



Russell W. Schrader
Associate General Counsel
and Chief Privacy Officer

July 29, 2011

By Electronic Delivery

CPSS Secretariat
Bank for International Settlements
4002 Basel, Switzerland

IOSCO Secretariat
International Organization of Securities Commissions
C/ Oquendo 12
28006 Madrid, Spain

Re: Committee on Payment and Settlement Systems (“CPSS”) and the Technical Committee of the International Organization of Securities Commissions (“IOSCO”) Principles for Financial Market Infrastructures Consultative Report (the “Consultative Report”)

Ladies and Gentlemen:

Visa appreciates the opportunity to comment on the CPSS and the Technical Committee of the IOSCO proposed principles in the Consultative Report (the “Proposed Principles”).¹ Visa understands that the Proposed Principles are intended to replace, for payment systems, the Core Principles for Systemically Important Payments Systems (“CPSIPS”);² for central counterparties (“CCPs”), the Recommendations for Central Counterparties (“RCCPs”);³ and for central securities depositories (“CSDs”), the Recommendations for Securities Settlement Systems (“RSSS”).⁴ Visa supports the CPSS and IOSCO efforts to provide greater consistency in the oversight and regulation of systemically important financial market infrastructure (“FMI”) worldwide and to reflect the lessons learned from the recent financial crisis.

This brief comment letter focuses on the threshold question of the scope of application of the Proposed Principles to central counterparties. The CPSIPS were developed specifically for systemically important payment systems. The CPSIPS recognizes that there were numerous systems for clearing small dollar payments, or a small volume of larger dollar payments that did not require the same level of risk controls as larger systems in order to protect and maintain stability in the economy in which these systems operate. In many cases, payments can be cleared over different systems, or other payments be substituted for the payments cleared by a particular system, reducing the importance of individual systems. In contrast, the RCCPs and RSSS presumed that clearing systems for securities and derivatives contracts required oversight. These markets are generally large scale and often are served by a single clearing system limiting the availability of substitute clearing arrangements.

¹ See BIS, CPSS-IOSCO, Report (March 2011), available at www.bis.org/publ/cpss94.pdf.

² See BIS, CPSS, CPSIPS (January 2001), available at www.bis.org/publ/cpss43.pdf.

³ See BIS, CPSS-IOSCO, RCCPs (November 2004), available at www.bis.org/publ/cpss64.pdf.

⁴ See BIS, CPSS-IOSCO, RSSS (November 2001), available at www.bis.org/publ/cpss46.pdf.

The Proposed Principles appear to be designed to apply to those central counterparties subject to the RCCPs. To do otherwise would be to reduce the scope of current oversight guidance for central counterparties. On the other hand, to apply the Proposed Principles to all central counterparties, including those for small dollar payments, would greatly expand the scope of the CPSIPS so that it could potentially cover small dollar payment systems merely because they used a central counterparty for settlement and would tend to encourage the use of potentially more disruptive settlement arrangements, such as unwinds, rather than central counterparties.

Visa believes that the Proposed Principles should be amended to specifically reference the scope of the RCCPs. Alternatively, the definition of central counterparties could be amended to reference exchange-traded or over-the-counter securities contracts. Without such amending language, Visa believes that the Proposed Principles' presumption that all central counterparties are systemically important is overbroad. Only central counterparties for payment systems with the potential to spread credit and liquidity disruptions should be subject to the designation "systemically important."

Specifically, the RCCPs by their terms applied to central counterparties used in exchange-traded or over-the-counter markets, to mitigate counterparty credit risk in financial market contracts, such as securities and derivatives contracts.⁵ The scope of the Proposed Principles contains no such limiting language. Instead, the Proposed Principles presume that all central securities depositories, Securities Settlement Systems ("SSSs"), central counterparties, and trade repositories are systemically important because of their critical roles in the markets they serve.⁶ Thus, under the Proposed Principles, central counterparties that are covered by the Proposed Principles are not limited to systems that clear or settle securities and derivatives contracts. Accordingly, the Proposed Principles dramatically expand the population of central counterparties for payment systems that are subject to the Proposed Principles. Visa believes that there are two alternatives to align the scope of the Proposed Principles with that of the CPSIPS and RCCPs:

1. The CPSS and IOSCO could amend the paragraphs of the Proposed Principles that define the scope of application. Paragraph 1.20 and Paragraph 4.4.2 of Responsibility D provide in identical language that "[t]he presumption is that all CSDs, SSSs, CCPs, and TRs are systemically important because of their critical roles in the markets they serve." The CPSS and IOSCO could amend this language to provide that "[t]he presumption is that all CSDs, SSSs, CCPs, and TRs *for financial market contracts, such as securities and derivatives contracts*, are systemically important because of their critical roles in the markets they serve." Such a revision would more closely align the scope of application provisions of the Proposed Principles to the RCCPs, and would enable market regulators to exercise judgment with respect to the systemic importance of payment systems, based on the importance of the payment to the market it serves, and the criticality of the market to the broader economy.
2. The CPSS and IOSCO could clarify the definition of a CCP. Paragraph 1.13 and Annex H define a CCP as "an entity that interposes itself between counterparties to contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts." Read narrowly, this definition would cover CCPs that facilitate the clearing and settlement of exchange-traded or over-the-counter securities and derivatives contracts. Read more broadly, this definition could encompass any CCP, including a CCP providing facilitation of relatively small value payments. Indeed, most money transmitters in the United States function as CCPs

⁵ See, e.g., RCCP ¶ 2.1 (stating that "[w]hether it serves an exchange or OTC markets, a CCP typically concentrates risks and risk management responsibilities").

⁶ See Principles ¶ 1.20 and Principles, Responsibility D, ¶ 4.4.2.

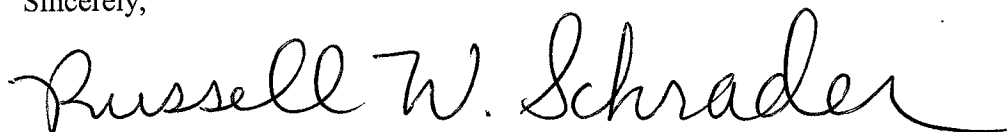
between payers and payees. Yet, these money transmitters in no way pose systemic risks to the United States economy. The CPSS and IOSCO could clarify the definition of CCP as follows: “an entity that interposes itself between counterparties to *exchange-traded or over-the-counter securities* or derivatives contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts.” Defining CCPs as such would avoid the result of national regulators applying the Proposed Principles to CCPs whose risk profile does not warrant the investment necessary to be subject to the conditions of the Proposed Principles. We note that the Consultative Report appears to generally assume that the Proposed Principles apply only to CCPs clearing financial market contracts;⁷ however, there is no language limiting the scope of application of the Proposed Principles to these markets, similar to the language in the RCCPs.

With such amending language, Visa believes that the application of the Proposed Principles with respect to central counterparties would not be overly broad. Imposing the Proposed Principles on non-systemically important central counterparties for small dollar payment systems could force such central counterparties to change their settlement model, reintroducing the risk that the central counterparty was designed to mitigate. For example, during the Visa settlement process, Visa settles bilaterally with each Visa participant for that participant’s net position vis-à-vis every other Visa participant. According, Visa interposes itself between counterparties to payment obligations in the retail payment market, and could be considered a central counterparty. Expanding the application of the Proposed Principles to settlement arrangements like Visa, despite the fact that a complete settlement failure would not likely affect the solvency of a single settlement participant,⁸ let alone broader financial stability,⁹ is unnecessary and could be counterproductive by reintroducing the counterparty risk that the Proposed Principles were designed to mitigate.

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Visa appreciates the opportunity to comment on this important matter. If you have any questions concerning these comments or if Visa can otherwise be of assistance in connection with this matter, please do not hesitate to contact me at (650) 432-1167.

Sincerely,



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⁷ See, e.g., Principles ¶ 1.13 n. 10 (providing that “in the absence of a CCP, a CSD may organize and manage a guarantee fund”).

⁸ The average daily net settlement position for the ten largest Visa participants is approximately \$300 million, which represent less than [2.5 percent], on average, of the total regulatory capital for those participants.

⁹ Visa does not pose a risk to broader financial stability. Visa settled approximately \$1 trillion in 2010, less than 1 percent of the \$1.1 quadrillion in government securities transactions processed by the Fixed Income Clearing Corporation (“FICC”), the CCP for government securities transactions in the United States. See DTCC Transaction Statistics and Performance Report, available at <http://www.dtcc.com/about/business/statistics.php>.