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**Eurex Clearing
Response
to the**

FSB Discussion Note on

“Guidance on Continuity of Access to
Financial Market Infrastructures (“FMIs”) for
a Firm in Resolution”

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Frankfurt am Main, 17.02.2017

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). US Commodity Futures Trading Commission (CFTC) 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 ongoing drive to minimize the negative consequences of financial institution defaults or disorderly resolutions. Eurex Clearing considers that going forward, the most severe financial crises can be substantially mitigated by the close cooperation between Resolution Authorities, other competent authorities and supervisors, and FMIs. In particular, a well-prepared approach to maintaining critical FMI memberships can minimize disruption and needless value destruction to the firm(s) in resolution, as well as control the impact across the markets. To this end, Eurex Clearing supports the efforts to enable continuity of access in resolution, where desired and enabled by the relevant authorities.

Our primary response to the guidance is the joint paper from the two CCP industry associations, CCP12 and EACH. In our individual response, we have opted to respond concisely and candidly, with the hope of adding color to the collective response.

Finally, we appreciate the opportunity the FSB provided in Basel on the 8th of February to clarify and discuss these matters. Following this workshop, we would like to stress the following general points:

- It is in the interest of FMIs, in particular CCPs, for continuity of access, as this naturally limits the impact on our participants and the CCP itself. Termination of a membership entails operating our default management process, which consists of hedging and auctions to rebalance the CCP, and a high likelihood of consuming collateral from the defaulter and possible mutualisation.
- This continuity, however, is strictly conditional on the firm in resolution, or its Resolution Authority, assuming the obligations inherent in remaining a participant of the system. As CCPs rely nearly completely on the collateral provided by its members, there is very little give in the system. The great concern is that a CCP either terminates a membership when continuity was desired by the resolution plan, or fails to risk manage a failed member while awaiting clear instructions to terminate. Thus, we strongly support ex ante work to avoid miscommunications, delays in payment, or other uncertainty, from leading to termination. To this end, we remain open to working with our members or authorities on;

- 1) Standard templates of assurance that a resolution authority will maintain access
- 2) Where permitted by data confidentiality, understanding if any of our services are considered critical to our members’ resolution plans
- 3) While respecting the hypothetical nature of such ideas, discuss the spectrum of possible mitigants authorities can deploy or instruct a firm to deploy in the run-up to resolution, such as power of attorney rights over accounts, pre-collateralisation of plausible new positions or market conditions, and risk management of indirect clients with authorities.

B. Questions and Answers

Q1. Does the consultative document appropriately address the tensions that may arise between the various financial stability objectives, with regard to the safety and soundness of providers of critical FMI services on the one hand and to the orderly resolution of the recipients of such services on the other?

Answer: In addition to the collective response, we would highlight that the Resolution Authority may benefit greatly from continued access to CCPs, contingent naturally on the particular scenario and the resolution strategy in that case. In particular, for firms which may be locked out of bilateral contracting and markets, CCPs provide an established way to hedge general exposures. Furthermore, some centrally cleared markets, such as repo, can provide a fair and arms-length manner to obtain anonymous funding at market rates. Thus, authorities should not only consider the value of the centrally cleared business, but also the ongoing utility of markets that CCPs provide access to which can support or enhance the resolution strategy.

Q2. Do you agree with the overall scope of the guidance and the proposed definitions, in particular the services and functions captured in the definition of ‘critical FMI services’? Should any of the definitions be amended? If so, please explain.

Answer: In addition to the collective response, and adding to the fruitful conversation during the workshop, we would stress that “ancillary” can be distinguished from critical, though for certain types of ancillary services these are necessary for the continuity of the primary service. For instance, in exchange traded derivative markets, continuity of exchange membership is ancillary but critical to successful continuity of the CCP membership. We consider that this understanding can be read in the existing language.

Q3. What are your views on the proposal in sub-section 1.1 of the consultative document that providers of critical FMI services clearly set out in their rulebooks or contractual arrangements the rights, obligations and applicable procedures in the event of an FMI participant entering into resolution?

Answer: No further comment to collective answer.

Q4. Sub-section 1.1 of the consultative document proposes that the exercise by the provider of critical FMI services of any right of termination or suspension of continued access to critical FMI services arising during resolution of an FMI participant be subject to appropriate procedures and adequate safeguards. What are your views on those procedures and safeguards? In your answer, distinguish where relevant depending on whether the firm that enters resolution continues or fails to meet its payment, delivery and collateral provision obligations to the FMI or FMI intermediary.

Answer: In addition to the collective response, we would highlight that most CCP rulebooks outline both mandatory and non-mandatory trigger events (i.e. grounds for termination). These are naturally dependent on the obligations that arise from the particular types of clearing services, and the remedying actions on the severity of the case. We would recommend that given the specificity of the obligations for varying CCPs, that authorities and participants reference these rather than attempt a more comprehensive list in the guidance. For the avoidance of doubt, the key safeguards are highlighted in Sub-section 1.1

Q5. Sub-section 1.2 of the consultative document proposes that the general rights, arrangements and applicable procedures of a provider of critical FMI services that would be triggered by entry into resolution of an FMI participant, its parent or affiliate, should be the same irrespective of whether the firm entering into resolution is a domestic or foreign FMI participant. What safeguards should be considered and what measures are needed to ensure a consistent approach is taken across providers of critical FMI services to these safeguards?

Answer: In addition to the collective response, we would agree wholeheartedly with the proposal. We would however note, that as a practical matter, this requires that foreign participants’ resolution authorities may need to take additional care on time zone matters and local currency liquidity, so as to avoid unnecessary terminations.

Q6. What are your views on the proposal in sub-section 1.4 of the consultative document that providers of critical FMI services should engage with their participants regarding the range of risk management actions and requirements they would anticipate taking in response to the resolution of an FMI participant? Does this strike the right balance between the objectives of orderly resolution and the FMI or FMI intermediary’s prudent risk management?

Answer: In addition to the collective response, we would highlight with some surprise the claims by some participants that they are not already engaged on these matters. It is standard and expected on a day-to-day basis that participants fulfill their obligations, and thus these should not be the source of any confusion. In terms of discretion for ad hoc or case-by-case risk mitigating actions which CCPs can enact, participants are well aware of these, and we contend that their views on the desirability of these is dictated on whether this is used against other participants in trouble, or the participant themselves.

Q7. Do you agree with the proposal in section 2 of the consultative document that firms should be required to develop contingency plans to facilitate continuity of access in both the lead-up to, and upon entry into, resolution? Does the consultative document address all aspects of the information and analysis that may be required for such contingency plans?

Answer: In addition to the collective response, we would suggest that yes, this is beneficial, even if the answer is ultimately unsatisfactory, as this helps highlight which services really are critical. We refer to the general introductory comments as ideas which firms and authorities could consider for lead-up and upon entry measures to maximize the probability of successful continuity.

Q8. Are there any aspects of the proposed guidance that should apply differently according to whether access to a critical FMI service is provided directly by an FMI or custodian, or indirectly by an FMI intermediary? If so, please describe with reference to the particular section(s) of the proposed guidance, and include your views on how that section(s) should differ.

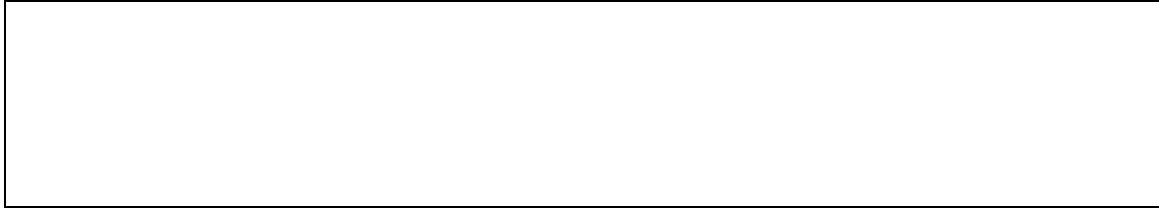
Answer: No comment.

Q9. Does the consultative document identify all relevant requirements and pre-conditions that a firm may need to meet to support continuity of access in both the lead-up to, and upon, resolution? What other conditions or requirements, if any, should be addressed?

Answer: In addition to the collective response: The document comprehensively covers the requirements and pre-conditions. However, in the normal course of business, participants employ various operational or market risk measures to smooth their interactions with FMIs and CCPs, for instance maintaining a comfortable over-collateralisation buffer to minimize intra-day margin calls. We would advise authorities to consider the continuity, expansion, or introduction of similar measures, if they consider that otherwise their ability to fulfill obligations towards the CCP could be imperiled.

Q10. Does the consultative document identify appropriate methods for providing the information and communication necessary for key decision making during the resolution of an FMI participant? Are there additional safeguards that could be put in place that would ensure adequate levels of transparency in the lead-up to, and upon resolution?

Answer: In addition to the collective response, we would reiterate that authorities could simplify communication with FMIs if mutually agreed templates, of a very short and clear nature, were agreed ex ante and easily recognized and interpreted during a stress period. We would stress again the necessity for authorities to prevent any possible divergence of understanding between a participants' Resolution Authority and the FMI's supervisors. Finally, we would suggest that in the fire-drill exercises conducted by CCPs, the first phase should include simulation of successful and unsuccessful (or undesired) continuity of access.



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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