



COMMENTS FROM THE ASSOCIATION OF SUPERVISORS OF BANKS OF THE AMERICAS (ASBA) TO CONSULTATIVE DOCUMENTS

Guidance on Continuity of Access to Financial Market Infrastructures (“FMIs”) for a Firm in Resolution

(ISSUED BY THE FINANCIAL STABILITY BOARD FOR
COMMENTS BY 10 February 2017)

I. Purpose of the revision

One of the primary objectives of a resolution plan is to ensure continuity of a firm’s critical functions¹. Thus, it is necessary to guarantee the parallel operation of other services, including those provided by Financial Market Infrastructures (FMIs).

In its report to the G20, on “Removing Remaining Obstacles to Resolvability”² of November 2015, the FSB identified that firms’ access to FMIs during resolution, remains an outstanding issue that needs addressing. Such access would allow authorities -and other market participants- to have confidence that the implemented resolution strategies and plans will be effective.

As a consequence, “this consultative document proposes a set of arrangements to support continued access to FMIs by a firm in resolution. Those arrangements apply at the level of the providers of critical FMI services, at the level of FMI participants, and that of the relevant resolution and FMI authorities. The consultative document builds on Part II of II-Annex 1 of the Key Attributes on the Resolution of FMI Participants (FMI-Annex), which sets out objectives for FMI participants and FMI rules and procedures to manage the resolution of a participant.”³

The above mentioned Key Attributes (KA) are “...an essential component of the FSB’s package of policies to reduce the risks of moral hazard and the potential for systemic disruption associated with systemically important financial institutions,” as well as they establish a set of core elements for an orderly and effective resolution regime. Specifically, the Annex mentioned above of the KA (Part II of II-Annex 1) provides guidance to deal with the resolution of an FMI participant that could be systemically important or critical in the event of a failure.

Following are the responses of the Association of Supervisors of Banks of the Americas (ASBA), based on the opinion of its members, to the consultative document.

II. Responses to Specific Questions Contained in the Document

1. Does the consultative document appropriately address the tensions that may arise between the various financial stability objectives, with regard to the safety and soundness of providers of critical FMI services on the one hand and to the orderly resolution of the recipients of such services on the other?

¹ ‘Critical functions’ are understood as the whole set of activities performed by and for third parties, in which a failure of any of them would lead to the disruption of services that are vital for the financial stability.

² [Removing Remaining Obstacles to Resolvability: Report to the G20 on Progress in Resolution. Financial Stability Board. November 2015.](#)

³ [Guidance on Continuity of Access to Financial Market Infrastructures \(“FMIs”\) for a Firm in Resolution \(Consultative Document\). Financial Stability Board. December 2016.](#)



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Yes, it does. The document adequately addresses the tensions between the conflicting priorities of preserving financial stability while ensuring continuity of critical services in the event of resolution of a firm (FMI participant). Thus, it would be useful to include the potential tensions in the resolution plan.

Considering that FMIs are systemically important entities, they should incorporate into their risk management the possible events associated with one of their participants entering into an orderly resolution process. In this sense, the strategy to manage these risks should be part of the operating regulations and agreements between the firms and the FMIs

2. Do you agree with the overall scope of the guidance and the proposed definitions, in particular the services and functions captured in the definition of ‘critical FMI services’? Should any of the definitions be amended? If so, please explain.

The overall scope of the guidance is adequate since it identifies and develops a set of actions focused towards the three primary agents involved (providers of critical FMI services, firms, and relevant authorities).

Albeit, the definition of “Critical FMI Services” could be extended to include other intricate property arrangements, e.g. the case where entities in resolution may be owners, directly or indirectly, of a FMI.

5. Sub-section 1.2 of the consultative document proposes that the general rights, arrangements and applicable procedures of a provider of critical FMI services that would be triggered by entry into resolution of an FMI participant, its parent or affiliate, should be the same irrespective of whether the firm entering into resolution is a domestic or foreign FMI participant. What safeguards should be considered and what measures are needed to ensure a consistent approach is taken across providers of critical FMI services to these safeguards?

Safeguards employed shall be consistent with the resolution strategy and shall always focus on maintaining for an FMI participant the conditions to continue providing critical services for an entity in resolution. However, to reinforce the prevalence of the conditions mentioned above, the possibility of requiring to both bridge entities and successor entities either of the following (or a combination of): (a) minimum capital levels; (b) additional collateral; (c) liquidity funds as guarantee, could be recommended.

6. What are your views on the proposal in sub-section 1.4 of the consultative document that providers of critical FMI services should engage with their participants regarding the range of risk management actions and requirements they would anticipate taking in response to the resolution of an FMI participant? Does this strike the right balance between the objectives of orderly resolution and the FMI or FMI intermediary’s prudent risk management?



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We agree with the proposal, because it balances different objectives and also gives some flexibility to FMIs and their providers of critical services focusing on key areas.

Adequate engagement of all relevant participants of an FMI shall be designed in accordance with the envisaged framework of risk. Also, to allow for an optimal engagement, better communication channels with all concerned authorities are needed.

7. Do you agree with the proposal in section 2 of the consultative document that firms should be required to develop contingency plans to facilitate continuity of access in both the lead-up to and upon entry into, resolution? Does the consultative document address all aspects of the information and analysis that may be required for such contingency plans?

The Association agrees with this proposal of requiring firms to develop contingency plans detailing how they would maintain access to critical FMI services.

As a fundamental aspect of contingency plans, it is recommended that firms in the process of resolution, map the primary services it uses, the requirements to comply and the conditions to continue with the use of credit lines. Also, firms should define the probable scenarios that may occur during a resolution process, to consider how will be the access to FMIs under different scenarios.

10. Does the consultative document identify appropriate methods for providing the information and communication necessary for key decision making during the resolution of an FMI participant? Are there additional safeguards that could be put in place that would ensure adequate levels of transparency in the lead-up to, and upon resolution?

The document appropriately identifies the methods for providing the information and communication between all relevant participants of the resolution process and during the lead-up to and upon resolution. However, we suggest adding to the document that relevant authorities may design a predetermined set of information requirements, which shall be adjusted to possible scenarios that the resolution may take.

I. Additional comment.

Under subsection 1.3 about heightened or additional requirements for a firm in resolution, safeguards shall also prevent market abuse to a firm in resolution, i.e. the equilibrium from a systemic point of view shall always be pursued taking into account the risk profile of the service provider. In this regard, all additional requirements for participants should be broadly discussed between authorities and firms to ensure the viability of the resolution plan, but always taking into account considerations related to the level of risk, size, and complexity of activities undertaken by the relevant participant.