

## **FINANCIAL SERVICES BILL – SECOND READING**

### **- A Briefing from the British Bankers' Association -**

#### **Introduction**

The British Bankers' Association (BBA) is supportive of the programme of initiatives to reform the UK banking system and views the reform of the UK system of financial services regulation as a key part of this. We have contributed to the three consultations, to the pre-legislative scrutiny process and to relevant inquiries by the Treasury Committee and see the introduction of the Bill into Parliament and the Government's response to the pre-legislative and select committee reports as an important step in putting in place a regulatory regime suited to the strategic oversight of the financial system and capable of delivering judgement-led regulation.

In keeping with the Joint Committee on the draft Financial Services Bill, we consider that successful regulation depends more on regulatory culture, focus and philosophy than structure. An aspect of the cultural change needed is the shift towards forward looking supervision and as the Joint Committee observed this requires staff with the right experience, approach and attitudes. While a change in culture is not something that legislation can guarantee, it is also clear that the setting of the right statutory objectives, the allocation and alignment of powers and responsibility to those objectives, and the establishment of appropriate systems of accountability and engagement is fundamental to the refocus sought.

The BBA is the leading trade association for the UK banking and financial services sector. We represent over 200 banking members, which are headquartered in 50 countries and have operations in 180 countries worldwide. These member banks collectively provide the full range of banking and financial services and make up the world's largest international banking centre. As outlined above, we have engaged fully on the development of the Bill; we are also contributing to the work being undertaken in respect of the Government's initiative in response to the Independent Commission on Banking and the many other regulatory reforms being progressed on an international, European and domestic basis

#### **Executive summary**

- In keeping with the Joint Committee on the draft Financial Services Bill, we consider that successful regulation depends more on regulatory culture, focus and philosophy than structure. While is not something that legislation can guarantee, setting the right statutory objectives, allocation and alignment of powers and responsibilities, and system of accountability and engagement provides a solid foundation.
- The BBA supports the emphasis on financial stability and the introduction of a macro-prudential element to financial regulation. But we were also pleased to hear the Chancellor say to the Joint Committee that we should not be seeking "the stability of the graveyard". We therefore see as a major issue for Parliament the question of whether the FPC's responsibility for making the financial sector safer overall has been properly set into the context of the Government's wider objectives for economic growth.

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- We have previously expressed concern over the lack of clarity about the duty on the part of the Governor to notify the Chancellor of a potential financial crisis and can see that the arrangements set out in both the Bill and the Memorandum of Understanding (MoU) will achieve the type of interaction that we would view as appropriate. This is, however, an issue which will merit closer inspection.
- We support the move to a single eight-year term for the Governor of the Bank of England as recommended by the Treasury Select Committee, the creation of an oversight committee for financial stability made up of non-executive members of the Court and the intention that the oversight committee should carry out retrospective reviews. Whether these governance changes are sufficient is a matter for Parliament.
- We support the measures in the Bill to bring about a more judgement-led approach to regulation and welcome the proposal that a duty to supervise be placed on the PRA, which we see this as being very distinct in focus from assessing compliance. This is a prime example of the way in which statutory objectives and responsibilities can lay the groundwork for setting the right culture and strategic approach. Close attention will need to be given to the specific provisions.
- We support the proposed change to the FCA's objectives in respect of the promotion of effective competition in the interests of consumers, subject to clarity about the role of the FCA and the role of the competition authorities, but see a need for further thought to be given to the lack of differentiation proposed in respect of consumers; we support the transfer of consumer credit regulation to the FCA and note that the powers proposed in respect of product intervention, the disclosure of warning notices and financial promotions raise important issues of principle.
- We are pleased to see the amendment to the Bill to require that the international coordination MOU establish a committee under Treasury chairmanship and reporting to the Chancellor, with FCA, PRA and Bank membership, with the aim of agreeing consistent objectives and effective international engagement.

### **Bank of England and the Financial Policy Committee**

The Financial Services Bill brings together responsibility for all aspects of financial stability within the Bank of England group since:

- the new Financial Policy Committee (FPC) will be responsible for macro-prudential oversight of the financial services system as a whole;
- the Prudential Regulation Authority (PRA) will be responsible for ensuring the safety and soundness of individual firms; and
- the Bank itself will be responsible for the regulation of systemic infrastructure.

This brings responsibility for financial stability under one roof and subject to specific concerns we are supportive of the broad direction of change. Key aspects of the draft Bill that we would comment upon at this stage comprise:

- **Financial Policy Committee:** the establishment of the Financial Policy Committee (FPC) is a major new addition to the UK regulatory makeup and this makes it all the more important that we lay the right ground rules for its operation. This includes the setting of the right statutory objective, remit and powers and also the shaping of the right accountability and due process mechanisms. The Bill introduced has been amended to clarify the types of risk upon which the FPC should focus, with reference to the interconnected nature of the financial sector and the immateriality of whether the risks involved arise in the UK or elsewhere. It is important to stress that the FPC will be most effective if it acts within the context of the new UK and EU supervisory architecture and does not simply replicate the microprudential supervision of individual firms.

- We were pleased to hear the Chancellor say to the Joint Committee that we should not be seeking “the stability of the graveyard” and see as a major issue for Parliament the question of whether the FPC’s responsibility for making the financial sector safer overall has been properly set into the context of the Government’s wider objectives for economic growth.
- **Crisis Management:** we have previously expressed concern over the lack of clarity about the duty on the part of the Governor to notify the Chancellor of a potential financial crisis and can see that the arrangements set out in both the Bill and the Memorandum of Understanding (MoU) will achieve the type of interaction that we would view as appropriate and likely to take place. This is, however, an issue which will merit closer inspection since we are unclear that the assignment of powers now proposed is consistent with the strategic division of responsibilities envisaged by the Government, including the proposed power of direction over the Bank.
- **Bank of England governance:** we agree that the independence of the Governor of the Bank of England is vital and for this reason support the move to a single eight-year term as recommended by the Treasury Select Committee. We also support the creation of an oversight committee for financial stability made up entirely of non-executive members of the Court. We further support the intention that the oversight committee be expected to commission retrospective reviews of policy-making and implementation performance and agree that the capacity for these should include both internal review and periodic or ad-hoc external review from expert authorities such as the International Monetary Fund (IMF).

### **Prudential Regulation Authority**

The BBA supports the measures included in the Bill to bring about a more judgement-led approach to regulation and welcomes changes to the Bill intended to strengthen this, some of which were at the suggestion of the Joint Committee. The changes to the Bill are as fundamental as proposing that a duty to supervise be placed on the PRA, which we see this as being very distinct in focus from assessing compliance. This is a prime example of the way in which statutory objectives and responsibilities can lay the groundwork for setting the right culture and strategic approach. We note the intention to consult on a draft Order seeking to clarify threshold conditions and effect a division between the PRA and FCA and would underline the importance of getting this right. We also note and support the intention to strengthen the supervisors’ powers to monitor emerging risks at the holding company level, subject to caveats about scope and relevant experience in the case of global institutions.

Engagement with practitioners and other interested parties, and the transparency with which this takes place, is an important feature of the UK regulatory landscape. We will therefore take particular interest in the Bank of England and FSA note requested by the Treasury and support the amendment to the Bill to require the PRA to report annually on its consultation activities as part of its annual report.

### **Financial Conduct Authority**

We support the establishment of a dedicated conduct of business regulator and also the proposed change to the FCA’s strategic objective in respect of the functioning of relevant markets and the change to the operational objective in respect of promoting effective competition in the interests of consumers, subject to there being clarity about the role of the FCA and the role of the competition authorities.

We have previously expressed concern, however, about the undifferentiated approach proposed in respect of the consumers of financial services and therefore plan to think through the new “have regard” proposed in respect of the appropriate degree of protection and level of care; also the proposed have regard for senior management responsibilities. We support the transfer of consumer credit regulation to the FCA and the retention of substantive Consumer Credit Act 1974 (CCA) provisions. The Bill maintains the new powers proposed in respect of product intervention, the

disclosure of warning notices and the use of misleading financial promotions, each of which raises important issues of principle.

We can see the logic of the division of responsibility between the Bank and FCA in respect of market infrastructure, but also see the importance of the Bank and FCA working closely on regulatory matters, including those where the Bank is the competent authority but the FCA holds the UK voting seat in the European Securities and Markets Authority (ESMA).

We note the Bill provides that consumer representatives should be able to make super-complaints to the FCA and also the Government's intention that, in a narrow range of circumstances, firms and the Financial Ombudsman Service (FOS) should be able to refer matters concerning mass detriment to the FCA and require a response in 90 days. These are also provisions which will benefit from close attention during the Parliamentary process.

### **Regulatory processes and coordination**

While we are fully appreciative of the distinct roles to be played by the PRA and FCA, it is equally clear that there is a clear need for effective coordination between the two if we avoid duplication and administrative burden and confusion in firm's daily regulatory engagement. We are therefore pleased to see the mechanism for coordination being put in place and the accountability that will underpin these and will consider in particular the MoU provisions relating to the Financial Services Compensation Scheme (FSCS), the way in which the FCA and the FOS will work together and the relationship between the FCA and the Money Advice Service (MAS). An initial inspection suggests that concerns relating to the governance of these bodies may not have been fully met.

We concur with the view that there are detailed and complex considerations in respect of issues such as the disclosure of information and the legal liability in the case of failed banks and look forward to the analysis and consultation expected to take place during the passage of the Bill.

### **European and international regulation**

The BBA was one of the organisations that in recognition of the importance of UK engagement in global and European regulatory bodies recommended the establishment of an international regulatory secretariat. We are therefore pleased to see the amendment to the Bill to require that the international coordination MOU establish a committee under Treasury chairmanship and reporting to the Chancellor, with FCA, PRA and Bank membership, with the aim of agreeing consistent objectives and effective international engagement. As the Treasury policy document illustrates, this engagement takes very different forms across the different authorities spanning the PRA's participation in supervisory colleges and the European Banking Authority engagement on the part of both the PRA and the FCA in international regulatory discussions.

This note sets out our broad overview of the provisions set out in the Financial Services Bill introduced to Parliament last month. We are planning a full review of the draft legislative clauses and the supporting MoUs and other documents in time for third reading and committee and will provide more detailed briefing on specific elements as the Bill progresses through its Parliamentary journey. If you would like to discuss issues arising from the Bill with us please in the first instance contact [ben.andersen-tuffnell@bba.org.uk](mailto:ben.andersen-tuffnell@bba.org.uk) or [mark.cazaly@bba.org.uk](mailto:mark.cazaly@bba.org.uk)

**British Bankers' Association**  
**3rd February 2012**