



28th ANNUAL CONFERENCE
of the International Organization of Securities Commissions
14~17 October 2003, Seoul Korea



Plenary 4

Combating Financial Crime Globally

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17 October 2003

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IOSCO SEOUL
17/10/03

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Because securities regulators have been confronted, since the very beginning of their cooperation through IOSCO, to the issue of an efficient enforcement of their rules and regulations in a global market where electronic trading has wiped out national borders, the topic of our panel has been addressed many times. Iosco has devoted a lot of resources and efforts in order to provide its members and the financial community with consistent answers to the challenge posed by international wrongdoers

But combating financial crime is not only an issue within the field of market activities in a global economy :it is also part of the global fight against all kinds of crimes when financial activities, possibly managed in compliance with securities requirements , are used either to finance criminal activities or to launder the money collected illegally through criminal activities .

This approach has ,of course, become even more important since the nine eleven dramatic events and the commitment of most of the international community against terrorism. Consequently, combating financial crime is not only an issue for securities regulators and the securities industry. It requires a close cooperation between all participants to all kinds of financial activities, namely the banking and insurance community and the FATF, with Police and Justice authorities and more generally with all individuals and entities who can contribute to the success of our undertakings.

My comments of today are based on my experience as a Securities Regulator and a member of IOSCO and of the committee of EU regulators.

It is not necessary to extend on the justification of this combat which is related with moral principles, stability of the society and efficiency of financial markets.

I shall rather focus on the reasons why it appears ,at least in my opinion ,that ,although we have made huge efforts and achieved some progress ,we are still far from our objectives ,we have obtained insufficient results and we need to improve dramatically the efficiency of our systems of enforcement with regard to international cooperation.

Let me first remind you that a lot has been done since IOSCO started its work.

Standing Committees number four of the Technical and Emerging Markets Committees have issued a number of reports and standards which have paved the way to a better cooperation between members. The Objectives and Principles of the Organisation, adopted in 1998, provide excellent and operational answers to the question of enforcement.

Interesting initiatives have been taken to cope with the new issues raised by the use of the Internet.

A number of bilateral MOUs have been signed between members, under the auspices of the Organisation and their combination constitute the beginning of a global network of inspection and enforcement bodies.

Finally, in the aftermath of the 9/11 events, IOSCO adopted the text of a multilateral MOU, quite an innovation in the field of international cooperation between financial authorities. I understand that a number of members, including some off-shore centers , often considered globally as a loophole in the network of financial regulation, have been able to commit themselves in the signing of this MOU, having successfully demonstrated their compliance

with the requirements of the screening group which checks their ability to cooperate effectively with the other signatories.

Unfortunately, we know that we are still far from delivering the quality of action and cooperation which would warrant a reasonably efficient system of enforcement world wide.

There remain a number of non cooperative jurisdictions which compromise ,willingly or not,the lengthy and painful process of search of the wrongdoers.Even between cooperative members,there remain a lot of procedural and substantial obstacles to an efficient and speedy exchange of information.Differences in concepts and legal systems hinder the cooperation between enforcement departments.Regulators around the world have different remits and powers and although the work of IOSCO has favored a process of convergence in this regard, a lot of progress has still to be made.Let me put it bluntly:while markets are integrating at the speed of electronic devices and industrial restructuring, we regulators are lagging behind and sophisticated wrondoers probably profit from this situation .

What should we do, then, to improve our collective capacity to combat financial crime?

I suggest that we consider a set of undertakings

Firstly we still have to improve our common understanding of what we consider financial crime is exactly .Let me give two examples:

Not so recently, the concept of insider trading was not present in all securities regulations and still today it does not have exactly the same content worldwide; market manipulation does not have exactly the same definition in all jurisdictions , not to mention the countries where the concept does not exist at all .

Because of this heterogeneous approach of what market abuse is, jurisdictions are sometimes unable to transfer information to their counterparts for lack of legal basis.

Therefore IOSCO should certainly intensify its effort in the field of technical analysis and definition of what securities regulators agree to fight against.

The E.U. has recently given a good example of what IOSCO should do with the adoption of the market abuse directive which provides clear and operational definitions and harmonises E.U. regulation in that field. Our Chairman, Stavros Thomadakis, has played a major role for this achievement and he can tell us how difficult it was, for instance, to agree on the definition of the concept of safe harbour with regard to market manipulation in the field of shares buy back.

The issue of client identification is another example of a difficult issue where IOSCO, although it has worked very hard for many years has not yet been able to deliver definitions and standards acceptable to all its members. I personally thought that it was a rather simple issue, although a strategic one and I was very optimistic when having been asked, 18 months ago, to chair a task force to deal with it. Well, I have to recognise that it was not that simple and my excellent Mexican colleague who was imprudent enough to accept to take the lead when I left a year ago is still working very hard on this topic. By the way, I have been told that the group has made some progress as far as the definition of concepts is concerned. This is a substantial achievement and I very much hope that it will facilitate further progress. Let me be clear: how can we pretend to combat financial crime if we do not agree on the ways and means whereby we try to identify together on a crossborder basis, the final clients and beneficial owners?

Secondly, we need to cope with the procedural hurdles which are probably the best protection for wrongdoers and which hamper the regulators' undertakings.

I know that this is a difficult one. There are many examples of these hurdles: the contradictions and inconsistencies between administrative and penal procedure from the point of view of the civil rights and of the capacity for the regulators to cooperate (for instance, while the US SEC seems to have the capacity to exchange information with other regulators while a penal procedure is ongoing, the French COB, once the prosecutor has started its own procedure, cannot have access to his information and cannot deliver its own information to international counterparts); another example is the difference in the way people are required to answer the questions asked during the course of investigations.

How could IOSCO, which is a non governmental organisation, deal with this kind of difficulty? I believe the answer is twofold.

Either there is a possibility to find compromise and to favor convergence through the standard setting process, assuming that members will make their best efforts at the domestic level so that their countries comply with the international standard, and this is, of course, a very efficient way forward;

Or we should favor mutual recognition, and accept differences wherever these differences do not affect fundamental principles. I can imagine a US citizen being questioned in the French way in the course of a French investigation and vice-versa.... Unfortunately this seems to be rather utopic for the time being.

A third orientation deals with building, or improving, confidence between regulators. Our task is extremely difficult and we deal with very sensitive issues against very sophisticated crooks.

We must recognise that our behaviour may be influenced by the fact that we are fundamentally part of our national marketplaces. For that reason we may be influenced, in the way we work with one another, by nationalistic considerations; We have our own priorities; Our willingness to cooperate may be hampered by competitive issues, if not by our own pride. The

same way different kinds of police authorities do compete within national borders, we may lose sight of the priorities and favour our immediate interests, being therefore detrimental to the achievement of our collective goal and “raison d’être” which is to maintain the integrity and the good functioning of the global market.

Therefore, I would favour all the initiatives which could be envisaged in order to develop common work in the field. This practical and very operational approach is at the very basis of Fescopol, today Cesrpol, which is a grouping of the heads of enforcement of the 17 members of the Committee of European Securities Regulators. To my knowledge, there has not yet been, up to now, an example of such an investigation organised internationally by a team of inspectors coming from different jurisdictions. But we are about to undertake such an innovation and, from my point of view, the sooner would be the better.

Finally, there is one sensitive issue which I believe we cannot avoid forever. It deals with the effectiveness of the implementation of the standards we have collectively agreed upon and with the way we deal with those who refuse or cannot cooperate in an open manner with other regulators.

Of course a lot of progress has taken place during the recent years in that respect.

IOSCO has settled a special task force for assessing implementation of the IOSCO objectives and principles of securities regulation and this task force has recently presented to the relevant committees a report on assessment methodology. This is an important step forward as it opens the way to an efficient peer review system.

Simultaneously, the Financial Stability Forum and the FATF have addressed the issue of off-shore centers, with the support of the IMF and the World Bank, in a way which has already produced positive effects. By the way, I personally prefer to refer to the concept of non-cooperative jurisdiction, as we know that a number of off-shore centers have both a good

regulatory system and a cooperative behaviour, while some classical market places are deliberately non cooperative and/or underregulated.

For many reasons, among which diplomacy is not the less important, I recognise that we should go as far as possible in dealing with the issue of non-cooperative jurisdictions through technical assistance and peer pressure.

But at the end of the day, if there remain some reluctant jurisdictions which provide, willingly or not, a kind of safe harbour to those who do not intend to play by the rules, we should then think about some kind of sanctions or preventative measures, for the sake of our own credibility and for the sake of the good functioning of financial markets. This, in my opinion, should be dealt with at the international level through a collective action plan.

Ladies and gentlemen, whilst market economy has made a huge progress throughout the world and favoured a remarkable rate of growth during the nineties, recent scandals, together with a new form of terrorism, have had a profound effect on public opinions which could, if not dealt with properly,

give way to severe backlashes and drawbacks. It is therefore our collective duty to give effective answers to the challenges posed by the development of financial crime. IOSCO is undoubtedly the right place to cope with these challenges. When looking back at what has been achieved during the last decade, one can be confident in the capacity of this Organisation to do so, and I very much hope that we will be able to bypass our national reservations in order to monitor a collective and efficient reaction to the damages caused by unpunished wrongdoings.