



**Response: ESMA Consultation Paper on draft RTS on the content
of CCP resolution plans**

January 2022

Introduction

The World Federation of Exchanges (WFE) is the global trade association for regulated exchanges and clearing houses. We represent over 250 market-infrastructures, spread across the Asia-Pacific region (~37%), EMEA (~43%) and the Americas (~20%). with everything from local entities in emerging markets to groups based in major financial centres.

The WFE has previously sought to proactively contribute to the international debate on CCP risk management, recovery and resolution¹. In doing so, its members have contributed significantly to the strengthening of the system via the implementation of many post-crisis initiatives, including efforts to encourage central clearing of derivatives as per the G-20 direction.

Whilst we consider recovery is almost always preferable to resolution, the WFE nevertheless welcomes well-designed international efforts to enhance and strengthen how CCPs will be resolved if the worst was to occur – such as a simultaneous default of several of the largest globally systemic banks. We therefore generally support further initiatives which encourage better planning by resolution authorities. In that context, the WFE appreciates the opportunity to respond to this Consultation Paper relating to Regulatory Technical Standards (RTS) on the content of CCP Resolution Plans.

We generally agree with and support the approach that ESMA is proposing to take in the draft RTS as regards to the key elements that should be contained in the contents of the resolution plan. We also support the flexibility that would be provided to resolution authorities to design resolution plans based on the specificities of CCPs as well as the local regulatory structure and legal framework.

We note that the point of resolution should be clearly defined in the plan as early intervention by the resolution authority will undermine any chances of recovery by the CCP outside of resolution. If a resolution authority were to intervene prior to the exhaustion of all resources and tools defined for recovery in a CCP's rulebook and recovery plan, the incentives market participants have to actively participate in the recovery process could be skewed. It is important that triggers for early intervention be circumscribed to scenarios based on financial stability objectives.

It is our view the circumstances that could lead to a CCP's resolution would be extreme and unprecedented. This would almost certainly be accompanied by very high levels of uncertainty. In such an environment 'pre-packed' resolution measures would be of limited value whilst procedures and organisation that allow prompt, targeted action based on facts and circumstances at the relevant time would be necessary.

¹ - [WFE: CCP Risk Management Recovery and Resolution – Aligning CCP and Member Incentives – October 2015](#)
- [WFE: Response to CPMI-IOSCO Consultative Report Resilience and Recovery of CCPs – October 2016](#)
- [WFE: Response to FSB Discussion Note - Essential Aspects of CCP Resolution – October 2016](#)
- [WFE: The Interplay between Central Counterparty Recovery and Resolution: A Global Perspective – February 2017](#)
- [WFE: Response to FSB's Consultative Document on CCP Resolution & Resolution Planning – March 2017](#)
- [WFE: Response to FSB's Consultation Paper on Treatment of CCP Equity in Resolution – July 2020](#)

Response to questions:

Question 1: Do you agree with how ESMA has enabled sufficient flexibility and ensured proportionality in the draft RTS? If not, please explain?

We agree with ESMA's conclusion that the regulatory technical standards (RTS) should not set out a list of fixed requirements for resolution authorities to include in CCP resolution plans.

In our view, it is vital to ensure that resolution authorities have the flexibility to manage the resolution process based on the specifics of the situation, event, market and regulatory/legal environment in which this process occurs.

Resolution authorities of the jurisdiction where the CCP is established are best placed to judge the nuances of the extreme and unlikely event that could push a CCP into resolution based on the local regulatory structure and legal framework.

We support ESMA's proposal to follow the principle of proportionality in the draft RTS but without tiering of CCPs so as to ensure an equal application of the standards across the EU.

Whilst resolution authorities should have discretion to design the final resolution plan based on the specificities of the CCP and their own jurisdiction, it is important that they consider the input and information provided by the supervisory authorities as well as all main elements of the resolution plan outlined in the RTS and reflect them in the final plan.

Question 2: Is there any aspect from the BRRD RTS that is not included in the draft RTS, but should be? If yes, please specify and explain why?

In our view, all relevant aspects from the Bank Recovery and Resolution Directive (BRRD) RTS have been taken into account. It is important to note, however, that given the vastly different purpose CCPs serve in the financial system as compared to banks, drawing on bank resolution standards to draft resolution standards for CCPs is not appropriate. CCPs monitor and manage risk as opposed to banks, which are risk takers.

Question 3: Do you agree with how the draft RTS envisages to further specify the resolution plan? If not, please explain?

As noted in our introductory remarks, there should be a clear definition of the point of resolution to avoid early intervention by the resolution authority before all recovery tools and resources of the CCP have been exhausted.

We would like to make the following general remarks regarding the proposed **matrix of resolution scenarios** and the **development of resolution strategies**.

The circumstances that could lead to a CCP resolution scenario are unprecedented and would far exceed what are considered extreme and plausible. Any situation in which the resolution of a CCP was conceivable or relevant would be one where general market uncertainty was high. This makes 'pre-packed' resolution measures in effect a set of assumptions.

The unpredictable and idiosyncratic nature of a CCP resolution event, increases the need for procedures that allow prompt, targeted action based on facts and circumstances at the relevant time.

We support ESMA's conclusion that resolution authorities should build each of the scenarios "in a way that best fits the specific characteristics and level of complexity of the CCP."

However, we question the need to reflect all nine scenarios outlined in Annex 1 in the resolution plan and believe those scenarios should only serve as examples that may or may not be reflected in the resolution plan. It is our view, that resolution authorities, in consultation with the CCP, should be the ones that ultimately identify meaningful and relevant resolution scenarios that take into account the CCP's specificities and risk profile. Therefore, an overly prescriptive list of scenarios would not be helpful in this context.

We also welcome ESMA's proposal to provide further flexibility in the **development of resolution strategies** by allowing resolution authorities, if necessary, "to include choices to be made within those strategies depending on the situation or where unforeseen impediments to an elected strategy are discovered at implementation."

On the point that resolution authorities "should identify one or two **preferred resolution strategies**", we note that the strategies identified should be appropriate for the facts and circumstances of the specific resolution event. We therefore also agree with the additional point made by ESMA that where a preferred strategy is identified, the resolution authorities "may also need to include choices to be made within those strategies depending on the situation or where unforeseen impediments to an elected strategy are discovered at implementation."

In general, we would caution against taking a too prescriptive approach to resolution planning given that hypothetical scenarios would not be able to fully reflect the circumstances of an actual CCP resolution event.

As regards scenarios covering **non-default loss (NDL) events**, we note that there are ex ante measures that a CCP can take to mitigate the risk of the NDLS being so severe as to be a trigger for resolution. Such ex ante measures have been implemented by CCPs in most cases.

Recent research² by LCH and Tilburg University shows that "an NDL loss event which exhausts both the Regulatory Capital held by the CCP and the annual profits held by the CCP has a very rare chance of occurring".

We would like to stress the importance of analysing the causes of NDL events to identify the source of the losses to the extent that is relevant to whether the responsibility for those losses is shared with others.

As noted in our guidance on NDLS³, there are circumstances where clearing members may bear responsibility for the losses.

For example, some CCPs allow clearing members to dictate where their money is invested after deposit at the CCP. In these circumstances, we would expect that clearing members are responsible for the losses, as they managed the decision as to where their money was held.

In a July 2020 paper on NDLS⁴, the International Swaps and Dealers Association (ISDA) concludes that "in some instances, clearing members and their clients may bear at least a portion of NDL related to custodial risks, settlement bank risks and investment risks."

² [LCH, Tilburg University: Why Is a CCP Failure Very Unlikely? – March 2021](#)

³ [WFE: Guidance on non-default loss – June 2020](#)

⁴ [ISDA: CCP Non-Default Losses – July 2020](#)

It is our view that any **resolution scenario** should take into account the extent to which responsibility for losses is shared among stakeholders. In that sense, we welcome ESMA's proposal in the **NDL Scenario – Financial Losses** that includes an alternative scenario “where the CCP's clearing members would also be required to bear losses”.

Question 4: In particular, do you agree with the content of the summary of the resolution plan (Article 12(7)(a))? Is there any aspect missing? If yes, please specify and explain why?

We agree with the proposed key elements to be contained in the summary of the resolution plan under Article 12(7)(a) of the EU CCP Recovery and Resolution Regime (CCPRRR), whilst we reiterate our general comments on NDL events made above.

We further support the proposed addition of a high-level summary related to points (b) to (s) under paragraph 7 of Article 12 of the CCPRRR to the summary of key elements of the resolution plan.

Question 5: Do you agree with the Option 1, if not please explain? Have you identified other benefits and costs not mentioned above associated to the proposed approach (Option 1)?

We disagree with Option 1 as, as noted above, we support a greater flexibility in identifying resolution scenarios that are meaningful and relevant for the specific CCP at the specific point in time.

Question 6: If you advocated for a different approach, how would it impact the cost and benefit assessment? Please provide details.

We would support Option 2 as we consider that option best reflects the mandate to respect the principle of proportionality and enable sufficient flexibility.