

Via E-Mail: fsb@bis.org

18th October. 2013.

The Financial Stability Board (FSB).

Dear Sirs.

Re. Consultative document on the Application of the Key Attributes (KAs) of effective resolution regimes to non-bank financial institutions.

CCP12, a global association of 32 major central counterparty organizations, congratulates the Financial Stability Board, in its continuous effort in developing the Key Attributes for effective resolution regimes. It is pleased to respond to this consultation and focuses on the FMIs and FMI participants sections.

CCP12 acknowledges that despite an FMI's risk management and recovery plan, it is possible that extreme stress could create a situation where an FMI cannot remain viable and may need to be resolved. It supports the FSB's objective of making feasible the resolution of financial institutions without severe systemic disruption. For this, effective, clear and enforceable resolution regimes should be implemented.

From its perspective, the report addresses for each Key Attribute the main considerations for FMIs. It is important to recognize that a "one size fits all" approach cannot be expected to work for the five types of FMIs identified in the report and further guidance on the application of KAs for CCPs would be desirable. In its opinion, resolution strategy should also take into account the operational and legal challenges of portability in each jurisdiction (CCP industry is particularly sensible to this item);

CCP12 is providing in Annex 1 the responses to the questions for consultation on the KAs implementation guidance for resolution of FMIs and FMI participants. It encourages the FSB to take them into account when finalising the report.

CCP12 appreciates your consideration of this submission and looks forward to working with you to advance the steps being taken for a safer CCP Industry.

Sincerely,

Siddhartha Roy
Chairman,
CCP12 – The Global Association of Central Counterparties

Attachments:

Annex 1: Questions for consultation on Resolution of Financial Market Infrastructure (FMI) and Resolution of Systemically Important FMI Participants.

Annex 2: List of CCP12 Member Organizations

Annex 1. Draft Implementation Guidance: Resolution of Financial Market Infrastructure (FMI) and Resolution of Systemically Important FMI Participants

Part I of the Draft Guidance: Resolution of Financial Market Infrastructure

1. Does the draft guidance adequately cover the principal considerations that are relevant to the resolution of each class of FMI (CCPs, CSDs, SSS, PS and TRs)? Would it be helpful if the guidance distinguished more between different classes of FMI? If so, please explain.

Response- The guidance is very clear in the objectives of an effective resolution regime that pursue financial stability and allow for the continuity of critical FMI functions without exposing taxpayers to loss. The guidance on the implementation the Key Attributes seems also to be broad enough to cover the principal considerations that are relevant to the resolution of each class of FMI.

We feel that a CCP in resolution creates different challenges compared to other FMIs in resolution. We would therefore welcome additional guidance on resolution of CCPs through a specific framework. In addition, we would recommend that each jurisdiction put in place national resolution regime that takes into account the limitations of current insolvency regimes and other legal and operational obstacles..

2. Should any further distinction be made in the draft guidance, for the purposes of applying the Key Attributes, between types of FMI that assume credit risk through exposures to participants and those that do not? If so, for which provisions is that distinction relevant?

Response- As mentioned in question 1 we would welcome further guidance for CCPs

3. Are the additional statutory objectives for the resolution of FMI (paragraph 1.1) appropriate? What additional objectives (if any) should the draft guidance include, relating either to FMIs generally or specific classes of FMI?

Response- CCP12 fully agrees that the basic objective of “an effective resolution regime for FMIs should pursue financial stability and allow for the continuity (timely) of critical FMI functions”. The mentioned additional statutory objectives seem to be appropriate to us. Those that are particularly relevant to our industry are: the continuity and timely completion of critical payment, clearing, settlement functions; accessibility of participants to securities or cash and collateral accounts. We would also highlight the relevance of including assets protection as an objective.

4. Is it appropriate to exclude FMIs that are owned and operated by central banks from the scope of application of the Key Attributes and this guidance (paragraph 2.1)?

Response- Although CCP12 believes that Central Banks can allow continuity of critical FMI functions in case of FMIs owned and operated by them, we think relevant not to exclude such FMIs from Resolvability assessments (KA 10) taking into consideration the elements established in 10.3 that are related to the feasibility and credibility of implementing the resolution strategy. The results of such assessments should be available to various stakeholders.

5. Should resolution authorities have a power to write down initial margin of direct or (where appropriate) indirect participants of an FMI in resolution (paragraph 4.8)? If so, should the power be restricted to initial margin that is not ‘bankruptcy remote’ and may be used to cover the obligations of participants other than the participant that posted it? What are the implications of such a power for FMIs and participants? Are any further conditions appropriate in addition to those specified in paragraph 4.9?

Response- CCP12 estimates that initial haircutting cannot be considered as a mechanism for allocating losses other than those related to the defaulted Member.

Even, if initial margin is likely to provide a high degree of loss-absorbency in a timely manner, in many jurisdictions, regulatory frameworks protect initial margin from being used to cover obligations other than those of the participant who funded that initial margin. Its replenishment for survival participants is capital costly. It could also cause a large liquidity strain in the market and have pro-cyclical effects.

CCP12 would consider the use of Assessment Power a better option for those cases where the origin of the loss is not from participant default. .

6. Should the Annex explicitly restrict resolution authorities from interfering with the netting rights of FMI participants (for example, by splitting a netting set through partial transfer of positions in a CCP or partial ‘tear up’ of contracts)? What is the possible impact on participants’ risk management, accounting reporting or regulatory capital requirements if netting rights can be interfered with in resolution, and how might any such impact be mitigated?

Response- CCP12 considers that resolution authorities should be restricted from interfering with the netting rights of FMI participants; splitting a netting set through partial transfer of positions could be more disruptive.

7. Does the draft guidance (paragraphs 4.1 and 4.2) adequately address the specific considerations in the choice of the resolution powers set out in KA 3.2 to FMIs? What additional considerations (if any) regarding the choice of resolution powers set out in KA 3.2 that should be addressed in this guidance?

Response- We agree with the specific considerations in the choice of the resolution powers set out in KA 3.2. We would however recommend to specify on point (iv) of Powers to allocate losses and terminate contracts (KA 3.2) relating to variation margin haircutting, that this should only be possible where the legal framework and the rules of the FMI permit the use of such resources for covering the obligations of participants other than the participant that posted it.

8. Are the conditions for entry into resolution of FMI (paragraph 4.3) suitable for all classes of FMI? What additional conditions (if any) would be relevant for specific classes of FMI?

Response- The border line between recovery and resolution should be clarified as much as possible in the report and considerations for each type of FMI should be taken into account.

9. Does the draft guidance (and paragraphs 4.4, 4.8 and 4.9 in particular) deal appropriately with the interaction between the contractual loss-allocation arrangements under the rules of certain classes of FMI and the exercise of statutory resolution powers?

Response-

Please refer to our response to Q 8 above.

To ensure that the supports of all stakeholders are available during recovery stage itself, it is critical that the point of entry into resolution is defined as clearly as possible in each jurisdiction. We therefore urge each jurisdiction to implement national resolution regime for CCPs.

10. Should contractual porting arrangements be recognised in the draft guidance on the transfer of critical functions (paragraphs 4.11 and 4.12)?

Response- We believe that the powers envisaged under para 4.11 and 4.12 are adequate. However, it is important to bear in mind that a third party may not be available. It is also very important to observe that the resolution authorities do not have the power to force any viable potential third party or bridge institution to act as a receiver of any transferred obligation.

11. Are there any other FMI-specific considerations regarding the application of any of the 8 resolution powers set out KA 3.2 that should be covered in this guidance?

Response- We consider that the FMI considerations regarding the application of resolution powers set out in KA.3.2 are adequate. However for the item of conversion to equity of any outstanding debt of the FMI we feel that the guidance should state if there are any restriction on who can participate in such conversion.

12. Does the draft guidance (paragraphs 5.1 and 5.2) deal appropriately with the considerations that are relevant to the decision whether to stay the exercise of early termination and set-off rights by FMI participants on the entry into resolution of the FMI? Should the guidance distinguish between different classes of FMI in this regard?

Response- The considerations seem to us to be adequate. CCP12 agrees with the mention in the report of “when considering whether to impose a temporary stay FMI... the resolution authority should take into account the impact on the financial markets and on the safe and orderly operations of the FMI and any linked FMI”. This is very relevant, because even if we consider the power of resolution authorities to stay temporarily any early termination rights exercisable by FMI participants when that FMI has entered into resolution to be appropriate, it is possible that this encourage participants to exercise their termination rights during the recovery process.

13. Are loss-allocation arrangements under FMI rules reflected appropriately in the application of the “no creditor worse off” safeguard in FMI resolution (paragraph 6.1)?

Response- Yes

14. What additional factors or considerations (if any) are relevant to the resolvability of FMIs, or particular classes of FMI (paragraphs 10.3 and 10.4)?

Response- We agree that “When conducting a resolvability assessment of an FMI, authorities should assess the feasibility and credibility of implementing the resolution strategy”. However, we have the following considerations:

- The legal and technical considerations are particularly relevant. We feel that a formal resolution regime for FMI should be set up in each jurisdiction to avoid any possible frivolous legal challenges causing disruption to the resolution process.
- The requirement set out in para 11.7 that Resolution plans should contain a purchaser pack goes beyond in what is required for SIFIs other than FMIs and does not seem proportionate.
- Moreover as for question 10, we would like to reiterate that it is likely to be difficult to find a third party accepting the transfer of obligations.

15. Are there additional matters that should be covered by resolution plans for FMIs or particular classes of FMI (paragraphs 11.6 and 11.7)? If yes, please elaborate.

Response- We feel that the guidance for resolution plans provided in 11.6 is adequate. However, as noted in question 10 and 14, it is not likely that a third party will accepting the transfer of obligations can be easily available.

16. Are the proposed classes of information that FMIs should be capable of producing (paragraph 12.1) feasible? Are any of the proposed classes of information unnecessary, duplicative or redundant? What additional classes of information (if any) should FMIs be capable of producing for the purposes of planning, preparing for or carrying out resolution?

Response- The information in the report can be produced, except with respect to indirect participants. Information related to indirect participant won't necessarily be available as it depends on the legal framework and arrangements with participants. CCP12 is of the view that information related to interoperability arrangements, risk and collateral in respect of linked CCPs should be available.

17. Are there any other issues in relation to the application of the Key Attributes to FMIs or particular classes of FMI that it would be helpful for the FSB to clarify in this guidance? If yes, please elaborate.

Response- We feel that the role of regulators during the resolution (and recovery) process should be further clarified and documented. For example, the possibility from regulators to provide collateralized liquidity support.

Part II of the Draft Guidance: Resolution of Systemically Important FMI participants

18. Does the draft guidance achieve an appropriate balance between the orderly resolution of FMI participants and the FMI's ability to manage its risks effectively?

Response- We believe that the orderly resolution of FMI participants and the FMI's ability to manage its risks effectively are not conflicting.

It is however necessary that a participant should be able to honour its obligations to a CCP unless the local bankruptcy laws prevent it from doing so.

19. What actions of the FMI in relation to failing participants could hamper its orderly resolution? How could the impact of such actions on orderly resolution be mitigated or managed?

Response- Some default procedures such as the closing out of positions could hamper resolution of the participant to an extent. FMIs should, however, consider the impact of their actions on financial stability and continuity.

20. Are the safeguards set out in the guidance (paragraph 1.3) adequate as regards the conditions and requirements for maintaining access of a firm in resolution or admitting as a new member an entity to which that firm's activities have been transferred? If not, what additional safeguards should be included in the guidance?

Response- We consider that for the item (ii) of 1.3; additional safeguards such as limits, ownership structure, management, capital for a third party successor or bridge institution should be established. This is to ensure that the bridge institution meets the membership criteria of the CCP

21. Are there any other issues in relation to the handling of the failure of FMI participants that it would be helpful for the FSB to clarify in this guidance? If yes, please elaborate.

Response- In relation to the potential impediments to resolvability, we would highlight that relevant authorities should keep the FMIs informed in relation to a resolution of any FMI participant.

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List of CCP12 Member Organizations

CCP-12 Member Organization	Geographic Identifier
ASX Limited (ASX)	Australia
BM&F Bovespa (BM&F)	Brazil
Cassa di Compensazione e Garanzia S.p.A. (CC&G)	Italy
Contraparte Central S.A. (CCLV)	Chile
Cámara de Riesgo Central de Contraparte de Colombia S.A. (CRCC)	Colombia
CME Group (CME)	USA
The Clearing Corporation of India Ltd. (CCIL)	India
TMX Group (TMX)	Canada
Depository Trust & Clearing Corporation (DTCC)	USA/UK
Dubai Commodities Clearing Corporation (DCCC)	UAE
Gre Tai Securities Markets Limited (GTSM)	Taiwan
Grupo BMV	Mexico
Eurex Group	Germany
Hong Kong Exchanges & Clearing Ltd (HKEx)	Hong Kong
Indian Clearing Corporation Limited (ICCL)	India
Intercontinental Exchange (ICE)	UK
Krajowy Depozyt Papierów Wartościowych (KDPW)	Poland
Korea Exchange (KRX)	South Korea
LCH Clearnet Group Ltd. (LCH)	UK
Mercado de Valores de Buenos Aires S.A. (Merval)	Argentina
NASDAQ OMX (NASDAQ)	USA/Sweden
National Securities Clearing Corporation Limited (NSCCL)	India
National Clearing Center (NCC)	Russia
The Options Clearing Corporation (OCC)	USA
Johannesburg Stock Exchange (SAFCOM)	South Africa
Shanghai Clearing House (SHCH)	China
Singapore Exchange Ltd (SGX)	Singapore
SIX X-clear (SIX)	Switzerland

CCP-12 Member Organization

Geographic Identifier

Taiwan Futures Exchange (Taifex)

Taiwan

Taiwan Stock Exchange (TWSE)

Taiwan

Tel Aviv Stock Exchange (TASE)

Israel

Japan Securities Clearing Corporation &

Tokyo Stock Exchange, Inc.

Japan

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