

17 February 2017

**Financial Stability Board Consultative
Document:
Continuity of Access to Critical FMI Services
for a Firm in Resolution**



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Background

The World Federation of Exchanges (WFE) is the global trade association which represents more than 200 Market Infrastructure Providers, of which more than 100 are Central Counterparties (CCPs) and Central Securities Depositories (CSDs). Our members include exchange groups and standalone CCPs.¹

Our members are both local and global, operating the full continuum of Financial Market Infrastructure in both developed and emerging markets. Of our members, 41 percent are in the Asia-Pacific region, 40 percent in EMEA and 19 percent in the Americas. The market capitalisation of entities listed on our member exchanges is over \$67.9 trillion, and around \$84.18 trillion in trading annually passes through the infrastructures our members safeguard.²

The WFE works with standard setters, policy makers, regulators and government organizations to support and promote the development of fair, transparent, stable and efficient markets around the world. We share regulatory authorities' goals of ensuring the safety and soundness of the global financial system, which is critical to enhancing investor and consumer confidence, and promoting economic growth.

Introduction

The WFE has previously publicly expressed support for initiatives such as the CPMI-IOSCO Principles for Financial Market Infrastructure (PFMI) and the FSB Key Attributes, and has sought to proactively contribute to the international debate on these issues and others – including Operational Continuity in Firm Resolution, CCP risk management, recovery and resolution and the impact of a bank's default on an FMI.³ In doing so, its members have contributed significantly to the strengthening of the system via the implementation of many post-crisis initiatives, including efforts to encourage central clearing of derivatives as per the G-20 direction.

The WFE expressly supports the initiative of the FSB to encourage FMIs to maintain access to a firm in resolution, where practical. Indeed, in some cases, continued access by the firm to the FMI may be beneficial to the CCP, or at least enable a smoother transition.

¹ The WFE membership list [can be found here](#)

² As at end 2016

³ [WFE: Response to FSB Consultative Document – Guidance on Arrangements to Support Operational Continuity in Resolution - January 2016](#)

[WFE: CCP Risk Management, Recovery and Resolution – Aligning CCP & Member Incentives - October 2015](#)

[WFE: Response to CPMI-IOSCO Consultative Report on Resilience and Recovery of CCPs – October 2016](#)

[WFE: Response to FSB Discussion Note on Essential Aspects of CCP Resolution – October 2016](#)

[WFE: The Interplay Between Central Counterparty Recovery and Resolution: A Global perspective – February 2017](#)

Executive Summary

The following broader views are reflected in WFE's responses to the consultation paper:

- FMI's have responsibilities to achieve public policy objectives of safety, efficiency and reducing systemic risk resulting from the failure of the FMI on the wider market and so, as long as these objectives are not compromised, FMI's should not unduly disrupt an FMI participant which has recently entered into resolution from accessing its services. However, in order to appropriately manage its market, FMI's themselves have detailed rules and standards which users of the FMI must meet – regardless of whether the firm has entered into resolution. This would include suitable capital and liquidity requirements, systems and controls, trading conduct, and expertise in the market. It is therefore imperative FMI's are not coerced into facilitating access for a firm in resolution which would compromise its statutory obligations to manage risk in its market.
- FMI's should not be expected to be the ultimate arbiter of what action or procedure – justifiably undertaken against an FMI participant entering into resolution in order to meet its own public policy objectives – could have a negative impact on the firm in resolution and the broader financial system. The relevant authorities of both the critical FMI service provider and of the firm are best placed to make this judgement as they are privy to information related to the broader economy which FMI's are not. This should therefore be appropriately reflected throughout the guidance. The existence of such a judgement from public authorities should go some way in addressing tensions which can arise between various financial stability objectives.
- Care should be taken to not be overly prescriptive, particularly regarding the range of risk management actions and requirements a critical FMI service provider would anticipate taking in response to the resolution of an FMI participant. This is to ensure that the nuances and specificities of each event can be taken into account. Markets – and the firms operating within them – vary, as do national and regional laws and regulations. As such, arrangements need to reflect and accommodate this by ensuring FMI's follow the correct governance procedure but with embedded flexibility to enable effective outcomes. A uniform or prescriptive approach could unnecessarily constrain the ability of the FMI itself (and ultimately the authorities) to protect its markets where an FMI participant enters into resolution. Actions undertaken by an FMI are often wholly influenced by wider market events – particularly in a high stressed scenario – and as such its tool-box needs to be able to suitably reflect such conditions. An FMI participant retaining access to an FMI's critical services should not be at the expense of the wider overriding goals of financial stability and fair, efficient and orderly markets.
- Critical FMI-service providers should, where appropriate, be privy to relevant information flows between relevant authorities and FMI participants. In particular, critical FMI-service providers should have access to contingency plans as designed by participant firms (and to challenge any flaws where necessary) – especially that information which is relevant to the risk management of its market. Such information will help an FMI better plan for the potential resolution of a participant and tailor its approach to a specific firm entering into resolution on a case-by-case basis. Resolution Authorities of firms should also be transparent to the market if they deviate from the firm's contingency plan.
- The definition of critical FMI services should be extended to include those services provided by third party 'middleware' service providers related to payment, delivery and collateral provision in the interests of ensuring financial stability throughout the ecosystem of infrastructure providers.

With regard to the specific questions within the Consultative Document, we respond as follows:

Specific Comments

The FSB invites comments on the consultative document and the following specific questions:

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?

There is a lack of consistency – and therefore clarity – throughout the paper as to who is ultimately responsible for supporting financial stability objectives, both from an FMI service provider perspective and an FMI participant perspective.

Whilst we acknowledge the difficulty in adequately addressing these tensions, the WFE believes more definitive guidance is necessary throughout the paper which reiterates that, whilst FMI service providers quite clearly have objectives to support the stability of the wider financial system (as well other relevant public interest considerations)⁴, if and when tensions occur, it is the Resolution Authorities themselves who are ultimately responsible for ensuring outcomes are reached which benefit the financial stability of the economy as a whole.

Relevant authorities should therefore be afforded a much more visible role with clear lines of responsibility defined in this guidance to ensure there: a) are no measures undertaken by the FMI to protect it and its market but which have financial stability consequences for the firm in resolution (and therefore an impact on the wider economy); and, b) are no behaviours undertaken by a firm in recovery or resolution designed to protect its own interests but that act to the detriment of the FMI, its participants and therefore the wider economy. After all, Resolution Authorities of both the FMI and firm are privy to a lot more information than FMIs and they are also not market participants; as such they are much better placed to provide evidence-based solutions which in turn would better help negate the natural tensions which exist.

Another aspect of this guidance which not only fails to address the tensions between the various financial stability objectives of FMI providers and its participant firms, but also distorts the perception of responsibility, is the attempt to redefine Principle 2, Key Consideration 1, of the PFMI.⁵ This redefinition appears contradictory to the rationale of this Principle and ultimately imprudent. In particular, we note the following:

- In the excerpt from the FMI-Annex in Section 1 (pg. 12), it rightly reiterates the FMI service provider's discrete requirement to have enough flexibility to cooperate both with resolution authorities and authorities of participants *'in order to prepare for and implement an orderly resolution in a way that does not increase risk to the FMI, its risk management or its safe and orderly operations'*. We fully agree with this clause and it provides helpful clarity as FMIs should be able to have as many tools available as possible and to appropriately cooperate with the relevant authority of the FMI participant in order to reduce any perceived risk to the FMI itself or to its market.
- Similarly, sub-section 3.1. makes a welcome attempt at seeking to balance the objectives between relevant authorities of providers of FMI services and Resolution Authorities of FMI participants. It is made clear there are tensions which need to be explicitly addressed in respective resolution plans and ultimately overcome as *'the responsibilities of both sets of the relevant authorities are ultimately intended to contribute to financial stability'*.
- However, Section 1 adds to the sense of confusion related to financial stability objectives by reiterating the PFMI (Principle 2) throughout but misinterpreting its meaning. For example, in sub-section 1.1. (pg. 14) it states:

'Consistent with Principle 2 of the PFMI, FMI specifically should have governance arrangements that are clear and transparent, promote the safety and efficiency of the FMI, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.'

⁴ as noted in Principle 2 of the PFMI

⁵ in sub-section 1.3 (pg. 16)

However, this non-footnoted reference wholly takes the meaning of the PFMI out of context. The PFMI does not state FMIs should have arrangements which '*support...the objectives of relevant stakeholders*' but rather:

*"An FMI's governance arrangements should also include appropriate consideration of the interests of participants, participants' customers, relevant authorities, and other stakeholders."*⁶

This is a small, but highly relevant distinction, namely that FMIs under the PFMI are tasked with taking into *consideration* the interests of its users, but not *support* the users' objectives. Furthermore, our concern the PFMI are being redefined in order to place more responsibility onto FMI providers regarding financial stability considerations is validated by the actual revision of the meaning of Principle 2, Key Consideration 1 in sub-section 1.3 (pg. 16) of the guidance where it states:

'These public interest considerations should include the implications on the FMI provider and the recipients of services, as well as the broader financial system, of a failure by the FMI participant to meet the additional requirements and the potential consequences thereof (declaration of default by the FMI service provider and/or loss of access to the critical FMI service).'

We consider this redefinition of the PFMI which now requires FMI providers to assess whether its risk management actions – which are designed to reduce risk to the FMI, its market and its broader financial system – also reduce risk vis-à-vis the firm in resolution as well as the broader financial system to which it relates to be wholly inappropriate.

This conflation of the responsibilities of FMIs by referencing the *Key Attributes of Effective Resolution Regimes for Financial Institutions* and the PFMI interchangeably, as well as providing supplementary guidance on elements referred to in those standards, does not suitably address the inherent tensions between managing FMI risk versus managing the orderly wind-down of an FMI participant because an FMI is currently being asked to do both – which is often impossible.

For example, there may be instances where an FMI's measures to manage credit, liquidity or business risk unduly impacts upon the going concern of a clearing participant; this may have wider financial stability implications. An FMI provider, in the throes of implementing its risk management framework, should not be expected to ascertain the macro-economic impact of its policies and procedures as it may be that, in such a situation, they do not reconcile with an FMI's responsibility to support the stability of the broader financial system. FMI are simply not provided with the requisite information to make this judgement.

Relevant authorities should therefore remain responsible for determining whether actions taken by an FMI provider towards a participant supports financial stability, as it is privy to the requisite information, and this should be made clear to the market. In the event a relevant authority assesses such an action (i.e. additional requirements subsequent to a firm entering resolution) harms financial stability – and therefore intervenes and decides to manage certain discrete elements of a CCP's risk management process due to financial stability concerns – it should be transparent to the market the precise reasons for deviating from the FMI provider's plan. Furthermore, in such a case, an FMI should under no circumstances remain ultimately responsible for undertaking an action against a firm in resolution which was directed by the relevant authorities on the grounds of financial stability.

In order to ensure such market interventions remain relatively rare, relevant authorities should share as much information as possible with the FMI provider relating to the wider market to ensure prudent decisions and actions can be taken by FMIs and firms. Similarly (as discussed below in our answer to question 7), the relevant parts of firms' contingency plans should be sent to FMIs at least where they relate to the critical services provided by the FMI and FMI should be able to challenge any flaws contained within them, where necessary. We therefore respectfully suggest:

- the wording in sub-section 1.3 should be strengthened to state '*relevant authorities should consider engage with the provider of critical FMI services*' (pg. 15); as well as
- further reiterating the relevant authorities' statutory obligation to foster financial stability, as referenced in sub-section 3.1.

⁶ CPMI-IOSCO PFMI, section 3.3.2. pg. 27

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 note the distinction between the definition of '*critical services*' and '*critical FMI services*' is that only firms (G-SIFIs) can provide critical services to third parties, whereas critical FMI services can be provided by an FMI, a custodian or an FMI intermediary.

However, we firstly point out there is no definition of a 'custodian' in this guidance, which we feel would provide useful clarity.

Secondly, there does not seem to be any coverage in this guidance related to critical services provided *to* firms – in particular G-SIFIs – *from* third parties (predominantly those which are unregulated). We note within the *FSB Guidance on Identification of Critical Functions and Critical Shared Services*, such services are included in the 'Critical Shared Services' definition which is not referenced here. We consider this to be an omission as critical shared services can be just as integral to a firm as critical FMI services, as defined in this guidance.

There exists a significant array of services provided to firms by third party vendors which, in the absence of continuity of provision, could lead to a collapse of the firm's critical functions. These may be separate to those related to FMI-specific services (i.e. clearing, payment, securities settlement and custody activities, functions or services) in – for example – the cyber security or data vendor arena. However, given this guidance relates specifically to critical FMI services, it is perhaps prudent to discuss an example of critical FMI services provided by non-FMIs or non-banks which are explicitly exempt from this guidance.

One example of such critical FMI services is the provision of 'middle-ware' IT services and software, which provide automated middle-office functions to manage risk related to trade capture, data transformation and bookkeeping – particularly related to clearing and settlement.

The provision of such services is intertwined with firms' business processes related to clearing and settlement and any disruption in such services could cause a firm's clearing and settlement processing ability to collapse. It would appear pragmatic from a regulatory perspective to seek assurance from such non-regulated third party service providers that they will ensure such services continue to be provided even when a firm enters resolution – akin to the requirements on FMIs within this proposed guidance.

Thirdly, we consider the guidance should better identify what the range of scenarios would look like in the case of a firm maintaining access to critical FMI services.

For example:

- In the definition of critical FMI services, it states they are both the core and ancillary functions related to clearing, payment, securities settlement and custody activities, functions and services. A firm may therefore be connected to an FMI in numerous capacities (e.g. as a clearing member, settlement bank, depository bank, custodian or liquidity provider), with each one receiving discrete critical services from the FMI.
- Therefore, it is possible there exists a scenario where, although one aspect of its connection may not be appropriate (e.g. to remain a clearing member) because it can no longer meet its payment obligations, the FMI might be able to continue to allow the firm to perform an ancillary function (e.g. custodian services).
- As such the guidance should reflect such instances, for example where a firm retains its ability to access the FMI's critical services but not necessarily in all of its business lines – due to the risk appetite of the FMI in question. The WFE is willing to work closely with the FSB to provide more examples of what a continued access model might look like (e.g. criteria and scope of, and for, continued access and limitations).

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 WFE has no concerns with the proposal regarding rights and obligations as these are currently comprehensively covered and set out in FMIs' rulebooks. However, being prescriptive on applicable procedures would constrain the flexibility FMIs require to manage their own markets in the most appropriate manner, especially during a highly-stressed event. This, we contend, would undermine the policy intentions of the FSB. It is also imperative that, whilst an FMI can provide guidelines to participants to explain the FMI's general approach, there needs to be flexibility to manage the specific scenario of a firm default. For example, in severely stressed circumstances, broader market behaviour can often become pro-cyclical which determines the actions of an FMI toward a participant; as such, such scenarios cannot be predicted.

We agree with the requirement for an FMI service provider to be consistent with the governance framework (as originally defined in Principle 2 of the PFMI) when exercising a right of termination or suspension of continued access.

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.

As noted in section 1.17 of the PFMI, '*to ensure the safety and promote financial stability more broadly, FMIs should robustly manage their risks*'. Those risks are identified as those which arise in or are transmitted by the FMI.⁷ The priority for FMI is to ensure the resolution of a firm does not cause undue risk to the FMI's market, its participants, and to the wider financial system. Therefore, regardless of whether a firm has entered into resolution, if they fail to meet their obligations as an FMI-participant then they should not have access to the FMI as the critical FMI service provider is required to ensure compliance with the PFMI and national rules as well as undertake general prudent risk management on behalf of both its market and its participants.

Regarding a firm who has entered into resolution but continues to fulfil its obligations from a payment, delivery and collateral provision perspective, it is right that FMI providers retain the ability to ensure other safeguards or procedures are met, where appropriate, to ensure the continued access to critical FMI services does not create any undue risk for the FMI, its other participants and the broader financial system. Such safeguards may include the need for the FMI to consider the effect of a firm's participation on the willingness of other firms to participate and/or the impact of a firm's continued participation on its clients. It would not be prudent to publicise a finite list of procedures and safeguards in order to ensure the FMI has sufficient flexibility in order to manage its market.

Following our response to Question 2 (where we discuss the several scenarios for a firm to continue access to an FMI's critical services), we could envisage the following FMI safeguards by type of firm participation:

- As a Clearing Member: continuity of pre-default portfolio risk reduction; margin increase; funding assessments as a condition and active client porting;
- As a Commercial Bank: continued/transitional access to any facilities (e.g. liquidity); and,
- As a Depository/Settlement bank: allow the CCP to withdraw and transfer collateral and settlement services to a solvent bank(s).

⁷ CPSS-IOSCO PFMI (pg. 11)

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?

The decision as to whether the FMI can invoke similar rights, arrangements and procedures to a domestic or foreign firm should remain with the FMI service provider. This is because FMIs are best placed to assess the particularities of the jurisdiction in question and adjudge whether rules can be enforced with an equivalent effect or not. It is precisely this flexibility in the FMI's rules which enable a more consistent approach to both domestic and foreign firms, as far as this is practicable, and the danger of having measures to ensure a consistent approach is it would be unable account for specificities of the foreign entities' resolution. Such a process cannot be embedded into global guidance due to the differences which exist in legal frameworks; as such this should be avoided here.

WFE members' contractual arrangements only extend to direct participants on their markets, not end users, and so our answer relates to clearing members or settlement banks in a CCP/CSD only i.e. direct FMI participants. Custodians or FMI intermediaries are solely responsible to ensure their clients can be treated identically in the event of a default regardless of whether they are domestically based or foreign. This is not the responsibility of the FMI provider - although it will take a judgement as to whether it considers the clearing member or settlement bank is able to do so.

WFE's members in the CCP/CSD industry only on-board clearing members who fulfil the risk-related participant requirements detailed in the PFMI (Principle 18) and national rules, as well as enable the full spectrum of contractual rights, obligations and procedures to be exercised upon a firms' resolution; hence the safeguards should not be different regarding whether a participant is domestic or foreign. According to section 3.18.5 of the PFMI, an FMI should consider whether a prospective participant can meet the operational, financial and legal requirements to allow them to fulfil their obligations to the FMI, including the other participants, on a timely basis.

When reviewing an application for membership aside from whether such a firm is of sufficient repute and appropriate risk management expertise, it is usually the case that WFE members can also seek further assurance related to the home regulatory authority, namely that it has an internationally recognised MoU in place with the host regulatory authority and that the country in question is a signatory of the IOSCO MMoU (and so bound to ensure the PFMI are implemented correctly when a clearing member defaults). WFE members can also seek assurance the jurisdiction of the firm in question provides suitable safeguards to the FMI service provider themselves either via its own internal due diligence or from a specialist third-party.

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 presume the question relates to the proposal in sub-section 1.3 as opposed to 1.4 and so will refer to that instead.

The WFE appreciates the work the FSB has done in this section to navigate the conflicting objectives of an orderly resolution for a firm and the prudent risk management of an FMI but suggests further amendments are necessary to reflect the difficulty of an FMI being too prescriptive when providing risk management information for FMI participants.

Appropriate transparency into an FMI's rules, financial health and risk management methodologies permits regulators and clearing members to assess and mitigate potential risks in the financial system and respond appropriately. Regulations governing FMIs require them to disclose certain market and risk information to both the public and regulators. This serves as an important check and balance by providing mechanisms through which the FMI and its regulators develop a high degree of visibility into risks in their markets. We generally support appropriate transparency regarding FMI rules and risk methodologies, and disclosure of information that permits clearing members and customers to assess potential risks and mitigate their exposures as well as ascertain a certain level of expectation of procedures, if, and when, a clearing member enters into resolution. Our view is

such disclosures bolster the safety of the financial system and the smooth functioning of fair and orderly markets. Transparency related to procedures is not appropriate, however, especially if a participant firm is impacted by the resolution of one of its affiliates or a parent.

Nevertheless, it is as important an FMI is able to see certain information produced by a participant as it is integral for the proper management of risk to its market i.e. for identifying risk from affiliates or other business lines etc.

FMI transparency and disclosure is only appropriate to a point though, not least because it is imprudent (and possibly dangerous) for an FMI to provide a finite list of actions and requirements it would seek when a participant enters into resolution as it could never likely cover all scenarios. We therefore make the following points related to the guidance, as currently drafted:

- The proposal in sub-section 1.3 is not as consistent as it could be between the requirements in Section 1.2 of Part II-Annex 1 of the Key Attributes which notes '*sufficient flexibility*' and the proposed guidance which asks FMI service providers to define and describe '*the range of risk management actions and requirements that it would anticipate taking or imposing*' and then explicitly asking for certain measures and scenarios to be mandatory within the disclosure.
- In the event of an FMI member firm resolution, collaboration between market participants, relevant authorities and FMIs is required to best protect the financial system and to ensure FMI and market participants' interests remain aligned (i.e. wider financial stability) and so suitably designed requirements for discussion and lines of communication between FMIs and FMI participants are prudent. As such, we are in agreement with the spirit of sub-section 1.3.
- The clear articulation of an FMI's risk management standards in its rules promotes member participation in the default management process; however, rules and procedures which are too prescriptive - as the requirements as drafted in sub section 1.3 have the potential to be - may undermine an FMI's ability to respond effectively when an FMI participant enters into resolution if, for example, an action or procedure has been deemed to be the most prudent course of action but it was not previously publicised by the FMI as being likely (and therefore did not form part of a participant's contingency plan). We therefore suggest the language in the sub-section needs to be changed to reflect the difficulty of FMI providers describing a finite list of potential actions, rather noting such a list should be used for illustrative purposes only. Further, the reference in the annex (section 5) where a firm needs to provide to the relevant authorities '*an inventory of the actions*' and '*likely timeframe in which the FMI... may implement such actions*' further reiterates the list in section 1.3 is meant to be read as all-encompassing. We fundamentally believe this to be unachievable for firms, as it is impossible for FMI providers to accurately and exhaustively provide what action is appropriate for future insolvency scenarios - as noted above.
- Lastly, WFE members fully accept the responsibility on defining objectives which place a high priority on the safety and efficiency of the FMI as well as explicitly supporting financial stability - which is in full alignment with the PFMI. However, given this sub-section also relates to how relevant authorities engage with FMIs both before and during an FMI participant entering into resolution, it is important to reiterate Resolution Authorities are ultimately responsible for ensuring financial stability during a member resolution, and not the FMI service provider nor the FMI participant.

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?

It is right and prudent a firm develops contingency plans to seek continuity of access to an FMI leading up to and during resolution albeit we question whether the provision of liquidity of a firm should be a pre-condition to accessing an FMI's services. Furthermore, a lot of the information provided by firms will be based on information, which they themselves have received from FMI providers (as requested in sub-section 1.3). We therefore make the following points:

- As previously discussed in our answer to question 6, it is problematic for FMIs to be too specific in the information they send to firms relating to the exact actions and procedures that would be invoked upon a firm entering into resolution. Such a list would be better suited as being non-exhaustive in nature and simply describing the likely scenarios which could take place.

- We consider the information and analysis which is required by firms to be produced as suitable and certainly a useful exercise to be undertaken which will benefit regulators – especially the mapping exercise regarding the size and usage of credit facilities from custodians/intermediaries or other third parties.
- Indeed, related to this specific provision of information to relevant authorities by firms, we would respectfully request FMI critical service providers are also privy to firms’ contingency plans (and to challenge the information provided within them related to the FMI, where appropriate) – where such entities are devoid of commercial sensitivities in relation to the firms themselves. This is because, for example in the case of clearing or payment infrastructure, understanding the usage of credit facilities and from whom it is provided is paramount in determining concentration risk i.e. where FMI members provide services for a significant number of users or smaller number of substantial users – the resolution of which could have a significant impact on the FMI and its market. Furthermore, in general, receipt of such contingency plans would help FMI providers mitigate unintended consequences of measures undertaken during a specific firm’s resolution as the FMI provider would have a better idea of the specificities of the firm in question.
- Resolution Authorities of firms should ensure actions they undertake (such as assurance of ongoing payment and source of payment) which diverge from the plans of the firm are communicated to relevant FMIs.

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.

CCP/CSDs are not market participants and have a statutory objective to ensure safe markets as per the PFMI; as such, whilst there should be at least a level playing field, if anything, custodians and intermediaries should have more conflict of interest provisions. Such firms should also not be privy to firm contingency plans (as noted below). Furthermore, indirect participants of FMIs are “guaranteed” by direct FMI participants, who themselves have their own risk appetite. As such, FMIs should have the flexibility to take appropriate action to protect themselves and contain contagion risk in the event an indirect participant’s entry into resolution changes the risk profile of the direct participant.

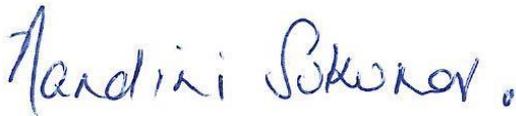
9. DOES THE CONSULTATIVE DOCUMENT IDENTIFY ALL RELEVANT REQUIREMENTS AND PRE-CONDITIONS THAT A FIRM MAY NEED TO MEET TO SUPPORT CONTINUITY OF ACCESS IN BOTH THE LEAD-UP TO, AND UPON, RESOLUTION? WHAT OTHER CONDITIONS OR REQUIREMENTS, IF ANY, SHOULD BE ADDRESSED?

The WFE considers there should be explicit reference to affiliates of FMI participants being required to provide suitable levels of information to help ensure FMIs can support continuity of access, where appropriate. Furthermore, general transparency commitments from Resolution Authorities for firms related to any actions they may take which diverge from firms’ resolution plans would be prudent. Also, it is vitally important international guidelines are not overly prescriptive especially when such granularity could hamper the risk management actions of an FMI to a firm in resolution.

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?

As previously mentioned in the answer to question 7, we consider it to be an omission that FMIs are not privy to the contingency plans produced by its firm participants, at a minimum the sections relevant to its own market. The information provided by firms will be partly based on information provided by FMIs themselves regarding the ways in which they would expect to respond to the resolution of a firm *inter alia*, and therefore having sight of the contingency plan would be beneficial for FMIs both to verify the reproduction of the information it has provided the firm is accurate, and also to use the information to develop its risk management arrangements, where appropriate. This could potentially enable critical FMI service providers to verify their risk management arrangements remain appropriate, and in some cases, make certain provisions more specific to individual firms on a case-by-basis.

As noted in our answer to question 6, it is impossible for critical FMI service providers to predict the precise action/procedure it would take upon a firm entering resolution, which is why a wholly flexible and non-exhaustive list needs to be embedded in these requirements. However, the results of, for example, a systematic fire-drill for a firm regarding how it predicts an entry into resolution would affect its ability to continue to meet its obligations as a participant of an FMI, has the strong potential to improve an FMI's risk management process. We therefore respectfully ask for consideration that such information - as detailed in section 2 - also be provided to FMIs for the same reasons (i.e. it is important providers of critical FMI services are engaged prior to and during a firm resolution, as detailed in sub-section 3.4.).



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