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**Sent by email to: [cpss@bis.org](mailto:cpss@bis.org)**

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Secretariat  
Technical Committee  
International Organization of Securities Commissions

**Sent by email to: [fmi@iosco.org](mailto:fmi@iosco.org)**

## **BVI's response to the consultative report on principles for financial market infrastructures**

Dear Sir and Madam,

In response to the above mentioned consultation, please find below BVI<sup>1</sup> views on the subject at hand.

We are pleased to have the opportunity to comment the suggested principles for financial market infrastructures (FMIs).

We are supportive of the CPSS/IOSCO policy guidance for FMIs. We believe that the principles will improve market liquidity, reduce systemic and other risk, enhance the operational efficiency and foster financial market stability.

We would like to make the following comments:

### **General remarks:**

We think that the set of standards should be developed in an active dialogue with all relevant market participants worldwide in order to avoid regulatory

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<sup>1</sup> BVI Bundesverband Investment und Asset Management e.V. represents the interest of the German investment fund and asset management industry. Its 84 members manage currently assets of nearly EUR 1.8 trillion both in mutual funds and mandates. BVI's ID number in the EU register of interest representatives is 96816064173-47. For more information, please visit [www.bvi.de](http://www.bvi.de).

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arbitrage and adverse spillover effects across countries. We believe that diverse and inconsistent FMI standards/requirements applied by the regulators globally will increase the cost for the market participants as they have to adopt different regulatory and national specific market standards.

We think that the CPSS/IOSCO principles should be considered as minimum requirements for FMIs and not be seen as a substitute for prudent risk management and governance structures for market infrastructures.

The FMIs should not be able to claim any intellectual property rights for the industry-delivered data on cleared and post traded contracts. There should be no license requirements or fees for the use of the data made available by the FMIs in internal systems of market participants, including client and regulatory reporting.

All FMIs providing post trade data may charge fees for the services provided by customers (including the granting of access to, and the used of, data and/or information produced in connection with the implementation of the "Services") on a Cost Recovery basis only. Cost Recovery refers to costs directly attributable to the services rendered. Other costs not directly related to such services, or costs related to other services, shall not be included.

We believe that the implementation of standards applied by the new CCPs with the buy side needs careful planning and should not to be rushed. All market participants need sufficient time to prepare. Our members need 6 to 12 months to set up policies and procedures for using a CCP following resolution of the major legal and operational issues.

### **Specific comments:**

From the viewpoint of the German investment fund management companies, BVI would like to submit the following comments:

### **Principle 2: Governance**

We support the principle. However, we believe that the interests of buy-side users, such as investment firms, UCITS management companies and alternative investment fund managers must be adequately reflected in the FMI's governance and risk committee rules and structures. Buy side representation on the Board of FMI's, in particular the new CCPs and TR's is needed to ensure fair treatment of all users, in view of the dominant position of the few CCPs and of possible conflicts of interest deriving from



CCP ownership by large financial institutions. A robust risk management system for the CCP is vital to protect both its clearing and non clearing members.

### **Principle 5: Collateral**

BVI supports the principle. However we believe that key consideration 1 needs to be clearly defined as some (indirect) market participants of a CCP are not able to meet the requirements to post specific assets as collateral to FMIs (e.g. CCP) due to investment restrictions. Asset managers manage funds and portfolios that invest in a variety of assets in order to achieve the best performance for the investor. All asset managers try to be at all times fully invested in the underlying assets indicated in the investment fund objectives. Therefore they can't dispose of large amounts of cash to post collateral but are only able to use a variety of assets to post collateral for (OTC) derivative contracts.

CCPs typically require cash collateral, particularly for variation margin purposes. Should asset managers be required to post cash collateral, they would be obliged to liquidate a significant portion of the portfolios/funds, thus losing the returns on those assets. The amounts of cash needed – and the related costs/loss of income – would be high, particularly for portfolios for pension funds or insurance companies using LDI strategies to hedge long term liabilities. UCITS and alternative investment funds (e.g. German real estate investment and institutional “special” funds) would be negatively impacted.

### **Key consideration 1 should state:**

1. An FMI should generally limit the assets it (routinely) accept highly liquid collateral (e.g. cash, government and high quality corporate bonds or main market index equities) as collateral to those with low credit, liquidity, and market risk.

### **Principle 14: Segregation and portability**

BVI supports the key considerations. We believe that consideration 2 and 3 and the explanatory note have to take into account the requirements of investment fund management companies in regards to segregation of positions and collaterals either in an omnibus or in an individual account structure. Investment fund management companies are obliged to segregate the assets belonging to one investment funds from assets belonging to



another investment fund according to article 8 para 1 of the directive 2010/43/EC and have to segregate their own assets from those of the investors. Investment fund management companies conclude the clearing eligible (OTC) derivative contracts in behalf of the investment funds.

Therefore we think that both CCPs and the participants should offer full segregation of client assets and monies, either in an omnibus account or in an individual client account, at client's choice.

In the case of omnibus accounts collateral is passed by the clearing member to the CCP. In case of individual client accounts collateral should be passed either to the clearing member or be held directly between the client and the CCP, at the client's choice. If these arrangements are not made mandatory for CCPs and their clearing members, experience has shown that the clearing members, at least, may choose not to offer the individual client account options, thus preventing arrangements that would work to the benefit of the client. A practical example of clients being prevented from accessing segregation was exposed in UK cash equity markets when LBIE (Lehman) defaulted in 2008.

We think that CCPs should have knowledge about the collateral posted and the positions agreed for each customer. A individual investment fund should be treated as one customer. Otherwise the portability could fail due to a lack of timely response (see no. 3.14.7).

As stated in section 3.14.8 a CCP can collect margins on net basis. In case of net margining the posting of assets as collateral from one investment fund could be used for fulfilling the obligations of another investment fund (see 3.14.9). This makes clear that the collateral posted from one investment fund could be used by the CCP to cover other obligations if all positions in derivatives of this specific investment fund are closed. We oppose that the posted collateral is used for other investment funds as this is not in line with obligations set out in article 8 para 1 of the directive 2010/43/EC. In accordance with sections 30 and 31 of the German Investment Act an investment fund management company is not allowed to use assets of one investment fund in order to fulfill the obligations of another fund.



## **Principle 18: Access and participation requirements**

We welcome the principle.

- **Fair and open access to CSDs**

BVI supports the CPSS/IOSCO principle that a CSD should grant access to market participants on an open and non-discriminatory basis. All market participants should have the possibility to access the CSD of their choice. This could enhance the competition between the CSDs and may reduce the issuance, clearing and settlement costs incurred by market participants.

MiFID has significantly shown that creating an open and non-discriminatory access to new trading platforms introduced more competition and decreased the transaction costs for equities in Europe. BVI believe this might occur again if the market participants have access to all CSDs.

- **Fair and open access to CCPs**

BVI supports the idea that CCPs have clearly defined principles and requirements for a clearing membership in place in order to grant full access on a non-discriminatory basis to all clearing participants to a central counterpart.

However BVI believes that the conditions on (direct) access of smaller financial service firms – in particular investment fund management companies – to a CCP need to be carefully calibrated. We have provided in the context of the European Market Infrastructure Regulation (EMIR) an alternative model for direct market access to a CCP which works in case of a default of a clearing member. We are happy to explain the model in more detail at your request.

BVI would like to see clarification in the context of the (OTC) derivative regulation of the market infrastructure providers (CCPs) of the term “non-discriminatory access”. We would like to mention that even where a CCP legally provides for “non-discriminatory access” to its CCP-platform the access by German investment fund management companies could be hindered due to fund specific regulatory requirements.

According to the latest draft of the Council on EMIR a CCP should provide a non-discriminatory access and may offer segregation of client assets to the clearing members and its client. We believe that both CCPs and the clearing



members should offer full segregation of client assets, collateral and monies to the non-clearing members/clients (investment fund management companies). The investment fund management companies are not allowed to access a CCP if it only offers partial segregation.

- **Fair and open access to Trade Repositories (TRs)**

BVI supports the idea that a TR should have fair and open access to its services. We think that user fees should be primarily based on the service delivered (i.e. data feeds). We believe that if the TR provider cannot demonstrate that the total revenue across all clients on a like-for-like basis is only increasing by either (a) inflation (RPI) or similar, or (b) an adjustment to reflect an expansion in OTC transaction coverage, then the governing body should not approve the TR pricing schedule.

The information stored in a TR should be maintained at least as the parties to the relevant OTC-contract would be obligated to maintain the data. The TR should not be able to claim any intellectual property rights for the industry-delivered content of the data repository. There should be no license requirements or fees for the use of the data repository content in internal systems of market participants.

## **Principle 22: Communication and standards**

BVI agrees with the principle. We support strongly that all access arrangements and securities transaction flows should be based on open international industry messaging and communication standards such as ISO 20022. ISO 20022 is the leading industry multi-syntax financial messaging standard.

In order to secure interoperability at the basic level, adequate rules on data governance are of utmost importance for the proper functioning of FMIs. The work of FMIs needs to be based on globally accepted identifiers for all trades/counterparties and in all reporting. That could allow to process and to seamlessly exchange data information between the market participants more easily and quickly without the requirement to map different identifiers for trades and counterparties.

In particular, the required identifiers should be available on a license and fee free basis. Primarily ISO standards should be considered for this purpose. The International Securities Identification Number (ISIN) for the identification of securities/transactions. Identification of the counterparties to the trade or



the underlying entities should be based exclusively on a globally agreed Legal Entity Identifier (LEI - i.e. the ISO Business Identification Code (BIC) or the ISO candidate Issuer and Guarantor Identifier (IGI)). The usage of a unique identifier is a precondition for demanding ad hoc information by the regulators in cases of concentration of securities holdings, market abuse and financial interconnectedness.

Without prescribing the use of specific open identification and transaction standards, interoperability between all market participants (e.g. exchanges, trading platforms, CCPs and CSD) will not be possible.

The interoperability arrangements between all market participants should also incorporate the improvement of quality of post trade reporting. The quality of trade reporting will ultimately be improved only if the use of specified data dictionaries and semantics is required in regulation and therefore accepted by all market participants in their reporting.

We would welcome regulatory support for standardisation of semantics of all reportable instruments which should ideally occur on a global basis. For example, the US-SEC/CFTC engaged until year end 2010 in a public inquiry concerning the feasibility of requiring the derivatives industry to adopt standardized computer-readable algorithmic descriptions to describe complex and standardized financial derivatives.

An industry initiative, the EDM Council, is engaged in providing semantics for other asset classes as well. Its work could be a good starting point for improving the quality and format of post trade reports. The Semantics Repository is structured as a formal and factual representation of the terms and conditions associated with every financial instrument as well as structural representation of every business relationship with involved counterparties. It has been constructed based on collaboration with the financial participants, it is extensible to cover any new instrument type that can be created and includes a process for both business and technical validation.

This industry initiative has completed the reference data semantics for all listed instruments as well as OTC derivatives and those constructs have been incorporated into a repository. The semantics for dated terms/market data, terms related to legal entity structures, loans and enhanced asset backed securities are in draft and will be completed in the first quarter of 2011. Following completion of this, the industry will move on to corporate



events, securities issuance and the transactions lifecycle. Access to the Semantics Repository is available to the public at:

<http://www.hypercube.co.uk/edmcouncil>.

#### **Principle 24: Disclosure of market data**

BVI agrees with the principle. Supervisory authorities and the public policy should recognize that there are reasons for the coexistence of different levels of transparency, and should push for higher transparency only in those cases where it can remarkably increase market efficiency as well as benefits for participants.

Trade repositories should be required to, among other things, provide aggregated data and statistics on types of transactions and types of counterparties to the public and to the OTC market's supervisory authorities. A TR should provide individual counterparty data on open positions, trading volumes and prices only to competent supervisory authorities for the purpose of maintaining financial stability. This detailed disclosure should also include information on the largest exposure to certain products and parties in order to be better able to assess the level of risk concentration in the market.

Any information given to the general public should be carefully considered. A publication of e.g. open positions may influence the price formation process in the OTC markets and may reduce liquidity. Therefore, it is significant that supervisory authorities determine in close cooperation with market participants, industry associations and service providers scope and details of publication of OTC data.

BVI feels that disclosure of individual company positions to the general public should be avoided in order to protect proprietary portfolio information. It should be noted too, that disclosure of derivatives positions without knowledge of other portfolio positions they could be hedging is of doubtful use and could actually be entirely misleading.

The level of granularity of information needs to be considered carefully. Only disclosure of statistics on standard products aggregated at a sufficiently high level to the public should be considered.





We hope that our views are of assistance to CPSS/IOSCO and remain at your disposal for further clarification of the issues at hand. Our response can be made public.

With kind regards

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