

# **Guidance on Continuity of Access to Financial Market Infrastructures (FMIs) for a Firm in Resolution**

## **Overview of Responses to the Public Consultation**

### **Introduction**

On 16 December 2016, the FSB published a consultative document – [\*Guidance on Continuity of Access to Financial Market Infrastructures \(FMIs\) for a Firm in Resolution\*](#) – (‘the guidance’) that proposed a set of arrangements to support continued access to FMIs by a firm in resolution. Those arrangements apply at the level of the providers of critical FMI services, at the level of FMI participants and at the level of the relevant resolution and FMI authorities. The consultative document builds on Part II of II-Annex 1 of the FSB’s [\*Key Attributes of Effective Resolution Regimes for Financial Institutions\*](#), which sets out objectives for FMI participants and FMI rules and procedures to manage the resolution of a participant.

The FSB received 29 responses to the public consultation from FMIs (including central counterparties (CCPs), central securities depositories (CSDs) and payment and securities settlement system operators), banks, official sector bodies, industry associations and advisory firms.<sup>1</sup> The FSB also held an industry roundtable with relevant industry participants to discuss the consultative document. Respondents welcomed the FSB’s focus on continuity of access to FMIs and generally supported the objectives of the guidance.

This note summarises the comments raised in the public consultation and sets out the main changes that have been made to the guidance to address them.

### **Summary of Main Issues**

#### *Scope of the guidance and definition of key terms*

Many respondents commented on the scope of the guidance. In particular, these respondents sought clarity on the scope of firms covered by the guidance and the application of the guidance to FMIs owned and operated by central banks. Accordingly, the final guidance clarifies that the guidance is intended to apply to global systemically important banks (while recognising that resolution authorities may choose to apply it to other firms subject to resolution planning requirements) and encourages FMIs owned and operated by central banks to take the guidance into consideration. In addition, contingency planning by firms, as set out in section two of the

---

<sup>1</sup> The comment letters are published on the FSB’s website (with the exception of those that requested otherwise): <http://www.fsb.org/2017/03/public-responses-to-the-december-2016-consultative-document-continuity-of-access-to-financial-market-infrastructures-fmis-for-a-firm-in-resolution/>

guidance, should capture FMIs owned and operated by central banks, to the extent that they provide a critical FMI service to the firm.

A number of respondents also commented on the definitions of key terms in the consultative document. Several respondents raised concerns with the definition of critical FMI services, which was interpreted as imposing a requirement on the FMI service provider to itself determine which of its services are critical for service users (i.e., firms). The final guidance therefore clarifies that critical FMI services would be identified in the course of the resolution planning for a firm, and that a provider of critical FMI services is not responsible for making a determination in respect of its members or customers as to which of its services is critical to them.

Some respondents also felt that the distinction between critical FMI services and ancillary services in the guidance was unnecessary, on the basis that ancillary services should be regarded as critical FMI services if their continuation is necessary to facilitate continuity of access. To address this comment, individual references to ancillary services throughout the final guidance have been removed, and the definition of critical FMI services instead refers to ‘related’ activities, functions or services.

#### *Application of guidance to FMIs and FMI intermediaries*

Section one of the consultative document proposed arrangements to support continuity of access that would apply at the level of providers of critical FMI services. The proposed arrangements in this section would apply equally to FMIs and FMI intermediaries. A number of respondents objected to this dual applicability on the basis that FMIs and FMI intermediaries perform different services and that their behaviour is motivated by different objectives. The FSB nevertheless considers that a termination or suspension of critical FMI services under contractual arrangements between indirect participants and FMI intermediaries may give rise to the same potential risks to an orderly resolution as termination by FMIs of a direct FMI participant’s access. Moreover, the objective of achieving a sufficient level of assurance around maintaining continuity of access should be the same irrespective of the type of critical FMI service or whether a firm accesses the critical FMI service on a direct or indirect basis. As such, section one of the final guidance applies equally to FMIs and FMI intermediaries. However, the final guidance acknowledges that the implementation of the guidance is likely to differ between FMIs and FMI intermediaries, for example because of differences in regulatory regimes and in the nature of the contractual relationship with the firm.

#### *Establishing rights, obligations and applicable procedures*

Section 1.1 of the consultative document proposed 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. Some respondents felt that FMIs should not be required to define applicable procedures and risk management actions, as this would limit the FMI to a pre-defined course of action and restrict its ability to use its tools in a manner best suited to address the risk at hand. The FSB considers that clarity on the actions that may be taken by a provider of critical FMI services is essential to enhancing predictability and transparency in resolution. Nevertheless, the final guidance clarifies that applicable procedures and risk management actions do not have to be formally defined in the rulebook of the FMI. Such procedures can instead be set out in, for example, non-binding procedures, playbooks or protocols between firms and providers of critical FMI services.

### *Cooperation and information among all relevant parties*

A number of respondents called on the FSB to emphasise the necessity of cooperation and information sharing not just among the relevant authorities, as provided in section three of the consultative document, but also among both providers of critical FMI services and service users. The FSB recognises the importance of cooperation and information sharing in contributing to greater assurance on continued access to critical FMI services and several changes have been made to the final guidance to emphasise this. In particular, section three of the final guidance recognises that exchange of information between resolution and supervisory authorities, FMI supervisors and overseers, firms and providers of critical FMI services is essential to providing the levels of understanding and assurance necessary to support the execution of plans for maintaining access, and the final guidance sets out the expected flows of communication between the relevant parties. In addition, section 2.3 of the final guidance encourages firms to share information with their providers of critical FMI services about how they would expect to continue to meet obligations and on the assumptions on which their contingency planning is based. This follows suggestions from several respondents to the public consultation that the FMI's own planning for the resolution of one of its participants would benefit from a greater understanding of the steps that its participants have identified in their contingency plans.

### *Resolution scenario analysis*

Section 1.3 of the consultative document proposed that providers of critical FMI services define the range of risk management actions and requirements that they would anticipate taking or imposing in response to a firm entering into resolution or in financial distress, as may materialise in advance of resolution. A few respondents expressed concern at the reference to financial distress in advance of resolution, on the basis that this period may be difficult to identify. Another respondent noted that the actions taken by a provider of critical FMI services would differ depending on the cause of resolution. For example, resolution arising from an operational failure (e.g. fraud or cyber attack) may necessitate a different response from the provider of critical FMI services than a resolution arising from a capital or liquidity shortfall. The final guidance makes clear that providers of critical FMI services should define the risk management actions they would take only in response to a firm entering into resolution, and that those risk management actions should be defined in the context of a resolution resulting from financial distress (as opposed to an operational failure).

Relatedly, a few respondents also expressed concern with section 2.3 of the consultative document, which set out examples of different resolution strategies scenarios to be considered as part of a firm's contingency planning. These respondents interpreted the guidance as imposing a requirement on firms to plan for a range of resolution strategies beyond the preferred resolution strategy of the authorities. The final guidance makes clear that firms' contingency planning should be based on the home resolution authority's preferred resolution strategy.

### *Implementation of the guidance*

Respondents to the consultation raised a number of other considerations including, for example, potential safeguards in relation to the proposal in section 1.2 of the consultative document on non-discrimination between domestic and foreign FMI service users, and factors to take into account with respect to the testing of operational procedures to facilitate continued access as set out in section 1.4 of the consultative document. While changes have not been made to the

final guidance to address all of these comments, the FSB recognises the importance of the issues raised and intends to consider them in further detail as the final guidance is implemented.