
**EACH response to the FSB Consultative
Document “Guidance on financial
resources to support CCP resolution and on
the treatment of CCP equity in resolution”**

July 2020

Introduction

The European Association of CCP Clearing Houses (EACH) represents the interests of Central Counterparties (CCPs) in Europe since 1992. CCPs are financial market infrastructures that significantly contribute to safer, more efficient and transparent global financial markets. EACH currently has 19 members from 15 different European countries. EACH is registered in the European Union Transparency Register with number 36897011311-96.

EACH appreciates the opportunity to provide feedback to the FSB Consultative Document (hereinafter “the consultation”) “Guidance on financial resources to support CCP resolution and on the treatment of CCP equity in resolution”¹.

The **key messages** expressed by EACH in this response are the following:

- 1. Compensating clearing members beyond the CCP rulebook may endanger taxpayer money** – Compensating clearing members for their losses borne in excess of the rulebook may likely result in clearing members suing the resolution authority. Such a provision creates a new route for compensation without the protection of the No Creditor Worse Off than in Liquidation (NCWOL) safeguard, whereby any deviation from the resolution authority beyond the CCP’s rulebook would expose it to claims via the CCP (as it takes over the CCP in resolution). As there is no limit on the amount of ‘financial resources in excess of the rulebook’, nor the possibility to write them down, the resolution authority would be exposed to potentially unlimited claims from the clearing members. In addition, it creates the unintended consequence of incentivising clearing members to shorten the rulebook to receive compensation in order to limit the ‘sunken costs’ of recovery.
- 2. Non-Default Losses and the “polluter pays” principle** – We believe that each stakeholder involved in a non-default loss should be responsible for it unless other arrangements are indicated in the CCP rulebook. This would ensure an allocation of the non-default loss that is proportional to the level of responsibility and/or benefits extracted from a service of each stakeholder, including CCP owner or CCP user.
- 3. Increasing the CCP equity is not always the answer** – A CCP should have enough resources at stake to ensure that it is incentivised to deliver adequate risk management, and this is performed through the CCP’s own contribution: the ‘skin-in-the-game’. Requiring CCPs to prefund an amount which creates meaningful loss absorbency for excessive member losses would create moral hazard, as the CCP would pay for the risks taken by its members.
- 4. Timing of entry into resolution** – We believe resolution authorities should define this timing as follows:
 - Unsuccessful (or clearly will be unsuccessful) recovery – The resolution authority should preferably intervene after the exhaustion of the resources and tools defined for recovery in a CCP’s rulebook and recovery plan. We therefore support the FSB’s existing guidelines on resolution which prescribe that resolution is triggered when *‘the recovery tools failed to return the FMI to viability, have not been implemented*

¹ <https://www.fsb.org/wp-content/uploads/P020520.pdf>

in a timely manner, or relevant authorities determine that recovery measures are not likely to return the FMI to viability’.

- Early intervention – If early intervention occurs, it is critical that the legal responsibility of either the CCP management or the resolution authority is clear at all times to avoid a situation whereby the CCP’s management would find itself only partially independent but legally accountable for the decisions made.
- Financial stability concerns – The resolution authority should have to demonstrate that there is clear and convincing evidence that entry into resolution prior to the exhaustion of the CCP’s recovery plan would result in greater financial stability (e.g. to avoid a contagion effect across multiple CCPs).

5. CCP shareholders are always exposed to losses – We would like to suggest the FSB to take into consideration that, in some jurisdictions like the EU, CCP shareholders are always exposed and therefore will always bear losses, either in resolution or as a result of the liquidation of the CCP in case of insolvency. In practice, this would mean that the NCWOL counterfactual should reflect the economic costs of closing down a CCP, in addition to that of applying the rulebook. In particular, in case of resolution authority intervention, the potential for CCP shareholders to exercise claims against the resolution authority is minimised because, as the NCWOL counterfactual would always include the dilution of the CCP shareholders’ equity, they are last in line in normal insolvency proceedings.

Part I – Financial resources for CCP resolution

Step 1: Identifying hypothetical default and non-default loss scenarios (and a combination of them) that may lead to resolution

1. What are your views on the scenarios presented for evaluating existing tools and resources?

Default scenarios

We **generally agree** with the comprehensive list of scenarios included in the consultation. We would nonetheless **suggest adding detailed guidance on the suspension of clearing mandates** as either an event occasioning CCP resolution or as a tool to be used as part of resolution. A potential suspension of a clearing mandate could create the risk that clearing members would be encouraged to limit their participation in the processes necessary to ensure a successful CCP recovery. If it is envisaged that a clearing mandate could be suspended, we would suggest further clarification is provided on the exercise of such power and how it would fit within the resolution framework.

Non-Default Loss (NDL) scenarios

EACH agrees with the list of NDL scenarios described in the consultation paper. However, we would like to underline the following aspects that, in our opinion, should be taken into account:

- **The “polluter pays” principle**

EACH believes that **each stakeholder involved (e.g. CCP or clearing member) should bear non-default losses if they are responsible for them unless other arrangements are indicated in the CCP rulebook.** In line with this, we note that the International Swaps and Derivatives Association (ISDA) suggested that *'in some instances, clearing participants should bear at least a portion of non-default losses related to custodial risks, settlement bank risks and investment risks'*². **Loss allocation for NDL should therefore be proportional to the level of responsibility and/or benefits extracted from a service of each stakeholder, including CCP owner or CCP user.** This principle of responsibility of NDL between the CCP and its participants should be mirrored in the resolution planning by authorities. We therefore strongly welcome the reference to this principle under scenario 1.2(i), which refers to losses potentially being borne by the clearing members.

- **Equity is not the answer for all NDL**

We would suggest that when analysing whether the resources needed for potential NDL cases are sufficient, authorities apply a **risk approach** based on assessing:

- All possible scenarios;
- Probability or frequency of occurrence of each scenario;
- Possible worst financial outcome from the scenario as well as its impact on financial stability and national economy;
- Application of a corresponding probabilistic weighting of the risk when assessing the needed remedy (and evaluating the investment costs for such a remedy).

A failure to apply this methodology could lead to **wrong assessments**, such as a proposal to increase the CCPs' equity for NDL, which is not necessarily the answer. As described in a detailed 2017 paper³ on the subject of NDL, **if the existing CCP defenses against NDL are not enough, there are other remedies than equity that would be much more adequate** (e.g. for liquidity shortfalls, investment losses, legal risks, failure of a custodian or settlement platform, failure of a concentration bank, central banks action or non-performance of vendors, service providers and IT suppliers).

Even in cases where financial resources could be a response, European CCPs are subject to **stringent capital requirements** to address specifically operational and legal risk, credit counterparty, market and business-related risks⁴. Adding equity on top of this would jeopardise the economics of clearing by imposing excessive fees that would discourage the

² ISDA Recommendations for CCP Recovery and Resolution Framework, September 2017, Page 9

<http://assets.isda.org/media/85260f13-48/d1ef0ce0-pdf/>

³ 'Recovery and Resolution, A Framework for CCPs', LCH, 2017, pages 14 to 17

<https://www.lch.com/sites/default/files/media/files/Recovery%20and%20Resolution.pdf>

⁴ EMIR RTS 152/2013, Art. 1.1. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0152&from=EN>

'1.CCP shall hold capital, including retained earnings and reserves, which shall be at all times more than or equal to the sum of:

(a) the CCP's capital requirements for winding down or restructuring its activities calculated in accordance with Article 2;

(b) the CCP's capital requirements for operational and legal risks calculated in accordance with Article 3;

(c) the CCP's capital requirements for credit, counterparty and market risks calculated in accordance with Article 4;

(d) the CCP's capital requirements for business risk calculated in accordance with Article 5.

2. A CCP shall have procedures in place to identify all sources of risks that may impact its on-going functions and shall consider the likelihood of potential adverse effects on its revenues or expenses and its level of capital.'

use of CCPs' services and trigger a return to the bilateral world. The 2017 paper provides quantitative evidence that that '*there is not much scope for a CCP to carry "dead capital" before it would start returning less than the cost of equity and would discourage private capital from funding the CCP.*'

2. Are there additional considerations that should be included in the guidance?

Although the listed scenarios cover a wide range of scenarios, the list should not be considered as exhaustive. Resolution authorities should have the flexibility to prepare resolution scenarios tailored to their jurisdiction/CCP and to consider additional scenarios which are not listed in the FSB's guidance.

In addition, EACH would like to elaborate further on the fact that, as stated above, **increasing the CCP equity is not always the answer** not only for NDL, but especially for default losses more broadly. CCP operators are in fact relatively small entities with significant less turnover, particularly compared to banks or other financial institutions. Their sole purpose is to perform adequate risk management by ensuring that those that bring risks can also be held accountable for potential losses in a mutualised system. CCP operators therefore have very finite resources which are not supposed nor sized to deal with the risk brought by clearing members. A CCP should have **enough resources at stake to ensure that it is incentivised to ensure adequate risk management, and this is performed through the CCP's own contribution: the 'skin-in-the-game'**. Requiring CCPs to prefund an amount which creates meaningful loss absorbency for excessive member losses would create moral hazard, as it would break the link between the risk-taker and the loss absorbing capital. It would also result in a situation where the CCP's capital would return less than the cost of equity, unless the CCP were to raise clearing fees substantially. This would then have the knock-on impact of further constraining clearing members' balance sheet capacity available to the buy-side, in conflict with the original regulatory goal of addressing systemic risk by increasing clearing flow through CCPs.

Step 2: Conducting a qualitative and quantitative evaluation of existing resources and tools available in resolution

3. Are the qualitative and quantitative considerations for evaluating existing resources and tools comprehensive and sufficiently clear?

EACH considers the key points to be followed by the resolution authorities outlined in this section of the consultation as sufficiently comprehensive and clear.

We particularly welcome the following:

- The reference made by the FSB to the **potential impact on stakeholder (including clearing member) incentives to support recovery or resolution** when evaluating existing recovery and resolution tools and resources against potential resolution strategies. As indicated by both CPMI-IOSCO and FSB, a CCP's recovery tools should create appropriate incentives for participants of the CCP to '*(i) control the amount of*

risk that they bring to or incur in the system, (ii) monitor the [CCP's] risk-taking and risk management activities, and (iii) assist in the [CCP's] default management process'⁵.

- The recognition by the FSB of the necessity for authorities to take into account the **different types of products cleared** when assessing the adequacy of resources and tools in resolution, as CCPs are very heterogeneous in terms of products cleared as well as markets served.
- The reference to the feasibility and credibility of **achieving the resolution objective of maintaining continuity of critical functions**.

Compensation

In addition, EACH would like to draw the attention on the necessity to **avoid exposing taxpayers to losses**. For instance, **compensating clearing members** that contribute financial resources in excess of their obligations under the CCP's rules, in both default and non-default loss scenarios – as indicated at page 19 of the consultation – may likely result in clearing members **suing the resolution authority**. Such a provision creates a new route for compensation without the protection of the NCWOL safeguard, whereby any deviation from the resolution authority beyond the CCP's rulebook would expose it to claims via the CCP (as it takes over the CCP in resolution). As there is no limit on the amount of 'financial resources in excess of their obligations under the CCP's rules', nor the possibility to write them down, the resolution authority would be exposed to unlimited claims from the clearing members as it is very unlikely that the CCP's equity/profits would be sufficient to extinguish these claims. This means that the sooner the clearing members get compensated, the higher the chance for taxpayers' money being touched. Under the recently agreed EU framework for the recovery and resolution of CCPs, the EU co-legislators decided to remove the possibility for 'parallel' compensation and limit the possibility for claims to cases where clearing members are worse off in resolution than in insolvency and are thereby entitled to NCWOL claims, in order to protect the public purse.

Default loss scenarios

Resolution authorities should limit their assessments of suitability to the CCP itself. CCPs are stand-alone vehicles that must by nature have a matched book. There should be no additional mandatory look beyond the CCP, by means of assessing the parent of a CCP or a third party because by doing so it increases risks of contagion. However, EACH agrees that for cases where the CCP relies on parent mechanisms for its recovery, authorities should be able to request that these mechanisms be sufficiently robust. In line with this, we suggest to amend 2.1.5(ii) as follows: '*Understand the availability of any additional financial resources (including from the CCP or **those contractually agreed with** its parent or affiliates) beyond prefunded CCP equity dedicated to cover losses as part of the default waterfall, the amount of such additional resources, and how and when they can be used to cover losses or replenish CCP equity.*'

Non-default loss (NDL) scenarios

The main messages that EACH would like to convey regarding the non-default loss scenarios are the following:

⁵ See CPMI-IOSCO Recovery Guidance at 3.3.7. See also 3.3.7-3.3.11

- **Allocation of NDL to participants (including clearing members)** – EACH strongly welcomes that authorities should consider, as detailed in point 2.2.3(i), the scope and terms of contractual arrangements for allocating NDL to participants (including clearing members). We believe that this consideration is particularly important to **address the misconception by some market stakeholders that all NDL should be borne by the CCP.**
- **Insurance policies** – In theory, insurance could be used at any level of the waterfall (e.g. to cover CCP contributions). In practice, it has been difficult or exceedingly expensive to obtain insurance policies for CCPs in recent years, due to a lack of availability of such products in the market. For these reasons, we support the consultation clarifying that the resolution authority should consider the availability and scope of coverage of insurance policies to cover various types of non-default risks. However, we would request that the FSB paper clarifies that it is **not mandatory to obtain such policies.** We therefore suggest to amend 2.2.1(i) as follows: '*Analyse the availability and scope of coverage of insurance policies to cover various types of non-default risks **where available, as this tool is voluntary** [...]*'.

Step 3: Assessing potential resolution costs

5. Are the considerations for analysing resolution costs comprehensive and sufficiently clear?

EACH generally agrees with the FSB’s considerations for analysing resolutions costs, we would like to note however that losses due to the failure of custodian, depository or agent bank would not necessarily result in actual losses of CCP resources as such. Resources, although temporarily might not be accessible, are held in an insolvency remote manner which protects them against third-party defaults.

6. Are there any other resolution costs that should be addressed?

Resolution costs are an important element to determine potential NCWOL risks. The other side of the NCWOL-coin is the costs of insolvency, which is key in assessing NCWOL risks. The FSB paper could benefit from guidance on which costs to take into account for the hypothetical insolvency and in which economic environment those costs have to be estimated, as outlined on page 9. It is likely that the insolvency of a CCP would result in an economic shock causing the insolvency costs and replacement costs for market participant, among others, to rise.

Step 4: Comparing existing resources and tools to resolution costs and identifying any gaps

7. What are your views on the considerations for resolution authorities when they identify gaps in resources and tools?

In line with EU legislation, European CCPs size their default fund on the basis of the simultaneous default of the two largest clearing members (cover 2). In addition, CCPs can use assessment powers/cash calls, Variation Margin Gains Haircutting (VMGH) and (partial) tear-up tools to ensure a comprehensive recovery plan in a case beyond extreme but plausible. Requiring CCPs to benchmark for an even more extreme/implausible event would need to be backed by compelling evidence and analysis, due to significant market costs associated to cover for those events. EACH believes that the consultation does not identify any risks to CCPs that have not been already identified and accounted for in previous evaluations of CCP resources.

Any additional tool included in resolution to cover identified gaps in resources should clearly come *in addition* to tools reserved for recovery, in order to increase the total loss absorbing capacity. Otherwise, we may face the risk of having a shortened recovery and an acceleration of the switch to resolution, thereby potentially exposing taxpayers' money.

8. Are there additional considerations that should be included in the guidance?

We would like to stress the importance of the timing of entry (or range of timing) into resolution and **suggest adding this consideration to Step 4**. We believe resolution authorities should define this timing as follows:

- **Unsuccessful (or clearly will be unsuccessful) recovery** – Authorities should avoid the presumption of resolution for CCPs or the creation of a defined limit to the CCP's recovery plan. Doing so could arbitrarily truncate, or condemn to failure, the recovery process before the recovery plan has had the opportunity to work properly. The resolution authority should preferably intervene after the exhaustion of the resources and tools defined for recovery in a CCP's rulebook and recovery plan. We therefore support the FSB's existing guidelines on resolution which prescribe that resolution is triggered when *'the recovery tools failed to return the FMI to viability, have not been implemented in a timely manner, or relevant authorities determine that recovery measures are not likely to return the FMI to viability'*.
We understand some authorities may be concerned that intervening too late may result in resolution being less effective. However, any plan developed by resolution authorities should be mindful of the potential impact on a CCP's risk management and recovery tools and be designed to ensure that it does not reduce the likelihood of successful CCP-led recovery.
- **Early intervention** – If early intervention occurs, it is critical that the legal responsibility of either the CCP management or the resolution authority is clear at all times to avoid a situation whereby the CCP's management would find itself only partially independent but legally accountable for the decisions made. In addition, in those jurisdictions where early intervention may correspond to the CCP's supervisory authorities, rather than to resolution authorities, it would be of utmost importance to ensure proper coordination, mutual cooperation and information sharing among authorities, with regard to the powers and tools respectively entrusted to them. EACH believes that the CCP should be directly involved in such coordination and information sharing. It is also critical that,

if the resolution authority intervenes early, it continues to execute the CCP's rulebook as a preference and considers the appropriate NCWO counterfactual.

- **Financial stability concerns** – The resolution authority should have to demonstrate that there is clear and convincing evidence that entry into resolution prior to the exhaustion of the CCP's recovery plan would result in greater financial stability (e.g. to avoid a contagion effect across multiple CCPs). We would expect this to be the core driver for intervention. In those jurisdictions where early intervention may correspond to CCP supervisory authorities, rather than to resolution authorities, coordination and mutual cooperation and information sharing among authorities, with regards to the powers and tools respectively entrusted to them, becomes of the utmost importance.

9. Are there any specific steps or approaches you would suggest that authorities consider as part of quantitative analyses?

It could be beneficial if the regulatory authorities could propose a set of quantitative resolution triggers/indicators they consider viable as a guideline for the CCPs.

Step 5: Evaluating the availability, costs and benefits of potential means of addressing any identified gaps

10. What are your views on the considerations for evaluating the availability, costs and benefits of potential means to address identified credit or liquidity gaps?

EACH agrees with the points indicated in the consultation that the resolution authority should follow when evaluating the availability, costs and benefits of potential means of addressing any identified gaps. However, we would like to put forward some suggestions in this regard, which can be found in our answer to Question 11.

11. Are there additional suggestions for potential steps to address identified credit or liquidity gaps that should be included in the guidance?

EACH would like to put forward the following suggestion for potential steps to address identified credit or liquidity gaps that should be included in the guidance:

- **Recovery and resolution in the event of breach of regulatory capital requirements**
EACH proposes the discussion paper to adequately consider whether **recovery and resolution could be successful whilst a CCP is in breach of regulatory capital requirements due to the exercise of resolution authority powers**. While the CCP equity may be written down in some cases as discussed in this response, the scenario of the CCP's regulatory capital being breached due to resolution should be avoided as it would put into question the entire recovery/resolution process and the willingness of participants to continue supporting the CCP in a crisis scenario. Also, since the CCP's license would be at risk of being revoked, regulators and central banks may be unwilling to allow it to continue operating.

In addition, we welcome the FSB’s suggestion that authorities consider the costs and benefits of potential means of addressing gaps. We particularly support the reference made on page 14 of the consultation to the need for authorities to consider the **impact on the CCP’s ongoing business** as well as the potential increase in the cost of central clearing. When considering additional resources, we stress the fact that in terms of regulatory capital, CCPs do not tend to have as many creditors as other financial institutions. They do not have material debt that is subject to bail-in because most CCPs are restricted to using Tier 1 capital and prevented from running a leveraged business model by regulation. In other words, CCPs essentially only have Tier 1 equity, cleared contracts, some operational liabilities, margin and SIG; any proposals to increase CCP financial resources would therefore be in the form of this ‘costlier’ type of capital.

Finally, requiring CCPs to increase financial resources will ultimately make clearing more expensive and therefore less attractive, creating a disincentive to clear. Cost considerations may mean market participants are less likely to voluntarily clear. Arguments in favour of requiring CCPs to increase their financial resources therefore need to be supported by compelling evidence of why this is necessary for the purposes of financial stability.

Part II – Treatment of CCP equity in resolution

12. Are the considerations for addressing the treatment of CCP equity in resolution plans sufficiently clear?

Yes, EACH is of the opinion that the considerations for addressing the treatment of CCP equity in resolution plans are sufficiently clear.

While we agree with most of the FSB’s guidance, we believe that recent discussions in some parts of the industry have conflated the issue of CCP equity shareholders bearing losses with the question of using CCP resources to cover clearing members’ losses or potentially compensate them.

We understand that some FSB members are genuinely concerned that the use of CCP equity in resolution would risk creating systematic CCP shareholders claims against the resolution authority under the current NCWOL arrangements. As such, we completely agree with the policy objective that the NCWOL safeguard should not be used as a means to tie the hands of resolution authorities which could be exposed to ex-post financial claims, or to make the resolution mechanism of CCPs prone to the moral hazard.

To avoid this situation, we believe a simple clarification of the NCWOL counterfactual would help limit such scenarios.

As per the FSB 2017 Guidance, NCWOL claims only arise if the losses faced during the practical outcome of resolution by the resolution authority are higher than the losses faced under the hypothetical scenario where the CCP would have gone under insolvency/liquidation.

The NCWOL implies there is a high value to the continuity of clearing services – therefore, it is important that the FSB Guidance is not understood in a limited way – when it states that *‘the assessment of the losses that would have been incurred or the recoveries that would have*

been made if the CCP had been subject to liquidation should assume the full application of the CCP's rules and arrangements for loss allocation', it does not mean that it should assess only the CCP rules and arrangements for loss allocation – which is a minimum but not exclusive condition.

In this context, it is therefore key to understand the losses brought by closing a CCP and losing access to clearing:

- For **clearing members**, this means the tear-up of all their contracts and the need to replace them (for further detail, EACH would recommend reviewing the recently agreed EU framework for the recovery and resolution of CCPs, Art. 60-61);
- For **CCP shareholders**, this means the loss in value of their shares (no value as market is closed), with whatever remaining equity being used to pay out outstanding liabilities under the application of the local insolvency law.

Based on this clarification of the NCWOL, because the CCP shareholders lose everything in insolvency/liquidation, there is no NCWOL claim from the CCP's shareholders in resolution. The CCP is in effect a lose-only machine. This avoids tying the hands of the resolution authority which should focus on continuing critical clearing services in resolution, rather than be concerned by potential future claims from the CCP's shareholders.

As per Section 6, if it remains unclear in a specific jurisdiction that CCP's equity is indeed fully exposed in insolvency/liquidation, EACH agrees that the FSB's guidance should clarify that the relevant home authorities have the power to fix the problem in insolvency/liquidation, by clarifying the applicable insolvency law.

Other measures on the resolution end of the NCWOL spectrum in sections 7 and 8, such as compensation of clearing members would not solve the NCWOL issue at hand. While such suggestions are inherently misleading, they also create deeper problems (see our answer to Question 14).

14. Are there additional mechanisms that could be used for adjusting the exposure of CCP equity to losses in resolution that should be included in the guidance?

There is an important consideration that EACH would like to put forward, i.e. that **compensation is a threat to the robustness of CCPs as independent risk managers**. EACH is indeed **strongly concerned** about the possibility, proposed in the consultation at page 19, **of compensating clearing members by providing shares in the CCP in return for any cash call or VMGH that is applied beyond the arrangements set out in the CCP's rules, and suggests deleting it**.

This compensation mechanism would break the CCP's incentive structure and therefore jeopardise the current resilience of CCPs, having the following effects:

- **Moral hazard** – The objective of having the default management and recovery tools is to ensure that the CCP has enough tools available to deal with the default of clearing members. Compensating clearing members beyond the CCP rulebook would effectively mean creating an incentive on the clearing members to negotiate a "smaller" rulebook in order to get as quickly as possible to the point where they would receive compensation.

- **Likelihood of recurring to public funds** – As explained in our answer to Question 3, compensating clearing members for providing financial resources in excess of their obligations under the CCP's rulebook without the limitation of the NCWOL safeguard would likely result in exposing the resolution authority to potentially unlimited claims that may need to be paid off with taxpayers' money (as the resolution authority takes over the CCP in resolution). This could limit the resolution authority's ability to act in the best interest of financial stability or create an unfair situation whereby the resolution authority would have to pay out public money to clearing members for having improved their individual welfare situation compared to the CCP going under insolvency procedures.
- **Incentives for operating a CCP** – Compensation to clearing members and/or clients on future CCP profits would mean that continuing to operate a CCP or to sell it off to a new buyer would be less attractive. This would discourage private capital from funding the CCP, and conflict with the policy of having a private sector solution to the problem of systemic risk. The cost/benefit balance of an equity stake in a CCP must therefore be correctly balanced from the outset.
- **CCPs do not keep the clearing members' resources received in recovery** – CCPs are not risk takers and the CCP is not the receiver of the resources provided by non-defaulting clearing members during the default management process or the recovery phase (they are therefore not "bailed-out" by their members). The receivers of the resources of non-defaulting clearing members are other financial institutions (which may include the non-defaulting clearing members themselves) that would charge fees to the CCP for hedging the defaulting members' portfolios or that would request discounts in the pricing of the defaulting clearing member's portfolio during the auction phase. The CCP should therefore have no reason to compensate clearing members.
- **Continuity of clearing services benefits the whole CCP ecosystem** – The whole CCP ecosystem (i.e. the CCP operator, the clearing members and clients), and not solely the CCP's shareholders would benefit from the continuation of the CCP: clearing members and clients would be able to continue benefiting from the independent risk management and capital savings of using a CCP.

Most importantly in reaction to footnote 26, we do not believe that clearing members need a further, new incentive to participate in resolution. Given the costs that clearing members would have incurred under a CCP liquidation, any resolution action until the point of NCWOL is a better economic outcome and therefore preferable. It would be absurd to end up in a situation whereby a resolution authority would end up paying claims (via the CCP it took over) to clearing members for having actually improved their welfare situation compared to resolution.

15. Within the section on implementing policy for the treatment of CCP equity in resolution, are there additional items that the relevant home authorities should consider?

Concerning the treatment of CCP equity in resolution, EACH would like to suggest the FSB to take into consideration that, in some jurisdictions like the EU, **CCP shareholders are always**

exposed and therefore will always bear losses, either in resolution or as a result of the liquidation of the CCP in case of insolvency. In particular, in case of resolution authority intervention, the potential for CCP shareholders to exercise claims against the resolution authority is minimised because, as the NCWOL counterfactual would always include the dilution of the CCP shareholders' equity, they are last in line in normal insolvency proceedings.