

Commentary on the Consultative Report on the Recovery and Resolution of Financial Market Infrastructures

September 28, 2012

Asia-Pacific Central Securities Depository Group (ACG)

The ACG (Asia-Pacific CSD Group) welcome the opportunity to comment on the Consultative Report on the Recovery and Resolution of Financial Market Infrastructures. Along with the published PFMI, we believe, this report will give further guidelines to FMIs and their respective authorities in developing appropriate recovery and resolution scheme for systemically important FMIs. We hope our comments below would be helpful for your work and appreciate your considerations.

I. General Comments

1. Circumstances that requires statutory management, administration or conservatorship

Some members suggest that for FMIs such as CCP and Large Value Payment Systems that are systemically important, resolution of such FMIs would normally involve more complex legal and administrative issues than those for of a common bankruptcy case. Once a recovery plan proves to be unsuccessful, a statutory manager, administrator or conservator would be required to be established in a timely manner in order to maintain critical services and operations as usual. Though true case of FMI resolution has been rare in many jurisdictions, resolution of some large financial institutions has shown the importance of the role of financial regulators in organizing and providing such measures as administration or conservatorship.

Therefore, it is recommended that report should address that regulators should strive for a statutory coverage without delays which will ensure fast processing of recovery and resolution efforts, considering the nature of FMIs business, which has no alternative organization generally and need fast processing of any recovery or resolution effort.

2. Flexible treatment for CSDs

As most of ACG members are CSDs, some members suggest that the report consider special business nature of CSDs thus provide more flexibility to them. Though CSDs are also vulnerable to insolvency, they have an extremely low risk of becoming insolvent if compared to CCPs, due to the fact that 1) their primary role is reducing settlement-related risk, and as such they have strict risk management systems in place, (2) other than in certain exceptional circumstances, they do not operate in competition with other companies, and they have no connection with OTC derivatives, and (3) they also face only limited credit risk.

Considering these characteristics of CSDs, some members think there is room for reconsideration of whether CSDs should be treated in the same manner as other Global Systemically Important Financial Institutions, and hope that the issue can be dealt with flexibly. With regard to the very low potential for CSDs to become insolvent, there is a risk that extensive work could arise from the revision of legal systems, etc. With regard to the specific measures for recovery and resolution, this needs to be handled flexibly in

accordance with factors such as the characteristics of each market and the governance structure of each CSD.

3. Applicability of key attributes to different type of FMIs

A few members suggest that It is necessary to identify particular types of FMIs (CSD, CCP, SSS,) to which key attributes (by item/paragraph wherever appropriate) are applicable.

In this report, under the "Recovery and resolution approaches for different types of FMIs" entities are categorized on the basis of whether or not they take on credit risk. We would also like to see it clearly specified whether or not each 'Key Attribute' will be applied to CSDs. If 'Key Attributes' is also applied to CSDs, some members suggest it should be applied in only a limited manner, based on point 2 noted above.

II. Specific Comments

As for key attributes 7 (legal framework conditions for cross-border cooperation), item 7.2, the last sentence "Where a resolution authority takes discretionary national action it should consider the impact on financial stability in other jurisdictions". But it is very difficult to consider the impact on financial stability in other jurisdictions. Therefore, we recommend some examples or limited interpretation are written in the report.

Some members suggested the report include the usage of "Insurance coverage" as a tool for recovery by FMIs. In many countries FMI opts for Insurance coverage to safeguard against potential losses that they may face due to any unforeseen circumstances. Usually the coverage is obtained against employee's infidelity and cyber crimes.

About ACG

The Asia-Pacific Central Securities Depository Group (ACG) was formed in November 1997 as an informal international organization with the objective to facilitate the exchange of information and to promote mutual assistance among member securities depositories and clearing organizations in the Asia Pacific region.

The number of participants as of 28 September 2012 is 32 institutions in 23 countries and regions.

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