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Financial Stability Board
c/o Secretariat to the Financial Stability Board
Bank for International Settlements
CH-4002 Basel
Switzerland

Sent by e-mail to: fsb@bis.org

GFMA comments on the FSB Consultative Document “Information sharing for resolution purposes”, 12 August 2013

The Global Financial Markets Association (GFMA)¹ welcomes the opportunity to comment on the Financial Stability Board (FSB) Consultative Document on Information Sharing for Resolution Purposes dated 12 August 2013 (Consultative Document).

GFMA is strongly supportive of the work of the FSB towards establishing an effective cross-border recovery and resolution framework and the Key Attributes of Effective Resolution Regimes for Financial Institutions (Key Attributes).² Cross-border cooperation is a crucial requirement for effective cross-border resolution and GFMA strongly supports efforts to strengthen and facilitate greater cross-border cooperation in this area. We set out below some comments in response to the Consultative Document.

¹ GFMA brings together three of the world’s leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA. For more information, visit <http://www.gfma.org>

² See Joint Trade Association Comment Letter to the FSB on the Consultative Document on Effective Resolution of Systemically Important Financial Institutions (2 September 2011), available at http://www.financialstabilityboard.org/press/c_110909cc.pdf; and GFMA Comments on the Consultative Document on Recovery and Resolution Planning: Making the Key Attributes Requirements Operational (7 December 2012), available at http://www.financialstabilityboard.org/publications/c_121218i.pdf

We agree that the ability for resolution authorities to exchange information is important to facilitate the development of effective cross-border resolution plans, carry out resolvability assessments and put in place institution-specific cross-border cooperation agreements (COAGs). It is also important to facilitate the implementation of the resolution of cross-border groups. The exchange of information should also support greater trust and cooperation amongst authorities in different jurisdictions. These are important elements to support cross-border resolution, without which authorities are more likely to resort to imposing national requirements such as ring-fencing of capital and liquidity which would be inefficient, could make groups less resilient by restricting the ability of the bank to transfer capital and liquidity to where it is needed in the group and be contrary to a global approach to resolution. We regard this as one of the greatest, but most important, challenges currently faced.

We therefore support the objectives of Key Attributes 7.6, 7.7 and 12 and welcome the FSB's proposal to issue guidance on this issue and efforts to remove obstacles to cross-border cooperation. Further progress is needed in this area and we are concerned that these remain aspirations and lack clear concrete steps or deadlines for implementation. We suggest that further work in this area could include producing a template COAG building upon the elements outlined in Annex 1 to the Key Attributes, although we recognise that this would need to be tailored to the specific institution.

Principles on information sharing for resolution purposes

We are generally supportive of the proposal for each jurisdiction to establish clear legal gateways that authorise national authorities to disclose information to other authorities where that information is necessary for the receiving authority to carry out functions relating to the resolution of a firm. We agree that it should be a necessary condition of such disclosure that the information is subject to adequate confidentiality requirements and safeguards, which are particularly important given the sensitivity of the information likely to be disclosed. We also support the proposed exclusion of the application of freedom of information legislation to information received from foreign authorities and the proposal to limit the access of confidential information to those officials, employees and agents of the recipient authority that require the information to perform their functions relating to resolution.

We believe that firms have an important role to play in helping develop processes for sharing appropriate information to ensure that these processes fit with firms' systems and internal processes on provision of information to the authorities.

The requirements for what information is required to be disclosed under "legal gateways" should be clarified. Principles 1.2 and 1.3 suggest that only information that is "necessary for the recipient authority to carry out functions relating to resolution" is required to be disclosable, but principle 1.9 implies that information for the range of purposes set out in that paragraph, which are significantly broader than the definition of "functions relating to resolution", including for example recovery plans. The scope of the principles should be clear and consistent.

The guidance on principles for information sharing should mean that reciprocity of legal gateways should not necessarily be a condition of disclosure. While we note the importance of information sharing being a reciprocal responsibility, all jurisdictions will be obliged to comply with the Key Attributes and therefore such conditionality should be unnecessary to avoid disputes as to what constitutes "comparable gateways".

We question whether proposed principle 1.8 which provides that legal gateways should not prevent or restrict the use of information by a recipient authority is consistent with principle 1.9 which sets out the purpose for which information may be disclosed. It would appear reasonable for authorities to be permitted to restrict the use of information to the purposes set out in principle 1.9.

We suggest that the principles on information sharing for resolution purposes should also include requirements for confidentiality extending to "analysis, evaluations or work products derived from" the disclosed information, consistent with principle 2.4(ii) and include similar notification obligations to those set out in principles 2.4(vi) and 2.5 in respect of confidentiality pursuant to COAGs. We also suggest that principles on the procedures for information sharing could usefully be included in section 1, similar to the provisions on the procedures pursuant to COAGs in principles 2.6 to 2.10.

Information sharing provisions for COAGs

In order to promote information sharing within Crisis Management Groups, we suggest that the provisions to be included in COAGs relating to confidentiality and use of information shared pursuant to the COAG, such as the proposed provisions in paragraphs 2.4 and 2.5 of the Consultative Document, should be made legally binding. This would facilitate information sharing by ensuring that parties could rely on these provisions, absent which they are likely to be reluctant to comply or could potentially be prohibited from doing so.

We also suggest that in addition to firm-specific information, COAGs should cover the exchange of information pertaining to actions, potential actions or plans of authorities as part of their development of globally coordinated approaches to resolution. Further guidance on this would also be welcomed building upon the Key Attributes, including paragraphs 3 and 6 of Annex 1.

If you have any questions or would like to discuss further, please contact Gilbey Strub (gilbey.strub@afme.eu), Carter McDowell (cmcdowell@sifma.org) or Oliver Moullin (oliver.moullin@afme.eu).

Yours faithfully

A handwritten signature in black ink, appearing to read "Simon Lewis". The signature is fluid and cursive, with the first name "Simon" written in a larger, more prominent script than the last name "Lewis".

Simon Lewis
Chief Executive Officer
GFMA