DFSA response to public comments on Consultation Paper No. 87 - Changes proposed to the Authorised Market Institutions regime

Overview

1. On 14 December 2012 the DFSA released a comprehensive package of proposals to enhance its Authorised Market Institutions regime ("the AMI Regime") in Consultation Paper 87 (CP87). Public consultation on these proposals closed on 14 February 2013 and we received 11 sets of public comments. The DFSA thanks the market participants and advisers for providing their thoughtful comments on the DFSA proposals. This paper explains the position adopted by the DFSA regarding the key points raised by public comments on CP87 proposals and the rationale for doing so.

2. The aim of the proposals in CP87 is to align the AMI regime with international standards that have been significantly enhanced to address changing market practices and issues, particularly in the aftermath of the recent financial market crisis. The key aspects of the international standards which are reflected in the proposed AMI regime include:

   (a) the CPSS-IOSCO Principles[1] for Financial Markets Infrastructure ("the FMI Principles"), which were introduced in 2012, as these will eventually form part of the standards against which jurisdictions will be assessed under the Financial Sector Assessment Program (FSAP); and

   (b) the major EU developments, such as the proposed MiFID II[2] and MiFIR, the European Market Infrastructure Regulation (EMIR)[3] and the proposed Central Securities Depository Directive (CSDD).[4] The potential benefit of aligning our regime with the EU regime is that the European Securities and Markets Authority (ESMA) may recognise the DIFC regime as providing an equivalent level of regulation as under the EU regime, so that clearing and settlement facilities in the DIFC would be able to offer their services to EU based market operators and clearing and settlement members.

3. In response to the public comments on CP87, and also of our own initiative, we have made numerous refinements to the CP 87 proposals, to provide greater clarity, certainty and flexibility for industry participants

[1] http://www.bis.org/publ/cpss101a.pdf
[2] http://regulatoryreform.wordpress.com/2013/05/10/eu-council-update-on-mifid-ii/ and http://ec.europa.eu/internal_market/securities/isd/mifid_en.htm
[3] http://ec.europa.eu/internal_market/financial-markets/derivatives/index_en.htm
[4] http://ec.europa.eu/internal_market/financial-markets/central_securities_depositories/index_en.htm

when complying with the regime. We have done so within the parameters set by the relevant international standards so that compliance of the DFSA regime with those standards is not compromised.

4. In order to promote better transparency, this paper sets out the DFSA's response to:

   (a) public comments it received to the 46 key issues raised in CP 87, in the same order in which those key issues were raised in CP 87;

   (b) some technical comments raised relating to drafting inconsistencies and anomalies; and

   (c) some general concerns regarding the DFSA's processes and regulatory approach.

5. In this paper (except where otherwise indicated):

   (a) capitalised terms generally have defined meanings in the DFSA Glossary (GLO) module;

   (b) a reference to a "current" provision or requirement is a reference to the AMI regime (i.e. the provisions in the AMI, General (GEN), Conduct of Business (COB) and GLO modules) in force before the CP87 proposals are implemented;

   (c) a reference to a "proposal" is a reference to a CP87 proposal, including any additional changes to those proposals resulting from public comments.

6. This paper will be of interest to:

   (a) Authorised Market Institutions (AMIs) licensed to operate Exchanges or to operate Clearing Houses, and applicants for such a Licence;

   (b) Authorised Firms licensed to operate Alternative Trading Systems (ATS), and applicants for such a Licence;

   (c) applicants for a Licence to Provide Custody;

   (d) Persons intending to act as a Trade Repository;

   (e) Persons who are Members of Exchanges, Clearing Houses or ATS, and Persons intending to become Members;

(f) Authorised Firms acting as financial intermediaries in respect of transactions relating to Investments;

(g) issuers of Securities who trade or clear their Securities on an AMI and Persons intending to do so;

(h) Persons who trade or clear Derivatives on an AMI and Persons intending to do so; and

(i) Financial Services Regulators.

Summary of public responses to the key issues in CP 87 and the DFSA's response

Proposals to retain the current form and structure of the AMI regime

7. We asked whether there are any concerns about the proposal to retain the current three main categories of Financial Services relevant to financial markets (i.e. Operating an Exchange, Operating a Clearing House and Operating an Alternative Trading System), and the current distinction drawn between regulation of AMIs and Authorised Firms.

8. One commentator noted that it has no concerns about retaining the current three main categories of Financial Services or maintaining the distinction currently drawn between AMIs and Authorised Firms.

Proposed changes to the definition of Operating an Exchange

9. We asked whether there were any concerns about the proposed changes to the definition of Operating an Exchange or any concerns about the proposed distinction drawn between Operating an Exchange and Operating a Multilateral Trading Facility (MTF), based on an Exchange having the ability, as opposed to an MTF operator, both to admit Securities to trading on its facilities and, if permitted by the regulator, to maintain an Official List.

10. One commentator responded and agreed to the distinction proposed between Exchange operations and MTFs, but noted that the current definition of an Exchange is much clearer than the proposed definition of an Exchange.

11. We have retained the proposed definition of Operating an Exchange, as it is based on the definitions adopted in MiFIR and is also well aligned with the equivalent definitions in EMIR.

Proposals to sub-classify Clearing House activities into CCP & SSS

12. We asked whether there were any concerns relating to the proposed sub-classification of Operating a Clearing House into two main sub-categories, i.e. Operating as a Central Counterparty (CCP) and Operating a Securities Settlement Service (SSS); two commentators responded.

13. One commentator said that the distinction drawn between the activities of CCPs and SSSs is not very clear. However, the other supported the proposed definition of a Clearing House on the basis that it is in line with the FMI Principles and so would foster a common understanding. That commentator went on to note that there are three types of activities – CCP, SSS and also central securities depository (CSD) – and, therefore, all three should be clearly recognised.

14. The FMI Principles recognise the activities of SSS, CCP and CSD as distinct activities, whilst also recognising that there is a significant overlap between them. However, as per the FMI definitions, counterparty risk exposure of a CCP is the main feature that distinguishes a CCP from an SSS, as an SSS does not incur such counterparty risks because it clears and settles third party transactions using a book entry system. This distinction forms the basis of the proposed definitions on which we consulted.

15. We have retained the proposed sub-classification of Clearing House activities into CCP and SSS, with the CSD function as an additional activity which may be undertaken by a Clearing House, with bespoke requirements applying to that activity. We do so on the basis that the activity of a CSD is to "hold" custody of securities and, should it prefer to undertake clearing and settlement activities, it should be licensed as a Clearing House.

Proposals to sub-classify ATS activities into MTF and OTF operations

16. We asked whether there were any concerns relating to the proposed sub-classification of Operating an Alternative Trading System (ATS) into operating a Multilateral Trading Facility (MTF) and operating an Organised Trading Facility (OTF), and the proposed conduct requirements for MTF and OTF Operators.

17. One commentator responded, and noted that it did not have any concerns relating to these proposals.

Proposals to replace the "by-way-of business" carve-out with a more precise carve-out

18. We asked whether there were any concerns relating to the proposed replacement of the very broad current "by-way-of-business" carve-out with a more precise carve-out applicable to specified Financial Services that may be carried on as an incidental and integral part of Operating an Exchange or Operating a Clearing House. We also asked whether there are any Financial Services which should be added to, or removed from, the more precise carve-outs proposed.

19. Two commentators responded; the first noted that the current "by-way-of-business" carve-out should be retained as it is easy to understand. In contrast, the second strongly supported the proposed more precise carve-outs on the basis that they promote better risk management, which provides added protection to market participants. It went on to note that, as Clearing Houses can be systemically important financial market infrastructures, it may be appropriate to divide functions of a Clearing House into its "core" and "ancillary" activities to promote better risk management.

20. We have decided to retain the proposed more precise carve-outs for the Financial Services that may be undertaken by an Operator of an Exchange or a Clearing House but, in doing so, we do not propose to draw a further distinction based on "core" and "ancillary" activities. To do so may lead to a higher level of prescription, which removes the flexibility available to AMIs to organise their business in a manner that takes in to account the nature, scale and complexity of their own operations.

Proposals to include CSD as part of Clearing House operations and Providing Custody

21. We asked whether there are any concerns relating to the proposals to expand the current definitions of Operating a Clearing House (a Financial service of an AMI) and Providing Custody (a Financial Service of an Authorised Firm) to include the activities of operating a Central Securities Depository (CSD).

22. Three commentators responded. Whilst they did not object to the CSD activities being regulated, they raised a number of discrete concerns as follows:

    (a) One commentator suggested that CSD activities should be a stand-alone third category of clearing and settlement alongside CCP and SSS. Our proposed definitions do not treat the CSD function as a stand-alone clearing and settlement function like that of a CCP or

SSS, on the basis that its central activity is to "hold" securities. Our proposed regime allows a Clearing House to operate a CSD, whilst also allowing an Authorised Firm licensed to "Provide Custody" to undertake the activity of operating a CSD. This approach provides flexibility for both AMIs and Authorised Firms, whilst also recognising the close relationship CSD activity has to both Operating a Clearing House and Providing Custody. It also enables us to provide bespoke regulation of CSD activity when undertaken by an appropriately licensed AMI or Authorised Firm in line with the requirements in the FMI Principles.

(b) Two commentators sought guidance on whether a separate licence is required to operate a CSD. As operation of a CSD is defined as an activity that may be undertaken by a Clearing House or as part of Providing Custody, firms licensed for those two Financial Services do not need to obtain a separate licence to be able to operate a CSD. Where they do operate a CSD, then CSD requirements apply to their CSD activities. We have included Guidance to clarify these aspects.

(c) Another commentator suggested that the proposed provisions relating to CSDs are far too prescriptive and the prior DFSA approval for establishing CSD links should be removed. We note that the proposed CSD requirements are designed to meet the FMI Principles and the key aspects of the CSDD without being as prescriptive as either of those standards. Therefore, whilst we have not diluted the proposed requirements significantly, to address the concern regarding CSD links, we have replaced the prior DFSA approval requirement for establishing CSD links with a prior notification requirement to the DFSA, to provide greater flexibility.

(d) One commentator noted that as CSDs do not generally hold collateral (as do CCPs or SSS), the proposed requirements relating to segregation and portability of collateral are not relevant to CSDs. These requirements, which were intended to apply to CCPs, had been proposed for CSDs through an oversight, and we have corrected this.

Proposal to allow an Exchange also to operate an MTF

23. We asked whether there are any concerns arising from our proposals to allow an AMI licensed to operate an Exchange to also operate an MTF under an endorsement on its Licence. We also asked whether there are any conflict of interests or other issues arising if the same legal entity undertakes both the operation of an Exchange and the operation of an MTF. One commentator responded, and noted that allowing an Exchange

to operate an MTF is a very positive development, and it is not aware of any conflict of interests arising from doing so, whilst wishing to consider the impact of these proposals in more detail later.

Proposals relating to Trade Repositories

24. We asked whether there are any concerns arising from our proposals to regulate Trade Repository activities without making this a Financial Service, instead treating it as an activity which may be undertaken by an AMI or Authorised Firm which obtains an endorsement on its Licence permitting it to do so. Where a firm does so, it is also subject to the proposed additional conduct requirements applicable to Trade Repositories. We also asked whether there are any concerns about regulating the activities of Trade Repositories pending consideration of development of a transaction reporting regime.

25. Only one commentator responded and they noted that, whilst they do not have any objections to regulation of Trade Repositories in the manner proposed, it would be preferable if a transaction reporting regime was first developed before doing so.

26. We have concluded we should not delay the introduction of the regime for regulating Trade Repositories pending the development of a transaction reporting regime because it:

(a) enables our regime to meet the growing expectation among international standard setters to create Trade Repositories (TRs) to facilitate better transparency relating to transactions, including OTC derivatives, by requiring Authorised Persons with an endorsement to operate TRs to gather and collate such information to facilitate the use of such information by regulators and market participants; and

(b) gives us sufficient time to consider the appropriate form and shape of a transaction reporting regime, taking into account transaction reporting regimes including that in EMIR.

Proposals to approve Key Individuals of AMIs

27. We asked whether there are any concerns relating to our proposal to introduce a DFSA prior approval requirement relating to Key Individuals (i.e. Members of the Governing Body, SEO, Operations Officer, Finance Officer, Compliance Officer, Risk Officer, MLRO and Internal Auditor). We also asked whether there are any Key Individual functions that should be added to or removed from those identified and, also, whether there are

any concerns arising from the proposal that SEO, Compliance Officer and MLRO have to be resident in the U.A.E.

28. Four commentators responded as follows:

(a) Two commentators objected to the proposed requirement that the DFSA's prior approval is required for individuals to be appointed to Key Individual functions. They noted that while AMIs should be obliged to appoint Key Individuals meeting prescribed suitability criteria, the AMI, and not the DFSA, should form the view of whether or not the individuals appointed to such positions meet the relevant criteria. They also noted that the DFSA's prior approval process could result in the recruitment process becoming more costly and time consuming, resulting in impediments for AMIs to hire suitably qualified individuals who are in demand.

(b) Another commentator objected to all members of the AMI's Governing Body having to be subject to the DFSA's prior approval requirement, noting that this seems to equate AMIs to Authorised Firms, which is not warranted as AMIs perform regulatory functions.

(c) Although the fourth commentator did not object to the DFSA's prior approval for Key Individuals, it had objections to the role of the "Operations Officer" being included as a Key Individual, as a number of individuals within an AMI would share this responsibility.

29. Whilst retaining the proposals for the DFSA prior approval for Key Individuals, to address some concerns raised by commentators we have provided more flexibility by allowing an AMI to seek the DFSA's "in principle" approval for any individual designated for a Key Individual role. We have also removed the requirement for the Operations Officer to be a Key Individual function for the reasons noted above. As there were no comments on the proposal to require SEO, Compliance Officer and MLRO to be resident in U.A.E, no change has been made to this proposed requirement.

Proposal to require AMIs to appoint user committees

30. We asked whether there are any concerns relating to the proposed requirement for AMIs to appoint user committees, comprised of representatives of its key stakeholders, tasked to advise the AMI's Governing Body and senior management on operational matters impacting on Members and other stakeholders. This proposal drew strong objections from several commentators, with one commentator supporting it.

31. The main objection to the user committees was that the reporting obligations imposed on members of such committees would act as a disincentive to provide proper advice, for the fear that they would be exposed to third party liabilities. There were also concerns that mandatory user committees may impose a significant administrative and financial burden on AMIs, so reducing their ability to attract quality candidates.

32. The proposal to introduce user committees stemmed from the need to meet FMI Principle 2 relating to Governance, which expressly includes the need for an AMI to obtain stakeholder input in making major decisions, such as those relating to its system's design, rules and overall business strategy. The role of user committees is expressly identified under that Principle as an effective means for an AMI to obtain stakeholder input, and forms part of the best practice included under that Principle. Therefore, we have removed the mandatory requirement for user committees and instead included the role of such committees as part of best practice relating to corporate governance applicable to Authorised Persons (in GEN), which is in line with the FMI Principle. We have also created an incentive for AMIs to establish user committees by allowing an AMI, which establishes user committees that meet best practice standards, to use this to demonstrate to the DFSA that it had undertaken due process to take account of stakeholder input to its decision making.

Proposals relating to "Proper Markets"

33. We asked whether there are any concerns relating to the proposals to strengthen "Proper Markets", which require every Exchange to have rules and procedures designed to promote fair, orderly and efficient trading of Investments on its facilities. These included a range of new provisions relating to liquidity incentive schemes, pre-and post-trade transparency, contract design specifications for Derivative contracts, volatility controls, error trade policies, short selling and position management and foreign ownership restrictions.

Liquidity incentive schemes

34. The proposed requirements relating to liquidity incentive schemes drew the most number of public comments, with seven commentators responding. The main objections raised related to:

(a) the proposed restriction that participation of such schemes be limited to Members of an AMI. Commentators noted that wider participation than Members is needed, and it is often the practice to incentivise non-Members to generate liquidity and volumes of trading in otherwise illiquid Investments;

(b) the requirement for the AMI to disclose to the public the details of the terms and conditions on which liquidity incentive schemes are offered, as such details often contain commercially sensitive information; and

(c) the DFSA's prior approval requirement for such schemes, as it would remove flexibility for AMIs in establishing such schemes.

35. In order to address the concerns raised, we have made substantial changes to the requirements relating to liquidity incentive schemes. These include allowing non-Members to participate in liquidity incentive schemes (provided they agree to comply with the Business Rules of the AMI as applicable to their activities); replacing the prior application period with a shorter application period for the DFSA's prior approval; and removing the requirement for the AMI to publish details relating to terms and conditions of liquidity incentive schemes.

Proposals relating to contract design specifications

36. One commentator responded and raised a number of concerns, the key aspects of which related to:

(a) the unworkability of the economic utility test, as every Derivative contract does not provide for price discovery of the relevant underlying commodity or security; and

(b) the obligation for an AMI to monitor and evaluate whether settlement and delivery procedures promote a reliable pricing mechanism and price convergence between futures and cash markets, as to do so is not the role of futures markets.

37. We have removed those requirements to address the concerns raised, particularly as the proposed Derivative contract specification criteria adequately deal with the essential elements for eligibility to be traded or cleared on an AMI. We have also included a number of other amendments to provide greater clarity and remove some unintended effects.

Short selling and position management

38. One commentator responded and noted that there is no definition of short selling and that it is not clear whether the provisions dealing with short selling apply to both naked and covered short sales. To address these concerns, we have included a definition of a "short sale" based on the IOSCO definition of that term and added detailed Guidance.

Proposals relating to foreign ownership restrictions

39. We asked whether there are any concerns relating to the proposed requirements to ensure that foreign ownership restrictions applicable to securities traded on an AMI are observed, and such restrictions do not adversely affect the functioning of Proper Markets.

40. Two commentators responded. They stated that the foreign ownership requirements are far too prescriptive and do not provide sufficient flexibility for AMIs to adopt effective measures to manage foreign ownership restrictions that may apply, such as requiring an investor to divest the relevant securities, rather than halting trading on such securities.

41. The proposed foreign ownership related requirements are broadly based, containing an overarching obligation that an AMI has adequate mechanisms to monitor and manage such restrictions, with only minimum requirements specified to enable an AMI to meet that overarching obligation. As a result, an AMI is not prevented from adopting additional mechanisms which it considers appropriate to meet the overarching obligation.

42. Given the importance placed on ownership restrictions in this region, including in the U.A.E., these proposals are not diluted significantly. However, we have made some refinements to the proposed provisions to address any concerns that our requirements impose a direct obligation on an AMI to remedy any breaches of foreign ownership restrictions, as the power to do so is available only to issuers and investors of the relevant Investments and not the AMI.

<u>Proposals relating to Direct Electronic Access (DEA) through Members</u>

43. We asked whether there are any concerns relating to the proposed enhancements to Membership related requirements, which include the proposed controls where a Member allows its clients to access a market through DEA (DEA clients).

44. Two commentators responded supporting the proposals relating to DEA clients, on the basis that those proposals promote greater trading activity and liquidity in markets.

<u>Proposals relating to Information Technology</u>

45. We asked whether there are any concerns relating to the proposed enhancements to information technology (IT).

46. Two commentators responded. One made a general comment that the proposed IT- related requirements are too prescriptive. The other objected

on the basis that an AMI is not in a position to undertake testing of trading algorithms used by a Member. Given the importance of IT for proper operation of markets, the proposals are not diluted significantly. However, as the responsibility lies with a Member to test its own trading algorithms, we have added Guidance to remove any ambiguity that an AMI is required to carry out such testing.

Proposals relating to capital resources

47. We asked whether there are any concerns relating to the proposed enhancements to capital requirements applicable to AMIs.

48. Two commentators responded stating that they have concerns about the proposed restriction which would prevent an AMI holding the cash component of its capital resources with a bank if that bank is a Clearing Member, on the grounds that this is overly prescriptive and has no benefit because the Clearing Member is a regulated bank.

49. We have removed this restriction to address the concern raised. In doing so, we have focused on requiring an AMI to monitor and manage any concentration of credit and liquidity exposures to its Clearing Members.

Proposed procedures for making changes to existing arrangements and Business Rules

50. We asked whether there are any concerns relating to the proposed enhancements to the procedures for making:

(a) any material changes to the AMI's existing arrangements to meet the Regulatory Functions (Licensing Requirements); and

(b) any changes to Business Rules, which require public consultation unless the DFSA has dispensed with that requirement.

51. Four commentators responded. Whilst all of them seemed to endorse the DFSA's prior approval requirements for changes, they expressed some concerns relating to the process for obtaining approval, including:

(a) the application for DFSA approval having to be made 90 days in advance of making a change, on the grounds that this would impede an AMI's ability to respond swiftly to rapidly changing market conditions. We have reduced the advance application period for DFSA approval from 90 to 30 days.

(b) Having to make public any submissions received by an AMI on any proposed changes to its Business Rules, as such submissions are

confidential in nature. We have removed this requirement to address this concern.

(c) A number of other aspects relating to changes to Business Rules, such as minor and administrative changes to Business Rules having to be approved by the DFSA and the stringency of the test applied by the DFSA for approval of any proposed changes to Business Rules. We have made a number of amendments and clarification to the procedural aspects of the DFSA approval process to address these concerns.

Proposed risk management requirements for Clearing Houses

52. We asked whether there are any concerns relating to the proposals to address risks specific to Clearing Houses, including in relation to CCP operations, and whether there are any areas of risk which are not addressed by the proposed requirements.

53. We received a number of technical comments on the proposals relating to Clearing Houses, including an objection to having to make public any legal opinion received by a Clearing House on the legal enforceability of its operations. We note that making public legal opinions was included in Guidance as good practice and; as such, it is not a mandatory requirement. However, to allay this concern, we have made further amendments to the relevant Guidance.

Proposed requirements for ATS operators

54. We asked a number of questions relating to the proposed requirements applicable to ATS operators to bring those in line with the enhanced requirements proposed for operators of Exchanges, as both types of facilities pose similar risks.

55. One commentator responded and endorsed the proposed requirements for ATS operators.

Proposed transitional arrangements

56. We asked whether the proposals not to grandfather any of the existing arrangements and to allow a period of six months for AMIs to move to the new regime are appropriate.

57. Three commentators responded. One objected to the six month transitional period as inadequate, given the scale and prescriptiveness of the changes proposed, noting also that there would be a significant cost burden involved which needs to be addressed through timing and what is applicable. A second commentator suggested that there should be further

discussions relating to how the transitional arrangements would work, and a third noted that they are unable to assess whether the six month period allowed is adequate.

58. Upon reflection, we thought that one of the administrative burdens in making the transition to the new regime would be to obtain the DFSA's approval for individuals already occupying the Key Individual positions at the point of transition. To remove this burden, we have provided for grandfathering of individuals occupying those positions at the commencement of the new regime. We consider that a six month period should be sufficient for the transition, but note that – should an AMI be unable to make the transition within this period – it could seek an extension of the relevant period by applying for a modification of the relevant rule.

Technical comments and the DFSA's response

59. Commentators raised a range of technical issues on various aspects of the proposed AMI regime, with a fair bit of overlap with the responses they provided to key issues raised in CP87 (such as Key Individual approval, and others discussed above). Most of the technical issues raised by commentators identified areas that needed further clarification or refinement to the proposed drafting, rather than any fundamental changes to the regime, with one exception noted below.

60. One commentator noted that the requirement imposed on a Clearing House acting as a CCP to perform stress testing on a daily basis, in order to assess and manage its credit and market exposures, is unwarranted. Instead, they said a CCP should have more flexibility to perform stress testing at regular intervals as it deems appropriate. Whilst the key considerations underpinning FMI Principle 11 require a CCP to undertake daily stress testing, we have concluded that some flexibility could be accommodated in this context. We have recast the obligation on a CCP to perform stress testing "on a regular basis as appropriate to the nature, scale and complexity of its operations", with the expectation, stated in Guidance, that a CCP with complex and widely spread operations should aim to perform such stress testing on a daily basis.

61. We do not propose to identify separately the clarifications and refinements made to the drafting to address technical comments, as they are myriad.

The DFSA response to general concerns relating to its process and regulatory approach

Whether a 60 day public consultation period is adequate

62. Some commentators noted that the 60 day response period allowed for public consultation under CP87 was inadequate on the grounds that the proposed changes were extensive and the period fell over Christmas holidays. We note that the appropriate public consultation period is determined on a case by case basis, subject to an overriding requirement applicable to the DFSA, under the Regulatory Law 2004, which requires a minimum public consultation period of 30 days, and the ability for the DFSA to dispense with public consultation in cases where it determined on reasonable grounds that any delay resulting from public consultation is detrimental to the interests of the DIFC markets.

63. We set a 60 day period for public consultation for CP87 based on a number of considerations, including the extensive nature of the changes proposed and the one-to-one briefings already held with key industry participants, including the two AMIs. Therefore, we do not consider that the 60 day period was unduly short.

The desirability of providing a marked-up version of the proposed AMI module against the existing AMI module

64. Some commentators noted it would have been made easier for them to analyse the proposed AMI regime if there was a marked-up version showing the old and new. We note that, where it is proposed to replace an entire module with a new module, it is not the DFSA's general practice to release a marked-up version, as the substantial changes proposed render a marked-up version impractical. However, to address similar concerns in the future, where such a replacement of a module is proposed, we propose to include appropriate footnotes indicating the new and old provisions.

The need for public briefing sessions for market participants

65. Some commentators noted that, as there is a significant impact resulting from the proposed changes to the AMI regime, it would have been highly desirable if public briefings were held by the DFSA. We note that extensive one-to-one briefing sessions were held with key market participants before and during the public consultation period. However, to address similar concerns arising in the future, we propose to hold, where appropriate, outreach sessions to market participants and other stakeholders during public consultation.

The need for greater transparency of the DFSA process

66. A concern was raised by a commentator that there was a general lack of transparency on the part of the DFSA as it did not publish a statement setting out the position it reached in response to public comments received on CPs. This statement is published partly in response to that comment. We expect to take this approach when appropriate in the future.

Whether the DFSA is moving towards a more rules-driven approach to regulation

67. Some commentators were concerned that the DFSA is moving away from a principles-based approach to more prescriptive regulation which may not provide sufficient flexibility for market participants. We note that both the FMI Principles and the relevant EU requirements, with which we seek closer alignment, are far more prescriptive and detailed regimes than what we have proposed. We have tried to provide flexibility without prescription. For example, we have only incorporated into our proposed regime the FMI Principles and the Key Considerations underpinning those Principles, leaving out much of the associated detailed material published as guidance under those Principles.

68. We have removed some requirements seen as overly prescriptive where we could do so without risking non-compliance with the relevant international standards. A number of the changes highlighted in the earlier part of this paper are examples of this approach, through which we intend to keep prescription to a necessary minimum and maximise flexibility for Authorised Persons.