



HM Treasury

Financial Services and Markets Act 2023:

Central Counterparties Special Resolution Regime Code of Practice

January 2024

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Central Counterparties Special Resolution Regime Code of Practice

Presented to Parliament pursuant to Schedule 11 of the
Financial Services and Markets Act 2023



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ISBN: 978-1-916693-81-4 PU: 3394

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Chapter 1

Introduction

1.1 The Financial Services and Markets Act 2023 (the Act) reforms the UK's system of financial regulation and introduces a new system for resolving central counterparties (CCPs).

1.2 The Act establishes a new framework for the Bank of England's (the Bank) regulation of Financial Market Infrastructure and CCPs in particular. Within that, Schedule 11 of the Act (Schedule 11) provides for a Special Resolution Regime for CCPs (hereafter referred to as the resolution regime for CCPs). The regime provides the Bank and His Majesty's Treasury with powers and tools to protect financial stability by effectively resolving CCPs that are facing financial difficulties and therefore failing or likely to fail, thereby protecting the financial system, taxpayers, and the wider economy.

1.3 CCPs are designed to reduce counterparty credit risks that arise when trading on financial markets. CCPs sit between the buyers and sellers in bilateral trades, including derivative trades, providing assurance that the obligations under those contracts will be fulfilled. Where a financial contract between a buyer and seller is centrally cleared, the CCP becomes the buyer to every seller and the seller to every buyer.

1.4 Collateral is placed with the CCP in case either the buyer or the seller fails to meet its contractual obligations, so that the CCP can use that collateral towards making good on the contract. CCPs are required to have a rulebook governing their relationship with their clearing members detailing (among other things) a pre-agreed series of measures to deal with the default of any of its clearing members (also known as the default waterfall). These measures must ensure that the CCP can manage the default of the two members to which the CCP has the largest exposure and continue to provide clearing services. The default waterfall includes a default fund made up of clearing members' pre-funded contributions that can be used to cover losses that exceed the collateral posted by a defaulting member.

1.5 At the G20 Pittsburgh summit in 2009, G20 leaders agreed that most standardised and liquid derivatives contracts should be processed through a CCP (otherwise known as 'clearing'). The increasing use of

CCPs due to the introduction of the resulting clearing obligations has furthered their importance in the financial system.

1.6 Given the significance of CCPs to the resilience of the financial system, it is important that there is a robust regime for their recovery (the process by which a CCP manages the default of one or more of its members or losses arising for other reasons) and resolution (the process by which the Bank can intervene if recovery fails or recovery action itself poses a threat to Financial Stability).

1.7 The UK first introduced a resolution regime for CCPs through the Banking Act 2009, with the regime itself coming into force in 2014. This original CCP resolution regime pre-dated the agreed Financial Stability Board (FSB) guidance on CCPs¹, and the FSB Key Attributes of Effective Resolution Regimes for Financial Institutions², which were finalised in 2017.

1.8 Whilst the regime that came into force in 2014 provided important powers for the Bank to resolve a failing CCP, it was judged important to expand that regime to ensure the Bank had a comprehensive set of powers and tools to protect financial stability and public funds, given the systemic importance of CCPs and the UK's ongoing commitment to implementing global standards. Therefore, the Treasury, in collaboration with the Bank, introduced Schedule 11 to expand the existing UK regime, bringing it in line with international standards.

1.9 As required by paragraph 16 of the Schedule 11, the Treasury must produce this Code of Practice (the Code). This will provide guidance and clarity on how a number of powers within the regime can be used, and also provide details which authorities must have regard to in conducting a resolution. Paragraph 29 of Schedule 11 also requires that the Code includes provision about the objectives, management, and control of bridge CCPs.

Revising and maintaining the Code

1.10 The Treasury will update the Code on a periodic basis, in light of evolving experience. The Treasury will consult the Bank, Prudential Regulation Authority (PRA), and the Financial Conduct Authority (FCA) on any changes. When making material changes to the Code the

¹ An example of the FSB guidance can be found here - <https://www.fsb.org/2017/07/guidance-on-central-counterparty-resolution-and-resolution-planning-2/>

² [Key Attributes of Effective Resolution Regimes for Financial Institutions - Financial Stability Board \(fsb.org\)](#)

Treasury will also consult the CCP Resolution Liaison Panel, which has a statutory remit to advise the Treasury on the Code under paragraph 20 of Schedule 11.

1.11 The Treasury has issued this version of the Code having consulted the PRA, FCA and the Bank in accordance with Schedule 11 of the Act.

CCP Resolution Liaison Panel (under paragraph 20)

1.12 As mentioned in 1.10, the CCP Resolution Liaison Panel (the Panel) may advise the Treasury on matters relating to the CCP resolution regime, advising on the effect on markets and individual firms, and the making of certain statutory instruments, the Code, and anything else referred to the Panel by the Treasury.

1.13 The main purpose of the Panel is to provide advice to the Treasury on the impact of the regime on financial markets.

1.14 Summaries of the proceedings of meetings of the Panel are published by the Treasury³, subject to considerations of commercial and market confidentiality. To note, the Treasury are not under any obligation to do this by virtue of the Act.

³ Summaries from CCP Resolution Panel meetings can be found here [CCP Resolution Liaison Panel - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Chapter 2

Overview

2.1 This section provides guidance on the use of the CCP resolution regime set out in Schedule 11 as it applies to CCPs in circumstances in which they are failing or likely to fail. This consists of:

- The eight stabilisation options: transfer to a private sector purchaser, transfer to a bridge central counterparty, transfer of ownership, terminating clearing member contracts, making a cash call, reducing variation margin payments, writing down liabilities, and taking control of a CCP.
- The three types of stabilisation powers through which the stabilisation options are achieved: share transfer powers, property transfer powers, and other resolution powers in accordance with paragraph 1(4) of Schedule 11. In the exercise of these stabilisation powers, the Bank would issue the applicable instrument.
- Supplementary or ancillary provisions and powers which ensure the effective use of the above stabilisation options.

2.2 The above special resolution powers may be used by the Bank to resolve a CCP that is failing, or likely to fail. These expanded powers replace the existing CCP resolution powers which were set out in the Banking Act 2009. The Banking Act powers will apply in respect of any resolution of a CCP that commenced before 31st December 2023 (the date on which the expanded CCP resolution regime under Schedule 11 was commenced) and will continue to apply until the end of that particular resolution.

Contents of the Code

2.3 In accordance with paragraph 16 of Schedule 11, which set out topics the Code may include, this Code provides guidance on:

- How the special resolution objectives are to be understood and achieved;
- The choice between different stabilisation options;
- The information to be provided in the course of a consultation being carried out by the Bank under Schedule 11;

- How to determine whether Resolution Condition 2 under paragraph 17 is met;
- How to determine whether the test of the use of stabilisation powers under paragraph 19 is satisfied;
- Paragraphs 89 and 92 (continuity obligations); and
- Compensation, including how the Treasury intends to satisfy the requirement under paragraph 87(3) (the “No Creditor Worse Off” safeguard).

2.4 In addition to the above, the Code sets out further guidance which builds on the suggested topics within Schedule 11. This includes:

- The general principles of a resolution;
- The role of UK authorities, including the Treasury, Bank, FCA and PRA;
- How to assess whether the Resolution Conditions are met;
- Detail on supplementary and ancillary powers (such as valuation, compensation, and the power to modify the law); and
- International cooperation during the course of a resolution.

2.5 The Code describes the legal powers under Schedule 11, including, in some cases, the legal constraints on the Bank and other authorities. This element of the Code expands on the Explanatory Notes that were published alongside the Act⁴, and the various explanatory memoranda that have been published with the relevant statutory instruments made under Schedule 11.

2.6 Schedule 11 also dictates that the Code is required to include provision about the management and control of bridge CCPs, as per paragraph 29(4).

The Bank’s regard to the Code

2.7 The Bank is legally obliged to have regard to the Code under paragraph 16(6) of Schedule 11.

⁴ The explanatory notes to the Act can be found here [Financial Services And Markets Act 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2023/56/explanatory-notes)

2.8 The Treasury considers that one of the primary purposes of the Code is to provide a clear guide for CCPs, clearing members, and the financial markets as to how the Bank will seek to achieve the special resolution objectives, and how the stabilisation powers may be used in practice. As such, in addition to describing the legal powers, in some cases the Code sets out the likely approach to using these powers. The Bank must have regard to this when exercising stabilisation resolution powers, therefore providing a greater insight into how the Bank would expect to act in order to achieve the resolution objectives.

2.9 The Code is a guide as to the most likely use of these powers. However, the powers may be exercised in a range of ways, depending on circumstance, provided they are consistent with the objectives of the regime. So, while the authorities must have regard to the Code, they are not necessarily bound to adopt an approach set out in the Code where an alternative approach would better meet the resolution objectives.

Chapter 3

Role of UK Authorities

3.1 The resolution of a failing CCP will involve coordination and cooperation between authorities at various stages of the decision-making process. As the Resolution Authority, the Bank is the lead authority in conducting a resolution in respect of a CCP. As appropriate, there are consultation requirements throughout Schedule 11, which will necessitate the Bank interacting with the Treasury, the FCA and, in the case in which the CCP is a PRA-authorized person, the PRA. The Bank will also interact with third-country authorities as appropriate, including as set out in Chapter 8.

3.2 As is set out in paragraph 17 of Schedule 11, a stabilisation power can only be exercised if all of the following conditions are met:

- Condition 1 is that the CCP is failing or likely to fail.
- Condition 2 is that
 - Having regard to timing and other relevant circumstances, it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the CCP that will result in Condition 1 ceasing to be met, or
 - In the Bank's assessment, the action that may be taken by or in respect of the CCP for the purpose of ensuring that Condition 1 is no longer met might have an adverse impact on the stability of the UK financial system.
- Condition 3 is that the exercise of the power is necessary having regard to the public interest in the advancement of one or more of the special resolution objectives.
- Condition 4 is that one or more of the special resolution objectives would not be met to the same extent by the winding up of the CCP.

3.3 The Bank takes responsibility for deciding whether Condition 1 is met, and sub-paragraph 17(6) of Schedule 11 sets out the criteria by which this may be determined. Before determining whether Conditions 2 to 4 are met, the Bank must consult the FCA, the Treasury, and, if the CCP is a PRA-authorized person, the PRA.

3.4 In addition to these conditions, as set out in paragraph 19 of Schedule 11, in a financial assistance case, the Bank may exercise the stabilisation powers in paragraphs 27, 29 and 30 of Schedule 11 – which relate to the private sector purchaser, bridge CCP and transfer of ownership stabilisation options – only if the following conditions are satisfied:

- The Treasury has given a recommendation to the Bank to exercise the stabilisation power on the grounds that it is necessary in order to protect the public interest; and
- The Bank considers that the exercise of the stabilisation power is an appropriate way to provide that protection.

3.5 A financial assistance case is defined in paragraph 19(2) of Schedule 11 as a case where the Treasury notifies the Bank that they have provided financial assistance in respect of a CCP for the purposes of resolving or reducing a serious threat to the stability of the UK financial system.

3.6 In respect of a CCP group company, and when exercising the private sector purchaser, bridge CCP and transfer of ownership stabilisation powers in accordance with paragraphs 27(2), 29(3) and 30(2) of Schedule 11, the Bank may exercise these powers subject to each of the following conditions being met, as set out in paragraph 117 of Schedule 11:

- The conditions in paragraph 17 of Schedule 11 are met in respect of a CCP in the same group;
- (Not in financial assistance cases), the Bank is satisfied that the exercise of the power in respect of the CCP group company is necessary, having regard to the public interest in the stability of the UK financial system and maintaining public confidence in the stability of that system;
- (In financial assistance cases), the Treasury has recommended the Bank exercise a stabilisation power on the grounds that it is necessary to protect the public interest, and in the Bank's opinion, exercise of the power in respect of the CCP group company is an appropriate way to provide that protection; and
- The CCP group company is incorporated in the UK or formed under the law of any part of the UK.

3.7 As stated in 3.1, the Bank has primary responsibility for the operation of the CCP resolution regime, including the decision to use

stabilisation options, and to decide which options are appropriate in differing circumstances.

3.8 As well as the above consultation requirements under paragraph 17 of Schedule 11, to determine whether the resolution conditions have been met, there are a number of occasions noted under Schedule 11, and the Statutory Instruments made pursuant to Schedule 11, where either one or all of the Treasury, the FCA, and the PRA (if the CCP is a PRA-authorized person) must be consulted by the Bank.

3.9 The Bank must send copies of any resolution instruments that are utilised to all three aforementioned bodies, as applicable, and must consult the same bodies, as applicable, before making a supplemental resolution instrument.

3.10 In addition, the aforementioned bodies, as applicable, and the CCP must be sent a copy of any share transfer or property transfer instrument that is made by the Bank. The FCA and the Treasury must be consulted by the Bank before a number of instruments are made, including:

- A bridge CCP share transfer or reverse transfer instrument
- A property transfer or reverse transfer instrument
- A bridge CCP supplemental property transfer or reverse transfer instrument
- A supplemental resolution instrument

Additionally, the PRA (if the CCP is a PRA-authorized person) and FCA must be consulted before an onward or reverse share transfer instrument is made. The Treasury must be consulted if the Bank amends a resolution instrument under paragraph 79(4) of Schedule 11.

3.11 As soon as is reasonably practicable after making a share transfer, property transfer, or resolution instrument, the Bank must publish a copy of the instrument on the Bank's website, and on at least one other medium, chosen by the Bank, to maximise the likelihood of the instrument coming to the attention of those affected. The Bank must also arrange for a publication of the copy on the website of the CCP which is being resolved and ensure that a copy is published by means of a regulatory information service if securities of the CCP have been admitted to trading on a regulated market. The Treasury must also lay a copy of an instrument before Parliament once it is received.

3.12 The Treasury has sole responsibility for decisions with implications for public funds, including authorising the use of any

stabilisation powers which would have implications for public funds. The Treasury will also exercise a number of ancillary powers under Schedule 11, such as the power to modify the law (which will be utilised if needed to enable the powers under Schedule 11, ensuring that the resolution can be conducted as effectively as possible) and powers in relation to compensation.

3.13 The Treasury is accountable for keeping Parliament and the public informed of action taken to manage a resolution. The Treasury is also responsible for ensuring the UK's compliance with its international obligations, and for matters relating to the wider public interest.

Chapter 4

Special Resolution Objectives

4.1 The Act provides for the special resolution objectives in relation to CCPs in paragraph 15 of Schedule 11:

- Objective 1 is to protect and enhance the stability of the UK financial system, including in particular by – (a) preventing contagion (including contagion to market infrastructures), and (b) maintaining market discipline.
- Objective 2 is to protect and enhance public confidence in the stability of the UK financial system.
- Objective 3 is to maintain the continuity of central counterparty clearing services.
- Objective 4 is to protect public funds
- Objective 5 is to avoid interfering with property rights in contravention of a Convention right (within the meaning of the Human Rights Act 1998).

4.2 Neither the Act, nor this Code, ranks the special resolution objectives, and they are to be balanced as appropriate in each case. This provision recognises that the relative weighting and balancing of objectives will vary according to the particular circumstances of each resolution, including both (a) circumstances specific to the failing institution; and (b) general circumstances relating to the wider financial system.

Matters to be considered in having regard to the objectives, and how the objectives are to be understood and achieved

4.3 This Code provides further detail and explanation as to how the objectives may be achieved by outlining the various factors that the authorities may consider in relation to them. Some of the terms used within the special resolution objectives are not defined by the Act. The objectives set out in the Act are also context-specific. The relevance and application of the objectives may change over time, for example, as the threats to financial stability change.

Stability of the financial system of the UK

4.4 The term ‘stability of the financial system of the UK’ refers to the stable functioning of the systems and institutions (including trading, payment and settlement infrastructure) supporting the efficient operation of financial services and markets for purposes including capital-raising, risk-transfer, and the facilitation of domestic and international commerce. This primarily concerns Objectives 1 and 2.

4.5 Objective 1 in particular refers to the requirement for the Bank to have regard to ‘preventing contagion’ and maintaining ‘market discipline’, in protecting and enhancing the stability of the UK financial system. In this objective, ‘contagion’ refers to a situation where stress spreads across the market to other participants. This may be due to exposures from the failing CCP which results in losses to a separate individual firm, or a general loss of confidence in the financial system. As such, the intention of Objective 1 is to recognise the wider systemic risks posed by the potential or actual failure of a CCP to the wider financial system, and to ensure the Bank has regard to the likely systemic impact of their actions, including a decision not to act, when considering whether to use a stabilisation option.

4.6 As such, the Bank will aim to ensure that stabilisation powers are not exercised in a manner that is likely to harm financial stability – for example, by not transferring shares or property to an unsuitable entity, or utilising loss-allocation tools in a manner that unduly disrupts the services of other entities. Where appropriate, this may involve liaising with the relevant parties in order to understand the different risks and stresses associated with the timing of resolution actions, and taking steps to minimise disruptions which may arise where the failed institutions have links to other financial market infrastructures and trading venues. The term ‘market discipline’ refers to the behaviour exercised by market participants which ensures financial markets continue to operate in an efficient and rational manner, including in compliance with all applicable statutory and regulatory requirements.

4.7 Paragraph 18 of Schedule 11 also requires that where the Bank is considering the exercise of a stabilisation power in respect of a CCP which is a member of a group, then it must have regard to the need to minimise the effect of the exercise of the power on other undertakings in the same group, and the potential effect on the financial stability of countries other than the United Kingdom (particularly those countries in which any member of that group is operating).

Public confidence in the stability of the financial system

4.8 Objective 2 is to 'protect and enhance public confidence in the stability of the UK financial system'. The term 'public confidence in the stability of the UK financial system' refers to the crucial role that public confidence has in maintaining the stable and efficient operation of financial services and markets. Public confidence is particularly crucial in the context of CCPs, as they are strongly interconnected with the broader financial market.

4.9 Public confidence in the financial system has a number of dimensions. For example, it refers to the expectation that (a) normal services will continue – in this case, clearing members, clients and exchanges will continue to be able to access clearing services and central securities depositories, other delivery facilities and interoperable CCPs (and their clearing members) will continue to be able to interact with the CCP; (b) problems with one institution (or perceived problems) will not extend to other institutions; (c) if an institution does fail, systems exist to protect the interests of market participants and the public. This is intrinsically linked to Objective 1, regarding the prevention of contagion and maintenance of market discipline.

4.10 Interoperable CCPs are those with interoperability arrangements, i.e. an arrangement between two or more CCPs that involves a cross-system execution of transactions. Each party to a trade matched on a trading platform chooses a different CCP to clear their trade. A balance contract then automatically arises between those CCPs to ensure each retains a balanced book. The two CCPs are therefore said to 'interoperate' in managing the risk and settlement arising between them.

4.11 The intention of Objective 2 is to ensure that the Bank has regard to the need to act so that a failing CCP is resolved in a manner that protects and enhances public confidence in the financial system as a whole, limiting as far as possible the potential negative effects of a CCP failure.

The continuity of clearing services

4.12 The continuity of clearing services refers to the stable and continued function of a CCP's clearing services, and the central role that CCPs play in the efficient functioning of the financial system. A particular CCP may be the sole or majority provider of clearing services in respect of a particular asset class or a given trading platform, and thus can be seen as an essential part of the financial system. CCPs can be strongly interconnected with clearing members and other financial market infrastructure in the trading and post trading chain, thus creating a high risk of contagion.

4.13 Maintaining the continuity of clearing services is reflected in Objective 3 (to maintain the continuity of central counterparty clearing services). Given the systemic nature of CCPs and the volume of trades that are cleared through their services, this is closely intertwined with Objectives 1 and 2 (to protect and enhance the stability of the UK financial system, and to protect and enhance public confidence in the stability of the UK financial system, respectively).

4.14 When carrying out a resolution, the Bank will seek to minimise operational disruption to clearing services or other critical market infrastructure to the extent that this is consistent with the achievement of the other resolution objectives, i.e. balancing the objectives as appropriate in each case. This may involve, where appropriate, liaising with relevant parties (such as regulators or industry) to understand the different risks and stresses associated with the use of various stabilisation tools, and taking steps to minimise disruption to a CCP's services as far as possible.

Protection of public funds

4.15 Objective 4 is the protection of public funds. The term 'protection of public funds' refers to the protection of taxpayers' interest in the effective expenditure of public money. The intention of the fourth objective is to recognise the duty of the Bank, the financial regulators (PRA and FCA) and, in particular, the Treasury, to protect public funds when determining whether to take resolution action, and which resolution action to take. The presence of the CCP resolution regime means that the public are less likely to bear the costs of CCP failure than they were in the past.

Avoiding interference with property rights

4.16 Objective 5 is to avoid interfering with property rights in contravention of a Convention right (within the meaning of the Human Rights Act 1998). This refers to holders of property rights in relation to a failing or failed CCP. These holders could include the institution itself, its shareholders, creditors, clearing members, clients of clearing members, exchanges, central securities depositories, delivery facilities, third party service providers, interoperable CCPs or other third parties. Such persons may hold property in the failing institution, or have a right of control over such property, or both. The primary Convention right at issue is Article 1 of Protocol 1 to the European Convention on Human Rights (right to property). Other Convention rights (including Article 6, the right to a fair trial and Article 14, prohibition of discrimination) may also be relevant. The inclusion of this objective acknowledges the

importance of ensuring that any interference with Convention rights is lawful, in the public interest, and proportionate.

The Bank's regard to objectives

4.17 The special resolution objectives in the Act serve three purposes:

- they reflect the purpose of the CCP resolution regime measures in the Act;
- they set out the objectives to which the Bank must have regard when using or considering the use of their powers under the CCP resolution regime; and
- they promote a consistent approach to CCP resolution in accordance with the Financial Stability Board's Key attributes of Effective Resolution Regimes for Financial Institutions⁵.

4.18 The Bank must have regard to the special resolution objectives in using, or considering the use of, the stabilisation powers. This means that the Bank must consider the effect of their likely actions (including inaction) and assess them in light of the objectives.

4.19 However, the Bank does not have to have regard to the special resolution objectives when making a determination under paragraph 17 of Schedule 11 that the CCP is failing or is likely to fail.

4.20 In exercising the powers under Schedule 11, the Bank will also have regard to the principles of public law, as is the case with any public body in the exercise of its functions. In particular, the Bank will have regard to the requirement to act reasonably and to have respect for the rule of law and principle of legal certainty. The Bank must also act in accordance with common law principles of procedural fairness when exercising the CCP resolution regime tools.

4.21 Following actions taken under the CCP resolution regime, the Bank will make a public statement explaining (a) how it has acted with regard to the special resolution objectives; and (b) how it has balanced the objectives against each other. The Bank must publish the instrument or order through which it took action. The form that such an explanation will take will depend on the circumstances.

⁵ [Key Attributes of Effective Resolution Regimes for Financial Institutions - Financial Stability Board \(fsb.org\)](#)

4.22 However, it should be noted that it may not be possible to divulge certain information. For example, information will not be made available by the authorities in any public statement where the release of that information would threaten financial stability or confidence in financial services and markets.

Chapter 5

Conditions for Resolution

Determining that the conditions for exercising the resolution tools are satisfied

5.1 A stabilisation power may be exercised in respect of a CCP only if the Bank is satisfied that all of the conditions set out in paragraph 17 of Schedule 11 have been met.

5.2 The first Condition is that the Bank determines that the institution is failing or is likely to fail. A CCP is considered to be failing or likely to fail in one or more of the following circumstances, as set out in paragraph 17 of Schedule 11:

- the CCP is failing or is likely to fail to meet the recognition requirements (within the meaning of section 286 of FSMA 2000);
- the value of the assets of the CCP is less than the amount of its liabilities;
- the CCP is unable to pay its debts or other liabilities as they fall due;
- any of the previous conditions will, in the near future, apply to the CCP; or
- extraordinary public financial support is required in respect of the CCP, and paragraph 17(9) of Schedule 11 does not apply to that support.

5.3 The Bank may treat Condition 1 as met if satisfied that it would be met but for the withdrawal, or possible withdrawal, of critical clearing services by the CCP⁶.

5.4 Condition 2 is that the Bank, is satisfied that, (a) having regard to timing and other relevant circumstances, it is not reasonably likely that (ignoring the stabilisation powers that are available to exercise the

⁶ Critical clearing services are defined under paragraph 154 of Schedule 11 as clearing services the withdrawal of which the Bank considers may threaten the stability of the UK financial system.

stabilisation options) action will be taken by or in respect of the CCP that will result in Condition 1 ceasing to be met; or (b) the Bank considers that action taken for the purposes of ensuring that Condition 1 is no longer met might have an adverse impact on the stability of the UK financial system.

5.5 The Bank must treat Conditions 1 and 2(a) as met if satisfied that those Conditions would be met but for financial assistance provided by the Treasury or the Bank, beyond ordinary market assistance offered by the Bank.

5.6 Condition 3 specifies that the Bank may only exercise a stabilisation power if satisfied that the exercise of the power is necessary having regard to the public interest in the advancement of one or more of the special resolution objectives. Condition 4 specifies that the Bank must be satisfied that one or more of the special resolution objectives would not be met to the same extent by the winding up of the CCP.

5.7 Conditions 2, 3 and 4 can only be determined by the Bank once it has consulted with the FCA, Treasury, and, if the CCP is a PRA-authorized person, the PRA.

5.8 The test of 'necessity' is a high one, and the Bank (in consultation with the Treasury, the FCA and, if the CCP is a PRA authorized person, the PRA), will necessarily have regard to public law restrictions and the duty to act compatibly with the Convention rights.

5.9 The assessment must seek to balance the short and long-term effects on financial stability and public confidence in the financial system of different resolution options, including the potential effect on the wider market when conducting a resolution.

5.10 If, having had regard to the public interest, the Bank determines that it is necessary to exercise one of the resolution powers, the Bank will need to have considered which of the powers it will use; and whether use of the power would be compatible with the Bank's legal obligations and the special resolution objectives.

5.11 To inform the determination of whether the conditions for the use of stabilisation options are met, ensure that any losses on the assets of the institution are fully appreciated at the moment resolution tools are applied and to determine which tools should be used in resolution, an independent valuation must be carried out (see paragraph 22 of

Schedule 11). This valuation is definitive, and the Bank must ensure that this is carried out in a fair and realistic way by an independent body. As such, the Bank must appoint an independent valuer to conduct this valuation. In certain circumstances where an independent valuation is not possible (due to urgent circumstances), the Bank may carry out a provisional valuation with a buffer for additional losses.

Whether the test for the use of powers in a financial assistance case is met

5.12 As noted in paragraph 3.4, where the Treasury has notified the Bank that they have provided financial assistance in respect of a CCP for the purpose of resolving or reducing a serious threat to the financial stability of the UK, specific conditions apply, as set out in paragraph 19 of Schedule 11.

5.13 In order to utilise the powers under paragraphs 27, 29 and 30 of the Schedule 11 (private sector purchaser, bridge CCP, and transfer of ownership respectively), the Treasury must have recommended to the Bank that the Bank exercise one of these powers on the grounds that it is necessary in order to protect the public interest and the Bank considers that the exercise of the stabilisation powers is an appropriate way to provide that protection.

General principles of resolution

5.14 In exercising the stabilisation powers, the Bank is required to act in accordance with certain general principles of resolution.

5.15 Firstly, depending on the type of loss, shareholders, clearing members and other third-party creditors (holding unsecured liabilities) of the CCP under resolution should primarily bear the losses, to avoid the use of public funds as far as possible. This is reflected in Objective 4, set out in paragraph 15 (6) of Schedule 11, which is to protect public funds. Schedule 11 contains several tools for loss-allocation to clearing members, and, in relation to a non-default loss (as defined in 5.19), also to other third parties through the use of the write down tool.

5.16 When determining whether to conduct a resolution, the Bank would normally expect for the CCP to use its existing loss mutualisation and loss absorption mechanisms as outlined in the CCP's rulebook, since the CCP's existing framework will have been agreed to by participants and the Bank in its capacity as CCP supervisor. However, in some circumstances the Bank may intervene earlier if, having regard to timing and other relevant circumstances, it is not reasonably likely that

such action will result in Condition 1 ceasing to be met, or if such action may have an adverse effect on UK financial stability. In a resolution, where the Bank has exercised its power to take control of the CCP, the tools available in the CCP's rulebook and the statutory powers may be exercised in tandem by the Bank as resolution authority. For example, a cash call could be made up to the limit allowed under the CCP's rulebook simultaneously with an additional statutory cash call under paragraph 32 of Schedule 11. It may also be the case that the circumstances that lead to a CCP resolution mean that elements of the CCP's recover plan are not available, particularly in the case of non-default loss.

5.17 In exercising the stabilisation powers, the Bank has the power to replace the management body, and expects to remove senior management considered responsible for the failure of the firm, and to appoint new senior management as necessary. Where senior management is retained, or any new members of senior management appointed, they will have a role in assisting the Bank to meet the special resolution objectives. In particular, the Bank has extensive powers under Part 6 of Schedule 11 to require directors and management of a CCP or CCP group company and persons connected with a CCP to provide the Bank with information that it reasonably needs in connection with the exercise of the stabilisation powers or other functions relating to resolution.

5.18 Natural and legal persons should be held to account, in accordance with civil or criminal law in the UK, for their responsibility for the failure of the institution. In particular, it may be possible for proceedings to be brought against anyone responsible for the institution's failure under the law on negligence, or for the breach of directors' and officers' common law and statutory duties.

5.19 The use of the stabilisation powers is subject to the safeguard that the Treasury will consider whether compensation is due, if, through the Bank's exercise of the stabilisation powers, relevant persons receive less favourable treatment than they would have received had the CCP entered insolvency immediately before the stabilisation instrument was made, and all the relevant rules (being the rules and procedures of the CCP for loss allocation) had been fully applied (including through the exercise of the CCP's discretion, where relevant) in the period leading up to insolvency. "Relevant persons" includes clearing members of the CCP and their clients, where the client has a direct contractual relationship with the CCP, creditors of the CCP and shareholders of the CCP. This is known as the "No Creditor Worse Off" (NCWO) safeguard, as reflected in the paragraph 87(3) of Schedule 11. The Treasury will in due course provide further clarification on relevant rules and the process by

which such relevant persons may be eligible for compensation under Schedule 11.

5.20 If the Bank is considering the exercise of one of the stabilisation powers in relation to a CCP which is a member of a group, then it must have regard to the need to minimise the effect on other institutions within the same group as that CCP, and to the potential effect on financial stability of countries other than the UK, particularly those countries in which any member of that group are operating. These principles are reflected in paragraph 18 of Schedule 11.

5.21 For the purposes of informing the Bank's decision as to which stabilisation options are appropriate, the Bank will consider whether, in relation to the CCP, there is a 'default loss', a 'non-default loss' or both a default loss and a non-default loss. A default loss means a loss arising as a result of a clearing member defaulting on its obligations to the CCP, whilst a non-default loss means a loss arising otherwise than as a result of a clearing member defaulting on its obligations to the CCP (including (but not limited to) losses arising from the insolvency, negligence or fraud of a custodian; losses arising from the failures of a repo counterparty or downgrade in a sovereign credit rating; losses caused by fraud, theft or bad acts of a third party or employee; losses arising from a cyber-attack; losses arising from systems failure; losses arising from litigation and similar). In scenarios where both a default and non-default loss occur during the course of a single resolution, the Bank may use the powers and options it deems necessary, to the extent they are available in relation to the relevant type of loss.

The choice between stabilisation options

5.22 The Act provides the Bank with the following stabilisation options for resolving a CCP (all paragraphs relate to Schedule 11):

- transfer to a private sector purchaser (paragraph 27);
- transfer to a bridge central counterparty (paragraph 29);
- transfer of ownership (paragraph 30);
- terminating clearing member contracts ('tear up power') (paragraph 31);
- making a cash call (paragraph 32);
- reducing variation margin payments (paragraph 33);
- writing down liabilities (paragraphs 34 and 35); and
- taking control of the CCP (paragraph 38).

5.23 Each of these stabilisation options is achieved through the exercise of one or more 'stabilisation powers' which are (all paragraphs relate to Schedule 11):

- The share transfer powers (paragraphs 41 and 49 to 53);
- The property transfer powers (paragraphs 54 and 67 to 74);
and
- the other resolution powers (paragraphs 31 to 35 and 38).

The Bank has the ability to use a combination of the above powers as necessary.

5.24 These stabilisation powers are in addition to any tools and powers set out in a CCP's business as usual arrangements, including in its default and recovery rules (to the extent they are still available), which would be available to the Bank as resolution authority through exercise of its power to take control of the CCP. These stabilisation powers are not subject to any limitations in the CCP's rulebook or other legal arrangements. As set out in paragraph 5.16, the Bank may allow a CCP to apply its own business as usual loss mutualisation frameworks first when financial difficulties arise, but there may be circumstances in which this does not promote the objectives of the special resolution regime. If the CCP is placed into resolution, the Bank can require the CCP to take action under the CCP's rulebook.

5.25 The Bank will need to take into account a number of issues in determining the feasibility of different options, including the position of the wider market, in particular the financial position of clearing members, and the likelihood of success of using each of the various options.

5.26 As set out below, there are a number of resolution options that may be utilised in a resolution of a CCP, depending on the type of loss borne by the CCP. However, the stabilisation option of taking control of the CCP may be used in both default loss and non-default loss scenarios. It involves the Bank transferring specified director or senior manager powers or shareholder voting rights to the Bank (for a specified period), which will allow it to direct a CCP and fully enforce the CCP's rulebook, including using any recovery tools which are still available, without the legal and operational complexities of transferring the CCP's shares to a bridge CCP.

5.27 In addition to considering whether there is a default loss, a non-default loss or both (as set out above 5.21), in choosing between the options available for each type of loss, the Bank will consider the relative merits of the stabilisation powers, which will depend on the

circumstances. It is also worth noting that the Bank will be able to, and is reasonably likely to, use a combination of powers and options when conducting a resolution. Where a default and non-default loss occur within the same resolution, the Bank will be able to utilise any of the options available to absorb the relevant losses as set out below that it deems necessary to respond.

5.28 The “No Creditor Worse Off” (NCWO) safeguard, as introduced in the ‘General Principles of Resolution’ section, will be relevant to the calculation of compensation entitlement following the use of the stabilisation powers. The Bank may, as outlined in regulations⁷, suspend any obligation of a clearing member under a resolution instrument for up to 18 months, or to waive any obligation. The matters relevant to the Bank’s use of the deferment power are set out in the Deferment Regulations, and the power includes the ability to enforce or waive a deferred obligation within the 18-month period.

Default Loss Scenarios

5.29 Under Schedule 11, in a default loss scenario, the Bank has access to tear up, cash call, and variation margin gains haircutting powers. It also has access to share transfer and property transfer powers and the power to take control, and may also rely on (or support or supplement or amend) the procedures under the rules of the CCP allowing for these steps.

5.30 In a default loss scenario, the CCP is highly likely to have an unmatched book, leaving the CCP exposed to the potential losses arising from the defaulting member’s portfolio (or multiple defaulting members’ portfolios). The CCP would no longer receive variation margins from the defaulting clearing member(s) but is still obliged to fulfil its own obligations under its contracts with the non-defaulting members.

5.31 The Bank may use the tear up power to terminate clearing member contracts, to enable the Bank to return the CCP to a matched book, although it is not designed to allocate losses themselves. Tear up will generally be utilised to rematch the CCP’s positions in a scenario where the CCP’s default management arrangements, such as an auction, have not returned the CCP to a balanced book, threatening the viability of the CCP and continuity of clearing services. The Bank may seek to restore a CCP to a matched book simultaneously with, or ahead of utilising stabilisation powers that allocate losses. The Bank would

⁷ [The Financial Services and Markets Act 2023 \(Resolution of Central Counterparties: Partial Property Transfers and Safeguarding of Protected Arrangements\) Regulations 2023 \(legislation.gov.uk\)](#)

seek to make the scope of a tear-up as narrow as possible to minimise the impact of the tear-up on the CCP's surviving members and the broader financial markets. The Bank must determine the commercially reasonable value of the contracts subject to a tear-up as soon as reasonably practicable. Under paragraph 31(5) of Schedule 11, the Bank is required to publish a statement of policy as to how it would determine what a commercially reasonable payment is. On the basis of the value determined, the Bank will require the CCP to make a commercially reasonable payment, representing the value of the terminated contract, to the clearing member who is a party to the terminated contract, or require the clearing member who is a party to the terminated contract to make a commercially reasonable payment representing the value of the terminated contract to the CCP.

5.32 The resolution cash call power allows the Bank to generate resources to absorb the CCP's losses and to recapitalise the CCP via contributions from clearing members. Clearing members can be required to pay a specified contribution to the CCP. In a default loss scenario, the maximum amount that a clearing member may be required to contribute (in addition to its liability under the rules of the CCP) is two times what it is required by the CCP to contribute to the default fund for the clearing service that has suffered the loss⁸. The Bank is likely to utilise this tool where the CCP needs to be rapidly recapitalised, or urgently requires more loss-absorbing capital. When making a resolution cash call, the Bank may consider the financial position of the contributing clearing members, as well as the likely distribution of losses in the insolvency counterfactual. The Bank may also vary the contribution rate between clearing members under a cash call instrument in accordance with the regulations made under paragraph 32 of Schedule 11. The statutory cash call power operates separately, and in addition to, a cash call power in a CCP's rulebook.

5.33 Variation margin gains haircutting (VMGH) allows the Bank to reduce or cancel the variation margin payments that a CCP would otherwise be required to make to clearing members whose house or client positions have gained value. The CCP would continue to receive variation margin payments from clearing members whose positions have lost value. The resulting surplus of funds would be used to address the outstanding loss. Where the CCP's rulebook provides a VMGH power for the CCP, the statutory resolution VMGH tool will operate separately to, and in addition to, this CCP rulebook provision and will not be bound by any limits specified in the CCP's rulebook. This power can only be used by the Bank in a default loss scenario.

⁸ The secondary legislation that sets out the cash call maximum limits can be found here: [The Financial Services and Markets Act 2023 \(Resolution of Central Counterparties: Calculation of Maximum Amounts for Cash Calls and Use of Specified Funds\) Regulations 2023 \(legislation.gov.uk\)](#)

Non-Default Loss Scenarios

5.34 Under Schedule 11, in a non-default loss scenario, the Bank has access to cash call and write-down powers. As with a default loss scenario, it also has access to share transfer and property transfer powers and the power to take control.

5.35 The cash call power functions in the same way in a non-default loss scenario as it does in a default loss scenario, allowing the Bank to absorb losses and recapitalise the CCP through clearing member contributions. However, given the lack of availability of VMGH in a non-default scenario, the caps are different. In a non-default scenario, the Bank may require a clearing member to contribute three times their contribution to all default funds to which they are required to contribute by the CCP in question (as per the regulations made under paragraph 32 of Schedule 11⁹). As in the case of default loss, prior to using this tool the Bank will consider how losses would have likely been borne by clearing members under the insolvency counterfactual and, potentially the financial position of clearing members, and may vary the contribution rate between clearing members. The Bank would generally envisage exhausting the CCP's equity and the application of any arrangements in the CCP's rulebook for non-default losses before making use of its cash call power in a non-default scenario. If a default and non-default loss occur simultaneously or in the course of the same resolution, the cash call caps for each type of loss operate independently of one another. As required under paragraph 81 of Schedule 11, the Bank must publish the cash call instrument on its own website and in at least one other medium to maximise the likelihood of informing those likely to be affected.

5.36 Subject to safeguards, the Bank may use the power to write down the CCP's unsecured liabilities and securities in a non-default loss scenario. In combination with the above tools, this allows the Bank the flexibility to allocate losses in a resolution through the mechanism that it feels is least disruptive to users of the CCP's services and the broader financial system given circumstances at the relevant time, and the least likely to deviate from how losses would have been borne absent resolution. It is likely that this power will be used in relation to unsecured liabilities to absorb an outstanding loss where it has not already been fully absorbed by the loss allocation measures for non-default loss available under the CCP's rules and arrangements, or the CCP's equity. Paragraph 34 of Schedule 11, and the regulations pursuant to Schedule 11, include a number of safeguards around the use of the

⁹ [The Financial Services and Markets Act 2023 \(Resolution of Central Counterparties: Calculation of Maximum Amounts for Cash Calls and Use of Specified Funds\) Regulations 2023 \(legislation.gov.uk\)](#)

write down power, ensuring that certain liabilities (such as liabilities to central banks, interoperable CCPs, clearing members' initial margin, and small enterprises) cannot be written down, and netting/close out arrangements are protected to ensure that the write down power does not impact on arrangements that clearing members rely on for regulatory reporting¹⁰. This power can only be used by the Bank in a non-default loss scenario.

Other stabilisation options

5.37 The Bank also has the powers, in all loss scenarios, to transfer some, or all, of the business of the CCP to a private sector purchaser or into a bridge entity, or to transfer ownership of the CCP to any person other than a commercial purchaser or bridge entity.

5.38 Transfer of some but not all of the property, rights and liabilities of a failing CCP to a bridge entity or to a private sector purchaser (partial property transfer – PPT) may be appropriate when the CCP incurs losses in a particular segregated product line that the default resources and loss allocation mechanisms cannot cover (or cannot cover without presenting a risk to financial stability), so that losses reduce the CCP's financial resources to a level which is no longer sufficient to meet its recognition requirements.

5.39 A PPT would be likely to involve the transfer of the positions and collateral associated with a segregated product line (or lines) cleared together with the systems, processes and legal arrangements (such as payment and settlement arrangements) facilitating operation of the relevant clearing service to the bridge entity.

5.40 It is important to ensure that the relevant requirements which apply to the conduct of a CCP's business are complied with when making a PPT. Therefore, the occasions when the Bank would seek to use PPT powers are limited. To ensure collateral and netting arrangements are protected, the necessary safeguards around the use of a PPT have been set out in the Financial Services and Markets Act 2023 (Resolution of Central Counterparties – Partial Property Transfers and Safeguarding of Protected Arrangements) Regulations 2023. The explanatory memoranda have been published alongside the SI¹¹.

¹⁰ [The Financial Services and Markets Act 2023 \(Resolution of Central Counterparties: Partial Property Transfers and Safeguarding of Protected Arrangements\) Regulations 2023 \(legislation.gov.uk\)](#)

¹¹ The regulations can be found here [The Financial Services and Markets Act 2023 \(Resolution of Central Counterparties: Partial Property Transfers and Safeguarding of Protected Arrangements\) Regulations 2023 \(legislation.gov.uk\)](#) and the explanatory memorandum here [The Financial Services and Markets Act 2023](#)

Chapter 6

Ensuring Resolutions are Effective

Overview

6.1 There are a number of supplementary and ancillary powers that may be used to ensure that resolutions are conducted effectively. This section of the Code provides further information on the powers that are found in the following paragraphs of Schedule 11:

- paragraph 2 (power to remove impediments to a resolution)
- paragraphs 22, 23 and 26 (valuation)
- paragraphs 49, 50, and 51 (supplemental, onward, and reverse securities transfers)
- paragraphs 67, 68 and 69 (supplemental, reverse, and onward property transfers)
- paragraphs 84, 97, 98, 99 and 101 (termination rights and events of default)
- paragraph 87 (compensation)
- paragraphs 89 to 96 (continuity obligations)
- paragraph 153 (power to modify the law)

6.2 Certain powers in Schedule 11 (for example the power to remove and replace directors and senior managers in paragraph 5, or the restriction on remuneration in paragraph 13) relate to the Bank's supervisory functions over CCPs. As such, they are not addressed in detail in this Code of Practice.

Supplemental, onward, and reverse transfers

6.3 The Act provides the Bank with the power to make supplemental, onward, and reverse transfer instruments in relation to securities or property. The Bank may make one or more onward or reverse transfer instruments. Supplemental transfers allow further transfers of property or securities from the original owner to a bridge CCP, private sector purchaser, or any other person. Reverse transfers provide for shares or property to be moved back from a bridge CCP or

private sector purchaser to the previous owner, subject to certain restrictions. Onward transfers allow for the bridge CCP's property or shares to be transferred to a private sector purchaser, a company wholly owned by the Bank, or any other person.

6.4 These transfers may become necessary, for example if additional details come to light about the nature of transferred securities or property, or the quality of these assets changes materially after the initial transfer. Such a change may affect the saleability of the bridge CCP, or the achievement of the special resolution objectives more widely.

6.5 The general and specific conditions in paragraphs 17 and 19 of Schedule 11 do not apply to supplemental, onward, or reverse transfers. As with all other transfers, the Bank must consult the Treasury, the FCA, and, if the CCP is PRA-regulated, the PRA when exercising these powers.

6.6 As with all stabilisation options, these tools can only be used in a manner consistent with the resolution objectives, and the general public law responsibilities governing the action of public bodies. In particular, where these further transfers interfere with property rights, the Bank must be satisfied that the action is in the public interest and is proportionate to the public interest aim being pursued.

6.7 Furthermore, such transfers can only be conducted in accordance with the safeguards for partial property transfers provided for in secondary legislation¹².

Power to modify the law

6.8 When necessary for the purpose of enabling the powers within the Act to be used effectively (having regard to the special resolution objectives), the Treasury may exercise its power to make regulations under paragraph 153 of Schedule 11 to modify the law. This power may be used in respect of primary and secondary legislation, and common law to make a specific amendment to legislation, or to disapply or modify the effects of an enactment or of a rule of law not set out in legislation.

6.9 The power may be used for the general purpose of the exercise of powers under Schedule 11. This includes use of the power:

¹² [The Financial Services and Markets Act 2023 \(Resolution of Central Counterparties: Partial Property Transfers and Safeguarding of Protected Arrangements\) Regulations 2023 \(legislation.gov.uk\)](#)

- to amend the law as it applies to all resolutions, or a class of resolutions, carried out under the expanded CCP resolution regime. This would then apply in all resolutions, or a class of resolutions, of CCPs where the Bank used a stabilisation power.
- for the purposes of facilitating a particular proposed or possible use of a power in the resolution of a specific CCP.
- in connection with a particular exercise of a power. Such an amendment would generally then only apply in the resolution of that specified CCP. It would not generally apply to the resolution of other CCPs.

6.10 The power can be used in relation to an instrument made in the exercise of a stabilisation power.

6.11 The power can be used retrospectively if this is necessary or desirable for giving effect to the particular exercise of a power under Schedule 11. However, in using the power, the Treasury must have regard to the fact that it is generally in the public interest to avoid retrospective legislation. The Treasury will exercise this power in accordance with the well-established principles of public law. In addition, the Treasury must have regard to the special resolution objectives and act compatibly with the Convention rights. Thus, the power could not be used for purposes unconnected with the use of the powers under the Act, for example to change the law for wider public policy objectives.

6.12 Regulations under this procedure will be subject to the affirmative procedure. Where the Treasury considers it necessary for the regulations to come into force without delay, the ‘made affirmative’ procedure will be used. Under this procedure, the regulations can be made and brought into force before being laid in Parliament, but will cease to have effect 28 days later unless approved by both Houses of Parliament. If such an instrument is not subsequently approved by Parliament, this does not affect the validity of anything previously done under the regulations or prevent the making of new regulations. This approach may be necessary given the potentially fast-paced nature of a CCP resolution.

Compensation

6.13 Paragraph 87 of Schedule 11 allows the Treasury to make regulations for protecting the financial interests of relevant persons in

connection with the making of a stabilisation instrument. These regulations allow for the establishment of a scheme, which may include provision which determines whether relevant persons should be paid compensation, provision for paying any compensation, and for specifying which relevant persons will become entitled to the proceeds of a disposal of things transferred under a share transfer or property transfer instruments.

These regulations will expand upon the “No Creditor Worse Off” safeguard. As set out in paragraph 87 of Schedule 11, the Treasury must have regard to, amongst other matters, the desirability of ensuring that ‘relevant persons’ before the making of a stabilisation instrument (defined as any clearing member, creditor, shareholder, or client of a clearing member where it has a direct contractual relationship with the CCP), do not receive less favourable treatment than they would have received if the CCP entered insolvency immediately before the instrument was made, and all the relevant rules (being the rules and procedures of the CCP for loss allocation) had been fully applied (including through the exercise of the CCP’s discretion, where relevant) in the period leading up to the insolvency.

Pre-Resolution valuation

6.14 To ensure that a resolution is effective, the Bank will be required to ensure a valuation of the CCP’s assets and liabilities is performed in order to estimate the scale of the losses that need to be addressed, enabling the Bank to act accordingly.

6.15 A valuation under the CCP resolution regime has two functions. As set out in paragraph 22 of Schedule 11, an initial valuation will be used to determine whether the conditions have been met for a resolution. This valuation will also inform decisions including which stabilisation option should be utilised, the extent to which liabilities and securities should be written down, and what assets, liabilities or securities (if any) should be transferred.

6.16 This valuation will be conducted by an independent valuer, appointed by the Bank as under paragraph 24 of Schedule 11. However, if the Bank considers that the urgency of the case makes it appropriate to exercise a stabilisation power before a valuation can be carried out by an independent valuer, the Bank may carry out a provisional valuation. As per paragraph 23 of Schedule 11, the Bank must arrange for this provisional valuation to be replaced by a full valuation, conducted by an independent valuer, as soon as is reasonably practicable.

6.17 Paragraph 26 of Schedule 11 provides for the actions the Bank may take if the independent valuation produces a higher valuation of the net asset value of the CCP – namely, to modify write-down instruments which have already been made, and to consider any transfer that have taken place to a bridge CCP. Within this paragraph, the reference to a ‘resolution instrument’ also means a ‘supplemental resolution instrument’.

6.18 The valuation will also be utilised to inform decisions around compensation entitlement. As under paragraph 22 of Schedule 11, an independent valuer must include an estimate on the amount that each class of creditors and shareholders might be expected to receive if the CCP went into insolvent liquidation. This will be used as a counterfactual against which NCWO compensation pay-outs can be calculated.

Power to remove impediments to a resolution

6.19 Paragraph 2 of Schedule 11 provides the Bank of the England with the power to provide directions to a CCP to address impediments to the effective exercise of the stabilisation powers. Paragraph 2(2) provides a non-exhaustive list of example directions the Bank will be able to direct a CCP to take.

6.20 Before utilising this power, the Bank must consider the effect on the CCP or entity in question, the financial services market in the United Kingdom more widely, and the financial stability of the United Kingdom. Paragraph 3 of Schedule 11 provides further detail over the form a direction must take, and provides detail on the ability of the CCP in question to make representations to the Bank.

6.21 The Bank must produce a statement of policy, outlining how it intends to exercise this power, before it may issue any direction under paragraph 2 of Schedule 11.

Power to remove and replace directors and senior managers

6.22 During a resolution, the Bank will be able to remove or replace a director or senior manager of a CCP in a share transfer instrument (paragraph 45 of Schedule 11), a property transfer instrument (paragraph 58 of Schedule 11), and in a resolution instrument (paragraph 83 of Schedule 11).

Continuity obligations

6.23 Where it is necessary to use a share or property transfer instrument in respect of an individual CCP that forms part of a group of companies, the continuity obligations will apply (paragraphs 89 to 96 of Schedule 11).

6.24 The residual CCP and each group company will be obliged under these continuity obligations to provide such services and facilities as the Bank considers necessary to enable the acquirer of the transferred business to operate it effectively. With the consent of the Treasury, the Bank may specify activities that are required to be undertaken within this obligation. This general duty, however, is subject to a right of the party providing the service to receive reasonable consideration (paragraph 89(6) and 92(6) of Schedule 11).

6.25 In addition, it may be appropriate to impose special continuity obligations. These obligations will be restricted to ensuring that necessary services and facilities continue to be provided in order to ensure that the part of the business that is transferred can continue to be operated effectively.

6.26 These special obligations provide powers to modify or cancel contracts, and confer or impose rights between a former group company or a third party and the transferred CCP. These powers may only be exercised with the consent of the Treasury, and the Bank must aim to ensure that providers receive reasonable consideration as far as is reasonably practicable.

6.27 For example, where the continuation of an outsourced service supporting a CCP's provision of a critical clearing services is required, the Bank may only exercise these powers to impose special continuity obligations with Treasury consent, which will be assessed against the public interest of the particular situation.

Termination rights and events of default

6.28 Paragraph 84 of Schedule 11 provides that the Bank utilising a resolution measure (as defined within the paragraph) will not trigger any default event provision in any contract to which a CCP under resolution is a party, provided that the substantive obligations in the contract continue to be performed. The Bank will determine whether this applies when making a stabilisation instrument.

6.29 Without these provisions, there is a risk that a resolution measure, or an event directly linked to the application of a resolution measure, triggers an event of default, allowing counterparties to exercise termination rights. This provision will therefore ensure that the effectiveness of various resolution measures is not undermined through the termination of key contracts.

6.30 Paragraph 97 of Schedule 11 also ensures that the Bank, when exercising a stabilisation power, is able to suspend obligations to make a payment or delivery under a contract where one of the parties is the CCP in resolution. This does not apply to payments of eligible claims or payments/deliveries to excluded persons (as defined in paragraph 100). Under paragraph 98 of Schedule 11, the Bank may also suspend the rights of a secured creditor of the CCP to enforce any security interest the creditor has in relation to any assets of the CCP. Similarly, the Bank is able to suspend the termination right of any party to a qualifying contract and prevent clearing members of the CCP from terminating their membership during a relevant period (paragraphs 99 and 101 of Schedule 11, respectively). All of the above powers are subject to temporary restrictions and safeguards outlined within their respective paragraphs and are crucial to ensure that the use of resolution measures and tools is not undermined during the resolution.

6.31 With regards to remuneration, the Bank is also empowered to restrict or prohibit specified discretionary payments to specified employees or shareholders of a CCP in resolution. Paragraph 102 of Schedule 11 allows the Bank to restrict remuneration whilst the conditions outlined in paragraph 17 of Schedule 11 (conditions for use of a stabilisation power) are met, to preserve the CCP's resources to enable it to pay compensation and repay any public funds that were utilised.

Chapter 7

Bridge CCPs

Overview

7.1 Paragraph 29 of Schedule 11 provides that the second stabilisation option the Bank may utilise when conducting a resolution is to transfer all or part of the business of a CCP into a bridge CCP. This option is broadly similar to the existing 'bridge bank' option in the banking resolution regime under the Banking Act 2009, which also applied to CCPs until 31st December 2023.

7.2 A bridge CCP is a company that is wholly or partially owned by the Bank, controlled by the Bank, and created for the purposes of receiving a transfer by virtue of paragraph 29 with a view to maintaining access to critical clearing services and (in due course) selling the CCP or its business. The bridge CCP option is exercised through either a property or a share transfer instrument.

Bridge CCP objectives and operating strategy

7.3 A bridge CCP is intended to be a short-term operation, until appropriate private sector solutions can be arranged and implemented.

7.4 The primary objective of a bridge CCP is to maintain access to critical clearing services and, in due course, to facilitate the sale of a bridge CCP – in whole or in part – to one or more private sector purchasers, or otherwise to transfer ownership to new owners following the stabilisation of the CCP.

7.5 It is anticipated that, where a bridge CCP is used, it would only operate for a short period of time. Where the pursuance of these objectives will not be compromised, the Bank may take steps to manage its relationship with the bridge CCP at arm's length.

7.6 The bridge CCP objectives are subordinate to the special resolution objectives. Where there is a conflict between the two sets of objectives, the special resolution objectives take precedence.

7.7 The operating strategy for a bridge CCP will be decided by the Bank according to what best meets the bridge CCP objectives. This is likely to involve the bridge CCP operating on a conservative basis, to provide continuity of critical clearing services and protect the value of the business. The Bank will take steps to ensure that the bridge CCP meets its regulatory requirements.

7.8 In its role as shareholder, the Bank will work with the board of directors to decide on how the bridge CCP should be operated. Where the Bank considers it appropriate, the board will produce a business plan setting out how the directors intend to operate the bridge CCP in a manner pursuant to meeting the bridge CCP objective. The Bank will ensure that the business plan meets the Bank's objectives for the resolution. If a bridge CCP exists for only a short amount of time it may be unnecessary to go through this process.

7.9 In some circumstances, it may not be feasible for some or all of a bridge CCP's business to be transferred to a private sector purchaser (for example, where a buyer cannot be found), or otherwise to transfer it to new owners. In these circumstances, the bridge CCP will be wound up in (i) a manner that meets the special resolution objectives, (ii) is in the interests of the remaining creditors of the bridge CCP, and (iii) is consistent with paragraph 29 of Schedule 11.

Contents of property and share transfer instruments for a bridge CCP

7.10 The Bank may transfer shares or property of the failing CCP to the bridge CCP by using a share transfer instrument or a property transfer instrument, respectively. In both cases, the Bank will ensure that the total value of liabilities transferred to the bridge CCP does not exceed the total value of the rights and assets transferred from the CCP under resolution.

7.11 Paragraph 41 of Schedule 11 describes the share transfer instruments and the provisions that it may make. A share transfer instrument may relate to specified securities or securities of a specified description. The Bank may make a share transfer instrument that provides for securities issued by a specific CCP to be transferred, or makes other provision for the purposes of, or in connection with, the transfer of securities issued by the CCP. Paragraph 52 of Schedule 11 provides that the Bank may subsequently make a bridge CCP share transfer instrument to a third party.

7.12 Paragraph 54 of Schedule 11 describes the property transfer instrument and the provisions that it may make. A property transfer

instrument may relate to all property, rights, or liabilities of a CCP (though this may be subject to specified exceptions), specified property, rights or liabilities, or property rights or liabilities of a specified description. Under paragraph 69 of Schedule 11, the Bank may subsequently make an onward property transfer instrument to a third party.

7.13 Where it is envisaged that the bridge CCP will be in operation for a period in which longer-term operational management decisions will need to be taken, the Treasury are likely to impose a management duty on the Bank including a requirement to manage costs efficiently.

7.14 The Bank will take steps to specify appropriately in the given circumstances which property, rights and liabilities of a failing CCP have been transferred.

Establishment

7.15 The Bank will establish or acquire an incorporated company to which securities, property, rights and liabilities will be transferred. The Bank will arrange appropriate authorisation for the bridge CCP. The bridge CCP will need to comply with authorisation requirements and will be subject to supervision by the Bank.

Nature of the shareholder relationship

7.16 A bridge CCP when it is established or acquired will be a company limited by shares that is wholly or partially owned by the Bank. The Bank will maintain control over the bridge CCP, and will ensure that control is not compromised by any award of equity issued by the Bank to provide capital to the bridge CCP. Any award of equity could be effected so that the new shareholders do not receive voting rights until the entity ceases to be a bridge CCP, for example.

7.17 The nature of the shareholder relationship with the bridge CCP will vary depending on the nature of each resolution and the particular 'phase' of the resolution. In broad terms, a bridge CCP might go through a number of phases, including:

- The stabilisation phase, immediately following the transfer; and
- The sale/purchase phase, where the Bank manages the bridge CCP on a conservative basis while working with one or more private sector purchasers to transfer the business.

Content of the articles of association

7.18 The articles of association of a bridge CCP will provide for the company regulations governing the relationship between the Bank (in its capacity as shareholder) and the directors of the company. These articles will be based on the model articles prescribed by the Secretary of State for a limited liability company but with such modifications as are necessary or appropriate and will be judged by the Bank, based to the extent appropriate on the existing CCP's arrangements. Such modifications will be based on what best meets the bridge CCP objectives. In the case of the rules and procedures, these modifications will generally be made without public consultation.

Reporting

7.19 Bridge CCPs are covered by the reporting requirements specified in paragraph 114 of Schedule 11. They may also be required to produce any other reports as agreed between the directors of the bridge CCP and the Bank.

7.20 Paragraph 114 of Schedule 11 provides that the Bank must report to the Chancellor about the activities of the bridge CCP, and under subparagraph (2) the Bank is required to submit the first report as soon as is reasonably practicable after the end of one year, beginning with the date of the first transfer to the bridge CCP. The obligation to produce a report exists whether or not the bridge CCP exists for a whole year. When a report under paragraph 114 of Schedule 11 is submitted, the Chancellor must lay the report before Parliament.

7.21 A similar report must also be made as soon as is reasonably practicable after the end of each subsequent year that the bridge CCP is in existence. Subject to discussions with the Bank, all reports under paragraph 114 may include:

- The management accounts of the bridge CCP;
- A report on the activities of the bridge CCP over the year;
- A report on the costs of advisers engaged by the bridge CCP; and
- How the Bank is intending to achieve the bridge CCP objectives

7.22 When compiling the report, the Bank may choose not to include market-sensitive information.

7.23 These reports to the Chancellor are supplementary to the reporting arrangements that the Bank in its role as shareholder will put in place to ensure it receives appropriate management information from a bridge CCP.

7.24 The content of specific reports under paragraph 114(5) of Schedule 11 will be determined on a case-by-case basis, dependent on the specific request of the Treasury.

7.25 In addition to the above reports, and any reporting requirements applicable to the bridge CCP pursuant to the Companies Act 2006, the Bank will consider in each case whether the bridge CCP should have regard to any additional reporting requirements to which similar CCPs may be subject. In addition, the Bank will make arrangements to provide for regulatory reporting appropriate to the activities undertaken by the bridge CCP.

7.26 Whilst there will be a presumption towards applying the same requirements as another CCP when determining these arrangements, the Bank will take into account, among other things, the size and nature of the bridge CCP's activities, the risk of competitive distortions, the length of time since creation, the foreseeable life of the bridge CCP, and the need for information for financial stability purposes. The decision to remove reporting requirements will be kept under review and is likely to be driven by particular events and apply for a finite period.

Different arrangements for management and control at different stages

7.27 The Bank will put in place appropriate arrangements for the management of a bridge CCP.

7.28 The nature of the management structure put in place will depend on the particular circumstances of the resolution. Over the period of stabilisation, the management arrangements may involve a relatively small core of directors with appropriate skills and experience. If a bridge CCP is only in existence for a short period of time, then this may remain suitable.

7.29 In circumstances where the bridge CCP exists for longer periods of time, the Bank will take steps to ensure the composition of the board of directors continues to remain appropriate. This may include appointing additional directors. The composition of the board will be decided by the Bank on a case-by-case basis, and having regard to relevant regulations and legislation.

7.30 The bridge CCP's board may or may not include employees of the Bank. In all cases, the Bank will approve the remuneration of the management body and determine their appropriate responsibilities.

Eventual disposal and onward transfer

7.31 Alongside maintaining access to critical clearing services, one of the purposes of a bridge CCP is to facilitate the sale of a bridge CCP, or otherwise ensure that substantially all of the bridge CCP's assets, rights and liabilities have been transferred to a third party or third parties.

7.32 Where a bridge CCP is being sold, the sale of business should follow as soon possible after the initial transfer of property to the bridge CCP. The Bank will be responsible for marketing the institution or parts thereof. The marketing will comply with the rules in paragraph 28 of Schedule 11, unless the Bank determines that would be likely to undermine one of the resolution objectives, and particularly if that would present a threat to financial stability or would undermine the sale and the use of this tool.

7.33 The Bank will consider the most appropriate method to determine the sale price, which may include arranging an auction. The requirement on the Bank in paragraphs 22 and 23 of Schedule 11 to ensure a valuation is conducted will also apply. The Bank should ensure that the sale price reflects this valuation where that is appropriate in the circumstances of the case

7.34 The Bank will ensure that the bridge CCP, or the relevant assets and liabilities, is marketed openly and transparently, in such a way that the sale does not misrepresent the assets, rights and liabilities of the bridge CCP or the bridge CCP itself, and in a way that does not unduly favour or discriminate between potential purchasers. The sale will be made on commercial terms, having regard to the circumstances.

7.35 In each case, the Bank will establish an appropriate mechanism for selecting a preferred purchaser and agreeing on a price for the business of the bridge CCP. In its assessment the Bank must take account of the special resolution objectives.

7.36 Following this process, the Bank will complete the transaction. This may be achieved through a standard commercial agreement, or by exercising the onward transfer powers provided in Schedule 11, either by making a bridge CCP share transfer instrument (paragraph 52), or an onward property transfer instrument (under paragraph 69).

7.37 In some circumstances it may be appropriate to transfer some or all of a bridge CCP's business to a public-sector transferee, either a company wholly owned by the Treasury or an onward bridge CCP (defined in paragraph 29(9)). However, this would only occur if it best met both the special resolution and bridge CCP objectives.

7.38 Following a transfer of all, or substantially all, of the bridge CCP's assets, rights and liabilities to a third party and provided there are no further transfers to the bridge CCP under para 29 for a period of two years (unless paragraph 29(6) of Schedule 11 applies or there is an extension of the two-year period under paragraph 29(8) of Schedule 11), the Bank must take steps to wind up the bridge CCP.

7.39 The Bank may extend the two-year period under para 29(8) by one year at a time where the extension is necessary to ensure the continuity of critical clearing services, or it would support one of the following outcomes:

- the bridge CCP merging with another entity
- the bridge CCP ceasing to be wholly or partially owned and controlled by the Bank
- the bridge CCP being wound up and its liabilities discharged
- the sale of all or substantially all of the bridge CCP's rights, assets, and liabilities to a third party

7.40 The Bank will document its reasons for extending the period, which must include consideration of any market conditions that justify it.

Chapter 8

International Cooperation on Resolution

Supporting a foreign resolution

8.1 CCPs operate across borders, providing clearing services to clearing members in many different countries. Due to the importance each major CCP holds within the financial market, failure of a systemic CCP that operates across borders could have significant impacts on global financial stability.

8.2 International cooperation is important to deliver resolutions on a cross border basis. The UK has implemented the FSB Key Attributes of Effective Resolution Regimes for Financial Institutions, which encourages cooperation to ensure cross-border resolution action is successful. This section deals with the way that the UK will cooperate with resolution authorities in countries or territories other than the United Kingdom (references to other countries in this Code include references to territories other than the UK).

8.3 The CCP resolution regime in Schedule 11 applies to UK CCPs only. The Bank can only apply resolution stabilisation powers to a failing UK CCP incorporated in the UK and authorised by the Bank. In accordance with FSB guidance, the Bank operates Crisis Management Groups (CMGs) for UK CCPs that are systemically important in other countries and participates in equivalent CMGs/resolution colleges run by other authorities.

8.4 UK based and authorised CCPs are always subject to the special resolution powers, even where such CCPs have non-UK based parent or other group entities.

8.5 Under paragraph 18 of Schedule 11, when exercising a stabilisation power in respect of a CCP which is a member of a group, the Bank must have regard to the need to minimise the effect of the exercise of the power on other undertakings in the same group, and the potential effect of the exercise of the power on the financial stability

of countries other than the UK (particularly those countries in which any member of that group are operating).

8.6 While it is expected that any resolution will be led by the resolution authority where the CCP is located, it may be necessary for the Bank to take actions that recognise or support those foreign resolution proceedings.

8.7 When the Bank is notified of foreign resolution action in respect of a third-country central counterparty, the objectives and results of which are broadly comparable to the exercise of a stabilisation power under the UK CCP resolution regime, the Bank is obliged by paragraph 145(2) of Schedule 11 to make an instrument which recognises the action, refuses to recognise the action or recognises part of the action and refuses to recognise the remainder. This will provide certainty in the UK as to whether a third-country resolution action has effect in the UK (e.g. for the write-down of liabilities governed by UK law). The Bank may only make a decision under paragraph 145(2) of Schedule 11 with the approval of the Treasury.

8.8 In addition to recognising the resolution of a third-country CCP, under paragraph 146(3) of Schedule 11 the Bank may exercise one or more of the stabilisation powers and options available to it in relation to a similar entity in the UK in order to support the third-country resolution. This would be with a view to promoting objectives in the third-country that correspond to Objectives 1 to 5 in the UK, as under paragraph 146(6) of Schedule 11.

8.9 The Bank may only refuse to recognise a third-country resolution action (or a part of it), if both the Bank and the Treasury are satisfied that one or more of the following conditions in paragraph 145(4) of Schedule 11 are met:

- recognition would have an adverse effect on financial stability in the United Kingdom;
- under the third-country resolution action, creditors (including in particular clearing members) located or payable in the United Kingdom would not, by reason of being located or payable in the United Kingdom, receive the same treatment as creditors who are located or payable in the country concerned and have similar legal rights;
- recognition of, and taking action in support of, the third-country resolution action (or the part) would have material fiscal implications for the United Kingdom;

- recognition would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention).

8.10 The Bank may also receive a request to use its investigative power (as referred to in paragraph 123(1) of Schedule 11) from a foreign resolution authority in connection with a third-country resolution action. Under paragraph 123(5) of Schedule 11, in deciding whether to exercise its investigative power, the Bank may take into account in particular—

- whether, in the territory of the foreign resolution authority concerned, corresponding assistance would be given to the Bank;
- whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
- the seriousness of the case and its importance to persons in the United Kingdom; and
- whether it is otherwise appropriate in the public interest to give the assistance sought.

8.11 The Bank may decide that it will not exercise its investigative power unless the foreign resolution authority undertakes to make such contribution towards the cost of its exercise as the Bank considers appropriate.

Chapter 9

Miscellaneous and Interpretation

Disclosure of information

9.1 Paragraph 148 of Schedule 11 allows the Bank to disclose information that it thinks relevant to the financial stability of individual CCPs, or one or more aspects of the UK financial system, providing that does not contravene data protection legislation. The Bank's power under this paragraph is permissive, meaning the Bank is not obligated to disclose information.

Supplemental instruments

9.2 Where the Bank creates a supplemental instrument, a further resolution conditions assessment and valuation is not required.

9.3 References to property transfer instruments, share transfer instruments, and resolution instruments within Schedule 11 include a reference to supplemental instruments.

9.4 The power in paragraph 26(1)(a) of Schedule 11 must be exercised by way of a supplemental instrument.

Upper tribunal

9.5 References to the 'Upper Tribunal' within Schedule 11 are to have the same meaning as provided in the Tribunal, Courts and Enforcement Act 2007.

Recovery of expenses

9.6 Paragraph 86 of Schedule 11 clarifies that the Bank may, in making a resolution instrument, share transfer or property transfer instrument in relation to a CCP, direct the CCP to pay the Bank a specified fee to cover expenses reasonably incurred by the Bank in connection with exercising that option. The Treasury may also direct a CCP to pay the Treasury a specified fee in the same way.

9.7 This power allows for expenses to be determined and recovered after the resolution has been conducted (when the full extent of expenses is known), and not only at the point of making a resolution instrument.

Public records

9.8 Paragraph 25(7) of Schedule 11 clarifies that the records of an independent valuer are public records for the purposes of the Public Records Act 1958. Upon receiving the records from the independent valuer, the Bank will transfer these records to the Treasury, who will bear overall responsibility for public records. The Treasury will nominate an Information Asset Owner at the point of transfer.

HM Treasury contacts

This document can be downloaded from www.gov.uk

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