



London Stock Exchange Group response to the Financial Stability Board (“FSB”) Consultative Document on Guidance on Continuity of Access to Financial Market Infrastructures (“FMIs”) for a Firm in Resolution

Introduction

London Stock Exchange Group (“LSEG” or “the Group”) is a financial market infrastructure provider, headquartered in London, with significant operations in Europe, North America and Asia. Its diversified global business focuses on capital formation, intellectual property and risk and balance sheet management. LSEG operates an open access model, offering choice and partnership to customers across all of its businesses.

LSEG operates a broad range of international equity, ETF, bond and derivatives markets, including London Stock Exchange; Borsa Italiana; MTS (Europe's leading fixed income market); and Turquoise (a pan-European equities MTF). Through its platforms, LSEG offers market participants, including retail investors, institutions and SMEs unrivalled access to Europe's capital markets. The Group also plays a vital economic and social role, enabling companies to access funds for growth and development.

Post trade and risk management services are a significant part of the Group's business operations. In addition to holding majority ownership of multi-asset global CCP operator, LCH, LSEG operates CC&G, the Italian clearing house; and Monte Titoli, a leading European custody and settlement business.

LSEG welcomes the opportunity to comment on the FSB Consultative Document on Guidance on Continuity of Access to FMIs for a Firm in Resolution.

General remarks

LSEG, as operator of several FMIs, would like to highlight within this consultation the delicate balance between the continuity of access to critical services and the performance of risk management activities to protect the market and its participants.

FMIs understand the critical role they will have to play to ensure successful resolution of their participants. In this view, the FMIs operated by LSEG would expect to act in line with the FSB guidance, which recommends that access to the FMI should not be terminated on the sole basis of resolution. However, the FMI participant in resolution must continue to meet its obligations like a normal FMI participant. For that purpose, LSEG supports the idea to establish contingency plans for FMI participants. FMIs are willing to assist in this process by providing relevant information available in their rulebooks and other documentation made available to participants and authorities.

Similarly, it will be essential that FMIs safely perform their core functions, such as risk management for CCPs, as systemic instability could arise pursuant to the entry into resolution of a significant bank. In close discussion with the authorities, we would expect the FMI to be able to apply the same risk measures to a participant in resolution as to a normal participant, in order to prevent contagion effect within the FMI itself and the wider market. We would also advocate for FMIs to have sufficient flexibility, so it can apply the risk mitigating actions that are best suited to the relevant situation. These actions would be based on the FMI's internal credit and risk assessment, and would not be taken on the sole basis of entry into resolution.

The two objectives of orderly resolution and prudent FMI risk management highlight the need for all FMIs to act in close coordination with the relevant authorities. We, therefore, strongly recommend direct contact between the resolution authorities and the FMIs, as well as multilateral discussions among authorities to consider the inter-linkage and network aspect of the services provided by the various FMIs.



Responses to Questions

Q1. 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?

LSEG welcomes the FSB's initiative to define a common approach to resolution of FMI participants, and in particular clear guidance about the effect of entry into resolution on access to FMIs' services. In this context, we support the objective to ensure continuity of access to critical FMI services. FMIs must play a key role to support the orderly resolution of one of their participants. We fully understand that providing continuity of access will be crucial for restoring financial stability and market confidence in the context of a firm resolution.

However, it is equally essential that continuity of access does not restrict the FMIs' ability to use their risk management measures, which have been designed to protect their participants and the entire financial system from contagion risk, as noted in the consultative document.

We agree that entry into resolution of an FMI participant should not trigger *per se* the automatic termination of access to FMIs. However, as noted in the consultative document, the FMIs should retain the ability to restrict or terminate access for an FMI participant in resolution if it fails to meet its payments and/or delivery obligations. We believe this principle is essential to strike the right balance between orderly resolution and preservation of FMI risk management. Indeed, we strongly believe that resolution should not alter the continuity of the risk management measures set out in the FMIs' rules, including risk-based participation requirements and on-going monitoring of participants.

This approach would also meet the objective to have clear and transparent FMIs' rules on resolution. Indeed, we understand that FMIs should provide some transparency to facilitate FMI participants' contingency and resolution planning. However, we would like to highlight that the conditions under which resolution happens and the responses taken by the affected participant, its resolution authority, and other relevant stakeholders can vary significantly. All these elements are not something that an FMI can predict since it has no *ex-ante* visibility on the resolution strategy. As a result, it is not possible for FMIs to fully define the exact steps they may take in those circumstances. We, therefore, welcome the recognition that some flexibility for the FMI should be embedded in the process of managing the entry into resolution of one of its participants. This flexibility is necessary to ensure the FMI can adequately respond to the very unique conditions of such an event, and can adapt to the resolution actions that the resolution authority will take.

We also strongly support the establishment of robust communication mechanisms, as prompt sharing of information will be key for continuity of access.

Q2. 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.

LSEG agrees with the overall scope of the guidance. We believe it is appropriate to include FMI intermediaries in the scope. However, the CPSS-IOSCO principles and this consultative document define FMIs as including only central securities depositories (CSDs), securities settlement systems (SSSs), and central counterparties (CCPs). For consistency purposes, and given the scope of entities covered by the definition of FMIs, we believe it would be beneficial to clarify that only FMIs provide critical FMI services, while FMI intermediaries provide access to those critical FMI services. We, therefore, suggest the amendments set out below to the proposed definitions of "Critical FMI services" and "FMI intermediary":

"Critical FMI services" are clearing, payment, securities settlement and custody activities, functions or services, for which a lack of continuity would lead to the collapse of (or present a serious impediment to



the performance of) a firm's critical functions. They include activities, functions or services that are ancillary to such clearing, payment, securities settlement or custody but whose on-going performance is necessary to enable the continuation of the clearing, payment, securities settlement or **central** custody. Critical FMI services may be **accessed** provided either directly by an FMI or custodian to a participant ("direct access"), or by **through** an FMI intermediary that itself has direct or indirect access to an FMI through one or more other entities or firms ("indirect access").

An "FMI intermediary" is a firm that provides **access to** clearing, payment, securities settlement and/or **central** custody services to other firms. FMI intermediaries are direct members of one or several FMIs and provide indirect access to the critical services offered by such FMIs (e.g., to other entities/affiliates within the firm, or to a non-affiliated firm or customer).

Q3. 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?

LSEG agrees that entry into resolution of an FMI participant should not, in itself, constitute a trigger for automatic termination of its participation in the FMI. We also support the view that a FMI should retain the ability to follow its risk management procedures, and potentially terminate, suspend or restrict access to its services, if the FMI participant in resolution fails to meet its obligations.

This is consistent with the resolution frameworks in many jurisdictions. For instance, in Europe, insolvency proceedings¹ would typically constitute one of the triggers for suspension of access under the FMIs' rules. However, the European Union regulatory framework on banking recovery and resolution (Directive 2014/59/EU) expressly provides that a crisis prevention measure or a crisis management measure should not, *per se*, be deemed to be insolvency proceedings, provided that the substantive obligations under the contract continue to be performed.

Thus, continuity of access relies primarily on the FMI participant's ability to continue to meet its obligations in the lead-up to, upon entry into, and during resolution. It is crucial for FMI participants and their regulators to ensure that the appropriate arrangements are in place to meet this objective as part of resolution planning.

FMIs should provide sufficient information for resolution planning by FMI participants and their authorities. In our view, the FMIs' rules already provide the appropriate level of transparency today. Indeed, for FMIs that are rulebook based, such as CCPs and CSDs, the rulebooks are publicly available. These rulebooks clearly set out the membership requirements, the obligations of the FMI participants, as well as the potential risk management actions that the FMIs may take under stress events. The rules are subject to frequent discussions with the FMI participants to ensure they have sufficient information.

Entry into resolution alone would not trigger a change in the contractual arrangements, the rights, or obligations of the FMI participant. The existing FMIs' rules would continue to apply and would not change as a direct result of entry into resolution. Therefore, we do not believe it would be useful or necessary to include specific provisions in the FMIs' rulebooks to cover the event of an FMI participant entering into resolution, as we do not expect FMIs to take specific actions on that sole basis.

¹ Please refer to the definition of insolvency proceedings included in European Directive 98/26/EC: "shall mean any collective measure provided for in the law of a Member State, or a third country, either to wind up the participant or to reorganise it, where such measure involves the suspending of, or imposing limitations on, transfers or payments."



Moreover, the FMIs' rules and contractual arrangements must be sufficiently flexible to accommodate different scenarios and adapt to the specific conditions of a participant entering into resolution. Requiring FMIs to be too prescriptive may have adverse consequences on their ability to manage risk and be counter-productive for the overall financial stability.

It is important to strike the right balance between the need for transparency and predictability for FMI participant resolution planning, and the flexibility required by FMIs to maintain appropriate risk management. We believe it is achieved with the current approach, whereby the FMIs' risk management tools and powers are clearly stated *ex-ante* in their rulebooks. These risk mitigating measures are part of the general FMI's risk management framework and apply to all its participants. They are not contingent on resolution and do not prescribe actions specifically for resolution.

Q4. 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.

While LSEG understands that it has a key role to play in ensuring the continuity of access to facilitate a successful resolution, we believe that it is equally crucial for FMIs to retain the ability to terminate or suspend access to their services, pursuant to the normal and defined FMIs' procedures. This would notably be the case if the FMI participant fails to meet its obligations towards the FMIs, or if continued access may cause a risk of contagion to the other FMI participants.

Existing FMIs' procedures already govern the actions taken in response to a participant's failure to meet its obligations or requirements. These procedures should continue to apply regardless of the entry into resolution of the FMI participant. Regular communication between the FMIs and relevant authorities in the lead-up to, upon entry into, and during resolution of the FMI participant also ensures appropriate regulatory oversight.

The definition of additional procedures and safeguards specific to the entry into resolution would prove difficult, as they would need to account for the uniqueness and the unpredictable causes of the event. As a result, these procedures and safeguards should not be too prescriptive. They must be sufficiently flexible to accommodate the various scenarios that the FMIs may face. Otherwise, they could impair the FMIs' ability to react to the specific market conditions at that time, and be counter-productive.

Q5. 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?

LSEG agrees, in principle, that there should not be any discrimination between domestic and foreign FMI participants. However, as noted in the consultative document, it is important that the resolution framework in the jurisdiction in which the foreign participant is located provides adequate safeguards to the FMI. The foreign resolution framework should include the appropriate measures to enable the FMI participant to meet its obligations towards its FMIs. It should also secure the common understanding of how critical honouring these obligations is for continuity of access. We support international convergence of resolution regimes across the various jurisdictions to reduce the risk of conflicting laws in case of cross-border resolution actions.



A foreign FMI participant will be subject to a foreign resolution authority. This cross-border aspect means more efforts need to be invested to make sure all the regulators and stakeholders across the various jurisdictions are sharing relevant information promptly. As further discussed in our response to Question 10, LSEG strongly believes in the importance of information sharing between regulators of the FMIs and the resolutions authority of the FMI participant. All relevant information or decisions should also be shared with the FMIs promptly so that they can take the appropriate actions.

Q6. 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?

In the most likely scenario, an FMI participant's entry into resolution would be the result of many factors taking place over a period of time. We expect that the FMIs would already have taken risk management actions in the lead-up to resolution, as a result of their ongoing monitoring and assessment. These actions are not contingent on entry into resolution. Indeed, resolution in and of itself would not alter the credit or risk assessment that the FMIs have already formed. These potential risk management actions or requirements, such as reduction in risks or increase in margin requirements, are clearly documented in the FMIs' rulebooks and are subject to frequent discussions with the FMI participants. This approach ensures that participants are familiar with all of the FMIs' risk management tools, and can prepare accordingly.

We support the view that FMIs should engage with their participants to discuss the risk management tools that can apply to them, when required. For instance, some FMIs within the Group participated in coordinated exercises to develop resolution playbooks for a number of their participants. During this process, direct discussions between FMIs and FMI participants provided the opportunity to clarify any questions regarding the FMIs' approach towards risk. We think that such coordinated initiatives positively contribute to FMI participants' resolution planning.

LSEG also fully agrees that testing of relevant process and procedures during peaceful times goes a long way to prepare for stress events. For instance, the CCPs within the Group regularly perform fire drills as part of their day-to-day risk management. Many of the activities related to resolution described in the consultative document, such as the on-boarding of bridge institution or third-party successor, or the transfer of clients' positions, are part of the CCPs' business-as-usual activities and already tested in fire drills.

Q7. 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?

We support the objectives set out in section 2 of the consultative document to ensure that an FMI participant arrangements for continuity of access are viable. However, we are unsure that contingency planning should fall under the responsibility of the FMI participants. Indeed, the FMI participants have no *ex-ante* visibility on the resolution strategy that may be required. As a result, contingency planning by FMI participants may remain a theoretical exercise. We also believe that some of the contingency planning requirements may duplicate some procedures already established under firms' recovery plans. Therefore, we would suggest that contingency plans may be more effectively developed by resolution authorities, on the basis of information provided by firms.



We look forward to working with our participants and their authorities for contingency and resolution planning. However, we would like to point out that FMIs may not be able to provide all the information currently listed under section 2.3 for the contingency plans. For instance, it may not be possible for the FMI to determine elements such as the 'most likely' amount of any additional requirement, as they would not be predictable in advance of the stress event.

Q8. 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.

We do not provide comments to this question.

Q9. 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 believe that the consultative document includes a comprehensive list of requirements to facilitate continuity of access. However, we would recommend that these requirements fully take into account the need of flexibility for FMIs, and the difficulty in providing certain information in advance of a stress event, as per our response to Question 3 and Question 7.

Q10. 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?

LSEG strongly supports the idea that resolution authorities of FMI participants should have periodic engagements with the relevant authorities of the FMIs. Where appropriate, we would also encourage direct contact between the resolution authority of the FMI participant and the FMI itself. These direct communications could provide the opportunity to confirm entry into resolution of the participant, discuss the operational impact of the potential resolution actions, and provide information on financial situation, the particulars of bridge institutions, or other resolution actions. We would also like to emphasise the need to ensure that all critical FMI service providers are identified and contacted, especially if they are domiciled outside of the participant's home country.

However, we would also recommend the implementation of methods to facilitate multilateral discussions. Indeed, we believe that it is important to consider the inter-linkage and network aspect of the services provided by the various FMIs. As actions taken by one FMI may have impacts on other FMIs, all of the FMIs have a joint role to play in ensuring that the participant can meet its obligations, and that financial stability is preserved. We, therefore, support the use of Crisis Management Groups where they are already established to facilitate discussions and information sharing amongst multiple regulators. Otherwise, exclusive reliance on bilateral discussions may inadvertently leave out some critical links and result in undesirable knock-on impact between the different FMIs.

We look forward to seeing further strengthening of formal and informal communication network amongst the global regulators and authorities on such matters.