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COMMENTS ON THE PRINCIPLES FOR FINANCIAL MARKET INFRASTRUCTURES CONSULTATIVE REPORT

South Africa welcomes the opportunity to comment on the consultative report on Principles for Financial Market Infrastructures ("FMIs") prepared by the Committee on Payment & Settlement Systems ("CPSS") and the Technical Committee of the International Organization of Securities Commissions ("IOSCO").

We have found the consultative report, proposed principles and explanatory notes very clear and comprehensive and therefore wish to commend CPSS-IOSCO for the work of their technical and working committees who have drafted this lucid and thorough report.

Overall, South Africa is supportive of the scope and intent of the proposed broad principles and wishes to highlight some considerations (see Annexure A and B) that we believe should be reflected upon in the formulation of the final amendments to the CPSS-IOSCO Principles.

Yours sincerely



N Müller

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Principle 1

Key consideration 1 - The legal basis should provide a high degree of certainty for each aspect of an FMI's activities in all relevant jurisdictions:

- Explanatory Note (EN) 3.1.5 needs to be constrained by legal arrangements between FMI's participants and their clients.

Key consideration 4 - An FMI should have rules, procedures, and contracts that are enforceable in all relevant jurisdictions, even when a participant defaults or becomes insolvent. There should be a high degree of certainty that actions taken under such rules and procedures will not be stayed, voided, or reversed:

- Independent legal opinions to interpret enforceability of laws of other jurisdictions must be obtained where necessary.
- The UNIDROIT Convention addresses legal consistency and certainty on substantive matters. It is our view that IOSCO should encourage the ratification of this global standard. We believe the recommendation of these Conventions by IOSCO will speed up the addressing of the specific legal risk.
- The Principle should be extended to include an FMI's own default.

Key consideration 5 - An FMI conducting business in multiple jurisdictions should identify and mitigate the risks arising from any potential conflicts of laws across jurisdictions:

- IOSCO should encourage the harmonisation of laws and ratification of global standards. IOSCO should require regulators to demand legal opinions on enforceability.

EN 3.1.1 & 3.1.5

- UNIDROIT specifically defines rights and obligations, also in insolvency circumstances. IOSCO should adopt the core rights and obligations as set out in UNIDROIT as a global standard across all member jurisdictions.
- The legal risk cannot be seen in isolation, and credit risk also plays a huge role.

EN 3.1.5

IOSCO should be clear on what is expected where CSDs and other FMIs fulfill this role.

- Segregation of securities should be prescribed at all layers of the holding chain and up to the level of beneficial holder.
- IOSCO should recommend how segregation should be done in practice on accounts for each beneficial shareholder and how this should be done in the case of nominees and omnibus accounts.

EN 3.1.6

It is very important that finality can only be revoked under very specific circumstances. The balance needs to be defined between the finality of a transaction and the very exceptional circumstances when the transaction may be revoked, e.g. by court order or not. IOSCO should encourage UNIDROIT principles to be incorporated in all jurisdictions. IOSCO should provide basis for defining exceptions to general rule of finality.

EN 3.1.7

- Enforceability of netting arrangements should be addressed / considered where two or multiple jurisdictions are involved to avoid possible risk, even systemic risk.
- IOSCO is not clear on the preferred method to reduce exposure to the insolvency of a counterparty. Is netting or the use of collateral in a form of security interest (pledge/out and out cession/hypothec, etc, or both recommended?)
- IOSCO should specifically address “cherry picking” powers of insolvency administrators.
- IOSCO should support the proper operation of netting agreements. UNIDROIT is currently doing a study on this topic (“Netting of Financial instruments study 78C”).

Principle 2

Key Consideration 5 – The board should establish a clear, documented risk-management framework that includes the FMI’s risk-tolerance policy, assigns responsibilities and accountability for risk decisions, and addresses decision making in crises and emergencies. Governance arrangements should ensure that the risk-management and internal control functions have sufficient authority, independence, resources, and access to the board:

- We are supportive of including reference to a documented risk tolerance or risk appetite statement but that statement needs to be linked to the risk management practices of the FMI (see 3.2.11).

EN 3.2.2 and 3.2.5

- We are supportive of IOSCO's recommendation and that IOSCO should not be prescriptive. Guidance should only be given and left to the local regulators to impose specific requirements where necessary.

EN 3.2.13

- The frequency of model validation should be consistent with the magnitude of the risk exposure related to the model’s use and frequency of changes to the parameters and assumptions in the model.
- Consideration should be given to the independent assessment of the Board’s performance.

Principle 3

Key consideration 1 - An FMI should have risk-management policies, procedures, and systems that identify, measure, monitor, and manage the range of risks that arise in the FMI:

EN 3.3.1 and 3.3.2

- IOSCO to detail the meaning of "capacity" and "incentives" in order to be clear and effective about the suggested mechanisms.

Principle 4

Key consideration 3 - A payment system, CSD, or SSS should cover its current and, where they exist, potential future exposures to each participant fully with a high degree of confidence using collateral and other equivalent financial resources (see principle 5 on collateral):

- IOSCO must give clarity on how netting arrangements affect credit risks.

Principle 5

- Principle can be cross-referenced with Principle 24.

Principle 6

- Principle can be cross-referenced with Principle 24.

Principle 7

- We support this Principle and Key Considerations. However, a FMI should assess the degree of dependency to a liquidity provider and where too great a concentration is deemed to exist, should diversify its liquidity providers.

Principle 11

Key consideration 1 – A CSD should have appropriate rules and procedures, including robust accounting practices and controls, to safeguard the interests of securities issuers and holders, prevent the unauthorised creation or deletion of securities, and conduct periodic reconciliation of securities issues it maintains:

- Acknowledgement by IOSCO that the precise activities of a CSD may vary based on jurisdiction and market practices, is positive.
- Where discrepancy in reconciliation exists then reconciliation practices should ensure that the CSD records prevail in the case of a discrepancy. IOSCO only mentions reconciliation, but reconciliation should be a requirement through all layers

in a holding chain. IOSCO does not define "top-down" or "bottom-up" reconciliation - whichever is to apply, the CSD records must prevail.

- Not all CSDs are Self-Regulatory Organisations (SROs) who would have a supervisory and enforcement role/obligations and monitor compliance by its Participants with such 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.

Key consideration 4 – A CSD should maintain securities in an immobilised or dematerialised form for their transfer by book entry. Where appropriate, a CSD should provide incentives to immobilise or dematerialise securities:

- IOSCO should recommend dematerialisation.
- Incentives should come from government level and main regulator. This should not only be the responsibility of the CSD.

Key consideration 5 – A CSD should identify, measure, monitor, and manage its risks from other activities that it may perform; additional tools may be necessary in order to address these spillover effects:

- IOSCO should recommend segregation not only between participants own securities and those of its clients, but also between clients in "omnibus accounts".
- Performance of other activities by a CSD is foreseen by IOSCO and this is positive.

Key consideration 6 – A CSD providing central safekeeping and settlement services to a CCP should ensure that the CCP would not pose additional material risks (such as liquidity and operational risk) as compared to any other participant in the CSD and, where necessary, take additional measures.

- The key consideration should be cross referenced to Principle 18.
- Any entity introducing risk to a CSD must be subject to stringent entry criteria, rules, procedures and monitoring at the level commensurate with such risk levels.
- We recommend that this consideration should not be limited to CCPs.

Principle 12

- DvP equates to transfer of ownership and can best be achieved across all layers through full segregation of client accounts at CSD level.
- This Principle could be cross referenced with Principle 14 and should be in an order that puts it close to Principles 8 and 9.
- Eliminate the restriction that the linked obligations are two in all cases. The principle assumes that there are only two linked transactions, DvP or PvP. The concept is appropriate but there are business operations in which 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, etc.

Principle 14

- This Principle should be extended and should apply to CSDs and any other intermediary in a securities holding chain.
- Reference to the wording "to the greatest extent possible" is not supported. IOSCO should recommend full segregation to end investor / Beneficial Owner level - supported by legislation.
- We support a direct holding model. IOSCO should recommend segregation to all levels in a holding chain. Individual accounts may also allow regulators to perform market surveillance more effectively and proactively prevent money laundering and terrorism financing.
- Segregation and portability must be able to withstand insolvency laws and should not always be linked but should also be dealt with separately. Segregation is important for other purposes e.g. attachments, securities interests, pledges, collateral management etc.
- We support segregation of securities as one would not want loss-sharing arrangements unnecessarily in an insolvency / default situation.
- Portability can be enhanced with the pre-appointment of a "Secondary" Intermediary i.e. investors appoint a "Primary" Intermediary who administers their accounts, but they proactively appoint a "Secondary" Intermediary who steps in and immediately fulfils the functions of the primary intermediary should the Primary Intermediary be placed in an insolvency / default proceeding.

Further considerations:

- What are the different models and approaches to establishing segregation and portability? What are their pros and cons respectively, for example in terms of efficiency and level of protection that can be achieved?
 - Models of segregation can include for example:
 - CCP/CSD
 - client / client
 - CCP / client
 - CSD / client
 - CSD / CSD
 - CSD / Participant
 - participant / client; and
 - combinations thereof.
- The basic approach to segregation should be not only the protection of the FMI or between FMIs and another group, but at all levels in a holding chain.
- Efficiency and cost debates exist when segregation is proposed but this should be weighed against the benefits of transparency and investor protection.
- Problem with supervising segregation at lower levels by an FMI whose power does not extend to lower levels. Instances of regulatory arbitrage and unlevel

playing fields where requirements do not apply to all tiers. This Principle should also apply cross borders. IOSCO should recommend to regulators and government to legislate and harmonise segregation.

- Is there any one option or model in particular that could usefully serve as a minimum requirement? Would it be possible to identify a specific approach to segregation and portability that could be defined as best practice?
- Minimum requirement should be segregation between FMIs or intermediaries proprietary positions and those of their clients. We support, as best practice, full segregation to end investor / Beneficial Owner level.
- Would it be helpful to distinguish between different types of products?

Principle 15

Key consideration 5 – An FMI should maintain a viable plan for (a) raising additional capital should its equity capital approach or fall below the minimum; and (b) if the FMI is unable to raise new capital, achieving an orderly wind down or reorganisation of its operations and services. This plan should be approved by the board of directors (or an appropriate board committee), updated regularly, and reviewed by the FMI's regulator, supervisor, or overseer:

- With regards to the reference to "Capital", IOSCO should define what capital includes - for example are borrowings, guarantees in favour of the FMI, etc included?

Principle 16

- This is a powerful Principle and maybe requires more guidance.

Principle 18

- We support the view that an FMI should establish fair and open access to its services, for both direct and indirect participants, other market infrastructures and where relevant service providers, with any restrictions justifiable only in terms of specific issues and risk considerations impacting the safety and efficiency of the FMI or the markets it serves.
- The Principle could be enhanced to specifically refer to access from applicants in all jurisdictions - this is with reference to both local and foreign applicants i.e. this is applicable to issues where entities are incorporated, located or otherwise conduct business for the purpose of participation outside the home jurisdiction (Linked to Principle 1).
- With regards to monitoring compliance, not all CSD's are Self-Regulatory Organisations or entities that would have a direct supervisory responsibility. Further, not all direct and indirect Participants may be regulated entities! In order to manage the risks that a FMI may face, we support the view that an FMI should be directly obliged to monitor compliance with its participation requirements on an on-going basis. Further, we support the view that an FMI should have the authority to impose

more stringent restrictions or penalties in situations where there are instances or non-compliance or increased risk.

Principle 19

EN 3.19.5

- The data that is required to be collected can only be retrospective, which does not help in the management of risk. While the other practical difficulties in implementing this principle are acknowledged, the logistical, informational and legal challenges to effectively implementing this Principle are insurmountable.
- Any Principle addressing the risk associated with indirect participation in FMIs needs to recognize the risk management practices and regulation applied to direct Participants in their dealings with their clients. Introducing additional requirements at the FMI-level will create duplication, increase cost and could potentially create conflicts between the regulatory requirements of the direct participants' regulators and the requirements of the FMI.
- There are tremendous challenges regarding the confidentiality of the indirect participants information and activity. These need to be carefully balanced against the additional visibility provided by this principle.
- IOSCO must also define segregation and take a stronger stance on what it entails.
- The Principle does not specify how far down the tiers this must occur. It will also drastically increase the administrative costs to regulate this. How will this be applied to FMIs that are not SROs?
- These are functions of the regulators, not the FMIs. This will result in a conflict of interest with members / participants of an FMI.
- This Principle would only seem to address a single layer of indirect participation. In practice, there could be multiple tiers of participation. This again highlights the practical difficulty in implementing a principle regarding tiered participant arrangements.
- In practice, the application of this Principle would likely vary considerably across various jurisdictions, particularly due to varying legal and confidentiality constraints in different jurisdictions.

Key consideration 2 – An FMI should ensure that its rules and procedures for direct participants allow it to gather basic information about indirect participation and to identify, monitor, and manage relevant concentrations of risk and important interdependencies. To the extent possible, an FMI should seek to identify direct participants acting on behalf of a material number of indirect participants, indirect participants with significant daily turnover in the system, indirect participants that are larger than the direct participants through which they access the FMI or that pose other specific risks:

- It is likely that significantly more “basic information” would be required in order to effectively meet the spirit of this Principle.

Key consideration 3 – If an FMI identifies material risks arising from tiered participation arrangements, it should periodically review the system rules and procedures with its

board to determine whether there are potential issues related to indirect participation in terms of legal structure, finality, or the stable operation of the system, and ensure that the nature of each user's participation is clearly defined:

- Reviewing rules and procedures applicable only to direct Participants as a means of responding to risk issues related to indirect Participants seems problematic and highlights the practical difficulty associated with this Principle generally.

Principle 20

Key consideration 1 – Before entering into a link arrangement and on an on-going basis once the link is established, an FMI should identify and assess all potential sources of risk arising from the link arrangement. Link arrangements should be designed such that each FMI is able to observe the other principles in this report:

- IOSCO focuses mainly on insolvency and default in the guidelines in ENs 3.20.5 – 3.20.18. It should also recommend the FMI should measure, monitor and manage risks for natural disasters, etc.
- IOSCO 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 for example a form of foreign participation where more intermediaries are interposed in the holding chain. FMIs links should be put into context.

EN 3.20.1

- Why is the principle being limited to links between FMIs of the same type (e.g. CSD to CSD or CCP to CCP) while links between FMIs of differing types are referred to other Principles? (see footnote 118 on page 87)
- We are supportive of the recommendation that links should adhere to the other Principles. For example, operational risk considerations in Principle 17 should include not only operational risk associated with the FMIs own operations but also those related to the operation of link (supported by note 3.20.4)

EN 3.20.5 (and other notes related to CSD to CSD links)

- The principles related to CSD to CSD links seem to include risk associated with securities settlement systems (particularly regarding credit risk) but this is not explicitly stated.

EN 3.20.9

- Repeating the requirement to assess the risk associated with use of third parties is duplicative given that this is already addressed appropriately in other Principles.

Key consideration 2 – A link should have a well-founded legal basis, in the relevant jurisdictions, that supports its design and provides adequate protection to the FMIs in the operation of the link:

- Clear distinction should be provided between:
 - 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
 - legal uncertainty about substantive law issues (what is law on a certain matter?)
- We agree with the Principle that choice of law must be spelled out clearly in agreement. However, IOSCO should recommend that jurisdiction of the country where the issuer CSD is incorporated is checked and the law which applies to the securities. IOSCO should also recommend that an independent legal opinion is obtained from the linked investor/issuer CSD that their respective conflict of law rules which apply, do allow them freedom of contract as set out in IOSCO.
- Settlement finality can take place at various points of the service chain. IOSCO should be clear that this is not just finality within own system, but also in link FMI.

Key consideration 3 – Linked CSDs should measure, monitor, and manage their credit and liquidity risks arising from each other. Any credit extensions between CSDs should be covered fully with high-quality collateral and be subject to limits:

- We agree that IOSCO seems to follow a risk-based approach to regulation of links (EN 3.20.2 and key consideration 1), but this approach should be expressly stated as a separate “Key consideration”.
- Check the CSD's default procedures for any loss-sharing arrangements that will expose participants in the linked CSD (3.20.6). This is because an unexpected liquidity pressure or losses may occur. IOSCO should make a recommendation on default procedures with regards to links. We agree that finality of transfer must be ensured together with this.
- On credit risk: The question is who bears the risk in each link scenario? Is it the client's obligation to ensure that the appointed Participant is in a position to honour its obligations on settlement day? For example, for sale transactions unencumbered securities should be available for delivery and for purchases, or the purchase obligation may be pre-funded. IOSCO should give guidelines on these practical issues. IOSCO should recommend that regulation is risk-based to ensure that these links are not over-regulated.
- On principal risk: disconnection between the payment and the transfer of ownership of securities should be addressed with settlement convention of simultaneous final and irrevocable delivery versus payment. What other guideline could IOSCO give in this regard?
- IOSCO should advise on systemic risk if pre-funding would be required for cash obligations or whether other requirements are set?

Key consideration 5 – An investor CSD should only establish a link with an issuer CSD if the arrangement provides a high level of protection for the rights of the investor CSD's participants:

- IOSCO should provide guidelines that segregation should be effected for customers in nominee/omnibus accounts.
- IOSCO should recommend that UNIDROIT principle of prohibition of attachment in upper-tier intermediary applies to link CSDs.
- Reconciliation standards are required, because reconciliation on only one level/tier may not address the concern.

Key consideration 6 – An investor CSD that uses an intermediary to operate a link with an issuer CSD should measure, monitor, and manage the additional risks (including custody, credit, and operational risks) arising from the use of an intermediary:

- IOSCO should recommend that any critical outsource arrangement with a service provider (e.g. custodian bank) should be subject to this requirement.
- Business continuity plans of intermediaries are but one example of what should be checked. What else is recommended?

Principle 21

- Key to mention conflicts of interests between FMI and other stakeholders (e.g. IT vendors; stakeholder needs) especially relevant for "for-profit" FMI's.

Principle 24

- We support market transparency and this Principle is essential for risk mitigation in the markets.
- Our view is that centralisation of data in a TR will meet objectives better and more efficiently, than having fragmented sources as suggested in *EN 3.24.4*.

General comments:

- The principles should provide a degree of freedom in the architecture and framework adopted by CCP's and avoid being overly prescriptive as to how the principles are to be achieved. The principles should recognise differences in various jurisdictions within which CCP's operate and be broad enough to accommodate such differences.
- The principles and any other related amendments to the requirements should be assessed in conjunction with the amendments required by other global regulatory standards such as Basel III.
- It would be preferable if the proposed assessment methodology could be made available at an early stage rather than when the final report is published in early 2012, as indicated in the consultative report. Furthermore, we hope that the scorecard and its manner of application would also be subject to market consultation.

Consolidated Industry Comments (CSD participants)

Principle 1: Legal basis

- We are concerned with the possibility for regulators to impose the new “core principles” in all concerned jurisdictions when they will affect multi-currency, multi-national FMI.
- Potentially with the number of FMI's regulating one business/organisation, like a Bank, there are concerns regarding potential inconsistencies in Rules and application of similar/same Rules to the same financial market role player (e.g. Rules affecting brokers may in some instances differ between Regulators).

Principle 3: Framework for the comprehensive management of risks

Key consideration 2 - An FMI should provide the incentives and, where relevant, the capacity to participants and their customers to manage and contain their risks:

- Risk Management discipline should be established at the level of the participant's client as in most instances clients are responsible for settlement failures.

EN 3.3.5

- A CCP should have buy-in procedures in place as they are an efficient tool to mitigate the risk. We disagree with the idea of a loss-sharing especially when the FMI is a CCP as this could lead to an unlimited and non-predetermined risk to be faced by a non-defaulting participant.

Principle 4: Credit risk

Key consideration 2 – A FMI should identify sources of credit risk, routinely measure and monitor credit exposures, and use appropriate risk-management tools to control these risks:

- There should be credit risk consideration on instances where the issuers are not able to fund the FMI (e.g. CSD) on time, resulting in the FMI not being able to provide the cash to the participants for a corporate action event.

Key consideration 3 – A payment system, CSD, or SSS should cover its current and, where they exist, potential future exposures to each participant fully with a high degree of confidence using collateral and other equivalent financial resources (see principle 5 on collateral):

- This requirement needs to be across all levels of investor/client, to be effective.

Key consideration 4 - A CCP should cover its current and potential future exposures to each participant fully with a high degree of confidence using margin and other financial resources (see principle 6 on margin which specifies 99 percent initial margin coverage and other requirements). A CCP should also maintain additional financial resources sufficient to cover a wide range of potential stress scenarios identified in regular and rigorous stress testing that should include, but not be limited to, the default of [one/two] participant[s] and [its/their] affiliates that would potentially cause the largest aggregate credit exposure[s] in extreme but plausible market conditions:

- There is little incentive for clearing member banks to increase usage of CCPs given the capitalisation requirements proposed by the BIS within the consultative document “Capitalisation of bank exposures to central counterparties” in conjunction with the additional financial resource requirement to CCPs proposed in the consultative report “Principles for financial market infrastructures”. We request that IOSCO consult with the BIS on the capitalisation implications to Banks and the likely uncompetitiveness of Banks when compared to non-bank clearing members.
- The December 2010 BIS papers “Basel III: A global regulatory framework for more resilient banks and banking systems” and “Capitalisation of bank exposures to central counterparties” respectively, propose different approaches to dealing with credit risk compared to the proposals in the CPSS-IOSCO Consultative Report. We recognise that credit risk management is applicable to both banks and FMIs. We request a cross comparison between these two sets of proposals to ensure consistent application of credit risk management principles.
- It would appear that the IOSCO principles emphasise and place more responsibility on an FMI.
- In our view, if an FMI is required to maintain sufficient financial resources to cover its credit exposure to each participant, the FMI may have to increase its financial resources. The concern is that the FMI may try to recover these costs from the Participants resulting in increased participation fees.

Principle 7: Liquidity risk

Key consideration 1 - An FMI should have a robust framework to manage its liquidity risks from its participants, settlement banks, nostro agents, custodian banks, liquidity providers, and other entities:

- The requirements for additional liquid assets/pre-arranged funding requirements for the FMIs may put additional pressure on the overall banking sector’s current shortfall in liquid assets as part of the Basel III liquidity requirements. This could further inhibit the competitiveness/attractiveness of banks utilising CCPs.

Key consideration 3 - An FMI should maintain sufficient liquid resources (that is, liquid assets and prearranged funding arrangements) to effect same-day and, where appropriate, intraday settlement of payment obligations with a high degree of

confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the [one/two] participant[s] and [its/their] affiliates that would generate the largest aggregate liquidity need in extreme but plausible market conditions. A payment system, CSD, or SSS, including one employing a DNS mechanism, should have sufficient liquid resources to effect, at a minimum, timely completion of daily settlement in the event of the inability of the [one/two] participant[s] and [its/their] affiliates with the largest aggregate payment obligation[s] to settle those obligations. A CCP should have sufficient liquid resources to meet required margin payments and effect the same-day close out or hedging of the [one/two] participant[s] and [its/their] affiliates with the largest potential liquidity need[s] in extreme but plausible market conditions:

- The standard that CCPs should have sufficient resources to withstand defaults is potentially destabilising. In difficult market circumstances both the “cover one” or “cover two” minimum requirement could lead to a run on the CCP market participants trying to close out positions. We would suggest following the alternative recommendation suggested by *Craig Pirrong in his ISDA Discussion Paper entitled “The Economics of Central Clearing: Theory and Practice”*, namely a recapitalisation mechanism that involves conditional capital, pre-committed from financial institutions which are not CCP participants, and which is activated in the aftermath of a default. We would also support Pirrong’s suggestions on constraints to be applied to a CCP’s ability to call for further capital.

The December 2010 BIS paper “Basel III: International framework for liquidity risk measurement, standards and monitoring” promotes a more resilient approach to liquidity risk management for regulated banks. We recognise that the principle for proper liquidity risk management holds for both banks and FMIs. We request a cross comparison between these two sets of proposals. The implementation of the principles could be equivalent to the banking requirements and discourage the increased use of CCPs. The “cover one” or “cover two” minimum requirement could discourage significant financial institutions from participation with smaller market participants. Due consideration is required for consistency in regulation where applicable.

IOSCO should provide clarity on how this Principle would be applied to non-banking FMI's.

Principle 9: Money settlements

EN 3.1.9

- We welcome the idea of combining the possibility of settling in commercial money with a guarantee via some collateral deposits in central bank(s) and we believe that for FMIs, settlement in Central Bank Money should be promoted.

Principle 11: Central securities depositories

Key consideration 1 - A CSD should have appropriate rules and procedures, including robust accounting practices and controls, to safeguard the interests of securities issuers and holders, prevent the unauthorised creation or deletion of securities, and conduct periodic reconciliation of securities issues it maintains:

- The role of a CSD is to safeguard the interests of securities issuers and holders. This means that a CSD should offer no activity that could increase the risk it could face especially when such activity could be done by other means. For example, the CPSS-IOSCO document points out the risk to which a CSD could be exposed when acting as principal in a security lending transaction (potential need to acquire the lent securities). This should be sufficient to say that a CSD should limit its activity to its core functions (aiming at a low-risk profile).
- If a CSD wants to provide additional services, it should be done through a “2+2” model as discussed at the moment in the consultation of the European Commission on the CDS legislation (“CSDs are required to apply for specific authorisation as a credit institution under the CRD and required to conduct those activities in a separate legal entity”).
- Registrars are excluded from the scope of this consultation though they have a role related to the integrity of the issuance. We suggest that if they still perform this function, the responsibility of the integrity of the issuance should be guaranteed by the domestic CSD (as it is one of the core services defining a CSD) and that most of the securities should benefit from the safety provided by the central recording by a CSD.

EN 3.11.2

Daily reconciliation is not enough especially when final settlement occurs on real time basis.

Principle 14: Segregation and portability

- We would like to draw the attention on the fact that segregation of positions at the CCP level means a split of the settlements which will reduce the benefit of the netting (i.e. increase the risk).

Principle 15: General business risk

Key consideration 3 - At a minimum, an FMI should hold equity capital at normal times equal to [six, nine, or twelve] months of expenses. An FMI may also need to hold additional equity capital, taking into account its general business risk profile. Capital held under international risk-based capital standards should be included where relevant and appropriate to avoid double regulation:

- Rules will be critical to ensure that this Principle is properly applied universally

Key consideration 5 - An FMI should maintain a viable plan for (a) raising additional capital should its equity capital approach or fall below the minimum; and (b) if the FMI is unable to raise new capital, achieving an orderly wind down or reorganisation of its operations and services. This plan should be approved by the board of directors (or an appropriate board committee), updated regularly, and reviewed by the FMI's regulator, supervisor, or overseer:

- Industry is supportive of this key consideration but recommends that the role of the Regulator should be limited.

Principle 17: Operational risk

Key consideration 5 – An FMI should have a business continuity plan that addresses events posing a significant risk of disrupting operations, including events that could cause a wide-scale disruption. The plan should incorporate the use of a secondary site and should ensure that critical information technology (IT) systems can resume operations within two hours following disruptive events. In case of extreme circumstances, settlement should be ensured by the end of the day at the latest. The FMI should plan and carry out a programme of tests of these arrangements:

- To provide comfort to the participants, the FMI should share results of its DR tests.

Principle 18: Access and participation requirements

Key consideration 2 – Any restrictions in an FMI's participation requirements should be justified in terms of the safety and efficiency to the FMI and the markets it serves, be tailored to its specific risks, and be publicly disclosed:

- There is a concern that allowing the FMI direct access to the indirect participants may affect the FMI's operational efficiencies and create more administrative expenses for participants.

Principle 19: Tiered participation arrangement

- In our view FMIs should not have to monitor the risk profile of Participant's clients. The principle should not prescribe how the relationship between Participant and their clients should be conducted.

Principle 20: FMI links

Key consideration 1 – Before entering into a link arrangement and on an ongoing basis once the link is established, an FMI should identify and assess all potential sources of risk arising from the link arrangement. Link arrangements should be designed such that each FMI is able to observe the other principles in this report:

- There is concern that link arrangements will by-pass existing participants and compromise fairness in the market. Link markets will effectively replace Global Custodians and the CSD will perform this function.

Principle 21: Efficiency and effectiveness

Key consideration 1 – An FMI should be designed to meet the needs of its participants and the markets it serves, in particular, with regard to choice of a clearing and settlement scheme; operating structure; scope of products recorded, cleared, or settled; and use of technology and procedures:

- Participants have a concern that perhaps their needs are not met, as there are no independent surveys performed to assess their level of satisfaction. The current survey is operationally focussed and no market feedback is provided on the market's view of the FMI. This process should be independently managed and include the regulatory aspects of the business of the FMI, and should include timeous feedback to the market. Participants should be provided with feedback on all comments, surveys and market input provided to the FMI.

Principle 23: Disclosure of rules and procedures

- We agree with the principle and recommend that there should be level playing field by the different regulators when implementing this principle.