<u>Financial Stability Board Consultative Document:</u>
<u>Guidance on Arrangements to Support Operational Continuity in Resolution</u>
<u>4 January 2016</u>

The World Federation of Exchanges[1] is the global trade association for exchanges and clearing houses. The WFE represents 64 public stock, futures and options exchanges, as well as CCPs. WFE promotes the development of fair, efficient and transparent markets. We work with policy makers, regulators and standard-setters around the world to support the development of effective rules and standards for exchanges and market participants. Over 44,000 companies - representing a total market capitalisation of US $64 trillion, trading value of US $76 trillion and equivalent to more than 75% of global GDP - list on WFE member exchanges.

The WFE welcomes the FSB's (and other organisations') efforts to enhance the resilience of the financial system post-crisis. The WFE has previously publicly expressed support for initiatives such as the CPMI-IOSCO PFMIs and the FSB Key Attributes and has sought to contribute to the international debate on these matters, including most recently on CCP risk management, recovery and resolution matters[2]. Hence, as an industry association representing some of the most important parts of the international market infrastructure – including exchanges and clearing houses – the WFE welcomes the opportunity to provide feedback on the FSB's further efforts to support financial stability via operational continuity in resolution situations.

We acknowledge that the proposed guidance does not specifically address continued access by firms to Financial Market Infrastructure (FMI) services – and that this will likely be separately considered. However, the WFE, as operators of regulated exchanges and CCPs seeking to ensure efficient and safe financial markets for all market participants, nevertheless provides its perspectives insofar as the proposals apply to FMIs themselves (and not firms' access to the FMI).

General Comments

Markets – and market infrastructure providers such as exchanges and CCPs - have been repeatedly tested in a range of significant market stress events including the 2008 global financial crisis and, more recently, in the global market volatility seen in August 2015. Despite their impressive track record through stressed market conditions, FMIs continue to refine and improve their resilience and ability to manage future market crises as the core function of their offering.

The WFE supports international efforts to strengthen and ensure the continued operation of firms and markets in stressed situations – including for FMIs themselves. As such, we generally support further initiatives that encourage planning for resolution situations and think it important that the interconnectedness aspect in particular is considered. This is an area in which international standard setters such as the FSB should - and do - play a leading role, and where trade associations with an international constituency – such as WFE - can support delivering that.

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[1] The membership list of the WFE is available here
[2] CCP Risk Management Recovery and Resolution – aligning CCP and member incentives

However, within that context, we respectfully note that:

- Care should be taken to not be overly prescriptive. This is to ensure that the nuances and specificities of each event can be taken into account. Markets - and the firms operating within them - vary, as do national and regional laws and regulations. As such, arrangements need to reflect and accommodate this. An excessively uniform or prescriptive approach could unnecessarily constrain the ability of the authorities, the FMI, or the firm itself to deal with a specific situation. This in turn could be to the potential detriment of the wider overriding goals of financial stability and fair, efficient and orderly markets.

- There are already several rules, regulations and standards relating to operational continuity for FMIs. Many operational arrangements that are put in place by FMIs also follow what is considered to be industry best practice. It is therefore important that generally applicable rules or principles do not conflict with those that are targeted at specific parts of the market; and

- FMIs have responsibilities to achieve public policy objectives of safety, efficiency and reducing systemic risk. To effectuate this they themselves have detailed rules and standards that users of the FMI must meet. This would include - but not be restricted to – systems and controls, trading conduct, etc. As above, it is therefore important that generally applicable rules or principles do not conflict with FMI specific rules that were designed in the interests of fair and orderly (and resilient) markets.

In summary, we advocate that any framework or guidelines need to retain sufficient flexibility to ensure the continued smooth operation of the wider market in the event of a firm-specific resolution situation. Further, they should not conflict with existing rules or expectations, nor create unintended consequences for the orderly and safe operation of the market. Markets are increasingly international, although continue to operate within regional or local market structures, laws and regulations. As such we would support here, as on other topics, a set of globally applicable principles (rather than hard rules), which would facilitate a more integrated financial system while enabling regulators and FMIs to consider and respond to the unique nature of local markets.

Responses to Specific Questions

1. Do you agree that the three service delivery models set out in Section 3 of the draft guidance represent, singly or in combination, current industry practice? Do you have any comments on the analysis of each model from a perspective of resolvability under different resolution strategies?

Yes. Whilst there may be others that exist, or variations on the models, these are generally the most commonly used in the FMI space (either singly, or in combination).

2. Are the arrangements to support operational continuity set out in Section 4 comprehensive and likely to be effective? What additional arrangements, if any, should be considered for inclusion? Should any elements be modified for specific service delivery models?

Yes, the arrangements set out in Section 4 are comprehensive. We agree that the level of robustness should rightly vary depending on the service and/or service delivery model. However, we would caution against standards being too prescriptive and would support sufficient flexibility in applying the standards to ensure the continued smooth operation of the wider market.

Further, we agree that ensuring operational continuity may be more difficult for resolution authorities when the services are provided outside of the jurisdiction in which the authority is located, although acknowledge that this falls outside of the scope of the guidance.

3. Are any of the arrangements particularly important in the context of either a Single Point of Entry ('SPE') or a Multiple Point of Entry ('MPE') resolution strategy, or are they strategy-neutral?

Whilst recognising the pros and cons of both the SPE and MPE strategies, much would depend on the situation, the firm in question and its organisational and financial structure, and the way in which it operated its critical services as to which strategy (or combination of strategies) best fitted. As such, we would suggest sufficient flexibility to be able to take into account the specifics of the situation.

4. Do you consider that any of the arrangements identified in Section 4 would be challenging to implement in the context of all or specific types of the service delivery models identified in Section 3?

Notwithstanding the quality of the drafting of contracts or SLAs, in the event a third party provider that also provides critical functions to other parties got into difficulties, resourcing (human and financial) could be compromised, thereby affecting that which is afforded to the provision of the service to the firm.

However, as previously noted, we would caution against standards being too prescriptive and would support sufficient flexibility in applying the standards to ensure the continued smooth operation of the wider market.

5. Does the legal entity ownership structure for the provision of critical shared services (for example, wholly owned or partly owned through joint ventures) give rise to specific challenges in relation to operational continuity? If so, what are these challenges and how might they be mitigated?

The risks should generally be mitigated through robust contract and SLA drafting.

6. Are there measures, in addition to those suggested in Section 4 of the draft guidance, which might reinforce contractual arrangements for the provision of shared services to support operational continuity in resolution? Do you foresee any challenges in adopting such measures in the context of all or specific types of service delivery model?

For third party, or intra-group, agreements, that an effective conflicts of interest policy is in place (non-prescriptive as to content – to be agreed on the basis of the service being provided and nature of the relationship between service provider and receiver).

7. Are there any arrangements that might mitigate challenges in connection with (i) service providers from outside the jurisdiction of the resolution authority and (ii) non-regulated third party or intra-group service providers that should be covered in this guidance?

No, the firm in question will, as part of its own due diligence procedures, consider the specificities of the service to be provided, the firm from which it is to be provided from, and its jurisdiction and so our view is that further guidance would be unnecessary and potentially overly restrictive as it would be unlikely be flexible enough to cover different situations.

8. Do you agree with the classes of information set out in the Annex as necessary to support firms and authorities in their assessment of operational continuity in resolution? Do you foresee any challenges for firms in producing and maintaining that information?

Yes, the classes of information as set out in the Annex are comprehensive. However, we would caution against standards being too prescriptive and would support sufficient flexibility in applying the standards to suit the needs of the local market and ensure the continued smooth operation of the wider market.

9. Are there any other actions that could be taken by firms or authorities to help ensure operational continuity in resolution?

Continuity of a FMI's services (i.e. recovery) is almost always preferable to resolution given the systemic disruption and distress that would be caused by a wind-down in particular of CCP services. FMIs should therefore be given appropriate flexibility and time to utilize recovery tools, while resolution authorities should ideally only step in after all recovery tools have been exhausted. Pre-emptive involvement by a resolution authority could introduce substantial uncertainty into the default management process and could prompt non-defaulting clearing members to expedite the resolution process rather than promote FMI recovery.