve the right not to take part in, or be bound by, the decision-making of the Association on policy making and related activities where such participation would not be consistent with the Fund's legal or policy framework, and (iii) if the Association reaches a decision on a policy-related matter, the Fund will only be prepared to support that decision to the extent that it is consistent with the Fund's legal and policy framework. These understandings would be set out in the Board decision approving membership and would be communicated to the FSB.

²⁵ These figures include the costs associated with the one Fund staff seconded to the FSB—an arrangement that has been in place since the establishment of the FSF in 1999.

The following draft decision, which may be adopted by a majority of the votes cast, is proposed for adoption by the Executive Board:

1. The Fund's acceptance of membership in the Financial Stability Board (the "Association") is approved.

2. In approving the Fund's acceptance of membership in the Association, it is understood that (i) the Fund will participate in the Association in accordance with the Fund's legal framework and policies, (ii) the Fund will reserve the right not to take part in, or be bound by, the decision-making of the Association on policy-making and related activities where such participation would not be consistent with the Fund's legal or policy framework, and (iii) if the Association reaches a decision on a policy-related matter, the Fund will only be prepared to support that decision to the extent that it is consistent with the Fund's legal and policy framework.