

## Response to the FSB/CPMI/IOSCO Consultation report “Financial Resources and Tools for Central Counterparty Resolution”

### MANAGEMENT SUMMARY

The International Swaps and Derivatives Association (ISDA), The Futures Industry Association (FIA) and the Institute of International Finance (IIF), collectively the Associations, represent the largest number of participants in national and global clearing, banking and financial markets. The Associations appreciate the opportunity to comment on the consultation paper on “Financial Resources and Tools for Central Counterparty (CCP) Resolution”<sup>1</sup> (the consultation paper) published by the Financial Stability Board (FSB).

We would also like to refer to our responses to previous FSB consultations on this important topic, which remain valid and form the basis of this response. This includes our response to the FSB’s 2022 report “CCP financial resources for recovery and resolution”<sup>2</sup>, the FSB’s 2020 consultation “Guidance on Financial Resources to Support CCP Resolution and on the Treatment of CCP Equity in Resolution”<sup>3</sup>, and the FSB’s discussion paper “Financial resources to support CCP resolution and the treatment of CCP equity in resolution”<sup>4</sup>, which was published in November 2018. We also refer to our analysis of recovery and resolution tools in our paper “Recovery and resolution: Incentives Analysis”<sup>5</sup>, which covers many of the same tools assessed as part of the FSB’s qualitative analysis of resolution tools in this consultation paper. However, the conclusions of our analysis for certain tools are different.

We welcome the FSB’s ongoing focus on the important topic of adequacy and impact of CCP financial resources for recovery and resolution. CCPs are a cornerstone of the financial system, and their resilience, recoverability and resolvability are paramount to preserve financial stability. We welcome the qualitative analysis on financial resources and tools against the relevant considerations set out in the FSB Key Attributes of Effective Resolution Regimes for Financial Institutions (Key Attributes) and accompanying guidance on CCP resolution to support CCP resolution objectives. We encourage further work on this important topic.

### Enhancing transparency and predictability

As part of the qualitative analysis of recovery and resolution tools, we would have welcomed further framing and detail around each individual tool, such as key descriptive features, and further context on the circumstances and order in which resolution authorities would be most likely to deploy the resolution tools.

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<sup>1</sup> [Financial Resources and Tools for Central Counterparty Resolution Consultation report \(fsb.org\)](https://www.fsb.org/wp-content/uploads/P090322.pdf)

<sup>2</sup> <https://www.fsb.org/wp-content/uploads/P090322.pdf>, response : [FIA-IIF-ISDA-Response-to-FSB-Consultation-CCP-Financial-Resources.pdf](https://www.fsb.org/wp-content/uploads/P161120-1.pdf)

<sup>3</sup> <https://www.fsb.org/wp-content/uploads/P161120-1.pdf>, response : <https://www.isda.org/2020/07/31/fia-iif-and-isda-respond-to-fsbs-consultation-on-ccp-resources-in-resolution/>

<sup>4</sup> <https://www.fsb.org/wp-content/uploads/P151118-2.pdf>, response : [https://www.isda.org/a/YrgME/FIA-IIF-ISDA-respons e-to-FSB-CCP-Equity-DP.pdf](https://www.isda.org/a/YrgME/FIA-IIF-ISDA-respons-e-to-FSB-CCP-Equity-DP.pdf)

<sup>5</sup> <https://www.isda.org/2019/03/15/ccp-recovery-and-resolution-incentives-analysis/>

We are mindful that the FSB has presented a toolbox approach allowing jurisdictions a greater level of flexibility to deploy instruments, in a manner that aligns with local laws, regulations and powers of the resolution authorities. We would however strongly recommend further guidance for resolution authorities and home jurisdictions to provide as much transparency and predictability to market participants as possible. We appreciate that a resolution authority needs flexibility to react to dynamic and unpredictable resolution scenarios, but further transparency on the overall plans would better enable market participants to prepare for how to react to resolution actions. This would increase the likelihood of a successful resolution. This would not necessarily have to take the form of a rigid waterfall, but could be achieved through a more detailed explanation of the FSB's expectations, and authorities' key considerations, for the use of the tools in the toolkit.

### **Ensuring appropriate calibration and aligning incentives**

Further work should be undertaken to calibrate the size of necessary resources for resolution. These should be adequate to cover recapitalization through right-sized CCP capital requirements that address default losses (DL) and non-default losses (NDL) and any resultant resolution costs.

We would welcome further discussion and qualitative analysis regarding the adequate quantum of pre-funded resources, through right-sized CCP equity and potentially a layer of bail-in bonds. On the latter tool, we suggest additional details to be further clarified such as how bail-in bonds should be structured, including how and when these bonds can be bailed in, and whether the resolution authority needs dedicated powers to bail-in these bonds.

We would also welcome more explicit references and details concerning compensation of market participants for the use of loss-allocation tools such as cash calls and variation margin gains haircutting (VMGH). We also propose exploring further how to approach recapitalization to ensure that future ownership of the resolved CCP is aligned with the way in which losses were allocated in resolution.

### **Balancing the continuum of recovery and resolution**

We believe there is value in developing an approach that looks across the recovery and resolution continuum when considering the availability of resources. We are mindful of existing guidance on recovery, with the CPMI-IOSCO guidance on recovery of financial market infrastructures, and on resolution, with the FSB guidance on CCP resources for resolution and the present 'toolbox' consultation. To achieve a comprehensive framework, we believe resources should be looked at holistically, through joint FSB and CPMI-IOSCO work across resources for recovery and resolution. This would be in line with the FSB, CPMI and IOSCO Chairs' announcement in November 2020<sup>6</sup>, which committed to the development of further international policy work on *"the use, composition and amount of financial resources in recovery and resolution to further strengthen the resilience and resolvability of CCPs in default and non-default loss scenarios"*, including *"assessing whether any new types of pre-funded resources would be necessary to enhance CCP resolvability"*.

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<sup>6</sup> [FSB releases guidance on CCP financial resources for resolution and announces further work - Financial Stability Board](#)

A similar set of tools is available in recovery and resolution. Together with the requirement for recovery to be comprehensive, this leads to a situation where a CCP would have no-creditor-worse-off (NCWO) claims if its equity is used in resolution, while clearing participants (clearing members and their clients) might take considerable losses from cash calls and VMGH without compensation, as the same tools are part of recovery. In comparison, this would not happen under the bank resolution regime, as recovery stops when a bank cannot resolve the situation with its own resources.

Overall, we appreciate that the FSB puts forward new resolution tools like bail-in bonds, resolution funds and insurance. We believe it is critical to place more reliance on CCPs' own financial resources rather than contingent resources provided by clearing participants, such as those provided through cash calls and VMGH. Such resources would be associated with significant performance risk, particularly in the event of the resolution of a systemically important CCP, where clearing members may be facing cash calls from multiple CCPs of which they are members. We urge policy makers not to excessively rely on tools such as cash calls and VMGH just because they can be structured in a way that achieves resolution objectives. We believe that a greater balance of loss allocation towards CCPs, relative to clearing members and participants, looking across recovery and resolution, would better align risk management incentives and promote better outcomes from a resilience, financial stability, incentives, and market confidence perspective.

As a general point, the guidance should require resolution authorities to carefully consider the impact of each of the selected tools and the combination of these tools on close-out netting, both in their own jurisdictions and the jurisdictions of clearing members of the CCP in question.

This response covers the positions of our members on the buy-side and sell-side. The paper does not reflect the views of many CCPs, and many of the CCPs are in disagreement with the views.

## RESPONSES TO THE QUESTIONS SET OUT IN THE CONSULTATION REPORT

### Section 2: Objectives for CCP resolution resources and tools

1. Are the four parameters for resolution-specific resources and tools sufficient to comprehensively support the objectives for CCP resolution?
  - A. to provide sufficient loss absorption, CCP recapitalisation options and liquidity to give resolution authorities a reasonable opportunity to achieve a successful resolution in default loss (DL) and non-default loss (NDL) scenarios;
  - B. to be reliable and readily available in resolution;
  - C. to mitigate potential adverse effects on financial stability; and
  - D. to align incentives across recovery and resolution and achieve outcomes in resolution consistent with the Key Attributes, including by ensuring CCP equity remains in a first-loss position and by preserving incentives for market participants to participate in recovery and central clearing.

We believe the analysis of these resolution tools should start with a standardized description of the key features of each tool, setting out upfront:

- whether the tool is pre-funded or unfunded;
- whether the tool could be used in default loss scenarios, non-default loss scenarios, or both;
- the point at which the tool should be used;
- who the resource providers are;
- how the tool could be calibrated.

These points are critical to ensure that the limitations and implications of each tool are well defined and understood by market participants and the resolution authorities. Without clearly setting out these descriptive points upfront, we believe that the analysis remains incomplete, and does not adequately address how the tools perform against the parameters and dimensions that the FSB has defined. A structured assessment is provided under question 6.

On the proposed parameters, we believe that the four parameters overall cover the key considerations for effective resolution. We agree that the objectives of resolution should be to preserve financial stability while ensuring the continuity of critical CCP functions, without exposing taxpayers to a risk of loss, as set out in the FSB consultation report, and reaffirming the objective of an effective resolution regime, per the FSB's Key Attributes. We also agree that resolution planning should maintain the right incentives for CCPs to appropriately manage risk, including ensuring margin adequacy, as well as for clearing members and market participants to centrally clear, participate in default management if such a scenario arises, and to reduce the likelihood of resolution. Loss allocation should fall predominantly under the party that managed the risk and whose decisions led to the loss. We would add that resolution authorities should consider how their resolution actions impact market participants' confidence in markets.

With regards to parameter D, we welcome the explicit reference to ensuring that CCP equity remains in as a first-loss position. However, to maintain the right incentives for CCPs to establish and maintain appropriate, adequate, and robust risk management, both in relation to default and non-default losses, more equity should also be exposed during recovery. This would also reduce issues with the NCWO safeguard in resolution.

## 2. Are there any other parameters that should be considered?

As noted in response to question 1, the analysis should explicitly include key descriptive features of each tool.

While we recognize that the FSB considers incentives, we believe that there should be consideration as to who bears the loss when considering the parameters against which resolution tools are analyzed. To maintain the right set of incentives, avoid any moral hazard, maintain financial stability and market confidence, resolution authorities should consider the extent to which losses are allocated between CCPs and clearing participants as a function of their responsibility for the materialization of the risk(s) that led to the resolution event.

### Section 3: Scope of analysis on resolution resources and tools

3. Are the resource and tool descriptions appropriate and clear in order to underpin the remaining analysis in the consultation report?

As noted in response to question 1, the analysis should explicitly include key descriptive features of each tool. Absent such descriptions, the limitations and implications of each tool remain implicit and unclear, which does not allow for a complete and informed analysis of the tools against the parameters and dimensions.

The FSB's approach would benefit from setting out expectations to inform the public about the circumstances and order in which resolution authorities would be most likely to deploy the resolution tools. This would not necessarily have to take the form of a rigid waterfall, but could be achieved through a more detailed explanation of the FSB's expectations, and authorities' key considerations, for the use of the tools in the toolkit.

4. Are there other resolution-specific resources or tools that should be considered? If so, please describe the relevant resolution resource or tool, and how such resource or tool meets the parameters and dimensions. Alternatively, are there resources or tools that should be removed from consideration? If so, please explain why.

We note that the FSB considers, as part of “**resolution-specific third-party contractual support**”, both insurance mechanisms and intra-group financial support. We would suggest separating these out as the analysis of each one of these tools would differ against the four parameters and six dimensions that the FSB has defined. For example, insurance support would mainly be used in NDL scenarios, which would not necessarily be the case of intra-group support. As regards intra-group support, different CCP ownership structures might affect the available resources in terms of equity and parent guarantees. For these reasons, it would be worth addressing insurance and intra-group support separately. In addition, we note that the analysis on third-party contractual support under Section 4 focuses on insurance support, and we believe that intra-group financial support would deserve further specific analysis on its own. Irrespective of the form, to address moral hazard and ensure correct incentives on CCPs, intra-group support should be used prior to loss allocation to other market participants.

We note that partial tear-up (PTU) is not explicitly mentioned as part of the resolution toolbox. We welcome that this implies that PTU is therefore not considered as a loss-allocation tool, as the consultation focuses on financial resources for resolution. However, we are mindful that resolution authorities may need to use PTU in a resolution scenario to restore a CCPs' matched book, and we would like to take this opportunity to underline the need to consider how such a tool can be structured in a way that does not impair existing close-out netting provisions.

We welcome that initial margin haircutting (IMH) is not explicitly mentioned as a potential tool in the consultation report. In no event should a CCP in recovery, or a resolution authority, be able to apply IMH to allocate losses arising from a member default. IMH is not an appropriate tool and would seriously harm financial stability while disincentivizing participation in the CCP's default management process.

Section 4: Qualitative analysis

5. The analysis identifies six key dimensions and maps them to the parameters for resolution-specific resources and tools. Are the descriptions of the dimensions sufficient? Are there other dimensions that should be considered?

*The analytical dimensions are: (i) purpose and usability; (ii) timeliness and performance risk; (iii) legal and operational considerations; (iv) impact on financial stability; (v) costs - magnitude and allocation; and (vi) impact on CCPs' business models and clearing participant incentives.*

As noted in relation to question 1, the analysis should first include key descriptive features of each tool.

As noted above in relation to the parameters, we consider that when assessing dimensions (i), (v) and (vi) for each tool, the analysis should have regards to who bears the losses vis-a-vis who manages the materialized risks in the first place.

When considering the dimension defined as “purpose and usability”, we consider that the FSB’s analysis should more explicitly refer to the four purposes for resources in resolution, as set out in the 2017 Guidance, i.e., to:

- (i) address uncovered losses;
- (ii) replenish resources in line with regulatory requirements within an appropriate timeframe;
- (iii) meet costs associated with maintaining and operating the critical functions of the CCP until exit from resolution, including the costs for critical dependencies such as service-level agreements, third-party service providers, or other key dependencies; and
- (iv) meet temporary liquidity needs.

6. For each resolution-specific resource or tool discussed in the consultation report, have the key costs and benefits been appropriately identified? Are there additional cost/benefit factors that should be considered?

We have developed a table, covering each individual tool against the six dimensions and the descriptive features that we suggest considering.

For all tools, the cost of resolution will ultimately be borne by clearing participants. The set of incentives, in terms of encouraging good CCP risk management, will improve through a better distribution of this cost. Therefore, we strongly suggest the cost to be initially paid by the CCP, in the form of pre-funded resources such as additional equity or a layer of bail-in bonds (BIB). Even if costs are recouped with clearing fees down the line, this tool will address moral hazard concerns associated with unfunded resources where survivors pay for residual losses. In addition, the CCPs will still have financial incentives to reduce the cost it pays for these resources.

Regarding Dimension 3 on legal and operational considerations, we urge authorities to consider how resolution tools interact with netting provisions: no resolution tools should put netting in question. If close-out netting provisions are in doubt in any jurisdictions, clearing could become extremely expensive or even impossible. Specifically, it should further consider the impact of the VMGH tool in resolution on close-out netting provisions.

Tool	CCP Equity / equity write-downs
<b>Pre-funded/unfunded</b>	Pre-funded
<b>DL/NDL</b>	DL, NDL
<b>Rank</b>	<p><b>Upon entry into resolution:</b> resolution authorities should use the remainder of CCP equity before any other tools are utilized.</p> <p>Equity should also be meaningfully used in recovery, as noted below with regards to calibration. Wider use of equity in recovery would also lessen any NCWO issues regarding CCP owners claims after resolution.</p> <p>In that regard, we welcome that the analysis refers to “equity amounts that remain after recovery”, which usefully highlights that equity should be exposed to losses ahead of a resolution scenario arising. In reality, for DL, the only equity used during recovery will be the Skin-In-The-Game (SITG), which is usually not risk-based and for many CCPs only represents a small fraction of their equity, especially compared to their yearly profits. As the FSB underlines in the report, “<i>the amount of equity typically held by a CCP is relatively small</i>”. As noted below in relation to calibration, we strongly believe that right-sizing equity across recovery and resolution should be revisited by standard-setters.</p>
<b>Source</b>	CCP owners
<b>Calibration</b>	<p>Right-sizing equity for recovery and resolution should be the priority to ensure CCPs’ robustness and reduce the likelihood that a CCP is placed in resolution altogether. It might be worth the FSB and CPMI-IOSCO jointly considering the approach to right-sizing equity over the recovery and resolution continuum, building on what the Principles for Financial Market Infrastructures already set out in relation to recovery.</p> <p>For DL, this could be supported by requiring meaningful sizes of SITG in recovery:</p> <ul style="list-style-type: none"> <li>- one tranche before pre-funded mutualized resources are used, and</li> <li>- one tranche after they have been exhausted.</li> </ul> <p>While SITG is meant to incentivize robust risk management practices by CCPs and not to serve as a loss allocation tool, for many CCPs, SITG is at present often too small to effectively serve the purpose of incentive, especially when compared to the prefunded default funds or total IM, which both give indications of the actual risks run and managed by the CCP.</p> <p>As noted in the CPMI-IOSCO report on current practices to address NDLs<sup>7</sup>, “<i>PFMI Principle 15, Key Consideration 3 calls for CCPs to hold liquid net assets funded by equity sufficient to implement their recovery or orderly wind-down plans</i>”.</p> <p>Equity, as a whole, should also be sized in a way that ensures that CCPs’ can withstand losses from plausible NDLs: we believe that it is critical that CCPs</p>

<sup>7</sup> [Report on current central counterparty \(CCP\) practices to address non-default losses \(NDL\) \(bis.org\)](https://www.bis.org/cpmi/publ/113/annex1.htm)



	<p>hold sufficient equity to absorb potential NDLS based on a set of scenarios and a predefined framework that determines the appropriate coverage model for various types of NDL, potentially including additional unfunded resources. We recommend additional work on right-sizing CCP equity with NDLS in mind, building on the practices outlined in the CPMI-IOSCO report on non-default losses.</p>
<p><b>Dimension 1:</b> Purpose and usability</p>	<p><b>To absorb losses:</b> in resolution, CCP equity should be used first to absorb any losses.</p> <p><b>To meet costs associated with maintaining and operating the critical functions of the CCP:</b> this requires that CCPs hold sufficient liquid net assets funded by equity to cover those costs, expanding into resolution the approach which is set out under Principle 15 of the Principles for Financial Market Infrastructures in recovery.</p> <p><b>To meet temporary liquidity needs:</b> as noted above in relation to using equity to meet costs associated with maintaining critical functions, for equity to serve as a credible resolution tool to meet temporary liquidity needs, CCPs need to hold sufficient liquid assets funded by equity.</p> <p>In addition, the description of the <b>equity tool</b> only refers to “equity write-downs”, as “<i>the resolution authority’s power to use existing CCP owners’ equity in the CCP to absorb losses in a first loss position in resolution</i>”. However, as set out in the FSB’s 2020 guidance on the treatment of equity in resolution<sup>8</sup> (the FSB 2020 guidance), there are various mechanisms for adjusting the treatment of CCP equity in resolution, beyond equity write-downs, such as: “<i>exposure of some or all of the CCP equity to losses via modification of the contractual loss allocation arrangements</i>”, “<i>transfer of critical CCP operations (assets and certain liabilities) to a bridge entity and placing the remnant CCP into liquidation/receivership</i>”, “<i>dilution of existing ownership by raising new capital through conversion or issuance of new shares</i>”. It would be helpful if the description of the equity tool could include these mechanisms, in line with previous FSB guidance, and not only focus on equity write-downs.</p>
<p><b>Dimension 2:</b> Timeliness and performance risk</p>	<p>Equity can <i>readily</i> absorb losses, but <b>might not be available in sufficient amount to meaningfully absorb losses</b>. This can be either because CCP equity was not sufficient in the first place, or CCP equity has already been used in recovery, for instance to pay for NDL, or that CCP equity is invested in illiquid assets.</p> <p>As mentioned above, for equity to be used in a timely manner, it must be invested in liquid assets such as high-quality liquid assets.</p>
<p><b>Dimension 3:</b> Legal and operational considerations</p>	<p>For DL, part of the equity might be written down in recovery, through the 1<sup>st</sup> and 2<sup>nd</sup> SITG layer. For NDL, equity should have been used to absorb losses in recovery. Meaningful equity, both in general and in the form of SITG could</p>

<sup>8</sup> [Guidance on Financial Resources to Support CCP Resolution and on the Treatment of CCP Equity in Resolution: Final Report \(fsb.org\)](https://www.fsb.org/wp-content/uploads/2020/07/Guidance-on-Financial-Resources-to-Support-CCP-Resolution-and-on-the-Treatment-of-CCP-Equity-in-Resolution-Final-Report-fsb.org)



	<p>make entry into resolution less likely, underlining the importance of right-sizing loss absorbing equity in recovery.</p> <p>In terms of legal considerations, it is important for local resolution rules to contain powers for the resolution authority to write down equity, or use CCP equity in any other way (see above) without triggering NCWO challenges.</p>
<b>Dimension 4:</b> Impact on financial stability	<p>As noted by the FSB, <b>utilizing CCP equity does not impact financial stability</b>, but the effects could depend on factors including total capitalization and the composition of equity holders. It might become an issue in the very unlikely case that a CCP is so large that wiping out its equity would have financial stability implications.</p> <p>In its resolvability assessment, a resolution authority should ensure that resolution of a CCP, especially wiping out its equity will not affect other critical functions provided by the CCP's group, for instance running an exchange that is important for financial stability.</p>
<b>Dimension 5:</b> Costs – Magnitude and allocation	<p>For equity to serve as a meaningful resolution resource to absorb losses, it <b>would need to be meaningfully sized</b>. CCPs should also have sufficient SITG in the waterfall to align incentives in business-as-usual (BAU) and in recovery.</p>
<b>Dimension 6:</b> Impact on CCPs' business models and clearing participant incentives	<p>In general, the use of CCP equity in resolution will incentivize the CCP to an appropriate and robust risk management framework from BAU to recovery. Exposing equity to losses in recovery to a larger extent would incentivize efficient risk management by the CCP, reducing the likelihood of entry into resolution.</p> <p>It would also reduce reliance in resolution scenarios on tools which carry financial stability risks, as well as fairness and moral hazard issues, such as VMGH and cash calls.</p>

Tool	Bail-in bonds (BIB)
<b>Pre-funded/unfunded</b>	Pre-funded
<b>DL/NDL</b>	DL, NDL
<b>Rank</b>	<b>To absorb losses:</b> Upon entry into resolution, after equity has been used up. Alternatively, depending on how they are structured, BIB could be used when equity is reduced below the levels required to maintain and operate the critical functions of a CCP.
<b>Source</b>	BIB holders. This could include intra-group entities to ensure a level of committed funded intragroup support.
<b>Calibration</b>	<p>BIBs would provide additional loss absorption capacity in resolution, in addition to any remaining equity not used in recovery. BIBs and equity should therefore be sized together.</p> <p>We do not have any preference as to the precise debt / equity mix of the CCP, as long as the instruments can absorb losses. BIBs could be considered</p>

	<p>as a complement to CCP equity – and remain preferable to resolution tools which allocate loss to clearing participants. We note that BIB in the context of CCP is a novel concept. We recommend that the structure of such instrument for CCP be further discussed, considering a design that addresses most issues in relation to CCP in resolution, namely, the capacity for loss absorption and recapitalization, associated legal and operational challenges, amongst others.</p>
<p><b>Dimension 1:</b> Purpose and usability</p>	<p><b>To absorb losses and to recapitalize the CCP:</b> the BIB tool and instruments should be further clarified and defined in order to identify clearly the type of liabilities they can be used against. Currently, BIBs are already used for banks and defined by local laws. In some jurisdictions these BIBs might have to be converted into equity depending on creditor hierarchy and insolvency laws, other jurisdictions might have separate rules and could be more flexible. We suggest that CCP BIBs should be defined and designed to address some of the issues specific to CCPs.</p> <p><b>To meet costs associated with maintaining and operating the critical functions of the CCP and to meet temporary liquidity needs:</b> to serve that purpose, there should be a requirement that the proceeds of BIB issuances be held in readily available liquid assets.</p>
<p><b>Dimension 2:</b> Timeliness and performance risk</p>	<p>BIB should readily absorb losses, but might not be available in sufficient amount to meaningfully absorb losses, which makes the sizing of these resources critical.</p> <p>As noted above with regards to purpose and usability, there should be an expectation that the proceeds of BIB issuance be held in readily available liquid assets. We note that the CPMI-IOSCO guidance on recovery already calls for CCPs to hold “liquid net assets funded by equity”. A similar expectation should be set with regards to holding “liquid net assets” or readily available liquid assets funded by BIBs as an additional resource in resolution. Jurisdictions could then further specify what counts as readily available liquid assets.</p>
<p><b>Dimension 3:</b> Legal and operational considerations</p>	<p>There would be greater legal and operational challenges than with equity, as this is a more complex instrument. However, in the context of Total Loss Absorbing Capacity instruments for banks, investors have shown interest for this type of instruments. The challenges with structuring these instruments are not insurmountable. We would suggest that such instruments be tailored to the specifics of CCPs as opposed to banks to address these legal and operational complexities.</p>
<p><b>Dimension 4:</b> Impact on financial stability</p>	<p>As noted by the FSB, BIB as a resolution resource would carry limited financial stability risk, but with potential for contagion risk depending on the composition of bondholders and materiality of exposures to BIBs.</p>
<p><b>Dimension 5:</b> Costs – Magnitude and allocation</p>	<p>We agree with the FSB’s analysis on the cost of BIBs, and the potential impact on cost of clearing. In this respect, BIBs look more costly on paper, as the cost of unfunded resolutions tools have not been internalized. However, BIBs also address moral hazard concerns that result from unfunded instruments which are contrary to a “defaulter-pays” model and where the burden of loss absorption rests with surviving market participants.</p>

<p><b>Dimension 6:</b> Impact on CCPs' business models and clearing participant incentives</p>	<p>As the CCP would be paying the cost for BIBs, even if the cost is recouped through clearing fees, the CCP would be incentivized to a conservative risk management model, which will likely be reviewed by bondholders and might help reduce the cost of these bonds. Arguably, it is preferable to pre-position these resources and address costs upfront during BAU as the cost of raising such funds during stressed markets would be considerably higher.</p>
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Tool	Committed intra-group support
<p><b>Pre-funded/unfunded</b></p>	<p>Unfunded, but a funded version, in the form of intragroup holdings of BIBs could also be considered, provided these rank junior to commitments from third-party investors.</p>
<p><b>DL/NDL</b></p>	<p>DL, NDL</p>
<p><b>Rank</b></p>	<p><b>To absorb losses:</b> if there are no intragroup holdings of BIBs, intra-group support should be activated at the point of entry into resolution. Some CCPs also use intra-group or parental support as part of their waterfall in recovery. As noted in the CPMI-IOSCO guidance on recovery, Principle 15, Key Consideration 5 of the PFMI calls for CCPs to “<i>maintain a viable plan for raising additional equity should its equity fall close to or below the amount needed</i>”. The guidance also adds that “<i>CCPs that are part of a larger corporate entity would typically first turn to intragroup support, for example from their parent company</i>”. This suggests that intragroup support should come in early, in recovery rather than after in resolution. Recognizing that the FSB consultation touches on resolution resources, we strongly suggest that any intra-group support should come in at an early stage in resolution, before any tools allocating losses to market participants are used. Similar to equity, we would suggest that standard setters revisit the expectations around the point at which intragroup support should come in, looking across the recovery and resolution continuum, in a way that reduces the likelihood that resolution is triggered.</p> <p><b>To recapitalize:</b> only if intra-group support is also used for loss allocation. It would not be equitable, nor would it create the correct incentives, if losses were allocated to clearing members and clearing participants and then parent becomes the new owner of the CCP by recapitalizing it. We strongly suggest that ownership of the resolved CCP be assessed across all resolution resources providers, having regard for any compensation allocated to market participants in line with the NCWO safeguard.</p> <p><b>To fund the running of critical functions:</b> such group support should be available at any time during resolution.</p> <p><b>To meet temporary liquidity needs:</b> such group support should be available at any time during resolution, as long as the intra-group support is provided in a timely fashion.</p>
<p><b>Source</b></p>	<p>Parent or other group entities</p>

<p><b>Calibration</b></p>	<p>As noted above, we suggest that calibration of intragroup support should be set across the recovery and resolution continuum.</p> <p>If used to absorb losses upon entry into resolution, intra-group support should be sized as a complement to any intragroup holding of BIBs. For groups that include both an exchange and a CCP, it is expected that the exchange would step in to support the CCP.</p> <p>Funding the running of critical functions should be clearly planned for, and committed intra-group support should be allocated as a priority to ensuring the continuity of the CCP’s critical functions, given that in CCP expenses in BAU circumstances are funded out of CCP equity.</p>
<p><b>Dimension 1:</b> Purpose and usability</p>	<p>This tool should primarily be used to absorb losses and meet costs associated with maintaining and operating the critical functions of the CCP.</p> <p>Intra-group support should not be used for recapitalization if not meaningfully used in recovery and at earlier stages of resolution. Otherwise, this would be unequitable to clearing participants that would have contributed via other resolution tools. However, if provided early on, for example before entry into resolution, intragroup support could be used for the purpose of a voluntary recapitalization in recovery.</p>
<p><b>Dimension 2:</b> Timeliness and performance risk</p>	<p>Unfunded resources cannot be relied upon to the same extent as funded resources and we propose that committed intragroup support should be ringfenced ex-ante. Such unfunded resources should therefore complement funded resources and meaningfully contribute to the funding of critical functions.</p>
<p><b>Dimension 3:</b> Legal and operational considerations</p>	<p>Additional consideration is needed on how such a tool could work when the CCP in resolution is a limited liability company within a group. While the challenges might be limited if the resources are committed, this needs however to be carefully documented to ensure that the parent meets its committed obligation.</p>
<p><b>Dimension 4:</b> Impact on financial stability</p>	<p>We agree with the FSB’s analysis that the use of such tool would not lead to widespread contagion but could strain the provider’s resources.</p>
<p><b>Dimension 5:</b> Costs – Magnitude and allocation</p>	<p>For intragroup support provided before entry into resolution, there should be a clear plan ex-ante around the limited circumstances and conditions intra-group support would need to be reimbursed. There should be no expectation that intragroup support would be repaid if provided after entry into resolution.</p>
<p><b>Dimension 6:</b> Impact on CCPs’ business models and clearing participant incentives</p>	<p>Requiring meaningful committed intragroup support would incentivize parents to ensure that the CCP entity within their group prudently manages risk ex-ante, to avoid entry into resolution and having to provide support.</p> <p>If intragroup support is used early or even before entry into resolution, and equity is not fully written down, CCP owners would be incentivized to provide intragroup support to avoid having all their equity written down.</p>

Tool	Insurance
Pre-funded/unfunded	Unfunded
DL/NDL	DL, NDL
Rank	<p>Resolution-specific insurance should be used before resorting to any tool allocating losses to clearing participants. Insurance claims should be made early, upon entry into resolution, to enable the resolution authority to build a clear picture of available resolution resources and any remaining shortfall once all pre-funded resources, parental support and insurance have been used.</p> <p>We underline that insurance also exists as a recovery tool, and is contemplated as such in the CPMI-IOSCO guidance on recovery.</p>
Source	Insurance companies
Calibration	Insurance could come as a complement to the right size of loss absorbing equity, especially in NDL scenarios.
Dimension 1: Purpose and usability	<p>To absorb losses, especially in NDL scenarios. In resolution this could however also be used for losses from DL.</p> <p>Insurance should not apply in the context of recapitalization.</p> <p>Insurance cannot be relied upon to meet temporary liquidity needs, as the insurance claim might take some time before it is paid out.</p>
Dimension 2: Timeliness and performance risk	We agree with the FSB's analysis on the challenges of timeliness and sizing to meaningfully contribute to resolution objectives. Because insurance providers might not deliver funds in a timely manner, the losses or costs (depending on the use of the insurance proceeds, cf. dimension 1) might have to be covered by other funds or tools at first. The providers of these temporary funds could then recover money through insurance claims.
Dimension 3: Legal and operational considerations	We agree with the FSB's analysis on legal and operational complexity. More analysis and standardization on CCP recovery- and resolution-specific is encouraged, for example by considering existing insurance products in the context of recovery, and the extent to which CCPs rely on these.
Dimension 4: Impact on financial stability	We agree with the FSB's analysis on the financial stability impact of insurance. Reliance on insurance might also create temporary liquidity needs if the insurance payment is delayed, and the resolution authority has to cover the losses in the first instance with other resolution tools, or from other liquidity that the resolution authority has access to. It is also worth noting that insurance companies may also be indirect participants at CCPs and as such, use of insurance does not address concerns with reliance on CCP participants.
Dimension 5: Costs – Magnitude and allocation	As set out by the FSB, widespread use of insurance products to address recovery and resolution losses would increase costs of clearing in BAU. Consideration should be given on how to make such a solution economically viable, if it were to play a meaningful role as a recovery and resolution tool.

<p><b>Dimension 6:</b> Impact on CCPs' business models and clearing participant incentives</p>	<p>The availability of insurance might disincentivize CCPs from prudently risk managing for potential losses. The availability of such tools should not lessen the importance of right-sizing loss absorbing resources in the form of equity and BIBs, which should remain the overarching priority.</p> <p>However, as insurance premiums will depend on the quality of the CCP's risk management framework, the CCP will be incentivized to have a conservative risk management framework to reduce that cost of insurance.</p>
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Tool	Resolution fund
Pre-funded/unfunded	Prefunded
DL/NDL	DL, NDL
Rank	Rank and purpose would be defined in the fund's terms. We however propose that the CCP equity is written off before the resolution fund is used.
Source	The fund could be funded by CCPs and/or by market participants but the funding structure must be defined. In terms of incentives, it would be preferable if the resolution fund is funded by CCPs.
Calibration	<p>Calibration would depend on what the fund can be used for. The fund might require more resources if it can be used for loss absorption or recapitalization than only for the purpose of funding the running of critical functions and temporary liquidity needs.</p> <p>Calibration should also factor in the risk that several CCPs could enter resolution simultaneously.</p>
Dimension 1: Purpose and usability	Whether the fund can be used for absorbing losses, recapitalization, funding of critical functions or temporary liquidity needs: this would need to be defined in the rules governing the fund at inception (e.g., for banks, the EU Single Resolution Fund cannot be used for recapitalization and loss absorption purposes). In a CCP context, where loss allocation is likely to be the biggest part of resolution, we believe that loss allocation should be included in the scope of the resolution fund, as it otherwise would not be effective.
Dimension 2: Timeliness and performance risk	Once established, a resolution fund would be reliable in terms of timeliness. There might be a degree of performance risk if two or more CCPs potentially qualifying for support from the resolution fund need to be resolved at the same time.
Dimension 3: Legal and operational considerations	Complex legal and operational issues would have to be addressed. Establishment of such a fund would require development of ad-hoc standards by the FSB, and jurisdictions would have to implement these. As there are only a few CCPs per jurisdictions, the fund would work best if covering several CCPs or even jurisdictions, raising the question of how it could be established and regulated in practice.



	There is also a question as to whether the sources would be jurisdiction specific or international (e.g., in the case of the EU). If jurisdiction specific, such a tool may not be meaningful where there are few systemically important CCPs.
<b>Dimension 4:</b> Impact on financial stability	Depending on the depth of the fund, it could act as a reliable shock absorber, avoiding drawing on market participants' resources while they would already be facing stressed conditions.
<b>Dimension 5:</b> Costs – Magnitude and allocation	As noted by the FSB, the costs would be borne in BAU through contribution to the resolution fund. A key consideration will be around who contributes to the resolution fund: clearing participants, and/or CCPs themselves. To the extent that the calibration considers the risk that several CCPs could enter resolution simultaneously, the cost advantage of a resolution fund relative to BIBs is reduced.
<b>Dimension 6:</b> Impact on CCPs' business models and clearing participant incentives	<p>As set out in the FSB's analysis, the existence of a fund could create some moral hazard, and the fund's resources should therefore only be used after equity, any BIBs and committed parental support have been used.</p> <p>For financial stability reasons, the funds' resources should be accessed before cash calls and VMGH are used.</p> <p>If the CCPs have to provide resources to the fund, they might be incentivized to better risk management to avoid having to replenish the fund further in the situation where any CCP viability event draws on resources from the fund.</p> <p>If only clearing participants provide resources to the fund, the CCPs are not incentivized to good risk management, in the knowledge that the ultimate backstop provided by the resolution fund is available.</p>

Tool	Cash calls
<b>Pre-funded/unfunded</b>	Unfunded
<b>DL/NDL</b>	We strongly believe that cash calls should be used in DL scenarios only. We disagree with the FSB's analysis that cash calls could apply to DLs and NDLs. As noted in the FSB's analysis, cash calls are calibrated in reference to participants' default fund requirements. But clearing members fund a default fund to mutualize their credit risk, not to mutualize operational risk or NDLs (other than NDLs arising from custody or investment risks). Making resolution cash calls available to absorb such NDLs puts too much of the onus on clearing members and violates the principle that incentives and burdens should be aligned. As the default fund would not be involved in recovery under a NDL scenario, using this power under resolution would not be consistent. It will also likely lead to high NCWO claims for clearing members.
<b>Rank</b>	<b>To absorb losses:</b> only up to a cap, sized across recovery and resolution (see below on calibration), and only after equity and BIBs have been fully written down and used; and after any insurance claims have been made.

	<b>To recapitalize:</b> only if old equity is fully written down and clearing members receive new equity.
<b>Source</b>	All clearing members
<b>Calibration</b>	While we welcome the FSB’s acknowledgment that there is a need to cap cash calls, we do not agree a cap on cash calls, and the ability to determine the obligation in advance, is by itself sufficient to address the cost and liquidity impact on clearing members. There will be potential financial stability issues arising from requiring many clearing members for sizable funds in a stressed period, potentially increasing performance risks. In any event, cash calls should only be usable up to a low multiple of the default fund across both recovery and resolution.
<b>Dimension 1:</b> Purpose and usability	If clearing members’ funds are used for recapitalization, i.e. clearing members provide capital for the CCP, they should also have ownership of the CCP.
<b>Dimension 2:</b> Timeliness and performance risk	We disagree that resolution cash calls have low performance risk. They may prove unreliable and procyclical during stressed market events. To address these issues, both the EU and UK resolution rules allow the resolution authority to defer payments from clearing members for financial stability reasons. We also note that the FSB’s prior interconnectedness paper <sup>9</sup> flagged a significant overlap of clearing memberships across many CCPs. This interconnection should be considered when analyzing the performance risk of cash calls, e.g., the risk of cash calls at multiple CCPs simultaneously.
<b>Dimension 3:</b> Legal and operational considerations	Clearing members should be consulted in the design phase of this tool, as well as ahead of any event leading to the use of recovery or resolution cash calls.
<b>Dimension 4:</b> Impact on financial stability	Further consideration should be given to the potential financial stability impacts arising from the use of these tools: cash calls would come with significant impacts on clearing participants, potentially severely affecting their liquidity positions in already stressed circumstances and where liquidity is much needed. As such, cash calls might be too procyclical to use.
<b>Dimension 5:</b> Costs – Magnitude and allocation	A cap should be defined ex-ante, taking into account cash calls that can be served in recovery. The cap should apply to both recovery and resolution cash calls, as a whole.  In previous responses quoted in the introduction, we have proposed that cash calls should be limited to a small number across recovery and resolution. If a CCP already can ask for three times the default fund as cash calls in recovery, and the resolution authority for another time in resolution, the burden on clearing members could become so large that it can impact clearing members’ operations and might affect financial stability.
<b>Dimension 6:</b> Impact on CCPs’	We note that the FSB considers that cash calls would not impact CCPs’ business models. However, the cost of such measures is indirect and

<sup>9</sup> <https://www.fsb.org/wp-content/uploads/P090818.pdf>

<p>business models and clearing participant incentives</p>	<p>therefore hidden, and likely to be borne by market participants. In addition, over-reliance on cash calls might disincentivize CCPs from prudent risk management. If the use of resolution cash calls is not accompanied by extinguishment of old equity and issuance of new equity to members, this presents an inequitable windfall to old equity and increase moral hazard risk.</p> <p>Compensation for the use of resolution cash calls should be mandatory to better align incentives and to follow basic principles of corporate finance. Compensation should take the form of either:</p> <ul style="list-style-type: none"> <li>- equity in the CCP;</li> <li>- compensation instruments representing a claim on future income of the CCP, for clearing participants that would not be able to hold equity in the CCP.</li> </ul>
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Tool	VMGH
Pre-funded/unfunded	Can be considered as funded, but not willingly funded by the provider of the resources.
DL/NDL	<p>This tool should be used for DLs only. We do not agree with the FSB’s analysis that VMGH could be utilized both in DL and NDL scenarios. It should be explicitly ruled out from NDL scenarios, as there is no economic rationale for allocating NDL to clearing participants that experience mark-to-market gains on their positions and have influence in the CCP’s general business risk management decisions.</p> <p>In addition, VMGH could also be inappropriate for NDLs, as NDLs could happen when there is limited market movement and therefore limited VM gains to haircut.</p>
Rank	<p><b>To absorb losses:</b> it could be used as a last resort, after all equity and BIBs have been fully written down; after committed intragroup support has been provided; after any insurance claims have been made; and after any resources from a resolution fund have been received.</p> <p><b>To meet temporary liquidity needs:</b> the resolution authority could consider delaying VM payments, rather than haircutting VM, to meet any temporary liquidity needs. The approach to delaying VM payments should be made clear by jurisdictions in their resolution regimes, to provide sufficient transparency and predictability to clearing participants. Some CCPs already have in their rulebook the ability to delay payments due.</p>
Source	<p>Clearing participants with positive mark-to-market positions.</p> <p>It is notable that this tool could significantly impact participants with directional positions, such as end-users.</p>
Calibration	<p>As with cash calls, fairness to clearing participants would be particularly relevant to consider when framing tools such as VMGH.</p> <p>VMGH should only be used with adequate safeguards and limitations: e.g., at only one point in time in resolution, with no second round of VMGH.</p>

<p><b>Dimension 1:</b> Purpose and usability</p>	<p>This tool could be used to absorb losses, to the extent equity, BIB, intragroup support, insurance and resource from a resolution fund have been used first.</p>
<p><b>Dimension 2:</b> Timeliness and performance risk</p>	<p>While we acknowledge, as noted in the consultation, that “VMGH would be timely”, we do not think that this justifies placing undue reliance on VMGH as a source of funds in resolution.</p>
<p><b>Dimension 3:</b> Legal and operational considerations</p>	<p>The resolution authority should analyze carefully whether the use of VMGH in resolution would be at all compatible with a qualifying master netting agreement.</p> <p>If used in resolution, VMGH should only be used for suitable products and in conjunction with position rebalancing tools that ensure that the quantum of losses has been determined and the use of VMGH would be limited.</p> <p>The tool should be appropriately framed ex-ante, with applicable limitations on time and amount, as noted above in relation to “rank” and “calibration”. We do not agree that they would be “relatively easy to implement from an operational perspective”, as set out in the consultation. While this might be true when comparing this tool with establishing a resolution fund or issuing BIBs, appropriate use of the tool should be accompanied by use of position rebalancing tools, which is not straightforward.</p>
<p><b>Dimension 4:</b> Impact on financial stability</p>	<p>We pointed out in the past that VMGH is procyclical, and therefore believe that VMGH can only be used as a last resort, on a very limited basis, explicitly ruling out NDL scenarios, and should be subject to safeguards and regulatory oversight. Loss allocation to clearing participants in stressed market conditions that might well coincide with a CCP resolution could also affect financial stability.</p> <p>The repercussions to the underlying markets and exchanges should also be considered, such as the impact on market confidence, amongst others.</p>
<p><b>Dimension 5:</b> Costs – Magnitude and allocation</p>	<p>Authorities should have regard to whom they are allocating the losses when using VMGH, and the extent to which this creates moral hazard and damages market confidence, which would be the case if clearing participants have to absorb losses arising from a risk which they had no responsibility in managing.</p> <p>VMGH should only be used with adequate safeguards, e.g., only used at one point in time during resolution, for suitable products and in conjunction with position rebalancing tools that ensure that the quantum of losses has been determined and the use of VMGH would be limited.</p> <p>For clients of clearing members, the allocation of their respective quantum of losses might depend on what positions other clients of the same clearing member hold in the same products, hence with which clearing member they clear.<sup>10</sup></p>

<sup>10</sup> Please note it would be a strong disincentive for client clearing if clearing members were not allowed to pass on VMGH losses to the clients whose positions at the CCP determine the amount of VMGH for the clearing member.

<p><b>Dimension 6:</b> Impact on CCPs' business models and clearing participant incentives</p>	<p>Tools like VMGH do not provide the right incentives for the CCP itself, as it enables the CCP to allocate losses to others. To ensure alignment of incentives, equity, BIBs, intragroup support and insurance should already be used prior to contemplating VMGH.</p> <p>As with the analysis on cash calls, in relation to incentives, an over-reliance on VMGH as a resolution tool might disincentivize CCPs from prudent risk management.</p> <p>We believe that compensation for use of VMGH should be mandatory to better align incentives and to follow basic principles of corporate finance. As for cash calls, compensation should take the form of either:</p> <ul style="list-style-type: none"> <li>- equity in the CCP;</li> <li>- compensation instruments representing a claim on future income of the CCP, for clearing participants that would not be able to hold equity in the CCP.</li> </ul> <p>We agree that market confidence in clearing, as well as in the underlying markets and exchanges, could be damaged if a tool like VMGH would be used. To a certain extent, this statement could apply for all tools in recovery and resolution: if a CCP required recovery or resolution, confidence in clearing generally will be harmed, not only for the CCP in question.</p>
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7. Section 4.3 considers the parameters and dimensions necessary to support orderly resolution (e.g. without material adverse effect on financial stability) and to address the implications of the resources and tools on the CCP as a going concern and on clearing members and market participants. Does this section adequately capture the relevant considerations or are there other factors that should be considered, such as synergies, cost efficiencies or offsetting qualities?

As noted above, the description of each tool should explicitly categorize their use between DL and NDL scenarios, specifically ruling out cash calls and VMGH in the case of NDL scenarios. To support orderly resolution, we strongly suggest additional consideration referring to the suggested rankings set out in our table above. We suggest setting out the purpose of each resolution resource; whether it would be used to absorb losses, fund critical functions, meet temporary liquidity needs, or recapitalization. As regards recapitalization, we note that future ownership of the CCP should be assessed across all resources provided in resolution, and in light of any compensation in the form of ownership instruments that may be issued to clearing participants.

8. Does the analysis by parameter and dimension provide sufficient clarity around how resources and tools may or may not contribute to a resolution toolbox such that the toolbox, in aggregate, would meet the parameters and dimensions?

For clarity, it would be helpful to place the toolbox analysis in the broader resolution strategies that authorities may adopt, in DL and NDL scenarios, following the 5-step approach outlined in the FSB

2020 guidance. We also understand that authorities may choose to implement a subset of the tools listed in the toolbox, or use tools not explicitly mentioned in the toolbox. While we understand that this provides authorities with flexibility to adapt to each idiosyncratic resolution scenario, this does not provide much predictability and transparency to clearing participants as to how the resolution objectives would be achieved for a given CCP.

The quantum of resources available plays a key part in determining whether the resources and tools may, or may not, contribute to a resolution toolbox that would meet the resolution objectives. This question of quantum is not addressed in the consultation, and we believe that the question of whether the toolbox would allow to meet resolution objectives is only partly answered without such crucial quantum information.

We also note that the quantum of resources available in resolution cannot be considered in isolation from recovery. As an additional step further to the FSB's toolbox, we would very much welcome the development by the FSB and CPMI-IOSCO of a holistic approach to resources available across the recovery and resolution continuum, as well as the treatment of CCP Equity to ensure NCWO challenges can be addressed. This might require revisiting the CPMI-IOSCO guidance and recovery.

#### Section 5: Framework for resolution resources and tools

9. Is the toolbox approach and standard described a clear and effective means to support resolution objectives while providing flexibility to jurisdictions and resolution authorities?

It is unclear whether the toolbox provides much clarity to market participants in relation to actions that resolution authorities may take in resolution scenarios. As noted above, combining this toolbox with the 5-step process outlined in the FSB's 2020 guidance might help better understand how resolution authorities would evaluate the availability and potential use of resources and tools for various resolution scenarios. While flexibility to authorities is important, it is equally important to provide certainty, transparency, and predictability to market participants.

With such level of flexibility, some authorities could decide to rely on tools such as VMGH and/or cash calls for reasons pertaining to ease and speed, which reinforces the need for clear limitations to the use of such tools, as set out above in our response.

We regret that the FSB consultation does not consider the question of the calibration of resolution-specific resources, only noting that jurisdictions "should make transparent their approach to calibrating one or more of the resolution-specific resources". While this approach provides a lot of flexibility to authorities, it does not provide much in terms of transparency and predictability to clearing participants. Transparency and predictability are crucial in achieving the resolution objectives and clear answers to questions such as "what may happen in a resolution scenario" and "how this might affect clearing participants" will help ensuring the robustness and confidence of markets in the global clearing infrastructure.

In addition to calibration, we believe that authorities should provide clarity on the purpose of the resources (i.e., loss-absorption, replenishment, temporary liquidity needs, funding the running of critical functions) more explicitly as part of its analysis against Parameter A – Dimension 1 ("Purpose and usability").



10. Is the toolbox approach an effective means to achieve each of the four parameters outlined in Section 2?

*A. to provide sufficient loss absorption, CCP recapitalisation options and liquidity to give resolution authorities a reasonable opportunity to achieve a successful resolution in DL and NDL scenarios;*

*B. to be reliable and readily available in resolution;*

*C. to mitigate potential adverse effects on financial stability; and*

*D. to align incentives across recovery and resolution and achieve outcomes in resolution consistent with the Key Attributes, including by ensuring CCP equity remains in a first-loss position and by preserving incentives for market participants to participate in recovery and central clearing.*

The FSB notes that the toolbox comprises a) a set of resolution-specific resources or tools [...] and b) if available, financial resources from access to non-exhausted recovery tools. However, it is not in itself sufficient to ensure that the resolution objectives are met. As noted in relation to previous questions, the toolbox approach should consider resources available in recovery and resolution holistically. Looking across the recovery and resolution continuum, rather than in isolation, is more appropriate given the idiosyncratic nature of each resolution scenario, which might prompt resolution authorities to trigger entry into resolution early, while still using unused recovery resources. A holistic approach might also allow for developing a credible approach to the right-sizing of equity, in a manner that would make equity a more credible tool for loss-absorption across recovery and resolution, and any complementary layer of BIB.

In addition, we consider that the toolbox approach should be augmented to more precisely outline how recapitalization of the CCP should be approached. We have attempted to discuss this point in our table, in relation to ranking and Dimension 1. We believe future ownership of the CCP should not be assigned only in regard to who provided resources for the purpose of recapitalization, but by looking across all providers of resources in resolution, be they resources to absorb losses or fund the running of critical functions – also considering potential NCWO claims. Further consideration on recapitalization, and how resolution authorities would approach this as part of resolution strategies, would therefore be welcome.

11. With regard to sizing in each jurisdiction, should the standard specify potential approaches for calibrating the quantum of one or more resolution-specific resources and tools to support resolution?

We understand that the toolbox approach provides authorities with some flexibility to tailor resolution-specific resources. We also note that the toolbox approach does not prescribe a specific quantum expected to be available for resolution. However, we would welcome clearer standards regarding right-sizing of CCP equity, any complementary layer of BIB, and for calibrating resolution resources. A more prescriptive approach with regards to CCP equity and BIBs, and the extent to which they can be used to bear losses both in recovery and resolution, would reduce the likelihood of entry into resolution, while enhancing predictability around the availability of resources.

12. To what extent should the standard include transparency into jurisdictions' approaches to calibrating one or more of the resolution-specific resources and tools in the toolbox (such as a function or multiple of the default fund)?

Transparency would be welcome on which tools authorities would consider as part of their toolbox in relation to DL and NDL scenarios, in what ranking, and for what purpose.

Resolution authorities should also clearly limit ex-ante the cases where loss allocation tools (VMGH and cash calls) could be used: as last resort tools, only in DL scenarios and with clear limitations on amount of usage. Then, to the extent that they are used for recapitalization, they should be accompanied by an extinguishment of old equity and issuance of new equity to participants who incur losses as a result of the use of these tools. There should also be an express limitation that such tools would only be used if there are no other options providing a better outcome for financial stability.

13. What should be the scope of application for the standard? Should it apply to all systemically important CCPs or just to CCPs that are systemic in more than one jurisdiction?

We would encourage applying the standard to all systemically important CCPs, and not only systemic CCPs in more than one jurisdiction. As noted above, systemically important CCPs are highly interconnected and there is significant risk of contagion if recovery or resolution is unsuccessful. Therefore, it is important to implement heightened resolution planning standards to all systemically important CCPs. In addition, further clarity and certainty as to what resolution actions might look like would be extremely valuable for clearing participants, for all systemically important CCPs, not only CCPs that are systemic in more than one jurisdiction.

More generally, we would support even broader adoption of resolution plans and tools, even for non-systemically important CCPs. If a jurisdiction uses a resolution fund constituted through contributions from all CCPs, it could consider covering also CCPs that are not systemically important.

14. To what extent should jurisdictions' calibration analysis and choice of resolution-specific resources and tools in the toolbox take into account the home resolution authority's ability to (i) use resources and tools that are available to the CCP in recovery; and (ii) capability to intervene before they have been exhausted in recovery?

We agree that the authority's ability to intervene while recovery resources and tools are still available will have a bearing on the calibration of resolution-specific resources. We understand that resolution authorities would value the flexibility to intervene early while some recovery resources are still available. But as noted in response to question 10, the ability for a resolution authority to use resources and tools that are available to the CCP in recovery further justifies looking at resources available across recovery and resolution holistically, rather than through separate approaches as is currently the case.

In line with the FSB 2017 Guidance, as well as the FSB Key Attributes (FMI Annex), resolution should be possible, if necessary before all recovery measures have been exhausted, including in cases where it is likely that the CCP's implementation of the recovery measures will not be sufficient to

return the CCP to viability in a timely manner; or the CCP will be unable to apply recovery measures in a manner that does not give rise to significant risks to financial stability.

In the latter case, we question whether recovery measures should be considered available in a resolution scenario, as the reason for entry into resolution would precisely be to mitigate financial stability risks arising from a further use of recovery tools. We question whether there might be litigation risks arising from early intervention followed by the use of recovery tools in resolution.

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Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 77 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](http://www.isda.org). Follow us on [Twitter](#), [LinkedIn](#), [Facebook](#) and [YouTube](#).

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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.

FIA's mission is to:

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

As the leading global trade association for the futures, options and centrally cleared derivatives markets, FIA represents all sectors of the industry, including clearing firms, exchanges, clearing houses, trading firms and commodities specialists from more than 48 countries, as well as technology vendors, lawyers and other professionals serving the industry.

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The Institute of International Finance is a global association of the financial industry, with around 400 members over 60 countries. Its mission is to support the financial industry in the prudent management of risks; to develop sound industry practices; and to advocate for regulatory, financial and economic policies that are in the broad interests of its members and foster global financial stability and sustainable economic growth. IIF members include commercial and investment banks, asset managers, insurance companies, sovereign wealth funds, hedge funds, central banks and development banks.