6 January 2015

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Discussion Paper DP1/14: Ensuring operational continuity in resolution

Dear Mr Okubo,

The Association for Financial Markets in Europe and the Institute of International Finance (together the "Associations") welcome the opportunity to respond to the PRA Discussion Paper "Ensuring operational continuity in resolution" (the "Discussion Paper"). Please find enclosed the Associations' response to the Discussion Paper.

Please do not hesitate to contact us if you have any questions or would like to discuss these issues further.

Yours sincerely

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Consultation response

PRA Discussion Paper: Ensuring operational continuity in resolution

6 January 2015

The Association for Financial Markets in Europe ("AFME")[1] and the Institute of International Finance ("IIF") (together the "Associations") welcome the opportunity to respond to the PRA Discussion Paper DP1/14 "Ensuring operational continuity in resolution" (the "Discussion Paper").

We set out below our general comments in response to the Discussion Paper, which is followed by answers to the individual questions raised.

A. General comments

The Associations strongly support the objectives of establishing credible and effective resolution plans and preparing for resolution with minimum disruption. We agree that this objective requires that firms put in place arrangements to ensure the continuity of critical economic functions in resolution. We strongly agree with the statement in paragraph 1.10 that these arrangements need to be considered as part of the resolution planning process and will be informed by the critical economic function identification and resolvability assessment processes. While guidance on operational continuity criteria is very welcome, the scope, definitions and arrangements for critical shared services should be refined to anchor them in this context, rather than, as currently drafted, coming across as additional or automatic requirements.

We believe that the focus of operational continuity guidelines should be to facilitate the group resolution plan and to enable the group to be recapitalised and stabilised with no interruption to the continuity of its critical economic functions. We therefore support the proposed "Design Principle 1".

However, in order to achieve this objective, we consider it essential that operational continuity guidelines are led by and tailored to the relevant group resolution plan. This principle should be given greater emphasis than is proposed in the Discussion Paper and the assessment criteria should be adapted to recognise this more clearly. We note that the FSB Guidance on Developing Effective Resolution Strategies (the "FSB

[1] AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

Guidance") states that "a firm needs to be legally and operationally structured in a way that supports effective resolution *under the chosen strategy*…." (our emphasis).[2]

Scope of the guidelines

We believe that the focus of operational continuity guidelines should be to enable the group to be recapitalised and stabilised under the group resolution plan with no interruption to the continuity of its critical economic functions.

The Discussion Paper goes further than the FSB Guidance by defining critical shared services not only in relation to critical economic functions, but also encompassing services that are necessary to allow parts of the group to be separated, either in post-resolution restructuring or in a recovery measure such as a divestment. We have concerns about blurring the lines between the different phases, as the objectives to be met differ and they may require different arrangements. The current draft also blurs the line between services which are contractual in nature and those which are not, such as HR, Treasury, Finance, Risk Management etc.

Instead, we suggest defining 'critical shared services' in line with the FSB guidance, and further defining which of those represent 'transactional services' which need to continue to operate, depending on the outcome in resolution. The assessment criteria should then be appropriately tailored depending on whether services are transactional or non-transactional "critical shared services".

Recovery planning also needs to be distinguished. Guidelines or requirements to facilitate a particular option under a recovery plan should be considered separately because they may raise different considerations from ensuring the continuity of critical economic functions in resolution. Accordingly operational changes that might be required to facilitate a recovery option should be considered as part of the assessment of recovery plans rather than included within the scope of guidelines to ensure operational continuity in resolution (unless of course, particular measures would be of equal importance in resolution).

The Discussion Paper also contemplates a need for measures to be taken to facilitate potential options for the restructuring of firms as they would re-enter the market following their recapitalisation and stabilisation. We expect that the nature of post-resolution restructuring will depend upon a number of factors that cannot be predicted in advance such as the reasons for the failure of the firm, market conditions at the time and whether it was an instance of idiosyncratic or systemic failure. The Bank of England has noted that "the extent of restructuring required will depend upon the causes and

[2] FSB, Recovery and Resolution Planning for Systemically Important Financial Institutions: Guidance on Developing Effective Resolution Strategies, 16 July 2013, p.8.

consequences of failure" and that "the restructuring that takes place after the firm has been stabilised is designed to address the causes of failure."[3]

Therefore, while the consideration of options for restructuring following the resolution of the firm is a valid aspect of resolution planning, we do not believe that it necessitates the same detailed guidance (or requirements) as ensuring the continuity of critical economic functions during the stabilisation of the firm. We expect that most options for restructuring that are capable of being anticipated in advance are likely to be covered by recovery plans and therefore addressed by the recovery planning process. In many instances the implementation of the recovery plan prior to resolution will have meant that such actions would have already been taken, but where a resolution happens more quickly, the recovery options could inform options for restructuring.

However if the general principles for operational continuity are to be applied to post-resolution restructuring, it is particularly necessary to apply the principle of proportionality, as discussed further below.

The need for global coordination and cooperation

The Associations welcome the proposal that the PRA would liaise with the home supervisor of groups headquartered outside the UK and may defer to equivalent requirements set by the home authority. Proposals for operational continuity will only work for global, cross-border banks if there is international consistency and coordination between resolution authorities and the necessary equivalence provisions are in place.

The global nature of shared service provision for global banks means that UK regulated entities across banking groups will receive support from intragroup service companies located in multiple jurisdictions. Correspondingly, UK service companies will support non-UK regulated entities. A lack of global equivalence would create the potential for a significant degree of regulatory extra-territoriality, as individual service and regulated entities must comply with national requirements across multiple send/receive locations, which in turn is likely to add complexity to the process.

Accordingly the Associations believe that operational continuity guidelines should be discussed and agreed within Crisis Management Groups as part of the group resolution planning and resolvability assessment process. In this regard the Associations strongly welcome the commitment by the FSB that it will develop a proposal on measures to support operational continuity in resolution in 2015.[4]

Specifically, in relation to paragraph 2.17 of the Discussion Paper, we do not consider the ring-fencing of financial resources within an intragroup service company not

[3] See The Bank of England's Approach to Resolution, October 2014, paragraphs 87 and 90.
[4] FSB, Report to the G20 on progress in reform of resolution regimes and resolution planning for global systemically important financial institutions (G-SIFIs), 12 November 2014.

regulated by the PRA to be consistent with the spirit of cooperation that underpins the FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions (the "Key Attributes"). Such an approach does not accord with the requirement under the Key Attributes for national authorities to consider the impact of resolution actions on the financial stability in other jurisdictions, since by ring-fencing capital resources for the benefit of UK entities, other non-UK group entities may be disadvantaged.

Finally, any concept of equivalence in this area should be understood broadly, for example by reference to FSB guidance rather than requiring a highly detailed equivalence analysis. In particular, we note that the PRA uses a broader definition of critical shared services than the 2013 FSB guidance, extending it to those whose failure would lead to a "serious disruption" rather than "collapse" or "serious impediment" of critical economic functions. This broader definition could give rise to inconsistencies, especially in relation to cross-border resolution planning. The PRA's approach to assessing "equivalence" and to non-EEA firm branches should duly take this into account, in general applying the global definition.

Structures/arrangements to achieve operational continuity

The Associations support the proposed flexibility as to how the objective of operational continuity in resolution is achieved, whether through a division or a separate operational subsidiary. We strongly agree with the need for flexibility in the structure of arrangements, provided that the objective is achieved. This is necessary because the most appropriate arrangements are likely to differ depending upon the bank's operational structure and the relevant resolution strategy. As discussed further below, it is unclear how some of the criteria considered in the Discussion Paper would apply to divisions and whether the proposed criteria provide sufficient flexibility in permitting different structures to achieve the desired goals.

We note that "dedicated intragroup service company" is not defined in the Discussion Paper. However, we consider that the definition of this term used in PRA CP19/14 is unnecessarily restrictive for these purposes. We do not believe that such restrictions should be imposed on the scope of services or the ability of service providers to enter into direct commercial relationship with non-group members for the purposes of forming independent business relationships so long as these do not negatively impact provisions made in respect of operational continuity. Such relationship could create, amongst other benefits, cost efficiency and risk diversification.

Proportionality

The Associations strongly support the proposal that any guidelines would be applied on a proportionate basis, taking into account the relevant resolution strategy and whether

barriers to executing the strategy are identified through the resolvability assessment process.

The need to apply proportionality is consistent with the Key Attributes and the EBA's draft guidelines on measures to reduce or remove impediments under the Bank Recovery and Resolution Directive ("BRRD"). However, the Discussion Paper does not, as currently drafted, sufficiently embed this principle of proportionality.

The Key Attributes state that structural changes should be applied only "where necessary" and "duly taking into account the effect on the soundness and stability of ongoing business".[5]

The EBA guidelines on measures to reduce or remove impediments to resolvability require that measures must be suitable, necessary and proportionate, as detailed in paragraph 5 of the guidelines.[6]

As discussed above, it is important that operational continuity guidelines are focused on the relevant group resolution strategy. This should be reflected in their application. As a result, we suggest changes to paragraph 2.1 to clarify this. This could be achieved by inserting "Whether arrangements for critical shared services and other transactional services are sufficient to ensure operational continuity will be considered as part of the resolvability assessment. Depending on the outcome of this assessment and the nature of the barriers to resolution identified, the firm may be required to make structural, legal or operational changes to address them." and "Where this is the case, and it is proportionate and necessary to do so, the PRA views the following three structures as potentially effective:"

The above general comments apply to the proposed design principles and assessment criteria. The design principles should be drafted in such a way as to support this resolvability assessment. However, many of the assessment criteria apply solely to separate entities or divisions and are therefore inappropriate where the bank and its relevant authorities conclude that the contractual and other arrangements in place for critical shared services are sufficient to ensure resolvability. We elaborate further upon some specific points on the proposed principles and criteria below.

B. Comments on the proposed design principles

1: Restructuring capabilities (para. 2.6): As discussed above, we support the objective of ensuring that the organisation and structure of critical shared services facilitates the execution of the firm's resolution plan. The reference to supporting "identified" divestment opportunities should be clarified to mean those divestments (if

[5] Paragraph 10.5 of the Key Attributes.
[6] See EBA Guidelines on the specification of measures to reduce or remove impediments to resolvability and the circumstances in which each measure may be applied under Directive 2014/59/EU, 19 December 2014.

any) anticipated under the resolution plan. It would not be proportionate to require ex ante changes to account for all possible outcomes, particularly where certain outcomes would be inconsistent with the resolution plan.

2: Contractual service provisions (para. 2.7): As discussed in our general comments above, it is important to consider the resolution strategy and proportionality when applying these provisions.

Requiring transferability to a new purchaser from third party vendors is extremely difficult. For this to be achieved broadly and rapidly, there is a need for regulatory support for standard contract terms with third party vendors. In addition, an adequate transition period needs to be provided for the renegotiation and re-documentation of agreements. Standard contractual terms may also be required to ensure third party service providers continue to provide critical shared services to an entity in resolution. Without this, firms are more likely to be limited to the intragroup service company or internal division models specified in paragraph 2.2 of the Discussion Paper for ensuring operational continuity of critical services.

3: Financial and operational resilience (para. 2.8): We agree with the objective of ensuring that critical shared services continue to be performed in resolution. However, as discussed in our general comments above, the proposed provisions for financial and operational resilience need to be considered in the context of the group resolution plan. The Associations view financial and operational resilience as part of the wider resolution planning process and these issues need to be built into the plan for the broader recapitalisation and liquidity needs of the group in resolution.

A UK service company providing shared services to multiple regulated entities across several jurisdictions may need to meet the financial requirements of multiple regulators, and vice versa. Recognition of the global resolution plan as the key pillar for the financial resilience of operational subsidiaries is therefore essential to mitigate potential complexity from competing local regulatory requirements.

Where the resolution strategy involves the recapitalisation of the group, for example via bail-in, financial resilience should be achieved by ensuring that the group has sufficient loss absorbing capacity available to enable the group to be recapitalised and for critical shared services to continue. This issue is addressed by the FSB's proposals for minimum Total Loss Absorbing Capacity ("TLAC") and the Minimum Requirement for Own Funds and Eligible Liabilities under the BRRD. Where the firm in resolution has been recapitalised pursuant to its resolution plan, this should address the need to continue to pay for the provision of critical shared services.

Once the firm has been recapitalised, it should have access to liquidity. As the Bank of England has noted, it might be necessary to provide liquidity to the firm in resolution.[7] Again the liquidity needs to ensure continuity of critical shared services should be

[7] The Bank of England's Approach to Resolution, October 2014, paragraph 56.

considered as part of the resolution plan to ensure that critical economic functions can be continued.

Additionally, where critical shared services are provided by a regulated entity that would not itself enter into resolution or liquidation under the resolution plan, financial resilience is already addressed in the regulatory capital and liquidity requirements that are applied to that institution.

C. Assessment criteria (paras. 2.9 to 2.19)

Our comments above are also relevant to the assessment criteria, but we set out some comments on the specific proposed assessment criteria below.

1: Ownership structure: This criterion appears to suggest that separate ownership is required regardless of the resolution strategy or the method of provision of critical shared services. We consider that such a requirement would be too prescriptive and it is unclear how it would relate to divisions or structures other than a separate operational subsidiary, especially where they are included in entities planned to be recapitalised by bail-in or other measures.

Additionally, the proposed requirement that "no serviced entity or business unit" is made worse off should be limited to ensuring the continuity of service to entities and business units that perform critical economic functions.

Further, we believe that modifying the ownership structure of the critical shared services provider is not the only means of ensuring that no serviced entity or business unit is "made worse off". Contractual arrangements that oblige the shared services provider to continue to provide services to each serviced entity or business unit if other group entities enter resolution (as set out in assessment criterion 2) would, where appropriate, also achieve this outcome, regardless of the ownership structure of the entity providing the services. For divisions providing services, such assurances are provided by the recapitalisation of the firm in resolution using TLAC or other resources in accordance with its resolution strategy.

2. Objective service agreements: Requirements for "internal SLAs" to be put in place for services provided within a single legal entity should not be required in all cases but should be considered in the context of the resolution strategy. We view this as a particular example of where the proportionality principle and relevance to the resolution plan needs to be carefully considered.

Any requirements for "internal SLAs" should be limited to those required to support critical economic functions and form part of a risk management exercise to understand connections and interdependencies. Further considerations are discussed under paragraph 8 (financial resilience) below. However, internal SLAs should not be required at any more granular level of detail than is necessary to achieve these goals. Excessive

requirements for internal SLAs could result in an unduly burdensome quantity of additional documentation, potentially increasing complexity.

In order to ensure a consistent measurement of required granularity for any service documentation, we believe that the SYSC 8 (Outsourcing Requirements) provisions of the PRA Handbook would provide a recognised standard that could be followed by firms.

3. Charging structure: This criterion should be addressed as part of internal transfer pricing and as with the other guidelines, it should be applied proportionately.

4. Scale and scope: This criterion is framed on the presumption that service provision is to be transferred to an intragroup services provider. However, as discussed in our general comments, this needs to be considered in the context of the resolution strategy. The criterion appears to preclude the provision of functions on a centralised basis (for example, risk management) by a regulated group entity, yet in some cases it is likely to be preferable that critical shared services are provided by another regulated entity within the group.

Greater clarity is required on these criteria, in particular with respect to what is covered by the references to "client facing" and "risk management" functions. Additionally the definitions of "transactional services" and "financial exposures" require clarification.

For example, call centre activities are client facing but could also form part of a critical shared service that presumably could be provided by an intra-firm provider. Similarly, it is not clear how the 'risk management' concept should be interpreted. Operational risk management functions should be distinguished from financial risk management functions. It is appropriate for certain risk management functions, such as operational risk, to be housed within an intragroup critical shared services provider. We therefore consider a blanket prohibition on the performance of risk management and client facing functions in a critical shared services provider (even where this is a dedicated intragroup service company) to be overly restrictive.

Additionally, it is unclear precisely which services would be classed as "transactional" and what constitutes "strategic judgment". This should be elaborated upon to provide greater clarity.

5. Governance structure: The proposed requirement for critical shared services to have their own governance structure is overly restrictive and appears to preclude the provision of services on a centralised basis with a centralised governance structure. This criterion should be considered in the context of a group's resolution strategy and should take into account safety and soundness concerns that may arise from fragmented governance and risk management if imposed only for resolution purposes in a way that is not consistent with the firm's overall governance and risk-management approaches.

The governance structure should also be calibrated in light of the senior persons' regime which will be coming into effect shortly. Directors of the critical shared services provider will carry significant regulatory risk and potentially personal liability, especially taking into account the circumstances when their decision making may become relevant. It will be important that the guidelines do not require that the directors of the critical shared services entity are independent physical persons, as identifying individuals who would be willing to take on that liability would be difficult outside the broader environment of a firm.

6. Ownership or continued access to operational assets: We support the objective of ensuring continued access to operational assets that are required to provide critical shared services, but these provisions need to be considered in the light of the relevant resolution strategy as discussed in our general comments above.

7. Operational resilience: We suggest that this criterion is considered within the context of the resolution plan and should not require additional requirements where the resolution plan adequately addresses the operational resilience of the critical shared services provider.

8. Financial resilience:

We do not believe that it is necessary for an operational services subsidiary to meet prudential capital requirements. As an operational services subsidiary does not book any client assets and usually charges on a cost-plus basis, it is extremely unlikely that it would incur a write down on its capital.

We also find the proposed liquidity coverage to be excessive. The liquidity coverage is required for the short period of time between when a firm enters resolution and when it stabilises after the execution of its resolution strategy and resumes access to normal funding sources (with potential lender of last resort liquidity provision, as set out in the Bank of England's "Approach to Resolution", October 2014, paragraphs 87 and 90). We consider the assumption that a service provider would receive no income for six months following resolution to be overly pessimistic. The Liquidity Coverage Ratio requirement, for example, is intended to ensure that financial resources are in place to meet short term obligations. This, together with the availability of TLAC or other resolution resources, should provide assurance that entities benefiting from intragroup shared services are able to continue to meet their obligations to shared service providers as they fall due. Further assurance of continued income could be provided, where appropriate, by proportionately documented intragroup SLAs, which would require not only continued service provision in resolution but also continued payment for services received.

We therefore believe that a liquidity coverage requirement should be consistent with a firm's resolution strategy timelines to allow the management to establish adequate funding as the recapitalised firm continues to operate following a resolution. Blanket requirements for periods of fixed prepayment could serve to restrict flexibility in the

run up to and immediately following resolution and there must be consideration given to ensuring that the requirements are tailored to the particular firm.

Notwithstanding the above, we would highlight the need for consideration of the position of directors of UK incorporated intra-group service provider entities. To the extent that a recipient of such entity's services is in resolution, directors of the service provider entity would need to be comfortable that they would be protected from creditor claims under English insolvency laws for continuing to provide critical services to an entity in resolution (if it were not be able to pay for such services or recover the cost thereof through the post-resolution reorganisation) where this could be deemed to the detriment of creditors of the service provider entity. While this will provide the directors of service providers with an incentive to make sure that resolution planning provides adequate assurances that payment will be able to be made, additional protections for directors would be appropriate because of the inevitable residual risk that, under unforeseeable market circumstances, a firm's approved resolution plan might not be sufficient.

The proposed financial resilience requirements for intragroup critical shared service providers may trigger significant unintended consequences by establishing an incentive for firms to outsource these functions to third parties. Outsourcing decisions always involve judgments and trade-offs that should not be biased unnecessarily, perhaps contrary to the firm's best prudential management as a going concern.

Further, the need for financial resources to be held at intragroup critical shared service providers is reduced where a firm's preferred resolution strategy provides for such entities to be maintained in resolution. Once again, any financial resilience requirements should be tailored to the resolution strategy of the firm.

Any final requirements on this assessment criterion would also need to provide greater clarity on the definitions of "capital resources" and "liquidity resources" and the items referred to in footnote 2 on page 8 of the Discussion Paper. We also request further clarification as to the logic of calculating "total expenses after the distribution of profits" for these purposes.

Proportionate application of SLAs requiring the continuation of services in resolution would offer an alternative to ring-fencing of financial resources. These would provide assurances over ongoing service provision from a non-PRA regulated intragroup service company, while the group resolution strategy should ensure that any material regulated entity receiving these services would have sufficient financial resources to continue making payments to the service provider in resolution. In a cross-border context, authorities should be reassured of the enforceability of contractual provisions when approving resolution plans.

D. Specific questions

Question 1: *Should the scope of the proposals to ensure operational continuity cover PRA-regulated banks, building societies and investment firms?*

Yes, we agree that the proposed scope should be applied across all such firms which operate critical economic functions. However, as discussed in our general comments, we believe that the guidelines should be applied proportionately. Please see our comments above regarding the need for global cooperation and coordination in relation to firms which operate in a number of jurisdictions.

Question 2: *Are there specific elements of SLAs that should be required in order to meet the objective of operational continuity?*

As discussed in our general comments above, the provisions necessary to achieve the objective of operational continuity will depend upon the resolution strategy for the particular firm. Therefore there should be some flexibility in the guidelines for specific elements of SLAs.

For example, where no separation of the group is anticipated, it might be appropriate to document intra-group critical shared services in the form of one or more overarching agreements (or Master Services Agreements) covering a number of critical shared services as opposed to granular SLAs from every critical shared service provider for every service. These should be enforceable amongst legal entities in all relevant jurisdictions and should remain valid regardless of any material deterioration in the financial circumstances of, or entry into resolution or insolvency by, any group entity.

Question 3: *Should firms be mandated to have a central repository for all SLAs?*

As discussed in our general comments, it is necessary to consider whether a central repository would be necessary to support the relevant resolution strategy. Requirements as to how SLAs are collated or stored are less important than being able to locate them quickly. We do not consider it necessary to mandate a central repository provided that SLAs can be located quickly when required, as would in any case be required by recovery and resolution planning. Alternatives such as an overarching contract or contracts covering multiple critical shared services would also meet much of the concern behind the idea of a central repository.

Question 4: *Are there any specific activities or services that should be prohibited from being part of the shared service provider?*

We believe that the definition of "financial risks" needs further clarification. The ability of an operational subsidiary to access or manage funding for its normal course of business should not be compromised through any prohibition. Further details are needed to ensure that service providers have no barriers to entering into necessary arrangements to support the provision of services in business-as-usual and post-resolution.

Question 5: *What governance and ownership structures would ensure the operational independence of a shared service provider?*

This question contains an implied presumption that all critical shared services are to be provided from a separate services entity. This is inconsistent with the PRA's stated view in paragraph 2.1 of the Discussion Paper that the provision of critical shared services from within a regulated entity could be an effective structure for achieving operational continuity.

Where such shared services are provided from a separate legal entity, the customary governance of a subsidiary would suffice. Where such shared services are provided by a division, existing internal governance procedures consistent with supervisory guidance for the conduct of the division and its oversight by the board, senior management, the risk-management function and audit (the three lines of defence) should suffice. There is no reason for additional guidance in this context, nor is it evident why resolution should be the driving factor behind the structure of management of services that, after all, are essential in a business-as-usual context as well as resolution.

We believe that further discussion is required with the industry if it is decided to specify any resolution-specific requirements on governance structures. However, it is of paramount importance that any potential solution is proportionate.

Question 6: *What type of managerial skills or other assets would a shared service provider need to restructure its operations upon the failure or entry into resolution of significant group entities or business units?*

We believe that the organisational structure is different for every firm and that the managerial skills or assets required would be highly dependent on the type, speed and length of the restructuring. As discussed above it is very difficult to predict the nature of the post-resolution restructuring in advance. This is a subject best left to discussion between the firm and its CMG, as part of the resolvability assessment process.

Question 7: *Are the financial resilience proposals sufficient to cover losses and a liquidity stress that could be generated by a failure or resolution event within the group?*

Please see our comments above.

Question 8: *How can it be ensured that the liquid assets of the shared service provider will be available in the event of a failure or resolution of other entities in the group?*

Please see our comments above.

F. Access to Financial Markets Infrastructure

An important aspect of ensuring operational continuity in resolution that is not addressed by the Discussion Paper is the need to ensure continued access to financial market infrastructures (each an FMI). This is an issue that has been identified by the FSB.[8]

The recent update to the Key Attributes in the form of Appendix II – Annex 1 (relating to resolution of FMIs and FMI participants) has provided welcome high level guidance. Annex 1 provides that jurisdictions are responsible for ensuring that each FMI's participation requirements, rules and procedures are not likely to hamper unnecessarily the orderly resolution of FMI participants, and that the FMI's rules afford the FMI sufficient flexibility to cooperate with the resolution authority of the FMI participant in order to prepare for and implement an orderly resolution in a way that does not increase risk to the FMI, its risk management or its safe and orderly operations. Although the clear presumption is that systemically important participants' membership in FMIs should continue in resolution, whether such participation is possible in practice will depend upon the FMI's rules and procedures and the discretion of the FMI.

We agree that firms should engage in interactive discussions with FMIs to fully understand each FMI's specific requirements in a resolution scenario and to identify any potential impediments to continued participation. However, given the need for confidence that FMI membership can continue, authorities need to support this process to maximize the likelihood of the continued participation in FMIs by entities in resolution. We therefore suggest that authorities undertake coordinated action, preferably at the global level, to ensure that agreements between FMIs and firms cover the necessary elements and potential questions that may arise in resolution. This should help both firms and FMIs in their planning to meet these requirements in applicable resolution scenarios.

[8] See, for example, FSB Report to the G20 on progress in reform of resolution regimes and resolution planning for globally systemically important financial institutions (G-SIFIs), 12 November 2014, p.13

If you have any questions about these comments or wish to organise a discussion, please contact Oliver Moullin (oliver.moullin@afme.eu; +44 (0)20 7743 9366) or David Schraa (dschraa@iif.com; + 1 202 857 3312).