European Association of CCP Clearing Houses

EACH Response – CPMI-IOSCO consultation "FMIs' management of general business risks and general business losses: Further guidance to the PFMI"

February 2026

European Association of CCP Clearing Houses AISBL (EACH), Avenue des Arts 6, 1210 Brussels

1. Executive Summary

The European Association of CCP Clearing Houses (EACH) represents the interests of Central Counterparties (CCPs) in Europe since 1992. CCPs are financial market infrastructures that significantly contribute to safer, more efficient and transparent global financial markets. EACH currently has 19 members from 14 different European countries. EACH is registered in the European Union Transparency Register with number 36897011311-96.

EACH appreciates the opportunity to respond to the CPMI-IOSCO consultation[1] "FMIs' management of general business risks and general business losses: Further guidance to the PFMI".

The feedback shared in this consultation response covers the following key EACH points:

- **No new standards** – EACH Members would like to emphasise that the guidance should not evolve into explicit new standards and should not be treated as hard quantitative requirements by supervisors. In this respect we would also highlight that the new guidance appears to be inconsistent with certain existing European regulation, which could disrupt long-standing practices.
- **Risk mitigation** – European CCPs already have in place systems to mitigate different types of risk and potential losses related to general business risks.
- **Orderly winding-down** – When it comes to ensuring an orderly winding-down, European CCPs hold capital, including retained earnings and reserves, proportionate to the non-default risks that the CCP is exposed to.
- **Governance and transparency** – EACH Members consider that governance committees, such as the EMIR Risk Committee, consultations with affected entities on relevant changes to the CCPs clearing rules, regular exchanges with the competent authorities as well as the disclosures CCPs already made available by CCPs, provide for a sufficient level of transparency and engagement with CCP participants.

2. Questions and Answers

Question 1: **Scope and interaction with other PFMI principles**

a) Is the guidance provided on the scope of general business risk and interaction with other PFMI principles clear and sufficient? If not, how should it be amended?

Answer to Question 1

Point (a)

Yes, EACH Members consider that the guidance provided on the scope of general business risk and interaction with other PFMI principles is clear. While welcoming the guidance's objective of improving consistency and understanding of Principle 15, we would like to

[1] https://www.bis.org/cpmi/publ/d229.pdf

emphasise that, in line with the intention of the consultative document, the guidance should **not evolve into explicit new standards** and should **not be treated as hard quantitative requirements** by supervisors. It is also helpful that the guidance clarifies it sets out an acceptable way, rather than the only way, to observe the PFMI. Anything too prescriptive would risk interacting in an unhelpful or unintended way with current CCP practices or local regulation, which in many cases exceed the PFMI.

Question 2: **Identifying, monitoring, and managing general business risks**

a) Is the guidance provided on identifying, monitoring and managing general business risks clear and sufficient? If not, how should it be amended?
b) Are there other approaches and tools, in addition to or instead of those mentioned in the report, that would help FMIs to identify general business risks and estimate the size and timing of general business losses? If so, please describe the approaches or tools.
c) Are there other approaches and tools, in addition to or instead of those mentioned in the report, that would help FMIs to minimise and mitigate the sources of general business risk and manage residual risk? If so, please describe the approaches or tools.

Answer to Question 2

Point (a)

Yes, EACH Members are of the opinion that the guidance provided is clear. EACH would also like to highlight that identifying and addressing those **scenarios that could cause business losses not linked to the default of a clearing member** (non-default losses (NDLs)) is already key matter for European CCPs. Its importance is explicitly recognized by the CCP Recovery and Resolution Regulation (CCP RRR)[2]. Article 9(1) of CCP RRR mandates that *"CCPs shall draw up and maintain a recovery plan providing for measures to be taken in the case of both default and non-default events and combinations of both, in order to restore their financial soundness, without any extraordinary public financial support, and allow them to continue to provide critical functions following a significant deterioration of their financial situation or a risk of breaching their capital and prudential requirements".* In addition, point (c) of CCP RRR Article 9(2) states that the measures included in the recovery plan shall also include loss-absorbing arrangements that are adequate to cover the losses that might arise from all types of non-default events.

Under EMIR as supplemented by the RTS 152/2013 on capital requirements[3], European CCPs are required to hold capital against various non-default risks such as operational risk and business risk.

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0023
[3] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0152

The CCP RRR has also introduced an additional amount of pre-funded dedicated own resources, the so called *second skin-in-the-game* (Article 9(14) CCP RRR). This additional capital can be used for both default and non-default events prior to resorting to the CCP's recovery measures and is sized between 10% and 25% of the CCP's EMIR capital requirement.

Furthermore, **European CCPs already have in place a framework of indicators based on their risk profile** and in accordance with the ESMA Guidelines of recovery indicators[4]. These guidelines also include guidelines on indicators for non-default risks.

CCP RRR also draws the attention towards the necessity to ensure a fair allocation of losses, specifying in Recital (20) that, as a general rule, *"losses in recovery should be distributed between CCPs, clearing members, and, where applicable, their clients as a function of their responsibility for the risk transferred to the CCP and their ability to control and manage such risks".* It should be noted that this view is shared also by ISDA in its 2017 paper "Safeguarding Clearing: The Need for a Comprehensive CCP Recovery and Resolution Framework"[5], according to which *"in some instances, clearing participants should bear at least a portion of non-default losses related to custodial risks, settlement bank risks and investment risks".* These arrangements are in general in the rulebook of the CCP, and sometimes more detailed in policies (e.g. the investment policy). The rulebook – and the changes to it – is subject to consultation by all clearing members. Additionally, relevant policies are also shared with the Risk Committee established as per EMIR legislation[6] for approval. Both ensure transparency to the clearing members and their active support for the rules and policies of the CCP.

Point (b) and (c)

While the guidance seems to be looking at any type of operational risks, we would like to emphasise that, currently, **potential losses related to general business risks** could arise from some specific areas. It would not be proportionate or appropriate for CCPs to be expected to hold capital sufficient to cover all of these risks in full, not all of which are even within the control of the CCP.

Such areas are the following:

- Third-party service providers – Some CCPs rely on third-parties to ensure certain aspects of the day-to-day functioning of their business. These parties may include referential, market and price data providers or trade sources such as execution platforms and middle-wares. A failure of these parties may impact the staff and operational systems of the CCPs and prevent them from functioning properly.
    - **How do CCPs mitigate this risk?** CCPs mitigate this risk through defined service level agreements with third-party service providers, on-going due diligence on third-parties and third-party risk assessments.

[4] https://www.esma.europa.eu/sites/default/files/2023-03/Guidelines_on_Recovery_Plan_Indicators_Article_9%285%29_CCPRRR.pdf
[5] https://assets.isda.org/media/85260f13-48/d1ef0ce0-pdf/
[6] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0648

- System failures (e.g. cybercrime or failure of monitoring tools) – This risk refers to the potential failure of the IT systems of the CCP. This could be the result of a general system failure or a concrete failure such as a cyberattack on the CCP.
    - **How do CCPs mitigate this risk?** CCPs mitigate potential system failures through the measures such as the development of system redundancies, secondary sites, business continuity tests, continuous monitoring and testing of systems and security or third-party assessment of security. In line with principle 17 of CPMI-IOSCO PFMIs, the risk of system failures should be addressed amongst other through the CCP's business continuity plans.
- Fraud – This risk refers to the potential losses that could result from a fraudulent action by an employee of the CCP or a clearing member.
    - **How do CCPs mitigate this risk?** CCPs mitigate fraud risk through the maintenance and enforcement of internal anti-fraud compliance policies, on-going monitoring of employee activity, limited access to online transmission or storage tools, and robust compliance requirements under regulations. Specific measures are described in each CCP's CPMI-IOSCO quantitative disclosures.
- Legal claims/professional responsibility – This refers to the legal risk to which the CCP may be subject as a result of, among other things, improper documentation among its partners and members.
    - **How do CCPs mitigate this risk?** CCPs mitigate legal risk through on-going and regular review to ensure contractual relationships with its clearing members, which are subject to regulatory approval by National Competent Authorities (NCAs) and EMIR colleges, clients and vendors are legally robust and capable of functioning in case of recovery and resolution scenario. Third-party legal reviews in conjunction with reviews at the inception of new relationships (i.e. onboarding a new clearing member or settlement bank), including an evaluation of the entity's jurisdiction.

Additional equity or recapitalization, asset sales or the subscription of insurance agreements are **other measures** available for CCPs to mitigate this type of risks.

CCPs have also in place measures and resources to address **custody and investment risks as per PFMI Principle 16**. To mitigate such risks and prevent related losses, CCPs have developed robust and conservative investment strategies and monitoring systems, building on the demanding and conservative standards already prescribed by EMIR as a best practice. Regulators and CCPs share the ultimate goal of protecting the funds of clearing members from any potential loss and have worked together to develop prudent standards for investment of margin and default funds' contributions. These requirements, as well as each CCP's approach to meeting them, are publicly available through the CCP's rulebook and disclosures, ensuring total transparency into each CCP's investment approach and risk management.

To further reduce investment risks, EACH Members maintain a balanced range of options to deposit collateral, including where possible access to central banks, in order to avoid

concentrating the deposits at commercial banks that are also clearing members. Investment risks could be further reduced by:

- Ensuring a diversified scope of high-quality investment counterparties (e.g. investing in secured money market funds);
- Considering rules to give CCPs a special treatment in the event of a custodian/CSD recovery and resolution event;
- Further extending access to central bank facilities[7].

With regard to the measures to mitigate custody risks and prevent potential custody losses, while the dedicated legislation on Central Securities Depositories (CSDR)[8] makes CSDs even more stable, efficient and safer market infrastructures, in the extreme scenario of a CSD or custodian being severely disrupted, regulators may consider exploring provisions for CCPs to directly access their assets held at CSDs. It should be noted that a given CSD may not itself be the definitive record of title to a particular security. There may be a chain of intermediaries between that CSD and the local CSD which is the definitive record of title to which CCP might be exposed to.

In jurisdictions where a CCP does not have access to a CSD (such as a European CCP accepting US collateral), EMIR permits the use of custodians. This introduces the normal sorts of investment risk which are associated with any counterparty.

Question 3: Determining the minimum amount of LNAFE

a) Is the guidance provided on determining the minimum amount of LNAFE clear and sufficient? If not, how should it be amended?
b) Are there other factors, in addition to or instead of those mentioned in the report, that an FMI should consider in its calculation of (i) the costs of implementing its recovery and orderly wind-down plans and (ii) the appropriate amount of LNAFE? If so, please describe the factors.

Answer to Question 3

Point (a)

Yes, we consider the guidance to be clear.

However we would note that the draft guidance appears to be inconsistent with European regulation. European implementation of the guidance therefore risks disrupting long-standing practices. We would highlight three potential inconsistencies:

- As mentioned above, European CCPs are required to hold capital against various non-default risks such as operational risk and business risk. It is not clear how this

[7] ECB introduces changes to the dedicated credit facility for euro area CCPs
[8] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0909&from=EN

requirement would interact with the new guidance, which is conceptually different and focuses on the single largest scenario.

- Under Article 1(3) of RTS 152/2013 on capital requirements, EU CCPs are in practice required to hold capital equivalent to at least 110% of capital requirements. By contrast, the draft guidance sets out that an FMI "should consider" holding resources in order to address unexpected losses without needing to implement its recovery plan.
- Article 16(2) of EMIR requires EU CCPs to hold sufficient capital for "orderly wind-down or restructuring".[9] This is consistent with the PFMI Principle 15 which refers to "recovery or orderly wind down". By contrast, the draft guidance sets out that an FMI should hold sufficient resources to fund its recovery plan and its orderly wind down plan, which would be cumulative.

This highlights the risk of unintended consequences should the guidance be too prescriptive. CCPs need to retain the flexibility to identify and manage general business risks and general business losses in an appropriate manner, in line with the overall principles set out in the PFMI as implemented in local regulation.

Point (b)

When it comes to **ensuring an orderly winding-down**, European CCPs hold capital, including retained earnings and reserves, proportionate to the non-default risks that the CCP is exposed to.

The CCP RRR's SSITG also adds to the layer of capital CCPs hold and is also intended to be used for non-default events.

Should it be necessary, a CCP might increase its capital resources through the use of capital preservation tools (e.g. reduction in dividend payments, cost reductions, asset sales), payment of its liabilities in instalments or conversion of its debt into equity (subject to an appropriate agreement between the CCP and its counterparty), or general capital raising from investors. CCP capital is appropriate for the allocation of non-default losses for which the CCP is the only entity with the responsibility for creating and managing those risks. European CCPs are well placed to meet such losses and thus ensure continuity of the CCP's critical services and the preservation of market stability.

Concerning the **calculation of six months of current operating expenses**, as a first comment we would like to point out that the sufficiency of the minimum period set out in the PFMI (six months) should be individually assessed based on the evidence available to the CCP. EU regulations (EMIR Article 16 supplemented by RTS 152/2013) already require a CCP to estimate the length of time for a wind-down or restructuring giving consideration to a number of individual factors (e.g. the liquidity, size, maturity structure and potential cross-border obstacles of the positions of the CCP and the type of products cleared) and submit it to the competent authority for approval. Thus, while the time span is floored at six months in

[9] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02012R0648-20250117

accordance with the PFMI, EU regulation may require a CCP to adjust it upwards depending on the outcome of its internal analysis. Furthermore, the regulation requires a review of the time period in case of significant changes in the assumptions underlying the estimation.

Question 4: Governance and transparency

a) Is the guidance provided on governance and transparency related to general business risk clear and sufficient? If not, how should it be amended?
b) What particular information related to an FMI's process for managing general business risk would be useful for the FMI's participants so they can assess the risks they incur by participating in the FMI? Are there practical problems with providing such information, and if so, how can they be addressed?
c) Are there other areas, in addition to or instead of those mentioned in the report, where an FMI should consider seeking stakeholder input on its process for managing general business risk?

Answer to Question 4

Point (a)

Yes, we consider the provided guidance to be clear.

Point (b)

Regarding **governance and transparency**, we believe that governance committees, such as the EMIR Risk Committee, consultations with affected entities on relevant changes to the CCPs clearing rules, regular exchanges with the competent authorities (including the recovery and resolution authority, where applicable) as well as the disclosures CCPs already made available by CCPs, provide for a sufficient level of transparency and engagement with CCP participants.

Furthermore, a CCPs rulebook should enable clearing members to get an overview of the loss allocation mechanisms that apply in the context of general business losses and other NDLs. In case such provisions are significantly amended by the CCP, clearing members are informed well in advance.

Question 5: Should the guidance distinguish between operating losses and non-operating losses in determining the minimum amount of LNAFE? If so:

a) Please explain why such a distinction would be helpful.
b) How should the guidance do so?
c) How should operating losses be defined? Are non-operating losses all losses other than operating losses and default losses?

No comments.