EBA CLEARING

# EBA CLEARING comments on the consultative report on Assessment Methodology for the principles for FMIs and the responsibilities of authorities of April 2012 by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organisation of Securities Commissions (IOSCO)

**15 June 2012**

## Introduction

EBA CLEARING welcomes the invitation by the CPSS and IOSCO to reply to the consultation on the CPSS-IOSCO proposed assessment methodology for the principles for FMIs and the responsibilities of authorities (hereafter referred to as "Assessment Methodology").

EBA CLEARING is a privately owned company, incorporated in France, whose shareholders are the participants in the EURO1 system. EBA CLEARING has been formed in 1998. Since the launch of the EURO1 system on the first day of Stage III of European Monetary Union, EBA CLEARING acts as the system operator of EURO1.

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Since 2003, EBA CLEARING also provides the retail payment system STEP2. In January 2008 respectively November 2009, STEP2 services were built for handling bulk SEPA Credit Transfers and SEPA Direct Debits (Core and B2B), which settle in TARGET2 (STEP2-T System). STEP2-T is the Pan-European ACH for bulk payments in the Single Euro Payments Area (SEPA).

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## Comments on the Assessment Methodology

The Assessment Methodology states that it is primarily intended for external assessors at the international level, in particular the IMF and the Worldbank. EBA CLEARING would welcome an insight on the plans of the overseer of the systems it operates regarding the choice between using the Assessment Methodology as is or developing different methodologies for oversight assessments. In that connection, it may be worthwhile to underline that use of different methodologies should not lead to different requirements or different interpretations of requirements stemming from the application of the Principles for financial market infrastructures (hereafter referred to as "PFMIs").

Comments on the Assessment Methodology provided herein should be read to also apply to equivalent methodologies developed by the relevant regulatory, supervisory or oversight authorities.

## 1. Comments solicited on the comprehensiveness of the Assessment Methodology:

There are four areas on which EBA CLEARING would welcome more guidance in the Assessment Methodology, namely:

1. Guidance on the required cooperation between assessors and the to be assessed FMI is of the utmost importance. In particular, we believe that the assessors and the management of the FMI have to work in close cooperation to allow for an efficient and not too burdensome performance of the assessment for both parties. To this effect, the FMI which has to maintain ongoing business during the assessment period must be informed sufficiently in advance of the intended assessment and be provided with a detailed assessment plan including a clear description of the purpose and scope of the assessment (i.e. the system or service of the FMI to be assessed, the list of relevant Principles, key considerations, and key elements, etc.), the timeframe for the different steps of the assessment, etc. This would allow the FMI to prepare for the assessment and dedicate the required staff and means for cooperating with and assisting the assessors without affecting daily business.

2. The Assessment Methodology could usefully be complemented with a clarification that the information collecting process should be such that only information that is relevant should be provided by the assessed FMI.

3. As regards the timeframe for implementing changes in case there are issues of concern, the Assessment Methodology should state that such timeframe shall be set thereby taking into account change cycles and cycles and processes for decision making of the FMI. A FMI should be consulted on the timeframes to ensure these are feasible.

4. We believe that the report should include guidance for assessors' organisational aspects in order to ensure there are Chinese-walls between senior executives and staff carrying out the oversight and supervision functions and, if applicable, senior executives and staff dedicated to the operation of a public sector FMI.

We believe some elements are missing in the Assessment Methodology:

1. The Assessment Methodology should foresee a process to allow the assessed FMI to review the assessment reports in a draft form, to allow for corrections and suggestions.

2. It is noted that no guidance is given on cases where the assessed FMI would not agree with the conclusions or with certain summaries.

3. In case recommendations are provided by assessors, a degree of flexibility should be built in to allow the FMI to consider, if applicable, different means to address the issue of concern at hand, and also to evaluate the recommendation from an efficiency perspective.

4. The Assessment Methodology should be complemented with clear guidance on publication of assessment results. An FMI should be asked for agreement with the text that would be published in the public domain, and should have the right to object to certain information being published. In that connection, insufficient consideration is given to the fact that private sector FMIs, acting in a competitive environment and investing in the know-how and technical, legal, operational and risk design of the systems they operate, have different concerns relating to putting information in the public domain compared to public sector FMIs. EBA CLEARING has no problem with certain information being available in the public domain, but the level of information that is provided publicly should be left at the discretion of the FMI.

## 2. Comments solicited on the clarity of the Assessment Methodology:

EBA CLEARING would wish to point to the following:

1. The Assessment Methodology states that the questions are not intended to be exhaustive and that assessors could, at their discretion, pose additional or different questions as needed depending on the circumstances. EBA CLEARING believes this is a too open ended statement, in particular if this could lead to imposing additional requirements or more stringent requirements compared to the PMFIs, or, as applicable, the PMFIs as implemented by the relevant regulatory, supervisory or oversight authority.

2. The 2 payment systems operated by EBA CLEARING constitute a FMI with cross-border activity. EURO1, the large value payment system of EBA CLEARING, is overseen by the ECB as lead overseer with the voluntary participation by National Central Banks having an interest in the oversight of the system. In that connection, EBA CLEARING would wish to comment that a single set of requirements, in the form of key considerations and key questions, should form the basis of an oversight assessment. This point will also be very relevant if and when the STEP2-T System, catering for the processing of SEPA payment instruments, would become subject to the PFMIs and would become subject to a similar oversight regime.

3. With regard to external assessments to be conducted by international financial institutions out of the scope of the supervision and oversight of the FMI, we would like that clarification is provided on whether the outcome of such external assessments would be binding on the assessed FMI and would be given enforceable effects or taken into consideration by the relevant authority in charge of the supervision / oversight of the FMI. In particular, any room for confusion that could result from different assessments being carried out by different assessors on the basis of different assessment methodologies should be avoided.

4. More guidance and clarity on the assessment of FMI links and the methodology used on a per FMI basis would be welcomed.

5. As to the definition of the assessment perimeter, we would wish that the Assessment Methodology clarifies whether and, if so, which of and to what extent stakeholders are concerned / covered. For instance, participating financial institutions are included in the definition of FMI; would that mean that participants (or participants with the most important volumes or of a critical importance) would also be assessed? Is it intended that shareholders of the FMI are also included in the scope of the assessment? If so, we strongly advocate that it is specified in the assessment plan that will be notified in advance to the FMI.

## 3. Comments solicited on the level of detail in the Assessment Methodology:

The detailed questions call for the following observations on the part of EBA CLEARING:

1. EBA CLEARING would have appreciated that the proposed Assessment Methodology includes specific guidance on the assessment of payment systems such as a multilateral net system without a central counterparty. As previously shared, EBA CLEARING is of the opinion that a list of questions in itself does not provide sufficient guidance on the exact meaning and scope of the requirements the fulfillment whereof is assessed through such list of questions. A separate assessment methodology for each type of FMI would have been appreciated to avoid further interpretation issues and questions on the applicability of any of the key considerations or key elements.

2. If the questions are maintained as they are, room should be left to evaluate whether they are relevant / effective taking into account the specificities of a given FMI. Further, from an efficiency perspective, room should be left to conclude that certain requirements must not be met in the same manner by all FMIs. For specific types of FMI, flexibility should be given in relation to certain requirements the fulfillment of which will not bring any assurance that the initial purpose is reached.

3. Conversely, if the questions are meant to each relate to a requirement that must be met in all cases, more refinement is needed for some of those in that depending on the type of FMI some key considerations could not apply or call for a different focus.

4. EBA CLEARING has major concerns on two approaches that are embedded in the questions, from the viewpoint of a system operator of interbank payment systems:

   (i) For an interbank payment system, the relationships are among the participants and between the participants and the system operator. The relationships with customers should be kept outside of the context of the system, and should be left at the level of the financial institutions participating in the payment system. Communications with customers, and contractual and other relationships with customers should not be brought into the perimeter of the FMI, and this is believed to bring a new type of risk that is not necessary.

(ii) EBA CLEARING strongly believes that putting the rules of a payment system or parts thereof (e.g. default rules) in the public domain attracts risks that are unnecessary. Reference is made to the concerns raised in our reply to the public consultation on the PFMIs, which remain unchanged.

5. Both for EBA CLEARING and its participants, it is of the utmost importance that requirements are clear and predefined. We note that several sets of requirements are developed or being developed (e.g. the disclosure framework, the ECB oversight expectations for links between retail payment systems, the upcoming oversight expectations for stress testing, etc.), which seem to add requirements in addition to those contained in the PFMIs / Assessment Methodology. A clear view on the full set of requirements applicable to a given type of FMI should be provided, preferably in the form of a comprehensive single Assessment Methodology.

EBA CLEARING

# EBA CLEARING comments on the consultative report “Disclosure framework for financial market infrastructures” of April 2012 by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organisation of Securities Commissions (IOSCO)

**15 June 2012**

# Introduction

EBA CLEARING welcomes the invitation by the CPSS and IOSCO to reply to the consultation on the CPSS-IOSCO proposed disclosure framework for financial market infrastructures (hereafter referred to as "Disclosure Framework").

EBA CLEARING is a privately owned company, incorporated in France, whose shareholders are the participants in the EURO1 system. EBA CLEARING has been formed in 1998. Since the launch of the EURO1 system on the first day of Stage III of European Monetary Union, EBA CLEARING acts as the system operator of EURO1.

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The present reply to the consultation is in 2 parts. In the first part, a reply to the specific points raised in the cover note to the report is provided. In the second part, input is provided on a number of major points in relation to which EBA CLEARING requires further clarification or would like to share views.

# Part 1 – Comments on the specific points contained in the cover note to the consultative report

EBA CLEARING would wish to convey the following comments in relation to the points which are the subject matter of the cover note to the consultative report on Disclosure Framework:

We would appreciate it if clarification could be given on whether FMIs would have to prepare and publish separate disclosure framework papers for each of their systems or services (for example, would EBA CLEARING as system operator of the EURO1 System and STEP2-T System[1] have to complete and provide a disclosure framework for each system, or would one covering both systems be sufficient

[1] Should the STEP2-T System become subject to the PFMIs.

considering that such systems pertain to different categories of payment systems and are separately overseen[2]?).

In addition, a clear and detailed description would be required of the key metrics specific to payment systems and that will have to be included in the general description of the FMI.

Furthermore, clarification would also be needed on whether the principle-by-principle narrative disclosure would have to or could be provided at the occasion of the oversight assessment exercise carried out by the relevant overseers of the FMI or should be independently provided and updated.

# PART 2 - Comments on major points and concerns regarding the proposed Disclosure Framework

EBA CLEARING would wish to convey a number of questions and points of concern which will need clarification, amendment or at least adjustment of the Disclosure Framework for each particular type of FMI.

## 1. General comment on the proposed Disclosure Framework:

While fully sharing the public policy objectives defined by the CPSS and IOSCO, EBA CLEARING does not see – in as far as interbank fund transfer systems are concerned -- the value of or the rationale for a transparency beyond the relevant FMI's stakeholders and authorities. The transparency and disclosure requirements have to be tailored to the type, importance, functioning of each FMI, and to the risks incurred or brought by each FMI to its participants and market. In this connection, consideration is also to be given to the fact that certain types of FMI have been and are more regulated and supervised than others; FMIs, such as systemically and prominently important payment systems, have been complying with relevant rules and requirements for the safety and stability of the financial markets in close cooperation with the relevant overseers. EBA CLEARING believes that the current practice as is followed for oversight of systemically important payment systems in relation to disclosure is sufficient and effective and doubts on the appropriateness of the proposed disclosure framework for (interbank) payment systems.

## 2. Comment on upcoming additional disclosure requirements:

Reference is made in the cover note to the consultative report to a set of key quantitative information under development by the CPSS and IOSCO that FMIs will have to provide and which will require more frequent updating than of the Disclosure Framework. EBA CLEARING strongly recommends a consistent and comprehensive unique disclosure program for each type of FMI.

[2] EURO1 is a large-value payment system classified as a SIPS while STEP2-T is a prominently important retail payment system.

## 3. Comment on the requirement for transparency and public disclosure:

As previously commented on the CPSS-IOSCO consultative report of March 2011, EBA CLEARING would like to restate that where disclosure to relevant market participants and to relevant regulatory / supervisory / oversight authorities is fully supported, it is believed that a requirement for public disclosure should be avoided for private sector-owned payment systems. Any requirement for disclosure to the general public of an FMI's strategic or sensitive information (e.g. the system's rules and procedures, admission criteria, suspension and exclusion procedures, default management, pricing, etc.) could entail potential risks for such FMI. Disclosure to third-party entities should be left to the discretion of the management of the FMI. Furthermore, any mandatory disclosure to prospective participants must be submitted to the signature of a confidentiality and non-disclosure agreement.

## 4. Comment on the FMI disclosure template:

EBA CLEARING supports the provision of a general description of the FMI, as currently available on its website[3] which provides substantive information for each of the systems or services it operates as well as the structure and management of the company. However, such transparency should not endanger the protection of the FMI's know-how, methods of doing business, trade and commercial secrets, specifications and technologies, etc. and must only take place provided the integrity of existing intellectual property rights and the protection of confidential information are preserved.

EBA CLEARING believes that the scope of disclosure that is proposed may attract new types of risk which are unnecessary, e.g. mal-interpretation including by non or less knowledgeable recipients of the information contained in the public disclosures that are made, legal risks stemming from reliance on narrative statements paraphrasing the actual legal and other relevant documentation, reliance on statements for making claims which otherwise would not be available, interpretations by the media and related overreactions in the markets, soliciting unwanted behaviour of participants in systems, inviting the markets to test weak points or alleged weak points. In that connection, EBA CLEARING would wish to submit the question what the intended legal effects of the imposed disclosure are, in particular taking into account the care to be taken by an FMI to ensure legal soundness and safety and stability of the systems it operates.

[3] https://www.ebaclearing.eu/