

FINANCIAL ASSISTANCE TO BUILDING SOCIETIES

A RESPONSE BY THE BUILDING SOCIETIES ASSOCIATION

The Building Societies Association welcomes the opportunity to respond to Chapter 6 (Financial assistance to building societies) of the Treasury's July 2009 consultation on the Special Resolution Regime. A response to Chapters 1 to 5 (Building society insolvency and special administration regime) has been sent separately.

The Building Societies Association (BSA) represents mutual lenders and deposit takers in the UK including all 52 UK building societies. Building societies have total assets of over £370 billion and, together with their subsidiaries, hold residential mortgages of over £245 billion, more than 20% of the total outstanding in the UK. Societies hold nearly £240 billion of retail deposits, accounting for more than 20% of all such deposits in the UK. Building societies also account for about 36% of all cash ISA balances. Building societies employ approximately 50,000 full and part-time staff and operate through approximately 2,000 branches.

Summary

The BSA agrees with the Treasury's proposal to replace the Building Societies (Financial Assistance) Order 2008 for the reasons set out in the consultation document, and welcomes the extension of the disapplication of section 9B of the Building Societies Act 1986 in relation to designated settlement or payment systems.

Detail

We agree with the Treasury's analysis in paragraphs 6.2 to 6.5 of the consultation paper as to why modifications are needed to the Building Societies Act to cater for financial assistance from the Authorities, and why, in replacing the existing Order, provision should be made broader in scope – both by including other central banks, and using the wider definition of "financial assistance" from the new Banking Act. (Q15 refers)

We have strongly advocated the flexibility for societies to be able to grant floating charges to secure their obligations in respect of both settlement and payment systems. So we agree with the Treasury's proposal in relation to floating charges granted to settlement banks, and consider that they should extend to payment as well as securities settlement systems. This point has been well-rehearsed in earlier discussions between some of our larger member societies and the Treasury. (Q16 refers)

We do not consider that the limited and sensible exceptions now proposed to section 9B of the Building Societies Act undermine the general principle to which it gives effect, and we think the exceptions are sufficiently tightly defined that we do not see any unintended consequences arising. (Q17 refers)

The proposals in relation to settlement systems will in our view enable building societies to access and use financial assistance more efficiently, where it is required, for the following reasons. First, as explained in paragraph 6.7 of the consultation document, financial assistance may initially be provided in the form of T-bills which, in order to generate funding, need to be repo'ed. This can be most efficiently done through the Delivery by Value mechanism within CREST. So the proposal allows societies to actualise such financial assistance in cash terms in the most efficient way within the current market infrastructure. (Q18(a) refers)

We consider that the same argument applies in relation to further use of the financial assistance once actualised as cash, and therefore extends to payment as well as securities settlement systems. Being able to access and use payments systems with maximum flexibility should allow societies, that have received financial assistance and turned it into cash, to use it for their immediate liquidity or funding needs in the most efficient way, again given current market infrastructure. (Q18(b) refers)

We have not been able to identify any unintended consequences or risks from the wider proposals. In particular, we stress that the exception for floating charges in relation to securities settlement and payment systems facilitates the more efficient execution of otherwise permissible transactions, rather than creating a route for new, substantive borrowing. (Q 19 refers)

We also take this opportunity to record one unrelated comment, drawn to our attention by a leading society, relating to the use of both fixed and floating charges in favour of a settlement bank, and not specific to building societies or to this draft Order. This relates to a perceived defect in the Banking Act 2009 (Restriction of Partial Transfers) Order, (the "Safeguards Order"). The concern is that a transfer in breach of article 5 of the Safeguards Order (which deals with secured liabilities) is not nullified pursuant to articles 10 and 11 of the Order, and this could mean that a settlement bank might find that its collateral had been transferred away where the counterparty was a UK deposit-taker (bank or building society) in an SRR situation.

The BSA Secretariat will be happy to provide further assistance and input to the Treasury on this draft Order as required.