



10 March 2017

Secretariat to the Financial Stability Board
Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel
Switzerland

BY EMAIL: fsb@fsb.org

Dear Sir/Madam

Guidance on Central Counterparty Resolution and Resolution Planning – Financial Stability Board Consultative Document

Thank you for the opportunity to comment on the FSB's proposed guidance (Guidance).

By way of background, the ASX Group operates licensed markets and post trade infrastructure (central counterparties and settlement facilities) for exchange traded and OTC financial products, across multiple asset classes – equities, interest rates, commodities and energy. The ASX Group's central counterparties are regulated by the Reserve Bank of Australia and the Australian Securities and Investments Commission.

ASX broadly supports the Guidance. We commend the FSB for striking what seems to us to be an appropriate balance between the interests of stakeholders in contractual certainty, and appropriate incentives to support CCP recovery efforts. In particular we note that, in our view, the FSB has defined correctly the counterfactual underlying the 'no creditor worse off' safeguard.

We wish to raise a single point of principle which we believe could be used to enhance the utility of the Guidance. We believe this would assist authorities and jurisdictions in implementing resolution regimes that are not only effective, but also avoid unintended consequences.

The proposed guidance states that as an alternative to awarding equity or other instruments of ownership to clearing members that contributed financial resources to a resolution in excess of their obligations under the CCP's rules and arrangements, *"the resolution authority may have the power to award to participants claims on the parent of the group to which the CCP is affiliated, where appropriate subject to the consent of the parent"* (Guidance, para 2.15).

Implicit in this alternative is the presumption that the resolution authority may take control of the parent rather than the CCP subsidiary directly. Reservation of a power to enter at parent level, or to award to participants claims on the parent by way of compensation, might be appropriate in relation to some FMI groups. But those powers have potentially far reaching implications for groups whose FMI business is not limited to central clearing or who operate multiple central counterparties (diversified FMI group). There are many such groups in existence. In our geographic region of the Asia Pacific this is the most common group structure. For example, the ASX Group operates separate central counterparties for the Australian equity and derivatives markets, as well as a number of other financial market infrastructures and related businesses.

The broader point we seek to make is that FMI groups can have very different ownership, legal and organisational structures, and those differences are relevant to both implementation of resolution regimes and resolution planning. The Guidance recognises the relevance of these matters to resolution planning (paragraph 7.6), as do the Key Attributes of Effective Resolution Regimes for Financial Institutions (Appendix II – Annex 1, section 11.6(ix)). However, the anterior step of defining resolution powers with respect to ‘point of entry’ (in the sense of ‘point in the corporate group’, rather than ‘point in time’) and awarding of equity as described in paragraph 2.15 of the Guidance, also needs to take into account structural differences. This is because the very existence (as distinct from the exercise) of a resolution power to enter at parent level, or to award to participants claims on the parent by way of compensation, would need to address a number of significant issues insofar as the powers could be applied to a diversified FMI group.

At the heart of those issues is whether the costs inherent in resolution powers to take control of, and to award claims to participants on, the parent entity of a diversified FMI group (and, by extension, group businesses other than the central clearing business of the CCP in financial distress), are justified by the incremental benefits to financial stability that may be derived from those powers. A balance has to be struck between the resolution authority’s need to have powers with respect to FMI group entities other than the CCP itself, and the impact of those powers on the economics of central clearing and diversified FMI groups.

In our view a resolution authority should derive adequate control with respect to affiliated entities that supply services or resources to the CCP, from the power to give legally binding directions to those affiliated entities (and their directors) to comply with their contractual obligations, supported by:

- appropriate sanctions for non-compliance with directions;
- statutory immunity for directed persons or entities, to resolve legal conflicts between directions and other duties or obligations; and
- comprehensive resolution planning, including incorporation of appropriate provisions in supply and resourcing contracts between the CCP and affiliated entities.

On the other hand, the reservation of a resolution power to enter at parent level, or to award to participants claims on the parent by way of compensation, would prompt a diversified FMI group to at least consider restructuring in order to mitigate the risk of its non-CCP business becoming subject to external control and the consequential loss of value to shareholders which this could entail. A decision to de-integrate a CCP for this reason could result in the loss of significant efficiencies derived from the CCP’s membership of the broader FMI group, and a consequential increase in the cost of clearing.

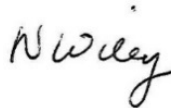
In our view, the potential upfront costs of resolution powers to take control of or award claims against the parent entity could be out of proportion to the perceived financial stability benefits. As noted above, this depends on the characteristics of the individual CCP which may be subject to those powers and the markets it serves. We believe that authorities and jurisdictions would be assisted if the Guidance contained a more thorough examination of the considerations and trade-offs relevant to these matters.

If you have any questions regarding this submission, please contact Nick Wiley (nicholas.wiley@asx.com.au).

Yours sincerely,

A handwritten signature in black ink that reads 'Amanda Harkness'.

Amanda J. Harkness
Group General Counsel

A handwritten signature in black ink that reads 'N Wiley'.

Nick Wiley
Deputy General Counsel Post Trade

Copy:

Mr Mark Chambers and Ms Louise Carter, Reserve Bank of Australia
Mr Oliver Harvey and Ms Dodie Green, Australian Securities and Investments Commission
Ms Julie Greenall-Ota, The Treasury