



Dear Sir or Madam

**Financial Stability and depositor protection: consultation paper**

We welcome the opportunity to comment on the proposed amendments contained in the Financial Stability and depositor protection: strengthening the framework consultation paper.

To place our views in context, it may be helpful to summarise the position of the AXA Group in the UK insurance market:

- We are the 5th largest UK general insurer, with a market share of 5%. These figures include health insurance, where we (in the form of AXA PPP healthcare) are the 2nd largest UK insurer with a market share of 24%.
- We are also the 6th largest UK life insurer, with a market share of nearly 8%.

We have provided our responses to the consultation paper questions. However we would like to emphasise a number of points:-

- The Government should ensure that the compensation scheme for depositors does not distort competition.
- Any increase in costs of the compensation scheme for depositors must be ring fenced and should not be funded by the other compensation sectors. There should be no cross-subsidy between sectors.
- The changes to the funding of compensation schemes which came into force April 2008 should be re-visited if there is a significant change to current compensation scheme arrangements.

**AXA UK**



## Consultation Questions

### 1 General

1.1 Please provide detail if you think that any proposals in this document:

- are necessary and proportionate;
- raise significant concerns; or
- could be improved?

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

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

Where these issues are relevant to AXA we have provided details in the responses to the detailed questions.

### 2 Chapter 2

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

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

Yes we agree the Authorities are taking action to improve stress testing by banks. In addition the FSA should move forward the recommendations arising from its internal review of the supervision of Northern Rock regarding prudential supervision including liquidity and stress testing.

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

Yes.

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

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

We agree that the Authorities should work with international counterparts and any UK regulation should be consistent with relevant accounting standards and CRD/Basel II prudent valuation guidelines.

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

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

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?

We have no comments on questions 2.6 – 2.8.

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

No comment.



### **3 Chapter 3**

- 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?**
- 3.2 Are the FSA's existing powers, and in particular the application of them, clear, and how could they be further clarified?**
- 3.3 To what extent are the annual and one-off costs of the new information requirement on banks proportionate? Can they be quantified?**
- 3.4 How effective would the new information requirement be in identifying and addressing a sudden deterioration in a bank's financial soundness?**
- 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?**
- 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?**
- 3.7 Which elements of such a payment systems regime should be effected through statutory powers?**
- 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?**
- 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?**
- 3.10 Would extending the 21-day period be a viable, alternative proposition?**
- 3.11 What would be the effect of removing the 'weekly return' reporting requirement? What other statutory reporting requirements disclose ELA?**

We have no comments on questions 3.1 - 3.11.

- 3.12 Do 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?**
- 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?**

We agree with these proposals.

- 3.14 Do you agree that funds provided by the Bank of England should be exempted from calculation of building societies' wholesale funding?**
- 3.15 What risks are there to building societies granting floating charges over their assets to the Bank of England?**

We have no comments on questions 3.14 - 3.15.

### **4 Chapter 4**

- 4.1 Do you agree there should be a special resolution regime for banks?**
- 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?**
- 4.3 Do you agree that the trigger should be linked to regulatory guidance material?**

No we do not consider that there is a case for a Special Resolution Regime. We believe the focus should be on effective regulation as outlined in this paper and enhanced regulatory supervision as provided by the recommendations following the FSA's internal review of its supervision of Northern Rock.



- 4.4 Do you agree with the special resolution regime process as outlined?**
- 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?**
- 4.6 What safeguards and appeal processes would be needed to support a public interest test for the special resolution regime?**

Refer to our response to questions 4.1 – 4.3.

- 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?**
- 4.8 Is judicial review the correct mechanism for challenging a decision to institute the directed transfer?**
- 4.9 Is the Financial Services Tribunal the right forum for resolution of transactional issues such as valuation or distribution of proceeds among stakeholders?**
- 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?**
- 4.11 Do you agree with the removal of shareholders' and directors' rights and temporary suspension of creditors' rights under this bridge bank proposal?**

No all of the decisions referred to in question 4.7 – 4.11 should be a matter for the courts.

- 4.12 Is judicial review the correct mechanism for challenging a decision to transfer to a bridge bank?**
- 4.13 Is the Financial Services Tribunal the right forum for resolution of transactional issues such as valuation or distribution of proceeds among stakeholders?**

Please refer to answers to questions 4.7 - 4.11.

- 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?**
- 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?**
- 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?**
- 4.17 Should a bank insolvency procedure be subject to the overall supervision of the Authorities?**
- 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?**

We have no comments on questions 4.14 - 4.18.



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

No, this is an inappropriate use of FSCS funds. The failed bank should meet all costs relating to any insolvency procedure so that good financial management can be seen to be encouraged.

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

No comment.

**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?**

The courts should govern insolvency procedures.

**4.22 What should the governance arrangements for the SRR be?**

**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?**

We have no comments on questions 4.22 - 4.23.

**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?**

**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?**

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

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

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

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

**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?**

We have no comments on questions 4.24 - 4.30.

**4.31 Should the industry contribute to the costs of an SRR?**

No, the failing institution should bear the costs.

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

Yes. The cost mechanism should follow the process which applies to administration or liquidation.



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

We have no comments on questions 4.33 - 4.36.

## **5 Chapter 5**

- 5.1 How would a higher compensation limit affect consumer confidence?**
- 5.2 How would a higher compensation limit affect the responsibility consumers have for their financial choices?**
- 5.3 How would a higher compensation limit for deposits affect consumer perception of other financial products?**

There needs to be a limit below which a customer will receive 100% compensation. This is particularly important for the smaller investor. We therefore consider that a compensation scheme which offers 100% up to a given limit and a reduced percentage beyond this limit is an appropriate structure. When setting this limit it is important to note that many customers who choose to invest in deposit accounts have a low attitude to investment risk and perceive deposits as 'safe' investments. Therefore institutions that offer deposit accounts need to be cautious in the way in which they use the deposits and investors should receive compensation that matches their expectations that deposits are a 'safe' investment.

Bank deposits compensation limits should be related to but not necessarily identical to the other contribution groups. The limits should be chosen to minimise market distortion, whilst recognising that bank deposits have a unique role in the financial system. Therefore a limit of £35000 does seem reasonable in order to avoid market distortion.

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

Where clients are holding large deposits as long term savings they should be encouraged to spread these across several financial institutions. A higher limit for long term deposits could distort the wider market in savings and investments since this could encourage investors to retain money in deposit accounts rather than investing in other products. There are also other products available where a higher compensation limit is available for shorter investment period of between 6 months and 2 years.



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

Where larger balances are being held as long term savings in deposit accounts then these should not be given any additional protection for the reasons as already explained.

However where large balances are being held on a temporary basis as a result of a life event for example house sale or legacy then additional protection may be appropriate. However the type of account and the length of time the balance can be held must be defined where greater protection is provided. The time period should not be more than 6 months since there are other products available which provide greater protection and guarantee the return of capital.

**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?**

No comment.

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

A more detailed analysis on the length of time the FSCS will take to process claims as a result of a bank failure should be undertaken. It is important that the FSCS retains proper controls in order to reduce fraud and minimise incorrect payments. Where payments to other financial institutions are late as a result of a bank failure it may be more appropriate for late payment fees and charges to be waived under these circumstances rather than reducing the length of time for the FSCS to make a claims payment.

**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?**

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

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

**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?**

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

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

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

We have no comments on questions 5.8 - 5.14.

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

We are very concerned about the proposals to extend the eligibility criteria for depositors. Current eligibility criteria should be retained which essentially limits compensation to individuals and small businesses. Removing this criteria will increase the cost of compensation and disregards the basic concept that the compensation arrangements are there to protect small customers.



- 5.16 To what extent would gross payments help maintain depositor confidence and speed up payment?**
- 5.17 To what extent are gross payments justified by maintaining depositors' access to liquidity as well as by accelerating payments by the FSCS?**
- 5.18 What are your views on the link between FSCS gross payment and set-off?**
- 5.19 Are any other measures necessary to better align FSCS rules and the provisions of the proposed bank insolvency procedure?**

We have no comments on questions 5.16 -5.19.

- 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?**

We are not in favour of removing the need for a formal claims process since this can potentially increase the incidence of fraud and incorrect payments being made.

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

We are not in favour of a pre-funding model and do not consider this is necessary in the UK since historically insolvencies in banks and insurers are rare.

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

These proposals highlight the differences between the deposit protection scheme and the other parts of the FSCS where the potential need for substantial liquidity at short notice will not arise and the current levy mechanism is the most appropriate funding method. Therefore the authorities should revisit the recent changes to the compensation scheme which came into force April 2008 in particular the general financial pool. The compensation scheme should be divided into industry sectors which are clearly ring fenced. If a firm fails within a particular sector only firms within that sector should contribute to the compensation scheme.

- 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?**
- 5.25 Are there additional risks which need to be considered with this faster account opening method?**
- 5.26 How else could the account opening process be sped up?**
- 5.27 What else would be needed to enable banks to provide instant access to funds following the deposit of a FSCS compensation payment?**

We have no comments on questions 5.24 – 5.27.



**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?**

**5.29 How should disclosure requirements be imposed?**

Banking deposit guarantees should be displayed in banks, marketing material, website and statements. Banks should inform customers when total deposits amount to more than the guarantee available under the Financial Services Compensation Scheme.

**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?**

No comment.

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

**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?**

There is a need for proper controls to be in place to control expenditure within the FSCS. Therefore more information needs to be provided on the proposals to increase management flexibility of the FSCS.

**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? We are not in favour of risk-based levies.**

This proposal implies an element of pre-funding which the FSA was not in favour of as a mechanism for funding the FSCS, as outlined in its discussion paper 06/1. This proposal also poses significant practical implementation difficulties.

## **6 Chapter 6**

**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?**

**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?**

We have no comments on questions 6.1 – 6.2.

## **7 Chapter 7**

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

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

**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?**

**7.4 To what extent will these proposals aid authorities in managing international financial crises?**

We have no comments on questions 7.1 – 7.4.



**Impact assessment**

- A.1 Do you have information that would improve the analysis of this impact assessment?**
- A.2 Do you believe that the impact on building societies of the tools within the special resolution regime is different to that on other banks?**
- A.3 Do you agree that small businesses would not be affected by these proposals in a different way to other consumers?**

We have no comments on the impact assessment.

Yours faithfully