

David Schraa
Regulatory Counsel

October 15, 2012

Secretariat to the Financial Stability Board
Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel
Switzerland
Sent by e-mail to: fsb@bis.org



1333 H Street, NW, Suite 800E
Washington, DC 20005-4770

TELEPHONE 202.857.3600

FAX 202.775.1430

WEB iif.com

Re. Financial Stability Board Consultative Document, *Information sharing for resolution purposes*, August 12, 2013

To the Financial Stability Board:

The Institute of International Finance (IIF) welcomes the opportunity to comment on the consultative document *Information sharing for resolution purposes* ("Consultative Document") prepared by the Financial Stability Board (FSB) and issued in August 2013. The two principal topics of the Consultative Document – the design of legal gateways and confidentiality regimes for sharing resolution-related information between foreign and domestic authorities, and the extent to which the institution-specific cross-border cooperation agreements ("COAGs") between members of the Crisis Management Groups ("CMGs") should include provisions relating to information sharing – deserve careful consideration, and the IIF fully supports the efforts of the FSB to design a system for exchanging information across borders subject to appropriate safeguards. Information sharing is a crucial element of cooperation between authorities, which in turn is essential for making bank resolution work.

Developing such a system, through agreements by COAGs and statutory change where needed, requires a delicate balancing of priorities. On the one hand, authorities need access to adequate, timely information in order to make well-considered assessments of the stability and health of financial institutions within their jurisdictions. The quality of oversight, and the ability of authorities to take appropriate actions, are dependent largely on the availability of good, useful information and data. Sources of necessary information and data may only exist outside the relevant jurisdictions, in which case appropriate legal and operational systems are needed to allow for the exchange of such information. On the other hand, protecting the confidentiality of the information exchanged is absolutely critical, especially considering the sensitive nature of the information likely required, including details about clients, counterparties and so forth. Receiving authorities must be able to rely and act upon the information received. How to balance these objectives, of providing sufficient information to relevant domestic and foreign authorities while at the same time protecting the confidentiality of that information, is a difficult challenge, but one that is absolutely essential for resolving global banks and achieving the finalization of the G20 regulatory reform program. The FSB can play a very useful role here in helping to ensure consistency in standards and encouraging such information sharing.

The Consultative Document appears to handle these matters well, though further details would be welcome.¹ For example, it describes the extent to which originating authorities should provide information

¹ One area in which additional guidance would be helpful is in determining what criteria and procedures are appropriate for making a comparability assessment of legal gateways, as indicated in Paragraph 1.7.

that is necessary for the receiving authority to perform its resolution-related functions (e.g., Paragraphs 1.1, 1.3, 1.12); at the same time, it acknowledges that receiving jurisdictions are responsible for establishing necessary safeguards to protect the confidentiality of the information provided (e.g., 1.10 – 1.15). The treatment of COAGs is similar in that it seems to balance the interests of the originating and receiving parties as fairly as possible.

The exchange of information is valuable in and of itself, but it should be recognized too that this will have ancillary benefits, namely that it will help establish greater trust and confidence between authorities. This process, of exchanging information back and forth, should be part of an ongoing effort to work together and should not be limited only to periods of stress. Greater cooperation and intensity of information sharing may be necessary through times of stress, but a strong foundation of reliable exchanges and coordination should be built during normal periods. The objective should be that, through this activity and, more generally, through the broader work regularly carried out by the CMGs, a level of trust will develop among the various authorities; as a result, it will be more likely that these authorities will have confidence in the cross-border resolution framework when a resolution occurs and will not resort to measures based solely on a narrow understanding of their self-interests. Good normal-time cooperation and coordination is also essential to making sure that data is understood consistently. While broad standardization of data definitions and other essential tools is being pursued through the FSB and the Basel Committee on Banking Supervision (BCBS), it will take a long time to optimize standardization in the market. In the meantime, the CMGs need to make sure they have a clear, common understanding of the data produced by or available from a given institution, to avoid doubts or misunderstandings in times of crisis.

For these reasons, the IIF sees this effort as a useful and important step and welcomes the FSB's continued efforts in this area. The recent report titled *Progress and Next Steps Towards Ending 'Too-Big-To-Fail'* ("TBTF Document"), published in September 2013, indicates that further work will be undertaken by the FSB on the sharing of information for resolution purposes. The IIF wishes to emphasize two points raised in that document that deserve particular attention. First, the confidentiality issues involved in this area are such that they may require that further legislation be adopted, which will mean that the FSB will need the continued support and involvement of the G20 members on this issue. Second, it is important to bear in mind that, in some cases, a G-SIFI's local operations may be systemically important within a host jurisdiction and that that host jurisdiction may not be represented in the CMG. In that case, there should still be a mechanism in place for exchanging information among the various relevant authorities, and the IIF welcomes the FSB's commitment to developing recommendations to address this.

The process of improving the exchange of information pursuant to the Consultative Document and the TBTF Document should of course be coordinated with the FSB's data gaps project and the BCBS's implementation of its guidance on risk data aggregation. It may also be useful to coordinate both technical data developments and legal work on access to, use of, and protection of data exchanged internationally with other initiatives, such as the CPSS-IOSCO report on *Authorities' Access to Trade-Repository Data* (August, 2012).

While there are differences of scope with those initiatives, it is important that, wherever possible, there be coordination of data definitions and data collection procedures. The industry faces many different demands on scarce resources for IT developments to meet the varied regulatory, supervisory, and business demands for systems and data developments, and it will increase efficiency, reduce implementation times, and minimize operational risk (or work-around solutions) if they can be coordinated to the maximum extent possible.

Specific points. The general discussion above for the most part answers the FSB's consultation questions; however, we have a few specific observations as well.

Question 1. While the same principles should apply to exchanges of information in respect of all financial sectors, the issues are especially acute with respect to information required for the supervision and

ultimately resolution of financial market infrastructures (FMIs). The IIF and other associations are commenting on the proposed annex to the *Key Attributes of Effective Resolution Regimes for Financial Institutions* for FMIs, which contains a fuller discussion; however, in addition to the usual supervisory and resolution authorities that need to be linked through COAGs, FMIs that treat products from a jurisdiction different from the FMI's home jurisdiction may need to make special arrangements for information exchanges with those other concerned jurisdictions.

Question 6. Information exchanged for resolution (or other supervisory purposes) should under all circumstances be excluded from generally applicable "freedom of information" access, and should not be disclosed under any circumstances, except as specifically provided in the relevant COAG or appropriate international agreements.

Glossary: "Information." While the definition of "non-public information" is appropriately broad, it might be helpful to add additional commentary to make clear that such information includes client or counterparty information, information about financial institutions that has not been disclosed in accordance with normal disclosure requirements and processes (even though it may be included in other reporting to the authorities), and information about the processes or analyses of authorities with respect to such information. This point is covered by Paragraph 1.3 but might be made clearer by commentary on the definition up-front.

Paragraph 1.7. While reciprocity requirements may be hard-wired into current legislation, it should be made clear (perhaps through the processes sketched in the TBTF Document) that reciprocity arrangements may introduce unhelpful rigidity and procedural barriers that should be avoided; rather all relevant jurisdictions should be committed to providing the scope and substance of the information required as described in this document, which should yield comparable obligations among all concerned jurisdictions, without requiring the sometimes-complex analysis needed to jump a reciprocity hurdle.

Paragraph 1.14. This paragraph should be expanded to read as follows: "No privileges or confidentiality associated with information provided by an authority **or a bank or other financial institution** should be waived as a result of sharing the information with another authority."

Given the complexity and importance of the issues, the IIF recommends that the FSB pursue further consultations with industry if more specific proposals are envisaged. Input from the industry will be critical to ensuring that any proposals put forward are well-balanced, constructive, and suitable for the purposes of developing a robust information sharing framework with necessary safeguards. Should you have any questions on the issues raised in this letter, please contact Alec Oveis (aveis@iif.com; +1 202-857-3615).

Very truly yours,



David Schraa
Regulatory Counsel, IIF