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Larry E. Thompson
Vice Chairman

55 Water Street
New York, NY 10041

TEL: 212-855-3240
lthompson@dtcc.com
www.dtcc.com

March 13, 2017

Via email

Financial Stability Board
Bank for International Settlements
CH-4002 Basel, Switzerland
fsb@fsb.org

Re: FSB Guidance on Central Counterparty Resolution and Resolution Planning

Ladies and Gentlemen:

The Depository Trust & Clearing Corporation (“**DTCC**”) welcomes the opportunity to comment on the 1 February 2017 Consultative Document prepared by the Financial Stability Board (“**FSB**”) entitled *Guidance on Central Counterparty Resolution and Resolution Planning* (the “**FSB Guidance**”). We appreciate the time and effort that the FSB has devoted to the FSB Guidance, including its thoughtful analysis of the comments to the 16 August 2016 discussion note on *Essential Aspects of CCP Resolution Planning* (the “**Discussion Note**”), and the consultations with FSB member authorities. This work has been essential to developing guidance that will assist authorities and jurisdictions in implementing effective resolution regimes and developing credible resolution strategies and plans for central counterparties (“**CCPs**”) in a manner that is consistent with the guidance on financial market infrastructure (“**FMI**”) resolution contained in the FMI annex to the FSB *Key Attributes of Effective Resolution Regimes for Financial Institutions* (the “**Key Attributes**”). DTCC respectfully requests that our comments be taken into consideration in finalizing the FSB Guidance.

I. Introduction

DTCC is the parent company and operator of the U.S. cash market securities CCPs National Securities Clearing Corporation (“**NSCC**”) and Fixed Income Clearing Corporation (“**FICC**”) both of which have been designated as systemically important financial market utilities (“**SIFMUs**”) under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“**Dodd-Frank**”). NSCC and FICC provide critical clearing and settlement services for multiple asset classes, including U.S. equities, corporate and municipal bonds, and government and mortgage-backed securities. NSCC and FICC are registered under the Securities Exchange Act of 1934, as amended, as clearing agencies, and are supervised by the U.S. Securities and Exchange Commission (the “**SEC**”).¹

¹ DTCC is also the parent company of The Depository Trust Company (“**DTC**”), the US central securities depository. Like NSCC and FICC, DTC is also designated as a SIFMU and is a registered clearing agency supervised by the SEC and, as a New York Limited Purpose Trust Company and state member bank of the Federal Reserve System, is also subject to supervision and examination by the New York State Department of Financial Services and the Federal Reserve Bank of New York under delegated authority from the Federal Reserve.

II. General

DTCC supports an approach that resolution authorities (and CCPs themselves) have a broad toolkit consistent with applicable law and the regulatory regimes and market structures in which they operate. We believe that resolution authorities should have general resolution powers designed to preserve the clearance and settlement functions of CCPs and mitigate systemic risk. We also believe that resolution authorities should have the flexibility to exercise their resolution powers in a manner that meets the challenges of the innumerable situations that could arise and, to the fullest extent possible, in a manner that is consistent with the CCP's *ex ante* rules. We appreciate that the FSB Guidance largely achieves these goals in a thoughtful and balanced manner.

DTCC offers the following additional comments for the FSB's consideration.

III. Indicators for a determination to trigger resolution, particularly for non-default losses

Given the breadth of the tools provided to resolution authorities in the FSB Guidance, DTCC recommends that resolution authorities be prepared to provide appropriate transparency concerning how and when resolution tools are likely to be used. As we previously noted in our comments to the Discussion Note, CCP participants need transparency regarding expected application and sequencing of resolution tools in a resolution to the extent practicable. We recognize, however, that resolution authorities need some flexibility to be able to effectively deal with situations which, by definition, go beyond extreme but plausible circumstances and be able to act to contain systemic events and prevent contagion. Resolution plans or triggers should not inadvertently create incentives for participants to undermine the CCP's efforts to effectively recover from a stress event.² As a result, resolution authorities should be able to take participant behavior into account, and will need to balance the desire for transparency with a proper alignment of incentives and the need for flexibility.³

In addition, regulators and resolution authorities should have a common understanding of the types of events that could potentially push CCPs to the point of resolution. The FSB Guidance attempts to set forth certain default and non-default indicators that resolution authorities should consider when determining whether to trigger resolution for a CCP. With respect to default losses, Section 3.4 of the FSB Guidance sets forth clear and helpful potential indicators, which include, among others, the CCP being unlikely to return to a matched book, being unable to cover losses, and being unable to replenish its financial resources within a reasonable time frame to a level that can deliver continuity of critical functions. The potential indicators in Section 3.5 relating to non-default losses, however, are somewhat less concrete or measurable. The enumerated indicators include circumstances when the CCP can only cover losses with actions that would create significant losses for CCP participants, or when the CCP fails or is expected to fail to comply with other regulatory requirements for authorization and such failure or expected failure cannot be addressed by supervisory action. Given the particularly amorphous nature of these triggers, we suggest that the relevant resolution and supervisory authorities work with CCPs to identify more concrete examples that would provide greater clarity for such triggers. In all cases, the final guidance should emphasize that to the

² In this context we note that concerns about writing down CCP equity fully, while consistent with general insolvency principles, should not be prematurely applied by resolution authorities as this may result in changing incentives among CCP participants in times of market stress and undermine recovery efforts based on *ex ante* rules.

³ See DTCC letter to FSB dated October 17, 2016, submitted in response to the Discussion Note (the "**DTCC Letter**"), pages 3-4.

fullest extent practicable, resolution authorities should rely on a CCP's recovery tools so as to avoid incentivizing participants to "wait it out" for a resolution authority to step in before complying with *ex ante* required actions.

IV. Power to require a CCP to adopt certain measures

Section 8.1 of the FSB Guidance grants broad powers to the oversight, supervisory or resolution authorities for the CCPs. This includes the ability to require the CCP to adopt measures designed to improve the resolvability of the CCP including, among others, where necessary and appropriate, changes to the rules and arrangements of the CCP, or operational, structural or legal changes, or changes to the terms or operations of any links with other FMIs.

DTCC supports providing supervisory and resolution authorities a broad range of tools to address the challenges of resolvability of a CCP. To the extent the use of these tools deviates from the recovery plan set forth by the CCP, they should be used very sparingly and with the lightest touch necessary given the significant differences between CCPs and other financial institutions and, additionally, the diversity of CCP models. This includes, for example, differences with respect to the products they clear, the regulatory structure of the markets for such products, as well as structural differences which, in the case of DTCC, include its utility ownership and governance model. In particular, we caution that applying tools that work for systemically important financial institutions do not necessarily work for CCPs.⁴

As we noted in our comments to the Discussion Note, the diversity of CCPs, the variety of risk management techniques they use for the asset classes they clear, and the markets they serve make it difficult to identify a common set of metrics or tools with respect to resolvability. DTCC also believes that decisions surrounding the appropriate timing of entry into resolution should take into account the market structure in the relevant jurisdiction. As we have previously noted, where the resolution authority is not the CCP's supervisory authority, it is essential that the resolution authority work in close consultation with the supervisory authority before taking any resolution action. CCPs, working closely with their supervisory authorities and the resolution authorities, are in a strong position to assist in identifying appropriate resolution measures. The unique market and regulatory environment in which a CCP operates must be taken into account when assessing the appropriateness of resolution tools to a particular CCP.

V. Cross border arrangements

Section 10.2(iii) of the FSB Guidance proposes that after the home country authorities and the Crisis Management Group (the "**CMG**") identify any challenges to the enforceability or effectiveness of resolution actions that may arise, the relevant authorities should consider, as appropriate, ensuring that, where needed, resolution actions are incorporated in the CCP's rules and arrangements or in other contractual agreements to give effect to or support the enforceability of such actions on a cross border basis.

DTCC continues to believe that it is essential for the supervisory authority in the CCP's home country to play a key role in any decisions concerning a CCP's resolution. Legal authorities and methods can vary widely across jurisdictions, and the CCP's supervisory authority is likely to be in the best position to assess which resolution actions are most appropriate. Supervisory

⁴ See DTCC Letter at page 6, where we note that "[u]nlike banks, CCPs are more monoline businesses and have predefined and predictable loss mutualization. Requiring them to hold substantial prefunded cash resources risks making CCP's de-facto investment companies which, in and of itself, would introduce a whole new set of risks."

authorities have the deepest knowledge and experience concerning the CCP's unique structure, operations and governing documents. Thus, any suggested changes or measures that are intended to enhance a CCP's resolvability would best be made at the behest of the supervisory authority in the CCP's home jurisdiction.

* * *

DTCC appreciates the opportunity to respond to the issues raised in the FSB Guidance and your consideration of the views expressed in this letter. We would welcome the opportunity to provide further detail on any of the matters discussed herein. If you have any questions or need further information, please contact me at lthompson@dtcc.com.

Sincerely,

A handwritten signature in cursive script that reads "Larry E. Thompson".

Larry E. Thompson