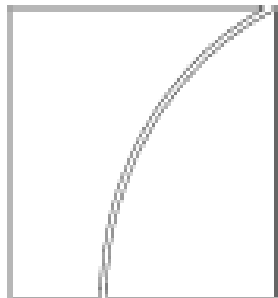


Committee on Payment and
Settlement Systems

Technical Committee of the
International Organization of
Securities Commissions



Principles for financial
market infrastructures

April 2012



BANK FOR INTERNATIONAL SETTLEMENTS



OICU-IOSCO

Responsibilities of central banks, market regulators, and other relevant authorities for financial market infrastructures

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Faith Stewart
IMF Expert

Objectives of the Session

1

Present context and background

2

Discuss the 5 responsibilities of central banks, market regulators, and other FMI authorities

3

Understand practical requirements of the overseer

4

Q & A

Regulation/Oversight/Supervision in practice should....

- **Lead FMI actors to behave responsibly and prudently**
 - Avoid negative externalities
 - Incentives structure – primary responsibility for ensuring FMI's safety and efficiency lies with the FMI itself
- **Harness the role that markets play in providing safe and efficient FMI services**
 - Avoid doing what the private sector can do better
 - Minimalistic approach – only intervene where and to the extent necessary
 - Proportional – scope of directives and regulations should not exceed what is necessary to accomplish the given objective
- **Be balanced, fair, even-handed, transparent – in reality and appearance**
 - Non-discriminatory rules, not arbitrarily administered
 - Equal opportunity for all participants (both existing and potential new entrants)
 - Perception based on authority's **reputation, credibility, technical competence, track record**

Responsibilities of Central Banks, Market Regulators, and other Relevant Authorities for FMIs

A. Regulation, supervision and oversight of FMIs

- Define/publish criteria

B. Regulatory, supervisory and oversight powers and resources

- Have sufficient powers to obtain information and enforce change
- Have sufficient resources

C. Disclosure of policies with respect to FMIs

- Define policies (objectives, roles, regulation)
- Disclose relevant policies

D. Application of the PFMI

- Adopt the PFMI
- Apply them to all systemically important FMIs
- Apply them consistently across FMIs

E. Cooperation with other authorities

Responsibility A: Regulation, supervision and oversight of FMIs

FMIs should be subject to appropriate and effective regulation, supervision, and oversight by a central bank, market regulator, or other relevant authority





Responsibility A

FMLs should be subject to appropriate and effective regulation, supervision, and oversight by a central bank, market regulator, or other relevant authority.

1. DEFINE/PUBLISH CRITERIA

Define criteria to identify FMLs

- *What criteria do authorities use to identify FMLs that should be regulated, supervised and overseen?*
- *How are the criteria publicly disclosed*



Key
Considerations
(KCs)

2. OVERSEE FMLs THAT MEET THE CRITERIA

FMLs that meet the criteria should be regulated, supervised and overseen by a central bank, market regulator, or other relevant authority.

- *Which FMLs have been identified for regulation, supervision and oversight?*
- *Did the authorities use the KC1 criteria?*
- *Which authority(ies) regulate, supervise or oversee the identified FMLs?*
- *What is the scope of the responsibilities for each authority*
- *How have relevant authorities avoided (or addressed) any gaps in regulation, supervision or oversight of FMLs?*

Criteria for designation, supervision, oversight

Criteria that may be considered for FMI designation:

- ❑ Number and value of transactions processed
- ❑ Number and type of participants
- ❑ Markets served (e.g. domestic, cross-border)
- ❑ Market share controlled
- ❑ Interconnectedness with other FMIs
- ❑ Available alternatives at short notice

	Publicly Disclosed Criteria for Identifying a Payment System as SIPS
US	<p>Designation by the Financial Stability Oversight Council (FSOC) based on a determination that the failure of or a disruption to the system could result in the spread of significant liquidity or credit problems among financial institutions or markets. FSOC must take into account:</p> <ul style="list-style-type: none"> • the aggregate volume and value of transactions • aggregate credit and liquidity exposures assumed by the payment system • interdependencies with other FMIs or payment, clearing or settlement activities (including via common participants) • the effect that failure or disruption would have on critical markets, financial institutions or the broader financial system, including the role of the FMI in the market, availability of substitutes, concentration of participants or by product type, degree of tiering and potential spillover effects • any other factors deemed appropriate.
EU	<p>At least two of the following are met in a calendar year:</p> <ul style="list-style-type: none"> (i) daily average values exceed €10 bn (ii) market share exceeds either: 15% of euro-denominated payments; 5% of euro-denominated cross-border payments; or 75% of euro-denominated payments in any Eurozone member state (iii) cross-border activity involves >5 countries and makes up >33% of the payment system's total volume (iv) used for the settlement of other FMIs
UK	<p>Recognition by UK Treasury if deficiencies in system design or disruption to its operation would be likely to threaten stability or confidence in the UK financial system, or have serious consequences for business or other interests. Treasury must have regard to:</p> <ul style="list-style-type: none"> • the number and value of transactions • the nature of the transactions and their substitutability • interdependencies with other systems • any role the system plays in the implementation of monetary policy.

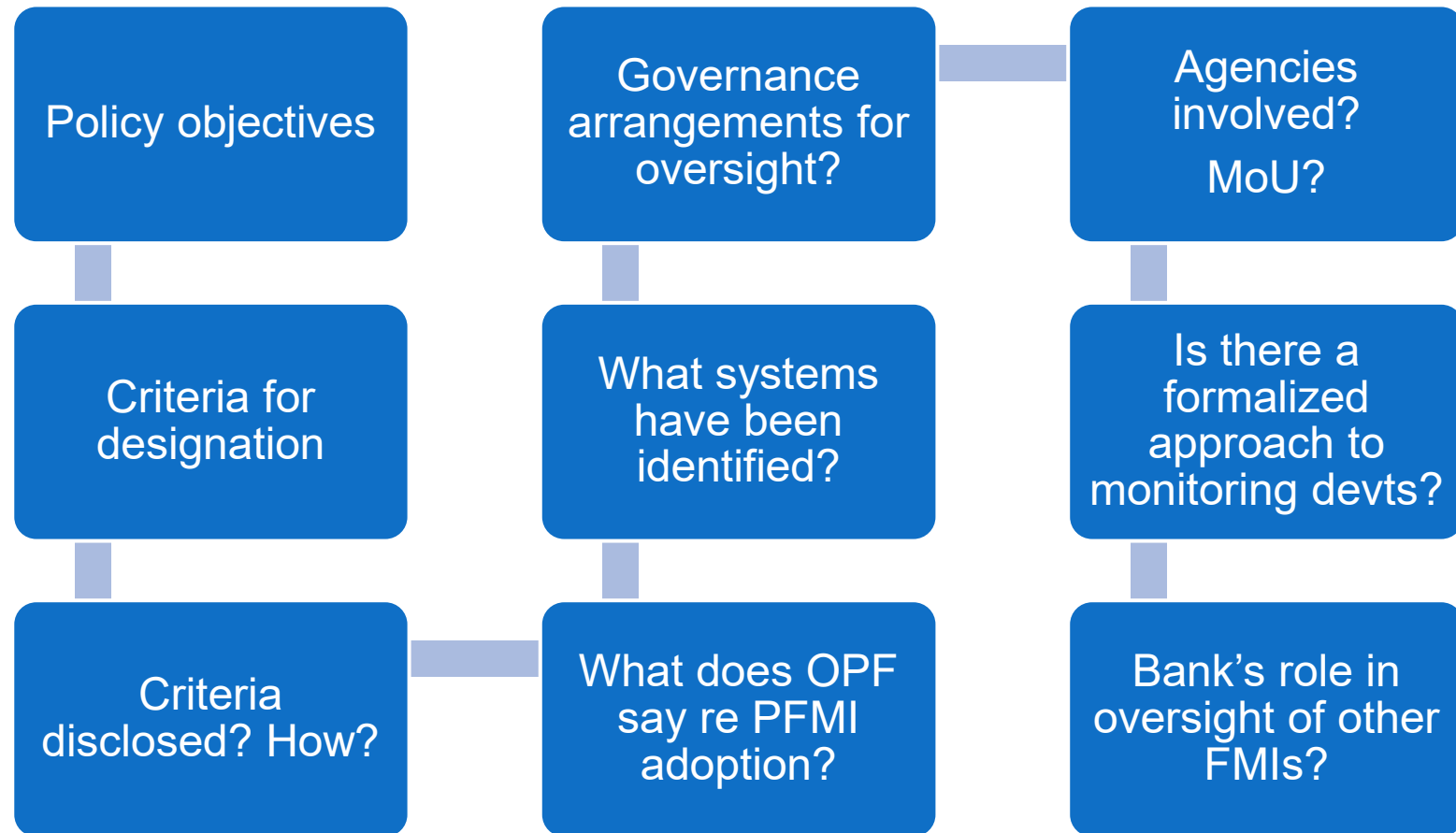
Having met the criteria...now which regulator?

Division of powers or responsibilities among authorities may vary depending on the legal and institutional framework

- ❑ Legislation should specify which authority has responsibility for which FMI
- ❑ FMI may be overseen by an authority that does not (yet??) have a legal mandate
- ❑ Authorities must cooperate to ensure gaps are addressed; no opportunity for arbitrage exists



Responsibility A: Assessment elicits the following info



Responsibility B: Powers and resources

Central banks, market regulators, and other relevant authorities should have the powers and resources to carry out effectively their responsibilities in regulating, supervising, and overseeing FMs



Responsibility B: Powers and resources

1. AUTHORITIES SHOULD HAVE POWERS

Authorities should have **powers** or other authority consistent with their relevant responsibilities, including the ability to **obtain timely information** and to **induce change or enforce corrective action**.

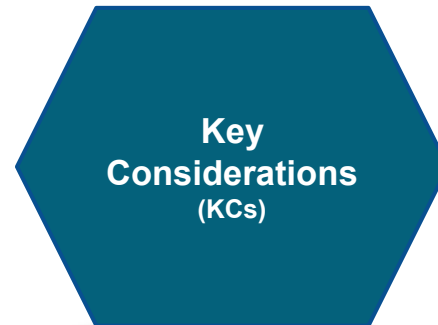
- What are the authorities' powers vis-à-vis its responsibilities?
- Are there constraints to their obtaining timely information from the FMIs? What are these?
- What powers, authority or other mechanisms enable authorities to induce change or enforce corrective action?
- Are there constraints? What are these?

2. AUTHORITIES SHOULD HAVE RESOURCES

Authorities should have sufficient resources to fulfil their regulatory, supervisory, and oversight responsibilities.

Protection: Wilful negligence or malice excepted

- What resources (including adequate funding, qualified and experienced personnel, and appropriate ongoing training) are available to authorities to enable them to fulfil their responsibilities?
- To what extent does the level of available resources constrain the ability of the authorities to carry out their responsibilities?
- What is each authority's process for assessing the resources it needs to fulfil its regulatory, supervisory or oversight responsibilities?



Examples of powers (1)

Authorization Designation/ Regulation

- For FMIs that meet the criterion of systemic importance:
 - Designate FMIs
 - Authorize, register or license FMIs

Obtain information

- From the operators, participants and infrastructure providers of FMIs, where this is **necessary** to perform their responsibilities
- May include onsite inspections

FMI Rules

- Receive notification of changes to FMI's rules
- Disallow or mandate change, propose new rules/amendments
- Process of approval should be documented and allow for collaboration, notification, lead time for implementation

Examples of powers (2)

Investigative Powers

- Require independent reports on FMIs
- Enter and search places with a warrant **where deemed necessary to perform their responsibilities.**

Enforcement Powers

- Issue a public warning
- Put in place a legally binding agreement with the regulated entity requiring certain agreed actions, which can be enforced in the courts
- Apply administrative, criminal and civil remedies, e.g. fines, imprisonment

Crisis Management

- Issue a direction, e.g. 'cease and desist'
- Remove, replace or appoint a director of an operator

What does '*sufficient resources*' mean?

Depends on

- How many, and what type of FMIs, are being overseen
- How complex /risky the activities of each FMI
- What is the scope of oversight (i.e. what is your mandate)
- Whether there are multiple authorities
- What is your oversight approach

Regulatory/supervisory/oversight approach

- How frequently are assessments done? What is the scope?
- What activities are undertaken as part of ongoing oversight?
- Degree of reliance on other regulators/ independent validations / self-assessments (by operator)

What are the skills requirements for oversight?

In determining priorities, it is critical that the authority has full awareness of the responsibilities that come with every priority objective, and the impact this will have on its operation and resource requirements.

- Legal
- Financial risk management
- IT, cyber security
- Understanding of markets
- Supervision
- Management/Leadership

Requires **coordination** with other internal departments

Need to **optimize resource use** within the authority/agency

It should be clear where oversight responsibility lies within the organization

Responsibility C: Disclosure of policies

Central banks, market regulators, and other relevant authorities should clearly define and disclose their regulatory, supervisory, and oversight policies with respect to FMIs.



Purpose:

Promote transparency, consistency and accountability....



Responsibility C

Central banks, market regulators, and other relevant authorities should clearly define and disclose their regulatory, supervisory, and oversight policies with respect to FMIs.

1. DEFINE POLICIES

Authorities should clearly define their policies with respect to FMIs, which include the authorities' objectives, roles, and regulations.

- What are each authority's policies with respect to FMIs, including its objectives, roles and regulations?
- Are they clearly defined?

2. DISCLOSE POLICIES

Authorities should publicly disclose their relevant policies with respect to the regulation, supervision, and oversight of FMIs.

- How are the relevant policies disclosed?



**Key
Considerations
(KCs)**

Policy objectives ...

Should be **clearly defined**:

- Policies include objectives, roles, regulations, instruments of oversight
- Policies should be consistent with legal frameworks
- A clear definition provides the basis for consistent policymaking and a benchmark to evaluate policy effectiveness

....and **disclosed**

- Clarifies expectations, communicates standards to be met and promotes observance of these standards by the FMI
- Promotes the accountability of the authorities

Responsibility D: Application of the Principles

Central banks, market regulators, and other relevant authorities should adopt the CPSS-IOSCO Principles for financial market infrastructures and apply them consistently..



Responsibility D

Central banks, market regulators, and other relevant authorities should adopt the CPSS-IOSCO Principles for financial market infrastructures and apply them consistently..

1. ADOPT THE PFMI

Authorities should adopt the CPSS-IOSCO Principles for financial market infrastructures.

- How and to what extent have the relevant authorities adopted the principles?

3. CONSISTENT APPLICATION

Authorities should apply these principles consistently within and across jurisdictions, including across borders, and to each type of FMI covered by the principles..

- How do authorities apply these principles consistently within the relevant jurisdictions, including to public sector-owned or -operated FMIs, and across jurisdictions?
- If an authority is an owner and operator of FMIs as well as the overseer of private sector FMIs, how does it consider and address possible conflicts of interest?
- If an FMI does not observe all applicable principles, how do authorities ensure that the FMI takes appropriate and timely action to remedy its deficiencies?

2. APPLY TO ALL FMIs

Authorities should ensure that these principles are, at a minimum, applied to all systemically important payment systems, CSDs, SSSs, CCPs, and TRs..

- To which systemically important payment systems, CSDs, SSSs, CCPs and TRs do authorities apply the principles?
- Are there systemically important FMIs to which the relevant authorities do not apply the principles?
- How do the authorities disclose to which FMIs they apply or do not apply the principles?
- How does each relevant authority justify its decision to apply or not to apply the principles to specific FMIs?



**Key
Considerations
(KCs)**

Issues of Scope (1)

Adoption of PFMI

- PFMI represents minimum risk management standards
- PFMI draw on collective experience of many CBs, market regulators and other authorities; subject to, and benefits from, public consultation

Consistency....

- ...is important because different systems may be dependent on each other, in direct competition with each other, or both
- ...prevents exploitation of regulatory weakness
- Where central banks own/operate FMIs, they should:
 - Apply the same international standards to their own systems (**exceptions noted**) with the same rigor as other overseen systems
 - Address possible conflicts of interest as operator/overseer
 - Avoid disadvantaging private-sector FMIs relative to CB's



Issues of Scope (2)

Consistency....

- The presumption is that all CSDs, SSSs, CCPs, and TRs are systemically important; **SI** | **PS** already identified...
- Authorities should disclose which FMIs they do not regard as SI, and to which they do not intend to apply the principles and provide a comprehensive and clear rationale
- Conversely authorities may disclose which FMIs they regard as SI

Promoting compliance and consistency

.....gives confidence and prevents exploitation of regulatory weakness in a particular jurisdiction.

- If an FMI does not observe the principles, the authorities should ensure that it takes appropriate and timely remedial action (see Resp. B)
- Shortcomings should be addressed within a timeframe consistent with the impact of risks, concerns, or other issues associated with the shortcomings
- Authorities should closely monitor newly formed FMIs and those undergoing significant change
- **If the FMI consistently complies with the standards, how does that change the overseer's role, if at all?**

Mechanisms for consistent application (any or all)

- ❑ Shared inboxes for supervisors of a particular FMI
- ❑ Team meetings for supervisors of a particular FMI
- ❑ Within an authority, supervisors/overseers of different FMIs compare and contrast differing practices of an FMI in a particular area
- ❑ Pool of specialists that work across FMIs
- ❑ Rotation of supervisors/overseers across FMIs
- ❑ Consistent governance arrangements across FMIs (e.g. all assessments approved by the same committee)
- ❑ Documentation of rationale for decisions
- ❑ Multiple authorities working together to assess an FMI
- ❑ **Disclosure of assessments as evidence of consistent application**

Responsibility E: Cooperation with other authorities

Central banks, market regulators, and other relevant authorities should cooperate with each other, both domestically and internationally, as appropriate, in promoting the safety and efficiency of FMs





Some rules of cooperation....

- PFMI not prescriptive about the form, but communication must be efficient, effective, flexible, in ***normal times***
 - Minimize potential for duplication and overburdening the overseen systems
-and ***during a crisis***
 - Reduce the probability of regulatory gaps
- At least one authority takes lead responsibility
 - Cooperative arrangement likely to involve central bank of issue, where the FMI is located or where participants are located
 - Lead authority coordinates and consults on assessments
- Notify other authorities of cross-border/multicurrency FMIs that are potentially relevant to them
 - E.g. Canada...CB may find it useful to require financial institutions to report their participation in cross-border or multicurrency P&S system
- Cooperative arrangements in no way prejudice an authorities' powers
 - *But...*regulatory actions should take account of the views of other authorities especially when the FMI is in a recovery, wind-down, or resolution scenario

Forms of Cooperation

- Memorandum of understanding, e.g.
 - [ASIC-RBA MoU](#)
 - [ESMA-ASIC-RBA MoU](#)
- Multilateral protocol, e.g.
 - [SADC](#)
 - [EAPS](#)
 - [CLS Oversight Committee Protocol](#)
 - [Multilateral Arrangement for Regulatory, Supervisory and Oversight Cooperation on LCH.Clearnet Ltd\)](#)
- Statutory, e.g.
 - EMIR colleges for CCPs
 - US Financial Stability Oversight Council

Addendum – Stakeholder cooperation

Not sufficiently addressed under the Responsibilities, and yet crucial for FMI oversight effectiveness: cooperation with the stakeholders

Cooperation as policy dialogue to:

- Manage collective action at industry level
- Secure fair representation of all interests within decision making
- Create consensus on policy choices
- Improve quality of policy design
- Inform stakeholders of policy orientation

Scope of an Assessment (RBA example)

“The scope of this self-assessment is limited to the Bank’s role as overseer of systemically important payment systems, although, where relevant, the oversight arrangements for other payment systems and other types of FMIs in Australia are discussed.”

Further Information

- CPMI-IOSCO [Assessment and Review of Application of the Responsibilities for Authorities](#)
- FSAP: IMF FMI Technical Notes, which typically include an assessment against the Responsibilities
- [Self-assessments of Australian Authorities against the Responsibilities](#)



Questions?
Thanks!