



FSB Continuity of Access to FMIs for Firms in Resolution

THE LONDON METAL EXCHANGE AND LME CLEAR LIMITED

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The London Metal Exchange is registered in England no 2128666.

LME Clear Limited is a private limited company and is registered in England no 07611628.

Registered offices as above.

[LME.COM](https://www.lme.com)

Part I: Legal entity and general contract/service information:

1. Please provide the following details:

- a) Full Legal Name: *LME Clear Limited*
- b) Legal Entity Identification Number (LEI): *213800L8AQD59D3JRW81*
- c) Jurisdiction of incorporation and registered number in the relevant corporate registry
United Kingdom.

Business Registry Name: RA000585

Business Registry Identifier: 07611628

Supervisory, resolution or other relevant regulatory authority responsible for overseeing the activities of your organisation in (i) the relevant jurisdiction(s) of incorporation, and (ii) if different from the jurisdiction of incorporation, the relevant jurisdiction(s) of operation. Where an FMI is overseen by more than one regulatory authority, please also indicate which is the principal/ home regulator of the FMI and the relevant function(s) regulated by the respective authorities.

Principal/home regulator: Bank of England

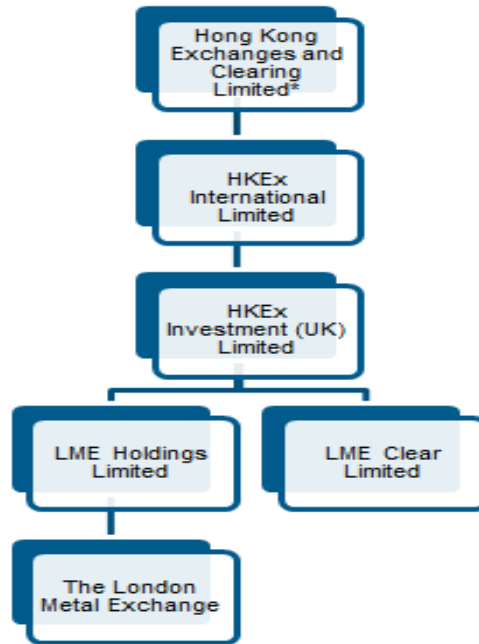
LME Clear is also regulated by the following authorities on a third-country basis:

- *European Securities and Markets Authority (ESMA) – European Union. LME Clear has received recognition as a third-country CCP, Tier 1, from 1st January 2021.*
- *Swiss Financial Market Supervisory Authority (FINMA) – Switzerland*
- *Ontario Securities Commission (OSC) – Ontario, Canada*
- *The Securities and Futures Commission (SFC) – Hong Kong*

- d) The ownership arrangement of the legal entity (e.g. is it majority owned by its users?)

LME Clear is a private company incorporated in England and Wales on 21 April 2011. LME Clear is a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (“HKEX”). The immediate parent of LME Clear is HKEX Investment (UK) Limited (“HKEX UK”), a company registered in England and Wales. HKEX International Limited, a company incorporated in Hong Kong and a direct wholly-owned subsidiary of HKEX, is the parent of HKEX UK. HKEX UK is also a parent of the LME (please see the organisation chart provided below).





2. Please provide the following information:

- a) Hyperlink to the published FMI disclosure template under the Disclosure Framework for Financial Market Infrastructures.10

[LME Clear CPMI IOSCO Disclosure Document 2018 \(PDF\)](#)

- b) a list or description of services provided, including a summary of the key ongoing access requirements that you require of members for each service (including operational, financial, and capital requirements).

LME Clear provides clearing and settlement services for users of the London Metal Exchange on all Ring, electronic and telephone trades.

For further details on the LME Clear membership requirements, please refer to Part B – Membership, in the LME Clear Rules and Procedures (the “Rules”):

[LME Clear Rule Book and Procedures](#)

3. Do your members/ clients access your services directly or through an intermediary?

Members access LME Clear services directly; clients access LME Clear services through an intermediary (i.e. the Member).

4. Do your members/ clients need a specific software or IT programme to receive your services? If the answer is ‘yes’, is such software/ IT programme your proprietary product or a specific third party product (please also consider whether specific plug-ins that you require clients to run only run in combination with certain software, e.g. Microsoft products)?

Yes, Members must have access to LMEmercury and LMEsword (proprietary products).

5. If your contracts are all governed by one governing law, please specify which governing law this is. If there are different governing laws, please specify the main governing laws



applicable and explain whether this is dependent on the location of the services provided or as negotiated with the members/ client, or any other reason.

All cleared contracts are governed by English law.

6. Are there any other service providers or FMIs (for example, CSDs, payment systems or other infrastructure) that a member / client would need to have access to in order to receive your services? Please provide the names of those types of service providers and their regulatory status, where applicable.

Members are required to have accounts at a Settlement Bank which must act as an SPS Bank for LME Clear. A full list of LME Clear SPS Banks who offer Settlement Bank Services for others or just themselves be found here:

[LME Clear Secure Payments System Banks](#)

Arrangements with other service providers may be required where Members wish to provide other types of collateral.

It is also worth noting that (i) in relation to the LME Base Service, LMEsword is provided by the London Metal Exchange rather than LME Clear and (ii) in relation to the LMEprecious Service, Members must have arrangements in place that allow them to settle physical gold.

7. Does your operating framework recognise the continued operations of FMI participants once they enter into resolution (e.g. as under the Bank of England's Resolvability Assessment Framework, or the Single Resolution Board's Expectations for Banks)?

LME Clear's operating framework facilitates the continued membership of entities in resolution where they continue to meet the membership requirements. LME Clear undertakes jurisdictional legal analysis to identify the circumstances where relevant resolution regimes do and do not place constraints on its ability to exercise its contractual rights under the Rules.



Part II: Rulebook / Contractual provisions regarding termination

8. Discretionary termination rights.

- a) Rule Book / Participation agreement provisions: which provisions give rise to a right to terminate a service user's access? Are the FMI's termination provisions disclosed publicly? If so, please provide any link(s) to that information.

Rule 10.2 of the LME Clear Rules sets out the Default Events which can give rise to a default. The Rules are available here:

[LME Clear Rule Book and Procedures](#)

- b) Are these provisions based solely on objective criteria, or can the FMI exercise judgement when triggering termination?

Termination on the occurrence of a Default Event is not automatic and LME Clear reserves discretion over whether to call a default. In some cases the determination of whether a Default Event has occurred will also involve the exercise of discretion by LME Clear.

- c) Does the FMI use 'forward looking' indicators that may trigger termination, and if so, which ones?

Several Default Events involve "forward looking" indicators. Please refer to Rules 10.2, summarised below.

(a) the Member fails to perform (or appears unlikely to perform) any obligation it owes to LME Clear including under any Member Documentation, Contract or Transfer Order;

(e) LME Clear determines that the financial condition of the Member no longer satisfies the Membership Criteria or the continuing use of LME Clear by the Member would result in an increased level of risk or uncertainty for LME Clear and/or its other Members.

(f) LME Clear has reasonable grounds to believe that the Member is in or is approaching significant financial or operational difficulty or otherwise will be unable to perform its obligations to LME Clear;

(h) LME Clear has reasonable grounds to believe it is appropriate to suspend or terminate the Member's participation in order to avoid the risk of a failed or rejected delivery, or to avoid a threat to the orderly operation, security, integrity or reputation of the Clearing System or which could lead to LME Clear becoming involved in legal proceedings with any third party;

(j) the Member suspends or threatens to suspend, or ceases or threatens to cease, to carry on all or substantially all of its business;

(n) LME Clear has reasonable grounds to believe that there is a risk that the continuing participation of the Member could result in an obligation being incurred by it to LME Clear which the Member would be unable to settle when due;

(o) LME Clear has reasonable grounds to believe that the suspension or termination of the Member's Membership is necessary either for the protection of LME Clear or for any of the other Members or to ensure the orderly operation, security, integrity and/or reputation of the Clearing System;



(q) the Member admits in writing its inability to pay any debt, or it appears to LME Clear that the Member is unable to pay its debts as they fall due or that the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities;

(r) the Member stops, or suspends, or threatens to stop or suspend, payment of all or any part of its indebtedness or commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of all or any part of its indebtedness or the making of a general assignment for the benefit of or composition with its creditors or if a moratorium is agreed, declared or otherwise obtained in respect of, or affecting, all or any part of its indebtedness;

(x) an event listed in 10.2, paragraphs (s) to (v) occurs (bankruptcy, dissolution, liquidation etc.) in relation to any Affiliate of the Member, where in the reasonable opinion of LME Clear such occurrence is reasonably likely to result in a Default Event occurring in relation to the Member.

- d) Do the FMI's provisions envisage that (i) financial stress on the participant's side (as defined in its provisions – please provide the definition of such stress) and/or (ii) a resolution event (recognised in the relevant jurisdiction) qualifies as a material change that may trigger termination?

Several Default Events involve the Member being under financial stress short of formal insolvency proceedings. See Rules 10.2(e), (f), (j), (n), (q) and (r). LME Clear does not address resolution events directly in its Rules. LME Clear analyses the provisions of applicable law (including any resolution regimes) and will only use its contractual powers under the Rules where it is satisfied that the exercise of such powers is consistent with applicable law.

- e) During stress or resolution of the member, are actions by other FMIs taken into account as possible indicators or triggers for termination?

The Default Event specified at Rule 10.2(b) directly addresses the circumstances where a Member is in material breach of the rules or terms of membership of any exchange, trading platform or clearing house or has been declared a defaulter, suspended or expelled from membership by such an entity.

- f) Are there any other relevant provisions regarding termination? If so, please explain why they are necessary for the FMI to enable rights for termination.

Rule 10 sets out in detail all provisions relating to the default of a Member. Please read Rule 10 in its entirety for a full understanding of LME Clear's rights and obligations in the context of default.

9. Suspension or restriction of membership.

- a) Does your framework allow for suspension or restriction of a participant's membership rather than termination? If yes, what exactly does this imply (for instance, limiting the right to enter new transactions in the system)? Please explain any differences to termination.

Rule 3.9 sets out the circumstances in which LME Clear may suspend a Member. LME Clear's suspension right arises where a Default Event has occurred in relation to the Member but a Default Notice has not been issued. Suspension can involve the suspension of access to all or any aspects of the Clearing System.



- b) Is there a specific timeline for a suspension period before it leads to termination of membership, and are there circumstances where suspension may be lifted without a termination of membership?

A suspension can take effect immediately and shall continue for so long as LME Clear may determine. A suspension may be lifted on such date and on such conditions as LME Clear shall determine. In particular, LME Clear may end a suspension if the suspended Member is under full compliance with its obligations under the Rules and the Member's use of the Clearing System will not threaten the orderly operation or integrity of the Clearing system or the interests of other Members.

10. Critical FMI service rules, contractual arrangements, or procedures should reflect any legal restrictions on termination and suspension of access because of an FMI service user entering into resolution (FSB 2017 Guidance, 1.1).

- a) In what way do your rules, contractual arrangements and procedures reflect this?

LME Clear does not address resolution events directly in its Rules. LME Clear analyses the provisions of applicable law (including any resolution regimes) and will only use its contractual powers under the Rules where it is satisfied that the exercise of such powers is consistent with applicable law.

- i. Do such arrangements include the effect of parent or affiliates entering resolution?

Refer to the response in 10.a. above.

- b) Do you have any plans to amend or otherwise change, or have you recently changed your rules, contractual arrangements or procedures to address legal restrictions on termination of access in the event that an FMI service user enters resolution? If so, please provide details of the proposed/applied changes.

LME Clear does not consider it necessary to amend its Rules for the reasons stated in 10.a. above.

11. Triggers, procedure and consequences of termination of FMI participation.

- a) Triggers: in which situations would termination be considered? Is participation/membership generally terminated in case of financial stress? Are these criteria clearly outlined in the rulebook or other contractual documentation (please include the relevant references)?

As stated in 8.a. above, Rule 10.2 of the Rules sets out the Default Events which can give rise to the issuance of a Default Notice. The Rules are available here:

[LME Clear Rule Book and Procedures](#)

- b) Please explain the management and monitoring around the termination process - steps and timelines of the escalation and decision-making, as well as of the implementation of termination. (Please provide concrete examples, if any, of participation/membership terminations and flag, where relevant, any changes made to the termination process since).

The link below is to our public facing document on managing a default, including steps in the pre-default process right through to final auction and close-out. LME Clear has never been required to undertake this process in a live situation.

[LME Clear Default Management Framework](#)



- c) What are the consequences of termination on the participant/member's ability to access the FMI's services? Would the firm be able to complete the processing of any outstanding transactions (e.g. not accepted for clearing or settlement, or in process but not complete) it has in the FMI's systems, or are these cancelled or liquidated?

The consequences which can flow from LME Clear determining that a Default Event has occurred are set out in Rule 10.4. The precise set of powers which LME Clear uses (including whether it will accept or decline future transactions) will depend on the Default Event in question and the provisions of applicable law. It is worth noting that, since LME Clear operates an open offer model of clearing, all transactions executed prior to LME Clear determining that a Default Event has occurred will be treated as cleared.

- d) Would the decision to terminate participation/ membership be notified ex ante (i.e. before it takes effect) to the competent authorities of (i) the direct participant and/or of (ii) the FMI? Would this decision be communicated ex ante to the participant itself? On both aspects, how long in advance of actual termination would such notifications occur?

LME Clear would inform the Bank of England prior to calling a default. The timeframe would depend entirely on circumstances and is not prescribed under the Rules. LME Clear would not necessarily inform the defaulting Member or the regulator of the defaulting Member in advance of calling a default.

- e) What impact would a participant/member's termination have on their parent/subsidiaries' direct membership in the FMI?

Where an Affiliate of a Member (which is also a Member) defaults, it will not necessarily lead to the Member being called into default. However, LME Clear will have the right to do so where a Default Event is subsisting in relation to that Member. In particular, Rule 2(x) applies where certain insolvency events occur in relation to an Affiliate of a Member and, in the reasonable opinion of LME Clear, such occurrence is reasonably likely to result in a Default Event occurring in relation to the Member.

- f) Does the FMI have cross-default provisions in its rule set? Could it put a member in default because of an affiliate's insolvency or of an indirect participant/client's default or do the rules explicitly prevent or exclude such automatic termination (as long as other obligations are being met)?

See the response in 11.e. above in relation to Affiliates. The default of a Client will not lead to the calling of a default unless it triggers another Default Event. Note that default is not automatic on the occurrence of a Default Event.

- g) What assistance would the FMI provide with the porting (within the FMI) of the participant's direct and/or indirect positions/outstanding transactions to a parent/subsidiary membership, third party successor or bridge entity?

Provided that the Affiliate, third party successor or bridge entity was acceptable to LME Clear then assistance would be provided in order to transfer the defaulter's book (subject to any constraints imposed by applicable law). Note that under Membership Procedure Part B:3.3 LME Clear has the discretion to impose different membership conditions on a bridge entity. This is designed to give additional flexibility in managing a resolution scenario.

- h) Please discuss any other points related to termination.

Please read Rule 10 in its entirety for a full understanding of LME Clear's rights and obligations in the context of default.



12. FMIs should retain the ability, as specified in rules or contractual arrangements, to terminate, suspend or restrict participation or continued provision of services where the firm fails to meet obligations or where safe and orderly FMI operations could be compromised (FSB 2017 Guidance, 1.1).

- a) Under what conditions, if any, could safe and orderly FMI operations be at risk from maintaining participation of a service user in resolution?

Provided that a Member in resolution continues to meet all its obligations to LME Clear, there should be no additional risks in maintaining the participation of a Member in Resolution.

- b) Which indicators, if any, can a participant use to anticipate that such a scenario may occur?

LME Clear would continue to monitor the performance of a Member in resolution in the same way as it would monitor the performance of any Member. In this case regular dialogue would be required with the resolution authority in addition to the management of the member itself.

13. Are there any further aspects or issues to mention in relation to the provisions for termination or suspension of membership? If possible, please provide concrete examples of specific factors that were considered in the past when assessing whether to exercise judgement to terminate or suspend a participant's access. Please elaborate.

Where LME Clear feels it is able to avoid the use of its default and /or suspension powers for minor or short term breaches of its rules it may use discretion. The most obvious use of this discretion is where an operational issue results in a delay to the payment of a margin call issued by LME Clear. While the issue is escalated and monitored closely, providing LME Clear can get confidence that the issue is simply operational in nature and will be resolved in a short space of time, LME Clear is able to waive the need to take steps to default the participant. However, post event LME Clear would follow up with the Member to ensure any lessons learned are implemented to limit future incidents.



Part III: Prior to resolution, during signs of distress at the participant

The questions in this section assume a situation of stress, in which one of the FMI's (direct) participants/members, or an affiliate company, exhibits signs of distress. Please distinguish in case there are differences between situations of idiosyncratic vs. market stress.

To avoid duplication, respondents may cross-reference other answers when appropriate.

14. What management and monitoring process(es) does the FMI have in place to identify a situation of stress of a (direct) FMI participant or its affiliate?

Credit assessments are conducted on a regular basis using the financial results reported, qualitative risk factors, trend of the business and industry and peer comparisons on participants to identify credit deteriorations.

Early warning market indicators such as (i) Credit Default Swaps/Share Prices/Adverse News/ Rating agency changes, (ii) late payment of margin and (iii) size of margin relative to size of entity are monitored daily to identify early signs of credit deterioration. Any credit deterioration identified will be investigated with the participant and escalated to senior management, risk measures may be applied.

LME Clear: Credit Risk Management

15. Which indicators does the FMI consider as part of its management and monitoring in order to determine whether its participants/members face difficulties due to idiosyncratic and/or market stress (outside of entry into resolution)?

The participant's quarterly financial results and market indicators such as (i) Credit Default Swaps/Share Prices/Adverse News/Rating agency changes (ii), late payment of margin and (iii) size of margin relative to size of entity are closely monitored to determine if the participant is facing or likely to face difficulties due to idiosyncratic or market stress.

16. What risk mitigation actions could the FMI take under its rules / internal procedures vis-à-vis the participant or member? Which of those potential actions are likely, i.e. to be expected by the firm? How would risk mitigation vary in the event of mild, moderate, and severe stress situations at a participant/member? Could actions be taken even though the participant/member meets its obligations?

See question 22 relating to "alleviating uncertainty for the FMI".

See also questions 8-12 as these describe the Rules / internal procedures that can be followed in relation to the termination, suspension or restricted participation of a member.

The severity of the situation would be reflected in the level of the credit rating. Participants whose creditworthiness deteriorates below a certain internal credit rating level will be subject to additional measures to ease the additional risk concern they pose to LME Clear. Risk measures may include, but are not limited to: credit limit reduction, more frequent financial monitoring, additional collateral, position limit reduction, suspension of membership (see question 9) and termination of membership (see question 8).



17. What self-reporting requirements are placed on the member/participant in a situation of stress (e.g. additional reporting, increased reporting frequency; evidence of operational and financial capacity)? Please provide any templates or overviews of required data points, where available.

In a situation of stress on a Member, in the first instance we would speak to the Member in question to determine the reasons for, and impact from, the stress. See also the response to question 21 below.

Participants may be required to provide more frequent financial status reporting (from monthly to weekly or even daily) to enable LME Clear to assess the participant's latest risk profile against its exposure to LME Clear. The information may be specific to the underlying issue - for instance an idea of risk exposure against volatility in another asset class in which they have material exposure - or detailed analysis of their liquidity position including the status of facilities and results of stress testing. Because of this there are no specific or standardised templates of data as each situation must be judged on its merits and the business model (and situation) of the Member concerned.

18. Please explain the methodology used to calibrate additional membership requirements (including operational, financial and capital requirements) for a member/client in financial stress outside of resolution.

Internal credit rating methodology uses a combination of quantitative and qualitative measures to attain the credit score of the participant, which includes capital, liquidity, profitability ratios and operational efficiency. The internal credit rating will drive the level of risk measures. Please refer to the credit risk assessment framework below:

LME Clear Credit Risk Assessment Framework

LME clear ensures daily monitoring, reporting and review processes are in place to ensure that the internal credit rating of all Members is appropriately managed on an on-going basis.

19. Please describe for each of the below risk mitigation actions, in as far as they form part of the FMI's set of potential risk mitigation actions: (i) whether these actions are discretionary or pre-determined, e.g., would the FMI follow a required set of actions, which may be described in its rule book; (ii) in which way, if at all, the FMI could deviate from the predetermined procedure so as to either disregard a mandated risk mitigation action or adopt a non-standard action?

- (i) Increasing membership contributions (e.g. default fund/loss sharing contributions), mandating pre-funding, restricting withdrawal of deposits;
- (ii) Increasing initial/variation margin/collateral requirements, restricting collateral types, removing cross-margining facilities; increasing liquidity obligations;
- (iii) Removing credit lines, reliance on parental guarantees or securities borrowing facilities;
- (iv) Enforcing trading controls including position limits, restricting markets;



- (v) Termination or suspension of participation/membership.

All procedures are defined within the Rules and policies. Actions are discretionary and LME Clear has the power to use them. The order in which the tools are used and the specific approach will be dependent on the underlying situation but LME Clear has the discretion to operate within the Rules.

Each Clearing participant is assigned an internal credit rating based on the risk metrics and risk mitigation actions may be applied to participants with credit ratings below certain levels as described in the Rules.

Risk mitigations actions covered by the Rules include, but are not limited to, the following:

2.16 Exercise of Discretion by LME Clear (pg 56)

8.4 Top-Up Collateral (pg. 110)

5. Additional Margin (pg. 216)

Rule 10 Powers of LME Clear after a Default Notice (pg. 120)

Part B – Default Fund Calculation of Default Fund Contributions (pg. 267)

Rule 3.9 Suspension of a Member by LME Clear (pg. 71)

Rule 3.10 Termination by LME Clear of a Member's Membership (pg. 72)

LME Clear Rule Book and Procedures

20. Please answer question 19 also for other risk mitigation actions, if any, that are not mentioned here and would likely be taken.

LME Clear's response to question 19 covers the material risk mitigation actions it is able to undertake.

21. In a situation of idiosyncratic or market stress, in which one of the FMI's (direct) participants/members, or an affiliate company, exhibits signs of distress, communications and notifications may be necessary. Please distinguish in the below in case there are differences between a situation of idiosyncratic vs. market stress.

- a) What notifications or communications would the FMI undertake to the participant/member, their competent and/or resolution authority, the FMI's competent and/or resolution authority, the stressed firm's settlement agent, and other stakeholders, and when? Would any of these be based on an obligation for the FMI to notify?

LME Clear would expect formal notification to only occur at the point of default. However, LME Clear would expect to engage frequently with key operational and management staff at any entity affected by either idiosyncratic or specific stress.

LME Clear would engage with regulators or resolution authorities - and would welcome that dialogue - although it is expected that this dialogue would be more challenging where the resolution authority is a different regulator to the Primary regulator of LME Clear.



LME Clear does not undertake to consult directly with the regulator or resolution authority of a Member prior to calling a default where the Member is incorporated outside of the UK. LME Clear would liaise with its own Primary regulator - the Bank of England - in relation to this in the first instance.

- a) Do you have a specific communication plan for this, or does your approach leverage existing crisis communication mechanisms? In both cases, please describe the main features of the approach.

LME Clear does not follow a specific or formulaic communication approach pre-default, as circumstances may typically be varied and wide ranging. However, LME Clear would expect to engage closely with any Member that was experiencing stress until a level of comfort had been reached relating to the circumstances.

- b) Does the FMI need to get consent from the firm or inform the firm prior to a notification or communication?

LME Clear's Rules do not require consent from a firm to issue a default notice, although the default notice would be provided to the member at the same time as being made publicly available. As such, almost certainly the decision to default would therefore be communicated before any official notice was published; in fact it is highly likely that informal communications would already have been extensive.

- c) Do the communication/notification protocols require specific factors to be considered, for example legal implication, market impact, etc.?

The decision to issue a default notice is only taken after due consideration of all relevant factors and effects - including legal and market impacts.

- d) Are your communication protocols standardised across participants or do they take into account the specificities of firms' participation and roles in respect of the FMI?

Communications will be specific to the function of the firm.

22. Alleviating uncertainty for the FMI.

- a) Which actions could the firm or the relevant authorities take in order to alleviate uncertainty for the FMI, and reduce the risk that the FMI may take risk mitigation actions that may have an adverse financial impact on the firm?

LME Clear will seek to maintain its BAU approach for the period that the firm continues to meet its membership obligations and is able to maintain standards consistent with its membership. The main action that might be applied is a lowering of credit quality of the firm; as such, any support provided that can enhance the credit quality will limit risk of mitigating actions being applied on the firm by LME Clear. Clear and prompt dialogue and information on the intended pathway for the member is also critical.

- b) Which data / quantitative information and what qualitative information might you need to receive from the participant and/or RA in order to allow the participant to maintain access (please consider the three levels of access mentioned in footnote 3)? Please specify by when you would need each piece of information, if appropriate. (insert footnote)

[LME Clear is unable to locate Footnote 3 that relates to three levels of access].

Types of information might include, but would not be limited to: evidence of capital injection, support of parent, written letter of support, liquidity provision agreements, cash flow forecast with support.



LME Clear would endeavour to engage with the entity as early as possible in any stress situation it was aware of, to give the firm the sufficient opportunity to provide the required evidence.

- c) What other actions could be taken ex-ante to avoid a temporary interruption of services or the risk of some transactions remaining unexecuted?

LME Clear would seek to ensure that the member continues to meet all obligations and engages in regular, full and frank dialogue to advise LME Clear of the current situation and mitigants being employed.

- d) Please discuss any other considerations. ?

N/A

23. Considering adverse financial impact of FMI risk mitigation actions on direct/indirect participants.

- a) Some actions, designed to protect the FMI, may precipitate the failure of the relevant participant/member or worsen its position at the time of resolution. How does the FMI consider this when deciding to protect itself?

LME Clear carefully considers all actions around entities encountering stress and assesses the procyclical impact of systemic and idiosyncratic actions. Regular dialogue would be maintained and notice would be provided ahead of any proposed actions where possible.

- b) Does the FMI take into account the impact on indirect participants of actions taken in response to a direct participant/member facing financial stress?

LME Clear carefully considers the downstream impact of any decisions, and the implications for the broader ecosystem.

24. Possible differences in treatment of domestic and foreign FMI service users entering into resolution.

- a) Do you differentiate in your treatment of domestic and foreign FMI service users, and if so in what way?

LME Clear does not differentiate the application of the Rules between jurisdictions. However, LME Clear is cognisant that different jurisdictions have different laws and resolution frameworks that may dictate a variation in its approach.

- b) Among foreign users, is there a distinction for users from certain jurisdictions? If so, what are those distinctions?

Please refer to LME Clear's response to question 24 a.

25. Safeguards in jurisdictional legal frameworks.

- a) How do you assess whether the resolution framework of the jurisdiction in which a firm resides provides adequate safeguards to the provider of critical FMI services?

LME Clear conducts legal analysis on every jurisdiction in which its Members are incorporated. Part of this analysis is focused on determining whether the legal framework of the jurisdiction, including the resolution framework, provides adequate safeguards for LME Clear's exercise of its rights and obligations.



b) From which regulatory regimes (e.g. countries) do you accept service users?

[United Kingdom, the United States of America, Germany, France, the Netherlands, Switzerland, Norway, Australia [and Canada]].

26. Are there any further aspects or issues to mention in relation to interaction between the FMI and a participant in financial stress? Do you have any examples of past experiences where the FMI has utilised its powers in relation to a member undergoing stress? What actions were undertaken and what were the outcomes? Could this example be indicative of actions that may be taken in a future case?

While the incidents concerned were for entities smaller than those likely to go into resolution, LME Clear has managed two situations, both related to macroeconomic stress that manifested into idiosyncratic situations. Both required the entity concerned to provide a full and frank disclosure of the situation, the potential risks to the entity, current mitigants and a plan for resolving the situation. The entities also provided documents and external expertise to validate the deliverability of the plan and LME Clear maintained a regular dialogue, providing them with an understanding and quantification of the mitigants we could employ.



Part IV: During and after resolution

To avoid duplication, respondents may cross-reference other answers when appropriate.

27. When the FMI becomes aware of a participant entering a resolution process, which actions would the FMI be likely to take vis-à-vis the participant? Could actions be taken even though the participant/member meets its obligations?

LME Clear would attempt to limit as far as possible the actions it needed to take in relation to a firm entering resolution. If the firm continued to meet its obligations, LME Clear would attempt to continue a BAU relationship, alongside undertaking heightened monitoring and requesting regular and open communication with the entity or resolution authorities. Depending on the resolution plan, LME Clear may work with the firm to undertake potential risk reducing activities such as a transfer of client positions, if this helped the overall survivability of the firm.

28. Please explain the methodology used to calibrate additional membership requirements (including operational, financial and capital requirements) for a member/client in resolution. To what extent does the FMI take into account the resolution strategy and tools applied to a member to determine their financial and operational requirements? Does the FMI consider anything specific in its methodology in relation to ring-fenced or specifically safeguarded entities?

LME Clear does not have specific requirements for an entity in resolution, although its credit ratings methodology is disclosed and explains the main factors that drive credit rating and consequent risk mitigation actions. The LME Clear disclosure also explains the consequences of a ratings downgrade below LME Clear's minimum entry rating for a Member. The disclosure also explains the impact for an investment counterpart of a downgrade. However, there is no certainty that being placed in resolution automatically triggers a credit downgrade, particularly if unequivocal and appropriate support can be evidenced. Therefore, the exercise of resolution powers could, in theory, play a part in reducing the likelihood of a downgrade and the need for consequent risk mitigants. LME Clear has no specific or special treatment of ring-fenced entities, other than acknowledging their generally stronger credit fundamentals.

29. Please describe for each of the below risk mitigation actions, in as far as they form part of the FMI's set of risk mitigation actions upon a participant entering a resolution process (in addition to actions that would be taken prior to resolution): (i) whether these actions are discretionary or pre-determined, e.g., would the FMI follow a required set of actions, which may be described in its rule book; (ii) in which way, if at all, the FMI could deviate from the predetermined procedure so as to either disregard a mandated risk mitigation action or adopt a non-standard action; (iii) how/when the following risk mitigation actions would be communicated to the participant.

- (i) Temporary suspension of certain activities (and if so, which activities);
- (ii) The actions are always discretionary, so may not need to be applied provided that sufficient assurances are obtained (refer to response to question 27) and obligations are met. See response to questions 9a and 9b for LME Clear's position on suspension under the Rules.



- (iii) Potential requirements to contribute additional margin or amounts to default or guarantee funds, secure additional liquidity commitments (including on an intra-day basis), or to pre-fund part or all of payment and settlement obligations;
- (iv) Refer to response to 29(i).
- (v) Potential changes to operational or information requirements, including those needed because certain services might not be available;
- (vi) Increased communication and information would need to form the basis of a relationship while in resolution.
- (vii) Potential requirements that may apply in relation to a bridge institution or a third party purchaser to which functions have been transferred.
- (viii) Refer to response to question 11(g). LME Clear provides itself with flexibility in its Rules to help on-board a bridge institution.

30. Please answer question 29 also for other risk mitigation actions, if any, that are not mentioned here and that would likely be taken.

N/A

31. In what way should a service user prepare for resolution-related risk mitigation measures by the FMI to maximise the likelihood of maintaining access? Does the FMI provide any documented guidance on this to its participants/members, and/or to their RAs?

Refer to response to question 27.

Broadly a Member should prepare to continue to meet its obligations under the Rules and - where this may be challenging - to provide open and transparent dialogue on delays and how long a mitigation will take to implement. The obligations are laid out in the Rules.

32. What impact would a member/ participant's resolution have on any parent or subsidiary's direct membership at the FMI?

The credit standing of the affiliate of the Member would determine LME Clear's approach. However, the fact that a member of the Group was in such a position to require resolution would suggest broader financial difficulties that may require appropriate action. Refer also to response to question 11(e).

33. In a situation of idiosyncratic or market stress in which one of the FMI's (direct) participants/members, or an affiliate company, enters resolution, communications and notifications may be necessary. Please distinguish in the below in case there are differences between a situation of idiosyncratic vs. market stress.

- a) What notifications or communications would the FMI undertake to the participant/member, their competent and/or resolution authority, the FMI's competent and/or resolution authority, the firm's settlement agent, and other stakeholders, and when? Would any of these be based on an obligation for the FMI to notify?

The Default Event triggers an internal process that includes a communication plan commencing with a notification to the Bank of England that a Default Event had occurred and a Default Notice shall be issued. This is followed by the formal notice of default



being issued to the entity affected and published to the wider market. This would be the formal point in a longer period of informal communication with the entity. In a resolution scenario LME Clear would expect to engage with resolution authorities on a frequent basis.

- a) Do you have a specific communications plan for this or does your approach leverage existing crisis communication mechanisms?

LME Clear has a formal default communication plan, which would be adapted to meet the different demands of a resolution situation.

- b) Does the FMI need to get consent from the firm or inform the firm prior to a notification or communication?

Refer to response to question 21(c).

- c) Do the communication/notification protocols require specific factors to be considered, for example legal implication, market impact, etc.?

Refer to response to question 21(d).

- d) Are your communication protocols standardised across participants or do they take into account the specificities of firms' participation and roles in respect of the FMI?

Refer to response to question 21(e).

- e) Would your members / clients be able to leverage any preparations your organisation has undertaken to access the necessary communication infrastructure to deliver the increased extent of communications that may be needed to respond to a resolution and any restructuring of a member/ client (such as increased call volumes to call centres)?

LME Clear has developed a communication plan that would provide support in the default of a Member. Similar activities would be required by LME Clear in a resolution scenario (e.g. client porting/transfer assistance). LME Clear believes the current default plan adequately addresses that need.

- f) What management and monitoring arrangements would apply for these crisis communications and notifications? Would you have a dedicated team or a point of contact for receiving and initiating all communications that relate to a member/ client entity in resolution or any related restructuring?

LME Clear's relationship management team would manage Member communications with support from its Legal and Compliance departments.

34. Alleviating uncertainty for the FMI. (As requested in Part II, if the responses to sub-questions a.-f. below have been documented in rulebook/contractual provisions or other documents, please reference.)

- a) What actions (such as communication) could the participant or authorities take in order to alleviate uncertainty for the FMI about the participant's situation, and thereby reduce the risk that the FMI may take risk mitigation actions that may have a further adverse financial impact on the participant?

Refer to response to question 22(a).

LME Clear would also expect to continue to maintain open dialogue on the financial position of the firm and steps being taken by resolution authority to limit or reduce risk and maintain obligations to LME Clear. LME Clear acknowledges the ability of a



resolution authority to maintain detailed dialogue with all affected parties could be challenging, particularly where the firm is incorporated in a non-UK jurisdiction.

- b) Assuming that the authorities and the affected member/ client may not be able to share relevant information before the commencement of the resolution process, would that represent a material issue that could determine how your organisation responds to the fact that a member/ client has been placed in resolution?

The earlier and more detailed any information provided, the more likely it is that the process to continue to allow the firm to maintain its service level would succeed.

- c) Which data / quantitative information would the FMI need to receive from the participant and/or RA in order to allow the participant to maintain access (please consider the three levels of access mentioned in footnote 3)? Please specify by when you would need each piece of information, if appropriate, including when you would need to be informed prior to resolution measures.

Refer to response to question 22(b).

- d) Which qualitative information would the FMI need to receive from the participant and/or RA in order to allow the participant to maintain access to the FMI? Please specify by when you would need each piece of information, if appropriate, including when you would need to be informed prior to resolution measures.

LME Clear does not have a prescribed list of qualitative information. However, being able to provide full and frank disclosure and respond to questions from LME Clear would be particularly beneficial including where obligations are unlikely to be met by the Member in resolution.

- e) What other actions could be taken ex-ante to avoid a temporary interruption of services or the risk of some transactions remaining unexecuted?

Refer to response to question 22(c).

- f) Please discuss any other considerations.

The above questions cover the key points.

35. Considering adverse financial impact of FMI risk mitigation actions on direct/indirect participants.

- a) Some actions, designed to protect the FMI, may worsen the position of the participant at the time of resolution and as a result may also affect other participants. How does the FMI consider this when deciding to protect itself?

Refer to response to question 23(a).

- b) Does the FMI take into account the impact on indirect participants of actions taken in response to a direct participant/member entering into resolution?

Refer to response to question 23(b).

36. FMI rules and contractual arrangements should allow a bridge institution to maintain its predecessor's participation (membership) during a resolution process (FSB 2017 Guidance, 1.1). (As requested in Part II, if the responses to the sub-questions below have been documented in rulebook/contractual provisions or other documents, please reference.)



- a) Please explain how the FMI rules, contractual arrangements and/or procedures reflect this.

As noted in the response to question 11(g), Membership Procedure Part B:3.3 gives LME Clear the discretion to impose different membership conditions on a bridge entity. This is designed to give additional flexibility in managing a resolution scenario.

- b) What would be the FMI's process to ensure that continuity of access can be maintained for the purchaser of a resolved entity or for a bridge institution?

The process required would be significantly different if a new legal entity were to be admitted to membership rather than there simply being a new purchaser of the existing legal entity. In the case of a new legal entity, LME Clear would make legal and operational resources available to manage the prompt on boarding of such an entity. Owing to the uncertainty inherent in any possible scenario, there is no specific process to enable this. However, as noted in the response to question 36(a) above, Membership Procedure Part B:3.3 gives LME Clear the discretion to impose different membership conditions on a bridge entity. This is designed to give additional flexibility in managing a resolution scenario.

- c) Please share any timelines and any external dependencies for this process.

Specific timelines are not available but LME Clear would require prompt information around the identity and structure of the bridge entity or purchaser and the operational structure being put in place to enable the successor entity to meet any ongoing obligations. For example, its intended arrangement for collateralisation and settlement would be key. In a resolution scenario it is likely that LME Clear would look to the resolution authority for this information.

- d) If the purchaser or bridge institution requires a new access, do you have a "fast-track" procedure to allow access for such a purchaser or bridge institution? How long is setting up access expected to take (with or without a "fast-track" procedure)? What would the FMI require in order to continue providing the service pending completion of the on boarding procedure (e.g. connectivity and BIC/SWIFT codes to remain unchanged)?

See response to question 36(b) and (c) above. LME Clear does not have a specific "fast-track" procedure and would look to leverage existing on boarding mechanisms. As little change to operational set-ups as possible would be desirable. A prompt and legally certain novation of any of the member's arrangements with third parties which are required to access LME Clear's services would also be desirable.

- e) What type of information is needed in the context of a change-of-control assessment, i.e. to accept a purchaser or bridge institution as a participant/member? Please specify by when you would need each piece of information, if appropriate. How long would you then need to take an informed decision on access for the purchaser or bridge institution?

Ideally LME Clear would require information demonstrating the entity's ability to meet all membership requirements in line with the normal LME Clear on boarding procedures. However, as noted above LME Clear retains the flexibility to adopt a different approach, where appropriate, in relation to a bridge entity.

- f) Does the FMI explicitly consider, in its rulebooks or internal procedures, the possibility of a RA requiring access for the purchaser or bridge institution even in case they do not meet the membership or participation criteria (for instance where a credit rating is required)?



As noted in the response to questions 11(g) and 36(a) above, Membership Procedure Part B:3.3 gives LME Clear the discretion to impose different membership conditions on a bridge entity. This is designed to give additional flexibility in managing a resolution scenario.

- g) Please discuss any other, e.g. practical, considerations around continuity of FMI access of a bridge institution or of a purchaser.

Given that the required timescales will make the provision of complete information in relation to all membership requirements unlikely, LME Clear would look to work closely with the resolution authority to understand the intended structure and operational set-up of any new entity. Therefore the timing for the on boarding of any new entity may depend, at least in part, on the capacity of the relevant resolution authority to provide such information to LME Clear. The prioritisation of LME Clear as a counterparty in this regard may depend on the Member and the resolution authority in question. LME Clear would always seek to communicate with its own regulator, the Bank of England, in relation to these matters in addition to any local resolution authority.

37. FMIs should consider the operational, technological, financial and legal implications arising from the transfer of functions or positions to a successor (either a bridge institution or a third-party purchaser). (FSB 2017 Guidance, 1.4)

- a) What preparations are necessary in your circumstances for such a transfer to be successful? What changes would be necessary for such a transfer to be successful? Please consider any preparations and changes by the FMI as well as by FMI members/service providers/others.

To be successful in any reasonable timeframe this would need to be a legal entity change rather than anything more so that LME Clear could use its rulebook flexibility to achieve a fast track on boarding process. Operational changes would require an impractical length of time to make continuity of service achievable. Bridge entities should be able to meet the obligations of the Member from which they inherit with immediate effect. Note that at present the flexibility under the Rules is specific to a bridge entity and specific consideration would have to be given to the scenario where a third-party purchaser acquires the business of the Member in resolution (as opposed to acquiring the Member in resolution itself).

38. Portability/Transferability of underlying client positions, for example to facilitate a bridge or partial transfer resolution strategy.

- a) For CCPs: Which kind of segregated accounts are offered to (underlying) clients to facilitate the portability/transferability of client positions and securities collateral? Do you envisage that there may be material barriers to the effective and timely transfer of client positions following a decision to transfer the activities of the member in resolution to another member? If so, please explain.

LME Clear would view the transfer of client positions held by an entity in resolution (and which has not been the subject of a Default Notice) in the same way that it would view a position transfer by any Member which is not in default. Any such position transfer would therefore be carried out in accordance with Rule 6.13. In particular, a position transfer would be carried out on the understanding that appropriate arrangements have been made in relation to the interests of the Clients and/or Indirect Clients (see Rule 6.13.8).

- b) For ICSDs: Do you offer segregated accounts to (underlying) clients? Do you envisage that there may be material barriers to the effective and timely transfer of client securities



and cash to another custodian following a decision to transfer the activities of the participant in resolution to another participant? If so, please explain.

N/A.

39. Are there any further aspects or issues to mention in relation to interaction between the FMI and the participant during or after resolution of the participant?

We consider the key points are articulated in the answers above, and the LME Clear Rules and Credit Framework describe the key on boarding requirements and standards for a bridge entity.



Part V: Arrangements and operational processes to facilitate continued access in resolution

40. The FMI should consider establishing management, monitoring and operational rules and procedures that facilitate the ability of FMI management to make prompt decisions in response to a service user's resolution (including a period when the FMI is closed for business). (FSB 2017 Guidance, 1.4)

a) What is the process that the FMI typically follows to identify, escalate, and come to a final decision on issues related to (i) the financial condition of a member, (ii) the performance or lack of performance by a member of its obligations under the FMI's rulebook, and/or (iii) the continuing membership of a member? MW

(i) *Refer to responses to question 14 and 15: any significant credit deterioration identified is escalated via the LME Clear risk department at which point a Default Management Committee (DMC) meeting may be called to manage the response to the situation and any future actions. This Committee contains the CEO, COO, CCO, Head of Legal and CRO of the CCP.*

(ii) *Where a breach of the Rules or any other obligation is identified through a business incident or a response to annual due diligence, this can be escalated to the Clearing Risk Committee for consideration and appropriate actions considered. This Committee contains the CEO, COO, CCO, Head of Legal and CRO of the CCP.*

(iii) *It is likely that the membership would only be discontinued due to a failure to meet obligations (whether as a result of default or as a consequence of disciplinary action taken under Membership Procedure Part D). Final approval to default a member is taken by the CEO on the advice of the Default Management Committee and any decision to discontinue a membership as a result of disciplinary action would be taken by the Disciplinary Committee (subject to ratification by the Board – see Membership Procedure Part D:7.1(f)).*

b) What positions, committees, or decision-making bodies in the FMI's organisation have a role in each phase of the identification, escalation, and final decision-making process?

In relation to default, the identification of a potential stress event would be expected of the LME Clear credit risk function, and who would then escalate any situation through the LME Clear risk department hierarchy. There are then escalations into the senior management of LME Clear, at which point the DMC (see a (i) above) would be initiated to provide decision-making capabilities. See Membership Procedure Part D in relation to disciplinary action.

c) What procedures are in place to facilitate prompt decision making at any time? What, if any, are the limitations?

The committees can be convened over the phone or web services out of business hours, and are empowered and able to make decisions under these conditions, with appropriate delegates assigned for key personnel if required. The typical limitations would come with availability of external decision makers (e.g. when engagement with regulatory authorities is required before announcing a formal default).



- d) What would be the likely range of decisions undertaken after receiving notice of a service user entering into resolution? What market communications or notifications to the regulator would be undertaken?

The key decision would be to decide how likely it is that obligations of the Member would be met, and where concerns remain how greater clarity or certainty could be sought, and whether any time delay in meeting obligations would put LME Clear at a material risk. Mobilising internal staff and providing information to the Bank of England and the relevant resolution authority would also be critical, together with reassurances communicated to the broader market that the Member was meeting obligations and LME Clear was able to function effectively.

41. In line with the Key Attributes FMI should regularly test the effectiveness of their relevant rules, contractual arrangements and procedures in responding to a resolution scenario of a participant.

- a) How do you test these contingency arrangements? How do you take participants in resolution into account in those contingency arrangements?

Default management fire drills are used to test the practical application of Rules and provide a test of decision making, attempting to replicate a resolution situation. However, a realistic scenario may be difficult to achieve without coordinated involvement of resolution authorities, regulators and Members.

- b) How do your rules facilitate the transfer of positions of a client of a service user in resolution to another service user of the FMI, as applicable?

This would be treated in the same way as any position transfer by a Member which is not in default. Refer to response to question 38(a) above.

42. How do you test members' readiness of arrangements for meeting increased information and communication requests (beyond those required in BAU) that will be needed prior to and during resolution? Which disclosures do you require from members in this regard?

LME Clear has yet to formally test such a scenario directly with a Member, but believes that a realistic test would also require the involvement of a resolution authority.

43. Please describe any simulation exercises the FMI has held with relevance to continuity of access. Please share examples of scenarios covered and whether such scenarios have been inspired by actual crisis events, and clarify the points below:

- a) Key Objectives/ how it correlates to a real life scenario;

In November 2020 LME Clear ran a fire drill which provided its Board with further understanding of the detail of a potential scenario, to create a decision making exercise for its DMC, and to consider any additions/changes to default procedures as a consequence of the test. LME Clear attempts to add realism and challenge into the scenario and not assume positive outcomes throughout the process.

- b) Frequency;

Quarterly default management exercises, but only occasionally will they be based on a resolution scenario.

- c) Involvement of (large) FMI participants and whether any FMI participants have performed a simulation on their side in parallel;



No, but LME Clear would intend to make this potentially the second step of its resolution exercises.

- d) Involvement of authorities: competent authorities of the FMI, competent authorities of participants, and RAs; and

LME Clear has yet to agree with its CA to undertake this test.

- e) Lessons Learned.

N/A.

44. Are there any further aspects or issues to mention in relation to arrangements and operational processes to facilitate continued access in resolution?

N/A.

