REPORT BY THE CNMV ADVISORY COMMITTEE ON THE CPSS-IOSCO CONSULTATIVE REPORT ON PRINCIPLES FOR FINANCIAL MARKET INFRASTRUCTURES (FMI) OF MARCH 2011

The CNMV's Advisory Board (or Committee) has been set by the Spanish Securities Market Law as the consultative body of the CNMV. This Committee is composed by market participants (members of secondary markets, issuers, retail investors, intermediaries, the collective investment industry, etc) and its opinions are independent from those of the CNMV.

I. GENERAL COMMENTS

The CNMV Advisory Committee is grateful for the opportunity to participate in the public consultation phase of the document drawn up by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organisation of Securities Commissions in connection with the Principles for Financial Market Infrastructures (hereafter, for brevity, the "Principles").

The Principles address Financial Market Infrastructures ("FMI"), a general category that encompasses a range of organisations and entities: payment systems, central securities depositories (CSD), securities settlement systems (SSS), central counterparties (CCP) and trade repositories (TR), and they replace the Recommendations previously issued separately in connection with some of those entities.

In terms of general comments, six aspects merit attention:

A. The common nature of the Principles. The consultative report adopts a single set of Principles that apply, to a greater or lesser degree, to each type of FMI. Although table 1 sets out the general applicability of the Principles to specific types of FMIs, the situation is unclear in many cases, particularly in the key considerations and the detailed development of each principle; consequently, the scope and applicability of each Principle to specific FMI types is not clear. Therefore, despite the evident advantage of having a single set of principles, it should be considered whether it is worth the sacrifice in terms of precision. In any event, an additional effort could be made so that, where necessary, the reference to FMI specifies the particular type of FMI being referred to.

B. Organic position of the various FMIs. It's important to note that FMIs and their management companies are often part of larger groups. Consequently, in all cases where the Principles define a duty, a responsibility, goals and a defined policy, it is necessary to

consider whether they can be fulfilled in the framework of coordinated management which may encompass more than one FMI.

C. Relationship between the Principles, the pre-existing Recommendations and other announced instruments. The existing ESCB-CESR Recommendations for SSSs and CCPs, which date from May 2009 and serve as the basis for supervision within the European Union, are very similar to the current CPSS-IOSCO Recommendations. Consequently, it should be considered whether it is advisable to maintain those European Recommendations when the new worldwide Principles come into force, particularly considering that, in the near future, there will be European legislation governing CCPs.

Regarding the latter issue, some divergences in approach are observed between the Principles and the European Market Infrastructures Regulation (EMIR), at least in the various extant versions of the latter. There are also major differences with respect to the Dodd-Frank legislation in the US.Although these comments can refer only to the CPSS-IOSCO Principles, it would be desirable for there to be coordination between the various authorities or legislators to ensure that there are no situations of legislative arbitrage to the advantage of CCPs in a specific region.

D. The various types of CCPs as regards the handling of exposure to them. Under Basel III, the proposals for bank capital requirements grant more favourable treatment to exposure to CCPs (provided they are "qualifying" CCPs) than to bilateral exposure. Such "qualification" consists of fulfilling the CPSS-IOSCO Principles, but there are no details as to how CCPs will be assessed to determine whether they "qualify". Consequently, it would be advisable to have a clear wording of all the requirements contained in these Principles, with the greatest possible precision with regard to the procedure for a CCP to be deemed as "qualifying".

E. Time frame for applying the Principles. Another problem, related to the one mentioned in the preceding section, is the short time available for CCPs to fulfil those requirements. The official CPSS-IOSCO document is not scheduled to completed until early 2012, but the Basel Committee on Banking Supervision wants the change in capital requirements for exposure to CCPs to come into force in January 2013. That gives CCPs less than one year, which is insufficient.

F. Independent validations. The Principles contain numerous references to validations that CCPs must perform with their models, parameters and assumptions (3.2.13, P.4Kc5, 3.4.12, 3.5.3, P.6Kc7, 3.6.4, 3.6.5, 3.6.8, 3.7.14, 3.7.17). In some cases, it is specified that the validation must be "independent", but no information is given as to the required degree of independence or externality. Moreover, the requirement that margin

or collateral parameters be validated before they can be implemented may compromise a CCP's security if such validation delays the application of the changes.

Although CCPs in general already comply with all of the Principles, some of the new features, new controls, etc., when taken together, represent a major additional burden, particularly if compliance with many requirements must be audited by third parties.

II. INTRODUCTION

Box 1:Public policy benefits of trade repositories

Although this Committee agrees with the recommendation that the authorities should provide mutual support for access information contained in TRs, reciprocity in the conditions of access to global TRs is important so as to ensure a level playing field and eliminate any competitive disadvantages. For example, it is more burdensome for a TR to fulfil direct access requirements imposed by several authorities or jurisdictions than to fulfil vis-à-vis just one authority and for the latter to relay information to other jurisdictions/authorities. Moreover, it is fundamental that any authority guarantee a level playing field for the TRs operating in its territory. Also, when negotiating cooperation agreements between regional authorities, it is very important that they take account of reciprocity in the conditions for recognising global TRs.

III. OVERVIEW OF KEY RISKS IN FINANCIAL MARKET INFRASTRUCTURES.

Box 2: Risk considerations for trade repositories

Evidently, the data held by TRs must be accurate and always up to date. However, it should not be overlooked that a TR always depends on external information sources and that, in the final instance, it is the participant firms which are in charge of maintaining that information. Consequently, the best tools a TR to ensure the quality of the information it holds are: a) matching or bilateral confirmation of the data; and b) the TR must be capable of granting an advantage in terms of legal certainty for contracts that are registered and matched. Both these factors should be promoted by the authorities at regulatory level.

IV. PRINCIPLES FOR FINANCIAL MARKET INFRASTRUCTURES

This section addresses, separately, the Principles that merit individual comment.

Principle 1: Legal basis

Point 3.1.4 establishes that an FMI should be able to articulate its legal basis to relevant authorities, participants, and, where relevant, participants' customers, in a clear

and understandable way, and it recommends that this articulation be achieved through well-reasoned and independent legal opinions or analyses.

This recommendation may be very costly or impractical where the FMI operates in a large number of jurisdictions; this case is addressed in section 3.1.10, which recommends that "to help achieve legal certainty on conflict-of-laws issues, an FMI should obtain reasoned and independent legal opinions and analysis of the enforceability of its choice of law in relevant jurisdictions".

To that end, it should be considered whether it is possible to attain such a clear determination of the applicable law using consensual criteria based on private international law and harmonisation of legislation, rather than through ad hoc legal opinions.

Principle 2: Governance

Where an FMI is part of a group, it's necessary to check whether the governance recommendations established in this Principle can be fulfilled at group level (rather than directly by the FMI). This might ensure that decisions adopted by the Board of Directors are coherent with the interests of all parties involved and with the pertinent jurisdictions.

The Principle also devotes considerable attention to stakeholder input (item 3.2.15) in the various arenas where the FMI operates. Implementation of this recommendation should not involve excessively complex solutions; rather, the result should be clear, simple structures for participation.

Principle 3: Framework for the comprehensive management of risks

This Principle requires that FMIs should clearly identify the risks of all types that they may face in their business and that they have policies, procedures and management systems for measuring, controlling and managing them.

Nevertheless, section 3.3.2 establishes that FMIs must consider other risks (apart from legal, credit, liquidity and operational risks), such as business, market and other risks that do not appear significant when taken alone but may prove significant when combined with others. Not all of these risks depend on or arise solely from the FMI or even its participants, which makes it extremely difficult to identify, control and manage them. This is the case of interdependencies, which are addressed in Principle 20. The FMI may not have access to the information it needs to identify, measure and manage those risks. Likewise, when recalculating the risk which an FMI may incur as a result of its activities with interdependent entities, such as its participants, it may be difficult to gain access to certain information about those participants since in some cases it may be available only to the regulator.

Section 3.3.5 establishes recommendations as to how FMIs can incentivise participants and customers to identify, measure and manage their own risks. This system may work vis-à-vis participants but it is hard for an FMI to apply it directly vis-à-vis customers, with which it does not have a contractual relationship (at least from the standpoint of a CSD). In any event, rather than incentives, these are more like sanctions for promoting greater settlement efficiency.

For all these reasons, we consider that it is more effective for an FMI to focus on identifying and managing the risks that affect it directly so as to minimise them and thus efficiently manage them, contributing to the security of the system as a whole. This would also reduce the costs incurred by the FMI as a result of the proposed external analyses.

In short, it would be advisable to specify the procedures and requirements to be applied in this risk identification and measurement process to be undertaken by FMIs.

Principle 4:Credit risk

This Principles seek to establish different rules depending on whether the the FMI is a payment system, CSD or SSS, on the one hand, or a CCP, on the other, evidencing that the idea of unification has its limits.

The Principles do not address the question of how many participants in default (whether the one with the most risk, or the two with the most risk, or some combination) need to be considered together in order to establish the funds that the CCP should have on top of the margin, such as the default fund, in "a variety of extreme but plausible market conditions".

All the current Recommendations require that CCPs be able to withstand default by the participant that would potentially cause the largest aggregate credit exposure; this is a sizeable hedge from a statistical standpoint; moreover, it has withstood the test of the recent financial crisis and there is no reason, other than prudence, for increasing this number without taking account of other factors such as the participants' structure or the types of products handled by the specific CCP and, in particular, without having considered the severity of the extreme conditions since they, rather than the number of simultaneous defaults, are what will determine the necessary level of funds.

Arranging coverage for more than one settling participant at the same time would increase the funds required and this would increase costs for the CCP and its participants.It is more important to ascertain the shortfall that would not be covered by the margin. In this connection, more emphasis should be placed on setting standards for the parameters used in the stress tests, rather than simply increasing the initial margin.

Some confusion may arise in this Principle with regard to the definition of "potential future exposure" and whether it should be covered by the initial margin or by other funds of the CCP. This term apparently refers to the potential settlement costs in excess of the replacement costs initially envisaged during the settlement or close-out period (according to footnote 38 of the Consultative Report), so it would be more appropriate to use the term "potential future replacement costs".

It would also be advisable to distinguish between "potential future exposure in normal situations" and " potential future exposure in extreme situations", so that the initial margins would serve to cover the former, given a certain level of confidence, while the CCP's additional funding (including the default fund) should suffice to cover the latter, in a scenario of extreme but plausible market conditions.

Principle 5: Collateral

It would be advisable to adopt a definition of "closely linked" companies and the type of link involved: ownership or a link arising from the very structure of the FMI (depending, therefore, on its type and characteristics).

Some disparity is observed in the reliance that is placed on market prices. Principle 3.5.3. warns that market prices may not fairly represent an asset's true value, while the following Principle insists that participant's positions be marked to market and the importance of having a reliable, timely source of price information.

As for cross-border collateral, it is not only important that FMIs have legal and operational safeguards to ensure that it can be used when necessary, but also that national and European legislation should enable FMIs to reject cross-border collateral which, even after adopting all the legal and operational safeguards, is considered to be a risk due to the complexity of its use as a result of time differences and geographical difficulties, without this constituting a breach of European legislation on the free provision of services.

The concept of "wrong-way risk" is introduced; although it is described correctly in explanatory note 3.5.2 as the risk of correlation between a participant's solvency and the value in liquidation of the collateral they supplied, but it is incorrectly defined in note 46 and in the definitions in Annex H.

More important is the provision that an FMI should avoid this risk by "not accepting collateral that would likely lose value in the event that the participant posting the collateral defaults". While we acknowledge the importance of this risk and the need to monitor it appropriately, the current wording is excessively generic and the proposed solution is too strict. With the current wording, we understand, for example, that no participant would be able to provide sovereign bonds from its own country as collateral.

Consequently, rather than a prohibition, it would be more appropriate to require proper vigilance of the wrong-way risk and proper management of the collateral that is accepted in order to minimise the risk.

Principle 6: Margin

According to key consideration 1, when setting margin levels a CCP should take into account potential increases in liquidation times in stressed markets. This may fail to consider that margin levels are established to cover settlements in normal market circumstances, whereas extreme market situations should be covered with additional financial resources. A distinction should be maintained between the risks covered by the margin and those covered by other funds, so it would be appropriate to eliminate the reference here to the longer liquidation time.

This principle again raises the recommendation that CCPs have their valuation models validated by external third parties, so it is necessary to insist that the identity of such third parties needs to be clarified: regulators, external auditors, or other entities.

Principle 7: Liquidity Risk

In the same way as in Principle 4 (Credit Risk), the question as to whether a CCP should maintain sufficient liquid funds to cover default by the [one/ two] participant[s] with the largest payment obligations is revisited in this Principle. The same comments are in order here, adding that if sufficient collateral is available to cover the credit risk (in accordance with Principles 4 and 5), that collateral will be sufficiently liquid of itself or sufficiently valid as collateral to obtain immediate liquidity.

The requirement in consideration 3 that "an FMI should maintain sufficient liquid resources ... to effect same-day ... settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that should include ... the default of the [one/two] participant[s] ... that would generate the largest aggregate liquidity need ..." must refer to the "variation margin" since the initial margin is paid only to the CCP. However, the requirement for same-day settlement clashes with the content of Principle 13 regarding procedures in default, particularly 3.13.1 (c) and (d) regarding prudent, orderly liquidation.

Moreover, the identification of this risk should take account of the possibility that a participant may be acting in the FMI not just as a participant but also as a settling bank or provider of liquidity, which will have different consequences in terms of liquidity risk.

Principle 8: Settlement finality

The introduction of principles 8, 9 and 10 in the area of "Liquidation" should clarify that, in the case of CSDs, the liquidation risk corresponds to the participants.

Apart from recommending that final settlement take place on the value date, it should also recommend that liquidation take place on the intended settlement day with the same goal of providing clarity and certainty.

Where settlement is performed batch-wise rather than in real time, a recommendation should be made as to the minimum frequency with which batches are processed.

It should be clear that the recommendation is to use central bank money rather than commercial bank money.

Item 3.8.6 should mention not only unilateral revocation but also bilateral revocation.

Principle 9: Money settlements

FMI participants should be aware at all times whether settlements are being made in central bank money or commercial bank money.

Principle 11: Central securities depositories

The definition of CSD should be broader; a CSD is not just "... an entity that holds securities accounts and, in many countries, operates an SSS". The definition should at least include the term "securities account provider".

Point 3.11.5 should specify that a CSD may not always have assets of its own. Moreover, apart from procuring segregation of the assets belonging to participants' customers, it is also necessary to segregate positions held by participants from those held by their customers.

As for links between CSDs, it should be made clear that CSDs must take all necessary steps to ensure that transfers of securities entail final transfers of title; therefore, the prohibition on provisional transfers of securities should be heightened, indicating also that the CSD cannot offer assurance in this connection where different jurisdictions are involved.

Also in connection with segregation of the securities owned by the CSD, participants, and participants' customers, the Principle states that "CSD should consider insurance or other compensation schemes to protect against misappropriation, destruction, and theft of securities". However, this point should actually be under Principle 17, which refers to operational risk.

Finally, it appears that insufficient regard is being given to the fact that the segregation and portability mechanisms operate fundamentally in the scope of CSD and

CCPs, respectively, and there is not yet a clear framework for applying these mechanisms in relations between CSDs and CCPs

Principle 13: Participant-default rules and procedures

As discussed above in connection with Principle 3, it is hard for an FMI to fulfil the recommendation that it involve its participants in periodical tests and reviews of its participant-default procedures to ensure that they are both practical and effective, as set out in section 3.13.7.

In any event, the recommendation that participants regularly review their default procedures is incentivised by the fact that, in the event of participant default, the FMI draws firstly on the assets delivered by the participant (margins and collateral).

Principle 14: Segregation and portability

This Principle has no precedent in the existing Recommendations for CCPs. Segregation and portability are good in themselves; however, there are many ways of obtaining these benefits. There is too much detail in the wording of this principle, with the result that the rules are too strict. As the recommendations themselves acknowledge, the protection that can be offered by a range of structures and depends on each country's legal framework; consequently, without pre-judging any type of structure of the way in which accounts should be kept in a CCP, it would be advisable to make segregation and portability obligatory, defining both concepts clearly and precisely but allowing CCPs to choose the structure that they consider to be most appropriate on the basis of their national legislation and internal policies.

Key consideration 1 appears to assume that the collateral received by CCPs is provided by customers, which is not generally the case. It is more common for customers to provide collateral to a settling participant, and for the latter to offer its own collateral to the CCP.

Therefore, it would be more appropriate for key consideration 1 to acknowledge the diversity of structures and to make it obligatory to have segregation and portability mechanisms in order to protect customers' positions and the related collateral.

Moreover, the measures regarding portability (e.g. obligation to ensure transfer of customers' positions from a defaulting participant to another participant) may have undesired consequences for the customers because, as the transfer may fail, the CCP's margin calculation methods must take account of an increase in the time for liquidating positions, which will increase the margin levels.

Principle 15: General business risk

Since the European Commission is considering the possibility of imposing capital requirements in the future legislation on CSDs, it would be highly recommendable to avoid inconsistencies, i.e. ensure that the Principles are not more demanding than the future legislation.

Principles 15 and 4 raise the possibility of other equivalent financial resources, including equity or equity capital, to cover not only the general business risk under this Principle 15 but also the credit risk of FMI participants and the FMI's payment, clearing and settlement processes, albeit only after deducting the amount allocated to covering the business risk.

Nevertheless, the use of equity to cover credit risk is contemplated on an exceptional basis, without specifying the criteria under which it departs from the general rule (covering the risk with collateral posted by the participants themselves), so there is a degree of obscurity about the use of equity which it would be advisable to clarify.

Principle 16: Custody and investment risk

When delimiting these two risks, it is advisable to clarify that they arise in different scopes: custody risk refers to securities that a CSD holds in an account at another CSD, whereas investment risk is confined to the CSD's own assets, which are highly liquid and solvent.

Principle 17: Operational risk

The recommendations established in this Principle should take into account the possibility that the risk management needs to be coordinated, either because one operator manages several FMIs or because several FMIs belong to a single group.

Principle 18: Access and participation requirements

In order for access to be really equitable and transparent, it should be defined at service level and not on the basis of the type of participant.

The same occurs with fees: fees should always be based on the type of service, and discounts on the level of activity— never on the basis of the type of participant. The authorities should seek to ensure that the fee for a given service does not depend on the nature of the participant receiving it, since differentiation of services makes it acceptable to have differentiation of fees, whereas the criteria for charging different entities different fees may be driven by the desire to attain a dominant position in the market, with the consequent dangers for competition.

Particular attention should be paid to access to and participation in FMIs by entities that are not subject to regulation and supervision, since this might jeopardize the FMIs' security and efficiency.

Principle 19: Tiered participation arrangements

This Principle should be broken down on the basis of the type of FMI since the distinctive characteristics of CSDs need to be taken into account.

CSDs differ from CCPs and payment systems in the conditions for attaining the status of participant. In practice, it is not easy to define “indirect participant” in the case of CSDs since the latter do not currently conduct visible oversight of their participants' customers. CSDs do not normally have the tools (legal, regulatory or operational) to identify and ascertain the risk profile of such indirect participants or, therefore, to manage the risk they pose. Moreover, many CSD users may be unwilling to share this information for reasons of confidentiality or competition. For these reasons, it is advisable to revise the explanatory notes of this Principle 19 to ensure that the information on indirect participation in CSDs is provided by the participants themselves to the regulators (since all participants in a CSD are regulated entities), since the regulators are empowered to demand such information and use it to obtain an overview of the chain of participants in a CSD. In short, the regulators are best placed to request any sort of information from FMI users.

The ultimate goal is to provide a clear picture of the obligations for FMI participants, so that any interested party may decide whether they wish to become a participant or participant in a given FMI (and to become bound by a clear system of rights and obligations) or whether, on the contrary, they prefer to be a customer of a participant or participant.

Finally, with a number of exceptions, the requirements to disclose this information lies upon the CSD participants, not on the CSD. CSDs offer tools to enable customers to break down their own customers' positions if they wish, but this service should not be obligatory.

Principle 20: FMI links

This Principle 20 should be understood as referring to horizontal links between market infrastructures, since vertical links are addressed in Principle 18.

It is appropriate to distinguish between links between CSDs and links between CCPs, as they are very different. Links between CSDs increase the operational and

custody risks, whereas links between CCPs are more complex and pose additional risks on top of credit and liquidity risk.

Nevertheless, the references to “segregation and portability” in paragraphs 3.20.7 and 3.20.9 (pages 106 and 107) are confusing since Principle 14 on segregation and portability is not applicable to CSDs. Therefore, the relevant paragraphs of Principle 20 should be rewritten into line with the content of RSS12 on protection of customer securities, which is applicable to CSDs: "An entity holding securities in custody should employ best accounting practices, and should segregate in its books customers’ securities from its own securities so as to ensure that customer securities are protected, particularly against claims of the entity’s creditors."

Some discrepancies are observed between the various language versions of the principles when referring to the provisional nature of transfers. To avoid confusions with respect to the EU regulation on finality, it is clearly advisable to use terms such as “definitive” or “effective” rather than “final”.

As regards agreement between FMIs, paragraph 3.20.3 suggests that the resulting rights and obligations for participants should be set out. However, participants are not parties to such agreements and, consequently, are affected by them subject to the specific contract they have entered into with the FMI, which normally reflect the terms and responsibilities contained in link contracts.

Paragraph 3.20.7 requires that links between CSDs be possible only when they provide a high level of protection for customers. It is not clear what parameters would be used to assess that level of protection (the CSD's home legislation?, the legislation governing the link contract?, …), not to mention the uncertainties arising from the existence of a range of disparate legislations. Consequently, the question should actually be approached by requiring total transparency and disclosure of the rules to be applied by the CSD with which the link is established, enabling the participants of each CSD to weigh the legal risks against the business opportunities.

Principle 21: Efficiency and effectiveness

In this principle it might be advisable to specify that FMIs should have mechanisms for a periodic review of their efficiency and effectiveness of their costs and fees.

Principle 22: Communications procedures and standards

This Principle makes it obligatory for FMIs to use or allow the use of internationally accepted communication procedures and standards in order to support interoperability

with participants, their customers, and third-party service providers; where such standards and procedures have not been fully adopted, they must use systems to translate or convert data from international standards into domestic ones and vice versa. (note 3.22.3). This same general rule and exceptions are apparently repeated in connection with FMIs that provide cross-border services (note 3.22.5), which, depending on the activities they perform, must be particularly sensitive to international standards in communication processes. Consequently, we suggest reconsidering the second exception or, at least, delimiting it in connection with the general exception.

Principle 23: Disclosure of rules and key procedures

Proper disclosure of the rules and procedures that FMIs must apply is a valuable recommendation but it should take account of the high cost of producing and updating such information so that, in accordance with the cost/benefit approach, it should apply to disclosures that are particularly relevant.

Principle 24: Disclosure of market data

It would be advisable to elaborate upon this principle in greater detail with regard to:

- The expectations of the parties and the industry,
- What should be understood by " timely" provision of information,
- What data should be disclosed to the authorities and the public,
- What forms should be used for information disclosure, considering the obligation to allow analysis and comparison of the data disclosed by numerous TRs.

The Principle acknowledges the possibility of legal and confidentiality-related restrictions on the disclosure of information. In these cases, it will be sufficient for the TR to notify the pertinent authorities of the existence of such restrictions and work with them to overcome them. Unless there are changes in legislation in the various jurisdictions, this factor may potentially lead to different levels of disclosure.

V. ANNEXES

To conclude, there follow some comments on the annexes to the Principles.

1. ANNEX C: Selected RSSS marketwide recommendations

Since there'll were already recommendations for securities settlement systems, and most of them are incorporated into these Principles, Annex C sets out the subsisting recommendations for SSS.

Consequently, the Principles will apply to SSSs insofar as they are FMIs, i.e. in accordance with the contents of Table 1 (page 13) and the recommendations set out in Annex C.

The latter include recommendations 6 (Central securities depositories) and 12 (Protection of customers' securities), even though they are expressly subsumed into the Principles, as indicated in Annex A (Mapping of existing standards to proposed standards). It would appear, therefore, that these two recommendations could be eliminated from Annex C in order to simplify the recommendations applicable to securities settlement systems.

Finally, it appears unnecessary to maintain recommendation 4, which refers to central counterparties and to assessing the advantages and costs of a CCP, stipulating that, if the mechanism of this type is introduced, the CCP must rigorously control the risks it assumes. That final part, at least, is sufficiently incorporated into the new principles.

2.Annex E: Guidance for CCPs that clear OTC derivatives

A. Part 1: Distinctive features of OTC derivatives The document identifies the distinguishing features of OTC derivatives, focusing on those that may affect a CCP's capacity to perform clearing functions safely and efficiently.

The following issues are significant:

- The various references to OTC markets in the document suggest greater structuring of these markets, even referring to the existence of trading platforms under development (b) and to the existence of conventions, standards and protocols that are broadly adopted by participants in those markets (g). However, these characteristics may not be applicable to all environments where bilateral OTC trades in derivatives take place and, therefore, is not possible to assess the extent to which these guidelines may be applicable.

- Mention is also made of portfolio compression services (e) as being essential for the operation and efficient risk management of OTC markets, providing for close interaction with CCPs. Nevertheless, this class of service does not appear to have been widely implemented in the sector as yet.

- Mention is made of the need to include the diversity of participants from various jurisdictions in the CCP governance structure. However, this may hamper decision-making if we consider the differences in legislation, physical location, time zone, category of entity, the reform, etc. of the various participants. No guidelines are given for overcoming these difficulties.

Part 2: Detailed guidance on CCP emergency actions and market protocols The document addresses this issue commencing with the definition of extraordinary

emergency situations: "Extraordinary emergency situations are those which have not been anticipated by and accordingly may not be adequately resolved through the established procedures outlined by CCPs"

However, the document then makes it obligatory for CCP regulations and procedures to specify, in broad terms, the range of circumstances in which the CCP is entitled to invoke exceptional powers and to establish a decision-making process in this respect. That is to say, these situations must apparently be contemplated and their resolution procedures defined beforehand, which appears to clash with the terms in which such situations were defined previously.

Moreover, the document simply refers to some of the exceptional measures which might be adopted in such situations (temporary relief to the CCP of obligations to perform on a contract or to compensate participants for losses incurred from the failure to perform); consequently, if the approach of requiring that these situations and the consequent procedures for action be defined beforehand, the exceptional measures should be set out in greater detail.

The requirement of a policy and procedures on potential conflicts of interest specifically for cases of extraordinary emergencies might be considered excessively demanding, since there is already a requirement to have a general policy on conflicts of interest that would apply in these situations.

Finally, we note in particular the reference to the obligation on CCPs to issue instructions so that any windfall gain obtained directly as a result of exceptional measures adopted in a situation of emergency be transferred by the beneficiaries to the parties who were negatively affected by the decision. The complexity and diversity of cases that may arise in these situations makes it inadvisable to oblige CCPs to arrange for the transfer of such gains. It would be very complicated to determine whether any gains in exceptional situations would be due directly to the CCP's decision, and establishing this obligation for CCPs might lead to intractable claims or conflicts.

3. Annex F: Oversight expectations applicable to critical service providers

This Annex should mention that the responsibilities assumed by critical service providers should be clearly identified so as to establish unequivocally the responsibilities of the FMI and those of critical service providers.

4. Annex H: Glossary

The term "governance" is contained in paragraph 3.2.1, not 3.2.2.

The definitions of “backtesting” and “dematerialisation” should avoid references to what they involve focus solely on what the terms consist of, since the documents appears

to use this expression in its various meanings, especially in the term “involve”. Therefore, in the case of backtesting, the definition should read: “Backtesting is comparing ..." (not "involves comparing"). In the case of dematerialisation, the definition should read: “Dematerialisation is the elimination ..." (not "involves the elimination").

The definition of financial market infrastructure (1.8) states that it is a multilateral system. However, this is not the case with a CCP, which enters into bilateral relations. It is equally unclear why it is classified as a system and, in fact, the category of multilateral system is standard in European legislation such as MiFID. Therefore, the scope for error will be reduced if the term “multilateral system” is eliminated from the definition of FMI.

It would also be advisable for the definition of “immobilisation” to refer also to securities represented by physical certificates.

The definition of “novation” and paragraph 3.1.8 which it references state that there is an original contract between a buyer and a seller, which is discharged. This reference to discharge of the contract is not clear since, technically, the mere fact of novation does not entail discharge of the contract. It would be more accurate to say that the contract is amended or transformed, since there appear to be divergences between the various language versions of the Principles on this point.