

Via Electronic Mail (fsb@fsb.org)

10th March, 2017

Financial Stability Board
Bank for International Settlements
CH-4002 Basel, Switzerland

RE: FSB Consultation Guidance on Central Counterparty Resolution and Resolution Planning

Dear Board Members:

The Clearing Corporation of India Ltd (CCIL), is a central counter party operating in the OTC space in the Indian jurisdiction. It is incorporated in 2001 and registered as a company under the Companies Act, 1956 and given licence by Reserve Bank of India (RBI) to operate under the Payment and Settlement Systems Act, 2007 in the larger Payment systems such as Government Securities, Collateralised Borrowing and Lending Obligations (CBLO), a money market product approved by RBI, Derivatives in IRS and FRA. CCIL has been operating as a Central Counter Party in all these Payment systems except in case of derivatives transactions in which it has commenced the guaranteed settlement recently.

We are supportive of all FSB and CPMI initiatives towards promotion of evolving best of standards for recovery and resolution of CCPs as the main objective of a good recovery and resolution is to ensure market stability and mitigate systemic risks. We place on record our sincere appreciation of the efforts initiated by FSB in this direction dedicated for the purpose of smooth conduct of the financial markets.

CCIL has participated in the FSB sponsored discussions with members of the industry as also the workshop conducted by CPMI on recovery and resolution and have subsequently given our comments on Guidance note. As member of CCP 12, we have also given our comments through CCP 12 on recovery and resolution in the past as also on this Consultative Document. In addition to the comments given by CCP 12, each of which we endorse, we would like to further add to those comments on the Consultative Document.

At the outset, we would like to draw your kind attention to a proposed legislative framework in India that deals with CCP resolution in the country. The draft Financial Resolution and Deposit Insurance Bill is available on the link: <http://finmin.nic.in/fslrc/FRDI%20Bill-27092016.pdf> The provisions of the draft Bill appears to be broadly in line with the proposals stated in the Consultative Document.

However, the triggers for leading the central counterparty to resolution may be delineated at granular levels based on low, moderate, imminent and critical risk scenarios subject to the discretion to be vested with the authorities. Similar dispensation has been provided in the draft Bill.

While we are in agreement with the broad framework laid down in this Consultative Document, we wish to specifically comment on the following points:

- a. We are in agreement to the Section 2.7 of the Consultative Document on forced allocation. We are of the view that forced allocation, as a recovery tool is expected to provide an incentive for clearing members to bid actively in any auction process which a CCP initiates as part of a default handling mechanism. Forced allocation as a recovery tool would help contain the tide of systemic risks and ensure smooth functioning of the financial system.
- b. While we are broadly in agreement with the Powers for non-default losses, set out in the Consultative Document, there may be some non-default losses which are not arising out of the actions of a CCP or beyond the control of CCP. For instance, in respect of investment risks, such risks shall be shared by the users to the extent they become beneficiaries of such investments. If the investment policies, that are laid out in accordance with law and approved by the appropriate authority and shared with the users, or where the benefits of such investments are passed onto the users as interest income, then it is reasonable to expect that whenever losses arise out of such investments, such losses shall be shared by the users.

Similarly, the custodians who have been appointed by the CCPs could fail, notwithstanding the best of the measures and safeguards put in place by the

CCPs to insure against any such failure. In such a scenario, the losses shall not be fully borne by the CCPs.

Another important area of risks that could emanate from non-default risk is settlement bank risk. In some jurisdictions, CCPs may be compelled to use a commercial bank for its settlement processes, either because the central bank does not permit maintenance of account by them with it or if the settlement is made in a foreign currency and jurisdiction. In such cases, where the services of commercial banks are used for settlement, there could be risks of failure of such settlement banks. Those losses should be mutualised amongst the participants.

Accordingly, we are of the view that non default losses such as above and those which are beyond the control of the CCPs should be mutualised amongst the users. This of course, is subject to the following caveats:

- 1) CCPs, shall in normal circumstances be responsible for all those losses which are within its control and where they are expected to initiate all such measures as are required to safeguard against such losses;
 - 2) Even where the losses are required to be mutualised, CCPs shall also bear part of such losses with other users;
 - 3) CCPs shall share transparently the checks and balances built by it against such losses with users.
- c. In respect of allocating equity to clearing members, the same would disincentivize the clearing members from participating in the recovery process and they would prefer equity participation over additional cash calls etc. This would also disincentivize the existing shareholders as their controlling interests would be watered down as they had taken a calculated risk by participation in the CCP as a 'going concern'. Wherever member contributions are called for mutualizing losses which have not been caused by the CCP's acts of omission or commission, such members should not be entitled to convert their contributions into equity in the CCP.

- d. The “resolution trigger” in Section 3.4 (iv) which stipulates that the CCP’s participants lack confidence over the CCP’s risk management could trigger resolution may be removed as it should be left to the judgment of the relevant regulator. The risk management systems and processes of CCPs are subject to regulatory review and approval and the regulators alone should decide on the viability. If left to the satisfaction of the participants, it would become quite subjective.

You may kindly take on board our above comments on the Consultative Document on CCP Resolution and Resolution Planning. In case you wish to discuss further on any of the above issues, you may reach us at onravi@ccilindia.co.in or ksaha@ccilindia.co.in.

Yours sincerely,

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