



31 October 2013

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Dear Sir/Madam,

Deutsche Bank's (DB) response to the Financial Stability Board's (FSB's) consultation on "Assessment Methodology for the Key Attributes of Effective Resolution Regimes for Financial Institutions"

DB welcomes the opportunity to provide feedback on the proposed assessment methodology. We believe this process, in addition to peer review and regular progress reports, will be vitally important to support consistent implementation of the Key Attributes of Effective Resolution Regimes for Financial Institutions and should positively contribute to the G20 and FSB objectives. Particularly for global systemically important financial institutions (G-SIFIs), consistent and timely implementation is important for the continuing work by Crisis Management Groups (CMGs) and by firms in relation to resolution planning.

The FSB's proposed methodology provides a comprehensive framework for future assessments and substantially we agree with the proposals set out in the document. To further enhance and strengthen this approach, we suggest that the following points be reflected:

- **Cross-border cooperation:** In Section III E and in relation to Key Attributes (KAs) 7, 8, 9 and 12, the FSB states that the score of the jurisdiction being assessed cannot be negatively impacted where lack of cooperation or agreement from another jurisdiction has prevented implementation, subject to the assessed jurisdiction demonstrating attempts to resolve this difficulty. This is an appropriate response in those circumstances. However, clearly the outcome is detrimental. We therefore suggest that the Explanatory Notes (ENs) also make clear that jurisdictions are expected to escalate the issue on a timely basis, both domestically (i.e. to government) and to the FSB and G20.
- **Consideration of preconditions:** Section IV states that "to the extent shortcomings in preconditions are material to the effectiveness of resolution, they may affect the grading of the affected KAs. Any suggestion aimed at addressing deficiencies in preconditions are not part of the recommendations of the assessment but can be made." We suggest that, while such recommendations may not form part of the assessment, assessors should be expected to include commentary on the impact of the preconditions in their report as this may influence the likelihood of changes being made. To reflect this expectation, the wording should be changed from "can be made" to "should be made".
- **Concrete recommendations:** All concrete recommendations should be accompanied by a proposed timescale. We recognise that in some cases this may be subject to legislative changes or rule-making and therefore the timing may not be within the control of the key stakeholders. However, as an incentive or way of demonstrating the urgency of making necessary changes, it could be helpful to include indicative timing.



- **Pilot and timing:** The FSB said that the draft methodology will be used in several pilot assessments (with the IMF and World Bank) which, along with feedback to the consultation, will support refinement of the methodology. Testing it in this way should provide valuable insight. However, it is not clear how long it will take to carry out assessments and whether they will be done concurrently. There is a risk this may result in some delay in publishing the final methodology and - as this will be a valuable statement of expectations which supports implementation - the FSB may wish to keep this approach under review.

More detailed comments are provided in the appendix.

We would be pleased to discuss further any of the points raised in our response.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'A. Procter', written over a horizontal line.

Andrew Procter
Global Head of Compliance, Government and Regulatory Affairs



Detailed comments on the FSB's consultation on "Assessment Methodology for the Key Attributes of Effective Resolution Regimes for Financial Institutions"

The following comments are sequential rather than in priority order.

Page	Reference	Comment
2	Overview – Testing and Finalisation of Methodology	The FSB said that the draft methodology will be used in several pilot assessments (with the IMF and World Bank) which, along with feedback to the consultation, will allow for the methodology to be refined. Testing in this way should provide valuable insight. The FSB may wish to keep this approach under review and consider taking on board feedback from the pilot before the assessment is concluded to ensure that there is no undue delay in publishing the final methodology.
12	Section III E KA 7 KA 8 KA 9 KA 12	The FSB has proposed that the score of the jurisdiction being assessed cannot be negatively impacted where lack of cooperation or agreement from another jurisdiction prevents implementation of one of the KAs. This is subject to the assessed jurisdiction demonstrating attempts to resolve this difficulty. While we agree that this is an appropriate response to reduce the detrimental effect, we think the ENs should make clear that jurisdictions are expected to escalate the issue on a timely basis, both domestically (i.e. to government) and to the FSB and G20.
18	Section IV	The preconditions specified are extensive and are an important factor. Section IV states that "to the extent shortcomings in preconditions are material to the effectiveness of resolution, they may affect the grading of the affected KAs. Any suggestion aimed at addressing deficiencies in preconditions are not part of the recommendations of the assessment but can be made." We suggest that, while such recommendations may not form part of the assessment, assessors should be expected to include commentary on the impact of the preconditions in their report as this may influence the likelihood of changes being made. To reflect this expectation, the wording should be changed from "can be made" to "should be made".
124	Appendix (3)	
21	Precondition C	We believe that for derivatives cleared by CCPs, the preconditions should include more detail regarding protection arrangements for clients and clearing participants in resolution. This is increasingly important as non-financial corporates will increasingly clear derivative trades through financial intermediaries that are the members of a clearing house. As such, there could be binding arrangements between the clearing participant (e.g. financial institutions as clearing member) and their clients (e.g. corporates). This will be particularly complex when undertaken on a cross-border basis.
31	KA 2.3 (iv)	KA 2 as drafted says that "as part of its statutory objectives and functions, and where appropriate in coordination with other authorities, the resolution authority should: ... (iv) duly consider the potential impact of its resolution actions on financial stability in other jurisdictions". This part is not specifically covered in the related ECs or ENs. Further guidance or cross-reference to other parts of the methodology should be included as this is important in the context of cross-border resolution.
35	EN 3.1 (d)	This EN should include that these elements be reflected in the



authorities' governance arrangements.

- 45 EN 3.2 (e) Resolution authorities should be able to demonstrate that they have undertaken (either directly or by coordinating) a comprehensive review of other legislation in place in their jurisdiction and, where necessary, communicated findings and requests for action to relevant policy-makers.
- 48 EN 3.2 (q) More explicit reference should be made to international standards for treatment of client assets and findings of peer reviews, etc.
- 56 EN 3.5 In relation to bail-in, the ECs and ENs do not expand upon the way in which assessors should consider jurisdictions' approaches to firm-specific or 'minimum' bail-in requirements. This should align with the work currently being undertaken by the FSB on loss-absorbing capacity.
- 65 KA 4.3 KA 4.3 makes reference to the fact that stays should be strictly limited in time, providing the example of two business days. However, the ECs and ENs do not reflect that there should be a specific time limit. Irrespective of the maximum duration chosen, it is important that jurisdictions provide predictability for market stability and to support orderly resolution. As such, this element of the KA should be more explicitly reflected.
- 85 EN 7.1 (b) The proposals state: "It is not inconsistent with KA 7.1 if the resolution authority may decline to commit to, or is prevented from engaging in, a cooperative solution if that solution would result in inequitable and discriminatory treatment for local creditors or pay insufficient attention to the need to maintain financial stability in the host jurisdiction.
- Similarly, it is not inconsistent with KA 7.1 if the resolution regime allows the resolution authority to take discretionary action where necessary to achieve domestic stability in the absence of effective international cooperation or information sharing (see KA 7.2)."
- It would be helpful to clarify whether the assessors are expected to consider this in a general sense or more specifically with regard to the resolution authority's approach to relevant jurisdictions and to home/host situations.
- 93 EN 7.6 (a) The assessors should be expected to consider what actions were taken by the jurisdiction to ensure that all necessary gateways have been identified and established – i.e. where MoUs are the appropriate mechanism and demonstrating that they are in place for all relevant jurisdictions/bodies.
- 96 EC 8.1.5 The proposals include that the assessors will consider the extent to which the jurisdiction participates in Crisis Management Groups (CMGs), etc "when invited". Presumably they should also take into account whether the host authority has considered if it should be included and, where they believe the answer is yes, sought to be involved.
- 97 EN 8.1 (a) (iv) "The capacity of the host authorities to cooperate and to support a group-wide solution, including the legal authority to share information and safeguard confidential information" is an important factor in the functioning of the CMG. However, it should be looked at subsequent to the identification of potential CMG members. This should also be kept under review to ensure that any changes are captured.
- 98 EN 8.1 (g) Where it is considered legitimate for an authority to decline to participate



in a CMG, the appropriate grounds should include consideration of the impact on financial stability in their jurisdiction, as well as materiality with reference to the G-SIFI. (Relates to point 8.1.5.)

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| 99 | EN 8.2 (a) | Although the effectiveness of the CMGs will be assessed through the FSB peer review process, some consideration of the jurisdiction's general approach to coordination and/or contributing may still be relevant to this assessment. |
| 101 | EC 9.1.1 | Where there are multiple agreements used to give effect to the requirement for a cross-border cooperation agreement (COAG), the supporting analysis should be clearly documented. The essential criteria on cross-border cooperation agreements should include well-articulated binding commitments. |
| 128 | Appendix
"The comments section" | All concrete recommendations should be accompanied by a proposed timescale. We recognise that in some cases this may be subject to legislative changes or rule-making and therefore the timing may not be within the control of the key stakeholders, but as an incentive it may be helpful to include indicative timing. |
| 130 | (6) Recommended actions | |
| -- | KA 9 | Although not part of KA 9, which covers the content and public disclosure of the COAGs, the FSB should consider whether to include ENs to support good practice for the communication to the G-SIFI of relevant parts of the COAG in order to support resolution planning. |
| -- | KA 10/11 | There are some apparent inconsistencies in relation to the treatment of domestic SIFIs. KA 11 and related ECs and ENs suggest that RRP are to be required in order to feed into resolvability assessments, while EN10.1(c) suggests that resolvability assessments are "good practice".

It should be clearly stated that any actions required under KA 10 must be based on a thorough resolvability assessment. |
| -- | KA 11.9 | This section appears under-developed and further guidance should be provided. In particular, consideration should be given as to the reasons for any inconsistencies between the plans – i.e. legal restrictions, etc. |