

RESPONSE TO HM TREASURY CONSULTATION PAPER ON THE FINANCIAL SYSTEM AND MAJOR OPERATIONAL DISRUPTION DATED FEBRUARY 2003

Submitted by:

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1. Background

ING Bank NV is part of the ING Group, one of Europe's largest financial institutions. The group is headquartered in the Netherlands and has extensive operations worldwide, including significant interests in the UK

2. Comments on consultation paper

Question 4a

We support the general thrust of the Treasury consultation paper, and in particular the possible new legislative provisions aimed at allowing financial institutions a breathing space in the event of an incident causing major operational disruption.

Question 4b

We also agree with the proposed limitations which would apply to new legislation as described in the consultation paper, and in particular (as set out in paragraph 4.16 of the paper) that the proposed new powers:

- would never be used in a purely financial crisis;
- would only be used in extreme situations arising from major operational disruption; and
- should only be used with support from the private sector.

Question 6a

We have one specific comment relating to the drafting of legislation. We consider it important that any primary or secondary legislation introduced to create a breathing space by suspending certain obligations should be structured so as to relieve institutions of all (and not just some) aspects of the obligations which normally require timely performance of business activity. These include:

- requirements of general law, for example in relation to the fulfilment of contractual obligations;
- contractual commitments, such as those between institutions and their customers;
- obligations imposed by the rules of financial infrastructure organisations, such as investment exchanges; and
- regulatory requirements, in particular those of the FSA.

On the latter point, the FSA imposes numerous detailed obligations on regulated firms through specific sections of its Handbook such as the Conduct of Business rules. In addition, the FSA imposes a general requirement that firms should continue to meet all their regulatory obligations in the event of operational disruption. FSA rule SYSC 3.2.19G states that "A firm should have in place appropriate arrangements ... to ensure that it can continue to function and meet its regulatory obligations in the event of an unforeseen interruption".

If an emergency provision were brought into force which (for example) merely suspended certain contractual obligations, there might be uncertainty as to whether firms could safely take advantage of this while they remained subject to other rules requiring normal performance, such as the FSA rules. Such uncertainty would tend to defeat the object of the emergency legislation.

Question 7

We agree that the proposed direction powers should apply to financial infrastructure organisations, potentially including functions of financial institutions which effectively constitute financial infrastructure, but that such powers should not extend to financial institutions generally.

ING Bank NV
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