NYSE Euronext's Response to the "Principles for Financial Market Infrastructures" Consultative Report by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO)

1. NYSE Euronext

1.1 NYSE Euronext is a leading global operator of financial markets and a provider of innovative trading technologies. NYSE Euronext's exchanges in Europe (Amsterdam, Brussels, Lisbon, London and Paris) and the United States provide for the trading of cash equities, bonds, futures, options, and other Exchange-traded products. NYSE Liffe is the name of NYSE Euronext's European derivatives business and is the world's second largest derivatives business by value of trading. It includes the central counterparty (CCP) to transactions on NYSE Liffe's derivatives market in London.

2. Response to Consultation

2.1 NYSE Euronext welcomes the opportunity provided by CPSS/IOSCO to comment on the Consultative Report. NYSE Euronext fully supports the initiative to produce global standards in respect of the financial market infrastructure, and sees the avoidance of regulatory divergence and regulatory arbitrage as a key goal for global regulatory authorities.

2.2 NYSE Euronext has participated fully in the production of the response to the Consultative Report prepared by the European Association of Central Counterparty Clearing Houses (EACH). Rather than reiterating all of the many detailed points in the response submitted by EACH, NYSE Euronext would like to take this opportunity to fully endorse EACH's response. In doing so, NYSE Euronext would like to emphasise the following points:

(a) <u>Access and Participation Requirements:</u> Key Consideration 1 states that "*An FMI should allow for fair and open access to its services, including by direct and, where relevant, indirect participants (...)*". NYSE Euronext would like to highlight that CCPs which operate on a principal-to-principal basis with their clearing members have no authority over the access of indirect participants. This access is dependent on clearing members' acceptance criteria and is managed between the clearing member and its (potential) clients.

The last sentence of paragraph 3.18.2 states that "*An FMI's participation requirements should therefore encourage broad access, including access by participants, other market infrastructures (...)*". There is a similar statement in Key Consideration 1 and paragraph 3.18.1. In their current form these references would require a CCP to encourage access from other market infrastructures, including its competitors. As a matter of principle, NYSE Euronext does not believe it is appropriate for CPSS-IOSCO to establish requirements which are, strictly speaking, matters for competition policy. NYSE Euronext therefore recommends that Principle 18 should be focussed on access and participation requirements for clearing members, leaving competition matters to the relevant competition authorities.

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(b) Segregation and Portability: In NYSE Euronext's opinion the current Principle 14, and especially Key Consideration 1 of this Principle, could be read as an obligation for the CCP to segregate customers' positions and collateral to the fullest extent possible under applicable law: *"A CCP should have segregation and portability arrangements that protect customer positions and collateral to the greatest extent possible under applicable law".* This is inconsistent with the Explanatory Note contained in paragraph 3.14.10 which states that "*The CCP should maintain collateral supporting customer positions in an omnibus account or in individual accounts at the CCP or its custodian. A CCP should consider offering individual customer account segregation given the additional protection benefits. In considering whether or not to offer individual customer accounts, the CCP should take into account all relevant circumstances."* As such, NYSE Euronext recommends that Key Consideration 1 should be redrafted to say that "*A CCP should have segregation and portability arrangements that protect customer positions and related collateral – particularly in the event of the default or insolvency of a participant – subject to the constraints of applicable law."*

(c) Central Bank Credit: In paragraph 3.7.11 it is stated that *"With regard to emergency central bank credit, an FMI should not assume the availability of such credit as part of its liquidity plan. An FMI needs to have private-sector sources of emergency credit in place."* NYSE Euronext would like to point out that this paragraph is not clear on where exactly the boundary lies between routine central bank credit and emergency central bank credit. NYSE Euronext considers that an explicit definition of these two types of credit would be a useful addition to the text of the Principles.

Subject to that clarification being made, NYSE Euronext understands that the intention of paragraph 3.7.11 is that where a CCP does have access to the provision of *routine* central bank credit on a collateralised basis, such access can be taken into account (alongside its access to commercial bank credit) in any assessment of the CCP's access to liquidity, whereas a CCP should not make any planning assumptions about the availability of *emergency* credit from a central bank.

(d) Credit Risk: NYSE Euronext notes that there is considerable international debate about whether "cover one" or "cover two" is the more appropriate standard for a CCP to apply in establishing the default resources that it might need to use in stressed market conditions. Principle 4 indicates that CPSS/IOSCO has yet to decide on this issue, given that it refers to a CCP maintaining "additional financial resources to cover 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 potentially cause the largest aggregate credit exposure[s] in extreme but plausible market conditions". NYSE Euronext is in favour of the existing "cover one" standard given that it is proportionate to the risks in question and it has proved sufficient in practice, including during the financial crisis. Moreover, NYSE Euronext is concerned that "cover two" would give rise to significant and unjustified costs which would ultimately be borne by the users of clearing services and which may act as a disincentive for their use. NYSE Euronext therefore suggests that CPSS/IOSCO promulgate an approach based on cover one, whilst noting that some primary regulators may deem it appropriate to adopt a more onerous approach.

3. Next Steps

3.1 NYSE Euronext would welcome the opportunity to continue to engage with CPSS/IOSCO as it progresses towards finalising the Principles for Financial Market Infrastructures.

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