
20th February 2014

EBA CLEARING comments on the consultative Assessment methodology for the oversight expectations applicable to critical service providers of December 2013 by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organisation of Securities Commissions (IOSCO)

As a leading payment infrastructure services provider in Europe, EBA CLEARING appreciates the opportunity to comment on the proposed oversight expectations applicable to FMIs' critical service providers ("CSPs"). As regards oversight of CSPs, EBA CLEARING advocates that the overseer of an FMI should rely on the oversight carried out by the relevant authorities of a CSP, to avoid any unnecessary overlap or additional burden both for the FMIs and the CSPs as well as for the authorities.

1. Independent oversight regimes for FMIs and CSPs

While fully sharing the view that critical service providers are key elements of the financial market infrastructure's ecosystem and should be subject to oversight expectations with a view to promote robustness, reliability and resilience of financial market infrastructures, EBA CLEARING firmly believes that any assessment framework and methodology for critical service providers should be clearly distinguished from the one applicable to the FMIs as such.

FMIs' oversight assessments should be carried out separately from the one of third-party CSPs providing services to them. In the same vein, CSPs are not to be assessed against the proposed oversight expectations at the occasion of or as part of an FMI's own oversight assessment. Where different, authorities supervising FMIs and CSPs overseers are to cooperate in accordance with the guidelines set out in the CPSS-IOSCO *Principles for financial market infrastructures*, without requiring any of the FMIs or CSPs to assess each other.

EBA CLEARING reply to CPPS & IOSCO public consultation on Assessment methodology for the oversight expectations applicable to critical service providers – December 2013

Further, compliance by CSPs with the respective oversight requirements should not be a condition for compliance by an FMI with the oversight requirements for (systemically important) systems. EBA CLEARING would therefore wish that sufficient guidance is provided on potential effects to be derived from any CSP being found not compliant with the oversight expectations and the absence of impact on its user FMIs.

2. No FMIs intermediation in CSPs' oversight assessment

EBA CLEARING has strong concerns about supervisors deciding to ensure compliance by CSPs indirectly through their user FMIs, and advocates that FMIs are not required to intermediate themselves in the oversight assessment of CSPs. EBA CLEARING in its capacity as operator of the EURO1/STEP1 and STEP2 Systems has a contractual customer relationship only with CSPs and has no authority to impose any oversight requirements on such CSPs. In addition, FMIs do not necessarily have the ability to request checking compliance by CSPs with such requirements – which may include very sensitive and restricted information that goes beyond the perimeter of the services by a CSP to a given FMI -- nor require CSPs to provide evidence of such compliance, including at the occasion of the review of contracts with CSPs. In addition, experience has shown that disclosure of certain information by a CSP to an FMI it services, as well as disclosure by an FMI of information relating to a CSP may, in certain cases not be allowed due to obligations of confidentiality and applicable policies.

Oversight of CSPs is to be exclusively carried out by designated regulatory or supervisory authorities empowered with sufficient authority to fine-tune and impose on CSPs oversight expectations as well as ensure ongoing compliance with such requirements. If need be, independent evaluation from external assessors might be used as well to further ensure CSPs' compliance with oversight and market standards.

In addition, and importantly, oversight of CSP's should focus on the categories and subject matter of the oversight expectations set forth in Annex F to the Principles for financial market infrastructures, and relate to the activities of a CSP. There should be no overlap with the oversight assessment of the FMI and its activities.

3. No direct relationship between FMI participants and CSPs

EBA CLEARING doubts the necessity of CSPs disclosing their answers to the key questions in the assessment methodology to FMI's participants. In most cases, there is no contractual relationship between FMI participants and CSPs, which are supplier to the FMI only. In the same perspective, neither a direct reporting of operational incidents from CSPs to FMI

EBA CLEARING reply to CPPS & IOSCO public consultation on Assessment methodology for the oversight expectations applicable to critical service providers – December 2013

participants nor a pre-consultation of FMI participants on technology changes should be imposed. Further, CSPs will typically provide services to a multitude of FMIs.

4. CSP's risk management framework

Risk and information security management requirements imposed on CSPs are set out in Annex F 'Oversight expectations applicable to critical service providers' of the CPSS & IOSCO PFMI which are specifically targeted at CSPs. EBA CLEARING is of the view that FMIs should not intervene in the definition by CSPs of their internal strategy for compliance with such oversight expectations. Contractual arrangements cannot allow any intervention of FMIs in CSPs' internal risk management procedures such as crisis management, or stress and business continuity testing.

Where an FMI's critical functions or services are outsourced to a third-party supplier, such FMI can only take necessary contingency and recovery measures to ensure resumption of the FMI operations.

5. FMI's dependency on CSPs

Clear guidance should be provided on criteria and methodology to be used for assessing an FMI's dependency on CSPs as part of its risk management framework. EBA CLEARING would wish to share that any such risk management of dependencies on CSPs would not be effective and efficient without specific regulatory and oversight policies being imposed on identified CSPs.