

ISDA and FIA response to MAS Consultation Paper on Notice and Guidelines for Recovery and Resolution Planning and Enhancement of Resolution Powers for Capital Market Infrastructures¹

Question 1. MAS seeks views on the proposed content of the RCP, assessment of recovery tools and governance arrangements for recovery planning.

We agree with the proposed contents of the recovery plan, and would suggest specifying in more detail the following:

- On the identification of critical functions, we suggest this should also include a description of the CMFMI's service providers, interconnections and interdependencies, and also the cost to continue providing critical services in recovery, and how it would mitigate contagion risks across the system;
- On the identification of stress scenarios, we suggest differentiating default and non-default loss/general business risk scenarios;
- On the assessment of the effectiveness of a full range of recovery options, we suggest that this should include the recovery trigger and the expected time the recovery option would take to implement;
- On the description of measures needed to implement the recovery options, we suggest that this should include at a minimum a detailed description of tools that the CMFMI would expect to use, and in which scenarios. We would suggest to explicitly rule out haircutting of IM as a measure;
- On the communication plan with stakeholders, we suggest that all participants should have sight of the RCP, and at the minimum the RCP should be discussed with the CMFMI's members through established governance (e.g. the risk committee and /or risk advisory group, as applicable). If all participants have transparency and are sufficiently prepared for a recovery situation, each participant can and will manage towards the CMFMI's recovery plan, instead of assuming worst-case scenarios as to how the recovery could work in practice and subsequently managing their risk on this basis. Participants planning based on worst-case scenarios assumptions might lead to actions that are not helpful for the CMFMI's efforts to manage effectively the recovery situation.

With regards to the assessment of recovery tools, we agree with the considerations set out by MAS under paragraph 3.5, 3.6 and 3.7 of the draft Guidelines to the MAS Notice. We would suggest adding explicitly that haircutting initial margin as a tool should not be allowed. In relation to the requirement under paragraph 3.5 (c) that "the tools should be transparent and designed to allow those who would bear losses and liquidity shortfalls to measure, manage, and control their potential losses and liquidity shortfalls", we would suggest to add a requirement that the CMFMI should define caps limiting the use of loss allocation tools to the CMFMI's members. Such caps should be defined as low multiples of members' default fund contributions, to mitigate the risk of contagion and mitigate potential broader financial system instability.

With regards to governance processes, we welcome the provision set out under paragraph 3.2 of the draft Guidelines to the MAS Notice, with regards to the CMFMI's board having to consider the "interests of all stakeholders who are likely to be affected by the RCP or

¹ [Consultation Paper on Notice and Guidelines for Recovery and Resolution Planning and Enhancement of Resolution Powers for Capital Market Infrastructures](#)

orderly wind-down plan”. We also welcome the requirement for CMFMIs to have processes for “identifying and appropriately managing the diversity of stakeholder views and any conflicts of interest between stakeholders and the notified CMFMI”. We would also suggest embedding a requirement for CMFMIs to seek advice from the risk committee on the design of the RCP, as well as on its yearly review, and to require the CMFMI to set out how this advice has been incorporated in the design of the RCP or justify why this advice has not been considered. We would also suggest requiring the CMFMI to document how it ensures that measures included in the RCP can also function over weekends and holidays.

Question 2. MAS seeks views on the proposed content of the OWP and governance arrangements for orderly wind-down planning.

We agree with the description in the consultation paper document, under paragraph 3.5, that the OWP should “contain appropriate plans, procedures, and systems necessary to wind down notified CMFMIs in an orderly manner if they are unable to restore their financial strength despite implementing the RCP”. We have some comments on form, contents, and governance.

On form:

We note that these proposed contents are not included in the draft guidelines themselves – as section 3 of the draft guidelines only describe the contents of the recovery plans. For clarity, we would suggest spelling out the contents of the OWP also under section 3 of the draft guidelines.

On contents:

- We suggest adding a requirement that the RCP and OWP jointly articulate at which point the CMFMI would consider that the measures included in the RCP are not able to restore its financial strength, to set clearer expectations as to the point at which the OWP would be triggered.
- We also suggest adding a requirement specifying the length of time the measures included in the OWP would take to achieve orderly wind-down.

On governance:

It would be helpful to further specify how CMFMIs will consult with clearing members in the design phase of the plan, and at which point in time they will engage with clearing members in the event of an activation of the plan. The CMFMI should also document how it ensures that measures included in the OWP can also function over weekends and holidays.

Question 3. MAS seeks views on the proposed maintenance and submission of information and notification of material business or structural changes for resolution planning.

We agree with the proposal regarding the information CMFMIs should maintain for the purpose of resolution planning, resolvability assessment and the conduct of resolution, and to submit such information to MAS upon request. We also agree with the requirement to inform MAS of any material changes to their business or structure. We encourage the MAS to provide further guidance as to how materiality of changes would be assessed, so as to provide greater certainty as to which changes would warrant notification to the MAS.

In particular, we note under paragraph 4.5 (d) (iii) that this information should include “risk control data and information between the notified CMFMI and each participant, including gross and net exposures, and risk and margin requirements”. ISDA notes that it is critical

that the CMFMI is able to transmit this information in a timely and complete manner to MAS, so that appropriate measure can be taken.

Question 4. MAS seeks views on the proposed notification requirements to MAS.

We agree with the requirement in the Notice, under paragraph 6.2 (b) that the CMFMI should “immediately inform the authority in the event that the notified CMFMI assesses that its viability is, or is potentially threatened or upon the occurrence of any event that may necessitate the implementation of its RCP or Orderly Wind-Down Plan”. We emphasize the importance of requiring CMFMI to inform the MAS as early as possible and appreciate that this is reflected through the requirement that the CMFMI informs the MAS in the event its viability is “potentially threatened”. While the principle of notification when viability is “potentially threatened” makes sense, we would suggest that the MAS spells out further which trigger points would warrant notification to the MAS. This should ideally mean that the MAS would be informed sufficiently in advance of any recovery measure being triggered. We note that under this requirement, we would expect early notification that the RCP may be activated. As regards the OWP, we assume the MAS would already be informed of the CMFMI’s viability being challenged, given that the OWP would only be triggered if the RCP measures have failed to restore viability.

Question 5. MAS seeks views on the proposed establishment of contingency arrangements and outsourcing measures for operational continuity in crisis situations and in resolution.

We agree with this proposal. The information collected for that purpose should also feed through the contents of the recovery plan, with regards to the identification of critical functions.

Question 6. MAS seeks views on the 6-month transition period for notified CMFMIs to comply with the Notice and Guidelines.

We agree with this.

Question 7. MAS seeks feedback on the draft Notice (see Annex A) and draft Guidelines (see Annex B).

We agree with the proposed guidelines, and the level of detail provided with regards to the contents of the recovery and orderly wind-down plans, subject to the points made in response to the previous questions.

We would like to flag two additional points on the draft Notice and draft Guidelines:

- **Entry into resolution:** Regarding the requirements to resolution planning in the Notice and Guidelines, we would welcome additional specifications on the objective criteria as to how the MAS would base its determination assessment to trigger resolution measures. As part of specifying such objective criteria, the MAS could also consider defining early warning signals (e.g. participants closing out positions, transaction volumes dropping). If the CMFMI is in the process of implementing recovery measures, consideration should also be given to the recovery tools still available to the CMFMI, and their implications to overall market stability should they be exercised when making an assessment on whether a CMFMI is able to restore its viability.

- Compensation: Clearing participants should be compensated for losses they suffer from the use of recovery tools, in application of the no-creditor worse-off safeguard (see also our response to Question 8 on this matter) Recovery tools are designed to enable the continuation of the CMFMI as a going concern, which includes the ability of the CMFMI to generate future profits, which it might not have been able to without clearing participants taking losses from the use of recovery tools. We believe that, by way of compensation, clearing participants should at minimum receive a share of these future profits of the CMFMI.

Question 8. MAS seeks comments on the proposed statutory bail-in powers for CMFMIs, and welcomes views on practical considerations relating to the use of bail-in powers for CMFMIs.

We welcome the introduction of a statutory bail-in regime for CMFMIs. We suggest adding an explicit provision to ensure that this power would not be used to haircut initial margin.

We note under paragraph 6.5 of the consultation that MAS notes that “As a guiding principle, in exercising any of MAS’ resolution powers, MAS intends to respect the statutory creditor hierarchy of claims in liquidation, along with the principle of equal treatment of creditors of the same class. The creditor compensation framework will apply in the exceptional situation where MAS departs from the creditor hierarchy in order to contain the potential systemic impact of the CMFMI’s failure, or to maximise the value of the CMFMI for the benefit of all creditors as a whole”.

We welcome this indication of the approach that MAS would follow in exercising its resolution powers, but suggest that it would be useful if the MAS could also clarify, where resolution is initiated before all recovery tools in the CMFMI’s rulebook have been exhausted, that MAS would respect the loss allocation sequence (waterfall) set out in the CMFMI’s rulebook, when deploying any remaining recovery resources in resolution, before exercising statutory resolution powers such as bail-in.

We also note the reference to the principle of equal treatment of creditors of the same class, which is in line with FSB Key Attribute 5.1, but would also suggest that the MAS considers the application of the no creditor worse-off safeguard, with respect to the use of resolution powers, in line with FSB Key Attribute 5.2.²

More broadly, we would welcome if MAS could in due course issue an “approach to resolution” document, in which the authority would set out how it would intend to use its resolution powers, including the proposed statutory bail-in power, in more detail, explaining what criteria would be considered when designing its resolution approach, how it would assess the impact of the exercise of these powers on market participants, and how it would communicate with market participants in a resolution scenario (including, in the case of bail-in powers, how eligible instruments would be identified). This could also be by way of an update of the monograph on MAS’ Approach to Resolution of Financial Institutions in Singapore issued by MAS in August 2017.

² [Guidance on Financial Resources to Support CCP Resolution and on the Treatment of CCP Equity in Resolution: Final report](#)

Question 9. MAS seeks comments on the proposal to apply the statutory bail-in regime to CMFMIs' equity instruments (except ordinary shares) and unsecured subordinated liabilities or debt instruments, issued or contracted after the effective date of the relevant legislative amendments.

We agree with this proposal. It makes sense that the resolution authority be able to use the remainder of a CMFMI's equity before any other tools are utilized. As such, a statutory bail-in regime should be applicable to CMFMIs' equity instruments and unsecured subordinated liabilities or debt instruments. We note that equity should also be meaningfully used in recovery (i.e. before MAS would step in to exercise its bail-in power).

The use of CMFMI equity in resolution will incentivize the CMFMI to an appropriate and robust risk management framework from BAU to recovery. Exposing equity to losses in recovery to a larger extent would incentivize efficient risk management by the CMFMI, reducing the likelihood of entry into resolution. It would also reduce reliance in resolution scenarios on tools which carry financial stability risks, as well as fairness and moral hazard issues, such as Variation Margin Gain Haircut (VMGH) and cash calls. In this regard, we would be grateful for MAS' confirmation that in the case of a CMFMI which is an Approved Clearing House (ACH), the scope of "eligible instruments" which may be subject to MAS' bail-in powers would not include any money or assets deposited with or paid to the ACH by its members for or in relation to any contracts of the customers of those members.

For consistency with the definition of "eligible instrument" in respect of Banks and Insurers (as defined in the consultation paper), we suggest that "equity instruments (except ordinary shares)" as mentioned in the consultation paper be defined as "any equity instrument or other instrument that confers or represents a legal or beneficial ownership in the Division 6 FI concerned, except an ordinary share" (please see section 80(1) of the Financial Services and Markets Act 2022 of Singapore (the "**FSM Act**") read together with regulations 28(1)(a) and 28(1A)(a) of the Financial Services and Markets (Resolution of Financial Institutions) Regulations 2024 (the "**Resolution Regulations**"). As regards "unsecured subordinated liabilities or debt instruments" of CMFMIs, we suggest aligning this with the equivalent limb of the definition of "eligible instrument" in respect of Banks in regulation 28(1)(b) of the Resolution Regulations.

Separately, we note that for Banks and Insurers, "eligible instrument" is defined to exclude "derivatives contract" (section 80(1) of the FSM Act read together with regulation 28(2) of the Resolution Regulations). We request that a similar exclusion apply to CMFMIs as well – the rationale for excluding derivatives contracts from the scope of bail-in for Banks and Insurers should also apply equally to CMFMIs.

In this regard, under regulation 9(2) of the Resolution Regulations, "derivatives contract" is defined with respect to an exhaustive list of underlying things, and "underlying thing" is in turn defined in regulation 9(2) to mean:

- (a) a unit in a collective investment scheme;
- (b) a commodity;
- (c) a financial instrument. This is defined under section 2(1) of the Securities and Futures Act 2001 of Singapore to include any currency, currency index, interest rate, interest rate instrument, interest rate index, securities, securities index, a group or groups of such financial instruments, and any other thing that is prescribed by the MAS in regulations;

- (d) the price of transporting goods as freight or of hiring vessels for the purpose of transporting goods;
- (e) the credit of any person;
- (f) a numerical indicator, model or statistic relating to weather;
- (g) a numerical indicator, model or statistic relating to the emission of pollutants;
- (h) real property; or
- (i) a numerical indicator, model or statistic that is a measure of economic performance or economic conditions.

Accordingly, in the event that the underlying asset for a particular derivatives transaction does not fall within the exhaustive categories of “underlying things” set out in the Resolution Regulations, it would not fall within the definition of a “derivatives contract”, and hence would not enjoy the benefit of the derivatives contract carve-out for the purposes of a bail-in.

We respectfully submit that as all types of derivatives contracts rely equally on the need for the derivatives contract carve-out, there is a need to ensure consistency in treatment of different classes of derivatives contracts for the purposes of this carve-out, and there should not be a distinction drawn on the basis of the underlying things. This is especially in the context of liabilities under bilateral netting arrangements which may fall within the definition of “eligible instrument”. We note that the MAS has made policy statements in the past that it is not the MAS’s intent, in exercising resolution powers over financial institutions, to interfere with set-off and netting arrangements, and that an exercise of resolution powers should not defeat or otherwise affect the preservation of set-off and netting arrangements. Further, it was clear from the views expressed in the parliamentary debates when amendments were proposed to be made to the Monetary Authority of Singapore Act 1970 of Singapore in 2013 regarding the MAS’ resolution powers that Singapore regards itself as a good netting jurisdiction, and that the policy intention is to preserve bilateral netting arrangements and carve-outs for bilateral netting arrangements will apply across all financial institutions and bilateral netting arrangements will not be defeated by resolution. Accordingly, we respectfully request that the definition of “underlying thing” in regulation 9(2) of the Resolution Regulations be amended to include all underlying things.

As a related issue, securities lending and repurchase transactions are also typically entered into under master agreements with bilateral netting arrangements (for example, the ISDA Master Agreement, Global Master Securities Lending Agreement and Global Master Repurchase Agreement). For the same reason set out in the preceding paragraph, we would also further specifically request for a specific carve-out for “securities lending and repurchase agreement” (as defined in regulation 9(2) of the Resolution Regulations) from the scope of “eligible instrument” as well.

We would also highlight that this inclusive approach would be consistent with the approach under the Insolvency, Restructuring and Dissolution Act 2018 of Singapore (the “IRDA”). “Derivatives contract” in the Insolvency, Restructuring and Dissolution (Prescribed Arrangements and Proceedings) Regulations 2020) is also defined with respect to “underlying things”, and the definition of “underlying thing” under these regulations includes a catch-all limb (j) “any other thing by reference to which the value of a derivatives contract is determined or from which the value of a derivatives contract is derived”. Therefore, derivatives contracts with all types of underlying assets would enjoy the benefit of the carve-outs from the stay on termination rights during restructuring proceedings under

section 440 of the IRDA and the judicial management and schemes of arrangement moratoria under sections 64, 65, 95 and 96 of the IRDA.

Similarly, “securities lending or repurchase agreements” also enjoy the benefit of carve-outs from the stay on termination rights during restructuring proceedings under section 440 of the IRDA and the judicial management and schemes of arrangement moratoria under sections 64, 65, 95 and 96 of the IRDA. Further, rights and liabilities that arise under securities lending or repurchase agreements which are subject to set-off or netting have the benefit of the protection under regulation 11 of the Resolution Regulations from a partial transfer of the business of a transferor under section 66 of the FSM Act.

More generally, we note that in respect of Insurers, “eligible instrument” is defined to include any unsecured liability or other unsecured debt instrument, excluding any liability mentioned in section 123(3) of the Insurance Act 1966 of Singapore or section 203(1) of the IRDA. In this regard, MAS stated in the consultation paper issued in September 2023 proposing to enhance its resolution powers for the insurance sector (including bail-in powers) that scoping in unsecured senior liabilities as bail-inable liabilities for Insurers is necessary for Insurers to have additional loss-absorbing capacity. MAS also stated that it recognises that certain unsecured senior liabilities should not be bailed in (such as liabilities not exposed to losses in insolvency and liabilities which if bailed-in will undermine resolution objectives). Therefore, MAS has excluded liabilities specified in section 123(3) of the Insurance Act and section 203(1) of the IRDA from the application of the bail-in powers. Notwithstanding this, we respectfully submit that the current scope of “unsecured liability” is still too broad. On the face of it, this will capture unsecured liabilities under all types of agreements, such as a supply or services agreement where the Insurer owes payments to a supplier or service provider. This is also the reason why we have requested for an expansion of the carve-out for derivatives contracts and carve-outs for securities lending and repurchase agreements above – based on the broad definition, unsecured liabilities under such agreements and contracts could be subject to bail-in. We would therefore respectfully request that MAS amend the definition of “eligible instrument” by further narrowing down the types of unsubordinated obligations to bonds, loans or other types of borrowed money obligations.

Question 10. MAS seeks views on the proposal to extend the restrictions on eligible instruments and disclosure requirements under regulations 30 and 31 of the FSM Regulations to the statutory bail-in regime for the CMFMI sector.

We agree with this proposal.

Question 11. MAS seeks views on the proposal for statutory powers to be introduced for MAS to convert into equity and write down CMFMIs’ contingent convertible instruments and contractual bail-in instruments, whose terms and conditions for conversion or bail-in had not been triggered prior to entry into resolution. These powers would be applicable to instruments issued after the effective date of the relevant legislative amendments implementing the statutory bail-in regime for the CMFMI sector.

We do not have comments on these proposals, and welcome the introduction of these powers. We welcome the introduction of powers that make it possible for MAS to convert into equity and write down CMFMIs’ contingent convertible instruments and contractual bail-in instruments, whose terms had not been triggered prior to entry into resolution. These bail-in instruments would provide additional loss absorption capacity in resolution, in addition to any remaining equity not used in recovery. We would also encourage the MAS to consider

the impact of exercising its statutory powers on all market participants that the CMFMIs serves, whether they are established on-shore or off-shore.

As mentioned above, in exercising these powers, it is important that MAS adheres to the principle of respecting the statutory creditor hierarchy of claims and the no creditor worse-off than in liquidation safeguard.

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