

**Response to the CPSS and the Technical Committee
of the IOSCO 's Consultative Report on OTC
derivatives data reporting and aggregation
requirements from Financial Competitive Regime
Perspective**

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- 1. All views in this submission are presented on behalf on the writer, and may not necessarily be construed as those of the People's Bank of China.**
- 2. For the writing tradition and reading convenience, this paper is drafted in English and Chinese. The meaning shall be construed as the same.**

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September 2011

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从金融竞争制度视角评述国际支付结算体系委员会和国际证监会组织技术委员会联合公布的《OTC 衍生品信息报告和聚集要求》征求意见稿

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- 1、 本文仅代表作者个人观点，并不必然代表中国人民银行观点。
- 2、 考虑到行文传统和阅读方便，文章以英文和中文书写，核心内容一致。

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General Comments

Dear Sir or Madam:

I welcome the opportunity to provide comments on the August 2011 consultative report on OTC derivatives data reporting and aggregation requirements issued by the CPSS and the technical committee of the IOSCO.

Even though the consultative report discusses a comprehensive package of measures to set out OTC derivatives data reporting and aggregation requirements, it neglects the importance of the competition secured by implementing the Financial Competitive Regime (FCR). **It is recommended that in the process of designing reporting and aggregation requirements, the CPSS and the technical committee of the IOSCO should consider from the FCR perspective.**

Paragraph 1.1 describes “... and protect against market abuse in the derivatives markets.” Market abuse is the activity performed mostly by large financial institutions enjoying dominant position in the financial sector, and the enforcement of the internationally accepted

FCR will help regulate effectively such behavior.

Paragraph 1.2 describes “... and (iii) enhance the transparency of information to relevant authorities and the public.” From the functioning perspective, the enhancement of information transparency promotes the competition in financial market.

“Access to data” on paragraph 1.2 describes “...facilitates the exercise of market discipline....” Only in the financial competitive ecological environment guaranteed by the regime can market discipline work most efficiently.

“Access to data” on paragraph 1.2 describes “...include information to facilitate an assessment of market activity and concentration of the market.” To a large extent, information on market activity and concentration of the market involves data on the competitive condition in financial market.

Competition can be added as one of the principles in paragraph 1.2 “International LEI development and principles”. From the beginning of designing system involving LEI, competition should be explicated in the set of basic principles. Normally, the LEI provider should

neither refuse financial firms' application to enter nor discriminate users.

“Initiatives to create TRs” on paragraph 2.2 describes “... such as REGIS-TR, a TR created by the Spanish stock exchange (Bolsas y Mercados Españoles) and Clearstream Banking Luxembourg.” There is one famous antitrust case related to Clearstream in derivatives market. On 2 June 2004, the European Commission decided that Clearstream Banking AG and its parent company Clearstream International SA violated antitrust decree by refusing to supply certain clearing and settlement services to and by applying discriminatory prices to Euroclear Bank SA. On 9 September 2009, The Court of First Instance announced to uphold the European Commission's decision.

Paragraph 2.3 refers to financial market infrastructures. In the response to the consultative report on principles for financial market infrastructures (FMIs), Zhen Li supports the idea that the FCR may play an indispensable role in fostering robust FMIs.¹

Paragraph 3.1.1 describes “... and (iv) conducting resolution

¹ Zhen Li, “Response to the CPSS and the Technical Committee of the IOSCO's Consultative Report on Principles for Financial Market Infrastructures from Financial Competitive Regime Perspective”, September 2011. Available at: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD357.pdf>

activities.” Resolution activities involve state aid and exit, which are related to preserving the competition in financial market by executing the FCR.²

“Assessing systemic risk and financial stability” on paragraph 3.1.1.1 refers to size, substitutability and interconnectedness, which reflect the competitiveness condition in financial market.³

“Conducting market surveillance and enforcement” on paragraph 3.1.1.2 describes “Market integrity is critical for the proper functioning of any market.” Market integrity requires the level playing field ensured by enforcing the FCR as Financial Constitution.

“Conducting market surveillance and enforcement” on paragraph 3.1.1.2 describes “...including market and price manipulation, insider trading, market rigging and front running.” These anomalous activities are filled with anti-competitive characteristics, and may be regulated effectively by enforcing the FCR.

² Zhen Li, “Response to the Financial Stability Board’s Consultative Document of Effective Resolution of Systemically Important Financial Institutions from Financial Competitive Regime Perspective”, September 2011. Available at: http://www.financialstabilityboard.org/press/c_110909fff.pdf

³ Zhen Li, “Response to the Basel Committee’s Consultative Document of Global Systemically Important Banks: Assessment methodology and the additional loss absorbency requirement from Financial Competitive Regime Perspective”, August 2011. Available at: <http://www.bis.org/publ/bcbs201/zhenli.pdf>

“Conducting market surveillance and enforcement” on paragraph 4.2.2 describes “Entities related by affiliation can have (1) a common economic incentive to conduct market abuse or (2) increased market power relative to a single entity that could increase the impact and therefore efficacy of a manipulative scheme.” Market abuse and manipulation are typical anti-competitive activities, which may be regulated effectively by enforcing the FCR.

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总 评

尊敬的女士和先生：

非常感谢有机会对国际支付结算体系委员会和国际证监会组织技术委员会 2011 年 8 月联合公布的《OTC 衍生品信息报告和集中要求》征求意见稿发表评论。

虽然征求意见稿讨论了一整套 OTC 衍生品信息报告和聚集要求的措施，但却忽略了通过实施金融竞争制度以確保的竞争的重要作用。建议在设计报告和聚集要求时，国际支付结算体系委员会和国际证监会组织技术委员会能从金融竞争制度角度考虑。

第 1.1 段指出：“……在衍生品市场防范市场滥用”。在金融领域，市场滥用行为往往由享有市场支配地位的大型金融机构所实施，实施国际认可的金融竞争制度有助于有效规制该行为。

第 1.2 段指出：“……(iii)增强对有关当局和公众的信息透明度。”从功能角度来看，增强透明度促进了金融市场竞争。

第 1.2 段的“信息获取”指出：“……有助于市场约束的运行”。

只有在以制度确保的金融竞争生态环境中运行,“市场约束”才能最有效地发挥作用。

第 1.2 段的“信息获取”指出:“……包括有助于测评市场行为和市场集中的信息。”在很大程度上,市场行为和市场结构的信息涵盖了金融市场竞争状况信息。

在第 1.2 段“国际 LEI 发展和原则”中,应当增加“竞争”作为原则之一。从设计包含 LEI 制度的一开始,“竞争”就应在基本原则中得到明确。正常情况下,LEI 的提供机构既不能拒绝金融机构的准入申请,也不能歧视使用者。

第 2.2 段“建立交易库的举措”指出:“……例如 REGIS-TR,是由西班牙股票交易所和明讯银行卢森堡共同建立的一家交易库。”在衍生品市场有一件关于明讯的著名反垄断案件。2004 年 6 月 2 日,欧委会裁决明讯银行及其母公司明讯国际集团违反了反垄断规定,因为它们拒绝向欧清银行提供某些清算、结算服务,并对其实施了歧视定价行为。2009 年 9 月 9 日,一审法院宣布支持欧委会的决定。

第 2.3 段提及了“金融市场基础设施”。在关于金融市场基础设施原则征求意见稿的反馈意见中,李震认为金融竞争制度将在培

育稳健的金融市场基础设施中发挥不可或缺的重要作用。⁴

第 3.1.1 段指出：“……（iv）实施处置活动。”处置活动包括国家救助和市场退出等，均事关通过执行金融竞争制度以维护金融市场竞争力。⁵

第 3.1.1.1 段“测评系统风险和金融稳定”中提及了规模、替代能力和关联性，这些要素都反映了金融市场的竞争状况。⁶

第 3.1.1.2 段“实施市场监督和执行”中指出：“市场公正对于任何市场的正常运行均是关键。”市场公正亟待通过作为金融宪法的金融竞争制度来确保公平的竞争平台。

第 3.1.1.2 段“实施市场监督和执行”指出：“……包括市场和价格操纵、内幕交易、操纵市场和抢先交易。”这些非正当行为均具有反竞争特点，可通过实施金融竞争制度来有效规范。

第 4.2.2 段“实施市场监督和执行”指出：“通过附属关联的法人（1）拥有实施市场滥用行为的正常的经济动机；或者（2）增加

⁴ 李震，“从金融竞争制度视角评述国际支付结算体系委员会和国际证监会组织技术委员会联合公布的《金融市场基础设施准则》征求意见稿”，载于“国际证监会组织”，2011 年 9 月。网址：<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD357.pdf>

⁵ 李震，“从金融竞争制度视角评述金融稳定理事会发布的《系统重要性金融机构有效处置》征求意见稿”，载于“金融稳定理事会”，2011 年 9 月。网址：http://www.financialstabilityboard.org/press/c_110909fff.pdf

⁶ 李震，“从金融竞争制度视角评述巴塞尔银行委员会公布的《全球系统性重要银行：测评方式和附加损失吸收要求》征求意见稿”，载于“巴塞尔委员会”，2011 年 8 月。网址：<http://www.bis.org/publ/bcbs201/zhenli.pdf>

了相对于单个法人的市场力量，该力量能够增强操纵计划的影响力和随后的实施效果。”市场滥用和市场操纵是典型的金融反竞争行为，须通过实施金融竞争制度来有效规范。

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