

Comments

on the Application of the Key Attributes of Effective Resolution Regimes to Non-Bank Financial Institutions

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Berlin, 17 October 2013

Reference number GBIC: EG-KM
Reference number GSBA: 7106

The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent more than 2,000 banks.

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Comments on Application of the Key Attributes of Effective Resolution Regimes to Non-Bank Financial Institutions.

I. Preamble

The German Banking Industry Committee is grateful for the opportunity to comment on the Application of the Key Attributes of Effective Resolution Regimes to Non-Bank Financial Institutions.

We support the draft guidance on how to implement the Key Attributes of Effective Resolution Regimes with respect to non-bank financial institutions that could be systemically significant or critical in failure.

We suggest that it should be demonstrated more clearly, that the scope of application of the Guidance is limited to **non-bank** financial institutions. This distinction is already expressed in the working title of, and the introduction to, the consultation paper. As we understand it, the repeated blanket mention of firms that operate brokerages, e.g. p.12 and in Question 35 of the Draft, is unclear, as financial institutions too could come under the scope of application of the consultation paper. For the financial institutions sector the existing Key Attributes of Effective Resolution Regimes for Financial Institutions cover the banking industry to the full extent, including the custody and management of client assets. Inclusion in the current draft is thus neither required nor desirable in the context of legal certainty.

II. In detail

Part III: Draft Implementation Guidance: Client Asset Protection in Resolution Questions for consultation

34. Are the distinct but complementary roles of the draft FSB guidance and the IOSCO Recommendations Regarding the Protection of Client Assets sufficiently clear?

In our opinion, the complementary roles of the FSB Guidance on the one hand and IOSCO's Recommendations on the other are sufficiently clear. We would welcome it, however, if the scope of application of the FSB Guidance currently before us is limited expressly to **non-banking** financial institutions throughout its entire wording. Only so, conflicts regarding the application of the FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions can be avoided in practice.

In view of this, the hitherto blanket mention of firms with brokerage operations, e.g. on p.12 and in Question 35 of the Draft, is, as we understand it, unclear.

35. Does the draft guidance deal adequately with the different types of firms and the range of their activities in the course of which they hold client assets, including investment business, prime brokerage and custody services? If not, what additional types of firms or activities should be covered?

See Answer 34 above.

We have no further comments on Questions 36 – 39.

40. Should the guidance be more prescriptive in relation to arrangements for the identification and safeguarding of client assets, including segregation, that are necessary to enable resolution authorities and administrators quickly to identify client assets and ascertain the nature of claims to those assets (paragraph 4.1)? If so, how?

We would point out that under German law the requirement of an "identifiable and segregated" portfolio (point 1.1 (i)) is fully reflected in a bank's internal securities bookkeeping combined with investor ownership rights. There is therefore no need for segregation at the next higher level of custody in order to guarantee the end client's segregation right in case of insolvency.

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41. Are there arrangements other than segregation that are capable of achieving the outcome described in paragraph 4.1? If so, please explain what other arrangements are currently used.

See also Answer 40.

We have no further comments on Questions 42 – 50.