German response to the European Commission`s consultation on a possible recovery and resolution framework for financial institutions other than banks

We thank the European Commission services for providing the opportunity to send written comments to the consultation on a possible recovery and resolution framework for financial institutions other than banks. Please find enclosed the German response:

Financial Markets Infrastructures

1. ***Do you think that a framework of measures and powers for authorities to resolve CCPs and CSDs is needed at EU level or do you consider that ordinary insolvency law is sufficient?***

Insolvency law itself in many cases might not be tailored to address certain issues specific to the case of a default of a financial market infrastructure (FMI). The objective of promoting uninterrupted services might create conflicts with respect to traditional concepts of insolvency law. Furthermore, from a supervisory perspective, in comparison to legal frameworks of insolvency law, a more limited number of instruments might be needed to address issues rising in case of the default of a FMI. These instruments would correspond with existing insolvency regimes and supersede them, where necessary.

It seems more appropriate that recovery and resolution measures remain in the hands of supervisory authorities within the jurisdiction where the FMI is domiciled and corresponding with respective insolvency laws, while acknowledging that close cooperation between authorities having a nexus to the default of the FMI has to be expected.

2. ***In your view, which scenarios/events might lead to the need to resolve respectively a CCP and a CSD? Which types of scenarios CCPs/CSDs and authorities need to be prepared for which may imply the need for recovery actions if not yet resolution?***

In the case of a CCP the most likely scenario seems to be the default of clearing members which cannot be covered by margins, collateral and the default fund and where loss allocation procedures – specifically in the environment of a stressed marked turn out to be ineffective.

An important risk with respect to both, CCPs and CSDs is operational risk.

3. ***Do you think that existing rules which may impact CCPs/CSDs resolution (such as provisions on collateral or settlement finality) should be amended to facilitate the implementation of a resolution regime for CCPs/CSDs?***

Legal certainty as provided by the provisions on collateral or settlement finality is a very important objective and provides confidence in the services of an FMI. Amendments of the relevant provisions for the purpose of recovery and resolution objectives would have to be very well reasoned.

4. ***Do you consider that a common resolution framework applicable to CCPs and CSDs is desirable or do you favor specific regimes by type of FMIs?***

Consistent with CPSS-IOSCO-principles, there should be a specific framework for FMIs. This framework could cover both, CCPs and CSDs. However, specificities of CCPs and CSDs should be further taken care of. Even though under a functional approach both CCPs and CSDs should qualify as FMI, their nature and exposure to risks differ fundamentally so that we see merit in taking appropriately care of the differences in the discussion about the regimes applicable to CCPs and CSDs.

5. ***Do you consider that it should only apply to those FMIs which attain specific thresholds in terms of size, level of interconnectedness and/or degree of substitutability, or to those FMIs that incur particular risks, such as credit and liquidity risks, or that it should apply to all? If the former, what are suitable thresholds in one or more of these respects beyond which FMIs are relevant from a resolution point of view? What would be an appropriate treatment of CSDs that do not incur credit and liquidity risks and those that incur such risks?***

A recovery and resolution framework should apply to all FMIs as an FMI's default might trigger knock-on effects. A strong indication for applying a resolution regime to all FMIs is the FSB's view expressed in the FSB key attributes according to which FMIs are assumed to be SIFIs.

6. ***Regarding FMIs (some CSDs and some CCPs) that are also credit institutions is the proposed bank recovery and resolution framework sufficient or should something in addition be considered? If so, what should the FMI-specific framework add to the bank recovery and resolution framework? How do you see the interaction between the resolution regime for banks and a specific regime for CCPs/CSDs?***

The proposed bank recovery and resolution framework is not sufficient for CCPs and CSDs that are also credit institutions. Under this assumption the FSB has mandated CPSS-IOSCO to further elaborate on FMI specific issues on the basis of the FSB key attributes. Legal clarity regarding the applicable recovery and resolution framework ex ante is key. A functional approach should be applied: Irrespective of its license an FMI should be subject to a specific recovery and resolution framework. Generally, in cases of FMI banking services are not the core of an FMI's operations. Furthermore, regulatory objectives with respect to FMI functions might not be fully covered by a banking resolution framework.

7. ***Do you agree that the general objective for the resolution of CCPs/CSDs should be continuity of critical services?***

We agree that the continuity of critical services is one key objective in the resolution of FMIs.

However, in specific circumstances, the objective of continuity of services may be secondary to other objectives. For example, restoring the viability of a CCP at the cost of its clearing members and/or linked FMIs could lead to new, possibly more severe, systemic risks, in cases in which some of those entities themselves face financial difficulties.

The competent authority should therefore be obliged to take a holistic view (i.e. consider the impact of different measures on the financial system as a whole) and have the necessary flexibility to balance conflicting objectives.

8. ***Do you agree with the above objectives for the resolution of CCPs/CSDs?***

Yes.

9. ***Which ones are, according to you, the ones that should be prioritized?***

A lack of coordination in case of a resolution scenario could undermine individual regulatory action, both, in a national as well as in an international context. Improvement of cooperative arrangements presumably can be reached with existing competences and tools already.

10. ***What other objectives are important for CCP/CSD resolution?***

The recovery under the conduct of the FMI's management should be a priority objective.

11. ***What should be the respective roles of FMIs and authorities in the development and execution of recovery plans and resolution plans? Should resolution authorities have the power to request changes in the operation of FMIs in order to ensure resolvability?***

The distribution of respective roles as envisaged in the FSB key attributes seems a reasonable distribution of tasks and competences with respect to recovery and resolution. The resolution authorities should have the power to request changes in the operation of FMIs in order to ensure resolvability. They should have the power to request from FMI to develop scenarios and implement respective appropriate recovery plans.

12. ***To what extent do you think that CCPs/CSDs in cooperation with their users would be able to define efficient recovery and resolution plans on the basis of amendments to their contractual laws?***

The lack of convergence in many legal aspects being touched upon (insolvency law, civil law, civil and administrative enforceability) in a recovery and resolution scenario cannot be the reason for an FMI to not investigate adequate measures to the largest extent possible in order to address all relevant issues in recovery and resolution scenarios to be identified ex ante.

13. ***Should resolution be triggered when an FMI has reached a point of distress such that there are no realistic prospects of recovery over an appropriate timeframe, when all other intervention measures have been exhausted, and when winding up the institution under normal insolvency proceedings would risk causing financial instability?***

Yes.

14. ***Should these conditions be refined for FMIs? For example, what would be suitable indicators that could be used for triggering resolution of different FMIs? How would these differ between FMIs?***

These conditions should be refined for FMIs. Triggering resolution might differ between CCPs and CSDs. It could be argued that in case of a CCP a trigger could be the failure of loss allocation exercised by the CCP whereas in the case of CSDs (where loss-allocation as a recovery tool would be less obvious) insolvency or imminent risk of insolvency could serve as a trigger.

15. ***Should there be a framework for authorities to intervene before an FMI meets the conditions for resolution when they could for example amend contractual arrangements and impose additional steps, for example require unactivated parts of recovery plans or contractual loss sharing arrangements to be put into action?***

Suitable supervisory powers under a going concern assumption should be available.

16. ***Should resolution authorities of FMIs have the above powers? Should they have further powers to successfully carry out resolution in relation to FMIs? Which ones?***

Powers with respect to resolution clearly go beyond those in a recovery scenario. The assumption should be that an FMI under recovery is still an entity under the responsibility of its management where an entity under resolution falls under the conduct of the competent resolution authority. The resolution powers should respect the principles governing company and securities law as far as possible.

17. ***Should they be further adapted or specified to the needs of FMI resolution?***

Yes; see above.

18. ***Do you consider that temporary stay on the exercise of early termination rights could be a relevant tool for FMIs? Under what conditions? How should it apply between interoperated FMIs? How should it be articulated with similar powers to impose temporary stays in the bank resolution framework?***

Yes, as stays could support continuity of services or novation of contracts in a transfer scenario. Contractual arrangements supporting the same objectives should be admissible.

19. ***Do you consider that moratorium on payments could be a relevant tool for all FMIs or only some of them? If so, under what conditions?***

A moratorium on payments in principle is a relevant tool for FMI resolution as well. Trade-offs on the basis of the objectives of continuity of services needs to be carefully considered on an individual basis.

20. ***Which reorganisation tools could be appropriate for resolving different types and CSDs and CCPs? What would be their advantages and disadvantages?***

Reorganisation tools would need to address a lack of substitutability in presumably many instances in the case of FMIs. Respective tools should address the fact that an FMI could be more monolithic in the sense that its core service cannot be split between healthy and non-healthy parts.

21. ***Which loss allocation and recapitalisation tools could be appropriate for resolving different types of CSDs and CCPs? Would this vary according to different types of possible failures (e.g? those caused by defaulting members, or those caused by operational risks)? What would be their advantages and disadvantages?***

A general assessment of the various allocation and recapitalization tools seems to be quite difficult. From a regulatory perspective, it needs to be decided on a case by case basis which tool fits best under the given circumstances. Therefore, the competent authority for the recovery and resolution of a financial market infrastructure should be vested with a broad range of tolls including the ones currently discussed at the international level. However, in the case of a CSD failure loss-allocation as a resolution tool seems to be less obvious. Anyway, the securities of a CSD's participant and even more the securities of a participant's client which are deposited at the CSD must not be used to absorb any CSD's losses.

22. What other tools would be effective in a CCP/CSD resolution?

From the supervisory experience no further tools are known than the ones described in the CPSS-IOSCO report on recovery and resolution.

23. Can resolution tools based on contractual arrangements be effective and compatible with existing national insolvency laws?

Contractual arrangements do not seem to provide a sufficient stable legal basis. A failure of an FMI might often have cross-border implications so that a legal basis set out in the respective applicable laws is needed.

24. Do you consider that a resolution regime for FMIs should be applicable to the whole group the FMI is a part of? What specific tools or powers for the resolution authorities should be designed?

An orderly resolution of an FMI requires to give due consideration to the impact of resolution actions on related entities. Accordingly, resolution actions may need to address the consolidated basis (e.g trading halts, in case of a CCP resolution).

25. In your view, what are the key elements and main challenges to take into account for the smooth resolution of an FMI operating cross-border? What aspects and effects of any divergent insolvency and resolution laws applicable to FMIs and their members are relevant here? Are particular measures needed in the case of interoperable CCPs or CSDs?

A key element is the possibility of efficient and concerted decision making. The main challenges might be diverging fiscal interests and divergences in insolvency law.

26. Do you agree that, within the EU, resolution colleges should be involved in resolution issues of cross border FMIs?

Resolution colleges could be considered as an appropriate instrument in the case of CCPs, specifically due to the specific relation between their Members that connect to the CCP in order to mitigate counter party risk, inter alia and which are subject to loss mutualisation for this reason. Respective resolution colleges should be based on existing colleges responsible for the supervision of the CCP.

Where the supervision and oversight of a FMI is within the sole responsibility of certain authority, robust cooperation arrangements might serve as a basis for respective crisis management groups.

27. How should the decision-making process be organized to make sure that swift decisions can be taken? Alternatively, do you think that responsibility for resolving FMIs should be centralised at EU-level?

Decision making processes should respect fiscal responsibility with respect to the FMI in question.

28. Do you agree that a recognition regime should be defined to enable mutual enforceability of resolution measures?

A recognition regime would be appropriate if Member States implemented the same rules on the resolution of FMIs. In such a case, a mutual recognition regime regarding administrative decisions in Member States could be established.

29. Do you agree that bilateral cooperation agreements should be signed with third countries?

Although the use of bilateral agreements is always a possible tool, we would prefer a multilateral memorandum of understanding with third countries. Rules and procedures of third countries should be assessed at the beginning - like the EU.

30. Do you agree that the resolution of FMIs should observe the hierarchy of claims in insolvency to the extent possible and respect the principle that creditors should not be worse off than in insolvency?

Yes.

Insurance and reinsurance firms

1. ***Are the resolution tools applicable to traditional insurance considered above adequate? Should their articulation and application be further specified and harmonised at EU-level?***

The above-mentioned tools are adequate. For insurance supervisors, the main aim is to protect policyholders. This can be facilitated by using the tools just mentioned.

In our opinion, the key attributes (KA) would therefore mostly apply to G-SIIs and other systemic entities which may be identified. We currently do not see the need to apply the framework to non-systemic insurance undertakings as we already have a variety of tools available in that area.

We see recovery and resolutions plans (RRPs) as a useful tool for recovery and resolution planning of systemically important insurers at the group level. We would normally not see the need to require separate RRPs for particular insurance subsidiaries or similar of a G-SII.

Given the current diversity of tools and various ways of enforcement in the individual member states, cross border communication between supervisory authorities is essential. It should be examined if it is possible to harmonise these tools in order to improve supervisory authorities' competencies.

2. ***Do you think that a further framework of measures and powers for authorities, additional to those already applicable to insurers, to resolve systemically relevant insurance companies is needed at EU level?***

The general applicability of the FSB's Key Attributes of Effective Resolution Regimes has been analysed by the IAIS with regards to potential G-SIFI insurers (or G-SIIs). In that respect, the IAIS came to the conclusion that, with regards to G-SIIs, the FSB Key Attributes are basically applicable. However, it should be taken into account that we have different timing aspects than in banking (even a G-SII is unlikely to go bust overnight and experience the same liquidity needs as a bank). Also, the different roles of technical provisions and policyholder liabilities need to be taken into account and these should not be used for direct bail-in. The IAIS is checking whether the KAs would apply to all insurers, as, for example, Solvency II already provides rules for such situations. Results of this workstream are scheduled for the end of this year and we would suggest that we try to await this work as well.

Given the applicability of the KAs for G-SIFI insurers on a world-wide basis, it would make no sense to have further (or different) rules at EU level.

3. ***In your view, which scenarios/events might lead to the need to resolve a systemically relevant insurance company? Even before that, which types of scenarios systemic insurers and authorities need to be prepared for which may imply the need for recovery actions if not yet resolution?***

As already pointed out in the consultation draft, insurance underwriting risks are less correlated with the economic business cycle and financial market risks.

Insurance groups and conglomerates that engage in non-traditional or non-insurance activities are deeper involved in financial market developments and could therefore be more affected by systemic risks than traditional insurers. Risks arising from non-traditional and non-insurance activities include financial guaranty insurance, capital markets activities such as credit default swaps (CDS), transactions for non-hedging purposes, derivatives trading or leveraging assets to enhance investment returns.

Since the financial crisis, international standard-setters like IAIS and FSB have worked intensively on possible scenarios; their work should be taken into account.

4. ***Do you agree with the above objectives for resolution of systemic insurance companies? What other objectives could be relevant?***

Yes. Nonetheless in order to avoid conflicts of objectives, it should be made clear that the protection of policyholders remains the main objective. All other objectives should be subordinated.

5. ***Do you think that recovery plans should be developed by systemic insurers and resolution plans by resolution authorities? Do you think that resolution authorities should have the power to request changes in the operation of insurers in order to ensure resolvability?***

Recovery and resolution plans should be prepared by insurers at group level. Normally, we would not see the need to require recovery and resolution plans for particular insurance subsidiaries of G-SIFIs. These plans should be reviewed by the group-wide supervisor. A group-wide supervisor in cooperation with other involved supervisors has the necessary experience and knowledge of the group structure and the group's financial condition. Moreover, the group-wide supervisor will be sensitive to policyholders' concerns in the case of resolution and recovery. He will especially assure that technical provisions for the purposes of policyholders will remain protected.

For the purpose of ComFrame, the necessity of recovery and resolution planning for insurers will be discussed further by the IAIS. If they are available timely, they might be taken into consideration.

6. ***Do you agree that resolution should be triggered when a systemic insurer has reached a point of distress such that there are no realistic prospects of recovery over an appropriate timeframe, when all other intervention measures have been exhausted, and when winding up the institution under normal insolvency proceedings would risk causing financial instability?***

The resolution should be the measure of last resort. When applying measures of recovery the specific situation of the insurance company must be taken into account. Procedures of winding-up of an insurer/an insurance group are subject to the national laws. Resolution measures must be subject to these provisions. We think there should not be a different layer of measures.

7. ***Should these conditions be refined? For example, what would be suitable indicators that could be used for triggering resolution of systemic insurers?***

As pointed out, there should not be an additional layer of measures with different trigger points.

8. ***Do you agree that resolution authorities of insurers could have the above powers? Should they have further powers to successfully carry out resolution in relation to systemic insurers? Which ones?***

When separating assets into "bad" and "not so bad" assets you have to know, which investment belongs to which insurance contract. Normally this can't be performed within an life insurance company.

Possible specific powers (of which some also fit to the needs of an insurance resolution) are mentioned in the chapter on resolution powers (exemptions at question 10). The resolution powers should respect the principles governing company and securities law as far as possible.

We would like to explicitly stress that supervisors should be able to install a bridge institution while a resolution scheme is being put in place. The supervisor should also have the ability to adjust the rights of policyholders.

Provisions related to the operation of a bridge insurer that need to be addressed include

- *Ownership of the bridge insurer, which could be owned by the resolution authority or could form part of the insurance guarantee scheme; and*
- *Funding of the bridge institution must be clear and must not involve the use of taxpayers' funds. Potential options include the constitution of a resolution fund that would be established on the basis of an industry levy or the use of the insurance guarantee fund. In the latter case, funding would be up to some limit related to the payout the IGS would have to make in the event of liquidation.*

9. ***Should they be further adapted or specified to the specificities of insurance resolution?***

Resolution tools for insurance groups must fit to the needs of the insurance sector. A "one-size-fits-all" approach would not be appropriate.

10. ***Would the tools mentioned above be appropriate for the resolution of systemic insurers? What other tools should be considered and why?***

We would like to stress that assets covering technical provisions can only be used for this purpose. Moreover:

- a temporarily stay of early termination rights might fit to certain non-insurance activities,
- a temporarily stay is also a necessary tool for life-insurance, even in member states where the early termination of life-insurance contracts is disadvantageous to policyholders.

- a moratorium of payment flows would not be appropriate for policyholder claims.

11. Do you think that, within the EU, resolution colleges should be set up and involved in resolution issues of cross border insurance groups?

As already pointed out, resolution plans should be supervised by the group-wide supervisor in cooperation with other involved supervisors. Insofar it would perfectly make sense if supervisory colleges could act as resolution colleges of cross-border insurance groups.

12. How could the decision-making process be organized to make sure that swift decisions can be taken? Should this be aligned with the procedures already set out in Title III of Directive 2009/138/EC?

In general, such an alignment could make sense if it is fully consistent with the G-SIFI work on the IAIS level. But given the delays we already have in implementing Directive 2009/138/EC, we cannot risk further delays due to the implementation of such an alignment.

13. Alternatively, do you think that responsibility for resolving systemic insurers should be centralised at EU-level?

No. As pointed out in question 5, a group-wide supervisor - in cooperation with the other involved supervisors - has the necessary experience and knowledge of the group structure and the group's financial condition. Moreover, the group-wide supervisor is sensitive to policyholders´ concerns in the case of resolution and recovery and will especially assure that technical provisions for the purposes of policyholders will remain protected. Therefore, as long as supervision of systemic insurers is not centralized, this shouldn't be the case for their resolution as well.

14. Do you think that a recognition regime should be defined to enable mutual enforceability of resolution measures?

A recognition regime would be appropriate if Member States implemented the same rules on the resolution of G-SIFIs. In such a case, a mutual recognition regime regarding administrative decisions in Member States could be established.

15. Do you think that to this end bilateral cooperation agreements could also be signed with third countries?

Although the use of bilateral agreements is always a possible tool, we would prefer a multilateral memorandum of understanding with third countries. Rules and procedures of third countries should be assessed at the beginning - like the EU Commission already does - with regard to third country equivalence to Solvency II.

Payment Systems and other nonbank financial institutions/entities

1. ***Do you agree with the above assessment regarding payment systems, payment institutions and electronic money institutions? Alternatively, do you consider that either (or both) would merit further consideration as to their ability, first, to give rise to systemic risk and, second, the need for possible recovery and resolution arrangements in response?***

Yes.

2. ***Besides those covered in previous sections of this paper, which other nonbank financial institutions can become systemically relevant and how? Depending on the type of institutions, what are the main channels through which such systemic risks are transmitted or amplified?***

In the context of the FSB non-bank SIFI work, four categories of undertakings have been initially identified, i.e. finance companies, hedge funds, non-hedge fund collective investment schemes (other funds) and market intermediaries (securities brokers and dealers). These appear also "natural" candidates at EU level. Transmission of risks may occur through various channels but typically because they play important functions in the shadow banking system contributing to maturity and liquidity transformation and the built-up of leverage.

3. ***In your view, what could be meaningful thresholds in relation to the factors of size, interconnectedness, leverage, economic importance or any other factor to determine the critical relevance of any other nonbank financial institution?***

FSB and IOSCO are currently setting limits for the materiality thresholds and elaborating impact factors/indicators for the size, interconnectedness, substitutability, global activities and complexity in order to determine the systemic importance of non-bank SIFIs. In order to avoid inconsistencies, the EU Commission should draw on these indicators and factors.

4. ***Do you think that recovery and resolution tools and powers other than existing insolvency rules should be introduced also for other nonbank financial institutions?***

In principle, there is also a case for non-bank SIFIs to require development of recovery and resolution plans. Yet, there are different aspects to be considered than in the banking and insurance sector. For instance the issue on what constitutes "critical services" certainly needs to be interpreted in a different manner. It is important, though, that any work in this area is developed in line with the work undertaken at global level, i.e. at the FSB and IOSCO.

5. ***In your view, what could then be meaningful points of failure at which different types of other nonbank financial institution could be considered to fulfil the conditions for triggering:***

a) The activation of any pre-determined recovery measures; or

b) Intervention by authorities to resolve the entity?

As stipulated in the FSB Key Attributes (Annex II, 3.4), firms should identify a combination of quantitative and qualitative criteria that trigger the recovery actions; in similar vein (Annex II, 4.1) authorities are held to identify the regulatory thresholds and legal conditions that provide grounds for initiation of official actions. Given the heterogeneity of the set of non-bank SIFIs and the differences in the underlying legal frameworks, there is no "one-size fits all" approach.

6. ***With respect to possible preventive and preparatory measures:***

a) Do existing regulatory frameworks applicable to other nonbank financial institutions provide for sufficient safeguards, in particular with respect to their governance structures, market/counterparty/liquidity risk management, transparency, reporting of relevant information and other etc.?

b) Are supervisors equipped with sufficient powers to be able to collect information and monitor the various types of risks existing or building up in the particular nonbank financial sector/institution?

c) Are additional supervisory powers needed to ensure de-risking and prevent overly complex and interlinked operations?

d) Would recovery and resolution plans be necessary to be introduced for all or only some of these institutions? Why?

Regarding collective investment schemes, the regulatory frameworks on investment funds in the EU provided by the Directives 2011/61/EU and 2009/65/EG cover a full set of organisational rules, market, counterparty and liquidity risk management and transparency provision. These Directives equip supervisors with sufficient powers to collect information and monitor the various types of risks. The Directive 2011/61/EU equips the competent authority with the power to conduct measures in case of systemic risks including the prohibition of leverage or transactions. Also, the powers of BaFin allow any necessary measure by BaFin.

Recovery and Resolution is one building block to address the negative externalities posed by SIFIs. Besides, the G-20/FSB has acknowledged that intensified supervision and capital surcharges (in the banking sector) are important measures that add to mitigating SIFI risks. Thus, there needs to be a discussion, too, about the implementation of measures with the effect of minimizing risks to the non-bank SIFI universe. Yet, these measures are only meant to address the specific additional risks posed by SIFIs and constitute somewhat of a "second step". The "first step" is to assure that adequate (prudential) regulation is implemented in the first place. This is where the work of the various FSB shadow banking workstreams appears to be relevant, in particular the ones on money market funds and "other shadow banking entities". Due to the fact that there is a high degree of heterogeneity

among the entities in the non-bank financial space, the respective FSB workstream approaches the issue through a functions-based perspective, rather than solely through an entities-based perspective. Based on the identified five underlying economic functions, i.e. "management of client cash pools with features that make them susceptible to runs", "loan provisioning that is dependent on short term funding", "intermediation of market activities that is dependent on short term funding or on secured funding of client assets", "facilitation of credit creation" as well as "securitsation and funding of financial entities", the FSB is currently developing a policy toolkit that corresponds to the five economic functions. Once finalised, the implementation of the policy tools will be peer reviewed.

Authorities' ability to define the regulatory perimeter for reporting is stipulated in high level principles for monitoring the shadow banking system, being part of the FSB's October 2011 recommendations on strengthening oversight and regulation of the shadow banking system. The question remains, though, whether more concrete steps are necessary at EU level to guide practical implementation at EU level.

7. *With respect to possible early intervention powers and measures:*

a) Do existing regulatory frameworks applicable to other nonbank financial institutions provide for effective early remedial actions of supervisors aimed at correcting solvency or operational problems at an early stage?

According to Sec. 5 of the German Investment Act (InvG), BaFin is authorised to issue all orders deemed necessary and appropriate to ensure that the business operations of an asset management company, the management of a fund are in conformity with the Act, the provisions enacted pursuant to the Act and the fund rules. Also, BaFin shall counteract undesirable developments which may adversely affect the sound management of investment funds or may result in serious disadvantages for the financial market. BaFin may issue orders that are appropriate and necessary to eliminate or prevent such undesirable developments.

Furthermore, BaFin may revoke the authorisation if e.g. the management company's own funds fall below the required thresholds provided the management company does not remedy this deficiency within a period to be stipulated by BaFin (Sec. 17 InvG). This may also trigger the decision for liquidation, see above. Otherwise, BaFin may also require the dismissal of the managers responsible instead of revoking the authorization (Sec. 17a InvG).

b) What other early intervention powers could be introduced?

Sec. 5 (1) InvG provides for the general authority of BaFin to issue any orders necessary and adequate to e.g. ensure that the business operations are in conformity with the Act or e.g. to eliminate or prevent such undesirable developments. Such a general authorization enables BaFin to take adequate measures for specific situation and hence provides for more flexibility.

8. ***With respect to possible resolution measures and tools:***

a) Should administrative, non-judicial procedures and tools for the restructuring or managed dissolution of other failing nonbank financial institutions be introduced?

b) Depending on the entity, what could be the appropriate and specific resolution tools to be used? For which institutions are certain resolution tools or techniques not relevant? Why?

In light of uncertainty which types of firms might be considered systemically relevant, a precise answer is difficult to provide at the current juncture. However, some indication on systemic importance might already be taken from the recent financial crisis where specific types of money market funds (C-NAV-money market funds) certainly showed that they have the potential to trigger or at least exacerbate a systemic financial crisis. Additional measures to reduce the run risk posed by those specific types of money market funds, might encompass the role of investor protection.