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Eurex Clearing AG
Comments
to the

CPSS-IOSCO Consultative Report

"Recovery of financial market infrastructures"

October 2013

A. Introduction

Eurex Clearing is a globally leading central counterparty clearinghouse (CCP) and the largest clearinghouse in Europe. Eurex Clearing is a subsidiary of Deutsche Börse Group providing central clearing services for cash and derivatives markets both for listed as well as certain over-the-counter (OTC) financial instruments. Eurex Clearing actively contributes to market safety and integrity with state-of-the-art market infrastructure both and clearing services as well as with industry leading risk management services for the derivatives industry. Customers benefit from a high-quality, cost-efficient and comprehensive trading and clearing value chain.

Eurex Clearing is a company incorporated in Germany and licensed as a credit institution under supervision of the Federal Financial Supervisory Authority (BaFin) pursuant to the Banking Act (Gesetz für das Kreditwesen). Furthermore, Eurex Clearing is a Recognised Overseas Clearing House (ROCH) in the United Kingdom and supervised by the Bank of England (BoE). On 01 August 2013 Eurex Clearing has submitted an application for re-authorization as central counterparty under the Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR) to its national competent authority BaFin.

Eurex Clearing welcomes the opportunity to comment on the consultative report on "Recovery of financial market infrastructures" published by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO) in August 2013.

This comment paper is arranged as follows. The first section contains our general observations on the CPSS-IOSCO consultation paper. The second section provides detailed comments on key statements of the report.

B. Comments

B 1: Summary of general observations

Eurex Clearing highly appreciates the efforts of the Committees of CPSS and IOSCO to provide guidance regarding recovery of financial market infrastructures to financial market infrastructures (FMIs) and their regulatory authorities.

Eurex Clearing proactively supports the introduction of recovery plans for FMIs and welcomes the high level of detail in which the concrete form of recovery plans is assessed in this report.

Eurex Clearing shares the Committees opinion that the measures included in a CCP's recovery plan must be suitable to fulfil a variety of purposes. Most notably with respect to CCPs, Eurex Clearing understands a full allocation of uncovered losses (without the presumption of tax-payer funds) resulting from a clearing member's default and the CCP's ability to re-establish a matched book to be cornerstones of any respective recovery plan. Without (at least) both these objectives being addressed in a CCP's recovery plan, such plan is void and threatens the integrity and stability of financial markets.

Eurex Clearing believes that there is a wide range of recovery measures which should be assessed individually by each FMI. Based on this assessment each FMI should be free in its choice of what measures to include its recovery plan, naturally subject to achieving the desired aims.

A particularly powerful tool, variation margin haircutting, may be employed in order to distribute losses to a very large participant base potentially including clearing members and their clients. However, this tools application needs to be carefully designed in order to deal with positions that are subject to variation margin and premium margin settlement. Variation margin cropping needs to encompass all products. Secondly a full allocation of losses resulting from a member's default and a CCP re-establishing a matched book need to be achieved simultaneously.

Acknowledging the highly disrupted market conditions that could trigger a CCP's recovery plan, Eurex Clearing understands that none of the possible measures (described in this report) are per se desirable for the CCP or its members. Nonetheless, Eurex Clearing appreciates the requirement to apply those measures that are least disruptive to the overall financial markets in any particular situation for any particular CCP.

Without doubt, the worst possible outcome for both the CCP and its members would be to fail to define how the CCP can ultimately re-establish a balanced book. Until such re-establishment has been conducted no crisis can be solved, but only be postponed.

The reason for promoting FMIs and CCPs in particular is to ensure that certain risks in the financial system are better capitalized and more transparent, than presently. FMI recovery plans serve to further make these costs explicit, and should be seen as an opportunity to strengthen the markets.

Finally, Eurex Clearing believes that a robust and well structured default management process seeks to avoid the action discussed here after.In the event of a resolution authority overtaking the transfer or wind-down of a failing member of an FMI, close cooperation can mitigate and substantially improve the outcome for all market participants.

B 2: Detailed comments

2.3.5 The FMI should also assess the legal enforceability of its plans, taking into account any constraints potentially imposed by domestic or foreign laws or regulations. The range of measures and tools employed by the FMI in its rules and contractual arrangements may vary across jurisdictions because, for example, in some jurisdictions some tools may not be allowable under the applicable legal framework or may be reserved for use by resolution authorities rather than by an FMI in recovery. In every case, however, it is important that a jurisdiction's laws permit for recovery tools that can allocate losses in full.

Eurex Clearing supports the Commissions' opinion that it is of utmost importance that all jurisdictions' laws permit CCPs to define recovery tools that can allocate losses in full. Eurex Clearing highly appreciates the efforts to ensure a common understanding, "that losses that are directed away from one type of entity will necessarily be allocated to another type of entity and losses that are not allocated by one method will necessarily be allocated by another method".

2.3.7 In making this choice, a balance may need to be struck between automaticity, which increases transparency and predictability for participants, owners, and third parties about the action that will be taken, and discretion to exercise judgment, which may enable a better decision to be made about the use of tools in light of the specific circumstances, including market conditions. Constraining such discretion, for example by putting reasonable bounds on the exercise of judgment to limit the use of particular recovery tools or to impose conditions on the use of particular tools, helps to increase transparency and predictability and to ensure that any exercise of judgment is consistent with the broader objectives of the recovery plan. In addition, authorities should be kept informed of the decisions made by the FMI in its discretion to exercise judgment.

Eurex Clearing is of the opinion that CCPs should be able toeither be prepared for their default or should be able to wound down.. It should be recognized that at a certain stage closing the CCP might be the more beneficial alternative for the overall financial markets. As such, Eurex Clearing is strongly in favour of considering reasonable limits upon which a CCP enters into stages of recovery or resolution plans. This limit will of course need careful evaluation both ex-ante and during any specific crisis, and these clear thresholds may of course be adjusted by the resolution authority. However, Eurex Clearing understands transparency to be a leading pillar in the definition of FMIs' recovery plans and requires FMIs to define the trigger(s) for resolution ex ante and the discuss such trigger(s) with the relevant resolution authority.

2.4.2 The FMI should identify those services it provides that are critical. "Critical" refers to the importance of the service to the FMI's participants, other FMIs, and to the smooth functioning of the markets the FMI serves and, in particular, the maintenance of financial stability. In general, for a systemically important FMI, its payment, clearing, settlement or recording functions will be regarded as critical. The failure of an FMI to provide a critical service would likely have a material negative impact on participants or significant third parties, give rise to contagion, or undermine the general confidence of market participants. Such negative impacts are dependent, in part, on the degree of substitutability of the service, that is, whether the service is also provided by another FMI (or other entity) and whether users of a potentially failed service can practicably switch to an alternative service. If an FMI provides ancillary services to its critical services, judgment will be needed as to whether the recovery plan needs to assure continuity of these services.

Eurex Clearing understands the requirement to identify an FMI's critical services. While the definition of critical services is something an FMI defines on its own, participants, regulators, and linked FMIs may feel differently about such definition. Therefore all stakeholders are to be considered when the critical services of an FMI are identified, and Eurex Clearing sees the ultimate approval on such matters residing with the recovery authority based on a recovery plan.

2.5.3 Where an FMI is systemically important to multiple jurisdictions or is subject to the authority of multiple regulators, supervisors, or overseers, cooperation among the authorities in line with Responsibility E of the PFMI is needed to conduct this assessment effectively. The relevant authorities should also coordinate with other relevant authorities, including the FMI's resolution authorities, to ensure consistency between recovery and resolution plans.

Eurex Clearing is of the opinion, that wherever possible and in line with applicable law, an FMI's supervisory authority should also qualify as the FMI's recovery authority and the FMI's resolution authority, to ensure a consistent and transparent decision making approach Therefore we see the home regulator as the responsible authority..

<u>3.3 Guidelines for appropriate recovery tools - The allocation of losses and liquidity shortfalls</u>

3.3.3 Uncovered credit losses and, where relevant, liquidity shortfalls could be allocated to direct participants, indirect participants, third-party institutions and/or owners on the basis of and to the extent that they are permitted by ex-ante arrangements such as the FMI's rules or specific provisions in arrangements between direct participants and their clients. In addition, allocation of losses and liquidity shortfalls should, in accordance with Principle 23, be transparent to all participants to allow them to assess the risks they would incur by participating in the FMI. Thus, such ex-ante arrangements should be clearly disclosed.

Eurex Clearing supports the opinion that transparency is a leading pillar in the definition of FMIs' recovery plans and appreciates the requirement of both the CCP and, where applicable the CCP's direct members when defining arrangements between themselves and their clients, shall disclose in all detail how losses are allocated. Transparency of such rules creates the right incentives for efficient and prudent risk management of all parties involved, and avoids additional stress in a volatile market environment.

3.3.4 The scheme for allocating losses and liquidity shortfalls does not affect the totality of the loss that must be absorbed by the financial system as a whole once the loss has occurred, but rather affects how the loss will be distributed throughout the financial system. Thus, given a loss event, losses that are directed away from one type of entity will necessarily be allocated to another type of entity, and losses that are not allocated by one method will necessarily be allocated by another method. The allocation scheme may affect the ability of the financial system as a whole to absorb financial losses and provides incentives, both positive and negative, that will influence the behaviour of owners and direct and indirect participants.

As stated above, Eurex Clearing understands this to be a key finding of the report. Eurex Clearing has the opinion that an FMI has to have a loss allocation scheme in

place which is appropriate to ensure that all losses can be allocated in a way that the loss will be absorbed with as little detrimental effects on the financial market as possible.

3.3.9 In many cases, direct participants will contribute significant portions of the FMIs pre-funded default resources. Direct participants may also be committed to contribute additional resources in the event of a default. Credit losses may be allocated to all direct participants, or may be limited based on product classes, with participants only being exposed to defaults in product classes in which they participate (or based on the extent of that participation). Allocations may also be limited based on the fact, or extent, of participation in links with another FMI.

Eurex Clearing understands an allocation of losses based on the member's participation to be reasonable, as long as the basis for such allocation is clearly defined.

Eurex Clearing is of the opinion that an appropriate balance is to be struck between primarily allocating losses to those members that have been most active and eventually broadening the scope of loss absorbers to satisfy a CCP's concept of mutualisation.

3.4 Summary of recovery tools for FMIs

3.4.2 An FMI is required under the PFMI to have recovery tools that allow it to allocate fully any uncovered losses and liquidity shortfalls caused by participant default. The FMI also needs to be able replenish its financial resources. Moreover, the FMI needs to be in the position to allocate losses or to effect an orderly wind down following losses that are not related to participant default, such as losses resulting from general business risk. Finally, an FMI needs to address the underlying structural weaknesses that have led to the manifestation of risks and losses.

3.4.3 Against this background, the following recovery tools can be distinguished:

(i) tools to allocate uncovered losses caused by participant default;

(ii) tools to address uncovered liquidity shortfalls;

(iii) tools to replenish financial resources

(iv) tools to allocate losses not related to participant default;

(v) tools for CCPs to re-establish a matched book; and

(vi) tools to address structural weaknesses.

Tools (i) through (v) are discussed in Sections 3.5 to 3.9. As mentioned in paragraph 2.4.13, tools to address structural weaknesses are not addressed further in this report. Of note, the combination and sequence of an FMI's recovery tools can be used to

allocate uncovered liquidity shortfalls in a manner that can be either directly related to or independent of the combination and sequence of the tools used to allocate any associated credit losses. Likewise, the steps that a CCP can take to re-establish a matched book following a participant default can be either directly related to or independent of the combination and sequence of the tools used to allocate any associated credit losses.

In Eurex Clearing's opinion, it is of utmost importance that an FMI's recovery plan addresses multiple purposes. With respect to CCPs, Eurex Clearing understands a full allocation of losses resulting from a member's default, and a CCP's ability to ultimately re-establish a matched book to be the most crucial objectives. Without (at least) both these objectives being addressed in a CCP's recovery plan, such plan is void and threatens the integrity and stability of financial markets.

3.5 Tools to allocate uncovered losses caused by participant default - Cash calls on participants ("assessment power")

3.5.2 The amount of the commitment for each direct participant could be calibrated in a number of ways, such as (a) proportional to prefunded default fund contributions, (b) proportional to activity at the FMI (eg based on relative volumes or values processed over a period of time, or outstanding net or gross positions at a point in time), or (c) a fixed amount irrespective of each participant's assets or activity at the FMI (eg an assessment of up to EUR 50 million each).

Eurex Clearing believes that a fixed amount irrespective of each participant's assets or activity at the FMI is undesirable for the overall financial markets. The definition of such fixed amount threatens to either overcharge small members (thereby threatening their solvency) or to unnecessarily limit the CCP's financial resources. At the same time a commitment based on each member's activity encourages members to deliberate on the level of risk they bring to the CCP.

Variation margin haircutting by CCPs

3.5.14 An important example of a position-based loss allocation recovery tool is variation margin haircutting by CCPs. When haircutting variation margin, the CCP reduces pro rata the amount it is due to pay participants with in-the-money (net) positions, while continuing to collect in full from those participants with out-of-the-money (net) positions.[1] Such a power may be capped at or below an amount equal to 100 per cent of the total amount owed to each participant with an in-the-money (net) position. Where a CCP does not have a direct contractual relationship with indirect participants (ie. clients of direct participants), the impact on such indirect participants will depend upon their contractual arrangements with their respective direct participants.

[1] Where amounts in default are ultimately recovered in the insolvency proceeding of the defaulting participant, such amounts could be distributed to participants who bore those losses.

Eurex Clearing agrees that allocating losses (primarily) to those members who have experienced gains during the crisis situation, can be a very powerful tool to obtain further financial resources to. However, several aspects need to be considered carefully when defining and executing such recovery tool.

Firstly, Eurex Clearing is of the opinion that over time members might become unwilling to provide additional funds, if variation margin haircutting is executed over an extended period of time. In order to avoid such a situation any position based allocation tool should be utilized only if the CCP is able to re-balance its book at the same point in time. If this condition was met, members would have certainty that this recovery tool would only be utilized within a limited way.

Secondly, variation margin haircutting may be severely disruptive if a CCP also clears products that are not settled with variation margin, e.g. options. While such an option position might have an identical underlying to a future position which is subject to variation margin haircutting, those members holding option positions are not affected by the variation margin haircutting. Therefore, other members have to bear a disproportionate burden. It may also be possible that one member experiences a gain on its futures positions and a loss (exceeding the gain on futures positions) on its options positions. In such case the member would be obliged to provide additional funds despite the net loss the member incurs across its overall portfolio. As such, this is contrary to the idea that those members net gaining from a specific event are best able to cover losses.

To mitigate this shortcoming, Eurex Clearing is of the opinion that a position-based loss allocation recovery tool should take into account the profits and losses of all positions, not only those settled by variation margin (within the respective asset class). Naturally, this requires the position-based loss allocation recovery tool to be another claim of the CCP towards its members, instead of withholding payments towards the members as would be the case for variation margin haircutting.

This claim needs to be calculated transparently by the CCP in accordance with predefined rules in order to enable direct and indirect participants to anticipate their obligations.

3.5.16 A participant's loss would be limited by the size of the increase in the value of their positions. Thus, variation margin haircutting represents a measurable and controllable exposure within statistical confidence levels.

Eurex Clearing appreciates that variation margin haircutting can be limited at any particular CCP. However, taking into account that members are likely to participate in more than one CCP at the same time and since it is likely that hedges of their overall portfolio are distributed across multiple CCPs, the losses any particular member experiences cannot be determined ex ante.

3.5.17 Since the size of the loss that a participant can face is related to the riskiness of its positions, this tool should provide incentives for participants to monitor the risk that they bring to the CCP ex ante. Losses are allocated only to participants who have experienced a gain. While this may concentrate the loss on a subset of participants, these participants may be in a better position to absorb the losses.

Allocating losses to members who experience a gain (in one asset class) at a particular CCP may seem maintainable. However, if members are active (in more than one asset class) at more than one CCP it is possible that a position generating a gain at one CCP is hedged with a position experiencing a loss at another CCP. As such, gaining members (in one asset class) at one CCP are not necessarily in a better position to absorb losses. Therefore, allocating losses to gaining members only can have a significant systemic impact, as these members may become unable to meet their obligation at other CCPs, lacking the liquidity of hedge positions.

3.5.18 While variation margin haircutting thus appears to be a suitable and effective tool for allocating uncovered losses caused by participant default, there are some limitations that need to be observed. For example, in the most extreme cases, variation margin haircutting alone might not be comprehensive, in that it may not be sufficient to both allocate the loss and meet the cost of re-establishing a matched book (eg if the price established in an auction for the defaulter's positions is extremely negative, perhaps due to illiquidity in the contracts). If the haircutting power is limited below the amount of VM owed it might also be insufficient to cover large losses and would need to be supplemented by other loss allocation tools. Moreover, a participant's positive position within a particular CCP may not be a perfect indicator of its relative ability to absorb a credit loss or liquidity shortfall. For example, the participant might have an equal (or larger) opposite position outside the CCP that it is hedging. As such, variation margin haircutting does not necessarily allocate losses to those who are best able to cope with them.

Eurex Clearing agrees that as variation margin haircutting does not by itself result in the CCP being able to rebalance its book, it is not sufficient to be the only applicable measure of a CCP's recovery plan.

Initial margin haircutting by CCPs

3.5.23 Any use of initial margin carries with it certain potential costs. Participants whose initial margin is consumed will be required to replenish it. The timeframe within which the consumed initial margin must be replaced raises important issues. Until it is replaced, the CCP is under-protected against future defaults. But if initial margin is required to be replaced immediately, this could cause a large liquidity strain during stressed conditions, which may have pro-cyclical effects, potentially leading to cascading defaults. Additionally, if the CCP arranges for initial margin not to be bankruptcy remote so that initial margin haircutting can be used during recovery, this would create capital charges for participants.

Eurex Clearing understands initial margin haircutting to essentially be a type of cash call, unless the uncovered positions are forcibly closed in conjunction.

Further, Eurex Clearing believes that bankruptcy remoteness of the margin collateral and segregated clients may proof to be a serious hindrance to this recovery tool,

assumedly in a wide range of jurisdictions.

As such, Eurex Clearing understands initial margin haircutting to be more of a resolution tool, rather than a recovery tool.

3.8 Tools to allocate losses not related to participant default

3.8.5 Another appropriate means for capital raising could be for an FMI to develop, ex ante, contingency plans to structure optional contributions for such recapitalisation. In such circumstances, it may be appropriate to consider whether such optional contributors should be compensated with an ownership interest in the FMI commensurate with the level of "new value" contributed. Depending on how it is implemented, this would imply the dilution or subordination of the interests of existing owners who do not contribute. This could incentivise participation in a capital raising exercise by permitting contributing institutions to benefit from any upside potential from the revitalised FMI. Contributors of new value may also obtain voting power.

Eurex Clearing believes that any reasonable recovery measures should be considered, and that FMIs might consider re-capitalization measures, to the level of detail feasible to be determined ex-ante. Furthermore, CCPs should consider, and discuss with the appropriate stakeholders other possible measures, such as special levies, modifications to fees, reducing dividends, etc. as measures to repay any emergency funding. A combination of such alternatives has the advantage of tailoring the loss coverage to those entities that benefit from the recovery.

Explicit insurance (eg from a third party) or indemnity agreements (eg from a parent, owners or participants)

3.8.7 Insurance or indemnity agreements may be an effective way of addressing the impact of specific business and operational losses. However the timeliness and reliability of such arrangements would be subject to a number of factors including the lead-time required for having a claim processed and paid (in particular if there might be a challenge as to the validity of the claim or indemnification). Use of this tool would result in replenishment of the FMI's financial resources, although an FMI is very likely to need to take recovery measures to address the root cause of its financial distress in addition to replenishment of financial resources.

Eurex Clearing believes that protection against losses by an insurance company is theoretically possible if such insurance company is more secure than the respective FMI. If insurance companies protect themselves by hedging their risks in the market, which may redistribute the CCP's default risk to its members, then care must be taken with closed link risks. However, an insurance company creates just another type of credit risk to the CCP and in reality solving an insurance claim is extremely unlikely within the timeframe of a crisis situation. Additionally providers of insurance or indemnity agreements are likely exposed to identical market stress events as the FMI and its members..

3.9 Tools for CCPs to re-establish a matched book

3.9.1 After a participant defaults, a CCP will need to re-establish a matched book of obligations, stemming further losses. The CCP may, through its own staff, with the aid of personnel seconded by participants, or other third party personnel, enter into liquidating or risk-neutralising transactions to mitigate the market risk of the defaulter's positions, or may auction portions or all of the defaulters' portfolio to surviving participants. If the CCP is unable to offset the defaulter's positions, within the CCP's recovery resources, through voluntary means, it may need to take action through involuntary means (albeit based on ex-ante agreements), such as forced-allocation or tear-up.

Eurex Clearing agrees that it is of utmost importance that a CCP's recovery plan defines all steps necessary for the CCP to re-balance its book. This ensures that the total losses are known, and removes any uncertainty in this respect.

Incentivise acceptance of unmatched contracts

3.9.3 To deal with a defaulter's outstanding positions, a CCP should auction these to direct participants or to third parties who could clear such positions through direct participants. The CCP's rules could provide incentives for successful bidders on unmatched contracts. The method of allocation of losses among participants could be set out ex ante to provide incentives for competitive bidding, for example "juniorising" (that is, using first) the mutualised default fund contributions of participants (if these have not been exhausted in meeting losses caused by a default) that are not successful bidders in auctions of unmatched contracts.

Eurex Clearing agrees that auctions are of paramount importance to manage the default of a CCP's member. Auction, if designed reasonably, serve to provide necessary incentives to non-defaulting members of the CCP to re-balance the CCP, by accepting unmatched contracts.

One possibility to create incentives is to allocate losses resulting from the auction or from remaining un-balanced positions to those members who failed to participate in the auction. Another possibility is to enforce auctions to be mandatory to all members that are active in the respective asset class.

Naturally, a mandatory auction requires the CCP to define when participation is fulfilled, i.e. under what conditions bids are valid. This could be achieved by setting a minimum price for members to comply with. Another option would be to define the reasonability of bids dependent on the winning bid or the average of all bids submitted. This however, creates the problem that members cannot anticipate ex-ante when submitting their bids, whether such bids will be valid, which hampers their ability to assess their exposure towards the CCP.

Another option to assess the reasonability of a bid is to ask for a bid and an offer without disclosing the side of the portfolio, and to set a maximum spread that the difference between such bid and offer quotes must not exceed. This definition has the advantage that members know ex-ante when submitting their bids, whether or not such bids will be valid.

<u>Contract termination: tear up</u>

3.9.11 The CCP could terminate some or all open positions in order to return to a matched book and stem further losses. A price would be established upon termination, eg at the last available marked to market price, and, to the extent resources are insufficient to permit payment of mark-to-market gains, payments due to participants would be reduced pro rata (ie variation margin haircutting). The termination or allocation could be (a) of all open contracts in a particular CCP ("complete tear-up"), (b) of all open positions in a particular service (eg all CDS contracts, but not IRS contracts), (c) of only those contracts needed to offset the defaulted contracts, and/or (d) contract tear ups subject to appropriate safeguards to minimise impact on netting sets. "Contract termination" with the "break up" of netting sets or hedged positions entail an element of "loss allocation" and "change in position", so their implications should be carefully assessed.

Eurex Clearing supports the Committees' opinion that taking into account all negative consequences of a full tear-up of a CCP, the allocation or termination of a small subset of such CCP's contracts is likely to be more beneficial for the overall financial system.

However, Eurex Clearing believes that a CCP should attempt conducting a final auction or similar process to achieve a matched book, before terminating any contracts.

3.9.21 A CCP whose rules include the availability of partial tear-up may create disincentives for participation among participants who, for risk management and/or regulatory reasons, are unwilling or unable to accept a model in which a hedged position may, by action of the CCP, be changed into a directional positions, in a manner that creates risks that the participant cannot effectively control ex ante other than by exiting the CCP. As a consequence, partial tear up may also have implications for the reliance on and management of net exposures.

While appreciating that the risks resulting from a partial tear-up, are hardly observable ex-ante for a CCP's members, Eurex Clearing understands the same to be true for variation margin haircutting. Indeed, if variation margin haircutting is applied, members formally keep their positions. However, the risks assumed with such positions are no longer those risks the member agreed upon, when entering into the respective positions. As is the case, if positions are terminated the member cannot effectively control ex ante what risk it is exposed to. This holds true particularly if variation margin haircutting is applied on an on-going basis and to a weaker extent if variation margin haircutting is performed as a one-off recovery tool. In addition the legal feasibility of ex-post application of variation margin haircutting is not assessed and will likely pose significant issues across legal jurisdictions.

Contractual versus voluntary tools to achieve a matched book

3.9.24 In contrast to the use of mandatory tools, voluntary or auction-based sale or replacement of unmatched positions is likely to lead to a far more desirable outcome. Accordingly, to maximise the chances of a successful voluntary or auction-based approach, the CCP should make use of the tools described in previous sections, such as variation margin haircutting and assessment rights, so that it has significant additional resources over and above its pre-funded default resources before it is forced to employ mandatory tools such as tear-up of contracts or forced allocation.

If a CCP is to conduct its recovery (or indeed resolution) plans, it must be able to ensure that at the end of such process no positions remain with the CCP. Hence, there must be mandatory measures, if the crisis cannot be resolved with voluntary measures, whereas the price at which such actions are taken may vary. In the view of Eurex Clearing losses must be ascertained first, from whereon a judgment can be made by the responsible stakeholders on whether, and how, they would like to cover such losses voluntarily beyond the committed funds, to avoid the appliance of contractual recovery tools.

C. Closing

We hope that you find these comments useful. If you have any questions please do not hesitate to contact:

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