

CROSS-BORDER REGULATION FORUM (CBRF)

February 23 2015

Ms. Rohini Tendulkar
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid
Spain

Re: Public Comment on the Task Force on Cross-Border Regulation

Dear Ms. Tendulkar

1. The Cross-border Regulation Forum (CBRF) believes that international regulatory coordination is crucial to financial stability and end users having access to a range of products. Existing approaches to coordination have a number of weaknesses and fall short of the aspirations set out by G20 leaders at the Pittsburgh Summit in September 2009. The CBRF warmly welcomed the establishment of the IOSCO Task Force on Cross-Border Regulation in June 2013 and the important steps taken in the development of the Consultation Report. The work of the taskforce presents an opportunity to address some of the existing limitations. Moreover, IOSCO itself should have a significant role in that process.
2. This letter is organized as follows. First, we set out why the CBRF believes effective coordination is so important and the consequences of sub-optimal coordination. Second, we offer the CBRF's views of the coordination tools discussed in the Report including deference, which we believe has the most to commend it. Third, we share the view held by the Financial Stability Board (FSB) that IOSCO should play a leadership role in promoting coordinated and consistent regulatory approaches and, fourth, conclude the letter by underlining our firmly held view of how IOSCO can and should play a leadership role in promoting coordinated and consistent regulatory approaches. We recognize that fully realizing such a role will require a number of further steps and stand ready to help in any way we can going forward.
3. Key points of this letter are:
 - Effective cross-border regulation is crucial to integrated global capital markets, financial stability and sustainable economic growth. There is scope to improve coordination going forward and the IOSCO report is an opportunity on which to capitalize.
 - The CBRF agrees that there is not a 'one-size-fits-all' tool for regulatory coordination but believes that, of the three tools discussed by the IOSCO Report, deference (also known as recognition) has greatest the advantages to policymakers and market participants.

- Global principles, such as those championed by the G20, are necessary but not sufficient for effective global coordination. To be effective, principles have to be sufficiently granular to facilitate common interpretations and cross-border deference. Policymakers should aspire to expand agreed principles to strengthen the common foundations on which individual jurisdictions base their rules.
- In regulatory policy making, early and continuous dialogue is crucial and is a vital ingredient to successful coordination.
- More attention also needs to be paid to cross-border regulation in the legislative phase of regulatory policymaking.
- Individual jurisdictions, in the interest of better coherence and sounder financial stability, should empower IOSCO to play an enhanced role going forward in delivering on their commitments. That enhanced role should include a greater presence in promoting best practice and cross-border dialogue and in collecting and disseminating information. National policymaking processes could also be strengthened in their effectiveness by IOSCO providing support and advice.

DETAIL

Introduction

4. The CBRF¹ welcomes the IOSCO Task Force on Cross-Border Regulation Consultation Report (“the Report”). We appreciate the significant work that has been done to achieve further regulatory coordination since 2009, and not least the leadership from IOSCO and the Financial Stability Board (FSB) in promoting international coordination and dialogue in recent years. We also acknowledge efforts made by policymakers and regulators around the world, on a national basis and through IOSCO, to develop ways to achieve a sound and coherent regulatory framework for financial services.
5. But it is crucial to recognize that the current regulatory framework has developed certain elements which are extraterritorial in scope. It is consequently becoming increasingly disjointed, fragmenting markets and creating barriers to entry which, in turn, limit the range of products and services that can be provided to consumers and other end users. The Task Force makes a valuable contribution to this discussion and the consultation presents a unique opportunity to identify ways to strengthen future regulatory coordination. Immediate action is needed.

¹ The CBRF was brought together in 2014 by an international group of financial services trade associations, investment banks, brokerage houses, market infrastructure operators and consumers of financial services to help improve and encourage the dialogue on international regulatory standards. See “Cross Border Regulation Forum launched to facilitate the enhancement of global regulatory standards” <http://www.icsa.bz/>

6. In drafting its response to the Report, the CBRF has drawn on the views of its member organizations and firms which represent a full range of market participants (and are included in Annex A to this letter).
7. In submitting this letter by way of response to the Report, we do not seek to reiterate the points and examples set out in previous CBRF papers submitted to IOSCO, but would emphasize that they are very relevant to issues raised in the Report.²

The importance of regulatory coordination

8. At the 2009 Pittsburgh Summit, G20 Leaders recognized the importance of individual authorities implementing "...global standards consistently in a way that ensures a level playing field and avoids fragmentation of markets, protectionism, and regulatory arbitrage."³ In making this commitment, leaders acknowledged that working cooperatively across jurisdictions reduces the risk of future crises and enhances the resilience of the international financial system.
9. Despite this call for consistency, as well as a number of re-affirmations by Leaders at subsequent G20 Summits, global approaches continue to be undermined by the unilateral and uncoordinated implementation (and extraterritorial application) of rules by individual jurisdictions. This acts to the detriment of global markets, with consequential impacts on the services available to consumers.
10. The consequences include fragmentation, increased barriers to entry, a reduction in products available to end users, and reduced market liquidity. Additionally, some unaligned rules had such extra-territorial impacts as to require market participants to restructure their businesses and inevitably impact market development in affected jurisdictions in some cases. Finally, fragmentation can reduce the ability of end users to properly manage risks.
11. There are a number of impediments to developing more coherent rules – all of which can be addressed as discussed later in this letter. One of the barriers is inconsistency in the implementation process which is observable not only in the substance but also in the *process* for implementing the new standards. These inconsistencies often emerge because of the different legal and political models, consultation and issuance processes and timelines. In the US and EU, primary legislation is often required to at least transpose some of the international standards or commitments and it is often at this stage that differences start to emerge. These disparities are driven by the fact that the international standards are usually drawn up by regulators but, at least in the US and EU, enabling legislation often has to be determined through political decisions. Sometimes these primary, or as it is referred to in Europe, "Level 1" legislative texts, set out requirements that bind the hands of

² See Cross Border Regulation Forum (CBRF), "Key Issues and Challenges Relevant to the Regulation of Cross Border Business in Financial Services."
http://www.icsa.bz/img/letter_pdf/Annex_13.CBRF_Response_to_IOSCOQuestionnaire_final_ver_13.1_28_MAY_2014.pdf

³ See "Leaders Statement: The Pittsburgh Summit, September 24-25 2009".
https://g20.org/wp-content/uploads/2014/12/Pittsburgh_Declaration.pdf

regulators and make it more difficult for them to implement rules which are consistent with the international standards to which they have committed to implement. It is clear that, in some markets, national legislators have a role to play in this process. However, the policy process could be made more effective if legislators were provided with more information on the extent to which legislative inconsistencies between jurisdictions emerge and what these mean for the effective international application of standards.

Examples of regulatory divergence and their consequences

12.. We shall provide just a few short examples of regulatory divergences and the problems stemming from them here.⁴

- In the global OTC derivatives market, data indicates that liquidity has already been bifurcated between US and non-US pools in light of divergent implementation⁵ and a lack of recognition of non-domestic trading venues.⁶ For instance, the average cross-border volume of euro Interest Rate Swap (IRS) transacted between European and US dealers as a percentage of total euro IRS volume was 25% from January 2013 to September 2013 but, in the period following the implementation of the Swap Execution Facility (SEF) rule, this average fell to 9% between October 2013 and January 2014.⁷
- It has proved difficult in a number of cases for jurisdictions to agree equivalence determinations as part of their regulatory reform efforts. For example, the recognition of Third Country Central Counterparties (CCPs) under the European Market Infrastructure Regulation (EMIR) by the European Commission has been complicated by different approaches in other jurisdictions. The combination of a lack of Third Country CCP recognition and the expiry of the transitional provisions in own funds for exposures to CCPs in the European Capital Requirements Regulation (CRR) could severely affect European firms acting on a cross-border basis as EU banks and investment firms would not be able to apply qualifying CCP capital treatment to CCPs not recognized by the European Securities and Markets Authority (ESMA). Global convergence would call for recognition of non-EU CCPs that may not have applied for EU recognition, but

⁴ See Cross Border Regulation Forum (CBRF), "Key Issues and Challenges Relevant to the Regulation of Cross Border Business in Financial Services" for more in depth case studies of cross border coordination in: Swap Execution Facilities; The Volcker Rule; Private Fund/AIF Reporting; Derivative Reporting and Confidentiality; Securitization; Futures Exchanges; and FX. http://www.icsa.bz/img/letter_pdf/Annex_13.CBRF_Response_to IOSCOQuestionnaire_final_ver_13.1_28_MAY_2014.pdf

⁵ See ISDA Research Notes: "Footnote 88 and Market Fragmentation: An ISDA Survey" (December 2013); Cross-Border Fragmentation of Global OTC Derivatives: An Empirical Analysis" (January 2014); "Made-Available-to-Trade: Evidence of Further Market Fragmentation" (April 2014); and "Revisiting Cross-Border Fragmentation of Global OTC Derivatives: Mid-year 2014 Update" (July 2014). <http://www2.isda.org/functional-areas/research/research-notes/>

⁶ See "Pro-Reform Reconsideration of the CFTC Swaps Trading Rules: *Return to Dodd-Frank*" - White Paper. J. Christopher Giancarlo, Commissioner, U.S. Commodity Futures Trading Commission, January 29 2015. the CFTC's implementation of its swaps trading regulatory framework under Title VII of the Dodd-Frank Act. <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/sefwhitepaper012915.pdf>

⁷ In the meantime, the average volume of euro IRS transacted between European dealers rose to 90 per cent from 75 per cent in the preceding period.

are adhering to the CPMI-IOSCO Principles for Financial Market Infrastructures, while reciprocity needs to be ensured. The recognition of non-EU trading venues under MiFID I has also been subject to a delayed equivalence process that is having adverse impacts on end users. This is because of the resulting impact on the regulatory-status of non-EU exchange traded derivatives under EMIR, which in the absence of recognition of the venues on which they trade are considered “OTC” and must count towards market participants’ thresholds for the clearing obligation. This puts EU market participants at a commercial disadvantage. Both cases show the effect of delayed recognitions on market infrastructures and end users, especially where there are interconnections between legislation (EMIR and CRR, and MiFID I and EMIR).

- Other areas of reform - including diverging national and regional approaches to bank structural reform – also run the risk of fragmenting markets, reducing competition, and narrowing diversity of funding sources and liquidity in the key regions.⁸ Such differences also threaten developing countries’ access to global capital markets, reducing global growth prospects and highlighting the need to ensure developing market views are heard. Even where attempts to develop outcomes-based frameworks are made, these examples demonstrate the difficulties facing cross-border financial markets. To avoid these consequences as they develop, regulators must (other than as may be necessary to comply with domestic legislation in addition to the measures that require adoption to reflect international standards and which are generated by particular requirements) develop and implement rules reflecting global, outcomes based frameworks – and recognize other regimes which achieve the same policy objectives.

13. The Asia Pacific and other emerging markets, in particular, face difficulties in the current approach to cross-border regulation – although the problems of inconsistent standards are global, affecting every region and jurisdiction. For instance, Asia Pacific countries face the challenge of needing recognition or acceptance of their regulatory regimes from the US, the EU as well as individual Asia Pacific countries among other jurisdictions. The difficulties in this have been clearly shown in the reporting and central clearing of derivatives. Further, the divergent approaches taken by both the US and EU on cross-border application of derivatives regulation has made it difficult for Asia Pacific countries to finalize their own regulations in a way which comports with both. Asia Pacific countries want to make their regulations as consistent as possible with major markets, which have caused them to delay developing their frameworks until international work has advanced. Due to US-EU disagreements or conflicting approaches, Asia Pacific regulations need to be drafted so broadly as to accommodate both the US and European approaches. For example, the derivatives reporting regime adopted in Australia allowed firms to use either the US or European approach.

⁸ See Financial Stability Board: “Structural Banking Reforms: Cross-border consistencies and global financial stability implications – Report to G20 Leaders for the November 2014 Summit.”
<http://www.financialstabilityboard.org/publications/g20-reports/>

14. Asia Pacific regulators are not able to choose one regime over the other as both the US and European markets are important. Asia Pacific regulators also have US and European firms in their markets, often as major participants, and so cannot choose one to comply with one regulatory regime over the other – harmonization is necessary with both. As Asia Pacific countries gain in importance in international markets it is even more important for these issues to be addressed.

Policy issues necessitating coordination going forward

15. While financial reform has been ongoing in many jurisdictions since the crisis, with many measures already partially or fully completed, there remain some key issues necessitating close global cooperation and coordination. Strengthening coordination now can improve global policy making substantially going forward. Examples of where, as initiatives are developed, enhanced coordination can play dividends include:

- In the United States, implementation of the Dodd Frank Act is near 60 per cent complete,⁹ with market participants around the globe already subject to many compliance requirements; however, there remain many key policy issues that have yet to be settled, giving rise to significant current and future cross-border implementation challenges.
- In the European Union, the establishment of a fully integrated Capital Markets Union¹⁰ will have important implications for global markets, and not just the 28 nations that are members of that bloc. It will therefore be important to lay a foundation of globally consistent and effective regulation in order for the Capital Markets Union to succeed.
- In the United Kingdom, any policy recommendations stemming from the ongoing Fair and Effective Markets Review (FEMR) will ultimately require a global approach to promote change in global “FICC” markets. As the FEMR Consultation states “(t)hroughout, the Review is conscious that the FICC markets are global in scope, and shaped by forces far wider than those in the United Kingdom alone.”¹¹
- Finally, the increasingly cross-border nature of financial crime and the need to improve cyber security will necessitate close cooperation between jurisdictions.

16. We are aware that the intention behind this review is to assess whether regulatory intervention is necessary in areas not covered by international or regional regulation. We note, however, that many of these areas are already subject to national or

⁹ See Davis Polk Dodd-Frank Progress Report, available at <http://www.davispolk.com/Dodd-Frank-Rulemaking-Progress-Report/>

¹⁰ See European Commission Green Paper “Building a Capital Markets Union.” http://ec.europa.eu/finance/consultations/2015/capital-markets-union/docs/green-paper_en.pdf

¹¹ See “How fair and effective are the fixed income, foreign exchange and commodities markets?” HM Treasury, Bank of England and Financial Conduct Authority, October 2014. <http://www.bankofengland.co.uk/markets/Documents/femr/consultation271014.pdf>

regional regulatory intervention – in the US and EU for position limits on commodity derivatives markets and in the EU for transparency of bond markets and for extension of the market abuse regime, for example. Measures which remain unaligned will present real challenges to market participants and regulators alike, particularly if other jurisdictions adopt similar (but not identical) measures.

Tools of coordination: CBRF preliminary response to IOSCO's thinking

17. The Report discusses three tools of regulatory cooperation: national treatment, deference and passporting. We believe deference is the most likely to offer solutions to the current challenges to cross-border regulation.

(i) Deference

18. The CBRF believes regulatory deference (which should be regarded as synonymous with “recognition”) to other regimes is a vital tool in successfully ensuring coordinated global regulatory efforts.

19. Outside of treaty blocs (where passporting would normally apply), this approach is the default recommendation for domestic implementation of G20 reforms, recognizing the importance of global standards. Its importance as a tool has been advanced by global leaders on many occasions. In 2013, G20 Leaders concluded “jurisdictions and regulators should be able to defer to each other when it is justified by the quality of their respective regulatory and enforcement regimes, based on similar outcomes, in a non-discriminatory way, paying due respect to home country regulation regimes.”¹² The FSB has also recognized that deference “is an important tool for addressing some of the issues arising from differences in the regulatory reforms” with the Chair telling the G20 that “the impact of these measures must be monitored closely for spillovers to others and - where there are not detailed international standards - authorities must resolve cross-border issues by applying the principle of deferring to each other’s rules where those rules produce similar outcomes.”¹³

20. Deference to another jurisdiction, as a tool of regulatory coordination, offers many advantages. In particular, it is an outcomes based approach that can effectively negate the risk of duplicative rules and reduce the costs to the business community in complying; end users in obtaining access to financial service products; and regulators in providing oversight. It also provides clarity to businesses and consumers trying to understand and comply with a variety of local laws in increasingly global markets.

¹² G20 Communiqué: Meeting of Finance Ministers and Central Bank Governors, Sydney, 22-23 February 2014
http://www.g20australia.org/official_resources/communique_meeting_g20_finance_ministers_and_central_bank_governors_sydney_22_23

¹³ “Regulatory Work Underway and Lessons Learned” Remarks given by Mark Carney, Governor of the Bank of England at the 29th Annual International Banking Seminar, Washington D.C., 12 October 2014.
<http://www.bankofengland.co.uk/publications/Documents/speeches/2014/speech765.pdf>

21. Where jurisdictions have comparable regulation that achieves similar regulatory outcomes, deference to local authorities is appropriate. Market participants should not be subject to multiple regimes in these instances, as it increases the risk of imposing duplicative, inconsistent or conflicting rules on market participants which will have consequential impacts for customers. It is imperative that deference be provided via a clear and transparent process focused on outcomes rather than line-by-line comparisons of different rule texts or legislative acts. This would prevent the negative consequences of duplicative, inconsistent or conflicting requirements, and instead serve to reduce transaction costs, foster competitive markets and facilitate cross-border trading and investment - especially for end users.
22. Deference can be an important tool, either based on an assessment by each jurisdiction of principles applied by particular jurisdictions, or by reference to international standards, such as IOSCO principles, and building into this an assessment of adherence to such international principles. The fact that IOSCO principles or recommendations are not legally binding does not prevent a jurisdiction from referring to them as a regulatory 'benchmark' or incorporating that principle or recommendation directly within its own legislation to give it legal effect.
23. The CBRF would also like to highlight several positive examples where deference has been used to improve cross-border regulation in the Asia region. For instance, in the derivatives reporting space, Singapore and Australia announced the first bilateral agreement to share data held in trade repositories in each other's jurisdiction, while safeguarding the confidentiality of that data.¹⁴ More generally, while the Asia Pacific is made up of many countries, with a variety of political, economic and legal systems, countries have managed to come to significant agreements on cross-border regulation. Securities regulators in China and Hong Kong have, for example, recently agreed to the launch of Hong Kong-China Stock Connect which allows equities in Hong Kong and mainland China to be bought and sold by local investors in spite of very different domestic securities regulations and laws. They are also reportedly close to finalizing a cross-border funds initiative for collective funds. These are positive examples that show cross-border issues can be resolved if governments are committed to doing so – even quite difficult issues.
24. By contrast, deference could have been used more assiduously in the recognition of Third Country CCPs under the EMIR framework in Europe. This process involves two steps: first, ESMA delivering technical advice on equivalence; then an "equivalence" decision ("ED") by the European Commission, which for a number of jurisdictions included the provision of technical advice by ESMA. While ESMA delivered its technical advice for a number of Third Country jurisdictions in September 2013, the bulk of the EDs are still outstanding today, causing major difficulties for a number of Third Country CCPs and market participants seeking to

¹⁴ ASIC and MAS sign World-First Memorandum of Understanding on Authorities' Access to OTC Derivatives Trade Repository Data, September 2014.
<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2014/ASIC-and-MAS-sign-World-First-Memorandum-of-Understanding.aspx>

utilize them. Absent a positive equivalence decision for a specific jurisdiction, ESMA is not able to recognize individual CCPs. We believe that by applying a more flexible approach based on deference to Third Country jurisdictions, based on outcomes, these difficulties would have been avoided.

(ii) National Treatment

25. In regard to those tools highlighted by the Report, while National Treatment is important to the conduct of global trade and investment, we are less sure it should be considered a separate tool of regulatory coordination. The principle of national treatment is a cornerstone of World Trade Organization (WTO) Law which most IOSCO countries are signatories to. That Law prohibits discrimination between imported and domestically produced goods and services including in financial services. Under these laws, signatories to these agreements are bound by international law to adhere to this principle and perceived violations can be robustly challenged and addressed. These laws require national treatment to be applied in order that countries meet their pre-existing commitments to allow the flow of trade and investment across borders. Jurisdictions do not have the discretion that is implied by discussing international regulatory coordination.

(iii) Passporting

26. Passporting has been useful in the case of regional coordination and has thus helped to avoid market fragmentation, as evidenced in the EU by the adoption of a range of banking and investment services directives and, for example, the Undertakings for Collective Investment in Transferable Securities (or “UCITS”) in the EU, which removed unnecessary barriers and burdens impacting retail collective investment schemes within the region. Further, Passporting is being utilized as a tool for aiding growth in Asian developing markets, as currently witnessed via the efforts of the Asia Pacific Economic Cooperation’s (“APEC”) Asia Region Fund Passport (“ARFP”) as well as the Association of South East Asian Nations (“ASEAN”) Collective Investment Scheme (“CIS”), which seeks to establish multilateral recognition frameworks to enable cross-border marketing of managed funds in participating economies across Asia. However, while the CBRF is supportive of this tool, it should be recognized that its impact is limited, in light of its regional scope.
27. In certain jurisdictions “passporting” is a legally recognized and business positive outcome to mutual recognition between jurisdictions (or institutions) so that when underlying regulatory standards are established centrally – for example in the EU as legislative text for cases of maximum harmonization – then the national authorities are no longer able to impose their own individualized local licensing requirements. Underpinning the above, an effective approach is to establish a binding global approach for jurisdictions to then implement domestically. A successful example of a global approach – where IOSCO took a leadership role in the development of an international, principles-based regulatory framework – is the IOSCO Principles for

Financial Benchmarks which were published in July 2013. However, to be effective, global principles have to be sufficiently granular to facilitate regulatory recognition and mitigate the propensity for differentiated interpretation or implementation.

28. Finally, international coordination can also be facilitated by the granting of certain regulatory *exemptions*. For example, although we note that foreign banking entities trading solely outside the US could be exempted from the provisions of the US Volcker Rule, the situation for non-US banking groups with non-US funds is unsatisfactory as they do not benefit from the proper exemptions under the Volcker Rule.

Conclusion on tools of coordination

29. In sum, as recognized by IOSCO, a “one-size-fits-all” approach to regulation is not realistic. Different jurisdictions will ultimately enact regulations to comply with national legislation or which they believe to be necessary and appropriate for the unique issues impacting their respective markets. Further, where markets are less mature, certain rules may not be relevant, appropriate or feasible for their stage of development. The design of global standards often results in regulation which is disproportionate to the legal and market structures in emerging markets for firms whose business is domestic - for instance, on the former, China implemented mandatory clearing of OTC derivatives in line with its G20 commitments, yet it does not have the requisite netting and insolvency regime to support the safe and efficient functioning of markets for derivatives. Thus, we believe approaches to regulation which allow jurisdictions to develop proportionate rules, in line with an outcomes-focused global framework, will be far more effective. Where high-level principles are developed through early and continuous dialogue between policy makers and regulatory authorities, there is less chance for conflict (so long as national authorities do not significantly diverge in their respective implementations and associated timescales for doing so). This approach would further facilitate the use of deference, as there is coordination and agreement on the over-arching principles and standards that local authorities will implement.

Role of IOSCO

30. Cross-border regulation is a crucial issue for the world economy. The establishment of the IOSCO Task Force was itself a valuable step in recognizing that. It is important that subsequent action, in light of the Report, continues in that spirit.
31. It is our view that IOSCO has a central role in helping the G20 to promote coordination of such regulation. It has already sought to facilitate coordination through, for example, its work on financial benchmarks and the joint report on a framework for uncleared derivatives margin. Going forward, IOSCO should seek to build on these efforts and national authorities should encourage it to do so. IOSCO is well placed to play a greater role and, given the problems in achieving effective coordination in recent years, is warranted in approaching this question with ambition.

32. As stated in our response to the IOSCO questionnaire, “the CBRF recognizes that there are national and regional sensibilities surrounding the loss of regulatory ‘sovereignty’, but that IOSCO needs a sufficient degree of international authority/influence to establish effective mechanisms” particularly in terms of encouraging more widespread commitment to deference.
33. Building on IOSCO’s role involves a number of steps. First, we see a greater role in scenarios where national standards have been designed and implemented before international consensus has been established. This could take a number of forms. For example, IOSCO could provide a platform for parties to discuss and resolve disputes. It could also establish standards designed to facilitate resolution of divergences.
34. Second, the CBRF would like to see an enhanced role for IOSCO in providing clear and detailed information on implementation of international standards and also proactively providing advice and guidance to policymakers on consistency and the difficulties that inconsistent implementation of rules may cause. During all stages of the policymaking process lawmakers should be actively encouraged to coordinate with other major markets to ensure regulations are workable and do not result in a disproportionate impact on firms from one jurisdiction. For instance, the supervisory agencies should be empowered to coordinate the implementation of standards that have cross-border implications such as Trade Reporting.
35. We agree with the suggestion in the Report that “IOSCO could consider enhancing international dialogue between policymakers and regulators among the various jurisdictions.” In particular, as the Report notes, to the extent that this allows for more “early identification” of cross-border ramifications then it could represent a valuable advance over the current patchwork of coordination mechanisms where international dialogue often happens too late in the process to be properly taken into account.
36. The CBRF also recognizes the value in exploring an enhanced role for IOSCO as a central hub of information. An expanded role here could take many forms. The International Council of Securities Associations¹⁵ has suggested “adopting a consensual interpretation of what is meant by “equivalence” based on equivalent regulatory outcomes rather than a line-by-line comparison of different legislative acts. This requires developing common processes and criteria for measuring whether or not jurisdictions are sufficiently compatible to be recognized for regulatory purposes.” Smaller markets have also expressed a desire for templates or best practice guidelines to assist them in developing and implementing regulations.

¹⁵ The International Council of Securities Associations (ICSA) was established in 1988. In view of the growing linkages between national capital markets, the trade and self-regulatory associations representing the world’s largest financial markets agreed to establish an international body of practitioners as a means to share information, work toward global best practices and promote mutual understanding. <http://www.icsa.bz/>

IOSCO could also act as a central store of information on the development of mechanisms to meet global standards.

37. Anticipating issues through global dialogue at an early stage is critical. IOSCO should be viewed as a potential forum for consultation and discussion at a much earlier stage than at present. Policy making jurisdictions should factor this process into their timelines so the cross-border aspects of regulation are accorded proper recognition.
38. At later stages in the process, IOSCO could also play a strengthened role in encouraging individual jurisdictions to coordinate timelines for implementation of IOSCO standards. For example, the BCBS/IOSCO Final Framework on Margin Requirement for Non-Centrally Cleared Derivatives recommended phasing in requirements governing the exchange of initial and variation margin on a timeline envisioned in its 2013 release that no longer comports with the current realities of individual jurisdictions' rulemaking timelines. Thus, in order to allow for an orderly and effective transition that allows for rules to be finalized and market participants to develop systems and come into compliance accordingly, a longer window for implementation is warranted.
39. In terms of the divergences that arise from the means and processes of implementation of regulations, there are a number of more specific ways IOSCO might promote greater coherence.
40. A number of markets now require impact assessments to be released for new pieces of legislation to understand what impact proposed legislation will have on the market. Given the international nature of many financial markets it would be helpful if these impact assessments, as a matter of practice, also include a section looking at how proposed legislation and subsequent changes during the legislative process, will impact key participants and international markets. IOSCO could play a role in encouraging such 'best practice'. It could also help inform jurisdictions as to which factors to consider as costs and benefits, and how to measure them appropriately.
41. Further promoting 'best practice' during the policymaking process, and integrating international standards into the development of policy in individual jurisdictions, regulatory agencies should be asked to present a view on what international standards have been agreed, how they are being implemented in key markets and the extent to which any divergence caused by legislative text could have an impact on the ability to reach a global consensus and for firms to operate in overseas markets. For instance, in the EU we would expect the European Supervisory Agencies to provide the European Parliament and Commission with an update on the implementation of relevant international standards when a piece of legislation is being passed and to set out the problems that an inconsistent approach may cause. We support this information being released publically.

42. Finally, there are some factors which IOSCO could take into account in future policy-making which can specifically support national approaches to deference, without inferring any interference with the legal responsibilities of national authorities and policy-makers. For example:

- IOSCO should aim to produce more granular standards to support its principles for equivalence findings. This could increase the level of alignment between national regimes for the purpose of assessing whether deference is appropriate, and perhaps support over time the possibility of IOSCO-driven peer assessment or FSAP reviews being factored into national assessments.
- IOSCO's final policy documents should recognize the potential cross-border issues that may arise and seek to address certain aspects at an early stage. This may include, where relevant, consideration of the extent to which there can or should be differentiated approaches for markets at different stages of development.
- In setting timelines for implementation, recognizing there are differences in how rules are made at national level, IOSCO should encourage members to also retain some flexibility in their national approaches to deference-type decisions – e.g. ensuring there are mechanisms for extending deadlines if this should prove necessary. This should not detract from clear expectations that members have committed to the implementation timelines, but recognizes that synchronized implementation is not achievable. Timelines set in one jurisdiction should not adversely and unnecessarily affect another market.

43. Taking into account all of the above, the question still remains: what mandate and resources would IOSCO need to enable it to take on such a role? What are the limitations currently in place that prevents IOSCO from deploying the functions outlined above and how can they be tackled to enhance its role? The CBRF is of the view that these are important questions which remain unaddressed in the Consultation (or in this response), yet which merit urgent attention. We therefore stand ready to become engaged in further dialogue to address these outstanding issues.

Conclusion

44. The CBRF believes that effective cross-border coordination is an essential component of global financial stability and economic growth. Despite recognition of its importance in principle by policymakers, the practice of coordination has a number of important shortcomings. IOSCO's Task Force on Cross-Border Regulation Consultation Report presents us with a good opportunity to assess how these might be addressed.

45. The CBRF believes that policymakers around the world should, wherever possible, adhere to the FSB's view that "deference – in part or in full – ...is an important tool

for addressing some of the issues arising from differences in the regulatory reforms that jurisdictions undertake to meet the G20's overall goals."¹⁶ And while we recognize that deference will not be appropriate for every issue, we strongly encourage policymakers to use processes that are outcomes based.

46. The process of strengthening coordination presents the opportunity for a broader role for IOSCO in promoting more effective and earlier dialogue, aiding policymakers and regulators in understanding and complying with global standards, and promoting best practice.

47. Five years on from the Pittsburgh Summit, we believe this IOSCO Report presents an excellent opportunity to move the practice of global regulatory cooperation closer to the vision of G20 leaders. The CBRF would welcome working further with IOSCO in translating this into concrete actions that can enhance regulatory consistency while promoting financial stability and global growth, with all the benefits that would provide for investors and end users.



Chris Dickens
HSBC
CBRF Chair



Anthony Belchambers
FIA Europe
CBRF Deputy Chair



David Love
AFMA
CBRF Deputy Chair

¹⁶ "Jurisdictions' ability to defer to each other's OTC derivatives market regulatory regimes." FSB report to G20 Finance Ministers and Central Bank Governors, September 18 2014. <http://www.financialstabilityboard.org/publications/g20-reports/>

CC: Ashley Alder
SFC
CEO

David Wright
IOSCO
Secretary General

LIST OF MEMBERS OF THE CROSS-BORDER REGULATION FORUM (CBRF)

Associations and other organizations:

CCP12 - The Global Association of Central Counterparties
AFB: Association of Foreign Banks
AFMA: Australian Financial Markets Association
AFME: Association for Financial Markets in Europe
ASIFMA: Asia Securities Industry and Financial Markets Association
Bombay Stock Exchange Broker's Forum
ECSDA: European Central Securities Depositories Association
FESE: Federation of European Securities Exchanges
FIA Global: (representing its 3 EU US and Asia affiliates)
ICMA: International Capital Market Association
ICSA: International Council of Securities Associations
IIAC: Investment Industry Association of Canada
IIF: Institute of International Finance
ISDA: International Swaps and Derivatives Association
SBA: Swiss Bankers Association
SIFMA: Securities Industry and Financial Markets Association
WFE: World Federation of Exchanges
WMBA: Wholesale Markets Brokers' Association

Firms:

Bank of America Merrill Lynch
Barclays
Blackrock
Deutsche Bank
Goldman Sachs
HSBC
ICAP
JP Morgan
Marex Spectron
Morgan Stanley
Nomura
RWE Supply & Trading
Shell
Societe Generale
Standard Chartered
UBS

Market Infrastructures:

CME Group
Eurex Group
ICE: Intercontinental Exchange
LME: London Metal Exchange

Observers:

The Investment Association
JSDA: Japan Securities Dealers Association
KOFIA: Korea Financial Investment Association