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Delivered Electronically

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Re: Response to (1) Disclosure framework for financial market infrastructures and (2) Assessment methodology for the principles for FMIs and the responsibilities of authorities

The Global Financial Markets Association[1] ("***GFMA***") and the International Swaps and Derivatives Association, Inc.[2] ("***ISDA***") welcome the opportunity to submit comments to the Committee on Payment and Settlement Systems ("***CPSS***") and the Technical Committee of the International Organization of Securities Commissions' ("***IOSCO***") regarding two consultative reports related to the CPSS-IOSCO Principles for Financial Market Infrastructures (the "***FMI Principles***")[3]: the Disclosure Framework for Financial Market Infrastructures (the "***Disclosure***

[1] The Global Financial Markets Association (GFMA) brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA. For more information, visit http://www.gfma.org.

[2] ISDA's mission is to foster safe and efficient derivatives markets to facilitate effective risk management for all users of derivative products. ISDA has more than 800 members from 58 countries on six continents. These members include a broad range of OTC derivatives market participants: global, international and regional banks, asset managers, energy and commodities firms, government and supranational entities, insurers and diversified financial institutions, corporations, law firms, exchanges, clearinghouses and other service providers. For more information, visit www.isda.org.

[3] Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, *Principles for financial market infrastructures*, April 2012.

Framework")[4] and the Assessment Methodology for the Principles for FMIs and the Responsibilities of Authorities (the "***Assessment Methodology***").[5]

The FMI Principles make significant advances in promoting effective risk management and a stronger global financial infrastructure that is transparent to participants. For instance, we consider the principle that FMIs that settle linked obligations should eliminate principal risk by making the final settlement of one obligation contingent on the final settlement of the other (Principle 12) to be a key aspect of a more stable global settlement infrastructure. We note that the focus on operational risk under Principle 17 is particularly important in that such risks may be harder to identify and measure than market, credit or other financial risks. And we concur with the approach to links between FMIs taken in Principle 20, which recognizes that the interconnections among FMIs may present a further source of risk. We believe that a project such as the one CPSS-IOSCO has undertaken—to articulate a formal structure for risk management and key operational aspects for FMIs; establish a means for making such a structure transparent; and create consistent international standards to assess compliance—will have the effect of establishing strong foundations for the global financial infrastructure and support long-term stability.

The FMI Principles will only have these effects to the extent they are diligently observed. Transparency to market participants and frequent comprehensive assessments are essential to achieving the goals of the FMI Principles. We are therefore pleased to submit our comments regarding the guidelines set forth in the Disclosure Framework and Assessment Methodology, and we thank CPSS and IOSCO for their work in bringing this project to fruition.

Introduction

As an increasing number of swaps are cleared through central counterparties ("***CCPs***"), both buy-side and sell-side participants in the market will increasingly face CCPs as counterparties instead of each other. In the over-the-counter ("***OTC***") market, participants have had the ability to choose the parties with which they were willing to transact. Historically, they used a number of methods to assess their exposure to the credit of their OTC counterparties and had the ability to require the financial and other information they considered essential to making informed credit decisions. In addition, OTC market participants have been able to negotiate appropriate collateral packages to mitigate credit risks identified through this process and provisions that allow them to react quickly in response to changes in market conditions or a counterparty's credit risk.

To a large extent, however, these tailored practices will not be available in the clearing environment. Counterparties will be obligated by law and regulation to clear many of their swaps and may have very limited choices of venues for clearing. Counterparties that are regulated financial institutions will therefore have to be able to assess the risks of their clearing

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[4] Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, *Disclosure framework for financial market infrastructures*, April 2012.

[5] Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, *Assessment methodology for the principles for FMIs and the responsibilities of authorities*, April 2012.

arrangements, including the effects of such risks on their regulatory capital requirements.[6] It is therefore essential that counterparties be able to obtain sufficient information from CCPs to allow them to make appropriate risk assessments.

We believe enhanced disclosures and careful assessments are also crucial for the other types of FMIs covered by the Disclosure Framework and Assessment Methodology. Such entities play critical roles in settling financial transactions, safeguarding assets and maintaining important records. We believe that clear, comprehensive disclosures about and effective oversight of these entities is essential to the global financial markets.

We commend the steps that the Disclosure Framework and Assessment Methodology take toward promoting transparency and reducing risk. By adopting the FMI Principles and proposing the Disclosure Framework and Assessment Methodology, CPSS and IOSCO have assumed a vital role in promoting the safety and soundness of the global financial infrastructure. Our comments in this letter on the Disclosure Framework focus on further increasing transparency and providing more granular data to market participants. Our comments on the Assessment Methodology generally are designed to facilitate a more comprehensive review by regulators and external assessors under the Assessment Methodology.

One important goal of the Disclosure Framework should be that market participants will be able to compare the risks posed by different FMIs by evaluating standardized information produced through the required disclosures. In order to allow market participants to make such a comparison, however, the Disclosure Framework must supply sufficient direction and guidance to FMIs to ensure that information is disclosed and prepared in a consistent and comparable form. We recognize that the guidelines must be flexible in order to conform to multiple legal regimes, organizational structures and methodologies, and are suggesting a level of granularity that we believe will heighten comparability while still providing adequate flexibility, particularly for CCPs.

Although the purpose of the Assessment Methodology is to promote implementation and ongoing observance of the FMI Principles and not to provide market participants with information about FMIs, we believe that assessment reports will contain information that would be important to market participants. We acknowledge that there is inherent tension between ensuring full and frank communication with regulators and external assessors, on the one hand, and enhancing transparency by making assessment reports widely available, on the other. We request, however, that the Assessment Methodology specify the entities to which the assessment reports must be delivered and require that FMI participants be provided access to such reports through a secure, password-protected or otherwise restricted website. This is especially important for the participants in FMIs that will be providing guarantees, default funds or other financial support to those FMIs. In order to mitigate any concerns regarding inappropriate disclosure or misuse of confidential information included in such assessment reports, we believe participants should be prohibited from using any information from assessment reports for any purpose other than to assess and manage the risks inherent in their relationships with the FMI

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[6] *See, e.g.,* Basel Committee on Banking Supervision, *Capitalisation of bank exposures to central counterparties*, 25 November 2011 (proposing approaches to capitalize both trade risk and default fund risk for clearing members).

and should establish information walls and institute other procedures that they would customarily use to protect confidential information.

In addition, assessment reports on the observance of the responsibilities of central banks, market regulators, and other relevant authorities for FMIs would provide important information about the overall strength of the supervisory framework under which each FMI operates. Some supervisory entities do currently provide "oversight reports," and we suggest that the Assessment Methodology encourage the publication of such reports.

Discussion.

Disclosure Framework.

General. The Disclosure Framework should facilitate disclosures that reflect the following considerations:

- As stated in Principle 23, the disclosure should "provide sufficient information to enable participants to have an accurate understanding of the risks, fees, and other material costs they incur by participating in the FMI";
- Disclosures should be certified by senior management of the FMI and reviewed by the Board of Directors;
- Disclosures should, to the extent feasible, be comparable across entities or segments, as applicable;
- Disclosures should be updated on at least an annual basis with certain aspects updated quarterly or monthly, as described below, and promptly after material changes; and
- Disclosures should be easy to locate, clearly marked and easily accessible through the FMI's website.

To ensure provision of sufficient information and facilitate comparable disclosures, we believe the general instructions and template should be expanded to provide greater clarity regarding how the disclosures should be prepared and how and to whom they should be made. For your convenience, we have attached as Annex 1 to this letter a proposed revision to the introduction, template and general instructions for such disclosures. Some of our key proposed changes include (i) moving the guidance that appeared in the introduction into the general instructions; (ii) adding text detailing the considerations set forth above; (iii) revising Part V of the template to state that FMIs should include in the annex additional publicly available resources and make available to the public all rulebooks, manuals, charters, bylaws and similar governing documents; (iv) adding instructions to prepare disclosures on a system-by-system or segment-by-segment basis, as well as aggregate disclosures, for FMIs that offer multiple services

and CCPs that clear a range of different product types and (v) including instructions to post these disclosures to the FMI's website.[7]

Updating Disclosures. The Disclosure Framework specifies that both the narrative disclosure and the key metrics should be updated following material changes to an FMI's system or its environment and that an FMI should, in any event, perform a comprehensive review of its responses to the Disclosure Framework to ensure they are up to date at least every two years.[8] However, financial disclosures will not be useful if only updated once every two years. Moreover, requiring general updates only every other year may reduce the usefulness of the disclosures. In order to ensure that market participants have up-to-date information, we believe that, in addition to prompt updates for material changes, FMIs should review and update all disclosures on an annual basis. Moreover, we believe that CCPs specifically should update disclosures regarding key metrics, including the information requested in Annex 2, and other key financial information on at least a monthly or quarterly basis.[9]

Principle-by-Principle Narrative.[10] We believe that the Disclosure Framework should in general provide more specific guidance to FMIs with respect to the principle-by-principle narrative. In the bullet points below, we describe several ways that we believe the guidance should be expanded or supplemented in order to ensure that disclosures are clearer, more detailed, and more consistent:

- Principle 1 (Legal basis). An FMI should (i) disclose whether it has obtained legal opinions regarding key aspects of the FMI's activities or operations, and the dates of those legal opinions; (ii) specify whether those legal opinions confirm the enforceability of the FMI's rules and procedures; (iii) make available copies of such legal opinions to participants; and (iv) state whether participants can rely on those opinions. The FMI should identify any legal regimes under which it is registered or that otherwise apply to it, describe how it complies with those legal regimes, and describe potential risks or consequences of failure to maintain full compliance. FMIs should disclose the applicable

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[7] In many circumstances, we have also identified further information or detail that we consider specific to CCPs. We believe it may be helpful to include a separate Annex 3 that could contain additional questions and instructions for CCPs that are linked to certain Key Elements in Annex 1 and that are designed to provide additional guidance and requirements to CCPs in preparing their narrative disclosures, without having to make CCP-specific modifications to the Key Elements in Annex 1. Some of the information currently requested by Annex 2 that is more narrative in nature, such as policies on investment risk and segregation disclosures, could then be requested under the new Annex 3, and the items in Annex 2 could be limited primarily to numerical, statistical or similar information whose disclosure would be required on a quarterly or monthly basis. We have not, however, tried to craft the additional Annex 3 for purposes of this letter.

[8] *See* Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, *Disclosure framework for financial market infrastructures* at 2, April 2012.

[9] See section regarding Key Metrics below for further discussion about updating the key metric disclosures.

[10] We note that the Key Elements throughout the Disclosure Framework (and Assessment Methodology) are confusing in that they occasionally require both "identification" and "disclosure" of information, and sometimes one or the other. For example, the Key Elements to Principle 2 require, among other things, "Identification of the governance arrangements under which the board and management operate" and also "Disclosure of the identified governance arrangements."[10] It is not clear how, exactly, these are different. Instead of "identify" or "disclose," we recommend that the Key Elements use the words "describe" or "provide."

resolution procedures that would be expected to apply to them and how they would be resolved or unwound if necessary.

- Principle 2 (Governance). FMIs should be required to identify their directors and explain those directors' qualifications; identify each committee of their boards and the directors who serve on each such committee; identify the responsibilities and roles of each committee; describe how often their boards of directors as a whole meets; describe how often each committee meets; and describe the policies and procedures they have in place to mitigate conflicts of interest involving members of their boards or any such committees. In connection with Key Consideration 7 to Principle 2, FMIs should identify whether and to what extent they seek stakeholder opinions through roundtables or any other type of open communication and, in particular, whether and to what extent they consult with market participants before implementing rule changes. Finally, FMIs should include organizational charts in their disclosures.

  In addition to the foregoing requirements that should apply to all FMIs, CCPs should be required to provide further disclosures regarding their risk committees. CCPs should describe the composition of their risk committees and provide copies of their risk committee charters and any policies and procedures that apply to them. They should also describe the responsibilities and role of their risk committees. Additionally, CCPs should disclose whether their risk committees are board or advisory committees and whether their members have a fiduciary duty to the CCPs. The CCPs should describe how they select members of their boards and risk committee(s) and the length of their terms.

- Principle 3 (Framework for the comprehensive management of risk). In addition to the disclosures that should apply to all FMIs, CCPs should be required to identify the senior members of their risk management teams and their qualifications, describe the role of the risk management teams, and disclose information about the CCPs' emergency powers, including the conditions under which it may exercise emergency powers. CCPs should also disclose the types of models they use in assessing risks and the types of risks tracked by those models, describe the types of risk limits that have been established (*e.g.*, limits on clearing members or limits on types of exposures), explain the processes for monitoring compliance with risk limits and backtesting risk assumptions, and describe the process, if any, for overriding risk limits (and how the CCPs will ensure that their override processes are not subject to conflicts of interest that may compromise risk management in a mandatory clearing environment).

- Principle 4 (Credit risk). CCPs, securities settlement systems ("***SSSs***") and payment systems ("***PSs***") should describe how they assess, monitor and collateralize the credit risk of their participants, counterparties, custodians and others to whom they have credit exposure. Importantly, they should also describe how losses are allocated in the event of a shortfall (*i.e.*, whether they are allocated out and, if so, to whom) in a way that fully satisfies the information required in Explanatory note 3.4.25 under Principle 4 of the FMI Principles. They should also describe their basis for concluding whether Cover 1 or Cover 2 applies to them. CCPs, SSSs and PSs should also disclose information regarding their interoperability agreements (if any), and make publicly available the agreements themselves. Disclosures should address how risks arising from an interoperable link are

managed, including what actions would be taken in the event of the default of a CCP, SSS or PS with which they have an interoperable arrangement, and what impact such a default would have on the (solvent) CCP's, SSS's or PS's participants. Additionally, CCPs should disclose what assumptions on close-out or portability are made when stress-testing clients' positions (*i.e.*, whether all, some, or no client positions are included in the stress-testing exercise and default fund sizing).

- Principle 5 (Collateral). CCPs, SSSs and PSs should describe, for both house and client collateral:
    - the method used for transferring cash and securities (*e.g.*, pledge or title transfer);
    - details regarding the operational structure of collateral accounts, such as whether their collateral accounts are held on an omnibus or segregated basis and whether collateral is required on a gross or net basis;
    - what assets are considered to be eligible collateral and any standard haircuts applicable to such assets;
    - the method employed by the CCP to set haircuts, under what circumstances those haircuts would change, how the CCP communicates changes and how it addresses potential procyclical effects;
    - whether client collateral is segregated from or commingled with the CCP's, SSS's or PS's own assets; and
    - their legal certainty with respect to the segregation of collateral from the assets of settlement banks/custodians.

- Principle 6 (Margin). CCPs should describe the results of any reviews regarding their initial margin models, including the review's scope, results, recommendations and any changes made as a result of the review. CCPs should also describe the frequency and summary results of their backtesting of ***current*** positions against confidence levels established by the Board of Directors (or similar governing body) or risk committee.[11] CCPs should also describe how, if at all, they mitigate the impact of their intraday variation margin calls on the liquidity of their participants.

- Principle 7 (Liquidity risk). CCPs, SSSs and PSs should describe their liquidity resources, including assessing their stock of high quality liquid assets and their procedures for maintaining that stock, describing any encumbrances on such assets, evaluating their additional liquidity resources, assessing the reliability of those resources at times of market stress, and assessing the sufficiency of their liquidity resources to cover an extended liquidity crisis. They should describe whether they have committed liquidity facilities, the nature of the liquidity provider (*e.g.*, central bank or commercial bank), any conditions to draw that may compromise the viability of such facilities as contingent liquidity, and the amount of such facilities. They should also describe their basis for concluding whether Cover 1 or Cover 2 applies to them.

[11] Maintaining ongoing records of potential losses of historical positions against historical margins is not backtesting, and does not indicate the adequacy of the CCP's current margin methodology for the clearing the members' current cleared positions.

- Principle 8 (Settlement finality). Each FMI should disclose (i) which BIS DvP settlement model it uses; (ii) how the FMI informs participants of final account balances; (iii) what the time lag is between the revocation point and the point of settlement finality and (iv) in the case of settlement procedures involving links to other FMIs, how and when settlement finality is ensured.

- Principle 12 (Exchange-of-value settlement systems). FMIs should be directed to provide diagrams and flowcharts illustrating the settlement process and the timing of each step in the process.

- Principle 13 (Participant-default rules and procedures). In addition to the disclosures that should apply to all FMIs, a CCP should be required to disclose how margin is applied in the event of a customer or clearing member default, any segregation or legal aspects to the CCP's treatment of margin that mitigate or enhance fellow customer risk, the order in which resources will be used (*i.e.*, the waterfall), whether the CCP has the right to make further assessments against its participants and any limits on such assessment rights, the role of the default fund or other resources, the circumstances in which the CCP's own capital will be applied, and the circumstances in which the CCP's own capital will *not* be applied (including any limitations on liability that the CCP may have). Finally, all FMIs should provide a general description of what would happen to customer and participant funds if the FMI were to default and whether, in the event of a participant's bankruptcy, other participants would potentially be liable to cover shortfalls even if they withdraw before they are called upon to contribute.

- Principle 14 (Segregation and portability). Disclosures as to whether clients are protected against simultaneous default of clearing member and fellow clients should be made in the narrative principle-by-principle disclosure, rather than as part of the key metrics disclosures required by Annex 2.

- Principle 15 (General business risk). FMIs should be required to provide annual audited financial statements, including an audit report in accordance with SAS 70 standards, quarterly unaudited financial statements and annual independent assessments of their internal controls over financial reporting requirements.

- Principle 16 (Custody and investment risks). FMIs should be required to disclose the criteria used to determine which specific entities the FMI uses to hold assets and cash of participants and their customers (without identifying any of the FMI's participants or customers),[12] the processes that the FMI uses to ensure proper segregation of custodial assets and cash on the books and records of the custodian, any legal regimes that would potentially constrain access to custodial assets and cash in the event of an insolvency of the custodian and whether or not each custodian is independent from the FMI. Additionally, FMIs should provide specific information about their investment policies such as restrictions on re-use of customer collateral.

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[12] FMIs should also not be required to disclose the identity of any counterparty to a repurchase agreement when disclosing custodial entities.

- Principle 18 (Access and participation requirements). FMIs, and CCPs in particular, should explain how they ensure that their capital reserves are sufficient to cover risk posed by new participants. FMIs should also demonstrate how they satisfy the requirements of Explanatory note 3.8.15 regarding risk-related participation requirements. Finally, CCPs should describe their requirements for new participants in connection with the default management process and the diligence performed by the CCP with regard to these requirements.[13]

- Principle 23 (Disclosure of rules, key procedures, and market data). In addition to other disclosures discussed above, CCPs should disclose any standard terms that apply to particular cleared products and describe any system or operational aspects that differ for different cleared products.

Key Metrics. In addition to the metrics already listed in Annex 2, we believe a CCP should provide monthly disclosures on a public website of aggregate information about its open positions and a valuation for its positions. The aggregate information should be tailored to individual product types so that CCPs disclose the gross notional value of cleared trades and notional value of net open positions for OTC products and the notional value of net open positions (open interest) for futures. For securities, CCPs should provide the market value of open trades and daily settlement value.

Finally, we believe that the description of the key metrics currently identified in Annex 2 should be revised to reflect the following concerns and should be updated at least monthly unless otherwise specified:

- Initial Margin
    - *Total non-cash collateral held* – this should be split out by type of security and method of transfer;
    - *Proportions of non-cash collateral held by collateral type* – the term "collateral type" should be further defined;
    - *Frequency of routine initial and variation margin collection* – this item could be moved to Annex 3, which could instruct that it be addressed in the relevant narrative disclosure required by Annex 1. Additionally, this item should include both intraday and end of day times;
    - *Number of non-routine margin calls over last 12 months* – this should be updated monthly on a 12-month rolling basis;
    - *Value of routine margin collection vs. non-routine margin calls over last 12 months* – same comment.
    - *Summary description of margin methodology and representative list of factors that would cause margin requirements to change. Should include summary of netting arrangements across positions / products* – this item could be moved to Annex 3, which could instruct that it be addressed in the relevant narrative

[13] We believe that new CCP participants must have the operational capacity and resources (including personnel with relevant expertise) to be able to quickly analyze, develop and execute on a plan for disposing of a portfolio of a defaulting fellow participant.

disclosure required by Annex 1 (*i.e.*, Principle 6). However, we strongly urge CPSS-IOSCO to require CCPs, whether in Annex 1, Annex 2 or (preferably) both, to provide details of their initial margin back-testing methodology and the results of their back-tests. Importantly, CCPs should be required to explain how their default management plan meets the appropriate confidence level based on the CCP's current positions.

- Default fund
    - *Size of pre-paid DF, including any segmentation by, e.g., type of product* – CCPs should update this disclosure whenever their default funds are resized, and this description should clarify whether "pre-paid" means "funded";
    - *Discussion of ability to call additional contributions from participants* – this item could be moved to Annex 3, which could instruct that it be addressed in the relevant narrative disclosure required by Annex 1 and that a CCP disclose the amount of additional contributions that may be called;
    - *Explanation of the specific stress test or series of tests from which the size of the DF was derived. (Implicitly, more severe tests would result in losses beyond the default capabilities of the CCP)* – this item could be moved to Annex 3, which could instruct that it be addressed in the relevant narrative disclosure required by Annex 1. We also believe that the parenthetical should be clarified;
    - *Results of simple standardized stress tests, e.g., parallel shift in relevant curves* – this should be broken out for various types of stress tests;
    - *Frequency of stress testing, backtesting and model reviews/validation* – this item could be moved to Annex 3, which could instruct that it be addressed in the relevant narrative disclosure required by Annex 1. We also believe that this item should clarify that "backtesting" is for initial margin and "model reviews" are for both initial margin and default funds.

- Capital
    - *Capital / own funds* – this should include several specific questions regarding the quality as well as the amount of capital and the types and amounts of assets held by the CCP representing such capital.

- Investment risk
    - *Policy on how margin and default fund invested* – this item could be moved to Annex 3, which could instruct that it be addressed in the relevant narrative disclosure required by Annex 1 and that CCPs disclose whether returns on invested collateral will be provided back to participants;
    - *Summary details of investments held at the CCP's own risk* – a standard report should be created for this disclosure;
    - *Summary measure of interest rate and fx risk in the investment portfolio* - a standard report should be created for this disclosure.

- Liquidity risk – CCPs should also evaluate the quality of their liquidity resources at a time of market stress. This item could be moved to Annex 3, which could instruct that it be addressed in the relevant narrative disclosure required by Annex 1.

- Segregation arrangements

    - *Whether clients are protected against simultaneous default of clearing member and fellow clients* – this item could be moved to Annex 3, which could instruct that it be addressed in the relevant narrative disclosure required by Annex 1. We also believe that the field should ask more granular questions regarding customer collateral protections. For example, CCPs should identify whether they can use non-defaulting customer funds to cover fellow-customer shortfalls, whether customer funds are individually segregated, and whether any specific bankruptcy rules would affect customer protections.

Assessment Methodology.

The Assessment Methodology provides a way to evaluate an FMI's observance of the FMI Principles. We believe that frequent internal and external reviews provided for by the Assessment Methodology will be helpful in reducing the risk posed by central counterparties. We note, however, that the Assessment Methodology does not specify the frequency with which assessments should be performed (by an FMI itself, national authorities or external assessors). Instead, Section 1.1 merely states that FMIs "may have to" periodically conduct self-assessments and that national authorities are "expected" to "regularly assess" FMIs.[14] We believe that, without frequent internal and external compliance reviews, FMIs will be more likely to fail to observe the principles and responsibilities dictated by the FMI Principles. We therefore believe that internal and external assessments should be mandatory, and that national authorities and FMIs should be required to conduct these assessments on at least an annual basis.

Additionally, while we appreciate the inclusion of timeframes for addressing any identified concerns,[15] we believe that the Assessment Methodology must prescribe a method for ensuring that these concerns are, in fact, addressed. In this regard, the Assessment Methodology should require recommendations to include a date for follow-up testing and should mandate that follow-up testing (by regulators, external assessors or the FMI, depending on who identified the relevant concern) actually occurs.

Similarly, in order to ensure that any potential problems identified during the assessment process are actually resolved, we urge CPSS-IOSCO to require that any material concerns be reported to the Financial Stability Board (the "***FSB***"). Additionally, we believe that the FSB should function as a centralized repository for all assessment reports by national authorities, evaluating such reports for consistency and providing external oversight with respect to developing issues. We also suggest that the Assessment Methodology include clear instructions for national authorities, as well as the International Monetary Fund and the World Bank (both of whom will function as external assessors under the Assessment Methodology), as applicable, to

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[14] *See* Assessment Methodology, p. 1.

[15] *See id.* at 11.

bring promptly to the attention of the FSB any issues with respect to an FMI or the oversight of the FMI that warrant the FSB's attention.

We also believe that the Assessment Methodology should identify how the assessment reports will be used. These reports will contain information that will be critical for regulators and market participants using FMIs. We therefore believe that all assessment reports (whether generated by FMIs or regulators) should be available to regulators and (although we earlier noted the inherent tension in such a requirement), to market participants that use the FMI in question. Assessments should also include a date range for the period of time that was reviewed.

Finally, we believe that the Assessment Methodology would further reduce risk if assessors were required to ask more granular questions and if the Assessment Methodology imposed more specific standards on FMIs. In this regard, below we provide several specific changes that we believe should be incorporated:

- Table 2 in Appendix 1 should identify the "Relevant parties" by name, title, and/or organization and should identify the reviewing authority (if applicable) by agency name;

- Table 2 in Appendix 2 should include a date for follow-up testing (*i.e.*, when the recommended action must be completed or implemented);

- Question 1.1.1 under Principle 1 (Legal basis) should specifically ask about legal certainty with respect to the following activities or operational aspects: (i) settlement finality; (ii) netting; (iii) interoperability (if applicable); (iv) immobilisation and dematerialisation of securities; (v) arrangements for DvP, PvP, or DvD; (vi) collateral arrangements (including margin arrangements); and (vii) default procedures;

- Question 1.1.3 under Principle 1 should require an assessor to ask: (i) whether the FMI has obtained any legal opinions regarding material aspects of the FMI's activities (and identify the date of those legal opinions);[16] (ii) whether those legal opinions confirm the enforceability of the FMI's rules and procedures; and (iii) whether the FMI has disclosed those legal opinions to market participants;

- Principle 2 (Governance) should require board members to have sufficient expertise in financial services and clearing services, and an assessor should question whether the board has identified an appropriate level of risk tolerance;

- Key Consideration 2.7 in Principle 2 should assess whether and to what extent the FMI involves its stakeholders in the risk management process by, for example, including participants in risk management committees or default management groups, publishing draft procedures for consultation or otherwise seeking participant input;

[16] We note that Question 1.1.3 refers to "the legal opinion(s)/analysis(es)," but it is not clear which legal opinions or analyses this reference relates to. We believe that modifying question 1.1.3 as described above would eliminate any confusion.

- Question 4.5.2 under Principle 4 (Credit risk) asks how stress-testing results are communicated to "relevant parties." We believe that assessors should additionally ask who the relevant parties are for purposes of this question;

- We suggest modifying Question 7.7.2 under Principle 7 (Liquidity risk) by adding at the end of the question: "including under stressed circumstances";

- Principle 8 (Settlement finality) should be modified in the following ways: (i) in connection with Key Consideration 8.1, an assessor should ask which BIS DvP settlement model the FMI uses; (ii) Question 8.2.5 should ask how the FMI informs participants of final account balances; and (iii) in connection with Key Consideration 8.3, an assessor should ask what the time lag is between the revocation point and the point of settlement finality and, in the case of settlement procedures involving links to other FMIs, how and when settlement finality is ensured;

- In connection with Key Consideration 11.6 to Principle 11 (Central securities depositories), we believe that, if a CSD engages in activities other than central safekeeping and administration of securities and settlement, an assessor should ask whether the CSD legally separates those activities from each other and, if so, how;

- Question 13.3.1 under Principle 13 (Default rules and procedures) should ask whether the FMI's default rules are only disclosed to regulators or if they are also publicly available[17];

- Question 17.6.1 under Principle 17 (Operational risk) should ask what "wide-scale or major disruptions" the FMI's business continuity plan assumes; and

- In connection with Key Consideration A.1 to Responsibility A, relevant authorities should state whether or not they publicly publish an oversight report that provides information about the ratings for regulated FMIs.

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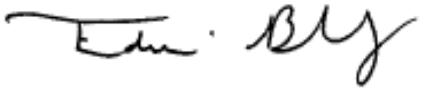
Thank you again for the opportunity to comment on the Disclosure Framework and Assessment Methodology. We would be pleased to discuss any of these comments in further detail, or to provide any other assistance that would help facilitate your review and analysis.

[17] Please note that we believe default rules should be publicly available.

Sincerely,



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International Swaps and Derivatives
Association, Inc. (ISDA)

Annex 1

1 Introduction

Clear and comprehensive disclosures by financial market infrastructures (FMIs) support sound decision making by market participants, authorities, and the public. Such disclosures also support the main public policy objectives of the CPSS and IOSCO to enhance the safety and efficiency in payment, clearing, settlement, and recording arrangements, and more broadly, limit systemic risk and foster financial stability and transparency.

This disclosure framework was prepared to supplement the CPSS-IOSCO *Principles for financial market infrastructures* (PFMI report) and to assist FMIs in providing the comprehensive level of disclosure that is expected of them under Principle 23 on disclosure of rules, key procedures, and market data.

This disclosure framework was prepared in connection with the CPSS-IOSCO *Assessment methodology for the principles for FMIs and the responsibilities of authorities* to ensure a common framework for disclosure and assessment that will reduce burden on FMIs and provide assessors with a basic set of information from which to begin their assessments of FMIs.

2 FMI disclosure template

In order to facilitate the comparison of FMIs, an FMI's disclosure should follow the structure outlined below. The general instructions set forth below apply to all disclosures pursuant to this template.

Responding institution: *[name of FMI]*
Jurisdiction: *[name of primary regulator(s)]*

The information provided in this disclosure is accurate as of *[date]*. This disclosure can also be found at *[website address]*. For further information, please contact *[contact details]*.

I. Executive summary

II. General description of the FMI: (a) organization; (b) market(s) served; and (c) key metrics

A. General description

An FMI should provide basic, concise descriptions of the services offered and functions performed by the FMI. A clear description of the typical lifecycle of the transaction clearing and settlement process under normal circumstances may also be useful for participants and the public. The information should highlight how the FMI processes a transaction, including the timeline of events, the validation and checks to which a transaction is subjected, and the responsibilities of the parties involved.

B. Key metrics

An FMI should provide key metrics of its services and operations. For example, an FMI should provide basic volume and value statistics by product type, average aggregate intraday exposures of the FMI to its participants, and statistics on the operational reliability of the FMI's systems. An FMI should also provide statistics related to the

financial resources it holds to meet the requirements of the PFMI report. For CCPs, a detailed list of key metrics is provided in Annex 2.

III. Summary of major changes since last update

An FMI should provide a summary of changes since its last disclosure to highlight any material changes and updates to the FMI's design and services.

IV. Principle-by-principle narrative disclosure

An FMI should provide a narrative response for each applicable key consideration with sufficient detail and context, as well as any other appropriate supplementary information, to enable the reader to understand the FMI's approach to or method for observing the principles. Cross-references to publicly-available documents should be included, where relevant, to supplement the FMI's discussion. Section 3 and Annex 1 provide specific guidance on the expected content of an FMI's narrative responses. [Annex 3 provides additional specific guidance and instructions that a CCP should follow in preparing its narrative responses.][18]

V. Annex of additional publicly available resources

The annex of additional publicly available resources must include all rulebooks, manuals, charters, bylaws and similar governing documents. Any amendments to such materials must be posted promptly after adoption. If not apparent on its face, the nature of the amendment should be described.

3 General instructions for completing the template

1. All disclosures should be prepared in accordance with the standards set forth in Principle 23, including by providing sufficient information to enable participants to have an accurate understanding of the risks, fees, and other material costs they incur by participating in the FMI In particular, FMIs should provide responses that are thorough and at an appropriate level of detail in order to:

   (1) provide substantive descriptions of key risks, policies, controls, rules, and procedures on a principle-by-principle basis, as required by Principle 23;

   (2) provide current and prospective participants, other market participants, authorities, and the general public with a comprehensive understanding of the FMI, its role in the markets it serves, and the range of its relationships, interdependencies, and interactions (for example, its key links, key service providers, and participants); and

   (3) improve transparency of FMI governance, risk-management, and operating structure in order to inform and facilitate comparisons among FMIs by current and prospective participants, other market participants, authorities, and the general public.

2. An FMI should provide a comprehensive narrative disclosure for each key consideration for each relevant principle, including the key elements listed in the assessment methodology under each key consideration. For the disclosure to be considered complete, the FMI's response must cover at a minimum all of these key elements.

[18] Annex 3 would set forth additional guidance and instructions that would be followed by CCPs in preparing their narrative disclosures, in order to elicit more granular detail, as discussed in footnote 7 above.

Descriptions of the key considerations and key elements, including guidance on necessary detail, are included below in Annex 1 [and Annex 3].

3. FMIs that offer multiple types of services, or comprise multiple infrastructure systems or business segments (such as an FMI that acts as both a CSD and an SSS) should provide separate disclosures for each service, system or segment and aggregate disclosures for all such services, systems and segments. CCPs with separate clearing systems for different product types should also prepare their disclosures separately for each clearing system and on an aggregate basis for all such clearing systems. Disclosures should be presented in a format that will facilitate comparison across affiliated legal entities and across services, systems or segments for such entities.

4. Disclosures must be certified by the FMI's Chief Executive Officer, Chief Accounting Officer or Chief Financial Officer, as applicable. All disclosures should be reviewed by the FMI's Board of Directors or equivalent governing body.

5. The applicability of each principle to particular types of FMIs is indicated in Annex 1 by the dots in the tabs attached to the headline principles. Disclosures described in Annex 2 [and Annex 3] are required only for CCPs.

6. Charts and diagrams should be included wherever they would be helpful. All charts and diagrams should be accompanied by a description that enables them to be easily understood.

7. In cases where multiple responses to a question are needed, for example if an FMI offers multiple types of services (such as, an FMI that acts as both a CSD and SSS), the FMI should provide a response covering each service and indicate the extent to which each response is relevant.

8. An FMI should not simply refer to or quote rules or regulations as a response to the disclosure framework. As a supplement to a response, however, an FMI may indicate where relevant rules or regulations may be found.

9. When addressing the timing of events, an FMI should provide responses relative to the local time zone(s) where it is located.

10. An FMI should update its responses to the disclosure framework following material changes to the system or its environment. General disclosures should be updated at least annually and promptly after any material change, financial disclosures should be updated at least quarterly, and metrics should be updated monthly unless otherwise indicated.

11. All disclosures should be made on the FMI's public website describing the services it offers, by way of a clearly labeled and highly visible link on the website's home page. If the FMI has more than one such website, the disclosures may be consolidated in a single location but each website should contain a clearly labeled and highly visible link on the website's home page to such location.