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Dear Sir / Madam,

Deutsche Bank response to Financial Stability Board consultation on application of Key Attributes of Effective Resolution Regimes to Non-Bank Financial Institutions

Deutsche Bank (DB) welcomes the proposals for Annexes to Financial Stability Board (FSB) Key Attributes of Effective Resolution Regimes describing how they apply to non-bank financial institutions. It is essential that authorities have the tools to ensure recovery and, if necessary, act to resolve all types of systemically important financial institutions (SIFIs).

We have provided comments via trade associations on the Appendix relating to resolution of financial market infrastructure (FMI). However, we wanted to respond directly to the questions covering resolution of systemically important FMI participants. Interaction with FMIs has been a key consideration for us in our own resolution planning. As such, our comments below are restricted to the four questions covering Part II of the draft guidance.

We believe these proposals are an important step towards addressing a key barrier to resolution faced by all SIFIs. A satisfactory resolution regime will require SIFIs to have continued access to exchanges, payment and clearing and settlement mechanisms - collectively "FMIs". The rules of many of these systems do not currently provide for continuity of access in the event of resolution.

Furthermore, the transferability of memberships for a bank whose critical functions are transferred to a third party or a bridge institution is untested. Each membership also includes specific eligibility and infrastructure requirements and gives FMIs broad latitude to determining liquidity and debit cap requirements if a participant is in distress. A balance needs to be struck between facilitating a resolution of participations with continuity of access to FMIs with allowing FMIs the flexibility to manage their own risk appropriately.

Yours sincerely,

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

Andrew Procter
Global Head of Compliance, Government and
Regulatory Affairs



Part II of the Draft Guidance: Resolution of Systemically Important FMI participants

18. Does the draft guidance achieve an appropriate balance between the orderly resolution of FMI participants and the FMI's ability to manage its risks effectively?

Yes. The guidance is prepared at sufficient high-level to allow FMIs to interpret it as appropriate for their institution. It makes significant progress towards removing a major barrier to resolution for SIFIs while giving sufficient discretion to FMIs to manage risks appropriately.

However, the paper does not discuss: the impact of FMIs increasing margin requirements for failing institutions; the potential impact on costs of resolution if all FMIs in which a bank participates act in the same way; or if all SIFIs are in distress in a system-wide crisis. This should be addressed in final guidance and consider pro-cyclical effects.

19. What actions of the FMI in relation to failing participants could hamper its orderly resolution? How could the impact of such actions on orderly resolution be mitigated or managed?

As noted in our covering letter, the ability to transfer FMI memberships to new owners or to a restructured institution or bridge bank is both essential and largely untested.

Furthermore, the process of transferring membership is complicated by the following matters:

- FMIs have broad rights to terminate membership or place a member in default before or after the transfer order is enacted. Extensive rights to declare a member in default would terminate all underlying ISDA contracts and associated collateral. This would introduce significant complexity to resolution, without close-out netting of positions.
- Governing law of the FMI may not recognise the transfer order, either because it is in a different jurisdiction or because membership is granted by statutory or public law powers.
- The bridge bank must meet eligibility criteria for membership of each FMI, and it is unclear if these can be waived temporarily to speed up the application process.
- Examples of these eligibility requirements include:
 - Requirement for a long term credit rating;
 - Licenses such as requiring a member firm to be authorised;
 - Technical, IT and other operational requirements;
 - Requirement for an audit and / or due diligence of customers prior to trading;
 - Requirement to maintain additional memberships (e.g. some exchanges require membership of clearing houses and payment systems).
- Finally, while a SIFI's positions and associated collateral may be transferred, it is unclear whether client agreements could also be transferred.

In general, the proposals outlined in the FSB's consultation would help address the majority of concerns raised above. However, FMIs' eligibility criteria may need to be waived temporarily for third party acquirers or restructured institutions to enable orderly resolution. For instance, a bridge bank is unlikely to prove a long-term credit rating or be authorised by a regulatory authority over a resolution weekend.

The FSB should consider including in the final guidance a requirement for jurisdictions to ensure that third party acquirers and bridge institutions may continue to exercise membership



rights and access to FMIs during resolution. Supervisory authorities should also be able temporarily to waive minimum authorisation requirements or grant temporary authorisations quickly. This should be supported in legislative frameworks, for example, the European Parliament text on the EU Recovery and Resolution Directive provides for continuity of memberships and for temporary suspension of authorisation requirements.

20. Are the safeguards set out in the guidance (paragraph 1.3) adequate as regards the conditions and requirements for maintaining access of a firm in resolution or admitting as a new member an entity to which that firm's activities have been transferred? If not, what additional safeguards should be included in the guidance?

As outlined above, DB is supportive of the proposal to ensure a fast-tracked application process for membership transfers in resolution. While the safeguards are adequate this still requires failing institutions or a bridge bank to “*comply with any other obligations of participation under the rules of the FMI*”. This broad wording may need to be relaxed for certain obligations (e.g. long-term credit rating) to ensure orderly resolution of the SIFI.

21. Are there any other issues in relation to the handling of the failure of FMI participants that it would be helpful for the FSB to clarify in this guidance? If yes, please elaborate.

Further guidance would be appreciated on the following:

- As some FMIs have complex collateral arrangements clarity would be appreciated on whether collateral or margin provided under existing transactions would be available to be used by a bridge bank following the issuance of the transfer order;
- Guidance on how FMIs should approach margin requirements for failing institutions in a way that balances the impact on the failing firm and on the FMI's own risk management;
- Clarity on timing for restructured institutions or a bridge bank to meet certain eligibility criteria or authorisation requirements;
- In the event of a SIFI being resolved under a Multiple Point of Entry approach, the FMI would need to ensure access to all resolution authorities responsible for resolving foreign subsidiaries; and
- How the FMI would handle the failure of numerous members, plus any specific aspects FMI should consider if this should occur to ensure orderly resolution of all counterparties.