

EBA CLEARING comments on the consultative report on recovery of financial market infrastructures and on the accompanying cover note of August 2013 by the Committee on Payment and Settlement Systems (CPSS) and the Board of the International Organization of Securities Commissions (IOSCO)

11th October 2013

EBA CLEARING welcomes the invitation by the CPSS and IOSCO to reply to the consultation on the Recovery of financial market infrastructures.

COMMENTS ON THE REPORT

1. Specific approach for payment systems

EBA CLEARING strongly advocates for differentiation per type of FMI (i.e. in particular a specific set of implementation guidelines for payment systems), thereby clearly distinguishing between FMIs that take on credit risk as principal and those that do not. In that context, a particular concern is that the credit and liquidity management tools of a payment system to address default losses, which are subject to the requirements of the PFMI including in particular Principles 4, 5 and 7, should not be within the scope of recovery planning. The focus of recovery planning for a payment system without a central counterparty is understood to be on operational and business risk affecting the operator of a SIPS (“non-default losses”). Consequently, EBA CLEARING strongly advocates for a clarification in the guidance that, for the purposes of recovery planning of payment systems (“without a CCP”), FMI refers only to the legal or functional entity that is set up to carry out central activities excluding the participants that use the system.

2. Efficiency and effectiveness

FMIs should be promoted to design their recovery plans in such a way that they are usable, effective to maintain, and proportionate to the size and risk profile of the institution. Efficiency and effectiveness of recovery plans would plead for allowing tailor made definitions of the scope and type of recovery tools for the given FMI. Standardisation of guidelines for recovery plans may hinder efficiency.

3. Critical service providers

In the case of the payment systems operated by EBA CLEARING, the continued provision of critical functions includes in particular processing and settlement services by critical service providers. EBA CLEARING strongly advocates that continued availability of services by critical suppliers must stem from a requirement by authorities to enable an FMI to cope with its recovery planning obligations. Contractual arrangements between a private sector FMI and its third-party service providers cannot impose any recovery let alone resolution requirements on such third parties.

4. The start and the end of recovery

With respect to recovery triggers, EBA CLEARING would like to share that the guidance should specify that the setting of (quantitative and qualitative) criteria should be done in consultation and coordination with the FMI's oversight authority.

Clear guidance should be provided on the entry and exit criteria of a recovery regime as well as its scope. FMIs should be given sufficient guidelines to be in a position to determine which events or the execution of which types of measures (depending on the FMI's structure and activities) would place or trigger the entrance of such FMI under recovery. In the same vein, conditions of cessation of a recovery regime as well as required steps to be taken by the FMI's governance and management bodies – in particular in the case implementation of the recovery plan leads to recovery -- should be specified.

Recovery being “in the shadow of resolution”, EBA CLEARING is strongly convinced that the entry into recovery and the end of recovery (which could lead to continuation of activities, wind down and cessation of activities, resolution, insolvency) cannot be triggered by a decision of the FMI and must attract full coordination with and involvement of the overseer and, if different, the resolution authority of an FMI.

Clarification on whether a resolution regime will be put into place for payment systems would be welcomed, in particular having regard to the somewhat divergent approaches by different regulatory and legislative bodies in the field of recovery and resolution planning and regimes. If a resolution regime would apply, EBA CLEARING would wish to see a congruence between the overseer and the resolution authority.

5. Level playing field

Requirements for recovery planning should ensure a level playing field among competing FMIs, including from the perspective of infrastructures deploying activities in SEPA.

A concern is to be noted on the approach of the guidelines for reaching the objective to avoid or mitigate the risk of incentivising bilateral “over the counter” clearing of payments.

Proportionality, in particular as regards capital or similar requirements, would be welcomed when addressing implementation of recovery planning to a specific FMI (e.g. thin versus thick).