

Appendix 3: The Bank of England's Statement of Policy on Continuity of Access to Financial Market Infrastructure (FMIs)

1 Background and statutory framework

1.1 This Statement of Policy (SoP) is issued by the Bank of England (the Bank), as UK resolution authority, in accordance with section 3B(9) of the Banking Act 2009 as amended (the Banking Act). The SoP sets out how the Bank expects to use its power under section 3A(2) of the Banking Act to direct a 'relevant person' to take measures to address impediments to resolvability, specifically in relation to their capabilities and arrangements to support continuity of access to financial market infrastructure.

1.2 A 'relevant person' means:

- (a) an institution¹ authorised for the purpose of the Financial Services and Markets Act 2000 (FSMA) by the Prudential Regulation Authority (PRA) or Financial Conduct Authority (FCA);²
- (a) a parent of such an institution which (i) is a financial holding company or a mixed financial holding company; and (ii) is established in, or formed under the law of any part of, the UK; or
- (b) a subsidiary of such an institution or of such a parent which (i) is a financial institution³ authorised by the PRA or FCA; and (ii) is established in, or formed under the law of any part of, the United Kingdom.

1.3 The intended process around using this direction power is set out in the Bank's SoP on its power to direct institutions to address impediments to resolvability.⁴ In short, this process involves the Bank:

- (a) determining that there is a substantive impediment to the resolvability of an institution;
- (b) where a substantive impediment is identified, notifying the institution of the impediment. The institution will then have four months to make its own proposal to remove the identified impediments; and
- (c) if the Bank remains dissatisfied with the measures proposed by the institution, directing the institution to take specific action to remediate the impediment.

1.4 This SoP sets out objectives and principles that firms are expected to meet in order to avoid a determination that they have insufficient capabilities and arrangements to support effective resolution and that these constitute an impediment to resolvability.

¹ For the purposes of this SoP the term 'institution' means UK-incorporated banks, UK-incorporated building societies and those UK-incorporated investment firms that are required to hold initial capital of €730,000, in particular those that deal as principal. References to 'institution' shall be taken to also include 'relevant persons'.

² The PRA and FCA are the UK competent authorities. According to Article 2 of the Bank Recovery and Resolution Directive (2014/59/EU) and Article 4 of the Capital Requirements Regulation (EU No. 575/2013), as amended by Regulation (EU No. 2019/876), 'competent authority' means a public authority or body officially recognised by national law, which is empowered by national law to supervise institutions as part of the supervisory system in operation in the Member State concerned.

³ The term 'financial institution' has the meaning given by article 4 (1) (26) of Regulation 575/2013/EU.

⁴ Bank of England (2015) 'The Bank of England's power to direct institutions to address impediments to resolvability' available at: <https://www.bankofengland.co.uk/paper/2015/the-boes-power-to-direct-institutions-to-address-impediments-to-resolvability-sop>.

1.5 Not meeting these objectives and principles may constitute a barrier to resolvability and may result in the Bank directing firms to improve their capabilities to ensure resolvability.

1.6 In considering these objectives and principles, firms should have regard to their size, business model, and preferred resolution strategy.¹

2 Policy scope

2.1 This SoP applies to:

- (a) institutions notified by the Bank that their preferred resolution strategy is bail-in or partial-transfer, i.e. that the Bank would expect the strategy to involve the use of its stabilisation powers; or
- (b) institutions notified by the Bank that they are a 'material subsidiary' of an overseas-based banking group for the purposes of setting internal MREL in the UK, as determined in accordance with the criteria set out in the Bank of England's approach to setting a minimum requirement for own funds and eligible liabilities (MREL SoP).²

2.2 Hereafter, references to 'firms' should only be taken to include those institutions that meet the criteria set out in paragraphs 2.1(a) and (b). Further detail is set out below on the application of this SoP to firms.

2.3 Firms should also ensure that the principles set out in this SoP are met in respect of all entities within their group.³

2.4 Material subsidiaries should consider this SoP within the context of the Statement of Policy: *The Bank of England's Approach to Assessing Resolvability* (Approach to Assessing Resolvability SoP), in particular paragraphs 2.5-2.6.

3 Objective

3.1 Firms are able to take all reasonable steps available to facilitate continued access to clearing, payment, settlement, and custody services in order to keep functioning in resolution (recognising that providers of these services may retain a degree of discretion over their ability to terminate a firm's membership).

4 Principles

Principle 1: Identifying FMI relationships

4.1 Firms should identify all of the relationships they have with FMIs,⁴ including those that are maintained via an intermediary.

4.2 Firms should know the membership requirements (including operational, financial and capital requirements) for all of the identified FMIs and FMI intermediaries (together 'FMI service providers'),

¹ The Bank will notify a firm of its preferred resolution strategy on at least an annual basis.

² Bank of England (2018) 'The Bank of England's approach to setting a minimum requirement for own funds and eligible liabilities (MREL)' available at: <https://www.bankofengland.co.uk/paper/2018/boes-approach-to-setting-mrel-2018>.

³ For the purposes of this SoP, a firm's group should be taken to include the firm and subsidiaries that are directly or indirectly owned by the firm. It does not include the parent entities of the firm or subsidiaries thereof in which the firm does not have an ownership stake.

⁴ An 'FMI', as defined by the Key Attributes, is 'a multilateral system among participating financial institutions, including the operator of the system, used for the purposes of recording, clearing, or settling payments, securities, derivatives, or other financial transactions'. As used in this guidance, an FMI includes payment systems, central securities depositories (CSDs), securities settlement systems (SSSs), and central counterparties (CCPs). It does not extend to trade repositories or to trading platforms. FMIs owned and operated by central banks are not themselves subject to the Key Attributes, however firms will need to consider their relationships with them for the purpose of this SoP.

and how these may change when the firm comes under financial stress, and specifically if it were put into resolution.

4.3 Firms should know how to communicate with each FMI service provider at a time of financial stress before resolution and should ensure that they are able to provide any additional information that may be required by each FMI in order for access to be facilitated.

Principle 2: Identifying FMIs that provide critical FMI services¹

4.4 Firms should develop a methodology to determine which of the FMI service providers identified under Principle 1 provide critical FMI services to them.

4.5 Firms should be able to identify all FMI service providers that provide critical FMI services to them, and describe for each FMI service provider:

- (a) the critical FMI service provided;
- (b) whether their access to the FMI is direct or indirect;
- (c) the jurisdiction where the critical FMI service provider is incorporated; and
- (d) the governing law under which the legal relationship between the firm and the FMI service provider operates and whether this framework supports recognition of the Bank's resolution regime.

Principle 3: Mapping and Assessment of FMI relationships

4.6 Firms should map relationships with critical FMI service providers to:

- (a) critical functions;²
- (b) critical services³ (where the firm provides access to FMIs or FMI intermediaries as a service to other legal entities within the group);
- (c) business lines;
- (d) legal entities; and
- (e) supervisory, resolution or any other competent authorities for the FMI by jurisdiction.

4.7 Should a firm assess that the contractual relationship with the critical FMI service provider may not facilitate continuity of access during resolution, to the extent that execution of its preferred resolution strategy would be materially impeded, it should consider putting in place arrangements with an alternative provider. Where the firm has decided to put in place arrangements with an alternative FMI service provider the firm should be able to provide an assessment of how credible the alternative arrangement is. Making arrangements with an alternative provider may not be viable, for example if there is no available provider of the same services as the FMI service provider in question or if there are

1 'Critical FMI services' are clearing, payment, securities settlement and custody activities, functions or services, the discontinuation of which could lead to the collapse of (or present a serious impediment to the performance of) one or more of the firm's critical functions. They include related activities, functions or services whose on-going performance is necessary to enable the continuation of the clearing, payment, securities settlement or custody activities, functions or services. Critical FMI services may be provided to a firm either by an FMI, or through an FMI intermediary.

2 'Critical functions' has the meaning in section 3(1) and (2) of the Banking Act 2009.

3 As referred to in Commission Delegated Regulation 2016/778: Critical services should be the underlying operations, activities and services performed for one (dedicated services) or more business units or legal entities (shared services) within the group which are needed to provide one or more critical functions. Critical services can be performed by one or more entities (such as a separate legal entity or an internal unit) within the group (internal service) or be outsourced to an external provider (external service). A service should be considered critical where its disruption can present a serious impediment to, or completely prevent, the performance of critical functions as they are intrinsically linked to the critical functions that an institution performs for third parties. Their identification follows the identification of a critical function.

legal, operational or financial barriers to the establishment and maintenance of a 'back up' arrangement. In this situation, the firm should consider alternative measures to mitigate the risk that continuity of access will be disrupted.

4.8 Firms should maintain an inventory of the actions that providers of critical FMI services may take to terminate, suspend or limit access, should its membership requirements not be met, and the consequences of those actions for the firm at a time of financial stress or in resolution. Where possible, following discussion with the critical FMI service provider, firms should consider and document the likelihood and circumstances in which these actions may be taken.

Principle 4: Usage of FMIs and FMI intermediaries

4.9 Firms should maintain a record of transaction data that details their relevant positions and usage of FMI service providers. These records should be provided to the Bank during pre-resolution contingency planning to assist the Bank's understanding of firms' obligations to and patterns of usage at FMI service providers.¹ These records should be reviewed and updated whenever the firm materially changes the volume or exposures it processes or holds with the FMI service provider in question.

4.10 Firms should consider how to provide to the Bank or Bail-in Administrator, upon request, any relevant information, including, but not limited to:

- (a) collateral pledges;
- (b) types of collateral accepted by each FMI service provider;
- (c) historical daily values of margin required at applicable FMI service providers;
- (d) historical daily values of gross payments sent or received; and
- (e) an inventory of material upcoming settlement and delivery obligations by value and type of asset.

4.11 Firms should be able to assess the anticipated extended collateral or liquidity requirements that providers of critical FMI services may place on them and how they would expect to meet those requirements, building on existing risk management systems.

4.12 In estimating these anticipated extended requirements (including on an intra-day basis and taking into account potential prefunding requirements), firms should consider the aggregated volume of business or activity that they would expect to maintain with each critical FMI service provider during resolution. Firms should also take reasonable steps to model the impact of their clients' possible behaviour in determining this amount.

Principle 5: Contingency planning

4.13 Firms should use the information collected according to principles 1-4, following engagement with FMIs, to draw up and update a contingency plan describing how they will maintain access to critical FMI service providers in stress and during resolution. The contingency plan should include a list based upon a full range of plausible actions that could be taken by each critical FMI service provider, and the defensive actions the firm has identified for mitigating them.

5 Timeframe for compliance

5.1 Firms should be compliant with this SoP by 1 January 2022.

¹ The maintenance and provision of such records must be performed in accordance with applicable law.

5.2 The Bank may on a firm-specific basis set an earlier compliance date, for example where the Bank has concerns about the resolvability of a firm.

5.3 The Bank may also set a firm-specific compliance date where a firm that was not previously within scope becomes within scope of this SoP. This might occur if the preferred resolution strategy applicable to the firm changes, or if the firm becomes 'material' for the purposes of setting internal MREL. In these cases, the Bank will determine the appropriate compliance date on a firm-specific basis, and expects to allow firms at least 18 months for compliance.