HM TREASURY

# Sanctions for the directors of failed banks

July 2012

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# Contents

# 1 Introduction

**1.1** Since the last election, one of the Government's key priorities has been to tackle the legacy of the financial crisis that started in 2007 and resulted in the last Government part-nationalising two of the largest banks in the world, including the Royal Bank of Scotland (RBS).

**1.2** The financial crisis highlighted weaknesses in the UK's regulatory system which the Government's domestic regulatory reform program, to be implemented in the Financial Services Bill, now before Parliament, will address. In addition, on 14 June 2012, the Government published a White Paper on the measures it is proposing to take forward the reforms recommended by the Independent Commission on Banking led by Sir John Vickers.

**1.3** However, while the Government's measures take the necessary steps in terms of organisational reform and institutional change, the crisis highlighted the important role that individuals – especially bank directors – play in the key decisions taken by banks – decisions which can have far-reaching consequences not just for the institution concerned or its customers but for Government, taxpayers and the wider economy. This wider impact of financial difficulties at banks makes them different from other companies and potentially justifies treating the directors and senior management of banks differently from those in other types of companies.

**1.4** The Joint Committee on the draft Financial Services Bill in its report on pre-legislative scrutiny, called on the Government to consider the recommendations made in the Financial Services Authority's (FSA) report on the failure of RBS (see below) "on changing the remuneration arrangements for executives and non-executive directors, or introducing a concept of 'strict liability' of executives and Board members for the adverse consequences of poor decisions, in order to ensure that bank executives and Boards strike a different balance between risk and return".[1] The Government accepted this recommendation.

**1.5** Ensuring that bank directors and senior management take full account of the downside risks for their institutions is an important part of the Government's overall approach to reforming banks and to reducing risks to the economy and the taxpayer. This paper sets out possible measures to strengthen the accountability of bank directors.

**1.6 The Government proposes to introduce a "rebuttable presumption" that the director of a failed bank is not suitable to be approved by the regulator to hold a position as a senior executive in a bank.** The necessary legislation would be included in the Financial Services Bill. The Government considers that this would directly address some of the key lessons from the FSA report on RBS. This measure could be supported by complementary reforms (which the regulators could take forward) to clarify management responsibilities and change the regulatory duties of bank directors.

**1.7 The Government is also considering the introduction of criminal sanctions for serious misconduct in the management of a bank**. This would raise a number of complex issues, which could not be considered in appropriate detail on the timescale for the Financial Services Bill. If this proposal is taken forward, the Government would include the necessary legislation in another Bill during the present Parliament.

[1] HL paper 236/HC 1447, paragraph 225, page 54.

1.8 The Government would welcome the views of all interested parties. Responses to this consultation should be submitted by **30 September 2012**. Annex A sets out how readers can respond to the consultation.

# 2 Background: the FSA report into the failure of RBS

**2.1** The FSA conducted a detailed inquiry into the failure of RBS and the report by the FSA's board, published on 12 December 2011, provided a comprehensive analysis of the mistakes that were made by the FSA and by the firm's management.[1]

**2.2** The FSA report said that the failure of RBS can be explained by a combination of six key factors:[2]

- significant weaknesses in RBS's capital position during the Review Period, as a result of management decisions and permitted by an inadequate regulatory capital framework;
- over-reliance on risky short-term wholesale funding;
- concerns and uncertainties about RBS's underlying asset quality, which in turn was subject to little fundamental analysis by the FSA;
- substantial losses in credit trading activities, which eroded market confidence. Both RBS's strategy and the FSA's supervisory approach underestimated how bad losses associated with structured credit might be;
- the ABN AMRO acquisition, on which RBS proceeded without appropriate heed to the risks involved and with inadequate due diligence (see box below); and
- an overall systemic crisis in which the banks in worse relative positions were extremely vulnerable to failure. RBS was one such bank.

[1] See the FSA website (http://www.fsa.gov.uk/library/other_publications/miscellaneous/2011/rbs.shtml).

[2] See paragraph 3 of the executive summary, page 21 of the FSA report.

**Box 2.A: The ABN AMRO acquisition: "the wrong price, the wrong way to pay, at the wrong time and the wrong deal"[a]**

The FSA's report summarised the key points as follows:[b]

> "The ABN AMRO acquisition: an extremely risky deal
>
> 18 The acquisition of ABN AMRO by a consortium led by RBS greatly increased RBS's vulnerability. The decision to fund the acquisition primarily with debt, the majority of which was short-term, rather than equity eroded RBS's capital adequacy and increased its reliance on short-term wholesale funding. The acquisition significantly increased RBS's exposure to structured credit and other asset classes on which large losses were subsequently taken. In the circumstances of the crisis, its role as the leader of the consortium affected market confidence in RBS.
>
> 19 RBS decided to make a bid for ABN AMRO on the basis of due diligence which was inadequate in scope and depth, and which hence was inappropriate in light of the nature and scale of the acquisition and the major risks involved. This was the inevitable result of making a contested takeover, where only limited due diligence is possible. In proceeding on that basis, however, RBS's Board does not appear to have been sufficiently sensitive to the wholly exceptional and unique importance of customer and counterparty confidence in a bank. As a result, in the Review Team's view, the Board's decision-making was defective at the time. RBS believed in its ability to integrate businesses successfully after the acquisition of NatWest; in the case of ABN AMRO, it underestimated the challenge of managing the risks arising from the acquisition."

[a] RBS press release, Royal Bank of Scotland Group PLC – Annual General Meeting, 3 April 2009 (cited in paragraph 326 and footnote 402 on page 159 of the FSA report).
[b] See paragraphs 18 and 19 of the executive summary, page 21 of the FSA report.

**2.3** While the FSA report acknowledges the contributions made to these factors by weaknesses in the overall supervisory and regulatory framework, it is clear that the first five factors listed above reflect errors of judgement and execution made by the RBS board and senior management. And while the RBS board cannot be held responsible for the overall systemic crisis, they must have some responsibility for the relatively worse position of RBS.

**2.4** The failings of RBS' management were also symptomatic of wider problems in the management of banks in the run up to the crisis. The Government had to provide financial assistance to the banking sector as a whole as well as nationalising or providing capital injections to several other banks besides RBS.

**2.5** The FSA's report on RBS set out the FSA's assessment of whether any of the individuals managing RBS could be subject to regulatory sanction. The FSA chairman's foreword noted that the FSA's "Enforcement Division lawyers concluded that there was not sufficient evidence to bring enforcement actions which had a reasonable chance of success in Tribunal or court proceedings". It recognised that "many people [would] find this conclusion difficult to accept".[3]

**2.6** The FSA report into the failure of RBS also highlighted the fundamental limitation on holding individuals to account under the existing powers, summarised in the Chairman's foreword as follows:

[3] See second page of the Chairman's foreword, page 7 of the report.

"The crucial points of principle are that:

- There is neither in the relevant law nor FSA rules a concept of 'strict liability'[4]: the fact that a bank failed does not make its management or Board automatically liable to sanctions. A successful case needs clear evidence of actions by particular people that were incompetent, dishonest or demonstrated a lack of integrity;
- Errors of commercial judgement are not in themselves sanctionable unless either the processes and controls which governed how these judgements were reached were clearly deficient, or the judgements were clearly outside the bounds of what might be considered reasonable. The reasonableness of judgements, moreover, has to be assessed within the context of the information available at the time, and not with the benefit of hindsight.

The implication of these points is that an investigation can identify evidence of numerous poor decisions and imperfect processes, without that establishing a case for enforcement action which has reasonable prospects of success in Tribunal or court proceedings."[5]

**2.7** In the light of this the foreword concluded:[6]

"By one means or another, however, there is a strong argument for new rules which ensure bank executives and Boards place greater weight on avoiding downside risks. The options for achieving this merit careful public debate."

[4] Strict liability here refers to the possibility that bank directors would be held responsible for the failure of a bank regardless of whether their actions were a significant contributory factor to the failure and whether those actions were reckless or negligent.

[5] See second page of the Chairman's foreword, page 7 of the report.

[6] See fourth page of the Chairman's foreword, page 9 of the report.

# 3 Increasing accountability

**3.1** This chapter describes the existing powers that are available to the regulator and to Government to hold the directors and senior management of financial institutions to account. The chapter then sets out the additional steps that the Government and FSA has already taken to better align risk and reward for the senior executives of banks.

**3.2** This chapter seeks views on a range of measures to increase the scope to hold individuals to account. The Government considers that the accountability of bank directors should be increased by introducing a "rebuttable presumption" that the director of a failed bank is not suitable to be approved by the regulator to hold a position as a senior executive in a bank. A director of a failed bank would therefore need to demonstrate to the regulator, that, notwithstanding the connection with the failed bank, he or she was suitable to have a senior executive role in another institution. This measure could be supported by complementary reforms (which the regulators could take forward) to clarify management responsibilities and change the regulatory duties of bank directors. The Government is also considering the introduction of criminal sanctions for managerial misconduct. This is discussed in Chapter 4.

## Existing regulatory regime

### Approved persons

**3.3** The Financial Services and Markets Act 2000 (FSMA) already provides the FSA with a wide range of powers over financial institutions and the people who work in them. At the heart of the regulatory regime's powers over individuals is the approved persons regime. Certain functions within financial services firms are designated as "controlled functions" and only persons who have been approved by the regulator as "approved persons" are allowed to perform those functions. The current controlled functions, which are set out in the FSA's rules include "director", "non-executive director" and "chief executive".

**3.4** The regulator therefore has significant scope to adapt the designation of controlled functions to meet changing circumstances and regulatory requirements. The regulator can, of course, remove an individual's approval to perform one or more (or even any) controlled functions subject to the safeguards and appeal arrangements set out in FSMA, or reject an application to assume controlled functions subject to the same safeguards. The regulator also has the power to prohibit an individual from performing functions in the financial services sector. These processes are capable of responding to cases of dishonesty, as well as to the various degrees that lie between mere misjudgements on the one hand and reckless negligence on the other.

**3.5** These powers with enhancements will continue to be available to the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) after the Financial Services Bill is enacted and the new regulators assume their functions.

**3.6** In addition, the Department for Business, Innovation and Skills (BIS) has the power to seek the disqualification of individuals as directors under company law in a range of circumstances including where the director has committed a serious criminal offence, persistently breached companies' legislation or traded on a fraudulent basis. These powers will also continue to be available.

## Remuneration

3.7 The RBS report identifies the design of remuneration packages for RBS directors and executives as having played a role in incentivising excessive risk taking, as well as discouraging robust and effective challenge of the CEO by his direct reports. The importance of ensuring that that compensation structures are consistent with firms' long-term goals and prudent risk taking is widely accepted, and the Government was at the forefront of international efforts to strengthen the regulation of bank remuneration packages to better align risk and reward. The international Financial Stability Board issued globally agreed Principles on Remuneration in September 2009, which were endorsed by the G20. These principles have been adopted in the European Union in the Capital Requirements Directive (CRD3).

3.8 The EU standards, which have been fully implemented in the UK, are the toughest in the world and exceed the FSB principles. They apply to approximately 2,700 firms regulated by the FSA, and require variable pay to be subject to appropriate risk adjustment, and for at least 40 per cent of any bonus to be deferred by at least three years, and to be subject to performance conditions, including the possibility of "malus" (i.e. the cancellation of unpaid deferred bonuses). As a result, in the event of a bank failure, senior executives are more likely to face a reduction or loss of previously awarded bonuses.

# Possible new measures

3.9 As set out above, therefore, some civil and regulatory sanctions already exist that can be taken against relevant individuals such as bank directors, and bank directors already have a range of responsibilities under company law and FSA rules. However, the Government considers these sanctions should be extended by introducing a rebuttable presumption requiring director of a failed bank to demonstrate that, notwithstanding his connection with the failed bank, he was suitable to be approved by the regulator to hold a position as a senior executive in a bank. The introduction of this requirement could be supported by other measures, which could be taken forward by the regulators under existing powers, including:

- clarifying management responsibilities; and
- changes to regulatory duties of bank directors.

3.10 It would be for the regulators themselves (the FSA now and the PRA or FCA in future) to decide whether to consult on possible measures, and whether to take forward a measure in rules or guidance.

## Rebuttable presumption in relation to directors of failed banks

3.11 **The Government favours legislating to amend FSMA in order to put in place a "rebuttable presumption" that a director of a failed bank is not suitable to be approved by the regulator as someone who could hold a position as a senior executive in a bank.** This would mean that a director of a failed bank who wished to take up a similar role in another institution would have to show to the regulator that he or she was a suitable person to have the new role notwithstanding the connection with the failed bank. In essence, this means that the person would have to show that he or she was not responsible for, and did not contribute to, the failure of the bank. Such a measure would directly address the points raised in the FSA report on RBS (see paragraph 2.6 above).

3.12 It would also be possible (with legislation) to provide that the director of a failed bank was automatically not a suitable person to hold a senior executive position in a bank. However, this approach would raise concerns about the lack of safeguards for individuals and about ensuring that requirements of fairness and natural justice were met. The provisions needed to address these concerns might mean that much of the advantage of an automatic approach was lost.

**3.13** Another, less radical, alternative would be to introduce more detailed regulatory guidance to make clear that where an applicant for approval under the approved persons regime has previously been a director of a bank which has failed, this would have a material bearing on the regulator's assessment of their suitability and competence.

**3.14** Guidance which made clear that the past failure was a matter of significant concern to the regulator could help to ensure that relevant individuals are deterred from reapplying for approved person status. However, new regulatory guidance would not of itself change the 'fit and proper' test which applicants have to meet, nor would it remove the need for the regulator to compile a body of evidence to support a refusal of an application. The regulator would still have to be able to show that the applicant's involvement with the failed institution meant that they were not suitable to perform the role that is the subject of the application in another institution and that it is reasonable to refuse the application.

**3.15** For these reasons the Government favours introducing a rebuttable presumption along the lines proposed in this paper.

## Clarifying management responsibilities

**3.16** The first group of possible supporting measures, which the regulators could take forward under existing FSMA powers, could help to address two obstacles the regulator can face in seeking to hold individuals to account:

- a lack of clarity about who was responsible for the area of failure; and
- the absence of an agreed standard to which key roles should be performed.

**3.17** To address these issues, it might be appropriate to introduce:

1. clearer regulatory requirements regarding individual responsibilities and the standards required of people performing certain key roles; or
2. a firm-led approach, whereby the onus would be on the firm and individual to set out in detail in a written statement the responsibilities and duties of each role.

**3.18** Either approach should ensure there was greater clarity about roles and make it easier to spot a problem before it emerges, and make any difference of view between the firm and the regulator on the responsibilities of a particular role more visible. In the event of bank failure, the more specific articulation of responsibilities might increase the likelihood that successful enforcement action could be brought on the basis of a failure to discharge those responsibilities.

**3.19** It could prove difficult to cater for all the variations in the way firms structure themselves and allocate responsibilities. These difficulties may be less serious with the firm-led approach provided the regulator reviewed the statement, and then ensured that it was kept regularly up to date, and that performance against the agreed standards was monitored and assessed.

**3.20** Should a failure occur, the regulator would still need to establish causation and responsibility, but by clarifying management responsibilities, this approach should make the latter easier to establish.

## Changes to regulatory duties of bank directors

**3.21** The second group of possible supporting measures (again matters which the regulators could take forward) relate to duties which the regulators could impose on bank directors. In the RBS report, the review team said that their assessment of RBS's management information and risk control systems raised a question, amongst others, about whether optimism, confidence and focus on revenue were a factor in inadequate attention being paid to core banking fundamentals by the RBS board.

3.22 The two possible supporting regulatory changes are:

1 requiring banks explicitly to run their affairs in a prudent manner; and

2 requiring bank boards to notify the regulator where they become aware that there is a significant risk of the bank being unable to meet the threshold conditions for authorisation.

3.23 Both of these approaches would fit well with the 'judgement-led' approach to firm supervision that the PRA will adopt, stepping back from a focus on compliance with the detailed rules, emphasising instead the importance of the ends that those rules are designed to promote. These approaches would also emphasise the individual responsibility that board members have for ensuring that their bank is run in a prudent manner as well as creating a potential route for enforcement action, as well as the responsibilities bank boards have for risk management. It should mean that the PRA received information that might not otherwise be available to it, or not available at a particular point in time.

3.24 Should a failure occur, it would then need to be determined whether board members collectively, or certain board members individually, had complied with the regulatory requirements.

**Box 3.A: Consultation questions**

1 What are your views on the proposal to introduce a rebuttable presumption along the lines set out in paragraph 3.11 that the directors of a failed bank are not suitable to hold senior executive positions in other financial institutions?

2 What are your views on the possible supporting measures discussed in this chapter aimed at clarifying management responsibilities and changing the regulatory duties of bank directors?

# 4 Criminal sanctions

**4.1** The FSA report focussed on regulatory sanctions and measures. However, the report has also stimulated interest in the possible introduction of new criminal sanctions for misconduct in bank management as another way of shifting the balance between risk and reward for bank directors. **The Government is therefore considering the introduction of criminal sanctions for serious misconduct in the management of a bank.** This would involve the creation of a new criminal offence which would not necessarily involve any element of dishonesty when it is committed. The introduction and formulation of such an offence would raise a number of complex issues. This chapter seeks respondents' views on whether to introduce criminal sanctions and what form they could take.

**4.2** The criminal law has, of course, long had an important role in providing a sanction for improper behaviour in the financial services sphere, through fraud and other offences that involve dishonesty, as well as offences such as insider dealing and making misleading statements. However, these offences do not cover matters such as negligence, incompetence or recklessness or other forms of purely managerial misconduct.

**4.3** The question is, therefore, what kind of managerial misconduct by bank directors and senior management might be subject to new criminal sanctions. There are four main possibilities:

- being a director at the relevant time of a failed bank (strict liability for bank failure);
- negligence (failure in a duty of care which leads to a reasonably foreseeable outcome);
- incompetence (failure to act in accordance with professional standards or practices);
- recklessness (failure to have sufficient regard for the dangers posed to the safety and soundness of the firm concerned or for the possibility that there were such dangers).

## Strict liability

**4.4** Introducing a strict liability offence would be one way of addressing the issues about liability raised in the FSA report on RBS (see paragraph 2.6 above). The introduction of such an offence would incentivise bank boards to avoid bank failure but the difficulties of introducing a criminal offence which involved strict liability for bank failure could be significant. There could clearly be company boards which were well-intentioned and conscientious but merely took a wrong decision, or happened to be in charge when the company was the victim of a combination of unfortunate decisions and outside events. Imposing severe criminal penalties on individuals who were not plainly at fault would be controversial.

**4.5** There is also considerable scope for argument over what constitutes the "relevant time" – that is the time at which the bank could be said to have failed – and by what is meant by failure. For example, if failure was defined by reference to insolvency or resolution under Part 1 of the Banking Act 2009 and the relevant time was defined as the time when those events occurred, directors who had been brought on to the board at an earlier stage to rescue the bank (but had not been successful) would be criminally liable, while the directors actually responsible for running the bank so badly that it needed to be rescued (and had presumably been dismissed or

resigned) would escape liability. Quite apart from questions of fairness, the introduction of strict liability could deter many people from taking up board appointments with banks in rescue or recovery situations. It is not clear that the introduction of a strict liability offence would be very effective in deterring misconduct by persons on bank boards.

**4.6** The Government considers, therefore, that it would be more appropriate to focus on other types of criminal offences that do not involve strict liability. Such offences would require the prosecutor to prove that the individual had failed to meet a required standard of conduct in some way i.e. had engaged in managerial misconduct. That could involve negligence, incompetence or recklessness.

## Negligence or incompetence

**4.7** The introduction of a criminal offence covering negligence or incompetence would send a clear signal that society is not prepared to tolerate conduct of these kinds. However, it is already possible for the regulator to take action against individuals for negligence or incompetence. Moreover, the regulator is required in effect to test a person's competence (among other things) when approving him or her to hold a senior executive position in a bank or other financial services firm (see paragraph 3.3 above). The regulator also has the ability to take action against the firm itself if the negligence or incompetence of an individual means that the firm failed to comply with regulatory rules or to satisfy the threshold conditions for authorisation.

**4.8** Negligence and incompetence can give rise to civil law actions for tort (delict in Scotland) or breach of contract which could be pursued by the company itself (or its liquidator) against the individuals concerned. It is also possible in some cases for the shareholders in the company to take action against individual directors by means of a derivative action in company law.

**4.9** It is usually more difficult to mount a successful criminal prosecution than for a regulator to take action under the Financial Services and Markets Act 2000 against a firm or individual (see below). It is not clear therefore, whether there would be advantages in introducing a new offence which would enable the regulator (or a criminal prosecutor) to pursue an individual bank director or senior manager in a criminal court for conduct which could be subject to regulatory sanctions.

## Recklessness

**4.10** The FSA report into the failure of RBS highlighted the critical role of the decision to acquire ABN AMRO and characterised that as an "extremely risky deal" (see Box 2.A above). It is natural, therefore, to consider whether a criminal offence based on excessive risk taking or recklessness should be introduced. The concept of recklessness has been the subject of much case law, and the judicial interpretation has developed over time. It can have different meanings depending on the statutory context. But it is generally considered to involve either disregarding a risk or acting unreasonably in taking on a risk.

**4.11** It is of course already possible for regulatory action to be taken against individuals for recklessness in the same way as for negligence or incompetence. Nevertheless, the more egregious character of recklessness may make it a more suitable subject for criminal sanctions. Creating a new criminal offence involving recklessness would send a very clear signal that society (which might have to pay a heavy price for dealing with the consequences of recklessness) is determined to prevent and deter that conduct. At the very least, it would surely make bank directors think twice before taking certain decisions. It would probably slow down the taking of such decisions; a responsible bank board might, for example, obtain legal advice about whether a decision could be considered to be reckless.

**4.12** Defining recklessness or excessive risk taking by bank management requires a clear idea of what would constitute normal or non-excessive risk taking. Banking business inevitably involves

taking risks. Business and investment decisions of all kinds are always forward looking and involve a degree of judgement about future developments that is necessarily less precise than, for example, the kinds of prediction that are possible under the laws of the natural sciences or engineering. It would be inherently more difficult, therefore, to decide whether someone ought to have been aware of a risk that occurred, or that they were aware of a risk but wrongly decided that it was not significant, or to judge whether it was reasonable or unreasonable to take a particular risk.

**4.13** Nevertheless, the Government considers that recklessness would be the appropriate basis for a new criminal offence for misconduct in bank management.

## Practical considerations

**4.14** Establishing that an individual was guilty of criminal misconduct (however formulated) in the management of a bank would not be easy or straightforward. There would always be a number of practical considerations to address.

**4.15** It would be necessary (except in some versions of the strict liability offence), to establish causation – that a particular decision or set of decisions taken over a period of time by the same individual or group of individuals led to the failure of the bank concerned. There would normally be some time between major decisions and the failure of a substantial bank and a great many things might have happened in the meantime which could have affected the outcome. It would be necessary to address the issue of decisions which were taken outside the UK (e.g. by multi-national companies).

**4.16** Another key issue for the prosecutor would be deciding which of the individuals who might be connected with the failure in some way should be prosecuted. For example, there could be directors who voted against proposals, or against some of the relevant proposals but in favour of other relevant proposals, or who were board members for part but not all of the relevant time. There could also be difficulties in extraditing defendants who were no longer in the UK.

**4.17** Any investigations and prosecutions would be time consuming and very expensive. Assembling evidence to use as part of the case would be a huge undertaking. This is inevitable in view of the size and complexity of the financial institutions concerned. Any prosecutor (in England & Wales ) would be bound by the Code for Crown Prosecutors (i.e that there has to be a realistic prospect of a conviction being obtained and a prosecution has to be in the public interest).[1] A prosecutor also has strict duties in relation to the disclosure of unused material. The amount of material that would constitute a reasonable line of enquiry such as to require the prosecution to collect it in a substantial financial collapse case would be enormous, and the task of analysing it to a proper standard would be formidable. This could make such investigations extremely costly, and result in prosecutions which could run into years rather than months. In the circumstances, the decisions whether to investigate and prosecute would be extremely complex.

**Box 4.A: Consultation questions**

3 What are your views on extending criminal sanctions to cover managerial misconduct by bank directors?

4 What are your views on the possible formulations of a criminal offence discussed in this chapter?

[1] Any prosecution in Scotland would be brought by the procurator fiscal.

# A How to respond

A.1 This paper is available on the Treasury website at www.hm-treasury.gov.uk. The Treasury invites responses to the issues raised in this consultation document. Responses are requested by **30 September 2012**. Please ensure that responses are sent in before this date. The Treasury cannot guarantee that responses received after this date will be considered. When responding, please state whether you are doing so as an individual or on behalf of an organisation.

A.2 Responses can be sent by email to: financial.reform@hmtreasury.gsi.gov.uk. Alternatively they can be posted to:

Financial Regulation Strategy
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

## Confidentiality

A.3 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act (FOIA), the Data Protection Act 1998 and the Environmental Information Regulations 2004).

A.4 If you would like the information that you provide to be treated as confidential, please mark this clearly in your response. However, please be aware that under the FOIA, there is a Statutory Code of Practice with which public authorities must comply and which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain why you regard the information you provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

A.5 In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of emails will be disregarded unless an explicit request for confidentiality is made in the body of the response.

## Code of Practice for written consultation

A.6 This consultation process is being conducted in line with the Code of Practice available on the BIS website (http://www.bis.gov.uk/files/file47158.pdf).

A.7 If you feel that this consultation does not fulfil these criteria, please contact:

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This document can be found in full on our website: http://www.hm-treasury.gov.uk

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