

20<sup>th</sup> February 2014

**EACH response to the CPSS-IOSCO consultative report 'Assessment methodology for the oversight expectations applicable to critical service providers'**

**1. General comments**

EACH, the European Association of Central Counterparty Clearing Houses, welcomes the opportunity to respond to the CPSS-IOSCO consultative report on the Assessment Methodology for the Oversight Expectations Applicable to Critical Service Providers, dated December 2013 ("the Report").

EACH is supportive of the principles set out in the Report, and in particular the need to assess and manage the risks arising from critical service providers.

EACH agrees with the statement made in the Report that the questions contained in the methodology should not be considered exhaustive, and that there should be flexibility in the form and content of responses. The need for flexibility especially applies to all questions which potentially cover confidential or sensitive issues, as is the case with a number of the proposed questions. Critical service providers should in all cases be permitted to respond to questions in a manner which does not divulge confidential or sensitive material.

**2. Definition of a critical service provider**

EACH is concerned that the guidance included in the current assessment methodology is too general and could impact more providers than only those that are truly critical to the operation of an FMI.

Moreover, we believe that the high safeguards included in the assessment methodology need to be justified by systemic risk concerns. The scope of the assessment should be explicitly limited to services that if not executed in an undisrupted, secure and controlled manner could materially impact the clearing, settling or recording of payments, securities, derivatives or other financial transactions. Therefore, a service should be considered critical only where a failure in its performance would impair the FMI's ability to meet relevant regulatory requirements or the continued provision of core services. In addition, we would suggest that CPSS/IOSCO provides more specific guidelines regarding the types of activities that should be excluded from the assessment. Examples of services that should be excluded are personal security services; reception; mail sorting; cleaning of the premises; hardware maintenance services; individual computer software; payroll processing services; and consulting services (legal, IT, business analysis). Where a provider undertakes a mixture of critical and non-critical activities, the non-critical activities should be outside the scope of the assessment.

An overly broad scope that is not strictly related to risk or other regulatory concerns would otherwise discourage outsourcing which generally aims to achieve higher operational efficiency by reducing costs through a specialization of competences and additional organizational flexibility.

Limiting the scope of the assessment to truly critical providers as suggested above will enhance the efficiency and standardization of supervisory practices in line with the aim of the assessment methodology and, at the same time, will avoid putting an excessive burden on FMIs and their providers. More precise guidance on the definition of CSPs will also help ensure a consistent approach across different jurisdictions.

### **3. Adherence to the expectations for critical service providers**

Consistent with Annex F of the CPSS-IOSCO Principles for Financial Market Infrastructures ("the PFMIs"), the Report identifies that there are two ways in which adherence to the expectations for critical service providers can be achieved:

*"(a) the authority monitors adherence to the expectations itself in a direct relationship with the critical service provider or (b) the authority communicates the standards to the FMI, which obtains assurances from its critical service providers that they comply with the expectations".*

EACH believes that, whilst the choice of approach will be at the discretion of the individual authority, clarity and clear communication of the approach to be followed will be important.

EACH is also of the view that wherever possible the approach which should be followed is for the FMI to be responsible for obtaining assurances from its critical service providers that they comply with the expectations (ie method (b)). This should certainly be the case, for example, where the critical service provider is part of the same group of companies as the FMI. EACH believes that the authority should only follow the approach of seeking to monitor adherence to the expectations itself in a direct relationship with the critical service provider (ie method (a)) in cases where the FMI is unable to extract the necessary assurances from the critical service provider. This might occur, for example, for a critical service provider which acts as an international payment system, for which alternatives are limited. Such a provider is likely to impact multiple FMIs.

EACH would welcome the opportunity to discuss the contents of its response with you, particularly if you require any clarification about the contents of this response.

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## About EACH

European central counterparty clearing houses (henceforth CCPs) formed EACH in 1991. EACH's participants are senior executives specialising in clearing and risk management from European CCPs, both EU and non-EU. Increasingly, clearing activities are not restricted exclusively to exchange-traded business. EACH has an interest in ensuring that the evolving discussions on clearing and settlement in Europe and globally, are fully informed by the expertise and opinions of those responsible for providing central counterparty clearing services.

EACH has 21 members:

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