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FSB: Governance Arrangements for the Unique Product Identifier (UPI): Key criteria and functions

Dear FSB

Please find below the responses from NEX Group.

Q1) Do you consider any further criteria should be included in the above list.

The information presented under section 4 "Key Criteria for the UPI Governance Arrangements" is comprehensive.

Q5) How should costs be allocated amongst stakeholders?

A cost recovery model should be based on a flat fee for consuming UPIs, irrespective of whether the stakeholder is generating the UPIs. The current model being implemented in the EU at present sets over 75% of the fees on to the trading venues, when many other users consume as many/more ISINs daily.

Q6) How should a UPI Service Provider provide its rationale for calculating cost recovery?

A UPI Provider should disclose the method it uses to calculate its fees based on the cost recovery model it implements. There should be annual validation by an external party, such as an auditor or a regulator to ensure that the UPI Provider adheres to its own methods, and that those methods are fair, reasonable and non-discriminatory.

Q11) Business continuity / Service Level Agreements

The UPI service provider should be subject to business continuity and service level requirements in a similar manner to a trade repository. For example, service level agreements should be in place between the service provider and the service user. There should be an expectation by the user that the service will be provided continuously. If there is any downtime then this will prevent users from complying with regulatory requirements, such as intra-day pre-trade transparency requirements.

Service providers could have a target 'up-time' annually, but in addition to this target should also have a maximum down-time allowable daily to ensure that users of UPIs are always able to meet intra-day requirements. E.g. "UPI provider will, in all circumstances, aim to restore service within a maximum of x hours/mins, to ensure that all users are able to meet their regulatory requirements at all times." This prevents the UPI provider from meeting their annual target but failing the users on one or two days during the year.

Q14) Do you agree with the two articulated areas of governance identified above?

Yes

Q19) Which entity or entities (or type of entity) would be best placed to perform each of the above governance functions?

Section 5.2. setting out "Functions associated with the oversight of the UPI system" is the area a regulatory approach should be adopted. UPI Providers need to be overseen. Their role will be mandated by regulations (i.e. the requirement to use a UPI to meet regulatory requirements) and therefore the provider of that service must be overseen to:

a) Ensure that they provide an adequate service to the stakeholders that are mandated to use them
b) Ensure that they do no exhibit monopolistic behaviour.

The most important aspect noted under this section is 5.2.3 – and the key is 5.2.3 (c) "taking action with regard to the provision of services by the UPI Provider(s), including procedural safeguards."

The body responsible for oversight of the UPI provider should not be linked to that entity in any way (e.g. not a parent company, not affiliated). The oversight body could be a global organisation, such as FSB or IOSCO, given extra powers to carry out this role – or could be an existing regulatory body such as ESMA or CFTC who are mandated to provide a 'global' service (not a jurisdictional one based on their current remit). It could also be a shared oversight body composed of private and public sector institutions.

Q23) What would be the impact on market participants and other key stakeholders of having multiple UPI service providers (whether across asset classes or serving the same asset class in terms of (a) cost, (b) ease of use of the UPI system (c) their ability to confirm to the UPI technical guidance (d) their ability to associate UPIs with products in a timely manner at least to facilitate the discharge or reporting obligations for OTC derivative transactions.

We are ambivalent as to whether there are one or more UPI service providers. However, the controls of the provider should be differentiated depending upon the number of providers:

- If there is only one provider they should not be profit making – a stand-alone service provider, mandated by regulations is effectively a monopoly and can in theory charge the industry, or distribute charges however they choose.

- If there is more than one provider, then a for-profit model is acceptable as normal market forces will persuade the industry to use the provider that best services their needs at an acceptable price. That said, there should be oversight of providers operating models.

- If there is more than one provider controls must be in place to ensure that more than one provider cannot supply the same UPI at the same time.

Q24) Should one or a limited number of UPI Service Providers be selected at the outset? Should the UPI Governance Arrangements allow for additional UPI Service Provider(s) to be incorporated over time?

Any UPI Service Provider who meets the requirements to provide this service should be allowed to do so from day one, or from any other day going forward.

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