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ECSDA response to the CPMI-IOSCO consultation on FMIs' management of general business risks and general business losses

ECSDA aisbl (European Central Securities Depositories Association)
Rue du Congrès 1; 1000 Brussels, Phone: +32 2 230 99 01 Email: info@ecsda.eu Website : ecsda.eu LinkedIn and X: @ecsda, #ecsda

Executive summary

ECSDA welcomes CPMI-IOSCO's aim to clarify expectations under PFMI Principle 15 and improve consistency in how FMIs address General Business Risk (GBR). We support guidance that **supplements** rather than reopens the PFMI and that remains outcomes-based, proportionate, and technology-neutral.

In that context, we particularly highlight that European CSDs already operate under a **stringent, detailed** CSDR prudential and operational framework specified in the technical standards. Although we may not expect other jurisdictions to fully endorse the European approach as applicable to all other regions through the international guidance, the clarity and accuracy of the relevant European provisions for CSDs should serve as an example of a high-quality implementation of the international guidance. The final guidance should pursue high-level **international alignment and aspire for further clarity, providing regional flexibility** rather than imposing parallel, potentially conflicting obligations.

We suggest that the final guidance:

- **Clarifies scope and interactions** with other risk families and with existing EU law under CSDR, notably RTS (EU) 2017/390 (prudential requirements) and RTS (EU) 2017/392 (authorisation, supervisory and operational requirements).
- **Maintains flexibility in tools**, focusing on identification and governance of GBR and **not prescribing** specific measurement models, vendor tooling, or external assurance that could be disproportionate for CSDs.
- **Adjusts transparency**, ensuring disclosures are on a legitimate "need-to-know" basis and do not require publication of commercially sensitive information or routine notice of minor technical changes.
- **Calibrates LNAFE expectations** to recognise (i) the low-frequency/high-impact-nature of certain shocks, (ii) the existing EU CSDR prudential requirements, recovery and winddown frameworks, and (iii) that capital should not be duplicated for the going concern, 'business as usual' risk management and recovery and orderly wind-down phases.

1. General comments and scope

Do you agree with the proposed clarification of the scope of general business risk and its interactions with other PFMI principles?

European CSDs endorse the scope as non-default, non-participant-credit losses and support the mapping to other principles. To enhance the guidance for CSDs, we ask:

1. Clarify the demarcation from other risks covered by specific provisions, ensuring that we take into account residual risk. It is to be noted that in the EU context, the residual risks are covered by the wind-down planning, having special capital provisions already foreseen.
2. Take into account the basis of the EU legislative framework.
3. Ensure that the CSD specifics are taken into account.

1.1 Scope and interaction with other risks and phases

We ask for guidance to explicitly confirm the perimeter of the GBR in the CSD context: while the guidance covers non-default, non-participant credit losses, the demarcation with other risks, such as legal, custody, investment, and operational risks, would benefit from further clarification.

Furthermore, the CSDR provision of capital for the wind-down takes into account different types of scenarios, including GBR and materialisation of other risks (as well as the credit and liquidity risks for the CSDs with a banking licence). The EU CSDR framework already ensures coherent and adequate provisions for the relevant risks specific to the CSDs, including their management and capitalisation, as well as recovery and wind-down as special phases in the functioning of FMIs.

Based on the present guidance, it is, however, not clear to us if the currently clear provisions of the CSDR and its standards will be adjusted. The risk perimeter and management processes, as well as provisions for wind-down, are already defined in detail under the EU CSDR standards. For guidance, with the necessary level of flexibility relevant in the global context, we ask to have the same level of clarity and a clear demarcation between business as usual, recovery and wind-down phase.

1.2 Clarity on the interplay with EU legislation

In our view, Principle 15 is well addressed by the **CSDR RTS (EU)** 2017/390, which sets capital, risk and wind-down parameters for CSDs, including calculations covering operational, legal and custody risks and resources for orderly wind-down (see Articles 1–5; Articles 6 & 7 set specific calculations and reporting for GBR and wind-down). The CSDR RTS provisions are adequate and coherent with the rest of the European framework and provide a necessary level of clarity, limiting the local interpretation, whereby addressing the needs of CSDs' stakeholders and providing a level playing field between different EU Member States.

We see the CPMI-IOSCO guidance as valuable international alignment. The level of flexibility of the guidance should allow for the CSDR-compliant frameworks to also meet the expectations of PFMIs.

Furthermore, the EU legislation now also includes the **DLT Pilot regime** – and it is unclear to us if the guidance will also be relevant to these entities, where some of the general business risks is also very relevant (including concerning the business model, ex. for a TSS (a combined entity for trading and settlement based on DLT) or for models allowing for alternative ways of reaching settlement finality, and for which the spectrum of risk is yet to be further analysed).

1.3 Distinction between CSDs and CCPs as well as other FMIs

European CSDs also ask for guidance to acknowledge structural differences between CCPs and CSDs— particularly about their risk profile, regulatory framework and absence of major historical occurrence of materialisation of business risk — so that expectations on tools, metrics and transparency reflect CSD-specific reality.

Unlike CCPs, the risk profile and business model of European CSDs do not lead to the removal of risk by concentrating it in the FMI. While a default of a participant is a challenge for CCPs, it doesn't have the

same magnitude of impact on the CSDs. Therefore, the CSD regulatory framework regarding these risks is already very extensive and benefits from deep reflection in each of the risk domains.

The central nature of notary service of CSDs, the importance of maintaining the integrity of the issue in line with the local legislations, makes it difficult for them to be replaced by other actors. The regulatory framework of the EU CSDs regarding these risks is crafted in a way that ensures that the probability of financial losses leading to recovery or resolution is as remote as possible. And this renders their wind-down a less suitable solution in case of a major distress. The non-financial tools and dormant procedures to preserve the continuity of the service provision are even more relevant for CSDs. To further avoid distress for the CSD participants, much more attention in the EU legislation is dedicated to the preservation of business continuity, including CSDR, but also DORA and other specific legislation.

2. Identifying, monitoring, and managing general business risks

a) Is the guidance provided on identifying, monitoring and managing general business risks clear and sufficient? If not, how should it be amended?

European CSDs support a stepwise approach: (i) identify and assess GBR drivers; (ii) reduce them via business and control decisions (ex., IT investments, sourcing strategies, contractual mitigants, insurance); (iii) manage residual GBR via LNAFE and other relevant tools (that can be even more relevant than capital in some cases).

Avoid prescriptiveness, allow for management and board discretion

As certain passages could be read as tool-prescriptive (ex. mandating specific external expertise or uniform metrics), we ask CPMI-IOSCO to clarify that examples are non-binding and that FMIs can use alternative, justified approaches.

We encourage the guidance to recognise that management should be empowered to select appropriate controls, and monitoring and managing tools, or insurance/hedging solutions, rather than defaulting to capital as the sole or main mitigant, especially where there is limited loss history evidencing the effectiveness of current frameworks.

Strategy adjustments and investments (ex. to increase cyber/IT resilience, launch new products or services, open a secondary office) may in many instances become a more efficient way of preventing the materialisation of the business risks. The guidance should aim to avoid creating additional GBR through compliance with this specific guidance, e.g. by mandating the imperfect attribution of resources, freezing or limiting innovation capabilities of FMIs. Such a policy stance may not only be challenging for the FMI, but equally for its participants and end investors (i.e. companies and citizens) that might in the end be deprived of the sufficiently risk-averse innovative companies responding to the evolving needs.

b) Are there other approaches and tools, in addition to or instead of those mentioned in the report, that would help FMIs to identify general business risks and estimate the size and timing of general business losses? If so, please describe the approaches or tools.

EU CSDs already comply with CSDR's detailed operational, prudential and governance RTS (2017/390 and 2017/392). The guidance should **acknowledge this baseline** and encourage reliance on existing supervisory interactions, including the CSDR review & evaluation process (as recently updated under CSDR Refit). The current regulatory framework helps to efficiently identify the risks, including GBR, and estimate their size and approximate their timing.

To avoid double coverage for the risks that are considered under the legal, custody, investment, and operational risk, CSDs agree with an intention under this guidance to particularly focus on severe/extreme but plausible scenarios and residual risks. Although these are also subject to the same regulatory framework for EU CSDs in a coherent way.

Due to the low probability of the events and high impact, a major benefit can be achieved by further reflections on scenario design and governance, not on mandating capital add-ons that are already captured by prudential rules or by recovery/wind-down planning. We would welcome a CPMI-IOSCO reflection on the eventual scenarios that can be common to CSDs globally.

c) Are there other approaches and tools, in addition to or instead of those mentioned in the report, that would help FMIs to minimise and mitigate the sources of general business risk and manage residual risk? If so, please describe the approaches or tools.

CSDs believe that it is more important to provide for an outcome-based approach without one-size-fits-all solutions. Prescribing uniform data, models or external reviews can be disproportionate and may divert scarce resources away from first-order mitigants (ex., cyber upgrades) that reduce risk more effectively than capital.

3. Capital requirements and LNAFE

a) Is the guidance provided on determining the minimum amount of LNAFE clear and sufficient? If not, how should it be amended?

The overall direction of the guidance is helpful, but certain clarifications would strengthen its practical applicability, particularly for European CSDs, which are, as mentioned earlier, operating under existing detailed prudential frameworks.

A clear statement that the CPMI-IOSCO guidance is intended to supplement the PFMIs is very helpful. As PFMIs are already transposed into the EU regulation, we need to highlight that the reflection on business risk has already been conducted when European authorities drafted the proposal for the above-mentioned standards. Furthermore, to avoid reopening of the European policy-making (with the CSDR Refit, which is being implemented), we would caution the authorities to consider introducing

parallel potentially divergent considerations on calculations and capital provisions described in detail in Art. 6 and 7 of the CSDR RTS (EU) 2017/390.

As this is done in the European framework, it may also be useful for the guidance to distinguish more clearly between capital that supports an FMI's ongoing viability in a going-concern scenario and the financial resources needed to implement feasible recovery or orderly wind-down actions. The capital should not be duplicated for the going concern, "business as usual" risk management and recovery & orderly wind-down phases.

A principles-based approach that avoids aggregating these elements mechanically, and instead encourages FMIs to demonstrate how they address potential overlaps, would help ensure that the framework is both appropriately conservative and proportionate.

b) Are there other factors, in addition to or instead of those mentioned in the report, that an FMI should consider in its calculation of (i) the costs of implementing its recovery and orderly wind-down plans and (ii) the appropriate amount of LNAFE? If so, please describe the factors.

In estimating the costs of implementing recovery and wind-down plans, FMIs may need to consider elements that are operationally significant but not always captured in high-level estimates. These include the feasibility and lead time of executing recovery options, the continuity costs for critical outsourcing or technology services, the contractual implications of terminating or transferring services (including any penalties), and the time and cost associated with obtaining regulatory approvals for particular actions. The credibility of a wind-down plan often depends on these practical considerations and recognising them explicitly could enhance the quality of LNAFE determinations.

When determining the appropriate amount of LNAFE, FMIs may also need to consider aspects such as the sensitivity of their business model to macroeconomic or regulatory developments, the structure and stability of their revenue base, and the extent to which ongoing investment programmes (particularly in technology and cyber resilience) materially affect the level of residual risk. Additionally, the capacity for an FMI's shareholders to contribute equity under stress, and the likely timelines for doing so, may be important inputs in assessing the sufficiency of the available buffers.

Finally, we support the report's acknowledgement that some GBR scenarios are low-probability. For that reason, we are aligned with the reflection of some authorities, considering that the capital for GBR should be "economically viable" and complemented by recovery and orderly wind-down tools; "100% coverage" of every conceivable LNAFE driver is neither feasible nor intended under PFMI. The consultation and the Level-3 assessment both emphasise LNAFE's purpose and the role of recovery/wind-down planning. The final text should, therefore, reiterate this to avoid expectations of unlimited capitalisation.

4. Governance and transparency

a) Is the guidance provided on governance and transparency related to general business risk clear and sufficient? If not, how should it be amended?

The guidance emphasis placed on governance, independence and board oversight is welcome. And we believe it could be further strengthened by explicitly endorsing a proportionate and "need-to-know" approach to transparency. FMIs' business risk management, recovery and wind-down-related documents typically handle commercially, cyber-resilience or otherwise sensitive information. Therefore, disclosures should focus on matters that genuinely support participant understanding of the risk exposure for them, without requiring the dissemination of operationally or competitively sensitive details. It is particularly important regarding the FMIs' innovation as one of the means of mitigation of the general business risk.

Participants and their underlying clients should not be a substitute for the supervisors and should rely on them for the performance of their duties. Therefore, transparency on the FMIs-related provisions and capital should flow through the established channels foreseen for that purpose (e.g., PFMI disclosures, due diligence and User committees), where the FMIs are able to share user-relevant information and risk management practices but do not mandate the disclosure of sensitive information.

In a similar vein, the disclosure requirements should be proportionate and should not require an update in case of a change of technical details in the relevant documentation and should only be relevant to be provided to the participants in case there is a material difference relevant to them.

It would also be useful if the guidance confirmed that examples of governance practices or disclosure formats provided in Level 3 are non-prescriptive, allowing FMIs to adapt them to the regulatory context in which they operate.

b) What particular information related to an FMI's process for managing general business risk would be useful for the FMI's participants so they can assess the risks they incur by participating in the FMI? Are there practical problems with providing such information, and if so, how can they be addressed?

Participants may find it helpful to have access to a high-level description of the FMI's framework for managing general business risks, including the governance structure, key principles of the risk-appetite framework, and the general methodology for identifying and addressing material business risks. Summaries of material changes that could affect service continuity—such as significant outsourcing changes, major platform transformations, or economically material adjustments in the services offered—could also help participants understand the potential implications for their own operations. This information can also be found in reports and participants' information shared by the CSD, due diligence documentation and divers disclosures.

For the European CSDs, it is the current practice to share this information (on top of disclosures, also provided in the CSDR links Due diligence questionnaires between linked CSDs). ECSDA is managing the

World Forum of CSDs' (WFC) Single disclosure tool, allowing to respond to the AGC and PFMIs disclosures. The European region is the place of establishment for most of the disclosing CSDs, with the Americas being the second most disclosing region. There are discussions within WFC to stop maintaining the PFMIs' Single disclosure tool, due to low volumes on the platform. We believe that the global interconnectedness of the infrastructure would largely benefit from the generalisation of PFMIs' disclosures across the globe, bringing also useful information to the participants of the CSDs in other regions (including connected European CSDs/FMIs).

Looking at the matter from the participants'/users' perspective, some practical challenges could arise if there were a requirement to share detailed information. Excessively granular disclosures may overwhelm participants without improving their understanding. These concerns could be mitigated by structuring transparency in tiers: high-level public information, targeted communications for direct participants through PFMIs' disclosure or due diligence, and more detailed information reserved for supervisors. A practical problem that arises from disclosing detailed general business risk profiles, loss estimation methodologies, or scenario assumptions is that certain disclosures could reveal commercially sensitive or proprietary information. We believe that CPMI–IOSCO should draw a clearer distinction between information intended for supervisors, for participants under confidentiality, and for public disclosure.

c) Are there other areas, in addition to or instead of those mentioned in the report, where an FMI should consider seeking stakeholder input on its process for managing general business risk?

Stakeholder input may be particularly useful in areas that directly affect service delivery or participant readiness. These could include changes in operating hours or settlement processes, the introduction or retirement of services, significant technology migrations, or changes in the fee structure that could materially influence usage patterns. Inviting feedback in these areas may support operational readiness without imposing an expectation that FMIs consult stakeholders on every technical adjustment or internal process refinement.

In the European context, we believe that no further disclosure is necessary beyond the existing frameworks.

5. Operating losses vs non-operating

5) Should the guidance distinguish between operating losses and non-operating losses in determining the minimum amount of LNAFE? If so:

a) Please explain why such a distinction would be helpful.

A distinction between operating and non-operating losses may assist FMIs in calibrating LNAFE more accurately. The guidance should seek a balance in explaining without being over-prescriptive: it should be up to the institution to take the right assumptions for the different scenarios, whether they are

related to 'gone concern', wind-down planning or 'going concern' GBR. Depending on the scenario, relevant losses could be operating or non-operating losses. This would not depend on them being operating or non-operating, but rather on the context of the 'going concern' or the 'gone concern' scenario.

Operating losses often arise from fluctuations in normal business activities and may be mitigated through management actions, whereas non-operating losses tend to be irregular or one-off in nature, such as legal settlements, sanctions or costs associated with recovery or wind-down implementation. FMIs should be able to differentiate between these categories to identify which losses should be addressed through capital buffers intended to support the going concern, and which should inform contingency planning for stress scenarios.

Any distinction should remain principles-based, flexible, and aligned with existing accounting and risk management frameworks. If CPMI–IOSCO pursues this distinction, further guidance would be needed on definitions and treatment to ensure consistency and avoid unintended capital inflation.

b) How should the guidance do so?

The guidance might acknowledge that FMIs may, where appropriate, use separate lenses for assessing their going-concern capital needs and their recovery or wind-down resource requirements. It could also suggest that FMIs explain how they avoid double-counting losses that may fall into both categories. This would preserve flexibility while still encouraging consistency and transparency in how FMIs justify their LNAFE determinations. The recovery and wind-down plans may suggest some categories of expenses that are unlikely to occur during this phase, such as regular employee bonuses.

c) How should operating losses be defined? Are non-operating losses all losses other than operating losses and default losses?

Operating losses could be described as losses arising from the FMI's usual business activities, such as unexpected revenue declines, cost overruns, or incident-related expenses that do not fall under participant-default scenarios. Non-operating losses, by contrast, could be defined as all other general business losses not linked to participant defaults, including rare or irregular events such as extraordinary legal or regulatory costs, major asset impairments. This approach would allow FMIs to categorise losses in a manner that supports a more accurate and proportionate LNAFE methodology while remaining fully consistent with PFMI expectations.

We thank CPMI and IOSCO for the possibility to contribute to the reflection and will be pleased to continue the dialogue.