



Bacs Payment Schemes Limited

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Banking Reform consultation responses

Banking Reform Team

H M Treasury

1 Horse Guards Rd

LONDON

SW1A 2HQ

9th September 2008

Dear Sir/Madam,

BACS' RESPONSE TO THE FURTHER TRIPARTITE CONSULTATIONS

This is the response of Bacs Payment Schemes Ltd to the further tripartite consultations on financial stability and depositor protection and the special resolution regime published by HM Treasury, the FSA and the Bank of England.

The UK Payments Council is also responding, on behalf of its members, and Bacs has had input to their document.

Looking at those areas with a potential impact on the Bacs Scheme:

A. Oversight of payment systems

1. Bacs welcomes the proposals by the Authorities to maintain the FSA as the independent single regulator, and the Bank of England as the sole overseer of payment systems, and supports a review of the Memorandum of Understanding to clarify the roles and responsibilities of these bodies, along with the Treasury, with regard to both financial stability and the Special Resolution Regime (SRR).
2. The proposed powers to be given to the Bank are consistent with the way in which its oversight role is already carried out in relation to Bacs, albeit in a non-statutory environment. Using the BIS Core Principles for Systemically-Important Payment Systems as the basis for any published "Principles" will provide additional support for payment schemes such as Bacs where these are already enshrined in its operation and governance.
3. Bacs notes that it is on the initial list of payment systems to be subject to oversight by the Bank, as it already is, but would not like the proposed new statutory powers to result in any diminution of its ability to manage the payment system itself and protect its integrity and security. Bacs would hope that any costs levied to support the more formalised process would not be onerous, as payment systems, of themselves, have no financial assets.

B. The special resolution regime

1. Of particular concern to Bacs is the need to protect its membership arrangements and those for ensuring daily settlement of financial obligations between its members. Consequently Bacs would like to see its key contracts and agreements included in the list of “qualifying contracts”. Secondary legislation to deal with collateral arrangements may also have an impact on these arrangements and Bacs would like to be involved in any further consultations.
2. It is important that the boundaries and legalities of the SRR are clearly identified so that the management of the payment system knows which entity is responsible for the settlement of financial liabilities within the system and/or whether a failing bank is to be excluded from membership. Failure to meet its settlement obligations must continue to result in the automatic exclusion of a member bank.
3. Bacs shares the concerns expressed by the UK Payments Council in relation to partial transfers and bridge banks, particularly concerning settlement arrangements and the time required to arrange new memberships and sponsorships.
4. Bacs supports the response of the Payments Council in relation to building societies granting floating charges over assets and extending the exemption from registering charges to the members’ payment systems liquidity funding arrangements.
5. Bacs would like to be involved in the activities of the FSA in working with indirect members of the payment systems to ensure that they have contingency arrangements with another Bacs Member that can be put in place quickly in the event that their sponsor bank fails. Pre-negotiated back-up agency arrangements could cover this requirement.

C. Compensation of depositors

1. Bacs has already expressed concerns at the potential impact on both payment systems and members of the need to handle large volumes of payments to new accounts in a short period of time. We believe that the 7 day proposal, while showing commitment to depositors, may be difficult to achieve for either practical or insolvency reasons. We would welcome the opportunity to be involved in further discussions on this issue.
2. We note that the proposal for a modified insolvency process could include keeping IT systems and other “infrastructure” operational and would support such a deferral of practical insolvency until customer funds, either individually or in bulk, have been moved to new accounts via payment systems. To achieve this it will be important to preserve the payment system identity of a failing member and its customers, i.e. the sort code and customer account number within that sort code, at least until the customer has received his compensation at a new bank.

D. Responses to questions within the consultations

D1 Second consultation – 8th July 2008

3.2 Are the criteria as set out (for determining which systems will be regulated), the right criteria and will they provide sufficient flexibility (for the Treasury) as payment systems evolve over time?

3.3 Is there a preferred method for recognising payment systems?

3.4 Do you agree that the indicative list includes all the relevant payment systems which are of systemic or system-wide importance?

Response:

Bacs supports the criteria suggested and believes they will provide the flexibility required. It will be important for the Treasury to monitor the emergence of new payment systems, understand their impact on customers and the industry, and analyse their method of working so that they can be assessed against the criteria at the appropriate time.

3.5 Are the powers (of the Bank of England) set out necessary and appropriately graduated?

Response:

A number of the suggested powers are already available to the Bank as a consequence of the relationships and processes already built up as part of its current oversight role and its role of designating systems in accordance with the Settlement Finality Directive. Those relating to penalties, disqualification and closure would be of benefit to the industry and customers should there be any problems with new and un-established payment systems.

Bacs is already designated by the Bank of England under the Settlement Finality Directive and would support the use of this model as the basis for oversight.

4.2 Do you agree with the roles for the Authorities for the triggering and operation of the Special Resolution Regime?

Response:

The roles would seem to be the right ones. Perhaps they could be reviewed at, for example, 12 months following implementation or following the first occasion of their use?

4.3 Respondents' views are sought on the practical considerations involved in developing a Special Resolution Regime.

Response:

Key issues for Bacs are: -

- Protection of a payment system's membership and settlement arrangements.
- Deferring bank failure until customer funds, either individually or in bulk, have been moved to new accounts via payment systems.
- It is important that the boundaries and legalities of the SRR are clearly identified so that the management of the payment system knows which entity is responsible for the settlement of financial liabilities within the system and/or whether a failing bank is to be excluded from membership. Failure to meet its settlement obligations must continue to result in the automatic exclusion of a member bank.

However, Bacs supports the commitment by the Payments Council to work with the BBA to establish the practicalities of maintaining limited access to payment systems post-insolvency, as a means of facilitating controlled access by depositors to their funds, provided there are adequate assurances that the settlement obligations of the failed bank will be met.

D2 Third consultation – 22nd July

Q2.1 Do you agree with the SRR objectives?

Response:

Bacs believes they are the right objectives and will look to see that the key objective of ensuring continuity of banking services is indeed covered within the second and third of those listed: to protect and enhance public confidence in the stability of the banking systems of the UK; and to protect depositors.

Q2.2 Do you agree with the role of the FSA in determining the conditions for entering the SRR?

Q2.4 Do you agree with the role of the BoE in operating the SRR in the public interest?

Q2.5 Do you agree with the role of the Treasury?

Response:

The defined roles would seem to be workable. Perhaps they could be reviewed at, for example, 12 months following implementation or following the first occasion of their use?

Q2.6 Do you agree that the SRR objectives should be supplemented by a code of

practice?

Q2.7 Do you agree with the proposed areas to be covered in a code of practice?

Response:

It is important that both the roles and the actions of the Authorities are clearly set out, and aligned with the Memorandum of Understanding following its review.

The Code of Practice should also cover the documenting and publication of the outcome of the consultation process and any decision to take a bank into the SRR so that other members of the banking industry and the payment systems can be made aware of the situation at the earliest opportunity.

Q3.15 Do you agree that an explicit safeguard to protect set-off and netting arrangements is required?

Q3.17 Should the qualifying financial contracts approach be adopted, what do you do you think should be defined as qualifying contracts?

Response:

Along with the membership agreement, set-off and netting arrangements are vital to ensuring the daily settlement of financial obligations between members of the Bacs Payment System. An explicit safeguard to protect these would be welcomed.

Bacs would like to see its key contracts and agreements included in the list of "qualifying contracts".

Secondary legislation to deal with collateral arrangements may also have an impact on these arrangements and Bacs would like to be involved in any further consultations.

Yours sincerely

Michael Chambers
Managing Director