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Financial Law Committee response to the Working Document of the European Commission on Technical Details of a Possible EU Framework for Bank Recovery and Resolution (the "Working Document")

Information about the respondent

1. The City of London Law Society (CLLS) represents approximately 14,000 City lawyers, through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

2. The CLLS responds to consultations on issues of importance to its members through its 17 specialist Committees. A working party of the CLLS Financial Law Committee, made up of solicitors who are experts in their field, has prepared the comments below on the Working Document, from the perspective of English law. Details about the membership of the working party are set out on page 17 below.

3. The CLLS is registered in the Interest Representative Register of the European Commission under **registration number 24418535037-82**. If the Commission wishes to make available on its website the responses received to the Working Document, the CLLS authorises the inclusion of this paper amongst those responses.

4. Unless otherwise stated, references in this response to Sections are to Sections of the Working Document.

Preliminarily comments

5. We welcome the broad objectives of the proposed legislation and in particular support the aim of ensuring that authorities in Member States have the necessary resolution tools to take fast and effective action to ensure the minimum of disruption to financial markets, the continuity of essential financial services and the avoidance of legal uncertainty. We also welcome the adoption of resolution tools and safeguards similar to those introduced in the UK by the Banking Act 2009. There are, however, a number of points on which the proposals are unclear or require further consideration. In particular we consider that:

   (a) The potential adverse consequences and complications of a temporary suspension of delivery or payment obligations, and of the exercise of close-out netting, proposed in Sections G12 and G13 are likely to outweigh any potential benefit of providing a short "breathing space".

   (b) We welcome the safeguards in Section H for counterparties and market arrangements that may otherwise be affected by a partial property transfer but consider that further safeguards are required (in addition to that based on the Settlement Finality Directive) to protect trading, settlement and payment systems and to preserve certainty, efficiency and stability on financial markets. We also consider that the safeguard for structured finance arrangements requires more detailed consideration and fuller consultation.

(c) If the proposals in Annex 1 to the Working Document for write down of the debt of a failing institution or conversion of debt into equity (referred to in the Working Document as "bail-in") are to be taken forward, they will need to be developed in much greater detail and address the issues summarised by us. Given the complexity of these issues, we have serious concerns whether they can be addressed in the timeframe contemplated by the Working Document.

Response to general approach

6. We note that any proposed resolution regime necessarily involves trade-offs between the private law rights of stakeholders in banks and the perceived need to take action in the interests of financial stability. The proposed framework therefore raises important questions of legal certainty and how best to uphold the legitimate expectations of market participants. We take the view that any interference with private law rights should be kept to the minimum necessary to achieve the aims of the regime. In particular, detailed consideration is needed to assess whether the additional powers, such as the power to write down debt, are workable and a proportionate means of upholding financial stability.

7. The preparatory and preventative powers, and early intervention powers, contemplated in the proposals are excessively broad and would probably be unworkable in practice. In our view, the threshold that must be reached before a preventative power could be exercised by a resolution authority is too low and would create significant uncertainty - resolution authorities needing only to be satisfied that impediments to resolution exist in any "conceivable situation". We note also that certain "preventative" powers - such as the power to prevent firms from developing or selling new business products or services - may have the unintended consequence of paradoxically making bank failure more likely.

8. In terms of the early intervention powers, we are especially concerned that a firm which is still very much a going concern could nonetheless be subject to substantial interference by a resolution authority. Furthermore, if exercised, it might prove impossible to keep the exercise of certain of the early intervention powers confidential from the market, such as the replacement of a board member, or the restricting of a firm's business activities. If the exercise of such powers became known, it is likely to excite market attention, which would be counterproductive. For this reason we are not convinced that supervisors should be given the power to appoint a special manager as an early intervention measure. We suggest that, if a firm is resolvable, and subject to a resolution framework being established, then there appears to be little or no justification for the exercise of these further powers.

9. In considering the possibility of a cross border resolution regime, the Commission needs to bear in mind that its current proposals, like those in the UK, seem to contain two elements:

(a) plans for recovery from financial difficulties without formal resolution processes, preserving the prospect of value recovery for equity investors;

(b) formal resolution processes, which, although they may restore the core businesses or some of them to financial health and safeguard those which are not individually failing, will almost inevitably lead to the winding up of one or more companies in the group and usually involve the loss of substantially all value for shareholder investors in the top company of the affected group (which may well be a quoted company).

10. In legislating it will be very important to distinguish provisions that should only apply to one or the other of the two cases. Where a financial institution can raise capital in the markets itself so as to prevent its situation being a threat to financial stability, this is the best outcome for the business, its shareholders, employees and customers and for the economy as a whole. Care should therefore be taken not to trigger the formal resolution process without having fully explored the possibility of recovery.

11. It is questionable whether solutions which are most effective pre-formal resolution – which would include the raising of additional equity capital, the conversion of contingent convertible capital instruments and/or a "bail-in" debt instruments or a scheme of arrangement with creditors – should be addressed in the context of resolution or dealt with in the context of pre-resolution prudential regulation. In any event, such measures need to be treated separately in the legislation, so that measures which could result in a full recovery could be utilised without the stigma of a formal resolution process, which in itself can be expected usually to lead to total loss of value for equity providers and substantial losses for most creditors. It is important that the "bail-in" process could not be triggered too early. The trigger would need to be based on serious events such as a threat to financial stability.

12. The proposals also need to acknowledge the jurisdictional limits of European Union law. Many EEA banks operate globally and have extensive operations outside the European Union. Absent broader international agreement on bank recovery and resolution, the efficacy of the proposed framework would be limited in relation to banking arrangements involving foreign property (in respect of which resolution authorities of Member States would not have jurisdiction to apply resolution tools) and any systemic risks brought to bear on EEA banks as a result of their counterparty exposure to foreign banks subject to "light touch" regulatory regimes. In order to be able to act decisively to prevent bank failure, it is essential that tools used in the European Union and the rest of the world are deployed in a coherent manner and are mutually recognised.

13. We also take the view that neither broad resolution powers nor broad resolution tools alone will be sufficient to uphold financial stability in the European Union. Diligent supervision by well-resourced and competent authorities in each Member State is critically important.

Response to recovery plan proposal

14. Recovery plans for individual institutions would vary enormously according the circumstances in which recovery is necessary. For instance, a financial institution that was a victim of fraud in a buoyant market is differently placed in relation to available tools and responses, than a company which, like many others, is suffering from a market wide lack of confidence and liquidity affecting many institutions (as in the recent crisis). While at an individual level the "living will" (which gives an in depth view of the business) would be useful for both efficient recovery and resolution, there would be no value in trying to anticipate what tools might best be used, such as sale of part of business, capital raising, or business wind-down.

Reponses to specific questions raised in the Working Document

15. We set out below our comments on a number of the questions raised in the Working Document. We have concentrated primarily on the proposals set out in Sections G12, G13 and H and Annex 1. The fact that we have not commented on other aspects does not necessarily mean that we will not have comments on these aspects when legislative proposals are put forward.

Question 18b: If adopted, should either be subject to a time limit (for example, the priority claim or claw back right would apply only if the relevant insolvency is commenced within a specified period - such as 12 months - after the transfer)?

16. A transaction may be challenged under a number of provisions of English law, including section 238 (*Transactions at an undervalue*), section 239 (*Preferences*) and section 245 (*Avoidance of certain floating charges*) of the Insolvency Act 1986. Such a challenge must be brought within a specified period after the onset of insolvency. This period is extended where the parties to the transaction are "connected". There may be a case for disapplying the "connected persons" rule where the financial support provided by another group company has been approved by the regulator.

Question 30b: In particular, is it necessary to include a general principle that creditors of the same class should be treated equally or should resolution authorities be able to derogate from this principle in specific circumstances?

17. We consider that this general principle should be adhered to as closely as possible. Where an exception is made to the principle, the exception should be clear and predictable so as to avoid legal uncertainty.

18. We note that the first limb of principle (d) in Section F4 is not necessarily consistent with the practical effect of resolution (as unsecured senior creditors generally may not be treated pari passu). This will need to be reflected in the legislation to avoid creating rights of action on the part of disenfranchised creditors.

Question 39a: Should all Member States be required to make provision in national law for all three mechanisms by which resolution can be carried out that are suggested above? If the same mechanisms are not available in all Member States, could this pose an obstacle to co-ordinated cross-border resolution?

19. Yes, we believe that all three mechanisms should be adopted by each Member State in order to ensure that it has an adequate choice of options.

Question 39b: Should receivership - which allows resolution authorities to take full control of the failing institution - be the primary framework for resolution?

20. No, we suggest that each Member State should be able to choose either administration or receivership, depending on the circumstances involved.

Question 42: Please give your views on the suggested temporary suspension of payment or delivery obligations? Is it appropriate to exclude eligible deposits? Should any other obligations be excluded?

21. A temporary suspension of payment or delivery obligations would be a source of considerable uncertainty for market participants for the reasons explained in paragraph 26 below. We do not support this proposal. A temporary suspension was not considered to be necessary when the UK introduced its own bank resolution regimes under the Banking Act 2009.

22. If the aim of the suspension power is to allow a short breathing space, we consider that this could effectively be achieved in the case of the failure of a major international investment bank only by suspending the whole of the markets in which it operates. This would be a very draconian measure and would require co-ordinated action between regulators in the main financial centres.

23. Although the terrorist attacks in New York on 11 September 2001 resulted in the New York Stock Exchange being closed for four days and all other US stock exchanges (including NASDAQ) and US option exchanges being closed, no purely financial crisis of the last twenty years has led to such closures. For instance, this did not occur in the case of the collapse of Barings in 1995, LTCM in 1998 or Lehman in 2008. A useful analysis of how law and market practice would respond to an event of major operational disruption is set out in the Report on this subject published by the Financial Markets Law Committee ("FMLC") in November 2003: see in particular pages 10 to 19, 86 to 88 and 128 to 132.

24. Although the laws of several jurisdictions provide emergency powers for its government or regulatory authority to declare a special bank holiday or non-business day, these powers have been rarely exercised. As explained in the FMLC's Report, such a declaration would not be the most focused response to a major market disruption and, if an attempt was made to use it for this purpose, it could give rise to a number of issues:

    (a) First, the power to declare a special bank holiday is typically a broad power and its use could have wider consequences and unintended side effects. Non-financial types of contract might be affected, even though the parties to them would otherwise have been unaffected.[1]

(b) Secondly, the effect on contractual obligations of calling an unscheduled bank holiday could cause significant potential problems, unless these had been addressed satisfactorily in advance by appropriate contractual terms.

(c) Thirdly, the declaration of a special bank holiday under the domestic law of a jurisdiction would not have extra-territorial effect. Many contracts will include obligations performable outside the relevant jurisdiction or may be governed by the laws of other jurisdictions. Even if banks and financial institutions were permitted to close their operations during a major operational disruption if necessary, they should not be compelled to do so. Equally, parties to contracts should continue to be free to perform their obligations (or to agree appropriate variations) if they wished to do so.

(d) Fourthly, the declaration of a special bank holiday could result in the closure of an exchange or settlement system which would also otherwise have remained open. This would conflict with the objective of preserving the ability of market participants to perform obligations if they chose to do so. The preferred course would almost certainly be to keep markets open and, even if a particular market had to be closed, to keep payment and settlement systems in operation wherever possible.

(e) Fifth, it is doubtful whether such a power could be used to declare a special bank holiday retrospectively. It is unclear whether a bank holiday could be declared during business hours so as to take effect for the remainder of the same day and, even if it could be, it might cause more complications than it would avoid.

25. Responses from market practitioners and trade associations to the Working Document "The Financial System and Major Operational Disruption" published by HM Treasury in February 2003 expressed a strong preference for the UK Government not to intervene unless this became unavoidable. Concern was expressed that the mere existence of wide discretionary emergency powers might cause serious uncertainty as to the circumstances in which those powers would be exercised and how they might affect financial markets, particularly where cross-border trading, clearing and settlement were involved. It was recognised as essential to maintain the maximum possible level of legal certainty in the financial markets.

Question 43: Please give your views on the temporary suspension of close out netting rights suggested in section G13, including the appropriate length of the suspension. Should any classes of counterparty be excluded from the scope of such a suspension: for example, Central Banks, central counterparties, payment and securities settlement systems that fall within the scope of the Settlement Finality Directive?

26. The creation of a power for resolution authorities to impose a suspension of even limited duration would be a source of considerable uncertainty for market participants. Again, we do not support this proposal and note that it was not thought necessary to include it in the Banking Act 2009. If the power were created and exercised, it could cause serious complications and difficulties for counterparties who had outstanding contracts (including financial collateral arrangements) with the failing financial institution and for third parties involved in back-to-back or linked transactions with such counterparties. Further, as there would need to be an exception for clearing houses (see paragraph 28 below), a mismatch could arise if there is a close-out by the central counterparty but the non-defaulting member is prevented for a couple of days from closing out vis-à-vis its counterparty.

27. The better approach would be to provide that a transfer to a bridge bank or third party purchaser of a failing financial institution's property or shares would be disregarded in

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1 The proclamation of a special bank holiday might relieve employees of their obligations to work even if they were urgently required to cope with an emergency and, for others, would entitle them to be paid overtime rates.

determining whether an event had occurred enabling the counterparty to exercise close out netting or other rights, as provided for in section 22 of the Banking Act 2009.

28. If a power of suspension were introduced, exceptions would be required to safeguard recognised clearing houses, recognised investment exchanges, securities settlement or payment systems and settlement banks etc. It is essential, for instance, that a clearing house should be able, immediately a member defaults or is likely to default, to take immediate steps (if it chooses) to enforce its default rules, including exercising close out netting, realising collateral and applying this against any resulting net single amount then due. Otherwise, the clearing house could have a major liquidity problem in ensuring overall settlement on the business day affected, unless it called on other members of the clearing house to provide additional collateral or guarantee fund contributions and these calls were promptly met in full or unless emergency funding was provided by a central bank or another source.

29. As stated above, if a suspension applies to some counterparties but not others, this could potentially have unexpected and arbitrary results on those with direct or indirect contractual relationships with the failing financial institution, particularly in a falling market. A suspension of rights could result in greater losses for a counterparty or result in a counterparty being required to fulfil its obligations to a central counterparty but being unable to take action against the failing financial institution.

30. It should be borne in mind that the length of any moratorium will be factored into the cost of collateral and credit for firms within the scope of the regime, as counterparties will have to take more collateral and charge more for unsecured credit exposures if they become subject to delays in their enforcement rights – raising the cost of doing business.

31. We understand that in the USA the Dodd-Frank Act provides protections for specified classes of financial contracts and for specified classes of counterparties.[2]

Question 46a: Do you agree that the classes of arrangement suggested in this section should be subject to the suggested safeguards in the case of partial property transfers? Should any other market arrangements be included?

32. We agree that the proposed safeguards are essential in the case of partial property transfers. It is also essential that the remedy for a breach of a safeguard be clearly spelt out and that this be capable of being consistently applied across the EU.[3]

33. We note that, as a general matter, the safeguards proposed in respect of the proposed resolution framework are modelled on the UK Banking Act 2009 safeguards. We broadly support the inclusion of these safeguards, which largely protect the position of counterparties whom we consider have a legitimate interest in not being "cherry-picked". However, the UK regime is not perfect: it includes elements of uncertainty (particularly in relation to structured finance), and some safeguards which arguably do not go far enough in protecting the legitimate interests of creditors and other stakeholders. We draw attention to these where relevant below.

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2 We understand that the Dodd-Frank Act provides protections for "qualified financial contracts" such as repurchase agreements, securities contracts, forward contracts, commodity contracts and swap agreements and, in each instance, for specifically defined classes of counterparties such as clearing organisations. Consistent with special protections afforded under other U.S. insolvency regimes (e.g. FDIC receivership of a bank), certain non-defaulting counterparties to such agreements are free to exercise their contractual rights to terminate, close-out and liquidate their positions upon the insolvency of their counterparties. However, the Act does have a one-business-day stay on netting by prohibiting a protected party from terminating, liquidating or netting out its position solely by reason of the appointment of the FDIC as receiver or the financial condition of the financial company in receivership until 5:00 p.m. Eastern Time on the business day following the date of appointment of the FDIC. A protected party is also precluded from exercising any such contractual rights after it has received notice that its qualified financial contract has been transferred to another financial institution, including a bridge financial company. The Act requires that the FDIC notify a protected party of any such transfer by 5:00 p.m. Eastern Time on the business day following the date of appointment of the FDIC. The Act provides that no "walkaway clause" shall be enforceable in a qualified financial contract of a covered financial company in default. See also footnote 11.

3 See, for instance, article 11 of The Banking Act 2009 (Restriction on Partial Property Transfers) Order 2009 which provides that, if the safeguard for set-off and netting is breached, the partial property transfer does not affect the exercise of the right to set off or net.

34. We agree that the classes of arrangement suggested in this section should be subject to the suggested safeguards. Inevitably, it will be necessary to see the proposed legislation in order to form a view as to whether the safeguards are adequate. However, we note that structured finance arrangements are a particular area of difficulty within the Banking Act regime. Because these differ in structure, and often involve a number of relationships between the originating or sponsoring organisation and any vehicle used to effect the structured finance arrangement, they pose particular difficulties in assessing how the resolution framework would apply, and in circumscribing the safeguarded relationships which would need to be subject of the protections. To our knowledge, there is no accepted definition of structured finance arrangements for these purposes. We believe that this is likely to pose a challenge in the drafting process, and will need close scrutiny and full consultation in order to ensure that the full range of structured finance arrangements are in fact caught within the safeguard (particularly given that the relevant definition should extend to appropriate securitisation and covered bond arrangements).

Question 47a: Please give your views on the safeguards for title transfer financial collateral arrangements and set-off and netting arrangements suggested in section H2.

35. We consider that safeguards similar to those introduced in the UK under the Banking Act 2009 and its secondary legislation are essential to protect such arrangements.

36. In addition, we should point out that it is not just financial institutions that rely on netting or set-off arrangements. Set-off lies at the heart of numerous cash management arrangements offered by banks to groups of companies. These are based on the standard forms of individual banks and are often not described as master agreements. There is no market standard form of agreement (comparable to the ISDA Master Agreement for derivative and other transactions) which is used for cash management purposes. As far as we are aware, there are no statistics publicly available as to the amount of money subject to such cash management systems but the total is certain to be huge.

37. Typical features of the above systems under English law are that (i) the bank agrees, for the purposes of calculating interest, to deduct credit balances from debit balances on the current accounts of the group companies participating in the system, (ii) each participant authorises the bank (if it chooses) to set off money standing to its credit on a relevant account within the system against the indebtedness to the bank on the relevant accounts of the same or any other participant, (iii) each participant is permitted to utilise a group overdraft facility (up to a net limit) subject to guaranteeing, or being liable as a co-obligor for, the indebtedness to the bank of each other participant. Such systems offer improved risk management for banks and also offer corporate customers an important saving in interest charges and a reduction in credit risk in relation to the bank concerned.

38. If the contractual right of set-off is reciprocal, the group has the ability to achieve a net settlement under which a single net amount is payable to or from the bank. Even if the contractual right of set-off is not reciprocal, the group can, subject to certain exceptions, rely on automatic, self-executing, mandatory set-off under Rule 2.85 of the UK Insolvency Rules 1986 (if the bank enters into administration and the administrator decides to make a distribution to creditors) or under Rule 4.90 (if the bank enters into insolvent liquidation). If such set-off was disapplied or excluded by the proposed legislation, the insolvency representative of the bank could require payment of the debit balances owing to the bank by group companies whose accounts are overdrawn, while treating group companies with credit balances on their accounts as mere unsecured creditors of the bank for the amount of those credit balances. This could result in the financial position of the group itself being destabilised.

39. A reporting entity in a group of companies is permitted under International Accounting Standard (IAS) Number 32, paragraph 42, to offset a financial asset against a financial liability and state the resulting net amount in its balance sheet when, and only when, that entity:

(a) currently has a legally enforceable right to set off the recognised amounts; and

(b) intends either to settle on a net basis, or to realise the asset and settle the liability simultaneously.

40. Similarly, a bank is permitted in the UK to report to the Financial Services Authority ("FSA") for regulatory capital purposes on a net basis in relation to debit and credit balances within such systems when, and only when, certain minimum criteria are fulfilled: see section 5.3 of the FSA's Prudential Sourcebook for Banks, Building Societies and Investment Firms (BIPRU). In particular:

(a) the on-balance sheet netting agreement must be legally effective and enforceable in all relevant jurisdictions, including in the event of the insolvency or bankruptcy of a counterparty;

(b) the reporting bank must be able to determine at any time those assets and liabilities that are subject to the on-balance sheet netting agreement;

(c) the reporting bank must monitor and control the risks associated with the termination of the credit protection; and

(d) the reporting bank must monitor and control the relevant exposures on a net basis.

41. It is essential that the legal framework contemplated in the Working Document does not undermine the ability of corporate customers and banks to report on a net basis and, if the need arises, to effect a net settlement by operation of netting or set-off.

Question 47b: Do you agree that certain retail rights and liabilities and rights and liabilities relating to subordinated debt should be excluded from the suggested safeguard?

42. Care will need to be taken to ensure that excluded retail deposits are not defined in such a way as to include credit balances of smaller companies on their bank accounts. Such companies may often be members of a substantial group of companies. If their credit balances were to be excluded from the safeguards, this could undermine cash management systems of the type referred to in paragraphs 36 to 41 above.

Question 48: Please give your views on the safeguards for security arrangements suggested in section H3.

43. Again, we consider such safeguards to be essential.

Question 49a: Please give your views on the safeguards for structured finance arrangements suggested in section H4.

44. We believe that structured finance arrangements pose particular difficulties in the context of resolution. This is due to their complexity and the number of roles likely to be played by the originator or sponsor. Given this background and that structured finance structures may vary significantly between jurisdictions, it may be difficult to come up with a "one size fits all" solution likely to preserve structured financial arrangements on resolution.

45. We consider that certain key principles should be taken into account when considering the safeguard for structured finance arrangements. In particular, in our view, a safeguard for structured finance arrangements should apply beyond a partial property transfer context in order to provide meaningful protection. While concerns in respect of netting, set-off and security interests may be addressed by keeping various interests together in a partial transfer scenario, the potential disruption to structured finance arrangements is more pervasive and unable to be addressed by simply keeping the interconnecting parts of such arrangements together.

46. Structured finance arrangements are typically multilateral and involve banks in a number of roles (originator/sponsor; servicer; trustee; swap counterparty etc). They also involve

the creation and transfer of proprietary, as well as contractual, claims. As a result, the key aim of a structured finance arrangement safeguard should be to ensure that the exercise of the various resolution powers does not adversely affect the operation of those roles, or entitlements to those claims (in a partial property transfer context, as well as a whole property transfer context etc.). If these items are not protected, then the resolution regime will result in significant uncertainty in a structured finance context. This uncertainty will impact on the true sale and enforceability legal opinions upon which such transactions rely, which in turn may result in adverse consequences for the rating of relevant products and bonds and possibly in the efficiency of relevant arrangements as a funding tool in general.

47. Based on the limited information provided in the Working Document, it is unclear whether it is intended that the structured finance safeguard should provide protection with respect to the operation of all of the ancillary powers relating to the possible override of contractual provisions (rather than just some of the powers). Protection with respect to all of the powers would be preferable to preserve sufficient contractual certainty.

Question 50: Is express provision in relation to the protection of trading, clearing and settlement systems necessary, or are the provisions of the Settlement Finality Directive sufficient? If express provision is needed in this context, should the protections be drafted more broadly than those in the Settlement Finality Directive?

48. The protections conferred by the Settlement Finality Directive[4] are helpful but not sufficient to safeguard trading, clearing and settlement systems. A number of gaps would be left as explained below.

49. First, although the Settlement Finality Directive and the Financial Collateral Directive[5] will have been implemented into domestic law, it would not assist to the extent that a Member State has chosen to implement the relevant Directives more widely. For instance, the Financial Collateral Directive created a minimum regime which applies only to a financial collateral arrangement where either the collateral-taker or the collateral-provider falls into one of the categories of financial institution and other bodies listed in Article 1(2)(a)-(d) of the Directive. In common with nine other EU Member States, the UK Government decided, as a matter of policy, to implement the Directive more widely. The UK implementing regulations apply to a financial collateral arrangement between any non-natural persons. The UK approach rightly recognises the difficulty of drawing a distinction between the wholesale financial markets and financial markets generally.

50. Secondly, care must be taken that the proposed legal framework (when enacted) will not undermine the special statutory regimes which exist under domestic law in individual Member States to ensure certainty, efficiency and stability in the financial markets. This is achieved in the UK by a combination of the following statutory measures:

(a) Part VII of the Companies Act 1989 ("Part VII") and its secondary legislation, which provide protection for recognised investment exchanges, recognised clearing houses, recognised overseas investment exchanges and recognised overseas clearing houses;[6]

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4 Directive 98/26/EC as amended.

5 Directive 2002/47/EC as amended.

6 The UK has the following Recognised Investment Exchanges: EDX London Ltd, ICE Futures Europe, LIFFE Administration and Management, London Stock Exchange plc, PLUS Markets plc and The London Metal Exchange Limited. The UK has the following Recognised Clearing Houses: CME Clearing Europe Limited, Euroclear UK & Ireland Limited, European Central Counterparty Ltd, ICE Clear Europe Limited and LCH.Clearnet Limited. The UK has the following Recognised Overseas Investment Exchanges: Australian Securities Exchange Limited, Chicago Board of Trade [CBOT], EUREX [Zurich], ICE Futures U.S., Inc, National Association of Securities Dealers Automated Quotations [NASDAQ], New York Mercantile Exchange Inc. [NYMAX Inc.], NYSE Liffe US, SIX Swiss Exchange AG and The Chicago Mercantile Exchange [CIME]. The UK has the following Recognised Overseas Clearing Houses: Cassa di Compensazione e Garanzia SpA, Eurex Clearing AG, European Multilateral Clearing facility NV, ICE Clear U.S., Inc., LCH SA, SIX X-Clear and The Chicago Mercantile Exchange [CME]. See the FSA Register at http://www.fsa.gov.uk/register/exchanges.do.

(b) The Financial Markets and Insolvency Regulations 1996, which provide protection for settlement banks such as CREST settlement banks;[7]

(c) The Financial Markets and Insolvency (Settlement Finality) Regulations 1999, which implement Directive 98/26/EC and provide protection for designated systems;[8] and

(d) The Financial Collateral Arrangements (No 2) Regulations 2003 which implement Directive 2002/47/EC and provide protection for financial collateral-providers and takers.

Although arrangements protected by the above legislation may be capable of being protected through the proposed EU legal framework to the extent that those arrangements rely on security interests, set-off arrangements, netting arrangements or title transfer collateral arrangements, it is essential that the whole of such arrangements be protected. For instance, at present "market contracts", "default rules" and "default proceedings" protected by Part VII, and "default arrangements", fall outside the scope of the proposals. We recommend that the making of partial property transfers be restricted in cases that involve, or where they might affect, arrangements protected by the legislation referred to in paragraph 50 above.

51. Thirdly, it is essential to protect the default rules which lie at the heart of recognised clearing houses and recognised investment exchanges. Whilst the proposals provide a measure of protection for set-off and netting, default rules also include other powers to enable the central counterparty to take swift and effective action to achieve an orderly close out. Typically default rules provide a range of options, including powers:

(a) to cancel or reverse any outstanding instructions for the payment of cash or delivery of investments;

(b) to realise and apply all or any of the defaulter's collateral or margin;

(c) to transfer the defaulter's position under any unsettled clearing contract to another willing participant;

(d) to arrange to make one or more contracts on behalf of the defaulter for the purpose of hedging market risk to which the defaulter is exposed;

(e) to exercise on behalf of the defaulter any option granted by an unsettled clearing contract;

(f) to close out or otherwise discharge the rights and obligations of the defaulter then outstanding with respect to accepted trades;

(g) to buy in or sell out instruments deliverable by or to the defaulter;

(h) to effect corresponding contracts in relation to the defaulter's unsettled contracts;

(i) to designate the currency of account and to convert any sum payable by or to the defaulter into that currency;

(j) to take such other action with regard to any unsettled clearing contract of the defaulter as the central counterparty may deem necessary to effect an orderly discharge of the defaulter's obligations;

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7 CREST settlement banks are key providers of the intra-day liquidity to CREST members (including market makers) required to enable the CREST system to function. The daily average value of securities moving through the CREST system in January 2011 was in the order of £1,462 billion, while the daily average value of cash moving through CREST was in the order of £913 billion, including self-collateralising repo transactions: www.euroclear.com. Such cash payments are only possible as a result of the credit and liquidity facilities which are provided by CREST settlement banks to CREST participants.

8 Systems designated under the Settlement Finality Regulations include CHAPS Sterling, Continuous Linked Settlement (CLS) System, BACS, Cheque Clearing System and Credit Clearing System, and systems operated by LCH.Clearnet Ltd, Euroclear UK and Ireland Ltd., ICE Clear Europe and European Central Counterparty Limited.

(k) where the default results in a net loss, to allocate that loss amongst other participants to the extent that it cannot be met out of the defaulter's margin or its clearing or guarantee fund contribution.[9]

52. All powers conferred by default rules are protected by Part VII and need to be equally protected under the proposed EU legal framework. It is widely accepted that the default rules of clearing houses in London worked well in dealing with the immediate aftermath of the Lehman administration. It makes no sense to risk undermining market confidence in the operation of such default procedures.[10]

53. Fourthly, although a recognised clearing house or recognised investment exchange will be protected by Part VII, it will often not be a designated system protected under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999. While approximately 27 UK and overseas clearing houses and exchanges are recognised under Part VII, only approximately 9 systems are designated under the above 1999 Regulations.

54. We understand that the Dodd-Frank Act includes express safeguards for clearing organisations.[11]

Questions in Annex 1 relating to debt write down as an additional resolution tool

General

55. This response considers the proposals regarding debt write down as an additional resolution tool in Annex 1 to the Working Document (referred to in this response as the "bail-in proposals"). These proposals would allow a failing bank to write off some or all of its indebtedness (or to convert that indebtedness into equity) as part of the resolution process. The question of what debt should be included in the bail-in proposals is considered below as is the question of whether the bail-in should only apply to debt instruments which contain contractual provisions allowing such write-off or conversion (the "targeted approach") or whether the bail-in regime should be imposed by statute on all debt falling within the regime, regardless of the contractual terms (the "comprehensive approach"). In particular, we note that:

(a) equity would be written off, and subordinated debt would either be written off or converted into equity, prior to the exercise of any powers to write off (or convert into equity) non-subordinated debt; and

(b) debt under existing instruments would not be subject to the bail-in proposals but would be "grandfathered".

56. We also note that, at present, the bail-in proposals are at a high level and are lacking in detail in many important respects. However, even in their current form, the proposals raise considerable concerns, particularly in relation to the impact on creditor rankings and recoveries in insolvency, as well as the uncertainty caused by the potential interference

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9 This summary is based on the default rules of European Central Counterparty Limited: see www.euroccp.co.uk (click on legal and regulatory)

10 Part VII also includes a number of other helpful provisions. In particular, it establishes the principle that the proceedings of a recognised clearing house or recognised investment exchange take precedence over insolvency procedures (section 159). It modifies insolvency law to the extent stated in sections 158, 164, 165, 174 and 175. It provides that an English court may not assist a foreign court under section 426 of the Insolvency Act 1986 to do anything which would be contrary to Part VII (section 183). It also imposes on a person who has control of a defaulter's assets a duty to give assistance for the purpose of default proceedings (section 160).

11 We understand that Section 210(8)(G) of the Dodd-Frank Act provides that a receiver of a covered financial company which is a party to any qualified financial contract cleared by or subject to the rules of a clearing organisation, is required to use its best efforts to meet all margin, collateral, and settlement obligations of the covered financial company that arise under qualified financial contracts (subject to certain exceptions), as required by the rules of the clearing organisation when due. If the receiver fails to satisfy any such margin, collateral, or settlement obligations under the rules of the clearing organisation, the clearing organisation will have the immediate right to exercise, and will not be stayed from exercising, all of its rights and remedies under its rules and applicable law with respect to any qualified financial contract of the covered financial company. This includes the right to liquidate all positions and collateral of such covered financial company under the company's qualified financial contracts, and suspend or cease to act for such covered financial company, all in accordance with the rules of the clearing organisation.

with contractual and property rights. There are significant differences in the insolvency and restructuring laws of the different Member States. While harmonisation is a noble aim, it may not prove possible in practice at least in the foreseeable future. Hence proposals that work in the context of the insolvency laws of one jurisdiction may be inappropriate in another; in other words, "a one-size fits all" solution may not be achievable. The proposals could also have an impact on the cost of funds for a bank. It has been suggested that the bail-in proposals could lead to an increase in the borrowing costs of banks which would be unwelcome in the current economic climate and would also have an impact on the cost and affordability of funds for customers.

57. Hence a very strong case would need to be made out before any such proposals were introduced. We are pleased to note that the Working Document proposes a full impact assessment and we look forward to seeing the results of this as we are not convinced, at present, that the benefits of the bail-in proposals would outweigh the adverse consequences arising from them.

58. This response focuses on the legal, rather than the commercial, implications of the bail-in proposals. Furthermore, we have not sought to address every question (or follow the order of the questions) but instead we have considered what we believe to be the key legal concerns arising from the proposals, based on our experience as to how debt write-downs and conversions into equity work in a consensual restructuring of a corporate debtor.

Co-ordination with Basell III and US regime

59. It is essential that any EU proposals are consistent with, and work alongside, other international developments including those under Basell III and the US framework (including the Dodd-Frank Act). In particular, the proposals would need to work alongside contingent convertible capital instruments ("cocos"). We note that the Commission is aware of this (and the need to avoid overlapping regimes or unnecessary complexity) but we suspect this is going to be difficult to achieve in practice, particularly given the "moving goal-posts" factor.

Trigger

60. The key questions here are:

(a) what should the trigger be for the exercise of the bail-in proposals;

(b) who should exercise that trigger; and

(c) who should be responsible for deciding how the bail-in proposals should be exercised if there are any discretions (for example in relation to what debt is subject to the bail-in and whether that debt should be written off or converted into equity).

61. Given the potential impact on creditor rights in insolvency, the trigger for conversion needs to be clear, not subjective and extreme (including, for example, a real threat to financial stability). We note that Annex 1 suggests that the trigger should be the same as for the other resolution tools and we think that this is right. Although it may be argued that an earlier trigger could allow for a greater prospect of rescuing the bank as a going concern, it is essential (given the consequences of the proposals) that this is only used as a last resort. Of the options considered in Section F1 of the Working Document, we consider that the quantitative conditions in Options 1(b) and (c) (which combine both solvency and liquidity) should be linked with the supplementary conditions under Option 3 (i.e. that no other measures are likely to avert failure and that the application of resolution tools is in the public interest). If the Commission were to adopt the contractual approach to bail-in referred to below, any debt instruments capable of bail-in issued after the legislation comes into force, could be drafted so as to refer to and recognise the trigger.

62. In the case of cross-border groups, there are clearly questions as to which authority should exercise the powers. We consider that the college of supervisors should agree, as

part of the resolution plan for the group, which authorities should have a role to play in initiating the bail-in and the roles that those authorities should have in executing the regime.

Interaction with other resolution tools

63. Another key question is how the bail-in proposals would fit with the other resolution tools. We note that Annex 1 suggests that they would sit alongside traditional tools but would be used where the other options are not sufficient. We agree that the bail-in proposals are unlikely to address the issues in respect of the failing bank if used in isolation and so should only be used as part of a wider restructuring. However, we wonder whether the bail-in proposals are necessary given some of the other tools. For example (and subject to suitable safeguards and compensation provisions), it would be possible to leave behind certain debt in a so-called "bad bank" while transferring other debt to a "good bank" (or the reverse could be done, transferring the debt that is to suffer a write-down into a new vehicle). Annex 1 suggests that such a split may not be possible given the size and complexity of a particular bank's asset or trading book or the intra-group relationships but these are also reasons why a bail-in might prove complex, particularly if there is any discretion as to what debt would be subject to the bail-in. Given the potential impact on contractual rights, we suggest that the trigger be as late as possible while not being actual insolvency. It may be appropriate to consider the same test as the Basel Committee has proposed for subordinated debt when it is to be written down or converted into equity.

Statutory or contractual approach

64. Annex 1 asks whether any bail-in regime should be imposed by statute (i.e. special banking legislation forming part of the national law of the member state in question, as in the case of the Irish Credit Institutions (Stabilisation) Act)[12] or whether it should only apply to particular instruments which, pursuant to their contractual terms, could be written off or converted into equity on the proposed trigger[13]. There are advantages and disadvantages of each approach, but we consider that the contractual route would be the preferred approach, provided that it did not have adverse tax consequences. The tax implications of each approach would need to be carefully considered.

65. A contractual approach may be easier for investors to understand, would be more certain in relation to outcome (for example in relation to whether the debt is to be written off or converted into equity as this could be written into the instrument) and may better reflect investors' commercial expectations (particularly as the possibility of a write-down could be priced into the instrument in question). However, there could be a debate as to how such provisions should be drafted and different issuers may include different language, thus adding to the uncertainty. Furthermore, contractual terms may need to be revised to keep up with legislative changes (leading to more grandfathering concerns as discussed below). If regulatory approval were required (for example before precedent wording is established), this may delay issuance. Finally, a contractual write down provision could alter the expected tax outcome for a debt "carrying instrument" (whereas a statute based regime may make it easier to retain a debt characterisation of the carrying instrument for tax deductibility purposes).

66. The main disadvantage of a statutory regime is the issue of recognition outside of the member state in question. To give a topical example, there is a very real concern as to whether an Irish statute can discharge or otherwise affect an English law governed debt.[14] In a European context, much will depend on whether the bail-in procedure in question falls under the scope of the Credit Institutions Winding Up Directive[15] (the "Directive") as a winding up proceeding or a reorganisation measure. If it does, all EEA member states will be required to recognise and give effect to the procedure pursuant to Articles 3 and 10 of

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12 The Working Document refers to this as the "comprehensive approach" but we prefer the label "statutory approach" as it is possible that the legislation in question could be selective as to what type of debt should be subject to the bail-in proposals.

13 The Working Document refers to this as the "targeted approach".

14 While the legislation in question would be effective in Ireland, the question is whether a creditor could seek to attach assets in England on the basis that the Irish provisions do not have any effect there.

15 Directive 2001/24/EC.

the Directive. This will turn upon the precise drafting of the national legislation. To give two examples:

(a) the appointment of the receivership committee in Iceland in respect of certain of the Icelandic banks in October 2008 under emergency law, Act No. 125/2008 on the Authority for Treasury Disbursements due to Unusual Financial Market Circumstances etc was not considered to be a winding up proceeding or a reorganisation measure under the Directive and so did not have automatic recognition across the EEA[16];

(b) although it has not yet been tested by the courts, it appears that a subordinated liabilities order under the Irish Credit Institutions (Stabilisation) Act should be a reorganisation measure under the Directive which would be recognised across the EEA.

67. Even if the bail-in procedure does fall within the scope of the Directive, this is only binding on EEA member states and so the provisions may not be effective outside the EEA (for example in Asia and the US). The question of whether the provisions will be enforceable in these jurisdictions will depend on the conflict of law rules of the jurisdictions in question including, for example, whether (and if so how) those jurisdictions have implemented the UNCITRAL Model Law on cross-border insolvency proceedings (assuming the bail-in procedure is treated as an insolvency proceeding for the purposes of, and credit institutions are not excluded from the scope of, such implementing legislation). Obviously third countries that do not recognise a statutory procedure could seek to block and apply assets of the relevant institution (and, though much less likely, those of the resolving State) in order to put parties back in the position they would have been without the bail-in measure.

68. If the bail-in procedure does not fall within the scope of the Directive, there may be recognition issues even within the EEA. In England, for example, there is a common law rule (established by the Court of Appeal in *Gibbs v La Societe Industrielle et Metaux* [1886-1890] All ER 804 and endorsed by the Privy Council in *National Bank of Greece and Athens SA v Metliss* [1958] AC 509) to the effect that only an English insolvency proceeding can effect or discharge an English law governed debt. Although the rule has been much criticised and some recent cross-border insolvency cases seem to cast doubt upon it, it is likely that the rule could only be finally laid to rest by the Supreme Court.

69. Finally, there would be a question whether a purely statutory scheme – which might impose bail-in on creditors whose lending terms did not contemplate compulsory write-of or conversion and shareholders, whose terms of issues did not contemplate that their rights would be extinguished without compensation – would be compatible with the European Convention of Human Rights, in that this would expropriate or diminish the property rights of the creditors and shareholders in the potential insolvency, without compensation. While there are general provisions for compensation on the basis "no worse off than in a liquidation", it is inherent in bail-in that rights applicable in the future, including in a liquidation, are changed and either removed or diminished by the bail-in. Also it is not clear how, even if liquidation-based compensation were allowed to the holders of bail-in securities, this could be funded, except by a public body. These issues would not arise with a contractual scheme, save to the extent that the trigger was a statutory action or that lack of good faith in the exercise of the trigger could still amount to expropriation.

70. Weighing up the balance on the points made above, we suggest that the contractual route would be more effective, less open to legal challenge, more flexible and more likely to achieve market acceptance.

What debt should be included?

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16 This view was confirmed by the Icelandic FME in a statement in October 2008. The Icelandic banks have since been placed into winding up proceedings which do fall under the scope of the Directive and so do have EEA recognition.

71. We note that it is proposed that equity would be written off, and subordinated debt would either be written off or converted into equity, prior to the exercise of any powers to write off (or convert into equity) non-subordinated debt. We assume that this could include hybrid capital instruments and cocos. This makes sense and is consistent with the principles in a consensual restructuring where "out of the money" stakeholders (such as existing equity) suffer the losses prior to more senior creditors.

72. We also note that it is not proposed that debt under existing instruments would be subject to the bail-in proposals (hence existing debt would effectively be "grandfathered"). This makes sense from the point of view of protecting the legitimate expectations of investors. However, it will result in a two-tier system (depending on when the debt instrument was created) which will be a significant departure from the pari passu principle that would usually apply in an insolvency process. Investors may seek to structure new funding as an extension or refinancing of grandfathered arrangements in order to fall within the exception. It also raises questions as to what should happen to existing statutes which do not seek to grandfather existing debt (such as the Irish legislation) if the European proposals are pursued.

73. The real question, though, is what new, non-subordinated (or ordinary unsecured) debt[17] should be included in the bail-in proposals. In this context, while we appreciate that there may be policy reasons for treating certain classes of creditor (such as retail depositors and swap counterparties) differently, this will result in a significant departure from the usual pari passu principle that applies in an insolvency process and, in effect, will lead to a different order of priorities (or bankruptcy ladder) in a distressed situation. This might lead to perceptions of unfairness (we agree with the concerns expressed in Annex 1 regarding market participants seeking to restructure debt so as to fall within an excluded category).

74. We do not comment on whether deposits (retail or wholesale) should be excluded from the proposals as this is a policy question rather than a legal one. We have considered, however, how certain other types of unsecured creditor would be treated in a typical consensual restructuring as this may provide some insight into how any bail-in proposals should be structured. This does lead to a problem, however. As further explained below, no two restructurings are the same and, with a consensual process, the rules can be modified to fit the particular facts of any case. However, if the statutory approach to a bail-in is adopted, we consider that clarity and transparency is essential in this regard. Although giving a discretion to the authority as to what debt should be included, and whether the debt should be written off or converted into equity, will lead to greater flexibility, it will also lead to great uncertainty in the market. If there is going to be a departure from the usual bankruptcy order of priority, the new rules need to be clearly set out, even if this results in less flexibility for the authorities. This is where a comparison with a consensual restructuring breaks down.

75. Generally, trade creditors and employees are not compromised as part of a consensual restructuring but continue to be paid in full[18]. In the context of a bank, this would include (for example) suppliers of electricity and stationery, IT systems, software and hardware and data processing services. Given that the bank is likely to need the continued supply of such goods and services in order to continue as a going concern, it would make sense not to include such creditors in the bail-in proposals.

76. Hedging counterparties are more difficult. The treatment of such creditors in a consensual restructuring of a corporate debtor varies widely, depending on the particular restructuring proposals. If (as is usually the case) the hedging agreements have been entered into to hedge the interest rate or currency exposure in relation to the finance documents, and those finance documents are being compromised as part of the restructuring, it is usual for the old hedging agreements to be terminated and new ones to be entered into in respect of the restructured debt. In other cases, the existing hedging agreements are left in place. In some cases, the swap agreements are closed out and the exposure of the

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17 Even though the effect of insolvency may be to render shareholder rights valueless, that cannot be known at the date of commencement of a resolution or an insolvency process.

18 There have been exceptions where there are key trade creditors with very substantial exposures.

debtor under the swap agreements is treated on a pari passu basis with financial creditors of the same class. In the case of a bank, however, the swap agreements are more likely to be part of the bank's trading book and so, on balance, we consider that swap counterparties should be treated in the same way as the bank's trading creditors and excluded from the proposals. The same should apply in relation to repurchase agreements (repos) and security lending agreements.

77. We also consider that debt owed to market infrastructure bodies (payment and settlement systems and clearing houses) should be excluded, both because this is protected by separate European legislation and for reasons of market stability. Liabilities under a master netting agreement should also be excluded as a consequence of the protections for close-out netting in the Financial Collateral Directive.

78. We do not consider that secured creditors (of any kind and regardless of whether the security is over financial collateral or other assets) should be included in the bail-in proposals, as this would run entirely counter to the European Union approach to the taking of security in the financial markets: for instance, as exemplified in the Financial Collateral Directive. It would also place European banks at a disadvantage in cost of capital for projects (eg building offices) where security arrangements might be expected to reduce funding costs. There seems no justification for reducing the range or raising the cost of collateralised transactions for financial institutions, when not doing so for other types of business: this seems a disproportionate move. If secured transactions were to be affected in any way, the bail-in proposals would need to ensure that they received a better outcome than unsecured creditors to reflect their security and this would be complex to achieve. Furthermore, agency arrangements (where the bank acts as agent for a third party) and custody arrangements (where the bank holds assets or money on trust for a third party) would need to be protected. Even then it seems doubtful whether such proposals would find acceptance. Their impact, even if accepted, could be damaging to the EU economy.

79. We appreciate that, as a result of these exclusions, if bail-in were extended to unsecured creditors, the main burden of the bail-in proposals fall on bondholders and other banks lending in the wholesale market. In relation to the latter, the risk of a "domino effect" should not be overlooked. In a time of global financial crisis, the fact that a bank lender may have all or part of its debt written off or converted into equity will have capital consequences for that bank lender. In relation to the former, although there may be a popularist view that investors who lent the money that enabled banks to make bad loans should suffer some of the pain before the tax-payer steps in, it should be remembered that the bondholders will often themselves be banks (leading to the "domino effect") or the bonds could be held by pension funds, insurers and other asset managers leading (ultimately) to an impact on tax-payers in any event. Given the question of compensation funding and the costs involved, we consider that any diminution of the rights of ordinary unsecured creditors and secured creditors are matters best left to individual schemes of compromise which can be tailored to individual circumstances and which are not imposed by a public body over-riding the contractual rights of the parties.

Cross-border groups and equity conversions

80. A bail-in at a parent company level may well be more attractive than a bail-in at a subsidiary level. Indeed, in light of the corporate structures of many systemically important financial institutions, it may be impracticable or inappropriate to issue new equity at the level of the debt, particularly where the entity with the debt obligation is a wholly owned subsidiary of another entity in the group. Where the subsidiary and the ultimate parent are in the same jurisdiction, it should not be too difficult for the legislation to provide that the equity will be issued by the ultimate parent company. However, where the subsidiary and the ultimate parent are in different jurisdictions, matters become more complex. Whether a bail-in at group level could be "imposed" by a supervisory authority at a lower level is doubtful. It may be easier if there was a group level supervisory authority but we doubt whether this would be achievable. Again this militates in favour of a contractual approach.

81. Other issues to consider include the impact on change of control provisions in contractual documents (and whether the issue of new equity could trigger termination rights which might be recognised in jurisdictions that are not bound by the bail-in proposals), whether the issuing vehicle has sufficient authorised but unissued capital (unless such provisions are to be disapplied by the bail-in statute) and whether the holder of the debt is able to hold equity in the proposed entity. All these arguments are much less likely to succeed if the bail-in relates only to securities where the terms of issue provide for bail-in.

Super-priority funding

82. Preferred ranking for investors who are willing to lend new money in the period post resolution would make sense (and would be consistent with the custom and practice in a consensual restructuring) but would need to be carefully prescribed so that existing lenders were not able to "staple" existing indebtedness to the new money being lent. Furthermore, such investors should only have priority over other unsecured creditors; we consider that it would be a major infringement of property rights if such investors were given priority over secured creditors. If and to the extent that new money is lent as part of a formal insolvency process (which may have been commenced in parallel with, or following, a resolution, such new money would (as a matter of English law and, we suspect, under the insolvency laws of many Member States) have priority over unsecured debts as "expenses" of the insolvency process in any event. Hence special rules might not be needed where resolution is integrated with national insolvency rules.

Membership of the Working Party of the CLLS Financial Law Committee

This response has been prepared, on behalf of the CLLS Financial Law Committee, by the following working party:

Geoffrey Yeowart	-	Hogan Lovells International LLP (Chairman of the working party and Deputy Chairman of the CLLS Financial Law Committee)
Dorothy Livingston	-	Herbert Smith LLP (Chairman of the CLLS Financial Law Committee)
Jennifer Marshall	-	Allen & Overy LLP (Member of the CLLS Insolvency Law Committee)
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Details of the individuals and firms represented on the Financial Law Committee are set out in the Appendix.

Financial Law Committee
The City of London Law Society

7 March 2011

THE CITY OF LONDON LAW SOCIETY
FINANCIAL LAW COMMITTEE

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