Minutes of the Banking Liaison Panel 3 March 2011

Apologies

1. Apologies were received from Nikhil Rathi (Treasury), Tom Crossland (FSA), Joanna Perkins (FMLC). Lucy Hallam-Eames, attended as FMLC observer. The meeting was chaired by Emil Levendoğlu (Treasury alternate).

Panel membership changes

2. The Panel noted that responsibility for running the Panel is moving from the Financial Regulation Strategy team to Financial Stability Contingency Planning team, and that there would be changes to the secretariat accordingly. The Panel noted that Rob Beattie had been nominated as the BBA alternate. The Panel noted that the Tom Crossland will be the new FSA representative, replacing Matt Lucas.

Minutes from the previous meeting

3. The minutes of the meeting of 2 December 2010 were approved.

Horizon scanning

4. Panel members raised the issue of the Settlement Finality Directive, and suggested that the Treasury should consider the implications of this for safeguards for partial property transfers.

5. Panel members noted that the powers under the Banking Act 2009 to make regulations implementing the Financial Collateral Arrangements Directive (FCAD).

6. Panel members asked what feedback there had been from the IMF Financial Sector Assessment Programme (FSAP). The Treasury explained that the FSAP mission was continuing its work, and that initial feedback could be expected later in the spring.

7. Treasury noted that consultation was underway on the reforms to the UK regulatory architecture.

The European Commission’s moratoria proposals

8. The Panel considered potential advantages and disadvantages of the proposal for the temporary suspension of contractual rights, currently under consideration by the European Commission.

9. The Panel concluded that there is no straightforward answer to whether moratoria in advance of a transfer taking place are feasible and / or desirable, and that it is be difficult to comment in detail at this stage before details of the proposal were clear. Issues covered in the discussion included –

- whether the proposal would actually provide breathing space for resolution, or whether the impact of suspending rights to close out would create uncertainty for counterparties that would lead to financial instability in the case of a resolution;

- whether a short stay, of a clearly specified duration, which did not interfere with counterparties ability to close out following a transfer (but not because of the transfer itself), would be easier from the point of view of legal certainty;

- potential behavioural responses, including whether counterparties would write in earlier triggers would be likely; and

- whether a moratorium would be applied in respect of all parties, including central counterparties and/or payment systems.

10. The Panel noted that it might be appropriate for the Panel to establish a subgroup to look at the issue, as it could have implications for the UK's SRR.

Further minor and technical amendments to the SRR

11. The Treasury provided draft clauses on further proposed technical amendments to the SRR, to be included in the Financial Services Bill.

12. The Panel discussed the draft clause providing for reverse transfers from private sector purchasers. The Panel noted that this included provisions to meet concerns raised at the previous meeting that this should not happen without the consent of the purchaser. Panel members suggested that consideration should also be given to whether the resolution authority should be required to seek the consent of relevant counterparties or at least be notified of the reverse transfer. The Treasury responded that this would be difficult in practice, and noted that the purpose of the power was to ensure that all parties could be put in the position that they thought they were in when the agreement was concluded; and that therefore the consent of the purchaser should be sufficient. The Treasury also noted that the operation of the transfer regime is such that transfers can take effect absent restrictions arising by contract or in any other way (e.g. without the need to seek consent of a third party).

13. The Panel discussed a new proposal from the Treasury, in the form of a draft clause allowing HMT to issue directions to the administrator for the purpose of ensuring compliance with the EU's state aid regime. Panel members noted that it was important to ensure that the insolvency practitioner is not required or expected to take actions that go beyond his legal remit, and that the Treasury should give consideration to whether any changes would be needed to the insolvency practitioner's statutory immunity. The Treasury did not think that any changes to the clause would be necessary, but agreed to give further consideration to the matter.

14. The Panel noted that the Treasury is still considering the Panel's comments on the proposed 'bridge bank management duty', to encourage more effective control of resolution costs.