FSB FINANCIAL STABILITY BOARD

Reducing the moral hazard posed by systemically important financial institutions

FSB Recommendations and Time Lines

20 October 2010

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FSB Recommendations and Time Lines

I. Overall policy framework to reduce moral hazard risk

This report recommends a policy framework for addressing the systemic and moral hazard risks associated with *systemically important financial institutions* (SIFIs) whose disorderly failure, because of their size, complexity and systemic interconnectedness, would cause significant disruption to the wider financial system and economic activity.

The report sets out recommendations for improving the authorities' ability to resolve such institutions in an orderly manner, without exposing tax-payers to loss, while maintaining continuity of their vital economic functions. This will require changes to resolution regimes and tools at national levels, and legislative changes to enable resolution authorities to co-ordinate in cross-border resolutions. The report recommends that in particular financial institutions that are clearly systemic in a global context (G-SIFIs) should have higher loss-absorbency capacity than the minimum levels agreed in Basel III. These institutions must also be subject to more intensive co-ordinated supervision and resolution planning to reduce the probability and impact of their failure.

SIFIs vary in their structures and activities, and hence in the nature and degree of the risks they pose to the international financial system. Judgement is therefore needed both in determining the group of G-SIFIs to which this framework is to be applied, and for each of these institutions, the magnitude and combination of added loss absorbency measures that will deliver the necessary risk reduction. The FSB and relevant national authorities will exercise judgment on the former drawing on quantitative and qualitative indicators developed by international standard setting bodies and input from national authorities. With regard to the latter, the FSB will establish a process of peer review to assess whether the measures are being applied consistently on a country-by-country basis and commensurate with the risk posed on a G-SIFI-by-G-SIFI basis.

As experience is gained, the FSB will review how to extend the framework to cover a wider group of SIFIs, including financial market infrastructures, insurance companies and other non-bank financial institutions that are not part of a banking group structure.

Recommendations

1. All FSB jurisdictions should put in place a policy framework to reduce the risks and externalities associated with domestic and global systemically important financial institutions in their jurisdictions.

2. The policy framework for SIFIs should combine:

   - a resolution framework and other measures to ensure that all financial institutions can be resolved safely, quickly and without destabilising the financial system and exposing the taxpayer to the risk of loss;

   - a requirement that SIFIs and initially in particular global SIFIs (G-SIFIs) have higher loss absorbency capacity to reflect the greater risks that these institutions pose to the global financial system;

   - more intensive supervisory oversight for financial institutions which may pose systemic risk;

   - robust core financial market infrastructures to reduce contagion risk from the failure of individual institutions and

   - other supplementary prudential and other requirements as determined by the national authorities.

3. Additionally, home jurisdictions for global SIFIs (G-SIFIs) should:

   - enable a rigorous co-ordinated assessment of the risks facing the G-SIFIs through international supervisory colleges;

   - make international recovery and resolution planning mandatory for G-SIFIs and negotiate institution-specific crisis cooperation agreements within cross-border crisis management groups (CMGs);

   - subject their G-SIFI policy measures to review by the proposed Peer Review Council.

Processes for implementation

4. Resolution regimes and supervisory frameworks and policies will be the subject of FSB thematic or country peer review assessments for all member jurisdictions. They will also be assessed as part of the IMF/World Bank FSAP.

5. FSB member countries that are home to G-SIFIs commit to participation in the G-SIFI Peer Review Council process.

II. Global SIFIs should have higher loss absorbency

Global SIFIs are institutions of such size, market importance, and global interconnectedness that their distress or failure would cause significant dislocation in the global financial system and adverse economic consequences across a range of countries. Standards for large global financial firms should be commensurate with the system-wide expected losses that their failure would produce.

Recommendations

6. G-SIFIs should have loss absorption capacity beyond the minimum agreed Basel III standards. They should have a higher share of their balance sheets funded by capital and/or by other instruments which increase the resilience of the institution as a going concern.

7. Depending on national circumstances, this greater capacity could be drawn from a menu of viable alternatives and could be achieved by a combination of a capital surcharge, a quantitative requirement for contingent capital instruments and a share of debt instruments or other liabilities represented by "bail-inable" claims, which are capable of bearing loss at the point of non-viability, i.e. within resolution, thus enabling creditor recapitalisation and recovery while maintaining vital business functions.

8. In some circumstances, the FSB may recognise that further measures, including liquidity surcharges, tighter large exposure restrictions, levies, and structural measures could reduce the risks or externalities that a G-SIFI poses.

Processes and timeline for implementation

9. The Basel Committee is asked to complete by mid-2011 a study of the magnitude of additional loss absorbency that G-SIFIs should have, along with an assessment of the extent of going-concern loss absorbency which could be provided by the various proposed instruments.

10. The FSB and its members, will examine the legal, operational, market capacity and other issues bearing on the viability of contractual and statutory bail-in (see para 25 Section III on resolution below), and monitor the ongoing capacity of markets for these instruments. They will report on their findings by mid-2011.

11. Drawing on the above analyses, the FSB, in consultation with the BCBS, will recommend an additional degree of G-SIFI loss absorbency and the instruments by which these can be met by December 2011.

III. SIFI resolution must be a viable option

Any effective approach to addressing the "too big to fail" problem needs to have effective resolution at its base. Such a regime must be able to prevent the systemic damage caused by a disorderly collapse without exposing the taxpayer to the risk of loss. To do this, the national regime must, as a basic starting point, provide the authorities with the tools to intervene safely and quickly to ensure the continued performance of the firm's essential financial and economic functions, including uninterrupted access of depositors to their funds wherever they are located, and to transfer and sell viable portions of the firm while apportioning losses, including to unsecured creditors, in a manner that is fair and predictable and so avoids panic or destabilization of financial markets. While some jurisdictions have enacted or are considering legislative changes, most existing arrangements do not yet meet those objectives. Internationally, impediments to cross-border resolution derive from major differences in national resolution regimes, absence of mutual recognition and agreements for joining up

home and host regimes, and lack of planning for handling stress and resolution. The complexity and integrated nature of group structures and operations, with multiple legal entities spanning national borders and business lines, make rapid and orderly resolutions under current regimes virtually impossible.

Recommendations

Comprehensive resolution regimes and tools

12. All jurisdictions should undertake the necessary legal reforms to ensure that they have in place a resolution regime which would make feasible the resolution of any financial institution without taxpayer exposure to loss from solvency support while protecting vital economic functions through mechanisms which make it possible for shareholders and unsecured and uninsured creditors to absorb losses in their order of seniority.

13. Each country should have a designated resolution authority responsible for exercising resolution powers over financial institutions. The resolution authority should have the powers and tools proposed in the FSB note on Key Attributes of Effective Resolution Regimes and in the BCBS Cross-border Bank Resolution Group (CBRG) Recommendations and the flexibility to tailor resolution measures to the specific nature of financial institutions' domestic and international business activities.

14. National authorities should consider restructuring mechanisms to allow recapitalisation of a financial institution as a going concern by way of contractual and/or statutory (i.e., within-resolution) debt-equity conversion and write-down tools, as appropriate to their legal frameworks and market capacity. Such mechanisms require that a robust resolution regime be in place.

Effective cross-border coordination mechanisms

15. The mandates of resolution authorities should be framed so that they are fully obliged to seek cooperation with foreign resolution authorities. Jurisdictions should provide resolution authorities with the capacity in law to cooperate and to share information across borders. They should review and, where appropriate, eliminate those provisions in national laws that hamper fair cross-border resolution such as depositor priority rules within resolution that give preferential treatment to domestic depositors over those of foreign branches, or that trigger automatic action in the domestic jurisdiction as a result of official intervention and/or the initiation of resolution or insolvency proceedings in another jurisdiction, while reserving the right to act on their own initiative in the absence of effective cooperation and information sharing. When resolving a SIFI, home authorities should take into account the effects on host countries.

16. For each G-SIFI, there should be institution-specific cooperation agreements between relevant home and host authorities. These agreements should provide for clarity as regards the roles and responsibilities of home and host authorities in planning for and managing the resolution of the institution, and should be

underpinned by national law that provides both the mandate and the capacity to co-operate and share all relevant information among home and host supervisors, central banks and resolution authorities. Authorities should explore avenues to formalise these agreements and over time make them more binding. The agreements should, inter alia:

- establish the objectives and processes for cooperation through crisis management groups, and provide for holding at least annual meetings including top officials of the home and relevant host authorities to assess the robustness of the G-SIFIs Recovery and Resolution Plans;
- define the roles and responsibilities of the authorities at all appropriate stages of a crisis; and
- set out the legal bases in the respective national laws and the modalities for information sharing during good times and in crisis, including sharing with any key host authorities that are not represented in the crisis management group.

Sustained recovery and resolution planning

17. All financial institutions should be resolvable in an orderly manner and without taxpayers' solvency support under the applicable resolution regimes in the jurisdictions in which they operate. Recovery and resolution plans that assess G-SIFIs resolvability should be mandatory. Recovery and resolution planning should be a continuing exercise.

18. Authorities should have the powers, exercisable under clear criteria, to require a financial institution to make changes to its legal and operational structure and business practices to facilitate the implementation of recovery and resolution measures. Should operations in other jurisdictions be affected by such proposed changes, there should be adequate coordination with the relevant host supervisors.

19. Resolvability under existing resolution regimes and cooperation agreements should be an important consideration in host authorities' determination of any changes to be required in a hosted institution's operations. Host jurisdictions may wish to decide, in light of the systemic significance (or otherwise) of the hosted foreign institution for their financial system and economy, and in light of the applicable resolution regimes and cooperation agreements, whether to permit a branch presence, or to permit a subsidiary presence, so that resolution is a local responsibility, but with co-ordination with the home (or group) regulatory and resolution authority.[1]

20. Where a SIFI has multiple significant legal entities, it should maintain information on a legal-entity basis; minimise any undue intra-group guarantees, in particular undue use of blanket guarantees; ensure that service agreements are appropriately documented and cannot be abrogated by the service provider in resolution; and ensure that significant global payment and settlement services are legally separable and continued operability is ensured.

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[1] For members of the European Union, the term "jurisdiction" will, as appropriate, refer to the European Union as one jurisdiction, and the freedom for institutions to establish branches and subsidiaries is guaranteed by the Treaty on the Functioning of the European Union and cannot be restricted in a way that contravenes the Treaty.

Processes and timeline for implementation

21. By end-March 2011 all FSB members, using the CBRG Recommendations and the FSB draft Key Attributes of Effective Resolution Regimes, will report their assessment of:

    - their capacity to resolve SIFIs operating in their jurisdictions under their existing resolution regimes; and
    - the legislative and other changes to national resolution regimes and policies needed to accomplish effective resolution; this includes in particular changes needed in order to (i) eliminate provisions that hamper cross-border cooperation or trigger automatic consequences as a result of interventions in other jurisdictions, (ii) to oblige seeking cooperation with foreign resolution authorities and (iii) to provide the powers to require changes to an institution's structure and business practices.

22. The FSB will set out by mid-2011 criteria for assessing the resolvability of SIFIs, which should be taken into account in determining the systemic risk of a G-SIFI, and the attributes of effective resolution regimes, including the minimum level of legal harmonisation and legal preconditions required to make cross-border resolutions effective. The work will draw on available principles and recommendations and be undertaken in close cooperation with the BCBS CBRG, IMF, IAIS, IOSCO and other bodies to take account of the nature of financial activities in different sectors, and be subject to public consultation.

23. Jurisdictions should use these criteria and attributes to set out their plans to address areas where legal or regulatory changes or improvements to their resolution policies are needed, by end-2011.

24. The FSB, in consultation with the Basel Committee's Cross-border Bank Resolution Group (CBRG), will undertake a thematic peer review on the implementation of the attributes of effective resolution regimes in 2012.

25. A working group will be established to examine the legal and operational aspects of both contractual and statutory bail-in mechanisms providing for debt to equity conversions and/or write-downs in resolution. Building on the work of the BCBS, the working group will consider the market capacity and impact of such mechanisms and the legal requirements and contractual terms for their use in group structures and in a cross-border context. The working group will present its findings and recommendations by mid-2011.

26. By end-2011, relevant home and host authorities should have drawn up for all G-SIFIs institution-specific cooperation agreements that specify the respective roles and responsibilities of the authorities at all stages of a crisis.

27. The FSB will assess and report by end-2011 on the progress in the development of institution-specific recovery and resolution plans for G-SIFIs. It will report on practical measures taken to improve resolvability, addressing obstacles associated with booking practices, global payments, intra-group guarantees and information systems.

IV. Strengthening SIFI supervision

Every country must have a supervisory system that is up to the task of ensuring that the regulations, including the new regulations coming out of Basel III, are backed up by effective risk assessments and enforcement, especially as it relates to SIFIs. Supervisors are expected to detect problems proactively, and intervene early to reduce the impact of potential stresses on financial institutions and therefore on the financial system as a whole. Given lessons learned from the crisis, improvements are necessary in four key areas: i) unambiguous supervisory mandates and independence as well as access to the appropriate quality and quantity of resources; ii) a full suite of powers available to all national supervisors to execute on their mandate; iii) an improved set of standards for supervisors, the quality of which must reflect the higher complexity of the financial system and the firms that comprise it, including the integration of better micro and macro risk detection processes; and iv) a stricter assessment regime that consistently drives supervisors to high quality work, and alerts authorities to potential weaknesses in their oversight processes earlier.

Recommendations

28. All national supervisory authorities should have the powers to apply differentiated supervisory requirements and intensity of supervision to SIFIs based on the risks they pose to the financial system.

29. All national supervisory authorities should have appropriate mandates, independence and resources to identify risks early and intervene to require changes within an institution, as needed, to prevent unsound practices and take appropriate counter-measures to safeguard against the additional systemic risks.

30. The FSB "SIFI Supervisory Intensity and Effectiveness Recommendations" should be taken into account in updates of BCBS, IAIS and IOSCO Core Principles, implementation standards and assessment methodologies, including in the upgrading of additional criteria to essential criteria (and therefore to be taken account of in the ROSC compliance assessment grading) as appropriate.

31. National authorities should review supervisory methodologies in the light of the lessons and improved techniques set out in the FSB "SIFI Supervisory Intensity and Effectiveness Recommendations" and make changes as needed.

32. FSAPs/ROSCs should take into account assessments against all essential and additional criteria of the existing Basel Core Principles as it relates to the supervision of SIFIs, and should make recommendations to address any weaknesses that are identified relative to the additional criteria.

33. Jurisdictions should provide for a national supervisory framework that enables effective consolidated supervision by addressing ambiguities of responsibilities, impairments related to information gathering and assessment when multiple supervisors are overseeing the institution and its affiliates.

34. For G-SIFIs, the quality of information exchanged in supervisory colleges should be adequate to enable a rigorous co-ordinated assessment of the risks facing the institution.

Processes and timeline for implementation

35. FSB members should conduct a self assessment against the relevant Core Principles, including essential and additional criteria, and identify deficiencies and corrective actions in a letter addressed to the FSB Chair, covering:

    - Supervisory mandates and independence;
    - Supervisory powers; and
    - Comprehensive consolidated supervision.

    These letters should be issued by mid-2011 for BCBS Core Principles and by early 2012 for IAIS Core Principles. A thematic peer review will be undertaken to assess the actions taken to address identified deficiencies.

36. The relevant standard setting bodies should take into consideration the recommended enhancements set out in "SIFI Supervisory Intensity and Effectiveness Recommendations" in the next revision of their Core Principles. Before the revised Core Principles are issued, they should provide a report to the FSB on how those recommendations will be reflected in the new principles, assessment methodology and criteria. This process should be completed by end-2012.

37. The standard setting bodies should report to the FSB on how to improve the operation of supervisory colleges to ensure a more rigorous co-ordinated assessment of the risks facing the institution by end-2012.

38. The FSB's group of senior line supervisors of SIFIs should continue to discuss the special needs and challenges of SIFI supervision. This group should before year-end 2011 prepare a status report for the FSB on whether further steps should be taken to implement or complement the recommendations set out in "SIFI Supervisory Intensity and Effectiveness".

V. Strengthening core financial infrastructures

The recent financial crisis demonstrated the potential for contagion arising from the interconnectedness of significant market participants and the limited transparency of counterparty relationships. Robust financial market infrastructures make an essential contribution to financial stability by reducing what could otherwise be a major source of systemic risk. At the same time, authorities must take steps to ensure that a core or critical financial infrastructure does not itself become a source of systemic risk.

Recommendations

39. International standards for core financial market infrastructures, including payment systems, securities settlement systems, and central counterparties, should be updated and strengthened in light of the lessons learned from the recent financial crisis and changes in markets to ensure resilience under stressed conditions

40. National authorities should implement: (i) the G-20 commitments that all standardised OTC derivatives contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties

(CCPs), and OTC derivatives contracts should be reported to trade repositories; and (ii) the recommendations set forth in the forthcoming report of the FSB OTC Derivatives Working Group.

Processes and timeline for implementation

41. CPSS and IOSCO should review and enhance their standards for financial market infrastructure, publishing a consultative report on revised standards by early 2011, and a final report by end-2011.

42. The FSB OTC Derivatives Working Group should provide regular assessments of progress, with an initial report no later than end-March 2011.

VI. Ensuring effective and consistent implementation of national policies for G-SIFIs

Recommendations

43. The FSB and national authorities, in consultation with the BCBS, CGFS, CPSS, IOSCO and IAIS, drawing on relevant qualitative and quantitative indicators, will determine by mid-2011 those institutions to which the FSB G-SIFI recommendations will initially apply.

44. A Peer Review Council (PRC) will be established, comprising senior members of the relevant national authorities having G-SIFIs operating as home or host in their jurisdictions, with a mandate to assess and report to the FSB as to whether:

    - the national G-SIFI policy measures adopted constitute reasonable choices from amongst the available set of policy options and potential trade-offs, on the basis of an evaluation framework agreed upon by the FSB in consultation with the standard setting bodies;
    - the G-SIFI Recovery and Resolution plans and institution-specific cooperation agreements are robust and likely to be effective;
    - the national G-SIFI policy measures are globally consistent and mutually supportive.
    - additional loss absorbency measures have been implemented.

45. The PRC will periodically review, for consideration by the FSB, whether other significant institutions should be considered as (or no longer considered as) globally systemic.

46. Arrangements, with appropriate safeguards, will be made for the sharing of confidential data and information necessary for the PRC to perform its functions. The modalities for PRC follow-up in cases where it may assess G-SIFI policies to be inconsistent with the agreed global approach will be defined.

47. The PRC will report annually to the FSB on the adequacy and global consistency of national G-SIFI policies.

Processes and timeline for implementation

48. The BCBS should propose to the FSB by end-2010 a provisional methodology comprising both quantitative and qualitative indicators to assist the FSB and national authorities in assessing the systemic importance of financial institutions at a global level. FSB members will evaluate this methodology and provide feedback to the BCBS, which should finalise the methodology in early 2011.

49. The FSB, in consultation with the standard-setters, should complete by end-2011 an evaluation framework for the application and review of G-SIFI policies, including: i) the ways in which higher loss absorption capacity can be created in G-SIFIs; ii) other prudential measures, such as liquidity surcharges, large exposures restrictions; or systemic levies; and iii) structural measures such as restrictions on activities and legal form that could improve an institution's resolvability.

50. The FSB will establish a PRC comprising senior members of the relevant national authorities with G-SIFIs in their jurisdiction to be in operation by end 2011. The FSB Steering Committee will draw up a framework for the operation of the PRC.

51. The PRC will conduct its initial assessment of national G-SIFI policies by end-2012.

Annex

Summary of processes and timelines

Action	Responsible	Completed by
Higher loss absorbency		
Study on additional loss absorbency (para. 9)	BCBS	Mid-2011
Assessment of legal, operational, market capacity and other issues relating to contractual and statutory bail-ins (para. 10)	FSB and members	Mid-2011
Recommendations on additional degree of loss absorbency and instruments (para.11)	FSB in consultation with BCBS	December 2011
Resolution		
Assessment of SIFI resolvability and needed legal and regulatory reforms (para. 21)	FSB members	March 2011
Formulation of resolvability criteria and key attributes of effective resolution regimes (para. 22)	FSB in consultation with BCBS CBRG, IMF, IAIS, IOSCO	Mid-2011
Assessment on the basis of resolvability criteria and key attributes of needed changes and improvements of national resolution regimes and policies (para. 23)	FSB members	End-2011
Thematic peer review on key attributes of effective resolution regimes (para. 24)	FSB in consultation with BCBS CBRG	End-2012
Recommendations on the legal and operational aspects of contractual and statutory bail-ins (para. 25)	FSB working group (to be established)	Mid-2011
Institution-specific cross-border cooperation agreements for global SIFIs (para. 26)	Home and key host authorities of G-SIFIs	End-2011
Report on progress on institution-specific recovery and resolution plans for global SIFIs (para. 27)	FSB Cross-Border Crisis Management Group (CBCM)	End-2011
Strengthening SIFI Supervision		
Self-assessments against relevant BCP on effective supervision (para. 35)	FSB members	Mid-2011
Self-assessments against relevant ICPs on effective supervision (para. 35)	FSB members	Early 2012
Review of relevant Core Principles relating to supervisory powers, mandates and consolidated supervision (para. 36)	BCBS, IAIS, IOSCO	End-2012

Action	Responsible	Completed by
Strengthening SIFI Supervision (con'td)		
Report on improvements of supervisory colleges (para. 37)	BCBS, IAIS, IOSCO	End-2012
Status report on implementation of SIFI supervisory Intensity and Effectiveness Recommendations (para. 38)	FSB group of senior line supervisors	End-2011
Strengthening Core Financial Market Infrastructures		
Review of standards for financial market infrastructure (para. 41)	CPSS, IOSCO	Early 2011 (consultative report) End-2011 (final report)
Assessment of progress on implementation of FSB OTC Derivatives WG Recommendations (para. 42)	FSB OTC Derivatives WG	March 2011
Peer review of G-SIFI policies		
Determination of those institutions to which the FSB G-SIFI recommendations will initially apply (para 43)	FSB and national authorities, in consultation with the BCBS, CGFS, CPSS, IOSCO and IAIS	Mid-2011
Provisional methodology for assessing systemic importance (para. 48)	BCBS	End-2010 (draft) Early-2011 (finalised)
Evaluation framework for G-SIFI policies (para. 49)	FSB in consultation with standard-setters	End-2011
Establishment of Peer Review Council PRC (para. 50)	FSB	End-2011
Initial assessment of G-SIFI policies (para. 51)	FSB PRC	End-2012