# Financial Services User Group's (FSUG)

# reply to the Consultation document

on a possible recovery and resolution framework for financial institutions other than banks

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## FSUG was set up by the European Commission to:

- advise the Commission in the preparation of legislation or policy initiatives which affect the users of financial services
- provide insight, opinion and advice concerning the practical implementation of such policies
- proactively seek to identify key financial services issues which affect users of financial services
- liaise with and provide information to financial services user representatives and representative bodies at the European Union and national level.

FSUG has 20 members, who are individuals appointed to represent the interests of consumers, retail investors or micro-enterprises, and individual experts with expertise in financial services from the perspective of the financial services user.

# Introduction

**FSUG** welcomes this consultation as a significant step towards the completion of the post crisis reform agenda. Our contribution to the consultation is provided from a financial services consumer perspective and does not enter deeply into the specific technical issues involved. Our concerns are, to the greatest extent possible, the elimination of risks and operational failure that can give rise to consumer detriment and additional costs on them and taxpayers generally. We support the attempts of policymakers and regulatory authorities to identify potential risk and strengthen risk management pertaining to the myriad transactions and trades that are inherent to the business of a wide range of financial business transactions and services performance.

Moves to strengthen the governance, capital, liquidity, operational risk management, direct trades and settlements, and clearing through central counterparties, together with reporting to central depositories derived from both regular and shadow banking activities are to be welcomed as a regulatory response and should bring greater security and risk mitigation in their wake. In addition, FSUG recognizes the existence of the directive to ensure that banks are now required to undertake suitable planning processes and 'living wills' to be triggered in the event of insolvencies or being overwhelmed by systemic risks.

FSUG, in responding to the consultation on Shadow Banking, pointed to the global nature of markets and market players participation and emphasized that EU efforts alone would not address such issues as contagion and regulatory arbitrage. We recommended the need for information sharing and regulation coordination at international level.

We agree that a recovery and resolution framework, similar to that now implemented for the banking sector, should be put in place for Financial Markets Infrastructures (FMIs), payments systems providers, and insurance undertakings which will take into account their particular roles, specificities and functions so as to provide regulatory authorities with the appropriate mechanisms and powers to address in a pre-emptive manner any crises emerging in their sphere of operations, so as to maintain financial stability and mitigate exposures and losses to tax-paying EU citizens.

However, we would like to point out that the currently proposed framework for nonbanks differs from that for banks in one very important aspect: it does not contain any suggestions for monitoring and prevention. The consultation document clearly notes that the focus of the current framework is "*not on the regulation which is necessary to mitigate the risks and negative externalities inherent in the business*" and "*not on prudential or market conduct rules*" but rather "*on what is variously termed crisis management or recovery and resolution*".

The document recognises that certain financial institutions need to be covered by recovery and resolution regimes to ensure continuity of service and protect the real economy from major disruptive impacts. In effect, some of these infrastructure institutions fulfil the role of 'network utilities' in the real economy – these are socially important as well as systemically important financial institutions. But, the need for recovery and resolution schemes is nowadays greatly increased because of the sheer scale, risk and complexity of operations and activities undertaken by certain of these systemically and socially important financial institutions. Moreover, the socially useful

network utility and infrastructure functions are mixed up with operations to support activities relating to market speculation or proprietary trading. It is self-evident that reforming the structure and governance of socially important financial institutions and improving *ex ante* pre-emptive regulations would reduce the need for recovery and resolution schemes – which by definition will have uncertain outcomes – to be implemented at times of crisis.

We believe that the prevention aspect should be a part of an integrated regulatory framework. Such a recovery and resolution framework might include the ability for authorities to insist that non-banking entities prepare plans and foresee actions to anticipate and minimize risk and disruptions; where emerging problems are identified the authorities should be vested with adequate powers of early intervention to stabilize a deteriorating financial or operational situation that could ultimately lead to insolvency or the loss of an essential difficult-to-substitute service provision. Where the ultimate failure of an entity is inevitable there should be powers of reorganization and wind-down available so as to minimize losses and the disruption of service provision.

FSUG endorses the twelve Key Attributes set out by the Financial Stability Board that are considered essential to any restructuring and resolution regime to assist with the resolution of any financial entity, whatever its size, location or financial business model, considered to be of critical and systemic importance, so that tax payers are not exposed to pay the costs and to avoid large scale service provision disruption. We believe that these attributes and approach should be extended and apply to recovery and resolution plans of all non-bank FMIs, insurance undertakings and types of other financial institutions such as payment systems, payments institutions, investment funds, and trading venues. The existence of a clear mandate for authorities and the enactment of an adequate legal framework for domestic and cross-border resolution measures are essential, with the key attributes mentioned above suitably adapted to the individual requirements and characteristics of the various FMIs, financial service providers and insurers.

FSUG recommends that a proposal for a Directive setting out a suitable framework for the recovery and resolution of non-banking systemically important FMIs, insurance and payments entities proceed with the object of protecting financial stability and minimizing tax-payer exposure that might arise from the failure of entities as set out in this consultation.

## General principles for schemes

FSUG takes the view that there should be a consistent recovery and resolution framework constructed around common principles covering all types of systemically or socially important financial institutions. However, clearly the application of the framework principles should be tailored to account for: i) the different type of services provided and activities undertaken by categories of institution; and ii) the degree of substitutability and risk associated with the activities undertaken by institutions. For example, CCPs and CSDs provide different services to their clients and there can also be differences between bodies in each category (for example, there are CSDs which also provide banking-type or other ancillary services to their participants).

We are not in a position to comment on specific thresholds for triggering the implementation of schemes. But clearly regulatory and resolution authorities - using their

detailed knowledge of the market and individual financial institutions – should develop a set of qualitative and quantitative thresholds which would trigger intervention. These threshold conditions should form part of the routine reporting and supervision process to ensure that regulatory authorities have the most current information on the state of systemically and socially important financial institutions.

More generally, in addition to appropriate threshold conditions, if a new resolution regime is to work effectively in terms of responsiveness to crises and minimising disruption to systemically and socially important financial services, certain conditions must apply.

In addition to the key attributes set out by the Financial Stability Board, we suggest that the regulatory authorities adopt the following principles when establishing the resolution framework and specific schemes.

- **Fit-for-purpose**: schemes should be designed to deal with the specific nature of the activities and risks associated with the financial institution (or categories of institution);
- **Robustness:** schemes should be able to deal with adverse, unforeseen, stressful financial events;
- **Ease of implementation:** schemes must be able to be implemented urgently and smoothly to avoid disruption and promote continuity of service;
- **Adaptability:** supervisors and senior management of financial institutions should update and amend schemes to reflect changes to the institution's activities and risks and exposures;
- **Legal security:** schemes must be protected from external legal challenge;
- **Governance and oversight:** regulatory and resolution authorities should ensure they have necessary, sufficient powers and schemes are subject to robust, independent scrutiny and oversight to ensure that vested interests cannot take advantage of the resolution process to gain financial advantage; and
- **Ownership and responsibility:** developing suitable schemes requires the participation of authorities and financial institutions. However, to ensure schemes are developed and implemented when needed requires leadership and ownership. This role should always be undertaken by the appropriate authorities – using external, approved experts where necessary.

To ensure these principles are met, the following measures should be adopted:

- **Risk-rating:** to ensure schemes are fit-for-purpose and robust enough to deal with the systemic importance and risks associated with specific financial institutions, regulatory authorities should risk rate institutions to determine the scope and detail of specific resolution regimes and procedures for triggering the operation of these schemes in the event of the financial institution getting into trouble. The risk rating system should take into account i) social and/ or systemic importance, ii) interconnectedness and therefore potential for market disruption, iii) concentration risks;

- **Stress testing:** we cannot afford to wait to test the effectiveness of these schemes ex-post. Therefore, these schemes should be stress tested as far as possible using simulations of adverse and extreme market events before being approved by regulatory authorities. Schemes should also be subject to a system of continuous approval and regular stress testing to ensure schemes remain fit-for-purpose; and

- **Legal/ regulatory powers** and duties: regulatory authorities should undertake a review of existing legal powers to ensure they can implement schemes. Moreover, senior management (current and previous senior management - where relevant) should be subject to set of specific regulatory duties in relation to the implementation of schemes. This should include duties to co-operate, report and disclose information to relevant authorities in a timely and honest manner. Breach of these duties should be subject to regulatory sanctions.

In the following paragraphs, we follow the document's groupings and present our views respectively.

## FINANCIAL MARKET INFRASTRUCTURES: CENTRAL COUNTERPARTIES AND CENTRAL SECURITIES DEPOSITORIES

# General

**Questions:**

(1) *Do you think that a framework of measures and powers for authorities to resolve CCPs and CSDs is needed at EU level or do you consider that ordinary insolvency law is sufficient?*

(2) *In your view, which scenarios/events might lead to the need to resolve respectively a CCP and a CSD? Which types of scenarios CCPs/CSDs and authorities need to be prepared for which may imply the need for recovery actions if not yet resolution?*

(3) *Do you think that existing rules which may impact CCPs/CSDs resolution (such as provisions on collateral or settlement finality) should be amended to facilitate the implementation of a resolution regime for CCPs/CSDs?*

(4) *Do you consider that a common resolution framework applicable to CCPs and CSDs is desirable or do you favour specific regimes by type of FMIs?*

(5) *Do you consider that it should only apply to those FMIs which attain specific thresholds in terms of size, level of interconnectedness and/or degree of substitutability, or to those FMIs that incur particular risks, such as credit and liquidity risks, or that it should apply to all? If the former, what are suitable thresholds in one or more of these respects beyond which FMIs are relevant from a resolution point of view? What would be an appropriate treatment of CSDs that do not incur credit and liquidity risks and those that incur such risks?*

(6) *Regarding FMIs (some CSDs and some CCPs) that are also credit institutions is the proposed bank recovery and resolution framework sufficient or should something in addition be considered? If so, what should the FMI-specific framework add to the bank recovery and resolution framework? How do you see the interaction between the resolution regime for banks and a specific regime for CCPs/CSDs?*

A primary objective of an effective resolution regime is to ensure the continuity of critical services. This may be achieved through a number of means including: the orderly transfer of functions to another provider if available; the creation of bridging arrangements or if financially and administratively feasible the restoration of the FMI's financial capacity or technical ability, preferably at a cost to the entity's users but certainly at a cost other than to tax payers. We again wish to underline the need to encourage and enforce the adequate sharing of critical information for the work of the resolution process while at the same time safe-guarding and protecting adequate levels of confidentiality.

FSUG points out that the Central Securities Depositories (CSDs) are systemically important institutions for the financial markets.1 CSDs enable settlement by operating securities settlement systems and also ensure the initial recording and the central maintenance of securities accounts that record how many securities have been issued by whom and each change in the holding of those securities. "Securities settlement systems in the EU settled approximately €920 trillion worth of transactions in 2010, and held almost €39 trillion of securities at the end of 2010." 2

A second general comment is that there should also be a monitoring and prevention tool for FMIs. This is something that is also being suggested in the recent Consultative Report of the Bank of International Settlement3 which clearly refers to preventive measures. We believe that these should be a part of the new framework.

We believe that the choice of the authority or authorities responsible for resolution in each Member State should be left to national discretion. National authorities are expected to be more flexible and carry less administrative costs than a single European single authority for all Member States. Nevertheless, a European Authority is vital to ensure a high level of harmonization in insolvency regimes across all Member States, to resolve potential disagreements between national resolution authorities, to coordinate responses to a cross border crisis and, where necessary.

FSUG believes that existing insolvency law is not sufficient to resolve CCPs and CSDs at EU level. First, insolvency law is not consistent EU-wide: it varies considerably from one Member State to another, and there is a clear need for some harmonised rules. Second, insolvency law procedures are often very protracted – payments to creditors from the 2008 Lehman Bros failure have only just started.

# Objectives

**Questions:**

(7) *Do you agree that the general objective for the resolution of CCPs/CSDs should be continuity of critical services?*

(8) *Do you agree with the above objectives for the resolution of CCPs/CSDs?*

(9) *Which ones are, according to you, the ones that should be prioritized?*

(10) *What other objectives are important for CCP/CSD resolution?*

We believe that the general objective for the resolution of FMIs should be a combination of continuity of critical services by maintaining the overarching objective of minimizing the exposure and the costs to taxpayers, safe-guarding EU citizens' assets, and especially pension funds as a key objective.

[1] (see FSUG-opinion on CSD: http://ec.europa.eu/internal_market/finservices-retail/docs/fsug/opinions/csd_securities_settlement-2011_06_30_en.pdf

[2] Source of figures: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52012PC0073:EN:PDF

[3] http://www.bis.org/publ/cpss103.pdf

We would also like to point out as well, that an important objective should be to ensure that the effective use of schemes should fit well with preventive measures and tools, and on-going supervision.

# Recovery and Resolution plans

**Questions:**

(11) *What should be the respective roles of FMIs and authorities in the development and execution of recovery plans and resolution plans? Should resolution authorities have the power to request changes in the operation of FMIs in order to ensure resolvability?*

(12) *To what extent do you think that CCPs/CSDs in cooperation with their users would be able to define efficient recovery and resolution plans on the basis of amendments to their contractual laws?*

Under the general FSUG approach, which focuses on the users of financial services, we believe that both FMIs and authorities should construct effective and realistic recovery and resolution plans, which respect the overarching objective of minimizing the exposure and the costs of taxpayers.

See above, for FSUG recommendations on principles for establishing resolution schemes and duties.

# Resolution triggers

**Questions:**

(13) *Should resolution be triggered when an FMI has reached a point of distress such that there are no realistic prospects of recovery over an appropriate timeframe, when all other intervention measures have been exhausted, and when winding up the institution under normal insolvency proceedings would risk causing financial instability?*

(14) *Should these conditions be refined for FMIs? For example, what would be suitable indicators that could be used for triggering resolution of different FMIs? How would these differ between FMIs?*

(15) *Should there be a framework for authorities to intervene before an FMI meets the conditions for resolution when they could for example amend contractual arrangements and impose additional steps, for example require unactivated parts of recovery plans or contractual loss sharing arrangements to be put into action?*

We believe that resolution triggers could be substantially facilitated by the existence of preventive measures and tools. These measures and tools should also help authorities prevent FMIs from reaching a position under which resolution is triggered.

# Resolution powers

**Questions:**

*(16) Should resolution authorities of FMIs have the above powers? Should they have further powers to successfully carry out resolution in relation to FMIs? Which ones?*

*(17) Should they be further adapted or specified to the needs of FMI resolution?*

*(18) Do you consider that temporary stay on the exercise of early termination rights could be a relevant tool for FMIs? Under what conditions? How should it apply between interoperated FMIs? How should it be articulated with similar powers to impose temporary stays in the bank resolution framework?*

*(19) Do you consider that moratorium on payments could be a relevant tool for all FMIs or only some of them? If so, under what conditions?*

# Resolution tools

**Questions:**

*(20) Which reorganisation tools could be appropriate for resolving different types and CSDs and CCPs? What would be their advantages and disadvantages?*

*(21) Which loss allocation and recapitalisation tools could be appropriate for resolving different types of CSDs and CCPs? Would this vary according to different types of possible failures (e.g. those caused by defaulting members, or those caused by operational risks)? What would be their advantages and disadvantages?*

*(22) What other tools would be effective in a CCP/CSD resolution?*

*(23) Can resolution tools based on contractual arrangements be effective and compatible with existing national insolvency laws?*

# Group Resolution

**Questions:**

*(24) Do you consider that a resolution regime for FMIs should be applicable to the whole group the FMI is a part of? What specific tools or powers for the resolution authorities should be designed?*

We believe that there should be both entity-specific and group preparatory recovery plans. There can be cases where an entity may independently and successfully implement a recovery plan without affecting the Group as a whole. On the other hand, in case entity-specific plans that lead to a resolution jeopardize the Group as a whole,

there must be a plan to control these issues as well. Thus, the availability of plans in both levels, though more costly, offers more alternatives.

# Cross border resolution

**Questions:**

(25) *In your view, what are the key elements and main challenges to take into account for the smooth resolution of an FMI operating cross-border? What aspects and effects of any divergent insolvency and resolution laws applicable to FMIs and their members are relevant here? Are particular measures needed in the case of interoperable CCPs or CSDs?*

(26) *Do you agree that, within the EU, resolution colleges should be involved in resolution issues of cross border FMIs?*

(27) *How should the decision-making process be organized to make sure that swift decisions can be taken? Alternatively, do you think that responsibility for resolving FMIs should be centralised at EU-level?*

(28) *Do you agree that a recognition regime should be defined to enable mutual enforceability of resolution measures?*

(29) *Do you agree that bilateral cooperation agreements should be signed with third countries?*

In the context of our answer in the first group of questions, we believe that the choice of the authority or authorities responsible for resolution in each Member State should be left to national discretion, while a European single authority would ensure a high level of harmonization. In any case, national authorities should closely cooperate to avoid any dispute in the case of cross-border consequences, should an FMI be forced to resolve.
To tackle resolution issues that affect EU's relation with third countries, we believe that the European Authority should cooperate with third countries and harmonize both regimes the most possible, on common principles developed jointly.

# Safeguards

**Questions:**

(30) *Do you agree that the resolution of FMIs should observe the hierarchy of claims in insolvency to the extent possible and respect the principle that creditors should not be worse off than in insolvency?*

We agree to the extent that both are possible in each specific case.

## INSURANCE AND REINSURANCE FIRMS

FSUG bears in mind the systemic importance of European insurance undertakings and the large number of policyholders which might be gravely affected by detrimental developments, in particular of companies providing life insurance contracts. Insurance Europe, the European insurance and reinsurance federation, figures out that in in 2010, the largest components of European insurers' investment portfolio were debt securities and other fixed income assets (41%), followed by shares and other variable-yield securities (33%). Loans represented 11% of the total.4 Other market figures show that developments in the total investment portfolio are mainly driven by life business, since the investment holdings of the life insurance industry account for more than 80% of the total. The UK, France and Germany are the most significant market players, illustrated by the fact that they jointly account for over 60% of all European life insurers' investments.5

# General

**Questions:**

(1) *Are the resolution tools applicable to traditional insurance considered above adequate? Should their articulation and application be further specified and harmonised at EU-level?*

(2) *Do you think that a further framework of measures and powers for authorities, additional to those already applicable to insurers, to resolve systemically relevant insurance companies is needed at EU level?*

(3) *In your view, which scenarios/events might lead to the need to resolve a systemically relevant insurance company? Even before that, which types of scenarios systemic insurers and authorities need to be prepared for which may imply the need for recovery actions if not yet resolution?*

From consumers' perspective it is important that policyholders have confidence in traditional insurance by the setup of effective Insurance Guarantee Schemes (IGS). The Whitebook on Insurance Guarantee Schemes (IGS) of EC stated that neither the solvency I-rules nor the Solvency II-regime could create a zero-failure environment for insurance companies. According to assumptions in the Whitebook on IGS, historical data and model estimations showed that the probability of default of insurance companies generally would range from 0.1% under normal economic conditions to 0.5% under exceptional conditions such as a financial crisis or where insurers would face particular difficulties in a specific EU country. The consequences of default, notwithstanding existing IGSs, might result in losses being passed on to EU policyholders or taxpayers. The Whitebook assumed: "In extreme cases these losses

4 http://www.insuranceeurope.eu/ebook/key_facts_2012/files/assets/downloads/publication.pdf (page 6 und 7)

5 ibid

may amount to as much as €46.5 billion for both life and non-life policies over a one-year time horizon. This is equivalent to around 4.4% of the total gross written premiums in the EU in one year. To illustrate this point, between 1996 and 2004 more than 130 insurers became insolvent in the EU and the 2009 failure of a Greek insurance group affected around 800,000 policyholders." 6

FSUG welcomes capital requirements and adequate supervisory powers, effective risk management and comprehensive governance structures which have to be complemented by a harmonised depository system to protect consumers directly against potential losses. These measures supposedly result in higher policyholders' confidence and therefore would enforce financial market stability in the long run. However it should be noticed that traditional insurance requires in most cases just usual supervision, and additional capital requirements should be introduced according to non-traditional insurance activities or any kind of link with non-insurance activity. Optionally non-traditional insurance could be separated from traditional insurance in a way that assure no consequences for traditional insurance portfolio, analogous to retail and investment banking.

Policyholders may not threaten the stability of an insurance company by an "insurance run" as bank clients might do by ruinous bank runs when withdrawing deposits without period of notice. Nevertheless FSUG wishes to figure out the fact that a high number of life insurance contracts are prematurely determined by policyholders. In many cases policyholders incur high losses by low surrender values. One of the reasons for policyholders' cancellations of insurance contracts before due date is reduced confidence in life insurance contracts.

The inconsistency of national EU Member States' insolvency laws warrants a minimum harmonisation at EU-level. EU authorities should seek to further minimise the impact of insurance insolvencies on EU citizens in general, and on insurance policy holders in particular. The protection of insured people should be further harmonised at EU level by fully harmonising IGS in Member States. For example, in France Mutual still do not guarantee insured clients' assets up to €100,000. This absence of any IGS concerns in particular a mutual pension fund with about 400,000 participants. Experience and evidence show that IGSs are a much more effective and quicker tool to minimize the impact of insolvencies than any other legal proceedings.

What requires a minimum harmonisation on European level is an existence of bridge institution for particular group of policies. This need will increase in the future as availability of products depends on age, for example long–term care or health insurance price policy. In case of such products continuity is much more important than any guarantees.

[6] http://ec.europa.eu/internal_market/consultations/docs/2010/whitepaper-on-igs/whitepaper_en.pdf, page 4

# Objectives

**Questions:**

*(4) Do you agree with the above objectives for resolution of systemic insurance companies? What other objectives could be relevant?*

Systemic risk is not the only problem as the protection of policy holders is also a very important one.

# Recovery and resolution plans

**Questions:**

*(5) Do you think that recovery plans should be developed by systemic insurers and resolution plans by resolution authorities? Do you think that resolution authorities should have the power to request changes in the operation of insurers in order to ensure resolvability?*

At the very least, Living Wills should be finalised and regularly updated by systemic insurers.
Special stress tests should be introduced for systemic insurers, and based on results of such stress test insurers should provide updated recovery plans on a regular basis. Resolution authorities could have the power to request changes in the operation of insurers in order to ensure resolvability, however those measures should be checked from the perspective of competitiveness of the insurance market.

# Resolution triggers

**Questions:**

*(6) Do you agree that resolution should be triggered when a systemic insurer has reached a point of distress such that there are no realistic prospects of recovery over an appropriate timeframe, when all other intervention measures have been exhausted, and when winding up the institution under normal insolvency proceedings would risk causing financial instability?*

*(7) Should these conditions be refined? For example, what would be suitable indicators that could be used for triggering resolution of systemic insurers?*

Resolution should be introduced on an individual entity basis. The powers of resolution authorities should be precisely defined. Due to the dynamics of financial market it is not appropriate to define any kind of indicators.

# Resolution powers

**Questions:**

*(8) Do you agree that resolution authorities of insurers could have the above powers? Should they have further powers to successfully carry out resolution in relation to systemic insurers? Which ones?*

*(9) Should they be further adapted or specified to the specificities of insurance resolution?*

The resolution authority must assure that it has competences characteristic for the specific insurance activity. The level of competences should guarantee appropriate usage of above mentioned powers.

# Resolution tools

**Questions:**

*(10) Would the tools mentioned above be appropriate for the resolution of systemic insurers? What other tools should be considered and why?*

Yes. Especially separation of non-traditional insurance activities from traditional activities seems to be appropriate.

# Group and cross-border resolution

**Questions:**

*(11) Do you think that, within the EU, resolution colleges should be set up and involved in resolution issues of cross border insurance groups?*

*(12) How could the decision-making process be organized to make sure that swift decisions can be taken? Should this be aligned with the procedures already set out in Title III of Directive 2009/138/EC?*

*(13) Alternatively, do you think that responsibility for resolving systemic insurers should be centralised at EU-level?*

*(14) Do you think that a recognition regime should be defined to enable mutual enforceability of resolution measures?*

*(15) Do you think that to this end bilateral cooperation agreements could also be signed with third countries?*

Enforceability of resolution measures is desired, however resolution scheme for cross border insurance group should be organised in a way that allows Member States to represents their interest.

## PAYMENT SYSTEMS AND OTHER NONBANK FINANCIAL INSTITUTIONS/ENTITIES

As the consultation paper outlines there are a range of other non-bank systems and institutions which provide payment, trading and investment services which are substantial in terms of volume and critical for the working of the financial services industry in Member States , cross border and on an international level. The Committee on Payments and Settlement Systems, CPSS, sets out in its Report 2012- Core Principles for Systemically Important Payments Systems- a Matrix of applicability of Key Considerations to specific types of FMIs. The Report also considers, among other matters, risks attributed to a variety of FMI entities, their governance arrangements, risk management policies and procedures, and particularly orderly recovery and wind down procedures. We would like to suggest that a similar exercise might be undertaken in respect of any entities included in the scope of this Consultation which are not included in the CPSS Report or other similar investigations so as to clearly identify what are the suitable and proportional arrangements for recovery and resolution planning. We would emphasise “proportional” taking into account the nature and criticality of services provided; whether Payments Institutions are allowed direct access to clearing and settlement in respect of internet, m-payments and card systems etc. Similarly investment funds and types of trading firms may take on systemic importance for the various reasons or combinations of them as mentioned in the Consultation. Further works needs to be done to fully understand the relationship and impacts of these existing and emerging non-bank and shadow banking institutions on the overall financial infrastructure and on overall financial stability with tools and metrics developed for impact measurement.

FSUG supports the view that there should be a requirement for stabilisation and resolutions planning in respect of these other non-bank financial institutions and that costs should not have to fall on the shoulders of citizen taxpayers.

### Questions:

*(1) Do you agree with the above assessment regarding payment systems, payment institutions and electronic money institutions? Alternatively, do you consider that either (or both) would merit further consideration as to their ability, first, to give rise to systemic risk and, second, the need for possible recovery and resolution arrangements in response?*

*(2) Besides those covered in previous sections of this paper, which other nonbank financial institutions can become systemically relevant and how? Depending on the type of institutions, what are the main channels through which such systemic risks are transmitted or amplified?*

*(3) In your view, what could be meaningful thresholds in relation to the factors of size, interconnectedness, leverage, economic importance or any other factor to determine the critical relevance of any other nonbank financial institution?*

*(4) Do you think that recovery and resolution tools and powers other than existing insolvency rules should be introduced also for other nonbank financial institutions?*

(5) *In your view, what could then be meaningful points of failure at which different types of other nonbank financial institution could be considered to fulfil the conditions for triggering?*

(a) *The activation of any pre-determined recovery measures; or*

(b) *Intervention by authorities to resolve the entity?*

(6) *With respect to possible preventive and preparatory measures:*

(a) *Do existing regulatory frameworks applicable to other nonbank financial institutions provide for sufficient safeguards, in particular with respect to their governance structures, market/counterparty/liquidity risk management, transparency, reporting of relevant information and other etc.?*

(b) *Are supervisors equipped with sufficient powers to be able to collect information and monitor the various types of risks existing or building up in the particular nonbank financial sector/institution?*

(c) *Are additional supervisory powers needed to ensure de-risking and prevent overly complex and interlinked operations?*

(d) *Would recovery and resolution plans be necessary to be introduced for all or only some of these institutions? Why?*

(7) *With respect to possible early intervention powers and measures:*

(a) *Do existing regulatory frameworks applicable to other nonbank financial institutions provide for effective early remedial actions of supervisors aimed at correcting solvency or operational problems at an early stage?*

(b) *What other early intervention powers could be introduced?*

(8) *With respect to possible resolution measures and tools:*

(a) *Should administrative, non-judicial procedures and tools for the restructuring or managed dissolution of other failing nonbank financial institutions be introduced?*

(b) *Depending on the entity, what could be the appropriate and specific resolution tools to be used? For which institutions are certain resolution tools or techniques not relevant? Why?*

We are broadly in agreement with the assessment of the Payment Systems, PIs and EMIs and support the view that sufficient consideration should be given to ascertaining their ability to give rise to systemic risk and where this is found to be the case that it would be consistent that recovery and resolution plans other than existing insolvency rules be introduced for all these other non-banking entities. Where it is necessary to activate pre-existing plans this should fulfil the required conditions for triggering. FSUG also suggests that adequate powers should be available to supervisors to collect data, monitor risk build up and where this is evident enforce such remedial action as shedding liabilities , deleveraging balance sheets, forced management/ governance changes , reduction of business complexity and the interlinking of operations.

Again, we strongly emphasise that taxpayers should not be burdened with any related or resultant costs