FSB FINANCIAL STABILITY BOARD

26 April 2018

Governance arrangements for the unique product identifier (UPI)

Second consultation document dated 26 April 2018

Optional response template

Instructions:

Submission of consultation responses via this template document is optional.

The document has been designed to be completed as a form in Microsoft Word. To assist with automated compilation of answers, users are only able to make changes in the spaces set aside for answers.

For the context of any question or for defined terms, please refers to the relevant parts of the consultation document.

Please save and submit the completed questionnaire as a Microsoft Word document, rather than converting it to a PDF. A password may be applied; in that case you should communicate the password by separate email or by telephone conversation arranged by email.

The FSB invites stakeholders to provide their responses by Monday 28 May 2018 by e-mail to fsb@fsb.org with "UPI Governance Arrangements" in the e-mail subject line. The feedback received will be taken into account in the FSB's development of the UPI Governance Arrangements.

You may choose to leave answers blank – in that case it is acceptable to leave the answer reading "Click here to answer text".

Should you wish to obtain an unlocked version of this template in order to facilitate sharing of draft answers in your organisation, please contact the FSB Secretariat on the email address above. In that case, you would still be requested to copy your answers to the locked version on the template to ensure accurate processing of the data.

Questions	Answers
Information about the respondent	
A. Name of respondent institution/firm	NEX Group
B. Name of representative individual submitting response	Michelle Hallett, Director of Regulatory Affairs
C. Email address of representative individual submitting response	Michelle.hallett@nex.com
D. Do you request non-publication of any part(s) of this response? If so, which part(s)? ***Unless non-publication (in part or whole) is specifically requested, all consultation responses will be published in full on the FSB's website. An automated e-mail confidentiality claim will not suffice for these purposes.***	Click here to enter text.
E. General information about the respondent institution/firm	NEX has SEFs and MTFs in Europe and the US. NEX is also the owner of trade repositories, ARMs and APAs in the EU.
F. General or introductory remarks	NEX is ambivalent as to whether there are multiple or single UPI services providers. However, comments below give our views on the advantages and disadvantages of each model – most of which are in keeping with text already in the consultation paper. However, to ensure our concerns are fully understood, we either propose new additional controls, or agree with controls proposed in the consultation. Should a single UPI provider be chosen then it is vital that very stringent, independent governance is put in place from the outset to avoid monopolistic behaviour, especially with regard to costs, fees and overspends. In addition, because of the risk that a single provider could fail (for short or extended periods of time) an

Questions	Answers
	appropriate risk assessment should be completed and continuity arrangements agreed in advance. Should multiple providers be chosen then a single Reference Data Library should sit on top of the UPI provider. The RDL should be obliged to provide equal services to ALL UPI providers, despite the fact that they may be within the same group as one of the UPI providers. If one UPI provider fails then arrangements to failover (either permanently or for short periods after an agreed length of outage) to another provider should be agreed in advance.
G. Date of response	17.05.2018
Consultation questions	
Q1. Do you agree a public-private partnership model such as the one sketched above should be adopted for the UPI Governance Arrangements?	Yes
Q2. Do you believe any governance functions in Annex 4 should be performed by a different body? If so, which ones and why?	The governance structure and allocation of responsibilities seems sound. However, the IRG, alongside UIROC, should be given explicit oversight in terms of allocation of fees and recovery of costs. The IRG should not be seen to be setting the prices, but, particularly if a single UPI provider model is used, market participants need to know that fee groups and cost allocations have been set in a fair, reasonable, non discriminatory and transparent way. A cost recovery model with a single provider does not encourage careful spending. As the industry will take the costs of this service, cost recovery must be monitored.

Questions	Answers
Q3. How should any Governance Arrangements for the UPI System be funded?	The UPI provider could collect a nominal fee, e.g. per UPI produced. Arrangements would need to be in place to avoid misappropriation of this fund.
Q4. Do you consider the Governance Arrangements described in section 3 above are appropriate and adapted to provide oversight on fees and cost recovery?	As above, governance of fees and cost recovery should be explicity set in Governance Arrangements. Disclosure of, and independent review of fees and fee structure should be mandated. This should be done before fees are agreed and have representation from all affected parties. With a single provider, there is no incentive for the "cost recovery model" to try to restrict spending. E.g. as long as the provider can cover their costs it does not matter to them that one consultant used is more expensive than another. This is something that needs to be carefully considered. The governance structure should consider aspects such as tendering for work and setting a reasonable annual budget that the provider strives to meet – under the oversight of the governance arrangements.
Q5. Please provide any specific suggestions to promote adherence to the cost and open access criteria, including suggestions relating to escalation procedures, including complaint handling bodies and processes.	Click here to enter text.
Q6. If you believe that start-up costs should be fully recovered by a UPI Service Provider, how should they be allocated between earlier- and later-arriving subscribers? For example, over how many years should the start-up costs be amortised?	Click here to enter text.

Questions	Answers
Q7. If revenues for a year have exceeded or fallen short of anticipated costs for that year, should the UPI Service Provider have a mechanism for rebating or recovering the excess, either during that year or at a later time?	Rebates to participants and reclaim of overspends: whilst we agree to this in theory, in practice if governance is properly in place then there should not be overspend by the UPI provider. Overspend should not be a surprise to the participants. Spending above the expected cost-recovery should be pre-approved by governance arrangements.
Q8. Do you believe that a UPI Service Provider should be allowed to cross-subsidise the provision of UPI Services with revenues from other business lines, either with regard to start-up costs or on an ongoing basis? Why or why not?	Click here to enter text.
Q9. Should a UPI Service Provider be permitted to provide value-added products and services (i.e., products and services that incorporate UPI data but are not required by the UPI Technical Guidance)?	Click here to enter text.
Q10. What is your evaluation of the risks of restrictive practices limiting open access, e.g. through the bundling of UPI Services with value-added services? How and by whom could such practices be prevented or restricted?	Click here to enter text.
Q11. Should a UPI Service Provider that engages in other business activity be required to "ring fence" its UPI functions? If so, what sort of corporate, legal, and/or accounting mechanisms would be necessary to effect such an arrangement?	Click here to enter text.
Q12. Should ownership of any intellectual property created by a UPI Service Provider be assigned to a third party in order to maintain and ensure continuation of open access in the event that the provider	Yes No preference as to structure; but must be able to provide open access on a utility-like basis to all participants

Questions	Answers
were to become insolvent or subject to administration or voluntarily withdraw? If so, how should that third party be structured?	
Q13. Should access to a vendor-proprietary identifier in the UPI Reference Data Library be limited to only those market participants who have a corresponding license agreement with the respective vendor? If so, how should that underlying asset or index be identified for non-licensees?	No, that diminishes the utility of the UPI Otherwise – usage for non-licensees could be limited to certain purposes (read-only, non-dissemination)
Q14. Do you believe that wherever possible elements within the Reference Data Library should use established International Data Standards?	Yes
Q15. Do you agree that, for similar reasons as were traversed in the UTI Consultation, the ISO is the most appropriate body to undertake the functions of an International Standardisation Body for the UPI?	Yes
Q16. Do you think it desirable that all elements in the UPI Reference Data Library be subject to ISO standards?	Yes
Q17. Do you agree with the FSB's preliminary conclusions about codelists and related topics in section 5.3 above?	Click here to enter text.
Q18. If you believe that the UPI data can and should be used for purposes other than solely regulatory reporting, describe in detail and provide specific examples of any such additional purposes.	Product reference within platforms
Q19. Considering the pros and cons of each of the above-mentioned models (Single UPI Service Provider model or Competitive model), what would in your view be the most suitable? Please provide detailed reasoning.	NEX is ambivalent, but appropriate controls must be in place depending upon which option is chosen. If more than one provider meet all the standards required then FSB could allow a multiple provider model. The additional costs should be

Questions	Answers
	reduced by natural competitive behaviour. Agree that with a multiple provider model there needs to be a single Reference Data Library on top to avoid duplication of UPIs. RDL should be required to provide equal levels of service to ALL UPI providers (as it is likely that the RDL will be in the same company as one of the UPI providers). Continuity and failover to other providers should be considered and agreed. However, if a single provider model is chosen then NEX agree that there need to be very strict governance controls to prevent monopolistic behaviour. Controls should be on pricing/fees, reliability and continuity of service. Need to carefully consider whether a failure of a single provider (and no UPIs produced) for any period of time is acceptable. If it is an acceptable risk, how long for and what is the long term contingency. This needs to be considered and agreed in advance.
Q20. Do you believe that there should be a single UPI Reference Data Library if multiple UPI Service Providers coexist in the UPI System? Why or why not?	Yes, agree that there needs to be a single Reference Data Library on top to avoid duplication of UPIs.
Q21. What would be the value added in having competing UPI Service Providers if there was a single entity centrally managing the UPI Reference Data Library?	Choice for market participants, and ability to tailor service to specific products. It reduces chances of monopolistic behaviour and gives the ability for costs to be reduced by natural competitive behaviour. There is an automatic contingency if one provider fails, or withdraws from the market.
Q22. How could the applicable technical principles and governance criteria mentioned in section 6.1 be followed if there were multiple UPI Service Providers?	Click here to enter text.