

Response to the Bank of England Consultation Paper

Ensuring the continuity of critical clearing services: the Bank of England's approach to discretionary payments by central counterparties

Executive summary

We appreciate the opportunity to provide our response to the Bank of England's Consultation Paper "Ensuring Continuity of Critical Clearing Services: the Bank of England's (BoE) approach to discretionary payments by central counterparties".¹ The International Swaps and Derivatives Association (ISDA) and the Futures Industry Association (FIA), collectively the Associations, have carefully considered the proposed statement of policy outlined in the consultation paper, regarding the BoE's power to direct CCPs to temporarily restrict or prohibit discretionary payments to shareholders or employees of CCPs.

The Associations acknowledge that this new power is an important component within the BoE's supervisory toolkit. As set out in the consultation paper, this power can serve to support CCP's financial resilience in times of stress. As such, it reduces the likelihood that a UK CCP would reach a point where it is failing or likely to fail, thereby safeguarding financial stability, in the UK but also in third countries where clearing members are established. It also provides further assurance that the continuity of critical clearing services can be maintained in times of stress.

In summary, we support the Bank's definition of its approach to the statutory conditions set out in the FSM Act 2023 for exercising these powers, as set out in the statement of policy contained in the consultation paper.

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

Detailed commentary

The proposed statement of policy, as detailed in the consultation paper, provides welcome details on the BoE's approach to a power defined under paragraph 13 of Schedule 11 of the Financial Services and Markets (FSM) Act 2023. This power enables the BoE to issue directions to require CCPs to restrict or prohibit certain types of discretionary payments for a period of up to five years, subject to certain conditions.

Approach to condition B: "Necessary or desirable having regard to the public interest"

The Associations particularly welcome that in setting out its approach to giving a direction to restrict or prohibit discretionary payments, the BoE explains that it "expects to consider the maintenance of public confidence in the UK financial system as part of the public interest in UK financial stability. This includes the maintenance of public confidence in markets and the banking and wider financial system which the CCP serves". We consider this to be a very important point, recognizing the cross-border nature of UK CCPs, which are relied upon by market participants globally. In that regard, any further guidance or approach

¹ [Ensuring continuity of critical clearing services: the Bank of England's approach to discretionary payments by central counterparties - Consultation statement](#)

document which would set out in further detail how the BoE intends to consider – in relation to this power as well as any other supervisory power, as relevant – *“the maintenance of public confidence in the UK financial system”* and *“the maintenance of public confidence in markets and the banking and wider financial system which the CCP serves”* would be very welcome in terms of providing further certainty and confidence to third-country market participants and authorities.

Relatedly, while we appreciate that resolution powers are governed by separate statutory conditions under the FSM Act, we would also encourage the BoE to adopt this approach as regards any resolution powers when assessing their impact on UK financial stability – i.e. to consider the maintenance of public confidence in the UK financial system and the maintenance of public confidence in markets, banking and wider financial system which UK CCPs serve.

Use of the power as a way to rebuild resources

The Associations’ members highly value resilient CCPs that can be relied upon under stress circumstances. We believe that the restriction of discretionary payments by CCP in severe circumstances is an effective measure that can be implemented, to ensure that CCPs can build up their financial resources to absorb potential losses in a situation of stress and uncertainty. As set out in the section detailing “C: Further conditions, of which at least one needs to be met”, we welcome that the BoE cites the scenario of an unanticipated material general business risk to a CCP, as one that could warrant giving direction under this power. We continue to stress that right-sizing the requirement for CCPs’ own resources is the most appropriate way to address non-default losses.

We also note that as part of the scenarios envisaged under condition C, the BoE considers a shock to a CCP that results in material financial losses, such that the CCPs’ viability or its ability to maintain critical clearing services could be threatened. We agree that such a scenario would justify the use by the BoE of the power to give direction to restrict or prohibit discretionary payments (subject to the conditions A and B being met). However, we would also like to point out that the preferred approach to ensure that a CCP stays viable and able to maintain critical clearing services in the scenario described here (material financial loss) is to require ex-ante sufficient pre-funded resources from the CCP such as appropriately size the first and a second tranche of skin-in-the-game. In that regard, we look forward to engaging with the BoE in its planned work with regards to the calibration of a second tranche of skin-in-the-game.

Comparison with the EU approach / EU cooperation angle

The Associations appreciate that the powers outlined by the Bank are similar to those afforded to European authorities under Article 18 of the EU CCP Recovery and Resolution Regulation, especially where *“a competent authority has determined that there are other indications of an emerging crisis situation that could affect the operations of the CCP”*, early intervention measures enable the competent authority, *“to restrict, prohibit or freeze ant payments of variable remuneration.”* We welcome that the statement of policy provides further color as to how the BoE would appreciate that the conditions for exercising the power have materialized – thereby providing welcome certainty.

Given the systemic importance of UK CCPs in the EU, we would welcome any further public guidance from the BoE on its approach to exercising other supervisory powers, and resolution powers, in a way that

ensures the maintenance of public confidence in the UK financial system and the maintenance of public confidence in markets, banking and wider financial system. Such additional information would provide useful assurance to EU market participants and authorities, illustrating that clearing across border at UK CCPs does not carry any added financial stability or systemic risk when compared to clearing at a local CCP.

About FIA

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. Our membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers. Our mission: To support open, transparent and competitive markets, protect and enhance the integrity of the financial system, and promote high standards of professional conduct. Information about FIA and its activities is available on the Association's website: www.fia.org.

About ISDA

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 77 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: www.isda.org. Follow us on Twitter, LinkedIn, Facebook and YouTube.