

EUROPEAN COMMISSION

Brussels, 19.3.2012
COM(2012) 102 final

GREEN PAPER

SHADOW BANKING

(Text with EEA relevance)

1. INTRODUCTION

The 2008 crisis was global and financial services were at its heart, revealing inadequacies including regulatory gaps, ineffective supervision, opaque markets and overly-complex products. The response has been international and coordinated through the G20 and the Financial Stability Board (FSB).

The European Union has shown global leadership in implementing its G20 commitments. In line with EU's Roadmap for Financial Reform, the Union is very advanced in implementing the reforms linked to the G20 commitments. Most of the reforms are now going through the legislative process. In particular, a major achievement has been the recent adoption by the Council and the Parliament of landmark legislation on over-the-counter derivatives. Negotiations are also well developed on measures to revamp capital requirements for the banking sector. Overall, the reforms will equip the EU with the tools designed to ensure that the financial system, its institutions and markets are properly supervised. More stable and responsible financial markets are a pre-condition for growth and for the creation of a business environment that allows companies to thrive, innovate and expand their activities. This in turn enhances the confidence and trust of citizens.

However, there is an increasing area of non-bank credit activity, or shadow banking, which has not been the prime focus of prudential regulation and supervision. Shadow banking performs important functions in the financial system. For example, it creates additional sources of funding and offers investors alternatives to bank deposits. But it can also pose potential threats to long-term financial stability.

In response to the invitations by G20 in Seoul in 2010 and in Cannes in 2011, the FSB is therefore in the process of developing recommendations on the oversight and regulation of this activity.

The FSB's work has highlighted that the disorderly failure of shadow bank entities can carry systemic risk, both directly and through their interconnectedness with the regular banking system. The FSB has also suggested that as long as such activities and entities remain subject to a lower level of regulation and supervision than the rest of the financial sector, reinforced banking regulation could drive a substantial part of banking activities beyond the boundaries of traditional banking and towards shadow banking.

Against this background, the Commission considers it a priority to examine in detail the issues posed by shadow banking activities and entities. The objective is actively to respond and further contribute to the global debate; continue to increase the resilience of the Union’s financial system; and, ensure all financial activities are contributing to the economic growth. The purpose of this Green Paper is therefore to take stock of current development, and to present on-going reflections on the subject to allow for a wide-ranging consultation of stakeholders.

2. THE INTERNATIONAL CONTEXT

At the November 2010 Seoul Summit, the G20 Leaders identified some remaining issues of financial sector regulation that warranted attention. They highlighted “strengthening

regulation and supervision of shadow banking" as one of these issues and requested that the FSB, in collaboration with other international standard setting bodies, develop recommendations to strengthen the oversight and regulation of the "shadow banking system". In response, the FSB released a report on 27 October 2011[1] on strengthening oversight and regulation of shadow banking.

Building on this report and on the invitation of the November 2011 G20 Cannes Summit to develop its work further, the FSB has also initiated five work-streams tasked with analysing the issues in more detail and developing effective policy recommendations. These work-streams include: (i) the Basel Committee on Banking Supervision (BCBS) will work on how to further regulate the interaction between banks and shadow banking entities and report in July 2012; (ii) the International Organization of Securities Commissions (IOSCO) will work on regulation to mitigate the systemic risks (including run-type risks) of Money Market Funds (MMFs) and report in July 2012; (iii) IOSCO, with the help of the BCBS, will carry out an evaluation of existing securitisation requirements and make further policy recommendations in July 2012; (iv) a FSB subgroup will examine the regulation of other shadow banking entities[2] and report in September 2012; and, (v) another FSB subgroup will work on securities lending and repos and report in December 2012. These work-streams bring together the EU and other major jurisdictions including the US, China and Japan, who are each considering appropriate regulatory measures.

3. WHAT IS SHADOW BANKING?

The October 2011 FSB report represents the first comprehensive international effort to deal with shadow banking. It focuses on (i) the definition of principles for the monitoring and regulation of the shadow banking system; (ii) the initiation of a mapping process to identify and assess systemic risks involved in shadow banking; and, (iii) the identification of the scope of possible regulatory measures.

In this report, the FSB defined the shadow banking system as "the system of credit intermediation that involves entities and activities outside the regular banking system". This definition implies the shadow banking system is based on two intertwined pillars.

First, entities operating outside the regular banking system engaged in one of the following activities:

- accepting funding with deposit-like characteristics;
- performing maturity and/or liquidity transformation;
- undergoing credit risk transfer; and,
- using direct or indirect financial leverage.

Second, activities that could act as important sources of funding of non-bank entities. These activities include securitisation, securities lending and repurchase transactions ("repo").

[1] Available at http://www.financialstabilityboard.org/publications/r_111027a.pdf

[2] Other shadow banking entities covers the entities listed in the box below, excluding MMFs.

Against this background, the Commission is at this stage focussing its analysis on the following possible shadow banking entities and activities. This should not be viewed as exhaustive, as shadow banking entities and activities can evolve very rapidly.

Possible shadow banking entities and activities on which the Commission is currently focussing its analysis

Entities:

- Special purpose entities which perform liquidity and/or maturity transformation; for example, securitization vehicles such as ABCP conduits, Special Investment Vehicles (SIV) and other Special Purpose Vehicles (SPV);

- Money Market Funds (MMFs) and other types of investment funds or products with deposit-like characteristics, which make them vulnerable to massive redemptions ("runs");

- Investment funds, including Exchange Traded Funds (ETFs), that provide credit or are leveraged;

- Finance companies and securities entities providing credit or credit guarantees, or performing liquidity and/or maturity transformation without being regulated like a bank; and

- Insurance and reinsurance undertakings which issue or guarantee credit products.

Activities:

- Securitisation; and

- Securities lending and repo.

The FSB has roughly estimated the size of the global shadow banking system at around € 46 trillion in 2010, having grown from € 21 trillion in 2002. This represents 25-30% of the total financial system and half the size of bank assets. In the United States, this proportion is even more significant, with an estimated figure of between 35% and 40%. However, according to the FSB estimates, the share of the assets of financial intermediaries other than banks located in Europe as a percentage of the global size of shadow banking system has strongly increased from 2005 to 2010, while the share of US located assets has decreased. On a global scale, the share of those assets held by European jurisdictions has increased from 10 to 13% for UK intermediaries, from 6 to 8% for NL intermediaries, from 4% to 5% for DE intermediaries and from 2% to 3% for ES intermediaries. FR and IT intermediaries maintained their previous shares in the global shadow banks assets of 6% and 2% respectively.

Questions:

a) Do you agree with the proposed definition of shadow banking?

b) Do you agree with the preliminary list of shadow banking entities and activities? Should more entities and/or activities be analysed? If so, which ones?

4. WHAT ARE THE RISKS AND BENEFITS RELATED TO SHADOW BANKING?

Shadow banking activities can constitute a useful part of the financial system, since they perform one of the following functions: (i) they provide alternatives for investors to bank deposits; (ii) they channel resources towards specific needs more efficiently due to increased specialization; (iii) they constitute alternative funding for the real economy, which is particularly useful when traditional banking or market channels become temporarily impaired; and, (iv) they constitute a possible source of risk diversification away from the banking system.

Shadow banking entities and activities may however also create a number of risks. Some of these risks can be of a systemic nature, in particular due to the complexity of shadow banking entities and activities; their cross-jurisdictional reach and the inherent mobility of securities and fund markets; and, the interconnectedness of shadow banking entities and activities with the regular banking system.

These risks can be grouped together as follows:

(i) Deposit-like funding structures may lead to "runs":

Shadow banking activities are exposed to similar financial risks as banks, without being subject to comparable constraints imposed by banking regulation and supervision. For example, certain shadow banking activities are financed by short-term funding, which is prone to risks of sudden and massive withdrawals of funds by clients.

(ii) Build-up of high, hidden leverage:

High leverage can increase the fragility of the financial sector and be a source of systemic risk. Shadow banking activities can be highly leveraged with collateral funding being churned several times, without being subject to the limits imposed by regulation and supervision.

(iii) Circumvention of rules and regulatory arbitrage:

Shadow banking operations can be used to avoid regulation or supervision applied to regular banks by breaking the traditional credit intermediation process in legally independent structures dealing with each other. This "regulatory fragmentation" creates the risk of a regulatory "race to the bottom" for the financial system as a whole, as banks and other financial intermediaries try to mimic shadow banking entities or push certain operations into entities outside the scope of their consolidation. For example, operations circumventing capital and accounting rules and transferring risks outside the scope of banking supervision played an important role in the build-up to the 2007/2008 crisis.

(iv) Disorderly failures affecting the banking system:

Shadow banking activities are often closely linked to the regular banking sector. Any failures can lead to important contagion and spill-over effects. Under distress or severe uncertainty conditions, risks taken by shadow banks can easily be transmitted to the banking sector through several channels: (a) direct borrowing from the banking system and banking contingent liabilities (credit enhancements and liquidity lines); and, (b) massive sales of assets with repercussions on prices of financial and real assets.

Questions:

c) Do you agree that shadow banking can contribute positively to the financial system? Are there other beneficial aspects from these activities that should be retained and promoted in the future?

d) Do you agree with the description of channels through which shadow banking activities are creating new risks or transferring them to other parts of the financial system?

e) Should other channels be considered through which shadow banking activities are creating new risks or transferring them to other parts of the financial system?

5. WHAT ARE THE CHALLENGES FOR SUPERVISORY AND REGULATORY AUTHORITIES?

Given the potential risks set out above, it is essential that supervisory and regulatory authorities consider how best to address shadow banking entities and activities. However, this task presents various challenges.

First, the authorities concerned have to identify and monitor the relevant entities and their activities. In the EU, most national authorities have relevant experience and the European Central Bank (ECB), the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA), the European Insurance and Occupational Pension Authority (EIOPA) and the European Systemic Risk Board (ESRB) have started building up expertise on shadow banking. However, there remains a pressing need to fill the current data gaps on the interconnectedness between banks and non-banks financial institutions on a global basis. The EU could therefore need to ensure permanent processes for the collection and exchange of information on identification and supervisory practices between all EU supervisors, the Commission, the ECB and other central banks. This will require close coordination among them to share information and promptly detect problems. It may also require new specific powers for national supervisory authorities.

Secondly, the authorities have to determine the approach to supervising shadow banking entities. The Commission considers it should (i) be performed at the appropriate level, i.e. national and/or European; (ii) be proportionate; (iii) take into account existing supervisory capacity and expertise; and, (iv) be integrated with the macro-prudential framework. On the latter, the authorities must be able to understand the hidden credit intermediation chains; assess properly their systemic importance; consider the macro-prudential implications of new

products or activities; and, map the interconnectedness of the shadow banking system with the rest of the financial sector.

Thirdly, as shadow banking issues may require extending the scope and nature of prudential regulation, appropriate regulatory responses are needed. The afore-mentioned FSB report has suggested some general principles which regulators should apply in designing and implementing regulatory measures for shadow banking. The FSB suggested that regulatory measures should be targeted, proportionate, forward-looking and adaptable, effective, and should be subject to assessment and review. The Commission considers that the authorities should take into account these high-level principles. The Commission also considers that a specific approach to each kind of entity and/or activity must be adopted. This will require achieving the right balance between three possible and complementary means: (i) indirect regulation (regulating the links between the banking system and shadow banking entities); (ii) appropriate extension or revision of existing regulation; and, (iii) new regulation specifically directed at shadow banking entities and activities. In this context, alternative or complementary non-regulatory measures also need to be considered.

Questions:

f) Do you agree with the need for stricter monitoring and regulation of shadow banking entities and activities?

g) Do you agree with the suggestions regarding identification and monitoring of the relevant entities and their activities? Do you think that the EU needs permanent processes for the collection and exchange of information on identification and supervisory practices between all EU supervisors, the Commission, the ECB and other central banks?

h) Do you agree with the general principles for the supervision of shadow banking set out above?

i) Do you agree with the general principles for regulatory responses set out above?

j) What measures could be envisaged to ensure international consistency in the treatment of shadow banking and avoid global regulatory arbitrage?

6. WHAT REGULATORY MEASURES APPLY TO SHADOW BANKING IN THE EU?

In the EU, each of the three possible regulatory approaches outlined in the previous section of this Green Paper is currently being followed and is summarised below. A number of legislative proposals with implications for shadow banking entities and activities are already in place or currently being negotiated by the European Parliament and the Council. Some Member States also have additional national rules for the oversight of financial entities and activities that are not regulated at EU level.

6.1. Indirect regulation of shadow banking activities through banking and insurance regulation

The EU has taken important steps indirectly to address shadow banking issues raised by securitisation structures to deter banks to circumvent existing capital requirements and other legislation:

- the revision of the EU banking capital requirements directive in 2009 (the so-called Capital Requirements Directive, or "CRD II"),[3] which Member States should have transposed into national law by October 2010, required both originators and sponsors of securitized assets to retain a substantial share of their underwritten risks. The directive also reinforced the treatment of liquidity lines and credit exposure to securitization vehicles. The previous rules had allowed banks to avoid posting capital for the corresponding risks;
- the amendments in the subsequent revision of the directive in 2010 (the so-called "CRD III")[4] further strengthened capital requirements in line with the recommendations published by the BCBS in July 2009. Since December 2011, banks have been required to comply with additional disclosure rules and hold significantly more capital to cover their risks when investing in complex re-securitisations. This Directive also required competent authorities in all Member States, when carrying out their risk assessment of individual banks under Pillar 2 of the Basel/CRD framework, to take into account reputational risks arising from complex securitisation structures or products;[5]
- in its proposal for the latest revision to the directive (the so-called "CRD IV")[6] the Commission has proposed the introduction of explicit liquidity requirements as of 2015, including liquidity facilities for SPVs and for any other products or services linked to a bank's reputational risk; and
- the Commission endorsed in November 2011 an amendment to the International Financial Reporting Standards (IFRS) to improve the disclosure requirements relating to the transfer of financial assets (related to IFRS 7).[7] The Commission is also analysing the new standards on consolidation (related to IFRS 10, 11 and 12). The objective of these standards is to improve the consolidation of securitization vehicles and the disclosure requirements relating to unconsolidated participations in "structured entities" like securitisation vehicles or asset-backed financing.

[3] Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management, OJ L 302, 17.11.2009, p. 97–119.

[4] Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies, OJ L 329, 14.12.2010, p. 3–35.

[5] See Annex V, point 8 of Directive 2006/48/EC as amended by Directive 2009/111/EC.

[6] See http://ec.europa.eu/internal_market/bank/regcapital/index_en.htm

[7] Commission Regulation (EU) No 1205/2011 of 22 November 2011 amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standard (IFRS) 7 Text with EEA relevance.

With regard to the insurance sector, under the rules implementing the Solvency II Framework Directive[8] (Solvency II) for insurance and reinsurance undertakings investing in securitisation products, the Commission plans to require originators and sponsors of such products to meet risk retention requirements similar to those set out in banking legislation.

6.2. Enlarging the scope of current prudential regulation to shadow banking activities

The scope of existing regulations has also been extended to new entities and activities so as to have a broader coverage, address systemic risk concerns and make future regulatory arbitrage more difficult.

This is the approach taken as regards investment firms. They are subject to the regime set out in the Markets in Financial Instruments Directive (MiFID).[9] In the review of this framework, the Commission proposed on 20 October 2011 a recast directive and a regulation in order to broaden the scope of the framework (e.g. to cover all high frequency traders and more commodity investment firms will be brought within the scope of MiFID); increase the transparency of non-equity instruments – which will enhance the ability to identify risks from shadow banking; and, entrust competent national authorities and ESMA with enhanced and proactive intervention powers, enabling them to control and mitigate risks from shadow banking. MiFID does not directly impose capital requirements for those firms brought within its scope. However, it cross-refers to the Capital Requirements Directive, thereby imposing bank-like prudential regulation on entities performing shadow banking activities.

6.3. Direct regulation of some shadow banking activities

Finally, the EU has also already adopted measures to regulate shadow banking entities and activities directly.

As far as investment funds are concerned, the Alternative Investment Fund Managers Directive (AIFMD)[10] already addresses a number of shadow banking issues, provided that the entities concerned are captured as alternative investment funds under that directive. Asset managers are now required to monitor liquidity risks and employ a liquidity management system. Given new methods for calculating the leverage and reporting requirements, activities such as repurchase agreements or securities lending will be easier for the competent authorities to monitor.

As regards MMFs and ETFs, these funds may be covered by existing legislation on undertakings for collective investment in transferable securities (UCITS).[11] In addition,

[8] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance, OJ L335/1 of 17.12.2009.

[9] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, OJ L 145, 30.4.2004, p. 1–44.

[10] Directive 2011/61/EC of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, OJ L 174, 1.7.2011, p.1.

[11] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities,

ESMA has developed guidelines which entered into force on 1 July 2011.[12] These guidelines include recommendations for these funds to restrict the eligible investments, limit the weighted-average maturity, and to carry out daily net asset value calculations.

Credit Rating Agencies (CRAs) are not leveraged and they do not directly engage in maturity transformation. Nevertheless, they have an important role in the credit intermediation chain since they assign ratings to products and entities. In the EU, CRAs are subject to stringent regulation and supervision by ESMA.[13] Moreover, the Commission has proposed additional legislative measures to strengthen the credit rating process.[14]

Finally, in relation to insurance regulation, Solvency II also addresses a number of shadow banking issues as it provides comprehensive regulation centred on a risk-based and economic approach, along with strong risk management requirements including a "prudent person" principle for investments. In particular, it explicitly covers credit risks in capital requirements; provides for a total balance sheet approach where all entities and exposures are subject to group supervision; and, is as stringent in respect of credit risk as CRD IV. Solvency II also requires Member States to authorise the establishment of an insurance SPV. Detailed rules implementing Solvency II which are currently being considered will include authorisation and ongoing regulatory requirements relating to solvency, governance and reporting as far as insurance SPVs are concerned.

Questions:

k) What are your views on the current measures already taken at the EU level to deal with shadow banking issues?

7. OUTSTANDING ISSUES

Although the indirect, extended and direct regulatory measures set out above go a long way to addressing shadow banking entities and activities, there is still further progress to make given the evolving nature of the shadow banking system and out understanding of it.

In coordination with the FSB, the standards setting bodies and the relevant EU supervisory and regulatory authorities, the aim of the Commission's current work is to examine existing measures carefully and to propose an appropriate approach to ensure comprehensive supervision of the shadow banking system, coupled with an adequate regulatory framework.

[12] Available at http://www.esma.europa.eu/content/Guidelines-Common-definition-European-money-market-funds

[13] Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, OJ L 302, 17.11.2009, p. 1–31, and Regulation (EU) No 513/2011 of the European Parliament and of the Council of 11 May 2011 amending Regulation (EC) No 1060/2009 on credit rating agencies, OJ L 145, 31.5.2011, p. 30–56.

[14] Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1060/2009 on credit rating agencies, COM(2011) 747 final of 15.11.2011.

In this context, there are five key areas where the Commission is further investigating options and next steps.

7.1. Banking Regulation

In this area, several issues are being examined with the overarching aim to:

- recapture for prudential purposes any flawed risk transfer towards shadow banking entities;
- examine ways to identify the channels of exposures, limit excessive exposure to shadow banking entities and improve the disclosure requirements of banks towards exposures to such entities; and
- ensure that banking regulation covers all relevant activities.

In particular, consolidation rules for shadow banking entities are being examined to ensure that bank-sponsored entities are appropriately consolidated for prudential purposes and therefore fully subject to the comprehensive Basel III framework. It is also appropriate to study the differences between accounting consolidation and prudential consolidation, as well as the differences between jurisdictions. In this regard, it is worthwhile to assess the impact of the new IFRS on consolidation, in particular in respect of shadow banking entities.

As regards bank exposure to shadow banking entities, there are several issues that need to be investigated further: (i) whether the large exposure regime in the current banking legislation is stringent enough to properly address all shadow banking exposures, individually as well as globally; (ii) how to account effectively for leverage in shadow banking entities such as investment funds, including in particular whether to extend the so-called look-through approach currently being applied by some banks; (iii) whether to apply the CRD II treatment of liquidity lines and credit exposures for securitisation vehicles to all other shadow banking entities; and, (iv) a review of the implementation of the national supervisory treatment for implicit support.

Existing EU banking legislation is limited to deposit-taking institutions that provide credit. It could be considered to enlarge the scope of financial institutions and activities covered by the current legislation. The Commission is currently studying the merits of extending certain provisions of CRD IV to non deposit-taking finance companies not covered by the definition in the Capital Requirements Regulation (CRR).[15] This would also limit the scope for future regulatory arbitrage for providers of credits.

7.2. Asset management regulation issues

The Commission is looking carefully at the evolution of both the ETF and the MMF markets in the context of shadow banking.

As far as ETFs are concerned, the FSB has identified a possible mismatch between liquidity offered to ETF investors and less-liquid underlying assets. The current regulatory debate

[15] European Commission, Proposal for a Regulation of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms, COM(2011) 452 final of 20 July 2011.

focuses on possible liquidity disruptions; the quality of collateral provided in cases of securities lending and derivatives (swap) transactions between ETF providers and their counterparties; and, conflicts of interest where counterparties in these transactions belong to the same corporate group. Some of these issues are not confined to ETFs. They arise in every instance where securities owned by an investment fund are lent to other counterparties or where a fund enters into a derivative transaction (e.g. total return swaps) with counterparty.

In addition, ESMA is currently carrying out a review of the UCITS framework in general and in particular as regards the potential application to ETFs, with a view to adopting new guidelines this year. The guidelines will include recommendations regarding the labelling of ETFs, disclosures to investors and use of collateral.

In relation to MMFs, the main concerns identified relate to the risks of runs (i.e. massive simultaneous redemptions by investors). Such runs could seriously affect financial stability. The FSB has identified the possibility of runs stemming mainly from the credit and liquidity risks inherent to the portfolio of an MMF, as well as from the method of valuing MMFs' assets. The risks of runs increase when MMFs value their assets through the amortised cost approach in order to maintain a stable Net Asset Value (NAV), even if the market values of the underlying investments fluctuate, as is the case for the so called constant NAV MMF. Investors have an incentive to be the first to withdraw funds from them in time of market stress before the NAV is forced to drop.

7.3. Securities lending and repurchase agreements

Another central issue concerns securities lending and repurchase agreements as these activities can be used rapidly to increase leverage and are a key source of funds used by some shadow banking entities. The ongoing work by the Commission and the FSB is examining current practices, identifying regulatory gaps in existing regulation and looking at inconsistency between jurisdictions.

The specific issues to be covered could include: prudent collateral management; reinvestment practises of cash received against collateralised securities; re-use of collateral (re-hypothecation); ways to improve transparency both in the markets and for supervisory authorities, and, the role of market infrastructure. The Commission considers that special attention should be given to global leverage resulting from securities lending, collateral management and repos transactions in order to ensure that supervisors have accurate information to assess this leverage, the tools to control it and to avoid its excessive pro-cyclical effects. Finally, bankruptcy laws and their impact on collateral should also be reviewed with a view to increasing international consistency along with the accounting practices of such transactions.

7.4. Securitisation

It will be important to include an examination of whether the measures relating to securitisation set out earlier in this Green Paper have been effective in addressing shadow banking concerns.

In addition, the Commission is currently examining how similar measures can be taken in other sectors. The main issues include transparency, standardisation, retention and accounting requirements. The Commission services and the US Securities and Exchange Commission

have therefore started comparing securitisation rules in the EU and in the US which share the goal of safer and sounder securitisation practices. Joint work has also been launched within IOSCO, in coordination with the BCBS, to help the FSB in developing policy recommendations by July 2012 aimed at requesting all jurisdictions to adopt comparable and compatible frameworks.

7.5. Other shadow banking entities[16]

Additional work on other shadow banking entities is also underway within the FSB and the EU in order to: (i) list the entities that could be covered; (ii) map the existing regulatory and supervisory regimes in place; (iii) identify gaps in these regimes; and, (iv) suggest additional prudential measures for these entities, where necessary.

Data collection is another issue to consider, as some national supervisors may not have the necessary powers to collect data on all shadow banking entities. The Commission and the European Supervisory Authorities will consult with national supervisory authorities in order to assess the situation. Depending on the results, a legislative approach at EU level could be warranted. In line with the FSB's work on data gaps, it may also be useful to ensure that supervisors have the powers to collect and share data on a global basis. In this context, the creation of a global Legal Entity Identifier (LEI) would be welcome.[17]

As stated in its Green Paper of 20 October 2010,[18] the Commission will also undertake further work on the resolution of other financial institutions. This will examine the nature of the risks for financial stability posed by various non-bank entities and explore the need for any appropriate resolution arrangements. In this context, a number of the shadow bank entities referred to in this Green Paper will be considered.

Finally, the Commission considers that further analysis should be carried out to monitor whether the new Solvency II Framework will be fully effective in addressing any issues raised by insurance and reinsurance undertakings performing activities similar to shadow banking activities.

Questions:

l) Do you agree with the analysis of the issues currently covered by the five key areas where the Commission is further investigating options?

m) Are there additional issues that should be covered? If so, which ones?

n) What modifications to the current EU regulatory framework, if any, would be necessary properly to address the risks and issues outlined above?

[16] For a list of other shadow banking entities, see foot note 2.

[17] The LEI is a global standard that would help risk management, data quality and macro prudential supervision. The FSB has set up an Expert Group to coordinate work among the global regulatory community to prepare recommendations for the appropriate governance framework for a global LEI.

[18] Available at http://ec.europa.eu/internal_market/bank/docs/crisis-management/framework/com2010_579_en.pdf

o)	What other measures, such as increased monitoring or non-binding measures should be considered?

8. WHAT ARE THE NEXT STEPS ENVISAGED BY THE EU?

On the basis of the outcome of this consultation and the work carried out by the ESRB, EBA, ESMA and EIOPA, the Commission will decide on the appropriate follow-up regarding the shadow banking issues outlined in this Green Paper, including legislative measures, as appropriate. The Commission will continue to engage in ongoing international work, including to ensure any level playing field concerns are addressed. Any regulatory follow-up will be accompanied by a careful assessment of its potential impacts and will also take into account the results of the work of the high-level expert group on structural banking reforms recently appointed by the Commission.[19] After the publication of the group's report, the Commission will assess the need for additional, targeted consultations on selected issues, as necessary.

The Commission invites stakeholders to comment on all the issues set out in this Green Paper and in particular to respond to the questions above. In addition, the Commission is organising a public conference on shadow banking in Brussels on 27 April 2012 to which all stakeholders are invited.[20]

The responses received will be available in the Commission website unless confidentiality is specifically requested, and the Commission will publish a summary of the results of the consultation.

Stakeholders are invited to send their comments before 1 June 2012 to the following email address: markt-consultation-shadow-banking@ec.europa.eu

[19] http://ec.europa.eu/commission_2010-2014/barnier/headlines/news/2012/01/20120116_en.htm

[20] http://ec.europa.eu/internal_market/bank/shadow_banking/index_en.htm