

Response to the ESMA consultation paper
Draft Guidelines on CCP recovery plan scenarios (Article 9(12) CCPRRR)

Introduction

The Futures Industry Association (FIA) and the International Swaps and Derivatives Association (ISDA), together with the Associations, represent the largest number of global and national participants in clearing, banking and financial markets. The Associations appreciate this opportunity to comment on this consultation.

This consultation response covers the positions of our members that are clearing members and their clients. The paper does not reflect the views of many CCPs, and many of the CCPs are in disagreement with the views expressed herein. [

Questions

Guideline 1 Questions:

Q1 : Do you agree that each CCP should include, in its recovery plan, at least one scenario for each of the seven types of scenarios?

We believe that the list of seven scenarios represents an absolute minimum. ESMA already recognises this by proposing that CCPs should assess whether it is necessary to create additional scenarios to accommodate for further granularity due to the specificities of the CCP beside the one scenario required for each type of scenario.

Q2 : Do you agree with the proposed list of the types of scenarios? Would you propose any additional types of scenarios?

We agree with the list of scenarios in principle as an absolute minimum.

Some comments to the proposed scenarios:

Scenario 1: Default event causing financial losses that propagate through the CCP's default waterfall with return to a matched book through voluntary, market-based tools

We note that for default scenarios, most CCPs have already recovery measures in their rulebook that are triggered automatically, i.e. without formal invocation of any recovery plan.

Scenario 2: Default event causing financial losses with a default management process that requires mandatory, rules-based arrangements in order to re-establish a matched book

We note that in order for recovery measures to be required in this scenario there don't have to be any financial losses. Subsequent auctions could have failed without large market movements and therefore losses could be still within prefunded resources. While losses will eventually go up, in this scenario the key issue is the fact that the book cannot be re-matched.

Scenario 6: Non-default event causing a liquidity shortfall

Especially for non-default loss scenarios, we believe that CCPs should address all risk factors defined in guidance 2, by either confirming the risk factor / scenario as not being relevant or including the risk factor or scenario in their recovery plan.

Q3 : *Do you agree that CCPs should further assess, based on the factors provided, whether it is necessary to create additional scenarios for each type of scenario?*

We absolutely agree that the CCP should further assess whether it is necessary to create additional scenarios for each type of scenario – both from factors provided by the guidelines and from the CCP's knowledge of its business.

It would be also helpful for the CCP to address a more detailed list of scenarios (see question 2).

Guideline 2 Question:

Q4 : *Do you agree with the proposed Guideline 2 and the list of relevant types and sources of risk that CCPs should cover when building their range of recovery plans scenarios?*

Yes, we agree with proposed guideline 2.

However, we note that the CCP should not only look at plausible scenarios, as extreme but plausible scenarios should already be part of the stress testing approach.

Guideline 3 Questions:

Q5 : Do you agree with the proposed Guideline 3 and the principles for determining the magnitude of the recovery plan scenarios (with reference to the overall risk management framework of the CCP as required by EMIR and the relevant RTSs)?

While the estimation of severity of scenarios can be helpful for the sizing of resources, we believe that the magnitude of recovery scenarios is a secondary issue: By definition a recovery scenario would be a scenario that either exceeds prefunded resources of the CCP or affects the CCP in another way that would prevent it from providing its critical services for the market.

Q6 : As regards operational risk, do you agree the recovery plan scenarios should include, if deemed relevant, scenarios in which all resiliency measures that form part of the policies and procedures required by Article 34 of EMIR are surpassed, leading to a failure in one or more critical functions of the CCP that exceed the legal requirement set out in article 17(6) of RTS 153/2013?

In line with our response to question 5, we believe that recovery scenarios by definition are scenarios that surpass the existing provisions, be they either financial or operational. Therefore, we strongly agree that the recovery plan scenarios should include, if deemed relevant, scenarios in which all resiliency measures that form part of the policies and procedures required by Article 34 of EMIR are surpassed, leading to a failure in one or more critical functions of the CCP that exceed the legal requirement set out in article 17(6) of RTS 153/2013.

Guideline 4 Question:

Q7 : Do you agree with the proposed Guideline 4 and the information to be included when describing the recovery plan scenarios?

We agree with the information to be included when describing the recovery plan scenarios.

While not part of level 1 of CCPRR, we would also request that these recovery plans will be made publicly available, or accessible to clearing members, at least partially (if the plans contain confidential information).

If all participants have transparency and are sufficiently prepared for a recovery situation, each participant can and will manage towards the CCP's recovery plan, instead of assuming worst-case scenarios how the recovery could work and subsequently managing based on these worst-case scenarios. The latter might likely lead to actions that are not helpful for the CCP's efforts to manage the recovery situation.

Guideline 5 Question:

Q8 : *Do you agree with the proposed Guideline 5?*

We do agree with this guideline.

Cost and Benefit Analysis Questions:

Q9 : *Do you agree with the Option 3, if not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach (Option 3)?*

We agree with option 3.

Q10 : *If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.*

We don't advocate for a different approach.

About FIA

FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. Our membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers.

Our mission: To support open, transparent and competitive markets, protect and enhance the integrity of the financial system, and promote high standards of professional conduct.

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 960 member institutions from 78 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on Twitter, LinkedIn, Facebook and YouTube.