



28 July 2011

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**To Whom It May Concern**

Please find below the feedback from the Dubai Financial Services Authority (DFSA) on the Consultative Report – Principles for Financial Market Infrastructures (FMI's) from March 2011.

**The Dubai Financial Services Authority (DFSA)** is the independent regulator of financial and ancillary services conducted in or from the Dubai International Financial Centre (DIFC), a purpose-built financial free-zone in Dubai. The DFSA's regulatory mandate covers asset management, banking and credit services, securities, collective investment funds, custody and trust services, commodities futures trading, Islamic finance, insurance, an international equities exchange and an international commodities derivatives exchange.

As a general remark DFSA is pleased to see the consolidation of the three separate sets of Principles and Recommendations into one single document. We believe this will create a more comprehensive approach. We also welcome the applicability of the Principles where relevant to the function of 'Trade Repository' (TR) and the definition of TR's introduced.

There are no active payment systems operating or trade repositories operating in the Dubai International Financial Centre (DIFC). DFSA's feedback below should be considered in that light and to be relevant only to CSD's, Security Settlement Systems (SSS) and Central Counterparties (CCP).

### **Publication**

The increased focus recently on mandatory clearing of certain OTC derivatives, standardisation of the same where possible, and overall potentially larger exposures being introduced to clearing houses, transparency with regard to these FMI's deserves a similar increased focus. In the "Recommendations for Central Counterparties" (2004) it was recommended that the results of the assessments were to be published. DFSA believes that this approach is commendable and should be continued. We note however that only few regulatory authorities have actually published the results.

In light of the recommendation that these Principles may be used by international financial institutions when carrying out due-diligence assessments, equally published assessments by statutory regulators or self-regulatory bodies would facilitate the execution of due-diligence. Where participants are entering emerging markets, for instance, the readily availability of these assessments would provide more transparency and certainty around the regulatory framework specific to FMI's.

### **Trade repositories**

There are certain issues around the legal access to data held with TR's that have yet to be addressed. The recently completed work of the OTC Data Reporting Working Group provides significant detail to the ongoing issues. DFSA believes that it would be

beneficial to continue to align these Principles with the work in other FSB and IOSCO groups.

The access to data by statutory regulators submitted to a foreign TR and the issue of applicable data protection law is an issue of ongoing interest and needs further consideration.

### **Re Principle 6 - Margin**

- Although Principle 6 adequately aligns with DFSA's own approach we believe that part of the key consideration become overly descriptive. For instance, the requirement to relate the initial margin level back to a single-tailed confidence level of at least 99 percent may not fit all markets. The consideration is silent on the sample period on which such confidence level should be based and does not take into account other methods for determining appropriate levels of margin.

- The ability to call additional margin, or initial and variation margin should not be limited to 'those positions that have lost significant value'. Instead, CCP should retain the power to collect any additional margin where they require mitigating their credit exposure in stressed circumstances. Equally and where applicable, the regulatory authorities should obtain powers to act in a same capacity as the CCP, or to direct the CCP to call for additional margin.

### **Re Principle 7 - Liquidity Risk**

- If a CCP accepts cash deposits as margin, a CCP should monitor, set limits and, where needed, reduce the concentration of such cash deposits with one or a limited number of banks. This is in particular the case if these banks are also direct participants (i.e. clearing members) and market counterparty to a CCP. If the use of bank guarantees is permitted by a CCP, the bank guarantees should preferably be provided by banks that are not a counterparty to the CCP. DFSA believes this point is not entirely reflected in the report.

### **Re Principle 10 – Physical Deliveries**

- The key considerations apply the terms 'physical instruments' and 'commodities' interchangeably. However it does not become apparent what the difference is between the two.

### **Re Principle 13 – Participant default rules and procedures**

- As it is well accepted that business continuity plans should have periodic testing, DFSA believes that the same (scenario) testing should be applied to the default rules and procedures. Although the key considerations refer to 'training' in this regard we believe the drafting should reflect this in a stronger way.

### **Re Principle 15 – General business risk**

- The DFSA rules stipulate that a CCP should '*hold the equivalent of 6 months operational expenses or any other amount as deemed appropriate by the DFSA.*' This allows the DFSA to set higher amounts for those FMI's that carry a higher general business risk but have low operational expenses.

As the report (in the key considerations here) already allows for this additional equity capital to be required, DFSA believes that a level of 6 months operational expenses is an appropriate level for FMI.

### **Re Principles 18 to 20 – Access and interoperability**

- The CPSS and IOSCO requested for specific feedback regarding access and interoperability. DFSA's only supervises one FMI at the moment, i.e. NASDAQ Dubai, which does not have direct links to other CSD's or CCP's. We therefore do not feel it appropriate to comment. As a general observation note that under local laws open access to an FMI, by remote access without local presence for example, may not always be allowed under national companies laws. This could be inadvertently interpreted as restricting access where it is beyond the control of financial services regulator to change these provisions in national laws.

### **Re Principle 19 – Tiered participation arrangements**

- Tiered participation can create various risks and the DFSA believes the credit and liquidity risks are well addressed in the explanatory notes. The Principle is silent however on the monitoring and prevention of financial crime (i.e. anti-money laundering and counter terrorist financing) and market misconduct. The increased use of clearing houses for reporting OTC transactions and, in general, the key function in the processing of financial and securities settlement through FMI's, warrants a strong requirement on FMI's to address those risks. DFSA believes that these conduct issues are not yet fully reflected in the report.

### **Re Principle 24 – Disclosure of market data**

- *'The provision of timely and accurate data to relevant authorities and the public in line with their respective needs'* is drafted as a key consideration to only apply to TR's. DFSA believes that this principle should equally apply to other FMI's and would suggest extending the scope to all FMI's where applicable. In essence statutory authorities should also be able to access data and require disclosure from other FMI's than just TR's.

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