

## Minutes of the Banking Liaison Panel 6 September 2010

### Apologies

1. Tom Huertas (FSA) and Matt Lucas (FSA alternate) sent apologies, Somia Shafiq attended as the FSA observer. Alex Kucyznski (FSCS) sent his apologies, James Darbyshire (FSCS alternate) attended. Ed Murray (ISDA) sent his apologies, Peter Werner (the ISDA alternate) attended. Dorothy Livingston (City of London Law Society) sends her apologies, David Ereira attended as her alternate. Joanna Perkins (Financial Markets Law Committee) sent her apologies, Anne-Laure Condat attended as an observer.

### Minutes of the previous meeting

2. The minutes of the previous meeting of the BLP held on 2 June 2010 were **agreed**.

### Horizon scanning

3. The Panel noted that the Treasury will shortly be issuing a consultation on investment firms, including draft clauses, which will run for two months. The consultation will include discussion of how the new proposed special administration regime (SAR) will interact with the special resolution regime (SRR). The Panel noted the Court of Appeal ruling on client money in the case of LIBE that clients whose money was not held in segregated accounts have a claim against money which was held in segregated accounts.
4. The Panel noted the changes under consideration to the investor compensation scheme directive, noting one proposed change that it would cover UCITs, and that diminution in the value of an investment would be compensatable. It was noted that there is an active discussion in Europe over the revisions to the directive, including issues such as the size of the prefund. Noted the relevance to the small companies carve-out from the safeguards order; the expanded definition of compensatable deposits (on which the small companies carve-out rests).

### Changes to the regulatory architecture and engagement with the BLP

5. Treasury officials introduced proposals about the regulatory architecture, currently the subject of consultation, and noted Ministers publicly stated intention that the legislation would be introduced in mid-2011. The Panel noted that there were no plans for formal stakeholder workshops, but that there would be informal engagement in addition to the full public consultation. The Panel noted that the new legislation is not likely to include significant changes to the SRR, although the Treasury is considering minor changes to the SRR, which would be discussed with the Panel at the next meeting on 2 December.

## **Bail-in**

6. The Panel noted that one of the G20's objectives is to reduce the cost and moral hazard associated with the markets perceived implicit backing by governments of systemically important financial institutions. One idea to emerge from the Financial Stability Board (FSB) is the proposal for 'bail-in'. The principle is that rather than the authorities having to provide additional capital where a SIFI is failing, the firm should obtain the necessary recapitalisation by converting debt to capital or restructuring its debts. The Panel noted that the UK government has not taken a position on bail-in.
7. The Panel discussed the potential challenges around design, including threshold for use, the need for safeguards and protections for creditor rights (which would be required for ECHR purposes), provision for respecting the creditor hierarchy, and cross-border challenges.
8. The Panel discussed whether a bail-in tool would be credible. It was noted that a 'bail-in' might not solve a failing firm's problems (for example liquidity issues), and the exercise of the tool could exacerbate the firm's problem. There was a question about whether banks hold sufficient convertible debt to make the tool effective.
9. The Panel discussed the risks and potential behavioural impacts of introducing a bail-in tool, including the impact on the investor base, cost of funding, and the possibility of a flight to secure funding (such as covered bonds). It was noted that investors seemed nervous about the introduction of a new bail-in tool, and it was noted that it might only be feasible in a bull market.
10. The Treasury noted that there were many issues to be resolved before the government could take a position on whether a new bail-in tool is feasible or desirable.

## **Any other business**

11. None.