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**15 June 2012**

**CPSS/IOSCO Consultations on the proposed Assessment Methodology and Disclosure Framework for Financial Market Infrastructures**

**Euroclear response**

We are pleased to be given the opportunity to offer Euroclear's<sup>1</sup> views on the CPSS/IOSCO Consultations on the proposed Assessment Methodology and Disclosure Framework for Financial Market Infrastructures ('FMIs').

Euroclear supports not only the global convergence represented by the CPSS/IOSCO Principles that will apply to FMIs, but also the delivery of consistent Disclosure Frameworks for FMIs globally.

**General Comments**

*(i) The Format of the Assessment Methodology*

We note that the proposed assessment methodology (AM) and the disclosure framework (DF) have two different audiences; the first being primarily addressed to regulators and the second to FMIs.

The Consultation notes that "FMIs may have to conduct formal periodic full or partial self-assessments of observance of the principles". However, it is unclear on what basis such a self-assessment should be conducted and whether all CSDs will be required to produce such an assessment. It is also unclear whether the self-assessment should be kept updated by the FMI between the regular assessments by the national authorities (in order to evidence progress in complying with the Principles).

We assume that such a self assessment would need to be undertaken by the FMI using the proposed AM. However, we are concerned at the duplication of effort required if an FMI is required to complete both the DF and an AM (as a self-assessment) on a regular basis. FMI's should not be required to complete both on a regular basis.

*(ii) Convergence with other Questionnaires*

The structure of the proposed AM actually facilitates industry efforts to achieve global convergence of existing disclosure questionnaires (including the Association of Global Custodians (AGC) questionnaire which, in the case of CSDs, partly

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<sup>1</sup> The Euroclear group is the world's leading provider of domestic and cross-border settlement and related services for bond, equity, fund and derivative transactions. User owned and user governed, the group comprises the international central securities depository Euroclear Bank, based in Brussels, as well as the national central securities depositories (CSDs) Euroclear Belgium, Euroclear France, Euroclear Nederland, Euroclear UK & Ireland and Euroclear Finland and Euroclear Sweden. Euroclear also owns Xtrakter, which operates the trade and transaction reporting services.



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overlaps with the CPSS-IOSCO framework). CSDs are already expected to publish a yearly (or at least biannual) update of both the AGC and CPSS-IOSCO disclosure frameworks, which for respondents represents a considerable administrative burden.

Such a burden would be reduced if all disclosures would be consolidated into a single questionnaire to be completed by CSDs on a regular basis, and in a standardised format to allow for easier comparison across countries and over time.

*(iii) The Disclosure Framework*

We support the proposal that an FMI should perform a comprehensive review of its responses (whether through a DF or a Self Assessment, but not both) at least once every two years.

*(iv) CPSS/IOSCO and the EU CSD Regulation*

CSDs in the EU will soon be subject to a Regulation of the European Union which aims to deliver a consistent regulatory playing field for all CSDs within the EU.

It is vital that the supervisory framework within the Regulation is fully consistent with the new CPSS-IOSCO Principles and that CSDs are not subject to duplicate, and potentially inconsistent, regulatory regimes. We would like to avoid a situation in which EU Competent Authorities could choose whether to apply the FMI Principles in addition to the contents of the CSD Regulation.

*(v) Review of the operation of the new Principles*

Given the additional requirements contained in the new Principles compared with the former SSS recommendations, we suggest that a review mechanism should be established in order to assess whether all of the Principles are working in practice, and which key considerations might need to be adjusted, in light of the experience gained in the first year(s) of implementation.

*(vi) Selected RSSS Recommendations*

We note that in Annex C of the Principles (page 141) six Recommendations from the RSSS continue to "remain in effect". However, it is unclear how the AM will apply (if at all) to these six recommendations. CPSS/IOSCO should provide further guidance for FMIs.

**Comments on the DF**

*(i) Transparency and Confidentiality*

We fully support the CPSS-IOSCO recommendation that FMIs should publish their responses to the DF on their websites.

However, we note that in some cases, it could be difficult for FMIs to provide comprehensive responses to the DF without releasing confidential information. This will have to be taken into account for a number of "key elements" of the DF for which FMIs should only be expected to publish a high-level overview.



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## **Comments on the AM**

### *(i) Application of the AM*

The AM (consistent with the Principles) applies some Principles to SSSs, but not to CSDs. As we pointed out in our July 2011 consultation response, this distinction is artificial as these are almost always the same legal entity.

### *(ii) Principle 1*

Principle 1 foresees a number of confirmations relating to the enforceability of "rules, procedures and contracts". The explanatory notes to the Key Considerations give guidance on which rules, procedures or contracts should be the focus of each Key Consideration. We believe this guidance is not appropriately reflected in the AM.

More specifically, question 1.4.1 (enforceability) suggests that a legal opinion should confirm the enforceability of rules, procedures and contracts in case of a participant insolvency. We do not think such a confirmation would be useful nor, more importantly, would it be possible to obtain in practice, for example in relation to the operating rules of an SSS. We would expect insolvency law to give the liquidator the possibility to suspend or terminate such rules, procedures and contracts. We suggest therefore, either to delete the sentence starting with "For example" or to limit the scope of the required confirmation to the relevant default arrangements which the FMI would activate in case of a Participant default or insolvency. This would bring the question in line with Section 3.1.9 of the Explanatory text which expressly refers to close-out, position/asset transfers, collateral and similar default related measures.

We believe a similar clarification is required for question 1.4.3 which refers to avoidance, reversal and stays.

Question 1.4.2 (legal precedence): If any legal precedence could prevent the enforceability of an agreement, we believe this would already have been covered by the relevant opinions discussed in question 1.4.1. Therefore, we propose to delete question 1.4.2.

### *(iii) Principle 9 – Money Settlement*

Principle 9 explains that "An FMI needs to conduct money settlements with or between its participants for a variety of purposes such as the settlement of individual payment obligations, funding ... and the collection and distribution of margin". This Principle is supposed to apply to all SSSs, but not to CSDs (but see comment above for the confusion that this artificial distinction creates). However, we believe that this Principle was drafted in relation to CCPs (and other FMIs) undertaking clean payments, not in relation to CSDs and DVP settlement (whether in commercial or central bank money). As we explained in our July 2011 consultation response, this confusion between clean payments and DVP could be avoided by referring to the nature of the cash settlement asset in DVP settlements. This would assist in being able to interpret how to apply Principle 9 in an environment where the CSD/SSS is a credit institution.



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