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Re: Consultation Papers:

(1) The Bank of England's approach to tiering incoming central counterparties under EMIR Article 25

and

(2) The Bank of England's approach to comparable compliance under EMIR Article 25a

The Global Association of Central Counterparties ("CCP12") is the global association for CCPs, representing 41 members who operate over 60 individual central counterparties (CCPs) globally across the Americas, EMEA and the Asia-Pacific region.

CCP12 appreciates the opportunity to comment on the Bank of England's ("BoE") Consultation Papers on (1) the Bank of England's approach to tiering incoming central counterparties under EMIR Article 25¹ and (2) the Bank of England's approach to comparable compliance under EMIR Article 25a² ("the consultation papers").

First of all, we generally welcome the BoE's intention to commit to an approach of regulatory deference to tiering incoming CCPs (i.e., non-UK) and comparable compliance. We also agree with the Bank's proposal to determine an incoming CCP as Tier 1 also in cases where it has been assessed as potentially systemically important and is above the initial triage and proportionality thresholds as long as the expectations of the applicable informed reliance assessment have been met. However, we believe the proposals could be improved upon to make these commitments clearer. In addition, CCP12 has some specific concerns with the initial triage criteria, which are outlined below.

We welcome jurisdictions' commitments to regulatory deference since we strongly believe that embracing an approach of mutual regulatory deference, supported by regulatory cooperation, is of the utmost

¹ Bank of England, Consultation Paper, The Bank of England's approach to tiering incoming central counterparties under EMIR Article 25 (November 2021), available at [Link](#)

² Bank of England, Consultation Paper, The Bank of England's approach to comparable compliance under EMIR Article 25a (November 2021), available at [Link](#)

importance to fostering healthy and safe financial markets. Such an approach is consistent with the G20 commitments with respect to the cross-border oversight of global derivatives markets.³ CCP12 has highlighted the benefits of such an approach in numerous previous responses to consultations, notably those from the European Commission⁴, European Securities and Markets Authority⁵, the Commodity Futures Trading Commission⁶, and the National People's Congress of the People's Republic of China⁷. Following these consultations, many jurisdictions (e.g., EU and US) have implemented regulatory frameworks for recognizing non-local CCPs that are broadly based on regulatory deference. We appreciate that the BoE proposal overall connects to this approach to base recognizing incoming CCPs on regulatory deference.

In terms of the initial triage criteria regarding the Initial Margin (“IM”) and Default Fund Contribution (“DFC”) thresholds, we have the following primary concerns that we believe should, at a minimum, be addressed:

- i. The criteria are inappropriately low;
- ii. The criteria use collateral held, as opposed to collateral required; and
- iii. The criteria use peak collateral values, as opposed to average collateral values.

In our opinion, the low thresholds do not accurately capture if an incoming CCP is in fact systemically important to the UK. By way of comparison, the initial triage criteria for IM and DFC are approximately 80% lower than the IM and DFC threshold implemented in the EU under EMIR 2.2. To address this, a potential option could be for the BoE to replace the currently proposed initial triage criteria for IM and DFC with the threshold set at UK clearing members’ average IM and DFC in the incoming CCP being less than 20% of the total amount of UK clearing members’ average IM and DFC of all CCPs recognized and authorised in the UK. We appreciate that the BoE recognized this in the consultation paper to be a useful indicator relative to assessing an incoming CCP’s systemic importance.

Additionally, CCP12 believes using criteria that are based on collateral held is problematic in two ways primarily: i) it fails to account for the difference in customer margin requirements (i.e., gross versus net) that are adopted across jurisdictions, which does not allow for a consistent assessment of incoming CCPs and inappropriately penalizes those CCPs that employ customer gross margining practices; ii) it creates a perverse incentive for incoming CCPs to discourage UK clearing members from posting excess collateral. Both gross margining and the posting of excess collateral are recognized as good risk management practices, but are penalized under the BoE’s proposal. Further, average collateral values

³ Group of 20, Leaders’ Statement, Pittsburgh Summit, pg. 7 (Sept. 2009) (noting, “[w]e are committed to take action at the national and international level to raise standards together so that our national authorities implement global standards consistently in a way that ensures a level playing field and avoids fragmentation of markets, protectionism, and regulatory arbitrage.”), available at [Link](#); Group of 20, Leaders’ Declaration, Saint Petersburg Summit, pg. 17 (Sept. 2013) (noting, “[w]e agree that jurisdictions and regulators should be able to defer to each other when it is justified by the quality of their respective regulatory and enforcement regimes, based on similar outcomes, in a non-discriminatory way, paying due respect to home country regulation regimes.”), available at [Link](#).

⁴ CCP12, Response to the Commission Delegated Regulation (EU) on Derivatives trading – determining the systemic risk of non-EU clearing houses (tiering criteria) (Jul. 2020), available at [Link](#)

⁵ CCP12, Response to ESMA Consultations (Jul. 2019), available at [Link](#)

⁶ CCP12, Response, Exemption from Derivatives Clearing Organization Registration (RIN 3038-AE65) (Nov. 2019), available at [Link](#); CCP12, Response, Registration with Alternative Compliance for Non-U.S. Derivatives Clearing Organizations (RIN 3038-AE87) (Nov. 2019), available at [Link](#)

⁷ CCP12, Response to the China Futures Law public consultation (Nov. 2021), available at [Link](#)

would be a much more stable metric that would indicate the consistent level of activity of UK clearing members within the incoming CCP in the last 5 years. Taking into account absolute peak numbers that occurred at any point in the last five years could potentially catch a one-off (or short term) event of UK clearing members' activity and thus not be representative of the five year period.

Moreover, in light of recent and ongoing market changes, it appears more adequate to shorten the lookback period to two years, which would be also consistent with the EU approach in their determination of CCPs' systemic importance. As a global association of CCPs, we would like to emphasise that from a third country CCP's standpoint, it would be desirable that both the UK and the EU approaches to tiering are similar, including the numeric thresholds.

Last but not least, in CCP12's opinion, the scope of "UK clearing member" should exclude non-UK affiliates in UK financial groups. We believe, an incoming CCP's clearing for non-UK market participants is immaterial to determining the systemic importance of this CCP to the stability of the UK. Bearing this in mind, the inclusion of non-UK entities which could contribute to the breaching of the triage or proportionality thresholds would be inappropriate.

When it comes to the interoperability aspect of the initial triage criteria, we understand that for arrangements with CCPs from jurisdictions which are not subject to equally prudent requirements, such links would need to be carefully looked at from the risk management and market safety perspective. We would like to, however, point out that in many cases the interoperability arrangements would be properly risk managed and supervised, as would be the case with such links subject to the on-shored EMIR Title V provisions (especially Articles 52 and 54 of EMIR). These provisions are designed to guarantee that the interoperability arrangements are not a source of such risk which could not be effectively managed on an ongoing basis. In such cases, where interoperability links are subject to appropriate scrutiny, approval, and supervision, this criterion would not be applicable.

Additionally, the combination of the proposed approach to the initial triage criteria and the subjective nature of the systemic risk assessment are particularly concerning. They could lead to an outcome where an incoming CCP that is clearly not systemically important to the UK based on a quantitative and qualitative assessment of their importance to the UK market is designated as such. For the qualitative measures, CCP12 believes it is important to formulate these as clearly as possible (by e.g. including elements which would allow assessing the exposures in Sterling in more detail within an incoming CCP) to create best possible transparency and common expectations among the BoE and incoming CCPs. CCP12 understands that an incoming CCP would be subject to the systemic risk assessment outlined in Annex 1 should it breach at least one of the initial triage criteria. CCP12 believes Annex 1 inappropriately focuses on areas for review that do not have a clear nexus to the UK, such as the incoming CCP's clearing of non-Sterling products, total collateral held (i.e., this includes collateral posted by non-UK clearing members), and broadly the CCP's membership requirements, among other things. The subjectiveness of this assessment that in many ways has no nexus to the UK not only creates uncertainty, but could unfortunately result in an incoming CCP that has no systemic impact on the UK being deemed Tier 2. Thus, in addition to remedying the shortcomings of the initial triage criteria by increasing the size and adjusting their calculation, as set out above, the BoE should address the shortcomings of the systemic risk assessment.

CCP12 also believes that there should be more convergence between tiering and comparable compliance assessments to the extent they apply to an incoming CCP. In our opinion, they should be processed simultaneously to limit significant overlap that will highly likely occur with regards to the information requested for each application. This would significantly reduce the administrative burden on incoming CCPs and limit compliance costs. In this context, CCP12 welcomes the approach consisting in the BoE relying on the information already submitted by the home authority of the requesting CCP as part of it providing equivalence advice to HM Treasury.

As to the procedural aspect of tiering and granting comparable compliance, in our opinion, defining timeframes for specific stages of the processes would be useful and would provide incoming CCPs with more certainty as to the length of the process. It would enable better planning on the CCPs' side in terms of the preparation of the application and other required documents and in terms of general business planning.

We also think, it would be useful to clarify in more detail what actions and within what timeframe individual CCPs should undertake in order to be able to continue providing services and/or offer new services in the UK.

About CCP12

CCP12 is the global association for CCPs, representing 41 members who operate over 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 www.ccp12.org.

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