

January 24, 2022

VIA ELECTRONIC SUBMISSION

European Securities and Markets Authority

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Re: CCP12 responses to ESMA's 4 (out of 6) Consultation Papers on CCP Resolution Regime (CCPRRR)

I. Introductory remarks

The Global Association of Central Counterparties ("CCP12") appreciates the opportunity to comment on the European Securities Markets Authority's ("ESMA") Consultation Papers on

- Consultation paper on draft RTS on the content of CCP resolution plans¹ - Page [2](#)
- Consultation paper on draft Guidelines on methodology to value each contract prior to termination² - Page [5](#)
- Consultation paper on draft RTS on Valuation of CCPs assets and liabilities in resolution³ - Page [7](#)
- Consultation paper on draft Guidelines on the application of the circumstances under which a CCP is deemed to be failing or likely to fail⁴ – Page [12](#)

¹ ESMA, Consultation Paper, Draft RTS on the content of CCP Resolution plans (Nov. 2021), available at [Link](#)

² ESMA, Consultation Paper, Draft guidelines on methodology to value each contract prior to termination (Nov. 2021), available at [Link](#)

³ ESMA, Consultation Paper, Draft RTS on valuation of CCPs assets and liabilities in Resolution (Nov. 2021), available at [Link](#)

⁴ ESMA, Consultation Paper, Draft guidelines on the application of the circumstances under which a CCP is deemed to be failing or likely to fail (Nov. 2021), available at [Link](#)

II. CCP12 Responses to Specific Questions to ESMA's Consultation paper on draft RTS on the content of CCP Resolution plans**Question 1: Do you agree with how ESMA has enabled sufficient flexibility and ensured proportionality in the draft RTS? If not, please explain?**

CCP12 welcomes that ESMA intends to ensure flexibility and proportionality with its proposed standards and agrees that the resolution plan should be comprehensive and fair – i.e., not one-size-fits-all – because CCPs have different risk profiles and clear different products, among other factors. Flexibility and proportionality are essential to ensuring that the resolution authorities are able to update the resolution plans for any innovations and changes in future to CCPs.

In terms of proportionality, CCP12 also agrees with ESMA's conclusion in Section 3.2 that the RTS should not require a fixed list of requirements for the resolution authority to include since it would not enable the necessary flexibility to ensure the plan is best suited for the CCP based on its risk profile, including products cleared, business model and membership.

In the context of flexibility, we question the merit of requiring resolution authorities to reflect a given set of nine resolution scenarios in the resolution plan. This would be an example of a too prescriptive approach which would not enable resolution authorities to select such a set of scenarios that would properly reflect the CCP's specificities and instead would impose an obligation to introduce the same set of scenarios for different CCPs operating in different markets, clearing different products etc.

Notwithstanding the above, we would like to stress the importance of resolution plans including a clear definition of the point of resolution which would follow after the CCP has had the opportunity to fully exhaust the arrangements and tools provided for under its recovery plan and rulebook. This would prevent confusion or uncertainty for CCPs and their participants and diminish the risk of early intervention which should be a last resort measure. For more details on the above please refer to our responses to the ESMA consultation papers on recovery-related draft RTS and Guidelines (especially draft Guidelines on the consistent application of the triggers for the use of Early Intervention Measures (Article 18(8) CCPRRR))⁵.

Question 2: Is there any aspect from the BRRD RTS that is not included in the draft RTS, but should be? If yes, please specify and explain why?

CCP12 is of the opinion that ESMA has generally taken into consideration what is available in terms of resolution specifications, including provisions of BRRD, thereby complying with its mandate to take into account previous guidance adopted under the EU's bank resolution regime. This happens in two ways: the application of BRRD already should – and does – consider continuity of access of a failing bank to FMs, and conversely, a CCP recovery or resolution plan affects its members, some of whom are banks. In this respect, banks' business with the CCPs should – and already is – reflected in their capital and

⁵ CCP12, Responses to ESMA's seven Consultation Papers on CCP Recovery and Resolution Regime (CCPRRR), available at [Link](#)

liquidity planning. An additional link exists in the case of some CCPs which are subject to the BRRD when they have to hold a banking licence under their local rules.

It is important to note, however, that bank resolution regimes may only serve as a starting point for ESMA's consideration. In this context, CCP12 would like to emphasise that CCPs serve vastly different purposes compared to banks. CCPs purpose is to act as risk managers as opposed to risk takers like banks. Both types of entities differ in terms of business objectives, risk management methodologies and performance and therefore bank resolution regimes as such are not appropriate for CCPs and should not be directly applied in order to take into account these differences.

Question 3: Do you agree with how the draft RTS envisages to further specify the resolution plan? If not, please explain?

CCP12 supports ESMA's view that resolution plans vary depending on characteristics of the CCP and that a one-size-fits-all approach should not be applied. To better provide for the differences among CCPs, CCP12 recommends that ESMA considers a less prescriptive and more flexible approach to the development of the resolution plan as envisaged in the Level 1 text.

Taking these elements and the differences in CCPs into account, ESMA should ensure that there is a process to check that outcomes are similar across CCPs, and that decisions on scenarios across different CCPs result in a fair and equal treatment.

Regarding the assessment of resolvability, the need for the resolution authority to ensure that a CCP's structure and operations maximize resolvability should be balanced against, and take specific account of, the ongoing resilience and risk management requirements applicable to the CCP for authorization and ongoing operations. EMIR is a very strict and comprehensive regulation and thus CCPs authorized under EMIR meet the highest standards of risk management and fulfil other prudential requirements. CCP compliance with these standards and legal requirements is tested and supervised on a regular basis (through internal and external stress-tests, competent authorities' assessments etc.). That is why the resolvability assessment's scope should be limited and should not contravene or supersede the requirements laid out in EMIR or other applicable CCP requirements. Outside of an actual resolution, the CCP's supervisory authority should maintain its full supervisory powers at all times (i.e., oversight of a CCP should continue to reside with its primary supervisory authority) and to the extent the resolution authority has any concerns, it should raise them with the supervisory authority in the first instance.

Regarding resolution strategies and scenarios, the legislation should ensure that resolution authorities are able to plan for scenarios which are by definition extraordinary, and that flexibility is retained. In particular, we do not like the prescriptiveness of having at least 9 sets of scenarios. In cooperation with the CCP, the resolution authority should establish meaningful scenarios based on a CCP's specific characteristics. For some CCPs, the recovery tools and wind-down approach do not change based on the scenario.

Consequently, CCP12 would recommend that Table 1 should not be adopted and instead ESMA should take a more principles-based approach, whereby the resolution authority identifies scenarios relating to the types of default and non-default events that are relevant to the CCP's offering. However, to the extent

this approach is not taken, at a minimum, Table 1 should be referenced as providing examples and as such, the resolution authority should not have to adopt scenarios using every consideration enumerated.

Question 4: In particular, do you agree with the content of the summary of the resolution plan (Article 12(7)(a))? Is there any aspect missing? If yes, please specify and explain why?

CCP12 agrees that the summary of the resolution plan should contain the key elements in relation to the different scenarios distinguishing between default events, non-default events and a combination of the two. For CCPs to be able to produce an informative and valuable opinion on the resolution plan, however, they should be provided with a comprehensive full summary of the whole resolution plan, instead of one that is limited to the key elements described in the Consultation Paper.

Question 5: Do you agree with the Option 1, if not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach (Option 1)?

No, CCP12 would prefer policy Option 2, which would provide for more flexibility for resolution authority in drawing up the resolution plan. As per our comments above, it is especially in the area of resolution scenarios that the resolution plan lacks sufficient flexibility. It would not necessarily introduce CCP tiering but would enable resolution authorities to apply such aspects and considerations that are really relevant for a given CCP.

In our opinion, Option 2 would not seem to have a significant impact in terms of the cost and benefit analysis and instead would provide for additional prudence.

Alternatively, we could support pursuing policy Option 1 which could be helpful in terms of having the elements and contents of the resolution plan aligned and in the same order as the requirements under Article 12(7) of the CCPRRR but this would require a less prescriptive approach of some provisions, such as of RTS Article 11 Resolution strategies and scenarios which requires the introduction of at least nine designated resolution plan scenarios based on the matrix for building the resolution plan scenarios as set out in Annex 1.

Question 6: If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.

Please refer to our previous response regarding Option 2.

III. CCP12 Responses to Specific Questions to ESMA’s Consultation paper on draft guidelines on methodology to value each contract prior to termination

Question 1: Do you agree with the proposed analysis and the corresponding limitations on the use of market standard approaches? If not, please explain why? Have you identified other points not mentioned above?

As described further in CCP12’s response to Question 4, CCP12 would like to emphasize that it is the CCP methodology that should be used as the preferred method. The ability of the resolution authority to determine that another methodology (i.e., not the CCP’s) could be used, could create a lot of uncertainty for the CCP and market participants. In this context, the use of market standard documentation from ISDA, GMRA or FIA should not be mandated, but it should be left at the CCP’s discretion to include their existing rules on valuation as part of the position allocation tool. The pricing of contracts – at least once per day – is vital and already core to all CCP processes and risk management.

We would also like to note an important fact that such standard documentation or certain envisaged tools (e.g., partial tear-ups) are not applicable in the context of securities cash clearing CCPs which are required to have their own specific methodologies. As such, it would not be practical to have a mandate as described in the guidelines across the board for all CCPs.

Question 2: Do you agree with the proposed analysis on the scope of the methodology and the concept of “contracts”? If not, please explain why and provide your analysis.

CCP12 agrees with the proposed analysis in the context of derivatives clearing CCPs and as long as it favours the CCP’s methodology to the highest possible degree. However, as also noted above, the concept of “contracts” appears to be applicable primarily to derivatives clearing CCPs – and does not acknowledge differences that would apply in the context of securities cash clearing CCPs.

Question 3: Do you agree with the interpretation of what could be the resolution authority methodology i.e., the re-use of the valuation methodology of the CCP unless the resolution authority deems it necessary to use another appropriate price discovery method? If not, please explain why and provide your interpretation of methodology and sequencing.

CCP12 would like to reiterate that in our opinion the resolution authority should use the CCP methodology as the preferred method and any deviation from it should be evidence-based and limited to very exceptional situations.

Question 4: Do you agree with the proposed analysis with regards to the valuation methodology? If not, please explain why and provide your analysis.

In the CCP12’s opinion, the usage of CCPs rules and arrangements should be the preferred method and other alternatives should only be seen as the last resort and only in instances where the resolution authority is able to substantiate that the CCP methodology would not produce a fair market price. This is

especially important based upon the differences among CCPs in terms of the nature of their businesses and products cleared (e.g., securities vs. derivatives) and the fact that respective CCP rules and arrangements for contract valuation are specific to those businesses and products cleared. Also, in terms of alternative price discovery methods, the resolution authority should base them on as objective as possible criteria (e.g., the most recent available settlement price), with the overall aim to avoid distortion of the incentives structure embedded in a CCP's risk management and default waterfall. Clearing members' engagement in the CCP's actions (through participation in auctions, where applicable, and provision of competitive bids) is key to successful default management. If there is a possibility arising from legal provisions or guidelines (such as those relating to methodology to value contracts prior to termination) that clearing members might be better off in resolution due to a price discovery method which would be more beneficial to them than the standard market price, they might be disincentivized to participate in auctions effectively.

In our view, the last available settlement prices as calculated daily by the CCPs to settle variation margins are a reliable and transparent basis to determine the termination prices. These prices could be modified on an ad-hoc basis for the purpose of the resolution, if warranted by the specific circumstances. We consider this approach to comply with the principles ESMA proposes.

We stress that polling members on inexecutable prices is likely to skew prices, and both that approach and references to a third party is inevitably not a neutral process.

Question 5: Do you agree with the Option 2, if not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach (Option 2)?

In the CCP12's view, Option 2 seems reasonable as long as the valuation methodologies that the CCPs have in place are strongly preferred and that cases in which alternative price discovery methods can be used are very limited in scope and evidence-based.

Question 6: If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.

No comment. / Not applicable.

IV. CCP12 Responses to Specific Questions to ESMA’s Consultation paper on draft RTS on valuation of CCPs assets and liabilities in Resolution

Question 1: Do you agree with the proposed approach to define three elements of independence that should be met for a valuer to be deemed to be independent from the CCP and the resolution authority?

CCP12 generally agrees with the proposed approach to define three elements of independence that should be met for a valuer to be deemed to be independent from the CCP and the resolution authority.

Question 2: Do you agree with the proposed definitions for the relevant entity, relevant authority and independent valuer?

CCP12 generally agrees with the proposed definitions and especially welcomes the broader definition of the relevant entity (compared to BRRD) to comprehensively capture all entities the valuer should be independent of. At the same time, we would also like to request clarifications from ESMA on whether CSDs should also be captured under this definition and therefore excluded from the valuation process. CSDs are entities acting as custodians of CCPs’ assets and which assets could be used for the purposes of securing intra-day credit lines. As such, CSDs should also be excluded from the scope since their independence is questionable.

Question 3: Do you agree with the proposed conditions to assess whether a person considered for the position of independent valuer or appointed as independent valuer does not have an actual or potential material interest in common or in conflict with any relevant public authority or the CCP?

CCP12 broadly agrees with the proposed conditions as they are very detailed and seem to capture relevant circumstances comprehensively which should help ensure the integrity of the valuation process. At the same time, we would like to refer to material interests arising from persons working for audit firms as noted in paragraph 53 of the report. There might be instances where, although the audit firm might not be servicing the CCP directly, it may still service the CCP’s members. We would assume that such a link could constitute a conflict of interest under the draft RTS but would appreciate further clarification on such instances by ESMA.

Question 4: Do you agree with the proposed conditions to assess whether a person considered for the position of independent valuer or appointed as independent valuer has the necessary qualifications, experience, ability, knowledge and resources?

CCP12 agrees with the proposed conditions to assess whether a person considered for the position of independent valuer or appointed as independent valuer has the necessary qualifications, experience, ability, knowledge, and resources. It is indeed very important that the valuer has the expertise and experience in post-trade valuation of CCP-cleared instruments.

Question 5: Do you agree with the proposed approach to determine and assess the three elements of independence to conclude if a valuer shall be deemed to be independent from the CCP and the resolution authority?

CCP12 broadly agrees with the proposed approach to determine and assess the three elements of independence to conclude if a valuer shall be deemed to be independent from the CCP and the resolution authority. We welcome the provision that states that the resolution authorities should establish a list of potential valuers once the CCPRRR draft RTS enters into force and revise this list on a regular basis. This should provide more certainty and streamlining of the resolution process in times of stress.

We would like to, however, notice that, in our opinion, Criterion 3 Part 1 A, which contains the conditions determining the legal, structural, and operational separation of the valuer from any relevant public authority or relevant entity, broadly limits the pool of eligible valuers. This is because the proposed definition of relevant entity captures clearing members, clients, and indirect clients. An auditing firm will likely not pass the separation test if they consulted for or audited one of the CCP's members or clients. At the same time, these restrictions may also be justified with the need to ensure the integrity of the valuation process.

Question 6: Do you agree with the respective proposed approaches for the valuation under Article 24(2) and Article 24(3) of Regulation (EU) 2021/23?

In CCP12's opinion, regarding the sources of information proposed to be available to the independent valuers, it is not entirely clear as to what is subject to valuation – the CCP's assets and liabilities or just the CCP's equity? By way of example, the treatment of intangible assets is not entirely clear when looking at the valuation process. For the purposes of the valuation of intangible assets, we believe that the KCCP calculations may prove helpful since they would include the value of the default fund, collateral held by the CCP, current exposure, replacement cost and potential future exposure.

We would also welcome clarifications as to the type of valuation. We think there is some risk of inconsistency between the valuation results under Article 24(2) based on the applicable accounting and prudential regulatory framework and under Article 24(3) based on the economic value and not the accounting value. The proposal indicates a mix of both, and it is not entirely clear how an accounting value (book value) and an economic value could be compared.

As a technical remark, we would like to point out that Article 15 refers to best points estimates and value ranges as laid out in Article 9(3), whereas they are laid out in Article 8(3).

Question 7: Do you agree with the described process for performing the 'No Creditor Worse Off' Valuation in accordance with Article 61 of Regulation (EU) 2021/23?

CCP12 would like to emphasise and recall from the Level 1 text that the NCWO counterfactual must reflect the actual conditions that creditors would have been subject to should the CCP have defaulted and closed down without intervention by the resolution authority. As also described in CCP12's response to Question 8, the valuation for the application of the NCWO principle should include the CCP's default waterfall, the recovery tools foreseen in the recovery plan and rulebook of the CCP and, crucially, the

replacement costs or consequences for the participants of the CCP. Without retaining this sensible goal and definition from the Level 1 text, the RTS would lead to a situation where participants of CCPs – and potentially other creditors – would expect that a resolution authority has no ability to apply any loss allocation or haircuts to their claims.

As a technical remark, we would like to point out that in the proposed RTS Article 28 is missing.

Question 8: Do you agree with the proposed list of direct replacement costs to be included in the NCWO valuation?

First of all, CCP12 would like to point out that it is broadly recognized by the industry that the consequences of a CCP closure would be dramatic. That is why, the NCWO valuation should reflect these adverse costs which are avoided by the resolution procedures.

We would therefore recommend that the replacement costs are defined even more broadly and comprehensively, including the costs of reopening positions with another CCP (such as membership fees, provision of collateral in the form of margins and default fund contributions, bid/ask spreads, adverse price moves and technological/operational adjustments that might be necessary) or reopening positions in the bilateral market if possible (which could include additional capital costs, application of the uncleared margin rules and other risk mitigation techniques and lack of netting).

We note that this logic is similar to BRRD, wherein actual trades must be conducted to qualify for claims to a resolution authority, which themselves are subject to haircuts.

We would also like to note that we consider “losses stemming from market moves between the time net positions were closed by the CCP and the time they were reopened” as being the losses stemming from the opposite transaction to the terminated transactions, and that only net costs, and not net profit, will be accounted for in the valuation. Including net profit could likely result in non-compliance with the NCWO principle, despite the best effort of the resolution authority, as it cannot anticipate the market direction.

We expect that in most circumstances estimated cost of replacement transaction will exceed the concentration/liquidity add-ons of such position (on a net level). While such an assumption cannot be prescriptive, taking into account the different scenarios, it could be included as a general recommendation or guidance for the valuer.

Importantly, we would also like to emphasise that certain concepts such as “reopening positions” are not applicable in the cash markets where transactions will be settling in a short period of time, not re-opened at another CCP. A comprehensive definition should also take into account applicable references and considerations with respect to the cash markets.

Question 9: Do you agree with the proposed approach for the calculation of the buffer for additional losses to be included in provisional valuations?

If we agree that the aim of the approach proposed is to simplify the process of provisional valuation by extrapolating losses estimated for a part of the CCP’s assets to the remainder of the CCP’s balance sheet, extrapolating also average losses estimated for assets of peer competitors, which would be subject

to the necessary adjustments for differences in the business model and financial structure, might run counter to this aim by adding complexity to the process.

We would highlight that as a first order of approximation, CCP's initial margin reflects a standard method for assessing the replacement costs of contracts or in the context of securities cash clearing, the amount needed to close out a defaulting member's unsettled transactions. Naturally, the initial margin ("IM") assumes the default management process of the CCP and a waterfall as incentives for members, and a counterfactual scenario of all firms replacing contracts – if they can – would not be so orderly, and thus IM might be too low an estimate.

Question 10: With regards to the proposed policy options for the circumstances for the independent valuer to be deemed independent, do you agree with Option 2? If not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach?

As described below, CCP12 generally agrees with Option 2, subject to certain comments.

Question 11: If you advocate for a different approach, how would it impact the cost and benefit assessment? Please provide details.

Not applicable.

Question 12: With regards to the proposed policy options for the information to be used in valuation, do you agree with Option 2? If not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach?

CCP12 generally agrees with Option 2 with regards to the proposed policy options for the information to be used in valuation.

In terms of overarching principles, it is difficult to comment on this part comprehensively since in policy Option 2 Benefits, Regulator's costs and Compliance costs seem not to be included. The risk of incompatible and not easily comparable results of two types of valuations, that we alluded to in our response to Question 6, remains.

In terms of valuation date, it seems to have 3 possible meanings as provided in Article 9 of the RTS – so at least in 2 cases (the resolution date and the date on which contracts are terminated) the valuation date would not be based on estimates and would be predictable. Only in the first case in which the date when resolution is expected would have to be estimated, there will be a degree of some uncertainty, but we agree it seems to be more economically reasonable to apply this estimated resolution date rather than the date of the last available public financial statement as it could indeed mean relying on outdated information.

Question 13: If you advocate for a different approach, how would it impact the cost and benefit assessment? Please provide details.

Not applicable.

Question 14: With regards to the policy options for the measurement basis, do you agree with proposed mixed approach? If not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach?

CCP12 agrees with the proposed mixed approach with regards to the policy options for the measurement basis.

Question 15: If you advocate for a different approach, how would it impact the cost and benefit assessment? Please provide details.

Not applicable.

Question 16: With regards to the proposed policy options for the buffer for additional losses in provisional valuations, do you agree with Option 2? If not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach?

CCP12 generally agrees with Option 2 but suggests not to use the method of extrapolating average losses estimated for assets of peer competitors, subject to the necessary adjustments for differences in the business model and financial structure, to simplify the process of provisional valuation.

Question 17: If you advocate for a different approach, how would it impact the cost and benefit assessment? Please provide details.

Not applicable.

V. **CCP12 Responses to Specific Questions to ESMA's Consultation paper on draft guidelines on the application of the circumstances under which a CCP is deemed to be failing or likely to fail**

Question 1: Do you agree with the proposed Guidelines 1 and 2, specifying the general considerations in determining if a CCP is failing or likely to fail? If not, please explain.

In the context of determining if a CCP is failing or likely to fail, there should be safeguards for CCPs protecting them from too early or unnecessary intervention by the resolution authorities which could very well lead to their inappropriate takeover or other harmful treatment to the detriment of the CCPs and their participants. It is important that no single criterion from the guidelines should automatically trigger resolution.

Early intervention should always be a last resort because it can undermine the incentives that characterize the central clearing model and creates uncertainty as to how the CCP's rulebook will operate. Ultimately, these outcomes could undermine financial stability by pre-emptively pushing the CCP into resolution.

Given these potential negative outcomes, CCP12 is highly concerned by the prospect of a resolution authority intervening before the CCP has had the opportunity to fully exhaust the arrangements and tools provided for under its recovery plan and rulebook. CCPs have worked with clearing members, regulators, and market participants to develop these arrangements and tools, which are embedded in CCPs' rulebooks to help balance incentives and inform market participants' expectations during a CCP's recovery. They have been carefully calibrated to address stress events and appropriately incentivize the active participation of market participants in the default management and recovery process. Accordingly, the CCPs' rulebooks provide not only the proper balance of incentives for all participants, but also as much certainty as is possible during periods of stress.

In the event that the CCP and market circumstances warrant intervention, the resolution authority should have the right and not the obligation to intervene.

Question 2: Do you agree with the proposed Guideline 3, considering the availability and adequacy of the CCP's recovery tools in determining if a CCP is failing or likely to fail? If not, please explain.

CCP12 would like to push back on the consideration of the adequacy of the CCP's recovery tools in determining if a CCP is failing or likely to fail. CCPs carefully design their recovery plans ex ante and the plans are subject to scrutiny and approval of the competent authority, supervisory college and resolution authority which should guarantee their adequacy. CCPs should not be prevented later from executing these plans or interrupted in their actions undertaken in line with these approved plans within the recovery phase. It is important to allow CCPs to perform their default management processes and apply their recovery tools to the highest possible degree as explained above.

Question 3: Do you agree with the proposed Guidelines 4 and 5, considering the financial resources of the CCP's in determining if a CCP is failing or likely to fail? If not, please explain.

CCP12 would generally agree with the proposed guidelines considering the financial resources of the CCP's in determining if a CCP is failing or likely to fail as long as the criteria warranting resolution authorities' intervention are met.

Question 4: Do you agree with the proposed Guideline 6, considering the operational capacity of the CCP in determining if a CCP is failing or likely to fail? If not, please explain.

CCP12 would partially agree with points a) and c) of Guideline 6, bearing in mind our response to Question 1.

We would also like to express our strong reservations regarding point b) of the Guideline referring to the loss of confidence of the CCP's clearing participants and other stakeholders in the CCP's ability to manage risks, operationally and/or financially. The relevant authorities are supposed to assess the circumstances and events which could negatively impact the CCP's operational capacity to continue providing critical functions basing this assessment on objective elements that can be measured. The loss of confidence in the CCP is supposed to be evidenced by a decrease in transactions submitted for clearing, the intention of liquidity providers to decrease the amount of the CCP's liquid resources or the intention of clearing members to terminate their contracts with the CCP.

When it comes to a decrease in transactions submitted for clearing, we identify a few issues with this element. First of all, a loss of confidence is not an objective measure that can be quantified easily, and it would be very difficult to set a reasonable threshold of such a decrease to apply this indicator in a consistent manner. Second of all, a decrease in transactions submitted for clearing can result from members' risk assessments in what is likely to be a volatile market in these circumstances – not due to a loss of confidence in their CCP. Also, a reduction of transaction volume which is not below a certain acceptable level to the CCP does not indicate that the CCP is failing. Depending on the CCP membership structure, fees might be based on other criteria and not volume of transactions which would mean that a reduction in the volumes would not necessarily translate into a CCP being financially worse off or even more so failing. Other indicators which rely on intentions of liquidity providers or clearing members would be even more difficult to define and measure, thus not meeting the requirement of the assessment elements being objective.

Therefore, we would propose to delete point b) from Guideline 6 or at least strongly advocate that the elements contained in this point are treated as an additional element for consideration for the resolution authority and not the main driver of the assessment due to the methodological problems they entail.

Question 5: Do you agree with the proposed Guideline 7 specifying other requirements for continuing authorisation in determining if a CCP is failing or likely to fail? If not, please explain.

We find the elements to be taken into account while assessing the CCP's situation in light of this Guideline (such as having a sizeable pool of clearing participants to avoid significant concentration or material deficiencies in the internal controls and other key areas of the governance arrangements or major

reputational depreciation) rather vague and not entirely appropriate. Many of the points noted in this Guideline, such as issues with risk management or controls, could be remediated by the CCP if required by the relevant authorities. There also may be a period of time necessary to assess these issues post-recovery and the CCP may need to be given adequate time to address these issues, as applicable.

Similar to our response to Question 5, we would advocate to delete these elements or at least treat them as additional criteria only and not the main drivers of the assessment.

Question 6: Do you agree with the proposed Guidelines 8 and 9 on information sharing? If not, please explain.

CCP12 generally agrees with the proposed Guidelines 8 and 9 on information sharing.

Question 7: Do you agree with the proposed Option 2? If not please explain. If yes, have you identified other benefits and costs not mentioned above associated to the proposed approach (Option 1)?

We agree with the overall aim of listing a set of objective elements the relevant authority should consider in determining if a CCP is deemed to be failing or likely to fail. However, in addition to our comments noted above, we have some doubts regarding the relevance of certain points in the guidelines and the objectivity of certain elements, considering the difficulty with measuring items such as clearing members' intentions or CCP reputational depreciation. We do not believe that a one-size-fits-all approach would be a desirable solution or in line with differences across CCPs that exist. That is why we would advocate for a removal of some ambiguous criteria as stated above or for their treatment as only secondary elements of the assessment.

Question 8: If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.

No comment. / Not applicable.

VI. About CCP12

CCP12 is the global association for CCPs, representing 41 members who operate around 60 individual central counterparties (CCPs) globally across the Americas, EMEA and the Asia-Pacific region.

CCP12 promotes effective, practical, and appropriate risk management and operational standards for CCPs to ensure the safety and efficiency of the financial markets it represents. CCP12 leads and assesses global regulatory and industry initiatives that concern CCPs to form consensus views, while also actively engaging with regulatory agencies and industry constituents through consultation responses, forum discussions and position papers.

For more information, please contact the office by e-mail at office@ccp12.org or through our website by visiting ccp12.org.

VII. CCP12 Members

