

Committee on Payment and Settlement Systems
And
Board of the International Organization of Securities Commissions

17 September 2012

CPSS / IOSCO CONSULTATIVE REPORT “RECOVERY AND RESOLUTION FOR FINANCIAL MARKET INFRASTRUCTURES”

Introduction

Bacs Payment Schemes Limited (Bacs) is pleased to respond to the above consultation. Founded in 1968 Bacs is a not-for-profit, membership-based industry body is owned by sixteen of the leading banks and building societies in the UK, Europe and US¹. Bacs is responsible for the schemes behind the clearing and settlement of automated payments in the UK including Direct Debit and Bacs Direct Credit and has been maintaining the integrity of payment related services for over 40 years.

The UK Government acknowledges that the Bacs payment system is of critical importance to the UK financial system and has confirmed that it meets the recognition criteria set out in the Banking Act 2009. Bacs is, therefore, regarded as an FMI recognised as systemically important by HMT and overseen by the Bank of England.

Since its inception, over 90 billion transactions have been debited or credited to British bank accounts via Bacs. And in 2011 over 5.7 billion UK payments were made this way with a total value of £4.3 trillion.

Bacs works closely with the Payments Council under a ‘contracted scheme’ arrangement for the benefit of the UK payments industry and the end users of the UK payment systems. In addition to this response Bacs has contributed to, and supports, the Payments Council’s response to this consultation.

Response

The consultation is similar in intention, although not in structure, to the UK Treasury’s consultation paper “Financial Sector Resolution: broadening the regime”. Whilst the consultation is aimed FMIs from an international perspective this response focuses solely on the schemes operated by Bacs.

Bacs, as a Non-CCP FMI, consists of three distinct elements – the scheme (operated by Bacs Payment Schemes Limited), infrastructure (provided under contract by a third party supplier – currently VocaLink) and settlement (provided by the Bank of England). Our response to this consultation encompasses the first two elements (i.e. scheme and infrastructure) and we consider the settlement aspect as out of scope of the consultation.

¹The members of Bacs have contributed to this consultation response although the Bank of England have not participated in the formation of Bacs’ view.

We believe that there is a strong incentivisation of the owners and members of payment systems to ensure continuity of services. Disruption in service provision by a Non-CCP FMI would cause the member / owner disruption and reputational damage as they serve the customer. Continuity of service is, therefore, a key objective for Bacs.

The provisions of the new CPSS / IOSCO Principle 15 'General Business risk' require a FMI to '...identify, monitor and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialise. Further liquid net assets should at all times be sufficient to ensure a recovery or orderly wind down of critical operations and services'. As a FMI recognised as systemically important by HMT and overseen by the Bank of England Bacs has a 2012/13 Observation that states 'Bacs should develop a plan to ensure no disorderly disruption to essential services in the event of financial difficulties are experienced by the Scheme company. The plan will also include Bacs holding appropriate levels of liquid net assets which should be equal to at least six months of operating expenses plus a reasonable buffer. Such a development would be a direct and significant enhancement to the focus of this aspect of the consultation.

We regard the risk of a scheme company such as Bacs failing are very small. Bacs is a small value company and is limited by guarantee. We do not have large value assets or technical intellectual property. We do not believe that the transition to a new scheme company in a short timescale following a failure to be difficult to manage with the above provisions regarding holding of liquid net assets and a plan to ensure no disorderly disruption to essential services being established. Such an arrangement may well be via a bridge institution.

Although dedicated to the execution of Bacs' role and responsibilities the majority of Bacs' staff are employed by UK Payments Administration Limited under a service supply arrangement. If anything were to happen to UK Payments Administration Limited the company (Bacs) would make arrangements to re-employ staff directly.

Although the risk of the failure of our infrastructure supplier is very small Bacs has existing contractual 'step in' rights with its infrastructure supplier should the supplier fail. The provision of infrastructure by our supplier is grounded upon robust contractual provision and strong day to day operational relationship.

We believe that any proposals to enhance or strengthen the regulatory framework ought to be sufficiently flexible to ensure that application to a particular Non-CCP FMI is proportionate to the systemic risk brought by the scheme operated.

It is our view that it is the responsibility of the Non-CCP FMI, as a System Operator that has chosen to outsource the provision of infrastructure services to a distinctly separate company, to ensure the continuity of service provision should the supplier experience difficulties or fail (as Bacs has done with Step In rights).

We believe that any proposals to enhance or strengthen the regulatory framework should be consistent with other current regulatory developments including at a national level.

Mike Chambers
Managing Director