

Global Regulation Tomorrow

Tracks financial services regulatory developments and provides insight and commentary

BoE launches two consultations on CCP resolution



By Anita Edwards, Simon Lovegrove (UK) & Hannah Meakin (UK) on July 18, 2024

On 18 July 2024, the Bank of England (**BoE**) published two consultation papers on central counterparty (**CCP**) resolution – one relates to the **BoE’s approach to determining commercially reasonable payments for contracts subject to a statutory tear up in CCP resolution**, and the other concerns the **BoE’s power to direct a CCP to address impediments to resolvability**.

Consultation on approach to determining commercially reasonable grounds for contracts subject to a statutory tear up in CPP resolution

Schedule 11 of the Financial Services and Markets Act 2023 (**FSMA 2023**) introduced a new regime for resolving CCPs that are deemed to be failing or likely to fail. Under the regime, the BoE and HM Treasury have several stabilisation options to resolve CCPs effectively, with the aim of protecting financial stability, taxpayers and the economy while maintaining the critical functions of the CCP.

One of those stabilisation options allows the BoE to ‘tear up’ (or terminate) one or more contracts cleared by the CCP in the affected clearing service, which would enable the CCP to return to a ‘matched book’ in a scenario in which one or more clearing members have defaulted on their payment or delivery obligations to the CCP. The BoE’s intention would typically be to conduct a ‘partial tear up’, rather than tearing up all contracts cleared by the clearing

service in question, to limit the number of contracts affected.

Depending on the value of each contract being torn up, the BoE would either (i) 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 (ii) require the clearing member to make a commercially reasonable payment representing the value of the contract to the CCP. If more than one contract is torn up for a given clearing member, these payments will be made on a net basis.

FSMA 2023 includes a requirement for the BoE to publish a statement of policy on how it would determine what a 'commercially reasonable' payment is. This consultation paper sets out its proposed approach.

The consultation closes on 4 October 2024, and the BoE says responses to the consultation will inform its thinking ahead of publication of its statement of policy later in 2024.

Consultation on power to direct a CCP to address impediments in resolvability

This consultation paper sets out the BoE's proposed policy for exercising its power to direct a CCP to address impediments to effective exercise of the stabilisation powers (resolvability) under paragraph 2, Schedule 11 to FSMA 2023.

The BoE's power of direction applies to UK-based CCPs, but not third-country CCPs offering services in the UK. The BoE also flags that it has a new power to direct a parent company of a CCP to establish a separate holding company in specific circumstances, if the CCP is a subsidiary of a company incorporated in the UK. The consultation is therefore most relevant to UK-based CCP and their parent companies, if the parent company is incorporated in the UK, as parties which could be subject to directions given by the BoE.

The BoE is the UK's resolution authority for CCPs and the power to direct CCPs to address impediments to resolvability is a new power conferred upon the BoE by FSMA 2023. The purpose of this consultation is to describe the context of the

new power and to consult on the BoE's draft statement of policy (**SoP**): 'The Bank's power to direct a CCP to address impediments to resolvability'. The proposed SoP sets out the process for giving directions, the types of impediment the power may apply to, and the BoE's approach to the use of the power in the context of its statutory stabilisation objectives.

This consultation closes on 18 October 2024.

Global Regulation Tomorrow

Published by



Copyright © 2024, Norton Rose Fulbright LLP. All rights reserved.