European Association of CCP Clearing Houses

27th February 2015

**EACH response – EBA consultation paper 'on minimum requirements for own funds and eligible liabilities under BRRD' – EBA/2014-41**

## 1. Introduction

The European Association of CCP Clearing Houses (EACH) represents the interests of Central Counterparties Clearing Houses (CCPs) in Europe since 1992. EACH currently has 20 members from 16 different European countries. EACH is registered in the European Union Transparency Register with number 36897011311-96. EACH welcomes the opportunity to provide input to the EBA on the 'Draft Regulatory Technical Standards on criteria for determining the minimum requirement for own funds and eligible liabilities under Directive 2014/59/EU'.

## 2. General response to the consultation paper

Although we understand that CCPs are not the targeted audience of this consultation, we would like to take this opportunity to clarify that the concept of Total loss absorbing capacity (TLAC), Minimum requirement for own funds and eligible liabilities (MREL) or any similar tool should not be applied to CCPs, mainly for the reason that CCPs, including those holding a banking license, are fundamentally different Financial Market Infrastructures (FMIs) compared with banks. The differences between these types of institutions range from their business objectives, the way they perform risk management, through to their supervisory architecture.

MREL is designed to enable the resolution of a bank to avoid public bail-outs, by forcing losses onto creditors first. CCPs already have a structured default waterfall/lines of defence to apply losses against. The liabilities of CCPs primarily arise out of their intermediary role as a risk manager between their participants, while CCPS do not issue debt/borrow money. Transposing a MREL designed for banks would therefore be unnecessary and disruptive to the incentive/disincentive scheme CCPs have already created, and enshrined in EMIR, for managing defaults of their members without public money.

Furthermore, EACH believes that for CCPs EMIR already set strict own funds requirements tailor made for CCPs' businesses and their risk profiles. Further business activities are strictly regulated and limited. This provides an appropriate basis to ensure sufficient resources are available to withstand losses under very extreme conditions and guarantees that the CCP can wind down its activity in an orderly manner.


European Association of CCP Clearing Houses AISBL (EACH), Rue de la Loi 42 Bte. 9, 1040 Brussels

*Table 1* below summarises the key differences between banks and CCPs.

**Table 1 - Key differences between a CCP and a bank**

| Issue | CCPs | Banks |
|---|---|---|
| **Business objective** | Counterparty risk mitigation | Various businesses related to risk taking: fractional reserve banking, investing on own account, investing on the account of its clients, securitisation, provision of loans, maturity transformation etc. |
| **Probability of default** | CCPs assume a probability of default of 100% in the margin model without credit assessments. | Banks typically consider counterparty credit risk with probabilities of less than 100%. |
| **Risk management** | Conservative risk modelling as demonstrated during the crisis | Risk management models challenged during the crisis |
| **Lines of defence** | Defaulting Members' Margin (Variation, Initial, Intraday cash calls, Concentration and other buffer margins), Defaulting members' default fund contributions, CCP's skin in the game, Remaining mutualised default fund, Contingent Resources in the form of Powers of Assessment, Additional CCP Capital. | Capital only |
| **Collateralisation** | Exposures fully collateralised | Collateralisation models challenged during the crisis |
| **Economising collateral** | Yes, multilateral netting allows less collateral to be set against risks | No |
| **Derivatives activity** | Only standardised derivatives cleared | Enter into both standardised and non-standardised derivatives |
| **Process in case of default** | Structured and transparent DMP | Depending on counterparty, typically a case-by-case application of close out netting and individual trading over time. |

-END-

Contact: Rafael Plata, rafael.plata@eachccp.eu, +32 (0)27208062