Response of ICE Clear Europe to the CPSS-IOSCO consultation papers concerning the assessment methodology and disclosure framework for the principles for financial market infrastructures

15 June 2012

Introduction

ICE Clear Europe welcomes the opportunity to respond to the CPSS-IOSCO consultative reports issued in April 2012 relating to the principles for financial market infrastructures, as follows:

- The consultative report concerning the assessment methodology
- The consultative report concerning the disclosure framework

ICE Clear Europe is recognised by the U.K. Financial Services Authority (FSA) and is the designated clearing house for ICE Futures Europe, ICE OTC and European credit default swap (CDS) contracts. ICE Clear Europe is also a CFTC-regulated Derivatives Clearing Organization (DCO) and SEC-regulated Securities Clearing Agency (SCA).

We are very supportive of the documentation of exacting global industry-wide principles as set out in the CPSS-IOSCO principles for financial market infrastructures, and believe that standards proposed will make a positive contribution to fostering financial stability. In a similar vein we are supportive of the assessment methodology and disclosure framework proposed.

As we expressed in our responses to previous consultation papers we believe that in a number of cases the level of detail of the principles for FMIs is excessive. Also, the additional cumulative burden on FMIs associated with the formal production of additional documentation and external audit or review of these arrangements will be substantial. This will add considerably to the cost to CCPs, and consequently to the cost of clearing for the CCPs' users. It will also require a considerable elapsed time to prepare such documentation. These concerns are accentuated in both the assessment methodology and disclosure framework documents. However, having already made these points in our previous responses, we have not re-iterated in this response. Instead we have limited our response to particular points specific to the draft assessment methodology and disclosure framework.

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Section 1 - Assessment Methodology

Confidentiality

1.1. Section 3.9 of the proposed disclosure framework states that an FMI should be careful not to disclose confidential information is its response. There should also be a duty for the assessor to protect such confidential information. The assessor will need to review a great deal of such confidential information in order to conduct the assessment. There should be clear arrangements in place to ensure none of this confidential information is disclosed.

Practical considerations in conducting an assessment

1.2 Section 1.4,, sets out a range of people with whom an assessor will need to meet (including regulators, market participants, auditors, etc) when conducting an assessment. It is noticeable that this list does not include management of the FMI. This is clearly an omission.

1.3 Section 1.4 also highlights the importance of the assessor having 'appropriate knowledge and understanding of FMIs'. Given the considerable differences between different types of FMIs, the requirement should be sharpened to require the assessor to have ‘appropriate knowledge and understanding of the type of FMI being assessed'

Rating framework

1.4 In section 2.4, an 'issue of concern' identified by the assessor is defined as *'a risk management flaw, a deficiency, or a lack of transparency or effectiveness that needs to be addressed*'. In order to ensure consistency with definitions elsewhere in the framework, this definition should specifically exclude minor operational matters. In particular, an issue of concern' should be defined as *'a risk management flaw, a deficiency, or a lack of transparency or effectiveness that needs to be addressed, and is not minor, manageable and of a nature that the FMI could consider taking up in the normal course of its business*'.

Expansion of the principles and responsibilities

1.5 The cover note to the consultative documents states that there is no intention to amend or expand upon the principles and responsibilities of FMIs. In general the assessment methodology realises this intention. However, there are a number of cases where the questions included in the assessment request not just that the requisite arrangements are in place, but also evidence that they are having a specified effect. This effectively amends and expands the principles and responsibilities of FMIs. Examples include the following:

a) Principle 10, Question 10.1.4: the assessment requests not just that delivery procedures are documented, but also evidence that participants understand their obligations.
b) Principle 18, Question 18.1.2: the assessment requests not just that access policies are in place, but also evidence that they allow for 'fair and open access'.
c) Principle 23, Question 23.3.2: the assessment requests not just that the FMI documents and trains its participants, but also evidence that this leads to participants understanding of the FMIs rules, procedures and risks.
d) Principle 23, Question 23.4.4: the assessment requests evidence that service definitions are clearly described in a manner that allows for comparability.

Section 2 – Disclosure Framework

The only specific comment relating to the disclosure framework concerns the section entitled '*General instructions for completing the principle-by-principle narrative disclosure*'. Point 3.5 states: *'An FMI should not simply refer to or quote rules or regulations as a response to the disclosure framework*'. There are a number of situations where quoting a rule of the FMI should be a perfectly adequate response. Indeed, if this were not the case, it would be necessary to question whether the rules were sufficiently self-explanatory. Instead, the requirement should read: *'An FMI should not **necessarily** simply refer to or quote rules or regulations as a response to the disclosure framework'*.