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## **Consultative Document 'Guidance on Continuity of Access to Financial Market Infrastructures (FMIs) for a Firm in Resolution'**

Dear Madam/Sir,

UBS would like to thank the Financial Stability Board (FSB) for the opportunity to comment on the Consultative Document "Guidance on Continuity of Access to Financial Market Infrastructures ("FMIs") for a Firm in Resolution". UBS agrees with the FSB that the continuity of access to financial market infrastructures for a firm in resolution is of central importance and thus welcomes its effort to establish more detailed global guidelines on this topic. Furthermore, UBS supports the objective to increase transparency and awareness with regards to the rights and obligations providers and recipients of FMI services have in resolution scenarios.

Before we turn to the specific questions raised by the FSB, we would like to outline general concerns that UBS has with the proposed guidance and where we would appreciate due consideration by the FSB.

### **1. Scope and calibration of requirements**

- **Requirements for FMI intermediaries (FMIs):** While we acknowledge the importance of maintaining uninterrupted service provision by FMIs in the event that a client of an FMI enters resolution, we believe that Section 1 of the Consultative Document does not adequately recognise the significant differences between true FMIs and FMIs and that the requirements for FMI providers of critical FMI services should be clarified. In our view, this would merit clearly distinguishing between FMIs and FMIs in the document and, at the very least, establishing separate implementation processes for the respective requirements. Please kindly refer to paragraph 3 below on Clarifications of definitions for a proposed alternative solution.
- **Proportional level of information requirements:** At UBS, we access more than 60 FMIs globally. When we consider the requirements of section 3 concerning the provision of information to authorities to enable the discussions between resolution authorities of firms and FMIs, we see a need to determine, in advance, simple and clear requirements. We anticipate that, in a crisis, the relevant network management teams, which handle the relationship between FMIs and the bank, will be fully engaged in reviewing and confirming the collateral and other arrangements needed to secure continued access to FMI services. There will likely be little resource available to develop and communicate information to resolution authorities, which has not been specified and put into report production in advance. This is an area where an industry group might develop simple and clear proposals, fully taking into account the proportionality principle that there should be a clear benefit compared to the cost of providing such information.

### **2. Approach**

- **Contingency planning vs. building of alternative access:** UBS advocates strengthening contingency planning as compared to building alternative access to FMIs and access to market venues for traded products. From our attendance at the 8 February outreach meeting

in Basel, we understand that this is the intent of the FSB but believe that this point could be made more clearly in the Consultative Document. This point is of particular importance because of the incremental cost both in terms of “change the bank” and “run the bank” expenditure which would follow from the build of alternative access. While we can understand the desire to analyse the impact of any failure of access to critical FMI services, such work should inform efforts to ensure continuity of existing access rather than building alternatives.

- **Focus of contingency planning:** Given the difficulty in anticipating concrete resolution scenarios, UBS is of the opinion that scenario-based analyses and strategies should be applied very restrictively only. Instead, contingency planning should primarily focus on analyzing liquidity needs in times of stress, communication & people (e.g. elaborating a communication plan, staff retention plan, etc.), and providing transparency (e.g. identification and mapping of services).

### 3. Clarifications of definitions

- **Distinction between FMIs and FMI intermediaries (FMIs):** FMIs are typically commercial banks owned by independent shareholders, which contrasts to many commercially managed FMIs, that are often owned by the participating member firms and which establish rule books on membership requirements. The contractual arrangements between FMIs and their clients are of a bilateral nature and we believe it will be challenging to develop contractual rights and obligations, which would be triggered by a client entering into resolution as required by section 1.1 of the Consultative Document. Indeed, risk management considerations and the understandable desire not to commit credit lines (with the associated capital cost implications) will impinge upon the clarity of contractual arrangements required by section 1.1.

We advocate the establishment of an industry group to consider these complexities with the objective of developing an industry wide agreed approach potentially leveraging existing rule books of true FMIs. This could significantly ease the implementation burden of negotiating separate bilateral contractual arrangements with G-SIB clients of FMIs. Such an industry group should further consider the testing requirements set out in section 1.4 and develop proposals specific to FMIs.

- **“FMI participant” or “firm”:** We would ask for clarification as to whether the scope is clearly limited to G-SIBs or could other clients of FMI/FMI intermediaries (e.g. D-SIBs) be affected by this guidance as well? Further clarifications are also needed as to whether various legal entities within one firm could qualify as intermediary and whether intra-company services could be covered as well.
- **“Ancillary services”:** We also think the section regarding “Continuity of ancillary services” is currently vaguely drafted and it is not clear what the resulting requirements for firms are. Absent a clear definition, it does not seem that “ancillary” services are of sufficient importance to be considered “critical”. Overall, the newly implemented term “ancillary services” does not tie in to the existing RRP denominations such as “Critical Operations”, “Critical Shared Services” and UBS is in particular of the opinion that “ancillary services” are of limited benefit for contingency planning. Therefore, it is suggested to expand the definition of critical FMI services to include supporting services of a critical nature and to delete the term ancillary services and the relevant section in the Annex.
- **“Entry into resolution”:** Lastly, the event “entry into resolution” could be clearer defined given differences in the meaning of this term across jurisdictions.

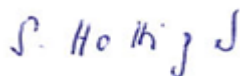
Please find below detailed answers to the specific questions of the Consultative Document. UBS’s response should furthermore be considered complementary to the letter of the Joint Associations Group (IIF-GFMA Joint Comments) to which we also contributed and which UBS supports. We would be happy to discuss with you, in further detail, any questions you may have. Please do not hesitate to contact William Widdowson (william.widdowson@ubs.com; +41-44-2345565) or Steve Hottiger (steve.hottiger@ubs.com; +41-44-2345064).

Yours sincerely,

UBS AG



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## Detailed answers to the questions of the Consultative Document

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 agree that there is an inherent tension between FMI interests (exclude unstable actors) and financial stability interests (ensure operations in resolution) and that the FSB makes an attempt to address that tension.
- UBS Group ("UBS") feels equal importance should be given to the role of regulators – as a third stakeholder group – and their behavior/recommendations towards FMIs.

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.

- We agree with the general scope of the guidance, however we perceive issues around the following aspects:
  - The breadth of information requirements as per the Annex would cause excessive administrative and economic burden (especially in conjunction with the inclusion of commercial "FMI intermediaries" and their general reluctance to disclose all necessary information).
  - Treatment of commercially motivated "FMI intermediaries" in the same manner as a "true" FMI: It is UBS's clear view that UBS as a G-SIB should not be treated in the same manner as a "true" FMI.
- We perceive a lack of clarity regarding some key definitions:
  - "FMI intermediary", e.g. would intra group service companies be included (as well as the different legal sub-entities)?
  - "Firms", i.e. are these limited to the approx. 30 G-SIBs or is the term used for further consumers of services from FMIs or FMI intermediaries (e.g. D-SIBs)? The latter would imply a very high level of complexity and would significantly increase the administrative burden and hence costs.
- Also, UBS proposes to exclude "ancillary services" from the scope of the document given their "not critical" nature.

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?

- UBS is of the opinion that it would be beneficial to have commonly accepted international standards re TBTF/resolution events included in FMI services contracts. Potential customized solutions tie up a very meaningful amount of resources justifying that some high-level common standards (including assignment clause, group clause, and termination clause) may be preferable. An industry group might be established to develop such a solution.
- UBS would clearly favor an obligation by critical FMI service providers to consult the relevant authorities in case a firm faces termination/suspension of access, i.e. with specific reference to the last paragraph: "Consequently, any exercise of a right of termination or suspension of continued access to critical FMI services during resolution should be consistent with the governance framework established by the provider of critical FMI services, which may include consultation with the relevant authorities"; UBS proposes to change "may" to "has to/must".

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.

- UBS remains skeptical as to the "true" value of detailed procedures to handle the "unplannable"; the feedback UBS received from FMIs and FMI intermediaries points to open communication at all management levels between service provider and customer as the single most important element in case of stress. Furthermore, the feedback received leads to the conclusion that as long as a firm in financial distress continues to meet its payment and margin obligations, the FMI or FMI intermediary is prepared to do

the utmost to avoid suspension or termination. Failure to do so would however trigger a suspension or exclusion decision almost immediately.

- Questions remain around the differentiation between going and gone concern situations, as the arrangements stipulated in this guidance appear to be solely dependent on the FMI participant to meet payment, delivery or other obligations apart from the fact that it is recommended in a default event access is not terminated immediately. UBS believes that an exclusion from FMI services should not happen "overnight" and that authorities should already be involved in a potential resolution case (given that a termination of FMI services delivery would hinder an orderly resolution of a firm).
- A more pragmatic and also effective way to tackle a potential client's resolution event could be the creation of a task force within the bank. This assessment is based on the fact that each resolution event is clearly perceived to be following its own logic, i.e. needs to be treated "case-by-case". As proposed, the procedures are very time and resource consuming.
- To summarize, UBS is of the opinion that the handling of ad hoc situations is more important than pure planning of the "unplannable".

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?

- UBS agrees that arrangements and procedures should be the same irrespective of a firm's domicile; in practice UBS perceives that service contracts, rule books, etc. between FMIs or FMI Intermediaries and Participants/Clients, are always subject to the law in the jurisdiction of the FMI or FMI intermediary but this should not lead to the unequal treatment of participants. Absence of equal treatment would impact the choice of direct/indirect access to FMIs and hence firms' business models.
- UBS recommends that the document stresses the requirement of national regulators to work together to define mutually acceptable solutions in the event of conflict of national laws, i.e. in order to "ensure appropriate and consistent application".

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?

- The requirement to "test the effectiveness of relevant rules, contractual arrangements and procedures addressing a resolution scenario regularly" is perceived to be too onerous a burden on "FMIs"/"FMI intermediaries" – especially from an FMI intermediary's point of view given the implied significant effort from units across the bank. There is also a perceived lack of clarity regarding the definition of "testing", i.e. does this include physical BCM tests?
- It is clear that it would be extremely costly and complex for UBS to maintain a dual or shadow network of FMI Intermediaries. This is true for the buyer of services, but it is equally true for the seller of FMI intermediary services. We had informal discussions with a number of securities custodians and cash correspondent banks. None of them is keen on acting as a "contingency solution" only. Asking a bank to act as the back-up provider is like asking "Would you like to be known in the market as my second choice?"

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?

- UBS very much agrees that firms should focus on ensuring continued access to existing service providers and developing contingency plans for this situation, rather than spending resources on building dual or redundant relationships to back up "FMI intermediaries" and "FMIs" (assuming that choice exists in the first place).
- UBS does not believe that all the suggested data gathering and analysis outlined in the Annex is needed to prepare such contingency plans. In particular the ancillary services element is perceived to be a "nice to have" with very substantial implementation and maintenance effort. Also, FMI intermediaries generally do not disclose uncommitted and unsecured credit lines they may have extended to clients under "business as usual" conditions. Clients therefore cannot reliably anticipate their liquidity needs under a stress

scenario, unless they assume the worst case, namely that the FMI intermediary sets all credit facilities to zero.

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.

- UBS is of the opinion that while the general guidance could be the same for all types of providers, the specific requirements should be different for true FMIs and FMI intermediaries as they fulfil very different roles:
  - FMIs are central market utilities. They are often user-owned and are highly transparent with respect to their membership requirements, internal processes, standard default management procedures, margin requirements, collateral valuation methodologies, etc. They do not provide bespoke services to a participant and cannot grant preferential treatment to one participant over another.
  - FMI Intermediaries are commercial service providers in a highly competitive market environment. They do not, or only to a very limited extent, disclose details with regard to internal counterparty risk monitoring, crisis management procedures, internal credit lines and their usage. "Soft factors" such as the relationship history between service provider and service consumer, reciprocal business relationships, etc. will influence the degree to which an FMI intermediary will (or will not) support a client in financial distress.
  - For the above reasons requirements for clarity and transparency demand different specification and hence implementation for FMIs and FMI Intermediaries.
- "True" FMIs thus provide standard services and already collect and disclose a lot of the standardized data requested by the FSB. The FSB should hence make clear that "hard" regulatory requirements will be very different for the different categories of providers and generally much lighter for FMI intermediaries. Financial institutions like UBS are already complying with the requirements of a G-SIB, so if it would have to comply in addition with most FMI requirements because it acts in some cases as FMI intermediary, this would present banks like UBS with a very substantial burden.

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?

- UBS perceives the document to be comprehensive, but would appreciate a clearer definition of the term "lead up to resolution". This ties into the more general point made in the main section of the letter, i.e. the event "entry into resolution" could be clearer defined given differences in the meaning of this term across jurisdictions.

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?

- UBS feels that the Consultative Document could offer more detailed guidance on the (i) timing aspects, and (ii) potential transitional rules for requirements mentioned in the document.
- UBS does not have additional suggestions on content. However, we consider the 18 information gathering requirements listed in the Annex as too extensive and detailed. The effort for compiling and maintaining this will be tremendous for globally active firms, even more so given that the systemically important banks are not static in their organizational set-up. In addition, the FMI and the FMI intermediary landscape is constantly evolving as well, particularly in Europe (e.g. TARGET2 Securities (T2S) project).
- UBS would also like to point out that coordination efforts among all involved parties could become very substantial, considering the cross-jurisdictional relevance. From this perspective, we would strongly speak in favor of a harmonized approach based on simple and clear information requirements across all major jurisdictions in order to avoid a largely disproportional burden on financial institutions and support effective communication in times of extreme stress up to and including resolution.