

15 June 2012

Secretariat
Committee on Payment and Settlement System
Bank for International Settlements
Sent by e-mail to cpss@bis.org

Secretariat
Technical Committee
International Organization of Securities Commissions
Sent by e-mail to fmi@iosco.org

**Response to the Consultative Documents “Assessment methodology for the principles for FMIs and the responsibilities of authorities” and “Disclosure framework for Financial Market Infrastructures”
from Japan Securities Clearing Corporation (JSCC)**

Dear Secretariats,

Following the consultative process on Principles for Financial Market Infrastructure (hereinafter “PFMI”) last year, Japan Securities Clearing Corporation (hereinafter “JSCC”) appreciates the opportunity to comment on the two additional consultative documents “Assessment methodology for the principle for FMIs and the responsibilities of authorities” (hereinafter “AM”) and “Disclosure framework for Financial Market Infrastructures” (hereinafter “DF”) proposed on 16 April 2012 by Committee on the Payment and Settlement System and Technical Committee of the International Organization of Securities Commissions.

JSCC would like to comment on issues regarding Principle 1, 5 and 13 on the AM and regarding Principle 7 on the DF as follows.

1. Comment on Q1.1.3 (Principle 1, AM)

Q.1.1.3: What is the legal framework and how does it provide a high degree of legal certainty for each material aspect of the FMI’s activities in all relevant jurisdictions? Do/Does the legal opinion(s)/analysis(es) examine all relevant legal aspects regarding the different perspectives (for example, the FMI’s perspective or the participant’s perspective)?

JSCC thinks it is appropriate to have a legal framework providing a high degree of

legal certainty for each material aspect of its activities. JSCC suggests that, however, the AM should leave assessors' discretion to determine the level of observance of this principle taking characteristics of the jurisdiction subject for the assessment into consideration. This is due to the meaning and importance of legal opinion differing based on characteristics and the written law of the individual jurisdiction. Hence, it is impractical to establish a unified requirement for obtaining legal opinion in each of them.

2. Comment on Q5.6.1 and Paragraph 3.5.10 of PFMI (Principle 5, PFMI and AM)

Q.5.6.1: How, and to what extent, does the FMI track the reuse of collateral and the rights of the FMI to the collateral provided, and accommodate the timely deposit, withdrawal, substitution, and liquidation of collateral?

PFMI Paragraph 3.5.10: ~In general, an FMI should not rely on the reuse of collateral as an instrument for increasing or maintaining its profitability. However, an FMI may invest any cash collateral received from participants on their behalf (see Principle 16 on custody and investment risks).

While paragraph 3.5.10 of PFMI states “an FMI may invest any cash collateral received from participants on their behalf”, JSCC would like to clarify the condition of the investment, that PFMI would permit (i.e. relationship between FMI and the participant which posts cash collateral, attribution of investment results).

Does the phrase “on their behalf” mean investment of cash collateral is permitted only where an FMI acts as an agent of the participants which post cash collateral (in other words, the case where losses resulting from investment are incurred not by the FMI but by the participants which posts cash collateral)?

3. Comment on KE 1 and 2 of Key Consideration 7.4 and 7.5 (Principle 7, DF)

KC7.4-KE1: Minimum liquidity resource requirement in each currency to cover a participant default.

KC7.4-KE2: Additional minimum liquidity resource requirements

KC7.5-KE1: Composition of qualifying liquid resources

KC7.5-KE2: Coverage and availability of qualifying liquid resources

For the sake of good order, JSCC would like to clarify the scope of the information that DF expects FMIs to disclose. JSCC understands that those key elements do not necessarily require FMIs to disclose concrete amounts of liquidity but just require to disclose supposition (e.g. outline of stress-test scenarios) for calculating minimum amount of liquidity and outline of the employed funding arrangement.

JSCC thinks that disclosing concrete amount of liquidity can potentially lead to market participant taking educated guesses on;

- transactions of major clearing participants,
- composition of individual contracts, or on
- funding arrangements.

In some cases this can fuel unnecessary speculation amongst stakeholders. Therefore, JSCC suggests DF not require for FMIs to disclose such details.

4. Comment on Q13.3.2 and Paragraph 3.13.6 of PFMI (Principle 13, PFMI and AM)

Q.13.3.2: Do they include: ~(e) the mechanisms to help address the defaulting participant's obligations to its customers?

PFMI Paragraph 3.13.6: To provide certainty and predictability regarding the measures that an FMI may take in a default event, an FMI should publicly disclose key aspects of its default rules and procedures, including: ~(e) where direct relationships exist with participants' customers, the mechanisms to help address the defaulting participant's obligations to its customers.

Question 13.3.2 seemingly requires much more task than the text of PFMI Paragraph 3.13.6 expects. For nailing down the sense described in paragraph 1.0 of the AM (“*The AM avoids repetition of the discussions of the principles and responsibilities that are contained in the PFMI Report; any elaborating commentary is intended to help explicate practical considerations that arise when performing assessments, not to amend or expand upon those discussions.*”), the phrase “*where direct relationships exist with participants' customers*” should be inserted at the front of (e) of Q13.3.2.

=End=

<Contact information>

Japan Securities Clearing Corporation
Strategic Planning Division

Tel : +81 3 3665 1234

E-mail : info@jscc.co.jp