



ICSA

INTERNATIONAL COUNCIL OF SECURITIES ASSOCIATIONS

30 August 2013

Regulatory Policy Committee
Organization for Economic Cooperation and Development
2, rue André Pascal
75775 Paris Cedex 16
France

Re: Consultation on the OECD's *Best Practice Principles for the Governance of Regulators*

Dear Sirs:

The International Council of Securities Associations (ICSA) welcomes the opportunity to comment on the consultation regarding the OECD's 'Best Practice Principles for the Governance of Regulators'.

ICSA is the global forum for trade associations and self-regulatory organizations whose members are active in the capital market on a national and/or global basis.¹ ICSA members collectively represent the vast majority of the world's financial services firms on both a national and international basis and are all involved, within their own jurisdictions, in active discussions with their regulators regarding financial sector policy reform. At the global level, ICSA promotes the views of its members through policy discussions and other forms of engagement with international regulatory bodies and standard setters, specifically the Financial Stability Board (FSB) and International Organization of Securities Commissions (IOSCO). In addition, ICSA has developed work streams in various areas, most critical in the area of regulatory transparency and regulatory governance.

ICSA's members broadly support the OECD's work program on enhancing the effectiveness of regulatory policies, including the Best Practice Principles for the Governance of Regulators ('Principles'). We believe that this is an extremely important issue for the financial services industry and, by extension, for the public as a whole.² Therefore we would like to commend

¹ ICSA's objectives are: (1) to encourage the sound growth of the international securities markets by promoting harmonization in the procedures and regulation of those markets; and (2) to promote mutual understanding and the exchange of information among ICSA members. More information about ICSA is available at: www.icsa.bz

² As is noted in Paragraph 204 of the consultation document, a key underlying reason for encouraging good governance arrangements for regulators is to provide the regulator with incentives to improve its performance,

the OECD for having developed this work and we urge it to promote a much broader global debate on this issue beyond the confines of the current consultation.

Due to time constraints we are not able to offer detailed answers to the specific questions posed in the consultation document regarding each of the proposed principles. Instead, we will offer our initial reactions to the larger question, which is whether or not the proposed Principles could be regarded as adequate. While again, ICSA members broadly support the draft Principles, we note that in several areas we believe that either the proposed Principles and/or the accompanying text should be modified in order to strengthen the effectiveness and impact of the Principles. Our views of these areas at this current stage are described below.

Principle 5: Engagement

ICSA members agree that this is a very important Principle and fully support the actual Principles for Engagement. We also agree with some of the language used in the accompanying text. For example, we agree strongly with Paragraph 178 of the consultation document, which states that, “Effective engagement with regulated parties and other stakeholders is important to inform the policy-making process and the decisions of the regulator.” However, language elsewhere in the section of the document that deals with Principle 5 appears to suggest that regulators should be “engaged” with stakeholders primarily in order to “...enhance public and stakeholder confidence in the regulator, its decisions and its actions.”³

We agree that it is important for stakeholders to have confidence in the regulator(s) with which they are engaged. However, we also suggest that regulators need to be “engaged” with stakeholders so that regulators can receive informed feedback on proposed regulations. This feedback, as is obliquely acknowledged in the consultation document, will help to improve the regulatory decision-making process while also reducing the risk that new policies will have unintended, and negative, consequences. Regulators’ engagement with stakeholders also enhances the credibility of regulatory decisions since it helps to ensure that the rules and regulations that are introduced have gone through a transparent and unbiased review process. For all of these reasons, we suggest that Principle 5 should promote “engagement” between regulators and stakeholders as a way to improve the quality and efficiency of the rules and

which may include, “adopting innovative regulatory approaches, making proactive efforts to reduce the regulatory burden and effective use of risk-based regulation.” We would add that this is particularly significant in the financial services sector, since the regulations imposed in that sector impact on the efficiency of capital markets and thereby have a direct influence on the well-being of the public. See OECD, *Best Practice Principles for the Governance of Regulators*, page 64.

³ OECD, *ibid.*, page 12.

regulations that are implemented as well as a way to enhance the credibility of regulatory policy and encourage greater cooperation between regulators and stakeholders.

Moreover, we suggest that this “engagement” is most effective when it takes place through structured consultation programs that are designed and maintained by the individual regulatory entities. An effective and structured consultation process, defined as one which includes a genuine invitation from regulators for comments from market participants and other stakeholders and appropriate consideration of the comments that have been received, will help to ensure that proposed regulations are subject to a transparent, informed review.

This is a particularly important issue for the financial services industry at the current time because of the substantial and far-reaching financial sector reforms that have been implemented in many jurisdictions. Because the time frames for implementation of major reforms have become compressed in many jurisdictions, for a variety of reasons, the time frames for regulatory consultations have also become compressed, even in jurisdictions with well established regulatory consultation programs. At the same time, little or no progress has been made toward establishing formal regulatory consultation programs in those jurisdictions without such processes.

Reflecting both the importance of this issue and our own ongoing internal discussions about regulatory effectiveness, ICSA released a set of *Best Practices for Regulatory Consultation* earlier this year.⁴ We are enclosing a copy of that document with this letter. Reflecting the experience of financial services firms and their representatives during a period of intense regulatory activity, the document emphasizes several key aspects of the consultation process. This includes the need for regulators to ensure that: (1) sufficient time is allocated for the consultation process, particularly for consultations on major reforms; (2) any proposed measures have well designed policy objectives and are written in a clear and precise manner so that stakeholders are able to provide comprehensive comments; and (3) any proposed new regulations are consistent and coherent with the existing regulatory framework. In addition, we note that impact assessments are an important part of the consultation process. While ICSA members recognize that conducting an impact assessment for a proposed regulation can be a challenging task, we believe such assessments are necessary since the information they provide enables stakeholders to comment in a sufficiently comprehensive manner on any proposed regulation. Impact assessments are also important since they allow regulators and policy makers to better understand the costs of a proposed regulation along with benefits.

⁴ This document was based in part on ICSA’s *Statement of Regulatory and Self-Regulatory Consultation Practices*, which was issued in October 2004.

We understand that the points we are making here are quite consistent with Principle 2 of the OECD Principles for Engagement in the consultation document, which states that, “Procedures and mechanisms for engagement should be institutionalized as consistent transparent practices.”⁵ However, we are suggesting that more attention should be placed on describing the actual “procedures and mechanisms for engagement” in the text of the final document. In particular, we suggest that the final Principles should emphasize the importance of structured consultation policies as a one of the most important “procedures and mechanisms for engagement,” which in turn are critical for regulatory transparency and proper regulatory governance.

Principle 7: Performance Evaluation

As is the case with Principle 5, ICSA members strongly support the concept of Principle 7, which is that regulators should periodically evaluate their own performance. However, we note that the forms of evaluation proposed in the consultation document are quite limited. We would suggest instead that the portion of the final text that describes performance evaluation should include, along with the measures mentioned in the consultation document, a periodic review by the regulator of the regulations put into effect at a given point in time.

We think this is important since human systems are highly dynamic while regulations, by their very nature, are static. Therefore, ICSA members suggest that it is absolutely critical for regulators to review their policy decisions on a periodic basis in order to determine if: (1) those regulations have met their intended objectives; and (2) the regulations in place are still needed. We are aware that regulators in the UK and EU are engaged in these types of performance reviews. Our understanding is, however, that regulators in other parts of the world are not, which is why we suggest that it should be included in the Principles. Moreover, while we believe that this type of ‘post-implementation’ review is important at all times, we suggest that it is particularly important during a period of time when a large number of major regulatory reforms are being implemented, as has been the case in the financial services industry during the past few years. In these circumstances, it is difficult to assess *ex ante* the effect of any single reform since regulated entities and other stakeholders will also be impacted by other regulatory reforms taking place at the same time. Therefore, the commitment to carry out post-implementation reviews is critical in order to ensure that the major regulatory reforms that have been put into place actually meet their stated objectives. Otherwise, there is a danger that a large body of regulations could be implemented and maintained without a detailed understanding of the impact that those regulations were actually having.

⁵ See OECD, *op. cit.*, pg. 12.

Applicability of the OECD Principles to Supra-National Entities

An issue that is not addressed in the consultation document is whether or not the draft Principles would be applicable for supra-national entities. This is an important issue for ICSA members since over the past several years the decisions made by various supra-national entities in the financial services sector, such as the FSB, IOSCO, the Basel Committee on Banking Supervision, the European Banking Authority and the European Securities and Markets Authority, have become far more significant for financial markets and market participants at both the national and international level than they were previously. Given the growing importance of these entities, we suggest that the OECD principles should also be applicable to their governance arrangements. This would hopefully help to encourage supra-national entities to conduct their operations in a more transparent and open manner so that their decisions and actions were more predictable and understandable for stakeholders. It would also hopefully encourage these entities to develop structured consultation programs as a way to engage in an open and continuing dialogue with stakeholders.

In closing, we would like to stress once again that ICSA members broadly support the OECD draft Principles. We have suggested several areas where we think that those Principles could be further elaborated. Beyond these suggestions, we believe that the issues raised in the draft Principles are extremely important and we urge the OECD to foster a much broader global debate on these issues beyond the confines of this current consultation. We would be more than happy to assist the OECD in that process.

As noted above, due to time constraints we have been unable to prepare a detailed response to all of the questions posed in the consultation document. Since this is a topic of great interest to ICSA members and our internal deliberations regarding regulatory effectiveness and transparency are ongoing, we may find it necessary to write to you in the future.

Please do not hesitate to contact us if you wish to discuss any of the issues raised in this letter.

Best wishes,



Jong Soo Park, Chairman
International Council of
Securities Associations (ICSA)



Ian C. W. Russell, Chairman
ICSA Standing Committee on
Regulatory Affairs