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To CPSS Secretariat e-mail cpss@bis.org
IOSCO Secretariat e –mail fmi@iosco.org

Subject*:** ***CPSS/IOSCO Principles for Financial Market Infrastructures
Consultative report - Assessment methodology for the principles for FMIs and the responsibilities of authorities – April 2012
Consultative report – Disclosure framework for financial market infrastructures – April 2012

Dear Sirs,

The TARGET Working Group (TWG) would like to thank CPSS and IOSCO for taking on board many of the comments we made on the original consultative report and for the opportunity to comment on the two new consultative reports dated April 2012.

The TWG represents the European payments industry in discussions with the ECB/Eurosystem on issues relating to the TARGET 2 payment system. Consequently, the remarks in this note are restricted to payment systems and no comment is offered in relation to other types of FMIs.

We consider both of the new reports to be comprehensive and have just the three sets of comments provided below.

Scheme and infrastructure

In Annex H of the PFMI report, financial market infrastructure (FMI) is defined as:

"A multilateral system among participating institutions, including the operator of the system, used for the purposes of clearing, settling, or recording payments, securities, derivatives or other financial instruments."

It is assumed, therefore, that where an FMI comprises two separate legal entities, one responsible for managing the scheme and one the infrastructure, the definition is intended to cover both of them. However, it is noted that Appendix 4 to the Assessment Methodology consultative report states in Responsibility A that authorities should clearly define and publicly disclose the criteria used to identify FMIs that should be subject to regulation and oversight by a central bank, market regulator, or other relevant authority. However, it is not clear whether when there are divided responsibilities this is intended to relate solely to the Scheme or to both the Scheme and Infrastructure. If only the

Scheme, is that body required to enter into legally binding contracts with the Infrastructure in respect of services provided by the latter. If so would such indirect control satisfy the requirements of the FMI Principles.

Two instances of where both entities are affected are Principle 2 Governance and Principle 15 General Business Risk. These are, of course, only high level examples and there are potentially a number of more specific issues dependent on the split of activity between Scheme and Infrastructure.

Consequently, it is recommended that guidance is provided on how authorities should categorise FMIs whose functions are split between two separate legal entities.

Questions re public sector – owned FMIs

Section 1.3 of the Assessment Methodology consultative report states inter alia, that:

- *public sector FMIs are out of scope of some assessment questions and require specific guidance under a few principles and responsibilities.*
- *appropriate questions have been formulated to help assess observance by public sector – owned FMIs for Principles 2 – 15 – 21 and Responsibility D.*

However, it is not clear which questions are out of scope for public sector FMIs. Also, apart from questions 2.1.4 re financial stability and 2.1.5 re public interest considerations, it is not clear which questions have been formulated to help assess observance by public – sector owned FMIs. Indeed, the questions relating to Responsibility D appear to be directed to relevant authorities, not FMIs themselves.

Clarity in the documentation with regard to both points would be appreciated.

Disclosure framework

Section 1.23 of the PFMI report states, inter alia,

"*However, there are exceptional cases where the principles are applied differently to FMIs operated by central banks due to requirements in relevant law, regulation or policy. For example, central banks may have separate public policy objectives and responsibilities for monetary and liquidity policies that take precedence. Such exceptional cases are referenced in (a) Principle 2 on governance, (b) Principle 4 on credit risk, (c) Principle 5 on collateral, (d) Principle 15 on general business risk and (e) Principle 18 on access and participation requirements. In some cases, FMIs operated by central banks may be required by the relevant legislative framework or by a central bank's public policy objectives to exceed the requirements of one or more principles.* "

This is recognised but the first paragraph of the Introduction to the Disclosure Framework consultative report reads

"*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.

In order to comply with these comments, it is suggested that where central banks are applying over-riding public policy objectives, this should be noted in the report of the relevant authority including, where possible, a brief description of the applicable public policy.

Yours sincerely,

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