



February 1, 2018

Financial Stability Board  
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## **Principles on Bail-in Execution - Comments on Consultative Document**

Dear Sirs:

The Institute of International Finance ("IIF"), the Global Financial Markets Association ("GFMA") and The Clearing House Association ("TCH", together the "Associations")<sup>1</sup> appreciate the opportunity to contribute to the discussion of the captioned Consultative Document and look forward to further exchanges with the Financial Stability Board ("FSB") on this important topic.

### **General comments**

Solving the operational complexities associated with the implementation of bail-in is one of the final endeavors in implementing the FSB's *Key Attributes of Effective Resolution Regimes for Financial Institutions* ("Key Attributes")<sup>2</sup> which provides a sound basis for the resolution of a major cross-border bank. The Associations have consistently supported the *Key Attributes* approach to resolution.<sup>3</sup> The Associations also concur with *Elke König*, Chair of the European Union's Single Resolution Board ("SRB"), that cooperation between stakeholders is an important ingredient for success in resolution.<sup>4</sup> Against this backdrop, the industry appreciates the FSB's awareness that the operationalization of bail-in requires not only banks but also authorities and providers of market infrastructure, to develop reliable and robust procedures.

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<sup>1</sup> See the Appendix for a description of the Associations.

<sup>2</sup> *FSB, Key Attributes of Effective Resolution Regimes for Financial Institutions* (2014), available at: [http://www.financialstabilityboard.org/wp-content/uploads/r\\_141015.pdf](http://www.financialstabilityboard.org/wp-content/uploads/r_141015.pdf).

<sup>3</sup> See e.g. *IIF / GFMA, The associations' Submission Re: FSB Consultative Document On Cross-Border Recognition Of Resolution Action, FSB Consultative Document On Guidance On Cooperation And Information Sharing With Host Authorities Of Jurisdictions Not Represented On CMGs Where A G-SIFI Has A Systemic Presence* (2014), available at: <https://www.iif.com/file/7060/download?token=6h71moTA>.

<sup>4</sup> See *Single Resolution Board, Building Resolvability Together – Conference Report, September 29, 2017*, p. 3, available at: [https://srb.europa.eu/sites/srbsite/files/srb\\_conference\\_report\\_29\\_sept\\_2018\\_final.pdf](https://srb.europa.eu/sites/srbsite/files/srb_conference_report_29_sept_2018_final.pdf).

Coordination between home and host authorities in particular is important to avoid any unnecessary destruction of value as stipulated in the Preamble to the *Key Attributes*<sup>5</sup>. The industry is convinced that a coordinated and appropriately timed intervention by authorities will mitigate such value destruction and will prevent an excessive mobilization of bail-in resources as well as foster market discipline and financial stability.

**The following comments respond to the FSB's specific questions.**

**1. Do the principles in the draft guidance address all relevant aspects of a bail-in transaction, including cross-border aspects? What other aspects, if any, should be considered?**

At the outset, the Principles should recognize that, dependent on the facts and circumstances at the time of resolution, it may be preferable to execute a bail-in through the write down of debt rather than conversion to equity, or a combination of both. Such write down can also be a first step in a more comprehensive resolution action.

Beyond that, the draft Principles identify most of the relevant aspects of a bail-in transaction. Indeed, the key elements are the process to determine the required recapitalization amount, the processes in the clearing systems to effect the changes to creditor rights and shareholders, the mechanics to deliver new shares and the related governance aspects. In the industry's view, the focus should be on the legal clarity and the finality of a bail-in led recapitalization. The guidance could be improved by emphasising these aspects. On the other hand, aspects that strongly depend on the underlying legal system could be deemphasized or even eliminated, e.g. specific guidance on aspects around the appointment of a valuer. While important, governance aspects should also be defined by principles and not by prescribing specific content and playbooks.

Further, we suggest strengthening the focus on the cross-border aspects of a bail-in transaction in the draft Principles. The *Key Attributes* correctly recognize that the effectiveness of the application of resolution tools on internationally active firms is dependent on international cooperation and recognition of resolution actions. Accordingly, the *Key Attributes* require jurisdictions to provide for transparent and expedited processes to give effect to foreign resolution measures, either by way of a mutual recognition process or by taking measures under the domestic resolution regime that support and are consistent with the resolution measures taken by the foreign home resolution authority.<sup>6</sup> Unfortunately, implementation of this requirement is still lagging behind. As a consequence, the burden has been transferred to firms.<sup>7</sup>

Nevertheless, in the interest of increased legal clarity, it remains important that the FSB encourage G20 jurisdictions to ensure the mutual recognition of resolution frameworks and the related powers and rights of resolution authorities. Such recognition would ensure that the applicable resolution framework is acknowledged, therefore legally valid, and also applicable under third country laws and regulations. This means that all the resolution powers and rights granted to the resolution authorities, such as the bail-in, are effectively applicable and enforceable according to the laws and the regulations of these third countries.

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<sup>5</sup> See *Key Attributes*, supra (note 2) Preamble (v).

<sup>6</sup> See *Key Attributes*, supra (note 2), KA 7.5.

<sup>7</sup> Firms are required to include bail-in acknowledgement clauses in financial contracts and to adhere to protocols provided by the International Swaps and Derivatives Association ("ISDA") to ensure that bail-in will be enforceable in a cross-border situation. Overall, great progress has been made in the context of contractual recognition.

Finally, and on a more granular basis, the Associations suggest that the FSB encourages resolution authorities to expedite documentation and disclosures of institution-specific cross-border cooperation agreements (“COAGs”) to the respective institution.

**2. Should any of the principles differentiate, or further differentiate, between different (i) resolution strategies (e.g., single point of entry vs. multiple point of entry); (ii) resolution entities (e.g., operating bank vs. holding company); or (iii) approaches to bail-in (e.g., open bank vs. closed bank bail-in)? If so, please describe how.**

As the document aims to develop high-level Principles, it is correct to strive for standards which are fit for all the various resolution strategies. However, the underlying assumption throughout the document seems to be that under all strategies, the bail-in period is extended. We think it is important for the draft Principles to recognize that in some jurisdictions the bail-in period is expected to be very short, perhaps limited to the resolution weekend only.

Against this backdrop, some of the draft Principles are less relevant if the bail-in period is indeed limited to a weekend. For example, the disclosure requirements to be observed during the bail-in period (as developed in draft Principle 12) will not be relevant if the entity returns to business as usual on Monday morning and therefore will be subject to standard disclosure requirements.

Against this backdrop, the Associations would appreciate a clarification that an accelerated bail-in is a valid option and that under such circumstances certain Principles may not be applicable.

**3. Do you agree with the information and disclosure requirements on the scope of bail-in as identified in principles three and four, respectively? Is the provision or disclosure of certain information likely to present any challenges for firms?**

In the industry’s view, the provision of timely and accurate information by regulators throughout the resolution process is key to a successful resolution. Before referring to the FSB’s specific question, the Associations would like to also take the opportunity to provide general comments on information and disclosure requirements:

In our view, the draft Principles should specify that the information requirement on the scope of bail-in should be limited to the preferred resolution strategy for the relevant banking group. For example, for a single point of entry (“SPOE”) strategy, this means the information should be tailored to the home authorities and the respective bail-in instruments necessary for the execution of the SPOE strategy.

The Associations support the FSB’s approach that market participants must be able to assess the bail-in risks of various liability categories. This relates to any instrument and liability formally eligible as Total Loss-absorbing Capacity (“TLAC”) but also extends to such instruments and liabilities that do not formally qualify as TLAC, but nevertheless may be subject to bail-in (e.g. liabilities with a remaining contractual maturity of less than one year)<sup>8</sup>. A clear regulatory definition of which instruments and liabilities are potentially exposed to – and explicitly excluded from – bail-in provides the necessary regulatory transparency about the creditor hierarchy,

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<sup>8</sup> See *FSB, Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution - Total Loss-absorbing Capacity (TLAC) Term Sheet*, 9 November 2015, No. 9 (Eligibility Criteria); available at: <http://www.fsb.org/wp-content/uploads/TLAC-Principles-and-Term-Sheet-for-publication-final.pdf>.

enables market participants to understand the associated risks, facilitates pricing and contains disruptions before and after a firm enters resolution.

The industry recognizes that in some circumstances authorities will need discretion to exclude certain liabilities from bail-in in order to achieve the resolution objectives. However, this should not lead to a perception that certain types of creditors will *de facto* be excluded from bail-in. Against this backdrop, and in order to prevent a moral hazard problem we strongly encourage resolution authorities to provide ex ante communication on the factors and criteria that will apply in determining discretionary exclusions. We agree with the FSB that primary objectives have to be maintaining financial stability and the continuity of critical functions, protecting tax payers and maximizing the value for creditors as a whole. However, the starting points must remain that the underlying seniority for funding instruments should be respected, creditors of the same class should be treated equally and investor identity is irrelevant for making any determinations.<sup>9</sup> In our view, predictability in the order of bail-in will in itself be an important contributor to financial stability.

While resolution authorities need appropriate flexibility to respond to specific situations, every effort should be made to ensure that a consensus is reached on bail-in qualification of various categories of funding instruments ex-ante. This should be reflected in appropriate disclosures to be provided by firms as discussed below (see our comments on Principle 4). The consensus on the scope of bail-in should also extend to the factors and criteria that will be applied by the resolution authority in determining discretionary exclusions. We also support a full and transparent communication on discretionary exclusions applied by regulators ex post, as this information will shape market expectations on the predictability and the reliability of the resolution process. This relates both to the specific instruments or liabilities that have been benefitted from a discretionary exception, but also to the rationale and the decision making process.

**On Principle 3:** We agree with the FSB that authorities will require timely access to bank data in order to determine which of the firm's instruments and liabilities fall within the scope of bail-in. We also agree with the need to have this information available within a sufficiently short timeframe and on an up-to-date basis. However, we would like to remind the FSB that member institutions are currently facing a variety of regulatory requirements with implications on their IT infrastructure. Supervisors and resolution agencies should coordinate on the prioritization of initiatives in collaboration with the banks. Further, we strongly encourage authorities, to the extent possible, to make use of data that is already available within banks, trading venues, market authorities or supervisors themselves. Any duplication of data requirements should be avoided. To the extent that information is required from other market participants, we support authorities ensuring that there are appropriate powers or gateways in place, to the extent possible, to obtain the required information on a timely basis.

Further, with regards to these information requirements, the industry prefers a flexible approach that is focused on results instead of a specific process. In our view, it should be sufficient to require firms to have an 'appropriate capability' to support timely access to required information to support bail-in. 'Technological infrastructure' may be a part in these measures but will, in most cases, not be the only means to provide such information. Timely availability of data can be achieved through a variety of measures, including documentation of processes, establishment of governance frameworks specifically addressing data requirements for resolution, clear sign-posting and mapping of data sources and processes for timely retrieval and collation of data from different sources. Against this backdrop, the 'capabilities' should not exclusively connect to

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<sup>9</sup> See *Key Attributes*, supra (note 2), KA 5.1.

'technological infrastructure'. We would prefer a flexible approach to develop individual solutions as long as they demonstrate compliance with the overall principle of ensuring 'appropriate capability' to support timely access to data.

Finally, with regards to the minimum data requirements, we do not see the need to provide the relevant information based on several accounting standards. The information should be provided in the relevant Group reporting standard, which could be IFRS, US GAAP or any other national accounting standard. We also regard the baseline information requirements as overly prescriptive. Certain minimum requirements may also be at odds with the intention to respect legal requirements in certain jurisdictions and the specific resolution strategy. The industry suggests a more flexible approach that asks authorities to consider certain information requirements but leaves it to them to make the final determination. Finally, we welcome the FSB's pragmatic approach to the information on the current holders of a firm's liabilities, as such information may indeed be difficult to obtain.

**On Principle 4:** The Associations strongly support ex ante regulatory transparency on the potential scope of bail-in according to applicable law. As we have explained above (see our comments on Principle 1) market participants must be able to assess the bail-in risks of various liability categories. A clear regulatory definition of which instruments and liabilities are potentially exposed to – or explicitly excluded from – bail-in provides the necessary transparency about the creditor hierarchy, enables market participants to understand the associated risks, facilitates pricing and contains disruptions before and after a firm enters resolution. These overarching regulatory standards should apply to any firm – large or small – issuing debt that may become subject to a bail-in.

Nevertheless, as a general remark, the Associations would like to mention that any additional disclosure requirements imposed on banks should be well integrated with the overall suite of disclosures that banks already make. They also should take into account national regulations and applicable resolution regimes. Additional stove-piped disclosures are likely to contribute more to complexity than to clarity. Beyond avoiding unnecessary duplication, authorities should ensure, to the extent possible, a harmonized set of disclosure rules (including for internal TLAC) as proposed by the Basel Committee.<sup>10</sup> Such harmonization reduces administrative burdens and provides clarity, prevents misinterpretations and creates a level-playing field across jurisdictions.

**4. Do you agree with the approach for valuations in resolution set out in principles five to eight, including with respect to (i) the valuation process and type of valuations that are necessary to inform a bail-in; and (ii) the methodology and assumptions for the valuations?**

Our comments in this section relate primarily to the situation of an open bank bail-in. In such a situation, valuation is particularly challenging as the whole process has to be executed under significant time pressure and in light of an acute crisis. A closed bank bail-in usually is not characterized by these kind of challenges.

**On Principle 5:** In the Associations' view, the Principles should make clear that the resolution authority in the home jurisdiction has the primary responsibility for determining and executing its resolution decisions, of which valuation is only a part. In the context of the valuation process,

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<sup>10</sup> See *Basel Committee on Banking Supervision, Standards: Pillar 3 disclosure requirements – consolidated and enhanced framework*, March 2017, available at: <https://www.bis.org/bcbs/publ/d400.pdf>.

this entails the sole responsibility for the entire valuation, including applying the valuation method and processes. Authorities in host jurisdiction should provide information to assist the home authority in its assessment. However, this in no manner affects the sole responsibility of the home resolution authority. Thus, depending on the bail-in process, the home resolution authority may set deadlines by which host jurisdiction authorities are required to provide relevant information. If such information is not received in time, the home authority should make its determinations without the input by host authorities.

Differences in the bail-in procedures, speed and lengthiness of the process in host countries must not in any way affect the timely execution of the bail-in process in the home jurisdiction. This would contribute to the efficiency of the process, which is especially important where the bail-in period is expected to be very short and limited to the resolution weekend. Otherwise, the slowest jurisdiction would set the pace and could jeopardize the resolution process in the home country.

**On Principle 6:** We agree with the FSB that valuations will require appropriate management information systems (“MIS”) as well as wider firm capabilities in order to provide sufficiently granular data for this purpose. However, we repeat our concerns about specific requirements relating to ‘technological infrastructure’ (see comments on Principle 3). The industry prefers a flexible approach that is focused on results instead of a specific process. It should be sufficient to require firms to have an ‘appropriate capability’ to support timely access to required information to support valuations. We prefer a flexible approach that leaves it to firms to develop individual solutions as long as they demonstrate compliance with the overall principle of ensuring ‘appropriate capability’ to support timely access to data.

We understand the need to have this information available on short notice and on an up-to-date basis. Most importantly, MIS requirements should be tailored to fit the respective resolution regime of the home authority for SPOE banks and the relevant resolution authorities for banks with a multiple point of entry (“MPOE”) strategy. However, we would like to remind the FSB that member institutions are currently facing a variety of regulatory requirements with implications on their IT infrastructure. Supervisors and resolution agencies should coordinate on the prioritization of initiatives in collaboration with the banks. We strongly encourage authorities to make use of data that is already collected for valuations on a going concern basis to the maximum extent possible.

As all banks strengthened their valuation processes after the global financial crisis the existing institution specific processes should build the basis for any valuation in resolution. This is important, as these valuations are needed to allow authorities to assess whether a firm has reached the point of non-viability (“PONV”) and will inform the decision on the recapitalization needs and appropriate resolution action once the PONV threshold has been crossed. Firms’ capabilities now allow them to perform the required valuations quickly – and certainly faster than any external valuer ever could. Against this backdrop, the guidance should clarify that a ‘valuer’ can be the bank itself, at least in the aforementioned circumstances. A valuation based on the ‘no creditor worse off than in liquidation’ (“NCWOL”) principle as a safeguard may nevertheless be supported by an external valuer.<sup>11</sup>

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<sup>11</sup> We do recognize that the European Union does require the appointment of an independent valuer but do not believe that this standard needs to be imposed across all jurisdictions.

## **On Principle 7:**

### *Valuation methodology:*

We concur with the FSB that the valuation methodology should be appropriate to the firm in resolution and be consistent with the resolution strategy. As different jurisdictions apply different resolution strategies (e.g. *in extremis* an open bank bail-in over a weekend vs. a closed bank bail-in via a transfer to a bridge institution) valuation approaches will also differ across jurisdictions. We also support the FSB's approach to assign the primary responsibility to set the overall valuation approach to the home authority. It should be clarified that home authorities can handle the valuation process in accordance with their resolution strategy for the firm in question.

### *Valuation assumptions:*

Base assumptions (most importantly the discount rate based on the macroeconomic scenario) can have a significant impact on the final valuation range. These assumptions should not only be applied consistently across different types of valuations for the same firm but also in the context of various parallel or sequential resolution cases.

In the same vein, the industry is looking for more *ex ante* disclosures on the overarching regulatory framework to be applied to valuations in a resolution. There will be a huge difference between assuming a best cash bid or a going concern value. In this context the industry suggests connecting to the base scenario as described in the Preamble to the *Key Attributes*: The Preamble envisages an environment in which a financial institution can be resolved without severe systemic disruption and without exposing taxpayers to loss, while protecting vital economic functions. In particular, the Preamble foresees the continuity of systemically important financial services, and payment, clearing and settlement functions and specifically mentions the need to avoid unnecessary destruction of value.<sup>12</sup> The base assumptions should also presume that a firm will have access to an effective funding mechanism.<sup>13</sup> Such a mechanism will promote market confidence and will encourage private sector counterparties to provide or to continue to provide funding to the material operating entities of a firm in or after resolution.

**On Principle 8:** We strongly encourage transparency of the valuation process. Our encouragement does not only extend to *ex ante* but also to *ex post* transparency. From our perspective, it is hard to imagine a situation where *ex post* disclosure of (only) summary information on valuation outcomes could jeopardize resolution objectives and be more important than creating confidence in the valuation process. Holding back information will necessarily create suspicion among market participants – in particular those that feel overcharged by the decisions of the resolution authority – and most likely lead to litigation.

In our view, the FSB could consider explicitly extending *ex post* transparency to the NCWOL valuation as mentioned in the Introduction to this section of the draft Principles. In our view this transparency would be helpful to ensure investors that bail-in preserves more value for shareholders and creditors than liquidation. This will foster market confidence in the resolution framework.

To further assure investors, it should be recognized in the document that compensation to investors may be provided if bail-in was in fact too comprehensive and has led to a surplus.

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<sup>12</sup> See Key Attributes, *supra* (note 2) Preamble (i) and (v).

<sup>13</sup> See FSB, Funding Strategy Elements of an Implementable Resolution Plan, Consultative Document, 30 November 2017, available at: <http://www.fsb.org/wp-content/uploads/301117-2.pdf>.

**5. Does principle 10 identify all relevant challenges to the development of a bail-in exchange mechanic? What other challenges, if any, do you see?**

As a general remark to this section of the draft Principles, the industry encourages the resolution authorities to involve relevant market infrastructures in designing exchange mechanics. To ensure credibility of the bail-in exchange mechanic, participants should agree on processes and procedures that should be standardized as far as possible across firms that could be subject to a bail-in.

**On Principle 10:** The industry would appreciate clarification that the disclosure needs to be limited to the preferred resolution strategy for each of the relevant banking groups. For example, in several jurisdictions 'trading of claims' might not be applicable, particularly as the bail-in regime in these jurisdictions is designed to recapitalize the failing bank within days instead of months. In jurisdictions where certain instruments to facilitate bail-in are not available within the relevant legislative framework, policy makers should consider if a legislative solution is available.

In terms of delivery of equity, proper mechanisms should be in place to allow delivery via a custody chain. The gateways mentioned in draft Principle 3 should not only facilitate the transfer of the necessary information 'upstream', but also the delivery of equity 'downstream', in particular cross-border. The new shareholders should not be required to identify themselves in order to receive the equity.

**6. Do you agree with the approach to meeting securities law and disclosure requirements set out in principles 11 to 14? Are there other aspects of securities law or securities exchange requirements that should be considered by resolution authorities as part of resolution planning?**

**On Principles 11 & 12:** We share the FSB's views regarding the importance of understanding the securities exchange and listing requirements that may apply during the bail-in period. However, it also seems to be important to understand the disclosure requirements as well as potential consequences as a firm reaches the PONV. This also extends to the communication strategy of supervisors and resolution authorities during this crucial time period. Every public communication must perform a balancing act not to be misleading but also not to exacerbate the firm's situation and to turn into a self-fulfilling prophecy. Further, any communication from authorities has to be internationally coordinated and should follow the lead of the home supervisor.

**On Principle 14:** The FSB seems to imply that the home resolution authority should be making determinations about disclosure requirements in consultation with the securities authorities. Consultation and coordination between the various authorities are indeed very important and such efforts are highly supported by the industry. However, we think that the market authorities are the correct entities to make final determinations about what rules should apply and what kind of exemptions should be granted.

In general, the FSB should encourage national regulators to adopt rules and regulations which facilitate compliance with applicable disclosure requirements, as well as any requirements under securities laws (such as prospectus and registration requirements). This could be by way of appropriate exemptions and exclusions from applicable requirements for actions taken in the course of executing bail-in, such as de-listing, re-listing, or exchange of securities. Such exclusions may require amendments to national legislation. In our view, it would be appropriate for the FSB



to recommend such legislative changes to accommodate bail-in execution as well as to set international expectations in this regard to assure cross-border cooperation and consistency.

**7. Do principles 15 and 17 adequately describe the actions that the home resolution authorities should carry out regarding (i) the management and control of the firm during the bail-in period and (ii) the transfer of control to new owners and management?**

Deliberations and decisions on governance are by their very nature highly sensitive, in particular as it relates to the removal and appointment of management. While the final decisions will have to be communicated to the public, it should be clarified that – as a matter of principle – deliberations within the relevant CMG will remain confidential.

**On Principle 15:** We agree with the FSB that clarity is needed regarding management roles and responsibilities during the bail-in period. In particular, we would be concerned about a situation in which the authorities ‘encourage’ the management to take certain actions. Decision making, responsibility and liability must not be separated. In general, the industry deems it necessary to clarify how national accountability rules<sup>14</sup> will interact with resolution regimes. In a resolution situation, senior managers will be under the direction of resolution authorities. Any interaction and conflicts with existing accountability frameworks should be resolved ex ante by resolution authorities in cooperation with the responsible supervisor.

As a matter of clarification, we would like to mention that in a resolution situation shareholder approval may be replaced by an administrative decree of a resolution authority. However, even though authorities may require sufficient flexibility, any such decree must be founded in law and such law has to be enacted ex ante.

**On Principle 17:** It should be clear at any point in time who is in control of the firm and who is bearing managerial responsibilities. At the end of the bail-in period governance and control rights have to be vested with the new shareholders. This change of control has to be clearly communicated to market participants. In this context, the authorities should educate bailed-in former bondholders about potential obligations that accrue to their new role as shareholders (e.g. disclosure requirements).

**On Principle 18:** As a consequence of a bail-in, a former bondholder may inadvertently turn into a major shareholder. We would like to draw the FSB’s attention to certain legal obligations that may emanate from attaining the position of a major shareholder or from passing certain thresholds. For example, in certain jurisdictions, exceeding specific thresholds may require a shareholder to provide all other shareholders with a mandatory take-over bid. In the same vein, the shareholder structure that will emerge as result of the bail-in may result in situations where shareholders may appear to be ‘acting in concert’.

We ask the FSB to suggest to G20 jurisdictions that the respective law should provide for an exemption or temporary relief from undue requirements or assumptions in the context of a bank resolution.

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<sup>14</sup> See e.g. *Bank of England – Prudential Regulation Authority*, Supervisory Statement SS28/15, Strengthening individual accountability in banking, May 2017, available at: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2017/ss2815update.pdf?la=en&hash=9BD48DA20A52066886ECE6790522C853B4E245BD>.

**8. Does principle 21 adequately identify all relevant types of information that the home resolution authority should communicate at the point of entry into resolution? What other information might creditors and/or market stakeholders require?**

As a general remark to the draft Principles in this section of the Consultative Document the industry concurs with the FSB on the importance of comprehensive and transparent communication strategies in order to avoid uncertainty, promote confidence and limit contagion. However, in order to achieve these goals, it should be clarified that any information should be simultaneously provided in English. The industry appreciates the openness of the FSB to the involvement of stakeholders such as institutional investors and financial institutions in the development of communication strategies.

Given the extraordinary nature of a bail-in action even the best and most comprehensive communication will leave open questions and will result in queries of unaffected creditors and stakeholders. Resolution authorities should be prepared to handle a multitude of queries on a timely basis. Against this backdrop it will be important to educate the media in order to achieve a timely and fact based news coverage.

As the FSB points out, and banks have witnessed in recent cases, resolution authorities are not the only authorities that might be involved in the process. Therefore, coordinated communication is key to preserving the credibility of the process.

**On Principle 21:** In general, we agree with the scope of information to be provided upon entry into resolution. In the industry's view communication regarding deposits are of the highest priority and sensitivity. To prevent a classic bank run and further contagion, retail depositors in particular need to receive early and precise information to what extent their deposits will be excluded from bail-in or protected by deposit guarantee schemes.

Furthermore, the FSB should consider expanding Principle 21 to cover general information to be provided ex post – upon finalizing bail-in. In principle, this information should extend to the basic facts as reflected in the draft Principles as such and as applicable: Bail-in scope, valuation, exchange mechanics, legal requirements and governance to be supplemented by information on regulatory authorizations and pro forma capital and liquidity ratios.

As noted in the Consultative Document, market participants may be unsettled in the event of a firm's resolution, and the resolution authority is in a unique position to provide clarity on major elements.

In particular, resolution authorities need to assure market participants where possible that certain liability classes have not and will not be touched in this resolution to prevent unnecessary market reactions. In the same light, market participants will appreciate any statement of the resolution authorities that would clarify the firm's liquidity position, and that resources are sufficient to satisfy obligations as they come due.

**9. Are there any other actions that could be taken by firms or authorities to help facilitate the execution of a bail-in transaction and enhance market confidence?**

In the Associations' view ex ante and ex post transparency and disclosures in conjunction with predictability and credibility of the various authorities fostered by international cooperation and coordination are key to the successful execution of a bail-in. To further strengthen the draft Principles, we ask the FSB to consider the following amendments:

As already mentioned in our response to Question 6, we deem it as highly important to develop communication strategies for a situation in which a firm gets closer to the PONV. This also extends to the communication strategy of supervisors and resolution authorities during the same crucial time period. Every public communication must perform a balancing act not to be misleading but also not exacerbate the firm's situation and to turn into a self fulfilling prophecy. Further, any communication from authorities has to be internationally coordinated and should follow the lead of the home supervisor.

In the same vein – and as already explained in our answer to Question 8 – the communication upon entering and exiting resolution is extremely sensitive. Any communication has to be timely, comprehensible and internationally consistent in order to achieve the objectives of a resolution as postulated in the Preamble to the *Key Attributes*.

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The IIF, GFMA, TCH and their working groups stand ready to support the FSB in its ongoing effort to improve cross-border resolution. Should you have any comments or questions on this letter, please contact Andrés Portilla (aportilla@iif.com) or Thilo Schweizer (tschweizer@iif.com) at the IIF, Charlie Bannister (Charlie.Bannister@afme.eu) at GFMA or John Court (John.Court@theclearinghouse.org) at TCH.

Very truly yours,



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## **APPENDIX: Description of the Associations**

The **Institute of International Finance** is a global association created in 1983 in response to the international debt crisis. The IIF has evolved to meet the changing needs of the international financial community. The IIF's purpose is to support the financial industry in prudently managing risks, including sovereign risk; in disseminating sound practices and standards; and in advocating regulatory, financial, and economic policies in the broad interest of members and to foster global financial stability. Members include the world's largest commercial banks and investment banks, as well as a growing number of insurance companies and investment management firms. Among the IIF's associate members are multinational corporations, consultancies and law firms, trading companies, export credit agencies, and multilateral agencies. All of the major markets are represented and participation from the leading financial institutions in emerging market countries is also increasing steadily. Today the IIF has more than 470 members headquartered in more than 70 countries. For more information, please visit <http://www.iif.com>.

The **Global Financial Markets Association** 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, Brussels and Frankfurt, 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>.

**The Clearing House** is a banking association and payments company that is owned by the largest commercial banks and dates back to 1853. The Clearing House Association L.L.C. is a nonpartisan organization that engages in research, analysis, advocacy and litigation focused on financial regulation that supports a safe, sound and competitive banking system. Its affiliate, The Clearing House Payments Company L.L.C., owns and operates core payments system infrastructure in the United States and is currently working to modernize that infrastructure by launching a new, ubiquitous, real-time payment system. The Payments Company is the only private-sector ACH and wire operator in the United States, clearing and settling nearly \$2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume.