1 The various instruments discussed are probably about as likely to be effective as the current ones. In practice, if a major bank failed, the Treasury would actually be making the decisions as it did with RBS etc. This is appropriate where the economic health of the nation is up for grabs.

2. No

3. It is a considerable waste of resource to put the FCA Chief Executive on the FPC. With his membership of the FPA Board, he is being stretched very thinly. At the very least, he needs to have the power to delegate his Board seat.

4. It should all be done by the FCA (actually the FSA) in one place. By diffusing regulatory effort in this way, all you will get is a waste of resource at best and chaos at worst. Having three bodies conducting enforcement action makes no efficiency sense.

5. Harmless verbiage except for principle 3 which is damaging, silly and irrelevant at the same time. Neither the PRA nor the FCA will regulate consumers. So, the principle of consumer responsibility is inappropriate. It also leads to damaging arguments when firms in breach of rules try to blame consumers of their services. Consumer responsibility only exists at the point at which regulation ends. The obligation of proportionality is sufficient to protect firms from excessive regulation.

6. The scope of the PRA is inappropriate as indeed is its existence separately from the FSA/FCA. The regulation of insurance is totally different from that of banks. Equally, there are huge numbers of small insurers and credit unions of no significance to the stability of the financial system. These should all be regulated (assuming that the Government persists in its breach of the Coalition Agreement by splitting prudential from conduct regulation) by the FCA.

7. The comments about regulatory style are a bit pointless. Judgement-led is a meaningless concept. You want regulators to do the job properly, preferably without reference to some mantra. We have had "risk-based", "principles-based" "outcomes-based" and now "judgement-led". None of the others have worked and all have distracted the regulator from the job of doing its best to provide a framework for the industry to operate in and punish them effectively when they breach that framework.

There is a risk with fiddling with the grounds of appeal to the Tribunal that you can hamstring the Tribunal from substituting its own decision for that of the regulator, a most powerful weapon. There is no evidence of excessive use of the Tribunal or of the Tribunal being an ineffective second layer of regulation. There is much to be said here for if it isn't broke don't fix it. There is an increasingly well established approach which appears to work. Any other would run a risk of creating European Convention on Human Rights Article 6 problems.

8. Harmless enough although it looks a bit like the regime that messed up the regulation of BCCI. Frankly, it looks a bit lumpy. One never wants one regulator being controlled by another because it impedes the use of budgetary authority.

9. None except that it would be more efficient to have one complaints commissioner for all three regulators.

10 No views.

11. It is important here to remove any consumer responsibilty principle. The FCA does not regulate consumers and their behaviour. This will only be interpreted as an excuse to break the rules or seak deductions from compensation. The industry needs to learn to get away from a caveat emptor type culture and into a compliant effective one. The Government should study the appalling papers put out by the FSA on consumer responsibility against the reports of the FSA consumer panel and the FOS on the subject which reject the notion entirely as having no relevance to either regulatory or Ombudsman. Proportionality is the correct benchmark of the ambit of regulation, not some woolly notion of consumer responsibility which does not exist as a matter of law.

12. This seems okay.

13. It is a good idea although probably unnecessary if one left the FSA's powers untouched.

14. Transparency and disclosure are not regulatory tools. They are presumptions of good administration. The promotion power is a good idea although the FCA should reserve the right not to name companies when it is inappropriate. I'm not convinced about the need to broadcast warning notices. There is a danger here that the enforcement process may be acquiring an extra stage pre-warning notice. One can probably destroy a small business by using a warning notice.

15. It would help if competition regulation of retail financial services was a concurrent power held by the FCA alongside the Competition Commission. The latter can focus on anti-competitiveness and the FCA on its consumer detriment.

16. No strong views although it may be sensible to retain the power to move the competent authority to another entity to remove the need for further legislation in that event.

17. Their complexity reveals the ill-starred nature of the idea. CEO cross-membership should be subject to the power of each CEO to delegate that membership to other staff members.

18 Fine.

19 & 20. The double authorisation and variation of permission approach is extremely inefficient, duplicative, messy and chaotic. Enforcement, authorisation and approval activity should be run by one not two or three regulators. If you have to have more than one regulator, my view is that these powers should sit with the FCA to be exercised where necessary in consultation with the PRA.

21 It makes sense to allow either regulator to prohibit individuals. Otherwise, again, approved person status should sit in one place not two since it involves a combination of concepts. The FCA is the obvious destination.

22 No views.

23. There is no evidence of any variation of impact of regulation on mutuals as compared with other organizations except as regards capital adequacy where mutuals struggle to raise the cash. The argument for mutuals is far from proven. So, while the proposal is probably harmless, it is also unnecessary.

24. It's a clunky consequence of the pointless split of regulators.

25 No strong views but the second sounds like a good idea although I think that it effectively already exists under the current regime.

26 No views except that the current system does not seem to have a problem.

27 No views

28. An opportunity is being missed here. The Government needs to stop the unprincipled rule that exists at present whereby competitors of firms that fail pay the compensation bill and indeed benefit from any fines by lower levies. The fee block idea has no logical justification and results in firms paying for other companies' errors not on the basis of the ability to pay but the random coincidence of being broadly in the same field as the firm. The recent Keydata case is a good example of this.

Equally, the Government still hasn't sorted out the anomalous and dangerous position of Northern Irish credit unions and industrial provident societies which should come within the FSA or FCA's remit and above all else benefit from FSCS protection. The shambles over the Presbyterian Society is outrageous.

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A new approach to financial regulation: building a stronger system : Consultation Response

11 What are your views on the (i) strategic and operational objectives and (ii) the regulatory principles proposed for the FCA?

The strategic objective for the FCA is wide ranging and comprehensive.

The operational objectives are again wide ranging but need to be backed up with more detail; particularly objective 2 in relation to consumer protection. At this stage it is unclear how the consumer credit regime will be controlled in the future but it is likely that it will come under the remit of the FCA. The focus of this consultation in relation to consumers is in the area of financial services. It should be noted that levels of consumer protection required differ depending on whether a service is being accessed or credit obtained and this should be carefully considered when finalising the objectives for the FCA. Consumers accessing credit are in a far more vulnerable position than those who are purchasing a financial service.

We welcome the acknowledgement that different consumers need different levels of protection depending on their circumstances and the product they are buying.

The regulatory principles of efficiency and proportionality are appropriate and necessary to ensure the effectiveness of the FCA, however the principle that "consumers are responsible for their own decisions" needs to be properly supported through other channels. The educating of consumers in relation to finance and financial products needs to be formalised and the most effective way of doing this would be to include it within the school curriculum. The educational materials currently available from various bodies including CFEB are not comprehensive and not as well publicised as they could be.

12 What are your views on the Government's proposed arrangements for governance and accountability of the FCA?

If the FCA is to take over control of the consumer credit regime consideration must be given as to whether this would be the most appropriate form of Governance for this sector. The control of the consumer credit regime should not be viewed as something that can be just added on to the control of financial services.

14 The Government would welcome specific comments on:

- **the proposed approach to the FCA using transparency and disclosure as a regulatory tool;**
- **the proposed new power in relation to financial promotions; and**
- **the proposed new power in relation to warning notices**

We agree that transparency and disclosure can be a powerful regulatory tool when used appropriately. Disclosure is particularly helpful in ensuring consumer protection.

21 What are your views on the Government's proposals for the approved persons regime under the new regulatory architecture?
If the FCA is to become responsible for the consumer credit regime it will be particularly important to have a strong approved persons regime. It has been shown in the past that it has been possible for unfit persons to obtain consumer credit licences and recent improvements in the checks carried out on potential licence holders must be carried over to the new regulatory body.

31 What are your views on the proposed arrangements for strengthened accountability for the FSCS, FOS and CFEB?
We welcome the strengthened accountability.

Dear Sirs,

Thank you for the opportunity to respond to this consultation.

Shared Interest Society Limited is a cooperative lending society registered under the Industrial and Provident Societies Acts. We lend to fair trade businesses around the world and are unregulated but operating (by definition) in the financial services sector.

Our view is that:

1. The sector requires a dedicated Registrar who understands its needs and has appropriate resources
2. Registration process and follow up should be modern, cost effective and easy to use (compare with Companies House for Companies registered under the Companies Acts)
3. It feels more appropriate for businesses such as Shared Interest Society to be registered with the FCA but we don't have a strong view about where our registration settles. Much more important are the two points above AND the imperative that we do not become subject to full "FSA-style" regulation as a by-product of the changes to be made.

We would very much like to remain informed of changes as they develop.

Regards

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A New Approach to Financial Regulation - building a stronger system. A consultation.

This response to the HM Treasury's Consultation paper, entitled: - "A New Approach to Financial Regulation- building a stronger system" is a personal response as a consultant within the credit industry.

I believe that the name chosen for the replacement of The Consumer Protection Markets Authority (CPMA) - The Financial Conduct Authority (FCA) is a sensible one. It correctly conveys the impartiality of the new body as a regulator. Any regulator must be impartial and seen to be so.

Part 4. Financial Conduct Authority.

4.9. It is a nonsense to say "that the FCA will be a "consumer champion". You cannot have your cake and eat it in this world. Either it is going to be partial to consumers, in which case it will not be an impartial Regulator, or it is not. The Paper says "the FCA should be an entirely impartial regulator from whom firms and consumers can expect fair treatment".

Even the Treasury Select Committee together with many other reputable organisations have advised you over this impartiality requirement. An impartial name is selected for the Regulator but then it goes onto to state that the FCA will be a 'consumer champion'. Frankly if Government persist with this nonsense, it will not gain the confidence of the industry or its support as it seems senior representatives within the House of Commons also believe.

Many people believe that the Financial Ombudsman Service is a 'consumer champion'. They very clearly state in their aims and objectives that this is not

the case. I believe this is one of their great strengths and would become one of the FCA's great weaknesses if it was allowed to be so.

Early publication of enforcement action.

4.85- 4.89

I can fully understand the desire of Government to make the service undertaken by the FCA as transparent as possible. I agree with the proposals made under 4.78-4.84. However I vehemently oppose the proposals under 4.85-4.89.

The reason is a simple and fundamental one. In this country we have always lived and hopefully always will live under the simple principle "a person is innocent until proved guilty".

The proposals for transparency and publicity of those asked to withdraw a misleading promotion, give a vital opportunity for the accused company to challenge the warning before publicity is possible:-

"4.83 The Government will therefore legislate to give the FCA a new power to direct a firm to withdraw or amend misleading financial promotions with immediate effect, and to publish the fact that it has done so. Under this new power, when the FCA considers that there has been, or is likely to be, a breach of its financial promotions rules:

- the FCA will notify the firm of its decision, directing the firm to withdraw its promotion (or approval) with immediate effect;
- after receiving the notice, the firm will have a short period of time to make representations to the FCA (during which time the financial promotion must remain out of circulation);
- after considering the firm's representations, the FCA's senior executive or committee will decide whether to confirm its direction;

the FCA will give written notice to the firm of its final decision, and will have a duty to publish details of this notice, where appropriate; and

- the firm will have the right to appeal to the Upper Tribunal, during which time the promotion will stay out of circulation. "

The proposals in this section I believe are fair and also provide a responsible opportunity of publicity.

However bizarrely under the proposals for early publication of enforcement action, no such opportunity is given to the company accused of misdemeanours. Instead it seems that it will be left to the discretion of the

Regulator. So of course a company will be classed as guilty without any opportunity to challenge this before the damage is done.

The damage of course is so obvious. Take an example:- The publicity is set in motion against a company and a few weeks later the FCA realise that a mistake has been made, so they publicly withdraw the warning and the publicity. Too late; the damage has been done. The company has been irrevocably tainted with 'a crime'. The effect on its business could be enormous.

I also suspect Government will find themselves in Court just once or twice too often as the defendant with the claimant company seeking compensation for damages. Probably quite rightly so.

The solution must be to offer the same facilities to such a warning as is outlined for possible advertising abuse.

If this plan for earlier publicity is handled properly through sensible legislation, then it may well serve a very important purpose. If on the other hand the legislation allows this cavalier approach as discussed, then one of the natural results will be that the legislation and Government will be laughed at in equal measure.

I do not believe this is what any Government would wish for. I am very certain that a regulator set up by the Government, trying to do a professional job of work would only want fair legislation that is equally fair to consumers and business – thus the creation of the impartial regulator, with balanced legislation under which to work.

If it was of any assistance, I would be delighted to continue working with The Treasury over this Consultation Paper.

Anthony Sharp
7.3.11

"A new approach to financial regulation: building a stronger system"

Response to the Consultation Document by Tony Shearer (tony@tonyshearer.com), submitted as an individual, dated 31st March 2011.

Response e-mailed to: financial.reform@hmtreasury.gsi.gov.uk

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

Summary

The Consultative Document addresses the wrong issues. This is not surprising as there has been no official attempt to assess and understand the causes of the banking crisis in the UK, and no attempt to identify publicly the lessons to be learned from it. Lord Turner's report in 2009 failed to do any of that as explained in my submission at the time; a copy of the introduction to my submission is included in the Appendix to this response.

There is no evidence that the past regulatory structure ("The Tripartite Arrangement") was the problem. The new structure is not a substantive change; the new proposal is to have three entities all under the Governor of the Bank of England but with the key appointments all within the control of the Treasury. The Tripartite Arrangement also has, and had, three different entities (Treasury, Bank of England, and FSA) and all under the overall arm of the Treasury. It is not as if these three bodies are three completely different businesses such as HSBC, Tesco and Vodafone with three different sets of owners; they are, and were, all Government entities falling under Government/Treasury supervision/control with responsibility to the taxpayer. It should not need a new structure for the Treasury and Government to co-ordinate between three of its own entities.

In reality very little practical change will be introduced by the new structure.

In fact regulation is about people, not structures. And it was the people that failed in the past; failed to do the job with which they were charged. The FSA had, and has, only two objectives, one of which was, and is, to prevent a systemic failure of the banking system. All that had to happen was the people running the FSA had to do their jobs, or the other members of the Tripartite Arrangement had to spot that they were not doing them.

This view is emphasised by the same people at the Treasury now arguing for the new structure and against the Tripartite Arrangement; the same people as argued a year ago, and over the previous dozen years, in favour of the Tripartite Arrangement.

The Bank of England as the regulator

If there is to be a new regulatory structure under one entity, then the Bank of England is an inappropriate choice for the following reasons:

1. It is probably amongst the least accountable and transparent organisations in the UK, probably even less so than the Treasury;
2. It is hierarchical, bureaucratic and composed of "Group think";
3. It has no obvious corporate governance structure. It is run by a Governor though it is not clear whether he is Chairman, Executive Chairman or Chief Executive, his executive colleagues such as the Finance Director do not fill the roles that their titles imply they should, and the roles of the non-executives are not clear;
4. Responsibility for the whole regulatory system (including both macro- and micro-regulation) is a massive job, when the Bank of England already has a very large job in setting interest rates and controlling inflation. The job seems to be too big for any one person or organisation;

5. The Bank of England has failed over the last couple of years to carry out its current main job of controlling inflation;
6. As I pointed out in 1997, the brief of controlling inflation is one that any student of GCSE Economics would know cannot be met only by setting interest rates, but the Bank of England has accepted the brief;
7. The Bank of England failed to do anything of substance to see, or address, the banking crisis before it hit, and even then was late to see the need to respond.

"Universal banks"

The paper does not address the issue of "Universal banks".

Large businesses (such as the big banks) will always be ahead of the regulators, employing lawyers and others to enable them to move faster than the regulators to find ways of avoiding, or minimising the impact of, rules and regulations (for example, capital requirements). Accordingly there need to be legal entities established that cannot be broken, as even Chinese walls will not always work securely. Separating the activities of the "Universal Banks" will enable regulators to set different Capital requirements for financial traders and proper lending banks/deposit takers.

The Governor of the Bank of England has made his position clear on this matter, namely that for any regulatory structure to be effective, the casino operations of financial trading carried out by "investment banks" must be separated from the deposit taking and lending activities of proper banks; he is correct in that view, though that is not the point. If he is to be responsible for the regulatory system then he will need to make this separation happen, and that makes the report of the Independent Banking Commission as irrelevant as will be any decision by the Government on this matter. If the Governor accepts anything other than total legal and practical separation of these activities then he is forsaking what he has made clear he regards as probably the most important regulatory change.

Accordingly what is said in paragraph 1.7 is irrelevant, namely:

"Furthermore, the Government has also established the Independent Banking Commission, chaired by Sir John Vickers, to consider the structure of the UK banking market, including the question of whether to separate retail and investment banking, and questions of competition in banking. The Commission will report in September 2011, with an interim report due in April."

Relationship between the Regulator and the Regulated

The paper does not address adequately the issue of the relationships between the regulators and regulated.

What is said in paragraph 1.2 is:

"The crisis was caused by the failure of financial institutions to manage themselves prudently, and of regulators to spot the risks that were building up across the system as a whole. Most developed economies – including the UK's – are emerging from the deepest recession for generations"

And paragraph 1.5 states:

"The Government recognises that steps must also be taken to ensure that financial firms are never again allowed to take on risks that are so significant and so poorly understood, resulting in such severe economic consequences for businesses, households and individuals. That is why the Coalition Government made the reform of UK financial regulation, and the replacement of the flawed system introduced by the previous administration, one of its key priorities on taking office in May 2010."

These paragraphs give the impression that the Treasury believes that the issue is one between the management of banks and the regulators. To use a cricketing analogy, the bowler is the market and the batsman is the regulated entity, with the regulator as the long-stop. The other nine fielders can be equated to:

1. The executive management of the regulated entity;
2. Its chairman and non-executive directors;
3. Its shareholders;
4. Its auditors;
5. Its financial advisers
6. The rating agencies;
7. Financial analysts;
8. Its lawyers
9. Its Investor Relations and Public Relations firm.

The banking crisis occurred because none of these nine categories did their jobs properly. The FSA, the Bank of England and the Treasury did not, at the time, act on this fact, and probably did not even appreciate it. The Consultation Document makes no mention of these nine groups, or of how the new structure will oversee their activities, even though:

a) on 30th March 2011 the Economic Affairs Committee of the House of Lords reported on the role of the auditors saying, inter alia, "There was no single cause of the banking meltdown of 2008-09. First and foremost, the banks have themselves to blame. As our predecessor Committee found in its report on *Banking Supervision and Regulation* in 2009, the supervisory system put in place in 1997 proved unfit for purpose. But we conclude that the complacency of bank auditors was a significant contributory factor. Either they were culpably unaware of the mounting dangers, or, if they were aware of them, they equally culpably failed to alert the supervisory authority of their concerns.", and
b) in March 2011 the Bank of England published a report that concluded, inter alia, that "Credit ratings are now heavily hardwired into financial contracts, investment processes, and the regulatory framework. Rating agency decisions therefore have potentially systemic consequences. Many policymakers and commentators have argued that the crisis was exacerbated by a combination of faulty ratings methodologies, conflicts of interest, and overreliance on ratings by banks, investors and regulators."

In a cricket match the long-stop needs to rely on the nine other fielders doing their job; he cannot do his job without their help. The fact that almost all of these fielders are paid by the batsman makes the job even harder. Similarly the regulator (long-stop) must get the others to help him. If they continue to fail to do their jobs, then it is inevitable that he will fail. Yet other than a few of the executives and non-executives and the two recent reports referred to above, it would seem as if none of the other players has been even admonished or identified for their failures. How will this now happen? How will these key and highly rewarded fielders be regulated within the new structure?

The people operating within the structures

The paper fails to identify that far more important than the structure are the people who are operating within it.

The Tripartite Arrangement could have prevented a systemic failure of the banking system, but didn't; and the Treasury did not act. I discussed and corresponded with Callum McCarthy (at that time Chairman of the FSA) on this very issue in 2005 and pointed out to him that the FSA focused on "minutiae and trivia" rather than the possibility of a systemic

failure of the banking system. If he had listened or even understood, or if Mr Tiner or Mr Sants (respectively former Chief Executive of the FSA, and his successor) had done their jobs properly, none of these reforms would be necessary. I make this point now, because I was right in 2005, and if these proposals are not changed then there is every chance that I shall be right once again, and at a terrible cost to the UK economy.

The new structure includes many of the people whose failures in the past caused the banking crisis. It is true that Callum McCarthy and John Tiner as well as John Kingman (the former Chairman of the Tripartite Arrangement) are not in the new structure, though incredibly they are still in important positions in the financial services sector. But Mervyn King is, as is Hector Sants who was a key executive at the FSA as Managing Director of Wholesale and Institutional Markets from May 2004 to July 2007 when he was appointed CEO, and he is to be a Deputy-Governor of the Bank of England as Chief Executive of the Prudential Regulation Authority and a member of the Board of the Interim Financial Policy Committee in the new structure. Lord Turner, the Chairman of the FSA from September 2008, is to be a member of the Board of the Interim Financial Policy Committee, even though he has failed to make the necessary changes to the FSA, and as a result the Government is now abolishing the FSA. The Governor of the Bank of England is to be Chair of both the Financial Policy Committee and the Prudential Regulation Authority, and will also have overall responsibility for the Financial Conduct Authority, as well as continuing as Chairman of the Monetary Policy Committee and holding his other responsibilities within the Bank of England.

Conclusion

The right solution is to keep the existing structure, not because it is brilliant or perfect but because the new one is not significantly better or even different as explained above. The cost and disruption of the changes are not worth the cost, the risks, the delay or the disruption. What needs to change are the people on the Board of, and within, the FSA, and as importantly within the Treasury and the Bank England. The new people should then get on and do their jobs properly.

Whatever structure is in place, circumstances will change to make it inappropriate. This may happen over a longish period such as over ten years, but it could happen over a period such as a year or two. Changes will happen in the way that banks operate either as a result of market forces, changes in other countries, or even as banks seek to create new products, structures or services to avoid what they see as costly or harmful restrictions or regulations. Accordingly the regulatory climate and structures cannot be set in stone. They need to be operated by people who understand the changing needs and priorities and adjust their objectives and actions accordingly.

The acid test will be how the structure operates in the short-term and also in the longer term. For each of the first 5 years, and thereafter every second year there should be an independent public review to see if the whole operation is working and meeting the changing needs and objectives.

Other comments

1. **Bonuses and lending**

   Paragraph 1.3 states

"As they rebuild their balance sheets – often with direct or indirect support from the taxpayer – banks must continue to lend to the businesses that are the engine of economic growth, particularly small and medium enterprises."

Paragraph 1.4 states

"The Government welcomed, last week, the commitment by the UK's biggest banks on lending expectations and capacity, the size of the 2010 bonus pool, pay disclosure and support for regional growth and the Big Society. Barclays, HSBC, Lloyds Banking Group, RBS and, with respect to lending, Santander, have made specific commitments on these issues, following a period of discussion between the Government and the banks, known as Project Merlin."

These paragraphs show a lack of understanding, by thinking that bonuses paid to "financial traders" (also known as Investment Bankers) are somehow linked to the lending practices of proper banks.

2. Growth or Risk?

Paragraph 1.10 states:

The Government's reforms focus on three key institutional changes:

- first, a new Financial Policy Committee (FPC) will be established in the Bank of England, with responsibility for 'macro-prudential' regulation, or regulation of stability and resilience of the financial system as a whole;
- second, 'micro-prudential' (that is, firm-specific) regulation financial institutions that manage significant risks on their balance sheets will be carried out by an operationally independent subsidiary of the Bank of England, the Prudential Regulation Authority (PRA); and
- third, responsibility for conduct of business regulation will be transferred to a new specialist regulator, which has had the working title 'consumer protection and markets authority'. The Government has now finalised the name of this body as the Financial Conduct Authority (FCA); the FCA will have responsibility for conduct issues across the entire spectrum of financial services.

1.21 The Government recognises that the exercise of the FPC's macro-prudential functions to increase overall resilience and make the financial sector more sustainable may impact upon the capacity of the financial sector to support the economy. Many respondents to the July consultation called for this to be recognised through a specific reference to economic impact in the FPC's statutory objective. The Government proposes to build this factor into the FPC's objective through an additional statutory limb, as follows:

> *This does not require or authorise the Committee to exercise its functions in a way that would in its opinion be likely to have a significant adverse effect on the capacity of the financial sector to contribute to the growth of the UK economy in the medium or long term.*

The above is meaningless and open to many different interpretations. The reality is that there is a trade off between reducing risk to provide a secure banking system with a low chance of a systemic failure and taxpayer support, and a higher risk level to enable banks to lend for the benefit of the UK economy and to be very profitable, make taxable profits and

enable the publicly held stakes in some of the banks to be sold for the maximum return. Government should indicate how they want these conflicting risk profiles to be balanced.

3. **Accounting policies**

There is no doubt that around 2004 and 2005 accounting practices changed, and this had a major impact on the financials statements of lending institutions. Particular areas affected were the way that bad debt provisions were calculated, and also in calculating the carrying value of liabilities as well as calculating "Mark to market" of assets when there was no market. The role of International Financial Reporting Standards in forcing banks to adopt these practices and the harmful role played by firms of auditors needs to be curtailed.

4. **Independent inquiries**

Paragraph 3.58 states:

"FSMA sections 14 to 18 provide the mechanism for the Treasury to appoint a person to hold an independent inquiry into the circumstances surrounding regulatory events which give rise to serious questions or public concern about the regulatory framework or the effectiveness of regulation in practice. The FSMA provisions established a statutory basis for launching the type of inquiry that had been conducted into the failures of the Bank of Credit & Commerce International (BCCI) in 1991 and Barings in 1995. The Bingham Inquiry into BCCI was conducted on a non-statutory basis and therefore had no powers to require witnesses to attend or give evidence. The Barings Inquiry was conducted by the Board of Banking Supervision (an advisory body within the Bank of England). The Government intends to retain an equivalent to the FSMA section 14 power in the new legislation, enabling the Treasury to order inquiries by an independent third party into any regulatory failure by the PRA and FCA."

No such inquiry has taken place into the collapse of the banking system and those who had a role in that failure, including the FSA. There has been no report published yet into the collapse of RBS, HBoS, or the Icelandic banks. What is the point in having such powers if you don't use them?

Tony Shearer

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31st March 2011

APPENDIX

From: Tony Shearer; tony@tonyshearer.com

15th June 2009

Section 1: Overview

Introduction

The Turner report is a missed opportunity.

In October 2008 The Chancellor of the Exchequer asked Lord Turner to review the causes of the current banking/financial crisis, and to make recommendations on the changes in regulation and supervisory approach needed to create a more robust banking system for the future. Lord Turner's review:

1. does not identify the causes of the crisis, and fails to deal with the related regulatory issues;
2. contains no analysis of what went wrong and the mistakes made by the FSA and others;
3. does not identify the lessons to be learned;
4. proposes solutions that are defective;
5. is deficient for these reasons and needs to contain sections covering:

a. the 100 or so people that brought down the UK economy and what lessons can be learned from them and their failures;

b. the consequences for depositors, and those who rely on the City of London and the other major financial centres, (such as pensioners, future pensioners, and private investors). It is this group who have not earned the returns that they should have, and needed, from the capital that they have saved and invested. Lord Turner wrote a previous report for the Government entitled The Pensions Crisis published in October 2004. It is amazing he did not identify this as a major issue, and try to address it.

6. does not explain the lessons to be learned from overseas regulators. The UK regulator failed, and so did many, but not all, international regulators. The Turner review talks a lot about international co-operation amongst regulators. But there is no section explaining how regulatory bodies in other countries (such as the USA, Canada, Australia, South Africa, Germany, France, Saudi Arabia, etc) fared (some did a lot better than we in the UK because their regulators were more on the ball), and how their banks were impacted by the crisis, with the lessons to be learned.
7. does not contain a section that explains and admits the failures of the FSA, and the lessons that need to be learned. The Regulator failed, rather than the Regulations. It is important that the real lessons are learned so that remedies can be put in place. The FSA still seems not to recognise this, and is a clear indication that the FSA and the Board of the FSA are not fit to continue in their roles.

The review is seeking responses to the Turner review, but decisions on how to proceed should not be left to the Board of the FSA and the Treasury. They have both already failed spectacularly. If no better alternative exists, the Treasury Select Committee should, set up a Committee of knowledgeable people (who are not tainted by recent events) with a brief to look at the Turner Review, and to make recommendations to the Treasury Select Committee.

The causes of the crisis

It is clear that the Tripartite Regulatory System has failed, as has its constituent parts, the FSA, the Bank of England and the Treasury. But so have the rating agencies, the financial analysts (who were employed to analyse the strengths and weaknesses of financial service companies), the auditors (who signed off the banks' accounts when it is clear that those accounts did not give a "true and fair view"), the investment banks (who promoted and advised on corporate transactions, and packaged and distributed so much of the toxic debts), the lawyers (who advised on these transactions), the head-hunters (who helped companies recruit the wrong people as both executives and non-executives), the public/investor relations advisers and spokespeople (who have seen their jobs as to present their clients in the most favourable light rather than to get the truth and the facts out into the open), and also the remuneration consultants (often the same head-hunters, who advised on the creation of the remuneration packages of the

executives): And of course the Executives and Non-Executives who were the directors of so many of the failed banks.
All of these have failed us; all of these have been very well remunerated, and all of these have left some depositors with substantial losses, and the taxpayer with the very considerable financial burden. Each of these groups needs to be embraced within the regulatory system, and the Police should open a few enquires.
The key points that Lord Turner's review does not deal with are:
1. The Turner review is based on a pseudo-academic analysis of what he says are the causes of the banking crisis. But what he actually does is to identify the conditions that enabled the City of London and the players in the other major financial centres to create the crisis. It was the City of London (and the other major financial centres) that created the crisis by forgetting who their clients really were, and putting their own self-interests, greed and wealth before their duties to the providers of capital that were their clients. The culture of the City must change. These issues are really very difficult to resolve, and this is because the City has so lamentably failed its customers. The rewards for capital have been eaten into, if not obliterated, by the charges and fees of those who see themselves as having talents to advise and manage. Put another way, the City has been too expensive and taken too much reward for doing too little; actually it has destroyed, and not created, value. This is what created the mess. Those working inside the City cannot be trusted to change this culture, and so the necessary change will have to be lead and enforced by the political and regulatory process.
2. Financial Markets are not efficient. They are driven by fear and greed: And those who benefit from and operate them often manipulate them to their advantage. The players in the City of London have a vested interest to keep financial markets buoyant and high. So booms go on long after they should have, crashes are far deeper and more intense, and recovery comes much too quickly. Few of the players have any vested interest in seeing bear markets. As a result, the City is not a safe place for pensioners, future pensioners, and private investors. Those who use the financial markets need protecting.
3. Institutional shareholders failed to behave like owners of the businesses and thus the banks were allowed to take on excessive risk for low returns, over-pay their staff, and over-stretch their own skills, their management and their resources. These shareholders have lamentably failed to deliver the service that they should have provided. Recent events have shown that the institutional shareholders and financial analysts have repeatedly missed what has been blindingly obvious to many of the rest of us. It is clear that many institutional shareholders have had over ambitious expectations of the returns that can be achieved from investment, and had little grasp of the issues facing the banks in which they had invested, or understanding of or influence over the boards of those banks. They have in many instances acted as if they were betting in a Casino using other people's money, and taking very large rewards for what has at best been some pretty average performance. The big issue here is how to get institutional shareholders to act responsibly and financial analysts to be independent!
4. The audiences that Lord Turner does not address is depositors, and also the needs of those who rely on the City of London and the other major financial centres; namely pensioners, future pensioners, and private investors. It is this group who have not earned the returns that they should have, and needed, from the capital that they have saved and introduced to the financial centres. The consequence for this on Government policy is massive; and compounded by the fact that there has been such a switch from final salary schemes (where the employer takes much of the investment risk) to money purchase pensions (where the investor takes all the investment risk). The consequences of this on the population of this country, Government policy and Government finances are massive. Lord Turner wrote a previous report for the Government entitled The Pensions Crisis published in October 2004. It is amazing he did not identify this as a major issue, and try

to address it.
5. Politicians lost their objectivity in their approach to bankers and feted, honoured and praised them, participating and encouraging them in a process that made bankers believe that they were "Masters of the Universe".
6. The main regulatory issue is about the quality of the FSA's people. The FSA can put in place all sorts of things and procedures: But over time the requirements and issues will change. The FSA needs good honest people who can be flexible and adapt to changing circumstances: And not those who have failed to date. It has been reported that the FSA is often now using four times as many people as previously when it inspects a business; it does not need more people; it needs better people focused on the important issues. The regulators failed to understand what was going on in financial markets, and failed to use the regulations that they had available to them. The FSA's failure was that though it had the powers to curtail, and possibly to stop, the excesses it did not do so; it was a failure of the Regulators not of the Regulations. Until the FSA, its CEO (who was Managing Director, Wholesale and Institutional Markets from May 2004 until he became CEO in July 2007), the Board of the FSA and its management recognises that it has failed totally and lamentably, and that it is part of the problem, their recommendations and proposed actions have no credibility. Indeed the recent statement by the CEO that regulated businesses should be "frightened" of the FSA is crass, and is but one indication that he has no understanding of the situation. It is remarkable how many people have told me that they are sufficiently scared of the FSA that they do not see it as a body that they can approach when they have concerns about a regulated business. Many of these are directors of companies and see the way that the FSA has responded to people such as me who have pointed out the shortcomings of the FSA, been whistle-blowers or otherwise been critical of the FSA and the regulatory environment. This attitude created by the FSA can only be harmful to the regulatory process. It is clear that there is so much that the FSA could have done, and did not do.
7. No organisation should be too big to fail. If it is that big then the state cannot afford to prop it up, and nor should it; and it will be too big to manage or to regulate.
8. The UK regulator failed, and so did many, but not all, international regulators. The Turner review talks a lot about international co-operation amongst regulators. This is pie in the sky. The UK regulator should get its own house in order and not rely on other regulatory bodies such as those in Iceland.
9. The "Protectors" (auditors, financial advisers, lawyers, rating agencies, and financial analysts) failed to do what they were paid to do, namely to protect investors, depositors and the taxpayers.
10. It is remarkable that the administration of the failed banks is costing so much. Ernst & Young and Freshfields have apparently billed about £30 million of fees from October 2008 to April 2009 in respect of the administration of Kaupthing Singer & Friedlander. This money will reduce the returns to depositors and other creditors. This is another example of the greed of the City of London, as by any measure fees such as these are excessive to a massive degree.

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

Our Ref: JM/JB/4.17.2 April 13th 2011

Dear Sir or Madam,

A NEW APPROACH TO FINANCIAL REGULATION: BUILDING A STRONGER SYSTEM

We welcome the opportunity to comment on the above document.

INTRODUCTION TO SPC

SPC is the representative body for a wide range of providers of advice and services to work-based pension schemes and to their sponsors. SPC's Members' profile is a key strength and includes accounting firms, solicitors, insurance companies, investment houses, investment performance measurers, consultants and actuaries, independent trustees and external pension administrators. SPC is the only body to focus on the whole range of pension related services across the private pensions sector, and through such a wide spread of providers of advice and services. We do not represent any particular type of provision or any one interest - body or group.

Many thousands of individuals and pension funds use the services of one or more of SPC's Members, including the overwhelming majority of the 500 largest UK pension funds. SPC's growing membership collectively employs some 15,000 people providing pension-related advice and services.

This document has been considered by SPC's Financial Services Regulation Sub-Committee which has representation from actuaries and consultants, insurance companies and lawyers.

COMMENTS ON THE DOCUMENT

We have restricted our comments to Chapter 4, on the Financial Conduct Authority, since this is the area in which the majority of SPC's members are likely to be affected.

Consultation question 11: What are your views on the (i) strategic and operational objectives and (ii) the regulatory principles proposed for the FCA?

The proposals are reasonable in themselves.

Although it is clear from other places in the document, that integrity of the financial system includes safeguarding against financial crime, we were somewhat surprised to see no direct reference to this in the operational objectives.

The reference in the objectives to promoting competition highlights the need to ensure that there is no overlap between the role played by FCA and bodies already responsible for various aspects of competition.

Consultation question 12: What are your views on the government's proposed arrangements for governance and accountability of the FCA?

We have no comments on the proposed arrangements.

Consultation question 13: What are your views on the proposed new FCA product intervention power?

The essence of the new power appears to be to control distribution of products, where deemed appropriate, rather than to control product features.

We have no objection to the concept in principle, but, as the principle is developed, it will be necessary to take proper account of the manner in which products are distributed and of the fact that providers might not always be able to control to whom a product is marketed, if they are not marketing it directly to customers.

Consultation question 14: The government would welcome specific comments on:

- **the proposed approach to FCA using transparency and disclosure as a regulatory tool**
- **the proposed new power in relation to financial promotions and**
- **the proposed new power in relation to warning notices.**

On transparency and disclosure, we would expect that the key to useful deployment of this tool would be for FCA to raise concerns at as early a stage as possible.

On warning notices it will be important to indicate why a warning notice has been withdrawn, as well as the fact that it has been.

Consultation question 15: Which, if any, of the additional new powers in relation to general competition law outlined above would be appropriate for the FCA? Are there any other powers the government should consider?

We have no comments in this area.

Consultation question 16: The government would welcome specific comments on:

- **the proposals for RIEs and Part XVIII of FSMA and**
- **the proposals in relation to listing and primary market regulation.**

These areas will not generally be relevant to SPC Members.

Yours sincerely

John Mortimer
Secretary

Solicitors Regulation Authority

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Financial Regulation Strategy
HM Treasury
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14 April 2011

Dear Sirs

Response to "A new approach to financial regulation: building a stronger system" ("the Consultation")

The Solicitors Regulation Authority (SRA) is the independent regulatory body of the Law Society of England and Wales. We set standards for, and regulate, more than 100,000 solicitors, and 10,000 law firms, in England and Wales.

We have submitted a licensing application to the Legal Services Board and hope that we will be in a position to license Alternative Business Structures from 6 October 2011. The application includes the new SRA Handbook of regulatory requirements which will accommodate ABSs and implement outcomes-focused regulation.

After the introduction of ABSs, assuming that there are no changes to the provisions relating to authorised professional firms in the FSA's current regime, firms which we authorise and regulate will be able to conduct financial services in one of three ways:

(a) under the exemption contained in Part XX of the Financial Services and Markets Act (FSMA) – in this case firms would be authorised by the SRA, subject to the SRA's Handbook, and not authorised by the FSA;

(b) as an Authorised Professional Firm (APF) authorised by the SRA to provide legal services and by the FSA in respect of financial services activities, and subject to carve-outs from the FSA's regime under the FSA's rules;

(c) as a firm authorised by both the FSA and SRA that does not fall within the definition of an APF.

We note that APFs will come within the regulation of the Financial Conduct Authority and we look forward to working with the FCA to ensure that dual regulation of such firms is successful.

As a matter of principle, we support the objectives of the Consultation, however, we do not intend to comment in detail on the proposals. This is in part due to the fact that the SRA is reviewing its own approach to authorising and regulating financial services.

We note that there is no reference to the Part XX exemption in the Consultation. We would suggest that this exemption for professional firms should continue.

We would welcome the opportunity to assist you in any policy development work you may be intending to undertake in respect of professional firms.

Yours faithfully

Samantha Barrass
Executive Director - Supervision, Risk and Standards

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Financial Regulation Strategy
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14th April 2011

Dear Sir or Madam,

A new approach to financial regulation: building a stronger system

I am writing to provide you with feedback from St. James's Place Group on the above-named HM Treasury Consultation Paper.

By way of background, St. James's Place Group includes three UK authorised "retail" firms; being St. James's Place Wealth Management (SJPWM), which is a Directly Authorised Personal Investment Firm with circa 1,500 Appointed Representatives; St. James's Place Unit Trust Group (SJPUTG), which is the Authorised Fund Manager of four NURS, including a property fund and twenty five UCITS unit trusts; and St. James's Place UK (SJPUK), which is an authorised long term insurer manufacturing life and pension products.

St. James's Place is not supportive of the proposals in Chapter 3 of the Consultation Paper that would require all insurance firms to be dual regulated. We believe that due regard should be given both to the systemic importance of a firm and the nature of the insurance business undertaken. As indicated in paragraph 3.21 of the Consultation Paper, for insurers the prudential supervision required is likely to be less intensive than that required for a high street bank. Beyond that, for insurers such as SJPUK, where the vast majority of liabilities to policyholders are directly related to the value of assets held in unitised funds, the level of continuous supervision required will be lighter still.

Therefore, by analogy with the proposed approach to prudential regulation of investment firms, we ask that consideration should also be given to developing a set of tests or indicators for a threshold **below** which insurers could be regulated solely by the Financial Conduct Authority, with appropriate reference to the PRA in all relevant matters.

Where regulation is split between the regulators, St. James's Place believes it would be beneficial to activate a 'lead' regulator to ensure consistency and efficiency for firms.

Our answers to the specific questions are attached.

Yours faithfully

W P Tonks
Group Risk Director

Section 1 Introduction

Point 1.10 states that 'financial institutions that manage significant risks on their balance sheets will be carried out by … the Prudential Regulation Authority'. It should be made clear that the financial crisis was primarily caused by the risks emanating from the banking sector and to assume all insurers carry such significant risk and should fall within the remit of PRA is not correct. There should be a weighting of risk above which insurers will come under the umbrella of PRA. Insurers below this level can be monitored by FCA, as per investment firms.

A key focus when determining the remit of the different regulatory forms will be to ensure there is no regulatory overlap. There is a danger that where there are more than one regulator is supervising a firm that each will regulate on certain matters leading to two levels of regulation on the same issue. It is vital this does not happen and, as far as possible, firms should only be regulated by one lead authority so there are efficiencies in contacts, reporting etc. For PRA firms this could mean that PRA takes the lead and consults with FCA on relevant issues and vice versa. Point 1.11 itself says that one of the failings of the current regime was that the 'fragmentation of responsibilities has had a number of dysfunctional results'. It is important that this is not repeated again within the new regime. If this requires a review of FSMA then this is what should happen. It is important that this is effectively implemented otherwise it is not clear how the alteration to structure will achieve the benefits suggested within the cost/benefit analysis.

The change to the regulatory structure could potentially mean that UK representation at EU level on policy making is diminished or watered down. It is vitally important that the new structure is adequately represented at this level to ensure this is not the case given Europe's increasingly important role in setting UK domestic policy.

Section 2 Bank of England and Financial Policy Committee

Q1 What are your views on the likely effectiveness and impact of these instruments as macro-prudential tools?

A1 We are supportive of these instruments being used as macro-prudential tools. It is clearly beneficial for the Bank of England to have a focus on financial stability. However, it is important that any use of such a tool must be careful not to hinder economic growth or lead to unintended consequences, particularly on financial services firms to whom they are not targeted. A form of cost benefit or risk reward analysis should be considered prior to using any such tool so they are not rushed into place.

Q2 Are there any other potential macro-prudential tools which you believe the interim FPC and the Government should consider?

A2 No.

Q3 Do you have any general comments on the proposed role, governance and accountability mechanisms of the FPC?

A3 It is important that there is some industry representation on the FPC to consider the effect of any decisions on firms, particularly in the non-banking sectors. There is also some potential for conflicts of interest in the remit and interests of the FPC and MPC that should be monitored. Each will have separate objectives that may not necessarily be compatible and consequently cross membership may not be practicable, although cooperation should be key.

Q4 Do you have any comments on the proposals for the regulation of systemically important infrastructure?

A4 Not specifically, although this term should be more clearly defined. Focus should also be on defining 'systemically important financial institutions' in order to ensure that firms are not burdened with excessive regulation when this is not justified. This could also assist in the division of firms between the PRA and FCA.

Section 3 Prudential Regulation Authority

Q5 What are your views on the (i) strategic and operational objectives and (ii) the regulatory principles proposed for the PRA?

A5 Within the regulatory principles to be applied to both regulators it is important to draw out the need to be able to justify the benefits when imposing any new regulation to ensure this does not impose any unnecessary burdens on business. We are supportive of the general principle that clients should take responsibility for their decisions. Point five of the principles should be carefully monitored to make sure there is sufficient justification when publicising information that it aids the advancement of strategic and operational objectives as business specific information could be confidential or business sensitive.

Q6 What are your views on the scope proposed for the PRA, including Lloyd's, and the allocation mechanism and procedural safeguards for firms conducting the 'dealing in investments as principal' regulated activity?

A6 As per the comments in our covering letter it would seem apt that the decision making route adopted in point 3.26 should also be applied to insurance firms. Here the intention is for determining significant risks within investment firms in order to justify PRA regulation. A similar decision making process should be applied to insurers so there is not a default assumption that the form of business a firm is undertaking determines the scope of supervisory work without considering the actual underlying activities the business is engaged in.

Q7 What are your views on the mechanisms proposed to make the regulator judgement-led, particularly regarding: rule-making; authorisation; approved persons; and enforcement (including hearing appeals against some decisions on a more limited grounds for appeal)?

A7 We welcome the proposal that greater use will be made of principles to ensure firms comply with the 'spirit' of the rules as well as the rules themselves. We also support a judgement-led approach to determining the fitness and propriety of individuals seeking

approval for dual-regulated firms, but it is important that that the authorities work together so firms do not need to apply to both authorities and decisions are based upon similar grounds.

With regards to enforcement, we do not agree that appeals against judgement-based supervisory decisions can only be heard by the Upper Tribunal on a judicial review basis and would seek further consultation on this matter.

Q8 What are your views on the proposed governance framework for the PRA and its relationship with the Bank of England?

A8 It is vital that the board of PRA have sufficient understanding of prudential issues facing different types of firms in different sectors of the industry to be able to make appropriate prudential rules. This is especially the case given the non-executive majority.

Q9 What are your views on the accountability mechanisms proposed for the PRA?

A9 The Complaints Commissioner's decisions should have a binding effect on the PRA, they should not be given discretion whether to make any payments recommended for complainants.

Q10 What are your views on the Government's proposed mechanisms for the PRA's engagement with industry and the wider public?

A10 It is important that the PRA continue to justify the impact of new regulation on the industry.

Section 4 Financial Conduct Authority

FCA should be a balanced regulator, holding neither the role of client or firm advocate. It is important that clients are given the rein to make their own choices and excessive regulation is likely to limit freedom of choice for clients. We welcome the acknowledgement of this in this paper. It is also vital that not all firms within a particular sector are 'tarred with the same brush' where detriment is found. The majority of misconduct is firm specific and not necessarily industry wide so any decision to use regulatory action on this basis must be firmly justifiable.

Q11 What are your views on the (i) strategic and operational objectives and (ii) the regulatory principles proposed for the FCA?

A11 We agree that in ensuring an appropriate degree of protection for clients there should also be focus on the regulatory principle that 'consumers should take responsibility for their decisions'. Careful consideration is required as to what this phrase means in practice. It is perhaps too easy, given the fundamental nature of their relationships with the differing firm and consumer audiences for regulators to recognise the validity of such a principle without giving it true meaning in their day to day supervisory interactions.

It is also important that there are some firm principles to determine whether or not clients are at risk in order that action is not taken to prevent a risk that was not significant, nor impose retrospective redress schemes on firms who had complied with regulation in letter and spirit at the point of sale where the regulator later changes their view on a product or service. Given the FCA will also be responsible for prudential supervision for a large suite of firms it would be sensible to build this into their objectives.

Q12 What are your views on the Government's proposed arrangements for governance and accountability of the FCA?

A12 We agree that using the existing FSA company as the FCA should secure a lower cost transition. It would seem sensible to delegate responsibility for financial crime entirely to the ECA. Whilst the FCA may well identify relevant issues within its remit a sensibly ordered memorandum of understanding as with other organisations would mean a properly centralised and integrated financial crime unit. As per A9 it will also be sensible to make the Complaints Commissioner's judgements binding on the FCA.

Q13 What are your views on the proposed new FCA product intervention powers?

A13 Product intervention in the form of 'banning' a product should be very carefully justified when determining the level of client detriment attached to that product. Carte blanche bans are a very crude and blunt tool for addressing a problem that is likely to be better dealt with in other ways. It may also remove access to a product that is useful to clients when difficulties have only been found in certain sectors of the market. We agree with the FSA in DP 11/01 6.14 – 6.19 that there are significant costs and difficulties in applying a product ban and that identifying products with inherent flaws is "rare".

Q14 The Government would welcome specific comments on:

- the proposed approach to the FCA using transparency and disclosure as a regulatory tool;
- the proposed new power in relation to financial promotions; and
- the proposed new power in relation to warning notices.

A14 We welcome the proposals for using transparency and disclosure as a regulatory tool subject to the points made in A5. We also welcome the new power in relation to financial promotions. However, we do not believe that it would be justifiable to publish warning notices as this takes a stance whereby the firm is presumed 'guilty until proven innocent'. Whilst a notice of discontinuance would assist where no further action is taken it is likely that clients will continue to believe the firm has been censured. The goal of "highlighting potential issues to consumers at an early stage and signalling to firms what behaviours the regulator considers to be unacceptable" (4.86) could be achieved by anonymous disclosure in the same way that current examples of good and bad practice are published in a non-attributable format.

Q15 Which, if any, of the additional new powers in relation to general competition law outlined above would be appropriate for the FCA? Are there any other powers the Government should consider?

A15 We welcome either option as appropriate for the FCA and that a stronger role in promoting competition would be apt. It should again be noted that before any action is taken industry wide or against a particular product that clear justification needs to be given to prove that the detriment is universal and not simply focused with particular firms.

Q16 The Government would welcome specific comments on:

- the proposals for RIEs and Part XVIII of FSMA; and
- the proposals in relation to listing and primary market regulation.

A16 We broadly agree with the proposals. The importance of ensuring adequate UK representation at European forums has already been set out.

Section 5 Regulatory processes and coordination

Q17 What are your views on the mechanisms and processes proposed to support effective coordination between the PRA and the FCA?

A17 Cooperation between the regulators is to be supported but there should be some clear ordering of authority where agreement can not be reached and to ensure a level of consistency from the firm's viewpoint. This is where a 'lead' regulator for dual regulated firms could play a key role. By having this decision made and controlled within the regulators firms would not be exposed to any unnecessary burdens when dual regulated. All attempts should be made to avoid duplication of effort or involve firms in internal discussions between regulators.

Q18 What are your views on the Government's proposal that the PRA should be able to veto an FCA taking actions that would be likely to lead to the disorderly failure of a firm or wider financial instability?

A18 We are in agreement with this proposal but it should be clear that such action will be followed by the PRA taking decisive and prompt action with the firm concerned to enable the FCA to take the action it feels is necessary without causing disorderly failure, even if this resulted in orderly failure.

Q19 What are your views on the proposed models for the authorisation process – which do you prefer, and why?

A19 We are very much supportive of the approach suggested in 5.38 whereby one authority is charged with processing each application, seeking the consent of the other authority on matters where they have expertise prior to granting permission. This would avoid unnecessary delays and duplication in workload. Indeed, as suggested in the other answers provided this would be a welcome approach to regulation as a whole.

Q20 What are your views on the proposals on variation and removal of permissions?

A20 We agree with this proposal subject to the points made in A19.

Q21 What are your views on the Government's proposals for the approved persons regime under the new regulatory architecture?

A21 Splitting responsibility for controlled functions between regulators for dual regulated firms will almost certainly lead to dual standards for individual controlled functions depending on where in the regulatory structure the firm fits. It would be preferable to have a 'lead' regulator that coordinated approved persons for each firm.

Q22 What are your views on the Government's proposals on passporting?

A22 Subject to appropriate coordination between the authorities we agree with this proposal.

Q23 What are your views on the Government's proposals on the treatment of mutual organisations in the new regulatory architecture?

A23 It is not overtly clear why mutual organisations should be given differential treatment to other financial services firms. There are several types of organisation that have different features to the majority of the market, for example vertically integrated firms. It would make consultation more complex and time consuming if each type of market participant had to be considered separately in the manner proposed in 5.55.

Q24 What are your views on the process and powers proposed for making and waiving rules?

A24 The decision to allow both authorities to make rules that fall within their jurisdiction seems likely to result in an unlevel playing field for firms where differing rules could apply in similar areas depending upon whether a firm is PRA or FCA regulated. This then will become an issue of priority for dual regulated firms when determining which rule to apply. By referring to FPC where there is disagreement would be apt on prudential issues but less so for conduct matters.

Q25 The Government would welcome specific comments on

- proposals to support effective group supervision by the new authorities – including the new power of direction; and
- proposals to introduce a new power of direction over unregulated parent entities in certain circumstances?

A25 We agree that the power of direction is correct in this scenario and, as mentioned elsewhere, could be usefully employed elsewhere in regulation. We do not agree with the proposal to introduce a new power of direction over unregulated parent entities. This would effectively result in unregulated firms becoming regulated.

Q26 What are your views on proposals for the new authorities' powers and coordination requirements attached to change of control applications and Part VII transfers?

A26 We agree with this proposal.

Q27 What are your views on the Government's proposals for the new regulatory authorities' powers and roles in insolvency proceedings?

A27 The FCA should hold responsibility in this area for 'non-systemically important' insurers.

Q28 What are your views on the Government's proposals for the new authorities' powers in respect of fees and levies?

A28 We agree that it is sensible for fee charging to be collected in its entirety through the FCA. It is also important to minimise duplication of fees where possible. There will inevitably be some firms that are close to the threshold of being FCA only or FCA and PRA regulated. The total fees for such firms should not be materially different, in one case the PRA will be regularly consulted in the other they will be formally regulating but with a light touch relative to other dual regulated firms, the cost differential is not great and this needs to be reflected in fee levels.

This review of the regulatory structure seems a good time to revisit the entire fee charging regime again to address 'problem' areas such as the shortcomings that have recently been seen in FSCS fee levies where there has been considerable debate and concern over how fees are allocated and funded.

Section 6 Compensation, dispute and financial education

Q29 What are your views on the proposed operating model, coordination arrangements and governance for the FSCS?

A29 We agree with the proposals subject to previous points raised around where non-systemically important insurance firms should sit within the regulatory structure.

Q30 What are your views on the proposals relating to the FOS, particularly in relation to transparency?

A30 Whilst generally supportive of the proposals relating to transparency at FOS we would hold some reservations around the ability for FOS to publish determinations if it considers it appropriate to do so. Publishing anonymous decisions may be a useful tool but publicising individual cases between a firm and an individual would be overly punitive and effectively provide a form of regulatory censure beyond that intended within FSMA's enforcement provisions.

Q31 What are your views on the proposed arrangements for strengthened accountability for the FSCS, FOS and CFEB?

A31 We are supportive of the proposed arrangements.

Section 7 European and international issues

Q32 What are your views on the proposed arrangements for international coordination outlined above?

A32 As we believe that many insurers should fall within the remit of FCA we also believe that FCA would be the appropriate member to hold the voting seat at EIOPA. Given the importance of European regulation on the UK it is vital that however this is organised the UK voice is strongly represented as proposed in 7.9.

Question no.	Question	SCB Response
1.	What are your views on the likely effectiveness and impact of these instruments as macro-prudential tools?	We are supportive of the move to create a comprehensive framework for macro-prudential regulation but have some concerns about how this will work in practice. Whilst the consultation paper alludes to a wide variety of possible tools, it is clear that the Bank of England's current focus is on a rather more narrow set of mechanisms that work through their effect on banks, such as counter-cyclical capital buffers, changes to risk weighting of specific asset classes, and leverage ratios. Whilst such tools may have a role to play, they are inherently indirect, and we believe that it would be a mistake to put sole or even primary emphasis on such instruments. Experience from Asia, where macro-prudential approaches have been deployed successfully for some time now, suggests there are significant advantages in more direct measures, such as Loan-To-Value ("LTV") or Loan-To –Income ("LTI") caps for specified asset classes, specific taxes, and even prohibitions of certain forms of lending. Such direct interventions can often have more impact, faster, for less cost than indirect tools such as counter-cyclical buffers, not least because they sound much more powerful signals. Given that we cannot predict the nature of the potential asset bubbles or distortions that necessitate action, nor whether these are fuelled by banks or through parts of the financial system, such as "shadow banks", it would seems wise to start with a reasonably broad armoury of potential tools, both direct and indirect. We appreciate that imposing direct constraints on borrowers will tend to have more political implications than indirect constraints on lenders, but this is precisely why this needs to be thought through now. Otherwise we risk designing a macro-prudential framework too feeble or theoretical to be effective from the start.
2.	Are there any other potential macro-prudential tools which you believe the interim FPC and the Government should consider?	As indicated above there are significant advantages in more direct measures, such as Loan-To-Value ("LTV") or Loan-To –Income ("LTI") caps for specified asset classes, specific taxes, and even prohibitions of certain forms of lending. Such direct interventions can often have more impact, faster, for less cost than indirect tools such as counter-cyclical buffers, not least because they sound much more powerful signals. These methods have been shown to work effectively in our Asian markets. We think these regimes will work in the UK and would avoid the complexity that is being suggested for some regimes in the West. Such regimes are especially important in markets such as the UK which are open and in which there is a significant risk of leakage if regulation is only through capital surcharges.
3.	Do you have any general comments on the proposed role, governance and accountability mechanisms of the FPC?	We remain concerned that the potential socio-economic effect of the application of macro-prudential tools has not been fully appreciated and therefore believe that the objective, governance and accountability mechanisms should be further reviewed.

Question no.	Question	SCB Response
		We are concerned about the potential effect of the application of these measures on economic growth and firmly believe there is a need to further strengthen the obligation of the FPC to take proper account of economic impact and the inter-relation of monetary and fiscal policies. In this regard FPC should have an objective to support economic growth. Box 2b point 4 of the FPC's objectives could be strengthened by the removal of the words '*in its opinion*' to merely state '*This does not require or authorise the Committee to exercise its functions in a way that would be likely to have a significant adverse effect on the capacity of the financial sector to contribute to the growth of the UK economy in the medium or long term'.* We support the proposition that the Treasury should lay out the FPC's toolkit in secondary legislation. This should also stipulate that the FPC should consult on how it plans to employ each tool and circumstances in which they might be used. Appropriate government oversight should be given to the recommendations of the FPC and consideration to their effect. In the regard we would recommend the FPC governance structure mirrors that of the Monetary Policy Committee. In addition in deploying any tool impact analysis consequences need to be carefully assessed with the PRA and others e.g. it would be inappropriate to deploy a tool that has the unintended consequence of concentrating risk even further or affects only one specific firm. With the UK being a truly global financial centre the FPC must not only take into account constraints imposed by international law but also commit to reflect agreements reached within international and European fora. In particular, FPC must ensure that its activities are coordinated with Financial Stability Board and the European Systemic Risk Board to ensure a level playing field and to avoid leakage.
4.	Do you have any comments on the proposals for the regulation of systemically important infrastructure?	We believe that the alignment of the regime applying to securities settlement systems and clearing houses with that which already applies to recognised payment systems is sensible and the additional powers proposed to be conveyed to the Bank should enable it to conduct its financial stability duties more effectively. However, the regulation of recognised clearing exchanges relies on the European Markets Infrastructure Regulation, and whilst we support the objective of maintaining a level playing field across the single market, it is difficult to comment on the appropriateness of relying on this regulation even with the reserve powers planned for the Bank. It is important that the details of the additional powers (actual or reserve) proposed to be conveyed to the Bank are consulted on before being granted.
5.	What are your views on the (i) strategic and operational objectives and (ii) the regulatory principles proposed for the PRA?	It is critical to ensure the principles of regulation reflect the need for efficiency, economy and effectiveness: and PRA needing to use its resources in the most efficient and economic manner. In particular, when making judgments the PRA must conduct Cost Benefit Analysis ("CBA") and only impose requirements where the evidence demonstrates that the benefits outweigh the costs. Whilst we recognise that the current approach towards CBA has become a cumbersome "box ticking" exercise, we think the emphasis

Question no.	Question	SCB Response
		should be on streamlining it and making it more effective, rather than abandoning it. The fundamental principle that new regulations need to be justified by rigorous analysis of market failure and cost-benefit should be maintained. CBA provides an important balance to the natural tendency for the PRA and FCA to keep on imposing additional regulations, and the absence of such mechanisms is likely to lead to over-regulation with unintended consequences. As regards the PRA's stated objectives we believe that one should be added on appropriate and proportionate supervision designed to prevent the failure of a firm; whilst recognising the PRA should not attempt to operate a 'zero failure' regime. The PRA should also be charged with giving due alignment and recognition to international consistency. Please also refer to further comments provided under question 11.
6.	What are your views on the scope proposed for the PRA, including Lloyd's, and the allocation mechanism and procedural safeguards for firms conducting the 'dealing in investments as principal' regulated activity?	It is important that the regulatory scope of the PRA (and also the FCA) is as wide as possible to avoid the threat that risks will migrate outside the regulated sector. The PRA may only choose to monitor the firms and not to apply detailed regulatory requirements, however it is important that the authorities have the ability to monitor activities across the financial sector to ensure risks are being effectively tracked. Such wide ranging powers are important because as new regulatory standards are applied there is a significant risk that some firms will seek to move to the other side of the regulatory perimeter and therefore it is essential that regulators are able to continue to understand the aggregate risks posed across the system, regardless of whether a firm is in or outside the perimeter. It will be important for the PRA to adopt a proportionate regime which uses market failure analysis ("MFA") and CBA to ensure that where it decides to intervene it has justification to do so. It will also be important for the FPC to be involved in discussions with HM Treasury, the PRA and the FCA to ensure that all authorities are aware of emerging risks that may be developing outside the regulated sector.
7.	What are your views on the mechanisms proposed to make the regulator judgement-led, particularly regarding: rule-making; authorisation; approved persons; and enforcement (including hearing appeals against some decisions on a more limited grounds for appeal)?	We are supportive of steps to reinforce supervision, including the shift to a more "judgement based" approach. However, to be effective, a "judgement-based" supervisory approach needs experienced, capable supervisors even more than a "rule-driven" approach. The more interventionist and more judgemental the supervisory approach, the more vital it is that supervisors understand the business models of firms, market dynamics, the technical details of the issues, practical implementation constraints and the underlying nature of the risks. Otherwise we risk micro-prudential regulation becoming much more costly and potentially even less effective.

Question no.	Question	SCB Response
		We do not support the suggestion that the shift to a "judgement-based" approach should be accompanied by a move away from a system of "full merits based review" towards more limited grounds of appeal. In fact, we think the reliance on judgement underscores the requirement for "full merits based review" mechanisms. In our experience, such procedures are used extremely rarely, but represent ain valuable disciplining mechanism. By contrast, in jurisdictions where the grounds for review are limited to failures of process rather than substance, we have experienced much greater inconsistency and arbitrariness in decisions. Furthermore, decisions made by both the PRA and the FCA should be subject to such "full merits based review". Indeed this is particularly important for the FCA given that judgement will sometimes be need to be exercised in highly charged circumstances coloured by public and media pressure. Of paramount importance is that new regulations need to be justified by rigorous analysis of market failure and cost-benefit should be maintained. Whilst we recognise that the current approach towards CBA has become a cumbersome "box ticking" exercise, we think the emphasis should be on streamlining it and making it more effective, rather than abandoning it. Given the concentration of powers within a single institution (the Bank of England) envisaged by the proposals, we believe effective appeals procedures and disciplines around justifying the merits of new regulations are important complements to such arrangements and should not be diluted. In addition, we think that senior roles should also be subject to the same rules as those for senior civil servants in respect of external appointments as per the rules of the acceptance of outside appointments by civil servants administered by the Advisory Committee on Business Appointments. Whilst noting the comment upon statutory guidance – guidance will be required at various points and will be required to be published to ensure the letter and spirit of rules can be adhered to. As regards to the 'Proactive Intervention Framework' whilst we duly note the intentions of this, once HM Treasury and the Bank have developed their thinking further, full and open consultation with the industry must occur before its deployment.
8.	What are your views on the proposed governance framework for the PRA and its relationship with the Bank of England?	We remain concerned by the concentration of power within one institution overall (the Bank) and believe further thought should be given to ministerial oversight and in the Board composition to ensure effective checks and balances. Given that the Government is proposing to move further away formal box ticking regulatory regime to one involving judgements, making judgements on those judgements will require robust, well resourced, independent and transparent accountability regime. We therefore believe alignment to the UK Code on Corporate Governance to be essential including the provision for external performance review to be reported on publicly on a periodic basis.

Question no.	Question	SCB Response
9.	What are your views on the accountability mechanisms proposed for the PRA?	It is unclear about the scope of the 'significant regulatory failures' that would be reported to HM Treasury and laid before Parliament. It is essential that if there are firm specific failures that are reported that proper regard is given to the financial stability impact such disclosure might have. Indeed there is a convincing case that firm-specific incidents should not be reported in this away. The PRA should be able to take the decision not to report a failure, or to delay the reporting of a failure, where this may compromise financial stability or commercial confidentiality. It will be essential for all three bodies to undertake effective MFA and CBA in advance of undertaking any interventions, unless there is clear reason to indicate that a delay would compromise financial stability. We assume that the statement in 3.63 means that the PRA and FCA will be subject to the same restrictions on disclosure as are currently set out in FSMA and the Freedom of Information Act. We understand the desire for transparency, and hence the proposals with respect to the Freedom of Information Act and potential disclosure of confidential information following regulatory failures "when this is in the public interest". However, we are concerned about the potential unintended consequences of such proposals, and about how these can be reconciled with firms' obligations to preserve the confidentiality of commercially or market sensitive information. We are not convinced that the protections accorded to such information are adequate under the current regime, let alone under proposals designed to achieve greater transparency. We need to ensure such proposals do not have the unintended consequence of actually impeding the free flow of information or hampering thorough investigation of regulatory failures.
10.	What are your views on the Government's proposed mechanisms for the PRA's engagement with industry and the wider public?	We agree that the all of the new authorities (including the FPC) should be subject to MFA and CBA requirements that are currently set out in FSMA and practiced by the FSA. It will not be enough for the authorities simply to comply with the CBA and not the MFA requirements. Whilst we understand the point that there is little purpose in consultation exercises on measures that have already been enacted into legislation, we are wary of the idea of streamlining consultation on implementation of European directives. In fact what is needed is a shift in emphasis towards consultation as to how these are implemented in the UK (which is often quite different from the implementation approach taken elsewhere in Europe). There should also be an explicit requirement to identify and cost justify "gold-plating" policy or ways of implementing international or European policy, since this has particular impact on the competitiveness of UK institutions and of the UK as a financial centre. The financial crisis highlighted the extent to which supervision and not regulation was at fault. It is essential therefore that consultation is not just limited to policy making (a role where the UK authorities

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		have an increasingly limited scope anyway). We would like to see mechanisms in place so that all stakeholders have a formal process by which they can engage with the authorities about the supervisory approach being adopted by the regulators. This might mean either through individual firm level engagement or something more structured setting out the views across a section of the industry. While we do not think that arrangement of practitioner panel contradicts the PRA's "judgement-based" approach, it is imperative that there is appropriate arrangement to require PRA to engage with practitioners, trade bodies and industry representatives. We have concerns about the extent to which the approach set out in the HM Treasury consultation differs with view recently set out in the Treasury Committee. It is essential that HMT makes clear that it still considers that the "new regulators must be rigorous in their analysis of the impact of regulation on industry." In particular, it is important to clarify that the authorities will have a statutory requirement to do this and the mechanisms that will be available should the authorities not meet these requirements.
11.	What are your views on the (i) strategic and operational objectives and (ii) the regulatory principles proposed for the FCA?	We generally agree with the Government's proposed strategic and operational objectives for the FCA. As the three operational objectives can be compatible with one another, we suggest that item 1.b. under Box 4.A should be amended as "*advances one or more of its operational objectives*." We welcome the Government's thought that FCA should have a stronger role in promoting competition. In view of the importance of this element, we suggest to incorporate facilitating competition – between firms operating within the UK as well as between UK and non-UK businesses, in FCA's operational objectives explicitly rather than as a general point. To enable firms and individuals to disclose information to regulators fearlessly, it is crucial that the regulators should safeguard the commercial and legal confidentiality of information provided by authorised persons. Therefore, the 5th regulatory principle should take into account commercial and legal confidentiality when making information available to public. Similarly for the 6th regulatory principle, while it is a good practice for the regulators to exercise their functions transparently, it should be subject to restriction regarding commercial and legal confidentiality.
12	What are your views on the Government's proposed arrangements for governance and accountability of the FCA?	In addition to the external accountability, it is also essential to promote internal accountability. Arrangement similar to the Regulatory Decisions Committee in FSA could be considered. Please also refer to comment provided under question 8 and 9 above.

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13	What are your views on the proposed new FCA product intervention power?	The proposed product intervention power is very powerful one which should be used very carefully. It is essential to get the appropriate set of principles governing the circumstances under which it will use this new product invention power and these must be consulted upon with industry prior to their introduction/use. As supervision will be more judgement led it is also important that FCA should have staff of sufficient quality to make the judgement. In using this new power, FCA should be transparent on their review process – including who can make the judgement and how these principles are met, and establish a mechanism to ensure that the standard is consistently applied. As the objective of introducing this new tool is to support retail customers, we assume that the Government's intention is to apply this new product intervention power to products for retail customers in the UK only but would be helpful if it is made clear.
14	The Government would welcome specific comments on: • the proposed approach to the FCA using transparency and disclosure as a regulatory tool; • the proposed new power in relation to financial promotions; and • the proposed new power in relation to warning notices.	As the Government mentions in the consultation paper, the publication of warning notices causes significant reputational damage to the relevant firms and individuals where enforcement action is later discontinued. Damage would have been caused despite the subsequent issuance of "notice of discontinuance". Careful consideration should be given to the fairness to affected firms and individuals. There should be a consistent set of criteria to assess whether such disclosure is proportionate.
15	Which, if any, of the additional new powers in relation to general competition law outlined above would be appropriate for the FCA? Are there any other powers the Government should consider?	We do not have specific comment on this question
16	The Government would welcomes specific comments on: • the proposals for RIEs and Part XVIII of FSMA; and • the proposals in relation to listing and primary market regulation.	We do not have specific comment on this question.
17	What are your views on the	We welcome the requirement for the PRA and FCA to synchronise their activities through the introduction

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	mechanisms and processes proposed to support effective coordination between the PRA and the FCA?	of a statutory duty to coordinate and via the provisions for shared regulatory processes. We would like to see this extend to co-ordinated requests for and sharing of information as well as supervisory visits, deep dives etc. Reporting should be channelled through one of the regulators with standardised templates. In this regard the FSA currently uses GABRIEL (GAthering Better Regulatory Information Electronically, an online regulatory reporting system, for the collection, validation and storage of regulatory data) and this should be adapted to be used as the single information platform to be shared by PRA and FCA. There should also be ongoing scrutiny of proportionality and relevance. Data passed between the institutions must be subject to existing FSMA confidentiality and 'gateway' policies and procedures. We understand the desire for transparency, and hence the proposals with respect to the Freedom of Information Act and potential disclosure of confidential information following regulatory failures "when this is in the public interest". However, we are concerned about the potential unintended consequences of such proposals, and about how these can be reconciled with firms' obligations to preserve the confidentiality of commercially or market sensitive information. We are not convinced that the protections accorded to such information are adequate under the current regime, let alone under proposals designed to achieve greater transparency. We need to ensure such proposals do not have the unintended consequence of actually impeding the free flow of information or hampering thorough investigation of regulatory failures. We agree with the moves to create an MoU to set out the relationships between the different authorities how these are monitored and evolved will be of equal importance. It would be sensible for all three bodies to have regard to each other's objectives. More importantly, where there are areas of overlap or mutual interest the bodies should work together and establish policies and procedures to ensure they collaborate and minimise unnecessary duplication and equally to avoid the risk of underlap. A 'shared service centre' approach should be utilised where possible. The UK authorities together with the Government must present a cohesive and aligned view on regulatory matters in the international arena; a relevant governance process should be established to ensure that this is achieved and the MOU should lay this out clearly. Legislation should provide processes for the FCA to delegate responsibilities to the PRA where appropriate e.g. for internationally active banks where the FCA's jurisdiction on conduct issues would be limited. In such cases it may be more efficient and effective for the PRA to regulate both prudential and conduct issues. There is precedent for the delegation of responsibilities in the current regulatory framework; the FSA delegated responsibility (in particular Principle 6) to the Banking Code Standards Board and ensured the Board enforced basic standards (through e.g. a MoU and an annual report). For firms with dedicated supervisory teams, the legislation should require the appointment of a lead

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		relationship manager within the PRA or FCA. Basic administrative functions (e.g. fee calculation and collection) would appear to be amenable to being conducted by one of the bodies only. Given that it is proposed that the FCA will be a single regulator for conduct issues all financial firms would fall within its perimeter - and those firms regulated by the PRA would form a sub set. Consequently, consideration should be given to the FCA conducting/discharging shared administrative functions. This should include a single authorisation/approval process for both firms and Approved Persons (including those conducting Significant Influence Functions). Please refer to 19 below. It may be appropriate for the FCA and the PRA to draw up a joint handbook, especially considering that FCA will be the single conduct regulator but prudential regulation will be split between the FCA and the PRA. In addition, to the above, where individuals sit on multiple Boards their roles and responsibilities need to be carefully constructed and defined to ensure conflicts of interest are managed.
18	What are your views on the Government's proposal that the PRA should be able to veto an FCA taking actions that would be likely to lead to the disorderly failure of a firm or wider financial instability?	We are fully supportive to this veto and the manner in which it is envisaged to be used.
19	What are your views on the proposed models for the authorisation process – which do you prefer, and why?	To avoid duplication (e.g. in collecting information) and enhance efficiency, one regulator should be charged with the responsibility to take the lead to process each application and seeking the consent of the other authority where appropriate. There should be a single authority responsible for requesting information from the applicants and coordinating with the other authority in the interaction with applicants to avoid duplication and confusion. Please also refer to comments in response to question 17. Although it is not mentioned in the consultation, we assume that it is the Government's intention that all existing approvals, such as approved persons and regulated activities permissions, will be grandfathered without the need to re-apply for PRA / FCA's approval. We also assume that there are not proposals to change the regulated activities permissions regime as set out in FSMA and its secondary legislation.
20	What are your views on the proposals on variation and removal of permissions?	While it is reasonable for both the PRA and the FCA to have the current conditions powers (the OIVoP and VVoP powers), the two regulators should be required to exercise these powers in a coordinated way. One regulator should be assigned with the role of interacting with the firm and coordinate / consult with the

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		other regulator to avoid confusion.
21	What are your views on the Government's proposals for the approved persons regime under the new regulatory architecture?	Overly complex procedures will be subject to a higher level of error. To simplify the process and avoid duplication, there should be a lead regulator for dually regulated firms in charge of the approval application process for all controlled functions. A mechanism should be established to ensure that the lead regulator coordinates and consults with the other regulator to ensure that the interests and objectives of the other one is duly addressed. Please also refer to comments in response to question 17.
22	What are your views on the Government's proposals on passporting?	The proposal seems acceptable in general.
23	What are your views on the Government's proposals on the treatment of mutual organisations in the new regulatory architecture?	We do not have specific comment on this question.
24	What are your views on the process and powers proposed for making and waiving rules?	There is significant risk of overlapping rules being developed by the PRA and the FCA and we are concerned about duplication and potential conflicts. To avoid duplication and conflicts, we believe that the two authorities should be required to jointly develop a single rule book which will help to ensure that the division of responsibilities in regulation and rule making are established and protocols are developed to deal with firms that are dual-regulated and where there are areas of overlapping responsibility. Please also refer to comments in response to question 17.
25	The Government would welcome specific comments on • proposals to support effective group supervision by the new authorities – including the new power of direction; and • proposals to introduce a new power of direction over unregulated parent entities in certain circumstances?	One lesson from the crisis is that coordination and communication between home and host regulators for internationally active banks needs to be improved. There is a risk that the creation of the PRA and FCA complicate such arrangements. For internationally active banks, careful consideration needs to be given to which of the new UK authorities should lead when dealing with offshore regulators so that the host regulators have clearly defined, and preferably a single point of contact in the UK regulatory framework. Where a firm's business is predominantly international, we think it sensible for the PRA to be the lead regulator in the international domain with the FCA feeding into the PRA on consumer protection and markets related issues. This is consistent with a view that the FCA's jurisdiction on conduct issues should generally be restricted to the UK, or where required, to the EU. We think it is important that the proposals encourage UK regulators to work together collaboratively with their counterparts overseas to assess the global risks to an international firm and to ensure that the decisions they take are consistent, harmonised and minimise duplication.

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		For firms with dedicated supervisory teams, the legislation should require the appointment of a lead relationship manager; with for internationally active firms this being within the PRA. (Please also refer to comment under question 17 above).
26	What are your views on proposals for the new authorities' powers and coordination requirements attached to change of control applications and Part VII transfers?	The proposal seems acceptable in general.
27	What are your views on the Government's proposals for the new regulatory authorities' powers and roles in insolvency proceedings?	These requirements seem acceptable provided they take account of the crisis management regime that is currently being developed by the European Commission.
	What are your views on the Government's proposals for the new authorities' powers in respect of fees and levies?	The proposal seems acceptable in general.
29	What are your views on the proposed operating model, coordination arrangements and governance for the FSCS?	We think that it is not desirable to empower the PRA and FCA to set their own compensation rules. In times of crisis (when the scheme is most likely to be activated) the public are unlikely to be willing and / or able to differentiate between schemes and / or between organisation regulated by the PRA and FCA. This might undermine the effectiveness of the compensation scheme and contribute to the panic and the mass withdrawal of deposits.
30	What are your views on the proposals relating to the FOS, particularly in relation to transparency?	We do not have specific comment on this question.
31	What are your views on the proposed arrangements for strengthened accountability for the FSCS, FOS and CFEB?	We do not have specific comment on this question.
32	What are your views on the proposed arrangements for international coordination outlined above?	We agree with the moves to create an MoU to set out the relationships between the different authorities and the steps they will take to ensure international co-ordination. This will be an important part of efforts to ensure the UK authorities are able to effectively lobby in the interests of the UK. It is important that either in legislation or in the MoU that the authorities seek to engage with industry participants when reaching agreements with international policy makers. And because the UK authorities are increasingly restricted in

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		their direct policy making powers it is essential that they seek to use the policy disciplines of MFA and CBA when engaging with international bodies. Policy development needs to be driven by empirical evidence and backed up by effective MFA and CBA. It will also be important for the UK authorities to continue to use secondments and other engagement as a way of developing closer relationships with policy makers in Brussels and in the international fora. The UK authorities with government must also present a cohesive and aligned view upon regulatory matters in the international arena. Please also refer to comments in response to question 25 above.

Peter Sands
Group Chief Executive

Standard Chartered

14 April 2011

The Rt Hon George Osborne MP
Chancellor of the Exchequer
HM Treasury
1 Horse Guards Road
London, SW1A 2HQ

Dear George

Standard Chartered welcomes the further HM Treasury consultation on the reform of the UK financial regulatory system. We continue to support your efforts to strengthen the resilience of the UK financial system and are particularly in favour of the introduction of arrangements to achieve effective macro-prudential regulation. The lack of a macro-prudential approach was a primary cause of the crisis and thus its introduction is one of the most important components of the strategy to enhance systemic stability.

Yet while the specific objectives of the new regulatory entities rightly revolve around financial stability, consumer protection etc. it is also important that these are balanced by an objective to support economic growth to ensure there is no undue drag on UK prosperity and competitiveness. Effective regulation inevitably involves trade-offs, and it is important that these are embedded in the objectives and processes of the new entities from the start.

Our responses to the detailed questions posed in the consultation are set out in the attached appendix. Here I would like to highlight just a few of the key points:

Macro-prudential tools

We start from the view that the roots of the financial crisis stemmed from fundamental imbalances in the growth of credit (consumer, corporate, bank and public) relative to GDP. Banks certainly played a role in fuelling these excesses but were far from being the only actors. Moreover, the Government, Bank of England, FSA, as well as the banks, failed to identify the risks building up in the system, let alone act to mitigate them. In this context we are very supportive of the move to create a comprehensive framework for macro-prudential regulation.

However, we do have some concerns about how this will work in practice. Whilst the consultation paper alludes to a wide variety of possible tools, it is clear that the Bank of England's current focus is on a rather more narrow set of mechanisms that work through

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their effect on banks, such as counter-cyclical capital buffers, changes to risk weighting of specific asset classes, and leverage ratios. Whilst these may well have a role to play, they are inherently somewhat indirect, and we believe that it would be a mistake to put sole or even primary emphasis on such instruments. Experience from Asia, where macro-prudential approaches have been deployed successfully for some time, suggests there are significant advantages in more direct measures, such as Loan-To-Value ("LTV") or Loan-To–Income ("LTI") caps for specified asset classes, specific taxes, and even prohibitions of certain forms of lending. Such direct interventions can often have more impact, faster, for less cost than indirect tools such as counter-cyclical buffers, not least because they send much more powerful signals. Given that we cannot predict the nature of the potential asset bubbles or distortions that necessitate action, nor whether these are fuelled by banks or through other parts of the financial system, such as "shadow banks", it would seem wise to start with a reasonably broad armoury of potential tools, both direct and indirect. We appreciate that imposing direct constraints on borrowers will tend to have more political implications than indirect constraints on lenders, but this is precisely why this needs to be thought through now. Otherwise we risk designing a macro-prudential framework too feeble or theoretical to be effective from the start.

Obviously the more powerful (and potentially political) the tools at the disposal of the Financial Policy Committee ("FPC"), the more demanding the requirements for accountability, transparency and overall governance. Whilst the consultation paper recognises these issues, we would reinforce their importance. Macro-prudential intervention that is overly "academic", out of touch with the markets and without political legitimacy, simply will not work.

Judgement based regulation and accountability

If the lack of macro-prudential regulation was a root cause of the crisis, poor supervision exacerbated and enabled it. Indeed, effective macro-prudential frameworks and supervisory approaches made more of a difference than micro-prudential rules in determining which countries suffered badly from the crisis and which weathered it well. In this context we are supportive of steps to reinforce supervision, including the shift to a more "judgement based" approach. However, there are three important caveats to this support:

- First, to be effective, a "judgement-based" supervisory approach needs experienced, capable supervisors even more than a more "rule-driven" approach. The more interventionist and more judgemental the supervisory approach, the more vital it is that supervisors understand the business models of firms, market dynamics, the technical details of the issues, practical implementation constraints and the underlying nature of the risks. Otherwise

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we risk micro-prudential regulation becoming much more costly and potentially even less effective.

- Second, we do not support the suggestion that the shift to a "judgement-based" approach should be accompanied by a move away from a system of "full merits based review" towards more limited grounds of appeal. In fact, we think the reliance on judgement underscores the requirement for "full merits based review" mechanisms. In our experience, such procedures are used extremely rarely, but represent a invaluable disciplining mechanism. By contrast, in jurisdictions where the grounds for review are limited to failures of process rather than substance, we have experienced much greater inconsistency and arbitrariness in decisions. Furthermore, decisions made by both the Prudential Regulatory Authority ("PRA") and the Financial Conduct Authority ("FCA") should be subject to such "full merits based review". Indeed this is particularly important for the FCA given that judgement will sometimes be need to be exercised in highly charged circumstances coloured by public and media pressure.

- Third, whilst we recognise that the current approach towards Cost-Benefit Analysis ("CBA") has become a cumbersome "box ticking" exercise, we think the emphasis should be on streamlining it and making it more effective, rather than abandoning it. The fundamental principle that new regulations need to be justified by rigorous analysis of market failure and cost-benefit should be maintained. CBA provides an important balance to the natural tendency for the PRA and FCA to keep on imposing additional regulations, and the absence of such mechanisms is likely to lead to over-regulation with unintended consequences.

These caveats are particularly important given the concentration of powers within a single institution (the Bank of England) envisaged by the proposals. Whilst we think the governance arrangements appear broadly sensible, we believe effective appeals procedures and disciplines around justifying the merits of new regulations are important complements to such arrangements and should not be diluted.

International influence and alignment on policy formation and deployment

The sheer scale and scope of regulatory change in the international arena, plus the number of different actors involved, poses immense challenges for banks and regulators alike. In this context, it is essential that the new UK regulatory regime complements emerging international arrangements and that the new regulatory authorities are able to influence the dialogue and policy setting within international and European circles. The paper recognises this imperative, but we believe there is room for further thought to the

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manner in which this is achieved, particularly with regard to how we ensure international competitiveness and consistency is factored into policy-making. Whilst we understand the point that there is little purpose in consultation exercises on measures that have already been enacted into legislation, we are wary of the idea of streamlining consultation on implementation of European directives. In fact, what is needed is a shift in emphasis towards consultation as to how these are implemented in the UK (which is often quite different from the implementation approach taken elsewhere in Europe).

We would also like to see an explicit requirement to identify and cost justify "gold plating" of policy or ways of implementing international or European policy, since this has particular impact on the competitiveness of UK institutions and of the UK as a financial centre.

Lead Regulator

One lesson from the crisis is that coordination and communication between home and host regulators for internationally active banks needs to be improved. Steps already taken to enhance the "College of Regulators" concept (e.g. by forming Crisis Management Groups) are therefore welcome. However, there is a risk that the creation of the PRA and FCA complicate such arrangements. For internationally active banks, careful consideration needs to be given to which of the new UK authorities should lead when dealing with offshore regulators so that the host regulators have clearly defined, and preferably a single point of contact in the UK regulatory framework. Where a firm's business is predominantly international, we think it sensible for the PRA to be the lead regulator in the international domain with the FCA feeding into the PRA on consumer protection and markets related issues. This is consistent with a view that the FCA's jurisdiction on conduct issues should generally be restricted to the UK, or where required, to the EU. We think it is important that the proposals encourage UK regulators to work together collaboratively with their counterparts overseas to assess the global risks to an international firm and to ensure that the decisions they take are consistent, harmonised and minimise duplication.

Coordination and information flows

While there are undoubted benefits from the new regulatory structure, there are risks of duplication, gaps and disconnects. We therefore welcome the requirement for the PRA and FCA to synchronise their activities through the introduction of a statutory duty to coordinate and via the provisions for shared regulatory processes. We would like to see this extend to co-ordinated requests for, and sharing of, information as well as supervisory visits, deep dives etc. Reporting should be channelled through one of the regulators with standardised templates, and there needs to be ongoing scrutiny of

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proportionality and relevance. We already face multiple requests for the same data, and in a number of areas are required to provide data at levels of detail and frequency that are not justified by the underlying regulatory objective. Data passed between the institutions must be subject to existing FSMA confidentiality and 'gateway' policies and procedures. We understand the desire for transparency and hence the proposals with respect to the Freedom of Information Act and potential disclosure of confidential information following regulatory failures "when this is in the public interest". However, we are concerned about the potential unintended consequences of such proposals, and about how these can be reconciled with firms' obligations to preserve the confidentiality of commercially or market sensitive information. We are not convinced that the protections accorded to such information are adequate under the current regime, let alone under proposals designed to achieve greater transparency. We need to ensure such proposals do not have the unintended consequence of actually impeding the free flow of information or hampering thorough investigation of regulatory failures.

I hope these comments, and the detailed responses in the attached annex, are helpful. I can assure you that Standard Chartered remains highly supportive of the efforts to strengthen the financial system and bolster the UK regulatory environment. We look forward to continuing to assist this process, and would be happy to expand on any of the matters raised in this response.

Yours sincerely

Peter Sands

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Mark Hoban MP
Financial Secretary to the Treasury
HM Treasury
1 Horse Guards Road
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14 April 2011

Dear Mark,

A new approach to financial regulation: building a stronger system

Standard Life welcomes the opportunity to respond to the latest HM Treasury consultation on building a stronger financial regulatory system. I wanted to outline our thoughts on some issues that we consider are particularly important.

Our response has benefited from helpful discussions with HM Treasury officials and we look forward to continuing this engagement in the future.

Our response
Standard Life is committed to putting the customer at the heart of its business. We believe that an innovative and competitive business is central to achieving positive outcomes for all our stakeholders. We support a robust regulatory framework that can maintain high standards of customer protection whilst enabling innovation and competition within the industry. Our response to your consultation paper is positioned with this in mind.

In reviewing the consultation paper we liaised closely with the Association of British Insurers and the CBI, contributing to and supporting their responses.

I would like to emphasise some key points in the following specific areas:

Clarity of responsibility and engagement between the different regulatory bodies
Creating an effective Memorandum of Understanding between the Prudential Regulation Authority and the Financial Conduct Authority and ensuring that the bodies' respective operational processes include sufficient detail around responsibilities and inter-regulatory communication will be key to the success of the new structure.

HM Treasury officials have indicated that they would welcome Standard Life's input on the content of the MoU and this is something we will look to progress.

Introduction of new product intervention powers
We believe that product governance rather than product intervention is the way forward. More effective use of current powers by appropriately qualified and experienced regulatory staff will adequately address any product development concerns and negate the need to introduce new regulatory powers. We support the efficient use of regulatory resources and a proportionate regulatory approach.

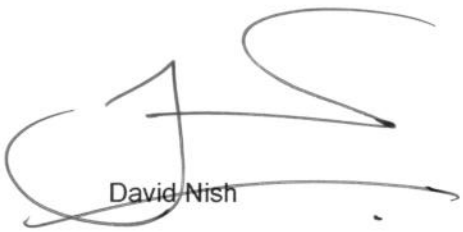
Use of warning notices
We suggest that care is taken in the use of such notices, given the risks to the reputations of the financial services industry, the regulators and the Government. Safeguards and accountability measures must be adequately detailed in the FCA's operational processes.

European engagement
I know that you place great emphasis on the need for effective UK engagement at the EU level and we strongly support HM Treasury's desire to ensure this happens on regulatory reform issues. Clearly it is important that the UK regulators are able to influence European regulatory developments.

Effect of significant regulatory changes occurring at the same time
The financial services industry faces the implementation of some significant changes towards the end of 2012. Solvency II, the Retail Distribution Review and auto-enrolment are already creating demands on the industry to be able to deliver these changes adequately. To ensure a successful implementation of the new regulatory structure, HM Treasury should continue to work with its colleagues in the FSA and Bank of England to ensure the structure is implemented in a way that does not add unnecessary resource pressure on firms.

Standard Life's detailed response to the consultation paper's specific questions is attached. Our comments focus on those questions where we are best able to offer our observations and suggestions.

Yours sincerely



David Nish

About Standard Life

Standard Life is a leading provider of long term savings and investments to over 6 million customers worldwide.

The Standard Life group operates across UK, Canadian and International retail markets, with corporate pensions and benefits businesses in the UK and Canada; Standard Life Investments, a global investment manager; and its Chinese and Indian Joint Venture businesses. As at March 2011 the Group had total assets under administration of £197bn.

Question	Response
Macro-prudential regulation 1. What are your views on the likely effectiveness and impact of these instruments as macro-prudential tools? 2. Are there any other potential macro-prudential tools which you believe the interim FPC and the Government should consider?	**Observations:** We support the proposals. Effectiveness of the proposals can only be achieved if applied consistently across all industry sectors.
Governance and accountability 3. Do you have any general comments on the proposed role, governance and accountability mechanisms of the FPC? 9. What are your views on the accountability mechanisms proposed for the PRA? 12. What are your views on the Government's proposed arrangements for governance and accountability of the FCA?	**Observations:** We consider the PRA's proposed prudential regulatory tools to be adequate. The effectiveness of the PRA and FCA supervision teams is key to them meeting their objectives. The proposed PRA and FCA boards lack insurer expertise. This creates a risk that they may apply inappropriate measures that may damage the insurance industry. **Suggestions:** Standard Life suggests that: • adequate representation of insurers on the PRA and FCA boards, will achieve a balanced overview of prudential issues • the PRA and FCA consider the prudential consequences of any significant regulatory action taken to address conduct issues. This should be reflected in the detailed operational plans that each body is due to publish.
Principles and objectives 5. What are your views on the (i) strategic and operational objectives and (ii) the regulatory principles proposed for the PRA? 11. What are your views on the (i) strategic and operational objectives and (ii) the regulatory principles proposed for the FCA?	**Observations:** We support the proposed objectives and regulatory principles for the PRA the FCA. **Suggestions:** Standard Life suggests extending the FCA's first operational objective to include facilitating *access* to the financial services market. We welcome the introduction of the principle that consumers should take responsibility for their decisions. We suggest that FCA rules include clear guidance on how this will fit with firms' regulatory duties, to give firms confidence that this principle will be applied. The FCA must also ensure that the FOS fully understands how this principle will apply when assessing any complaints.

Question	Response
New product intervention powers 13. What are your views on the proposed new FCA product intervention powers?	**Observations:** We are keen to see HM Treasury's reasoning as to how any new powers would significantly reduce the risk of customer detriment and how the proposals fit with the proposed new principles of efficiency and proportionality. Standard Life considers the FSA's current powers sufficient to address any product concerns that the FCA may have. We do not support the creation of new intervention powers for the FCA. As we commented in our response to FSA's discussion paper on product intervention, more effective use of current regulatory powers by appropriately qualified and experienced staff should be adequate. Introducing the power to ban products/product features may reduce consumer confidence in the market and reduce consumer choice. We agree that product approval is not a viable proposal. We do not understand how any new powers would significantly further reduce the risk of consumer detriment compared to current regulatory powers. Recent concerns regarding specific products, such as payment protection insurance, revolved around the selling practices of the product rather than the product itself being poor. New powers would not avoid a repeat of such issues. **Suggestion:** We suggest focusing on developing a product governance framework within the existing regulations. The FCA must develop effective relations with firms from an early stage in the product development process. Effective engagement with firms will ensure that the FCA is aware of new product developments at an early stage, enabling the FCA to influence developments appropriately to reduce potential customer detriment. Robust product governance and distribution strategy processes in firms combined with effective regulatory supervision by suitably qualified and experienced supervision staff should ensure that placing restrictions on product features/the sale of products is generally unnecessary.
Transparency and disclosure as a regulatory tool 14. The Government would welcome specific comments on: • The proposed approach to the FCA using transparency and disclosure as a regulatory tool • The proposed new power in relation to financial promotions and • The proposed new power in relation to	**Observations:** Standard Life supports the proposals for new powers to direct a firm to withdraw a financial promotion, where this would prevent customer detriment. We do have significant reservations about introducing a power to issue warning notices. We support HM Treasury's view that safeguards will be needed to mitigate the risk of reputational damage to individuals or firms. There are additional risks for HM Treasury to consider though: • The power to issue warning notices may compromise the FCA's ability to achieve its operational objective of protecting and enhancing the integrity of the UK financial system • Inappropriate use of warning notices, resulting in a regular need for notices of discontinuance to be issued may damage consumer confidence in the Government, industry and the

Question	Response
warning notices	regulators • Frequent publication of notices may cause consumers to question the integrity of the financial services industry. Or they may question the abilities of regulators to identify and prevent issues, if issues go unnoticed until the enforcement process is triggered. We have no objections to the current process of issuing notices of action that has been taken as a result of enforcement action. However, we are concerned about the apparent introduction of the concept of "guilty until proven innocent". **Suggestions:** The FCA should document in detail the safeguards that will be applied to the use of warning notices. Use of warning notices could be reviewed as part of the annual consultation on regulator performance against their objectives. Action could then be taken to address concerns or failings.
New role and powers in competition 15. Which, if any, of the additional new powers in relation to general competition law outlined would be appropriate for the FCA? Are there any other powers the Government should consider?	**Observations:** The detailed proposals focus mainly on situations where firms may break competition law. There are no specific proposals as to how the FCA will fulfil its objective to act in a way which promotes competition. We would be happy to be involved in any working group to develop these details. **Suggestion:** The proposed operational objective to facilitate efficiency and choice in the market should be reflected in the FCA's operational processes.
Recognised investment exchanges 16. The Government would welcome specific comments on: • The proposals for RIEs and Part XVIII for FSMA • The proposals on relation to listing and primary market regulation	**Observation:** This appears to be a continuation of the existing regime with a few adjustments. It does not cause us concern.
Effective inter-regulatory co-ordination 17. What are our views on the mechanisms and processes proposed to support effective co-ordination between the PRA and FCA?	**Observations:** The effectiveness of the MoU between the PRA and FCA will depend on the detail contained in each regulator's operational processes. Uncertainty amongst FSA staff regarding their roles in the new structure and the departure of senior members of FSA staff during the transitional period risks diverting attention from effective regulation. There is also the risk of regulatory underlap and/or overlap between the PRA and FCA. This could also increase costs and process inefficiencies for dual-regulated firms. We see potential for duplication in processes such as authorisation, supervision or enforcement. Standard Life awaits the publication of the PRA and FCA's operational processes, so that the details can be properly assessed.

Question	Response
	Suggestions: We will consider what issues should be included in the PRA and FCA's MoU and will submit our suggestions to HM Treasury shortly. We suggest that the PRA and FCA shadow structures prioritise agreement of details as to how they will communicate with each other and deal with potential overlaps. We would then like to see these details presented for consultation as soon as possible.
PRA's veto 18. What are our views on the Government's proposal that the PRA should be able to veto the FCA taking actions that would be likely to lead to the disorderly failure of a firm or wider financial instability?	**Observation:** Whilst we understand the need for oversight so that wider financial stability issues are considered, care must be taken that PRA's veto does not create the impression of the FCA being a secondary regulator to the PRA. **Suggestion:** We would like to see clear processes between the PRA and FCA setting out the circumstances when the PRA's veto could be used and how it would be used. We suggest information on the veto and its use is set out in the MoU between the PRA and FCA, with more detailed process information then set out in the PRA's operational processes.
Authorisation and variation of permissions 19. What are your views on the proposed models for the authorisation process – which do you prefer and why?	**Observations:** Standard Life has no comments on the authorisation process as this mainly concerns new entrants to the financial services market. The proposals for variation of permission appear to replicate the current FSA approach.
Approved persons process 21. What are your views on the Government's proposals for the approved persons regime under the new regulatory architecture?	**Observations:** There is a risk of creating an overly bureaucratic process for dual-regulated firms when splitting the responsibility for approval between the PRA and FCA. Without clear lines of responsibility that are captured in each regulator's operating standards and in the MoU between the PRA and FCA, there is a risk of poor communication between the regulators. This may result in slow service for firms and duplication of information requests from the regulators. It would be unfair for an individual to be unable to start their new role because of a delay caused by ineffective processes in the regulators. We support the proposal for one regulator to have the overall responsibility for processing an application, whilst discussing the application with the other regulator to be able to reach a decision. **Suggestions:** There should be a defined process to address situations where the regulators disagree with each other. A shared service agreement between the PRA and FCA would reduce costs for the regulators and ensure a smoother process. There would be less risk of information being lost or not communicated between the regulators.
Unregulated parent entities 25. The Government would welcome specific comments on:	**Observation:** Standard Life would be interested to understand how the power of direction would be used to support effective group supervision by the

Question	Response
• Proposals to support effective group supervision by the new authorities – including the new power of direction • Proposals to introduce a new power of direction over unregulated parent entities in certain circumstances?	new authorities. **Suggestion:** We would like more detail as to which circumstances would allow the regulator to use the power of direction over an unregulated parent entity. We would like the regulators to detail their expectations of unregulated entities.
Financial Ombudsman Service (FOS) 30. What are your views on the proposals relating to the FOS, particularly in relation to transparency? 31. What are your views on the proposed arrangements for strengthened accountability for the FSCS, FOS and CFEB?	**Observations:** Standard Life agrees with FOS concentrating on individual complaints on a case-by-case basis, provided there are clear and effective communication links with the FCA to identify trends that the FCA may act upon. We support the proposal that FOS should have transparent processes regarding its ability to publish decisions. It should consult on the principles that would govern publication. Our concern has been that FOS has tried to act in a regulatory capacity at times, rather than working with the FSA as the regulator to develop a coherent approach to issues. **Suggestion:** We suggest that legislation is introduced to clarify FOS's scope and its relationship with the FCA to enable an effective and coherent approach to complaints handling.
European and international co-ordination 32 What are your views on the proposed arrangements for international co-ordination?	**Observations:** There is a risk that an issue raised at e.g. ESMA is outwith the expertise of the FCA representative but could be considered by a PRA representative. **Suggestion:** As the European regulatory system will drive Member States' own regulatory systems, it is important that the individuals put forward to represent the UK at European level are experienced in political negotiating and influencing, as well as being technically competent in the areas they represent. The MoU between the PRA and FCA and the bodies' respective operational processes must clearly state how each body will represent the UK at each of the European authorities and confirm the strategy for dealing with the cross-referral of European issues amongst the UK regulators.