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Comments on Public Disclosures on Resolution Planning and Resolvability

Japanese Bankers Association

The Japanese Bankers Association (“**JBA**”) appreciates the opportunity to comment on the Financial Stability Board’s (“**FSB**”) discussion paper on Public Disclosures on Resolution Planning and Resolvability (“**the Discussion Paper**”), released on June 3, 2019.

I. General Comments

The Discussion Paper mentions that ex-ante public disclosures of information on resolution planning and resolvability of a firm could increase predictability and transparency for market participants and the general public.

While the JBA generally agrees with this view, we believe that resolution-related disclosure itself should not be treated as the ultimate goal but instead should play a part in achieving the goals set out in the key attributes which is to resolve financial institutions in an orderly manner without taxpayer exposure to loss. We believe that public disclosure is merely one of the complementary means to help investors and stakeholders understand that we have put an end to the TBTF problem.

It should be noted that current legal grounds/frameworks and disclosure practices differ among jurisdictions and therefore, expectations of stakeholders for disclosures also vary.

> Any resolution regime of a jurisdiction is inevitably closely linked with each jurisdiction’s legal system and its unique laws and regulations.[1] Thus they are not necessarily comparable with each other in a unified format, even if every resolution regime is fully-compliant with the FSB’s *“Key Attributes of Effective Resolution Regimes for Financial Institutions.”*
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> Jurisdictional differences in resolution planning and related disclosure requirements exist as well. For example, the authorities are solely responsible for preparing resolution plans in Japan[2] and in EU member states[3] based on the data and information provided by the firms, whereas in the United States, “covered companies” such as bank holding companies are required to prepare and submit their own resolution plans to the relevant authorities.[4]

[1] For instance, the resolution regime for financial institutions in Japan are stipulated in *Deposit Insurance Act* as special provisions of the Bankruptcy Act, Corporate Reorganization Act and Civil Rehabilitation Act, whilst it is stipulated under Title II of the *Dodd-Frank Wall Street Reforms and Consumer Protection Act* in the United States and under the *Banking Act 2009* in the United Kingdom.

[2] This is stipulated in the Comprehensive Guidelines for Supervision of Major Banks, etc, available at, https://www.fsa.go.jp/common/law/guide/city/03d2.html#03_11 (Only Japanese)

[3] This is stipulated in the Bank Recovery and Resolution Directive (“**BRRD**”), available at, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014L0059

[4] This is stipulated in 12 CFR Part 243 and 12 CFR Part 381 (the Resolution Plan Rule), available at, https://www.govinfo.gov/content/pkg/CFR-2012-title12-vol4/pdf/CFR-2012-title12-vol4-part243.pdf

Disclosure practices on the resolvability assessments the authorities have made also vary. With such differences, it is difficult to apply a “one-size-fits-all approach” for disclosure requirements, given that financial institutions in many jurisdictions do not have access to the information on the applicable resolution plans that are devised by the authorities.

Furthermore, firms have various stakeholders who have various interests towards firms. Disclosure should be tailored to its intended audience taking into account their interests, and knowledge of and familiarity with the resolution regime. For example, investors of TLAC-eligible instruments are expected to be more familiar and have been well-informed with the applicable resolution regime, by virtue of disclosures provided at time of purchase. Host regulators should have access to resolution-related information through Crisis Management Group as well as regular and/or ad hoc engagement with firms. Therefore, if additional disclosure is necessary, intended audience should be clearly defined and content of disclosure should be closely aligned with those.

Therefore, we believe that the most feasible approach for now is to leave home jurisdiction’s discretion to decide to what extent public disclosures should be made available and how they should be described to achieve a better understanding among the target audience groups. Disproportional focus on formality or international standardization may give rise to confusion or misunderstanding among recipients, given the differences among jurisdictions and audience groups as discussed above.

Taking into account these differences, JBA agrees that it can be a starting point that home authorities provide an overall picture of their resolution framework aligned with stakeholders’ needs for comparable disclosure, in order to promote understanding among market participants that there is a credible resolution framework in place, and to demonstrate the resolvability of G-SIBs under the respective resolution framework. However, once again, at the very least, designers of a disclosure regime should be mindful of the target audience and the particular knowledge gap that the regime is intended to address, and calibrate the scope and content of disclosures accordingly.

If the FSB were to develop a guidance on resolution-related disclosures, such guidance should be limited to the minimum extent necessary to achieve the aforementioned goals. This guidance should help resolution authorities to proactively demonstrate and explain clearly to market participants and stakeholders that there is a credible and applicable resolution framework in place. Such framework should be provided in formats that are easy to understand, such as in presentation deck form that may include diagrams of available approaches and step-by-step illustration of the resolution processes.

Meanwhile, this guidance should also include home jurisdiction’s discretion on whether to disclose firm-specific information and its granularity, and whether to require their supervised firms to disclose firm-specific information on resolution planning. This discretion should be exercised based on thorough discussion between the authorities and the firms. Authorities should be mindful that larger volume of information does not necessarily translate to better disclosure and be weary of unintended adverse consequences of firm-specific disclosures, which will be discussed further in II. C below.

We recognize firm-specific resolution planning and resolvability disclosure has been already implemented in the United States and is also finalized in the United Kingdom. Nevertheless, the FSB, as an international standard setting body, should carefully consider whether the development of public disclosure guidance at an international level would be meaningful for the intended audience and if so, what approach would be suitable to achieve the goals taking into account the fact that the resolution regime has inherently jurisdictional nature.

II. Specific Comments

A. Responsible entity for public disclosure

The responsibility for developing and maintaining, and where necessary, executing the resolution strategies set out in resolution plan lies with the authorities under the FSB's *Key Attributes of Effective Resolution Regimes for Financial Institutions*.[5]

In those jurisdictions where home authorities are responsible for resolution plan, we believe the authorities should be also responsible for public disclosure of information on resolution planning and resolvability of a firm, subject to adequate safeguards for commercially sensitive information of the firm.

B. Proportional approach

The extent of disclosure for resolution planning and resolvability and its update frequency should be proportionate to the complexity and systemic importance of respective G-SIB. This tailored approach is granted in US Large BHC and FBO rules.

In Japan, the JFSA released its approach to introduce the TLAC framework in April 2016 and revised on April 2018, in which *"Preferred Strategy for Orderly Resolution of the 4SIBs*[6]*"* and *"A Model of Procedures of Orderly Resolution under the SPE Strategy"* for the 4SIBs has been already disclosed on its website. Given that Japanese G-SIBs' organization structure and business model are relatively simple and traditional compared with peers in other jurisdictions,[7] necessity and granularity of further disclosures should be carefully considered, taking into account the demand for such information from investors and market participants.

C. Constructive ambiguity

In general, helping investors and market participants understand the jurisdiction's resolution resume and general/firm-specific strategies through public disclosures of resolution plans could support orderly resolution and contribute to avoiding market disruption that may arise from uncertainty in times of crisis.

However, a disclosure of resolution plan entails risks to adversely promote moral hazard among the market participants that may be immune losses in resolution due to ranking higher

[5] See 1.9 in I-Annex 4 – Essential Elements of Recovery and Resolution Plans.

[6] 4SIBs means three Japanese G-SIBs (Mitsubishi UFJ Financial Group, Inc, Sumitomo Mitsui Financial Group, Inc and Mizuho Financial Group, Inc) and one Japanese D-SIB (Nomura Holdings, Inc).

[7] Japanese G-SIBs' buckets are relatively low with Bucket 2 for MUFG and lowest Bucket 1 for SMFG and Mizuho FG.

than those investors who are subject to write-off or equity conversion of external/internal TLAC. Conversely, for those investors of the entities which is designated as "non-material sub-groups," disclosures entails risks that it would unnecessarily incentivize them to secure their position more during normal phase and rush to terminate their transactions in times of crisis/stress.

Given that public disclosure would have potential risks of unintended consequences, FSB should carefully consider whether the benefit of the disclosure outweighs cost and mis-incentivize risks. We believe "Constructive ambiguity" should be purposely left in public disclosure. For instance, *under the FSA's Approach to Introduce the TLAC Framework*, "Material Sub-groups" are referred as merely "*a domestic sub-group that is designated separately as systemically important by the FSA or at a foreign sub-group that is subject to TLAC requirements or similar requirements by the relevant foreign authority*."

D. General disclosures by authorities on Resolution frameworks, powers and strategies

We are of the view that public disclosure of a reliable resolution framework by each resolution authority is important. The credibility of the resolution framework could be further enhanced by disclosing the details such as the expected communication process, identification of stakeholders and timeline at the actual point of failure, as well as SPE vs. MPE in a manner that is easy to understand for other jurisdictions, investors, depositors, etc.

E. General disclosures by authorities on Cross-border cooperation

We pointed out in our *Comments on Evaluation of too-big-to-fail reforms*[8] the insufficiency of effective framework to promote cooperation between home and host authorities. In our comments, considering the fact that some FSB member jurisdictions require banks to develop an additional resolution plan in their jurisdictions despite the existence of the home country's group-wide resolution plan, we are of the view that the FSB's cross-border framework to operationalize home and host authorities' cooperation is not yet sufficient.

We believe that enhancement of transparency of the FSB's cross-border framework to operationalize home and host authorities' cooperation, mentioned as "Cross-border cooperation" in the Discussion Paper, is also important in particular. The Discussion Paper only illustrates the existence of institution-specific cooperation agreements ("**CoAgs**") for G-SIBs and other memoranda of understanding ("**MoUs**"), but we respectfully request more detailed disclosures related to this point. Specifically, principle-oriented disclosure of process and cooperation among home and host authorities in the case of an actual point of failure is necessary for further transparency.

F. Firm-specific disclosure (General)

As we discussed elsewhere in the letter, we believe firm-specific disclosure may impose risks of adverse unintended consequences and escalate market turmoil during market-wide

[8] JBA, Comments on Evaluation of too-big-to-fail reforms (June 21, 2019), available at, https://www.zenginkyo.or.jp/fileadmin/res/abstract/opinion/opinion310641.pdf

financial stress, thus should be considered with caution. Whether to introduce firm-specific disclosures, whether by authorities or by firms, should be a consideration for the home jurisdiction and the judgment to produce any firm-specific disclosures should be made by firms, based on consultation and coordination with relevant resolution authorities.

G. Firm-specific disclosure on authorities' resolvability assessment

In the Discussion Paper, it is noted that *"Such disclosures should help strengthen [...] additional incentives for firms to remove any remaining barriers to resolvability"* as one of the objectives. For firm-specific disclosures, *"Resolvability Assessments (e.g. including continuity of critical functions, access to financial market infrastructures (FMIs))*" is also exampled as one of the Elements for disclosures.

However, we believe to identify potential barriers to effective resolution and actions to mitigate those barriers are the issues to be addressed through the CMG's resolvability assessment, or direct engagement with authorities or in line with other measures by authorities, but not by public disclosers.