

**Draft report by Kay Swinburne MEP
on recovery and resolution framework for non-bank institutions**

RESPONSE FROM IRSG POST TRADE WORKSTREAM

The International Regulatory Strategy Group Post Trade workstream welcomes the opportunity to comment on the draft report by Kay Swinburne MEP.

Overall we are supportive of the general thrust of the recommendations in the report, in particular:

- The prioritisation of a recovery and resolution framework for CCPs given their increasing systemic importance and of those CSDs which are exposed to credit risk;
- The monitoring of risks to CCPs arising from concentration of clearing members;
- The reference to the important distinction between recovery state and resolution state - resolution should only begin once the CCP has exhausted the entire default waterfall including loss allocation arrangements;
- The importance of respecting a CCP's default waterfall;
- The need to distinguish between CCPs and CSDs to take account of the fundamentally different role that each plays in the financial markets and their different risk profiles;
- The importance of aligning EU legislation on recovery and resolution with the relevant international standards set out by the Financial Stability Board and CPSS-IOSCO;
- The emphasis on recovery over resolution;

We also make the following additional points which go beyond the text of the current draft report:

- It is important that recovery and resolution plans address all the products cleared by a CCP rather than simply those that are mandated by regulation;
- The prioritisation of CSDs with a banking licence should not result in the adoption of two separate regimes;
- To be effective in times of crisis, resolution authorities should be national and not centralised at European level, although some cross-authority information sharing as proposed by the Financial Stability Board would be necessary;
- Looking ahead, if it is felt necessary to introduce a recovery and resolution framework for asset managers this must take into account the different structure of these firms from banks, requiring a very different set of tools to do so;
- Ordinary insolvency law may not be sufficient to deal with the specific needs of financial market infrastructures;
- Plans should also consider differences in, for example, legal and accounting practice, business hours and listings rules;

Two issues which we believe require further debate are:

- The extent to which CCPs and CSDs should be treated differently, depending on whether they are operating with a banking licence or not; for those who do, should they be considered as financial market infrastructures, or as banks?;
- How to balance the need for losses remaining at the end of the waterfall in a CCP to be borne by all participants, with the desire for the liability of participants to be limited;

IRSG Post Trade Workstream

The International Regulatory Strategy Group (IRSG) is a practitioner-led body comprising leading UK-based representatives from the financial and professional services industry. It is an advisory body both to the City of London Corporation and to TheCityUK.

The Post Trade Workstream includes representatives from financial services firms, investors and financial market infrastructures.

The objective of the Post Trade Workstream is to provide a cross-sectoral review of post-trade services. These comments reflect a consensus of views within the Workstream. The views of individual members may differ from the consensus in some areas.

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