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Secretariat to the Financial Stability Board  
Bank for International Settlements  
Centralbahnplatz 2  
CH-4002 Basel  
Switzerland

21 February 2017

Dear Sirs

**RE: FSB CONSULTATION: CONTINUITY OF ACCESS TO FMI'S FOR A FIRM IN RESOLUTION**

Please find attached Bacs responses to the consultation questions contained in the Financial Stability Board consultative document: 'Guidance on Continuity of Access to Financial Market Infrastructures ("FMI's") for a Firm in Resolution.' Bacs responds to the consultation questions in our role as a UK systemically important domestic payments systems operator.

Bacs is the longest established electronic interbank payment service operator (PSO) in the United Kingdom. We deliver batch-processed regular payments to UK citizens and corporates utilising two major payment services; Bacs Direct Credit (DC) and Direct Debit (DD). In 2016, we processed over 6.2 billion payments worth a total of £5 trillion and broke our record for single-day payments, processing 109 million transactions at the end of September.

We are approaching our 50<sup>th</sup> birthday and our flagship payment systems, DC and DD are integral to how money is moved in the UK. Virtually all government welfare and pension payments use DC and almost all employees receive salaries using this method. Virtually everyone in the UK uses DD to pay regular monthly bills without stress or hassle. Bacs is regulated by the FCA and PSR, is an FMI company and is supervised by the Bank of England.

Yours sincerely



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<b>FSB Consultative Document Comments – Bacs</b>		
<b>No</b>	<b>Question</b>	<b>Bacs Response</b>
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?	On the whole the consultative document addresses question of safety and soundness however, we would advocate a requirement on participant firms to make available an independent skilled persons review of their resolution plans in so far as those elements that impact provision of the same on, say, a bi-annual basis to enable FMIs to place reliance on the review and ensure visibility for both parties including the opportunity for review and challenge as appropriate.
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
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?	We agree. Within the Bacs Scheme Participant obligations are set out in the Scheme rules and agreements, principally the Settlement Agreement. This sets out the events that can cause a Bacs Participant to be excluded. Resolution, which could be trigger at various points between business as usual (therefore fully compliant) and exclusion, is not specifically referred to in the Settlement Agreement. However, it is covered by Force Majeure, which allows Bacs to address issues on a case-by-case basis.
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	We have developed a suite of Management Information that provides both lead and lag indicators for the performance of participant firms under Bacs Code of Conduct which includes pre-funding headroom and tiering, where non-member (Indirect participants; eg; those that are sponsored by participants), reach sufficient transaction volumes that would ordinarily mean they should be a full participant. This being the case, the associated risks emanating from the participant would trigger our escalation procedures which includes communications with Regulators, in advance of the invocation of a resolution plan. Procedures and safeguards are defined in our Participant Settlement Agreement. The Bacs Code of Conduct specifies a requirement for pre-funding to mitigate settlement risk in the event of a failure in a participant firm. Attestation of compliance to the same is signed-off by the firm’s audit function and the SMR assigned to FMI compliance – thus we have placed some reliance on the regulatory requirement for

		participant firms to have documented and tested resolution plans. Given our response to Question 1 we agree that this requirement should be a feature of contractual and/or rules/codes of conduct.
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?	One Bacs Participant is not UK registered, it is US registered. However as it is regulated by the PRA/FCA the Bacs Board took this into consideration when the firm joined Bacs.
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?	We agree and this is allowed under our contractual Force Majeure conditions. We believe a fast track process would increase risk in the overall system unacceptably and therefore we would not advocate such a requirement. Our MI (Lead and lag indicators) and escalation procedures would invariably mean we would be able to commence on-boarding or at least pre-qualify a bridge or 3 <sup>rd</sup> party successor in advance of the invocation of the resolution procedures. We think this is a sound practice that all providers of critical FMI services should adopt.
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?	We agree with the principle of ensuring participant firms have contingency plans for resolution however we suggest that the independent skilled person accreditation referred to in our Question 1 response should include how the firm's resolution plan takes into account the points in section 2. In other words the accreditation by the independent reviewer should take cognisance of the FMI's code/rules and triggers and form an opinion on the likelihood (Or otherwise) of the FMI invoking expulsion of participant firm in the scenarios described. We feel there is potential for significant overhead if a participant firm has to perform actions under section 2 with a number of FMIs – hence our suggested approach above
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.	Please refer to our response to question 4
	Does the consultative document identify all relevant requirements and pre-conditions that a firm may need to meet to support continuity of	It would appear to meet all relevant requirements

9	access in both the lead-up to, and upon, resolution? What other conditions or requirements, if any, should be addressed?	
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?	Communication between Bacs and the Authorities (principally Bank of England) is critical in the event of (or ideally leading up to) resolution. It is emphasised that a Power of Direction from the Authorities is likely to offer clarity in a resolution scenario. Please refer to our response to question 1 vis-à-vis independent skilled persons review and accreditation of resolution and recovery plans