THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES

17 April 2008

Our ref: ICAEW Rep 53/08

Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

By email: banking.reform@hm-treasury.gov.uk

Dear Sirs

DISCUSSION PAPER FINANCIAL STABILITY AND DEPOSITOR PROTECTION: STRENGTHENING THE FRAMEWORK JANUARY 2008

The Institute of Chartered Accountants in England and Wales is pleased to respond to your request for comments on *Financial Stability and Depositor Protection: Strengthening the Framework.*

Please contact me or Iain Coke, Head of the Financial Services Faculty, should you wish to discuss any of the points raised in the attached response.

Yours faithfully

Michelle Logan
Manager of Risk and Regulation
T +44 (0)20 7920 8432
F +44 (0)20 7638 6009
E michelle.logan@icaew.com

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES

ICAEW Representation

ICAEW REP 53/08

DISCUSSION PAPER FINANCIAL STABILITY AND DEPOSITOR PROTECTION: STRENGTHENING THE FRAMEWORK JANUARY 2008

Memorandum of comment submitted in April 2008 by The Institute of Chartered Accountants in England and Wales in response to the Bank of England/HM Treasury/FSA discussion paper on Financial Stability

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INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales (the Institute) welcomes the opportunity to comment on the Discussion Paper *Financial Stability and Depositor Protection: Strengthening the Framework,* issued by the Bank of England, HM Treasury and the Financial Services Authority in January 2008.

WHO WE ARE

2. The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 130,000 members in more than 140 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 700,000 members worldwide.

3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The Inst itute ensures these skills are constantly developed, recognised and valued.

MAJOR POINTS

Real risk of unintended consequences

4. We welcome the Tripartite Authorities' initiative in reviewing the existing supervisory regime, including in particular the legal framework for dealing with banks facing difficulties. We fully support the objectives in the paper and understand the need for urgency but believe that given the scale of change proposed it is important to consult and reflect adequately otherwise we believe that there is a very real risk of unintended adverse consequences, particularly in relation to the proposed changes in chapters 3 and 4 of the Discussion Paper which propose fundamental changes to current UK insolvency legislation. We believe that it is possible that these may even impact on London's attractiveness as a financial centre and no decisions therefore should be undertaken to rush through ill-considered legislation.

Strengthening the powers of the Tripartite Authorities

5. We wholeheartedly endorse the strengthening and clarification proposals relating to the Tripartite Authorities. It is clear that for the tripartite arrangement to be effective it is essential that they can share information without restriction and are clear in terms of what each of them is accountable for. We do believe, however, that the FSA had considerable powers that it did not appear to utilise in recent events because it failed to recognise the risks of Northern Rock's business model. This was explicitly recognised by the FSA itself in its own internal review of the events surrounding Northern Rock. We are of the view that it is fundamental to understand the reasoning behind this rather than continue to provide the FSA with stronger and stronger statutory powers.

Support for the SRR conceptually but with significant practical concerns

6. We believe that the concept of a Special Resolution Regime ('SRR') has merit and is clearly intended to ensure that the regulators are able to take decisive and in certain circumstances more aggressive action to assist a bank in difficulties prior to an insolvency event. For example, in certain situations we believe that it would be appropriate for the Tripartite Authorities to be able to parachute in their own management team rather than merely demand change to the existing one. This is beyond their existing powers. We can also see that there would be benefit in the Tripartite Authorities in effect being able to negotiate a private sale through the SRR regime and in that context being able to ensure that the acquirer will not be sued directly by disgruntled shareholders. Any challenge to the SRR by shareholders if successful should only be able to result in a claim for damages and not to the reversal of the original decision to put the bank into SRR.

7. Whilst we entirely support the SRR as a concept, we do not believe that the proposals are particularly well thought through in a number of material respects . It is unclear how a number of processes referred to will work in practice and we therefore believe that further detailed consultation is necessary both within and outside the banking industry. We believe that detailed consideration needs to be given to how this process should work in conjunction with existing insolvency legislation which should only be changed if proven to be absolutely necessary. There is no doubt that our current insolvency legislation has served us well through many banking crises and should not be cast aside without very detailed consideration being given to the im plications. The legislation has proven to be effective in several scenarios such as BCCI, and in a series of smaller bank failures. In addition the current legislation has the advantage of clarity in that all parties are clear as to what their various rights and remedies are, and the value that the commercial marketplace puts on certainty should not be underestimated. It is also essential that insolvency practitioners are appropriately consulted in relation to this proposed change and what, if any, changes to the insolvency legislation are necessary or desirable.

8. In our view the triggers that would permit the Tripartite Authorities to place an organisation within the SRR need to be very carefully and tightly determined. We do not believe that all other regulatory remedies need to have been exhausted as we think that this may well lead to unnecessary delay and defeat the purpose for which the legislation was drafted. We do believe however, that the regulators should be able to prove as a minimum that the bank concerned would fail the relevant threshold conditions within a reasonable time period and that placing the bank into the SRR is an appropriate response

9. We would also strongly recommend that in terms of appropriate planning the regulators should have one contingency plan for each bank in the UK which would be regularly reviewed so that if necessary the plan could be implemented with minimal changes in a short time frame.

10. We do not believe that it is appropriate for the industry to contribute to funding the SRR. We are of the view that post the SRR there are only two possible outcomes. The first is that the firm continues in business as a going concern or is sold in which case either the firm itself or the acquirer should pay for any costs incurred in relation to the SRR. The second is that the firm goes into insolvency in which case the costs would be met from assets of the firm in the same way as an insolvency practitioner's costs are.

Role of the Restructuring Officer

11. In terms of the proposals to appoint a restructuring officer we are of the view that this individual must be a qualified insolvency practitioner and have all the rights and obligations that exist within the framework of the current legislation. We note that the objectives of this individual are not currently clearly defined. Whilst we have no difficulty in agreeing that it may be appropriate for the individual to have as an additional objective, the public policy objective of maintaining financial stability, we do not believe that it is appropriate to prioritise depositors over other creditors and shareholders and note that the authorities themselves reject this view later in the discussion paper. We believe that rather than give depositors priority they should be properly protected under the Depositor Protection Regime.

New Insolvency Regime for Banks

12. Having established the new SRR regime, we believe that there is little merit in setting up a special insolvency regime for banks and are entirely unclear as to why the Tripartite Authorities felt that this was an appropriate course of action.

Should there be regulation of credit rating agencies?

13. In terms of the comments about credit rating agencies contained within the Discussion Paper, we believe that there should be a formal consultation process about whether credit rating agencies should be regulated entities given their importance to the stability of financial market places on a global basis. Our view is that a market solution is preferable to further regulation and in that context if changes are required to current practices they should be sought through the IOSCO code of Conduct on Credit Rating Agencies.

Compensation Limits

14. We believe that the current compensation limit of £35,000 is adeq uate in the majority of cases. We do believe however, that the FSA should acknowledge that there is a major issue in relation to brand and this undoubtedly causes significant confusion and less protection for consumers. It is unrealistic for a consumer to be expected to know the relationship between brands, banking licences and group structures given the complexity in many places. We recommend that the current compensation limit should be extended so that the FSCS limit is set per person per brand and that the government should consult with the banking industry as to how best to accommodate this whilst ensuring that any such system has suitable safeguards to avoid unintended consequences. In terms of higher balances for items such as house purchase/pension lump sums we believe that a marketplace must be made available for the customers to enable them to purchase insurance at a reasonable cost.

Scope of the proposals

15. The reason why payment systems have been included within the scope of this Discussion Paper is not apparent. We would recommend that should the FSA wish to change the regulatory approach to payment systems, it should explain clearly why it is doing so and engage in a separate consultation process.

16. We are unclear as to why financial collateral arrangements are included in the scope of this Discussion Paper and can see no commercial or regulatory reason why this is believed to be necessary or appropriate at this time.

Accounting Standards/Consolidation

17. We note the comments made in relation to accounting and the valuation of structured products. We are pleased to note the support of the Tripartite Authorities for fair value accounting and the acknowledgement that 'we must not prejudge the impact of new accounting standards'. We would note however, that it is currently quite clear in terms of accounting rules what should be consolidated on an entity's balance sheet. It should also be recognised that IFRS is different from US GAAP and the concerns that are currently being raised in relation to US entities do not apply to those reporting in accordance with the requirements of IFRS In addition we thought it would be helpful if at this early stage we explained that in our view the mere existence of reputational risk in itself does not give rise to consolidation as there seems to be considerable confusion around this point at the moment. We would be pleased to meet further with the Tripartite Authorities to discuss our views in relation to the accounting matters raised within this paper should the Tripartite Authorities believe that it would be helpful.

18. We are of the view that the cost benefit analysis throughout this paper is not sufficiently detailed to enable any meaningful comment to be made.

SPECIFIC QUESTIONS

19. Our answers to the specific questions raised by the Tripartite Authorities are set out below.

ANSWERS TO DETAILED QUESTIONS

Chapter 1 - General

Questions 1.1: Please provide detail if you think that any of the proposals in this document:
- **are necessary and proportionate;**
- **raise significant concerns; or**
- **could be improved?**

20. We refer you to our initial observations which are included at the front of this document.

Question 1.2: To what extent are the proposals in this document mutually reinforcing?

21. We believe that the Special Resolution Regime and the special insolvency procedure for banks are potentially mutually re-in forcing.

Question 1.3: The proposals in this consultation document, unless specified, are intended to be implement for banks, building societies and other deposit-taking firms. Please provide details where this is not appropriate.

22. We believe, save where we have expressly provided otherwise within this document, that consistent proposals should be implemented for all deposit taking firms.

Chapter 2 – Stability and Resilience of the Financial System.

Question 2.1: Do you agree with the actions being taken by the Authorities in the UK to improve stress testing by banks?

23. We believe that it is essential that the Tripartite Authorities take the right approach in relation to stress testing. We have made detailed recommendations to the FSA in our response to the discussion paper 07/7 *Review of Liquidity Requirements for Bank and Building Societies* and would refer you to that response. We also note that it is important that stress testing is not seen as the panacea to all problems.

Question 2.2: Have the Authorities correctly identified the issues on which international work on stress testing and risk management should focus?

24. We refer you to our previous response to Discussion Paper 07/7 *Review of Liquidity Requirements for Bank and Building Societies*.

Question 2.3: Have the Authorities correctly identified the issues on which the work on liquidity regulation should focus?

25. We refer you to our previous response to Discussion Paper 07/7 *Review of Liquidity Requirements for Bank and Building Societies*.

Question 2.4: Do you agree with the actions being taken by the Authorities to encourage full and consistent valuation and disclosure by banks?

26. We note that the authorities have recognised that it is too soon to consider the impact of IFRS 7 on financial reporting and believe that it can only realistically be considered post the banks' reporting season and after a sufficient period for analysis. It is also important to note that the objectives of IFRS and the objectives of regulatory reporting may well be different and therefore require different outcomes.

Question 2.5: Have the Authorities correctly identified the issues on which international work on accounting and valuation of structured products should focus?

27. We believe as stated above that it is important for the authorities to be clear that they are focusing on prudential regulatory requirements and needs and not on financial reporting standards per se.

Question 2.6: Have the authorities correctly identified the issues on which international work on credit rating agencies should focus?

28. We refer you to our earlier answer in paragraph 13.

Question 2.7: Do you agree with the Authorities' proposals to improve the information content of credit ratings?

29. We agree

Question 2.8: Do you agree with the Authorities that the preferred approach to restoring confidence in ratings of structured products is through market action and, where appropriate, changes to the IOSCO Code of Conduct on Credit Rating Agencies?

30. We agree.

Question 2.9: Have the Authorities correctly identified the issues on which international work on banks' exposures to off-balance sheet vehicles should focus?

31. As stated earlier in our response, we believe that this is an area which is currently the subject of much confusion. It is currently quite clear in terms of accounting rules what should be consolidated on an entity's balance sheet. The fact that entities have gone beyond their contractual obligations and taken some vehicles in difficulties onto their balance sheets should not be seen as a problem as clearly they would not be doing this if they could not afford to do so. It should also be recognised that IFRS is very different from US GAAP and the concerns that are currently being raised in relation to US entities do not apply to those reporting in accordance with the requirements of IFRS. In addition we would like to make clear that the mere existence of reputational risk alone should not be regarded as a trigger for consolidation.

Chapter 3 – Reducing the Likelihood of a Bank Failing

Question 3.1: To what extent do the FSA's range of existing powers reduce the likelihood of failure of a bank, and under what circumstances would they not be effective?

32. We believe that the FSA already has sufficient powers to prevent a bank failing. It has in effect the ability to change the whole management team of the bank concerned if the bank runs a risk of breaching threshold conditions. The real issue is why the FSA did not utilise its powers in the events surrounding Northern Rock.

33. We are also of the view that if such powers were utilised correctly and at the appropriate times they would be effective. We do believe however that the SRR would enhance the Tripartite Authorities powers. In certain situations, for example we believe that it would be appropriate for the Tripartite Authorities to be able to parachute in their own management team rather than merely demand change to the existing one. This is beyond their existing powers. We can also see that there would be benefit in the Tripartite Authorities in effect being able to negotiate a private sale through the SRR regime and in that context being able to ensure that the acquirer will not be sued directly by disgruntled shareholders. Any challenge to the SRR by shareholders if successful should only be able to result in a claim for damages and not to the reversal of the original decision to put the bank into SRR.

Question 3.2: Are the FSA's existing powers, and in particular the application of them clear, and how could they be further clarified?

34. We believe that the FSA's powers are clear and do not require further clarification.

Question 3.3: To what extent are the annual and one-off costs of the new information requirement on banks proportionate? Can they be quantified?

35. We have no comments.

Question 3.4: How effective would the new information requirement be in identifying and addressing a sudden deterioration in a bank's financi al soundness?

36. Whilst it is clear that new information requirements are a matter for regulators there is no doubt that in practice a regulator can already receive any information that it wants from a particular bank. In reality it is to what use that the information is put that is the key here.

Question 3.5: Are there circumstances in which it would not be appropriate for the FSA to collect and share the information that the Bank of England or HM Treasury require?

37. We believe that there are no circumstances in which it would be inappropriate for the Tripartite Authorities to collect and share information. If there were it would demonstrate that the tripartite arrangement was not workable in practice.

Question 3.6: Do you agree with the proposal for a new and flexible regime for payment systems oversight and, if so, how should its scope be defined?

38. We are surprised at the inclusion of payment systems within the scope of this proposal. We believe that it has no relevance to this particular consul tation paper and should be dealt with separately by another consultation if there really is a demonstrable need for change.

Question 3.7: Which elements of such a payment systems regime should be effected through statutory powers?

39. Please see previous response to Question 3.6 above.

Question 3.8: To what extent is the current provision to register charges at Companies House relevant to banks? Do you agree that it is appropriate to amend it?

40. The current requirement to register charges at Companies House is relevant to banks. We believe that it is inappropriate to amend this as the ramifications could potentially be very significant both in the normal marketplace and if there were a potential insolvency event.

Question 3.9: Should any exemption for banks only apply to receipt of ELA, or should there be a more general exemption for all types of lending?

41. We believe that it is not appropriate for there to be an exemption for banks in relation to the Emergency Liquidity Assistance or a more general exemption for all types of lending.

Question 3.10: Would extending the 21-day period be a viable, alternative proposition?

42. We believe that it would be possible to consider extending the 21 day period for registration purely in relation to the ELA. It would be essential though for banks to ensure that they made no inaccurate representations if they were to secure lending from alternative sources post the ELA and before the charge at Companies House was registered. We believe that the situation posited in paragraph 3.46 of the discussion paper is a very significant commercial problem.

Question 3.11: What would be the effect of removing the 'weekly return' reporting requirement? What other statutory reporting requirements disclose ELA?

43. We believe that there will be no effect from removing the weekly return reporting requirement. We are unaware of any other statutory reporting requirements that disclose the ELA.

Question 3.12: D you agree that the Bank of England should be provided with statutory immunity for any acts or omissions which relate to its role in providing financial stability and central banking functions?

44. We believe that the Bank of England should be given statutory immunity in both these areas.

Question 3.13: Do you agree that it is appropriate for the Bank of England to be able to rely upon its security in all such circumstances?

45. We believe that the Bank of England should be able to rely on its security from the point in time in which it is given. It should not however be given priority over other creditors who have pre-existing rights.

Question 3.14: Do you agree that funds provided by the Bank of England should be exempted from calculation of building societies' wholesale funding?

46. We agree.

Question 3.15: What risks are there to building societies granting floating charges over their assets to the Bank of England?

47. We believe that there are no risks to the Building Societies granting floating charges to the Bank of England over their assets

Chapter 4 – Reducing the Impact of a Failing Bank

Question 4.1: Do you agree there should be a special resolution regime for banks?

48. We refer you to paragraphs 6, 7, 8, 9 and 10 earlier in our response.

Question 4.2: Do you agree that the trigger for a bank entering a special resolution regime should be based on a regulatory judgement exercised by the FSA in close consultation with the Bank of England and HM Treasury?

49. In our view the triggers that would permit the Tripartite Authorities to place an organisation within the SRR need to be very carefully and tightly determined. We do not believe that all other regulatory remedies need to have been exhausted as we think that this may well lead to unnecessary delay and defeat the purpose for which the legislation was drafted. We do believe however, that the regulators should be able to prove as a minimum that the bank concerned would fail the relevant threshold conditions within a reasonable time period and that placing the bank into the SRR is a proportionate response

Question 4.3: Do you agree that the trigger should be linked to regulatory guidance material?

50. Please see the answer to Question 4.2 above.

Question 4.4: Do you agree with the special resolution regime process as outlined?

51. We believe that the SRR process outlined here is at a very high level and the level of detail is insufficient to make any meaningful comment. As previously stated this is an area where considerable further analysis and work is required particularly in relation to how this concept fits in with the insolvency regime.

Question 4.5: Do you agree that the potential abridgement of property rights in the special resolution regime can, in principle, be justified with a suitable public interest test?

52. We believe that the SRR process outlined here is high level and the detail provided is insufficient to make any meaningful comment.

Question 4.6: What safeguards and appeal processes would be needed to support a public interest test for the special resolution regime?

53. We believe that the SRR process outlined here is at a very high level and the level of detail is insufficient to make any meaningful proposals.

Question 4.7: Do you agree that the Authorities should have the power to direct a sale of a bank possibly against the wishes of the directors or shareholders?

54. We agree.

Question 4.8: Is judicial review the correct mechanism for challenging a decision to institute the directed transfer?

55. We believe that judicial review would be the correct mechanism for challenging a decision but that it is important that any action must be one with the sole remedy of damages against the Tripartite Authorities.

Question 4.9: Is the Financial Services Tribunal the right forum for resolution of transactional issues such as valuation or distribution of proceeds among Stakeholders?

56. We believe that the Financial Services Tribunal is the appropriate forum.

Question 4.10: Do you agree that, in tightly defined circumstances, the Authorities should be able to take control of a failing bank through effecting a transfer of some or all of its assets and liabilities to a bridge bank? Do you agree that that some flexibility in the description of these circumstances is also desirable?

57. We can foresee immense logistical difficulties in achieving the Bridge Bank concept and are unsure as to why it is necessary if the SRR is enacted. We also believe that it is essential that the Bridge Bank does not disadvantage one group of creditors over another or favour any particular group such as depositors.

Question 4.11: Do you agree with the removal of shareholders' and directors' rights and temporary suspension of creditors' rights under this bridge bank proposal?

58. We can foresee immense logistical difficulties in achieving the Bridge Bank concept and are unsure as to why it is necessary if the SRR is enacted. We also believe that it is essential that the Bridge Bank does not disadvantage one group of creditors over another or favour any particular group such as depositors.

Question 4.12: Is judicial review the correct mechanism for challenging a decision to transfer to a bridge bank*?*

59. We believe that judicial review would be the correct mechanism for challenging such a decision but that it is important that any action must be one with the sole remedy of damages against the Tripartite and not to unwind the original decision as that would take far too long and result in confusion and uncertainty.

Question 4.13: Is the Financial Services Tribunal the right forum for resolution of transactional issues such as valuation or distribution of proceeds among Stakeholders?

60. We believe that the Financial Services Tribunal would be the appropriate forum for such matters.

Question 4.14: Should a new bank insolvency procedure be introduced for banks and building societies as an option for the Authorities instead of normal insolvency procedures?

61. We refer you to our earlier comments in this document in paragraph 12. We do not understand why it is being suggested that we need a new insolvency procedure especially for banks. We believe that this will result in unnecessary complexity and confusion and a fundamental lack of certainty at the time that it is most needed.

Question 4.15: Do you think that there ought to be provision in the bank insolvency procedure for continued trading of some of the bank's business in the interests of depositors or other creditors? If so, how do you think this might work?

62. We refer you to our earlier comments in this document in *paragraph 12*. We do not understand why it is being suggested that we need a new insolvency procedure especially for banks. We believe that this will result in unnecessary complexity and confusion and a fundamental lack of certainty at the time that it is most needed. All of these matters are we believe appropriately dealt with within the current insolvency framework.

Question 4.16: Should the objectives of a bank liquidator be limited to assisting a rapid FSCS payout to eligible depositors and then winding up the affairs of a failed bank? Should the proceedings have any other statutory objectives?

63. We do not believe that it is appropriate for a bank liquidator's objectives to be limited in this way and that the provisions in the current insolvency legislation are adequate for these purposes.

Question 4.17: Should a bank insolvency procedure be subject to the overall supervision of the Authorities?

64. We refer you to our earlier comments (*paragraph 12*) in which we explained that we did not believe that a new bank insolvency procedure was necessary.

Question 4.18: Should a bank insolvency procedure be a stand-alone regime in which the bank liquidator has the combined powers of an administrator and liquidator?

Are any other powers required?

65. We refer you to our earlier comments (*paragraph 12*) in which we explained that we did not believe that a new bank insolvency procedure was necessary.

Question 4.19: Should the FSCS cover any additional costs that a new bank insolvency procedure may incur?

66. We refer you to our earlier comments (*paragraph 12*) in which we explained that we did not believe that a new bank insolvency procedure was necessary.

Question 4.20: Should further consideration be given to the introduction of depositor preference?

67. We do not believe that it is appropriate to give any further consideration to depositor preference as enhancements to FSCS should be sufficient.

Question 4.21: Do you agree that commencement into insolvency should be controlled by the Authorities, for example through requiring 14 days prior notice be given to the FSA? Should normal insolvency proceedings be retained alongside the bank insolvency procedure?

68. We refer you to our earlier comments (*paragraph 12*) in which we explained that we did not believe that a new bank insolvency procedure was necessary. We

believe that it is undesirable that 14 days prior notice be given to the FSA before a party can commence insolvency proceedings and reiterate our earlier stated concerns about why this is felt to be necessary.

Question 4.22: What should the governance arrangements for the SRR be?

69. We believe that the overall responsibility for a bank in SRR must be held by an insolvency practitioner as they already have clearly identified responsibilities to shareholders, creditors and directors.

Question 4.23: Do you consider that introducing the office of the restructuring officer as part of the SRR would be a helpful and necessary development?

70. We do believe that introducing the office of the restructuring officer is helpful in this context. We refer you to our earlier comments in *paragraph 11*.

Question 4.24: Do you have any comments on the specific implications for shareholders, creditors or directors from the appointment of the restructuring officer over and above those already raised by the other resolution tools?

71. We refer you to our earlier comments in this respect in *paragraph 11*.

Question 4.25: Should the Government have the power to take temporary ownership of a failing bank, in order to facilitate a more orderly resolution? Under what circumstances would it be appropriate for this power to be exercised?

72. We believe that this should be a possibility but only as a matter of last resort. A bank should be placed into SRR and then primary legislation should be enacted through Parliament.

Question 4.26: Do you agree that the special resolution regime should be extended to building societies but not other mutuals?

73. We believe, save where we have expressly provided otherwise within this document, that consistent proposals shou ld be implemented for all deposit taking firms.

Question 4.27: Do you agree with the proposals for a new accelerated directed transfer procedure for building societies, similar to that proposed for banks?

74. We agree

Question 4.28: Do you believe a form of temporary public sector control through a bridge bank should be provided for building societies?

75. We believe that building societies should be treated in the same way as banks and there is no logical reason to differentiate.

Question 4.29: Do you agree that a building society insolvency procedure should exist for building societies alongside a similar model for banks?

76. We do not believe that banks or building societies should have special insolvency procedures.

Question 4.30: Do you agree that the Treasury should make an Order under the 2007 Act to ensure that, on the winding up or dissolution of a building society, any assets available to satisfy the society's liabilities are applied equally to creditors and members?

77. This is a matter that should be handled directly by the Insolvency Practitioner who has statutory duties and responsibilities.

Question 4.31: Should the industry contribute to the costs of an SRR?

78. In our view the costs of the SRR should not be met by the industry as this removes accountability and responsibility from the bank itself, its directors and shareholders. We are of the view that post the SRR there are only two possible outcomes. The first is that the firm continues in business as a going concern or is sold in which case either the firm itself or the acquirer should pay for any costs incurred in relation to the SRR. The second is that the firm goes into insolvency in which case the costs would be met by any assets of the firm in the same way as an insolvency practitioner's costs are.

Question 4.32: Would mechanisms other than the FSCS be appropriate for addressing such cost issues? How might such mechanisms work?

79. We would refer you to our comments made in response to *Question 4.31* above.

Question 4.33: Are there any other mechanisms available to secure access to payment systems for agency banks in the event of a settlement bank failure?

80. We have no comments.

Question 4.34: Are there contingency measures that banks could adopt to ensure that their organisation and structure are compatible with the tools proposed in the special resolution regime.

81. We have no comments.

Question 4.35: Do you agree that the Government should take a power to enable it to make secondary legislation in relation to financial collateral arrangements, and with the proposed definitional scope? If not, why, and what would you suggest?

82. We refer you to our comments earlier in the response (*paragraph 16*).

Question 4.36: Do you have any suggestions as to future revisions to the financial collateral regime that should be considered?

83. We refer you to our comments at the front of the response (*paragraph 16*).

Chapter 5 – Consumer confidence and Compensation Arrangements

Question 5.1: How would a higher compensation limit affect consumer confidence?

84. We do not believe that a higher compensation limit would be likely to impact on overall consumer confidence. We do believe that there is a major issue currently existing in relation to brand awareness and this undoubtedly causes significant confusion and less protection for consumers. It is unrealistic for a consumer to be expected to know the relationship between brands, banking licences and group structures given the complexity in many places. We recommend that the current compensation limit should be extended so that the FSCS limit is set per person per brand and that the government should consult with the banking industry as to how best to accommodate this whilst ensuring that any such system has suitable safeguards to avoid unintended consequences. In terms of higher balances for items such as house purchase/pension lump sums we believe that a marketplace must be made available for the customers to enable them to purchase insurance at a reasonable cost.

Question 5.2: How would a higher compensation limit affect the responsibility consumers have for their financial choices?

85. We do not believe that a higher compensation limit would impact in any way the responsibility consumers have for their financial choices. We would recommend that the Tripartite Authorities engage in a public relations campaign to explain the numerical limit, the benefits of diversification and most importantly the key factors that a consumer should consider when choosing an account rather than simply the headline rate of interest.

Question 5.3: How would a higher compensation limit for deposits affect consumer perception of other financial products?

86. We do not believe that a higher compensation limit for deposits would affect consumer perception of other financial products.

Question 5.4: Which of the solutions to cover balances above the compensation limit is the most practical, desirable and/or proportionate, and why?

87. In terms of higher balances we believe that a market must be made available for the customer in some way so that they can purchase insurance at a reasonable cost either from a government scheme or from a commercial provider as this enables customers to better manage their risks.

Question 5.5: What types of large balance should be subject to additional protection, and in what circumstances?

88. In terms of higher balances for items such as house purchases/pension lump sums we believe that a market must be made available for the customer in some way so that they can purchase insurance at a reasonable cost either from a government scheme or a commercial provider.

Question 5.6: Are there other circumstances, apart from client accounts, where consumers have little influence on where accounts are opened? What are your views on how the issue of client accounts might be addressed in relation to compensation payments?

89. We believe that in instances of this type where customers do not know where accounts are opened on their behalf they must be compensated on a per account basis as any other result is inequitable and will result in a lack of consumer confidence.

Question 5.7: What are your views on a one-week target for FSCS payment?

90. We believe based on our experience that there will be logistical issues with meeting this target.

Question 5.8: How feasible would be it for banks to provide instant access to the funds provided by FSCS cheques as soon as they are deposited?

91. We believe that this would be feasible provided that banks were exempted from the current money laundering requirements for a period of two to three months. The cheques could all receive special clearance.

Question 5.9: Are there other means to ensure consumers have access to funds within one week, including alternative payment methods to cheques?

92. We would recommend that this question is explored in detail with the banking industry.

Question 5.10: How effective would interim payments be in mitigating consumer detriment when a full payout is not possible within a week?

93. Clearly interim payments would be effective in mitigating consumer detriment in such an eventuality. Nonetheless if there were insufficient data and records available to make a full payment within the seven days it is unlikely in practice that there would be sufficient data to make an interim payment.

Question 5.11: How quickly could banks make the changes to have the necessary information readily available on account balances of FSCS-eligible depositors, and what would be the cost to them?

94. We have no comments.

Question 5.12: Should banks follow a common data standard or format, and, if so, what would this entail?

95. We have no comments.

Question 5.13: What information should be included in a single customer view and what: would be the implications for firms of different information Requirements?

96. We believe that based on our knowledge and experience it will be hugely problematical and very expensive for banks to attempt to have a single customer view. This proposal and the one above need to be worked through in detail with the industry to come up with practical recommendations.

Question 5.14: How would banks place a 'flag' on accounts that are not eligible for FSCS payments?

97. We have no comments.

Question 5.15: Are there other classes of depositor that should be ineligible for FSCS compensation payments, and, if so, why?

98. We do not believe so.

Question 5.16: To what extent would gross payments help maintain depositor confidence and speed up payment?

99. In our view it clearly makes sense to make gross payments and this will undoubtedly assist in terms of speeding up the actual payments if the customer is eligible. We wish to make it clear however, that in this context we are not proposing a change to the insolvency rules on set off but merely a change to the FSCS operational rules.

Question 5.17: To what extent are gross payments justified by maintaining depositors 'access to liquidity as well as by accelerating payments by the FSCS?

100. We believe that gross payments are justifiable on both grounds provided that the customer is eligible. Please also note our comments in response to *Question 5.16* above.

Question 5.18: What are your views on the link between FSCS gross payment and set-off?

101. We believe that gross payments should prevail over set off. Please also note our comments in response to *Question 5.16* above.

Question 5.19: Are any other measures necessary to better align FSCS rules and the provisions of the proposed bank insolvency procedure?

102. We do not believe that it is appropr iate for us to respond to this question given that we do not believe that it is necessary to have a bank insolvency procedure and we were unable to ascertain from the discussion paper why the Tripartite Authorities had determined that this was necessary or desirable.

Question 5.20: What are your views on the removal of the formal claims process? What risks would be involved in the FSCS automatically sending out cheques and how can they be mitigated?

103. We have no comments.

Question 5.21: What are your views on the introduction of an element of pre-funding into the FSCS?

104. We believe that any level of pre-funding would either be punitive or unhelpfully low or as such reduce consumer confidence in the system.

Question 5.22: What steps would need to be taken to ensure that pre-funding would be compatible with other elements of the FSCS funding arrangements?

105. We have no comments.

Question 5.23: What are your views on whether the FSCS should be permitted to borrow from the Government or the Bank of England?

106. We believe that the FSCS should be permitted to borrow from the Government or the Bank of England.

Question 5.24: How soon could streamlined procedures for opening accounts be introduced so that the one-week target for opening a new account can be met?

107. We have no comments.

Question 5.25: Are there additional risks which need to be considered with this faster account opening method?

108. We have no comments.

Question 5.26: How else could the account opening process be sped up?

109. We have no comments.

Question 5.27: What else would be needed to enable banks to provide instant access to funds following the deposit of a FSCS compensation payment?

110. We have no comments.

Question 5.28: What notification requirements on compensation should apply to banks, and how can they be made less burdensome? Would these have an effect on market stability or depositor confidence?

111. We have no comments.

Question 5.29: How should disclosure requirements be imposed?

112. We recommend that disclosure requirements should be imposed as part of the existing principle of treating customers fairly, and that the appropriate mechanism is agreed from time to time between the FSA and the banks.

Question 5.30: What would be the best way for DWP and HMRC to make payments in the event that consumers did not have access to their bank accounts?

113. We have no comments.

Question 5.31: What are your views on the proposed changes to increase FSCS management flexibility?

114. We have no comments.

Question 5.32: Are there other possible changes which could increase management flexibility for the FSCS or enable it to process a large volume of claims quickly in the most cost-effective way?

115. We have no comments.

Question 5.33: What are your views on the use of risk-based levies or on the introduction of behavioural factors into the calculation of the levies?

116. We have no comments.

Chapter 6 – Strengthening The Bank of England

Question 6.1: What are the benefits of formalising in statute the Bank of England's role in the area of financial stability, and giving its Court responsibility for overseeing its performance in this area?

117. It is clearly beneficial in terms of clarity and accountability for the Bank of England and its Court's role in relation to financial stability to be formalised. This avoids potential confusion and misunderstanding.

Question 6.2: To what extent would the proposals improve the ability of the Court of the Bank of England to oversee the Bank of England's performance including its enhanced role in the area of financial stability?

118. The proposals will significantly enhance the ability of the court of the Bank of England to oversee the Bank of England's performance. This is particularly important in relation to its role in Financial Stability given the consequences of any decisions for the UK economy as a whole and potentially the global economy.

Chapter 7 – Effective Coordination

Question 7.1: To what extent will the proposals enable an improved handling of a financial crisis?

119. We are of the view that the proposals should enable an improved handling of a financial crisis. We would note however that the Tripartite Authorities and in particular the FSA had very significant powers already many of which were not utilised during recent events relating to Northern Rock as the FSA itself acknowledges.

Question 7.2: To what extent would the proposals strengthen the operation of the IMF and FSF?

120. We are of the view that the proposals would strengthen the operation of the IMF and FSF.

Question 7.3: To what extent would the proposal for the IMF and FSF to work together to develop an early warning system be helpful in improving risk identification and financial sector resilience at the international level? How would this best be implemented?

121. Whilst, we believe that this proposal will agree a common approach towards failing banks and therefore create both greater co-operation and certainty it will not necessarily of itself improve financial sector resilience at the international level.

Email: michelle.logan@icaew.com