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Financial Stability Board
Centralbahnplatz 2
Basel, Switzerland

Submitted by email to: fsb@fsb.org

GFMA/IIF response to FSB Consultative Document: Guidance on Continuity of Access to Financial Market Infrastructures for a Firm in Resolution

Introduction

The Global Financial Markets Association (GFMA) and the Institute for International Finance (IIF) (together the "Associations"[1]) welcome the opportunity to comment on the Financial Stability Board's (FSB) proposed guidance on Continuity of Access to Financial Market Infrastructures (FMIs) for a Firm in Resolution (the Guidance). We recognise that maintaining continuity of access to critical FMI services is an essential part of resolution planning and welcome the FSB providing guidance to build upon the Key Attributes and the work undertaken by firms in this area.

We strongly support the objectives of the Guidance including enhancing transparency and communication between FMIs, FMI intermediaries, firms and the relevant supervisory and resolution authorities to further advance work in this area. We set out below a number of areas where we believe clarification and adaptation is necessary to provide a workable framework to achieve these goals. The key issues we believe should be addressed in the final guidance include the following:

- it should be clarified that custodian banks are not in any way classified as FMIs and should instead be treated, for the purposes of this Guidance only, as FMI intermediaries which better reflects the services they provide. This should be achieved by clarifying that custody services are covered by the definition of FMI intermediary and by removing references to custodians from the definition of FMI and elsewhere in the Guidance;
- it is essential to distinguish between FMIs and FMI intermediaries in each portion of the Guidance. While we agree that the over-arching objective of ensuring continuity of access to critical FMI services should apply to both direct and indirect access, there are a number

[1] A description of the Associations is included in the annex.

of important differences which need to be considered and reflected in the Guidance; conflating the two may lead to unnecessary confusion and complexity;

- a number of the definitions require clarification including the definitions of FMI intermediary, critical FMI services and FMI participant or firm;

The Associations and their members look forward to working with the FSB and regulators to facilitate the implementation of the Guidance, and would welcome a further discussion with the FSB as to how further work on consistent and efficient implementation might be organised.

We comment on each section and in response to the questions raised in the Consultative Document below.

Section 1 – Continuity of access arrangements at the level of the provider of critical FMI services and questions 1 to 6 of the Consultative Document

We strongly support the proposed principle that providers of critical FMI services should take appropriate steps, in a clear and transparent manner, to consider and plan for the interaction between the resolution regimes of their FMI participants and their own risk management framework and clarify the actions that they are likely to take in a resolution scenario. This will assist firms and resolution authorities with recovery and resolution planning to ensure that they are prepared to take steps to maintain continuity of access. It is key that the supervisor of the FMI participates and cooperates with resolution authorities of participants in this process.

Question 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?

We believe that the proposed Guidance generally achieves an appropriate balance to address these tensions. As set out in the Guidance, increased transparency as to the risk management actions that are likely to be taken and communication between the relevant parties as part of resolution planning should support this objective. The right balance between the potentially conflicting objectives and stability concerns that may arise in the process of resolution of a G-SIFI will ultimately depend upon the role and approach of the authorities involved and therefore section 3 of the Guidance is key to achieving this.

As discussed further below, striking the right balance requires consideration of how the Guidance might apply differently to different types of FMIs, different FMI intermediaries and different FMI participants and underlying firms which have different resolution strategies.

In addition, the onus for taking the initiative for the identification of critical FMI services, which is necessary for determination of the scope and the necessary form of such arrangements, should be primarily on the recipient of the services and its relevant authority rather than on the critical services provider. Providers of critical FMI services should in turn be expected to provide the necessary transparency and negotiate in good faith.

Question 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.

Scope and exclusion of FMIs operated by central banks: We agree with the overall scope of the Guidance including FMIs, FMI intermediaries and the relevant resolution and supervisory authorities. However, we note that FMIs owned and operated by central banks are excluded from the scope of section 1 of the Guidance. While we understand that the FSB may not have jurisdiction over such bodies, and that they are excluded from the Key Attributes, the ability of firms to comply with section 2 of the Guidance is dependent upon their having access to the necessary information from FMIs. FMIs owned and operated by central banks should therefore be encouraged to apply the Guidance.

Many significant FMIs are managed by central banks (eg. Target, Fedwire), therefore their total exclusion from the application of the Guidance would significantly limit its effectiveness. Despite the formality of the FSB's lack of a remit over central-bank FMIs, the Associations urge the FSB to engage at an appropriate level (through the Bank for International Settlements) to assure maximum continuity of the standards and Guidance for central bank FMIs with those established for other FMIs.

Further, an important goal of the FSB's engagement with central-bank FMIs should be to assure that such FMIs, though excluded from this Guidance commit to establishing the appropriate safeguards necessary to ensure non-discrimination between domestic and foreign FMI participants. The ownership and operation of an FMI by a central bank should not exclude it from providing such assurances to its participants. The same process should assure engagement of such FMIs with participants to establish expectations regarding the heightened or additional requirements that may be put in place for a firm in resolution.

Application to custodians: It is important to clarify how the Guidance applies to custodians. The proposed Guidance includes custodians and custody services in both the definitions of FMI and FMI intermediary and also contains separate references in a number of places. Further the definition of a provider of critical FMI services includes an "FMI, custodian or a FMI intermediary". We are concerned that this appears to separate the role of a custodian from that of FMI intermediaries and could be read as including functions and services that custodians provide that are unrelated to the provision of FMI services.

It should be clarified that custodian banks are not in any way classified as FMIs and should instead be treated, for the purposes of this Guidance only, as FMI intermediaries which better reflects the services they provide. This should be achieved by clarifying that relevant services provided by custodians are covered by the definition of FMI intermediary and removing references to custodians from the definition of FMI and elsewhere in the Guidance.

Definition of FMI intermediary: a clearer definition of FMI intermediary is required to ensure that it does not capture unrelated services provided by many banks such as correspondent banking or prime brokerage.

In the context of payments and the definition of an FMI intermediary, a firm which provides correspondent banking services and does use an FMI in the process of providing its correspondent banking services to respondent banks that are G-SIFIs (with the effect that such services may be deemed "critical"), or uses an FMI to reach the next correspondent bank in the processing chain for cross-border payments or the final beneficiary bank, should not be classed as an FMI intermediary where it does not provide indirect access to an FMI. We support the proposal of The Clearing House/SIFMA response that the definition should be amended as follows:

> An "FMI intermediary" is a firm that provides clearing, payment, securities settlement and/or custody services to other firms **in order to facilitate the firms' direct or indirect access to an FMI.**"

It should also be clarified that entities within a group providing intra-group services are not intended to be covered by the definition.

Definition of critical FMI services: FMIs and FMI intermediaries are unable to determine what services they provide may be critical FMI services for a firm because this will depend upon the firm's business and resolution planning. It should therefore be clarified in the Guidance that the determination of what is a critical FMI service should be determined by the recipient of the FMI service or its resolution authority (as applicable under the relevant resolution regime) and communicated to the FMI or FMI intermediary. The Guidance should therefore clarify that it is the responsibility of the recipient of a critical FMI service to notify the relevant providers that they are providing them with such a service.

Clarification of the treatment of ancillary services: We note that the definition of critical FMI services in the Guidance includes "activities, functions or services that are ancillary to such clearing, payment, securities settlement or custody but whose on-going performance is necessary to enable the continuation of the clearing, payment, securities settlement or custody". It is important that the scope of ancillary services covered within the Guidance is limited to those that are necessary to enable the continuation of the critical FMI service i.e. those within the definition of critical FMI services, to avoid the risk of overly broad interpretation of "ancillary" services as presented in the present draft. Currently the proposed Guidance makes a number of separate references to ancillary services, including in the Annex. We propose that such separate references should be removed on the basis that the concept is sufficiently addressed by the definition of critical FMI services. If separate references are retained, it should be clarified that any such references are only referring to ancillary services that fall within the definition of critical FMI services.

Scope of application to FMI Participants and firms: it should be clarified that the intended scope of the Guidance is limited to firms that are G-SIFIs. This would be consistent with the Key Attributes and avoid an excessively broad range of firms being brought within the scope of the Guidance. While the proposed definition of firm does refer in the definition of FMI participant to those for which recovery and resolution planning is required under the Key Attributes, we believe that the application only to G-SIFIs should be made clearer for the avoidance of doubt. An overly broad scope of application would create a very significant burden for FMI intermediaries which provide FMI services to a large number of smaller institutions.

Definition of FMI participant or firm: the distinction between "FMI participants" and "firms" in some instances becomes blurred in the Guidance. This is somewhat clarified when referring to the indirect participant as "customer". It would be clearer to separate the definitions of "FMI participant" and "firm" and make one a "direct participant", and the other one "indirect". The clear distinction between firms with direct and indirect access is also important in the context of contingency plan, various resolution scenarios and additional requirements for liquidity resources.

In addition, the definitions are not consistent in how they are applied to recipients of FMI services, which makes drawing engagement lines problematic. For example, the definition of "critical functions" refers to activities performed for "third parties", the definition of critical FMI services refers to activities, services and functions provided to firms, participants or other entities (where a firm or participant is one that is required to complete recovery or resolution planning under the Key attributes), and the definition of an FMI intermediary refers to a firm providing activities to other firms or customers).

Greater clarity in general would be achieved if the Guidance made a clear distinction between situations where critical FMI services are provided through a direct membership and when they are intermediated.

Definition of Firm: Although the definition of "firm" clearly states that it is an entity with direct access to FMI services, it would be helpful to clarify that it should be understood that the "firm" as so defined means the relevant legal entity only and not the overall group of which it may be part, for example where the "firm" so defined is a subsidiary of a resolution entity that may be placed into resolution while the firm itself remains solvent and outside of resolution, in accordance with the concepts of the FSB's Key Attributes.

Definition of resolution: we understand that the Guidance is intended to address situations which are directly or indirectly connected to the resolution or anticipated resolution of an FMI participant. However, the proposed definition of "entry into resolution" includes "any other measures taken by a provider of critical FMI services prior to resolution for which a statutory power exists to override or stay a right of termination or suspension." There is an element of circularity in the Guidance which restricts providers of critical FMI services from terminating a critical FMI service upon an FMI participant entering into resolution, because entry into resolution is defined by reference to actions that a provider of critical FMI services may take. We propose the following revision to the definition to address this:

> "For the purposes of this guidance, 'entry into resolution' also includes the period of time prior to an actual resolution for which a statutory power ~~exists~~ to override or stay a right of termination or suspension is in effect."

Question 3: What are your views on the proposal in sub-section 1.1 of the consultative document that providers of critical FMI services clearly set out in their rulebooks or contractual arrangements the rights, obligations and applicable procedures in the event of an FMI participant entering into resolution?

Question 4: Sub-section 1.1 of the consultative document proposes that the exercise by the provider of critical FMI services of any right of termination or suspension of continued access to critical FMI services arising during resolution of an FMI participant be subject to appropriate procedures and adequate safeguards. What are your views on those procedures and safeguards? In your answer, distinguish where relevant depending on whether the firm that enters resolution continues or fails to meet its payment, delivery and collateral provision obligations to the FMI or FMI intermediary.

We agree with the principle that FMIs should review their rulebooks or contractual arrangements to ensure that these allow for an FMI participant to maintain its participation during resolution. Such arrangements should nevertheless be subject to appropriate safeguards to protect the continued safe and orderly operations of the FMI. Safeguards should, as the FSB has always foreseen, include the condition that the participant in resolution must meet its payment, delivery and other obligations to the FMI. For as long as participants meet the rules of membership they should not be excluded. Equally, the FMI should ensure that the rules do not automatically trigger a termination or suspension of critical FMI services in the event of entry into resolution of an FMI participant, its parent or affiliate.

We therefore support the focus of the Guidance on the need to avoid automatic consequences upon a participant entering resolution, but support the application of a common set of expectations and governance processes for dealing with FMI participants in resolution. FMI participants and the relevant authorities should be involved in this process to ensure it meets the objectives and to enable FMI participants to plan in accordance with section 2 of the Guidance.

Application to FMI intermediaries: This is one of the crucial issues on which it is important to have clearly differentiated guidance for FMIs and FMI intermediaries. While the goals of the Guidance in both cases would be similar, the very substantial differences between an FMI's relationship with its participants based on common rules and an FMI intermediary's bespoke agreements with its clients indicate that the Guidance should be set separately.

As discussed further below, the Associations believe that it is essential to distinguish between FMIs and FMI intermediaries in the Guidance. While we agree that the over-arching objective of ensuring continuity of access to critical FMI services should apply to both direct and indirect access, there are a number of important differences which need to be considered and reflected in the Guidance. Making the distinction in the Guidance between direct FMI access and access via an intermediary is vital insofar their behaviour towards an entity in resolution will be motivated by different objectives. FMIs more often fulfil a utility function towards the marketplace as a whole with generic rulebooks and pricing, whereas intermediaries are purely commercial service providers with customised contracts. This is already reflected in PFMI Principle 2, mentioned in the draft Guidance. What's more, the FMIs are often natural monopolies (or flagship incumbents), while service provides are operating in a competitive environment. It is also important to take

into account that FMI intermediaries must comply with risk, capital, liquidity and other regulatory obligations.

In contrast to FMIs, the relationship between FMI intermediaries and their client firms is based on bespoke bilateral contractual arrangements which cannot be amended unilaterally. Dealing with a large number of bilateral contracts would take time and would not be under the full control of the FMI intermediary, so proportionality needs to be considered. As discussed above it is important that the determination of critical FMI services is clarified as being the responsibility of the recipient of the service (or its resolution authority as applicable under the relevant resolution regime) and for the firm to communicate such determination to the provider of the critical FMI services, as providers are unable to determine which services meet the definition of critical services for a particular client firm. The onus should be on recipients of critical FMI services to seek any changes or clarification of contractual arrangements.

Accordingly, it should be clarified that FMI intermediaries should be permitted to meet the provisions of section 1 of the Guidance that provide for such intermediaries to set out the rights and obligations of an FMI participant in resolution by any reasonable means or method appropriate under the particular circumstances of the FMI intermediary and its client firms, not necessarily via amending bilateral contracts but also via operational steps (as long as any such alternative means or methods are agreed upon by the participant and FMI intermediary to be effective to mitigate termination risks);

As discussed under question 2 above, the scope of the Guidance should also be clarified as being limited to G-SIFIs within the scope of the Key Attributes.

The suggestion in sub-section 1.1 of the proposed Guidance that contractual rights and obligations and applicable procedures should be distinct from the default rules of the FMI is potentially problematic. In the UK, for example, actions taken under the default rules of a CCP are protected by statute (Part VII of the Companies Act 1989) so that they are not subject to challenge under insolvency law. If the rules and procedures applicable on the entry into resolution of a participant or indirect participant were not included within the default rules they would not have the full benefit of such protections. This would undermine the CCP's ability to facilitate access to participants in resolution, because its actions could become subject to insolvency law challenges if the entity was subsequently placed into administration or wound up. Overall, this would be inconsistent with the aim of the Guidance and could have a destabilising effect both on the CCP itself and on clearing members and clients.

Question 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?

We support the principle that there should not be any discrimination between domestic and foreign FMI participants by a provider of critical FMI services subject to the presumption in the Guidance "that the resolution framework in the jurisdiction in which the foreign participant is located provides adequate safeguards to the provider of critical FMI services", or such safeguards are provided by the regulators or resolution authorities of such providers. Consideration should however be given to the application of stays on termination which might be different in different jurisdictions. The FSB is urged to continue to seek as much uniformity of such stays as possible across jurisdictions.

Although this proposal is obviously sensible in principle, in practice, the rules of the FMI must be based upon, and comply with, the applicable legal regime in the FMI's own jurisdiction and the jurisdictions of its members and participants. The insolvency and resolution regimes of such jurisdictions vary and may in certain respects conflict with the obligations to which an FMI or FMI participant is itself subject. Different authorities are likely to provide different guidance on FMI rules on resolution and legal advice may result in differences between participants in different countries, so that consistency of approach is impossible. Such issues cannot be resolved by the FMI itself but require cooperation between resolution authorities on a global basis in order to ensure an adequate framework is in place to enable a uniform approach. An FMI may be able to take the same approach to a foreign participant as a domestic participant where it has been able to assess the risks associated with the applicable insolvency or resolution regime, for example on the basis of legal opinions. We believe that a reference to such legal opinions permitting the recommended approach should be added to the Guidance.

Section 1.3: Establishing expectations regarding the heightened or additional requirements for a firm in resolution

We strongly support the proposed Guidance that providers of critical FMI services should engage with the FMI participants to discuss and communicate the range of risk management actions and requirements that they may take in response to an FMI participant, its parent or affiliate entering resolution. This is critical for FMI participants to plan effectively and comply with section 2 of the Guidance. This kind of discussion should be supported by a non-disclosure agreement.

However, this is another case where it is clearly important to differentiate between FMIs and FMI intermediaries. FMIs may be able to address many of such issues through their terms and conditions, operating procedures, or other standard documentation, whereas FMI intermediaries stand in a different relationship to their clients, which will entail much more specific and commercially sensitive discussions with individual firms. Further to this, risk management actions will differ between FMIs and FMI intermediaries. Intermediaries for example are likely to need to manage risk through margin requirements and typical bank risk-management tools, whereas FMIs have a variety of mechanisms available, including guaranty fund contributions.

We support the guidance that any additional requirements imposed by an FMI on an FMI participant to maintain adequate risk management should be appropriate in light of the risk that the FMI participant poses to the provider or its other participants and that such additional requirements should be consistent with the FMI's framework for the comprehensive

management of risks. We suggest that the Guidance should add that such additional requirements should also be proportionate and overseen by the regulatory and resolution authorities.

We support the requirement for FMIs to regularly test the effectiveness of their rules and procedures to address a resolution scenario. The results of such tests should be shared with FMI participants and competent authorities as this will assist them in their planning (on a confidential basis where necessary). The timing of the testing should be defined: for example "regular" means each year or when a firm has a new provider, or when there is a change in firm's relevant rules, contractual arrangements and procedures addressing resolution. The Guidance should also set an expectation that the general assumptions and procedures utilised in their effectiveness testing should be shared with FMI participants ex ante to increase transparency and assist FMI participants in their planning for continuity of access. It should also be confirmed that the results of the testing exercises should be kept confidential between the FMI and its participants to facilitate an open dialogue.

However, given that FMI intermediary services are motivated by different client needs, require different documentation, and may even be subject to different governing law, regular effectiveness testing per FMI participant or per service contract would not be practical or effective. Any effectiveness testing regime for FMI intermediaries should be flexible and recognise the bespoke nature of FMI intermediary services.

The Guidance should address situations where a provider of critical FMI services is prohibited from complying with the guidelines by local legal or regulatory constraints. Similarly, certain inconsistencies between the Guidance and international or national legal or regulatory frameworks may currently be incompatible, for example the potential impact on the ability of an FMI intermediary to net its exposures to a client[2]. Where necessary, this should be resolved by suggesting a form of harmonisation between the Guidance and national frameworks. For example, providers of critical FMI services are subject to local prudential and anti money-laundering (AML) requirements, which could constrain their ability to facilitate a transfer of services for situations where the resolution plan of the firm (or of its parent) requires transfer of the participation or membership in an FMI or the client relationship of an FMI intermediary to a successor entity such as a bridge entity (or involves a change of ownership of the firm that has the relationship with the FMI or the FMI intermediary). Guidance as to such situations would be required, for example where existing accounts or access codes would be expected to continue for the benefit of a new legal entity stepping into the place of a member or client firm; further, the FSB should work with the Financial Action Task Force (FATF) and other AML and Counter Terrorism Financing (CTF) and compliance authorities to make certain that FMIs and FMI intermediaries would be able to rely upon the due diligence done on the predecessor firm for AML, CTF and other compliance purposes, to avoid potentially lengthy delays where the business of a former participant or client firm is continued in a new legal entity as a result of resolution. The FSB's continued efforts to make possible "fast track" transfers to new legal entities of FMI participation

[2] For example, it is necessary to consider the interaction with requirements that contracts with FMI intermediaries have to comply with in order to achieve recognition of netting for capital purposes.

or FMI intermediary client relationships will be essential to the success of resolution in such situations, even if doing so requires legislative or regulatory changes.

Question 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?

We believe that this section of the Guidance should provide for close cooperation, including information sharing with relevant authorities in the process of assessing and establishing expectations of risk management actions. We suggest that there should be a role for authorities to facilitate the engagement between FMIs and their participants, in particular in relation to the communication flow and the level of disclosure of information between FMI service provider and FMI participant, and of both parties with the competent authority.

The same broad principles of advance discussion of likely additional requirements should apply as between an FMI intermediary and its client firms, but, again, will be much more bespoke and will depend not only on the FMI intermediary's risk management but on upstream FMI requirements imposed on the FMI intermediary and on the FMI intermediary's risk appetite and commercial policies. Whereas the supervisor of an FMI should have a major role in overseeing an FMI's policies regarding additional requirements because of systemic concerns, the supervisor or resolution authority of an FMI intermediary should in most cases take into account the specificities of the FMI intermediary's client relationships and should not impose discussion of additional requirements that would go beyond what is commercially reasonable for the FMI intermediary as a service provider. FMI intermediaries should maintain reasonable flexibility to take appropriate risk management actions, including imposing additional or heightened requirements, that can be tailored to the specific risks posed by the FMI participant under the specific resolution circumstances at the time.

Section 2 – Continuity of access expectations and requirements applicable to firms

Question 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?

We support the need for firms to develop contingency plans focussed on facilitating continuity of access in the lead up to and upon entry into resolution. As discussed above, firms will need access to the information on expected risk management actions from critical FMI service providers in order to produce effective contingency plans. This planning should be integrated with recovery planning and form part of the resolution planning for the firm under local resolution planning requirements rather than being seen as a separate or additional exercise. Greater emphasis should be provided in the Guidance that the contingency planning should be based upon, and

tailored to, the relevant resolution strategy for the firm, including considerations such as which entity in the group would enter resolution. The granularity of the contingency plans should be tailored to the relevant resolution strategy (i.e. SPE or MPE approach) and corporate structure (i.e. whether the resolution entity has access to FMIs). For example, where the entity receiving the critical FMI services is not a resolution entity, it would not enter resolution under the resolution strategy. This should be given greater emphasis in the Guidance.

We agree that FMI participants should engage with the providers of critical FMI services to understand the likely responses they would take in the lead-up to and during resolution. However, it should be clarified that the scenarios set out in the Guidance should be considered in the context of the relevant resolution strategy for the FMI participant.

It is important to stress, however, that "contingency plans" for the purposes of the final Guidance should not be understood to require in any sense preparation of plans for transfer to alternative service providers or other fall-back arrangements, except if that is part of the firm's resolution plan. Rather, "contingency plans" should be understood to require analysis of the issues that termination might pose, and how to avoid or deal with them, as part of an overall planning process to assist the authorities in understanding the issues and risks.

For banks, liquidity contingency plans and recovery plans are already in place and provide a first level of contingency planning to facilitate continuity of access in both the lead-up to, and upon entry into resolution.

The FSB should note that the assessment of the "most likely" outcome will be dependent on firms making internal assumptions. In most cases it will be necessary and possible for firms to provide estimates only. We support the introduction of such guidance, but it will necessarily be indicative only. Further, it will often be more appropriate for firms to estimate a range and not specific amounts, and it should be made clear that this will be appropriate where firms so determine. We believe that the Guidance should clarify that the determination of the most likely amount should be based upon the FMI participant's internal assumptions and financial modelling.

Some aspects of the information requirements and contingency planning may be challenging for firms to accurately assess on an ex ante basis, for example unadvised credit limits, where FMIs and FMI intermediaries would for very good reasons not be able to provide specific limits. As a result, it would be better to permit firms to base their assessments on past usage of credit in practice rather than trying to estimate limits. It would also be better to address usage of credit facilities as part of overall liquidity planning rather than as a standalone resolution information requirement, taking into account that liquidity needs during resolution may rise. The guidance for firms to maintain transaction data which is available on demand requires significant IT and procedural implementation efforts.

It would be helpful for the FSB to instruct the FMIs to establish and communicate a standard set of assumptions and arrangements that banks can incorporate into their resolution planning. This should result in more robust and transparent contingency planning. However, such a requirement would not be possible and should not apply to the 1:1 client relationships of FMI intermediaries given the bespoke nature of these relationships as explained above.

Question 8: Are there any aspects of the proposed guidance that should apply differently according to whether access to a critical FMI service is provided directly by an FMI or custodian, or indirectly by an FMI intermediary? If so, please describe with reference to the particular section(s) of the proposed guidance, and include your views on how that section(s) should differ.

As discussed above, we believe that it is important to differentiate between FMIs and FMI intermediaries in the Guidance and that the Guidance should make a general distinction between direct and intermediated access to critical FMI services. While we agree that the over-arching objective of ensuring continuity of access to critical FMI services should apply to both direct and indirect access, there are a number of important differences which need to be considered and reflected in the Guidance and its application.

In contrast to FMIs, the relationship between FMI intermediaries and client firms is based on bespoke bilateral contractual arrangements representing a commercial relationship which cannot be amended unilaterally. FMI intermediaries may have a large number of bespoke bilateral contracts. Consequently, the following aspects of the Guidance should apply differently to FMI intermediaries:

- FMI intermediaries should be permitted to meet the provisions of section 1 that provide for such intermediaries to set out the rights and obligations of an FMI participant in resolution by any reasonable means or method appropriate under the particular circumstances of the FMI intermediary and its participants, not necessarily via amending bilateral contracts but also via operational steps (as long as any alternative means or methods are agreed upon by the participant and FMI intermediary to be equivalent in effect to mitigate termination risks);
- the definition of FMI intermediary should be clarified as discussed above to be distinguished from FMI participants; and
- FMI intermediaries should not be required to consult with the resolution authorities of FMI participants where this could create concerns regarding the sharing of confidential information with a competitor of the FMI intermediary or FMI participant.

As discussed above, the treatment of custodians should be clarified by including custody services within the definition of FMI intermediary for the purposes of this Guidance and deleting separate references to custodians.

Question 9: Does the consultative document identify all relevant requirements and pre-conditions that a firm may need to meet to support continuity of access in both the lead-up to, and upon, resolution? What other conditions or requirements, if any, should be addressed?

We believe that the Guidance is comprehensive in this respect.

Section 3 – Co-operation among authorities regarding continuity of access to critical FMI services

Question 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?

We strongly support the need for cooperation and information sharing between the various authorities in relation to the continuity of access to critical FMI services, both across jurisdictions and between bank resolution authorities and FMI supervisory authorities. As much preparation and communication should be put in place as part of resolution planning to ensure that there are no surprises in the event of resolution and there is a common understanding of the plan and issues that will need to be dealt with. We therefore strongly support section 3 of the Guidance. Authorities should be in a continuous dialog between FMIs and its participants in business as usual and stress scenarios. In case the FMIs and the participant's supervisors are not the same, appropriate coordination protocols and mechanism should be in place.

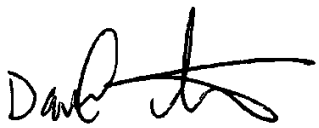
More specific guidance should be considered to clarify the relationship between authorities including how decisions would be made and the process for disseminating information. The Guidance should also clarify that sharing of information should be on a confidential basis and, as discussed above, that consideration should be given to maintaining appropriate levels of confidentiality when sharing information about potential resolution plans for an FMI intermediary with its clients, which may also be competitors.

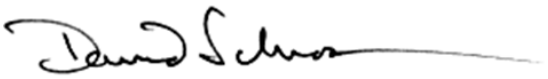
It is important that the Guidance should require FMIs to consult with their supervisory authority and the resolution authorities of the relevant FMI participant when assessing what risk management actions to take in relation to an FMI participant entering resolution. This would ensure that the authorities are able to balance the necessary objectives and encourage transparency and communication amongst the authorities.

It would also be helpful for the FSB to encourage FMIs to establish and communicate a standard set of contacts, escalation points for use prior to and/or in resolution as part of communications planning.

Finally, we would like to reiterate our overall support for the FSB's work to develop the Guidance and hope that these comments are constructive in finalising effective guidance. The Associations look forward to further engagement with the FSB and authorities to facilitate effective implementation and international coordination of the final guidance. If the FSB would like to discuss any of these comments further, please contact Oliver Moullin (oliver.moullin@afme.eu) or David Schraa (dschraa@iif.com).

Yours faithfully,





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Annex - The Associations

The Global Financial Markets Association (GFMA) brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London, Brussels and Frankfurt, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA. For more information, visit http://www.gfma.org.

The Institute of International Finance is a global association of the financial industry, with close to 500 members from 70 countries. Its mission is to support the financial industry in the prudent management of risks; to develop sound industry practices; and to advocate for regulatory, financial and economic policies that are in the broad interests of its members and foster global financial stability and sustainable economic growth. IIF members include commercial and investment banks, asset managers, insurance companies, sovereign wealth funds, hedge funds, central banks and development banks. For more information visit www.iif.com.