The Clearing House
At the Center of Banking Since 1853

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Re: Consultative Paper, *Recovery and Resolution of Financial Market Infrastructures*

Dear Sir or Madam:

The Clearing House Association L.L.C. ("Association") and The Clearing House Payments Company L.L.C. ("PaymentsCo" and, together with the Association, "The Clearing House")[1] appreciate the opportunity to provide comments to the Committee on Payment and Settlement Systems of the Bank for International Settlements ("CPSS") and the Board of the International Organization of Securities Commissions ("IOSCO") in response to their consultative paper on *Recovery and Resolution of Financial Market Infrastructures* ("Consultative Report"). The Clearing House commends CPSS and IOSCO for taking on the important topic of recovery and resolution of FMIs. We believe that the Consultative Report is an important step toward increased awareness of these issues by FMIs, their regulators, and the wider range of market participants, and we fully support this effort.

The Consultative Report attempts to set out in a few pages the essential features of an effective resolution regime for financial market infrastructures ("FMIs"), "help to

[1] Established in 1853, The Clearing House is the nation's oldest banking association and payments company. It is owned by the world's largest commercial banks, which collectively employ 1.4 million people in the United States and hold more than half of all U.S. deposits. The Clearing House Association is a nonpartisan advocacy organization representing through regulatory comment letters, amicus briefs, and white papers the interests of its owner banks on a variety of systemically important banking issues. Its affiliate, The Clearing House Payments Company L.L.C., provides payment, clearing, and settlement services to its member banks and other financial institutions, clearing almost $2 trillion daily and representing nearly half of the automated-clearing-house, funds-transfer, and check-image payments made in the U.S. See The Clearing House's web page at http://www.theclearinghouse.org for additional information.

develop a common understanding of FMIs' recovery and resolution in all jurisdictions, and a common interpretation of how the *Key Attributes [of Effective Resolution Regimes for Financial Institutions]* apply to the recovery and resolution of FMIs." This would be an extremely complex undertaking, and CPSS and IOSCO wisely do not attempt to "provide a comprehensive analysis of, or solution to, all the complex and wide-ranging issues that apply to the recovery and resolution of FMIs." Rather the Consultative Report identifies some of the salient issues and "seeks ways in which these issues can be addressed."

This letter will approach the topic of FMI resolution and recovery in the same spirit as the Consultative Report, i.e., we will not attempt a comprehensive exploration of all aspects of the recovery and resolution of all kinds of FMIs, nor will we attempt to analyze these issues from different points of view (e.g., participants in CCP-type systems); rather we will address the portions of the Consultative Report that apply to systemically important payment systems ("SIPS") from the view of a SIPS operator. Our comments are informed by our more than 40 years' experience in operating a large-value funds-transfer system. The Clearing House Interbank Payments System ("CHIPS") has been in operation since 1970 and currently processes more than US $1.6 trillion in payments on an average day. The Clearing House pioneered many of the techniques that later became standard risk-mitigation procedures for SIPS, including bilateral credit limits, sender net debit caps, and collateralized loss-sharing agreements. CHIPS has been in compliance with the CPSS's *Core Principles for Systemically Important Payment Systems* ("Core Principles") since their adoption in 2001, as it was in compliance with the "Lamfalussy Standards" when they were adopted in 1990. We therefore have considerable experience not only in operating a SIPS but in meeting or exceeding all applicable standards for the safe and sound operation of such a system.

PaymentsCo was recently designated a systemically important financial market utility by the Financial Stability Oversight Council ("FSOC") under Title VIII or the Dodd-Frank Wall Street Reform and Consumer Protection Act because of its operation of CHIPS. As such, PaymentsCo is subject to regulation by the Board of Governors of the Federal Reserve System. As the Federal Reserve Board has announced its intention to seek public comment on a proposal to adopt the rules set out in the CPSS and IOSCO's recent paper *Principles for Financial Market Infrastructures* ("FMI Principles") for the organizations it regulates, the CPSS and IOSCO's final report on recovery and resolution of FMIs will almost certainly be an important guide for interpreting the sections of the FMI principles dealing with recovery and resolution planning. This fact gives The Clearing House a keen interest in any final report that CPSS and IOSCO will issue on these topics. In this regard, The Clearing House is currently in the process of drafting a paper on the steps that the private-sector and financial-institution supervisors should take with respect to central counterparties ("CCPs") to enhance financial stability. In our view, the risks to financial stability include the dangers inherent in rules that allow CCPs to mutualize losses through uncapped assessments on non-defaulting clearing members. The final report should be completed by the end of October 2012, and we

urge CPSS and IOSCO to study this report and take its recommendations into consideration when revising its proposals on FMI recovery and resolution.

We also note that our comments are necessarily preliminary and cannot begin to address all of the difficult issues that are sure to arise in any resolution and recovery plan for an FMI. We therefore may supplement our comment upon further consideration of the issues.

SUMMARY

1. CPSSS and IOSCO should adopt a longer term process for finalizing this report that includes meetings with FMIs and other stakeholders, consultation with legal experts (including experts in insolvency law) , and developing a revised proposal for public comment.

2. Bank-like resolution regimes may not always be available, or the best alternative. FMIs and their regulators should have flexibility to design optimal recovery and resolution plans. Implementation of FMI contingency plans to deal with defaulting participants does not mean that the FMI is in need of recovery or resolution.

3. Design of recovery and resolution plans should rest primarily with the FMI in collaboration with its primary regulator.

4. Resolution authorities should not have power to require an FMI owners to contribute additional capital beyond that which is required by the FMI's constituent documents.

5. Resolution authorities need operational and legal flexibility to implement principles within the confines of national law.

6. There should be predictable criteria for placing an FMI into resolution, and a regulator should not put an FMI into resolution until it has assessed the market impact of the possible failure of the FMI, both within and without the orderly resolution regime.

7. CPSS and IOSCO need to devote greater attention to the variety of FMI organizational structures and understand the implications of this complexity for proposals for uniform recovery and resolution standards.

(a) Bail-in would not be an option where and FMI does not issue substantial debt.

(b) Subjecting owners of FMIs to potentially unlimited liability may cause owners to try to exit from these investments, making it hard for FMIs to raise capital.

8. Power to force an FMI into resolution, and the power to force changes in an FMI's business practices, structure, or organization should be strictly limited.

PRELIMINARY REMARKS

1. CPSSS and IOSCO should adopt a longer term process for finalizing this report that includes meetings with FMIs and other stakeholders, consultation with legal experts (including experts in insolvency law), and developing a revised proposal for public comment.

Given the complexity of the issues involved, it is unlikely that the usual procedure of publishing a consultative paper, analyzing the comments received, and issuing a final paper will be adequate to achieve the goal that CPSS and IOSCO have set, i.e., to outline the key features of effective recovery and resolution regimes for FMIs. We therefore urge CPSS and IOSCO to adopt a more long-term project plan and analyze the comments received; hold a series of meetings with commenters, including major FMIs, their owners, participants, and other interested parties; and then issue a new consultative report that summarizes the comments, gives an indication of how CPSS and IOSCO believe the comments should be addressed, and seeks another round of comments on the revised paper.

During this process, it is especially important for CPSS and IOSCO to seek advice from experts in insolvency law in at least a few of the leading jurisdictions. Insolvency is a complex area of the law, and certain aspects may seem counterintuitive to many. For example, many regulators, economists, and market participants view a funds transfer as a continuous flow—money moving from the originator to the beneficiary—and place primary emphasis on ensuring that this flow is not interrupted. The law, however, necessarily treats a funds transfer as a series of discrete, if related, transactions, each with its own set of parties who have their own reciprocal sets of rights and obligations.[2] As insolvency is a legal event and an insolvent FMI will be resolved in a legal proceeding, this approach will be controlling and may have a profound effect on how uncompleted funds transfers are treated. It is vital that CPSS and IOSCO and the national regulators who will adapt the principles and key attributes to their local jurisdictions understand these rules and how they will work.

2. Bank-like resolution regimes may not always be available, or the best alternative. FMIs and their regulators should have flexibility to design optimal recovery and resolution plans. Implementation of FMI contingency plans to deal with defaulting participants does not mean that the FMI is in need of recovery or resolution.

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[2] *See, e.g.,* U.C.C. § 4A-104(a)

We also note that the Consultative Report has been crafted with the intention of applying its principles to all FMIs: including central counterparties ("CCPs"), securities settlement systems ("SSSs"), trade repositories ("TRs"), and central securities depositories ("CSDs"), as well as SIPS. This ambitious project, which we fully support, does require that CPSS and IOSCO, as well as market participants and regulators in general, keep several key points, or general themes, in mind. These themes, which The Clearing House will allude to throughout this letter, are.

1. FMIs have come in a variety of organizational forms—banks, nonbank financial institutions, business corporations, limited liability companies, unincorporated associations—with each FMI choosing the form of organization that best suits its needs and the needs of their owners and participants.

2. Because of the variety of organizational forms, bank resolution regimes may not in all cases provide the best method of resolving troubled FMIs.

3. Even when an FMI is structured as a bank, the laws of a particular jurisdiction may not provide the robust, regulator-driven resolution regime that CPSS and IOSCO recommend, and political realities may not be conducive to the new legislation that would be necessary to bring one into existence.

4. Accordingly, FMIs and their regulators must have a great deal of flexibility to work together to construct recovery and resolution plans that meet the specific needs of the FMI, its owners and participants, and the markets it serves, given the organizational structure of the FMI and the legal regime of the FMI's home country.

5. A key component of any FMI resolution plan is whether other FMIs provide similar services that can be accessed by the troubled FMI's participants.

6. FMIs have for years had procedures to deal with the full or partial failure of one or more participants. Implementation of these procedures under existing rules is not an indication that the FMI itself is troubled or that recovery or resolution plans need to be invoked.

Although The Clearing House acknowledges the difficulty of devising an approach to recovery and resolution of FMIs that will work for all relevant jurisdictions, there must be more specific proposals that encapsulate the aforementioned themes.

We note that certain principles, such as Key Attribute 3.2(iv) and (vii) seem to suggest that resolution authorities should have the power to compel troubled FMIs to continue to provide systemically significant operations, post-failure, with costs to be covered by the shareholders or other owners. Two crucial concerns arise out of this suggestion: Can the government compel a company with limited liability (e.g., a corporation, limited liability company, or limited partnership) to continue to provide services at a loss? If so, what are the constitutional and corporate law limitations that CPSS and IOSCO have considered? Many FMIs are structured as entities of a group of owner banks or owner participants, so the proposal to require the continuation of services at a loss through forced owner contributions is troubling. The potential for unlimited liability that may result from an initial investment in an FMI, apart from having a deterrent effect in the recruiting of new members, could encourage the exit of owner institutions from an FMI under stress conditions and make it more difficult to raise capital.

Finally, further underscoring our recommendation that national-resolution authorities be given operational and legal flexibility, we note the need to have a market-impact test conducted by the authority prior to *any* resolution regime being triggered. In our detailed comment, at paragraph 2.5, we suggest the workings for a market-impact test, which would be especially relevant for FMIs with systemically significant third-party alternatives

DETAILED COMMENTS

3. Section 2—Design of recovery and resolution plans should rest primarily with the FMI in collaboration with its primary regulator.

Paragraphs 2.2—2.3. Preventive Measures and Recovery Planning. The Clearing House agrees with the primary emphasis on the ability of an FMI to absorb shocks and recover from them, especially on the need for an FMI to have (i) sufficient financial resources to withstand financial shocks, (ii) sound procedures for replenishing financial resources depleted by a stress event, and (iii) effective strategies to address losses. The Clearing House also fully supports placing the primary responsibility for designing a recovery plan on the FMI.

Paragraph 2.4—Oversight and Enforcement of Preventive Measures and Recovery Plans. The Consultative Report proposes that oversight and enforcement of recovery plans remain with the FMI's direct supervisor. The Clearing House supports this proposal and backs Key Attribute 2.2, which calls for the designation of a primary regulator, where there is more than one, to coordinate recovery and resolution plans. We believe that in the event of stress conditions for an FMI, the lead regulator will have the most detailed knowledge of the FMI's internal operations, will have likely created an environment of cooperation and information sharing with the FMI, and will know the metrics by which

to judge whether the FMI's failure would have any significant market impact. It makes sense for this regulator to take the lead in any crisis involving the FMI.

Paragraphs 2.5–2.6—Activation and Enforcement of Recovery Plans. While The Clearing House fully supports the creation of a recovery regime that grants the primary regulator the power to act when the conditions require, it is important that the final report give national regulators a great deal of flexibility. Since not all FMIs are the same and not all legal systems have identical rules, it is vital that each primary regulator be permitted to develop its own assessment for when a recovery plan should be put into action. Nonetheless, a regulator should be permitted to force an FMI to act on its recovery plans only after consultation with the affected FMI, and it should be permitted to act to force an FMI to implement its recovery plan only upon a clear finding that there is no other alternative—including a finding that there are no alternatives for market participants to clear their essential transactions. Moreover, as recovery plans could impose draconian measures, the FMI and its owners and participants should have the right to seek judicial review of any decision by a regulator to force the implementation of recovery measures.

Paragraphs 2.7-2.8—Beyond Recovery. The Consultative Report recognizes that extreme financial pressures could create a situation where it can no longer continue as a going concern. In that case, the report states that "[b]ecause the traditional bankruptcy process does not have the preservation of financial stability as an objective and could cause a systemic disruption through delays or cessation of an FMI's critical functions, it is necessary to also have a resolution regime available to use on FMIs."

The Clearing House agrees that a bank-like resolution regime may be optimal in many cases, but it would not be absolutely necessary if the law of an FMI's home country provides for expedited bankruptcy proceedings. The Clearing House recommends that CPSS and IOSCO take into consideration the various differences between national legal regimes by seeking input from leading experts on insolvency law for several leading jurisdictions. Furthermore, due to the differences in insolvency law throughout the CPSS and IOSCO member states, the resolution authority should have legal as well as operational flexibility to devise a resolution regime that is consistent with local law. Moreover, public disclosure of the general outlines of an authority's resolution plans, as is currently being done in the United States by the Federal Deposit Insurance Corporation, could enhance financial stability by giving market participants confidence in the authority's ability to resolve systemically important firms without market disruptions.

Paragraph 2.8—Resolution Planning. The Clearing House agrees that FMIs should be expected to provide data and information on its plans to their primary supervisor, and that plans should be subject to close scrutiny by FMIs and their regulators. We emphatically disagree, however, with the notion that supervisors should be free not to disclose their own plans for the recovery and resolution of an FMI with the FMIs. The

close cooperation and trust that is essential to the supervisory process would be greatly impaired if FMIs believe that cooperation is a one-way street and that supervisory oversight is just a synonym for a government take over.

The Clearing House acknowledges that a resolution authority may have reasonable confidentiality concerns, but we believe that these concerns may be alleviated by limiting the access to sensitive supervisory information to select individuals within the FMI, as is currently done with examination and other sensitive supervisory information.

4. Section 3—Resolution authorities should not have the power to require an FMI owners to contribute additional capital beyond that which is required by the FMI's constituent documents.

Paragraph 3-3.3—Recovery Plans for FMIs that Do Not Take on Credit Risk. The Clearing House supports the distinction between FMIs that take on credit risk and those that do not. Even though The Clearing House recognizes the efforts made by CPSS and IOSCO to differentiate between credit-risk taking and non-credit risk taking FMIs, further expert study needs to be devoted to adequately develop and tailor principles according to the business and operational needs of various types of FMIs. Furthermore, The Clearing House also recommends that because of the complexities presented by the great variety of FMIs, CPSS and IOSCO further distinguish the applicability and suitability of these principles as applied to payment systems.

Paragraphs 3.4-3.5—Recovery. The Clearing House believes that this section needs clarification. We agree that FMIs should be adequately capitalized. If, however, an FMI runs into financial difficulties, the implication of the Consultative Report is that it should be able to go to shareholders or other parties and raise additional capital. But most FMIs will have some form of limited liability built into their constituent documents or by corporate law. For example, an FMI organized as a limited liability company may be governed by an agreement specifying that no member is required to provide additional capital. Members may voluntarily contribute additional capital, but they cannot be forced to do so. Does the Consultative Report contemplate that the supervisors have the authority to void these contracts and force owners to contribute additional capital?

Limited liability is an essential feature of corporate organization because it allows investors to limit their liability to the capital that they are willing to commit. A regulatory regime that allows regulators to void this essential feature would prompt owners to distance themselves from FMIs: members of LLCs would withdraw, and shareholders of corporate FMIs would attempt to sell their stock. It would be very difficult, if not impossible, for FMIs to find new owners or to raise new capital under such a regime.

The years since 1970 have seen the development of mobile payments, the conversion of paper checks to digital images, the advent of the automated clearing house, and the application of modern computer and telecommunications technology to a wire-transfer system that had remained essentially unchanged since the invention of the telegraph. Eliminating the ability of investors to limit their liability will cause the funds available for future innovation to dry up, and will do little, if anything, to help raise capital for troubled FMIs.

CPSS and IOSCO should clarify that the national authorities should have no authority to require the owners of an FMI to supply new capital to FMIs other than as contemplated by the FMI's own rules and constituent documents.
Paragraph 3.5- 3.7—Resolution. The Clearing House fully supports giving national authorities the power to bring FMIs into an orderly resolution but also believes that they must have legal and operational flexibility to work with FMIs within their oversight in a manner that can be tailored to meet the specific challenges faced by a particular entity.

5. Section 4 – Resolution authorities need operational and legal flexibility to implement principles within the confines of national law.

Paragraph 4.4—Tools for FMI Resolution. This section states that the resolution powers and tools outlined in the Key Attributes "are broadly applicable to FMIs much in the way that they are applicable to other financial institutions ("FI")." Not all FMIs are financial institutions, however, and while non-FI FMIs may be eligible for a bank-like resolution, this may not always be the case. In the U.S., for example, if an FMI does not have a bank charter, it can be resolved in a bank-like fashion only if its business is deemed to be financial in nature (a likely finding in the case of an FMI); and if the Secretary of the Treasury finds, among other things, that the company is in default or in danger of default, its failure would have adverse effects on U.S. financial stability, there is no private-sector alternative to resolution, and normal bankruptcy would threaten financial stability. If these conditions cannot be met, the FMI would be placed in bankruptcy. The Clearing House believes that this strikes the right balance. If there would not be any significant market impact, or if there is another system (e.g., another FMI that can absorb the troubled FMIs volume), then the FMI should not be regarded as an essential facility and it should be permitted to wind down its operations in an orderly fashion.

6. There should be predictable criteria for placing an FMI into resolution, and a regulator should not put an FMI into resolution until it has assessed the market impact of the possible failure of the FMI, both within and without the orderly resolution regime.

Paragraph 4.5 - Entry into Resolution Trigger. The Clearing House agrees that there should be clear, objective criteria to determine when an FMI is "no longer viable or likely to be no longer viable." But we disagree that viability should be the only criterion for placing an FMI into receivership. Market impact and the availability of another FMI that

can take over the troubled FMI's transactions should also be considered before an FMI is placed into a special resolution regime.

Key Attribute 3.2(iii)-Power to Operate FMI: We agree with CPSS and IOSCO that if an FMI is placed into resolution, the goal should be to continue its essential services until it can be wound down in a way that will not cause market disruption and that this will require whatever powers are necessary to make that occur. Nonetheless, several important questions remain. First, given that extraordinary intervention should occur only if an FMI's cessation would cause systemic harm, what objective criteria can be established to determine when such a level of harm is likely to occur? Second, how can the FMI's essential functions be separated from the corporate entity that provides those functions? A firm may provide several services, only one of which can be considered systemically important. What should be done with those other services? If the firm itself is financially strong but it has decided to exit the business that is regarded as systemically important because that business is no longer profitable, or if the firm decides that the business is no longer central to its strategic plans, does this fact justify the takeover of the entire firm? If not, how can the systemically important activities be separated from the rest of the firm? We reject the notion that a firm that started a business many decades ago is condemned to continue providing those services, regardless of the financial consequences to the firm or its owners, until the end of time simply because regulators have decided that it is important or serves important markets.

The Clearing House recommends that CPSS and IOSCO incorporate an ex ante market-impact test into the recovery and resolution plans of each FMI. This will enable senior management and owners of a particular FMI to know in advance whether the potential failure of their FMI would be considered market-impacting, and in turn senior management would know whether it could unilaterally close down a money-losing firm.

7. CPSS and IOSCO need to devote greater attention to the variety of FMI organizational structures and understand the implications of this complexity for proposals for uniform recovery and resolution standards.

(a) Bail-in would not be an option where an FMI does not issue substantial debt.

(b) Subjecting owners of FMIs to potentially unlimited liability may cause owners to try to exit from these investments, making it hard for FMIs to raise capital.

Paragraph 4.6: This section references key attribute 3.2(xi), which proposes a moratorium on outgoing payments once an FMI has entered into resolution and asks

how a moratorium would affect payment systems. With respect to CHIPS, The Clearing House merely provides a mechanism through which a sending participant can transmit a payment message to a receiving participant and settle its obligation to pay the amount of that message to the receiving participant. The Clearing House does not itself incur any payment obligation with respect to any of the payment messages processed through CHIPS (nor with respect to any of its other payment services). PaymentsCo would, of course, have to be able to pay its employees and certain service providers (e.g., telecommunications providers and the Federal Reserve Bank of New York) but a moratorium would not affect its ability to manage the prefunded balance account and complete the settlement of CHIPS payment messages. CPSS and IOSCO should also consider how a moratorium on payments by an FMI would accord with the legal provisions protecting clearing organization netting, which typically provide for the enforcement of netting contracts, limit the ability of parties to those contracts (including the netting organization itself) to avoid their obligations under the contract, and limit the application of automatic stays in bankruptcy and similar proceedings to netting contracts.[3]

Key Attribute 3.5- Bail-in Within Resolution: The report calls for the power of a resolution authority to require a bail-in of an FMI, or convert debt instruments into equity to provide needed equity after the shareholders have been wiped out. This will work, however, only if the FMI has issued debt instruments. Not all have, and it is unclear how a bail-in will work if an FMI has no debt.

Paragraph 4.20-4.22 Funding of Firms in Resolution: Paragraph 4.22 references Key Attribute 6.2 and states,

> [w]here temporary sources of funding to maintain essential functions are needed to accomplish orderly resolution, the resolution authority or authority extending the temporary funding should make provision to recover any losses incurred (i) from shareholders and unsecured creditors subject to the "no creditor worse off than in liquidation" safeguard (see Key Attribute 5.2); or (ii) if necessary, from the financial system more widely.[4]

The lack of specificity as to the source from which the resolution authority would obtain additional funding for the FMI's resolution, and potential ability to require owners for the continued operation of a failed FMI's operations—despite the limited liability that owners have a right to expect—are deeply troubling. Requiring FMIs to expand loss mutualization rules upwards to owners without any clear limits may cause those owners to try to cease their affiliations with the FMIs. This would be counterproductive in that it would make it difficult for FMIs to raise capital.

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[3] See, e.g., 12 U.S.C. §§ 4401–4422. We understand that other jurisdictions have similar provisions.

[4] Consultative Report at 26 (quoting Key Attribute 6.2).

As noted earlier in this letter The Clearing House is preparing a study on financial stability and CCPs that will be completed by the end of October 2012. Part of this study will outline concerns and proposals for solving the "end of waterfall" questions posed to CCPs upon a clearing member's default. We urge CPSS and IOSCO to consider this report in its further consideration of the issues regarding FMI recovery and resolution.

In the payment system sphere, The Clearing House recommends that CPSS and IOSCO take note a number of FMIs house several FMIs within a single corporate structure. Care should be taken to ensure that problems with one FMI does not imperil the viability of the others or that owners of the firm do not become responsible for the failure of the participants in their FMIs.

The Clearing House recommends CPSS and IOSCO seek further input from FMIs and other stakeholders on how failing FMIs could be recapitalized without mandatory capital calls on owners.

8. Power to force an FMI into resolution, and the power to force changes in an FMI's business practices, structure, or organization should be strictly limited.

Paragraph 4.23-Resolvability Assessments: This section cross-references key attribute 10.1 which proposes that resolution authorities engage in regularly occurring assessments of the feasibility of an FMI's recovery and resolution plans. The Clearing House supports this proposal.

Key Attribute 10.5-Power to Change Company Structure: The Clearing House is concerned that the wide scope of powers given to the resolution authority may go beyond the optimal level of intervention that should be reserved for winding down a failed FMI. The Consultative Report proposes that the resolution authority be given the power to change a firm's business practices, structure, or organization in order to reduce complexity and costliness of resolution.[5]

The Clearing House believes that if a resolution authority is to have this power, it should be strictly limited to situations in which an FMI has already been placed into resolution, the FMI's services have been specifically found to be essential to important markets, and the failure to continue the services will have significant negative effects on financial stability, and there is no alternative to the proposed restructuring.

Key Attribute 11.6-Resolution Plan: CPSS and IOSCO state that FMIs should develop plans to recover from situations of stress and that authorities should develop plans to restore an FMI to viability or wind it down in case it cannot be restored to health. The Clearing House agrees with the general thrust of this recommendation but makes the following observations:

[5] Consultative Report at 31.

1. It should be standard practice for an FMI to have plans to meet all of the foreseeable threats to its operation, whether financial, operational, or other. But it is not possible to conceive of everything. FMIs should regularly review their plans with their primary regulators and discuss the potential threats to ensure that these plans are current.

2. CPSS and IOSCO state that resolution plans are the responsibility of authorities, but it would seem better to have FMIs do the initial resolution planning. Regardless of how intrusive a regulator is, an FMI will always know more about its business—the organization, capital structure, essential employees, key contracts with vendors, etc.—than a regulator will. Thus it makes sense for an FMI to work with its regulator to develop an initial resolution plan, which the receiver can modify as needed if the FMI is placed into resolution.

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We hope these comments have been helpful. We would be pleased to consult with CPSS and IOSCO as they continue work on this important topic, and we would like to be included in the meetings with FMIs and other stakeholders that we have recommended in this letter. If you have any questions, please contact me at joe.alexander@theclearinghouse.org or 212-612-9234.

Very truly yours,

Joseph R. Alexander
Senior Vice president, Deputy
General Counsel, and Secretary

cc: Ms. Louise L. Roseman
Board of Governors of the Federal Reserve System

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