clear to trade

Eurex Clearing

Response
to the

FSB Discussion Note on

“Essential Aspects of CCP Resolution Planning”

August 2016

Frankfurt am Main, 17.10.2016

A. Introduction

Eurex Clearing is a globally leading central counterparty clearinghouse (CCP). Eurex Clearing is a subsidiary of Deutsche Börse Group providing central clearing services for cash and derivatives markets both for listed as well as certain over-the-counter (OTC) financial instruments. Eurex Clearing actively contributes to market safety and integrity with state-of-the-art market infrastructure both in trading and clearing services as well as with industry leading risk management services for the derivatives industry. Customers benefit from a high-quality, cost-efficient and comprehensive trading and clearing value chain.

Eurex Clearing AG is an EMIR authorized CCP incorporated in Germany. Eurex Clearing is also licensed as a credit institution under supervision of the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) pursuant to the Banking Act (Gesetz für das Kreditwesen). The Commodity Futures Trading Commission (CFTC) has granted Eurex Clearing AG a limited registration as a Derivatives Clearing Organization.

Eurex Clearing highly appreciates the efforts of the FSB to establish global standards for resolution through its Key Attributes, and the particular guidance regarding financial market infrastructures (FMIs). Eurex Clearing proactively supports the introduction of resolution plans for CCPs and welcomes the increased level of detail of ongoing FSB and CPMI/IOSCO work, including the discussion note. The establishment of resolution plans is not only essential to account for the extremely unlikely possibility of actual activation of the plans, but also to enforce market discipline and risk management incentives on an ongoing basis.

B. Questions and Answers

Q1. *Does this discussion note identify the relevant aspects of CCP resolution that are core to the design of effective resolution strategies? What other aspects, if any should authorities address?*

Answer:

Eurex Clearing agrees that the discussion note identifies the key aspects of recovery and resolution which can benefit from further industry and public comment, and build on the existing global recovery and resolution reports and guidance from October 2014. While specific points are addressed in the respective questions, there are four general comments to make:

Firstly, the discussion note talks about limiting contagion, which we feel requires some clarification. Eurex Clearing strongly agrees that undesirable or unnecessary contagion should be limited for the benefit not only of financial stability, but also for the preservation of incentives. In our view, contagion should be clearly only used in a negative sense if it is this includes actors who are not involved participants in the market. CCP recovery and resolution is the extension of the business-as-usual role of profit and loss allocation or the default management process, and it is natural and desirable that loss allocation affects the involved market. Indeed, the mutualisation of a default fund is a structured "contagion" that is in place not only to minimize disruptions by spreading losses widely, but also to create ex ante incentives across the participants of the market to support a rebalancing.

Secondly, the discussion note highlights the need for authorities to maintain continuity of critical functions, and the ability to wind-down non-critical functions. While recognizing that the definition of critical functions is subject to the nature of the crisis leading to the resolution, we would highlight that in principle, there should be the possibility to wind-down any service of a CCP, especially since in many cases there is a firm desire to limit the available resources to CCPs.

Thirdly, we would highlight that the context of CCP resolution is either severe non member-default related failures at a CCP, or member default scenarios. In the latter case, these scenarios are strongly influenced by the bank, or non-bank resolution frameworks' interaction with CCPs. Eurex Clearing will continue to work to ensure that no undesirable gaps or inconsistencies arise between these two sides of financial crisis management. On this point we support the mention of ensuring robust CCP continuity to other FMIs.

Finally, we recognize that resolution planning will be a living, ongoing activity, and hope that broad global consistency will be maintained. This consistency is key in preventing the build-up of risk in FMIs that benefit or appear to benefit from advantageous resolution approaches, notably public sector support.

Incentive effects of resolution strategies

Q2. *What is the impact on incentives of the different aspects of resolution outlined in this note for CCP stakeholders to support recovery and resolution processes and participate in central clearing in general? Are there other potential effects that have not been considered?*

Answer:

Eurex Clearing is generally of the opinion that the PFMIs including the recovery guidance and the Key Attributes including the FMI Annex, express the correct incentive structure. The discussion in the note adds key considerations, and appropriately weights the potential advantages and disadvantages of certain measures in terms that Eurex Clearing agrees with. Thus we consider that actual resolution planning, and future legislation where it is imminent will benefit from the issues outlined by the FSB and determine the appropriate balance between the various factors depending on the CCP, market, or indeed scenario in question. There are two issues to consider:

Firstly, that CCP's typically build in further incentives into their rulebook for participant behavior in a default management case. These can include fines, juniorisation, or other measures to address partial, unsatisfactory, or outright non-fulfillment of default management process (DMP) obligations. In practical resolution planning, we would recommend that authorities bear these in mind to ensure that resolution cases triggered by the inadequate behavior of certain participants can be addressed in a targeted manner, rather than say with broad loss allocation.

Secondly, that authorities consider whether it is possible, and potentially preferable, for certain participants to selectively default or leave CCPs in recovery and resolution. In our view, it should be possible for a member to default against a CCP with the regular consequences (positions wound down, collateral use, clients transferred and loss of access to the market), without necessarily triggering cross-default clauses. We expect that for critical services, there is a high hurdle for a member to elect this path, but that maintaining the ability to leave a CCP clarifies that remaining a member and sharing in loss allocation is ultimately a choice.

Timing of entry into resolution

Q3. *What are the appropriate factors for determining timing of entry into resolution? How might a presumptive timing of entry (or range of timing), if any, be defined in light of the criteria set out in the FMI Annex to the Key Attributes? If defined, should the presumptive timing of entry be communicated to the CCP and its participants?*

Answer:

The discussion note adequately covers the issues around entry into resolution. Eurex Clearing is of the view that while a CCP's DMP and recovery via private solutions must be given the chance to run its course, authorities benefit from the ability to be involved early. While Eurex Clearing expects that a resolution, should one occur, would probably be the extension of a waterfall consider not to cover the desirable degree of continuity, early intervention enables two crisis management actions:

1) Addressing failure of a CCP to enact its rulebook (extremely unlikely)
2) Preventing a CCP from deploying powerful recovery tools (for instance, based on impact assessment based on broader knowledge than available to the CCP)

In practice, even prior to the initiation of a CCP terminating a member the CCP's supervisors, and if relevant, the member's resolution authority, are engaged and consulted. Additionally, supervisors and resolution authorities of the CCP are expected to be extremely familiar with the rulebook and plans of the CCP, and we consider this provides the best background for determining what possible entry points are, depending on the available tools for the particular service or resolution authority. While a guiding list can be drawn up for DMP and NDL losses, consisting of incurred losses, stages of an unmatched book, and other indicators, Eurex Clearing does not consider it feasible or desirable to set a strict timing of entry ex ante. Resolution authorities will also be able to consider information outside of the CCP, for instance the effect of the crisis on other CCPs, bilateral markets, and exchanges with member resolution authorities that can provide additional non-public triggers.

Eurex Clearing does however recognize that certain jurisdictions may for legal or other reasons benefit from clarity on the stage of intervention. In such circumstances, we consider that disclosure of the point of intervention is preferable, as long as authorities are left with the option to decline intervention at all.

Adequacy of financial resources in resolution

Q4. *Should CCPs be required to hold any additional pre-funded resources for resolution, or otherwise adopt measures to ensure that there are sufficient resources* *committed or reserved for resolution? If yes, what form should they take and how should they be funded?*

Answer:

Eurex Clearing considers that sufficient resources should be simply included into the existing waterfalls of CCPs, if these are considered to be inadequate for the desired level of continuity and scenarios. In particular, the various proposals of separate pools of resources will weaken current incentive structures, since the contributions to these come from other sources.

Q5. *How should the appropriate quantum of any additional CCP resources be determined? In sizing the appropriate quantum, what factors and considerations should be taken into account? Do your answers vary for default and non-default losses?*

Answer:

Eurex Clearing believes further tools and resources, both those available and included in the CCP beyond its regular default fund, or by authorities as the case may be, should reflect the level of desired continuity for the services. Ideally a method for ascertaining the value of a CCP's continuity for its participants should be developed, e.g. to determine assessment powers more prudently. This could for instance be evaluated based on participants' own determination of the value of a CCP. As a benchmark, we would propose that replacement costs of trades, for which initial margin is an estimate, could serve as an initial figure subsequently adjusted by the particular manner in which such counterfactuals could be achieved for the market in question. Of course, the flexibility of authorities should be seen in the light of such ex ante calculations proving incorrect, or requiring re-evaluation based on the crisis which has actually occurred, for instance if certain market segments continuity is of less value by nature of the events.

For non-default losses, this is best tackled through the established process under the EMIR RTS with an addition regarding participants' collateral investment or custody related losses.

Q6. *Should resolution funds external to the CCP be relied upon? If so, how should such funding arrangements be structured so as to minimise the risk of moral hazard, including for CCPs with significant cross-border participation? Where these are pre-funded, how should the target size be determined and which entities should be required to contribute?*

Answer:

Eurex Clearing believes a resolution fund would set wrong incentives.

As outlined in our answer to question 4, a CCP specific resolution fund would divide up prefunded resources into different pots making resources unavailable for recovery even in cases where there is a proven value of CCPs continuity. Many proposals also include compensation for use of such funds, which would drive participants to lower liability prior to such a fund's use.

Multi-CCP funds are inappropriate, as they would either be called upon by many CCPs simultaneously in the event of a broad crisis, or, for idiosyncratic or NDL related cases would benefit the CCP's which had maintained the weakest standards.

Tools to return to a matched book

Q7. *What factors should the resolution authority consider in choosing and exercising tools to return the CCP to a matched book? Is one (or more) of the tools for restoring a matched book preferable over others and if so, why?*

Answer:

The choice of tools for forcing a matched book is highly dependent on the asset class or market segment in question. Based on the comprehensive requirement from the PFMIs and the CPMI/IOSCO guidance on recovery, Eurex Clearing considers that CCPs should adopt versions of partial tear-up (PTU) rules into their DMP and recovery planning. These will, depending on the nature of the cleared instruments or products, consist of one or more of the following:

1) A "minimal set" PTU, terminating only pro-rata open interest to the degree necessary to rebalance the CCP
2) A broader partial tear-up based on similar risk profiles, to avoid undue disruption for products, such as swaps, where the minimal set may concentrate the impact given specific maturity dates or other features
3) A broader still partial tear-up based on a product class, to remove a segment from clearing in full

For some cleared markets, notably repo, Eurex Clearing considers that broad tear-ups may be inferior to accelerated settlement or other measures to tackle unmatched books of substantial scale.

If such rules are included in CCP's rulebooks, then authorities' intervention could consist of simply applying the existing tools, or making adjustments based on macro-prudential considerations. Authorities should consider at least the following factors:

1) Whether the market wishes continuity of the cleared service for the subclass of products to determine the aggregation of the tear-up. Note that nothing prevents a minimal set tear-up to be broadened later to remove the products from clearing, although this does mean that participants will continue to experience profit and loss via the CCP for the remaining contracts until such time.
2) The impact on incentives from different aggregations of partial tear-up in hedging and auctions during the DMP. In particular, authorities should consider based on the case at hand whether it is preferable to narrow or broaden the partial tear-up.
3) What reasonable prices are for the partial tear-up. In Eurex Clearing's view, the primary choice would be to use latest market prices, but care must be taken that these are both available and reflective of genuine trading to prevent skewing the tear-up prices. It is possible that the reason auctions have failed is great uncertainty as to the price of the contracts. As CCP's must have robust end-of-day

settlement price procedures, it should be possible to roll back price development to a level at which existing variation had been collected and paid.

4) Whether, and how, other authorities for which the relevant subset of a broad partial tear-up is considered critical are consulted.

Q8. *Should any tools for restoring a matched book only be exercisable by resolution authorities? If so, which tools and subject to what conditions?*

Answer:

In Eurex Clearing's view, the only contentious matched book tool has been full tear-up, i.e. closing all current positions of a CCP. In our view, this is a natural consequence for limited liability CCPs, unless other tools are structured to give comprehensiveness. Hence, we consider that all such matched book tools should be part of a CCP's rulebook. While resolution authorities may choose to intervene, without the obligation to do so, we do not consider there to be a need to restrict certain rebalancing tools for only the authorities. Nonetheless, Eurex Clearing recognises that the broader the tear-up, the more likely that authorities will have views on the systemic impact beyond what the CCP is able to evaluate, and thus resolution scenarios could arise in which authorities employ flexibility, for instance cash calls or modifying more granular tear-up rules, to improve on a full tear-up if this is the only tool which remains available to the CCP.

Allocation of losses in resolution

Q9. *What are in your view effective tools for allocating default and non-default losses and what are the pros and cons of these tools? Should initial margin haircutting be considered as a tool for the allocation of losses in resolution? Is one or more of the tools preferable over others? What are your views on the use of tools to restore a matched book as a means of loss allocation?*

Answer:

Eurex Clearing is generally supportive to introduce a flexible approach in the application of a tool fitted to the market segment or asset class.

Nonetheless we see the following order of preference:

a) Cash calls: This tool already exists in many rulebooks. Ex ante rulebook based cash call are transparent and measurable against the presumed value of continuity for participants. In resolution, cash calls have the advantage that they do not modify the positions or economics of trades in the market, and their apportionment can also be determined with fairness and systemic impact. In particular, the effect of other tools such as VMGH or IMHC could be blended together in a formula for a cash call. Additional cash calls beyond ex ante commitments enable the market to continue in a clean manner if losses exceeded preparations, and should be considered a key voluntary resolution tool for critical services. If this tool is used, resolution authorities should consider how to ensure the exit of those members who are not able or willing to continue as a participant.

b) Variation margin gains haircutting (VMGH) (for markets where possible, e.g. swaps and potentially exchange traded derivatives with some modifications): if conducted retroactively from the beginning of the default, VMGH is comprehensive, and allocates losses to "winners" at the CCP. VMGH in this form has various advantages, in that it creates a reserve price in an auction, it can be used to recover gains in scenarios driven by abnormal prices, and sets a maximum payout that could be obtained from the market via a CCP. However, these benefits must be balanced against disadvantages of the tool. Since VMGH reduces the payout from contracts, those participants that hold CCP positions as part of an investment mandate or to hedge off-CCP business will seek similar exposure that the CCP is attempting to rematch, complicating the DMP. Additionally, VMGH in most proposals covers only a portion of derivatives, which means that multi-product hedges or strategies at a CCP are likely to be modified. Finally, VMGH is less predictable, as its impact depends on the profit and losses of positions based on the specific scenario at hand. Thus, Eurex Clearing considers that while VMGH could be useful in certain scenarios, it must be extremely carefully evaluated.

c) Other forms of contract termination: As with variation margin gains, contract terminations could be conducted at prices that include a loss allocation. Such alternatives could be considered if whole or part of a market is considered unviable, and the full or partial closure can be arranged in an equitable manner through the prices themselves and thus avoiding potentially disruptive effects of other tools.

d) Initial margin haircutting (IMHC): IMHC comes in various forms. The most common one is simply a cash call, since participants are asked to replenish the used IM. This is perhaps more robust than cash calls, but they key difference is that IMHC of this type affects indirect participants. Other forms of IMHC use either excess margin, for instance margin left over after certain non-critical markets are closed. IMHC is a realistic and robust indicator for the amount of risk brought by each user of the CCP system and equitably spreads the losses across the entire participant base. It is a good preliminary estimate for the "value" of the CCP for each individual participant.

In a given scenario it should also be possible to apply combinations of the listed tools, if these combinations appear most effective in handling the financial distress.

Q10. *Which, if any, loss allocation tools should be reserved for use by the resolution authority (rather than for application by a CCP in recovery)?*

Answer:

Eurex Clearing considers that in principle, there is a continuous spectrum from mutualisation to recovery and resolution. As such, we do not see the need to preclude any tools from the CCP's rulebook, and consider that market participants and CCPs will be strongly incented to strengthen and precise these to match the desired level of continuity and equitable loss allocation. We consider the question to be primarily for authorities, either through their choice of early intervention, or if jurisdictions have preferences for certain types of tools (e.g. to determine an appropriate balance between direct and indirect members' loss absorption). However, given the above comments on the need to tailor tools to the particular asset classes and market segments, Eurex Clearing expects that such discussions will arise naturally in the recovery and resolution planning of each CCP, in which case authorities can more readily determine what, if any tools, they would like to exercise themselves.

Q11. *How much flexibility regarding the allocation of losses is needed to enable resolution authorities to minimise risks to financial stability? For example, to what extent should a resolution authority be permitted to deviate from the principle of pari passu treatment of creditors within the same class, notably different clearing members in resolution? What would be the implications of a resolution strategy based primarily or solely on a fixed order of loss allocation in resolution set out in CCP rules vs. a resolution strategy that confers discretion to the resolution authority to allocate losses in resolution differently to CCP rules?*

Answer:

Eurex Clearing would like to highlight on a general note that flexibility for the resolution authorities does not mean that loss allocation is eased.

A flexible approach will primarily help a resolution authority to respond to a crisis situation in the best way possible. If the CCP, its members, and regulators have prepared tools and loss allocation capability for very extreme but plausible scenarios, then resolution is either a way to ensure continuity beyond these levels, or to adjust their application (including closing a service prior to a CCP enacting incommensurate tools). Of course, as mentioned, it is conceivable that resolution is deployed to ensure the existing rulebook is applied if a CCP is unable or unwilling to do so, but we consider this a highly improbable situation. However, authorities should maintain cooperation and discussions to prevent such flexibility from being used to promote the interest of a particular jurisdiction over those of others.

Pari passu in resolution relates to creditors, typically in bank resolution in which haircuts for bond holders features as a key tool. For CCPs, further careful consideration of "class of creditor" should be detailed prior to a definite judgement, since there could be great differences in how the losses of, say, direct or indirect participants are considered. Nonetheless, Eurex Clearing considers that the existing structure of CCPs already strays from this, in that mutualisation is based on risk managed by the CCP per member with averaging over time, rather than possible losses. Furthermore, tools like VMGH and partial tear ups would also continue to create further differences. As such, Eurex Clearing is of the view that it should be possible to deviate from pari passu in order to maintain equitable loss allocation and maintain positive risk management incentives.

Eurex Clearing prefers that DMP and recovery are allowed to play out in full, and that participants benefit from the certainty included in the CCP rulebook. Given that resolution would only occur in highly novel situations with the necessity for decisive action by authorities, Eurex Clearing considers fixed and completely predictable resolution to be unlikely and undesirable. Nonetheless, this resolution authority flexibility is expected to lead to improved incentives for CCPs and their participants, as it creates a preference for stronger CCP rulebook based tools and deeper waterfalls so as to avoid resolution.

Q12. *What are your views on the potential benefits or drawbacks of requiring CCPs to set out in their rules for both default and non-default losses:*
(i) The preferred approach of the resolution authority to allocating losses;
(ii) An option for, or ways in which, the resolution authorities might vary the timing or order of application of the loss allocation tools set out in the rules?

Answer:

The benefits of setting out clear rules for DMP or NDL are increased transparency and thus the ability to evaluate and discuss the framework amongst the CCP's stakeholders. We note that it is unlikely that resolution authorities would be bound by the CCP's rulebook, and expect that in most cases authorities would draw up their own plans. Resolution legislation will describe the approaches or options for authorities.

Non-default losses

Q13. *How should non-default losses be allocated in resolution, and should allocation of non-default losses be written into the rules of the CCP?*

Answer:

Eurex Clearing supports that rules which affect the participants of the CCP for non-default losses should be written into the rules of the CCP. Non-default losses are, with exceptions such as member collateral related losses, the responsibility of the CCP and their management is part of the business as usual risk management of the CCP operator.

The special case of member collateral should in particular be included, since this is the primary type of NDL risk in which comprehensive tools require loss allocation to participants, in addition to the CCP bearing losses.

Q14. *Aside from loss allocation, are there other aspects in which resolution in non-default scenarios should differ from member default scenarios?*

Answer:

Eurex Clearing would note that as NDL is unrelated to the considerations mentioned above, there is no reason to have great flexibility for loss allocation and that pari passu can be maintained given the traditional nature of creditors in such cases.

Application of the "no creditor worse off" (NCWO) safeguard

Q15. *What is the appropriate NCWO counterfactual for a resolution scenario involving default losses? Is it the allocation of losses according to the CCP's rules and tear-up of all the contracts in the affected clearing service(s) or liquidation in insolvency at the time of entry into resolution, or another counterfactual? What assumptions, for example as to* *timing and pricing or the re-establishment of the CCP’s matched book, will need to be made to determine the losses under the counterfactual?*

Answer:

Eurex Clearing agrees that it is important that participants have the ability to ultimately limit the amount of resources that could be consumed in a CCP resolution. In comments above, the importance of enabling participants to leave or default towards a CCP –with its consequences- is an important and practicable check against powerful tools to restore the service.

NCWO for CCPs should consider the costs that would be incurred across the system if the CCP was to become insolvent, after the full consumption of its waterfall. We consider the best way to address the timing point is for CCPs to include appropriate tear-up descriptions into their rulebook, to be operated if resolution authorities choose not to intervene. Thus, the counterfactual should include the following;

1) The loss of participants positions, and the impact this has on their trading and hedging, including the effect of un-hedging outside of the CCP, or, conversely, and estimate of the replacement costs for which initial margin can serve as a basis. In cases where initial margin, or portions of it, form part of the estate in the event of insolvency, there should not be double counting.
2) The effect on capital and liquidity requirements following the loss of positions, or, consistently with the above, the changes in capital requirements if replacement trades are conducted.
3) The loss of revenue from client clearing business.
4) The potential impact on members from the lack of access to the products going forward.
5) Additionally, the overall systemic impact of such changes to the risk transfer markets can be considered by authorities.

Finally, we note that such a view should enable authorities to consider the system-wide consequences of a CCP default. While we agree with the importance of a safeguard for participants, one of the key difficulties with the NCWO safeguard is that it does not explicitly appear to recognize the systemic value or the financial stability benefits of a mutual system.

Q16. *What is the appropriate NCWO counterfactual for a resolution scenario involving non- default losses? Is it the liquidation of the CCP under the applicable insolvency regime, assuming the prior application of any relevant loss allocation arrangements for non-default losses that exist under the CCP’s rules or another counterfactual?*

Answer:

Eurex Clearing agrees with the approach described in the consultation document referring to the respective insolvency regime, after loss allocation according to the rulebook and NDL specific arrangements, as an appropriate counterfactual.

Q17. *How should the counterfactual be determined in cases that involve both default losses and non-default losses?*

Answer:

Eurex Clearing considers it important to address default related losses first, since this will include determinations of which if any services are to be continued and under which form. Following this, NDLs should be addressed. Thus, we posit that the counterfactual for both can be considered independently.

Equity exchange in resolution

Q18. *Should CCP owners' equity be written down fully beyond the committed layer of capital irrespective of whether caused by default or non-default events?*

Answer:
Eurex Clearing is strongly of the view that if a CCP has failed to the point of requiring resolution authority take-over, then the CCP's equity should be fully written down in either default or non-default events. We would however stress that early engagement should not lead to such a write-down, as the CCP is still operating itself.

Q19. *Should new equity or other instruments of ownership be awarded to those clearing participants and other creditors who absorb losses in resolution?*

Answer:
Eurex Clearing believes this form of ex post compensation of participants for bearing losses in recovery and resolution disrupts the incentives, and is unnecessary. The effect of compensation for recovery or resolution tools is to change the CCP's waterfall from a mutual risk management mechanism, to the CCP underwriting the risk beyond the default fund (or assessments). Offering compensation, whether equity or other instruments, especially on a "dollar for dollar basis" has the effect of creating a threshold beyond which resolution is preferable. Eurex Clearing expects that such a change from loss allocation would lead to enormous pressure to lower assessment rights and other resiliency measures, to minimize the contributions that participants commit without compensation.

In terms of necessity, Eurex Clearing considers that the objective of recovery and resolution is maximal continuity consistent with the viability of the cleared markets in question. This naturally includes loss allocation across participants to achieve continuity. It is unclear what the rationale is from granting compensation from future owners or users of the service, if the rebalancing and continuity could only be achieved beyond the default fund.

Cross-border cooperation

Q20. *What are your views on the suggested standing composition of CMGs? Should resolution authorities consider inviting additional authorities to the CMG on an ad-hoc basis where this may be appropriate?*

Answer:

Eurex Clearing agrees with the proposals that CMGs include relevant authorities as outlined in the KAs and the FMI Annex, and there can be good reasons to include additional authorities on an ad-hoc basis. We would however caution that if a broad crisis affects multiple participants, and then CCPs, at more of less the same time, authorities should consider how to streamline the multiple different CMGs to avoid additional complexity. Thus, we would recommend that authorities carefully consider differences between ex ante deliberations and evaluations of resolution planning, versus efficient in-crisis information exchanges, consultation, and decision making.

Q21. *What should be the nature of engagement with authorities in jurisdictions where the CCP is considered systemically important, for the purpose of resolution planning and during resolution implementation?*

Answer:

For the sake of clarity, Eurex Clearing believes that both participants and authorities from other jurisdictions should recognize the ultimate role of the CCP's rulebook and local resolution authority. Naturally, authorities should cooperate and coordinate to the best of their abilities, including ex ante planning options that can provide other jurisdictions' authorities with comfort around ways to determine and provide for a sufficient certainty of continuity for services more critical to them.

Q22. *Should CCP resolution authorities be required to disclose basic information about their resolution strategies to enhance transparency and cross-border enforceability? If so, what types of information could be meaningfully disclosed without restricting the resolution authority's room for manoeuvre?*

Answer:

Eurex Clearing is open to disclosing information about the resolution strategy to other authorities in order to achieve transparency and increase cross-border enforceability.

The difficulty is that it is unclear what type of loss allocation is necessary given that the scenario is not known ex ante. Of course, practical information such as contact details, the local legal structure of a bridge, etc. can be disclosed upfront.

We consider that CCP rulebooks and relevant local law are always public. Authorities should be free, but not obliged, to disclose a presumptive path or approach to CCP resolution publicly if they consider this to enhance financial stability.

<u>Cross-border effectiveness of resolution actions</u>

Q23. *Does this section of the note identify the relevant CCP-specific aspects of cross-border effectiveness of resolution actions? Which other aspects, if any, should also be considered?*

Answer:

Eurex Clearing agrees with explanations made in the discussion note.

Q24. *What should be the role, if any, of the suspension of clearing mandates in a CCP resolution and how should this be executed in a cross-border context?*

Answer:

Eurex Clearing strongly disagrees with a tool to suspend the clearing obligation during a CCP recovery and resolution. To our understanding, clearing mandates are based on the availability of a CCP providing such services, and thus the termination of services obviates the need for such a tool. In general, it is difficult to image either a situation in which a vibrant market exists but a CCP struggles to recover, or in which liquidity is extremely constrained in a less critical market but there is a keen desire to continue bilateral trading. Further to this, we think such a tool would be problematic for the following reasons:

1) If the CCP has struggled with a DMP for the asset class or contracts in question to the point of entering resolution, we do not consider it prudent to enable bilateral trading in the same contract. Indeed, there may be good reasons to temporarily ban trading in such contracts.
2) If re-bilateralisation is possible, we believe this could create situations in which a CCP is left, after forcing a matched book, with a set of trades for which the price development is further disrupted, not only due to differences in collateral and capital standards.
3) The ability to trade bilaterally will be uneven, not only across jurisdictions which may treat the tool differently, but also between participants who will have different ability to transact bilaterally.

C. Closing

We hope that you have found these comments useful and remain at your disposal for further discussion. If you have any questions please do not hesitate to contact:

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