

Industry workshop on continuity of access to FMIs for firms in resolution

Informal Summary of the Workshop

Basel, 21 May 2019

As a means of engagement with external stakeholders on progress in implementing the [FSB Guidance on continuity of access to FMIs for firms in resolution \('Guidance'\)](#), the FSB held a workshop on 21 May 2019 to explore ways to further support implementation and means to achieve efficiencies.

The Guidance sets out arrangements and safeguards to facilitate continuity of access to FMIs for a firm in resolution that apply at the level of the providers of clearing, payment, securities settlement and/or custody services ('financial market infrastructure (FMI) services'), at the level of FMI service users¹ and at the level of the relevant resolution and FMI authorities. The FSB has committed to monitoring implementation of the Guidance and to consider what further actions could be undertaken to assist authorities and firms in their implementation efforts.

The workshop provided an opportunity for participants to share views and experiences in implementing the Guidance and to discuss ways to support and enhance this work, including for example through the development of common templates that firms could use to gather the information needed from relevant FMI service providers to support their resolution planning; and through further engagement on the likely communication and information needs in the lead up to and during a resolution of a member.

Thirty-nine participants from banks, FMI service providers (including central bank operated payment systems, privately operated payment systems, central securities depositaries (CSDs), international central securities depositaries (ICSDs), and central counterparties (CCPs)) and industry associations as well as forty-one participants from public authorities attended the workshop.

The following summarises the main themes that were discussed at the workshop. It does not necessarily represent the views of FSB member authorities or reflect consensus views expressed by participants at the workshop.

1. Experiences of seeking continuity of access to FMIs during resolution

Representatives of *Novo Banco* (Portugal), which was established following the resolution of Banco Espírito Santo in 2014, shared their experiences of seeking continuity of access to FMIs during a resolution. The experience demonstrated the importance of detailed contingency

¹ FMI service users may also be referred to in this note as firms or G-SIBs.

planning ahead of a resolution, public communications by the resolution authority and capacity to communicate with all counterparties and relevant stakeholders (e.g. payment systems, CSDs/securities settlement systems, CCPs as well as intermediaries and customers) in order to meet the extensive information requests following a resolution.

They also highlighted other important practical aspects of ensuring continuity of access, including having readily available relevant legal documentation, clear records of accounts and assets (such as proprietary and client accounts and assets), information on the location of collateral and how it can be mobilised, and coordination between internal departments as well as with domestic financial authorities. A view was expressed that alternatives to maintaining continuity of access to FMIs, such as moving to new FMIs, would not be practical in a resolution.

2. FMI service user perspective

Representatives from firms that are FMI service users described how they have identified critical FMI services and how they engage with the providers of the FMI services to discuss challenges in resolution planning from their perspective. They noted that identifying and understanding dependencies on key FMIs, understanding how FMIs would treat the firms in stress scenarios and what additional requirements they might impose (e.g., prefunding or collateral requirements, information requirements) both in the lead up to, and in resolution, are critical to ensuring contingency preparedness. Participants also noted the importance of differences in approaches between types of FMI.

They also noted that the ability of FMI service users to forecast heightened liquidity needs to meet their obligations towards FMIs, including e.g., increased margin requirements, is important to ensure that sufficient liquidity remains available at the point of entry into resolution and to plan how additional needs can be met. It was acknowledged that FMIs retain significant discretion and that it is difficult to model liquidity needs and to plan with certainty for all scenarios.

The FMI service users expressed the view that a presumptive path of an FMI's response(s) to a firm entering resolution, consistent understanding by FMIs of the resolution strategies for FMI service users, and more transparency and standardisation of information requests that FMI service users may face could facilitate better planning and responses in a crisis.

In principle, entry into resolution should not lead to termination of access as long as FMI participants continue to meet their contractual obligations towards the FMI. However, it was also noted that it is not guaranteed and that legal actions taken by courts may impact resolution. Some participants suggested that there might be a higher risk of termination under intermediary relationships and that bilateral negotiations to amend contracts could be very time-consuming.

To enhance preparedness, it was noted that it would be important that firms engage with FMIs to have an ongoing dialogue and to test contingency plans and playbooks. Related to this, industry participants in the workshop stressed the need to have up to date contact information with ideally a single point of contact including out of hours contact details.

3. FMI perspective

Participants discussed challenges in resolution planning from the perspective of FMIs.

FMI service providers noted that they were faced with multiple questionnaires from their users to support their respective resolution planning. These were time-consuming to complete even though they did not change from year to year. It was suggested that some streamlining of information collection might be helpful, especially by FMI type.

Some FMIs had published documents setting out potential responses to a member entering resolution, and participants agreed that ‘presumptive paths’ descriptions, whilst not binding on the FMI, would be helpful if published together with information such as membership and authorisation requirements that would need to be met in resolution and legal documents that may need to be filed to maintain access, etc.

FMI representatives stressed their obligation to protect the safety and soundness of the FMI and maintain the continuity of their critical services. They noted that they would not automatically default participants that were placed into resolution as long as they continue meeting legal and contractual requirements for membership (including type of entity) contractual obligations to the FMI.

At the same time, to maintain continuity of access FMIs require information from firms in advance and as they enter resolution, for example: confirmation of authorisation and membership status of the post resolution entity, especially in the event of transfer or partial transfer (e.g. bridge bank or breaking up of a bank); any changes to ownership and control (and potential change) as a result of the resolution action; and any existing intra-group arrangements to ensure the availability of liquidity to continue to meet FMI liquidity requirements. While such legal arrangements could be checked and put into place over a resolution weekend, any technical or operational changes would require some advance planning. FMIs also highlighted the importance of understanding the applicability in resolution of relevant legal safeguards such as settlement finality regulations.

Participants in the workshop noted that, in some circumstances, the firm in resolution might also be providing critical services and liquidity to the FMI which may need to be continued.

FMI service providers stressed the importance of communication and information sharing with authorities in order to ensure preparedness for potential resolution actions, in particular in the phase leading up to resolution, and stressed the need for FMIs and their members to have a clear understanding of authorities’ preferred resolution approach. FMIs generally supported more direct communication with resolution authorities for understanding resolution strategies, especially for non-domestic members and potentially via engagement with bank Crisis Management Groups. Some information about the resolution strategy for an individual firm, such as disclosures by US G-SIBs, could help FMIs to be better prepared.

Regarding the period immediately before a resolution of a member, FMIs understood the need for confidentiality and caution, but encouraged some controlled communication including through use of non-disclosure agreements.

FMI participants supported the importance of central contacts, and also suggested collation or centralisation of other information and resources that would be relevant to continuity of access to FMIs.

4. FMI intermediary perspective

Participants in the workshop discussed challenges in resolution planning from the perspective of FMI intermediaries that provide clearing, payment, securities settlement and/or custody services to other firms in order to facilitate the firms' direct or indirect access to an FMI.

Intermediaries offering FMI services on the one hand have to provide information to FMIs on their own resolution planning, and on the other hand obtain similar information from those clients that identify them as critical FMI service providers. Participants acting as intermediaries noted that they have many, sometimes thousands, of such clients and unlike for FMIs there is not a common rulebook. However, very few clients have approached them so far.

While some standardised language in contractual arrangements may be helpful, it should also be recognised that bilateral contractual arrangements can differ and so changes can be resource intensive to instigate. However, treatment or requirements are often guided by the rulebook of the FMI being accessed, so there is scope for the development of standardised intermediary questionnaires by FMI service type.

It is challenging for FMI intermediaries to deal with entities located in several jurisdictions as it requires particular effort to consider the applicable law almost on a case by case basis. Therefore, some more engagement with resolution authorities regarding overall resolution approaches would be useful.

Participants in the workshop discussed the importance of communication. However, it was recognised that due to additional commercial confidentiality considerations and the competitive nature of intermediary services, communication in a resolution situation may be lesser and later than communication between FMIs and resolution authorities.

Similarly to FMIs, FMI intermediaries would not automatically default participants that were placed into resolution. However, they have certain non-negotiable conditions to continue offering access to FMI services, like the timely payments of obligations. The intermediaries also have to maintain and protect their own access and relationship with the FMI. It would be important for FMI intermediaries to know that a client in resolution would be able to continue (pre)funding obligations to maintain access to FMI services.

Equally, intermediaries would also look to assist clients to de-risk their portfolios and manage other risks in the lead up to resolution.

5. Possible actions to progress implementation

Workshop participants discussed possible actions that could be taken, including for example:

- For firms' resolution planning, developing common templates for collection of certain core information from FMIs by FMI types (payment system, CSD/ICSD, CCP, intermediary service provider);
- FMIs disclosing publicly certain information including non-binding 'presumptive path' summaries of responses to a member experiencing distress or entering into resolution (and entering into default/ termination of a member, to understand the differences);
- Sharing relevant resolution contact information; and

- Engagement between FMIs and resolution authorities regarding resolution strategies and approaches, and likely communication and information needs during resolution planning, as well as in the lead up to and during a resolution of a member.

FSB members will consider further these and other relevant follow up actions to help progress implementation.