# EACH Response to the Bank of England's consultation on central counterparty resolution execution and resolvability outcomes

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# 1. Introduction

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 consultation on the Bank of England's consultation[1] on central counterparty resolution execution and resolvability outcomes.

The key messages that EACH would like to convey are the following:

- **Resolution should build on existing CCP recovery arrangements and be proportionate** – CCPs already invest heavily in risk management and recovery, and resolution is a tail-end risk. Any new resolution requirements should therefore be proportionate.
- **UK statute rather than amendment of individual CCP rulebooks** – To the extent the Bank concludes that subordination of default fund contributions relative to other unsecured claims is necessary to achieve greater predictability, EACH would encourage the Bank to pursue this through UK statute rather than through amendment of individual CCP rulebooks. A statutory approach would ensure consistent treatment across all UK CCPs, and provide a more robust legal basis for the resulting priority ranking.
- **A pro-rata approach is a good starting point, but should not be mandatory** – EACH supports pro-rata allocation because it promotes transparency and predictability, but it should not be mandatory. Resolution authorities should retain a clearly defined degree of flexibility where a strictly pro-rata allocation would undermine the statutory objectives of resolution or create disproportionate risks to financial stability.
- **Need for clear boundary between CCP recovery powers and Bank resolution powers**– EACH suggests that the Bank establish a clear protocol for the sequencing and demarcation of CCP and statutory resolution actions in respect of the same defaulting clearing member's positions.

# 2. Questions and answers

### Resolution powers and the creditor hierarchy in an NDL scenario

**Q1. Has the Bank correctly identified and understood the challenges associated with calculating the allocation of losses in an NDL resolution, as described in the section above?**

[1] https://www.bankofengland.co.uk/paper/2026/discussion-paper/central-counterparty-resolution-execution-and-resolvability-outcomes

Yes, EACH Members are of the opinion that the Bank has correctly identified the challenges associated with calculating the allocation of losses in an NDL resolution.

We consider, however, that certain **additional aspects could be further emphasised** to align with **internationally recognised standards** and with the **approach reflected in the CCP Recovery and Resolution Regulation** (EU) 2021/23[2] (CCP RR). CCP RR places significant emphasis on the requirement for fair, prudent and realistic valuation of assets and liabilities at the point of resolution, recognising that provisional valuations may be unavoidable given the need for rapid intervention. CCP RR also expressly links valuation to the subsequent assessment of compliance with the NCWO safeguard. Accordingly, we suggest that the consultation distinguish more clearly between:

- identification and quantification of NDLs;
- allocation of those losses across relevant stakeholders; and
- ex post validation of that allocation through the NCWO assessment.

**Q2. Are there any potential options in addition to those identified by the Bank above?**

In addition to the two options identified by the Bank, EACH would encourage the Bank to also consider:

- building further on the approach reflected in the CCP RR, under which **NDLs are first addressed through a CCP's own pre-funded resources and recovery arrangements**, with resolution action reserved for cases where those arrangements prove, or are assessed to be likely to prove, insufficient;
- **enhanced pre-resolution engagement and information-sharing** with the home and host authorities of non-UK clearing members, reflecting the cross-border membership base of many UK CCPs; and
- development of **standardised valuation methodologies and templates**, developed in cooperation with CCPs and clearing members, to reduce the ex-ante uncertainty associated with calculating counterfactual insolvency exposures.

To the extent the Bank concludes that subordination of default fund contributions relative to other unsecured claims is necessary to achieve greater predictability, EACH would encourage the Bank to pursue this **through UK statute rather than through amendment of individual CCP rulebooks**. A statutory approach would ensure consistent treatment across all UK CCPs, avoid a protracted and potentially contested rulebook amendment process with clearing members established in multiple jurisdictions, and provide a more robust legal basis for the resulting priority ranking than a contractual subordination, which may be more susceptible to challenge under the insolvency law of the clearing member's home jurisdiction.

**Q3. What factors should the Bank take into account when considering the potential benefits, risks and costs of such options?**

EACH suggests the Bank take into account the following factors:

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

- the **effect of any change on the risk-management and pricing incentives** currently embedded in default fund and margin arrangements, as well as on the incentive structure than underpins central clearing; and
- the importance of **maintaining legal certainty in the calculation methodology**, given its interaction with the credibility of the NCWO safeguard.

We would like to underline that CCPs invest heavily in their risk management and recovery procedures. As recognised throughout the consultation, CCP resolution is a tail-end risk. This should not lead to complacency but should introduce a degree of proportionality when assessing different options and in the context of any new expectations on CCPs or clearing members.

**Q4**. **Would any of the potential options carry material risk of unintended consequences?**

Overall, EACH **welcomes the Bank's early engagement with the industry** and the openness with which the Bank is setting out its thinking, as this will help to mitigate the risk of unintended consequences. Understanding the motivation behind any policy changes can also mitigate the risk that any changes to the resolution process signal a lack of faith in existing arrangements or in CCPs' ability to manage their own risks.

However, we would nevertheless like to flag that **subordinating default fund contributions could alter the risk/return profile** of those contributions relative to other exposures, with potential knock-on effects for how clearing members provision for, or treat under applicable prudential frameworks, their default fund contributions.

### Returning value to CCP creditors in an NDL scenario

**Q5. Are there any other potential options to expose CCP equity to loss and to return value to creditors in addition to the two broad options identified by the Bank above?**

We agree that the two broad approaches identified by the Bank represent the **principal mechanisms** for ensuring that CCP shareholders appropriately absorb losses before value is returned to creditors.

**Q6. What factors should the Bank include when considering the potential benefits, risks and costs of such options?**

We would underline the Bank's commentary in paragraphs 29 and 30 about the significant challenges related to a mandated transfer of ownership.

Many CCPs will be part of a wider group and will have significant group dependencies such as shared technology infrastructure. As the Bank recognises, it would be **expensive and impractical to duplicate this stack in business** as usual and would introduce operational complexity.

EACH therefore suggests the Bank include the following factors:

- **cross-border regulatory approval requirements** that may apply to any transfer of ownership or creation of profit-sharing instruments, including under applicable EU or third-country financial services and/or merger control regimes;
- the effect on incentives for **clearing members located outside the UK** to continue participating in UK CCPs; and
- **the operational lead time realistically required** to implement any mandated ownership transfer or profit-sharing arrangement, given the cross-border nature of many CCP groups.

**Q7. Would any of the potential options carry material risk of unintended consequences?**

Yes. In particular, EACH would highlight the following risks:

- a transfer of ownership to a potentially large and geographically dispersed group of non-UK clearing members could trigger **merger control and financial regulatory approval requirements in multiple jurisdictions simultaneously**, adding material delay and legal uncertainty at precisely the moment the Bank would be seeking to restore confidence in the CCP;
- clearing members' internal governance and business mandates commonly **restrict their ability to hold CCP equity**, particularly at short notice, which may be especially pronounced for EACH members subject to group-level restrictions on holding financial market infrastructure equity; and
- profit-sharing arrangements involving preference shares or similar instruments would need to be **carefully structured** to avoid unintended prudential or accounting consequences for clearing members under applicable EU or UK capital and accounting frameworks.

### PTU considerations

**Q8. Might the Bank adopting a pro-rata approach to a tear-up present any risks or potential unintended consequences? What factors should the Bank consider when assessing whether, and if so how, to utilise any flexibility in the allocation or scoping of a statutory tear up in resolution?**

We agree that a **pro-rata approach provides an appropriate starting point** for a statutory tear-up, as it promotes transparency, predictability and equitable treatment of participants by avoiding discretionary allocation decisions.

However, we **do not believe that a pro-rata approach should be mandatory**. Resolution authorities should, in our opinion, retain a clearly defined degree of flexibility where a strictly pro-rata allocation would undermine the statutory objectives of resolution or create disproportionate risks to financial stability.

In particular, there are circumstances in which a purely pro-rata tear-up could produce unintended consequences:

- a pro-rata allocation may **fail to reflect the liquidity characteristics** of different products or clearing services. If the contracts selected for tear-up are concentrated in less liquid products, a pro-rata approach could amplify price volatility or impair market functioning;
- a pro-rata allocation may appear neutral, but the **economic impact may differ materially across participants** depending on portfolio purpose, liquidity needs, and ability to re-hedge. This may increase systemic risk;
- a rigid pro-rata methodology may **reduce the resolution authority's ability** to restore a matched book efficiently. The primary objective of a tear-up is not simply to distribute losses evenly but to restore the operational integrity of the CCP and preserve critical clearing services.

**Q9. Should any of these factors, or subset of factors, be prioritised over others by the Bank in performing our ex-ante or resolution scenario specific assessments?**

EACH agrees that the primary objective of a partial tear-up should be preservation of financial stability and continuity of critical clearing services, consistent with the Bank's statutory resolution objectives. Within that overarching objective, EACH considers that **predictability and legal certainty for clearing members** should generally be prioritised ahead of purely operational considerations such as speed of execution, save where delay would itself threaten financial stability.

**Q10. Could the Bank's potential consideration of different options with regard to the scoping or allocation of a partial tear up in resolution carry material risk of unintended consequences?**

Yes. As noted in response to Q8, **any departure from a pro-rata approach could create a perception (or reality) of inconsistent treatment** between clearing members, particularly where those clearing members are subject to different oversight and insolvency regimes. This may impact on behavioural incentives for clearing members, creating incentives to reduce positions perceived as vulnerable to tear-up, concentrate activity in products viewed as less likely to be affected, and more generally to alter hedging behaviour in ways that could reduce market efficiency.

There may also be client-level consequences as the impact of any tear-ups passes through from clearing members to clients. These may not be fully captured by a decision based only on clearing member-level data.

EACH would also draw the Bank's attention to **paragraph 33** of the consultation, which states that the Bank may exercise its statutory tear-up power 'before, after, or alongside' the CCP's own unexhausted rulebook powers for managing a defaulting clearing member's positions. In EACH's view, **this formulation does not, of itself, establish a sufficiently clear boundary** between action taken by the CCP under its own recovery arrangements and action taken by the Bank under its statutory resolution powers. Sequential exercise of these powers (i.e. 'before' or 'after') at least implies an identifiable point at which control passes from the CCP to the Bank. Concurrent exercise ('alongside') does not, and risks conflating two legally distinct regimes carrying different safeguards: CCP rulebook-driven tear-ups are governed by the CCP's own contractual arrangements (including any associated compensation mechanics), whereas statutory tear-ups must be performed at a commercially reasonable price and, per paragraph 34 of the consultation, must not themselves reallocate losses or recapitalise the CCP.

This **lack of a clear demarcation** could give rise to **legal uncertainty and increase the risk of challenge**. For instance, this could result in different economic outcomes for the tearing up of economically similar instruments depending on whether the CCP or the Bank is performing the contractual tear-up, which is likely to lead to uncertainty and subsequent legal challenge.

Therefore, EACH would encourage the Bank to **set out a clear protocol governing the sequencing** (or, where genuinely necessary, the demarcation) of concurrent CCP and Bank action in respect of the same defaulting clearing member's positions.

## CCP resolvability

**Q11. Has the Bank identified an appropriate set of 'resolvability outcomes' for CCPs? Are the topics set out in the high-level descriptions of these outcomes comprehensive, reasonable and proportionate?**

We agree that the proposed resolvability outcomes represent an **appropriate framework** for assessing whether a CCP can be resolved in an orderly manner while maintaining financial stability and continuity of critical clearing services.

Furthermore, we would **welcome further clarity on the proposed resolvability outcome 3** on 'CCP capacity to provide data, modelling and analytical capabilities'. In particular, we would encourage the Bank to specific on what data will be needed and how this compares with data that CCPs already provide regularly to the Bank. We would also welcome **further detail on the Bank's expectations** around CCPs supporting the production of modelled outputs and how this interacts with the Bank's judgment in section 2.1 that any modelling would still leave considerable uncertainty.

**Q12. Are there any further issues the Bank should consider when assessing the resolvability of a UK CCP?**

EACH Members do not have further issues to signal.