

February 7, 2022

VIA ELECTRONIC SUBMISSION

The Committee on Payments and Market Infrastructures (CPMI) Secretariat (cpmi@bis.org)

The International Organization of Securities Commissions (IOSCO) Secretariat (consultation-06-2021@iosco.org)

Re: CPMI and IOSCO discussion paper on client clearing: access and portability

The Global Association of Central Counterparties (“CCP12”) very much appreciates the opportunity to comment on the CPMI and IOSCO discussion paper on client clearing: access and portability¹ (“the discussion paper”).

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.

By way of introduction, CCP12 would like to highlight some key points from our response to the discussion paper, which are further elaborated on in the document:

- We agree with the discussion paper’s observation that no further guidance on the Principles for Financial Market Infrastructures (“PFMIs”)² is necessary in the context of the new client clearing access models and client porting. In our opinion, PFMIs are comprehensive and sufficient and appropriately address relevant issues around the provision of such client clearing services. PFMIs embrace best practices in risk management, while allowing CCPs to appropriately manage the risks that are unique to their respective markets and products cleared, and this is the approach that should be and is applied in the case of the new access models and client porting.
- While we think the direct and sponsored access models developed by some CCPs in cooperation with some of their clearing members have enhanced client clearing services and improved the accessibility to central clearing to a large extent, the models still need time to mature and become more widely used, where appropriate. One of the ways to achieve this would be to pursue a regulatory deference approach globally and to address local regulatory hurdles.
- In order to enjoy the benefits of central clearing to the highest degree, including in stress situations resulting in a default of a market participant, in this case of a client clearing service provider (“CCSP”), it would be of a paramount importance, in markets where porting is applicable, to promote the porting of clients’ positions and assets, as opposed to running a liquidation process. In some jurisdictions porting is currently hindered by legal requirements which prevent it from

¹ CPMI, IOSCO, A discussion paper on client clearing: access and portability (Nov. 2021), available at [Link](#)

² CPSS, IOSCO, Principles for financial market infrastructures (April 2012), available at [Link](#)

being efficient and successful which should be addressed by local regulators. Additionally, porting is challenging for CCPs that operate pursuant to customer net margining regimes.

- In light of the challenges around porting in some jurisdictions that we have identified and describe in more detail in our responses to individual questions below, CCP12 would be keen to support work that needs to be done in this area. We would be happy to engage in cooperation with the international Standard-Setting Bodies in order to work out what actions need to be taken in order to make porting robust and/or more effective in the jurisdictions where porting is currently not a viable or likely option of dealing with a CCSP default.

CCP12 would like to provide the following comments to the detailed questions included in the report:

Access (Section 2) Design of direct and sponsored access models

1. Do you agree with the observation in the discussion paper that the direct and sponsored access models are designed for and generally used more by larger and/or more sophisticated clients?

In CCP12's opinion, it is important to note that the development and adoption of direct and sponsored access models is at a very early stage. The uptake depends on the risk management and operational benefits to the client, and economic benefits to the general clearing member that typically continues to act as a clearing agent for the client. Access models are available to small and medium sized clients. The greater use of the direct and sponsored access models by larger and more sophisticated clients is just reflective of the stage of market development. We would like to point out, in addition, that many CCPs have smaller and/or non-bank entities as their direct participants so many of these entities are clearing members already and therefore do not seek special access models. Further and as alluded to above, the demand for access models is a consequence of the risk and resource management of market participants. With regard to some less sophisticated or smaller clients, their capacities/resources to invest may be lower or there may be no demand on their end for special access models. We also note that CCPs have membership criteria to ensure that members are able to satisfy their obligations to the CCP.

We would also like to point out that with respect to the cash markets, there is no mandate to clear any product so the entities that engage in clearing tend to be the more sophisticated clients, which actively seek out clearing for the capital efficiencies it provides to them and their counterparties.

2. Could there be any other solutions that would facilitate access, either through greater use of such access models by small and medium-sized clients, or through some other solution?

In CCP12's opinion, an important solution to facilitate clients' access to central clearing and reduce capital pressures would entail allowing non-domestic clients to efficiently access CCPs outside their jurisdictions – irrespective of whether they clear cash securities or derivatives exchange-traded or OTC products – via domestic and non-domestic clearing members, either through traditional client clearing or a direct/sponsored access model by appropriately deferring to the expertise of the home country regulator in designing a framework for the markets and parties for which it maintains primary regulatory oversight. CCP12 believes that such a deferential approach should be adopted across capital markets, including for CCPs and CCSPs acting as clearing members. Embracing an approach of regulatory deference for

comparable regulatory frameworks across markets promotes access to central clearing to support financial stability, while endeavouring to avoid market fragmentation. In the context of client clearing, this approach would provide domestic and non-domestic clients with much broader access to central clearing services. Not only does appropriate regulatory deference increase client access to markets cleared by foreign CCPs, but regulatory deference with respect to CCSPs increases the number of clearing members at CCPs which would be very welcome, bearing in mind the global nature of capital markets today.

Enabling broader access to centrally cleared markets and enhancing the availability of entities providing client clearing services across jurisdictions would also foster deeper pools of liquidity in the markets, diversify the counterparty exposures and lessen concentration. Conversely, if regulators applied registration requirements that are too broad in their jurisdictions (e.g., requiring CCPs and/or CCSPs to comply with local regulatory requirements outside of those for which they are subject by their primary regulators to serve non-domestic clients), that would undermine the incentives of CCSPs and CCPs to facilitate client access to central clearing, which is the very reason CPMI-IOSCO initiated this discussion.

In addition to the points made above, from a regulatory perspective, a more efficient regulatory approval process to allow new client types to access CCPs would be welcome by the clearing community. Streamlining regulatory processes, which are mandated in order to introduce changes to the CCP's rulebooks, where such changes are often a response to a market demand and a reflection of developments and innovations in the market, would be also desirable in some jurisdictions.

Moreover, changes to the accounting standards for sponsor firms similar to the U.S. capital model, whereby sponsors obtain certain balance sheet benefits associated with this activity, would also pave the way for more uptake of those models.

Finally, CCP12 would like to note that while the demand for access models is a consequence of the risk and resource management of market participants, the use of access models should be enabled to the extent possible depending on the risk profile of market participants. In our opinion, as also described above and in the responses to the questions that follow, there is scope for further innovation by addressing credit, market, operational, legal and liquidity risk management constraints.

Barriers

- 3. Do you agree with the findings in the discussion paper that direct and sponsored access models are used more for certain types of products (e.g., repos) than for others? Do you agree with the reasons described in the paper for why this is the case? Why/why not?**

CCP12 agrees with the finding that access models are currently more often used for repo products (as opposed to, for example, derivatives). Partially, this is due to the fact that the development and adoption of access models is at a very early stage and that those models are designed to address risk and liquidity management constraints of clearing members in relation to client clearing. The necessity of robust and more reliably independent liquidity management, particularly the need to exchange variation margin ("VM"), has led most of the existing sponsored clients to focus their activities on the repo market given the composition of their portfolios (i.e., securities collateral). Additionally, clearing members might be more incentivized to provide clients with direct clearing services for repo transactions due to the benefits

reflected in their balance sheets. Therefore, repo access models have been the most successful use case so far as they reduce capital requirement constraints. Access models, however, also offer benefits in other asset classes. As models mature, and risk management and liquidity management requirements evolve and local regulatory requirements change (where necessary), CCP12 expects the use of access models to increase – both in relation to other asset classes and greater use by different types of clients. Through certain sponsored access models, the sponsored clients are able to use the operational services of the sponsoring agent to post or collect VM directly as and when possible while still benefiting from all other functionalities which are offered to direct members.

It would be worthwhile to note in this context that the design and application of access models are quite distinct for each CCP and therefore might also develop differently.

Challenges related to direct and sponsored access models

4. Do you agree that direct and sponsored access models have the potential to diversify the risk profile of the direct clearing participant basis of a CCP by introducing new types of direct participants? Why/why not?

Yes, CCP12 agrees that access models have the potential to diversify the risk profile of the direct clearing participants of a CCP. Under certain models, new types of entities (such as pension funds or insurance companies) that previously were not eligible or sufficiently equipped for direct participation at CCPs can now have direct access to CCPs. We would like to highlight, however, that the CCPs' robust risk governance process will ensure that any new client who applies for direct or sponsored membership will be evaluated against a CCP's risk management requirements and will be subject to ongoing monitoring. To accommodate the development of new types of clearing models, a CCP's procedures integrate and test the risk profile of direct clients against a CCP's internal risk framework before they are accepted as participants within the CCP. These participants are also monitored thereafter on an on-going basis. A CCP needs to and does assess the implications of introducing new direct and sponsored participants and how they impact the risk management framework and ability of the CCP to manage a default. Please also refer to our response to question 5 which outlines safeguards CCPs have in place to prevent risk transmission.

Diversification of the risk profile of the direct clearing participant base of a CCP can also have a positive outcome consisting of decreasing the CCSPs' concentration, rebalancing the market, and enhancing market liquidity. It may also decrease certain risks in services peripheral to trading and clearing, if direct or sponsored clients are able to avail themselves to posting collateral according to the full CCP eligibility list, without required collateral transformations in cases where traditional access to CCPs entails a more limited collateral schedule based on the client-to-Clearing Member relation. It could be even more beneficial if entities involved in the provision and use of the direct and sponsored access models are geographically diversified, with their clearing in foreign markets being supported by the broader take-up of a regulatory deferential approach irrespective of type of products cleared (i.e., cash securities or derivatives / exchange traded or OTC). This would appropriately reflect the global nature of cleared markets today.

5. Do you think that CCPs have introduced sufficient safeguards to prevent risk transmission from direct participants using direct and sponsored access models? Why/why not? If not, what additional safeguards do you think are necessary?

Yes, CCPs' practices are designed to ensure all client clearing activity is appropriately risk managed and have introduced sufficient safeguards to mitigate risk transmission from direct participants using new access models. This is in line with the PFMLs which comprehensively cover the risk transmission and risk management issues. Firstly, CCPs usually develop access models in close alignment with the clearing community. Secondly, risks associated with access models are generally comparable in some ways to those of a standard clearing membership. CCPs have aligned the onboarding process (including resources and credit assessments) and utilize the same high risk management standards as for other clearing members, while responding to the unique features of the access mode (e.g., the special role of the clearing agent acting as the sponsor for the client when it comes to default fund contributions and participation in the default management process ("DMP")). Furthermore, CCPs have installed safeguards in the default waterfall to address a default of a client participating in one of these access models. Some examples of such safeguards could be gross margining of sponsored client activity or a CCSP guarantee, which would be in conjunction with appropriate credit reviews and surveillance of clearing members in their capacity as sponsoring members.

6. Do you think that sponsors are properly incentivised to closely monitor the activity of their sponsored participants (i.e. the direct participants)? Why/why not? If not, how do you think sponsors could be properly incentivised?

Yes, CCP12 thinks that sponsors are properly incentivized to closely monitor the activity of their sponsored participants. First of all, sponsors are professional financial institutions, which have significant experience with managing risks stemming from their own activities and from that of their clients. It should be noted that sponsors are obliged to monitor the activity of their clients as set out in the CCPs' rulebooks and failing to do so would result in consequences for them. Second of all, the discussion paper does not cover the topic of a client's default so it is worthwhile noting that the clearing agent has a natural business incentive to fulfil its obligation toward its client, which is reinforced by the safeguards outlined in the previous question, which could include providing the contribution to the default fund for the client, as well as potential additional payments that might be made in case of the default of the client. The extent to which a sponsor is incentivized might depend also on the particular sponsored access model and be potentially higher in instances when the sponsoring member guarantees their sponsored clients' performance to the CCP. Being directly responsible and involved in the management of a default event means it is in the sponsors' interest to monitor the activity of the clients they serve.

Further, it is worth noting that during the process of developing access models, CCPs have often observed the sponsors' eagerness to ensure all required controls are in place. These sponsors seem to go through rigorous approval processes within their organizations that are designed to ensure that all the controls are available, and effective enough to reduce residual risks to de-minimis levels.

7. Do you think that the number of sponsors is limited? Are you concerned about sponsor concentration risk? If so, is this because it is difficult to find a sponsor? Are there any other reasons?

As mentioned in our answers to the previous questions, the development and adoption of access models is still in a relatively early stage. The availability of sponsors reflects, on the one hand, the stage of market development and on the other market demand. We must say we have not observed a shortage of sponsors to the degree which would make it difficult for clients to find one, although we have observed that mostly the more sophisticated and/or larger clients seek to use this access model, due to the reasons explained in our response to question 1. In quite a few markets we have seen a growing number of sponsoring members and many clients with more than one sponsor, so concentration does not seem to be an issue in these cases. In any case, the concentration risk issues would be addressed by CCPs as part of their standard risk management practices.

We agree that the greater the number of sponsors, the greater user choice, competition, pricing, and liquidity. Generally, as models mature, there should be increasing numbers of clearing agents and sponsors considering the increased use of clearing. Also, providing the function of an agent within the sponsored access model may be less demanding from the operational and capital requirements perspective when compared to fulfilling the role of a clearing member under traditional client clearing. This may help develop these services and make them more popular among entities capable of being CCSPs.

8. Do you think that CCP rules adequately address the issue of sponsor default? If so, what are the CCP rules that adequately address this issue? If not, what kind of CCP rules are required to address this issue?

As set out in the introductory remarks and our response to question 5, CCPs follow the PFMI, which set appropriate standards related to the issue of default which have proven to be effective. As a result, CCPs' rules adequately address the issue of a sponsor's default, as this is generally treated as equivalent to the default of a clearing member, as defined under the specific terms of a given CCP's rules. This is done by CCPs in different ways, depending on the market, its client access model, its participants, and products cleared. In addition to the safeguards CCPs put in place to address both sponsor or client defaults when developing access models as outlined in question 5, CCPs' practices may include: (i) where applicable, CCPs having well established game plans which enable quick porting (often bulk transfers) and having procedures in place which allow for such transfers without having to seek the clients' consent in times of stress (as outlined in more detail in our responses to questions on porting later in the document); (ii) some CCPs gross margin the sponsored client activity in order to ensure it is able to perform on those sponsored clients' activity which received the CCP's guarantee of settlement and have been novated to the CCP prior to the sponsoring agent's default.

Testing

9. Have you participated in default management exercises that test direct and sponsored access models?

Many of CCP12 members, which offer direct and sponsored access models, have run default management exercises that test these models or have such tests on their agendas for the near future. The results of fire drills and porting tests evidence the robustness of the DMP (including successful liquidation processes) and raise awareness of any challenges in relation to porting these types of client positions.

10. Without providing identifying information, what has worked well in such exercises? What has not? Do you have recommendations as to what could be improved for such exercises?

As noted above, many of CCP12 members that provide such access models have conducted tests of direct and sponsored access models. These tests have shown that while liquidation and other aspects of the DMP work well, the most desirable way of dealing with a default – porting – may be challenging in practice, as elaborated on in the responses to the questions that follow, especially question 15.

Additional considerations

11. Please describe any additional factors that may be impacting the activity and uptake of direct and sponsored models that are not considered in this paper.

In CCP12's opinion, the activity and uptake of direct and sponsored models would be greater if there was improved understanding by market participants of the legal requirements, the set-up and operational processes. We identify the need for further education of clients and regulators on how different models work and the roles and responsibilities of each participant in the client clearing process under these models. Other factors that could be considered would be the scalability of the sponsored access model, the size of the targeted pool of audiences as well as the development costs (e.g., including but not limited to the legal and human resources expenditures).

There are also certain regulatory issues in some jurisdictions that affect the market's use of the models. By way of example, some provisions of the EU Money Market Fund ("MMF") regulation³ which restrict assets received by an MMF as part of a reverse repurchase agreement by capping the exposure to a given issuer at 15 % of the MMF's net asset value, and which treat CCPs in the same way as any other counterparty (such as an investment bank) negatively impact the activity and uptake of sponsored clearing models. Another example would be the EU law related to insurance companies which at the moment of introduction did not envisage a situation where insurers became members of a CCP through direct access models, and as a consequence caused a gap in the regulations preventing insurance firms from using such models. Further, capital charges for unfunded contributions under the Leverage Ratio

³ Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds, available at [Link](#)

under Basel III may materially impact the economics of direct access models, and the business case for their adoption.

12. Please provide any additional comments with regards to the impact that direct and sponsored access models have on access to client clearing.

According to CCP12, direct and sponsored access models can serve as a great way for different types of entities, which traditionally do not or cannot become clearing members, to access central clearing when it is mandatory (for OTC derivatives) or economically desirable (which is particularly relevant in repo markets). These access models broaden the scope of ways through which clients can access CCPs and provide different types of clients with a possibility to choose the form of access (indirect or direct) that best fits their needs and characteristics. This does not lead to creation of new clearing members and/or clients but opens up new possibilities for connecting to CCPs. From a cash market clearing perspective, these models serve to promote greater market liquidity by enabling eligible clients to engage in greater activity than would be otherwise feasible for them outside of central clearing.

13. Please provide additional comments with regard to access to client clearing more generally.

In addition to our previous comments, we would like to flag that some clients have shared concerns over the maintenance cost and minimum charges associated with the CCSP arrangement on porting.

Porting (Section 3)

Risks from not porting

14. Are there any additional risks or potential harm associated with not porting following a clearing participant default, which were not described in the discussion paper? If so, please describe such additional risks and/or harm.

CCP12 would like to note that porting may not be applicable to all CCPs based on, among other things, the products cleared, the legal framework in which they operate, and the lack of detail available to the CCP with respect to clients' positions.

Where porting is available, however, no porting in the case of a CCSP default results in the liquidation of clients' positions. As rightfully pointed out in the paper, this may cause disruptions for both the clients (in case of the hedging nature of their transactions) and the whole market (in the form of increased volatility). This in turn can lead to default losses that will need to be covered by the default waterfall, which includes CCPs' own resources and the mutualised resources of non-defaulting members.

A certain type of risk not emphasised in the discussion paper is a broad reputational risk, if there are cases where clients' expectation of porting does not match the robustness or their actual segregation model's ability to enact this.

15. Potentially effective practices. Do you agree with the two tools identified in the discussion paper as potentially successful porting practices? Are there any other tools that should be identified as potentially effective practices?

CCP12 generally agrees with the two tools identified in the discussion paper, i.e., pre-emptive identification of potential alternate CCSPs (by either the client or the CCP's analysis – also known as game plans) and account structures facilitating fully margined client positions, as potentially successful porting practices.

However, while we agree with the tools, some of them are not applicable in some jurisdictions as regulatory frameworks differ. By way of example, some local regimes which require positive ex-ante client consent make the application of a game plan unlikely to be successful as CCPs are not in the position to anticipate clients' choice. Generally, strict client consent paired with AML requirements and KYC due diligence requirements will likely prevent swift processes to find alternative CCSPs. CCSPs may only take on clients for porting in the case of a default where they already have an established relationship with those clients and where the CCSP's risk appetite allows them to take on these clients' positions. Therefore, as described below, waivers of AML, KYC, and capital requirements for a limited period of time during the porting phase could be considered to facilitate porting for all jurisdictions, not only for jurisdictions that require ex-ante client consent.

Moreover, we should be mindful of the fact that the results of game plans, like designated alternative CCSPs, cannot guarantee porting. Where the game plan approach can be employed, however, it can allow a CCP to pre-emptively identify potential receiving CCSPs with similar and/or complimentary risk and business profiles that may accept clients for porting. This supports efficient and effective porting. For both – the use of game plans and designated alternative CCSPs, limitations to porting may be due to the lack of visibility in advance into the portfolio of the defaulting entity, the fact that successful porting arrangements will be subject to commercial terms, and the risk appetites of receiving CCSPs. Challenges to porting are further exacerbated under a net margining regime, where a CCP typically establishes an omnibus account with either limited or no visibility into the positions of clients and where incremental margin requirements may be called for from the receiving member.

Also, it is worth bearing in mind that the tool of designated alternate CCSPs comes with operational challenges and cost concerns. It could possibly be burdensome to some clients to arrange and maintain alternate CCSPs.

16. What additional approaches do CCPs use to pre-emptively identify a backup CCSP? What incentives can be provided to assist the development of alternative/backup CCSP relationships? Are there any other considerations for alternate/backup CCSPs not set forth in the report?

CCP12 does agree that the easing of certain requirements for alternative/backup CCSPs could assist the development of such relationships. Temporary exemptions, as mentioned in the discussion paper, related to capital and leverage ratio requirements or position limits and the possibility of reliance on the existing KYC due diligence and AML protocols, could encourage more clearing members to act as receiving clearing members for porting clients. These exemptions could help remove the potential risk of

exceeding thresholds and non-compliance with these requirements in the case of a sudden change in the CCSP's position due to receiving clients' positions for porting. Otherwise, these requirements may serve as a disincentive for porting.

In addition to the easing of certain requirements for receiving CCSPs, regulatory deference in relation to registration/recognition in the cross-border context, as mentioned in our response to question 2, could also encourage CCSPs to participate in porting, broadening the base of available entities providing such services to clients.

Moreover, we would like to stress the benefits of the game plan approach, as we believe that is an effective mechanism to support porting and something CCPs do themselves (where local regulatory requirements allow), which could include looking at clearing members' customer profiles, risk management capabilities, exchange memberships, financial resources, capital requirements/resources, physical delivery capabilities and other factors, as appropriate.

We think that porting is also supported by pre-emptively putting in place frameworks to share confidential client information with receiving CCSPs, such as NDAs and rules-based protections.

17. Are there other considerations for having a game plan that were not described in the discussion paper?

We have outlined our arguments in favour of having a game plan in place in our response to question 16 but would also like to reiterate that game plans are currently not applicable in all jurisdictions. Where local regulation requires client consent explicitly and where there is a net margining regime, the use of game plans has only a small chance of success.

18. In addition to those outlined in the paper, what attributes of account structures facilitate or impede porting client accounts?

CCP12 would agree with the benefits of gross margining (whether it is gross omnibus or individual segregation account) at the CCP-level with respect to porting, as the positions and collateral of the clients are held separately from the CCSP's collateral and CCP's own assets and each client's exposures are independently fully margined (as opposed to net margining, which is also described in our response to question 19). A CCP with customer gross margin independently collateralizing each client's exposures has the beneficial flexibility to potentially port clients to one or multiple CCSP(s).

We also believe the discussion paper is somewhat misinformed with respect to its statement that for both customer gross and net margin accounts the best option is to transfer positions to a single CCSP because of the potential need for increased margin if porting to multiple CCSPs⁴. This is likely to be true for net margin accounts and in the case of gross accounts, where the margin offsets of a single client are broken (e.g., this could potentially occur where a single client within a gross account is attempted to be ported to multiple CCSPs). Gross margining still offers superior benefits with respect to porting, compared to net margining, because there are no margin offsets between unaffiliated customers, thus, one customer

⁴ The discussion paper, p. 11, (i) Account structures and margining

could be ported to one CCSP and another customer could be ported to a different CCSP without breaking any margin offsets. It also generally seems unlikely to us that, within a gross account, a single client would be ported to multiple CCSPs. On the other hand, as identified in the discussion paper, undisclosed net margin accounts and mandatory client consent represent the biggest hurdle for successful porting.

19. Are some client accounts not suitable for porting?

As described above, CCP12 would agree that individual/omnibus segregated account that are gross margined are much more likely to facilitate porting as compared to net margin accounts which make porting more challenging, if not impossible. This is because the exposures of clients are offset against each other and not independently fully margined (as is the case with gross margin), which results in less collateral at the CCP-level. Under net margining, a CCP typically establishes omnibus accounts that hold the positions for multiple clients of a clearing member. This account structure allows the CCP to manage its net exposure to the clearing member, but generally does not provide the CCP with sufficient information to accurately attribute positions and collateral to specific clients of the clearing member, nor does such account result in collateral at the CCP-level that fully margins the exposures of each individual client independently. Accordingly, it is unlikely that a CCP operating under such a regime could identify the positions of all of the customers held in each omnibus account, attribute collateral to such positions, identify a clearing member willing to receive the positions of each customer and transfer such positions in a time frame that is acceptable for a DMP. Please also refer to our answer to the previous question.

20. Does holding excess collateral and the ability to make direct payments improve the probability that a client will be ported successfully or are there impediments to using this collateral?

CCP12's view is that holding excess collateral and having the ability to make direct payments seem to be a way to enhance the probability of a successful porting. The CCP's ability to provide enough time for the client to find a replacement clearing member will be directly proportional to the collateralisation of the client's account, which is why the benefits of gross margining are evident, as described above. These collateralisation practices could give CCPs comfort that they may have additional time to port clients, assuming the necessary obligations continue to be met. However, direct payments may only work effectively for more sophisticated clients who have the capacities and resources to maintain appropriate operational arrangements in order to make such payments.

21. What is your view of a client consent mechanism that could be used to facilitate porting, if permitted under applicable law?

To speed actions in times of stress such as a sponsor's default, it would be helpful if the CCP would not need to seek consent, particularly explicit positive consent, from the clients of the defaulting sponsor to perform porting. As pointed out in the discussion paper, this could be achieved by advance, abridged or negative consent or even a no-consent rule. Different jurisdictions allow for different solutions, but it is important that the CCP's hands are not tied by the necessity to obtain an explicit consent from clients when managing a default. That is why, to make porting more likely and streamlined, local CCP regulators

and legislators should introduce laws that would permit mass porting without clients' explicit consent (e.g., U.S. CFTC regulatory regime for centrally cleared derivatives). Equipping CCPs with the power to port as many clients' positions (and collateral) as possible would be a more advantageous solution for the whole market than the alternative, which is liquidation.

22. Are the potentially effective practices described in the discussion paper consistent with prior porting experiences?

As a trade association that is not itself a CCP, we have no comments on this question. We would recommend that the authorities refer to individual responses to the discussion paper of some of our members in which they might share their individual experiences.

23. Are there any barriers to implementing potentially effective porting practices that are not described in the discussion paper?

CCP12 thinks the barriers to potentially effective porting practices have been well identified in the discussion paper. In particular, we would deem regulatory support in the form of temporary exemptions to AML, KYC, and capital/leverage ratio requirements, as well as a reconsideration of explicit positive client consent, to be useful options to further enhance the likelihood of successful porting as outlined in our answers to the previous questions. In the cross-border context, porting would be more feasible if deferential approach was adopted more widely, as we explained in our response to question 2. This approach would be particularly helpful in the default of a large CCSP operating client clearing services in multiple jurisdictions, by maintaining the required regulatory status in each.

Communication and coordination

24. Are there any additional communications by the CCP or the defaulting CCSP that may increase the probability of porting client accounts?

CCP12 members are strong supporters of communication and cooperation with other market stakeholders. This is demonstrated in many ways, such as disclosure practices described in our response to question 29 and default and payment system outage notification protocols CCP12 has developed internally. Moreover, for those CCPs, which are able to port, they typically provide information about porting processes and requirements on their websites to ensure that the community knows which steps are to be taken in case of a default and CCPs also ensure emergency communication with their participants in case of a default.

We would like to point out, however, that there are limitations as to how much communication and coordination can occur across CCPs due to, for example, legal and confidentiality constraints, as well as inherent differences in products cleared, clearing membership bases, and primary market hours.

Notwithstanding this, we also appreciate the discussion paper's statement that "the defaulting CCSP may be in a good position to contribute, and should be prepared to help coordinate the porting between the multiple CCPs (when possible, subject to applicable law), given that it has all the client information, and

the CCPs do not share a CCSP's position information.”⁵ In this context, we would like to emphasise, as also described in our response to question 30, the importance of communication between the CCP and the distressed CCSP. Communication is a key part of business-as-usual risk management, but it is paramount where a CCSP is distressed as this can allow a CCP to pre-emptively port the CCSP's clients.

25. Are there additional actions CCPs can take following a clearing participant default to coordinate that are not set forth in the discussion paper? Are there any limitations on coordination that are not included in the paper?

We would like to refer to our responses to questions 24 and 26 where we mention what limitations apply to cooperative actions that can be undertaken between different CCPs and between CCPs and their participants.

Harmonisation

26. Are there additional items CCPs can harmonise or standardise during business as usual that are not outlined in the discussion paper? Are there any factors that may impede harmonisation or standardisation that are not provided in the paper?

CCP12 members do not identify the need for further harmonization in this area. As mentioned in our response to question 24, CCPs already cooperate closely with one another and exchange experiences, information, and best practices. There are also natural limitations to harmonisation, which result from legal and confidentiality constraints, different local regulatory requirements, and differences between CCPs, such as the products and markets they clear.

Notable issues to consider when developing a porting protocol

27. Are there additional regulatory requirements that could impede porting? Can such impediments be addressed or mitigated through action prior to the CCSP's default?

CCP12 would like to emphasise here again that temporary relief on capital/leverage ratio requirements and KYC and AML procedures would be very helpful in enhancing the likelihood of successful porting. Please also refer to our previous responses concerning the introduction of laws facilitating mass porting without prior explicit client consent (comments to question 21) and the benefits of regulatory deference in relation to registration/recognition in the cross-border context (comments to questions 2 and 23).

28. Are there any additional factors that should be addressed in testing exercises?

CCP12 agrees that testing default procedures is one of the prerequisites of a successful DMP and CCPs have observed the benefits of testing the DMP. We believe testing exercises, including where they may address porting, should be designed to account for the unique characteristics of a given CCP (e.g., products cleared and types of market participants, etc.). We support reasonable policy proposals with

⁵ The discussion paper, p. 12, point 3.2.1 Communication and coordination

respect to emphasizing the importance of conducting porting testing exercises. However, we do not believe that there is a need to prescribe granular recommendations around how these testing exercises should be structured or executed, given these unique characteristics of each CCP and potential attendant operational challenges. From our experience, the readiness of some market participants could be improved via participation in at least annual default management fire drills where the scope at times also covers porting.

29. Please provide examples of good disclosure practices from your perspective.

Where porting is applicable, CCPs already publish relevant information about porting procedures, requirements, and processes. Generally, CCP12 members have vast experience with data and information disclosure, the level of which is pretty unique within financial markets, especially when compared to market participants, such as CCSPs and clients. The transparency of CCPs is evidenced by, among other things, the public disclosure of their rulebooks and the public qualitative and quantitative disclosures⁶ provided in accordance with CPMI and IOSCO standards⁷. Having comparable insight into market participants activities could help support successful porting (with respect to those CCPs and markets where porting is applicable) and would provide a deeper understanding of the CCSPs' scope of activities, which could be used to evaluate the CCSP's ability to take on new clients through porting.

30. Are there other arrangements a CCSP can make to ensure that, post default, the CCSP can help coordinate porting at multiple CCPs if the CCSP is a non-defaulter? If the CCSP defaults, what arrangements can the CCSP make to facilitate the porting of its clients?

In the case of a CCSP's default, the non-defaulting CCSPs can help out in two ways – (1) by contacting the CCP which is dealing with the default to indicate their potential willingness to take over positions of the defaulting CCSP's clients and by contacting other CCPs which have also had the defaulting CCSP as their clearing member and/or (2) in cases where a non-defaulting CCSP is seeking to take over one or more clients at one CCP, by checking whether those clients are also looking for porting at other CCPs. With respect to the defaulting CCSPs, it would be very helpful if they could provide necessary information (e.g., disclosing details of their clients) as swiftly as possible, including supporting the facilitation of any necessary actions by their respective authorities, where necessary. Moreover, if a bank resolution authority or other resolution entity is not involved and the normal insolvency proceedings are managed by an administrator, a defaulting CCSP could also provide the liquidator with a clear list of clients in order to facilitate next steps.

⁶ CCP12, Public Quantitative Disclosures, available at [Link](#)

⁷ CPSS, IOSCO, Principles for financial market infrastructures: Disclosure framework and Assessment methodology (December 2012), available at [Link](#) and

CPMI, IOSCO, Public quantitative disclosure standards for central counterparties (February 2015), available at [Link](#)

Suggested next steps**31. Please provide feedback on the suggested next steps for consideration. Do you agree that these issues warrant further consideration by CCPs, CCSPs and/or clients? Are there additional issues that may warrant further consideration?**

CCP12 appreciates the considerations and findings of the discussion paper and the ability of different market participants to comment. While such research done in this area by the authorities is valuable and can help both existing and new market stakeholders (including CCPs, CCSPs and clients) with the development and enhancement of client clearing services, we would like to emphasise that at this stage we do not see a need for a specific guidance for CCPs in this area or for any changes or amendments to PFMI. The PFMI have proven themselves effective in allowing CCPs to successfully manage the risks in their market, including with regards to client clearing. While CCPs can make some adjustments based on their experience with the new models for client access and porting following market developments and in response to participants' needs, a prescriptive approach towards these matters could unnecessarily stifle effective risk management tailored to one's market and innovation. With respect to access models, this could prevent CCPs from potentially designing new models or developing new features for existing models.

We do, however, see a need for further work and possibly the issuance of recommendations for local regulators and legislators in a few areas relating to porting. We would stress that these areas are not something that CCPs themselves can change, but CCP12 and its members would be most keen to support any work, including by the International Standard-Setting Bodies and local legislators or regulators, to make positive changes here. First of all, to ensure true progress in making porting more efficient and successful, some local regulatory changes are required, such as the removal of the clients' explicit consent requirement in some jurisdictions. In our opinion, local regulators should be encouraged to have a closer look at how porting works in their specific jurisdictions and how to remove regulatory obstacles that hinder porting in their markets. Second of all, in order to facilitate porting to non-defaulting CCSPs and the ongoing provision of client clearing services, temporary waivers for AML, KYC and capital/leverage ratio requirements would be welcome. Last but not least, regulatory deference aimed at promoting efficient access of foreign entities to a given market would also likely improve the availability of CCSPs for clients, and more broadly, access to central clearing. Please see our responses to the previous questions to find more details on these solutions.

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 www.ccp12.org.

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