

## **ISDA response to the Bank of England’s consultation paper “Fundamental Rules for financial market infrastructures”<sup>1</sup>**

### **Executive Summary**

ISDA welcomes the opportunity to provide comments on the Bank of England’s (BoE) proposed Fundamental Rules for financial market infrastructures (the Fundamental Rules, FR). While we understand that these rules apply to all financial market infrastructures that the BoE supervises, our comments below focus on CCPs. We will refer to CCPs throughout the response for that reason. We acknowledge that these rules are in the same spirit as similar rules covering expectations for other market participants.

Overall, we very much support the intent of the rules. A common theme in our response is that we would encourage further explicit references to “transparency” throughout the rules.

We believe that “transparency” should be mentioned as one of the guiding principles that CCPs should follow in the conduct of their business, and that this could be reflected under FR 1, 2 and/or 3.

We would also welcome further references to transparency in relation to FR 9, in the context of operational resilience, given that market participants do require adequate information on CCPs’ operational resiliency to perform their third-party risk assessments.

We also very much appreciate the addition of FR 10, which recognises the specific nature of CCPs, by requiring them to identify, assess and manage the risks that their operations could pose to the stability of the financial system. We would encourage that the outcome of the assessment also be shared with CCPs’ participants, who would then be able to factor this into their own risk management.

This response covers the positions of our members on the buy-side and sell-side. The paper does not reflect the views of many CCPs, and many of the CCPs are in disagreement with the views.

### **Discussion**

#### ***Scope***

We note that the BoE sets out in paragraph 2.2 that the rules will apply to “recognised UK CCPs”, and that “systemic third-country CCPs” are not in scope, but that the BoE may consider bringing them in scope in the future. We welcome the deferential approach taken by the BoE, as we understand that the definition of the scope of application means that the Fundamental Rules would not apply to non-systemic third-country CCPs that are recognised

---

<sup>1</sup> [Fundamental Rules for financial market infrastructures | Bank of England](#)

in the UK. In the hypothetical case where the Fundamental Rules were to apply to a systemic third-country CCP, we would encourage the BoE to follow a similarly deferential approach, to provide market participants with some certainty on the supervisory outcomes that CCP supervisory authorities are aiming to achieve for a given CCP.

### ***The proposed Fundamental Rules***

We support the 10 proposed Fundamental Rules, which are sensible and provide useful clarity about the supervisory outcomes that the BoE aims to achieve when carrying out its supervisory role on CCPs.

#### **CCP transparency**

##### ***FR 1, 2 and 3***

We welcome the suggestion that the BoE would expect “integrity”, “skill”, “care”, “diligence” and “prudence” from CCPs when conducting their business, as set out in FR 1, 2 and 3. We would suggest adding “transparency” among those guiding values expected from CCPs in carrying out their business. It has been extensively discussed, over recent years, how increased transparency from CCPs helps overall financial stability by allowing market participants to better prepare for margin calls or other CCP actions, especially in times of stress. Therefore, feeding into the BoE’s financial stability objective, we would suggest including explicit consideration of “transparency to market participants” as a key value expected from CCPs. This could sit alongside FR1, as a subset of “integrity”, FR 2, related to “care and diligence” and/or FR 3, “prudence”, given that providing adequate transparency is a way for CCPs to mitigate the risks arising from unexpected margin spikes under stress. Relatedly, we would suggest substantiating FR 2 on “care and diligence” and 3 on “prudence” by setting an expectation that CCPs pursue “predictability and consistency of outcomes”.

#### **Third country aspects**

##### ***FR 7***

We welcome FR 7, with regards to how CCPs are expected to deal with regulators. We note that paragraph 2.24 clarifies that the rule, on openness and cooperativeness with regulators, applies to interactions with regulators in the UK. Because UK CCPs serve market participants globally, we suggest that the Bank should expect CCPs to act in the same open and cooperative way with third country regulators as well. Such openness will only help reassuring third-country authorities that reliance on UK CCPs is not source of increased financial stability risk.

#### **Contagion**

##### ***FR 10***

We welcome the addition of a rule requiring a CCP to “identify, assess and manage the risks that its operations could pose to the stability of the financial system”. We are cognisant that there is no such equivalent in the PRA rulebook for banks, and welcome that that the CCP’s

rulebook recognises the special role a CCP plays through the addition of this rule. We would welcome further detail as to how the outcome of the FMIs' assessment completed in application of FR 10 will be communicated to market participants. We believe that requiring CCPs to share with market participants their assessments of the potential systemic impacts of their actions would be very valuable information for market participants to factor into their own risk management.

We very much welcome that under FR 10, where the BoE requires that FMIs identify, assess and manage the risks that their operations could pose to the stability of the financial system, the BoE explicitly requires CCPs to consider how their actions could impact the financial stability of all markets that they serve. We note that the supervisory statement recognises, under paragraph 44, that CCPs "should consider the nature of their business as it relates to cross-border activities" in relation to FR 10.

We would suggest requiring CCPs to identify, assess and manage the risks that their operations could pose to their members, alongside the assessment of the risks to the financial system. This would reflect the need for CCPs to have identified their most important participants and put in place appropriate plans (disconnect, reconnect, testing) with those participants to be prepared in advance of an incident and minimise the effect of an FMI disconnecting a member while maintaining their resilience.

In addition, we would encourage further development of the piloting and reviewing different methods to implement the rule, given that the "stability of the financial system" encompasses both financial and operational stability.

On operational stability, FR 10, which mandates CCPs to identify, assess and manage the risks that their operations could pose to the stability of the financial system appears to develop the concept of operational contagion. However, we express concern that the concept is not well understood. As UK regulators have regularly noted, the chain of assets and third parties which contribute to the delivery of any given service may be complex. As a result, understanding the impact any disruption to a CCP service may have at a single firm may be complicated. This becomes even more complex for the wider financial industry because of a more diverse set of clients and important business services. At this stage, it is unlikely that CCPs can implement this principle. We encourage further development of the concept and piloting and reviewing different methods to implement the rule.

With that in mind, we support that FR 10 sets out, under paragraph 43 of the supervisory statement, that FMIs "should reasonably foresee the risk that they pose to financial stability, and work to ensure they do not introduce or exacerbate systemic risk". We believe this rule should guide FMIs not only in their approach to operational stability and resilience, but also towards procyclicality, in line with our response to the BCBS-CPMI-IOSCO consultation on margin transparency.<sup>2</sup>

---

<sup>2</sup> [ISDA-Response-to-Margin-Transparency.pdf](#)

## **Operational resilience**

### **FR 9**

We welcome FR 9 with regards to requiring CCPs to maintain sufficient operational resilience.

#### *Information sharing*

To achieve member confidence in CCP resiliency capabilities, we encourage more transparent information sharing. All CCPs have identified their important business services and impact tolerance in compliance with the BoE's rules. However, dissemination of this information to their members is not consistent. The current level of detail a clearing member receives via Public Qualitative Disclosures is not consistent with the appropriate level of detail a clearing member would receive via a material outsourcing relationship.

We would welcome greater clarity surrounding the requirements for CCPs to engage with member firms that are seeking information on their resiliency planning and capabilities.

Relatedly, we would welcome clarity on the requirements for CCPs to respond to questionnaires from members to support understanding of controls and operational plans in the place in the event of a cyber-attack. Members are compelled to understand the risks associated with third parties, but struggle to achieve this without appropriate due diligence.

This is in line with the BoE's broader efforts regarding supply chain management, for instance the recent Supervisory Statement on Critical Third Parties, Consultation Paper 7/24 on Operational Resilience. It also aligns with the recent BCBS Principles for the Sound Management of Third-party Risk.

#### *Testing*

We would encourage the BoE to require CCPs to conduct more frequent industry-wide resilience exercises. In turn, this will allow participants to build better collective responses. For participants to derive value, quality needs to be prioritised over quantity. Tests need to have clear objectives that align with participants priorities and be followed by transparent remediation of identified weaknesses by CCPs. For example, participants require greater clarity on the actions that are required from them during a disruption to a CCP's important business services. As such, a test from which participants derive clarity on the actions they are required to take following a data loss incident would be beneficial.

## **About ISDA**

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 1,000 member institutions from 76 countries. These members comprise a broad range of derivatives market participants, including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearing houses and repositories, as well

as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's website: [www.isda.org](http://www.isda.org). Follow us on [LinkedIn](#) and [YouTube](#).