

**MEMO# 30806**

July 28, 2017

# International Regulators Provide Guidance on CCP Resilience and Resolution

[30806]

July 28, 2017 TO: ICI Members

ICI Global Members SUBJECTS: Derivatives

International/Global

Systemic Risk

Trading and Markets RE: International Regulators Provide Guidance on CCP Resilience and Resolution

The Basel Committee on Banking Supervision (BCBS), the Committee on Payments and Market Infrastructures (CPMI), the Financial Stability Board (FSB), and the International Organization of Securities Commissions (IOSCO) previously agreed to coordinate their international policy work to enhance the resiliency and recovery and resolution planning of central counterparties (CCPs). As part of that coordination the FSB recently released guidance on CCP resolution and resolution planning,[\[1\]](#) and CPMI/IOSCO published a report on CCP resilience and provided further guidance on their Principles for Financial Market Infrastructures (PFMI).[\[2\]](#)

This memorandum describes the scope of the Guidance and the CCP Resilience Report and the elements of each document that are most relevant to regulated funds. Both the FSB and CPMI/IOSCO contemplate that customer funds could be used to recover or resolve, as applicable, a distressed CCP. ICI Global has repeatedly counseled these bodies on the importance of protecting customer assets, including earlier this year when we urged the FSB to ensure that authorities provide adequate transparency into CCP resolution plans and that resolution plans do not sanction the use of customer assets through contract tear-ups, margin haircuts, or other means.[\[3\]](#) Unfortunately, the Guidance and the revised CCP Resilience Report fail to reflect most aspects of our recommendations.

## **The FSB Guidance: Topics Covered and Treatment of Customers**

The Guidance is intended to assist authorities in their resolution planning and promote international consistency in the process for resolving a CCP. It reflects the general preference of the FSB and the international regulatory community to prioritize resolution options that will enable the continuation of critical CCP functions without exposing taxpayers to the risk of loss. To that end, the Guidance sets out powers for resolution

authorities to maintain the continuity of critical CCP functions, discusses the use of loss allocation tools, and describes steps authorities should take to establish crisis management groups for relevant CCPs and develop resolution plans. The Guidance also describes steps that authorities should take to prepare for the wind down of a failing CCP in their jurisdiction, focusing on the following 10 aspects of CCP resolution and resolution planning:

- the objectives of CCP resolution and resolution planning;
- the powers that resolution authorities should have to maintain the continuity of critical CCP functions, return the CCP to a matched book, and address default and non-default losses;
- the potential indicators of circumstances that could lead to a determination to trigger resolution;
- the treatment of equity of existing CCP owners in resolution;
- the application of the “no creditor worse off” safeguard in resolution;
- the assessment of the adequacy of financial resources in resolution;
- the content and development of resolution plans;
- the process resolution authorities should use to assess the resolvability of a CCP and address impediments to resolvability;
- the creation and operation of crisis management groups for CCPs that are systemically important in more than one jurisdiction; and
- the need for cross-border coordination to ensure the enforcement of resolution actions.

Some provisions of the Guidance have implications for customers. Despite the efforts of ICI Global, for example, the guidance contemplates that a resolution authority could seize customer assets—including initial and variation margin—or tear up customer positions to resolve a CCP, at least if the CCP’s failure arises from the default of a clearing member.[\[4\]](#) The Guidance is silent on whether customer assets also could be used to address a CCP failure that results from other sources, such as mismanaged operational risks.

There are, however, certain provisions of the Guidance that are potentially more favorable to regulated funds and other clearing customers. The Guidance states that equity should be fully loss absorbing for default losses and that the point at which equity will be written down should be clear and transparent. The Guidance also provides that equity should absorb non-default losses no later than at the point at which any applicable loss allocation arrangements available under the CCP’s rules and arrangements for non-default losses have been exhausted.[\[5\]](#) Equity also should be written down before any losses are allocated to creditors.

The Guidance states that the FSB will undertake further work on financial resources for CCP resolution and, based on further analysis and experience gained in resolution planning, determine by the end of 2018 whether it should develop further guidance on this issue.[\[6\]](#)

## **The CPMI/IOSCO CCP Resilience Report**

The CCP Resilience Report provides further guidance on five key aspects of a CCP’s financial risk management framework: (1) governance; (2) stress testing for credit and liquidity risks; (3) coverage of financial resources (*i.e.*, sufficient prefunded resources to cover a CCPs credit exposures on an ongoing basis); (4) effective margin system; and (5) CCPs contribution of its financial resources to losses. The CCO Resilience Report is intended to provide further clarity and granularity in these key areas and to highlight areas in which CCPs need to further develop their recovery plans. The CCP Resilience Report is also intended for use by regulatory, supervisory, and oversight authorities as they carry out

their respective responsibilities for CCPs. According to CPMI and IOSCO, the report is not intended to create additional standards for CCPs beyond those that have already been set out in the PFMI.

Jennifer S. Choi  
Associate General Counsel

George M. Gilbert  
Counsel

#### endnotes

[1] See FSB, *Guidance on Central Counterparty Resolution and Recovery Planning*, July 5, 2017 available at <http://www.fsb.org/wp-content/uploads/P050717-1.pdf> (Guidance). The Guidance complements a 2014 FSB publication on the key attributes of effective resolution regimes for financial institutions by providing guidance on implementing this publication in resolution arrangements for CCP's. See FSB, *Key Attributes of Effective Resolution Regimes for Financial Institutions*, October 2014 available at [http://www.fsb.org/wp-content/uploads/r\\_141015.pdf](http://www.fsb.org/wp-content/uploads/r_141015.pdf).

[2] See CPMI and IOSCO Board, *Resilience of central counterparties (CCPs): Further guidance on the PFMI*, July 2017, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD568.pdf> (CCP Resilience Report). CPMI and IOSCO also issued a revised report on the recovery of financial market infrastructures, including CCPs, at the same time as the CCP Resilience Report. See CPMI and IOSCO Board, *Recovery of Financial Market Infrastructures*, October 2014 (Revised July 2017), available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD569.pdf>.

[3] See Letter from Dan Waters, Managing Director, ICI Global, to Secretariat of the Financial Stability Board, dated March 13, 2017, available at <https://www.ici.org/pdf/30634a.pdf>. See also Letter from Dan Waters, Managing Director, ICI Global, to Secretariat of the Financial Stability Board, dated October 17, 2016, available at [https://www.ici.org/pdf/16\\_iciig\\_fsb\\_ccp\\_resolution\\_ltr.pdf](https://www.ici.org/pdf/16_iciig_fsb_ccp_resolution_ltr.pdf). We shared the 2016 recommendations with CPMI/IOSCO in response to a consultation on CCP resilience and recovery.

[4] See Guidance at 4-5.

[5] See *id.* at 9-10.

[6] See *id.* at 1.

---

**Source URL:** <https://icinew-stage.ici.org/memo-30806>

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.