



July 28, 2011

To: CPSS-IOSCO Working Group

cpss@bis.org and fmi@iosco.org

The following letter is submitted for your consideration on behalf of the Americas' Central Securities Depositories Association (ACSDA)¹, whose membership is comprised of 26 member organizations, principally CSDs and SSSs, from across the Americas and South Africa.

In the months since the consultative report on "Principles for Financial Market Infrastructures" was released in March 2011, we in ACSDA have made a careful review of CPSS-IOSCO's work and held a number of conference-call discussions in order to prepare this response. From these discussions, we are pleased to confirm that our members, especially those most directly involved, have been broadly supportive of the Principles most relevant to CSDs and SSSs.

First of all, *gracias* to the committee for making a Spanish-language translation available in May 2011, as Spanish is ACSDA's official language. Having the text in both English and Spanish versions enables a wider dialogue across our association and we welcome this important and considerate outreach to our region which includes 6 of the 19 countries represented in the G-20,

Secondly, the priority we have given to our ACSDA response will, we hope, reciprocate the opportunity we have had for a direct discussion with the committee's co-chair, Jeffrey S. Mooney, who (by video link) addressed our 2011 General Assembly and shared his insights into the objectives behind certain Principles. Our members' discussions with their own regulators have also raised the report's profile among our membership, as has ACSDA's positive engagement over several years with The World Bank's securities settlement specialists, whose colleagues are currently engaged in developing the Assessment Methodology for the Principles.

Third, we look forward to any updates in the coming months, as we already have the CPSS-IOSCO Principles for FMIs on our agendas for two upcoming ACSDA conferences including our first ACSDA Lawyers' Workshop on August 29-30 in Santiago, Chile; and our 3rd ACSDA Leadership Forum in Buenos Aires, Argentina, on November 8-11.

Turning to the topic of feedback about the consultative report, we would like to note that some ACSDA members who also operate CCPs, besides contributing to this ACSDA response, have also been proactive in the comment letter of CCP12, the Global Association of Central Counterparties, as well. ACSDA defers to CCP12 and other CCP groups on such clearing comments and is focusing on CSD and SSS in this letter.

Furthermore, a number of ACSDA's members have indicated that they plan to submit individual comment letters on behalf of their own organizations, focusing on elements they feel are of great importance and relevance to their markets and institutions. Any differences that may exist in different organizations' views may be useful in reflecting the sometimes varying priorities, of different FMIs and/or associations representing them.

Of course, ACSDA has contributed to and endorses the letter submitted by the World Forum of CSDs, on behalf of all 5 regional CSD associations, which, first of all, acknowledges the value of supervisory dialogue and insights on a global level, and the thoughtful collaboration of central banks and securities regulators. Then, it focuses on 5 shared requests of the CSD community, namely, to do the following:

- Show each Principle's relevance to the various types of FMIs and reduce some duplication in the final report;
- Seek an opportunity to preview and provide feedback on the Assessment Methodology;
- Re-integrate Annex C into the main report;
- Underscore that CSDs are limited in terms of monitoring external factors; and
- Urge consistent application of the Principles, once finalized.

In addition, even before commenting on specific Principles, we would offer the following general comments:

- **SSSs and CSDs.** To most of us, it seems unusual that CPSS-IOSCO in this report addresses SSS entities separately from CSDs, since a great number of CSDs are also SSSs.
- **Corporate Actions.** As ACSDA mainly represents CSDs and SSSs, one critical area of our business seems to have been overlooked: the role of asset servicing, especially the challenges of corporate actions and their associated risks. We believe that the nine Global Corporate Actions Principlesⁱⁱ) defined in 2010 by the private-sector group, International Securities Services Association, with expert and global input from a working group comprised of CSDs and custodians, may offer a comprehensive resource for CPSS-IOSCO to consider adopting or referencing as guidance to FMIs. Certainly, corporate actions and other asset servicing must be seen as a significant source of risk to most CSDs (and in terms

of trades and net positions pending settlement, to CCPs).

- **Registrars and Transfer Agents.** It also seems unusual, as well, that the report is silent on the settlement and post-settlement roles of Registrars and Transfer Agents (or at least seems to miss how these relate to a CSD and SSS in the processing chain), given the prevalence of CSDs taking on these roles alongside private sector firms.
- **CSDs' New Businesses.** Indeed, a discussion of Registrar and Transfer Agency functions might be a useful segue-way for CPSS-IOSCO to also provide guidance to CSDs in terms of the new business roles they are taking on, where related risks must also be managed and mitigated. In point 1.9, the reference to FMIs being “legally organized in a variety of forms, including associations of financial institutions, non-bank clearing corporations and specialized banking organizations” seems to overlook the fact that CSDs (and CCPs and SSSs) today are typically corporations, with increasingly few exceptions, run as for-profit businesses.
- **Consensus on Interoperability, Dematerialization and Settlement in Central Bank Money.** It seems a missed opportunity for CPSS-IOSCO supervisors not to reach consensus in defining terms for interoperability among FMIs, as well as in not expressing a stronger preference for dematerialization of securities and settlement in central bank money.
- **Settlement Finality Protections.** Also, in discussing settlement finality, we believe that the Principles should provide criteria for assuring protection of securities and payment transactions at all levels of the securities holding chain, given that a chain of FMIs is typically involved.
- **Tone Guided by Explanatory Notes.** ACSDA would support an outcome whereby the tone of the final Principles aligns with the explanatory notes, which are more general and recognize the viability of alternative structures and models, which FMIs may need to adopt in different jurisdictions. This is particularly relevant for our CSD members in markets without CCPs, something that does not seem to have been contemplated within the Principles, but which is a reality for many countries within ACSDA's membership.

ACSDA 's feedback on specific Principles s attached for your consideration.

Thank you for inviting us to offer these comments and suggestions in an effort to demonstrate our good will and sincere commitment to continue to upgrade our risk management focus within CSDs. Should you seek any further input from ACSDA or to clarify any of our comments, the most efficient approach would be via ACSDA's

Executive Secretary, Bruce Butterill at bbutterill@acsda.org. Bruce's direct telephone is +571 616 6749.

Sincerely,

The Americas' Central Securities Depositories Association (ACSDA)

ⁱ For more information about ACSDA, please refer to <http://www.acsda.org>

ⁱⁱ *ISSA's Global Corporate Actions Principles can be found at:*
http://www.issanet.org/pdf/2010_ISSA_CA_WG_REPORT.pdf

Attachment: **ACSDA Comments on Specific Principles**



ACSDA Comments on Specific Principles for Financial Market Infrastructures

Principle 1: Legal basis

- With respect to settlement finality, we believe that the Principles should provide criteria for assuring the protection of securities and payment transactions at all levels of the securities holding chain.
- When settlement depends on the interaction of multiple interlinked systems like CSDs, CCPs, SSSs, Registrars and/or Transfer Agents, and possibly others, there must be legal certainty related to which of those entities is giving title to the investor and the impact on asset protection. Each of the entities mentioned performs a critical role, but it is through interactions between them that provision of title to the investor is completed. The need to protect the securities and payment cycle needs to be addressed in a more complete way.
- The Principles should ensure consistency with the objectives of the Hague and UNIDROIT Conventions and confirm this in the text.

Principle 2: Governance

- Guidance is needed on what constitutes a “distinct risk profile”. To the extent that the risk profile can be managed and risk mitigated consistently, FMIs should be permitted to maintain multiple roles and assume different inherent risk profiles within a single legal entity.

Principle 3: Framework for the comprehensive management of risks

- More detail is required with respect to the meaning of “capacity” and “incentives”.
- It is very important to establish a joint protocol or framework for the management of risks between all interdependent FMIs in a market, especially in relation to business continuity and disaster recovery. The protocol should encompass a response to any contingency event that could be reasonably contemplated.
- Entities with the capacity to generate a systemic impact on the market, such as clearing and settlement banks, must also be given due consideration in the Principles. Regulators should have responsibility to monitor these risks.

- Emphasis should be placed on the tools and where possible, incentives, to assist in the management of risk, rather than on penalties.

Principle 4: Credit risk

- Reversals of payments and deliveries on corporate actions could certainly impose major credit risks on CSDs and SSSs and should be considered.
- When there is no CCP in the market, to what extent might some of the risk management issues fall in part to the CSD?

Principle 5: Collateral

- The Principles should stress the importance of CSDs having the ability to move collateral to where it is required in the market.
- As a fundamental point, the Principles should opine on what is appropriate in terms of reuse of collateral.

Principle 7: Liquidity risk

- The entire liquidity cycle within the market needs to be well understood. There are interdependencies among liquidity providers (and users) that can have implications for the liquidity chain. FMIs can, and frequently do, compete for the same pool of liquidity.

Principle 8: Settlement finality

- It is important to consider interdependent and interconnected systems that participate in the settlement process. The chain often includes a FMI, Registrar and Transfer Agent as part of a single transaction.
- It should be strongly indicated within the Principles that settlement payment in central bank funds constitutes industry best practice.
- Cross-border settlement procedures should specify the applicable law and consideration on who is given title to the security in a chain of FMIs, Transfer Agents and Registrars.
- The Principles should explicitly indicate that “reversals” as a market practice are something that must be avoided.
- We would suggest that reference to trade confirmations and matching in Principle 8 be removed and may be better referenced in another Principle as not related to settlement finality. Trade date confirmation/matching at the FMI should appear as a

separate principle. It is conducive to shortening the settlement cycle and the related settlement risk.

Principle 9: Money settlements

- The statement that FMI's "...should conduct its money settlement in central bank money where practical..." gives way to broad interpretation. As stated in Principle 8, the principle should unequivocally state that settlement in central bank funds constitutes industry best practice.

Principle 11: Central securities depositories

- Dematerialization should be more strongly recommended.
- Where discrepancy in reconciliation exists, then reconciliation practices should ensure that the CSD records prevail. IOSCO only mentions reconciliation, but timely reconciliation should be a requirement through all levels within the holding chain.
- Not all CSDs are Self-Regulatory Organizations (SROs) that have supervisory and enforcement roles/obligations and monitor compliance by participants with rules and procedures. In instances where the CSD is not an SRO, this consideration should be extended to specifically mention monitoring of compliance with such rules and procedures by the CSD - since non-compliance exposes the CSD and other market stakeholders to risk.

Principle 12: Exchange-of-value settlement systems

- We suggest that this Principle be cross-referenced with Principle 8.
- The Principle seems to assume that there are only two linked transactions, DvP or PvP. In addition, it is important to recognize that in some business operations, there can be three or more linked transactions. Examples are premium payments of securities lending in two currencies; collateral substitution (DvD), which includes various securities on either side.

Principle 14: Segregation and portability

- While there was no consensus on this within the ACSDA membership, we do not understand why these issues and considerations would be contained to CCPs and we look to CPSS/IOSCO for clarity on this thinking.

Principle 15: General business risk

- Additional risk categories exist that need to be addressed; strategic, commercial and reputational risk all exist within FMI business risk, and CSDs and their supervisors need to address them, especially with regard to new businesses.

Principle 17: Operational risk

- As noted earlier, the Principles should recommend developing an industry protocol for FMI contingency.
- A systemic-risk view needs to consider other FMIs and participants including for example, Transfer Agents, Registrars, major banks, perhaps large institutional investors and others who operate in the securities industry and can expose the markets to risks .

Principle 19: Tiered participation arrangements

- As stated in the World Forum of CSDs letter - Principle 19 on tiered participation seems to have been written mostly with CCPs and payment systems in mind and it is unclear how the concept of “indirect participants” could be applied to CSDs. In practice, many CSDs currently have no control and no visibility on their clients’ clients with the possible exception of a growing number of markets with direct holding or “transparent” systems. Furthermore, the participants in these CSDs might be reluctant or unable to share such information for competition and legal data confidentiality reasons.
- ACSDA similarly recommends that Principle 19 should not be imposed on CSDs directly, but that the information on tiered participation arrangements should be disclosed by CSD participants to the relevant regulators.

Principle 20 – FMI links

- Settlement finality can take place at various points within the service chain. The Principles should be clear that this is not just finality within one system, but also in the linked FMI.
- The Principle does not address or make any reference to the other existing forms of foreign participation and the fact that FMI links may pose fewer challenges than (by way of example) a form of foreign participation where more intermediaries are interposed in the holding chain. FMIs links should be put into context.
- The Principle should distinguish clearly between:
(a) Legal risk which is the possibility of an unexpected application of a law or regulation or because a contract cannot be enforced, because (the application of the home country (issuer CSD) law of jurisdiction which would determine the CSD’s right to enforce its rules for a foreign participant, and

(b) Legal uncertainty about substantive law issues.

Principle 22: Communications procedures and standards

- A protocol for corporate actions must be strongly urged. A message standard should be prescribed. We recommend referencing the *ISSA Global Corporate Actions Principles*, issued in May 2010.
- The Principles should prescribe that Issuers inform FMIs (CSDs, SSS; CCPs, and where appropriate stock exchanges or listing venues) of all corporate actions according to a standard electronic format. This is an imperative for the mitigation of the associated risks and increased efficiency.

ACSDA is pleased to have had the opportunity to offer our perspectives and suggestions with respect to the current draft of the Principles and look forward to future dialogue on this very important initiative.