



14 October 2013

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Dear Sir / Madam,

Deutsche Bank response to Financial Stability Board consultative document on information sharing for resolution purposes

Deutsche Bank (DB) welcomes this consultation on information sharing for resolution purposes, as we strongly support Financial Stability Board (FSB) efforts to facilitate key aspects of cross-border recovery and resolution planning. As noted in recent FSB progress reports, there remain significant obstacles to cross-border resolution. Guidance published in July to promote a consistent approach by authorities to recovery and resolution plans (RRPs) was a welcome first step towards tackling these obstacles, but further guidance is necessary.

This latest consultation on draft implementation guidance on information sharing, covering both principles for national legal gateways and cross-border cooperation agreements is a very positive development. Our view is that lack of cooperation between authorities would be a major barrier to developing effective RRP, both within Crisis Management Groups and with other host authorities. Greater legal certainty that regulatory counterparts have appropriate domestic regimes in place to protect confidentiality should help to facilitate trust and cooperation between jurisdictions on development of RRP and, ultimately, during a crisis situation. Without confidence in cross-border cooperation, host authorities may be incentivised to introduce measures that effectively trap capital and liquidity behind borders.

In fact, there are a number of areas where we believe that the guidance could go much further to facilitate cooperation and increase certainty for firms and authorities alike:

- The draft guidance is very generic as it calls for sharing of any information “relevant” for a number of resolution tasks. This is too vague, allowing for significant discretion by authorities and differences in interpretation. The FSB should specify in more detail minimum standards for information to be shared to facilitate effective cooperation.
- Greater clarity is needed over the content and status of cross-border cooperation agreements (COAGs). In addition to minimum levels of information to be covered, the FSB should consider setting a deadline for G-SIFI home and major host authorities to have these in place. The paper is also silent on whether COAGs or elements of them could be extended to host authorities outside the Crisis Management Group.
- Nowhere in the draft guidance does it mention whether firms would be kept generally informed of what information is shared or the content of COAGs. We believe this is important for a number of reasons: first to understand the level of information sharing occurring between authorities; to help facilitate access to information in practice; and to



facilitate compliance with confidentiality restrictions on client, counterparty or commercially sensitive data.

- The final guidance should also be more specific on timing of information sharing. As the paper rightly notes, there is a greater need to share more detailed and sensitive information quickly in a crisis. However, while the firm is in good financial health, greater clarity is needed on timing to share risk-sensitive information (e.g. what information and how long after the event should it be passed on) to protect the “need to know” principle.
- The draft guidance also rightly highlights the challenges of sharing information collected for supervisory purposes with non-supervisory bodies responsible for resolution - we consider that it is also a challenge to ensure information relevant for resolution is shared effectively between others that may need to cooperate, e.g. insolvency practitioners appointed to resolve/wind-down entities of failed institutions.

Brief responses to the specific questions are outlined below. More generally, we strongly welcome the emphasis in the FSB peer review of resolution regimes on including specific provisions in domestic legislation to facilitate cooperation with foreign authorities on resolution. As the FSB notes, “unless home and host authorities have the capacity to share such information, it is unrealistic to expect them to meaningfully discuss cross-border resolution strategies and plans or to cooperate effectively in a crisis.”

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



Annex - Information sharing for resolution purposes: DB responses to questions

- 1. The draft guidance is intended to apply in relation to all financial sectors. Do any considerations arise in relation to exchange of information on particular kinds of financial institution that require sector-specific provisions? If yes, please elaborate.**

No. The draft guidance should be applicable to a wide range of financial institutions. However, if - as we believe is necessary - the FSB stipulates in further detail the type of information to be shared, we see the case for tailoring this to different kinds of financial firms.

- 2. Do the provisions on legal gateways for disclosure of non-public information (paragraphs 1.1 to 1.8) outline the key elements that should be included in a jurisdiction's legal framework to allow national authorities to share information for resolution-related purposes with other national and foreign authorities? Please explain any additional elements that should be included.**

Yes, but we consider the provisions could go further, as they are vague on what information should be shared and when it can be shared, potentially giving rise to significant variations in interpretation. The FSB should specify further types of information relevant for resolution purposes and provide examples of situations where sharing might be necessary. This will help give host authorities confidence that important information will be available when it is needed. The emphasis on "comparable" (not equivalent) gateways for reciprocity is welcome, as is the stipulation that conditions on use of information should not be unduly restrictive. However, it should also be clear that the information should be used for resolution purposes.

- 3. Does the draft guidance (in particular, paragraph 1.4) provide an adequate standard of protection for all types of information, including supervisory information, that authorities may need to share for resolution purposes? If not, please explain.**

Yes, paragraph 1.4 does. In Q5 we outline how paragraphs 1.10-1.15 should go further.

- 4. Are the resolution-related purposes for which authorities should be able to disclose information (paragraph 1.9) sufficiently comprehensive? If not, what additional purposes should be included?**

The provisions of paragraph 1.9 are sufficiently comprehensive to facilitate sharing between authorities of the outcome of various resolution-related tasks. However, the guidance should ensure that the firm has visibility over what information has been shared between authorities - particularly on recovery plans where the firm owns the plan. In addition, it is not clear whether all of this information should be disclosed while the firm is still in good financial health or only during the recovery phase - circulating such information before certain trigger points should be on a "need to know" basis and only when the viability of the firm is clearly under threat.

- 5. Are the standards of 'adequate confidentiality requirements' set out in the draft principles (paragraphs 1.10 to 1.15, 2.4 and 2.5) sufficient to protect the confidentiality of sensitive information, without being excessively restrictive so as**



to impede necessary exchange? If not, please explain what more is required or desirable.

In most areas, the draft guidance strikes an appropriate balance. However, we would suggest:

- i) greater clarity on timing of information sharing, particularly when highly sensitive information is appropriate to share while the bank is still in good financial health;
- ii) provisions to allow sharing of information outside public bodies where they have specific roles in resolution in national frameworks (e.g. insolvency administrators).

6. Is it appropriate that information received from foreign authorities should be excluded from Freedom of Information regimes or exempt from disclosure under such regimes (paragraph 1.15)? Are there circumstances when information received from foreign authorities for resolution-related purposes should be subject to disclosure requirements?

Yes, information received from foreign authorities should be excluded from Freedom of Information regimes. Authorities sharing information need confidence that confidentiality will be respected in all circumstances.

7. What other issues in relation to the exchange of information for resolution-related purposes (if any) would it be helpful for the FSB to clarify in this guidance?

We are concerned at the lack of detail on what information would be relevant, necessary or appropriate to share, especially when it comes to firm-specific cooperation agreements (COAGs). Given the crucial nature of these documents for facilitating cross-border resolution of global systemically important financial institutions and the slow progress in developing them, the FSB should go much further to ensure effective COAGs are in place.

For example, the FSB could develop a template or sample document to support greater clarity and consistency in COAGs. There should be a global deadline for them to be in place and agreed. Firms could be consulted on what is covered in their specific COAGs, as there may be areas that firms believe would be helpful to facilitate cooperation. Thought should also be given to how to make COAGs more effective once agreed, e.g. what should be put in place to give them more binding effect, especially during a crisis? How should they take into account / cover cooperation with host authorities outside the Crisis Management Group?

As the FSB notes, information sharing is a basic requirement to facilitate cross-border cooperation on resolution. Unless this is delivered trust cannot be developed between authorities and incentives will remain for proposals that trap capital and liquidity behind borders. The FSB has a key role to play in ensuring authorities can and do cooperate.