November 20, 2023

VIA ELECTRONIC TRANSMISSION
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Mr. Klass Knot
Chair
Financial Stability Board (FSB)
Bank for International Settlements
Centralbahnplatz 2 CH-4002
Basel Switzerland

RE:Financial Resources and Tools for Central Counterparty Resolution Consultation Report

Dear Mr. Knot:

The Depository Trust & Clearing Corporation ("DTCC"), together with its registered clearing agency subsidiaries, the Fixed Income Clearing Corporation ("FICC") and National Securities Clearing Corporation ("NSCC"), appreciate the opportunity to comment on the above-referenced Consultation Report (the "Report")[1] issued by the Financial Stability Board ("FSB"), which sets out a proposal for a toolbox approach as a new global standard for central counterparty financial resources and tools for resolution.[1]

Introduction

DTCC's common stock is owned by the financial institutions that are participants of its registered clearing agency subsidiaries: The Depository Trust Company, the U.S. central securities depository ("DTC"), FICC, and NSCC. Market participants created DTCC, DTC, FICC and NSCC as financial market infrastructure designed to facilitate efficiency and effective risk management for the markets they serve through central clearing and settlement of transactions. To preserve this central mission, private investors are not permitted to purchase or sell shares of DTCC. Instead, DTCC is owned exclusively by the participants that DTCC serves. As a member-owned and governed financial market infrastructure, DTCC operates from the premise that the financial resources necessary for loss mutualization will be provided by its members, when needed, given the alignment of interests in continuity of DTCCs critical services.

NSCC and FICC (collectively referred to herein as the "Clearing Agencies") provide central counterparty ("CCP") services for multiple asset classes, including U.S. equities, corporate and municipal bonds, and government and mortgage-backed securities. The Government Securities Division of FICC is the leading provider of trade comparison, netting and settlement for the U.S. Government securities marketplace. The other division of FICC is the Mortgage-Backed Securities Division, which provides CCP services for mortgage-backed

[1] FSB Report," Financial Resources and Tools for Central Counterparty Resolution, Consultation report," dated 19 September 2023, https://www.fsb.org/wp-content/uploads/P190923.pdf.

securities, including To-Be-Announced securities. NSCC provides clearing, settlement, risk management, and CCP services for trades involving equities, corporate and municipal debt, exchange-traded funds, and unit investment trusts in the U.S. Each of the Clearing Agencies have been designated as a systemically important financial market utility ("SIFMU") by the U.S. Financial Stability Oversight Council pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[2] Under the SIFMU framework, the U.S. Securities and Exchange Commission (the "SEC")[3] is the supervisory agency for FICC and NSCC, and the FDIC is the Title II resolution authority for these SIFMUs.[4] In addition, each of the Clearing Agencies is a covered clearing agency ("CCA") that maintains Recovery & Wind-down Plans ("RWPs") pursuant to SEC regulations.[5]

<u>Executive Summary</u>

1. *Importance of Preserving Incentives for Participation in Central Clearing*

DTCC appreciates the FSB's objectives to ensure financial stability and continuity of access to central clearing in the event of a CCP failure given the importance to the marketplace of central clearing. We believe central clearing is critical for financial stability purposes and that resolution planning should not undermine the benefits central clearing brings to markets, either by creating disincentives to participation or otherwise increasing costs and burdens to the detriment of market liquidity and effective risk management.[6] The FSB has acknowledged the benefits of central clearing on prior occasions, including in respect of the recent periods of market turmoil during COVID-19.[7] The SEC has also underlined these benefits in its proposal to expand central clearing for the U.S. Treasury markets.[8] As the FSB and resolution authorities ("RAs") consider the effects of enhancing CCP resolution regimes with new tools and requirements, DTCC recommends an approach that seeks to ensure that the systemic risk benefits central clearing provides on an ongoing basis to markets are not undermined by the costs of implementing measures to address CCP resolution. In practice, such an approach should protect against CCP resolution measures diluting or otherwise harming the systemic benefits central clearing provides to the markets.

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[2] 12 U.S.C. § 5464 (Dodd-Frank Act §§ 805, 803(8)).

[3] The Clearing Agencies are registered clearing agencies under the Section 17A of Securities and Exchange Act of 1934, as amended, and are also self-regulatory organizations under that same statute.

[4] 12 U.S.C. § 5389, 12 U.S.C. § 5390 (Dodd-Frank Act §§ 210(a)(2), 209(b)).

[5] 17 CFR 240.17Ad-22(e); Release Nos. 34-78961 (Sept. 28, 2016), 81 FR 70785 (Oct. 13, 2016); 34-88616 (Apr. 9, 2020) 85 FR 28853 (May 14, 2020).

[6] *Supra* note 1, page 5, "Resolution planning should maintain incentives for CCPs, clearing member and market participants to centrally clear and engage constructively in efforts to achieve a successful default management or recovery and to reduce the likelihood of resolution."

[7] FSB Report, "COVID 19 pandemic: Financial stability implications and policy measures taken," (15 April 2020).

[8] "Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule with Respect to U.S. Treasury Securities," 87 Fed. Reg. 64610 (proposed Oct. 25, 2022).

DTCC also commends the FSB for including as one of the resolution resource parameters (and related analytical dimensions) the concept of whether a resolution tool/financial resource preserves incentives for market participants to participate in recovery and central clearing (referred to in the Report as, Parameter (D)). However, as will be discussed in more detail herein, we also observe that three other Parameters (Parameters (A), (B) and (C))[9] specified in the Report are solely dedicated to considerations around supporting an orderly resolution, and thus create an imbalance in terms of weighing the importance of access to central clearing against each of the proposed tools.

2. *Incorporating Wind-down Tools into the Composition of the Toolbox*

We believe that a CCP dedicating resources *solely* for resolution entails an important balancing with ensuring that the benefits of central clearing remain accessible and are not undermined. We therefore favor the approach laid out in the Report that acknowledges that a RA may have to rely on recovery tools and measures as re-purposed for use in resolution. Indeed, we believe RAs should take this an additional step further and consider their access to the CCP's orderly wind-down tools to the same degree that they consider recovery tools as options for being re-purposed (or dually-purposed) for use in resolution. Under the PFMI, a CCP would already be expected to have tools and resources in place to achieve the same objectives as a resolution (both to restore the CCP's ability to perform its functions as a going concern under recovery planning and to ensure the performance of those functions by another entity under orderly wind-down planning).[10] In particular, for member-owned CCPs, we encourage RAs to consider biasing towards using existing recovery and wind-down tools because those tools effectively already impose upon member-owners the costs of a resolution based upon a preestablished alignment of incentives around business as usual risk management and recovery.[11]

In our view, there seems to be an imbalance in the Report's approach to the relationship between the RA's access to resolution tools and resources and the substance of the CCPs' recovery and orderly wind-down plans with the focus being exclusively on recovery tools and not on wind-down financial resources. We think this imbalance needs to be corrected by the FSB and recommend that this can be addressed by consulting with Committee on Payments and Market Infrastructure ("CPMI") - International Organization Of Securities Commissions ("IOSCO") to develop a clearer understanding of CCPs' pre-funded wind-down resources and how those resources are (or could be) relevant to resolution planning. This coordination would

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[9] Parameter (A) provide sufficient loss absorption, CCP recapitalization options, and liquidity, to give resolution authorities a reasonable opportunity to achieve a successful resolution in DL and NDL scenarios; Parameter (B) be reliable and readily available in resolution; Parameter (C) mitigate potential adverse effects on financial stability.

[10] Under paragraph 1 of the FMI Annex of the Key Attributes, the FSB states that the objectives of an FMI resolution regime is to "…allow for the continuity of critical FMI functions without exposing taxpayers to loss, either by restoring the ability of the FMI to perform those functions as a going concern or ensuring the performance of those functions by another entity or arrangement coupled with the orderly wind-down of the FMI in resolution."

[11] As the Commission noted in its proposed rule regarding "Clearing Agency Governance and Conflicts of Interest," "[…], a clearing agency may be organized so that the participants are owners of the clearing agency, which may eliminate diverging incentives between owners and participants." 87 Fed. Reg. 51812 (proposed Aug. 8, 2022).

be consistent with the previous work done by FSB and CPMI-IOSCO with regards to the Joint Report on CCP Financial Resources for Recovery and Resolution.[12]

In fact, in the SEC's recent rule proposal on the subject of recovery and wind-down planning (the "SEC RWP Rule Proposal"), the SEC proposed to clarify the definition of "orderly wind-down" to make it expressly clear that actions of a covered clearing agency in effecting an orderly wind-down should not increase the risk of significant liquidity, credit, or operational problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system. The SEC noted that a covered clearing agency's orderly wind-down plan should serve as a final and binding solution to whatever circumstance necessitated the wind-down, that is, not a temporary stopgap measure.[13] Thus, the DTCC Clearing Agencies' orderly wind-down plans have been designed to enable continuity of services and transfer of the failing CCP's critical services and capital funding to a transferee entity (either a third-party or a failover entity the clearing agency has established ex ante), albeit without assuming the presence of an RA applying funds or tools *exclusively* to be used in resolution.

3. *Encouraging Regulatory Coordination between Resolution Authorities and Supervisory Authorities*

DTCC supports the proposed toolbox approach because it provides both CCPs and their relevant authorities the ability to tailor resolution tools and strategies to the particular CCP and cleared market at issue. [14] However, in the proposed additional section to the FMI Annex on "Resources to support orderly CCP resolution," we believe there should be clear recognition for jurisdictional and legal structure differences, such as where the RA and the CCP's supervisory authority ("SA") are different authorities or regulatory bodies, such as is case for the DTCC Clearing Agencies (consistent with the approach taken in Paragraph 11.4 of the FMI Annex).[15] As a factual matter, in a split RA/SA jurisdiction, the interaction and separation between the two authorities' respective legal authorities can greatly affect decisions around the appropriate timing of entry into resolution, as well as which tools should be used, how much, and by whom. Any

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[12] FSB and CPMI-IOSCO "Report on Central Counterparty Financial Resources for Recovery and Resolution,"10 March 2022.

[13] Securities Exchange Act Release No. 34-97516; File No. S7-10-23 (May 17, 2023), available at https://www.sec.gov/rules/proposed/2023/34-97516.pdf page38 and page 37, "Proposed Rule 17ad-26(b) would define "orderly wind-down" to mean "[…] the actions of a covered clearing agency to effect the permanent cessation, sale, or transfer of one or more of its critical services in a manner that would not increase the risk of significant liquidity, credit, or operational problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system. The Commission believes that this definition would clarify that an orderly wind-down is distinct from a resolution in that orderly wind-down continues to rest within the control of the covered clearing agency while resolution would involve a governmental entity as the resolution authority, such as the FDIC as a receiver."

[14] This approach also seems consistent with Paragraph 11.2 of the FMI Annex, which states that "Recovery and resolution plans need to be taiored to the specific risks and systemic implications that a particular type of FMI may be exposed to or create."

[15] Paragraph 11.4 of the FMI Annex states that the "Resolution authorities for an FMI should, in cooperation with the FMI's oversight or supervisory authorities (where distinct from the resolution authority), develop resolution strategies and operational plans to facilitate the effective resolution of the FMI in a way that ensures continuity of the critical functions carried out by the FMI."

additional standards around a proposed resolution resource toolbox that the FSB adopts into the existing FMI Annex of the Key Attributes should specifically contemplate these differences as a factor for RAs to consider, and encourage coordination between an RA and SA (when they are different entities) when assessing resolution tools against the dimensions described in proposed paragraph 4.21 and, generally, when determining the composition and calibration of its resolution toolbox itself. For example, whereas proposed paragraph 4.20 states that RAs should have "the power to intervene before recovery resources have been exhausted," this does not provide for due consideration of the SA(s)'s view regarding whether or when resolution is the more appropriate course of action once a CCP has begun attempting a recovery. In such circumstances, we would expect that an RA would be best positioned to apply independently the considerations set forth in Parameters (A) through (C),[16] whereas application of Parameter D would require some established form of consultation between the RA and the SA. Given that the Report says that no one Parameter is more important than the other,[17] a question that needs to be addressed by the proposed new standard is how that balance is to be maintained in practice.Therefore, we believe it is imperative that the RA coordinate and consult with SAs when considering exercising such a power and that the proposed standard avoid giving the perception that the RA has unilateral authority to intervene while a CCP is in recovery.

We believe that clarifying the roles/responsibilities of split supervisory/resolution authorities will make the FSB's toolbox approach even more effective. For example, and as noted earlier, there will likely be opportunities that arise to dual-purpose certain existing rules-based recovery tools and orderly wind-down planning resources for use in resolution. For example, under the regulatory framework in which the DTCC Clearing Agencies operate, the SEC is the CCPs' SA, and FDIC is the RA. Based on SEC requirements for recovery and wind-down plans, a CCP can only rely on itself in seeking to achieve an orderly recovery or wind-down, as opposed to assuming government intervention or support, such as via a resolution.

Given these existing obligations on SEC-registered CCPs, if pre-funded resolution-specific resources were required to be set aside, in addition to those necessary to fund the CCP's orderly wind-down plan, a duplication of pre-funded financial resources would be necessary to support the CCP's wind-down and resolution, the costs of which, in a member-owned structure, would be borne by the member-owners. Similarly, this could potentially result in a scenario where the CCP has pre-funded resolution-specific resources which it cannot use in the event they are needed in a wind-down. In order to avoid such outcomes, we recommend that both RAs and SAs work together in a clear, collaborative way that allows CCPs and the cleared markets to understand what actions each will take during a CCP's recovery, orderly wind-down, and in the event of entry into CCP resolution. This is particularly important in jursidictions, such as the U.S., where the SA and RA are separate authorities with different functions.

Indeed, such collaboration is consistent with what the SEC provided for in the Adopting Release to the CCAS, where the SEC noted it would share information with the FDIC in its

[16] *Supra* note 9.

[17] *Supra* note 1, page 17.

capacity as the resolution authority.[18] The SEC expressed a similar point in the SEC RWP Rule Proposal by noting that one of the reasons the SEC is proposing to codify certain elements that would be required to be included in RWPs is that this would assist resolution authorities develop and improve resolution plans for CCPs.[19]

4. *Designing a Toolbox for Member-Owned CCPs*

As discussed above, the Report should address how CCP's orderly wind-down tools and pre-funded resources could be applied in a CCP resolution. There are certain proposed tools, such as "Resolution funds,"[20] which although may be helpful to include for consideration by RAs, do not make sense for member-owned CCPs, who through their member-ownership already are bearing the cost a fund assessment would impose.

Additionally, DTCC disagrees with the FSB's mapping of certain of the tools to the resolution resource parameter designated. Our disagreement with the FSB's choice of mapping may be due to the fact that FSB appears to only be considering the tool in terms of its use in recovery, and not wind-down. As an example, third-party contractual support is described as potentially not meeting the analytical dimensions associated with Parameters (B) and (C) (timeliness and legal and operational certainty).[21] However, we believe that legally-enforceable wind-down funding resources provided by creditworthy contractual counterparties would serve to satisfy these parameters (i.e., be reliable and readily available in resolution to mitigate potential adverse effects on financial stability).

DTCC supports the FSB's approach of not having RAs prescribe a specified quantum of resources in resolution and requiring that each jurisidiction be responsible for establishing an approach to calibrating the resources and tools in the toolbox that can be called upon for resolution.[22] However, we believe the Report is too vague in describing what that approach would be and are therefore not able to comment on it at this point in time. As a result, we ask that the FSB obtain more information around the methodology and substance of what the approach to the calibration of resources would comprise (e.g., costs and burdens, confidentiality concerns associated with regulatory publication, and alignment with CCPs' existing capital

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[18] *Supra* note 5, pages 99-100, "In particular, the Commission believes that a covered clearing agency generally should have policies and procedures to provide the relevant resolution authorities with information needed for the purposes of resolution planning under applicable authority, including any plans prepared pursuant to Rule 17Ad-22(e)(3). The Commission works with the FDIC and other resolution authorities, as appropriate, to help ensure the development of effective resolution strategies for covered clearing agencies; providing the Commission and the FDIC information for resolution planning would promote the ongoing development of these strategies."

[19] *Supra* note 13, page 36, "For example, by ensuring that these items are included in RWPs, a resolution authority will have a more comprehensive understanding of what the covered clearing agencies' critical payment, clearing, and settlement services are, as well as what providers support such services, thereby allowing a resolution authority to connect, or "map," the various providers to the critical services to ensure continuity of clearance and settlement by a covered clearing agency in resolution."

[20] *Supra* note 1, page 7.

[21] *Supra* note 1, page 14.

[22] *Supra* note 1, page 25.

requirements imposed by their supervisory authority), and how RAs would be expected to make their approach transparent to CCPs.

As noted previously, particularly in jurisdictions where the SA and the RA are different authorities, we believe RAs and SAs should have more transparent, formal coordination arrangements to help the RA achieve its calibration. Furthermore, from a legal perspective, in a split RA/SA jurisdiction, the requirements and mechanisms that would be needed to implement resolution tools may depend on the CCP's obligations to comply with the SA's regulatory requirements. For example, for the DTCC Clearing Agencies, it may be that either the SEC would need to do a rulemaking or the CCP would need to submit proposed rule filings for public consultation and SEC approval. Thus, we firmly believe that any proposed global standard would need to take these jurisdictional legal implications into account.

Comments to the FSB's Qualitative Analysis

DTCC believes that the Report helpfully breaks down broad concepts for assessing each individual tool's ability to support resolution and the costs and implications of a particular toolbox composition into more manageable/specific components, by parameters and analytical dimensions. Although the parameters identified seem sufficiently comprehensive for such an assessment, DTCC observes that the analysis leaves a perception that considerations around resources "to support orderly resolution" outweigh those covering the implications of these tools for financial stability in business-as-usual circumstances ("BAU"). One potential adverse outcome of such an imbalance is the miscalibration of an RA's selected toolbox that assures a well-run resolution (i.e., a tail-risk event) at the expense of reducing incentives for central clearing and the financial stability benefits that central clearing brings in BAU.

In the Report, the FSB acknowledges that "none of the parameters and their underlying analytical dimensions could be prioritized over others and instead are all essential in establishing an effective set of resolution resources and tools…"[23] We observe, however, that of the total four parameters, there are three (A, B and C) that seem dedicated to considerations around supporting an orderly resolution as compared to one parameter (D) that offers a counterbalance. Parameter (D) includes important cost and incentives considerations, such as systemic risk and impact, that should be clearly highlighted for a RA to analyze as it calibrates its toolbox.

While the Report provides that Parameter (C) (mitigate potential adverse effects on financial stability) should be considered from the orderly resolution perspective, we believe it is also vital for RAs to consider any potential adverse effects on the incentives for use of central clearing (and therefore on financial stability) that could arise based on a requirement that the CCP use a particular tool or resource. For example, the Report notes that certain tools (e.g., prefunding a resolution fund, requiring use of bail-in bonds) may increase the cost of clearing and therefore disincentivize central clearing, but does not address the systemic significance of such an negative consequence We further believe that in order to assess whether Parameter (C) is being achieved, it is necessary to confirm that Parameter (D) is also being achieved because of the indelible link between the inherent benefits central clearing brings to markets and its impact on financial

[23] *Supra* note 1, page 17.

stability. As the FSB (and the Chairs of the FSB, CPMI, and IOSCO) have recognized previously, “recent periods of market turmoil have demonstrated the benefits that central clearing brings for global financial stability.”[24]

Comments to the proposed Financial Resources and Tools

As an overall matter, DTCC believes that the Report should acknowledge the practical reality that although CCPs and RAs (and, as we have noted above, where relevant SAs) can work to design appropriate tools, there are no tools that can be entirely free from potential legal challenge. We also believe that when considering components of a toolbox, it is important to expand the proposed standard to add that RAs recognize that certain CCPs already plan for orderly wind-down and have the authority to access the CCP’s orderly wind-down tools to the same degree that they consider recovery tools as options for being re-purposed (or dually-purposed) for use in resolution.

Bail-in Bonds

Bail-in bonds are a potential tool used in bank recovery and resolution planning. When evaluating the availability, costs, and benefits of potential means of addressing financial resources and resolution costs, DTCC firmly believes that RAs must consider the fundamental differences between CCPs and banks. Bank failures are the result of their business models, market activity, and risk profiles, and are inherently different from the operations of CCPs, whose primary functions are to ensure performance of financial contract obligations and manage risk. Additionally, we do not believe this tool is useful for member-owned CCPs because holders would be member-owners or clients of such members, and thus this tool and the exposure it is meant to address is redundant in a member-owned structure. Also, additional debt could adversely impacts a CCP’s ability to assess debt or credit markets.

Most importantly, we believe the FSB’s recent 2023 Bank Failures Report, (the “FSB Bank Report),” [25] namely the observed experience around the Credit Suisse Additional Tier 1 (AT1) bonds, demonstrates that the cost of issuing these instruments could, depending on the attendant circumstances, enter into tension with the elements of Parameters (C) and (D).[26] As the FSB Bank Report notes, the effectiveness of bail-in instruments like AT1 bonds may be limited if the moment at which bail-in needs to occur entails the presence of markets already roiled by idiosyncratic shocks (i.e., the failure of Silicon Valley Bank). We observe, however, that the exercise of any bail-in instrument, regardless of how it is structured, is likely to occur in volatile market conditions since the distress of a G-SIB or CCP is per se a condition precedent to a volatile market. Accordingly, if the combination of volatile markets with bail-in instruments means increased risk of systemic knock-on effects, then it seems like this tool will often risk

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[24] See https://www.fsb.org/wp-content/uploads/P090322.pdf

[25] *See* FSB Report, “2023 Bank Failures, Preliminary lessons learnt for resolution,” 10 October 2023.

[26] Id., Section 1.4, “At the time of the failure of Credit Suisse, the Swiss authorities had concerns that the application of the bail-in tool in the volatile market conditions following the failures of several US banks in mid-March 2023 could give rise to financial stability issues and could be accompanied by several knock-on effects in Switzerland and globally.”

being in tension with Parameter (C), and therefore RAs should use extreme caution in considering such instruments for their resolution toolboxes.

Resolution Funds

The resolution fund is another example of a tool that in DTCC's view would not be effective if used in the case of a member-owned model. This is because as a practical matter, a member-owned structure already allocates to the appropriate parties the costs that a post-loss resolution fund assessment would similarly require. Thus, in our view, while the FSB may want to have this tool available as an option in some circumstances, we believe it does not make sense to include it in a toolbox for member-owned CCPs, who through ownership already are bearing the cost a fund assessment would impose. Further, for any CCP, whether member-owned or not, we believe that this tool would likely also increase the costs of central clearing for all members, which in turn adversely impacts how it measures up against Parameter (D).

Resolution-specific Third-party Contractual Support and Resolution-specific Insurance

As noted above, we encourage the FSB to consider the third-party contractual support tool as relevant for resolution purposes given that it may also be included as part of a CCP's wind-down arrangements. Notwithstanding the Report's concerns to the contrary, we believe that third-party contractual arrangements can satisfy Parameters (B) and (C) based upon the CCP having in place strong and periodically reviewed contractual arrangements, proactive monitoring and confirmation of the counterparty's ability to perform, and diversification of contractual arrangements including arrangements that entail prefunded financial resources.

We also agree with inclusion of insurance as an available tool. With regard to the concerns reflected in the Report regarding its drawbacks (i.e., timeliness, costs to CCPs, enforceability), these can be mitigated by contractual assurances covering the timeliness of payments and enforceability in the relevant jurisdiction. Further, CCPs that obtain insurance would budget for premium costs in advance with BAU expenses that are payable over time.

Resolution Cash Calls

DTCC fully agrees that both mandatory and voluntary cash assessments can be appropriate tools, and for DTCC's cash market and member-owned CCPs could be used as an effective means to replenish financial resources. Indeed, the shortened settlement cycles in the cash markets (T+2 moving to T+1 in May 2024) and the alignment of interests between members and management in a member-owned CCP, are some of the reasons these types of tools may be more successful than others. Furthermore, such a tool is rules-based, predictable, and is proportionate to a member's volume of activity and associated risk risk they present to the CCP.

We believe that this tool is another example of one where consideration by the RA of the implications arising from a CCP's ownership and governance model, and the risks posed by the products it clears, should be taken into account.[25] As previously noted, as member-owned and governed CCPs, DTCC's Clearing Agencies operate from the premise that the financial resources necessary for loss mutualization will be provided by its members, when needed, to maintain continuity of its critical services.

Further, this tool is a clear example of where there is a need for the FSB guidance to acknowledge the interplay between an SA's legal authority over a CCP and the RA's need to ensure that legal authority is compatible with a particular resolution strategy. For example, in the case of the DTCC CCPs this could mean that the FDIC would need to request that the SEC require FICC or NSCC submit a rule filing to allow for particular use of this tool for resolution purposes. Such a possibility is not limited to just this particular resolution tool, but any tool or initiative that an RA may find desirable but whose implementation is subject to a legal regime administered by the SA. In the context of this particular resolution tool, CCPs will need to understand if/when they need to structure a recovery cash call to also have the potential to become a resolution one.

Similarly, we also believe further clarification from the FSB would be advisable in terms of the language in the Report that notes that the provisions on resolution cash calls are separate, and in addition to, a CCP's contractual right to use cash calls in recovery. We believe the Report is not always as clear as it could be about how the FSB thinks about cash calls repurposed from recovery as opposed to resolution-specific cash calls, or whether there even is a real difference between the two concepts.

Statutory or contractual variation margin gains haircutting (VMGH) for resolution

While we believe these tools are fine to include in the toolbox, we think it would be useful for the FSB to make clear that these particular tools are intended to be used only for CCPs that clear products with long-term financial exposures. For example, in the case of the DTCC CCPs such tools would clearly not be appropriate, whereas we are aware that CCPs that clear certain derivative products already have developed such tools in their rulebooks.

Equity Write-Down

As discussed above, we note that as with the other proposed tools, the treatment of CCP equity in resolution would have to contemplate the ownership structure of the CCP. When this tool is applied to a member-owned CCPs, the distinction between using equity of the member-owners to absorb losses and applying other resolution tools to member-owners to also absorb losses disappears. This is because the application of almost any resolution tool for a member-owned CCP will immediately result in a scenario where members simultaneously absorb losses in their roles as users as well as in their roles as owners. This is in contrast to a scenario with a publicly traded CCP, where the CCP's management will experience, as the probability of a resolution approaches, increasing tension between maximizing shareholder value (at the expense of the members) while relying upon the participants to continue to perform their financial risk performance obligations under the CCP rulebooks, default management waterfalls, and recovery and wind-down plans. Comparing these two scenarios, RAs need to take into account how incentives across owners and users may or may not vary, and therefore the need for certain resolution tools may become less useful or relevant where such tools produce an indistinguishable effect across both users and owners. Accordingly, we suggest that the FSB clarify in its guidance that this tool, like others we have highlighted herein, will vary in their applicability and utility depending on the CCP ownership mode at issue and this is a factor RAs should take into consideration accordingly when developing their resolution toolboxes. Furthermore, as a user-owned CCP, we recommend that the FSB think about the role of owner equity in the wind-down context, where user-owners are already incentivized to deploy resources to capitalize a bridge entity or recapitalize a failing CCP.

Conclusion

DTCC appreciates the opportunity to comment on the Report and the FSB's consideration of the views expressed in this letter. We welcome the opportunity to discuss the Report and our comments. If you have any questions or need further information, please contact me at 001-212- 855-5237.

Sincerely,

Timothy Cuddihy
Managing Director
Group Chief Risk Officer