



**London Stock Exchange Group response to the FSB consultative document:
*Application of the Key Attributes of Effective Resolution Regimes to Non-Bank
Financial Institutions***

16/10/13

1. London Stock Exchange Group plc (LSEG) welcomes the opportunity to respond to FSB's consultative document, and supports the aim of developing resolution frameworks for financial market infrastructures (FMI). As Europe's leading diversified exchange group, we operate four CCPs (CC&G and three within LCH.Clearnet Group), a CSD (Monte Titoli), and regulated markets and multilateral trading facilities within London Stock Exchange, Borsa Italiana, Turquoise and MTS.
2. For many of the questions, it is in fact members of FMI that are best placed to respond, given that the document discusses scenarios where the FMI is no longer viable as a going concern. Therefore we offer a targeted response to issues that we think are most relevant to FMI and their operators.
3. Part 1 summarises our key points and part 2 offers broader discussion around our positions. We acknowledge that our response may be published.

Part 1 – Key points

4. There is not a common resolution regime that would be suitable for all FMI.
5. We stress the importance of cross-border harmonisation of resolution regimes to the greatest extent possible, due to the international profile of FMI participants.
6. To be effective in times of crisis, resolution should be managed by the national authority of the jurisdiction in question, and not a regional body or college of regulators.
7. Any requirements to disclose information on indirect participants should only apply to the extent that the FMI have such information available.
8. Arrangements for transfer of core FMI services to a bridge institution must have consideration for cross-border differences in insolvency, company and civil law.
9. We believe that resolution authorities should adopt a flexible approach on single vs multiple points of entry when developing resolution strategies for FMI, in line with the FSB's "Guidance on Developing Effective Resolution Strategies for Systemically Important Financial Institutions".
10. When resolving a failing clearing member, the resolution authority's use of the power to transfer the member's positions to a bridge institution must take place before the clearing member has been declared in default by the CCP in order to prevent a conflict with the CCP's default management rules.
11. With regard to Part III (Client Asset Protection in Resolution), we would welcome clarification of whether the term 'client assets' covers assets held outside of a CCP, as this could have an impact on CCP porting arrangements.



Part 2 – LSEG comment on specific issues

There is not a common resolution regime that would be suitable for all FMI

12. Question 4 asks whether the conditions for entry into resolution of FMI (paragraph 4.3 of the Key Attributes) are suitable for all classes of FMI, and what additional conditions would be relevant for specific classes of FMI.
13. We address this point in the context that there is not a common resolution regime that would be suitable for all FMI. CCPs, CSDs, payment systems and settlement systems all perform different activities and according to their specific role within the financial system. Resolution regimes will need to take into account, and deal with, the specific risk profile of different FMI.
14. Nevertheless, we do support the conditions set out within paragraph 4.3 of the Key Attributes as being broadly applicable for all FMI, because:
 - a) The conditions are appropriately general for the resolution authority to determine their application according to the specific FMI and resolution circumstances;
 - b) The conditions recognise that resolution does not begin until it is clear that the FMI's own recovery measures will be insufficient to keep the FMI viable.

We stress the importance of cross-border harmonisation of resolution regimes to the greatest extent possible, due to the international profile of FMI participants

15. Considering that different jurisdictions are at different stages of development in this area, we would like to stress that a harmonised global approach to FMI resolution is of systemic global importance. Currently, progress varies across jurisdictions and this risks creating an un-level playing field in relation to resolution planning requirements. This is particularly true in relation to FMI whose members are large, multinational financial institutions that operate in many jurisdictions. It is important the resolution regimes are aligned to the extent that participants are able to assess and monitor possible obligations in resolution across their international operations.

To be effective in times of crisis, FMI resolution should be managed by the national authority of the jurisdiction in question, and not a regional body or college of regulators

16. FMI resolution during a crisis will call for fast and decisive action where the national resolution authority of the FMI in question would be best placed to lead the process. We consider that this principle should apply within the context of a cross-authority information sharing framework supported by other relevant authorities, in the event that the FMI has a broad, international membership.



Any requirements to disclose information on indirect participants should only apply to the extent that the FMI have such information available

17. Question 16 asks whether the proposed classes of information that FMIs should be capable of producing (paragraph 12.1 of the Key Attributes) are feasible. We believe that FMI can be reasonably expected to provide the information set out within paragraph 12.1, though we stress that FMI may not always have information about indirect participants.
18. FMI will naturally have information about members, and indeed FMI such as CCPs will have a comprehensive overview of a member's positions for activity cleared within the CCP. However, FMI are not likely to have as detailed information about their member's clients. For this reason, we believe that FMI should only be required to provide information about indirect participants to the extent that they are able to have such information in the first place.

Arrangements for transfer of core FMI services to a bridge institution must have consideration for cross-border differences in insolvency, company and civil law

19. Question 7 asks whether the draft guidance in paragraphs 4.1 and 4.2 adequately address the specific considerations in the choice of the resolution powers for FMI. We believe that the guidance does indeed appropriately address the choice of resolution powers, though we stress that the transfer of core services to a bridge institution must take into account the fact that there will be cross-border differences in corporate, insolvency and civil laws. There may also be bilateral agreements between the FMI and third parties that exist outside the scope of such laws, though are required for specific operational reasons (for example, agreements with foreign tax authorities). Therefore, we recommend that a process for managing these differences is established in advance, in order to achieve maximum certainty should this resolution tool be needed.

We believe that resolution authorities should adopt a flexible approach on single vs multiple points of entry when developing resolution strategies for FMI, in line with the FSB's "Guidance on Developing Effective Resolution Strategies for Systemically Important Financial Institutions"

20. Question 17 asks whether there are any other issues in relation to the application of the key attributes to FMI that would be helpful for the FSB to clarify. We note that the draft guidance does not clarify how KA 11 applies to groups of financial market infrastructures.
21. In this context, it is important that resolution of an FMI within a group of other FMI does not have a destabilising effect on other infrastructures within the group, such as trading venues or CSDs. Failing to do so could lead to broader instability within the financial system, which is precisely what resolution seeks to avoid. This is also consistent with our first principle that there is not a common resolution regime that would be suitable for all FMI.



22. Moreover, we believe that the development of resolution strategies by competent authorities, described in paragraph 11.4 of the report, should have regard for the differences in the governance structures of particular FMI, and whether it is part of a broader group of FMI. Resolution authorities will need to maintain a flexible approach when considering single point of entry and multiple point of entry resolution strategies, taking account of the FMI group's specific governance arrangements, in line with the FSB's "Guidance on Developing Effective Resolution Strategies for Systemically Important Financial Institutions"¹

Additional Comment regarding the resolution of FMI participants

When resolving a failing clearing member, the resolution authority's use of the power to transfer the member's positions to a bridge institution must take place before the clearing member has been declared in default by the CCP, in order to prevent a conflict with the CCP's default management rules

23. In relation to paragraph 1.3 of the Kay Attributes, 1.3(iii) states that in order to support the continuity of critical functions of a participant in resolution, FMI rules should facilitate the transfer of positions of a participant in resolution to other participants of the FMI. We believe that this poses some possible issues where resolution powers may clash with CCP default procedures, and further clarification may be needed.
24. If the resolution authority is using its power to transfer positions of the failing participant to another participant or bridge institution, this power to transfer positions must take place before the failing participant is in default at the CCP. This is because once a CCP declares a participant is in default, their proprietary positions will be liquidated and client positions will be subject to transfer to the client's chosen back-up clearing participant, according to the ex ante default management procedures of the CCP.
25. Therefore, should the resolution authority attempt to instigate position transfers to another institution under its own resolution process, this may lead to a conflict with the CCPs default management rules. It is important that CCPs and members have certainty about which porting arrangements are applicable in a default scenario.
26. Therefore, in relation to question 20 about whether the safeguards set out in paragraph 1.3 are adequate, we would suggest that further clarification is needed.

With regard to part III: client asset protection in resolution, we would welcome clarification of whether the term 'client assets' covers assets held outside of a CCP, as this could have an impact on CCP porting arrangements

27. Echoing our comments above about the porting of positions of a failing clearing member, the same rationale would also apply if resolution authorities were to use the 'client asset' guidance described in paragraph 2.1, when resolving a clearing member. Market participants, CCPs and regulatory authorities have invested significant

¹ http://www.financialstabilityboard.org/publications/r_130716b.pdf



resources in developing the porting arrangements required under EMIR and Dodd-Frank. It is important that resolution plans for clearing members do not over-ride or conflict with these arrangements, as this could cause legal and operational barriers during the resolution process.

28. Therefore we suggest that clarification is needed as to whether ‘client assets’ includes collateral held at a CCP, and if so, how this would interact with existing porting arrangements of the CCP. If the intention is to include collateral posted at the CCP as ‘client assets’, and ensure their transferability as part of clearing member resolution, we would suggest that the most effective way would be to ensure that the transfer arrangements are effected before the clearing member is in default at the CCP.
29. Furthermore, we also suggest that clarification is needed in relation to the application of section 8 of the guidance to the Key Attributes on client asset protection in resolution. It is unlikely that FMI would be able to comply with the information requirements and record keeping in the manner set out in section 8, as an FMI could not be expected to hold such information for its members’ clients, the clients of their clients, and so forth.

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