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February 10, 2017

Financial Stability Board
fsb@fsb.org

Dear Sir/Madam:

Re: CBA Comments on FSB consultative document: Guidance on Continuity of Access to Financial Market Infrastructures (“FMIs”) for a Firm in Resolution

The Canadian Bankers Association (CBA)¹ is pleased to provide its comments on the FSB’s guidance on Continuity of Access to Financial Market Infrastructures for a Firm in Resolution. We would like to express our support for this guidance, as we believe it will help banks prepare for their continued access to critical FMI services in the event of resolution.

The CBA believes that the FSB guidance strikes a fair balance between ensuring firms’ continuity of access to FMI services during resolution while also trying to ensure that FMIs are able to manage their own risk and protect their participants from contagion risk. We would like to note, however, that it may be difficult for an FMI participant that is entering resolution to continue to meet its payment and delivery obligations to the FMI as it may have difficulty meeting any increased margin and liquidity requirements.

We would encourage resolution authorities of FMIs and FMI participants to coordinate resolution actions to the greatest extent possible. We would also like to suggest that the FSB consider applying this guidance to firms, commensurate with the size, nature, and complexity of the firm and the risk that each firm poses to the financial system.

Our detailed comments and responses to the questions in the consultative document are contained in the attached Appendix.

We would be pleased to discuss these comments with you further at your convenience.

Sincerely,



¹ The Canadian Bankers Association works on behalf of 60 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 280,000 employees. The CBA advocates for effective public policies that contribute to a sound, successful banking system that benefits Canadians and Canada’s economy. The Association also promotes financial literacy to help Canadians make informed financial decisions and works with banks and law enforcement to help protect customers against financial crime and promote fraud awareness. www.cba.ca.

Appendix – CBA Comments and Responses

FSB Guidance on Continuity of Access to FMIs for a Firm in Resolution Consolidated Comments

1. Continuity of access arrangements at the level of the provider of critical FMI services

The CBA notes that the six D-SIBs in Canada all act as both FMI participants and as FMI intermediaries.

1.1 Establishing rights, obligations and applicable procedures in the event of an FMI participant, its parent or affiliate entering into resolution

While we believe that providers of FMI services should continue to have the capability to manage their own risk and limit risk to the broader financial system, we agree that FMIs should not have binary rules which automatically dictate termination or suspension of an FMI participant solely because the participant has entered resolution, in part because termination or suspension may cut the FMI participant off from emergency liquidity that may be available from central banks or other agencies that is predicated upon the FMI participant remaining a member of a particular FMI. A key consideration is a well-founded resolution plan that includes robust liquidity strategies.

The CBA notes that it may be difficult for authorities to determine whether an FMI has “materially restrict(ed) access such that it effectively amounts to a termination or suspension”. The FSB may wish to further elaborate on this issue in the guidance.

1.2 Non-discrimination between domestic and foreign FMI participants by a provider of critical FMI services

The CBA is supportive of the non-discrimination principle. However, for most FMIs, the determination of the effectiveness of resolution in foreign jurisdictions could be difficult given the varying oversight and governance regimes. We believe that where the presumption of the local resolution regime providing adequate safeguards cannot be satisfactorily ascertained, adequate measures based on rules and procedures established by FMIs should be followed to better manage the contagion risk and preserve financial stability within the broader economy globally or locally.

1.3 Establishing expectations regarding the heightened or additional requirements for a firm in resolution

We believe that FMI rulebooks should include requirements/procedures that are consistent with all applicable FMI participant resolution regimes and ensure that legal or jurisdictional inconsistencies and/or conflicts are resolved. We suggest that regulatory authorities review FMI rulebooks and note any weaknesses, conflicts, and/or inconsistencies.

1.4 Arrangements and operational processes to facilitate continued access in resolution

The CBA acknowledges the need to ensure there are mechanisms in place to ensure the expedited transfer of participation or membership to a third-party successor or bridge institution where resolutions plans/regimes rely on such mechanisms; however, we do not believe this should be a requirement, particularly where resolution plans provide an alternative strategy.

We also suggest that the FSB consider making the following edits to this sentence in section 1.4, page 17, “In particular, providers of critical FMI services should consider the technology, financial, ~~and~~ legal, and operational implications arising from the transfer of functions to a successor (either a bridge institution or a third-party purchaser).”

2.1 Resolution planning for firms as recipients of critical FMI services

We would like to note that Canadian D-SIBs are already required by resolution authorities to prepare contingency plans that detail how the bank would maintain access to critical FMI services. Given these contingency plans rely upon other stakeholders (especially the FMIs themselves) to cooperate in order to maintain FMI access, industry coordination should continue in order to develop and implement a predictable and stable cross-border legal and rules-based regime.

2.2 Information requirements for resolution planning

We acknowledge the need to maintain the noted information but believe this should be balanced by the size and complexity of the firm.

With respect to segregation (“Firms should review and seek to develop their capabilities to segregate information...”), we support the overall view that separability in resolution is important but do not feel this requirement is clearly articulated here, nor should it be. The FSB guidance may wish to clarify that the firm’s segregation efforts will not extend into identifying whether its client positions are for the client’s own positions or their underlying customer positions as that level of segregation would be the responsibility of the firm’s clients.

2.3 Contingency planning to meet conditions of access in resolution

The CBA believes that both the FMI's resolution authority and the FMI participant's resolution authority should coordinate and facilitate discussions between firms and providers of critical FMI services to help ensure that there is consistency among agreements developed by firms and FMIs.

As the draft FSB guidance introduces a number of new requirements on firms, we believe that the final guidance should clearly state that these additional requirements (e.g., technical changes to IT systems, additional reporting, etc.) are to be phased in over time in order to minimize the burden on firms.

2.4 Contingency planning to meet liquidity requirements

The contingency plans of Canadian D-SIBs contain details on anticipated liquidity requirements from FMIs and how the firm would be expected to meet them. Additionally, banks currently test their ability to manage liquidity, both in terms of stress testing and timely data production.

3.2 Periodic discussion between relevant authorities of matters affecting continuity of access to critical FMI services

We agree that resolution authorities of FMI participants should identify and engage periodically with the relevant authorities of each provider of critical FMI services in order to discuss the resolution authority's preferred resolution strategy, the credibility and feasibility of firms' contingency plans and any barriers to continuity of access to critical FMI services. We would also like to suggest that the minutes/outcomes of these discussions be shared with FMIs and FMI participants and that consideration be given as to whether it would be appropriate for firms to participate in those discussions.

As the draft FSB guidance provides for information sharing between "relevant authorities", we suggest that information only be shared on an anonymous and as needed basis and that emphasis be placed on the importance of confidentiality and restrictions on usage to limited and agreed purposes – particularly where information about a distressed firm is being shared prior to a potential resolution.

- 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 note that the document seems more heavily weighted on the orderly resolution of participants and recipients of FMI services. The request for clearer rules around termination would seemingly shift the risk of contagion from FMI participants to FMI providers and may serve to limit the powers of FMIs.

The FSB may wish to address how differing resolution regimes may pose inconsistencies in application.

Further, we recognize that while clarity is important and is to be aimed for, we also understand that some flexibility needs to be embedded in the rules given the multiple number of potential scenarios.

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.

The definition of an FMI excludes trade repositories (“TRs”) – since TRs are part of the definition of an FMI in the Key Attributes, we suggest that the document clarify why TRs are excluded from the draft FSB guidance.

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?

The CBA believes that rulebooks should clearly outline the procedures applicable to both defaulting and non-defaulting participants in the event of one participant entering resolution. This would help provide non-defaulting participants with additional information that would aid in their own contingency planning.

We recognize that while clarity is important and is to be aimed for, we also understand that some flexibility needs to be embedded in the rules given the multiple number of potential scenarios.

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.

The CBA agrees that there should be clearly defined procedures in rulebooks with specific provisions relative to the obligations of a firm in distress and the corresponding actions by the FMI.

We would like to express our concern regarding the sustainability of margin/payment increases by the FMI to a participant experiencing a pronounced, yet not prohibitive, level of financial distress. For instance, if the FMI progressively increases the initial margin or default fund requirements of a participant in distress (which still continues to meet its payment obligations to the FMI), it is not clear at what point a regulator would consider such behaviour by the FMI to “materially restrict access such that it effectively amounts to a termination or suspension”.

Further, we strongly believe that FMIs must be able to follow their rulebook (or contractual) procedures as they manage through a participant’s resolution, and that those procedures should be fully transparent and documented in the participant rulebooks or contracts.

Section 1.1 provides that rules or contractual arrangements of the provider of critical FMI services should reflect any restrictions on termination rights (e.g., stay in the event that a firm enters into resolution – consideration should be given to enforceability of any such restrictions in a cross-border context as well as where restrictions are provided for in a rulebook (as opposed to legislation)).

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?

Sub-section 1.2 appears to be premised on the ability of the FMI to determine with certainty that the respective resolution regimes applicable to each participant provide sufficient safeguards to the FMI and the solvent participants. One safeguard would be coordination between regulatory entities, especially to review pending guidance that could create unintended friction between legal jurisdictions. Consistency and transparency are also important principles irrespective of whether the firm entering into resolution is a domestic or foreign FMI participant. This could be accomplished through documented processes and procedures as well as cross border regulatory co-operation and communication.

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 CBA agrees that providers of critical FMI services should engage with their participants and resolution authorities regarding the range of risk management requirements and actions they would anticipate taking in response to the resolution of an FMI participant. This engagement would help ensure that FMI participants can plan and predictably manage their own resolution process, while also allowing the FMI to better manage its own risk.

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?

As indicated earlier, the Canadian D-SIBs are already required to develop contingency plans to facilitate continuity of access in resolution. However, we would like to suggest that the FSB consider applying this requirement in accordance with the size, nature, and complexity of the firm. We also suggest that the guidance clarify how this requirement would differ, if at all, from any domestic regulatory requirement of this nature.

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.

FMI intermediaries may have competing regulatory mandates to manage their own risk versus maintaining access on behalf of their client/participant. FMI intermediaries require a degree of flexibility to reconcile these competing priorities in order to manage risk in the event a participant is failing.

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?

We agree that the FSB document addresses the key issues and challenges.

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?

The CBA views transparency between resolution authorities and FMIs and FMI participants with respect to their resolution actions during resolution to be generally desirable, although we would highlight the need to observe strict confidentiality requirements with respect to information sharing, especially in the lead-up to any resolution event. This is acknowledged in both the Bank Act (Canada) and the Office of the Superintendent of Financial Institutions Act (Canada), which require that appropriate confidentiality protections be in place for any information regarding the business or affairs of a regulated bank under OSFI's supervision that may be shared with any governmental or other agency or body that supervises financial institutions. Recognizing the need to protect the confidentiality of sensitive supervisory information, any sharing of such information with providers of critical FMI services and other stakeholders, especially on a cross-border basis, would of course need to be accompanied by robust security procedures and contractual safeguards on its restricted use and disclosure.