FSB FINANCIAL STABILITY BOARD

Guidance on Cooperation and Information Sharing with Host Authorities of Jurisdictions Not Represented on CMGs where a G-SIFI has a Systemic Presence

Consultative Document

17 October 2014

The Financial Stability Board (FSB) is seeking comments on its Consultative Document on Cooperation and Information Sharing with Host Authorities of Jurisdictions not Represented on CMGs where a G-SIFI has a Systemic Presence ('Guidance note').

The *Key Attributes of Effective Resolution Regimes for Financial Institutions* require home and key host authorities of FSB-designated global systemically important financial institutions ('G-SIFIs') to establish Crisis Management Groups ('CMGs') and to develop effective cross-border resolution plans. For reasons of operational efficiency and effective decision-making, CMG membership is generally limited to key authorities from jurisdictions that are home or host to entities that are material to an effective resolution of the group. It is therefore possible that some jurisdictions where operations of the firm are locally systemic to the host jurisdiction but not material to the resolution of the overall group are not represented in the CMG.

As set out in its report to the G-20 on *Progress and Next Steps Towards Ending "Too-Big-To-Fail"* of September 2013 the FSB agreed "to develop recommendations for cooperation and sharing information with host authorities in jurisdictions where a G-SIFI has a systemic presence but that are not participating in the CMG of that G-SIFI ('non-CMG host jurisdictions')".

The draft Guidance note covers four main areas:

(i) Process for identifying non-CMG host jurisdictions;

(ii) Criteria for assessing the systemic nature of a G-SIFI's presence in a non-CMG host jurisdiction;

(iii) Cooperation and information sharing arrangements with a non-CMG host jurisdiction; and

(iv) Classes of information to be shared between home authorities and non-CMG host jurisdictions.

The FSB invites comments on the draft Guidance note and the following specific questions:

1. Is the process for identifying non-CMG host jurisdictions where a firm has a systemic presence and the respective roles of home and host jurisdictions in that process clear and appropriate?
2. Are the suggested criteria for assessing the systemic presence of G-SIFI in a non-CMG host jurisdiction appropriate? What additional considerations, if any, should be taken into account?
3. Are there additional possible forms of arrangement with non-CMG host jurisdictions that should be described in the draft Guidance note?
4. Will the classes of information described in the draft Guidance note enable non-CMG host authorities to assess the potential systemic impact of resolution measures on the local operations of a G-SIFI? What additional types of information, if any, might non-CMG host jurisdictions require for that purpose?
5. Are there any additional elements that should be covered or elaborated in more detail in the draft Guidance note?

Responses should be sent to fsb@bis.org by 1 December 2014. Responses will be published on the FSB's website unless respondents expressly request otherwise.

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Introduction

The FSB *Key Attributes of Effective Resolution Regimes for Financial Institutions*[1] *('Key Attributes')* require home and key host authorities of FSB-designated global systemically important financial institutions ('G-SIFIs') to maintain Crisis Management Groups ('CMGs') to prepare for and manage a cross-border financial crisis affecting the firm. Among other things, CMGs provide a forum for the discussion and agreement of resolution strategies and plans and the coordination of resolvability assessments.

The *Key Attributes* recognise that in the establishment and operation of CMGs, a balance needs to be struck between efficiency and inclusiveness. For reasons of operational efficiency, practicality and effective decision-making, the membership of CMGs is generally limited to those core jurisdictions and authorities that are material for a group-wide resolution of the firm, meaning the authorities that have resolution responsibilities relating to the significant or critical functions of the G-SIFI, including its holding company and material operating entities. However, if membership is limited in that way, it is possible that some jurisdictions where operations of the firm are locally systemic but not material in the context of the overall group will not be represented in the CMG.

The *Key Attributes* therefore also require cooperation and information sharing between CMGs and jurisdictions where the firm has a systemic presence locally but that do not participate in the CMG ('non-CMG host jurisdictions'[2]). KA 8.1 specifies that CMGs should cooperate closely with authorities from non-CMG host jurisdictions ('non-CMG host authorities'). KA 11.8 states that non-CMG host authorities should be given access to recovery and resolution plans ('RRPs') and information on measures that could have an impact on their jurisdiction. KA 9.1 (iii) stipulates that, as well as dealing with information exchange between members of the CMG, institution-specific cooperation agreements ('COAGs') should also set out the processes for information sharing with non-CMG hosts authorities.

To that end, home jurisdictions of G-SIFIs should have processes to ascertain those jurisdictions that are not members of the CMG but that assess the local operations of the firm to be systemically important for the local financial system,[3] and should ensure that appropriate arrangements for ongoing communication, cooperation and information sharing with the relevant authorities in those jurisdictions are established and maintained. As noted in the Guidance, it is important as a prerequisite for effective information sharing that all jurisdictions, including non-CMG hosts, have in place an adequate regime for the protection of confidential information that imposes adequate confidentiality requirements.[4]

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1 See http://www.financialstabilityboard.org/publications/r_141015.pdf .

2 Non-CMG host jurisdictions are jurisdictions; i) where the local operation of a G-SIFI is deemed to be systemically important for that jurisdiction; and ii) that are not members of the CMG of that G-SIFI.

3 See paragraph 1.25, I-Annex 4 to the *Key Attributes*.

4 See I-Annex 1 to the *Key Attributes* on Information sharing for resolution purposes.

1. Purpose

1.1 The purpose of this note is to provide guidance on cooperation and information sharing between CMGs and non-CMG host jurisdictions. It is addressed to home authorities and CMGs of G-SIFIs, and non-CMG host authorities of G-SIFIs and covers:

(i) processes for identifying jurisdictions where operations of a G-SIFI are locally systemic (Section 2);

(ii) criteria for assessing a systemic G-SIFI presence in a non-CMG host jurisdiction (Section 3);

(iii) possible cooperation and information sharing arrangements with a non-CMG host jurisdiction (Section 4); and

(iv) classes of information that should be shared (Section 5).

1.2 The requirements in the *Key Attributes* for cooperation with CMGs and non-CMG host authorities apply to G-SIFIs generally. However some considerations in this guidance may be applicable only to global systemically important banks (G-SIBs).[5]

2. Process for identifying non-CMG host jurisdictions

2.1 The process for identifying non-CMG host jurisdictions where the G-SIFI has a systemic presence should begin as soon as practicable after a CMG is established.

2.2 Non-CMG host authorities should be best placed to assess the systemic importance of a G-SIFI's local operations in their own jurisdictions.[6] Non-CMG host authorities should submit their assessment of systemic importance to home authorities. Non-CMG host authorities should also provide sufficient information to home authorities[7] to enable the home authorities to ascertain the reasons for the host authorities' assessment.[8]

2.3 Home authorities should also take measures to identify the non-CMG host jurisdictions where the G-SIFI has a systemic presence. They may, as appropriate,

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[5] This guidance note does not alter the information sharing responsibilities of home and host authorities and the arrangements for consolidated supervision which in essence, require the home country supervisors to be responsible for consolidated supervision and host country supervisors to be responsible for supervision on an individual or sub-consolidated basis for entities operating in their jurisdictions.

[6] The Basel Committee on Banking Supervision ('BCBS') framework for dealing with domestic systemically important banks ('D-SIBs') requires supervisors to assess the systemic importance of banks in their jurisdiction (including of subsidiaries of G-SIBs) and identify those banks that are systemically important at the domestic level.

[7] Subject to confidentiality requirements as stated in paragraphs 4.6 and 4.7.

[8] See paragraph 1.25 of I-Annex 4 to the *Key Attributes*.

consult other members of the CMG. They should be able to obtain from the G-SIFI the relevant information that is necessary to support an analysis of those jurisdictions where its operations are deemed locally systemic.

2.4 Once the home authorities have identified non-CMG host jurisdictions with locally systemic operations or have received an assessment of systemic importance of a G-SIFI's local operations from a non-CMG host jurisdiction, it should engage with the relevant authorities in those jurisdictions to review that initial identification.

2.5 In the event of any discrepancies between the assessments of the home authorities and the non-CMG host authorities, both home and non-CMG host authorities should review the reasons for their assessments and address points of divergence (for example, use of different assessment criteria, different weighting of assessment criteria or reliance on different data). The home authority should generally accept the host authorities' assessment provided it is supported by the criteria described in Section 3.

2.6 Home authorities should share the list of identified non-CMG host jurisdictions within the CMGs and, upon request, with other non-CMG host authorities.

2.7 The determination of non-CMG host jurisdictions should be reviewed regularly (for example annually).

3. Criteria for assessing a systemic G-SIFI presence

3.1 To assess the systemic presence of a G-SIFI's operations in a non-CMG host jurisdiction, home and non-CMG host authorities should assess the potential impact of the failure of the G-SIFI on the host economy having regard to a number of considerations, which include (i) size; (ii) interconnectedness; (iii) substitutability or financial institution infrastructure (including considerations related to the concentrated nature of the banking sector); and (iv) complexity (including the additional complexities from cross-border activity). In addition, both home and non-CMG host authorities may need to consider other criteria to assess the systemic presence, especially for local G-SIFI branches.

3.2 The use of common assessment criteria may help to promote a consistent approach to the assessment of the systemic presence of G-SIFI operations across non-CMG host jurisdictions. Such criteria may include, but are not limited to, the following.

a. The Basel Committee on Banking Supervision ('BCBS') framework for dealing with domestic systemically important banks ('D-SIBs') ('the BCBS D-SIB Framework').[9] See relevant excerpt in the Annex.

[9] See http://www.bis.org/publ/bcbs233.pdf.

b. The framework for assessing critical functions set out in the FSB's paper *Guidance on Identification of Critical Functions and Critical Shared Services*.[10] Examples of critical functions and characteristics that may render local G-SIFI operations systemically important in a host jurisdiction include payments, custody, certain lending and deposit-taking actives in the commercial or retail sector, clearing and settling, limited segments of wholesale markets, market-making in certain securities and highly concentrated specialist lending sectors.

4. Cooperation and information sharing arrangements

Types of arrangements

4.1 Once it has been determined that a G-SIFI has a systemic presence in a non-CMG host jurisdiction, the home and the non-CMG host authorities, in consultation, as necessary, with members of the CMG, should agree on the arrangements that will address the needs of the non-CMG host authorities, the home authority and CMG for mutual cooperation and information sharing.

4.2 The home authority should engage with non-CMG host authorities and, as appropriate, with members of the CMG in determining a practical cooperation and information sharing arrangement that is tailored and appropriate, taking into account a range of factors, including:

a. the nature of the firm's presence in the non-CMG host jurisdiction (for example, whether it takes the form of a domestically incorporated subsidiary, a branch of a foreign firm or an intermediate holding company of a sub-group);

b. the nature of the firm's group structure (for example, the extent of the financial, managerial and operational dependence of the local operations on the parent firm or its subsidiaries in other jurisdictions);

c. the nature of the activities the firm undertakes (for example, deposit taking and lending, payment services, its role in other financial infrastructure such as facilitating indirect clearing for other firms) and their systemic importance in the non-CMG host jurisdiction;

d. the potential volume and similarity of information needed by the identified non-CMG host jurisdictions;

e. the relevance of the actions (or forbearance) of the non-CMG host authorities in the event of the firm's distress for the implementation of the agreed resolution strategy and operational plan for the whole firm; and

f. the required level of involvement of non-CMG host authorities in implementing the preferred resolution strategy for the G-SIFI.

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[10] See http://www.financialstabilityboard.org/publications/r_130716a.pdf.

4.3 Authorities may consider different types of arrangements, which can also be combined in different ways:

a. **An 'extended' or 'universal' CMG** (based on the model used by supervisory colleges) including all or some host authorities that are not members of the 'core' CMG.

b. **One or more regional sub-CMGs for specific geographical areas**. This arrangement might be suited to a firm where the group is structured to reflect the geographical distribution of local operations and critical functions. The composition of regional sub-CMGs should take into account group structure and the form of cross-border operations.

c. **Bilateral cooperation and information sharing arrangements.** Bilateral arrangements entered into between the home and individual non-CMG host authorities might be suitable where there is a need for direct engagement with non-CMG host authorities and specific reciprocal information needs.

Where appropriate, depending on the type of arrangement, the COAG should set out the processes for information sharing with non-CMG hosts authorities.[11]

4.4 The number of non-CMG host jurisdictions may vary over time and cooperation and information sharing arrangements may therefore need to reflect that variation.

Cooperation and mutual support in resolution

4.5 In establishing cooperation and information sharing arrangements, the home authority and non-CMG host authorities should seek to reach an understanding of how they might support each other in a resolution and any conditions for that support. Support might include, for example, notification by the home to the non-CMG host authorities that a resolution action is taking place, exchange of information between authorities immediately before and during resolution and timely processing by host authorities of any necessary regulatory approvals (such as change of control approvals) required by the resolution action.

Prerequisites for information sharing

4.6 As a prerequisite for the sharing of information, authorities need to demonstrate that they meet the standards set out in the *Key Attributes* (namely, KAs 7.6, 7.7 and 12.1 and I-Annex 1 on information sharing for resolution purposes). The home authority, the members of the CMG and non-CMG host authorities should have a clear understanding of each other's information sharing and confidentiality frameworks and enter into any arrangements necessary and feasible under those frameworks to facilitate information sharing and put in place appropriate confidentiality commitments.

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[11] See KA 9.1 (iii).

4.7 The sharing of information, including the onward disclosure of information provided by other authorities, should be consistent with I-Annex 1 to the *Key Attributes* on information sharing for resolution purposes.

4.8 If the regime for information sharing and confidentiality protections of a non-CMG host jurisdiction does not meet the standards set out in the *Key Attributes,* including I-Annex 1, the home authority may be limited in what it is able to disclose to authorities in that jurisdiction. Pending reforms to fully implement those standards, non-CMG host authorities may obtain certain information directly from the firm.

5. Classes of information to be shared

Home authority or CMG to non-CMG hosts

5.1 Once home authorities are satisfied that a non-CMG host authority meets the prerequisites for information sharing outlined in paragraphs 4.5 to 4.7 above, the non-CMG host authority should be able to obtain information that is necessary for them to assess the potential systemic impact of a resolution strategy and resolution measures set out in the operational resolution plan on the local operations of the G-SIFI.[12]

5.2 Information requested by the non-CMG host jurisdiction should be directed to the objective set out in paragraph 5.1, and information requests should be proportionate to the extent needed for the non-CMG host jurisdiction to understand the impact of resolution measure on the host jurisdiction.

5.3 The specific information needed by individual non-CMG host jurisdictions in order to meet the objective set out in paragraph 5.1 is likely to vary, depending, in particular, on the preferred resolution strategy (for example, single-point-of entry (SPE) or multiple-point-of-entry (MPE)) developed by the home authority and CMG. For example, an SPE strategy, which supports the continuity of operating subsidiaries, may not require the sharing of the same specific information that may be required under other strategies. Moreover, firm-specific resolution strategies and plans will generally focus on the firm's critical functions and the operations that are material to the G-SIFI as a whole. Certain critical functions provided by the G-SIFI in the non-CMG host jurisdiction may not be specifically addressed in the resolution strategy and plan. The home and non-CMG host authorities should therefore discuss what specific information (if any) the latter need about the resolution strategy and plan and the treatment of particular critical functions under the strategy and plan.

5.4 Set out below are classes of core information that may, in many cases, assist non-CMG host authorities in understanding the impact in their jurisdiction of the resolution measures proposed in the resolution strategy and plan.

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[12] See KA 11.8.

a. **Relevant information on applicable resolution regimes,** including resolution powers; conditions for entry into resolution and use of those powers; domestic procedural requirements (for example, any requirements for court approvals); and information about actions that might be required in host jurisdictions (including, for example, judicial orders or regulatory approvals) in order for the resolution actions to be effective. That understanding can clarify the expectations of non-CMG host authorities about how a resolution would proceed and enable them to develop domestic resolution regimes that are compatible to the extent necessary with those of other jurisdictions.

b. **Information about firm structure**, including information about the structure of the G-SIFI, its global solvency, financial and operational inter-dependencies between the local entity and the parent or other group entities, critical functions carried out by the firm, and arrangements for the intra-group provision of critical shared services to the extent relevant to the continuity of operations in the non-CMG host jurisdiction.

c. **Information about resolution strategies and operational plans**, including high-level summaries of those strategies and operational resolution plans, and information on measures that the firm is taking to address barriers to resolution, where relevant to the local operations of the G-SIFI. The home authority should communicate to the non-CMG host authorities the likely material impacts of the resolution strategy on the firm's operation in the non-CMG host jurisdiction.

d. **Information about the firm's recovery plan.** Information about recovery plans may be requested by non-CMG host authorities where the information is necessary for them to assess the potential systemic impact of the recovery plan on the systemically important operations in their jurisdiction. It should be noted that a firm-wide recovery plan may focus on the firm's critical functions and the operations that are material to the G-SIFI and its recovery plan, therefore, may not address the operation of the G-SIFI in some non-CMG jurisdictions.

e. **Identification of the authorities responsible for resolution and contact details of key staff.** Factual information about the authorities responsible for resolution in the home jurisdiction and their specific functions and roles is likely to be needed by non-CMG host authorities in most, if not all, cases. Non-CMG host authorities are also likely to require up-to-date contact details of key senior and working level staff in the home and key host jurisdictions with responsibilities and functions relating to resolution to facilitate timely communication in a crisis.

5.5 The information set out above could be provided by means of 'minimum information packs' that might form the core of information sharing arrangements. However, it does not constitute a prescriptive list. The type, extent and granularity of information needed and the speed and frequency at which it is required vary in accordance with changes in the circumstances of the firm or external market conditions and can intensify as a crisis develops.

5.6 Home authorities should engage in bilateral discussions with individual non-CMG host authorities to assess additional, specific information needs of each authority in both normal times and a crisis situation.

5.7 Additional information may be shared upon request by non-CMG host authorities as agreed with home authorities, depending on the nature of the local operations of the firm, to assist host authorities in understanding the impact of the resolution strategy and operational resolution plan on local operations or to support the assessment of systemic impact. Such additional information may include:

a. the findings of the firm's resolvability assessment;

b. additional information related to resolution measures that may affect the operations in the host jurisdiction;

c. the assumptions underlying the resolution strategy and operational plan to the extent they relate to the operations in the host jurisdiction;

d. availability and accessibility of the G-SIFIs' liquid assets and loss absorption capacity to the local entities of the firm in the non-CMG host jurisdiction;

e. more detailed information about the plans of the home authority for dealing with the assets of the firm (branch or shares in a subsidiary) in the non-CMG host jurisdiction;

f. information about plans of the home authority to support critical services of the subsidiary(ies) or branch(es) in the non-CMG host jurisdiction during resolution; and

g. information about the CMGs and the main discussion at its meetings.

Non-CMG host to home authority or CMG

5.8 Non-CMG host authorities should be prepared to provide similar classes of information (as set out above) to the home authority or the CMG on a reciprocal basis. The classes of information that may be shared include the following:

a. information on the G- SIFI's operations in the host jurisdiction;

b. description of the resolution regime of the host jurisdiction (including information regarding legal or regulatory requirements in the host jurisdiction that are relevant to the implementation of a global resolution strategy and the possibility of independent action under that regime);

c. recovery and resolution plans for the local firm entity or entities (if developed at local level);

d. the circumstances and conditions under which non-CMG host authorities would forbear from taking independent national action to address a crisis affecting the local entity and rely on implementation of the resolution strategy and plan developed by the CMG, if needed;

e. the results of local resolvability assessments (if undertaken);

f. legal and practical provisions relating to confidentiality requirements (to determine adherence to the requirements of paragraphs 4.6 and 4.7); and

g. information on the host authorities responsible for resolution and up-to-date contact details of key senior and working level staff.

Annex

(Excerpt from BCBS framework for dealing with domestic systemically important banks)

Principle 5: The impact of a D-SIB's failure on the domestic economy should, in principle, be assessed having regard to bank-specific factors:

a. Size;

b. Interconnectedness;

c. Substitutability/financial institution infrastructure (including considerations related to the concentrated nature of the banking sector); and

d. Complexity (including the additional complexities from cross-border activity).

In addition, national authorities can consider other measures or data that would inform these bank-specific indicators within each of the above factors, such as size of the domestic economy.

21. The G-SIB methodology identifies five broad categories of factors that influence global systemic importance: size, cross-jurisdictional activity, interconnectedness, substitutability/financial institution infrastructure and complexity. The indicator-based approach and weighting system in the G-SIB methodology was developed to ensure a consistent international ranking of G-SIBs. The Committee is of the view that this degree of detail is not warranted for D-SIBs, given the focus is on the domestic impact of failure of a bank and the wide ranging differences in each jurisdiction's financial structure hinder such international comparisons being made. This is one of the reasons why the D-SIB framework has been developed as a principles-based approach.

22. Consistent with this view, it is appropriate to list, at a high level, the broad category of factors (e.g. size) that jurisdictions should have regard to in assessing the impact of a D-SIB's failure. Among the five categories in the G-SIB framework, size, interconnectedness, substitutability/financial institution infrastructure and complexity are all relevant for D-SIBs as well. Cross-jurisdictional activity, the remaining category, may not be as directly relevant, since it measures the degree of global (cross-jurisdictional) activity of a bank which is not the focus of the D-SIB framework.

23. In addition, national authorities may choose to also include some country-specific factors. A good example is the size of a bank relative to domestic GDP. If the size of a bank is relatively large compared to the domestic GDP, it would make sense for the national authority of the jurisdiction to identify it as a D-SIB whereas a same-sized bank in another jurisdiction, which is smaller relative to the GDP of that jurisdiction, may not be identified as a D-SIB.

24. National authorities should have national discretion as to the appropriate relative weights they place on these factors depending on national circumstances.