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30th July 2004

Dear Mr Roldán,

Comments on Barclays Response to CEBS Consultative Paper CP02 “The High Level Principles on Outsourcing”

Barclays PLC is a UK-based financial services group engaged primarily in banking, investment banking and investment management. In terms of assets employed, Barclays is one of the largest financial services groups in the United Kingdom.

The Group also operates in many other countries around the EU and the world. Barclays has been involved in banking for over 300 years and operates in over 60 countries, including Spain, Portugal, France, Italy and Germany. Barclays has several business groupings that are managed as international businesses, reflecting changing customer needs and the developments taking place in global financial services.

Barclays welcomes the opportunity to comment on CEBS Consultative Paper and supports the work of the Committee in this important area. Much work has already been done by the EU Commission, national supervisory authorities, and various trade bodies to define what constitutes best practice. Nonetheless your paper is a welcome addition and in taking this work forward we would encourage the Committee to co-ordinate its work with that of CESR in relation to outsourcing in the context of other EU FSAP Directives (eg. MiFiD).

As a supervised firm, we support all of the eleven High-Level Principles outlined in the Consultation Paper. Many of these principles are reflected in much of Barclays best practice guidelines and practices with regard to outsourcing. We have set out our detailed comments and observations in the attached paper. As you can see, we consider that some of the principles would benefit from further clarity, but we expect that this will happen as a result of this process.

As noted in the preamble to the paper, further work is required to develop guidance in a number of key areas related to the principles. We would be delighted to support the Committee in the development of guidance through further consultations or through participation in an industry working party.

Naturally, we would welcome the opportunity to discuss any of the matters raised in the Consultation Paper or to participate in subsequent discussions. Should you wish to take this opportunity, then please contact either me (details above) or my colleague, Jon Harvey on +44 (0)207 068 1931. In closing, we are pleased to confirm that we are happy for you to publish this response on your website.

Yours sincerely,

Bill Eldridge
EU Public Affairs Director

CEBS Consultative Paper CP02 “The High Level Principles on Outsourcing” Detailed Comments

Part 1: Definitions

The definition is a wide one, which covers the supply of all goods, services or facilities on a structural basis. This is further defined as the contractual supply of goods, services or facilities that form part of the business processes and which are necessary to support the provision of banking or other financial services. We feel that it is helpful to have a wide definition to ensure that best practice is applied in all appropriate circumstances. However, we expect the supervisory authorities to exhibit different levels of interest between captive and outsourced contracts and based on the experience of outsourcing the business has.

Part 2: High Level Principles (HLP) on outsourcing addressed to institutions

1. Strategic and core management responsibility and functions cannot be outsourced.

The examples given in the consultation paper are strategic oversight, risk management and strategic control. We agree that these should not be outsourced.

Points needing clarification:

- It is important to differentiate between strategic/core management responsibilities and processes. Could, for instance, this principle include cash management, cheque processing, clearing settlement, project delivery and customer data management? Barclays would be against a broad and ill-defined scope.
- What is the envisaged impact of this principle on consultancy services used by financial institutions to inform and assist strategic and core management responsibilities and functions?
- How will organisations be required to demonstrate their core management responsibilities?

2. The ultimate responsibility for proper management of the risks associated with outsourcing lies with an outsourcing institution’s senior executive management

We agree with this principle. Indeed it is reflected in our internal processes and risk assessments. We feel that contractual provisions should be robust enough to enable the accountable executive to be provided with the necessary information during the life of the outsourcing to manage and mitigate any risks, as well as providing the financial institution with appropriate controls over the service provider.

In exercising this principle, the requirements of local regulators should be kept at the fore.

Points needing clarification:

- There is a need to clarify the meaning of ‘*senior operational level*’ - if a financial institution wishes to ensure capability to resume direct control over an outsourced activity it may be preferable to retain operational skills. However, over time it may be difficult to retain internal skills due to natural attrition and movement of employees around the organisation.
- Does CEBS envisage this principle applying in the same way for captive (intra group) sourcing?

3. An outsourcing institution should take particular care when outsourcing material activities, i.e. activities of such importance that any weakness or failure in the provision of these activities could have a significant affect on its ability to meet its regulatory responsibilities and/or continue in business. In such cases the outsourcing institution should pre-notify its supervisory authority.

A significant issue with the current supervisory framework is that an activity supporting banking operations across countries requires regulatory approval from each of the countries thereby increasing the cost of compliance. Therefore, harmonisation of requirements across the EU would be valuable, although we accept this may create problems of interpretation.

A distinction between the extent to which the outsourced service touches the customer and the impact on the Bank and its customers in the event of a failure of that service could be useful.

Most outsourcing service providers, because they do not provide traditional financial services, do not come under the control of financial services regulatory authorities. Increasingly, they are also located in jurisdictions other than that of the outsourcing institution. In view of this, it might be prudent for supervisory authorities in Europe to develop relationships with both financial services regulators and securities exchange regulators in other jurisdictions.

Points needing clarification:

- A clearer definition of ‘*material activities*’ is needed. This definition should be consistent across supervisory authorities.
- In order to comply with obligations towards its supervisory authority it should be clear when a financial institution should pre-notify.

4. There should be no restrictions on the outsourcing of non-material activities

We support this principle and feel that it is reflected in Barclays best practice on outsourcing.

Points needing clarification:

- The supporting notes suggest that the lack of restrictions apply to an obligation to notify the supervisory authority. Would there still be an obligation to comply with the other principles?

5. The Outsourcing institution should have a policy on its approach to outsourcing including contingency plans and exit strategies.

We support this principle and feel that it is reflected in Barclays best practice on outsourcing.

6. An outsourcing institution's policies should require it to manage the risks associated with its outsourcing arrangements.

We support this principle and feel that it is reflected in Barclays best practice on outsourcing.

Points needing clarification:

- The supporting notes to the principle state that outsourcing institutions should bring all serious problems with an outsourcing service provider to the supervisory authority's attention. What would be considered a 'serious problem'? To enable financial institutions to comply with their obligations to the supervisory authorities there should be clarity around these obligations.

7. All outsourcing arrangements should be subject to a formal and comprehensive contract.

We support this principle which reflects Barclays best practice on outsourcing.

8. In managing its relationship with an outsourcing service provider and outsourcing institution should ensure that a service level agreement (SLA) is put in place

The outsourcing contracts negotiated by Barclays are structured to include, amongst other things, service levels, service credits regimes, management information and reporting obligations. We believe that this principle could be broadened to cover the relationship and performance management of outsourcing arrangements, as reflected in Barclays best practice in outsourcing projects.

9. Supervisory authorities should aim to establish a right to information, and to conduct, or order, on-site inspections in an outsourcing provider's premises

We would suggest that this principle ties in with the rights of audit required under an outsourcing contract.

10. Supervisory authorities should take account of concentration risk, where one outsourcing service provider provides outsourcing services to several authorised outsourcing institutions

We agree that there should be an awareness of concentration risk and believe this is something which the financial institutions should consider as part of their own risk assessments.

11. Supervisory authorities should take account of the risks associated with “chain”outsourcing (whereby the outsourcing service provider sub-contracts elements of the service to other providers).

We agree with this principle. We also believe that there need to be controls on the service provider’s ability to sub-contract.

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