ICAEW

THE INSTITUTE OF CHARTERED ACCOUNTANTS
IN ENGLAND AND WALES

12 September 2008

Our ref: ICAEW Rep 99/08

Your ref:

Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

By email: banking.reform@hm-treasury.gov.uk

Dear Sirs

CONSULTATION PAPER FINANCIAL STABILITY AND DEPOSITOR PROTECTION: FURTHER CONSULTATION

The Institute of Chartered Accountants in England and Wales is pleased to respond to your request for comments on *Financial Stability and Depositor Protection: further consultation*.

The ICAEW's Financial Services Faculty was established in 2007 to become a world class centre for thought leadership on issues and challenges facing the financial services industry, acting in the public interest and free from vested interests. It draws together professionals from across the financial services industry and from the 25,000 ICAEW members specialising in the sector. This includes those working for regulated firms, in professional services firms, intermediaries, and regulators.

Please contact Iain Coke, Head of the Financial Services Faculty or myself, should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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ICAEW Representation

ICAEW REP 99/08

CONSULTATION PAPER FINANCIAL STABILITY AND DEPOSITOR PROTECTION: FURTHER CONSULTATION

Memorandum of comment submitted in September 2008 by The Institute of Chartered Accountants in England and Wales in response to the Tripartite Authorities Consultation Paper *Financial Stability and depositor protection: further consultation.*

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INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales (the ICAEW) welcomes the opportunity to comment on the Discussion Paper *Financial Stability and Depositor Protection: further consultation.*

WHO WE ARE

2. The ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the ICAEW provides leadership and practical support to over 130,000 members in more than 140 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The ICAEW is a founding member of the Global Accounting Alliance with over 700,000 members worldwide.

3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The ICAEW ensures these skills are constantly developed, recognised and valued.

4. The ICAEW's Financial Services Faculty was established in 2007 to become a world class centre for thought leadership on issues and challenges facing the financial services industry, acting in the public interest and free from vested interests. It draws together professionals from across the financial services industry and from the 25,000 ICAEW members specialising in the sector. This includes those working for regulated firms, in professional services firms, intermediaries, and regulators

MAJOR POINTS

5. We welcome the FSA's further consultation on *Financial Stability and Depositor Protection* published in July 2008 which provides a helpful update on the responses to the previous January consultation paper and requests some assistance in terms of a few additional points.

6. We believe that the explicit recognition by the FSA of the need to ensure greater consistency internationally in the regulation of liquidity risk is most helpful. In addition the summary of the detailed work that is currently being undertaken by the various European regulatory agencies and the FSA's participation in that is most useful.

7. We support the objectives of the SRR and are comfortable with the division of responsibility between the various Tripartite Authorities. It is entirely appropriate that the FSA should be the body to determine whether the conditions for entering the SRR have been met and, therefore, inappropriate for the FSA to be required to deal with the consequences of regulatory failure. We are comfortable, therefore, that the Bank of England should be responsible for implementing the SRR. It is also clear that the treasury must be responsible for decisions concerning public finances such as if there is a need for temporary public ownership,

SPECIFIC QUESTIONS

8. Our answers to the specific questions raised by the FSA are set out below.

Reducing the likelihood of a bank failing.

Question:3.1) The Authorities are seeking views from respondents on the extent that contractual provisions, such as those set out above may prevent the Authorities from taking appropriate action; and the merits of the two approaches set out above?

We believe that it is not appropriate for there to be legislation that in effect, allows the Authorities to amend existing contracts unilaterally or for the regulator to in effect attempt to achieve the same result by issuing regulatory guidance. We believe that these proposed provisions have the potential to damage the UK's competitiveness and make London a less attractive location for doing business***.***

Question:3.2) Are the criteria as set out, the right criteria and will they provide sufficient flexibility as payment systems evolve overtime?

We have no comments***.***

Question:3.3) Is there a preferred method for recognising payment systems?

We have no comments.

Question:3.4) Do you agree that the indicative list in paragraph 3.47 includes all the relevant payment systems which are of systemic or system-wide importance?

We have no comments.

Question:3.5) Are the powers ,as set out above, necessary and appropriately graduated?

We have no comments.

Reducing the impact of a failing bank

Question:4.1) The authorities would welcome views on the most appropriate ways to deal with other relevant entities in investment banking groups with the aim of helping to maintain financial stability?

We believe that effective principles and risk based regulation and supervision in the UK by the FSA are the most appropriate way to deal with this problem. We believe that the FSA already has very wide ranging powers and sanctions that enable it to fulfil this role without the need for further legislation. If there were a threat to financial stability one would expect the FSA to implement heightened supervision. It is also essential though as recently proposed that there is increased information sharing amongst international regulators to deal more effectively with difficulties in banks operating across borders and different legal jurisdictions.

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Question:4.2) Do you agree with the roles for the Authorities for the triggering and operation of the Special Resolution Regime?

We agree with the roles for the Authorities for the triggering and operation of the Special Resolution Regime (SRR). It is entirely appropriate that the FSA should be the body to determine whether the conditions for entering the SRR have been met and, therefore, inappropriate for the FSA to be required to deal with the consequences of regulatory failure. We are comfortable, therefore, that the Bank of England should be responsible for implementing the SRR. It is also clear that the Treasury must be responsible for decisions concerning public finances such as if there is a need for temporary public ownership.

Question:4.3)Respondents views are sought on the practical considerations involved in developing a SRR.

We would refer you to our detailed response on the SRR consultation paper.

Question:4.4) What would be the best way to calculate the hypothetical net cost of depositor compensation payments, including the estimation of the recovery rate?

We believe that it is inappropriate to extend the scope of the Financial Services Compensation Scheme (FSCS) as proposed and there would, therefore, be no need to make such a calculation.

Effective compensation arrangements for depositors

Question:5.1) The authorities would welcome further views on the best way of introducing gross payout when there are mutual debts.

We believe that the answer to this question is better addressed by the banking industry.

Question:5.2)The Authorities would welcome further views on a possible move to pre-funding and on the proposed legal framework for pre-funding and FSCS borrowing from the National Loans Fund.

We believe as we previously stated in our response to the January consultation paper that any level of pre-funding would either be punitive or unhelpfully low and as such reduce consumer confidence in the system.

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