2 August 2019

Via Electronic Mail

Financial Stability Board
Email: fsb@fsb.org

Re: Consultative Document on Public Disclosures on Resolution Planning and Resolvability

Ladies and Gentlemen:

CLS Bank International ("CLS") welcomes the opportunity to submit these comments regarding the consultative document, "Public Disclosures on Resolution Planning and Resolvability", published by the Financial Stability Board ("FSB") on 3 June 2019 (the "Consultative Document"). CLS fully supports the objectives of the Consultative Document, as well as the principles expressed in the FSB's: *Key Attributes of Effective Resolution Regimes for Financial Institutions*, October 2014 ("Key Attributes");[1] *Guidance on Continuity of Access to Financial Market Infrastructures ('FMIs') for a Firm in Resolution*, July 2017 ("Guidance"),[2] which builds upon related tenets within the Key Attributes; and *Principles on Bail-in Execution*, June 2018 ("Bail-in Principles").[3]

CLS is an Edge Act corporation organized under the laws of the United States of America and regulated and supervised by the Board of Governors of the Federal Reserve System (the "Federal Reserve Board") and the Federal Reserve Bank of New York (the "FRBNY") (collectively, the "Federal Reserve"). The CLS system (the "CLS System") is a global multicurrency cash settlement system that offers its participants ("members") and their customers the ability to mitigate settlement risk with respect to their foreign exchange ("FX") transactions. CLS has been designated a systemically important financial market utility by the United States Financial Stability Oversight Council under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The CLS System was specified by HM Treasury in 2010 as a recognised inter-bank payment system pursuant to Part 5 of the Banking Act 2009 in the United Kingdom ("UK"). Additionally, the central banks whose 18 currencies are settled in the CLS System have established the CLS Oversight Committee (the "OC"), organized and administered by the Federal Reserve pursuant to the *Protocol for the Cooperative Oversight Arrangement of CLS* (the "OC Protocol")[4] as a mechanism to carry out the central banks' individual responsibilities to promote safety, efficiency, and stability in the local markets and payment systems in which CLS participates, consistent with the CPMI-IOSCO *Principles for financial market infrastructures* (the "PFMI").[5]

[1] Key Attributes, *available at* https://www.fsb.org/wp-content/uploads/r_141015.pdf.

[2] Guidance, *available at* https://www.fsb.org/wp-content/uploads/P060717-2.pdf.

[3] Bail-in Principles, *available at* https://www.fsb.org/wp-content/uploads/P210618-1.pdf.

[4] https://www.federalreserve.gov/paymentsystems/cls_protocol.htm.

[5] Committee on Payments and Market Infrastructures ("CPMI") and Technical Committee of the International Organization of Securities Commissions ("IOSCO"), *Principles for financial market infrastructures* (Apr. 2012), https://www.bis.org/cpmi/publ/d101a.pdf.

I. Background

As a systemically important financial market infrastructure ("FMI"), CLS is fully aware of the critical role it will be called upon to play in the event of the resolution of one of its members, and CLS's comments relate to the need for transparency with respect to banks'[6] resolution planning and resolvability, which (as the FSB notes in the Consultative Document) will "clarify expectations and strengthen market confidence in the resolution actions of authorities".[7]

CLS has taken many steps over the years to maximize the likelihood that a member in resolution will be able to continue to safely participate in CLS.[8] At the same time, however, CLS is mindful that continued participation of a member in resolution should not result in increased risk to CLS, its other members, and other stakeholders.[9] Accordingly, the Key Attributes and the Guidance stress the need for communication and coordination among authorities, firms, and providers of critical FMI services (e.g., FMIs).[10] As described further below, CLS believes that enhancing transparency with respect to resolution planning and resolvability—e.g., coordinating ex ante to ensure key information that FMIs require will be readily available before and/or upon a firm's entry into resolution—will help maximize the likelihood that CLS (and other FMIs) will be able to allow the continued (safe) participation of a member in resolution.

CLS sets forth its comments relating to general disclosures in Section II, and those relating to firm-specific disclosures in Section III.

II. General disclosures

1. Information-sharing template for FMIs

As the FSB provides in Principle 21 of its Bail-in Principles, "The home resolution authority's initial communication to the market should provide clear and robust information to mitigate the risk of

[6] Please note that CLS uses the terms "bank" and "firm" interchangeably throughout this letter.

[7] Consultative Document, p. 2. *See also* Bail-in Principles, Principle 19, at p. 23 – 24 ("As part of resolution planning, resolution authorities should develop a comprehensive creditor and market communication strategy for the bail-in period with the objective of promoting confidence, informing creditors and the market of the implications of the resolution, limiting contagion, and avoiding uncertainty.").

[8] Some of the steps CLS has taken include: preparing an internal resolution playbook; developing a comprehensive set of considerations to assist members with their resolution planning, including identifying considerations relating to the broader financial ecosystem; submitting comment letters relating to proposed legislation in jurisdictions where its members are located; closely engaging with members; conducting a "war game" (based on a hypothetical scenario of a member's resolution) attended by members and regulatory authorities; and amending its rules, as appropriate.

[9] See Annex 1 of Appendix II of the Key Attributes, at section 1.2.

[10] Annex 1 of Appendix II of the Key Attributes specifically provides that, "Resolution authorities should inform FMIs as soon as possible of the resolution of a participant, and if possible in advance of the firm's entry into resolution. Throughout the period that a participant is in resolution, authorities should provide the FMI with information about the participant or any bridge institution to which its functions have been transferred relevant to the continued participation of that firm or bridge institution in the FMI." In addition, in the Annex of the Guidance ('Indicative information requirements for firms to facilitate continuity of access to FMIs'), the FSB explains that, "Communication and coordination information is essential for minimising the uncertainty of stakeholders involved in the resolution process, ex-ante and ex-post. . . . [A]uthorities, firms and providers of critical FMI services will each need to play a significant role in ensuring continuity of access to critical FMI services for a firm in resolution."

inconsistent communications and limit the need for subsequent additional announcements."[11] CLS strongly supports this principle and suggests that resolution authorities work with FMIs ex ante as part of resolution planning for banks, in order to understand and address the key pieces of information that each FMI will require in a resolution scenario—e.g., information about the firm in resolution's financial positions, liquidity, role in the larger ecosystem, identity and contact details of responsible individuals with respect to continued participation in FMIs, and communication plans. This type of detailed ex ante planning is critical to identifying and addressing unanticipated issues, which, if not done properly, will either impede continued participation in FMIs or potentially compromise the safe and orderly operations of the FMIs, as well as possibly lead to unintended systemic consequences.

Therefore, as suggested above, CLS proposes that authorities develop (as part of their ex ante engagement with FMIs) a single, clear, and concise information-sharing template that encompasses the key information points that FMIs will require in a resolution scenario about a firm in resolution as well as the resolution action overall, which would be provided to FMIs in an actual resolution event. By agreeing to such a template ex ante, FMIs will be more confident about the information that they will be supplied by authorities in an actual resolution event and will be able to plan accordingly.

Since a number of FMIs may have similar requirements in terms of information that would be provided by the relevant resolution authority in a resolution scenario, CLS believes the use of a readily available, centralized template could serve as a baseline set of information for each type of FMI, which could then be modified as appropriate (e.g., to address any confidentiality issues in a resolution scenario). For example, this template could be provided to FMIs concurrently with the public notice of a firm's entry into resolution (understanding that this may require non-disclosure agreements to be in place prior to such disclosure); ideally, though, the resolution authority would provide FMIs with the completed template ahead of the public notice. Additionally, while there are several types of issues that should be addressed in the proposed centralized template, CLS believes that the following items should be considered for inclusion, in order to avoid ambiguity, uncertainty, or misunderstanding in a resolution scenario:

a) The contact details of the relevant resolution authority (e.g., a dedicated email address) for FMIs to use as a first point of contact in a bank resolution scenario;
b) Whether the firm in resolution will timely meet all obligations (e.g., funding) to the FMIs in which it participates;
c) Whether the firm in resolution will meet (or continue to meet) its capital requirements as required by the firm in resolution's regulator;
d) Whether the firm in resolution will continue to provide critical FMI services (e.g., as an FMI intermediary);[12]
e) Indication of the services provided by the FMIs that the firm in resolution will continue to participate in;

[11] Bail-in Principles, Principle 21, at p. 25. While the FSB posits this and other related principles (i.e., those contained in section VI of the Bail-in Principles) in the context of a bail-in, CLS believes that they are of general applicability with respect to resolution, regardless of the resolution action taken.

[12] For example, with respect to CLS, a number of members provide services as part of the CLS ecosystem, such as acting as nostro agents and/or third-party service providers. In a bank resolution scenario, it will be important for CLS to know whether the member in resolution will continue to act in those capacities (as applicable), because it will help CLS assess the nature and extent of the systemic impact.

f) Whether the firm in resolution will continue in its other roles within the FMIs' respective ecosystems;[13]
g) Whether there will be a transfer of the firm in resolution's memberships in FMIs to a different legal entity;
h) Whether FMIs' rules and default arrangements will be enforceable;
i) Whether there will be any issues with respect to the firm in resolution's operating capabilities (i.e., whether the firm in resolution will continue to meet operability requirements in order to participate in all of the FMIs in which it participates);[14]
j) Whether safeguards apply to FMIs with respect to resolution tools/powers (e.g., moratoria will not be applied with respect to FMIs; there will be no suspension of payments to FMIs; certain liabilities owed or owing to FMIs cannot/will not be bailed in);[15] and
k) Whether all legal requirements will be met under the applicable legal framework (e.g., enforceability of netting, finality of settlement).

Without such basic information, FMIs may not be able to continue to allow the firm in resolution to access their services and systems, as FMIs must observe relevant principles of the PFMI at all times, and therefore cannot (and should not) allow continued participation of a firm subject to resolution where continued participation would compromise the continued safe and orderly operations of the FMI. With the aforementioned template to disseminate important information in a time-sensitive resolution scenario, FMIs will be better enabled to make key decisions and take certain measures that will maximize the likelihood of the firm in resolution's continued access of critical FMI services, which in turn will benefit other members in the FMIs and other stakeholders and will facilitate the overall success of the resolution. In addition, by preparing these templates ex ante, the authorities will have additional time to address other important tasks during the resolution scenario.

2. Resolvability assessments – metrics/framework

CLS agrees that public disclosures by authorities on banks' resolution planning and resolvability—especially those disclosures that are firm-specific, such as resolvability assessments—would help bolster market discipline and firms' accountability, as well as further incentivize firms to remove barriers to resolvability. In this regard, CLS agrees that a firm's ability to maintain continued access to FMIs during resolution is a critical component to resolvability, and the FSB further provides in the Guidance, "Resolution authorities should consider the credibility and feasibility of plans for preserving access to critical FMI services in resolution as part of resolvability assessments." Accordingly, CLS proposes that resolution authorities publicly disclose the framework for conducting resolvability assessments, including the key metrics by which firms' resolution plans and capabilities will be

[13] By way of example, in the CLS ecosystem, certain members have contractually agreed to act as liquidity providers in certain currencies if and when required (as determined under those arrangements). CLS will need to know whether the member in resolution could still be relied upon to act as a liquidity provider (if applicable) if so required.

[14] For example, it will be important for CLS to know as soon as possible whether there will be any changes to the firm in resolution's static data (e.g., Business Identifier Codes ("BICs")) and/or connectivity architecture, especially in a resolution scenario that will involve a transfer of membership in CLS. Any such changes will require advance planning and coordination, and depending on the situation (particularly the time constraints), it might not be possible to make such changes in time in order to allow continued participation in the CLS System.

[15] See, e.g., section 1.2 of the Guidance, which provides in relevant part, "Adequate safeguards, with respect to a resolution regime of a jurisdiction other than that of the relevant provider of critical FMI services, should reflect international practice regarding appropriate creditor safeguards applicable to financial transactions generally as well as those that protect the continued safe and orderly operation of the provider of critical FMI services."

assessed.[16] For example, it would be helpful for FMIs to know the aspects that resolution authorities regard as critical in determining whether a firm's plans for continuity of access to FMIs during resolution are credible and feasible. Greater transparency in this regard will help FMIs to better understand the criteria against which their members are being assessed and will enable FMIs to provide as much assistance as possible to remove barriers to resolvability.

In addition, CLS believes that it would be helpful if authorities indicated, as part of the public disclosure of their resolvability assessment frameworks, that they assess (as applicable) the services that firms provide as FMI intermediaries (such as nostro agents) and the resolution planning done to ensure firms' clients will have continued access to those critical FMI services during resolution, in light of the growing focus on addressing banks' roles as FMI intermediaries (particularly in the resolution context).[17] Given that many banks (particularly G-SIBs) play key roles in the provision of critical FMI services, CLS believes it is important to account for these dependencies when assessing firms' resolvability, as these could be areas for additional disruption to the broader market if firms have not adequately prepared contingency plans and have not communicated with their respective clients in advance to ensure a shared understanding of the potential impact of those plans on clients.

3. Takeaways from resolution-related exercises and workshops

CLS observes that various FMIs, banks, and authorities take part in different exercises and workshops that focus on resolution-related topics.[18] Some are conducted on a local/regional basis, while others are conducted on a more global or cross-border basis. CLS suggests that the FSB consider encouraging FMIs, banks, and authorities to disclose (to the extent appropriate and feasible) to FMI members, other authorities, the general public, etc. the high-level, non-confidential takeaways (e.g., "lessons learned") from such exercises and workshops, as they may further assist relevant stakeholders in enhancing both their understanding of key issues and their measures to address those issues. Furthermore, CLS believes that over time, this type of disclosure could enable market participants (e.g., FMIs and FMI intermediaries) to develop and execute more realistic, finely tuned resolution-focused exercises, which could further bolster market participants' preparedness for a resolution scenario and could also help draw out any pertinent or unforeseen issues.

III. Firm-specific disclosures

1. Resolvability assessments – firm-specific outcomes

As noted in Section II.3 above, CLS strongly supports the public disclosure of resolvability assessment frameworks. As an important corollary, CLS believes it would be particularly beneficial if resolution

[16] As the FSB notes on page 8 of the Consultative Document, the UK and the EU Banking Union are two examples of jurisdictions that are looking to move forward on this topic. The Bank of England and the Prudential Regulation Authority have already issued consultations on its Resolvability Assessment Framework package (which has now been officially established as of July 30, 2019), while the SRB is planning on issuing a consultation paper on resolvability components in due course.

[17] This is consistent with, e.g., section 1 of the Guidance.

[18] See, e.g., the April 2019 coordination exercise on cross-border resolution planning, which involved senior officials representing various authorities, central banks, and finance ministries in the EU Banking Union, the U.S., and the UK. Federal Deposit Insurance Corporation ("FDIC"), Press release – "U.S., European Banking Union, and UK Officials Meet for Planned Coordination Exercise on Cross-Border Resolution Planning", https://www.fdic.gov/news/news/press/2019/pr19033.html.

authorities could publicly disclose the high-level (and non-confidential) outcomes of their resolvability assessments of covered firms, noting in particular whether firms' resolution plans are deemed credible and feasible and where barriers to resolvability remain, as applicable.[19] For example, if a resolution authority determines that a firm's plans to maintain continuity of access to FMIs are not credible and not feasible, and notes where related barriers to resolvability exist, CLS believes public disclosure of high-level, general themes found across firm-specific resolvability assessments could help FMIs understand where gaps or problems exist with respect to facilitating continued access to FMIs' services in a resolution scenario. As a result, FMIs will likely be in a better position to help firms address these issues.

* * *

We appreciate the FSB's consideration of the views set forth in this letter and would welcome the opportunity to discuss any of these comments in further detail. Furthermore, we would fully support the FSB seeking consultation on any future guidance on this topic of public disclosures on resolution planning and resolvability.

Best regards,

Dino Kos
Chief Regulatory Officer

cc:
Gaynor Wood, General Counsel
Lauren Alter-Baumann, Head of Regulatory Strategy
Andrea Mparadzi, Senior Legal Counsel
Caitlin Foran, Regulatory Affairs Specialist – Resolution
Olivia Sirett, Commercial Specialist

[19] An example of this can be found in the U.S. resolution regime, where the Federal Reserve Board and FDIC publish their feedback letters (with any necessary redactions) on covered firms' resolution plan submissions.