

ISDA/FIA Central Counterparty (CCP) Recovery and Resolution (R&R) Comparative Review 2021

FSB, EU and UK Frameworks

Background and assumptions

The table below sets out a comparative review of the following documents, which set out the FSB, EU and UK frameworks:

- (a) Financial Stability Board (FSB) [Key Attributes](#) of Effective Resolution Regimes for Financial Institutions, 15 October 2014 (FSB Key Attributes).
- (b) FSB [Guidance](#) on Central Counterparty Resolution and Resolution Planning, 5 July 2017 (FSB Guidance 2017).
- (c) FSB [Final Report](#) on Guidance on Financial Resources to Support CCP Resolution and on the Treatment of CCP Equity in Resolution, 16 November 2020 (FSB Guidance 2020).
- (d) Regulation [\(EU\) 2021/23](#) of the European Parliament and of the European Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties (EU CCP R&R).
- (e) UK HM Treasury (HMT) [Consultation Paper](#) on the Expanded CCP Resolution Regime, February 2020 (UK CCP R&R Proposals).






Our analysis does not cover either EU procedural rules or EU rules relating to supervision, colleges or cooperation of supervisors/regulators, with the exception of the topic of crisis management groups (CMGs).

The final column of the table provides space for any comments that ISDA or the FIA may wish to note.

Key: Comparative indicators against the FSB Guidance

We have used the FSB Guidance 2017, FSB Guidance 2020 and FSB Key Attributes (together the **FSB Guidance**) as a ‘control variable’ to track particular points of similarity and divergence between the frameworks by shading relevant cells in the table, in accordance with the key below. Please note that:

- the FSB Guidance citation column is shaded green for ease of comparison in each case; and
- the main points of difference between the FSB Guidance and the EU and UK frameworks are highlighted by formatting relevant points of difference in *underlined italics*.

 Provisions are the same or similar	 Provisions are different in some respects	 Provisions are different	 Further detail needed to compare	 Provisions are not addressed in the FSB Guidance
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No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
Objectives and conditions								
1.	CCP R&R objectives	FSB Guidance 2017, 1.1 and 1.2, p.2. FSB Key Attributes Preamble; Appendix II FMI Annex 1, 1.1, 3.1.	<p>Resolution objectives</p> <p>CCP resolution should seek to:</p> <ol style="list-style-type: none"> i. maintain market and public confidence while minimising adverse contagion to the CCP's participants or to the wider financial system, including other Financial Market Infrastructure (FMIs); ii. avoid any disruption in the operation of links between the CCP in resolution and other FMIs where such disruptions would have a material negative effect on financial stability or the functioning of markets; and iii. maintain continuous access by participants to securities or cash collateral posted to and held by the CCP in accordance with its rules and arrangements and that is owed to such participants. <p>The objectives of CCP resolution can be achieved either by:</p> <ol style="list-style-type: none"> i. maintaining or restoring the continuity of the CCP's critical functions; or ii. ensuring continued performance of those functions by another entity or arrangement (including a bridge entity established by the RA) coupled with the orderly wind-down of the residual CCP in resolution. 	EU CCP R&R, Recital 41. and Article 21	<p>Resolution objectives</p> <p>The prime objectives of resolution should be to ensure the continuity of critical functions, to avoid adverse effects on financial stability, and to protect public funds.</p> <p>When applying the resolution tools and exercising the resolution powers, the resolution authority (RA) shall have regard to all the following resolution objectives, which are of equal significance and shall balance them as appropriate to the nature and circumstances of each case:</p> <ol style="list-style-type: none"> i. to ensure the continuity of the CCP's critical functions, in particular: <ol style="list-style-type: none"> a. the timely settlement of the CCP's obligations to its clearing members and, where applicable, their clients; b. continuous access of clearing members and, where applicable, their clients to securities or cash accounts provided by the CCP and collateral in the form of financial assets held by the CCP; ii. to ensure the continuity of the links with other FMIs which, if disrupted, would have a material negative impact on financial stability in the EU or in one or more Member States as well as the timely completion of payment, clearing, settlement and record-keeping functions; iii. to avoid a <i>significant adverse effect on the financial system in the EU or in one or more Member States</i>, in particular by preventing or mitigating contagion of financial distress to the CCP's clearing members, their clients or to the wider financial system, including other FMIs, and by maintaining market discipline and public confidence; and iv. to protect public funds by minimising reliance on extraordinary public financial support and the potential risk of losses for taxpayers. <p>When pursuing the objectives set out above, the RA shall seek to minimise the cost of resolution on all affected stakeholders and avoid destruction of the CCP's value, unless such destruction is necessary to achieve the resolution objectives.</p>	UK CCP R&R Proposals, 1.7, 2.1 and A12, pp.3, 7 and 13.	<p>Resolution objectives</p> <p>The UK regime aims to <i>preserve the stability of the UK's financial system and the economy, and ensure the UK remains a world leader for clearing services regulation.</i></p> <p>Consistent with the legal objectives in the Banking Act 2009 and Financial Services Act 2012, the proposals are guided by several intertwining principles:</p> <ol style="list-style-type: none"> i. ensuring the continuity of clearing services; ii. protecting and <i>enhancing the stability of the financial system of the UK</i>; iii. protecting and enhancing public confidence in the <i>stability of the financial system of the UK</i>; iv. protecting public funds; v. avoiding interference with property rights; and vi. ensuring consistency with international standards including the FSB guidance. <p>When used together, the proposed powers and tools form a regime which would give the Bank of England (the BoE) i.e. the UK RA, the flexibility to:</p> <ol style="list-style-type: none"> i. stabilise a CCP, so that it can continue to provide its critical clearing services; ii. prevent contagion spreading across the financial system; and iii. ensure losses are allocated fairly across CCPs and clearing members, rather than to taxpayers. <p>The key purpose of expanding the resolution regime is to reduce the likelihood that public funds would be needed in a CCP resolution.</p>	
2.	Conditions and timing for entry into resolution	FSB Guidance 2017, 3.2, p.7. FSB Key Attributes 3.1, 12; Appendix II FMI Annex 1,	<p>Resolution conditions</p> <p>In determining whether the necessary conditions have been met to place a CCP into resolution, the RA, together or in consultation with other relevant authorities, should take into account the particular circumstances prevailing at the time of the member default(s) or other stress event and a broad range of factors, including the potential impact of the CCP's recovery actions on the markets served and financial system and potential availability of new resources or options in resolution to support critical functions and maintain financial stability.</p>	EU CCP R&R, Article 22.	<p>Resolution conditions</p> <p>The RA shall take a resolution action in relation to a CCP provided that all of the following conditions are met:</p> <ol style="list-style-type: none"> i. the CCP is failing or is likely to fail as determined by the competent authority, after consulting the RA or the RA after consulting with the competent authority, where the RA has the necessary tools for reaching that conclusion; ii. there is no reasonable prospect that any alternative private sector measures, including the CCP's recovery plan or other contractual arrangements, or 	UK CCP R&R Proposals, 2.3 and A6 to A12, pp.7 and 12-14.	<p>Resolutions conditions</p> <p>Under the current regime, a stabilisation power may be exercised with respect to a CCP only if the BoE is satisfied that:</p> <ol style="list-style-type: none"> i. the CCP is failing, or is likely to fail, to satisfy the recognition requirements. The BoE may treat this condition as met if satisfied that it would be met but for the withdrawal or possible withdrawal of critical clearing services by the CCP; and 	

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		3.4-3.5, 4.3, 12.	See also the Resolution indicators below.		<p>supervisory action, including early intervention measures taken, would prevent the failure of the CCP within a reasonable timeframe;</p> <p>iii. <u>a resolution action is necessary in the public interest</u> to achieve, while being proportionate to, one or more of the resolution objectives, and winding up the CCP under normal insolvency procedures would not meet those resolution objectives to the same extent.</p> <p>A CCP shall be deemed to be failing or likely to fail where one or more of the following circumstances apply:</p> <ol style="list-style-type: none"> the CCP infringes, or is likely to infringe, its authorisation requirements that would justify the withdrawal of its authorisation under <u>European Markets Infrastructure Regulation</u> (EU) No 648/2012 (EMIR); the CCP is unable, or is likely to be unable, to provide a critical function; the CCP is unable, or is likely to be unable, to restore its viability through its recovery measures; the CCP is unable, or is likely to be unable, to pay its debts or other liabilities as due; the CCP requires extraordinary public financial support (further defined in Article 22 but not summarised below). <p>The RA may also take a resolution action where it considers that the CCP has applied or intends to apply recovery measures which could prevent the CCP's failure but cause significant adverse effects to the financial system of the EU or its Member States.</p>		<p>ii. having regard to timing and other circumstances it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the CCP that will enable the CCP to maintain continuity of any critical clearing services while also satisfying the recognition requirements. CCP services are deemed 'critical' if their removal, in the BoE's opinion, would threaten the stability of <u>the financial systems of the UK</u>.</p> <p>The proposed CCP R&R regime would then introduce an additional trigger for entry into resolution to operate alongside the two-existing conditions. This new condition would allow the BoE to use its CCP resolution powers before the CCP has completed its recovery measures, if the BoE considers that the continued application of these measures would have an adverse impact on financial stability.</p> <p><u>Note any decision to put a CCP into resolution is also conditional on it being in the public interest.</u></p>	
		<p>FSB Guidance 2017, 3.1, p.7.</p> <p>FSB Key Attributes Appendix II FMI Annex 1, 4.3.</p> <p>FSB Guidance 2020, 1.1 and 1.2, p.5.</p>	<p>Resolution timing</p> <p>An RA, in consultation with other relevant authorities, should allow for recovery measures to proceed where they are reasonably likely to be effective within the timeframe required. However, 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.</p> <p>In an extreme case, it is possible that a CCP's recovery plan is not sufficient to fully cover potential non-default losses, orderly wind-down of the service may not be appropriate, and resolution may be called for.</p>	<p>EU CCP R&R, Article 22 and 23.</p>	<p>Resolution timing</p> <p>Resolution action may only be taken where the conditions for resolution (set out in the row above) are met and with regard to the resolution objectives. When a CCP is unable, or is likely to be unable, to restore its viability through its recovery measures, the EU CCP R&R includes it within the definition of failing or likely to fail. The RA can take resolution action once this condition is met. Art 22(5) similarly states that the RA may take a resolution action where it considers that the CCP applies or intends to apply recovery measures which could prevent the CCP's failure but cause significant adverse effects to the financial system.</p> <p>Together, these provisions allow the RA to put the CCP into resolution, if necessary, before all recovery measures have been exhausted.</p>	<p>UK CCP R&R Proposals, 2.3 and A10-A11, pp.7 and 13.</p>	<p>Resolution timing</p> <p>Resolution action may only be taken where the conditions for resolution (set out in the row above) are met and if the BoE is satisfied that the exercise of the power is necessary having regard to the public interest in the stability of the financial systems of the UK or the maintenance of public confidence in the stability of those systems of the UK. The BoE is also required to have regard to the special resolution objectives when using or considering the use of the resolution powers. Under the new proposals, the BoE can place a CCP into resolution before the CCP's own recovery measures have been exhausted, on the condition that continued recovery actions by the CCP would likely 'compromise financial stability'.</p> <p>The existing requirement for the BoE to consult HMT and the Financial Conduct Authority (FCA) prior to determining that condition for resolution is met will be extended to the new condition that allows the BoE to use its resolution powers before the CCP has completed its recovery measures, if the BoE considers that the continued application of these measures would have an adverse impact on financial stability. The BoE should continue to be required to notify and consult HMT and the FCA ahead of any action where</p>	

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							resolution action would pose risks to financial stability. However, given the potential ‘fast-burn’ nature of a CCP resolution scenario, it is proposed that the BoE would be required to share resolution plans for CCPs with HMT in advance, with the ability for the BoE to diverge from these plans without prior consultation in certain circumstances. Any divergence would need to be notified to HMT ex-post under the new proposals.	
Recovery planning								
3.	Recovery plans and assessment of recovery plans		Note the FSB Guidance does not consider recovery plans in detail, in large part as these are covered by other international standards or frameworks already exist.		Note that the EU CCP R&R are considerably more detailed than the FSB rules, given the FSB’s focus on resolution.		The proposed UK rules do not change or address the current UK framework pertaining to recovery plans.	
		FSB Guidance 2017, 3.1 and 7.2, pp.7 and 14. FSB Key Attributes Appendix II FMI Annex 1, 11.1-11.3	<p>Overall approach</p> <p>A CCP’s recovery plan should be designed to address comprehensively any uncovered credit losses and liquidity shortfalls. The RA, in consultation with other relevant authorities, should allow for recovery measures to proceed where they are reasonably likely to be effective within the timeframe required. However, resolution should be possible, if necessary before all recovery measures have been exhausted, 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</p> <p>Given the close relationship between resolution and recovery, the development of the resolution plan should start with the CCP’s recovery plan.</p> <p>See Resolution indicators below for default and on-default losses.</p>	EU CCP R&R, Articles 9, 10 and 11.	<p>Overall approach</p> <p><i>A CCPs shall draw up and maintain a recovery plan providing for measures to be taken in the case of both default and non-default events to restore their financial soundness, without any extraordinary public financial support, and allow them to continue to provide critical functions following a significant deterioration of their financial situation or a risk of breaching their capital and prudential requirements.</i> The recovery plan shall include a framework of indicators that identify the circumstances under which measures in the recovery plan are to be taken which shall be regularly monitored.</p> <p>The measures included in the recovery plan shall:</p> <ol style="list-style-type: none"> address all the risks identified in the different scenarios; in the case of losses due to a default event, ensure the re-establishment of a matched book and the full allocation of uncovered losses; include loss-absorbing arrangements to cover the losses that might arise from non-default events; and enable the replenishment of the CCP’s financial resources, including its own funds, to a level sufficient for the CCP to meet its EMIR obligations and to support the continued and timely operation of the critical functions of the CCP. <p><i>Where a CCP intends to activate its recovery plan, it shall notify the competent authority and RA of the nature and magnitude of the problems, and indicate the recovery measures it intends to take and the time-frame to restore its financial soundness. The RA or competent authority may require the CCP to refrain from taking that measure if it may cause significant adverse effects to the financial system or is unlikely to be effective. Following the notification, the competent authority shall immediately assess whether the circumstances require the use of early intervention powers.</i></p> <p><i>The recovery plan should be drawn up in accordance with Section A of the Annex to the EU CCP R&R, which outlines the specific ‘requirements for recovery plans’ and also take</i></p>		<p>Overall approach</p> <p>The UK CCP R&R Proposals do not amend the existing regime and there are no live UK proposals or consultations to amend the UK legacy regimes in relation to recovery plans, which broadly work as follows:</p> <p>The UK regime in relation to CCP recovery plans was introduced by the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (SI 2013/1908), which amended the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995). Therefore, from 1 May 2014, the UK regime included an obligation for clearing houses to maintain a recovery plan.</p> <p>Specifically, section 23A and 29B of SI 2001/995 provide that a clearing house or CCPs must maintain a recovery plan that sets out the steps that it will take in order to maintain the continuity of the services that it provides and the activities that it carries on that are specified in its recognition order in the event that such continuity is threatened.</p> <p>There is limited regulatory guidance from the BoE, but significant volumes of guidance emanates from the international bodies, such as Committee on Payment and Settlement Systems (CPSS) and the Board of the International Organization of Securities Commissions (IOSCO). Although the BoE supervisory statement does not specifically apply to CCPs it could provide some useful implied guidance on the content of the recovery plans. Certain types of threat to the continuity of a CCP’s on-going operation are already the subject of separate obligations under both EMIR and the SI 2001/995 (see article 34 of onshored EMIR relating to business continuity policy and disaster recovery plans). See also the BoE’s operational resilience supervisory statement for CCPs from March 2021 which could again be implied across.</p>	
		FSB Guidance 2020, Part 1, p.3.	<p>RAs and CMGs should coordinate closely with the relevant supervisory and oversight authorities and any supervisory colleges for CCPs, which may perform or may have performed assessments of the adequacy of financial resources in the context of recovery planning.</p> <p>Recovery planning is addressed by the PFMI.</p>					

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					<p><i>into account all relevant interdependencies within the CCP's group.</i></p> <p><i>Recovery plans should be submitted to the competent authority who will assess the plan, taking into account numerous factors. These would then be assessed, and ultimately if any deficiencies or impediments are not adequately assessed, the authorities can compel the CCP to make changes to it or take specified actions.</i></p> <p>For further detail relating to the requirements for recovery plans, including procedural rules, competent authority and RA powers, assumptions, governance frameworks and assessment of recovery plans, please see Article 9 and 10 EU CCP R&R. Article 11 also defines the coordination procedure for recovery plans.</p>		We would be happy to undertake further analysis if that would be of interest.	
Resolution planning								
4.	Resolution plans and CCP's duties	<p>FSB Guidance 2017, 7.1-7.5 and 7.7, pp.14 and 16.</p> <p>FSB Key Attributes 11.1-11.4, 11.6-11.8; Appendix II FMI Annex 1, 11.</p>	<p>Resolution plan scope</p> <p>The RA should develop and update regularly resolution plans that address resolution scenarios with default losses and non-default losses, distinguishing between different types of non-default loss where relevant (see below for indicators relating to default and non-default scenarios).</p> <p>The resolution plan should start with the CCP's recovery plan.</p> <p>The resolution plan should also take into account the following:</p> <ol style="list-style-type: none"> the ownership, legal and organisational structure of the CCP, including whether it is part of a larger group of FMIs or other financial institutions; the availability of other CCPs that could credibly and feasibly act as a substitute for the critical functions of the CCP; the nature and diversity of the CCP's membership as well as its indirect users; and whether the CCP clears any products or classes that are subject to central clearing mandates. <p>The resolution plan should consider different scenarios and identify appropriate tools and actions to:</p> <ol style="list-style-type: none"> fully address any outstanding losses; replenish the financial resources of the CCP to a level sufficient to meet regulatory requirements and support the continued and timely operation of the critical functions of the CCP; and wind down those functions not judged to be critical for financial stability, where necessary or appropriate. 	EU CCP R&R, Articles 12 and 13.	<p>Resolution plan scope</p> <p>The RA shall, after consultation with the competent authority and in coordination with the resolution college, draw up a resolution plan for the CCP. The resolution plan shall provide for the resolution actions that the RA may take where the CCP meets the conditions for resolution. The resolution plan shall specify the different scenarios for applying the resolution tools and exercising the resolution powers. It shall clearly distinguish between failure caused by default events, non-default events, as well as between different types of non-default events.</p> <p>The resolution plan shall take into consideration at least the following:</p> <ol style="list-style-type: none"> the CCP's failure, including in situations of broader financial instability or system wide events, due to: <ol style="list-style-type: none"> default events, and non-default events; the impact that the implementation of the resolution plan would have on: <ol style="list-style-type: none"> the clearing members, their clients and indirect clients; any linked FMIs; financial markets, including trading venues, served by the CCP; and the financial system in any Member State of the EU (Member State), and in third countries where it provides services; <i>the manner and the circumstances under which a CCP may apply for the use of central bank facilities provided under standard collateralisation, tenor and interest rate terms and the identification of the assets that would be expected to qualify as collateral.</i> 		<p>Resolution plan scope</p> <p>The UK CCP R&R Proposals do not amend the existing regime and there are no live UK proposals or consultations to amend the UK legacy regimes in relation to resolution plans, which broadly work as follows:</p> <p>Section 89B of the UK Banking Act 2009 (the Banking Act) sets out the resolution regime applicable to CCPs in the UK. This is based on the resolution regime applicable to UK banks and investment firms, and section 89B(6) sets out a table of modifications that outlines the applicable regime to CCPs. Under section 89B (1ZA) of the Banking Act the amendments made to the Banking Act by the Bank Recovery and Resolution Order 2014 (the 2014 Order) do not affect the Banking Act as it applies to CCPs. This means that all references to the Banking Act are to that Banking Act as it was in force before the 2014 Order was made.</p> <p>Under section 5(4) of the Banking Act, the BoE, as the appropriate RA in respect of CCPs, is legally obliged to have regard to the HMT's the Banking Act 2009: special resolution regime code of practice December 2020 (the Code) (from page 88 sets out the relevant CCP guidance) when exercising its resolution powers in respect of CCPs. The Code provides a helpful guide and insight into how the resolution powers under the Banking Act may be used in practice. The BoE has also published 'The Bank of England's approach to resolution' in 2014, updated in October 2017 (see Part 3 for resolution planning).</p> <p>We would be happy to undertake further analysis if that would be of interest.</p>	

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			<p>For losses arising from member default, the resolution plan should also identify appropriate tools and actions to return the CCP to a matched book.</p> <p>RAs should consider the merits of disclosing some elements of the resolution plan to the CCP or to the public. They should take into account the effects of doing so on incentives of CCP clearing members, CCP owners, and market participants to participate in a CCP's default management process and recovery procedures.</p>		<p><u>The resolution plan should not assume: (a) extraordinary public financial support; (b) central bank emergency liquidity assistance; or (c) central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms. The resolution plan shall make prudent assumptions regarding the financial resources available as resolution tools required to achieve the resolution objectives and the resources that are expected to be available in accordance with the CCP's rules and arrangements at the time of entering into resolution.</u></p> <p><u>The RA shall review resolution plans and update them, at least annually or if material changes occur to the CCP's legal or organisational structure, its business or financial situation.</u></p> <p>Article 13 mandates that a CCP must cooperate as necessary in drawing up resolution plans and provide RAs with all the necessary information to draw up and implement those plans. Article 14 outlines the coordination procedure for resolution plans. Annex I Section B outlines the information that RAs may request CCPs to provide to draw up and maintain resolution plans.</p>			
		FSB Guidance 2020, Overview and Part 1 pp.2-3.	<p>As part of resolution planning, RAs should assess the adequacy of existing resources and tools and the potential financial stability implications of their use.</p> <p>The RA should evaluate the feasibility and credibility of the resolution plan in coordination with the CCP's oversight and/or supervisory authorities. For a CCPs that is systemically important in more than one jurisdiction (SI>1 CCP), the RA should discuss the resolution plan and resolvability assessment within the CMG.</p> <p>The RA should assess regularly, as part of its resolution planning, what financial resources and tools can reasonably be expected to be available to it at the time of a CCP's entry into resolution and the CCP's rules and arrangements. Further, it should assess whether those resources and tools would be sufficient to achieve the resolution objectives in the case of both default and non-default losses and a combination of both.</p> <p>To further the objectives of the FSB Guidance 2017, the FSB Guidance 2020 sets out a five-step process for assessing the adequacy of financial resources and tools available to support the resolution of a CCP:</p> <ul style="list-style-type: none"> • Step 1: identifying hypothetical default and non-default loss scenarios (and a combination of them) that may lead to resolution; • Step 2: conducting a qualitative and quantitative evaluation of existing resources and tools available in resolution; • Step 3: assessing potential resolution costs; • Step 4: comparing existing resources and tools to resolution costs and identifying any gaps; and • Step 5: evaluating the availability, costs and benefits of potential means of addressing any identified gaps. <p>Resolution indicators for default and non-default scenarios See below.</p>					
		FSB Guidance 2017, 7.5-	<p>Resolution plan content</p> <p>The resolution plan should include a description of the following aspects:</p>	EU CCP R&R, Article 12.	<p>Resolution plan content</p> <p>The resolution plan shall include the following:</p> <ol style="list-style-type: none"> <u>a summary of the key elements of the plan;</u> 		<p>Resolution plan content</p> <p>The UK CCP R&R Proposals do not amend the existing regime and there are no live UK proposals or consultations to amend the UK legacy regimes in</p>	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
		7.6, pp.14 to 16.	<ul style="list-style-type: none"> i. the decision-making process for triggering resolution including indicators to take into account when deciding whether to put the CCP into resolution. In the case of non-default losses, it should show the different sources of losses and the speed with which such losses can crystallise; ii. the critical services and functions that are likely to be continued in resolution; iii. in the case of a member default, the tool(s) that the RA would expect to use to return to a matched book and the arrangements for allocating the financial losses from those measures; iv. the general approach the RA would expect to follow in determining the scope and price of any tear up of cleared contracts; v. to the extent that the RA would need to depart from the CCP's rules and arrangements, the general approach and different plans for each scenario the RA would expect to follow in calculating and allocating losses, including the choice and sequencing of different loss allocation tools, and how the RA would apply the NCWO safeguard and assess losses under the counterfactual; vi. the RA's general expectations as to how and in what time frame the financial resources of the CCP, i.e. default fund and regulatory capital including own contributions to default funds, would be replenished; vii. any ancillary actions that the RA would generally expect to take or consider when implementing the resolution strategy, for example stays on early termination rights; viii. how the plan would address intra-group dependencies, interoperability arrangements and links with other FMIs; ix. how the plan would support operational continuity, including where threats to the viability of the CCP arise from an interruption or loss of critical third party services, for example arising from the failure of a Central Securities Depository (CSD); x. how the RA would address in a timely manner any need for consents or change of control or other approvals; xi. any steps necessary for the CCP to maintain the status as a Qualifying CCP; xii. the wind down of those functions judged not to be critical for financial stability, where appropriate; xiii. the approach that the RA would take to coordination with other authorities during the resolution, including the CMG; xiv. the supervisory and RAs of clearing members; and 		<ul style="list-style-type: none"> ii. <u>a summary of the material changes to the CCP that have occurred since the resolution plan was last updated;</u> iii. <u>a description of how the CCP's critical functions could be legally and economically separated from its other functions so as to ensure the continuity of its critical functions in the resolution of the CCP;</u> iv. an estimation of the timeframe for implementing each material aspect of the plan, including for replenishing the CCP's financial resources; v. a detailed description of the assessment of resolvability; vi. <u>a description of any measures to address or remove impediments to resolvability identified as a result of the assessment;</u> vii. <u>a description of the processes for determining the value and marketability of the critical functions and assets of the CCP;</u> viii. <u>a detailed description of the arrangements for ensuring that the information required by RAs is up to date and available to the RAs at all times;</u> ix. <u>an explanation as to how resolution actions could be financed;</u> x. a detailed description of the different resolution strategies that could be applied according to the different possible scenarios and their related timeframes; xi. a description of critical interdependencies between the CCP and other market participants and between the CCP and critical service providers, interoperability arrangements and links with FMIs, and ways to address those interdependencies; xii. a description of critical intra-group interdependencies and ways to address them; xiii. <u>a description of the different options to ensure:</u> <ul style="list-style-type: none"> a. <u>access to payments and clearing services and other infrastructures;</u> b. <u>timely settlement of obligations due to clearing members and their clients and any linked FMIs;</u> c. <u>access of clearing members, and their clients on a transparent and non-discriminatory basis to securities or cash accounts provided by the CCP and securities or cash collateral posted to and held by the CCP owed to such participants;</u> d. continuity in the operations of links between the CCP and other FMIs and between the CCP and trading venues; e. <u>preservation of the portability of positions and related assets of direct and indirect clients; and</u> f. preservation of the licenses, authorisations, recognitions and legal designations of a CCP where necessary for the continued performance of the CCP's critical functions; xiv. <u>a description of how the RA will obtain the information to perform a valuation;</u> 		relation to resolution plans. See above for further details.	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
			<p>xv. in jurisdictions where temporary funding arrangements are available, the conditions and processes for considering the provision of temporary public funding in resolution for the CCP and arrangements for recovering these funds.</p>		<p>xv. <u>an analysis of the impact of the plan and associated costs on the employees of the CCP;</u> xvi. <u>a plan for communicating with the media and the public;</u> xvii. a description of essential operations and systems for maintaining the continuous functioning of the CCP's operational processes; xviii. <u>a description of the arrangements for notifying the resolution college;</u> xix. <u>a description of the measures to facilitate the portability of positions and related assets of the clearing members and clients of the defaulting CCP from the defaulting CCP to another CCP or a bridge CCP while not affecting the contractual relationships between the clearing members and their clients.</u></p>			
		<p>FSB Guidance 2017, 3.4-3.8, pp.7-8.</p>	<p>Resolution indicators Default losses In the case of default losses, potential indicators of circumstances that could lead to a determination to trigger resolution might include that:</p> <ul style="list-style-type: none"> i. the CCP is or will likely be unable to return to a matched book, or can only do so by actions that would require resources in excess of its available prefunded and committed financial resources, compromise financial stability or by actions that create significant, unpredictable exposures for the CCP's participants; ii. the CCP is or is likely to be unable to cover losses, or exhausts or is likely to exhaust its loss allocation tools and arrangements or can only cover losses with actions that would create significant, unpredictable losses for the CCP's participants; iii. the CCP is unable or likely to be unable to replenish its financial resources within a reasonable time frame to a level that can deliver continuity of critical functions and meet regulatory compliance; iv. the CCP's participants are unwilling or unable to participate fully in recovery; or v. the management of the CCP is not implementing in a timely manner the default management processes or recovery actions creating material risk to the continuity of the critical functions. <p>Non-default losses In the case of non-default losses, potential indicators of circumstances that could lead to a determination to trigger resolution might include that, in the judgement of the relevant authorities:</p> <ul style="list-style-type: none"> i. the CCP's capital is or will likely be exhausted or severely depleted below regulatory requirements, notwithstanding any loss allocation rules and arrangements for the type of 	<p>EU CCP R&R, Article 22.</p>	<p>Resolution indicators See the conditions under which resolution action in relation to a CCP may be taken above. See also the circumstances above where a CCP shall be deemed to be failing or likely to fail where one or more of the following circumstances apply part of the Resolution conditions above. These are repeated below:</p> <p>A CCP shall be deemed to be failing or likely to fail where one or more of the following circumstances apply:</p> <ul style="list-style-type: none"> i. the CCP infringes, or is likely to infringe, its authorisation requirements that would justify the withdrawal of its authorisation under <i>EMIR</i>; ii. the CCP is unable, or is likely to be unable, to provide a critical function; iii. the CCP is unable, or is likely to be unable, to restore its viability through the its recovery measures; iv. the CCP is unable, or is likely to be unable, to pay its debts or other liabilities as due; v. the CCP requires extraordinary public financial support (further defined in Article 22 but not summarised below). <p>The RA may also take a resolution action where it considers that the CCP has applied or intends to apply recovery measures which could prevent the CCP's failure but cause significant adverse effects to the financial system of the EU or its Member States.</p>		<p>Resolution indicators See the conditions under which resolution action in relation to a CCP may be taken above.</p>	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
			<p>loss, and the current CCP owners are unwilling or unable to recapitalise;</p> <p>ii. the CCP can only cover losses with actions that would create significant, unpredictable losses for the CCP’s participants; or</p> <p>iii. the CCP fails or is expected to fail to comply with other regulatory requirements for authorisation on a continuing basis and such failure or expected failure threatens financial stability, and cannot be addressed by supervisory actions.</p>					
		FSB Guidance 2020, 1.1 and 1.2, pp.4-6.	<p>Default losses</p> <p>As loss allocation arrangements for default losses might fail and an orderly wind-down of the service may not be appropriate, leading to resolution, the RA should consider in its resolution planning at least the following hypothetical default loss scenarios:</p> <p>i. The CCP does not have sufficient resources and tools for a successful recovery as called for by the CPSS-IOSCO Principles for financial market infrastructure (PFMI).</p> <p>ii. The CCP’s loss allocation arrangements set out in the recovery plan do not operate as intended.</p> <p>iii. Multiple clearing members do not meet their obligations under the CCP’s recovery actions.</p> <p>iv. The relevant authorities determine that resolution should be initiated before some of the arrangements or tools under the CCP’s recovery plan are applied.</p> <p>Non-default losses</p> <p>The RA should consider in its resolution planning the following hypothetical non-default loss risks, taking into account the loss allocation arrangements for each type of risk under the CCP’s rules:</p> <ul style="list-style-type: none"> Investment risks i.e. if an investment counterparty fails. Failure of a custodian, depository, a payment or settlement bank, a securities settlement system or other entity providing services. Operational risk events, such as human error, information technology failure, fraud, cyber incident, or non-performance of vendors or service providers. A CCP can incur operational losses directly (primary losses) or due to the legal actions taken by others affected by the event (secondary losses). Legal risks, including legal, regulatory or contractual penalties which can take a long time to materialise fully. <p>To prepare, the RA should consider in resolution planning the following hypothetical non-default loss scenarios:</p> <p>i. The CCP does not have sufficient financial resources or tools to cover non-default losses.</p>					

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
			<ul style="list-style-type: none"> ii. The CCP's arrangements to cover (specific) non-default losses set out in the recovery plan cannot be used or do not operate as intended. iii. The CCP's clearing members do not meet their obligations under the CCP's recovery actions. iv. The CCP's shareholders or parent companies do not support the CCP's recovery actions and will not recapitalise irrespective of their contractual commitments. v. The RAs determine that resolution should be initiated before some of the recovery arrangements or tools are applied or the CCP is wound down. 					
		FSB Guidance 2020, Part 6, pp.18-19.	<p>Addressing the treatment of CCP equity in resolution plans</p> <p>When the RA develops resolution plans and strategies, it should fully understand for each default and non-default loss scenario:</p> <ul style="list-style-type: none"> • the treatment of equity under existing recovery arrangements, taking into account the ownership structure of the CCP; • the extent to which equity would be exposed to losses in liquidation under the applicable insolvency regime, based on the treatment received under the counterfactual; and • the 'no creditor worse off than in liquidation' (NCWO) safeguard, including the treatment of equity in liquidation. <p>When the RA develops resolution plans and strategies, it should also consider at least the following:</p> <ul style="list-style-type: none"> • the point in time or the position in the default waterfall for equity to bear losses; • potential challenges and constraints to CCP equity bearing losses in resolution in excess of the amounts contemplated by the CCP's rules or other contractual loss allocation arrangements; and • any other factors that may affect its assessment of whether the treatment of CCP equity in resolution is appropriate and consistent with the FSB Key Attributes, FMI Annex and the FSB Guidance 2017. <p>Mechanisms for adjusting the treatment of CCP equity in resolution</p> <p>As part of its resolution planning, an RA should consider and incorporate in the resolution strategy possible mechanisms for adjusting the exposure of CCP equity to losses in resolution to achieve the treatment of CCP equity set out in the FSB Key Attributes, FMI Annex and the FSB Guidance 2017 and to provide adequate resources for an orderly resolution.</p>	EU CCP R&R, Recital 96.	<p>Addressing the treatment of CCP equity in resolution plans</p> <p>Consistently with the internationally agreed principles for effective resolution regimes for financial institutions developed by the FSB, the EU CCP R&R should ensure that equity holders of a CCP absorb losses first in resolution in a way that minimises the risk of legal challenge by equity holders, on the basis that their losses in resolution are greater than the losses that they would have incurred under normal insolvency proceedings according to the 'no creditor worse off' principle.</p> <p>The EU CCP R&R notes that on 15 November 2018, the FSB published a consultation paper entitled 'Financial resources to support CCP resolution and the treatment of CCP equity in resolution' and that based on the feedback received to that paper and further assessments, the FSB plans to issue guidance at the end of 2020 on how equity should be used in the event of resolution of CCPs in a manner that minimises the risk of legal challenge by equity holders resulting from the application of the 'no creditor worse off' principle.</p> <p><i>Following the publication of that guidance, the European Commission should review the application of the rules laid down in the EU CCP R&R with regard to the write-down of equity in resolution by taking into account those internationally agreed standards.</i></p> <p><i>In addition to this specific review, the European Commission should review the application of the EU CCP R&R after five years from the date of its entry into force, inter alia, by taking into account any further international developments. That general review should cover at least certain core matters related to the recovery and resolution of CCPs, such as financial resources available to resolution authorities to cover non-default losses and the CCPs' own resources to be used in recovery and resolution.</i></p>		N/A	
Resolvability assessments and addressing impediments to resolvability								
5.	Resolvability assessments and	FSB Guidance	Resolvability assessments	EU CCP R&R,	Resolvability assessments	UK CCP R&R	Resolvability assessments	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
	impediments to resolvability	2017, 8.1, 8.2 and 9.1. FSB Key Attributes 10.1-10.5, 11.1-11.4, 11.6-11.8; Appendix II FMI Annex 1, 10, 11. FSB Guidance 2020, Overview, Part 1, p.3.	As part of the resolvability assessments, RAs should, in coordination with the CCP's oversight or supervisory authorities, carry out periodic crisis management exercises and assess the adequacy of financial resources and of any funding arrangements and accordingly adopt measures to improve the resolvability of the CCP and adjust the resolution plans, where necessary. For CCPs that are systemically important in more than one jurisdiction, the home RA should establish a CMG to coordinate the resolution planning and resolvability assessments. The RA should conduct regular resolvability assessments to evaluate the feasibility and credibility of the resolution plan in coordination with the CCP's oversight and/or supervisory authorities. For a SI>1 CCP, the RA should discuss the resolution plan and resolvability assessment within the CMG.	Articles 15-17.	The RA, in coordination with the resolution college, and after consultation with the competent authority, <u>shall assess the extent to which a CCP is resolvable without assuming: (a) extraordinary public financial support; (b) central bank emergency liquidity assistance; (c) central bank liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.</u> <u>A CCP shall be deemed resolvable where the RA considers it feasible and credible to either liquidate it under normal insolvency proceedings or to resolve it applying the resolution tools and exercising the resolution powers while ensuring the continuity of the CCP's critical functions and avoiding any use of extraordinary public financial support and, to the maximum extent possible, any significant adverse effect on the financial system and the potential for undue disadvantage to affected stakeholders. These adverse effects include broader financial instability or system wide events in any Member State.</u> <u>Upon request by the RA, a CCP shall demonstrate that:</u> i. <u>there are no impediments to the reduction of the value of instruments of ownership following the exercise of resolution powers, regardless of whether outstanding contractual arrangements or other measures in the CCP's recovery plan have been fully exhausted; and</u> ii. <u>the contracts of the CCP with clearing members or third parties do not enable them to successfully challenge the exercise of resolution powers by an RA or otherwise avoid being subject to powers.</u> Article 17 addresses the coordination procedure to address or remove impediments to resolvability. Annex 1 Section C includes matters that the RA is to consider when assessing the resolvability of a CCP.	Proposals, A3-A5, p.12.	Under the proposed regime, the BoE would have a statutory power to require a CCP to remove material impediments to resolvability. Such impediments might be in relation to the CCP's existing rules and arrangements, or their operational, structural and legal frameworks, which could be considered a potential threat to the successful execution of a CCP's resolution. <u>The proposed regime does not expressly refer to assessments to determine resolvability, although it does follow that if there is a power to remove impediments there would necessarily be an assessment.</u>	
		FSB Guidance 2017, 8.1, and 8.2, pp.16-17.	Resolvability impediment removal The oversight, supervisory or RAs for CCPs should have powers to require a CCP to adopt measures to improve its resolvability including, where necessary and appropriate: i. changes to the rules and arrangements of the CCP, including changes to delivery, segregation or portability arrangements of participants' positions or related collateral; ii. operational, structural or legal changes, for example so that different CCP functions or services, such as the clearing of different products, can be dealt with separately in resolution; iii. changes to the terms or operation of its links with other FMIs. In requiring any such measures the RA should take account of the likely effects of such changes on the soundness of operations of the CCP, including its risk management, the functioning of markets, the provision of	EU CCP R&R, Articles 15-17.	Resolvability impediment removal Where, following the assessment, the RA, in coordination with the resolution college, concludes that there are material impediments to the resolvability of a CCP, <u>the RA shall prepare and submit a report to the CCP which analyses the material impediments</u> , considers their impact on the business model of the CCP <u>and recommends targeted measures to remove those impediments.</u> <u>Within four months of the report, the CCP shall propose to the RA possible measures to address or remove the material impediments.</u> The RA and resolution college shall assess whether those measures effectively address or remove those impediments. <u>Where the RA concludes that the measures proposed by a CCP would not effectively reduce or remove the impediments, the RA shall identify 'alternative measures' which it shall communicate to the resolution college for joint decision. The RA shall notify the CCP in writing of the alternative measures. The RA shall justify why the measures proposed by the CCP would not be able to remove the</u>		Resolution impediment removal The UK CCP R&R Proposals does not address this topic and there are no live UK proposals or consultations to amend the UK legacy regimes in relation to resolvability impediment removal. See for example, Chapter 2 of the Banking Act relating to removal of impediments to the exercise of stabilisation powers and the relevant safeguards that apply (as modified by section 89B(6) of the Banking Act). We would be happy to undertake further analysis if that would be of interest.	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
			<p>liquidity, and the incentives of direct and indirect participants to use the CCP.</p>		<p><u>material impediments to resolvability and how the alternative measures would be effective in doing so.</u></p> <p><u>The alternative measures shall take into account the following:</u></p> <ul style="list-style-type: none"> i. <u>the threat to financial stability of those material impediments to the resolvability of a CCP;</u> ii. <u>the likely effect of the alternative measures on:</u> <ul style="list-style-type: none"> a. <u>the CCP, including its business model and operational efficiency;</u> b. <u>its clearing members, and to the extent the information is available, their clients and indirect clients, including where they have been designated as other systemically important institutions (O-SIIs);</u> c. <u>any linked FMIs;</u> d. <u>financial markets, including trading venues it serves;</u> e. <u>the financial system in any Member State or the EU;</u> <u>and</u> f. <u>the internal market; and</u> iii. <u>the effects on the provision of integrated clearing services for different products and portfolio margining across asset classes.</u> <p><u>The CCP shall propose within one month a plan to comply with the alternative measures, with a reasonable timeframe for the implementation of the plan. The RA may, after consulting the competent authority and while allowing for a reasonable timeframe for implementation:</u></p> <ul style="list-style-type: none"> i. <u>require the CCP to revise or draw up service agreements to cover critical function provision;</u> ii. <u>require the CCP to limit its maximum individual and aggregate uncovered exposures;</u> iii. <u>require the CCP to make changes to how it collects and holds margins;</u> iv. <u>require the CCP to make changes to its default funds;</u> v. <u>impose on the CCP specific or regular additional information requirements;</u> vi. <u>require the CCP to divest specific assets;</u> vii. <u>require the CCP to limit or cease specific existing or proposed activities;</u> viii. <u>require the CCP to make changes to its recovery plan, operating rules and other contractual arrangements;</u> ix. <u>restrict or prevent the development of business lines or provision of new/existing services;</u> x. <u>require changes to legal or operational structures of the CCP or any group entity directly or indirectly under its control to ensure that critical functions may be legally and operationally separated;</u> xi. <u>require the CCP to operationally and financially segregate its different clearing services to isolate some specific asset classes and to restrict netting sets covering different asset classes;</u> 			

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
					xii. <u>require the CCP to set up a parent undertaking in the EU;</u> xiii. <u>require the CCP to issue liabilities that can be written down and converted or to set aside other financial resources to increase the capacity for loss absorption, recapitalisation and the replenishment of pre-funded resources;</u> xiv. <u>require the CCP to take other steps to enable capital, other liabilities and contracts to be able to absorb losses, to recapitalise the CCP or to replenish pre-funded resources, including attempting to renegotiate any liability the CCP has issued or to revise contractual terms, to ensure that any decision of the RA to write down, convert or restructure that liability, instrument or contract would be effected under the law of that jurisdiction;</u> xv. <u>where the CCP is a subsidiary, coordinate with relevant authorities to require the parent undertaking to set up a separate holding company to control the CCP, to facilitate the resolution of the CCP and to avoid the adverse effects that the application of the resolution tools and powers could have on group entities;</u> xvi. <u>restrict or prohibit interoperability links of the CCP where such a restriction or prohibition is necessary in order to avoid adverse effects on the achievement of resolution objectives.</u>			
Early intervention measures								
6.	Early intervention measures	FSB Guidance 2017, 3.1, p.7. FSB Key Attributes 3.1; Appendix II FMI Annex 1, 4.1, 4.4.	<p>Early intervention Note that there is no direct mention of ‘early intervention’ in the FSB Guidance 2017.</p> <p>The FSB Guidance 2017 does, however, note that 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</p> <p>Resolution plans and CCP’s duties See above.</p> <p>Assessment of resolvability and impediments to resolvability See above.</p>	EU CCP R&R, Article 18.	<p>Early intervention Where a CCP infringes, or is likely to infringe in the near future, the capital and prudential requirements, or poses a risk to financial stability in the EU or in its Member States, or <u>where the competent authority has determined that there are other indications of an emerging crisis situation that could affect the operations of the CCP</u>, in particular, its ability to provide clearing services, <u>the competent authority may:</u></p> <ul style="list-style-type: none"> i. <u>require the CCP to update the recovery plan, where the circumstances that required early intervention are different from the assumptions set out in the initial recovery plan;</u> ii. <u>require the CCP to implement one or more of the arrangements or measures set out in the recovery plan within a specific timeframe;</u> iii. <u>require the CCP to identify the causes of the infringement or likely infringement and draw up an action programme;</u> iv. <u>require the CCP to convene a meeting of its shareholders or, if the CCP fails to comply with that requirement, convene the meeting itself;</u> v. <u>require one or more members of the board or senior management to be removed or replaced where found unfit to perform their duties;</u> vi. <u>require changes to the business strategy of the CCP;</u> vii. <u>require changes to the CCP’s legal or operational structures;</u> 	UK CCP R&R Proposals, 2.4 and A16, pp.7 and 14.	<p>Early intervention The UK CCP R&R Proposals do not amend the existing regime and there are no live UK proposals or consultations to amend the UK legacy regimes in relation to early intervention. We would be happy to undertake further analysis if that would be of interest.</p>	
		FSB Guidance 2020, 1.1, p.4.	To prepare for possible CCP failure, the RA should consider in its resolution planning at least the hypothetical default loss scenario that the RAs determine that resolution should be initiated before some of the arrangements or tools under the CCP’s recovery plan are applied. In this scenario, the RAs have determined that applying recovery arrangements or tools in the prevailing					

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
			<p>market conditions may threaten financial stability and/or the continuity of critical functions.</p> <p>Resolution indicators for default and non-default scenarios See above.</p>		<p>viii. <u>provide the RA with all the information necessary to update the CCP's resolution plan to prepare for the possible resolution of the CCP and the valuation of its assets and liabilities</u>, including any information acquired through on-site inspections;</p> <p>ix. require the implementation of the CCP's recovery measures;</p> <p>x. <u>require the CCP to abstain from the implementation of certain recovery measures</u> determined to possibly have an adverse effect on financial stability in the EU or its Member States;</p> <p>xi. <u>require the CCP to replenish its financial resources</u> in a timely manner to comply or maintain compliance with its capital and prudential requirements;</p> <p>xii. <u>require the CCP to instruct clearing members to invite their clients to participate directly in auctions organised by the CCP when the nature of the auction justifies this exceptional participation</u>. Clearing members shall inform their clients comprehensively about the auction following the instructions received from the CCP.</p> <p>xiii. <u>restrict or prohibit any remuneration of equity and instruments treated as equity to the fullest extent possible without triggering an event of default</u>, including dividend payments and buybacks by the CCP, and it may restrict, prohibit or freeze any payments of variable remuneration, discretionary pension benefits or severance packages to senior management.</p> <p><u>The competent authority shall only apply the measures above after taking account of their impact in other Member States where the CCP operates or provides services</u> and after informing the relevant competent authorities, in particular where the CCP's operations are critical or important for local financial markets.</p> <p>The competent authority shall apply the measure in point (ix) only where that measure is in the public interest and is necessary to achieve any of the following objectives:</p> <ol style="list-style-type: none"> i. to maintain the financial stability in the EU or in its Member States; ii. to maintain the continuity of the critical functions of the CCP and access to critical functions on a transparent and non-discriminatory basis; iii. to maintain or restore the financial resilience of the CCP. <p>The competent authority shall not apply the measure in (ix) in relation to measures involving transfer of property, rights or liabilities of another CCP.</p> <p><u>Where a CCP uses contributions to the default fund of the non-defaulting clearing members, it shall inform the competent authority and the RA without undue delay and</u></p>			

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
					<i>explain whether that event reflects weaknesses or problems of that CCP.</i> Further procedural rules are contained in Article 18 in relation to notifications.			
		FSB Key Attributes, Appendix II FMI Annex 1, 3.1-3.2, 3.1-3.2.	Lockdown or deferral period on the payment of dividends, buybacks or variable remuneration Note the FSB Guidance 2017 and the FSB Guidance 2020 does not directly address this point. In relation to recovery plans, the FSB Key Attributes notes that firms should identify possible recovery measures and the necessary steps and time needed to implement such measures and assess the associated risks. The range of possible recovery measures should include actions to strengthen the capital situation, for example, recapitalisations after extraordinary losses, capital conservation measures such as suspension of dividends and payments of variable remuneration.	EU CCP R&R, Articles 9 and 18.	Lockdown or deferral period on the payment of dividends, buybacks or variable remuneration <i>When a CCP intends to activate its recovery plan and has informed the competent authority, the competent authority shall restrict or prohibit any remuneration of equity and instruments treated as equity, including dividend payments and buybacks by the CCP to the fullest extent possible without triggering an event of default and it may restrict or prohibit any payments of variable remuneration discretionary pension benefits or severance packages to senior management.</i>	UK CCP R&R Proposals, 2.4 and A13-A16, pp.7 and 14.	Lockdown or deferral period on the payment of dividends, buybacks or variable remuneration <i>Further to the COVID-19 statement from the BoE to CCPs in early 2020, this proposal would introduce the power for the BoE to temporarily restrict, freeze or prohibit any remuneration of equity or instruments treated as equity (including dividend payments and buybacks by the CCP) and restrict, freeze or prohibit any payments of variable remuneration, in severe circumstances, including if there is a rapid deterioration in the financial situation of the CCP and it was therefore at risk of failing.</i>	
			N/A	EU CCP R&R, Articles 9 and 18.	Lockdown or deferral period on the payment of dividends, buybacks or variable remuneration Timing <i>Where a CCP infringes, or is likely to infringe in the near future, its capital and prudential requirements or poses a risk to financial stability in the EU or its Member States, or where the competent authority has determined that there are other indications of an emerging crisis situation that could affect the operations of the CCP, in particular, its ability to provide clearing services, the competent authority may:</i> <ul style="list-style-type: none"><i>restrict or prohibit any remuneration of equity and instruments treated as equity to the fullest extent possible without triggering an event of default, including dividend payments and buybacks by the CCP, and it may restrict, prohibit or freeze any payments of variable remuneration as defined by the CCP's remuneration policy, discretionary pension benefits or severance packages to senior management.</i>	UK CCP R&R Proposals, 2.4 and A13-A16, pp.7 and 14.	Lockdown or deferral period on the payment of dividends, buybacks or variable remuneration Timing <i>This power should be available as an early intervention measure, but also after a CCP has entered resolution in order to ensure that resources can be directed to compensation payments and replenishing public funds, should either be necessary.</i>	
Resolution authority (RA) resolution powers and tools								
7.	Enforcing contractual obligations	FSB Guidance 2017, 2.1 and 2.2, p.3. FSB Key Attributes 3.2; Appendix II FMI Annex 1, 4.1-4.2, 4.9.	Enforce contractual obligations There should be a presumption that the RA continues to follow the steps and processes under the CCP's rules and arrangements (including those associated with segregation and portability arrangements for client positions in the event of member default) where it intervenes before these have been exhausted, as these will be known to the CCP, its participants and the markets served by the CCP. Upon the CCP's entry into resolution, the RA should have the power to enforce any outstanding contractual rights and obligations of the CCP, including any existing and outstanding or uncalled contractual obligations of the CCP's participants to meet cash calls or make further contributions to a default fund, or any other rules and arrangements of the CCP for the allocation of both default and non-default losses (including for the repayment of	EU CCP R&R, Articles 23, 27 and 48, and Recitals 42, 50 and 51.	Enforce contractual obligations See also Article 54 (exclusion of certain contractual terms in early intervention and resolution) and Article 55 (Power to suspend certain obligations). The RA should generally enforce any existing and outstanding contractual obligations towards the CCP in line with how they would be called in its operating rules, as well as any existing and outstanding contractual obligations committing non-clearing member parties to any form of financial support. Article 48 provides the RA with general powers to apply the resolution tools effectively, including: <ul style="list-style-type: none">i. to enforce any existing and outstanding contractual obligations of the clearing members of the CCP under resolution; and		Enforce contractual obligations The UK CCP R&R Proposals do not propose a specific 'contractual obligation' framework for the UK, rather they outline various powers and safeguards which will affect contractual obligations. See below for: <ul style="list-style-type: none">Power to take control of a CCP;Power to suspend termination rights and power to suspend certain obligations; andDeviation from a CCP's rules and arrangements	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
			<p>liquidity providers) where they have not been already applied exhaustively by the CCP prior to resolution.</p> <p>FSB Guidance 2020, 2.2.3, p.11.</p> <p>In non-default scenarios, the RA should consider and understand the scope and terms of the contractual arrangements for non-default loss allocation to clearing members.</p>		<p>ii. <u>to enforce any existing and outstanding obligations of the parent undertaking of the CCP under resolution including to provide the CCP with financial support by way of guarantees or credit lines.</u></p> <p>Further, Article 23 (the general principles regarding resolution), provides that the RA shall take all appropriate measures to apply the resolution tools and powers in accordance with the following principles:</p> <p>i. all contractual obligations and other arrangements in the CCP’s recovery plan are enforced, to the extent that they have not been exhausted before resolution, unless the RA determines that to achieve the resolution objectives in a timely manner the following are more appropriate:</p> <p>a) to refrain from enforcing certain contractual obligations under the CCP’s recovery plan or otherwise deviate from it; and</p> <p>b) to apply resolution tools or exercise the resolution powers.</p> <p>Article 27 similarly states in relation to the general provisions on resolution tools that prior to the application of resolution tools such as write down and conversion, sale of business and a bridge CCP tool, the RA shall enforce any existing and outstanding rights of the CCP, including any contractual obligations by clearing members to meet recovery cash calls, to provide additional resources, or to take on positions of defaulting clearing members.</p>			
		FSB Guidance 2017, 2.1 and 2.2, p.3.	<p>Refraining from enforcing contractual rights</p> <p>If necessary to achieve the resolution objectives and avoid significant adverse effects on the financial system, the RA should be able to refrain from enforcing certain contractual rights and obligations under the CCP’s rules and arrangements or otherwise depart from the CCP’s rules and arrangements. This should be subject to explicit limits and safeguards consistent with the FSB Key Attributes, the FMI Annex, including those on forced allocation, cash calls, initial margin write down, write-downs of equity and unsecured liabilities and NCWO safeguard.</p> <p>If the RA refrains from enforcing certain contractual rights and obligations under the CCP’s rules and arrangements or otherwise departs from them, it should do so in a manner that does not discriminate on the basis of nationality (consistent with FSB Key Attribute 7.4).</p>	EU CCP R&R, Articles 23, 27 and 48.	<p>Refraining from enforcing contractual rights</p> <p>Article 48 provides for powers in relation to resolution tools where necessary to achieve the resolution objectives, for the RA to refrain from enforcing contractual obligations or deviate from the CCP’s operating rules.</p> <p><u>Article 27 similarly states that the RA may partially enforce the contractual obligations where it is not possible to enforce those contractual obligations in full within a reasonable timeframe.</u></p> <p>The RA may also refrain from enforcing the relevant existing and outstanding obligations either partially or in full to avoid significant adverse effects on the financial system or <u>widespread contagion</u>, or where the resolution tools are more appropriate to achieve the resolution objectives in a timely manner.</p> <p><u>The RA may enforce the remaining obligations within 18 months after the CCP is considered to be failing or likely to fail, provided that the reasons for refraining from enforcing those obligations no longer exist. The RA shall notify the clearing member and other party three to six months before enforcing the remaining obligation.</u> The proceeds from the enforced remaining obligations shall be used to recover the use of public funds used for the payment of NCWO claims</p>	UK CCP R&R Proposals, 2.14.	<p>Refrain from enforcing contractual obligations</p> <p>This power enables the BoE to delay enforcement of a clearing member’s obligations in resolution should such enforcement during the resolution of the CCP present a risk to financial stability. <u>The BoE would have a power to enforce outstanding obligations resulting from such a delay in enforcement at any time up to 18 months after the resolution, if at the relevant time the reasons for refraining from their enforcement no longer exist. If the BoE does not enforce an outstanding obligation within this 18-month period, the obligation will lapse at the end of it.</u></p>	

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					<p>resulting from the RA's decision to refrain from enforcing those obligations or the application of any government stabilisation tool.</p> <p><i>These requirement to meet the remaining obligations shall be included in the CCP's rules and other contractual arrangements.</i></p>			
8.	Powers to return to a matched book	<p>FSB Guidance 2017, 2.3 and 7.5, pp.4 and 14-15.</p> <p>FSB Key Attributes 2, 3 and 6.5; Appendix II FMI Annex 1, 4.3-4.4, 4.9-4.16.</p>	<p>RA approach</p> <p>The RA should have the power to restore the CCP to a matched book by soliciting voluntary actions, conducting auctions or by tearing up or otherwise terminating contracts. The resolution plan should include a description of, in the case of a member default, the tools that the RA would expect to use to return to a matched book and the arrangements for allocating the financial losses associated with these measures</p> <p>See also Partial tear-up and Resolution indicators – Default losses.</p>	EU CCP R&R, Recital 42 and 50.	<p>RA approach</p> <p>The EU CCP R&R provides for a number of powers, including tear-up, position and loss allocation tools and write down and convert unsecured liabilities. See below for further details.</p> <p>In the case of default losses, the EU CCP R&R states that the RA should restore the CCP to a matched book and allocate outstanding losses through application of position and loss allocation tools. In the case of non-default losses, losses should be absorbed by regulatory capital instruments and should be allocated to shareholders up to their capacity either through the cancellation or transfer of instruments of ownership or through severe dilution. Where those instruments are not sufficient, RA should have the power to write-down unsecured debt and liabilities, in accordance with their ranking under applicable national insolvency law, and apply loss allocation tools, to the extent necessary without jeopardising broader financial stability.</p>	UK CCP R&R Proposals, A27-A33, pp15-16.	<p>RA approach</p> <p>The UK proposals provide for a number of powers, including tear-up, position and loss allocation tools and write down and convert unsecured liabilities. See below for further details.</p> <p>The UK CCP R&R Proposals note that the ability to re-match the CCP's book is an essential component of the BoE's ability to manage a default loss scenario where the CCP is unable to independently re-match its book at a price which does not use up an unacceptable level of the loss absorbency available under its rulebook. It also notes that the preferred FSB position management tool to achieve this is a partial tear up power.</p>	
		FSB Guidance 2020, 2.1.4, p.10.	<p>RA approach</p> <p>When an RA evaluates the availability and potential use of matched book tools, it should:</p> <ol style="list-style-type: none"> understand how the tools to return the CCP to a matched book works under the CCP's rules, including when and how it can be used, their impact on participants and the governance processes around its use; evaluate constraints on the use of matched book tools in accordance with the CCP's rules, including the timing, scope and method of determining the tear up price; and understand potential impact of tear up on financial stability, continuity of critical functions, netting sets, and linked FMI. 					
9.	Partial tear up or termination of contracts	<p>FSB Guidance 2017, 2.4, p.4.</p> <p>FSB Key Attributes 3.2; Appendix II FMI Annex 1, 4.9-4.12.</p>	<p>Suitability</p> <p>Partial tear up should only be considered if market-based actions to return a CCP to a matched book (e.g. auction or direct liquidation of positions into the market) have failed, are expected to fail, or would likely result in losses that exceed the prefunded and committed financial resources that are available under the CCP's rules and arrangements to cover those losses, or would otherwise compromise financial stability.</p>	EU CCP R&R, Article 29.	<p>Suitability</p> <p><i>There is no express statement that tear up tools should only be used when market-based actions have failed.</i> The RA may 'terminate' or tear up the following CCP contracts in resolution: (a) contracts with the clearing member in default - where the transfer of assets and positions resulting from those contracts has not taken place under Art. 48(5)-(6) of EMIR relating to default procedures; (b) contracts of the affected clearing service or asset class; (c) other contracts of the CCP.</p>	UK CCP R&R Proposals, 2.8 and A.28, pp.8 and 15.	<p>Suitability</p> <p>Tear up should only be used where the CCP is unable to independently re-match its book at a price which does not use up an unacceptable level of the loss absorbency available under its rulebook.</p>	
		FSB Guidance 2017, 2.5, p.4.	<p>RA approach and timing</p> <p>The RA should establish in advance its approach to determining any contracts to be torn up.</p> <p>The RA should use tear up for the purpose of returning the</p>	EU CCP R&R, Article 29.	<p>RA approach and timing</p> <p><i>The EU CCP R&R proposal does provide some parameters for use of tear up but these are very high level.</i> The RA should terminate contracts without discriminating between members, except obligations that cannot be enforced in a reasonable</p>	UK CCP R&R Proposals, A.27-A.33,	<p>RA approach and timing</p> <p>The BoE and HMT will set out after consulting how they intend to use these powers and will establish the general approach in advance to allow industry to understand how partial tear up will be conducted and</p>	

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			<p>CCP to a matched book, not to allocate losses. This is without prejudice to the ability of the RA to allocate losses (e.g. by gains-based haircutting), where gains are the result of partial tear up.</p> <p>The RA should also regard the CCP's rules and arrangements in relation to the use of partial tear up by the CCP as part of recovery.</p>		<p>timeframe.</p> <p>The RA shall notify the clearing member of the date on which a contract is terminated. Prior to termination, the RA requires the CCP to value the contract, determine the net amount payable by or to each member, taking account any due but unpaid variation margin (VM), notify members of net amounts and require the CCP to pay or collect them. The members then must communicate the application and affect to their clients. The RA may also temporarily prevent the CCP from clearing any new contract of the same type as that terminated.</p>	pp.15 and 16.	<p><u>how it would occur in a fair, transparent and non-discriminatory manner.</u></p> <p>This power should not be used as a means of loss allocation. Rather, the contract should be cash settled at a commercially reasonable price.</p>	
		FSB Guidance 2020, 2.1.4, p.10.	<p>When a RA evaluates the availability and potential use of tear up, it should:</p> <ol style="list-style-type: none"> understand how using tear up to return the CCP to a matched book works under the CCP's rules, including when and how it can be used, how it may impact various participants and the governance processes around its use; evaluate constraints on the use of tear up in accordance with the CCP's rules, including the timing, scope and method of determining the price of tear up; and understand potential impact of tear up on financial stability, continuity of critical functions, netting sets, and linked FMI. 					
		FSB Guidance 2017, 2.5, p.4.	<p>Value and payment</p> <p>The price of the tear up should be based on a fair market price determined on the basis of the CCP's own rules and arrangements or other appropriate price discovery method.</p>	EU CCP R&R, Article 29.	<p>Value and payment</p> <p>The valuation shall be based, as far as possible, on a fair market price determined by the CCP's own rules or arrangements, unless the RA deems necessary the use of another appropriate price discovery method.</p> <p><u>Where a non-defaulting clearing member is unable to pay the net amount, the RA may require the CCP to place the non-defaulting clearing member in default and use its initial margin and default fund contribution.</u></p> <p>The European Securities and Markets Authority (ESMA) will by 12 February 2022 specify the methodology for determining the valuation.</p>	UK CCP R&R Proposals, A.29-A.33, p.16.	<p>Value and payment</p> <p>This price should reflect the 'value' of the contract which would incorporate market price and market instability. This should be a 'commercially reasonable price' and will be determined by the CCP to minimise risk that partial tear-up would be inconsistent with netting and accounting standards for cleared positions.</p>	
10.	Full tear up or termination of contracts	<p>FSB Guidance 2017, 2.6, p.4.</p> <p>FSB Key Attributes 3.2; Appendix II FMI Annex 1, 4.9-4.12.</p>	<p>Suitability, RA approach, timing and value and payment</p> <p>Full tear up of all contracts, whether in an individual clearing service or a whole CCP, should be avoided to the extent possible and only be applied if:</p> <ol style="list-style-type: none"> the clearing service or the CCP is not critical and the full tear up will not, in the opinion of the relevant authorities, have systemic consequences for the wider financial market or participants; or no other option would likely result in a better outcome for financial stability. <p>The price of the tear up should be based on a fair market price determined on the basis of the CCP's own rules and arrangements or other appropriate price discovery method, if deemed necessary by the RA.</p>	EU CCP R&R, Article 29.	<p>Suitability, RA approach, timing and value and payment</p> <p>The RA would have the power to perform a full termination of contracts, <u>there is no express statement that full tear up should be avoided or specific limitation for use outside general resolution conditions and objectives.</u></p> <p>See Partial tear up or termination of contracts above for provisions that apply, extracted below.</p> <p>The RA may 'terminate' or tear up the following CCP contracts in resolution: (a) contracts with the clearing member in default - where the transfer of assets and positions resulting from those contracts has not taken place under Art. 48(5)-(6) of EMIR relating to default procedures; (b) contracts of the affected clearing service or asset class; (c) other contracts of the CCP.</p> <p>The RA should terminate contracts without discriminating between members, except obligations that cannot be enforced in a reasonable timeframe.</p>	UK CCP R&R Proposals, A.27-A.33, pp.15 and 16.	<p>Suitability, RA approach, timing and value and payment</p> <p>Under the UK CCP R&R Proposals, the BoE would have the power to perform a full tear up of contracts.</p> <p>See Partial tear up or termination of contracts above for provisions that apply.</p> <p>Tear up should only be used where the CCP is unable to independently re-match its book at a price which does not use up an unacceptable level of the loss absorbency available under its rulebook.</p> <p>The BoE and HMT will set out after consulting how they intend to use these powers and will establish the general approach in advance to allow industry to understand how partial tear up will be conducted and <u>how it would occur in a fair, transparent and non-discriminatory manner.</u></p>	
		FSB Guidance 2020, 2.1.4, p.10.	<p>When a RA evaluates the availability and potential use of tear up, it should:</p> <ol style="list-style-type: none"> understand how using tear up to return the CCP to a matched book works under the CCP's rules, including when and how it can be used, how it 					

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
			<ul style="list-style-type: none"> may impact participants and governance processes around its use; ii. evaluate constraints on the use of tear up in accordance with the CCP's rules, including the timing, scope and method of determining price of tear up; and iii. understand potential impact of tear up on financial stability, continuity of critical functions, netting sets, and linked FMI. 		<p>The RA shall notify the clearing member of the date on which a contract is terminated. Prior to termination, the RA requires the CCP to value the contract, determine the net amount payable by or to each member, taking account any due but unpaid variation margin (VM), notify members of net amounts and require the CCP to pay or collect them. The members then must communicate the application and affect to their clients. The RA may also temporarily prevent the CCP from clearing any new contract of the same type as that terminated.</p> <p>The valuation shall be based, as far as possible, on a fair market price determined by the CCP's own rules or arrangements, unless the RA deems necessary the use of another appropriate price discovery method.</p> <p>Where a non-defaulting clearing member is unable to pay the net amount, the RA may require the CCP to place the non-defaulting clearing member in default and use its initial margin and default fund contribution.</p> <p>ESMA will by 12 February 2022 specify the methodology for determining the valuation.</p>		<p>This power should not be used as a means of loss allocation. Rather, the contract should be cash settled at a commercially reasonable price.</p> <p>This price should reflect the 'value' of the contract which would incorporate market price and market instability. This should be a 'commercially reasonable price' and will be determined by the CCP to minimise risk that partial tear-up would be inconsistent with netting and accounting standards for cleared positions.</p>	
11.	Forced allocation, position and loss allocation	<p>FSB Guidance 2017, 2.7, pp.4-5.</p> <p>FSB Key Attributes 3.2, 6.4; Appendix II FMI Annex 1, 4.1-4.3, 4.4, 4.9, 4.11 4.18 and 11.6, 12.1.</p> <p>FSB Guidance 2020, 2.2.3 and 2.2.4, p.11.</p>	<p>Forced allocation</p> <p>An RA should only impose a forced allocation of open contracts where it has an explicit power, under the legal framework or the CCP rules and arrangements, to do so. Even in such a case, the RA should only use this tool where no other option would likely result in a better outcome for financial stability.</p> <p>Allocation of losses in non-default scenarios</p> <p>When an RA evaluates the allocation of losses to clearing members, it should:</p> <ul style="list-style-type: none"> i. Understand the scope and terms of any contractual arrangements for allocating non-default losses to clearing members; ii. Consider the effect of any financial caps or legal or operational constraints for allocating non-default losses to clearing members, and how any caps compare to possible non-default loss amounts; iii. Evaluate the risk of clearing members failing to meet calls and mitigants to this; and iv. Analyse the potential impact on affected clearing members and, to the extent feasible, their clients, 	EU CCP R&R, Article 28.	<p>Position allocation and loss allocation tools</p> <p>In the EU CCP R&R, the <i>RA's position allocation tool applies to termination of contracts (full or partial tear up) and the RA's loss allocation tools are the reduction of the value of any gains payable by the CCP to non-defaulting clearing members (i.e. VMGH) and resolution cash calls</i>. These tools are described in more details above and below. <i>There is no express limitation that such tools should only be used if there is no other option for a better outcome for financial stability.</i></p> <p>RAs shall apply the tools in respect of contracts relating to clearing services and the collateral related to those services posted to the CCP.</p> <p>RAs shall apply the position allocation tool for full or partial tear up to rematch the book of the CCP or bridge CCP where relevant.</p> <p><i>RAs shall apply the loss allocation tools (VMGH and resolution cash call) for any of the following purposes:</i></p> <ul style="list-style-type: none"> i. <i>to cover the losses of the CCP;</i> ii. <i>to restore the ability of the CCP to meet payment obligations as fall due;</i> iii. <i>to achieve those outcomes in relation to a bridge CCP;</i> iv. <i>to support the transfer of the CCP's business by way of the sale of business tool to a solvent third party.</i> <p><i>The VMGH loss allocation tool may be applied by the RAs in relation to losses arising from a default event and in relation to losses arising from a non-default event. If this loss</i></p>	UK CCP R&R Proposals, 2.15 and A86, pp.10 and 24.	<p>Loss allocation</p> <p>The UK CCP R&R Proposals introduce a power enabling the BoE to use statutory loss allocation tools (VMGH, cash calls and write down powers) to replenish the CCP's resources to the level necessary to meet its statutory obligations, in addition to absorbing losses, within the constraints of the NCWO safeguard. <i>There is no express limitation that such tools should only be used if there is no other option for a better outcome for financial stability.</i></p> <p>Partial tear up power would not be used as a means of loss allocation.</p> <p>For more detail, see VMGH, statutory cash calls and write down and conversion below.</p>	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
			<p>and the extent to which this could raise financial stability concerns.</p> <p>When an RA evaluates the allocation of losses to creditors, it should:</p> <ol style="list-style-type: none"> Consider the extent of the RA's legal powers to impose losses on the CCP's creditors; Consider the extent of the RA's legal powers to convert creditor claims into equity to recapitalise the CCP; Understand the insolvency hierarchy of the CCP's creditors, its relationship to the CCP's loss allocation arrangements, the counterfactual in case of insolvency and the identification of any types of creditors that may be difficult to apply losses to without risk to the resolution objectives; and Evaluate the application of the NCWO safeguard and the extent to which there are any concerns if losses are not allocated equally to creditors ranking pari passu with others. 		<p>allocation tool is applied in relation to losses arising from a non-default event, it shall only be applied up to a cumulative amount equivalent to the non-defaulting clearing members' contribution to the CCP's default funds and distributed among clearing members proportionally to their contributions to the default funds.</p> <p>For more detail, see partial and full tear up or termination of contracts above, and VMGH and statutory cash calls below.</p>			
12.	Variation Margin Gains haircutting (VMGH)	<p>FSB Guidance 2017, 2.10, p.5.</p> <p>FSB Key Attributes Appendix II FMI Annex 1, 4.9-4.11.</p>	<p>Power and rulebook</p> <p>The RA should have the power to reduce the value of gains payable by the CCP to non-defaulting participants i.e. the power to conduct VMGH.</p> <p>The power should, where needed, be set out in the CCP's rules and arrangements where it is relevant to the particular CCP. However, some clearing services do not operate cash settled variation margin and close-out sums in their arrangements, and therefore gains based haircutting tools may not be applicable in those scenarios.</p>	EU CCP R&R, Articles 29 and 48.	<p>Power and rulebook</p> <p>The EU legislation provides the power for the RA to conduct VMGH, called the 'reduction of the value of any gains payable by the CCP to non-defaulting clearing members' in the legislation. The EU CCP R&R provides that the RA may reduce the amount of the CCP's payment obligations to non-defaulting clearing members where those obligations arise from gains due from the CCP's processes for paying VM or a payment that has the same economic effect.</p> <p><i>A non-defaulting clearing member shall not have any claim in any subsequent proceedings against the CCP arising from the reduction in payment obligations.</i></p> <p>The CCP shall include in its rules reference to the power to reduce payment obligations in addition to any similar arrangements provided for in those rules at the recovery stage and shall ensure that contractual arrangements have been concluded to allow the RA to exercise its powers.</p> <p>Article 48 (general powers) similarly provides the RA the power to reduce, including to reduce to zero, the amount of VM due to a clearing member of a CCP under resolution.</p>	UK CCP R&R Proposals, 2.12, 2.15 and A.54-A.60, A83-A86, pp.9, 20, 23 and 24.	<p>Power and rulebook</p> <p>To help ensure there is adequate loss absorbing capacity in a default loss scenario, the proposed regime would give the BoE a power to conduct VMGH beyond the quantum and time limits specified in a CCP's rulebook. The use of VMGH by the BoE would be subject to the NCWO safeguard.</p> <p>The proposal would mandate the inclusion of the resolution VMGH power in a CCP's rulebook, although reserved to the RA, to provide a contractual hook for the enforcement of the BoE's statutory power.</p> <p><i>The quantum of resources the BoE can haircut under their statutory power should not be capped to allow the BoE the flexibility to surpass the CCP rulebook limits and provide for greater loss absorbency in resolution, subject to the NCWO safeguard.</i></p> <p>The UK CCP R&R Proposals would enable the use of VMGH, (among other sources) to generate funds to replenish the CCP's resources to the level necessary to meet its statutory obligations, and continue to provide its critical services in a timely manner.</p>	
		FSB Guidance 2017, 6.2, p.10.	<p>RA approach and timing</p> <p>For default losses, the RA should consider the following specifically for VMGH:</p> <ol style="list-style-type: none"> the risk characteristics, complexity and pricing uncertainties of the products cleared, and the related potential inaccuracy in VMGH calculations; and the availability, and potential impact on affected participants, of tools such as VMGH. 	EU CCP R&R, Article 29.	<p>RA approach and timing</p> <p><i>There are no express additional conditions to be considered in a default scenario.</i> The RA shall calculate any reduction using an <i>equitable allocation mechanism</i> (see valuation below) and <i>communicate to the clearing members as soon as the resolution tool is applied. The reduction in the value of gains payable shall be immediately binding on the CCP and affected clearing members. The members must then</i></p>	UK CCP R&R Proposals, A.59-A.60, pp.19-20.	<p>RA approach and timing</p> <p>This tool would only be available in a default loss scenario – <i>this appears to be more restrictive than the FSB position.</i> CCP rulebooks do not include VMGH for non-default loss scenarios, therefore permitting VMGH in non-default loss scenarios in resolution would introduce additional uncertainty to a non-default loss resolution event. No detailed conditions</p>	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
		FSB Guidance 2020, 2.1.3, p.9.	<p>When a RA evaluates the availability and potential use of tools for default loss scenarios, it should consider, at a minimum, the following additional points for VMGH:</p> <ol style="list-style-type: none"> understand how VMGH works under the CCP's rules, including when and how VMGH can be used, how it may impact various participants and the governance processes around the use of VMGH; evaluate constraints on the use of VMGH in accordance with the CCP's rules; and evaluate potential market and financial stability implications with using VMGH. 		<p><u>communicate the application of and affect of the tool to their clients.</u></p> <p><u>The total net gains to be reduced for each clearing member shall be proportional to the amounts due from the CCP. Where a RA reduces only in part the value of gains payable, the residual outstanding payable amount shall still be owed to the non-defaulting member.</u></p> <p>Non default losses For non-default loss, see Forced allocation, position and loss allocation above. <u>In particular, note that VMGH loss allocation tool may be applied by the RAs in relation to losses arising from a default event and in relation to losses arising from a non-default event.</u></p>		for use of VMGH are set out in the high level proposals.	
13.	Statutory cash call power in a default and non-default loss scenarios, and resolution cash calls	<p>FSB Guidance 2017, 2.8, 2.9, p.5.</p> <p>FSB Key Attributes 3.2; Appendix II FMI Annex 1, 4.9-4.12.</p>	<p>Default loss scenario</p> <p>The RA should have the power to enforce any outstanding or uncalled obligations of non-defaulting participants under the CCP's rules and arrangements to honour their commitments to the CCP, including honouring cash calls or making any other contributions to the CCP.</p> <p>Jurisdictions may confer to the RA an explicit statutory power to require non-defaulting clearing members to make contributions in cash to the CCP up to a specific limit. Any such explicit statutory power should be subject to the presumption that it would be exercised only after at least the pre-funded waterfall is exhausted (i.e. that the statutory cash call is reserved for resolution). Any statutory cash calls and the limit up to which they may be exercised by the RA should, where needed, be reflected in the CCP's rules and arrangements.</p> <p>Clearing members should be able to assess at all times the maximum amount that they may be required to contribute under any such cash calls.</p>	EU CCP R&R, Article 31, Recital 28.	<p>Default loss scenario</p> <p>The RA may require non-defaulting clearing members to make a contribution in cash to the CCP up to twice the amount equivalent to their contribution to the CCP's default fund - <u>the regime therefore provides a specific limit in line with the FSB proposal.</u> This obligation to make a contribution in cash shall also be included in the CCP's rules and other contractual arrangements as a resolution cash call reserved to the RA taking resolution action. <u>Where the RA calls for an amount in excess of the contribution to the default fund, it shall do so after assessing the impact of this tool on non-defaulting clearing members and the financial stability of Member States,</u> in cooperation with the RAs of non-defaulting clearing members. <u>The points the RA should consider before use of cash calls are less specific than those set out under the FSB proposal.</u></p> <p><u>Where the CCP operates multiple default funds and the tool is applied to address a default event, the amount of the contribution in cash shall refer to the contribution of the clearing member to the default fund of the affected clearing service or asset class.</u></p> <p>The RA may exercise the resolution cash call regardless of whether all contractual obligations requiring cash contributions from non-defaulting clearing members have been exhausted.</p> <p>The RA shall determine the amount of the cash contribution of each non-defaulting clearing member in proportion to its contribution to the default fund up to the limit.</p> <p><u>The RA may require the CCP to reimburse clearing members the possible excess amount of a resolution cash call</u> where the level of the resolution cash call applied based on a provisional valuation is found to exceed the required level.</p> <p><u>If a non-defaulting clearing member does not pay the required amount, the RA may require the CCP to place that</u></p>	UK CCP R&R Proposals, A61-A69, pp21-22.	<p>Default loss scenario</p> <p>In a resolution scenario, the BoE is constrained by the limits on the cash calls contained within the CCP's own rules and arrangements, which may not offer sufficient loss absorbency. This proposal therefore introduces a statutory power to enable the BoE to conduct a cash call in a default loss scenario. This would also be included in the CCP's rulebook but should be reserved for the RA in a resolution. <u>The points the BoE should consider before use of cash calls are less specific than those set out under the FSB proposal.</u></p> <p><u>This statutory cash call power would allow the BoE to make cash calls on clearing members in excess of the limits on the cash calls contained within the CCP's default management arrangements under the rulebook,</u> subject to the NCWO safeguard. This is consistent with the power for the BoE to deviate from a CCP's rules and arrangements.</p> <p>The quantum of this default loss cash call would be capped at two times an individual clearing member's contribution to the prefunded default fund – <u>the proposed regime therefore provides a specific limit in line with the FSB proposal.</u> This would be subject to the NCWO safeguard.</p> <p>In addition to this, a CCP generally also has the power to conduct a further voluntary cash call, before being expected to conduct a full tear up of contracts and service closure.</p>	
		FSB Guidance 2020, 2.1.1 and 5.2, pp.9 and 15.	<p>When an RA evaluates the availability and potential use of resources and tools for default loss scenarios, it should consider, at a minimum, the following additional points for cash calls:</p> <ol style="list-style-type: none"> understand how cash calls work under the CCP's rules, including when and how they can be used, how they may impact participants and governance processes for use of cash calls; evaluate constraints on the use of cash calls in accordance with the CCP's rules; determine performance risks under the CCP's rules and mitigants to non-performance; and evaluate the potential financial stability implications of cash calls, including the likelihood and impact of cash calls by a single CCP as well as concurrent cash calls by multiple CCPs that could be affected by the same event. <p>Additional cash calls</p>					

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			<p>The RA should also consider the potential implications of requiring any additional resources or tools in relation to additional cash calls, such as:</p> <ol style="list-style-type: none"> whether the RA has the power to issue additional cash calls not contemplated by the CCP's rules; if applicable, how can the possibility of additional cash calls reserved for resolution be implemented and made transparent to clearing members; what governance or control arrangements should apply to additional cash calls; how can additional cash calls be sized so they remain measureable, manageable and predictable; can there be assurance that clearing members are adequately prepared to meet additional cash calls; whether the RA should be able to apply additional cash calls for loss absorbency and recapitalisation; and whether additional cash calls would have any NCWO implications. 		<i>clearing member in default and use its initial margin and default fund contribution up to the required amount.</i>			
		FSB Guidance 2017, 2.14, p.6.	<p>Non-default loss scenario</p> <p>Jurisdictions may confer to the RA an explicit statutory power to require clearing members to make contributions in cash to the CCP up to a specific limit which may be exercised if the non-default losses are not fully absorbed by writing down the CCP's equity and by applying any other loss allocation measures available under the CCP's rules and arrangements for non-default losses.</p> <p>Any statutory cash calls, the points in time at which they may be called and the limit up to which they may be exercised by the RA should, where needed, be reflected in the CCP's rules and arrangements. Clearing members should be able to assess at all times the maximum amount that they may be required to contribute under any such cash calls.</p>	EU CCP R&R, Recital 42 and Article 31.	<p>Non-default loss scenario</p> <p>To prevent the need for the application of government stabilisation tools, the RA should also be able to use the resolution cash call following a non-default event.</p> <p>The RA may require non-defaulting clearing members to make a contribution in cash to the CCP up to twice the amount equivalent to their contribution to the CCP's default fund - <u>the regime therefore provides a specific limit in line with the FSB proposal</u>. This obligation to make a contribution in cash shall also be included in the CCP's rules and other contractual arrangements as a resolution cash call reserved to the RA taking resolution action.</p> <p>Where the CCP operates multiple default funds and the tool is applied to address a non-default event, the amount of the contribution in cash shall refer to the sum of the contributions of the clearing member to all default funds of the CCP.</p>	UK CCP R&R Proposals, A69-A71, pp21-23.	<p>Non-default loss scenario</p> <p>The proposal introduces a statutory power enabling the BoE to conduct a cash call in non-default loss scenarios. Consistent with the default loss cash call, this should also be included in the CCP's rulebook, but should be reserved for the RA in a resolution.</p> <p>This cash call would be exercisable only after the exhaustion of the CCP's equity and the application of any arrangements in the CCP's rulebook for non-default losses.</p> <p>The quantum of this cash call would be capped at three times each clearing member's prefunded contribution to the default fund - the regime <u>therefore provides a specific limit in line with the FSB proposal</u>, given that the proposal does not include a VMGH power for non-default losses, to allow clearing members to understand the maximum amount that they may be required to contribute under any such cash call. <u>The larger contribution of three times is provided for given that the proposal does not include a VMGH power for the central bank in a non-default loss scenario – a contentious power that RAs hold under the EU CCP R&R.</u></p> <p>Whilst not a mandatory power in FSB guidance, the UK CCP R&R Proposals believe would be beneficial for the BoE to have the power to conduct a cash call in a non-default loss scenario to address outstanding losses, and recapitalise the CCP, returning it to above the minimum regulatory capital threshold without relying on the use of public funds as it is less disruptive than a write down of unsecured liabilities. Use of both</p>	

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							the cash call and the write down power, as with all resolution powers, would be subject to the NCWO safeguard.	
14.	Powers for losses including power/tool to write down and convert unsecured liabilities	<p>FSB Guidance 2017, 2.13, pp.5-6.</p> <p>FSB Key Attributes 3.2, 3.5-3.6; Appendix II FMI Annex 1, 4.9.</p> <p>FSB Guidance 2020, 5.3, pp.15-16.</p>	<p>RA approach</p> <p>The RAs should have the power to write down, where appropriate, unsecured liabilities in accordance with the creditor hierarchy in insolvency and, if appropriate, convert them into equity or other instruments of ownership of the CCP or of a successor entity to absorb losses and to replenish the capital of the CCP or a successor entity. It should be able to exercise this power where:</p> <ol style="list-style-type: none"> i. non-default losses are not fully absorbed by writing down the CCP's equity, by applying any other loss allocation measures available under the CCP's rules and arrangements for non-default losses, and by applying recoveries from defaulting counterparties; and ii. where the current owners of the CCP are unwilling or unable to recapitalise the CCP to a level necessary for its continued authorisation. <p>The RA should also consider the potential implications of requiring any additional resources or tools in relation to write down / bail-in powers, such as:</p> <ol style="list-style-type: none"> i. whether a write-down or bail-in power is available to the RA; ii. whether write-down or bail-in could provide additional loss absorbing and recapitalisation capacity, and if so: <ol style="list-style-type: none"> a. what (if any) liabilities would be available for write-down or bail-in; b. what (if any) impediments to the write-down or bail-in of the identified liabilities could arise; c. what effects could bail-in have if used for recapitalisation; d. what effects write-down or bail-in could have on the CCP's collateral mix/liquidity; iii. whether non-bankruptcy remote initial margin would be available and, if so, would the RA have the power to write it down; and iv. whether there are any NCWO considerations. <p>The RA could fully or partially write down CCP equity to allocate remaining losses after default management and recovery measures have taken place. However, as the depletion of CCP equity below the minimum regulatory requirements would require the CCP to raise capital to remain a going concern, the RA should account for this in its planning.</p>	<p>EU CCP R&R, Articles 27, 32-35.</p>	<p>RA approach</p> <p>The RA shall apply the write-down and conversion tool in accordance with various procedural rules in respect of <i>instruments of ownership and debt instruments issued by the CCP under resolution</i> or other unsecured liabilities in order to absorb losses, recapitalise that CCP or a bridge CCP, or to support the application of the sale of business tool.</p> <p><i>Based on the valuation, the RA shall determine the following:</i></p> <ol style="list-style-type: none"> i. <i>the amount by which the instruments of ownership and debt instruments or other unsecured liabilities must be written down taking into account any losses that are to be absorbed by the enforcement of any outstanding obligations owed to the CCP; and</i> ii. <i>the amount by which debt instruments or other unsecured liabilities must be converted into ownership instruments to restore the capital requirements of the CCP or bridge CCP.</i> <p>Article 33 outlines the provisions governing the write-down or conversion of instruments of ownership and debt instruments or other unsecured liabilities. It specifically mandates that the RA shall apply the write-down and conversion tool in accordance with the priority of claims applicable under normal insolvency proceedings.</p> <p>Prior to reducing or converting the principal amount of debt instruments or other unsecured liabilities, the RA shall reduce the nominal amount of instruments of ownership in proportion to the losses and up to their full value, where necessary. The RA shall reduce, convert, or both, the principal amount of debt instruments or other unsecured liabilities to the extent required to achieve the resolution objectives, and up to the full value of those instruments or liabilities, where necessary.</p> <p>Article 34 outlines the effect of write down and conversion, including that the RA shall complete or require the completion of all the administrative and procedural tasks necessary to give effect to the application of the write-down and conversion tool. These include relevant registers, listings etc.</p> <p>Article 35 contains provisions relating to the removal of procedural obstacles for write-down and conversion. <i>Where this resolution tool is applied, the competent authority shall require the CCP to maintain at all times a sufficient amount of instruments of ownership to ensure that the CCP may issue sufficient new instruments of ownership and that the issuance of or conversion into instruments of ownership could be carried out effectively.</i> The RA shall apply the write-down and conversion tool regardless of any provisions in the CCP's instruments of incorporation or statutes, including with</p>	<p>UK CCP R&R Proposals, A72-A77, pp.22.</p>	<p>RA approach</p> <p>The UK CCP R&R Proposals introduces a power for the BoE to write down, and if appropriate convert, unsecured liabilities (e.g. default fund contributions) to generate additional loss absorbing capacity to execute a resolution (in particular, one resulting from a non-default loss event). The BoE does not envision using this tool in a default loss scenario, where a cash call or VMGH could more appropriately be used to achieve the same loss absorbency.</p> <p>The BoE would be able to exercise this power to absorb an outstanding loss where a non-default loss is not already fully absorbed by any of: the resolution cash call; writing down the CCP's equity; or applying any other loss allocation measures for non-default losses available under the CCP's rules and arrangements. The write down power could also be used to return the CCP to the minimum regulatory capital threshold.</p> <p><i>The proposal would introduce limits to the scope of the write down and conversion tool to ensure liabilities are not written down or converted which would be detrimental to the functioning of a CCP's operations or systems. This is also necessary to avoid giving rise to widespread contagion.</i></p>	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
					respect to pre-emption rights for shareholders or requirements for the consent of shareholders to an increase of capital.			
			N/A	EU CCP R&R, Article 33.	<p>Exclusions</p> <p><i>The RA shall not apply the write-down and conversion tool to the following liabilities:</i></p> <ul style="list-style-type: none"> i. <i>liabilities to employees, in relation to accrued salary, pension benefits or other fixed remuneration, except for any variable component of remuneration that is not regulated by a collective bargaining agreement;</i> ii. <i>liabilities to commercial or trade creditors arising from the provision to the CCP of goods or services that are critical to the daily functioning of its operations, including IT services, utilities and the rental, servicing and upkeep of premises;</i> iii. <i>liabilities to tax and social security authorities;</i> iv. <i>liabilities owed to systems or operators of systems designated according to Directive 98/26/EC, to participants if the liabilities result from participation in such systems, to other CCPs, and to central banks;</i> v. <i>initial margins.</i> 	UK CCP R&R Proposals, A78-A79, pp.22-23.	<p>Exclusions</p> <p><i>The power would be limited to prevent the BoE from being able to write down the following liabilities:</i></p> <ul style="list-style-type: none"> i. <i>liabilities to employees;</i> ii. <i>liabilities to commercial or trade creditors arising from the provision to the CCP of goods or services that are critical to the daily functioning of its operations;</i> iii. <i>liabilities to tax and social security authorities;</i> iv. <i>liabilities owed to systems or operators of systems designated to participants (e.g. settlement systems) to the extent that the liabilities result from their participation in such systems, to other CCPs and to central banks;</i> v. <i>and initial margins.</i> <p><i>Initial margins should be out of the scope of the power because writing down initial margin would leave positions uncovered, meaning open positions would either have to be reduced (e.g. through a tear up) or clearing members would have to top up the margin requirements with potential procyclical effects. Haircutting of initial margins may also present risks to netting. This would be also subject to the NCWO safeguard.</i></p>	
			N/A	EU CCP R&R, Article 33.	<p>Conditions</p> <p><i>Where the nominal amount of an instrument of ownership or the principal amount of a debt instrument or other unsecured liabilities is reduced, the following conditions shall apply:</i></p> <ul style="list-style-type: none"> i. <i>that reduction shall be permanent;</i> ii. <i>the holder of the instrument shall have no claim in connection with that reduction, except for any liability already accrued, any liability for damages that may arise as a result of an appeal challenging the legality of that reduction, any claim based on instruments of ownership issued or transferred, or any claim for payment; and</i> iii. <i>where that reduction is only partial, the agreement that created the original liability shall continue to apply in respect of the residual amount subject to any necessary amendments of the terms of that agreement due to the reduction.</i> <p><i>Where converting debt instruments or other unsecured liabilities, the RA may require the CCP to issue or to transfer instruments of ownership to the holders of the debt instruments or other unsecured liabilities.</i></p> <p><i>The RA shall only convert debt instruments or other unsecured liabilities where the following conditions are met:</i></p>		N/A	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
					<p>i. <u>the instruments of ownership are issued prior to any issuance of instruments of ownership by the CCP for the purposes of provision of own funds by the State or a government entity; and</u></p> <p>ii. <u>the conversion rate represents appropriate compensation to the affected debt holders for any loss incurred as a result of the exercise of the write-down and conversion powers, in line with their treatment under normal insolvency proceedings.</u></p> <p><u>The RA shall ensure, in the context of drawing up and maintaining the CCP's resolution plan and as part of the powers to remove impediments to the resolvability of the CCP, that the CCP is at all times able to issue the necessary number of instruments of ownership.</u></p>			
15.	Power to suspend or stay termination rights, suspend obligations and restrict enforcement of security	<p>FSB Key Attributes, I-Annex 5.</p> <p>FSB Key Attributes Appendix II FMI Annex 1, 5.1-5.2.</p>	<p>RA approach</p> <p>FSB Guidance 2017 and the FSB Guidance 2020 make no material mention on suspension of termination rights or stay of termination rights.</p> <p>The FSB Key Attributes state that subject to adequate safeguards, entry into resolution and the exercise of any resolution powers should not trigger statutory or contractual set-off rights, or constitute an event that entitles any counterparty of the firm in resolution to exercise contractual acceleration or early termination rights provided the substantive obligations under the contract continue to be performed.</p> <p>Should contractual acceleration or early termination rights nevertheless be exercisable, the RA should have the power to stay temporarily such rights where they arise by reason only of entry into resolution or in connection with the exercise of any resolution powers. The FSB Key Attributes include various other conditions attached to this stay power.</p> <p>Further, the FSB Key Attributes also note that RAs should have at their disposal powers to impose a moratorium with a suspension of payments to unsecured creditors and customers (except for payments and property transfers to CCPs and those entered into the payment, clearing and settlements systems) and a stay on creditor actions to attach assets or otherwise collect money or property from the firm, while protecting the enforcement of eligible netting and collateral agreements.</p> <p>The <u>I-Annex 5</u> to the FSB Key Attributes (4.3, for example) stipulate that, subject to adequate safeguards, entry into resolution and the exercise of any resolution powers should not constitute an event that entitles the counterparty of the firm in resolution to exercise early termination rights provided the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed. Should early termination rights nevertheless</p>	EU CCP R&R, Article 57.	<p>RA approach</p> <p>The RA may suspend the termination rights of any party to a contract with a CCP under resolution from the publication of the notice of the termination <u>until the end of the working day which follows that publication</u>, provided that the payment and delivery obligations and the provision of collateral continue to be performed. The end of the working day means midnight in the Member State of the resolution.</p> <p>The RA shall not exercise the power in relation to systems or operators of designated systems, other CCPs and central banks.</p> <p><u>A party to a contract may exercise a termination right under that contract before the end of the period outlined above where that party receives notice from the RA that the rights and liabilities covered by the contract shall not be:</u></p> <p>i. <u>transferred to another entity; or</u></p> <p>ii. <u>subject to write-down, conversion, or the application of a resolution tool to allocate losses or positions.</u></p> <p>Exclusions</p> <p><u>Where the notice has not been given, termination rights may be exercised on the expiry of the period of suspension, subject to exclusion of certain contractual terms in early intervention and resolution, as follows:</u></p> <p>i. <u>where the rights and liabilities covered by the contract have been transferred to another entity, a counterparty may exercise termination rights in accordance with the terms of that contract only if the recipient entity causes the enforcement event to occur or continue;</u></p> <p>ii. <u>where the rights and liabilities covered by the contract remain with the CCP, a counterparty may exercise termination rights in accordance with the conditions for termination as set out in the contract between the CCP and the relevant counterparty if the enforcement event occurs/continues after the expiry of a suspension.</u></p>	UK CCP R&R Proposals, 2.5, A17-A21, pp.8, 15-15.	<p>RA approach</p> <p>This proposal will give the BoE the statutory power to impose restrictions on clearing members' rights to early termination of participation that may arise as a result of a CCP being placed into resolution or the exercise of associated resolution powers, to help stabilise the clearing services offered by the CCP, and ensure the RA has access to the largest possible pool of resources for loss absorbency.</p> <p><u>The stay would be a mandatory contractual provision between CCPs and clearing members, as this strengthens the ability to enforce the requirement on a cross-border basis. This may require CCPs to update their rulebooks.</u></p> <p><u>Termination rights would only be suspended until the end of the working day which follows</u> in order to avoid increasing uncertainty and instability in the market. For the avoidance of doubt, during the operation of the stay, clearing members would still be able to 'trade out' of their positions at the CCP through normal trading activity, subject to sufficient market liquidity being available.</p> <p>The UK CCP R&R Proposals do not amend the UK legacy regimes in relation to powers to suspend or stay termination rights. In particular, under sections 22 and 38 of the Banking Act (amongst other sections), the BoE may make provision for a share or property transfer to be disregarded for the purposes of determining whether a default event right applies. We would be happy to undertake further analysis if that would be of interest.</p>	

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			<p>be exercisable, the RA should have the power to stay temporarily such rights where they arise by reason only of entry into resolution or in connection with the resolution powers and provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be performed.</p> <p>Conditions</p> <p>The I-Annex 5 also includes various conditions for the exercise of early termination rights, including:</p> <ol style="list-style-type: none"> i. the stay only applies to early termination rights that arise for reasons only of entry into resolution or in connection with the use of resolution powers (including, for example, a change in control); ii. the stay is strictly limited in time (for example, for a period not exceeding two business days); iii. the RA would only be permitted to transfer all of the eligible contracts with a particular counterparty to a new entity and would not be permitted to select for transfer individual contracts with the same counterparty and subject to the same netting agreement; iv. for contracts that are transferred to a third party or bridge institution, the acquiring entity would assume all the rights and obligations of the contracts were transferred; v. the early termination rights of the counterparty are preserved against the firm in resolution in the case of any default occurring before, during or after the period of the stay that is not related to entry into resolution or the exercise of a resolution power; vi. following a transfer of financial contracts the early termination rights of the counterparty are preserved against the acquiring entity in the case of any subsequent independent default by the acquiring entity; vii. the counterparty can exercise the right to close out immediately against the firm in resolution on expiry of the stay or earlier if the authorities inform them that the contracts will not be transferred; and viii. after the stay period, early termination rights could be exercised for those financial contracts that are not transferred to a sound firm, bridge institution or other public entity. 					

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
			<p>Power to restrict enforcement of security</p> <p>Collectively, the resolution powers would allow the RA to take the necessary action to restrict enforcement of security, although this is not explicitly included in the FSB Guidance.</p>	EU CCP R&R, Article 56.	<p>Power to restrict enforcement of security</p> <p><i>The RA may prevent secured creditors of a CCP under resolution from enforcing security interests in relation to any assets of that CCP under resolution from the publication of the notice of the restriction until the end of the working day which follows that publication.</i> The end of the working day shall mean midnight in the Member State of the RA.</p> <p><i>The RA shall not exercise this power in relation to any security interest of systems or operators of designated systems, other CCPs, and central banks over assets pledged or provided by way of margin or collateral by the CCP under resolution.</i></p>		N/A	
16.	Power to take control of a CCP	FSB Key Attributes 3.2 and 6.5; Appendix II FMI Annex 1, 7.2.	<p>Power to take control of the CCP</p> <p>Collectively, the resolution powers allow the RA to take the necessary action to have control of the CCP, although this is not explicitly referenced in either the FSB Guidance 2017 or the FSB Guidance 2020.</p> <p>The FSB Key Attributes state that RAs should have at their disposal a broad range of resolution powers, which should include powers to appoint an administrator to take control of and manage an affected firm with the objective of restoring the firm, or parts of its business, to ongoing and sustainable viability.</p>	EU CCP R&R, Articles 48 and 58.	<p>Power to take control of the CCP</p> <p>The RA shall have all the powers necessary to apply the resolution tools effectively, including <i>power to take control of a CCP under resolution and exercise all the rights and powers conferred upon holders of instruments of ownership and the CCP's board including the rights and powers under the operating rules of the CCP.</i></p> <p><i>The RA may exercise control over the CCP under resolution to:</i></p> <ol style="list-style-type: none"> <i>manage the activities and services of the CCP, exercising the powers of its shareholders and board;</i> <i>consult the risk committee;</i> <i>manage and dispose of the assets and property of the CCP under resolution.</i> <p><i>The control may be exercised directly by the RA or indirectly by a special manager appointed by the RA.</i> Where the RA exercises control over the CCP, the RA shall not be deemed to be a shadow director or de facto director under national law.</p>	UK CCP R&R Proposals, 2.6 and A22-A24.	<p>Power to take control of the CCP</p> <p>This power would <i>enable the BoE to take control of a CCP without having to rely on its existing property or share transfer powers.</i> This would allow the BoE to more easily enforce the CCP's rulebook to stabilise the CCP and ensure continuity of the critical clearing services in resolution, without the legal and operational risk of conducting a property or ownership transfer.</p>	
17.	Power to require the provision of services and facilities	FSB Key Attributes 3.2.	<p>Power to require the provision of services and facilities</p> <p>Collectively, the resolution powers allow the RA to require the provision of services and facilities, although this is not explicitly referenced in either the FSB Guidance 2017 or the FSB Guidance 2020.</p> <p>The FSB Key Attributes state that RAs should have at their disposal a broad range of resolution powers, which should include powers to ensure continuity of essential services and functions by requiring other companies in the same group to continue to provide essential services to the entity in resolution, any successor or an acquiring entity; ensuring that the residual entity in resolution can temporarily provide such services to a successor or an acquiring entity or procuring necessary services from unaffiliated third parties.</p>	EU CCP R&R, Article 51.	<p>Power to require the provision of services and facilities</p> <p>The RA <i>may require a CCP under resolution, any entity belonging to the same group as the CCP or any of the CCP's clearing members to provide any services or facilities that are necessary to enable a purchaser or bridge CCP to operate effectively the business transferred to it.</i> This shall apply regardless of whether an entity in the same group as the CCP or one of the CCP's clearing members has entered into normal insolvency proceedings or is itself under resolution. The services and facilities shall not include any form of financial support.</p> <p>The RA may enforce obligations imposed by RAs in other Member States where those powers are exercised in relation to entities belonging to the same group as the CCP under resolution, or in relation to the clearing members of that CCP.</p> <p><i>The services and facilities shall be provided:</i></p> <ol style="list-style-type: none"> <i>on the same commercial terms</i> on which they were provided to the CCP immediately before the resolution action was taken, where an agreement for 		<p>Power to require the provision of services and facilities</p> <p>Collectively, the resolution powers would allow the BoE to require the provision of services and facilities, although this is not explicitly included.</p> <p>See:</p> <ul style="list-style-type: none"> Enforcing contractual obligations; Power to take control of a CCP; Power to suspend termination rights and power to suspend certain obligations; and Deviation from a CCP's rules and arrangements. 	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
					<p>the purposes of providing those services and facilities exists; <i>or</i></p> <p>ii. <i>on reasonable commercial terms</i>, where there is no agreement for the purposes of providing those services where that agreement has expired.</p>			
18.	Other general and ancillary powers	FSB Key Attributes 3.2; Appendix II FMI Annex 1, 4-5.	<p>Other general powers</p> <p>The RA shall also have the following powers, in addition to those captured in this table:</p> <ol style="list-style-type: none"> appoint an administrator to take control of and manage the affected firm with the objective of restoring the firm, or parts of its business, to ongoing and sustainable viability; operate and resolve the firm, including powers to continue or assign contracts, purchase or sell assets and take any other action necessary to restructure or wind down the firm's operations; ensure continuity of essential services by requiring other companies in the same group to continue to provide essential services; ensuring that the residual entity can temporarily provide such services; or procuring necessary services from unaffiliated third parties; override rights of shareholders of the firm in resolution, including requirements for approval by shareholders of particular transactions, in order to permit a merger, acquisition, sale of substantial business operations, recapitalisation or other measures to restructure and dispose of the firm's business or its liabilities and assets; establish a separate asset management vehicle (e.g., as a subsidiary of the distressed firm, an entity with a separate charter, or as a trust or asset management company) and transfer to the vehicle for management and run-down non-performing loans or difficult-to-value assets; impose a moratorium with a suspension of payments to unsecured creditors and customers (except for payments and property transfers to CCPs and those entered into the payment, clearing and settlements systems) and a stay on creditor actions to attach assets or otherwise collect money or property from the firm, while protecting the enforcement of eligible netting and collateral agreements; and effect the closure and orderly wind-down of whole or part of a failing firm with payout or transfer of insured deposits and prompt access (e.g. within seven days) to transaction accounts and segregated client funds). 	EU CCP R&R, Articles 48 and 49.	<p>Other general powers</p> <p>The RA shall also have the powers:</p> <ol style="list-style-type: none"> <i>to require any person to provide the RA with any information it requires</i> to decide upon and prepare a resolution action, including updates in the resolution plan or required through on-site inspections; with regards to <i>debt instruments and other liabilities of the CCP, to amend or alter their maturity, amend the amount of interest payable, or amend the date on which interest becomes payable</i>, including by suspending payment for a temporary period; <i>to require the competent authority to assess the buyer of a qualifying holding in a timely manner</i> by way of derogation from the time-limits laid down in Article 31 of EMIR; and <i>to transfer open positions and any related assets</i>, including relevant title transfer and security financial collateral arrangements, set-off arrangements, and netting arrangements, <i>from the account of a defaulting clearing member to a non-defaulting clearing member</i> in a manner consistent with Article 48 of EMIR. <p>Ancillary powers</p> <p>Where a power is exercised, the RA may also exercise any of the following ancillary powers:</p> <ol style="list-style-type: none"> subject to the protection of security arrangements, <i>to provide for a transfer to take effect free from any liability or encumbrance affecting the financial instruments, rights, obligations, assets or liabilities</i>; <i>to remove rights to acquire further instruments of ownership</i>; <i>to require the relevant authority to discontinue or suspend the admission to trading on a regulated market, or the official listing, of any financial instruments issued by the CCP</i>; <i>to require the CCP</i> under resolution or the purchaser or bridge CCP, where relevant, <i>to provide the other with information and assistance</i>; <i>to cancel or modify the terms of a contract</i> to which the CCP under resolution is a party or substitute the purchaser or bridge CCP, in place of the CCP under resolution, as a party; <i>to transfer the membership of a clearing member from the CCP under resolution to a purchaser of the CCP or a bridge CCP</i>. 		<p>General and ancillary powers</p> <p>The UK CCP R&R Proposals do not amend the existing regime and there are no live UK proposals or consultations to amend the UK legacy regimes in relation to BoE's general and ancillary power which can be found in Banking Act.</p> <p>We would be happy to undertake further analysis if that would be of interest.</p>	
Financial resources and other resolution tools								
19.	Provision and recovery of temporary funding,	FSB Guidance 2017, 6.5-	<p>Government financial stabilisation tools</p> <p>The FSB Guidance does not directly address these tools, but notes that resolution planning should not rely on public solvency support and not create an expectation that</p>	EU CCP R&R, Articles	<p>Government financial stabilisation tools</p> <p><i>In the very extraordinary situation of a systemic crisis, Member States may apply the government stabilisation tools in Articles 46 (public equity support tool) and 47 (temporary</i></p>		<p>Temporary funding and government financial stabilisation tools</p> <p>The UK CCP R&R Proposals do not amend the existing regime and there are no live UK proposals or</p>	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
	including requiring submission of a business reorganisation plan, sale of business tool, bridge CCP tool, and government stabilisation tools such as public equity support tool and temporary public ownership tool	6.10, pp.13-14. FSB Key Attributes 3.2-3.4, 6; Appendix II FMI Annex 1, 4.13-4.16, 7.	<p>such support will be available. In jurisdictions where temporary public funding arrangements are available for CCP resolution, any public funding should be relied on only as a last resort, be limited in time, and be recoverable over an appropriate time period from the assets of the CCP (including any claims against defaulting counterparties' estates or recoveries thereon), its participants or other participants in the financial system more widely.</p> <p>Provision and recovery of temporary funding RA approach</p> <p>Resolution planning should not rely on public solvency support and not create an expectation that such support will be available.</p> <p>Recovery and value</p> <p>To determine the amounts to be recovered, the RA should consider the amounts that CCP participants would otherwise have been required to contribute under CCP's rules and arrangements and in resolution, had temporary public funds not been provided by the authorities, and, if appropriate, the costs of providing those funds.</p> <p>Any recoveries by the CCP from the estate of a defaulting counterparty should first be used to pay back temporary public funds. If the recoveries from the estate of the defaulter exceed that, the excess should be treated in accordance with the CCP's rules and arrangements or be redistributed to CCP equity holders, clearing participants or other participants in the financial system more widely who contributed to the loss allocation arrangements of the CCP.</p> <p>Arrangements for the recovery of temporary public funding should be publicly disclosed as appropriate. Where appropriate they should be written into the legal framework and the CCP's rules and arrangements to provide clarity regarding how authorities would recover funds and to provide a legal basis to collect from both domestic and foreign participants of the CCP.</p> <p>Other recovery methods of temporary public funding, such as selling an equity stake in the CCP or imposing transaction levies to recoup temporary public funds from a broader base, may also be considered.</p>	45, 46 and 47.	<p><u>public ownership tool) to resolve a CCP where the following conditions are met:</u></p> <ol style="list-style-type: none"> <u>the financial support is necessary to meet the resolution objectives;</u> <u>the financial support is used only as a last resort after all resolution tools have been exploited to the maximum extent practicable whilst maintaining financial stability;</u> <u>the financial support is time-limited;</u> <u>the financial support complies with the EU state aid framework; and</u> <u>the Member State has, in advance, defined comprehensive and credible arrangements for recovering, over a suitable period, the public funds deployed, if not retrieved in full through the sale to private purchasers.</u> <p><u>Government financial stabilisation tools shall be deemed to be applied as a 'last resort' where at least one of the following conditions is met:</u></p> <ol style="list-style-type: none"> <u>the authorities, after consulting the central bank, determine that the application of remaining resolution tools would not avoid a significant adverse effect on the financial system;</u> <u>the authorities determine that the remaining resolution tools would not suffice to protect the public interest, where extraordinary liquidity assistance from the central bank has previously been given to the CCP;</u> <u>in respect of the temporary public ownership tool, the authorities determine that the remaining resolution tools would not suffice to protect the public interest, where public equity support through the equity support tool has previously been given to the CCP.</u> <p>Public equity support tool</p> <p><u>Public financial support may be provided for the recapitalisation of a CCP in exchange for instruments of ownership. CCPs subject to the public equity support tool shall be managed on a commercial and professional basis. The instruments of ownership shall be sold to a private purchaser as soon as commercial and financial circumstances allow.</u></p> <p>Temporary public ownership tool</p> <p><u>A CCP may be taken into temporary public ownership by one or more transfer orders of instruments of ownership executed by a Member State to a transferee which is either:</u></p> <ol style="list-style-type: none"> <u>a nominee of the Member State; or</u> <u>a company wholly owned by the Member State.</u> <p><u>CCPs subject to the temporary public ownership tool shall be managed on a commercial and professional basis and shall be sold to a private purchaser as soon as commercial and financial circumstances allow.</u></p>		<p>consultations to amend the UK legacy regimes in relation to temporary funding and government financial stabilisation tools, which broadly work as follows:</p> <p>Under the Banking Act as it applies to CCPs, there are a range of 'stabilisation options' which provide the framework for government financial stability tools. The options include private sector purchase (section 11 as modified by section 89B(6) of the Banking Act), bridge bank purchase (section 12), an asset management vehicle (section 12ZA) and temporary public ownership (section 13 as modified by section 89B of the Banking Act), amongst other sections. These options effectively provide the power to transfer ownership of a UK CCP to any person by way of share transfer instrument; the power to transfer the property, rights and liabilities of a UK CCP; and the power to modify or amend a CCP's rules and make provision about its membership where a property transfer has taken place.</p> <p>We would happily review these provisions if that would be of interest.</p> <p>The Banking Act does not currently provide for bail-in as a resolution tool available to the BoE in respect of CCPs – however, as discussed in row 14 above, A72-A77 on page 22 of the UK CCP R&R Proposals set out proposals for a new bail-in power.</p>	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
			N/A	EU CCP R&R, Articles 36, 37, 38 and 39.	<p>Submission of a business reorganisation plan <u>CCPs shall, within one month after the application of the resolution tools (or up to two months with the RA's permission), conduct a review of the causes of its failure and submit it to the RA alongside a business reorganisation plan.</u></p> <p><u>The RA shall submit the review and the business reorganisation plan, and any revised plan in accordance with Article 38, 'Assessment and adoption of the business reorganisation plan', to the competent authority and resolution college.</u></p> <p>Article 37 contains the requirements relating to the content of the business reorganisation plan and Article 39 contains requirements relating to the implementation and monitoring of the business reorganisation plan.</p>		<p>Submission of a business reorganisation plan The UK CCP R&R Proposals do not amend the existing regime and there are no live UK proposals or consultations to amend the UK legacy regimes in relation to the submission of a business reorganisation plan.</p> <p>The submission of a business reorganisation plan is listed under Section 48H of the Banking Act as a 'Bail-in option'. The Banking Act does not currently provide for bail-in as a resolution tool available to the BoE in respect of CCPs – however, as discussed in row 14 above, A72-A77 on page 22 of the UK CCP R&R Proposals set out proposals for a new bail-in power. As such, it remains to be seen how (and whether) the submission of a business reorganisation plan provisions will apply to CCPs.</p>	
		FSB Key Attributes Preamble, 3.2, 3.4, 6.5.	<p>Sale of business tool Collectively, the resolution powers allow the RA to sell the business, particularly through a transfer of critical functions to a solvent third party as indicated in the FSB Key Attributes.</p> <p>In particular, the FSB Key Attributes note that the resolution regime should include stabilisation options that achieve continuity of systemically important functions by way of a sale or transfer of the shares in the firm or of all or parts of the firm's business to a third party, either directly or through a bridge institution, and/or an officially mandated creditor-financed recapitalisation of the entity that continues providing the critical functions. The FSB Key Attributes also provide the general powers for the RAs to override rights of shareholders in resolution, including requirements for approval by shareholders of particular transactions, in order to permit a merger, acquisition, sale of substantial business operations, recapitalisation or other measures to restructure and dispose of the firm's business or its liabilities and assets.</p>	EU CCP R&R, Articles 40 and 41.	<p>Sale of business tool <u>The RA may transfer the following to a purchaser that is not a bridge CCP:</u></p> <ol style="list-style-type: none"> i. <u>instruments of ownership issued by a CCP under resolution;</u> ii. <u>any assets, rights, obligations or liabilities of a CCP under resolution.</u> <p>The transfer shall take place without obtaining the consent of the shareholders of the CCP, or any third party other than the purchaser and without complying with any procedural requirements under company or securities law other than those provided for in Article 41 relating to procedural requirements.</p> <p><u>A transfer shall be made on commercial terms. The RA shall take all reasonable steps to obtain commercial terms to conform to the valuation. The article also describes what entities the consideration paid would benefit and the allocation order of any consideration from the purchaser.</u></p> <p><u>The RA may, with the consent of the purchaser, transfer the assets, rights, obligations or liabilities transferred to the purchaser back to the CCP under resolution, or the instruments of ownership back to their original owners. The CCP or original owners shall be obliged to take back any such assets, rights, obligations or liabilities, or instruments of ownership.</u></p> <p><u>Where the purchaser is not authorised to provide the services and activities resulting from the acquisition, the authorities shall conduct a due diligence assessment and ensure the purchaser has the professional and technical capacity to perform the functions of the purchased CCP and that it applies for authorisation.</u></p> <p>As an EMIR service provider, <u>the purchaser shall be considered to be a continuation of the CCP under resolution,</u></p>		<p>Sale of business tool The UK CCP R&R Proposals do not amend the existing regime and there are no live UK proposals or consultations to amend the UK legacy regimes in relation to the sale of business tool, which broadly work as follows:</p> <p>Under the Banking Act, the BoE may exercise the following resolution power (referred to as a stabilisation option under the Banking Act) to resolve a CCP:</p> <ol style="list-style-type: none"> i. the private sector purchaser/transfer of ownership stabilisation options under which: <ol style="list-style-type: none"> a. the BoE may sell all or part of the business of the CCP to a commercial purchaser by way of one or more property transfer instruments (see section 11 of the Banking Act as modified by section 89B(6) of the Banking Act); or b. the BoE may transfer ownership of the CCP by way of one or more share transfer instruments (see section 13 of the Banking Act as modified by section 89B(2) of the Banking Act). <p>We would be happy to undertake further analysis if that would be of interest.</p>	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
					<p><i>and may continue to exercise any right exercised by the CCP relating to assets, rights, obligations or liabilities transferred.</i></p> <p><i>Unless otherwise indicated, shareholders, creditors, clearing members and clients of the CCP and other third parties whose assets, rights, obligations or liabilities are not transferred shall have no rights over the assets, rights, obligations or liabilities transferred.</i></p> <p>There are various other rules pertaining to whether the transfer results in the acquisition or increase in a qualifying holding and various conditions and assessments that apply, not summarised here.</p> <p>Article 41 contains procedural requirements relating to the sale of business tool.</p>			
		FSB Key Attributes 3.2-3.4; Appendix II FMI Annex 1, 3, 4.13-4.16, 10.3.	<p>Bridge CCP tool</p> <p>Collectively, the resolution powers allow the RA to use a bridge CCP, particularly through a transfer of critical functions to a bridge CCP as indicated in the FSB Key Attributes. This is not directly addressed in the FSB Guidance 2017.</p> <p>The FSB Key Attributes establish that RAs should have the power to establish one or more bridge institutions to take over and continue operating certain critical functions and viable operations of a failed firm, including:</p> <ol style="list-style-type: none"> i. the power to enter into legally enforceable agreements by which the authority transfers, and the bridge institution receives, assets and liabilities of the failed firm as selected by the authority; ii. the power to establish the terms and conditions under which the bridge institution has the capacity to operate as a going concern, including the manner under which the bridge institution obtains capital or operational financing and other liquidity support; the prudential and other regulatory requirements that apply to the operations of the bridge institution; the selection of management and the manner by which the corporate governance of the bridge institution may be conducted; and the performance by the bridge institution of such other temporary functions as the authority may from time to time prescribe; iii. the power to reverse, if necessary, asset and liability transfers to a bridge institution subject to safeguards, such as time restrictions; and iv. the power to arrange the sale or wind-down of the bridge institution, or the sale of some or all of its assets and liabilities to a purchasing institution, to effect the objectives of the RA. 	EU CCP R&R, Articles 42 and 43.	<p>Bridge CCP tool</p> <p>The RA may transfer to a bridge CCP:</p> <ol style="list-style-type: none"> i. instruments of ownership issued by a CCP under resolution; ii. any assets, rights, obligations or liabilities of the CCP under resolution. <p><i>The transfer may take place without obtaining the consent of the shareholders of the CCP under resolution or any third party and without complying with any procedural requirements under company or securities law other than those procedural requirements in Article 43.</i></p> <p><i>The bridge CCP shall be a legal person that:</i></p> <ol style="list-style-type: none"> i. <i>is controlled by the RA and is wholly or partially owned by one or more public authorities; and</i> ii. <i>is established or used for the purpose of receiving and holding the instruments of ownership issued by a CCP under resolution or some or all of the assets, rights, obligations and liabilities of the CCP to maintain its critical functions and subsequently sell the CCP.</i> <p><i>The RA shall ensure that the total value of liabilities and obligations transferred to the bridge CCP does not exceed the total value of the rights and assets transferred from the CCP.</i></p> <p>The Article describes what entities the consideration paid would benefit and allocation order of any consideration paid by the purchaser.</p> <p>The RA may transfer the rights, obligations, assets or liabilities that had been transferred to the bridge CCP back to the CCP, or the instruments of ownership back to their original owners where that transfer is expressly provided for in the instrument by which the transfer is made. Where the RA uses the transfer power the CCP under resolution or original owners shall be obliged to take back any such assets,</p>		<p>Bridge CCP tool</p> <p>The UK CCP R&R Proposals do not amend the existing regime and there are no live UK proposals or consultations to amend the UK legacy regimes in relation to the bridge CCP tool, which broadly work as follows:</p> <p>Under the Banking Act, to resolve a CCP the BoE may exercise the resolution power called the bridge bank stabilisation option under which the BoE may transfer all or part of the business of the CCP to a company which is wholly owned by the BoE by way of one or more property transfer instruments (see section 12 of the Banking Act, amongst other sections).</p> <p>We would be happy to undertake further analysis if that would be of interest.</p>	
		FSB Guidance 2020,	The FSB Guidance 2020 includes, as a mechanism for adjusting the treatment of CCP equity in resolution, the transfer of critical CCP operations (assets and certain					

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
		Section 7, p.20.	liabilities) to a bridge entity and placing the remnant CCP into liquidation/receivership. The RA could expose CCP equity to losses by transferring all of the CCP's remaining open positions and related collateral or parts of them to another CCP or a bridge entity and then winding down the residual CCP.		<p>rights, obligations or liabilities, or instruments of ownership, subject to certain conditions.</p> <p>The RA may transfer instruments of ownership or assets, rights, obligations or liabilities from the bridge CCP to a third party.</p> <p>As an EMIR service provider, <u>the bridge CCP shall be considered to be a continuation of the CCP under resolution, and may continue to exercise any right the CCP had of the assets, rights, obligations or liabilities transferred.</u></p> <p><u>The bridge CCP shall not be prevented from exercising the CCP's rights of membership and accessing payment and settlement systems and other linked FMIs and trading venues, and the bridge CCP shall not be denied access to them on the ground that the bridge CCP does not possess a rating from a credit rating agency.</u></p> <p><u>Shareholders, creditors, clearing members and clients of the CCP under resolution and third parties whose assets, rights, obligations or liabilities are not transferred to the bridge CCP, shall have no rights over the assets, rights, obligations or liabilities transferred to the bridge CCP, or against its board or senior management.</u></p> <p><u>The bridge CCP shall have no duty or responsibility to shareholders or creditors of the CCP under resolution, and the board or senior management of the bridge CCP shall have no liability to those shareholders or creditors for acts and omissions in the discharge of their duties, unless gross negligence or serious misconduct occur under applicable national law.</u></p> <p>Article 43 contains the procedural requirements relating to bridge CCPs.</p>			
20.	Removal or replacement of senior management, directors and board	FSB Key Attributes 3.2; Appendix II FMI Annex 1, 3.2-3.3.	<p>Removal of senior management and board</p> <p>Collectively, the resolution powers allow the RA to remove senior management and the board as indicated in the FSB Key Attributes. This is not directly addressed in the FSB Guidance 2017 or FSB Guidance 2020.</p> <p>The FSB Key Attributes establish that RAs should have at their disposal a broad range of resolution powers, which should include power to remove and replace the senior management and directors and recover monies from responsible persons, including claw-back of variable remuneration.</p> <p>Special administrator</p> <p>The resolution of an FMI may be carried out by the RA directly or through a special administrator, conservator, receiver or other official with similar functions. They shall be guided by the resolution objectives</p>	EU CCP R&R, Articles 19, 27 and 50.	<p>Removal of senior management and board</p> <p><u>Where there is a significant deterioration in the financial situation of a CCP, or the CCP infringes its legal requirements, including its operating rules, and other measures taken are not sufficient to reverse that situation, competent authorities may require total or partial removal of the senior management or board of the CCP, and it shall notify ESMA, RA and the supervisory college.</u></p> <p><u>The appointment of the new senior management or board shall comply with certain rules in EMIR relating to senior management and the board and be subject to the approval of the competent authority.</u> Where <u>the competent authority</u> considers that replacement of the senior management or board is insufficient, it <u>may appoint one or more temporary administrators with the relevant qualifications, ability and knowledge to replace or to temporarily work with the board and senior management of the CCP.</u></p>	UK CCP R&R Proposals, A25-A26, p.15.	<p>Removal of senior management and board</p> <p><u>The proposed rules extend the existing powers in the Financial Services and Markets Act 2000 (FSMA) (including the conditions and procedure for their use) which currently allows the Prudential Regulation Authority (PRA) and FCA to direct certain firms to remove or replace directors and senior executives in severe circumstances, including a significant deterioration in the financial situation of the firm or a serious infringement by the firm, to cover CCPs.</u></p> <p>FSMA also provides the PRA and FCA with <u>the power to appoint a temporary manager to a firm</u>. FSMA sets out the conditions and procedures for the use of these powers. The proposed rules would also extend this power to cover CCPs.</p> <p>To note, provisions in onshored EMIR also give a similar power to the CCP's supervisor, but this power</p>	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
					<p>Special management</p> <p>The RA may appoint one or more <i>special managers to replace the board of a CCP under resolution. The special manager shall be of sufficiently good repute and shall have adequate expertise in financial services, risk management and clearing services. The special manager shall have all the powers of the shareholders and the board of the CCP. The special manager shall only exercise those powers under the control of the RA. The RA may limit the actions of the special manager or require prior consent for certain acts.</i></p> <p><i>The RA shall make public the appointment and the special manager shall be appointed for no more than one year.</i></p> <p><i>The RA may remove the special manager at any time and shall in any case remove the special manager in the following cases:</i></p> <ol style="list-style-type: none"> i. <i>where the special manager is failing to perform its duties;</i> ii. <i>where the objectives of resolution would be better achieved by removing or replacing that special manager; or</i> iii. <i>where the conditions for the appointment are no longer fulfilled.</i> 		<p>is limited to where “the conduct of a member of the board is likely to be prejudicial to the sound and prudent management of the CCP”.</p> <p>Under the existing regime, the BoE has the power to remove, appoint and vary service contracts of directors of a CCP as part of a share or property transfer (see section 20 (as modified by section 89B(6) of the Banking Act) and 36A of the Banking Act, amongst other sections. We would be happy to undertake further analysis if that would be of interest.</p>	
Loss allocation and safeguards								
21.	No Creditor Worse Off in liquidation (NCWO) safeguard, counterfactual and valuation for NCWO		Clearing member compensation See below.		Clearing member compensation See below.		Clearing member compensation See below.	
		<p>FSB Guidance 2017, 5.1-5.6, pp.10-11.</p> <p>FSB Key Attributes 5.1-5.3; Appendix II FMI Annex 1, 6.1.</p>	<p>NCWO RA approach</p> <p>For the purposes of determining the NCWO counterfactual, the assessment of the losses that would have been incurred and of the recoveries that would have been made by CCP participants, equity holders and creditors if the CCP had been liquidated should assume, in accordance with the applicable insolvency law, the full application of the CCP’s rules and arrangements and any other contractual agreements.</p> <p>If and to the extent that the RA departs from the CCP’s rules and arrangements, CCP participants to whom losses are allocated should be covered by the safeguard where the losses incurred in resolution exceed the losses that would have been incurred in liquidation from the full application of the CCP’s loss allocation arrangements consistent with insolvency law.</p> <p>In specific circumstances, the RA may need to depart from the general principle of equal (pari passu) treatment of creditors within the same class and order of loss allocation in accordance with the CCP’s rules and arrangements, if necessary to achieve the resolution objectives or maximise value for all creditors. The RA should not be prohibited from doing so, if necessary, to achieve the resolution objectives.</p>	<p>EU CCP R&R, Articles 60-61, Recital 36.</p>	<p>NCWO RA approach</p> <p>Where the RA applies one or more resolution tools, it shall ensure that shareholders, clearing members and other creditors do not incur greater losses than they would have incurred had the RA not taken resolution action in relation to the CCP at the time the RA considered that the conditions for resolution were met and had the CCP instead been wound up under normal insolvency proceedings, following the full application of the applicable contractual obligations and other arrangements in its operating rules.</p> <p>An RA should be able to deviate from the NCWO principle.</p>	<p>UK CCP R&R Proposals, A34-A39, pp.16-17.</p>	<p>NCWO RA approach</p> <p>The assessment of the losses that would have been incurred if the CCP had been subject to liquidation should assume the full application of the CCP’s rules and arrangements for loss allocation. The UK regime would follow the same approach.</p> <p>The proposal introduces an explicit NCWO safeguard in the CCP resolution regime. This will ensure that, like the safeguard that already exists for banks, where one or more statutory resolution powers have been used, if any shareholder, clearing member or other creditor is left worse off in resolution than they would have been under the NCWO counterfactual, they would be entitled to compensation.</p> <p>By setting out a clear and transparent counterfactual, consistent with FSB guidance, this NCWO safeguard proposal will increase market certainty, reduce any risk of litigation and ensure that clearing members, shareholders and creditors can measure their exposure limit accurately.</p>	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
			<p>Statutory or contractual subordination of liabilities may be used to shield operationally critical liabilities that are important to support the resolution objectives, from loss (e.g., relating to the provision of liquidity to the CCP).</p> <p>NCWO Timing It should be assumed that the liquidation of the CCP commenced at the same time as the CCP entered into resolution. Where the CCP's rules and arrangements reserve powers to be exercised by the RA it should be made clear and transparent whether these powers should be assumed to be applied in the NCWO counterfactual.</p>					
		FSB Guidance 2020, Step 2, p.7/8, 2.1.6, p.10, 2.2.4, p.11, Section 5 Part II, Section 6, p.18 and p.19, and Section 8.	<p>NCWO RA approach The RA should consider when evaluating the existing resources and tools, the implications of the NCWO safeguard and the potential for related compensation claims.</p> <p>The RA should consider whether any additional resources or tools could be available for use in resolution and, if so, under which conditions or whether they could be integrated in the CCP's waterfall. This evaluation includes:</p> <ol style="list-style-type: none"> NCWO implications of reserving financial resources or tools only for resolution compared to recovery, including the risks of compensation claims on the RA, differences between resolution and the ordinary insolvency regime, and the treatment of the CCP's rules in liquidation; ability to mitigate any NCWO concerns; and whether the RA has the power to effect or require changes to the CCP's rules. <p>NCWO timing In evaluating the timing and sequencing of imposing losses on CCP equity beyond those provided under the CCP's rules and other contractual loss allocation arrangements, the RA should consider:</p> <ol style="list-style-type: none"> the implications of the timing and sequencing of imposing losses on CCP equity for the application of the NCWO safeguard; potential shareholders NCWO claims; and the assessment of any options to attenuate or solve any identified NCWO obstacle. <p>The RA should address the challenges relating to CCP equity fully bearing losses in resolution. This may include proposing potential changes to laws, regulations or powers of the authority or RAs that would enable achieving the resolution objectives or limit the potential for NCWO claims.</p>					
		FSB Guidance 2017, 5.5 and 5.6, p.11.	<p>Valuation counterfactual Default loss scenarios For resolution triggered by member default losses, the relevant counterfactual is the liquidation of the CCP in accordance with the applicable insolvency laws, assuming</p>	EU CCP R&R, Articles 9 and 61.	<p>Valuation counterfactual The valuation shall include:</p> <ol style="list-style-type: none"> the treatment that shareholders, clearing members and other creditors would have received had the RA not taken resolution action in relation to the CCP at 	UK CCP R&R Proposals, A34-A39, A87-97,	<p>Valuation counterfactual Under this proposal, <u>only the direct costs which creditors would have experienced under the counterfactual (assuming full implementation of the CCP's rulebook) would be included.</u> It would be</p>	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
			<p>a full tear up of contracts at the time of resolution, and full application of loss absorbing financial resources, under the CCP's rules and arrangements and any other contractual agreements in accordance with the insolvency law utilising the CCP's pricing methodology or, to the extent necessary, other appropriate price discovery method.</p> <p>Creditors in default loss scenario</p> <p>Where consistent with the legal framework, the counterfactual should respect segregation and limited recourse provisions between different clearing services within the CCP. When assessing what treatment creditors (including equity holders and participants) would have received under the NCWO counterfactual, the RA (or other RA) should take into consideration the following:</p> <ol style="list-style-type: none"> any outstanding or uncalled but available obligations such as parental guarantees or rights of assessment of the CCP as at the time of entry into resolution; where actual payment obligations (including cash calls) are not met in full by members in the CCP resolution, the amounts actually received and the value of claims against clearing members and creditors who defaulted on the obligations; any limited recourse provisions in the CCP's rules regarding segregation of services, and the CCP's rules and arrangements for loss allocation, including for the tear up of contracts; the assumption that tear up occurs at the time of resolution and consistent with insolvency law; the price of any torn-up contracts as determined through the rules of the CCP and utilising the CCP's pricing methodology or other appropriate price method, and consistent with applicable insolvency law. <p>See Clearing member compensation below.</p> <p>Valuation counterfactual – Non-default scenarios</p> <p>For non-default losses, the relevant counterfactual is the liquidation of the CCP, assuming in accordance with the applicable insolvency law full application of any loss sharing arrangements that are relevant to the type of loss incurred and provided for in the CCP's rules and arrangements.</p>		<p>the time the RA considered that the conditions for resolution were met and had the CCP instead been wound up under normal insolvency proceedings, following the full application of the applicable contractual obligations and other arrangements in its operating rules;</p> <ol style="list-style-type: none"> the actual treatment that shareholders, clearing members and creditors, have received in the resolution of the CCP; whether there is any difference between the treatment referred to in point (i) of this paragraph and the treatment referred to in point (ii). <p><u>For the purposes of calculating the treatments referred to in point (i) above, the valuation shall:</u></p> <ol style="list-style-type: none"> <u>disregard any provision of extraordinary public financial support under resolution or central bank emergency liquidity assistance or any central bank liquidity assistance under non-standard collateralisation, tenor and interest terms;</u> <u>be based on the losses that would have been realistically incurred by clearing members and other creditors, had the CCP been wound up under normal insolvency proceedings, following the full application of the applicable contractual obligations and other arrangements in its operating rules;</u> <u>take into account a commercially reasonable estimate of the direct replacement costs, including any additional margin requirements, incurred by the clearing members to reopen within an appropriate period their comparable net positions in the market by considering effective market conditions, including market depth and ability of the market to transact the relevant volume of such net positions within that period; and</u> be based on the CCP's own pricing methodology unless such methodology does not reflect the effective market conditions. 	pp.16-17 and 24-25.	difficult to quantify a commercially reasonable estimate of the indirect costs which creditors would have experienced in the absence of resolution (e.g. costs of reopening comparable net positions in the market, such as those associated with the loss and re-establishment of hedges, and costs connected with the administration of the CCP's estate). That uncertainty would make it more difficult for clearing members and creditors to assess their exposure and provides a higher level of protection to creditors in the event a CCP is placed in resolution.	
		FSB Guidance 2020, 2.2.4, p.11.	When an RA evaluates the availability and potential use of resources and tools for non-default loss scenarios, it should evaluate the application of the NCWO safeguard and the extent to which there are any concerns if losses are not allocated equally to creditors ranking pari passu with others.					
			Valuation counterfactual See above.	EU CCP R&R,	Valuation process for NCWO For the purposes of assessing compliance with the NCWO principle, the RA shall ensure that <i>a valuation is carried out</i>	UK CCP R&R Proposals,	Valuation process for NCWO After CCP resolution, <i>an independent expert third-party entity should conduct a NCWO valuation to</i>	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
				Articles 9 and 61.	<p><i>by an independent person as soon as possible after the resolution action or actions have been effected.</i></p> <p>The valuation shall be distinct from the valuation under Article 24(3).</p> <p>Regulatory Technical Standards (RTS) ESMA shall develop draft RTS specifying the methodology for carrying out the valuation to calculate the losses following liquidation had the CCP been wound up under normal insolvency proceedings, by 12 February 2022.</p>	A34-A39, A87-97, pp.16-17 and 24-25.	<p><i>determine if any clearing members are due compensation as a result of the NCWO safeguard.</i> Consistent with the Banking Act 2009, as it currently applies to non-CCPs, this third-party entity must be appointed by a person (individual or panel) appointed by HMT. The Code sets out further detail on this appointment process, and appropriate criteria for appointment. The Code will be amended for the purposes of CCP resolution.</p> <p>The independent valuer should assess the hypothetical financial outcome for clearing members under the NCWO counterfactual. This should be compared against the actual financial outcome for clearing members as a result of resolution, which will determine the validity of any compensation claims, and the size of these. <i>The BoE will set out a clear and transparent calculation methodology, where indirect costs will not be taken into account in the counterfactual.</i> providing greater protection and certainty for clearing members.</p>	
22.	Deviation from a CCP's rules and arrangements		<p>Enforcing contractual obligations See above.</p> <p>Power to take control of a CCP See above.</p>		<p>Enforcing contractual obligations See above.</p> <p>Power to take control of a CCP See above.</p>		<p>Enforcing contractual obligations See above.</p> <p>Power to take control of a CCP See above.</p>	
		FSB Key Attributes 3.2; Appendix II FMI Annex 1, 4.	<p>Deviation from a CCP's rules and arrangements Collectively, the resolution powers allow the RA deviate from a CCP's rules and arrangements, although this is not directly addressed in the FSB Key Attributes, FSB Guidance 2017 or FSB Guidance 2020.</p>	EU CCP R&R, Article 48 and 49.	<p>Deviation from a CCP's rules and arrangements Article 48 provides the RA with the power to enforce any existing and outstanding contractual obligations of the clearing members of the CCP under resolution or, where necessary to achieve the resolution objectives, refrain from enforcing such contractual obligations or otherwise deviate from the CCP's operating rules.</p> <p>Article 49 similarly provides the RA with the ancillary power to modify or amend the operating rules of the CCP under resolution, including as regards its terms of access to clearing for its clearing members and other participants.</p> <p>These powers collectively allow the RA to deviate from a CCP's rules and arrangements.</p>	UK CCP R&R Proposals, A40-A44, p.17.	<p>Deviation from a CCP's rules and arrangements <i>The proposed regime would introduce the power for the BoE to deviate, or refrain from enforcing, a CCP's existing rules and arrangements once in control of a CCP, but subject to the NCWO safeguard.</i> Where action by the RA results in a shareholder, clearing member or creditor incurring greater loss than under the NCWO counterfactual, the NCWO safeguard would apply. The affected creditor would be entitled to compensation.</p> <p>It should be noted that, whilst allowing the BoE to deviate from the CCP's rules and arrangements has the potential to introduce a NCWO claim, the NCWO safeguard would apply to the overall quantum of losses suffered in excess of the quantum of losses expected under the counterfactual, and is not applied to the use of individual tools. Therefore, the power to deviate from a CCP's rules and arrangements should allow the BoE flexibility to take the most effective resolution path, which should reduce the losses imposed on creditors and likelihood of NCWO claims.</p> <p>Under the existing regime, the BoE has the power to modify or amend a CCP's rules and make provision about its membership where a property transfer has taken place (see section 89C and 89D of the Banking Act). We would be happy to undertake further analysis if that would be of interest.</p>	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
23.	Second tranche of ‘Skin in the Game’ (SITG) or additional pre-funded own resources	FSB Guidance 2017, 4.1-4.4, p.6. FSB Key Attributes 5.1.	<p>Allocating losses to equity holders in resolution</p> <p>The FSB Guidance states that existing owners’ equity in the CCP should absorb losses in resolution, to the extent not already written down upon enforcement of the CCP’s rules and contractual arrangements. The power to write down equity of the CCP in resolution should be set out in the legal framework and, where needed, reflected in the CCP’s rules and arrangements, and its constitutive arrangements (e.g. articles of incorporation).</p> <p>For default losses, in resolution, equity should be fully loss absorbing. It should be clear and transparent at which point in resolution any remaining equity would be written down, for example, no later than at the point at which prefunded and committed financial resources such as cash calls in recovery available under the CCP’s rules and arrangements would have been exhausted.</p> <p>For non-default losses, in resolution, 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. Moreover, equity should be written down before losses are allocated to creditors in accordance with the creditor hierarchy under the applicable legal framework.</p> <p>If both default and non-default losses occur concurrently, the losses attributable to each distinct cause should be allocated separately, in accordance with the applicable loss allocation rules and arrangements for default losses and non-default losses.</p> <p>RAs may consider alternative approaches to allocating losses to existing equity holders and recapitalising the CCP, such as writing down the equity and selling new equity in the CCP. The approach chosen may vary depending on the structure of the CCP (for example, single or multi-service), the value of the clearing service in which the default has taken place relative to the equity of the CCP, and constraints under applicable law</p>	EU CCP R&R, Article 9.	<p>RA approach</p> <p>Following a default or a non-default event, a CCP shall use an additional amount of its pre-funded dedicated own resources, prior to the use of certain of the arrangements and measures set out in the recovery plan. <u>That amount shall not be lower than 10 % nor higher than 25 % of the risk-based capital requirements calculated in accordance with Article 16(2) of EMIR relating to capital requirements.</u></p> <p>To comply with that requirement, the CCP may use the amount of capital it holds, in addition to its minimum capital requirements, to comply with the notification threshold in the delegated act adopted under Article 16(3) on EMIR relating to capital requirements.</p> <p>Technical standards and methodology</p> <p><u>ESMA and the European Banking Authority (EBA) shall develop draft RTS specifying the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources</u> and submit them to the European Commission by 12 February 2022, taking into account the various factors including, inter alia, the structure and internal organisation of CCPs, the appropriateness for CCPs, depending on the currencies in which the financial instruments they clear are denominated and the rules applying to and the practices of third-country CCPs.</p>	UK CCP R&R Proposals, A45-A53, pp.18-19.	<p>RA approach</p> <p>Under this proposal, CCPs would be required to introduce a second tranche of CCP SITG in their rulebook as part of the default waterfall. This would further expose equity shareholders to losses and would help progress towards the objective of FSB guidance that equity should be fully lossbearing in resolution. This would also reinforce the incentives for CCPs to conduct robust risk management, and ensure that their default fund is appropriately sized.</p> <p>Under this proposal, <u>this second tranche of SITG would sit after the prefunded default fund, but before cash calls, so that it is used before non-prefunded resources.</u> This is an additional amount of resource which should be clearly distinct from the dedicated resources (first tranche of SITG) referred to in onshored EMIR Article 45(4) (the existing default waterfall).</p> <p>The intent of FSB Guidance, and this proposal on a second tranche of SITG, is to ensure appropriate incentivisation, in addition to increasing the resources available for an orderly resolution, by ensuring that CCP equity is loss absorbing. Introducing a second SITG to the default waterfall has the effect of exposing CCP equity to loss simply by increasing the amount of CCP equity in the default waterfall, in a way that minimises the likelihood of NCWO claims by equity holders on the basis that their losses in resolution are not greater than the losses that they would have incurred otherwise.</p> <p><u>This second layer of SITG will have to be sized. This should be based on the CCP’s risk-based capital requirements, as set out in onshored EMIR Article 16(2) relating to capital requirements, thereby sizing it proportionately to the individual CCP and the risk it is clearing.</u></p> <p>Technical standards and methodology</p> <p>As with the current tranche of SITG, <u>the BoE should be empowered to specify the methodology for calculation and maintenance of the amount of the CCP’s own resources that should be included in the second tranche of SITG.</u></p>	
		FSB Guidance 2020, Part 7, 2.1.5.	<p>RA approach</p> <p>When an RA evaluates the availability and potential use of resources and tools for default loss scenarios, it should understand in relation to CCP equity and other financial resources from the CCP or its affiliates:</p> <ol style="list-style-type: none"> i. the availability of prefunded CCP equity dedicated to cover losses as part of the default waterfall, and when it can be used; and ii. Understand the availability of any additional financial resources from the CCP or its parent or affiliates, the amount, and how and when they can be used to cover losses or replenish CCP equity. <p>CCP equity exposure</p>					

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
			<p>The FSB Guidance 2020 outlines the possible mechanisms to adjust the exposure of CCP equity to losses in resolution, which include:</p> <ul style="list-style-type: none"> Exposure of some or all of the CCP equity to losses via modification of the contractual loss allocation arrangements. These could be modified to expose the entire CCP equity (or a larger portion of it than is currently available) to losses in resolution, in one or more tranches. However, as the depletion of CCP equity below minimum regulatory requirements would require the CCP to raise capital to continue to be able to provide its critical clearing services, the RA should plan for this. 					
24.	Safeguard for clients and indirect clients		<p>NCWO See above.</p> <p>Clearing member compensation See below.</p>		<p>NCWO See above.</p> <p>Clearing member compensation See below.</p>		<p>NCWO See above.</p> <p>Clearing member compensation See below.</p>	
		FSB Guidance 2020, Section 7, pp.19-21.	<p>Clients The FSB Guidance 2020 notes that the relevant home authorities should consider the indirect effect the options for the treatment of equity in resolution may have on clients, who generally have fewer opportunities to influence the risk profile of the CCP and its risk management. In addition, the RA should understand the options available to participants to choose alternative CCPs, and the effects of any central clearing mandates.</p> <p>Note that the FSB Guidance 2017 refers to “participants” in most cases, including their right to compensation and that term is expressed to include indirect participants. However, it does not prescribe how that would occur.</p>	EU CCP R&R, Article 63.	<p>Clients <i>Contractual arrangements allowing clearing members to pass on to their clients the negative consequences of the resolution tools shall also include, on an equivalent and proportionate basis, the right of clients to any recompense or compensation clearing members receive or any cash equivalent of such recompense or compensation or any proceeds they receive following a claim to the extent that such proceeds are related to client positions. Those provisions shall also apply to the contractual arrangements by clients and indirect clients offering indirect clearing services to their clients.</i></p> <p>ESMA shall develop draft RTS to specify the conditions under which the passing on of compensation, cash equivalent of such compensation or any proceeds is required, and proportionate and shall submit them to the European Commission by 12 February 2022.</p>	UK CCP R&R Proposals, A95, p.25.	<p>Clients <i>If a clearing member is compensated, they should not be mandated to compensate their clients.</i> This protects the relationship between clearing members and clients. Clients will only be entitled to a direct claim where they are a direct creditor of the CCP.</p>	
25.	Safeguard for counterparties in partial transfers, including protection for financial collateral, set off and netting arrangements and protection for security arrangements, structured finance arrangements and covered bonds	FSB Key Attributes 4.1-4.4, 6.2; Appendix I Annex 5, 2.1; Appendix II FMI Annex 1, 4.13.5, 11.6, 12.1.	<p>These safeguards are not directly addressed in the FSB Guidance 2017 or FSB Guidance 2020. However, in the FSB Key Attributes, some of these points are addressed.</p> <p>Set-off, netting, collateralisation, segregation of client assets In particular, the FSB Key Attributes note that the legal framework governing set-off rights, contractual netting and collateralisation agreements and the segregation of client assets should be clear, transparent and enforceable during a crisis or resolution of firms, and should not hamper the effective implementation of resolution measures.</p> <p>The FSB Key Attributes also flag that there should not be any ‘cherry picking’. For example, for a temporary stay the RA would only be permitted to transfer all of the eligible contracts with a particular counterparty to a new entity and would not be permitted to select for transfer</p>	EU CCP R&R, Article 65.	<p>Safeguard for counterparties in partial transfers <i>The protections provided for in the headings below apply in the following circumstances:</i></p> <ol style="list-style-type: none"> <i>where the RA transfers some but not all of the assets, rights, obligations or liabilities of a CCP under resolution to another entity or, in the application of a resolution tool, from a bridge CCP to a purchaser; and</i> <i>where the RA exercises its ancillary power to cancel or modify the terms of a contract to which the CCP under resolution is a party or substitute the purchaser or bridge CCP, in place of the CCP under resolution, as a party.</i> 		<p>The UK CCP R&R Proposals does not address these topics directly and there are no live UK proposals or consultations to amend the UK legacy regimes in relation to safeguard for counterparties.</p> <p>We would be happy to undertake further analysis if that would be of interest.</p>	
				EU CCP R&R, Article 66.	<p>Protection for financial collateral, set off and netting arrangements <i>The RA shall ensure that the application of a resolution tool, other than the position allocation tool, does not result in transferring some but not all of the rights and liabilities under a title transfer financial collateral arrangement, a set-off</i></p>			

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
			<p>individual contracts with the same counterparty and subject to the same netting agreement (no cherry-picking rule).</p> <p>RAs should have the power, subject to legal safeguards for counterparties relating, in particular, to netting sets and collateral arrangements, to transfer to a third party purchaser or bridge institution the ownership of an FMI or all or part of an FMI's critical operations (for example, clearing in one specific product), including all associated rights and obligations and necessary service-level agreements. Any such power should be exercisable notwithstanding any requirements for consent or novation that would otherwise apply.</p> <p>Resolution plans for FMIs should also consider if resolution measures would split netting sets, consider the impact of that splitting on liquidity and collateral requirements.</p> <p>In relation to access to information and information sharing, FMIs should be required to maintain information and controls on netting arrangements, so that authorities can assess the impact of possible transfers of part of the business of an FMI on participants' netting rights).</p> <p>Protection for security arrangements</p> <p>The FSB Key Attributes note that where temporary sources of funding to maintain essential functions are needed to accomplish orderly resolution, the RA or authority extending the temporary funding should make provision to recover any losses incurred: (i) from shareholders and unsecured creditors subject to the NCWO safeguard; or (ii) if necessary, from the financial system more widely. Note that there is no mention of secured creditors.</p> <p>Further, the FSB Key Attributes note that resolution plans for FMI should take into account the legal mechanism by which collateral is provided, including whether collateral is provided as a security interest or pledge or by way of title transfer, the status of that collateral in insolvency (that is, whether it could be considered 'bankruptcy remote'), and the implications of that status for the extent to which losses can be imposed under loss allocation rules of the FMI and the exercise of statutory powers.</p>		<p><i>arrangement or a netting arrangement between a CCP under resolution and other parties to the arrangements, or in modifying or terminating the rights and liabilities under those arrangements through the use of ancillary powers.</i> The arrangements shall include any arrangement to which the parties are entitled to set-off or net those rights and liabilities.</p> <p>Protection for security arrangements</p> <p><i>The RA shall ensure that the application of a resolution tool does not result in any of the following with respect to security arrangements between a party and a CCP under resolution:</i></p> <ol style="list-style-type: none"> <i>the transfer of assets against which the liability is secured unless that security liability and benefit are also transferred;</i> <i>the transfer of a secured liability unless the security benefit is also transferred;</i> <i>the transfer of the security benefit unless the secured liability is also transferred;</i> <i>the modification or termination of a security arrangement through the use of ancillary powers, if the effect of that modification or termination is that the liability ceases to be secured.</i> <p>Power to restrict enforcement of security</p> <p>See below.</p> <p>Protection for structured finance arrangements and covered bonds</p> <p><i>The RA shall ensure that the application of a resolution tool does not result in any of the following with respect to structured finance arrangements, including covered bonds:</i></p> <ol style="list-style-type: none"> <i>the transfer of some, but not all, of the assets, rights and liabilities which constitute or form part of a structured finance arrangement to which the CCP under resolution is a party;</i> <i>the termination or modification through the use of ancillary powers of the assets, rights and liabilities which constitute or form part of a structured finance arrangement to which the CCP under resolution is a party.</i> <p>Structured finance arrangements shall include securitisations and instruments used for hedging purposes which form an integral part of the cover pool and which according to national law are secured in a way similar to the covered bonds, which involve the granting and holding of security by a party to the arrangement or a trustee, agent or nominee.</p>			
26.	Partial transfers and protection of trading, clearing and settlement systems		N/A	EU CCP R&R, Article 69.	<p>RA approach</p> <p><i>The RA shall ensure that the application of a resolution tool does not affect the operation of systems and rules of systems covered by the Settlement Finality Directive (98/26/EC), where the RA:</i></p> <ol style="list-style-type: none"> <i>transfers some but not all of the assets, rights, obligations or liabilities of a CCP under resolution to another entity;</i> 		N/A	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
					ii. <u>cancel or amends the terms of a contract to which the CCP under resolution is a party or substitutes a purchaser or bridge CCP as a party.</u> <u>The RA shall ensure that the application of a resolution tools does not result in any of the following outcomes:</u> i. <u>revoking a transfer order;</u> ii. <u>affecting the enforceability of transfer orders and netting;</u> iii. <u>affecting the use of funds, securities or credit facilities;</u> iv. <u>affecting the protection of collateral security.</u>			
Compensation and replenishment								
27.	Clearing member compensation		NCWO See above. RA approach The RA should have the power to compensate clearing members that contribute financial resources to a resolution in excess of their obligations under the CCP's rules and arrangements, for both default-related and non-default related loss scenarios. Form of compensation The compensation can be provided, for instance by providing appropriate amounts of equity or other instruments of ownership or debt instruments convertible into equity to them. Alternatively, the RA may, where appropriate, award to them claims on the parent of the group to which the CCP that entered resolution is affiliated, subject to the consent of the parent.		NCWO See above. RA approach Without prejudice to the responsibility of clearing members to take losses which go beyond the default waterfall, where a CCP in recovery caused by a <i>non-default event</i> has applied the arrangements and measures to reduce the value of any gains payable by the CCP to non-defaulting clearing members set out in its recovery plan, and as a result has not entered into resolution, <u>the competent authority of the CCP may require the CCP to recompense</u> the clearing members for their loss. The possibility to provide recompense to non-defaulting clearing members shall not apply to their contractually committed losses in the default management or recovery phases. In Recital 51, the EU CCP R&R notes that when assessing the amount and the form of compensation, the RA can consider, for example, the financial soundness of the CCP, and the quality of instruments available for compensation and for meeting the 'no creditor worse off' safeguard. To maintain an adequate incentive structure, such compensation should reflect the extent to which a clearing member has supported the recovery of the CCP and therefore also take into account the remaining outstanding contractual obligations of the clearing members towards that CCP. Such compensation should be deducted from any entitlement to a 'no creditor worse off' payment. Form of compensation <u>The form shall be cash payments</u> or, where appropriate, may require the CCP to issue instruments recognising a claim on the future profits of the CCP. The cash payments or the value of instruments recognising a claim on future profits of the CCP issued to each affected non-defaulting clearing member shall be proportionate to its loss in excess of its contractual commitments. <u>The instruments recognising a claim on future profits of the CCP shall entitle the possessor to receive payments from the CCP on an annual basis until the loss has been recouped, if possible in full, subject to an appropriate maximum number of years from the</u>		NCWO See above. RA approach The proposal ensures that clearing members are eligible to recoup losses suffered as a result of providing resources for loss absorption and/or recapitalisation of a CCP in excess of the loss they would have experienced under the NCWO counterfactual. Insolvency law establishes a creditor hierarchy that determines the order in which losses are allocated in liquidation. This should also be applicable for loss allocation for the purposes of compensation, such that those who suffered the first loss in resolution should be the last to be compensated. Under the proposals, the BoE would also have the power to temporarily restrict, freeze or prohibit any remuneration of equity or instruments treated as equity (including dividend payments and buybacks by the CCP) and restrict, freeze or prohibit any payments of variable remuneration, in certain circumstances, as summarised above. This will be available after a CCP has entered resolution in order to ensure that resources can be directed to compensation payments and replenishing public funds, if necessary. See <u>above for an explanation of this power.</u> Form of compensation If a clearing member is compensated, either as a result of the NCWO safeguard or otherwise, compensation could take the form of: proceeds from the delayed enforcement of a clearing member's obligations; claims on a share of the CCP's future profits; <u>profits resulting from the sale of the CCP</u> ; equity in the CCP; or potentially, <u>as a last resort, public funds. The use of public funds for compensation would be the very last resort and would be subject to explicit consent from HMT.</u> Where clearing members are compensated with future profits or equity of a CCP, this reduces the immediate risk to public funds. It also provides an	
		FSB Guidance 2017, 2.15, p.6. FSB Key Attributes 5.1-5.5; Appendix II FMI Annex 1, 6.1.		EU CCP R&R, Article 20, 27, 62 and 64.		UK CCP R&R Proposals, 2.16, A15-A16, A87-A97, pp.10, 14, 24-25.		
		FSB Guidance 2020, Section 7, pp.20-21.						

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
			<p>iv. how compensation would affect the allocation of any recoveries the CCP would make from the defaulter's estate.</p> <p>The RA, in cooperation with the CCP's supervisory authorities, should also evaluate whether it should require the CCP's rules to enable clearing members to claim reimbursement from the CCP for any financial resources contributed in resolution that exceed the amount in the CCP's recovery arrangements. As a result, those subject to such additional haircuts or cash calls would have a corresponding claim against the CCP that would rank ahead of equity.</p>		<p><u>date of issuance. If the non-defaulting clearing members have passed on the excess losses to their clients, the non-defaulting clearing members shall be obliged to pass the payments received by the CCP on to their clients, to the extent that the losses being recompensed are related to client positions. An appropriate maximum share of the CCP's annual profits shall be used towards payments relating to those instruments.</u></p> <p>Compensation for clients and indirect clients Article 63 relating to the safeguard for clients and indirect clients also refers to recompense or compensation under Article 62, and is also summarised above.</p> <p>RTS <u>ESMA shall develop draft RTS to specify the order in which recompense must be paid, the appropriate maximum number of years and the appropriate maximum share of the CCP's annual profits.</u> ESMA shall submit those draft RTS to the European Commission by 12 February 2022.</p> <p>Loss allocation compensation In Article 27, the general provisions on resolution tools, is it noted that the RA may require the CCP to compensate non-defaulting clearing members for their losses stemming from the application of loss allocation tools, where those losses are in excess of the losses that the non-defaulting clearing member would have borne under their obligations under the CCP's operating rules, provided that the non-defaulting clearing member would have been entitled to the payment of the difference referred to in Article 62 for safeguards for shareholders, clearing members and other creditors (summarised above). This compensation may take the form of instruments of ownership, debt or instruments recognising a claim on the CCP's future profits.</p> <p>Safeguard for shareholders, clearing members and other creditors <u>Where, in accordance with the relevant valuation, any shareholder, clearing member or other creditor has incurred greater losses than it would have incurred had the RA not taken resolution action for the CCP and had the CCP instead been wound up under normal insolvency proceedings, following the full application of the applicable contractual obligations or other arrangements in its operating rules, that shareholder, clearing member or other creditor shall be entitled to the payment of the difference.</u></p> <p>Recoupment of payments <u>The RA shall recover, to the largest extent possible, any reasonable expenses incurred in connection with a payment under Article 62 (Safeguard for shareholders, clearing members and other creditors) in any of the following ways:</u></p> <p>i. from the CCP under resolution, as a preferred creditor;</p>		<p>incentive for clearing members to continue clearing and reintegrate the CCP into the financial system.</p> <p><u>Under the proposals, equity and future profits can also be used by the BoE as tools to compensate clearing members in circumstances where clearing members have not been left worse off than under the NCWO counterfactual, irrespective of whether an agreement was made contractually or not.</u> Compensating clearing members might encourage a faster and more voluminous return to clearing and normal market behaviour, thereby promoting financial stability. <u>Should a clearing member voluntarily provide funds to recapitalise the CCP and replenish the minimum capital requirements, it could be appropriate (and even beneficial) to compensate the clearing member, since they would not be covered for this action under the NCWO counterfactual.</u></p> <p>Compensation for clients and indirect clients <u>If a clearing member is compensated, they should not be mandated to compensate their clients.</u> This protects the relationship between clearing members and clients, which should be a private contractual agreement which will govern any rights and obligations regarding the pass through of compensation from the clearing member to its underlying client. Clients will only be entitled to a direct claim where they are a direct creditor of the CCP.</p> <p>Clearing members and CCPs should be responsible for negotiating between themselves the precise nature of any contractual arrangement which would entitle clearing members to a claim on future profits or equity. <u>The BoE would have oversight over these arrangements, given that public funds could ultimately be at risk.</u> See above for an explanation of this safeguard.</p> <p>The UK CCP R&R Proposals does not address these topics in detail and there are no live UK proposals or consultations to amend the UK legacy regimes in relation to compensation. These can be found in the Compensation sections of the Banking Act (as modified by section 89B(6)) relating to the following:</p> <p>Section 49 (orders), section 50 (sale to private sector purchaser), section 51 (transfer to temporary public ownership), section 52 (transfer to resolution company), section 53 (onward and reverse transfers etc.), section 58 (resolution fund), sections 59 and 60 (third party compensation), section 60B (principle of no less favourable treatment), section 61 (sources of compensation) and section 62 (procedure), amongst other section.</p>	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
					<ul style="list-style-type: none"> ii. from any consideration paid by the purchaser where the sale of business tool has been applied; iii. from any proceeds generated as a result of the termination of the bridge CCP, as a preferred creditor. 		We would be happy to undertake further analysis if that would be of interest.	
28.	Powers to replenish financial resources	<p>FSB Guidance 2017, 2.12 and 2.13, 7.3 pp.5-6 and 14.</p> <p>FSB Key Attributes 6.1-6.5; Appendix II FMI Annex 1, 7.1-7.2</p> <p>FSB Guidance 2020, 2.1.2, 2.1.5, 2.2.2, pp.9-11.</p>	<p>Powers to replenish</p> <p>In a member default scenario, the RA should be able, consistent with the rules and arrangements of the CCP, to replenish the CCP's financial resources including default fund and capital as soon as practicable.</p> <p>In a non-default scenario, this would include write down and conversion, as outlined above.</p> <p>A resolution plan should consider different scenarios and identify appropriate tools and actions to:</p> <ul style="list-style-type: none"> i. fully address any outstanding losses; ii. replenish the financial resources of the CCP to a level sufficient to meet regulatory requirements and support the continued and timely operation of the critical functions of the CCP; and iii. wind down those functions not judged to be critical for financial stability, where necessary or appropriate <p>Note that the powers and tools for replenishment of CCP resources are discussed above.</p> <p>When an RA evaluates the availability and potential use of resources and tools for default loss, it should, for replenishment of minimum resources:</p> <ul style="list-style-type: none"> i. analyse arrangements by which the default fund and other minimum financial resources required for continued authorisation would be replenished, including the viability, reliability and timeliness of such arrangements; ii. evaluate any potential constraints with respect to the replenishment of minimum resources; iii. evaluate potential market and financial stability implications associated with using such replenishment arrangements; iv. understand availability of prefunded equity dedicated to cover loss as part of the default waterfall, and when it can be used; and v. understand the availability of any additional financial resources from the CCP or its parent or affiliates, the amount of such additional resources, and how and when they can be used to cover losses or replenish CCP equity. <p>Non-default losses</p> <p>When an RA evaluates the availability and potential use of resources and tools for non-default loss scenarios, it should, in relation to CCP equity and other financial resources from the CCP or its affiliates:</p>	<p>EU CCP R&R, Articles 9, 12, 16, 27.</p>	<p>Powers to replenish</p> <p>Article 9 notes that the measures included in the recovery plan shall enable the replenishment of the CCP's financial resources, including its own funds, to a level sufficient to meet its EMIR obligations and to support the continued and timely operation of the critical functions of the CCP. Article 12 states that a resolution plan should contain a timeframe for replenishing the CCP's financial resources.</p> <p>Article 16, which contains provisions relating to addressing or removing impediments to resolvability, highlights measures the CCP must take to replenish pre-funded resources, including writing down and converting liabilities, renegotiating liabilities and revising contractual terms. In relation to early intervention measures in Article 18, the RA may require the CCP to replenish its financial resources in a timely manner to comply with its capital and prudential requirements.</p> <p>Under Article 27, general provisions on resolution tools, the RA shall ensure the replenishment of the pre-funded resources and the recapitalisation of the CCP or the bridge CCP to an extent sufficient to restore the ability of the CCP or the bridge CCP to comply with the conditions for authorisation and to continue to carry out the critical functions of the CCP or the bridge CCP, taking into account the operating rules of the CCP or the bridge CCP.</p> <p>Note that the powers and tools for replenishment of CCP resources are discussed above.</p>	<p>UK CCP R&R Proposals, A83-A86, pp.23-24.</p>	<p>Powers to replenish</p> <p>The proposed regime would introduce a power enabling the BoE to use statutory loss allocation tools (VMGH, cash calls and write down powers) to replenish the CCP's resources to the level necessary to meet its statutory obligations, in addition to absorbing losses, within the constraints of the NCWO safeguard. This should allow the BoE to ensure that financial resources are replenished within an appropriate timeframe in order for the CCP to meet its obligations under onshored EMIR.</p> <p>As a consequence, this should allow the CCP to meet the conditions for its continued authorisation, allowing it to continue to operate its critical clearing services.</p> <p>Note that the powers and tools for replenishment of CCP resources are discussed above.</p>	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
			<ul style="list-style-type: none"> i. understand the availability of CCP equity to cover different types of non-default losses; and ii. understand the availability of any additional financial resources from the CCP or its parent or affiliates, the amount of such additional resources, and how and when they can be used to cover losses or replenish CCP equity. 					
Valuation								
29.	Valuation for resolution		<p>RA approach to NCWO valuation For NCWO compensation valuation see above.</p> <p>RA approach to CCP R&R valuation N/A</p>	EU CCP R&R, Articles 24, 25 and 26.	<p>RA approach to NCWO valuation For NCWO compensation valuation see above.</p> <p>RA approach to CCP R&R valuation <i>RA</i>s shall ensure that any resolution action is taken on the basis of a valuation ensuring a fair, prudent and realistic assessment of the assets, liabilities, rights and obligations of the CCP.</p> <p><i>Before the RA places a CCP under resolution, it shall ensure that a first valuation is carried out to determine whether the resolution conditions are met. After the RA has decided to place a CCP under resolution, it shall ensure that a second valuation is carried out.</i></p> <p>Provisional valuation Article 25 contains requirements in relation to the valuation, including conditions that need to be met for the valuation to be considered definitive. <i>If they do not meet those conditions, the valuation shall be considered a provisional valuation under Article 26. Provisional valuations shall include a buffer for additional losses and an appropriate justification for that buffer. Where RAs take resolution action on the basis of a provisional valuation, they shall ensure a definitive valuation is carried out as soon as practicable. The RA shall ensure that the definitive valuation:</i></p> <ul style="list-style-type: none"> i. <i>allows for full recognition of any losses of the CCP in its books;</i> ii. <i>informs a decision to write back creditors' claims or to increase the value of the consideration paid.</i> <p>Definitive valuation <i>Where the definitive valuation's estimate of the net CCP asset value is higher than the provisional valuation's estimate of the net asset value of the CCP, the RA may:</i></p> <ul style="list-style-type: none"> i. <i>increase the value of the claims of affected creditors which have been written down or restructured;</i> ii. <i>require a bridge CCP to make a further payment of consideration in respect of the assets, liabilities, rights and obligations to the CCP under resolution or, as the case may be, in respect of the instruments of ownership to the owners of those instruments.</i> <p>RTS ESMA shall develop and submit to the European Commission draft RTS to specify the methodology for calculating the buffer for additional losses for provisional valuations.</p>		<p>RA approach to NCWO valuation For NCWO compensation valuation see above.</p> <p>RA approach to CCP R&R valuation The UK CCP R&R Proposals does not address this topic and there are no live UK proposals or consultations to amend the UK legacy regimes in relation to valuation for resolution. These can be found in the sections 54-57 and 62A of the Banking Act (as modified by section 89B(6) of the Banking Act), amongst other sections.</p> <p>We would be happy to undertake further analysis if that would be of interest.</p>	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
CMGs, cross-border cooperation between authorities and cross-border enforcement								
30.	CMGs and cross-border cooperation and enforcement between authorities	FSB Guidance 2017, 9.1-9.7, pp.17-20. FSB Key Attributes 2.14, 7, 8; Appendix II FMI Annex 1, 8-9.	<p>CMG approach and cooperation</p> <p>The home RA is responsible for establishing CMGs for its domestic CCPs if they are systemically important in more than one jurisdiction (including the home jurisdiction).</p> <p>The requirement for institution-specific cross-border cooperation agreements (FSB Key Attribute 9) may be met by crisis coordination and communication agreements, protocols or MoUs adopted, provided that those arrangements are adapted, amended or supplemented where necessary to support the cooperation, coordination and information sharing needed to carry out the functions relating to recovery and resolution. In particular, they should:</p> <ol style="list-style-type: none"> provide for the RA and other authorities that do not participate in the arrangements (for the purposes of regulation, supervision or oversight of the FMI) to participate in planning, preparing for and carrying out resolution of the FMI; define the roles and responsibilities of the authorities involved in planning, preparing for and carrying out resolution; include arrangements and procedures for sharing information necessary for the purposes of planning, preparing for and carrying out resolution; and include institution-specific details regarding the implementation of the resolution measures set out in the resolution plan for the FMI. <p>Systemic importance criteria</p> <p>Home and host oversight or supervisory authorities and RAs should consider some or all of the following when assessing whether a CCP may be of systemic importance in a jurisdiction other than the home jurisdiction:</p> <ol style="list-style-type: none"> the extent to which the CCP's participants (or participants' parent company or group) are located in the host jurisdiction; the CCP's share of the aggregate volume and value of cleared transactions that originate in the host jurisdiction; the proportion of total volume and value of transactions cleared by the CCP that originate in the host jurisdiction; the extent to which instruments cleared by the CCP are cleared or settled in the host jurisdiction's currency; links the CCP has with FMIs, such as CCPs and CSDs, located in the host jurisdiction; the extent to which the CCP clears instruments that are subject to mandatory clearing in the host jurisdiction; <i>substitutability</i>: the extent to which there is no readily available substitute to the CCP that is a 	EU CCP R&R, Articles 6 and 52.	<p>Cooperation between authorities</p> <p>Competent authorities, RAs and ESMA shall cooperate closely for the purposes of the EU CCP R&R. In particular, during the recovery phase, the competent authority and the members of the supervisory college should cooperate and communicate effectively with the RA, to enable the RA to act in a timely manner, and competent authorities and RAs shall, without delay, provide ESMA with all the information necessary to carry out its duties.</p> <p>The RA of a CCP and the RA of its clearing members shall cooperate closely to ensure that there are no impediments to resolution.</p> <p>Power to enforce crisis prevention measures or resolution actions by other Member States</p> <p><i>Where instruments of ownership, assets, rights, obligations or liabilities of a CCP under resolution are located in, or governed by the law of a Member State other than the Member State of the RA, any transfer or resolution action in respect of those instruments, assets, rights, obligations or liabilities shall have effect in accordance with the law of that other Member State.</i></p> <p><i>The RA of a Member State shall be provided with all necessary assistance by the authorities of other relevant Member States to ensure that any instruments of ownership, assets, rights, obligations or liabilities are transferred to the purchaser or bridge CCP or any other resolution action becomes effective in accordance with the applicable national law.</i></p> <p><i>Shareholders, creditors and third parties that are affected by the transfer of instruments of ownership, assets, rights, obligations or liabilities shall not be entitled to prevent, challenge, or set aside that transfer under the law of the Member State where the assets are located or that governs the transfer of the instruments of ownership, assets, rights, obligations or liabilities.</i></p> <p><i>Where the RA of a Member State applies various resolution tools, and the contracts, liabilities, instruments of ownership or debt instruments of the CCP include instruments, contracts or liabilities that are governed by the law of another Member State, or liabilities owed to creditors and contracts in respect of clearing members and, where applicable, their clients located in that other Member State, the authorities in that other Member State shall ensure that any action resulting from those resolution tools takes effect.</i></p> <p><i>Shareholders, creditors and clearing members and, where applicable, their clients affected by those resolution tools shall be entitled to challenge the reduction of the payable amount of the instrument or liability or its conversion or</i></p>		<p>Cooperation between authorities</p> <p>The UK CCP R&R Proposals does not address this topic and there are no live UK proposals or consultations to amend the UK legacy regimes in relation to cross-border cooperation and enforcement. See for example, Chapter 6 and Chapter 6A of the Banking Act relating to third-country resolution actions and resolution of UK branches of third-country institutions (as modified by section 89B(6) of the Banking Act). Information on third country resolutions and international cooperation on resolution is set out in chapter 10 of the Code.</p> <p>Sections 83ZA to 83Z2 of the Banking Act set out the BoE's powers to gather information and to investigate in relation to its powers under the Banking Act and to enforce its requirements through regulatory or criminal sanctions.</p> <p>We would be happy to undertake further analysis if that would be of interest.</p>	

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			<p>major provider of clearing services to the host jurisdiction. Consideration should be given to the degree of overlap in products cleared and critical clearing services offered;</p> <p>viii. <i>interconnectedness</i>: the extent to which the CCP is connected to the host jurisdiction by providing services that are important to the real economy in the host jurisdiction, such that its failure could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets, in that jurisdiction and threaten its financial stability; and interdependencies between CCPs other than links (e.g. cross-margining arrangements, provision of critical functions from one CCP to the other, and guarantees provided by a common parent company) and in cases where the CCP is part of a group, any relevant interconnections from the location of the parent company.</p> <p>Composition of the CMG In determining the composition of the CMG of a CCP, the home RA should be guided by the FSB Key Attributes and the FMI Annex with a focus on the materiality of the CCP’s operations and activities in jurisdictions for resolution planning and for executing resolution. The home RA should consider including in the CMG, in addition to the relevant CCP home authorities (which are the supervisory and RAs, central bank, finance ministry and the public authority responsible for guarantee scheme) the following:</p> <ul style="list-style-type: none"> ix. host country supervisors where the CCP is authorised/licenced; x. supervisors and RAs of major clearing members (e.g. jurisdictions where members accounting for a significant share of the CCP’s default fund); xi. central banks of major currencies cleared (i.e. currencies accounting for a significant share of the CCP’s business); xii. in the case of CCPs belonging to a wider financial group, supervisors and RAs of significant affiliated entities; and xiii. if relevant, supervisors and RAs of significant FMIs and trading venues operating with the CCP. <p>The home RA may consider inviting other authorities to join the CMG or to participate on an ad hoc basis where appropriate.</p>		<p><i>restructuring, as the case may be, only under the law of the Member State of the RA.</i></p> <p>Various rights and safeguards should also be determined, but are not extracted here.</p>			
		FSB Guidance 2020, Overview and Part 1, pp.2-3.	<p>CMG approach For a systemically important CCP, the RA should discuss the resolution plan and resolvability assessment within the CMG.</p>					

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
		FSB Guidance 2017, 9.3-9.4, p.19. FSB Key Attributes 7, 8; Appendix II FMI Annex 1, 8-9.	<p>Information exchange</p> <p>Within CMGs, CCP-specific cooperation agreements (CoAgs) should support information sharing for resolution and resolution planning on a multilateral basis among all CMG members, including by setting out dedicated arrangements for data confidentiality and professional secrecy.</p> <p>Information shared should at least encompass information necessary for assessing the credibility and feasibility of the resolution plan in terms of maintaining the continuity of critical functions in a resolution and minimising systemic risk in jurisdictions where the CCP is systemically important. It may also include information about cleared markets, linked FMIs or clearing members.</p>	EU CCP R&R, Article 8.	<p>Information exchange</p> <p>RAs, competent authorities and ESMA shall, on their own initiative or on request, provide each other in a timely manner with all the information relevant for the exercise of their tasks under the EU CCP R&R. However, the RAs shall only divulge confidential information provided by a third-country authority where that authority has given its prior written consent. RAs shall provide the competent ministry with all information relating to decisions or measures that require notification, consultation or consent of that ministry.</p>		<p>Not addressed by the UK CCP R&R Proposals. See existing regime above.</p> <p>We would be happy to undertake further analysis if that would be of interest.</p>	
31.	Information sharing, engagement and cooperation between RAs and other authorities	FSB Guidance 2017, 9.5-9.7, pp.19-20. FSB Key Attributes 7, 8; Appendix II FMI Annex 1, 8-9.	<p>Cooperation and information sharing with non-CMG authorities</p> <p>The home RA should establish effective arrangements for cooperation and information sharing with relevant host authorities from jurisdictions where the CCP is systemically important but that are not represented on the CMG (relevant non-CMG authorities), taking as a starting point for those arrangements the FSB guidance on cooperation with non-CMG hosts and using, where possible, existing cooperative arrangements between authorities.</p> <p>During resolution planning, the home RA should share relevant information on the resolution plan with relevant non-CMG host authorities to enable them to understand the key elements of the resolution plan and the impact of resolution actions on their jurisdictions. It should seek input from these authorities as appropriate. The home RA should consider any information or feedback provided by relevant non-CMG host authorities.</p> <p>The home RA should communicate with relevant non-CMG authorities during a crisis and consider information provided by those authorities. Such information sharing could be done through existing cooperation arrangements between authorities.</p>	EU CCP R&R, Articles 76-79.	<p>Third country cooperation</p> <p>Article 76 contains provisions relating to agreements with third countries, whereby the European Commission may submit to the European Council recommendations for the negotiation of agreements with one or more third countries regarding the means of cooperation between the RA and the relevant third country authorities in connection with recovery and resolution planning in relation to CCPs and third country CCPs.</p> <p><i>Article 77 contains provisions relating to the recognition and enforcement of third country resolution proceedings and Article 78 provides for the right to refuse recognition or enforcement of third country resolution proceeding.</i></p> <p>Article 79 governs cooperation with third country authorities, providing that competent authorities or RAs, where appropriate, shall conclude cooperation arrangements with the following relevant third-country authorities. The cooperation arrangements shall establish processes and arrangements between the participating authorities for sharing the necessary information for, and cooperating in, carrying out various resolution tasks and exercising the resolution powers. Article 80 governs the exchange of confidential information.</p>		<p>Not addressed by the UK CCP R&R Proposals. See existing regime above.</p> <p>We would be happy to undertake further analysis if that would be of interest.</p>	
			N/A	EU CCP R&R, Articles 52 and 53.	<p>Power in respect of assets, contracts, rights, liabilities, obligations and instruments of ownership of persons located in or governed by the law of third countries</p> <p>In Article 53, <i>where a resolution action concerns assets or contracts of persons located in a third country or instruments of ownership, rights, obligations or liabilities governed by the law of a third country, the RA may require that:</i></p> <ol style="list-style-type: none"> i. <i>the CCP under resolution and the recipient of those assets, contracts, instruments of ownership, rights, obligations or liabilities take all necessary steps to ensure that the action becomes effective;</i> ii. <i>the CCP under resolution holds the instruments of ownership, assets or rights or discharges the</i> 		N/A	

No.	Theme	Citation	FSB Guidance	Citation	EU CCP R&R	Citation	UK CCP R&R Proposals	ISDA/FIA comments
					<p><i>liabilities or obligations on behalf of the recipient until the action becomes effective;</i></p> <p>iii. <i>the reasonable expenses of the recipient properly incurred in carrying out any action are reimbursed.</i></p> <p><i>For these purposes, the RA shall require the CCP to ensure the inclusion of a provision in its contracts with clearing members and holders of instruments of ownership and debt instruments and holders of other liabilities located in or governed by the law of third countries by which they agree to be bound by any action in respect of their assets, contracts, rights, obligations and liabilities taken by the RA. The RA may require the CCP to provide it with a reasoned legal opinion by an independent legal expert confirming the legal enforceability and effectiveness of such provisions.</i></p>			