

**Deutsche Börse Group (DBG) response**  
**to the**  
**FSB Consultation Report**  
**on**  
**Financial Resources and Tools for**  
**CCP Resolution**

Frankfurt, 17 November 2023

## 1. Introductory Remarks

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The CCPs Eurex Clearing and European Commodity Clearing (ECC) are part of Deutsche Börse Group (DBG).

DBG appreciates the FSB's ongoing monitoring of the implementation of the global standards and the jurisdictional progress made in resolution planning and their recent work to improve the resilience of CCPs and the broader financial system. Against this background, we welcome the opportunity to provide feedback to the FSB Consultation Report on Financial Resources and Tools for Central Counterparty Resolution. While detailed comments to the raised questions can be found below, DBG would generally like to highlight the following points:

- First of all, we would like to emphasise that we welcome the FSB's approach to allow flexibility for jurisdictions and resolution authorities to decide which resolution tools to use, depending on the respective resolution scenarios and the circumstances inherent to every CCP.
- From an EU perspective, we would like to remind, however, that EU CCPs are already subject to stringent and detailed regulatory requirements defined under EU regulations, clearly specifying the use, composition and amount of resources and tools available for addressing default and non-default losses (DL and NDL). We therefore believe that the EU regulatory framework already includes adequate rules with respect to both CCPs' financial resources and resolution tools and broadly meets the proposed toolbox approach.
- The work on international level should ideally take into account the existing best practices developed in some jurisdictions. Harmonising the calibration of the quantum of resolution-specific resources and tools with the EU framework would facilitate global consistency while allowing for regional nuances, ultimately contributing to the effectiveness and resilience of CCP resolution mechanisms.
- Nevertheless, DBG believes that the toolbox approach as proposed by the FSB represents a commendable framework for achieving resolution objectives while concurrently offering flexibility to jurisdictions and resolution authorities. While it is vital to allow for some flexibility to accommodate specific regional considerations, a harmonised global approach ensures that authorities, CCPs, and market participants benefit from a coherent and predictable resolution landscape. Hence, this approach combines clarity and adaptability, creating a robust and globally aligned foundation for the resolution of CCPs whilst recognising that the specific circumstances and regulatory landscapes of CCPs may vary across jurisdictions and allowing for customisation.
- While DBG believes that the parameters outlined for resolution-specific resources and tools are both sufficient and crucial to comprehensively support the objectives for CCP resolution, parameter D could refer as well to "interaction with recovery tools" with respect to incentives across recovery and resolution, highlighting that resolution tools should not restrict available recovery tools as the preceding risk management layer.
- Further, as explained in detail in our responses to questions 4 and 6, we would suggest removing the "bail-in bonds" and "resolution funds" from the tool-box due to concerns regarding suitability, practical use, and implementation – we believe those tools are therefore not suitable for CCPs.
- In addition, as highlighted in our responses to questions 1, 5 and 10, we would like to point out the need of sufficient flexibility for the resolution authorities in the case of DL or NDL scenarios. Hence, it would be beneficial if the FSB clarifies that due to the differences between the nature of

DL and NDL scenarios, not all tools are equally suitable in any case. Furthermore, the proposed standard appears to focus primarily on financial risks as a cause of DLs and NDLs. Therefore, the FSB could also reflect on operational risks as another potential trigger.

- Generally, when selecting tools, the focus should be on effectiveness and the consideration of an appropriate incentive alignment. The calibration and selection of resolution-specific resources and tools should as well be mindful of the home resolution authority's role and capacities. It is important to recognise in this context the home resolution authority's ability to make use of resources and tools that are already available to the CCP during its recovery phase. Also, the ability to intervene early in the process to preserve financial stability should be a central consideration in the calibration and choice of resources and tools.

DBG trusts that our comments are useful for the FSB's further policy work and remain at the FSB's disposal for further discussion.

## 2. Detailed comments to the consultation report

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### *Q1: Are the four parameters for resolution-specific resources and tools sufficient to comprehensively support the objectives for CCP resolution?*

DBG believes that the four parameters outlined for resolution-specific resources and tools are indeed sufficient to comprehensively support the objectives for CCP resolution. Each of these parameters is well-aligned with the overarching goal of enhancing the resiliency and stability of the financial system. They collectively provide a robust framework that empowers resolution authorities to act decisively and effectively in both DL and NDL scenarios, thereby bolstering market confidence and reducing systemic risk.

It recognises that achieving successful CCP resolution is a multifaceted challenge, and these parameters offer a comprehensive approach to address the complexities involved. Moreover, they foster a sense of responsibility and accountability across the industry, which is essential for maintaining the integrity of the financial system.

However, we also would like to point out the need of sufficient flexibility for the resolution authorities in the case of an DL or NDL scenario.

Also, we would like to highlight that, while parameter D contains reference to incentives across recovery and resolution, an additional dimension hereunder regarding “interaction with recovery tools” could be added. One of the critical issues of resolution tools is, that their implementation should not restrict available recovery tools as the preceding risk management layer. E.g., focussing on resolution cash calls should not impede usage of cash calls for recovery purposes.

### *Q2: Are there any other parameters that should be considered?*

Please refer to the last section of our response to Q1 where we suggest an addition to parameter D to also refer to “interaction with recovery tools” with respect to incentives across recovery and resolution.

### *Q3: Are the resource and tool descriptions appropriate and clear in order to underpin the remaining analysis in the consultation report?*

As mentioned above, EU CCPs are already subject to stringent and detailed regulatory requirements defined under EMIR and notably under the recently implemented EU CCP Recovery & Resolution Regulation (CCP RRR), clearly specifying the use, composition and amount of resources and tools available for addressing DLs and NDLs.

Guidance at the international level should take these regulatory realities into account and strengthen the harmonisation towards the standard that has already been created. Additional requirements that conflict with the current regulation may lead to a risk of misalignment between the new guidance and EU standards, which could result in increasing the unlevel playing field for EU CCPs vis-à-vis non-EU CCPs.

Nevertheless, we believe that the proposed toolbox approach and standard represent a decent framework for achieving resolution objectives while providing the necessary flexibility to jurisdictions and resolution authorities not having to use each of the proposed tools.

*Q4: Are there other resolution-specific resources or tools that should be considered? If so, please describe the relevant resolution resource or tool, and how such resource or tool meets the parameters and dimensions. Alternatively, are there resources or tools that should be removed from consideration? If so, please explain why.*

We see the proposed tools that the resolution authorities are able to activate as a list of possibilities. Our understanding of the FSB's approach is that it remains subject to the respective resolution authority to decide which resolution tools to use, depending on the respective resolution scenarios and the circumstances inherent to every CCP. We would expressly welcome this approach. When selecting tools, the focus should be on effectiveness and the consideration of an appropriate incentive alignment. As long as the selection of the tools ensures this, we interpret the proposed measures as an overall toolbox where the resolution authorities in the respective jurisdictions can choose from.

The intended flexibility of the resolution authorities in selecting the suitable tools would allow enough discretionary power.

With that being said, we would however like to express our concerns regarding the first two resources that were identified as we believe they are not suitable for CCPs. We therefore suggest removing the two tools "bail-in bonds" and "resolution funds" from the tool-box due to concerns regarding suitability, practical use, and implementation.

- **Bail-in bonds:** CCPs are neither banks nor insurance companies. They play a quite different role from banks with differences in their operations, the balance sheet, and their risk management. CCPs do not underwrite or charge on the basis of their members' risks and do not borrow money or lever themselves. In this light, we believe that bail-in bonds are unsuitable as resolution tools as they are potentially negatively affecting the CCP's business model and incentive structures. Such a measure would alter the CCP's risk profile and weaken its proven and robust risk management frameworks. If the bond buyers are not CCP members, it creates moral hazard at the end of the waterfall by decoupling loss mutualisation from continuity of their trades. Participants of the CCP would be incentivised to reduce, limit, or replace their commitments in the waterfall as best they can prior to these resources kicking-in. If the CCP invests the proceeds, this would create a new risk for the CCP. Moreover, cash that is parked at a central bank or similar, would increase the costs of clearing.
- **Resolution funds** carry the risks of skewing incentive structures by discouraging clearing members to properly risk manage their positions. A single resolution fund for all CCPs, comparable to the resolution fund for EU banks, is not tailored and adequate to the needs of CCPs. A mutualisation of debt in the event that the collateral of a defaulted clearing member is not sufficient is already taking place, as clearing members have to make a contribution to the common default fund. Furthermore, a multi-CCP fund would also be inappropriate because in the event of a broader crisis it could be used by many CCPs at the same time and would therefore quickly reach its limits. In addition, the fund would particularly benefit the CCPs which have maintained the weakest risk standards.

*Q5: The analysis identifies six key dimensions and maps them to the parameters for resolution-specific resources and tools. Are the descriptions of the dimensions sufficient? Are there other dimensions that should be considered?*

Some tools might be more appropriate for events initially under control of a CCP while others are not, for example: While it might not matter for which type of event a resolution fund is foreseen from regulators' point of view, it is highly relevant for contributing CCPs.

Furthermore, it would be beneficial for the standard to clarify for which loss type (DL, NDL or both), which tools are suited.

*Q6: For each resolution-specific resource or tool discussed in the consultation report, have the key costs and benefits been appropriately identified? Are there additional cost/benefit factors that should be considered?*

Please also refer to our response to question 4. In addition, we would like to express the following:

- The description in point A of the “**Bail-in bonds**” category (section 4.2 page 12) proposes bail-in bonds as a liquidity providing instrument. From our viewpoint, this is confusing as it does not correspond to the purpose and established market practice of bail-in bonds under bank recovery and resolution: Here, bail-in bonds provide debt financing and liquidity before resolution. In resolution, bail-in bonds transition to loss-absorbing equity without providing additional liquidity.
- The description of the **resolution fund** avoids discussion on distribution of contributions, which is a key cost. It is plausible to assume that the volume of initial margins or the default fund contributions or cleared notional would be the basis for such contribution for several reasons not elaborated here. However, those figures are rapidly changing with market conditions and do not relate to a CCP's financial power to fund such resolution fund. This is related to part of proposed dimension 5 – “on whom the burden falls” but differentiates not only between CCPs and different groups of stakeholders, but also within the group of CCPs in a jurisdiction.

*Q7: Section 4.3 considers the parameters and dimensions necessary to support orderly resolution (e.g. without material adverse effect on financial stability) and to address the implications of the resources and tools on the CCP as a going concern and on clearing members and market participants. Does this section adequately capture the relevant considerations or are there other factors that should be considered, such as synergies, cost efficiencies or offsetting qualities?*

No comments.

*Q8: Does the analysis by parameter and dimension provide sufficient clarity around how resources and tools may or may not contribute to a resolution toolbox such that the toolbox, in aggregate, would meet the parameters and dimensions?*

No comments.

*Q9: Is the toolbox approach and standard described a clear and effective means to support resolution objectives while providing flexibility to jurisdictions and resolution authorities?*

As mentioned in our response to question 3, EU CCPs are already subject to stringent and detailed regulatory requirements, for addressing both DLs and NDLs. The toolbox approach represents a commendable framework for achieving resolution objectives while concurrently offering flexibility to jurisdictions and resolution authorities. This approach combines clarity and adaptability, creating a robust foundation for the resolution of CCPs.

The clarity inherent in the toolbox approach and standard is particularly advantageous. It provides a structured and comprehensive set of resources and tools that serve as a roadmap for resolution authorities and jurisdictions, enhancing preparedness and consistency in CCP resolution planning. This clarity helps to ensure that resolution objectives, such as loss absorption, financial stability, and incentive alignment, are pursued with a well-defined and shared understanding.

Furthermore, the flexibility embedded in this approach is equally valuable. Recognising that the specific circumstances and regulatory landscapes of CCPs may vary across jurisdictions, the toolbox approach allows for customisation within a standardised framework. This adaptability enables jurisdictions and resolution authorities to tailor their resolution strategies to suit their unique requirements while remaining aligned with global standards and principles.

*Q10: Is the toolbox approach an effective means to achieve each of the four parameters outlined in Section 2?*

Please also refer to our responses to questions 1 and 5.

The FSB could highlight that due to the differences between the nature of DL and NDL scenarios, not all tools are equally suitable in any case. Furthermore, the proposed standard appears to focus primarily on financial risks as a cause of DLs and NDLs. Therefore, FSB should also pay attention to operational risks, which can be triggers as well.

*Q11: With regard to sizing in each jurisdiction, should the standard specify potential approaches for calibrating the quantum of one or more resolution-specific resources and tools to support resolution?*

As already mentioned above, it is prudent to acknowledge the robust and comprehensive framework already established within the EU through the Central Counterparties Recovery and Resolution Regulation (CCP RRR). This framework encompasses a well-defined set of measures and scenarios for the resolution of CCPs operating within EU jurisdictions.

Given the existence of such a stringent EU framework, a global alignment with these measures and scenarios becomes not only practical but also essential. Harmonising the calibration of the quantum of resolution-specific resources and tools with the EU framework would not only enhance consistency but also facilitate efficient resolution planning for CCPs that operate across multiple jurisdictions.

While it is vital to allow for some flexibility to accommodate specific regional considerations, a harmonised global approach ensures that CCPs, their members, and market participants benefit from a coherent and predictable resolution landscape. This approach promotes regulatory certainty and supports the resilience

and stability of CCPs within a global financial context. Hence, DBG recommends that the standard considers potential approaches for calibrating the quantum of resolution-specific resources and tools in alignment with the current comprehensive EU framework established by the CCP RRR. This approach would facilitate global consistency while allowing for regional nuances, ultimately contributing to the effectiveness and resilience of CCP resolution mechanisms.

*Q12: To what extent should the standard include transparency into jurisdictions' approaches to calibrating one or more of the resolution-specific resources and tools in the toolbox (such as a function or multiple of the default fund)?*

No comments.

*Q13: What should be the scope of application for the standard? Should it apply to all systemically important CCPs or just to CCPs that are systemic in more than one jurisdiction?*

No comments.

*Q14: To what extent should jurisdictions' calibration analysis and choice of resolution-specific resources and tools in the toolbox take into account the home resolution authority's ability to (i) use resources and tools that are available to the CCP in recovery; and (ii) capability to intervene before they have been exhausted in recovery?*

It is essential to consider two critical aspects when calibrating and choosing resolution-specific resources and tools within jurisdictions:

- 1) **Use of Resources and Tools in Recovery:** It is important to recognise the home resolution authority's ability to make use of resources and tools that are already available to the CCP during its recovery phase. This approach ensures a seamless and coordinated transition from recovery to resolution, avoiding redundancy and ensuring that the measures employed in both phases are coherent and aligned.
- 2) **Early Intervention Capability:** Equally significant is the home resolution authority's capability to intervene before resources and tools are fully exhausted during the recovery phase. Early intervention plays a pivotal role in enhancing the likelihood of successful resolution by addressing issues proactively and preventing situations from escalating to a point where resolution becomes more challenging. This underscores the importance of timely and well-informed decision-making by the resolution authority.

The calibration and selection of resolution-specific resources and tools should be mindful of the home resolution authority's role and capacities. This approach promotes efficiency, minimises duplication, and enhances the overall effectiveness of CCP resolution mechanisms. Moreover, the ability to intervene early in the process is a valuable tool in preserving financial stability and should be a central consideration in the calibration and choice of resources and tools.