



Financial Stability Board  
Bank for International Settlements  
Centralbahnplatz 2  
CH-4002 Basel  
Switzerland  
[fsb@fsb.org](mailto:fsb@fsb.org)

February 10, 2017

**Re: Guidance on continuity of access to Financial Market Infrastructures for a firm in resolution**

Dear Sir/Madam,

Payments Canada welcomes the opportunity to comment on the Financial Stability Board's (FSB) consultative document, entitled *Guidance on Continuity of Access to Financial Market Infrastructures for a Firm in Resolution* (December 16, 2016).

Payments Canada is a statutory corporation (non-share capital) created by an Act of Parliament. It operates on a not-for-profit basis and is funded primarily by membership dues. Payments Canada lies at the heart of the Canadian financial system, facilitating the clearing and settlement of payments between its members to support the financial and economic well-being of all Canadians.

Payments Canada owns and operates two national systems for clearing and settlement of payments – these are the Automated Clearing Settlement System (ACSS) and the Large Value Transfer System (LVTS). Combined, these two systems clear an average of nearly \$200 billion in payments value each day. Given the importance of these systems to daily economic life in Canada, under the powers granted to it in the *Payment Clearing and Settlement Act* (PCSA), the Bank of Canada has designated the LVTS as a systemically important payment system, and the ACSS as a prominent payment system, which affords the Bank of Canada oversight authority over these systems with a focus on mitigation of systemic risk and payments system risk, respectively.

Payments Canada offers the following general comments for consideration:

- **Balancing safety and soundness with continuity of access:** while we support efforts to allow for continuity of access to critical services in a resolution scenario, it is important that firms (or successor entities) continue to meet obligations under an FMI's rules.
- **Rules should be flexible:** given that each resolution scenario will be different, an FMI's rules should remain flexible. A prescriptive approach could lead to constraints for the firm, successor entity, other firms or the FMI in dealing with a specific event.



- Communication plans: we support the approach that authorities should seek to agree in advance (and document) what information they may expect from each other during the course of resolution and how the information will be shared.

Our responses to the specific questions contained in the consultative document are attached as Appendix I.

We welcome the opportunity to discuss the content of this letter with representatives from the Financial Stability Board, at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne Butler".

Anne Butler  
VP Research, Policy and Legal



Payments Canada responses to questions posed in the consultative document

**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?**

- It is our view that the guidance appropriately addresses the importance of firms continuing to meet requirements under the rules of an FMI to ensure that safety and soundness is not impacted in a resolution scenario.
- For Payments Canada, an important factor for allowing continuity of access to its systems will be whether there is a guarantee of viability if a firm is to enter into resolution.

**Q2: 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.**

- Payments Canada is supportive of the overall scope of the guidance. In particular, a key point to emphasize is that continuity of access should be permitted provided that the safe and orderly operation of the FMI is not compromised.
- In sub-section 1.4, it would help to clarify what the expectation is with respect to regularly testing the effectiveness of arrangements to address resolution scenarios. FMIs are subject to other similar requirements (e.g., default simulation) which involve detailed planning and include involvement of participants. Consideration should be given to ensuring that the introduction of new testing requirements does not impact requirements that are already in place. It is not clear whether the testing should be done with involvement of firms. It may be challenging to include firms since contingency plans across firms will vary. It is also necessary to be mindful of drawing on the same resources within an FMI as well as within firms.
- With respect to the key terms in the document, the definition of “resolution” could be clearer. That is, the definition refers to the exercise of resolution powers and tools, but what is “resolution”?
- It is not clear whether the definition of “critical FMI services” captures Payments Canada’s systems that have been designated as systemically important and prominent. We have made the assumption that the definition includes both systems.



**Q3: 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?**

- It is our view that rules should generally allow for continuity of access, subject to appropriate safeguards; however, applicable procedures should be dealt with outside of the rules. That is, the rules should not be prescriptive and should remain flexible given each scenario will be different.

**Q4: 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.**

- It is our view that rules should allow for a firm to maintain its participation during a resolution process if the safe and orderly operations of the FMI are not impacted, if there is a guarantee that the firm will remain viable, and if the firm (or successor entity) continues to meet the obligations set out in the FMI's rules.
- If a firm in resolution (or a successor entity) fails to meet such obligations, Payments Canada agrees that the FMI should follow its normal procedures to determine the exercise of its rights to terminate, suspend or restrict access to its services.

**Q5: 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?**

- As noted in the consultative document, the safeguards and measures require further consideration and development to ensure appropriate and consistent application. If the expectation is to have a consistent approach taken across providers of critical FMI services, it would be beneficial for providers in the same jurisdictions to discuss appropriate safeguards.



**Q6: 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?**

- As a first step, providers of critical FMI services should engage with resolution authorities of participants to discuss what resolution tools are available and whether continuity of access is feasible (depending on the tool that is implemented or the resolution power that is exercised). Providers of services can then engage with participants regarding the range of risk management actions and requirements they would anticipate taking in a resolution scenario.
- Early engagement and communication between all relevant parties to set expectations strikes the right balance between the objectives of orderly resolution and the FMI or FMI intermediary's prudent risk management.

**Q7: 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?**

- Payments Canada agrees that firms should develop contingency plans to facilitate continuity of access. The guidance seems to capture the information that would be relevant.
- It is not clear whether the contingency plans would be shared with providers of critical FMI services. In order to plan for a resolution scenario and be able to respond to and make prompt decisions during a resolution scenario, it would be beneficial to know the steps that firms have identified or would take.

**Q8: 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 noted in Q4 above, an FMI should allow access subject to certain safeguards being met. Access is something that would be determined by the FMI, in consultation with relevant authorities where applicable, and not by an FMI intermediary. Similarly, it is the FMI that would exercise the right to terminate or suspend participation. Sub-section 1.1 could be amended to take into account some of these differences.



**Q9: 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?**

- The guidance seems to capture all relevant requirements; however, this question is more relevant for firms and their resolution authorities to consider.

**Q10: 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?**

- As noted in the Annex to the consultative document, communication and coordination of information is essential for minimizing the uncertainty of all parties involved in the resolution process.
- The guidance refers to periodic discussion, information sharing and engagement with providers of critical FMI services all of which are critical in terms of key decision making during resolution.
- A communication plan, including proper protocols for what can be shared, would be important. The plan should address communication and information sharing prior to, during, and after a resolution.