August 1, 2019

Mr. Dietrich Domanski
Secretary General
Financial Stability Board
Centralbahnplatz 2
CH-4002 Basel
Switzerland

RE: IIF/GFMA response – Public Disclosures on Resolution Planning and Resolvability

Dear Mr. Domanski:

The Institute for International Finance (IIF) and the Global Financial Markets Association (GFMA) (together the "Associations"[1]) welcome the opportunity to comment on the Financial Stability Board's (FSB) discussion paper on the topic of Public Disclosures on Resolution Planning and Resolvability (referred to as the "Discussion Paper").

Executive Summary

The resolution planning and resolvability work that has been undertaken by the FSB in cooperation with member jurisdictions, including the adoption of the Key Attributes of Effective Resolution Regimes for Financial Institutions in 2011[2], is part of a considerable effort that has gone a long way to help achieve the objectives of reducing systemic and moral hazard risks associated with systemically important banks. As noted in this Discussion Paper, FSB jurisdictions have made substantial progress towards ending "Too-Big-To-Fail" through the introduction of legislative frameworks governing the resolution of systemically important banks. Banks have developed resolution plans and taken significant actions to remove barriers to resolvability. And systemically important banks are now significantly better capitalized, have better funding conditions and are less interconnected than during the global financial crisis, which reduces the probability of a resolution in the first place.

As such, it is important that these efforts are properly explained and disclosed to help inform investors, creditors and other market participants more generally about what frameworks are in place, thereby strengthening market discipline and incentivizing firms to remove any remaining barriers to resolvability. The use of *ex ante* disclosures also clarifies expectations to investors and financial markets about what steps would be taken during resolution and should thereby also contribute to

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

[2] FSB 2011. Key Attributes of Effective Resolution Regimes for Financial Institutions: https://www.fsb.org/work-of-the-fsb/policy-development/effective-resolution-regimes-and-policies/key-attributes-of-effective-resolution-regimes-for-financial-institutions/

market confidence. As such, the Associations are supportive of general resolution-related disclosures by global standard setters, member jurisdictions and by firms.

That said, the FSB has also just commenced a significant evaluation on the impact of the Too-Big-To-Fail reforms for systemically important banks, which will run until late 2020. We encourage the FSB to await the outcome of that evaluation and allow a meaningful observation period (which is likely to extend beyond 2020) before the issuance of any further guidance on firm-specific disclosures. Any further work in this area should only be proposed in response to any identified shortcomings and needs. Otherwise we should encourage a breathing moment, in order not to create the feeling of moving goalposts in the regulatory space.

Regarding the regulation and frameworks that have already been developed, although there is already a great deal of information available to markets, more can be done to make this information easier to find and presented in a simple, effective and comparable way. Authorities could consider organizing conferences, workshops and additional investor outreach that would also help inform market participants about the details of resolution planning and resolvability approaches.

Disclosure of firm-specific details can be more complex, as the FSB Discussion Paper explains, due to the need to protect commercially sensitive information and, given the market sensitivity of this type of firm-specific information, to ensure consistent and appropriate levels of disclosure by different institutions.

We note that the Discussion Paper is intentionally focussed on so-called "peace time" disclosures – *ex ante* disclosures in normal conditions – as opposed to disclosures in the lead-up to, during or after a resolution event. We agree that peace time disclosures are extremely important for market discipline and public accountability purposes, but we do not think such a clear distinction can be made between disclosures in peace time versus those under stressed conditions, particularly in relation to any firm-specific disclosures (whether published by authorities or firms themselves). This is because the market will come to expect information to be disclosed if that is the practice in peace time. And if a view is taken that it would be destabilising to disclose the same information during a stress event, then the market is very likely to react to the absence of disclosures during a stress. Therefore, careful consideration needs to be given before peace time disclosures commence as to the impact of such disclosures – or their absence – in a stress period. This is very similar to the disclosure of central bank liquidity assistance, which is carefully considered in order to avoid destabilizing effects on financial stability.

Furthermore, we believe that market expectations built on disclosed information could constrain firms and regulators' available options to execute the optimal resolution strategy. We believe the ability for firms and regulators to respond flexibly depending on the nature of a crisis and to deploy the most effective resolution strategy at point of failure should be preserved.

In addition, it will take time for disclosure practices to develop and accordingly policymakers should phase-in any potential future additional disclosure requirements so that they only apply in full after various resolvability workstreams have been completed and/or only after full regulatory compliance deadlines have passed. For example, in the UK – the Bank of England has just released new policies for continuity of access to FMIs, funding in resolution, etc. with a compliance deadline of January 1, 2022. Disclosures in respect of such policies should only take place after full compliance has been

achieved (including addressing any issues identified during the process of achieving compliance), rather than asking firms to comment on their plan for achieving compliance.

If there is a view that certain additional firm-specific disclosures would be beneficial, the Associations would be supportive of measures to address this which permit firms to take a judgment on what information to disclose to the market or allows them to play a large role in the development of disclosure requirements with the regulatory authorities. Where any firm-specific disclosures are made by authorities or required of firms, it is vital to ensure that their timing, presentation and level of granularity is consistent and standardized to avoid unintentionally advantaging or disadvantaging any firms in peace time or in a future stress event.

Finally, while there are complexities around the choice of whether and how to publicly disclose firm-specific information about resolution planning and resolvability, it is generally advantageous for regulatory and resolution authorities in different jurisdictions to cooperate and smoothly share information and data in relation to cross-border entities. The Associations support strong regulatory coordination and cooperation in data collection and sharing between authorities in order to improve the effectiveness of recovery and resolution planning and execution, and to alleviate market fragmentation.

Below we set out our views in answer to the questions raised and welcome the opportunity to discuss these further should this be helpful in any future FSB work in this area.

The IIF and GFMA look forward to working with the FSB and its members around this important topic. If you have any questions, please contact Martin Boer (mboer@iif.com) or Allison Parent (aparent@gfma.org).

Very truly yours,

Martin Boer
Director, Regulatory Affairs
Institute of International Finance

Allison Parent
Executive Director
Global Financial Markets Association

General resolution-related disclosures:

1. What current practices regarding general (non-firm specific) disclosures by resolution authorities are useful for market participants and should therefore be encouraged?

We agree that current practices stated in the Discussion Paper regarding general disclosures by resolution authorities could be useful for market participants. We encourage the authorities to update the material when required. An example of good general resolution disclosure is *The Bank of England's approach to resolution* (the so-called "Purple Book"), which was first published in 2014 and has been subsequently updated, notably in October 2017[3]. The document lays out the framework available to the Bank of England to resolve failing banks, and other firms, as well as arrangements for central counterparties.

While there is already a substantial amount of information made available by the FSB, authorities and banks, more can be done to make this information easier to find and presented in a simple, effective and comparable way. If authorities would consider organizing conferences, workshops and additional investor outreach that would also help inform market participants about the details of resolution planning and resolvability approaches.

2. What general disclosures (e.g. of resolution frameworks, resolution planning, and elements of resolvability such as loss-absorbing capacity and funding in resolution), if any, could be further developed or improved? What other elements of general information may be considered for disclosure?

We believe that market participants, as well as the banks themselves, would highly value it if authorities' public websites include simple documents (maybe including in presentation format/slides) that provide a full picture of the resolution framework in their jurisdiction in order to facilitate the understanding of resolution planning and resolvability approaches. Authorities could issue alerts through their websites and communications department whenever there are significant developments or updates to these materials.

We would encourage individual resolution authorities to set out a clear decision tree over the general use of different resolution tools in their jurisdiction in order to increase investor understanding of each authority's approach. That said, any disclosure would need to retain some flexibility to give the authorities the ability to take the actions that they think are appropriate in and around a resolution event.

An example of good practice can be in found in Europe, where the Single Resolution Board (SRB) presents and publishes very clear presentations, through their "Industry Dialogues", for the industry that give an overview of the state of play of the framework.[4] Also, as highlighted in section 1.4 of the FSB Discussion Paper, the Bank of England as the UK Resolution Authority has released and updated a separate paper on its approach to resolution – often referred to as the 'Purple Book' – which it has updated periodically. As a part of this, the Bank of England outlines to the market, how it envisages

[3] https://www.bankofengland.co.uk/-/media/boe/files/news/2017/october/the-bank-of-england-approach-to-resolution
[4] https://srb.europa.eu/en/news/industry-dialogues

the resolution to unfold, timelines and key activities, how resolvability is assessed and how MREL is linked and set differently in relation to the choice of the resolution strategy for an institution which provides further transparency for investors on the approach to an institution's MREL and to resolution. Each Resolution Authority should be encouraged to provide maximum public disclosure of their general resolution approach.

Finally, we believe the FSB should suggest that home resolution authorities publicly provide a general, non-firm specific overview of their resolution funding plans and preferred resolution strategies once they are fully developed. Such disclosure should increase market confidence about how public authorities will exercise their resolution powers during periods of financial distress and ultimately allow the market to assess the residual value of failed institutions more accurately, which will help to preserve financial stability and reduce the tendency toward destructive panic and run behaviour that has been exhibited during such periods in the past.

3. What are suitable means or mechanisms for disclosure of general resolution-related information? What mechanisms for dissemination of information other than those described in the paper could be adopted?

We support the means for disseminating general resolution-related information that are listed in Section 1.3 of the Discussion Paper. In particular, we encourage the FSB and respective member authorities to organise more frequent stakeholder events to assist market participants in understanding the resolution framework and how it develops over time. This could take the form of training sessions or conferences. This would enhance awareness of market participants and would give a clearer and more homogeneous understanding of the framework.

In addition, we think the FSB could add substantial value by compiling and curating a permanent public repository on their website with links to key documents on resolution frameworks, powers and strategies in each jurisdiction.[5] Home authorities in member jurisdictions would be responsible for selecting the relevant documents and keeping them up to date. This could be linked to the annual publication of the list of G-SIBs, which is arrived at and disclosed by the FSB using the BCBS methodology, with further views being provided on the resolution regime, resolution authority and preferred resolution strategy chosen by the institution's resolution authority in discussion with the G-SIB's home resolution authority.

It would also be good for resolution authorities to share case studies and experiences of resolutions undertaken. The SRB has shared some of these in the past, which provide helpful guidance on practicalities of decisions and actions resolution authorities take and can help inform implementation aspects relating to removing impediments to resolution by firms.

[5] This exercise could include FSB member jurisdictions and any non-member jurisdictions that wanted to participate in the FSB's repository.

Firm-specific resolution-related disclosures:

4. Does the discussion paper address relevant current practices, means and requirements regarding firm-specific resolution-related disclosures by authorities? What other practices or requirements, if any, could be noted?

Yes, the Discussion Paper provides an overview of relevant current practices, means and requirements.

It would be welcome if there was more consistency between how jurisdictions report these disclosures, to provide investors, creditors and other market participants with information that is comparable.

In general, we think it is appropriate for home authorities to control firm-specific resolution disclosures, rather than host authorities. This also reduces the risk that banks become subject to multiple disclosure requirements in different jurisdictions, potentially at different dates and relating to different resolution strategies, which could generate confusion for investors rather than clarity. (See response to Question 9.)

As mentioned in our initial comments, we note that the Discussion Paper is intentionally focussed on so-called "peace time" disclosures – ex ante disclosures in normal conditions, as opposed to disclosures in the lead-up to, during or after a resolution event. We agree that peace time disclosures are extremely important for market discipline and public accountability purposes, but we do not think such a clear distinction can be made between disclosures in peace time versus those under stressed conditions, particularly in relation to any firm-specific disclosures (whether published by authorities or firms themselves). This is because the market will come to expect information to be disclosed if that is the practice in peace time. And if a view is taken that it would be destabilising to disclose the same information during a stress event, then the market is very likely to react to the absence of disclosures during a stress. Therefore, careful consideration needs to be given before peace time disclosures commence as to the impact of such disclosures – or their absence – in a stress period. This is very similar to the disclosure of central bank liquidity assistance, which is carefully considered in order to avoid destabilizing financial stability effects.

5. Does the discussion paper address relevant current practices, means and requirements regarding firm-specific resolution-related disclosures by firms? What other practices or requirements, if any, could be noted?

Yes, the Discussion Paper provides an overview of relevant current practices, means and requirements.

As the Discussion Paper highlights, disclosure of firm-specific details is more sensitive due to the need to protect potentially commercially sensitive information and, given the market sensitivity of this type of firm-specific information, to ensure consistent levels of disclosure by different institutions. In general, the disclosure of 'hard information' – including details on TLAC issuance and creditor ranking

– entails fewer potential adverse effects than the disclosure of more scenario-based or judgement-based information, such as firm-specific details of preferred resolution strategies. It would be important to ensure that firm-specific scenario and hypothetical information is not disclosed.

6. Are current practices and requirements adequate overall? How could they be improved further? What other types of firm-specific disclosures, if any, should be considered to help increase transparency?

We believe the current disclosure practices by authorities are sufficient. Any other type of information should be managed by, or developed in close conjunction with, firms themselves. As discussed in response to Question 7 below if, after a careful cost-benefit analysis, authorities do determine that additional firm-specific disclosures are required in due course then the Associations would support banks being in control of these. At a minimum, we would strongly support prior consultation and prior warning to firms about the proposed nature of those disclosures.

We have covered our view on jurisdictional differences in requirements in our response to question 9, but to comment specifically on disclosure practices in a couple of key home jurisdictions:

- The U.S. has now been through several iterations of public disclosures and we believe the process works adequately and the scope is proportionate.
- In the UK, the Bank of England has just finalized the disclosure requirements that form part of its new Resolvability Assessment Framework (RAF).[6] Under the RAF, major UK firms will periodically self-assess their preparedness for resolution for the UK Prudential Regulation Authority and publicly disclose a summary of their self-assessment. The Bank of England would publicly respond with views on the resolvability of individual firms. We think it is important that disclosures that predate compliance deadlines for the removal of barriers to resolvability are carefully managed in order to avoid market misunderstandings about firms' progress. We understand the Bank of England's approach for disclosure timing whereby all firms publish on the same day and the Bank publishes its statement at the same time, or as soon as possible after. This approach should avoid unintentionally advantaging or disadvantaging any firms in the market.

7. What are your views on firm-specific disclosures on resolution planning and resolvability? Does the discussion paper appropriately describe the benefits of such disclosures, as well as any tensions that may arise related to such disclosures and steps that could be taken to address them?

We agree that transparency is a positive step that enables investors to make informed decisions and allows firms to demonstrate progress in removing impediments to resolvability, but this must be balanced against the need to maintain commercial confidentiality, avoiding an unlevel playing field between firms due to discrepancies between firm-specific disclosures and avoiding overwhelming or confusing investors with excessive and/or complex disclosures.

[6] Published on July 30, 2019. See https://www.bankofengland.co.uk/news/2019/july/boe-and-pra-finalise-the-resolvability-assessment-framework.

We agree with the Discussion Paper on the need for regulators to preserve optionality and the ability to respond flexibly in resolution and that differences between disclosed plans and real-world outcomes increases the risk of legal challenge. Similarly, there are a range of potential unintended consequences of disclosing too much information or disclosing it in an unsystematic way – for example if a firm is materially delayed or likely to be unable to address an impediment, disclosure of this fact could affect market confidence. These data and signals are likely to be extremely market sensitive and would affect funding costs and stability.

If experience reveals the need for certain additional firm-specific disclosures, some steps could be taken to alleviate the potential tensions. As mentioned in the Discussion Paper, in general if the onus is on firms to determine the level of detail to provide in disclosures this would help to protect proprietary information. As there is little precedent about resolvability disclosures, especially firm-specific ones, we would recommend that any standards are developed in an iterative and phased manner through close liaison with firms. Industry, investors and regulators will need to develop commonly agreed market standards on disclosure, which would take time - the process should facilitate such gradual evolution.

Certain general guiding principles could be considered by the FSB that would frame firm-specific disclosures.

- Consistency of timing for disclosures across the industry, and between authorities and the industry. In general, we believe that investors should have access to the same level of public information about firms at the same time, given that analysts and industry specialists will wish to compare firms against each other. No firm should be advantaged or disadvantaged by virtue of timing or the sequence in which firms' disclosures – or authorities' public statements about what they show – are released.

- Consistency of the format for disclosures across the industry. In the case of any firm-specific disclosures, they could be based on internationally agreed minimum requirements, for the public disclosure to ensure investors and the public have a consistent basis on which to review firms' progress and to prevent any one firm providing, in good faith, significantly more or less detail than others and potentially being advantaged or disadvantaged as a result. Similarly, any regulatory statements on different firms should follow a consistent format and this format should be aligned to that of the firms' own disclosures.

- Care should be taken if disclosure requirements precede compliance dates for the relevant policies. This is necessary and would apply to both national regulation and global standards in order to carefully manage messages to the market, media and general public. It would not be appropriate for firms to be compelled to publicly comment (and be judged) on capabilities and arrangements they are not yet required to have in place.

Such principles should be articulated as part of an overarching framework about disclosure, including: a) the firm's financial information published as required by market regulation; b) the firm's TLAC related disclosure (Basel Committee's Pillar 3); and, c) the firm's preferred resolution strategy and related capabilities developed to implement it.

Please see our response to Question 9, below, for our view on jurisdictional components of disclosures.

8. Will disclosure of both external and internal total loss-absorbing capacity (TLAC), if compliant with the Basel Committee's Pillar 3 disclosure requirements, be appropriate and sufficient for market participants to evaluate their exposures and assess resolvability? What, if any, additional public disclosures related to TLAC issuance and distribution could help market participants in assessing resolvability?

Yes, we believe the Basel Committee's Pillar 3 disclosure requirements are appropriate and sufficient for market participants to evaluate their exposures and assess resolvability.

9. What other benefits do you see or what concerns, if any, do you have about current disclosure practices? Does the fact that practices differ across jurisdictions and firms pose any issues?

As disclosure regimes are developed globally, there is a risk that global banks become subject to multiple disclosure requirements in different jurisdictions, potentially taking place on different dates, in different formats and focusing on different resolution strategies. We question the rationale and the value of, for example, a firm completing a disclosure in the U.S. as a Foreign Banking Organisation (FBO) while also completing a group-wide disclosure for its home authority in the UK Given that these disclosures are largely predicated on different resolution strategies (Title 1 in the U.S. vs Single Point of Entry bail-in at Group level) there is potential for creating confusion among investors about how firms will be dealt with in failure, undermining regulators' intent for investors to be clearly informed. This puts a significant burden on cross-border banks to align disparate disclosure requirements and then to disclose them in a consistent way to market participants.

In general, we think it is appropriate for home authorities to control firm-specific resolution disclosures, rather than host authorities. One approach would be to include the resolvability of firms' key jurisdictions in one single global resolvability disclosure, which could be released to investors globally at the same time.

Finally, while there are complexities around the choice of whether and how to publicly disclose firm-specific information about resolution planning and resolvability, it is generally advantageous for regulatory and resolution authorities in different jurisdictions to cooperate and smoothly share information and data in relation to cross-border entities. The Associations support strong regulatory coordination and cooperation in data collection and sharing between authorities in order to improve the effectiveness of recovery and resolution planning and execution, and to alleviate market fragmentation.

Way forward:

10. What actions, if any, should the FSB take to promote resolution-related (both general and firm-specific) disclosures?

We believe the FSB should encourage resolution authorities to ensure a good understanding of the framework among market participants. We would encourage individual resolution authorities to set out a clear decision tree over the use of different resolution tools in their jurisdiction in order to increase investor understanding of each authority's approach. That said, any disclosure would need to retain some flexibility to give the authorities the ability to take the actions that they think are appropriate.

Greater consistency between how jurisdictions report resolution-related disclosures would be welcome to provide investors, creditors and other market participants with additional information that is comparable.

In addition, we think the FSB could create additional value by compiling and curating a permanent public repository on their website that is accessible and available to the general public with links to key documents on resolution frameworks, powers and strategies in each jurisdiction.[7] Member jurisdictions would be responsible for selecting the relevant documents and keeping them up to date.

Regarding firm-specific disclosures, we think the FSB and national authorities should allow a meaningful observation period to identify what, if any, further disclosures might be beneficial in response to any identified shortcomings or needs. If firm-specific disclosures are developed, this should involve a careful cost-benefit analysis in close cooperation with firms in order to help alleviate the above-mentioned tensions related to firm-specific disclosures.

In conclusion, we would like to reiterate that the evaluation that the FSB has just commenced on the impact of the Too-Big-To-Fail reforms for systemically important banks, which will run until late 2020, will present a good opportunity to identify if there are any shortcomings and needs around the regulatory framework for systemically important banks. We encourage the FSB to await the outcome of that evaluation and allow a meaningful observation period (which is likely to extend beyond 2020) before the issuance of any further guidance on firm-specific disclosures in order to ensure that guidance is only produced on a needs basis. We also encourage a breathing moment, in order not to create the feeling of moving goalposts in the regulatory space.

[7] This exercise could include FSB member jurisdictions and any non-member jurisdictions that wanted to participate in the FSB's repository.

Annex - The Associations

The Institute of International Finance is the global association of the financial industry, with close to 450 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.

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 www.gfma.org.