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02 September 2011

Dear Sir/Madam,

Deutsche Bank Response to FSB Consultative Document: "Effective Resolution of Systemically Important Financial Institutions"

We fully support the Financial Stability Board (FSB) working towards policy measures to improve the capacity of authorities to resolve systemically important financial institution (SIFIs) without systemic disruption and without exposing the taxpayer to the risk of loss. We welcome the opportunity to provide feedback on the package of measures outlined in the document.

Our key observations are set out below, with more detailed comments provided in the Appendix.

- **Momentum at G20 level:** The members of the G20 and the FSB must commit to building and maintaining momentum towards harmonised resolution regimes and international coordination. The approach to resolution described in the consultation document will, if implemented consistently and in a timely way, contribute significantly to meeting the FSB's objectives. The FSB should include in their recommendations a clear timeline for jurisdictions to implement changes.

- **Group level planning:** The FSB should recommend recovery and resolution planning be undertaken at group level. The home authority should take a lead role in working with the firm and other members of the Crisis Management Group to develop the Recovery and Resolution Plan (RRP) and coordinate the resolvability assessment. The timelines must be reasonable and any local planning should be coordinated within the group plan.

- **Recognition of inter-linkages:** Development of the RRP, the resolvability assessment and 'improving resolvability' are intrinsically linked and should be managed as an iterative process. The outcome of the review should not be pre-judged with an expectation that there will be restructuring of a firm's operations. The assessment must include recognition of any changes required to the resolution regime in a particular jurisdiction without unnecessarily requiring actions by the firm to compensate for legislative shortcomings which can and should be addressed.

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- **Communication to firm of the firm-specific cooperation agreements:** Firm-specific cooperation agreements should be binding and at least the key elements communicated to the firm in order to factor these into resolution planning. There should be a clear principle that the home authority's role must be respected.

- **Respect for group structure:** There is no one optimal group structure. As such, the outcome of the overall resolution process (planning, assessment and 'improving resolvability') should not be aimed at structural reform. Existing group structures should be respected, including branch structures.

- **Clarity regarding resolvability assessments:** The criteria for resolvability assessments need to be clear and objective and there must be much more detail provided than is set out in the consultation. There is a role for the FSB in not only establishing standards, but also to put in place arrangements (such as peer review) to guard against inconsistency of judgments and outcomes.

- **Support for bail in:** We support including 'bail in' as one of the available resolution tools. For investors, it is extremely important that there is clarity in relation to the trigger.

We would be happy to discuss any of the points raised in this response in more detail and look forward to contributing to future policy development and elaboration of these proposals.

Yours sincerely,

Andrew Procter
Global Head of Government & Regulatory Affairs
Deutsche Bank AG

Appendix

Deutsche Bank Detailed comments on "Effective Resolution of Systemically Important Financial Institutions"

KEY ATTRIBUTES – Annex 1

The framework set out in the 'key attributes' section has considerable merit and the potential to make a positive contribution towards meeting the policy objectives. Whether this is achieved however, will be dependent on consistent and timely implementation in member jurisdictions (and ideally beyond), supported by authorities working together and with firms to progress firm-specific recovery and resolution planning.

Therefore, when the FSB puts forward its recommendations to the G20, there must be a strong commitment to putting in place clear and consistent legal frameworks. This should be included in the proposed timetable, with a specific recognition of the differing starting points as identified by the Basel Committee. This is necessary to support the cross-border cooperation agreements.

Interaction between resolvability assessments/RRP/improving resolvability: Although split into separate sections in the document, resolvability assessments, RRPs and 'improving resolvability' can be seen as a continuous linked process. Given the overall complexity of this process and the fact that starting points differ not only by jurisdiction but also by institution within a jurisdiction (depending on participation in pilot programmes) we expect that this process will be implemented through an iterative dialogue with authorities, coordinated by the home regulator through the Crisis Management Group (CMG).

Home/host cooperation and coordination: Addressing the complex and sensitive home/host issues is vital to achieving the objective of being able to resolve SIFIs. The FSB aims to address some of the difficulties with its proposals. This should be strengthened by establishing a clear principle that the home authority's role is to lead and coordinate decision-making and assessment at all points along the spectrum from business as usual to resolution. This is necessary to demonstrate commitment to group resolution and the G20 mandate. The wording relating to the host authorities' commitments in the cooperation agreement section should be amended accordingly.

In some sections of the document the arrangements as described for cross-border cooperation do not go far enough. As part of the legal framework in any jurisdiction, host country authorities should have power to consent to group-level resolution measures. This legislation should also support a group-wide approach to RRPs and assessments. This should be the initial starting point, as it is unnecessarily complex (and possibly counterproductive) to manage multiple jurisdiction-level approaches that are not consistent with group-level frameworks. Timetables for any jurisdiction-specific requirements should be coordinated with the FSB timeline and agreed within the CMG. The FSB could set out a timetable within its recommendations and include this in its peer review process.

The FSB must avoid a situation where a framework of individually negotiated agreements (be they bilateral or between a small number of jurisdictions) are considered to be anything other than an interim solution. The recommendations to the G20 must make this clear.

CMG and colleges: Clarification of the roles of CMGs and colleges will be necessary – particularly in relation to the recovery phase where there could be significant overlap in their areas of focus. Also, while the membership of the CMG may be narrower in terms of jurisdictions, it is likely to be broader in terms of its composition, involving possibly the resolution authority, supervisory bodies, finance ministries, central banks and/or Deposit Guarantee Schemes.

Group structure: The treatment of branches is difficult to reconcile in this document. The existing legal structure of each group should be respected and we support the industry position expressed by the IIF that a general principle should be established to restrict the use of ring-fencing in local jurisdictions without clearly stated and explained exceptions. The burden of proof should be high. Group structures have evolved into their current state over a number of years and with a case-specific rationale. In particular, the EU specifically allows for the use of branches in support of the single market structure. This is not a 'blank sheet of paper' exercise with the objective of moving all firms to a similar structure. Any changes will take time and are likely to be costly and disruptive to business and risk management. There is no one optimal structure for all banking groups.

Confidentiality: Concerns regarding confidentiality are apparent within the document and public debate. Recovery and resolution planning involves the transmission of extensive amounts of confidential and commercially sensitive information. This requires appropriate safeguards be put in place to ensure that access to information is managed so that it used for the purpose of resolution planning only. The firm should be aware of the content of the agreement which relates to sharing of information between authorities and understand how access to information will work in practice.

RESOLVABILITY ASSESSMENTS – Annex 4

Overall process: By their nature, resolvability assessments are a type of continuous review process, integrated with the preparation and maintenance of RRPs. There will be overlap between the 'ex ante' actions identified by the firm through the planning process and the type of actions which will contribute to 'improving resolvability'. There must be a realistic expectation that this will evolve over a longer timeframe. The initial focus must be on the group level with the assessment led by the home authority.

Criteria for assessment and achieving consistency: There needs to be in place clear and objective criteria for making the assessment. The FSB should elaborate on the approach described in the document to establish common understanding and expectations about how judgments will be made. The assessment of credibility is subjective and there is insufficient guidance in the document to provide insight into how the framework will be implemented. The assessment process is potentially hugely significant for each firm and it is important that the firms and the authorities can be confident that the process, criteria and judgments are as consistent as possible to avoid any destabilising effects. The FSB should play its role, not only by establishing standards, but by putting in place arrangements (such as peer review) to guard against inconsistent outcomes.

Section 4 sets out areas to consider as part of the assessment, however, phrasing these as questions gives little insight into the way in which the RRP will be assessed. At this stage, this functions more as a list of areas to include in the RRP than something that can be used to drive action by firms during the planning process, i.e. ex ante actions.

External factors: It is not clear is how the external factors which impact on firm resolution will be accounted for within the assessment. The current resolution regimes relevant to the firm in question should not simply be reviewed with a view to putting the firm-specific part of the assessment in context. Rather, it should be expected (especially in the initial stages) that authorities will identify 'measures to improve resolvability', which should be factored into the planning and reflected in the cooperation agreement and final resolution plan. While section 7.2 of the paper on cooperation agreements does suggest the documentation of the authorities' commitment to making changes, it does not include any need to commit to timing; nor what could be the repercussions of not delivering.

Responsibilities: The home authority must coordinate the assessment process, taking into account the views of the host regulators. There should not be a fragmented approach which could lead to ring-fencing.

CROSS-BORDER COOPERATION AGREEMENTS – Annex 3

Basis of the agreement: Putting in place cooperation agreements is a significant step forward and reduces uncertainty. The objectives and scope as described are sensible. The outline provided is intended to deal with current barriers to group-level resolution. However 'presumption in favour of cooperation' is not strong enough to support the FSB's objectives. The recommendation to the G20 must be that the agreements are made binding, even if this is reliant on being embedded in local frameworks.

Involving the firm: The relevant firm needs to understand several elements of the agreement in order to factor this into its own contribution to the resolution planning process. A mechanism for communicating this should be factored into the agreement process. This includes the details relating to confidentiality provisions and how the term 'as appropriate' will be interpreted, as well as commitments to making changes under section 7.2.

Disclosure of cooperation agreements: There is no real clarity about potential disclosure to the market of firm-specific cooperation agreements. We do not consider it appropriate to disclose the full detail of the agreement beyond, perhaps, its existence. Irrespective of the final decision, there must be consistency. There should not be any uncoordinated disclosures (driven by authorities or firms) as this will have 'knock on' effects.

RECOVERY AND RESOLUTION PLANNING – Annex 5

Overall approach: Preparation of RRPs should be undertaken at group level, with the home authority responsible for coordinating and involving host authorities through the CMG. Local requirements should not pre-empt the completion of the group-level planning and unilateral actions should be strongly discouraged. The FSB has an important role to play in monitoring the way in which authorities work together and providing mechanisms to achieve consistency. There needs to be transparency regarding the requirements, so that there can be common understanding. This will contribute towards ensuring the requirements are predictable and applied consistently. The RRP and the resolvability assessment should not be seen as a means to require structural changes or modification of the way in which the business is run.

While we have no objection to the timetable proposed for the initial iterations of the RRPs, there should not be a preference for speed over thoroughness. The iterative nature of the process to develop the RRP (including the assessment outcomes) should be made clear in the FSB's recommendations. This should also be reflected in the timeline and within the cooperation agreement.

Provision of resolution planning information to authorities: While the overall structure and content of RRPs is welcome, authorities should give consideration to the way in which the information is provided. Particularly in relation to resolution, hard copy documentation is unlikely to facilitate the type of analysis authorities will have to undertake in advance and could pose difficulties when decisions have to be made in a short timeframe. Much of it will relate to granular details about such matters as systems, personnel and contracts, where detailed prior knowledge is vitally important to make the information useful. It is therefore not feasible for the resolution authority to undertake the relevant analysis of these practical issues without both close dialogue with the firm and a way of using the information efficiently.

To this end, authorities should work with firms to develop appropriate ways to provide information; specifically IT-based solutions.

Communication strategy: The RRP should also include communication plans for creditors, regulators and customers against both the recovery actions and in terms of dealing with resolution. For listed firms there needs to be consideration of the application of listing rules.

Disclosure of RRPs: The document is not clear about the question of publication and it has been suggested that there may be appetite for disclosing some or all of the content. RRPs contain information which is highly confidential and will be extremely market sensitive. We do not believe that disclosure of any or all of the RRP would be helpful and certainly not of content relating to the firm-specific assessment. In fact, such disclosure is likely to be misinterpreted and therefore misleading.

IMPROVING RESOLVABILITY – Annex 6

This section to some extent tries to predict the sorts of 'ex ante' actions a firm will identify through developing its RRP. However, this section sets out high-level themes to consider, which cannot be applied on a blanket basis. This needs to be considered in more detail before policy decisions are taken and implemented. In the meantime, firms can consider these elements when developing RRPs and discuss actions with the authorities.

On the specific subjects:

- *Intragroup exposures:* Extensions of credit, guarantees and intragroup transactions are important components of firms' risk management approaches. Seeking to put in place restrictions will have a fundamental effect on the way in which groups are managed and careful consideration needs to be given as to how this would interact with the relevant regulations already in place. Prescriptive requirements will impact each firm in different ways depending on its structure. As noted elsewhere in our response, the resolution regimes should not be designed in order to direct firms towards a specific structure.
- *Reconstitution of separate legs of transactions booked in separate intragroup entities:* We agree with the broader industry view expressed by the IIF that what is intended here is unclear and needs to be considered further to understand the implications for risk management.
- *Complexity of group structure:* the way this is expressed presumes that the development of RRPs and the increased understanding of the authorities do not contribute to improving the resolvability of the firm. The implications of this are therefore significant and will have repercussions in relation to matters such as compliance, tax, capital planning and risk management generally. The FSB should avoid putting in place a general principle or approach which unnecessarily pushes firms to restructure without significant justification. Much more detailed explanation should be provided about the criteria used to make a judgement.
- *Global payment operations:* The level of preparation that can be undertaken by firms is limited in that 'maintaining access' depends on many factors outside of the firm's control. Policies currently being developed by IOSCO and CPSS in relation to Financial Markets Infrastructures will need to be taken into account and it would therefore be appropriate to consider this fully over a longer timeframe and following completion of their work.

Resolution funds: The clear expectation is that resolution will be financed by the industry and there are numerous and varied arrangements in place in different jurisdictions, ranging from specific pre-funded resolution funds to taxes designed to recoup costs of the recent crisis. The lack of harmonisation creates distortions in the market. Resolution funds should have clear objectives, with a defined purpose and criteria for the use of funds. Combining a resolution fund with a deposit guarantee scheme can make managing the situation more complex and unpredictable.

'BAIL IN' – Annex 2

'Bail in' debt (i.e. that which can be converted or written down at the point where the firm is considered to be no longer viable) could be used in a situation where writing off all pre-existing equity, and either converting to equity or writing off all subordinated debt has proved insufficient to maintain the viability of the institution.

The FSB paper focuses on statutory 'bail in', on the basis that contractual 'bail in' debt can still be issued by firms or required by national regulators. The FSB notes that, if so, there would need to be clear sequencing of the conversion/write down such that all contractual convertible instruments would be used to absorb losses before any resolution powers (including 'bail in') are used.

We agree with the objectives as set out in the FSB's paper and would add the following comments in relation to the overall approach:

Clarity and certainty: The debate about the pros and cons of convertible and 'bail in' debt is complicated by inconsistent use of the terminology and lack of clarity about the interplay between the various proposals and decisions.

The market appetite for and price of 'bail in' instruments will mainly depend on the design of the 'bail in' mechanism and the anticipated consequences of resolution. As such, it is important there is as much clarity as possible about the trigger. Investors are looking to understand the probability of resolution being necessary and the consequences of write down and conversion. Achieving complete certainty will be impossible as each use of this tool will be case-specific. Setting the trigger for write down/conversion as close to the point of insolvency as possible is the best way of maximising the available investor base, while simultaneously minimising the additional cost of such debt for the issuer. It is also important that it is clearly understood that any equity resulting from conversion or write-down is wiped out under the resolution regime, both in respect of investor appetite and to eliminate moral hazard for shareholders.

The statutory framework as set out in Annex 2 recognises the need for clarity. However, there is a need to elaborate on ii) the conditions under which 'bail in' and other resolution tools could be used. Linking the trigger to the conditions for entering the resolution regime makes sense, so long as this is clearly defined and well understood. This again supports the need for consistency in different jurisdictions.

Scope of the statutory power: Clearly setting out what is in and out of scope is of critical importance. To this end, we disagree with the proposal that this range of liabilities should be 'as wide as possible'. The statutory approach should only subject 'investor-related' debt to the 'bail in' mechanism. This would include hybrid capital instruments and senior or junior unsecured bonds or bonded loans. Other forms of 'bank business-related debt' should remain outside of scope, including secured debt and debt resulting from the following: transaction payments, repos, derivatives, trading, fiduciary business and employee compensation.

Market appetite: As discussed above, the market appetite for these instruments is potentially limited by uncertainty about the way in which they will operate and the consequences of the decision of the resolution authority for creditor status. The better understood the decision-making process is in advance (even if at the time it is not transparent for operational and/or stability reasons), the better able investors are to make an assessment. Introducing objective criteria is desirable for investors because they are better able to predict the circumstances where the decision might be made, and it will be less expensive for issuing banks. For example, some form of definition would be helpful, such as the way this is expressed in Sec. 48b of the German Banking Act as amended by the German Restructuring Act, which includes an objective example to illustrate the point of 'failure'. It is also important that although the trigger should be close to this point of failure, the trigger should not be based on the insolvency test. This is too difficult to assess in the necessary timeframe (e.g. a 'crisis weekend') and is also not a test that regulators are experienced in using.

However, it is important that any trigger incorporating objective elements does not result in an obligation for authorities to exercise their 'bail in' powers automatically or override the 'resolution objectives' and the authorities' ability to take action in the public interest.

We have discussed 'bail in' with various types of investors, in particular with a focus on the approach set out in the European Commission's consultation in early 2011.

It is important to recognise that the investor base for bank debt is not homogeneous and the impact of introducing 'bail in' features has a non-linear effect on the liquidity available from different types of funds, with the most liquid funds potentially being those with most restricted ability or appetite to invest.

Common themes emerging which will affect market capacity include:

- Proposals should apply only to new debt.
- Investors generally want to see that the hierarchy within the capital structure is respected.
- Investors have a consistent view that certainty about the treatment of creditors is a fundamental pre-requisite.
- Transition and phase-in arrangements are very important. The timing must not pre-empt the implementation of Basel III or the 13 January 2011 Basel Committee on Banking Supervision's (BCBS) paper and there must be significant lead time to allow the market to adjust (ideally at least 10 years). Basel III will need to be embedded first, with 'old' debt being phased out.
- To avoid dampening investor appetite, if a specific amount of 'bail in' debt is required by authorities, it would be beneficial to put in place a mechanism to protect 'early' investors from being exposed to relatively higher losses due to the timing of their investment. For example, should the bank split the amount of its required issuance into a number of individual trades over the implementation period and the bank was to enter resolution before the build up was complete, existing investors will bear relatively higher losses than they would have to if this had happened after the implementation period, where these would be spread more widely. To build the momentum needed to establish a market for contractual 'bail in', investors would want some form of protection from what they would perceive to be disproportionate losses. Otherwise, they may be reluctant to invest.
- This proposal could result in heightened differentiation between banks perceived to be strong and others, with the latter finding it difficult to access the market for this kind of instrument.
- The more transparent the trigger the better.
- There are some concerns relating to whether the instruments will be 'rateable', although increasingly ratings agencies appear to believe their models will be able to accommodate these instruments.

Restrictions on investors: In addition to issues which affect investors' views on the attractiveness of the instruments themselves, there will also be potential technical limitations for certain types of investors, such as other banks (due to Basel III liquidity approach) and

insurers and pension funds (due to Solvency II requirements). Other investors may face non-regulatory restrictions related to their mandates, although there is some flexibility possible over time. We understand that some thought is being given to whether additional restrictions should be put in place for certain investor classes (i.e. types of financial institutions) due to concerns about interconnectedness. This is likely to be unnecessary given that other regulatory changes should result in bank debt being a safer investment. If any restriction is being considered, it should not be on the overall amount of holdings of this type of instrument, but at the level of individual name exposures.
Retail investors could be restricted from holding ‘bail in’ debt directly. However, in normal insolvency proceedings retail investors in bonds would not be protected by Deposit Guarantee Schemes and, therefore, would have to bear the same loss as other bondholders.

Compensation mechanisms: Insolvency rankings will be subverted irrespective of the chosen approach if, for example, subordinated debt is to be converted into equity while senior unsecured debt will only be written down without upside potential. This is another reason for an approach which incorporates a contractual clause in which the debt holder accepts that they will be subject to ‘bail in’.

An additional compensation mechanism would be unnecessary if the execution of the ‘bail in’ mechanism is successful and the bank is sustainably restructured. In case of an unexpected later resolution/insolvency proceeding, any compensation for the senior unsecured creditors who would have to bear a higher amount of loss than unaffected senior unsecured creditors could only work as a subordinated claim towards the bank in resolution. A compensation claim on senior level would create a liability from an accounting perspective and therefore would undermine the purpose of the ‘bail in’ tool.

Group treatment: Flexibility will aid the achievement of the resolution objectives. ‘Bail in’ debt issued by the parent institution can also be used by groups which have an integrated structure.

Ensuring creditor confidence and adequate liquidity: Giving a priority right to the provider of a new credit facility could set an incentive to a potential lender to provide the ‘bailed-in bank’ with urgently needed liquidity, especially if usual short-term refinancing sources were not available. A discretionary option would not be practicable as it would require the consent of all remaining senior creditors. Therefore, a statutory power to order a right of priority should be preferred. The priority right could be limited up to a specified percentage of the capital and to a certain number of years after imposing such an order (e.g. see Section 2 of the German Restructuring Act).

DISCUSSION NOTE: CREDITOR HIERARCHY, DEPOSITOR PREFERENCE AND DEPOSITOR PROTECTION IN RESOLUTION

Deposit insurance: The crisis showed that creditors will seek to arbitrage the differences in scope where these exist between deposit insurance schemes. Hence, a harmonised definition of deposits and insured deposits would be beneficial in addition to a consistent level of depositor protection. The FSB should take account of the findings from the peer review it has recently undertaken with a view to understanding the implications of different models of deposit protection and making recommendations for harmonisation.

Depositor preference: National depositor preference should be eliminated in order to minimise the incentives for national and not group level resolution.

Putting all depositors in a position where they receive higher priority should be avoided – any preferential treatment should only apply to those depositors which are insured. There is otherwise an incentive for institutional investors to move into holding deposits instead of debt, which would have the effect of exacerbating difficulties for a failing firm by excluding them from the wholesale funding market and triggering insolvency. Consideration should therefore be given to putting in place a maturity limit such that all liabilities below a certain threshold are excluded (perhaps one year). Any change to the level of protection or prioritisation of retail deposits would significantly affect the 'stickiness' of the deposits.

Creditor hierarchy: Creditors who provide a bank in difficulty with liquidity support in order to enable the restructuring of this bank should have a priority claim in any subsequent insolvency proceedings. However, granting such privileged position should be an exception. It should not be the case that all costs incurred in connection with the use of resolution tools rank above all other senior unsecured creditors.

Subordinating other senior unsecured creditors will adversely impact their recovery rate due to the amount of depositor claims. Investors (i.e. potential creditors) will take this structural feature into account and as such could affect the funding strategy of the firm and its ability to diversify.

DISCUSSION NOTE: CONDITIONS FOR A TEMPORARY STAY ON EARLY TERMINATION RIGHTS

The FSB is seeking comment on the conditions under which a brief stay on early termination rights should be imposed following entry into resolution and pending the use of resolution tools, as well as the length and scope of such a stay, possible exemptions and its cross-border application.

As a starting point, there is no doubt that continuity of contracts is an important pre-condition for a successful transfer of healthy business. This holds true especially for tenancy or operational lease agreements or custody, clearing or settlement arrangements. However, the principle cannot apply to all business activities without differentiation. For example, we cannot see that it would be necessary or desirable for the resolution of a failing institution to transfer all derivatives. It would be difficult for the institution assuming complex trading book positions to manage these – especially if the relevant traders and risk management have left. This could have repercussions for counterparties and market stability.

When considering introducing a special right for the resolution authority to override or suspend contractual termination rights, the FSB must take account of the potential negative consequences for counterparties and the potential risk to the financial markets. Netting agreements are beneficial to the market as a whole and close out netting plays a role in reducing contagion. This mechanism relies on the effectiveness and enforceability of the contractual termination right of the counterparties. Any legal restriction on their right to exercise their contractual rights, or which impacts the likely effectiveness or enforceability, could have serious adverse effects on the counterparties and their risk management. This could affect the market as a whole.

DB supports the resolution authority having the right to suspend the effect of termination rights under netting agreements. However, this right would need to be exercisable only within clearly circumscribed limitations (including a very short time limit) and where certain safeguards are in place. The authority would only be able to exercise these rights in circumstances where doing so could prevent the collapse of one or more institutions and/or the financial markets.

The conditions and safeguards set out in the discussion document are generally appropriate. We suggest incorporating the following points:

- Under ii): The time limit should be no more than 48 hours.
- Under vi): Safeguards should be in place such that there should be no splitting up of rights and liabilities resulting from transactions covered by the same netting agreement. If the resolution measures were to allow this, it would undermine the entire practice of netting and compromise firms' ability to manage risks. There should be no limitation on such safeguards. The parties to the agreement have agreed on the scope and extent of the netting agreement and thus have identified a sufficient connection or relationship. There is no obvious reason why this should be questioned or reviewed ex post, particularly when any decision would be influenced by the ex post view and would be likely to result in arbitrary decision-making. Cherry picking of transactions and/or collateral to be included in any transfer under resolution powers would fundamentally undermine the risk mitigation abilities of the counterparties with potentially devastating effects.
- Under viii): It may not be appropriate to include all types of counterparties. In particular, in view of the increasing systemic importance of Central Counterparties (CCPs), consideration should be given to excluding them from the suspension of the termination right subject to the future IOSCO-CPSS requirements for FMIs.
- CCPs rely on close-out netting to mitigate the risks emanating from the default of their members and their risk mitigation capabilities would be significantly impaired if they could not use this. Whereas such impairment may be manageable for the counterparty in the case of a bilateral relationship (subject to conditions), this may not be the case for a CCP, where the exposures may be much more significant and complex.
- Breaches: due to the importance of the issue and potentially far-reaching implications of a transfer which breaches the safeguard provisions there should be clear and significant consequences.