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FIA Response to BCBS, CPMI, IOSCO Consultation on A Discussion Paper on Client Clearing: Access and Portability

Introduction

On behalf of FIA[1] and its members, we express our appreciation for the opportunity to respond to the CPMI-IOSCO A discussion paper on client clearing: access and portability. We understand this discussion paper concerns clearing and access to CCPs. It is critical that clients have access to CCPs and we appreciate the global regulators studying this important issue.

Below are FIA's answers to the specific questions posed in the discussion paper.

Access (Section 2) Design of direct and sponsored access models

1) **Do you agree with the observation in the discussion paper that the direct and sponsored access models are designed for and generally used more by larger and/or more sophisticated clients?**

CCPs are important inter-connectors in the financial system, and are meant to decrease counterparty credit risk by managing and mutualizing that risk through their clearing members. Clearing members absorb losses from the default of clients. Additionally, clearing members provide funds to the CCP for a default fund used if a clearing member itself defaults and that defaulting clearing member's margin is insufficient to cover the loss. The use of the default fund results in risk mutualization. This risk becomes more significant if the CCP membership is more heterogeneous or if more complex products are cleared.[2] Thus, CCPs and the entire clearing ecosystem are best served by relatively high standard membership criteria consistent with equitable access to clearing.

FIA agrees with the CPMI – IOSCO Discussion paper on client clearing: access and portability (Paper) that these models are only suitable, if at all, for the larger and/or more sophisticated clients due to operational, credit, risk and liquidity capabilities. The purpose of a clearing member is to be an

[1] 1 FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from more than 48 countries as well as technology vendors, lawyers and other professionals serving the industry. FIA's mission is to support open, transparent and competitive markets, protect and enhance the integrity of the financial system, and promote high standards of professional conduct. As the principal members of derivatives clearinghouses worldwide, FIA member firms play a critical role in the reduction of systemic risk in global financial markets.

[2] Since the earliest days of central clearing in the late 19th century, one of the methods that CCPs have used to manage the risk they take is to impose strict admission criteria on their members "to ensure they have a low probability of insolvency and have the necessary operational abilities to engage in clearing." *Central Counterparties: Mandatory Clearing and Bilateral Margin Requirements for OTC Derivatives*, Jon Gregory (2014), p. 134.

intermediary and to provide access to CCPs by guaranteeing financial obligations of the clients to the CCPs, risk managing its clients and the clearing process and meeting the requirements of the CCPs.

2) Could there be any other solutions that would facilitate access, either through greater use of such access models by small and medium-sized clients, or through some other solution?

Small and medium-sized clients will need to have the operational capacity to use these models and directly risk manage their margin calls and exposure with the CCPs in real time. That alone may make it less likely that small and medium-sized clients will use direct and sponsored models.

There are also regulatory impediments to clearing for small and medium-sized clients. Although the regulators have made strides in calibrating post-crisis capital requirements to ensure the correct incentives are in place, there is still more work to be done in this area. Capital is a driver of internal caps on clearing members' capacity to clearing for clients.

Section 2.1 of the Paper observes, "Direct and sponsored access models were designed to address the perceived shortcomings of 'traditional' client clearing." The Paper adds that the models were developed to provide solutions to two groups of market participants: (i) buy-side entities that find the current costs of clearing excessive due to "passed-through regulatory/capital costs from client clearing service providers" and (ii) client clearing service providers that do not view client clearing as a very profitable business given its significant balance-sheet costs and that look for more capital-efficient ways to provide clearing services. The concerns raised by these participants suggest that the "shortcomings" of client clearing are due to the capital costs to which clearing service providers are subject. Reducing such costs may be a more direct and less risky way of addressing client access than pushing for the development of direct and sponsored access models.

There are binding constraints on clearing capacity through the capital requirements. The leverage ratio now recognizes client collateral but it is not a one-to-one recognition and is somewhat limited. We note that the Derivatives Assessment Team (DAT) report highlighted that under the current exposure measure (CEM) there was no recognition of client cleared collateral under the leverage ratio. This was partially improved by the introduction of the standardized approach to counterparty credit risk (SA-CCR). This greatly improved the ability of clearing members to clear for clients. However, the recognition of collateral is still limited via a formula that should be reviewed by regulators. Margin is risk-reducing and clearing members should be incentivized to collect it as the first line of defense in the clearing system.

Also, the GSIB capital surcharge score, where OTC notionals cleared under the riskless principal model are included (both client and CCP leg) in the complexity bucket for the firm's GSIB score limits client clearing. This has prompted FIA to explore an agency clearing model with the EU CCPs under EU legal jurisdictions which could provide an alternative clearing model.

Barriers

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3) **Do you agree with the findings in the discussion paper that direct and sponsored access models are used more for certain types of products (eg repos) than for others? Do you agree with the reasons described in the paper for why this is the case? Why/why not?**

FIA agrees that not all products or markets are suitable for direct and sponsored access models. The Paper notes that there were some CCPs citing an increase in demand for the sponsored access model in repo markets and the fixed income transactions, due to the balance sheet offsets that such models afford and the resulting decreased capital charges. In the case of at least one CCP, the balance sheet offsets of its sponsored repo product benefit the sponsoring member. The offsets allow the sponsor, that is also a dealer in bilateral repos, to address the impact of post-financial crisis leverage ratio and GSIB capital surcharge requirements. These capital requirements have limited the amount of bilateral repos dealers can do with clients by significantly increasing the cost of bank balance sheets. In this respect, the sponsored product can be viewed as a replacement for bilateral repos that dealers are effectively prevented from entering into with clients because of capital and balance sheet constraints.

We agree that there are cost-savings that facilitate the sponsored access model's success in those asset classes, but this is subject to market conditions as well as internal capital modelling. Furthermore, depending on the sponsor, balance sheet benefits may not be as meaningful and may be outweighed by the risk or operational costs and concerns.

Finally, direct and sponsored models are typically suited to a specific category of customers that are sophisticated and carry exposures of a size that warrant these models.

Challenges related to direct and sponsored access models

4) **Do you agree that direct and sponsored access models have the potential to diversify the risk profile of the direct clearing participant basis of a CCP by introducing new types of direct participants? Why/why not?**

See answer to Q1. No two sponsorship models are the same, so it is hard to answer this for all models.

If the sponsoring member remains liable for their sponsored client in the event of a client default, the risk hasn't been diversified. It's just more visible by having a sponsored client. Also, capital requirements for the client clearing service provider (CCSP) will remain the same as if the client were an ordinary client of the clearing member.

In a sponsorship model the sponsor must have the ability to manage risk real time. If reporting and other monitoring takes place at the CCP, rather than the clearing member, the clearing member still has risk through the guarantee fund contributions they make on behalf of the sponsored client but less ability to manage the risk. Thus, the sponsor must have all the tools currently available for risk management, including closing and liquidating the client.

Given sponsors are typically the same firms who already provide traditional clearing access to clients, sponsored models not only fail to diversify participant risk in some cases but also contribute to further risk. This is because sponsors may lack operational visibility to properly monitor client activity and risk or access collateral posted.

If a sponsor, or clearing agent, is responsible only for certain aspects of the clearing relationship (e.g. guaranty fund contribution, operational services) the CCP is ultimately and directly responsible for the risk that direct clearing participants brings to the CCP and its other members. In such a model, the risk-absorbing buffer of 'ordinary' clearing members with additional capital and risk management capabilities may be missing. Given this, direct clearing participants naturally are the more sophisticated, well-capitalized clients. They must fulfill a CCP's clearing member requirements.

In short, whether direct and sponsored access models can diversify a CCP's risk profile depends on the model and the circumstances.

The potential legal and regulatory risk to the CCP is also more complex than it is in a traditional clearing model. Even when a sponsor fully guarantees a client's performance to a CCP, contractual privity between the CCP and client (which would be absent in a traditional clearing model) increases the risk that the CCP may be pulled into insolvency or other proceedings with respect to the client. A CCP would want to conduct sufficient legal review, including obtaining legal opinions, to confirm that its default management rules would be enforceable and not subject to stay or avoidance under the laws of the client's jurisdiction, particularly in scenarios in which both the client and its sponsor are insolvent. A CCP would also want to obtain independent legal opinions analyzing the legal and regulatory consequences (including conflicts of law issues) under the laws of a client's jurisdiction if the CCP allows the client to become a sponsored member. The expectation that a CCP would engage in such legal analysis is articulated in Principle 1 (Legal Basis) of CPMI-IOSCO's *Principles of Financial Market Infrastructures.*

5) Do you think that CCPs have introduced sufficient safeguards to prevent risk transmission from direct participants using direct and sponsored access models? Why/why not? If not, what additional safeguards do you think are necessary?

Some of the new direct and sponsored access models may add risks to the system. We commend the international regulators for considering the potential default of a client and the legal rights and duties of its sponsoring member. We do not believe this potential default will be easily ported -- and if not ported, the direct and sponsored client would have to be liquidated, impacting the other members and clients of the CCP by mutualizing the loss.

For example, if a sponsor calculated RWA with respect to exposures to a client's transactions in accordance with the cleared transaction provisions of the capital adequacy rules (such that the sponsor's guarantee of the client's obligations to the CCP was treated as a derivative transaction between the sponsor and client), it would be critical for the sponsor to have enforceable closeout netting rights against the client in its default in order to net exposures to the client for RWA

calculations. Inability to net such exposures would be a fatal flaw to the structure of a sponsored model as it would prevent the sponsor from providing clearing services in a cost-efficient manner.

6) **Do you think that sponsors are properly incentivised to closely monitor the activity of their sponsored participants (ie the direct participants)? Why/why not? If not, how do you think sponsors could be properly incentivised?**

In models where sponsors are required to contribute to the CCP default fund on behalf of the sponsored client, sponsors are naturally incentivized to monitor client activity. However, it is imperative that CCPs provide sponsors adequate visibility and tools to do so.

7) **Do you think that the number of sponsors is limited? Are you concerned about sponsor concentration risk? If so, is this because it is difficult to find a sponsor? Are there any other reasons?**

FIA believes that there are a limited number of clearing members who are willing to become sponsors. The rationale varies from CCP to CCP and product to product. There may also be limited incentives for clearing members to become sponsors, especially when restrictions under current capital rules are punitive for clearing members, limiting commercial returns.

8) **Do you think that CCP rules adequately address the issue of sponsor default? If so, what are the CCP rules that adequately address this issue? If not, what kind of CCP rules are required to address this issue?**

Rules differ between CCPs and products. CCP rules need to ensure risk standards remain high for sponsored clients to protect against a sponsored client default.

Additionally, one of the most important tools for risk management is the sponsor's ability to call clients into default to protect themselves and the clearinghouse. This requires tools to real-time monitor the sponsored client. Without the tools and ability, sponsored models are riskier.

Testing

9) **Have you participated in default management exercises that test direct and sponsored access models?**

FIA is not aware of any default management exercises that test direct and sponsored access models. In the exchange traded derivatives space, FIA is not aware of any meaningful live sponsored access activity that needs testing.

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10) **Without providing identifying information, what has worked well in such exercises? What has not? Do you have recommendations as to what could be improved for such exercises?**

Additional considerations

11) **Please describe any additional factors that may be impacting the activity and uptake of direct and sponsored models that are not considered in this paper.**

FIA believes that it is difficult to design a model in derivatives that is valuable for both the clearing member and clients.

A value-add for the clearing members means better accounting treatment, collateral access, capital efficiency and/or revenue generation. It must have one of these positive outcomes while providing equal risk management tools for monitoring the sponsored client or direct client without putting the mutualized resources at risk.

A value-add for the clients would be operationally easy to connect, provide collateral, and handle all the product changes and messaging. In other words, the value that the clearing member brings should be replaced in just the same way or better through the sponsored or direct access model.

FIA believes at this time the models are likely not providing both clearing members and clients these values in the same model.

12) **Please provide any additional comments with regards to the impact that direct and sponsored access models have on access to client clearing.**

These models are still not the solution for access for the target audience, primarily the small and medium sized clients. Additionally, FIA is not hearing of issues regarding access in the exchange-traded derivatives markets.

13) **Please provide additional comments with regard to access to client clearing more generally.**

FIA believes regulatory capital remains a primary driver. Capital rules are sometimes broadly applied without enough consideration about the impact to clearing, a risk-management function for the financial industry.

As discussed above, a primary drive of the uptake of sponsored repo has been the post-crisis changes to bank capital requirements such as the leverage ratio and GSIB capital surcharge. These

have resulted in constraints on the balance sheet capacity of banks acting as repo dealers to meet client demand for bilateral repo transactions, whose notionals have significantly declined relative to pre-crisis levels as a result of the changes in capital requirements. The issue of balance sheet capacity is addressed by the balance sheet offsets that the sponsored repo product provides banks acting as sponsoring members so that sponsored repo can effectively substitute for bilateral repo transactions.

Sponsoring members' assumption of the responsibility for clearing fund contributions that would otherwise be expected from their clients as sponsored members can be viewed as a trade-off. To make the product a workable solution to banks' balance sheet constraints, they are willing to assume such funding obligations in order to facilitate participation in the product by clients that cannot take on mutualized default risk. Risk assumed by the sponsor with respect to the additional clearing fund obligations is presumably mitigated, to some extent, by the fact that the securities underlying the repos are sovereign securities and the repos are either overnight repos or have very short terms (e.g., 7 days or less).

It should not be assumed that sponsored repo structures promote (or even support) portability of a sponsored member's transactions in the insolvency of its sponsoring member.[3] The prospects of portability would depend upon the structure of the particular sponsored product offered by a CCP.

Different considerations apply in the case of cleared derivatives with respect to whether sponsored or direct access models would effectively address client concerns raised with respect to "traditional" clearing. These include (1) some small- and medium-sized clients have difficulties in accessing clearing, and (2) some clients are unhappy with regulatory/capital costs being passed through to them by their clearing members.

It is difficult to assess the Paper's assertion that small- and medium-sized clients have difficulties in accessing clearing without more details,[4] but the root cause of the issue that each category of clients has (whether it is access or cost) is imposition of capital costs on their clearing members that make the provision of clearing services less profitable. As explained above, sponsored member models, which provide enhanced balance sheet offsets, are designed to address the balance sheet constraints that result from the capital rules. In the case of cleared derivatives, however, bank regulatory capital requirements result in binding constraints different than balance sheet capacity.

[3] Also, it should not be assumed that portability would be a concern of every client. For example, it is not clear why a client engaging in only overnight repos would care about portability.

[4] We note that since the beginning of futures clearing in the late 19th century, clients of all sizes and types, ranging from individuals in the retail market to the largest of institutional clients, have had access to clearing. We assume that complaints about access have not come from clients clearing futures.

While a sponsored model may address such constraints, these constraints could also be addressed by less drastic modifications to the applicable clearing model.[5]

Additionally, structuring a sponsored model for cleared derivatives that would allow a CCP to waive default fund contributions -- as has been the case for some CCPs' sponsored repo models --would not be advisable. In terms of portability of clients' cleared derivatives, the legal structures supporting portability in "traditional" clearing models are, as a general matter, well-analyzed and sound. It is not clear that a sponsored model would provide any enhancements.

More generally, it is not clear how expansion of sponsored or direct access models would solve for, or even address, the concerns of small- and medium-sized clients regarding access or buy-side clients' complaints regarding the pass-through of regulatory/capital costs. The first category of client simply wants access to clearing. The second category, which has access, wants it at a lower cost, but new models would likely require them to enter into direct relationships with CCPs. At minimum this would impose new legal obligations on clients and, depending on the structure of the particular model, possibly subject their operational capabilities, liquidity and creditworthiness to scrutiny by a CCP. Additionally, such clients would presumably still need sponsors under such models, which would expect fees for their sponsoring services, and there is no certainty costs incurred would be less than the clearing costs they currently bear.

Even assuming a model could be developed to address concerns about access and cost, it will not be developed overnight and there could be a lengthy period where issues are not addressed. These issues may even worsen if more clearing members exit the market because of failure to address the root cause of their concerns.

The more direct, quicker and less risky solution to potential lack of access is to address capital costs for clearing service providers.

Porting (Section 3)

Risks from not porting

[5] For example, as noted above, calculation of the GSIB capital surcharge requires a GSIB clearing member that is clearing OTC transactions for clients under the principal model to include the notionals for both the CM-CCP and CM-client legs of client transactions in the complexity bucket. Such requirement could impose a significant binding constraint on a GSIB clearing member's capacity to clear for clients, and FIA is exploring the feasibility of replicating aspects of the US agency clearing model in UK and European CCPs as an alternative to existing principal model clearing. In theory, a sponsored model could also address the issue (since a sponsored model is a form of agency model) but replication of the US model would be a more conservative strategy from a legal perspective since the US agency model lacks the contractual privity between a CCP and clients that is a feature of a sponsored model that increases legal risk and uncertainty.

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14) Are there any additional risks or potential harm associated with not porting following a clearing participant default, which were not described in the discussion paper? If so, please describe such additional risks and/or harm.

FIA believes the paper correctly identifies the risks and potential harm association with not porting following a clearing participant default.

15) Potentially effective practices. Do you agree with the two tools identified in the discussion paper as potentially successful porting practices? Are there any other tools that should be identified as potentially effective practices?

The Paper identifies two tools to maximize the potential for a successful port in event of a default:

1) the client identifying an alternate or backup CCSP; and

2) a CCP formulating a game plan in advance on how to allocate the clients of a potential defaulter.

Both tools are helpful for a successful management of a member default.

Back up CCSP -

Although this is helpful, back up providers often do not provide a guarantee that they will take a port as it will be highly dependent on the portfolio in question and the current credit appetite. Clients should aim to not only identify but also ensure they have legal and know your customer (KYC) requirements completed as much as possible in advance.

Game planning –

FIA strongly recommends game planning through tabletop or playbook exercises for all parties in the chain. A member default is likely to occur during a highly stressful and volatile time, and understanding key tasks, owners, sequencing and communication protocols is a good investment.

It is very important to make sure that any fire drills are conducted as close as possible to the game plan that would be put into effect (for the fire drill scenario). There is always constructive feedback provided and it will be a more useful drill if the game plan mimics as much as possible how the CCP will handle an actual default.

These game plans need to be refreshed and not be a one-off investment given constantly changing dynamics including number of CCSPs, evolution in CCP product offering and regulatory environment.

16) What additional approaches do CCPs use to pre-emptively identify a backup CCSP? What incentives can be provided to assist the development of alternative/backup CCSP

relationships? Are there any other considerations for alternate/backup CCSPs not set forth in the report?

Clearing firms in EMEA may reference in their public clearing disclosures that clients may consider arrangements with a back-up clearing member, and carrying out operational testing in respect of those arrangements, in order to facilitate porting of positions and assets in the event of a default by their clearing member.

Back up CCSP are likely to come at a cost to the end-user as it is a significant amount of ongoing cost for a CCSP to set up and service a client, and is especially costly for fund managers with significant legal entities/accounts. The clearing member must conduct ongoing credit due diligence, anti-money laundering (AML) and continued regulatory upgrades just to keep the relationship compliant. Operational and system capacity issues arise from having dormant accounts on books and middleware platforms. It can also be less operationally efficient for end-users to face multiple counterparties thanks to loss of margin efficiency, less commercial negotiating power and other concerns.

The industry should contemplate what being a backup actually means. As the Paper rightly notes, it is not a guarantee of porting. Clearing members generally set contractual limits for OTC derivatives and sometimes for futures and options (e.g. under MiFID) expressed in terms of initial margin. This limit changes based on the client legal entity and based on the credit appetite. The backup clearing member will always consider the current utilization for an entity and the credit appetite which may be reduced because of related market disruptions or volatility.

Additionally, it would be very unusual for a clearing member to take a client on without KYC/AML, as noted in the Paper. Moreover, the following have to be in place from a risk management perspective, a client clearing agreement (which includes the legal terms which govern the relationship), limits and standing settlement instructions (SSIs) to facilitate margin payments to accompany the transfer. These elements are critical to ensure margin obligations are covered and further risk is not introduced into the system for solvent clearers.

Finally, the CCSPs have a requirement for credit due diligence, which implies that the relationship must pre-exist the porting event between CCSP and client. The US Federal Reserve released a press release on 10 December reminding firms of safe and sound practices for counterparty credit risk management in the light of the Archegos default. This applies to institutions supervised by the FRB that have derivatives portfolios and relationships with investment funds. The Fed specifically states that when initiating a relationship and on an ongoing basis, firms should obtain critical information regarding derivative portfolios. The UK PRA published a similar letter on the same day.[6]

[6] See these relevant links:
https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20211210a1.pdf;

17) Are there other considerations for having a game plan that were not described in the discussion paper?

In the event of a clearing member default, the environment will likely be highly chaotic with multiple parties all seeking resolution with expediency during an elevated level of market volatility. Therefore, it's very important that the process is as smooth as possible. FIA recommends some very practical measures, including:

1) harmonization of data formats and fields;
2) use of LEIs or universally understood client identifiers; and
3) common milestones/timeframes for porting across CCPs.

CCPs should make fire drills as true to life as possible, including contemplating the default of a large clearing member with listed and OTC derivatives. Existing fire drills tend to stress certain clearing services but, realistically, a large member default will impact the system across asset classes, services and CCPs.

18) In addition to those outlined in the paper, what attributes of account structures facilitate or impede porting client accounts?

This will depend on the CCP and its implementation of different account structures, though it is generally believed that the ability to identify positions and accompanying collateral will facilitate porting. However, the realistic view is that the real drivers of ability to port will be the environment at the time the port is required, the capacity of the CCP and the risk appetite of the identified substitute CCSP.

19) Are some client accounts not suitable for porting?

Client accounts with illiquid or concentrated positions in the defaulting CCSPs client portfolios may be particularly challenging to port, particularly if the positions do not have favorable capital treatment. Additionally, certain client profiles may also be difficult in a porting situation, such as retail clients and potentially indirect clearing clients, which may be more operationally challenging for a new clearer to adopt.

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https://www.bankofengland.co.uk/prudential-regulation/publication/2021/december/supervisory-review-global-equity-finance-businesses

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20) Does holding excess collateral and the ability to make direct payments improve the probability that a client will be ported successfully or are there impediments to using this collateral?

Holding excess collateral generally assists the porting of a client. However, sometimes customer positions and related collateral do not move together. This can result in a potentially under-margined portfolio being ported to a non-defaulting clearing member. Given the clearing member cannot be undermargined for its clients, this places additional collateral requirements on the clearing member until collateral is ported. Furthermore, it creates a potential resource implication, particularly in times of stress. Again, other factors will be more important such as market conditions, risk appetite and capacity to review multiple porting request at the same time.

21) What is your view of a client consent mechanism that could be used to facilitate porting, if permitted under applicable law?

FIA believes that client consent may impede porting in a "bulk" port arrangement. If one client objects, that could impact all other clients in the bulk. Under EMIR Article 48(5) in the EU, all types of omnibus accounts can only be posted to a back-up clearing member if all clients in that omnibus account have agreed to be ported to the same back-up clearing member and have previously entered into contractual arrangements with that back-up clearing member by which that clearing member has committed to take them on as its clients. Even for customers who have elected individual segregation under EMIR, the back-up clearing member is only obliged to accept that client's assets and positions where it has previously entered into a contractual relationship with the client by which it has committed itself to do so (see EMIR Article 48(6)).

FIA agrees with the potential solution of a negative consent process or advance consent. As noted in the Paper, clients could then move to another CCSP or liquidate after the fact, if desired.

22) Are the potentially effective practices described in the discussion paper consistent with prior porting experiences?

23) Are there any barriers to implementing potentially effective porting practices that are not described in the discussion paper?

Local insolvency laws in the country in which the CCP is incorporated may impede movement of collateral with the position which may also impact portability. Some jurisdictions may require court approval to move collateral.

Insolvency law in some jurisdictions (e.g. in many EU member states) do not clearly protect porting by the CCPs in the event of default of the clearing member. That means there is a risk that porting of

customers' positions and assets will be challenged by the insolvency practitioner of the defaulted clearing member. The risk of legal challenge of such transfers may act as an impediment to the back-up clearing member accepting ported customers. Similarly, in certain jurisdictions such as the US, porting customer positions and collateral after a default is dependent upon obtaining requisite approvals from a bankruptcy court.

Additionally, in the EU, Article 25 of Commission Delegated Regulation (EU) 2017/589 of 19 July 2016 and Article 17(6) of the MiFID II Directive, relating to due diligence of prospective clearing clients, requires clearing members to make a number of assessments of prospective clients, including, credit strength, internal risk controls, intended trading strategies, payment systems and arrangements and collateral provided by the client. These assessments will take time to complete before a ported client is on-boarded.

Communication and coordination

24) Are there any additional communications by the CCP or the defaulting CCSP that may increase the probability of porting client accounts?

Maintaining CCSP contacts/escalation trees may help. CCPs should seek CCSP updates to these regularly, perhaps on a quarterly basis, and make them systemically available to view and update. The reverse also holds true. To avoid duplicative communications and miscommunication, it should be clear who from the CCP will communicate what, as communication channels during BAU times may differ at different levels of the organization.

25) Are there additional actions CCPs can take following a clearing participant default to coordinate that are not set forth in the discussion paper? Are there any limitations on coordination that are not included in the paper?

Harmonisation

26) Are there additional items CCPs can harmonise or standardise during business as usual that are not outlined in the discussion paper? Are there any factors that may impede harmonisation or standardisation that are not provided in the paper?

See Answer to Q17, FIA recommends harmonization of data formats and fields. Clearing member assessments are hampered by CCPs having different position file formats, as well as different upload template requirements when using CCP "what-if" tools, resulting in data formatting issues when consolidating existing client portfolios with new ones to ascertain the risk of the combined portfolio.

Notable issues to consider when developing a porting protocol

27) Are there additional regulatory requirements that could impede porting? Can such impediments be addressed or mitigated through action prior to the CCSP's default?

1) FIA recommends that regulators work with industry to consider forbearance for a limited time period post-port to conduct KYC and AML. We also encourage regulators to work with industry to develop a centralized database for KYC.
2) FIA recommends that regulators provide capital forbearance for a limited time, until the non-defaulting clearing member can capitalize the new positions and obtain proper documentation, such as a netting opinion.
3) FIA recommends that jurisdictions of existing clearing members review their insolvency laws to ensure legal certainty for porting of client positions and assets by the CCP in the event of insolvency of the clearing member.

28) Are there any additional factors that should be addressed in testing exercises?

None that we can suggest at this time.

29) Please provide examples of good disclosure practices from your perspective.

The publication of CCP "game plans" and a sample default timeline and runbook would bolster the lack of understanding noted by clients.

30) Are there other arrangements a CCSP can make to ensure that, post default, the CCSP can help coordinate porting at multiple CCPs if the CCSP is a non-defaulter? If the CCSP defaults, what arrangements can the CCSP make to facilitate the porting of its clients?

Suggested next steps

31) Please provide feedback on the suggested next steps for consideration. Do you agree that these issues warrant further consideration by CCPs, CCSPs and/or clients? Are there additional issues that may warrant further consideration?

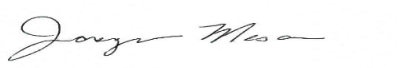
The industry may want to consider a fintech solution for porting. New technology may have a role to play in facilitating the timely and accurate transfer of information and efficient communication across all market participants in a default scenario. Technology could also help address the complex issues that would arise from a larger clearing member defaulting at multiple CCPs. It may be possible for a fintech solution, with the right permissioning model across the clearing chain, to enable client portfolios to be shown to CCSPs who are designated back up for that entity. CCSPs could publish limit availability by client entity and confirm portfolios they were willing to take

electronically, enabling the porting process to begin more smoothly. Clients would also have full transparency of the process and their status. Linking this information to CCP margin calculators and existing risk cleared would facilitate understanding of margin and liquidity impacts to CCPs/CCSPs.

An additional tool that may assist is a central KYC database where clients can upload their documentation and permission various intermediaries that may need it.

FIA looks forward to speaking with global regulators about our views expressed in this consultation response. If you have any questions or would like to discuss, please contact Jacqueline Mesa at jmesa@fia.org or 202-772-3040.

Respectfully submitted,



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