



**Via E-Mail ([FSB@fsb.org](mailto:FSB@fsb.org))**

October 17, 2016

Financial Stability Board  
Bank for International Settlements  
CH-4002 Basel, Switzerland

**RE: Essential Aspects of CCP Resolution Planning – Discussion Note**

Dear Board Members:

The Options Clearing Corporation (“OCC”) appreciates the opportunity to submit comments on the “Essential Aspects of CCP Resolution Planning” Discussion Note by the Financial Stability Board (“FSB”).<sup>1</sup> OCC believes it is critically important that the FSB and the international standards-setting bodies that are coordinating on the CCP Workplan solicit and incorporate public input as they work to provide further guidance on the recovery and resolution processes for central counterparties (“CCPs”) like OCC.<sup>2</sup> Much of the discussion regarding CCP resiliency has appropriately focused on CCP recovery, and OCC strongly supports the work that has been done in this area. The Discussion Note seeks to further the discussion regarding CCP resolution. As a member of CCP12 and the World Federation of Exchanges (“WFE”), OCC’s primary responses to the Discussion Note questions can be found in the letters submitted to the FSB by those organizations. As reflected in those comments, OCC’s overarching concern is that in providing guidance regarding resolution, the FSB and other policymakers should not prevent a CCP from fully implementing its recovery plan and should avoid suggesting steps or processes that undermine the CCP recovery process. In this letter, OCC offers further comments regarding certain topics related to resolution that are not covered by the Discussion Note but that OCC believes should be addressed as further guidance is issued in this area.

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<sup>1</sup> See (<http://www.fsb.org/wp-content/uploads/Essential-Aspects-of-CCP-Resolution-Planning.pdf>), released August 16, 2016. The Discussion Note builds on the FSB’s “Key Attributes of Effective Resolution Regimes for Financial Institutions” (“Key Attributes”) and implementation guidance on financial market infrastructure (“FMI”) resolution in II-Annex 1 to the Key Attributes (“FMI Annex”), and collectively these documents are intended to set out a framework for FMI resolution that sits alongside the resilience and recovery standards in the Principles for Financial Market Infrastructures (“PFMIs”).

<sup>2</sup> See (<http://www.fsb.org/wp-content/uploads/Joint-CCP-Workplan-for-2015-For-Publication.pdf>).

## **About OCC**

OCC, founded in 1973, is the world's largest equity derivatives clearing organization. Although OCC began as a clearinghouse for exchange-listed equity options, it has significantly expanded the scope of the products it clears since its founding. OCC operates under the jurisdiction of both the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC"). As a registered clearing agency under SEC jurisdiction, OCC clears transactions for exchange-listed options, security futures and OTC options. As a registered derivatives clearing organization ("DCO") under CFTC jurisdiction, OCC clears transactions in futures and options on futures. OCC also provides central counterparty clearing and settlement services for securities lending transactions. In addition, OCC has been designated by the Financial Stability Oversight Council as a Systemically Important Financial Market Utility ("SIFMU") under Title VIII of the Dodd-Frank Act. As a SIFMU, OCC is also subject to oversight by the Board of Governors of the Federal Reserve System.

## **OCC Comments**

While the Discussion Note focuses on CCP resolution, OCC believes that the primary focus of the dialogue on CCP resiliency should continue to be on CCP recovery. As a signatory to the CCP12 and WFE letters, OCC would like to reiterate certain key points from those letters. As noted by CCP12 and WFE, it is very important in planning for CCP resolution for policymakers to be mindful of market conditions that would lead to such a scenario, which most likely would involve multiple large clearing members defaulting at the same time. Planning for such a scenario is inherently difficult because it is impossible to foresee how such a scenario might actually transpire. It is therefore critical that policymakers focus on resolution planning that promotes market certainty while giving resolution authorities and CCPs the flexibility to deal with actual events as they occur.

We believe this flexibility is best facilitated by ensuring that CCPs are able to fully implement their recovery plans prior to a resolution authority taking over. We agree that any recovery tools a CCP would use should be transparent to the market, in the rulebook, and be subject to oversight and implementation by an appropriate committee of the board of directors. We recognize, however, that CCPs need some degree of flexibility to assess and adapt to the particular stressed situation they are managing by using default management and recovery tools that are best suited to address the particular stressed situation. A prescriptive approach to recovery that does not allow for flexibility may serve to exacerbate the situation for the CCP and the market as a whole.

In addition to agreeing that recovery tools should be transparent to clearing members and the public, OCC also agrees that recovery tools should be appropriately calibrated to incent non-defaulting participants to participate in the recovery process, and policymakers should take great care to avoid creating or promoting incentives that could undermine this recovery process. To this end, CCPs must be permitted to exhaust all

recovery tools available for use **prior to** any resolution authority intervening and initiating the wind-down process. The importance of permitting a CCP to completely exhaust recovery efforts before instituting resolution proceedings cannot be overstated. Thus, “resolution” should be defined as the required intervention of an authority once it is determined that the CCP’s recovery plan has failed and CCP continuity is no longer possible.

As a U.S.-based CCP that has been deemed systemically important by appropriate regulatory bodies, OCC believes that it is critical to point out that, unlike other jurisdictions that may be covered by the FSB’s discussion note, there is yet no certainty under U.S. law that CCPs such as OCC are subject to resolution authority under Title II of the Dodd-Frank Act (“Title II”). Specifically, although there seems to be some consensus among the staff at certain regulatory agencies that the resolution of a CCP in the U.S. would be handled through a Title II process administered by the Federal Deposit Insurance Corporation (“FDIC”),<sup>3</sup> there is no formal guidance in this regard.

Assuming, however, that OCC is subject to resolution authority under Title II, OCC strongly recommends that policymakers provide guidance on the intersection of a CCP’s wind-down plan and the winding down of a CCP by the appropriate resolution authority. Specifically, OCC believes that if resolution is triggered, per OCC’s recommended definition above, the resolution authority should be obligated to step in and wind-down the CCP according to the CCP plan that has been approved by its board of directors and appropriate regulatory authorities. As the FSB knows, the PFMI and the SEC’s Covered Clearing Agency rules that apply the PFMI to CCPs like OCC require OCC to establish a plan for the recovery and orderly wind-down of OCC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.<sup>4</sup> These rules also require OCC to hold liquid net assets funded by equity equal to the greater of either (i) six months of its current operating expenses or (ii) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of OCC, as contemplated by OCC’s recovery and wind-down plan, and to establish a viable plan to replenish such capital.<sup>5</sup> OCC and other CCPs have spent a significant amount of time and effort establishing such recovery and wind-down plans and raising equity capital to support them. Ultimately, the plans will be reviewed and approved by relevant regulatory bodies and should be utilized in resolution.

OCC believes that it is critical for resolution authorities to avoid taking steps that create confusion and result in a waste of scarce resources when a CCP is unsuccessful in recovering. Such steps could include waiting to initiate resolution of the CCP until after

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<sup>3</sup> See, e.g., “DCO Resolution – Staff Presentation of the CFTC and FDIC,” ([http://www.cftc.gov/idc/groups/public/@aboutcftc/documents/file/mrac062716\\_dcoresolution.pdf](http://www.cftc.gov/idc/groups/public/@aboutcftc/documents/file/mrac062716_dcoresolution.pdf)).

<sup>4</sup> See 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>5</sup> See 17 CFR 240.17Ad-22(e)(15).

the CCP has commenced its wind-down plan and the CCP has expended resources on the plan. Rather, as noted above, resolution authorities should initiate resolution of a CCP once it is determined that the CCP's recovery plan has failed and CCP continuity is no longer possible, and should follow the CCP's wind-down plan. If a resolution authority enters at this time, the resolution authority will be able to rely on the above-referenced equity capital and replenishment requirements to wind-down the CCP in an orderly manner. As these funds will have been deemed sufficient for the CCP to wind itself down, they will be sufficient for the resolution authority to wind-down the CCP as well. As such, OCC believes that CCPs should not be required to hold additional, pre-funded resources for resolution beyond those already stipulated in the regulatory requirements for CCPs in relation to orderly wind-down. As noted in the preceding paragraph, OCC holds capital sufficient to ensure an orderly wind-down of critical services, and this capital would be available to a resolution authority if necessary.

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We appreciate the opportunity to submit these comments, and are more than happy to discuss them further with you as you work to provide further guidance on CCP resolution.

Respectfully submitted,

A handwritten signature in dark ink, reading "Craig S. Donohue". The signature is written in a cursive, flowing style.

Craig S. Donohue  
Executive Chairman  
The Options Clearing Corporation