



Mr. Paul Tucker
Chairman of the Committee on Payment and Settlement Systems

Mr. Masamichi Kono
Chairman of the Board of the International
Organization of Securities Commissions

By e-mail

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28th September 2012

Subject: Consultative report on recovery and resolution of financial market infrastructures

Dear Sirs,

It is my pleasure to send you herewith the comments of EBA CLEARING on the consultative report on recovery and resolution of financial market infrastructures and on the accompanying cover note of July 2012 by the Committee on Payment and Settlement Systems (CPSS) and the Board of the International Organization of Securities Commissions (IOSCO).

I wish to take this opportunity to express my appreciation for this important work on the matter of ensuring the continuity of critical operations of all FMIs in case of adverse market conditions and financial shocks.

I may hope that our observations and suggestions contribute to this objective and remain,

Yours faithfully,

P.P.


Gilbert Lichter
CEO

**EBA CLEARING comments on the consultative
report on the recovery and resolution of
financial market infrastructures and on the
accompanying cover note of July 2012 by the
Committee on Payment and Settlement
Systems (CPSS) and the Board of the
International Organization of Securities
Commissions (IOSCO)**

28 September 2012

EBA CLEARING reply to CPSS & IOSCO Consultative Report on recovery and resolution of FMIs
28 September 2012

INTRODUCTION

EBA CLEARING welcomes the invitation by the Committee of Payment and Settlement Systems (“CPSS”) and the Board of the International Organization of Securities Commissions (“IOSCO”) to reply to the consultation on the consultative report on the recovery and resolution of financial market infrastructures (the “Report”).

EBA CLEARING is a privately owned company, incorporated in France, whose shareholders are the participants in the EURO1 system. EBA CLEARING has been formed in 1998. Since the launch of the EURO1 system on the first day of Stage III of European Monetary Union, EBA CLEARING acts as the system operator of EURO1.

EURO1 is a multilateral large value net payment system for payments denominated in euro operating alongside TARGET2, the real time gross transfer system of the central banks of the Eurosystem.

Since 2003, EBA CLEARING also provides the retail payment system STEP2. In January 2008 respectively November 2009, STEP2 services were built for handling bulk SEPA Credit Transfers and SEPA Direct Debits (“Core” and “B2B”), which settle in TARGET2 (“STEP2-T System”). STEP2-T is a pan-european ACH for bulk payments in the Single Euro Payments Area (“SEPA”).

Since its launch, EURO1 is overseen by the European Central Bank (“ECB”). STEP2 is equally overseen by the ECB.

Reference is made to www.ebaclearing.eu for general information on EBA CLEARING and the systems it operates.

COMMENTS ON THE REPORT

1. Specific approach for payment systems

While fully sharing the approach of the Report to follow the path of the differentiation between FMIs that take on credit risk as principal and those that do not, EBA CLEARING strongly recommends to deepen that approach and to consider adopting specific sets of requirements for recovery plans and resolution tools per type of FMI (e.g. in particular payment systems without a central counterparty (“CCP”)).

2. Flexible implementation of recovery planning

Where EBA CLEARING shares the call for recovery planning, EBA CLEARING believes that sufficient flexibility should be allowed to take into account the specificities of the FMIs as well as different means to achieve implementation of the principal features of recovery planning.

However, EBA CLEARING would welcome clarity on the question whether, in addition to compliance with the requirement to cover general business risk through the setting aside of capital resources funded by equity to cover 6 months of operating costs, recovery planning entails a requirement that funding is available during the period an FMI is considered to be in a recovery phase, and if yes,

whether such funding should be by the shareholders of the FMI or by the participants in a given system operated by the FMI.

3. *No need for statutory resolution regime for payment systems without a CCP*

For payment systems, and in particular in the case where there is more than one channel available for sending payments, EBA CLEARING believes that there is no need per se for a statutory resolution regime. For payment systems without a CCP, EBA CLEARING believes that the establishment of “tailor-made” ex-ante resolution tools ensuring that the FMI can continue to perform its critical operations and services would be more appropriate to prevent systemic disruption in case of failure.

EBA CLEARING is strongly convinced that ensuring portability of the payment traffic of participants is the objective that should be achieved, and in that connection a smooth transition of services within a reasonable time frame taking into account the needs of the users would be better covered through ensuring that critical functions can be assumed by designated third parties through binding contractual arrangements or otherwise. Continuation of operations with the intervention of such designated third parties should also be allowed including at the level of the participation in a settlement system (e.g. TARGET2).

A statutory resolution regime might jeopardize, or, as applicable, not fall under, the protection of the Settlement Finality Directive and is, in addition, believed to give rise to conflict of law problems that may adversely affect smooth continuation of critical services.

4. *Critical suppliers*

EBA CLEARING would wish to draw the attention to the fact that continued availability of services by critical suppliers is equally important, and EBA CLEARING would welcome a requirement from the authorities for recovery and resolution planning of critical suppliers to enable a FMI to impose recovery and resolution planning on critical suppliers.

5. *No moratorium for payment systems*

As already acknowledged in the Report, EBA CLEARING considers that a moratorium is unlikely to meet the objectives of continuity in the resolution of FMIs for which making payments is part of their critical services. Objectives could rather be met by allowing for a time window during which banks can transfer their payments to another channel.

6. *Resolution authority should ideally be the overseer*

Would there be a requirement for a designated ‘resolution authority’ (e.g. authority taking over certain critical functions awaiting liquidation of a FMI), EBA CLEARING strongly advocates that the resolution authority is the overseer of the system.