

Via Electronic Mail (FSB@fsb.org)

13 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:

CCP12 is a global association of 36 major central counterparty (“CCP”) organizations in Europe, Asia and the Americas. CCP12 was formed to share information, develop analyses, and develop policy standards for common areas of concern. CCP12 members work toward the common purpose of creating conditions in which a global CCP solution can emerge to meet the needs of the marketplace.

This letter represents our response to the Board’s recently published consultation *Guidance on Central Counterparty Resolution and Resolution Planning* (“the consultation”). CCP12 appreciates the opportunity to provide comments to the Financial Stability Board (“FSB”) on this important issue.

CCPs and authorities share the ultimate goal of preserving market stability and minimising losses and contagion. Cooperation between CCPs and authorities throughout the development and execution of a recovery and resolution plan will be critical to ensuring a successful outcome for the financial markets. CCP12 and its members are committed to working together to meet this shared goal and appreciate the opportunity to submit our thoughts on the FSB’s topics below.

## Overview

In developing a resolution plan, it is critical that the respective resolution authorities (“RAs”), in consultation with regulators and CCPs, understand the circumstances and market scenarios that could push the CCP to such an extreme point. Most likely, a CCP will only face a resolution scenario if multiple large, highly capitalised clearing members have defaulted simultaneously or if it incurs non-default losses of such magnitude that it would threaten the CCP’s solvency. This would be an unprecedented scenario that, by definition, would be beyond extreme but plausible as defined by the regulators. Whilst we agree that it is crucial to have plans in place to address this possibility in order to ensure the continuity of critical clearing services, we believe that regulators and market participants recognise how extreme a situation must be to arrive at such losses. For this reason, the key principles driving the definition of a resolution framework for CCPs should reflect the extreme and unlikely nature of such an event occurring.

Given the exceptional nature of such an event, the market will require as much certainty as is possible in executing the tools necessary to restore market stability. This is best achieved by allowing the CCP to execute and exhaust its recovery plans, which include tools that have been developed using the guidance provided by the report from the Committee on Payment and Market Infrastructure (“CPMI”) and International Organization of Securities Commissions (“IOSCO”) *Recovery of financial markets infrastructures* (“the Report”). The recovery plan is also subject to oversight and approval by the appropriate Board of Directors and regulators. The tools available for

the CCP within the recovery plan are further codified in the CCP's rulebook and are subject to the same governance processes that any new rule is required to pass before implementation. This will include review by and consultation with clearing members, the appropriate Board of Directors, and the relevant regulators. It allows CCPs to tailor their recovery plans and tools to meet the needs of their market and provides crucial transparency to clearing members and market participants to enable them to measure, manage and control their exposures to the CCP during a severe market stress.

This process ensures sufficient oversight and insight into the recovery tools and processes to protect market stability throughout the recovery process and ensures that the appropriate governance process is followed in the implementation of any applicable recovery tool. Resolution should only be triggered if it is necessary to provide for continuity of clearing services and market stability once recovery measures are exhausted.

## Specific Areas of Interest

### 1. Objectives of CCP resolution and resolution planning

In general, CCP12 is supportive of the goals described by the FSB. In particular, we appreciate the FSB's focus on "restoring the ability of the CCP to continue to perform its critical functions...", as this rightly highlights the importance of keeping the CCP operational even after losses. We highlight, however, that there may be instances where the CCP is still able to provide critical functions in the scenarios considered, thus recommend that the objective be slightly reframed to "restoring or maintaining the ability of the CCP to continue to perform its critical functions..." We would further suggest that the FSB expand their objective to include minimising the cost of resolution on all affected stakeholders and avoid destruction of the CCP's value.

We must note however, the stated and suggested goals of the FSB would all be best served by allowing the CCP to manage and execute its recovery plan without unnecessary intervention by the resolution authorities.

### 2. Resolution authority and resolution powers

It is critical that CCPs maintain the necessary flexibility and authority to define and execute their recovery plan unless and until the appropriate regulators, including the supervisory and resolution authorities, have determined that the plan and its tools prove insufficient to manage the crisis or the tools would jeopardise financial stability. As stated in our response to the August 2016 Discussion Note,<sup>1</sup> it is crucial to ensure that the CCP can maintain the control and authority to manage its markets and provide transparency and certainty to financial markets and participants, particularly under the exceptional and unprecedented event that would lead to a CCP's recovery.

CCPs have developed their recovery plans in line with the Report as defined by CPMI IOSCO and implemented the recovery tools in their rulebooks, in consultation with their clearing members and reviewed by the appropriate regulators and Board of Directors. Publishing these powers afforded to the CCP under the rulebook on the CCP's public website provides the necessary certainty and transparency to allow clearing members and market participants to measure, manage and control

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<sup>1</sup> <https://ccp12site-main.pbworks.com/f/CCP12%20Reponse%20FSB%20CCP%20Resolution%20Planning.pdf>

their exposures to the CCP during a severe market stress. This transparency is supported by regular reporting of the size of each clearing member's default fund and assessment powers, which ensures each firm knows exactly what resources are required to support a CCP stress event at any given time. Authorities should only disrupt the execution of this plan if a failure to do so would have a demonstrably detrimental effect on market stability.

In addition to providing certainty to the markets, allowing the CCP to execute its recovery tools will also ensure that existing incentive structures are maintained throughout recovery. CCPs operate on the basis of mutual benefits and shared risk between itself, its members, and the end users. The incentives created by the recovery tools support the continuity of the CCP's critical functions and if broken through early RA intervention or the expectation of intervention, the risk mitigation benefits of the CCP will be jeopardised. In particular, during the extreme and uncertain scenario that could drive a CCP to use its recovery tools, the certainty and reliability of these incentives will be crucial to returning to normal market function.

In the event that intervention by the RA becomes necessary, we agree with the FSB that the contractual rights and obligations of the affected CCP should be honoured in resolution, including the obligations of the CCP's participants. This is critical to ensuring that the incentives upon which the CCP has developed its default management and recovery processes are maintained throughout the process; without these incentives, clearing members may be less engaged in the default management and recovery processes, limiting the opportunity for success and propagating stress throughout the financial markets.

However, should the RA decide to intervene, we do not think it is reasonable to assume that the authority can simply follow the processes under the CCP's rules. These rules are designed to ensure the CCP can manage losses and restore a matched book whilst minimising losses and limiting contagion risk to non-defaulting clearing members. As discussed above, the RA should only intervene in a distressed CCP if a) the recovery tools have been exhausted or b) the execution of the remaining recovery tools would create greater market instability.

In the first case, the tools available in the CCP's rulebook would have been used and proven ineffective, so the authorities wouldn't have the need or option to execute these processes. In the second, where the RA intercedes due to financial market stability concerns, it would be based on the authorities' belief that such tools would cause greater uncertainty in the market and therefore it would be inappropriate for the RA to execute these processes.

Any deviation from the CCP rules by the RA should be strictly limited to the cases where the execution of the recovery tools would create greater market instability. In this exceptional scenario, we assume the RA will step into a CCP in recovery to execute tools that were either unavailable to the CCP or not contemplated by the CCP in its recovery plan, as necessary to support stability of the market. Unless the CCP has not executed its recovery plan effectively, the recovery plan has failed, or the RA, with its broader view of the financial markets, believes that the recovery tools to be executed will lead to greater instability for participants, we do not believe it is appropriate for the RA to intervene in the recovery process.

We further note that if the authorities have intervened at any point, they must do so in consideration of the no creditor worse off ("NCWO") principle. Whilst we believe this is the intention

of the FSB, there are specific points of the consultation that may introduce an opportunity for the authorities to forgo NCWO. Paragraph 2.2 of the consultation suggests that the RA “continues to follow the steps and processes under the CCP’s rule and arrangements...” However, the introduction of section 5 highlights that the NCWO safeguard will be applicable “if and to the extent the resolution authority departs in resolution from the loss allocation under the CCP’s rules and arrangements.” This could lead to the incorrect assumption that the RA can intervene in the CCP’s recovery plan and execute the CCP’s rulebook, but not be bound by the NCWO safeguard until it deviates from the CCP’s rules. This could lead to a scenario where the RA executes the CCP’s rulebook but does not have to consider NCWO, such as where specific authorities have asked that RA powers be included in the CCP’s rulebook. Whilst we believe the RA should only intervene in order to execute tools beyond the CCP’s rules and tools, we ask that the FSB make clear that the RA will always be required to consider NCWO principles in taking action at the CCP.

In particular, the tools described in sections 2.3 – 2.12 were included in the Report published by CPMI-IOSCO and provided explicit authority to the CCP to execute the tools in their recovery plan.<sup>2</sup> Whilst we agree that the RA should maintain the power to execute the tools necessary to return the CCP to a matched book and allocate losses, we maintain that such tools should first and foremost be available to the CCP, as they must maintain the right to design their incentive structures themselves as appropriate for their users and markets. We believe this was the goal of paragraph 2.5(ii), which considers the CCP’s rules in determining the fair market price of contracts impacted by tear ups, and ask the FSB make this recognition of the importance of CCP tools explicit in their final guidance.

Without the ability to execute and exhaust its recovery plan as designed, the CCP cannot maintain its critical incentive structure, which will limit the effectiveness of both the recovery plan and the default management that proceeds it.

#### *Powers for non-default losses*

We appreciate the consultation’s expectation that clearing members may have a role in curing losses from a non-default loss scenario. As we stated in our response to the August discussion note, the determination of non-default loss allocation should depend on the nature of the loss considering the myriad types of non-default losses, their predictability and market convention.

We acknowledge that there are some non-default events where responsibility rests mainly with the CCP and in these cases such the CCP is rightfully charged with funding the losses. However, we note that there are instances, where the clearing participants have the insight into potential non-default losses or directly benefit from the practices that could lead to non-default losses. In these cases, it is appropriate that clearing members share responsibility for the losses.

For example, in some jurisdictions clearing members explicitly approve the investment policies of CCPs. Additionally, some CCPs offer a share of investment returns to their clearing members. If investments are made on behalf of clearing members in a manner consistent with a CCP’s transparent investment policies or the clearing members benefit from the return on these investments, it is reasonable to expect that the clearing members would absorb any losses that may occur. If losses are the result of the CCP executing investments that are inconsistent with these

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<sup>2</sup> See 4.1.2 in <http://www.bis.org/cpmi/publ/d121.pdf>

“There are different types of recovery tools with different purposes that might be applied by an FMI individually...”

agreements, the liability should lie with the CCP. In contrast, some jurisdictions require CCPs to fully cover some types of investment losses (e.g. market losses in the customer origin in the US) so such loss sharing is not contemplated by CCPs.

Other non-default losses associated with idiosyncratic risk such as the failure of a custodian or settlement bank should be handled in a manner consistent with market practice in those areas of financial services. A CCP may be compelled to use a commercial bank for its settlement processes, either because the central bank does not maintain accounts for such entities or because the settlement is in a foreign currency. As CCP services may only be offered using services of commercial banks, participants should be expected to mutualize the loss on settlement bank default. Further, custodians and clearing brokers for example disclaim liability for their usage of other legal entities via sub-custodial or depository relationships as a matter of practice.

In those instances where other entities share responsibility for the non-default losses, it should not be the case that a full write down of CCP equity is required before calling funds from beyond the CCP. Where the CCP is not solely responsible for the event, the losses should be shared between those entities in relation to their role in creating the loss.

Further, unless the CCP is 100% responsible for the event that causes the non-default losses, it would be wholly inappropriate to reward clearing members with equity in the clearinghouse. Knowing that they could benefit from equity in the CCP as a result would create perverse incentives for clearing members who have clear visibility into the CCP's rules, policies, and agreements.

We suggest that the FSB specify that where the clearing members have had the opportunity to make decisions that ultimately lead to a non-default loss, including by reviewing the investment policies of a CCP, the CCP is permitted to share those losses with the clearing members.

#### *Equity in return for contributions to the CCP resolution*

Whilst we appreciate the interest in incentivising clearing member participation in resolution beyond the obligations defined in the CCP's rulebook, we note that providing equity in the CCP could threaten to skew the incentive structure the CCP depends on and limit the opportunity for a successful recovery if members believe equity in the CCP is more commercially advantageous than participation in a successful recovery. It is possible that clearing members could jeopardise the recovery process whilst meeting their obligations to the CCP and avoiding default themselves, such as through providing inappropriate auction prices that the CCP could not accept without utilising their full default fund. These actions may allow the clearing member to accept minimal losses for themselves in default management and recovery in order to secure equity on a parent company that may be much more valuable, effectively rewarding clearing members for inappropriate default management behaviour.

Under no circumstances should it be assumed that equity in an entity other than the direct CCP is a viable legal option. Particularly where the CCP is a member of a broader group with services that will be unaffected by stress at the CCP (i.e. data services), such equity could represent attractive compensation for clearing members and disincentivise proper default management behaviour.

Equity compensation will also skew the governance structure of the CCP if members become more influential in the CCP and its risk management standards after the crisis, as discussed in more detail below. We discussed additional concerns with regard to equity compensation in our response to the FSB's August consultation. We've included this language here for your reference, as these points are

still concerning to our members and we do not believe that the consultation has resolved these points.

Equity as a compensation tool is extremely likely to skew the incentive structure supporting the CCP's default management and recovery process. Allocating equity to the clearing members effectively creates an ownership opportunity for clearing members in a market stress event. If the CCP is approaching resolution, the clearing member will likely have suffered losses under the default management process. If bearing a relatively small amount of additional losses would result in an ownership stake in the CCP (who may maintain valuable services beyond the clearing service under distress), there is a risk that clearing members would view it as more beneficial to artificially limit their participation in the default management process and encourage the resolution of the CCP to gain this ownership.

Currently, CCPs are structured to ensure independent owners, clearing participants (through the risk committee), and CCP senior management are all incentivised to manage overall risk effectively. The balance created by relying on three groups with independent perspectives ensures that no one voice can overpower the others, resulting in CCP policies that act in the best interest of the market, rather than any individual participant. If one member of that group gains additional power – through clearing members gaining a controlling ownership share of CCP equity – the commercial interests of the clearing members may become overly influential in the CCP risk management processes, resulting in less secure markets coming out of the resolution.

In the event that a CCP operates multiple asset classes with unique clearing memberships, providing an equity stake could threaten the security of the other asset classes. In a situation where one asset class defaults, its clearing members could end up with ownership of the entire CCP. Allowing some clearing members ownership over the entire CCP structure would be an inappropriate result for members of the asset classes that did not suffer losses and may not have signed up to clear at a member-owned clearinghouse.

There is also a risk that this compensation structure favours some clearing members while disincentivising others, who may not be permitted to take an ownership stake in the CCP. There are significant issues with using equity to reward clearing members for behaving in an appropriate manner during a default, recovery, or resolution. Further, the control provided by an equity stake in the CCP is an unnecessary and inappropriate reward for what is generally a financial service.

### **3. Entry into resolution**

We agree with the consultation's expectation that a CCP can be put into resolution when it "is, or is likely to be, no longer viable." Any such evaluation must be performed in conjunction with the appropriate supervisory and resolution authorities, maintaining the existing and appropriate governance structures. We also maintain that this assessment should be a requirement for the entry into resolution, as described in our response to CPMI-IOSCO's August consultation Resilience and recovery of central counterparties (CCPs).<sup>3</sup> Specifically, triggering or threatening to trigger resolution prematurely will destroy the incentives defined in the Report and the CCP's recovery plan. The

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<sup>3</sup> <https://ccp12site-main.pbworks.com/f/CCP12%20Response%20CPMI%20IOSCO%20CCP%20Resilience%20and%20Recovery.pdf>

market will interpret this to mean the CCP has failed, and participants will limit their contribution to the process as a result, exacerbating the stress conditions and unnecessarily delaying a return to market stability.

Whilst we agree with the majority of the potential indicators for resolution related to default losses as described in paragraph 3.4 in the consultation, it is unclear to us what compromises the committed financial resources referenced in 3.4(i). Specifically, assessment powers are an established layer of a CCP's waterfall and are defined in the rulebooks of many CCPs. These are not prefunded resources, but the clearing members are well aware of these obligations, which are reported regularly and included in all public rulebooks as well as any confidential member agreements. We fully expect that clearing members have prepared for this potential payment and do consider such funds to be part of the committed resources available to the CCP, available to help the CCP return to a matched book.

In addition to the assessment powers, CCPs publish all of their potential recovery tools that could impact participants through the public rulebook and member agreements. This is in addition to the on-going due diligence performed by clearing members and regular reporting of default fund and assessment requirements. This ensures that clearing participants are fully informed of their potential losses in the event of a significant default event, that the "significant, unpredictable losses" envisioned in 3.4(ii) are beyond the scope of the CCP's rulebook. If the CCP is performing its recovery plan as defined and codified in the rulebook, participants would be able to anticipate their potential losses as the default management process unfolds.

The size of such losses must be significant enough to ensure clearing members are sufficiently incentivised to participate in the default management process and bid on the defaulted portfolio. Ultimately, the clearing participants will be able to manage the size of these losses through their participation in the default management process and maintaining a balanced risk profile, which will limit exposure to more extreme loss allocation tools or partial tear up.

We further question the necessity of another proposed indicator: the lack of confidence of the CCP's participants (3.4.(iv)). This is a qualitative and potentially arbitrary measure that does not require consideration of the authorities' larger object of ensuring financial stability. Any indicator must be based on demonstrable risks to financial stability and should not be left to subjective metrics, particularly if there is a possibility of conflict of interest based on the clearing member participants' interest in compensation under resolution.

The true signal that clearing participants have lost confidence in the CCP will be the withdraw of members, following the process defined in the CCP's rulebook. As participants leave the clearinghouse, the total risk as the CCP will be reduced and the CCP's potential impact on broader market stability will diminish. We see no reason for the RA to intercede in this, as the process will organically cure the risks the authorities seek to address.

With regards to non-default losses, we support the principle behind the FSB's proposed indicators. Whilst we recognise the importance of regulatory requirements for authorisation as an indication of a CCP's health and viability, we ask that the FSB consider the materiality of the requirements in question. Depending on the jurisdiction, there may be many authorisation requirements that will not have a material impact on the ability of the CCP to manage its risks or markets (i.e. the size or composition of a CCP's Board of Directors). We expect that the language in 3.5(iii) was meant to

address material impacts on a CCP's risk profile, regarding the potential threat to financial stability. However, we ask that, where the FSB considers a resolution trigger in the event of a non-default loss, such trigger is limited to compliance with regulatory requirements for authorisation that would materially impact the risk management capabilities of the CCP.

Finally, where the FSB considers the public reporting of triggers (3.3), we caution that any public reporting must balance the need for certainty from markets with the need for flexibility in approach and the risk of gaming by the market participants. If a clearing member considers that resolution of a CCP could be commercially beneficial for their business (such as by gaining equity in the CCP or its parent), knowing the triggers for these benefits in advance could disincentivise effective participation in the CCP's default management and recovery processes. This will exacerbate market stress and market instability whilst also limiting the opportunity for a successful CCP recovery, thereby undermining the very objectives of this guidance.

Public reporting of triggers also limits the flexibility that will be crucial in managing the unprecedented situation of a CCP's recovery. In particular, as the FSB rightly noted in the August discussion note *Essential Aspects of CCP Resolution Planning*, it is "difficult to make an exact presumption in advance about the timing of entry into resolution."<sup>4</sup> It is highly likely that any pre-defined trigger could be improperly calibrated given the unprecedented nature of such an event. Publicly reporting any triggers will impact the market's response to a stress event at the CCP and potentially jeopardise the CCP's recovery, but any inaccuracies in the triggers will exacerbate these negative impacts.

CCP12 supports cooperation between a CCP and the relevant regulators. To enable effective cooperation that furthers the objectives of the guidance, paragraphs 3.6-3.8 of the guidance should be clarified to confirm that all sharing of information should be done in a manner that is consistent with the applicable laws and regulations that preserve confidentiality and anonymity and also respects the role of the CCP's regulator or RA and should not enable other regulators to undermine the CCP's regulator or RA.

However, we would highlight that the real-time risk management capabilities requested in paragraph 3.7 are unclear. Currently, the risk management capabilities of the CCP have been reviewed and are monitored by the appropriate supervisory authority on an on-going basis. Where these systems are sufficient for day-to-day and stress markets, authorities should not impose additional systems requirements on CCPs in preparation for an unlikely and unprecedented event.

#### **4. Allocating losses to equity holders in resolution**

We understand the FSB's interest in the equity of the CCP and are committed to engaging on this topic to reach the appropriate principles for each party. However, we request that the FSB clarify what is meant by writing down equity. In some jurisdictions (such as the US), the concept of writing down equity can have a different meaning in a legal or accounting context. We look forward to providing further comment on the use of writing down equity once we understand what is contemplated. Furthermore, we question the need for equity write down to begin before recovery tools or equivalent resolution tools have been executed. It is important to recognise that the use of recovery tools in a default scenario will only become necessary if multiple auctions have failed to

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<sup>4</sup> See 3.6 in <http://www.fsb.org/2016/08/essential-aspects-of-ccp-resolution-planning/>



return the CCP to a matched book. This will likely indicate that there exists a subset of products for which the market no longer has an appetite. The auctions are designed to identify these product sets and allow markets to manage the identified liquidity gaps – not only a crucial step in re-establishing a matched book but also restoring market stability beyond the CCP. Prolonged losses after multiple auctions demonstrate a lack of liquidity in the market, which is unlikely to be due to a failure of the CCP to manage risk.

CCPs cannot cure default losses without cooperation and active engagement from clearing participants in the default management process. Cooperation and active engagement is encouraged by the expectation of significant losses. Whilst the amounts held in the default fund and committed to assessments are sizeable and sufficient to cover the losses of the largest clearing member(s), they are typically not as large as some of the other clearing requirements, such as variation margin pays during market stress. Clearing members regularly make these large variation margin payments – payments that can be many multiples of their assessment liabilities – without endangering their business or threatening financial stability. This suggests that the market can withstand larger losses than anticipated by the waterfall without exacerbating market stress.

A CCP's equity, except for the amount designated as the skin-in-the-game, should not be considered as a loss absorbing tool except where it is clear that the CCP has failed or the funding is necessary to ensure financial stability. Neither of these conditions will have been met solely by the fact that the CCP's waterfall has been exhausted. Unless CCPs determine that an equity write down is appropriate for their markets, other recovery tools should be considered without an equity write down.

## **5. No creditor worse off safeguard**

We appreciate that the FSB has included consideration of the full application of the CCP's rules in considering the assessment of losses for the NCWO counterfactual. In many cases, the CCP's rules represent a contractual agreement between the CCP and its clearing members, and includes responsibilities that the clearing members have agreed to meet to the CCP. It is appropriate that any existing contractual obligations defined in a CCP's Rulebook, including any Recovery tools, are specifically excluded when determining the counterfactual for NCWO assessments for both default and non-default losses.

Further, it may be necessary to consider the additional costs associated with re-establishing the clearing member's positions where necessary, including the replacement costs of the positions, the deposits needed to set up a new CCP relationship or the costs and increased capital requirements of bilateral margin requirements, as necessary. It is highly likely that these replacement positions would be priced at extreme levels due to the market stress caused by the CCP resolution and the subsequent market moves. This will require more funding to establish the positions as well as to support the higher margin as a result of the market stress.

Whilst we believe these costs should be considered along with the potential losses caused by a CCP's liquidation or termination, we would highlight that such events are rare and have historically involved unique solutions. This, combined with the distinct insolvency law applicable to global CCPs established in different jurisdictions, make it difficult to establish the exact cost of such an event, particularly in the unprecedented stress market that could lead to it. The assessment of the cost of a CCP insolvency and liquidation will be difficult to perform with certainty and regulators must be cognisant of these challenges.

## **7. Resolution Planning**

We appreciate the FSB's focus on the home RA with regards to the CCP's resolution plan. This is important to ensure the authority in charge has the necessary expertise in the CCP in question.

Further, the CCP and supervisory authority should be consulted throughout the development of the resolution plan, to ensure proper consideration of the CCP's rulebook and markets. Particularly given the interaction between the recovery plans developed by the CCP and the resolution plans, as the FSB notes in point 7.2 in the consultation, such cooperation is crucial to ensuring the proper balance between recovery and resolution.

In general, we agree with many of the aspects of the resolution plan considered under paragraph 7.5. However, subsection 7.5(v) appears to require the RA to define a prescriptive plan to manage a CCP resolution. This is contradictory to the principle of constrained flexibility, a principle that is widely supported across the industry and its participants. Given the extraordinary and unlikely event that could require the implementation of a resolution plan, it would be impossible to define ex ante the appropriate sequence and scope of tools to be used in resolution. It is critical that the authorities have the necessary flexibility to address the risks as they arise, given the facts and circumstances at the time.

We support many of the aspects of the resolution plan described by the consultation and agree with the FSB that these points will be critical to a smooth resolution. We appreciate the benefits of transparency for market participants and agree that the RA "should consider the merits of publically disclosing some elements of the resolution plan" as suggested in paragraph 7.7. However, we encourage the authorities, in making this consideration, to carefully assess the potential impact to the incentives of clearing members, where a knowledge of potential resolution plans may discourage active participation in default management and recovery processes. Such participation will be crucial to ensuring a successful return to a matched book and market stability. Public disclosure could also exacerbate market response to stress at the CCP, as participants anticipate more extreme tools being used in the future based on perceived stress at the CCP. This would ultimately amplify existing stress conditions, limiting the opportunity for a successful CCP recovery.

## **8. Resolvability assessments and addressing impediments to resolvability**

As highlighted in our response to item 5, the failure of a CCP is an incredibly rare event and, under the current regulatory environment, it is unprecedented. It will be difficult to say, without any historical precedent, that a particular business practice or delivery arrangement will materially impact the likelihood of a successful resolution of a CCP. As such, we would recommend that authorities adopt a proportionate approach, and ensure that any significant changes to the CCP's business model to address impediments to resolvability do not adversely impact the business as usual operations of the CCP.

Where the CCP has been authorised and is in compliance with prudential regulatory obligations, including regular reviews of changes which are typically required by local regulators, the execution of their business under the existing rules as well as operational, structural, and legal arrangements, does not require further evaluation. These regulatory standards, in line with international standards, have been developed to create a common set of best practices that our members are committed to implementing as appropriate for our members and markets. These regulatory standards should already provide a sound basis to ensure the ability of a CCP to be successfully resolved.

In addition, resolvability assessments cover key elements that have been reviewed and approved by the authorities during the authorisation process of the CCP. Requiring the CCP to perform significant changes to these same elements may contradict previous processes.

In particular, the potential for an authority to require that certain products be separated during resolution could create breaks in liquidity pools and netting arrangements. It could further impose significant costs on clearing members suddenly faced with multiple requirements to fund additional default funds. This would materially impact market participants and their liquidity, making clearing more difficult and expensive. This could create further pressure on the accessibility of critical clearing services for smaller firms and fragment markets unnecessarily. The scenario envisioned of a CCP resolution is unprecedented and the potential resolvability of a CCP is an extreme event beyond anything remotely considered plausible. CCPs and the appropriate regulators have developed and support clearing arrangements that suit their markets and provide robust risk management solutions.

Again, the resolution of a CCP is a thankfully rare event, historically occurring at only three CCPs globally in modern financial history.<sup>5</sup> All of these occurred before regulators implemented improvements to financial market security in response to the 2008 banking crisis, ensuring market participants are better capitalised than in pre-2008 years. These events also occurred before the industry implemented the stringent standards of CPMI-IOSCO's Principles for Financial Market Infrastructure, further strengthening the CCPs and their markets. It is unnecessary and inappropriate to modify the business as usual operations of the CCP to attempt to prepare for an unlikely event, particularly given the extreme and unpredictable markets that would have to occur to lead to a CCP resolution.

## 9. Crisis Management Groups

CCP12 supports the efforts to establish coordination agreements in advance of a potential market stress, to be led by the home jurisdiction. Such cooperation will be critical to the successful implementation of resolution processes. In particular, we agree that the establishment of information sharing arrangements between the relevant authorities, which should allow sharing of relevant information only under a stress event, will be critical to ensuring a successful solution to a market crisis. We appreciate that the FSB has included this important tool, as the protection of confidential information is critical for CCPs and market participants. It is critical to establish the legal certainty of information sharing between authorities in advance of a market stress event during which this information may be critical to multiple authorities.

Sincerely,



Lee Betsill  
Chairman, CCP12

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<sup>5</sup> <http://www.bankofengland.co.uk/archive/Documents/historicpubs/speeches/2011/speech501.pdf>