

IOSCO Task Force on Cross-Border Regulation

Final Report



OICU-IOSCO

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1. Introduction

1.1 Background

In today's global securities¹ markets, financial activities often cross national borders. As a result of these developments and their supervisory responsibilities over markets, trading, products, and market participants, securities regulators often have regulatory interests that extend beyond their borders. Specifically, the process of applying national regulations to businesses operating and transacting on a cross-border basis is not just a function of regulators being bound by national laws to consider how market activities beyond their borders could impact their own domestic² markets. Rather, the extent to which domestic financial institutions operate across multiple foreign jurisdictions also appears to be a significant driver of the degree to which the laws and regulations of a home jurisdiction interact with those of a foreign, or host, jurisdiction. This means that the laws and regulations of the home jurisdiction may also apply to the activities of a domestic financial institution and its clients, customers, or counterparties taking place in the foreign jurisdiction, in addition to the laws and regulations of the foreign jurisdiction itself.

Consequently, close communication and coordination between the home and host authorities are relevant, considering, among other issues, that there might be instances in which conflicts or inconsistencies of domestic and foreign law and regulation requiring resolution may arise. Members of the financial industry which operate on a global level have raised concerns about the impact of differences between, and duplication of, regulation that applies to cross-border financial activity.

In this context, regulators are frequently called upon to consider how their domestic regimes will apply to global financial markets and interact with other regulatory regimes as well as with international standards, including those adopted by IOSCO. The challenge is to ensure that potential solutions do not weaken the effectiveness of domestic regulation while, at the same time, not unduly constraining the cross-border offering of financial services or products.

Authorities will often seek to balance potential trade-offs between increased cross-border market access and financial activity, on the one hand, and maintaining appropriate levels of investor protection and managing the importation of potentially harmful risk, on the other. Any analysis of the possible effects of the cross-border application of securities regulation should take into account the fact that an approach that works effectively in one market may not be easily replicated in, or appropriate for, other markets. In addition, jurisdictions have different legal and

¹ For the purposes of this report, the term "securities" has a wide meaning which includes equities, debt, and derivatives.

² Throughout this report, the terms "domestic", "local", "host", and "national" are used interchangeably when referring to a particular jurisdiction, regulator, or market participant, as are the terms "foreign" and "home." Although the Task Force has endeavored to draft this report using consistent terminology wherever possible, any discussion of cross-border activity will, by its nature, contain some ambiguity when describing the relationship of the relevant players and activities.

institutional frameworks or may have different reasons for pursuing different cross-border approaches.

In order to facilitate any analysis of cross-border securities regulation, it is important to have a thorough understanding of the regulatory tools that are currently available to authorities, and how regulatory actions and initiatives undertaken by jurisdictions impact cross-border securities markets.

Prior to the creation of the Task Force on Cross-Border Regulation (Task Force) in June 2013, IOSCO had not previously conducted a study on, or developed a comprehensive understanding of, various approaches to cross-border securities regulation. IOSCO's most significant work to date regarding cross-border cooperation includes the following:

- The Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MMoU), which was established in May 2002 and revised in May 2012, is the key instrument used by market regulators around the world to request assistance in securing compliance with and enforcing securities and derivatives laws and regulations.
- The final report on the Principles Regarding Cross-Border Supervisory Cooperation published by the Technical Committee of IOSCO in May 2010.³ This report discusses the different types of regulated entities that operate in securities markets and the challenges of globalization. It describes cooperative mechanisms and suggests how regulators can enhance cross-border cooperation to better supervise regulated entities that operate across borders. It also suggests that regulators should explore opportunities to further collaborate to identify, assess, and mitigate emerging global risks.

Over the years, IOSCO has also focused on other areas of cross-border securities-related activities. These actions and initiatives are included in Appendix 1 of this report.

³ *Principles Regarding Cross-Border Supervisory Cooperation*, IOSCO, May 2010, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD322.pdf>.

1.2 Setting up of the Task Force and its Key Mandates

To examine, consider, and analyze cross-border regulatory issues and tools, IOSCO established the Task Force comprising of twenty-two member regulators⁴ as listed in Appendix 2. Cross-border regulatory tools describe the legal and supervisory techniques used by a jurisdiction to regulate, oversee, or otherwise address foreign entity activity in or affecting that jurisdiction.

The work of the Task Force aims to assist policy-makers and regulators in addressing the challenges they face in protecting investors, maintaining market quality, and reducing systemic risk. Importantly, while the Task Force's work is designed to be applicable broadly to markets and not limited to any one particular area, the Task Force sought to avoid duplicating the work of other relevant international work streams, in particular the ongoing work relating to the over-the-counter (OTC) derivatives reform agenda.

The key mandates of the Task Force are:

- (i) To develop a cross-border regulatory toolkit (Toolkit), containing common terminology, of regulatory options for use by IOSCO members. This includes highlighting the characteristics associated with various approaches to cross-border regulation and the potential impact that the use of such cross-border regulatory tools may have on investor protection, markets, and systemic risk.
- (ii) If appropriate, to lay a foundation for the development of guidance on the coordinated use of the Toolkit to help IOSCO members consider how a particular tool can be used to achieve IOSCO's three core regulatory goals: protection of investors, ensuring that markets are fair, efficient and transparent, and reduction of systemic risk.⁵

In undertaking this mandate, the Task Force, among other things, has also taken into account the following:

- The impact and relevance of cross-border regulatory tools on the IOSCO Objectives and Principles of Securities Regulation,⁶ including the principles relating to the regulator, principles concerning supervision and enforcement, and principles for cooperation in regulation.
- Whether IOSCO should facilitate the development and implementation of cross-border regulatory tools.

⁴ In terms of participation by region, seven Task Force members are from the Americas, seven members are from Asia-Pacific, and eight members are from Europe.

⁵ Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation, IOSCO, September 2011.

⁶ *Objectives and Principles of Securities Regulation*, IOSCO, June 2010, available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD323.pdf>.

1.3 Developing this Report

The Task Force surveyed its members, members of the IOSCO Board, and the Growth and Emerging Markets Committee (GEMC) on tools that they have adopted, planned to adopt, or are aware of, to address cross-border regulatory issues with respect to activities involving, among others, market intermediaries, securities exchanges and markets, collective investment schemes (CIS), and financial market infrastructures. Specifically, the survey sought information about the characteristics of these cross-border regulatory tools, including their purpose and underlying rationale. It also included questions on members' experiences and challenges in using such tools, and asked for members' views on how, if appropriate, IOSCO could facilitate the development and implementation of these tools. A list of thirty-seven member regulators⁷ who responded to the Task Force survey can be found in Appendix 3.

In April 2014, the Task Force held three roundtable meetings in Hong Kong, London, and Washington D.C. with invited financial industry representatives, academics, and other key stakeholders to seek their preliminary views on what they believe to be the most important issues and challenges in complying with cross-border regulation, and to elicit their suggestions on how regulators could enhance cross-border coordination.

Based on feedback from the survey and meetings, IOSCO published the Task Force Consultation Report in November 2014 to solicit additional views on cross-border regulatory tools, use of these tools, and other cross-border issues. Thirty-three consultation responses were received from stakeholders including regulators, academics, and industry representatives. A list of respondents to the Consultation Report is included in Appendix 4.

IOSCO is grateful to all those who contributed to the work of the Task Force. With careful consideration of the feedback received and other relevant issues, this Final Report adopts the following structure:

- Based on information obtained from surveyed regulators, Sections 2 - 6 describe the Toolkit of specific cross-border regulatory options, the process for assessing foreign regulatory regimes, and general considerations when using the Toolkit. The Task Force believes that these sections could be a useful resource for regulators and policy-makers in understanding and evaluating existing cross-border regulatory tools, as well as in future development and implementation in this area of regulation.
- Section 7 provides an overview of key observations and suggestions made in the public consultation responses.
- Section 8 concludes with the Task Force's view on the direction of travel for cross-border regulation. This section also presents next steps for IOSCO as the basis for future work in this area.

⁷ Among the thirty-seven members who participated in the survey from late October 2013 to April 2014, twenty-one were members from the GEMC. In terms of participation by region, four members were from Africa / Middle-East, eleven members were from the Americas, eight members were from Asia-Pacific, and fourteen members were from Europe.

2. The Cross-Border Regulatory Toolkit – Overview of the Tools and Key Features

The purpose of this section is to provide an overview of the cross-border regulatory tools identified in the Toolkit.

The Toolkit, which is visualized in the diagram on the next page, comprises the tools which are commonly used by IOSCO members to regulate cross-border securities market activities. These tools can be broadly classified into three main types, namely, *national treatment*, *recognition*, and *passporting*.

These three main types are general categorizations only, and a cross-border approach adopted by a jurisdiction may, to varying degrees, involve elements or characteristics of more than one tool.

Two key features of the tools are worth noting. First, passporting may require a legal framework or an international treaty, together with a high degree of rule convergence and harmonization in processes. Unless these conditions exist, the primary tools available are national treatment or varying degrees of recognition. Second, the need to assess and rely on another jurisdiction's regulatory regime varies significantly among these tools, ranging from passporting, which requires a significant amount of reliance on other jurisdictions, to national treatment, where the regulatory focus is on the domestic market and formal consideration is not typically given to the operation of the foreign regulatory regime.

Another feature to note is that different jurisdictions using a particular tool may focus on different objectives when designing their particular domestic securities regulations, such as those jurisdictions focused on enabling foreign financial institutions to gain access to a domestic market, or those focused on protecting investors and preventing the importation of risks from other markets. Tools used by jurisdictions to regulate cross-border activity are typically designed to achieve multiple objectives, and different regulatory objectives can be pursued by using a single tool.

Other key features of the tools are summarized in the diagram and details can be found in Sections 3 to 5. Considerations on the application of the toolkit are further discussed in Section 6.

Tool 1: National Treatment

- The domestic regulator generally treats foreign persons, entities, and products in the same manner as domestic ones in terms of market access and ongoing requirements, regardless of the foreign regulatory regime.
- However, exemptions and accommodations may be granted to market participants active in the domestic jurisdiction, including such foreign persons, entities, and products.
- Limits the need for the domestic regulator to consider the effectiveness of foreign regulatory regimes in detail or how they may compare to its regime.
- May be supported by cooperative mechanisms agreed between the domestic regulator and foreign regulators.

Tool 3: Passporting

- Permits market access between the jurisdictions covered by the passporting arrangement based on a common set of rules.
- Based on a single authorization or registration which allows for the provision of services and products throughout participating jurisdictions under the supervision of a single (“home”) authority.
- May require an international treaty or similar legal instrument, and highly harmonized rules and processes.
- Where the regulator of the host market has concerns about a regulated entity’s compliance, that regulator may be required to discuss these concerns with the home authority.
- May include participation of a common authority to supervise compliance, draft guidelines, provide recommendations, and facilitate supervisory cooperation.

Diagram of the Cross-Border Regulatory Toolkit

Tool 2: Recognition

- Enables the domestic regulator to permit activities of persons and entities, including the distribution of products, from recognized foreign jurisdictions to take place within the domestic jurisdiction. This can be one-way (unilateral recognition) or reciprocal (mutual recognition).
- The domestic regulator recognizes a foreign regulatory regime, at times in substitution for its own, if the latter is assessed to be sufficiently comparable to the domestic regime.
- Often involves the domestic regulator relying on the effectiveness of the oversight of the foreign regulatory regime, and consideration of both formal requirements under regulation, as well as how those requirements are enforced or administered in practice.
- Requires cooperation between domestic and foreign regulators, which is commonly supported by bilateral or multilateral cooperative mechanisms.

For the purpose of Sections 3 to 6, all statements, observations, and viewpoints regarding the tools, as well as the different approaches adopted by regulators are based on the responses of IOSCO members to a survey conducted by the Task Force from October 2013 to April 2014.⁸ Accordingly, these statements may not apply to regulators who did not provide relevant information in response to the survey.

3. Tool 1 – National Treatment

3.1 Definition of National Treatment

National treatment, for the purposes of this report, refers to a tool in which entities domiciled in or operating from foreign jurisdictions are generally treated in the same manner as domestic entities in terms of market access and ongoing regulatory requirements, regardless of the effectiveness of the foreign regulatory regime or how it may compare to the domestic one. In some limited situations, alternative treatment, exemptions, or other regulatory accommodations may be granted and/or be available.⁹

Foreign entities¹⁰ are commonly required to register or obtain authorization, approval or licenses from the domestic regulator on the same basis as domestic entities. In addition, ongoing requirements often apply to all entities and do not differentiate between domestic or foreign entities. In some cases, a foreign entity may be required to take certain steps to operate as a domestic entity.

As illustrated in the following example, national treatment is commonly applied by regulators from both developed and emerging markets across a wide range of cross-border market participants.

Example 1 : Broad application of national treatment to various types of market participants

A number of developed and emerging markets in the Asia-Pacific region and Africa commonly require all market participants to be licensed or obtain other forms of authorization before carrying on a regulated securities business. In Hong Kong, corporations must be licensed to carry on a business in a regulated activity unless exemptions apply. Similarly, individuals must also be

⁸ See footnote 7.

⁹ The Task Force recognizes that the term “national treatment” also has a well-understood meaning in the context of international trade law and wishes to clarify that all references to “national treatment” throughout this report should be interpreted solely for the purposes described herein and should not be conflated with the use of the term in international trade law or any related context.

¹⁰ The term “foreign entity” has a unique meaning within each regulatory regime and entities may be classified as “foreign” based on domicile, place of business, or other characteristics.

licensed to perform a regulated activity for a licensed corporation. Currently there are 10 types of regulated activities in Hong Kong under the Securities and Futures Ordinance (Cap 571,¹¹ Laws of Hong Kong), including:

- dealing in securities;
- dealing in futures contracts;
- leveraged foreign exchange trading;
- advising on securities;
- advising on futures contracts;
- advising on corporate finance;
- providing automated trading services;
- securities margin financing;
- asset management; and
- providing credit rating services.

It is considered a breach of provisions of the law if someone actively markets any regulated activity to the Hong Kong public whether in Hong Kong or from a place outside Hong Kong without the appropriate Hong Kong license to do so.

3.2 Regulatory Objectives of National Treatment

The regulatory objectives of national treatment are generally to:

- create a level playing field where all relevant market participants are treated substantively the same and in a non-discriminatory manner, regardless of whether they are domestic or foreign entities.
- promote regulatory transparency, predictability, and efficiency in the regulation of cross-border securities activities from the perspectives of regulators, market participants, and investors.
- maintain a high level of investor protection and market integrity, and reduce systemic risk by ensuring that all entities and their activities within a particular market are subject to the same direct oversight of the local regulator of that market.
- improve capital flows and domestic market access.

Below is an example for illustration.

¹¹ See details at <http://www.hkllii.hk/eng/hk/legis/ord/571/sch5.html>.

Example 2: Equal treatment for both domestic and foreign issuers

“Host” registration of a transaction to offer or sell securities is required for both domestic and foreign issuers that publicly offer or sell securities in the United States, unless an exemption applies. One of the main purposes of registration is to protect investors by requiring that material information regarding the issuer and the securities being offered or sold is disclosed in a standardized and/or uniform manner to help investors with their investment decision to transact in a security.

3.3 Regulatory Accommodations for Foreign Entities

Although foreign entities are generally subject to the same entry and ongoing requirements as domestic ones, there are instances where additional relief, exemptions, or regulatory accommodations are available to foreign entities. For example, based on considerations of the foreign entities’ circumstances, the domestic regulator may provide accommodations as illustrated below.

Example 3: Disclosure accommodation for foreign private issuers

Continuing with Example 2, although foreign issuers seeking to publicly offer or sell securities in the United States may register in the same manner and using the same forms and making the disclosures as domestic issuers, a separate disclosure regime that is consistent with the IOSCO cross-border disclosure standards¹² and tailored to foreign issuers exists for foreign issuers that satisfy the definition of “foreign private issuer”.¹³ This separate disclosure regime is similar to the disclosure regime for domestic issuers, but is tailored in certain instances. For instance, unlike domestic issuers who are required to use U.S. Generally Accepted Accounting Principles (GAAP), foreign private issuers may file financial statements prepared in accordance with U.S. GAAP or International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board. Foreign private issuers also have the option of providing financial statements prepared in accordance with their home country GAAP, together with reconciliation to U.S. GAAP. Foreign issuers that do not satisfy the definition of “foreign private issuer” are

¹² *International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers*, IOSCO, September 1998, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD81.pdf>.

¹³ The term “foreign private issuer” means any foreign issuer other than a foreign government except an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter: (i) More than 50 percent of the outstanding voting securities of such issuer are directly or indirectly owned of record by residents of the United States; and (ii) Any of the following: (a) The majority of the executive officers or directors are United States citizens or residents; (b) More than 50 percent of the assets of the issuer are located in the United States; or (c) The business of the issuer is administered principally in the United States. See *Securities Act Rule 405* available at: <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=20c66c74f60c4bb8392bcf9ad6fccea3&rgn=div5&view=text&node=17:2.0.1.1.12&idno=17#17:2.0.1.1.12.0.39.98>.

required to register their securities offerings and report using the same forms and rules as domestic issuers.

In some cases, regulators may provide limited modifications to the application of national treatment to facilitate domestic investors' access to foreign markets and expertise while maintaining domestic investor protection safeguards. For example, instead of requiring foreign entities to comply with the full domestic regulatory regime, some jurisdictions offer limited conditional exemptions from compliance with certain market entry or registration requirements. An example of this type of limited conditional exemption is provided below.

Example 4: Conditional exemptions from broker-dealer registration

Certain Asian, Canadian jurisdictions, and the U.S. Securities and Exchange Commission (U.S. SEC) provide conditional exemptions to foreign market participants from broker-dealer registration. Under the U.S. SEC regime, such conditional exemptions (which are contained in Rule 15a-6 under the Securities Exchange Act of 1934) apply to certain foreign broker-dealers that engage in a limited range of specified activities involving U.S. persons. These activities generally include: (1) effecting "unsolicited" securities transactions; (2) providing research reports to some types of U.S. institutional investors and effecting transactions in the securities discussed in the reports; (3) soliciting and effecting transactions with or for institutional investors through a registered broker-dealer acting as an intermediary; and (4) soliciting and effecting transactions directly with or for registered broker-dealers, banks, non-U.S. citizens "temporarily present in the United States", and certain other specified persons.

The above regulatory relief is intended, among other things, to provide U.S. persons, primarily institutional investors, greater access to overseas securities markets while, at the same time, retaining a number of key investor protections.

3.4 Compliance with Domestic Regulatory Regime

It appears that the most important consideration for allowing foreign entities to operate cross-border in a host jurisdiction in the case of national treatment is that such entities are required to comply with requirements of the domestic regulatory regime in generally the same manner as domestic entities and are subject to the direct oversight of the domestic regulator. The regulatory requirements and standards of foreign jurisdictions are thus far less important considerations to the domestic regulator as compared to jurisdictions employing unilateral or mutual recognition. Furthermore, the regulatory accommodations described in Section 3.3 above are generally independent from the structure of the foreign regulatory regime and the existence of particular laws, regulations, requirements, or standards in the relevant foreign jurisdiction. To the extent that the availability of a particular accommodation is entirely independent of the foreign regulatory regime and from the legal and practical feasibility of enforcing the domestic regulatory regime upon the foreign entity, it would not be necessary for the domestic regulator to conduct assessments of foreign regulatory regimes, nor would the domestic regulator need to devote time

and resources to periodically update prior assessments of foreign regulatory regimes, in each case as would be expected under unilateral or mutual recognition.

3.5 Cooperation with Foreign Regulators

Another consideration for allowing cross-border securities market activities under national treatment is, in certain cases, cooperation between the domestic and foreign regulators. Enforcement cooperation is most commonly achieved through the IOSCO MMoU. In certain cases, a bilateral supervisory memorandum of understanding (MoU) also may be used to facilitate information sharing between or among regulators in supervisory matters or to undertake cross-border inspections or examinations of globally-active entities that are regulated in more than one jurisdiction. The legal framework of the home or host jurisdiction may require having in place a MoU to exchange non-public information or perform cross-border examinations. An example of the cooperation between regulators through the use of a MoU in the context of a national treatment regulatory regime is provided below.

Example 5: Cooperation with Foreign Regulators by entering into a MoU

The U.S. Commodity Futures Trading Commission (CFTC) has negotiated and entered into supervisory MoUs or similar arrangements with the relevant foreign regulator, or regulators, prior to approving an application from a central counterparty (CCP) organized outside of the United States for registration as a derivatives clearing organization (DCO). In order for such a CCP to be registered as a DCO, a MoU or similar arrangement satisfactory to the CFTC must be in effect between the CFTC and the foreign regulator(s), pursuant to which, among other things, each foreign regulator agrees to share information and cooperate with the CFTC in the supervision of the CCP.

The negotiation of supervisory arrangements can present a good opportunity to develop close working relationships between or among regulators, as well as to highlight any potential issues related to cooperation and information sharing. These arrangements establish expectations for ongoing cooperation, address direct access to information, provide for notification upon the occurrence of specified events, memorialize understandings related to on-site visits, and include protections related to the use and confidentiality of non-public information shared pursuant to the arrangement.

As Example 5 demonstrates, some methods of implementing national treatment have cooperation as a critical component of the tool's application and may require entering into a MoU to facilitate such cooperation between regulators.

Cooperation may not be expressly required in law because foreign entities, to the extent registration, licensing, approval, or other form of authorization is required, generally interact directly with the domestic regulator (as opposed to communicating through the foreign regulator). However, a cooperative arrangement may be negotiated even where the law does not expressly

require cooperation, either in recognition of the benefits of cooperation or out of practical necessity. For example, some domestic regulators may choose to consider issues relating to supervisory cooperation with the foreign regulator when assessing an application submitted by a foreign entity.

3.6 Challenges to Cooperation under National Treatment

In utilizing national treatment:

- some regulators have encountered difficulties in conducting examinations or inspections of entities domiciled and regulated abroad due to **legal restrictions in the foreign jurisdictions**. Their direct access to the books and records of, and direct communication with, entities located abroad may be limited or prohibited.
- For regulators overseeing these cross-border entities, foreign requests to conduct on-site inspections within their jurisdictions may **conflict with local laws**, which may require that such inspections be conducted through, or coordinated by, the local regulator.

In such circumstances, cooperation is critical between the domestic and foreign regulators in order to develop a solution.

4. Tool 2 – Recognition

4.1 Definitions of Unilateral and Mutual Recognition

Recognition, for the purposes of this report, refers to a tool under which a host regulator “recognizes” a foreign regulatory regime, or parts thereof, following an assessment of the foreign regulatory regime by the host regulator. This may be unilateral or mutual, depending on whether two-way recognition is desired between the jurisdictions.

Under unilateral recognition, cross-border activities (involving, among others, intermediaries, issuers of securities and investment products, securities exchanges and markets, or financial market infrastructures) from recognized foreign jurisdictions can take place on specific terms, which usually involve enhanced regulatory cooperation and, in some cases, the use of regulatory relief or a level of reliance on the foreign regulator’s supervisory oversight when supported by an assessment of the foreign regulatory regime.

The defining characteristic of mutual recognition is that both regulators agree to recognize each other, each operating as home as well as host jurisdictions in respect of the same cross-border activities.

Some regulators note that their domestic legal framework may not allow for recognition of and reliance on foreign regulators. However, among regulators who can utilize both unilateral and mutual recognition, some expressed a preference for mutual recognition as it incentivizes and drives an expectation of reciprocity. Some regulators have indicated that mutual recognition will be pursued, if possible, once unilateral recognition has been established. This means that in certain cases, markets may still interact via unilateral recognition where mutual recognition is not immediately feasible.

Example 6: Unilateral recognition of foreign CIS

The offer of a CIS constituted overseas (foreign CIS) to investors in Singapore must be recognized by the Monetary Authority of Singapore (MAS) under a recognition framework. The MAS will only recognize a foreign CIS if the laws and practices of the foreign jurisdiction afford investors in Singapore protection at least equivalent to that provided under the Securities and Futures Act for CIS constituted in Singapore. Additional conditions on the foreign CIS may be imposed to ensure that the necessary investor protection safeguards are in place. MAS also expects that the foreign regulator can be relied upon to provide mutual assistance and exchange of information in respect of the schemes.

Among other things, the MAS will assess the equivalence of the foreign jurisdiction under which the CIS is constituted and regulated by undertaking a comparative assessment of its laws and regulations, with specific focus on the requirements that are applied to the CIS and its operators, as well as the adequacy of investor protection safeguards.

Example 7: Integration of stock exchanges through mutual recognition

The “Mercado Integrado Latinoamericano” (MILA), also known as the Integrated Latin American Market, is the virtual integration of the stock markets of Chile, Colombia, Mexico and Peru. Investors are able to access MILA through registered brokers with access to the common trading platform to buy and sell stocks in any of the four markets.

Mutual recognition of the regulatory and supervisory framework among MILA member countries is the key feature that, from a regulatory perspective, allows the proper functioning of this virtual integration. Issuers and intermediaries participating in MILA are subject to the supervision of their home authority and stock exchange.

The securities regulators of the MILA countries have signed a multilateral memorandum of understanding that allows for the exchange of information for authorization and on-going supervisory oversight. It also sets up the basis for a regional supervisory committee of representatives of each regulator, so they can monitor the MILA market and take the necessary supervision and enforcement actions, when applicable. In addition, the fact that three out of the four MILA securities regulators are also signatories to the IOSCO MMoU enables them to provide each other with information on enforcement matters when the need arise.

4.2 Regulatory Objectives of Unilateral and Mutual Recognition

The primary regulatory objectives of Unilateral and Mutual Recognition are to:

- improve capital flows and domestic market access by reducing duplicative regulations or other barriers in terms of market entry, time to market, and cost to market participants through the use of regulatory relief or other facilitation measures.
- internationalize the domestic market by attracting foreign investments, increasing investors’ access to a broader range of financial products, facilities, and services, and enhancing competition and innovation in the financial services industry.
- ensure adequate investor protection, maintain market integrity, and reduce systemic risks and regulatory arbitrage in light of the increased presence of foreign services, products, and market infrastructures.
- enhance cooperation with and/or reliance on recognized foreign jurisdictions for ongoing supervisory oversight of dually regulated entities through the use of, for example, “substituted compliance”.

It is unlikely that a jurisdiction would consider all of the above regulatory objectives at the same time or with equal weight when designing or implementing a unilateral or mutual recognition framework. In regulating a specific type of cross-border activity, regulators may place different weighting or importance on each objective depending on the strategic priorities and needs of the particular market. For example, the first two objectives are commonly associated with market-

opening policies, while the last two objectives, especially investor protection, focus more on enhancing regulatory oversight.

Example 8: Tangible benefits of mutual recognition

In 2008, Australia and New Zealand established mutual recognition for securities offerings so that an issuer who is lawfully offering a product in its home jurisdiction can offer it in the other jurisdiction by using a single disclosure document prepared under home regulations. This mutual recognition arrangement is premised on the principle of substituted compliance which allows each jurisdiction to rely on an issuer's substantive compliance with the rules of the other jurisdiction.

From 30 June 2008 to 12 November 2013, there were 80 New Zealand offers made to Australia and 1035 Australian offers made to New Zealand to facilitate financial integration. In 2009, the Australian Securities and Investment Commission (ASIC) published a report setting out outcomes of a survey of 10 firms that participated in the Australia-New Zealand mutual recognition of securities offers. The report found that the mutual recognition scheme was viewed as a welcome policy development because it:

- reduced firms' costs. Firms cited legal and documentation cost savings as being the predominant savings available. The cost-savings for some firms which were able to quantify them varied from approximately 55% to 95%.
- accelerated the regulatory approval process, which allowed securities offerings to reach the market more quickly.

Example 9: Approaches to unilateral recognition of foreign issuers

The International Quotation System of the Mexican stock exchange (SIC, Spanish acronym) allows investors to purchase foreign securities listed overseas that have been recognized by the Comision Nacional Bancaria y de Valores (CNBV) or whose issuers have received corresponding recognition by the CNBV.

The SIC has two types of recognition of foreign securities markets. The first one allows foreign issuers from IOSCO nominated Board member jurisdictions and securities issued by central banks or governments from European Union (EU) Member States to be directly recognized by the CNBV to trade on the SIC without any additional requirement or administrative procedure.

The second type of recognition allows a domestic stock exchange to request recognition of a specific country and/or issuer. This only applies to foreign issuers from the EU, member jurisdictions of the Organization for Economic Cooperation and Development (OECD), and MILA. Such recognition is granted by the CNBV to trade on the SIC if, among other criteria, the foreign country and/or issuer can demonstrate that their regulatory requirements are consistent with Mexican provisions relating to investor protection, transparency, insider trading, market manipulation, conflict of interests, and disclosure requirements.

In any event, it is important for CNBV to have a bilateral or multilateral MoU with the securities regulators of those foreign jurisdictions, so as to ensure that regulators would be able to exchange information needed for cross-border supervision.

Example 10: Temporary License Framework for promoting broader access to financial services

Under the Temporary License Framework, the Malaysia Securities Commission (SC) may grant temporary licenses, via a streamlined process, to foreign professionals who wish to serve only institutional and sophisticated investors in Malaysia. Among other requirements, these professionals must be regulated in foreign regulatory regimes that are sufficiently equivalent to that of Malaysia. In addition, there must be arrangements between the SC and the foreign regulator to ensure prompt sharing of information and effective cooperation regarding supervision, investigations, and enforcement.

This framework is intended to provide local issuers and sophisticated investors with access to high-end services which may not be readily available domestically, and to assist in the capacity building of local licensed companies in terms of training and transfer of skills.

4.3 Regulatory Regimes of Foreign Jurisdictions

It is usually critical for a host regulator to determine whether a cross-border activity or entity qualifies for unilateral or mutual recognition based on a prior assessment of whether reliance can be placed on home jurisdiction supervision. Many regulators tend to evaluate whether and to what extent the foreign regulatory regime achieves regulatory “outcomes” that are generally predetermined and similar to those achieved by the domestic regulator (as opposed to focusing on a line-by-line comparison of domestic and foreign rules and regulations).

Example 11: Assessment and unilateral recognition of foreign regulatory regimes in granting licensing relief to foreign financial services providers

ASIC may grant a conditional license exemption to foreign financial services providers (foreign providers) who wish to serve only wholesale clients in Australia.¹⁴

One of the conditions in granting such relief is that the foreign provider is regulated in its home jurisdiction, and that the foreign regulatory regime is sufficiently equivalent to that of Australia. For instance, considerations may be given to the foreign jurisdiction’s regulations, license issuing

¹⁴ See ASIC’s Regulatory Guide 176 on foreign financial services providers, available at <https://dv8nx270c159a.cloudfront.net/media/1240973/rg176-published-29-june-2012.pdf>.

criteria, the foreign provider's obligations under home regulation, and how those obligations are monitored and enforced. Since the foreign provider is not seeking to service retail clients, ASIC considers the equivalence of regulatory outcomes from the perspective of market integrity and systemic risk, and will not focus on investor protection issues.

Another condition in granting such relief is whether there is an effective cooperation arrangement between the foreign regulatory authority and ASIC. The foreign provider will also have to submit to the non-exclusive jurisdiction of the Australian courts in legal proceedings, comply with any order of an Australian court, and take practicable steps to enable and assist its home regulatory authority to disclose any relevant information to ASIC.

Currently, there are 638 foreign providers relying on this relief. They include foreign providers regulated in Germany, Hong Kong, Singapore, the United Kingdom, and the United States.

4.4 Process for Assessing Foreign Regulatory Regimes

Sections 4.4.1 to 4.4.8 describe some ways in which foreign regulatory regimes are assessed for the purposes of unilateral or mutual recognition. This description represents a compendium of responses from surveyed jurisdictions and is not, therefore, a definitive statement of the processes or techniques used by all jurisdictions. It is, for the purposes of this Final Report, not intended to be used as a model, a recommendation, or as guidance.

4.4.1 Participants in the Assessment

The assessment of a foreign regulatory regime normally involves 3 parties:

- **The domestic regulator** identifies regulatory outcomes (in agreement with the foreign regulator if the assessment is conducted for a proposed mutual recognition arrangement), conducts an assessment of the foreign regulatory regime, including with respect to supervision and enforcement, discusses with the foreign regulator ways to address areas of concerns, documents the analysis and where necessary, considers whether there are alternative ways to achieve the desired regulatory outcomes.
- **The foreign regulator** provides information about its regulatory regime, discusses with the domestic regulator and where necessary, considers whether to adopt measures to meet domestic regulatory outcomes.
- **The foreign entity** seeking to operate or to continue to operate on a cross-border basis under a unilateral recognition arrangement provides the domestic regulator with details of the foreign regulatory regime to which it is subject. It may have to coordinate with other market participants and its home regulator in the process.

4.4.2 Guidelines used in the Assessments

Compared with emerging markets, regulators from developed markets have more established guidelines on conducting assessments of foreign regulatory regimes. These are often high-level

guidelines that explain the concepts and processes of the assessment, and are revised on an ongoing basis to ensure that they remain valid or compatible with changing requirements and market conditions. Depending on the regulator, the guidelines may or may not be made publicly available.¹⁵

4.4.3 Initiation of the Assessment

The assessment of foreign regulatory regimes is initiated at different times for unilateral and mutual recognition. Under unilateral recognition, the assessment is typically initiated when the domestic regulator receives an application from a foreign regulator or entity seeking to operate, or to continue to operate, in the domestic market. For mutual recognition, the assessment begins when both the domestic and foreign jurisdictions negotiate the possibility of having such an arrangement. The assessment may need to be conducted on an ongoing or periodic basis as the relevant regulatory regimes evolve and develop.

4.4.4 Assessment Steps

There are four steps in the assessment process: identify regulatory outcomes, select regulatory outcome measures, gather materials for evaluation, and evaluate gathered materials. Sections 4.4.4.1 – 4.4.4.4 below describe each of these steps, using actual examples and information on the current practices of jurisdictions.

4.4.4.1 Identifying Regulatory Outcomes

The first step is for the domestic regulator to identify a set of regulatory outcomes for the purposes of the assessment. These outcomes have to be achievable by the domestic regulator itself, and relevant to the unilateral or mutual recognition arrangement under consideration. The foreign regulatory regime will be assessed in subsequent stages as to whether and to what extent it also achieves these regulatory outcomes. The regulatory outcomes being assessed may involve varying degrees of specificity.

Key regulatory outcomes commonly identified by regulators are:

- domestic investor protection;
- maintenance of local market integrity;
- reduction of regulatory arbitrage;
- reduction of systemic risk, crime, and misconduct in the domestic financial system; and
- effectiveness of anti-money laundering and counter-terrorist financing measures implemented in the foreign jurisdiction.

¹⁵ See ASIC's Regulatory Guide 54 on principles for cross-border financial regulation, available at <https://dv8nx270cl59a.cloudfront.net/media/1238990/rg54-published-29-june-2012.pdf>

4.4.4.2 Selecting Regulatory Outcome Measures

After identifying regulatory outcomes, the second step is for the domestic regulator to select the regulatory outcome measures. Regulatory outcome measures are defined as the different aspects of the foreign regulatory regime or methods that would provide information about the extent to which the foreign regulatory regime has achieved the regulatory outcomes identified.

Eight of the most commonly used regulatory outcome measures include:

- **General analyses of foreign securities laws, regulations, requirements, and standards:** Such analyses provide a means to determine the clarity and transparency of the foreign regulatory regime, and to obtain an overview of the foreign legal, regulatory, and enforcement framework. Such analyses can also be valuable to the domestic regulator by providing insights into the foreign regulator's objectives, roles and general powers, and whether it operates in a regulatory environment with an independent legal system and a well-founded reputation for integrity.
- **Specific analyses of foreign securities laws, regulations, requirements, and standards, both as written and implemented, with respect to the cross-border activity considered under the proposed unilateral or mutual recognition arrangement:** The domestic regulator can assess whether the relevant provisions are comprehensive and how they are applied in practice, including, for example, the criteria for licensing, authorization or registration, and the obligations of the foreign entity under its home regulation.
- **The level of investor protection in the foreign jurisdiction:** Evaluating investor protection safeguards in the foreign jurisdiction may provide insights into how well domestic investors who are involved in cross-border securities transactions are protected. These safeguards can include the exercise of rights by investors, investor compensation schemes, disclosure requirements imposed on market participants, and dispute resolution mechanisms, among others.
- **Enforcement capability of the foreign jurisdiction:** This measure provides information regarding the foreign regulator's powers and tools of investigation and enforcement. The domestic regulator can examine if the foreign regulator has the resources to use those powers and tools, and whether it effectively uses those powers and resources to promote compliance with the regulatory regime.
- **The level of supervisory oversight in the foreign jurisdiction:** This measure provides information about the nature, comprehensiveness, and extent of the foreign regulator's oversight program for a particular cross-border entity. For example, the domestic regulator can understand how issues are identified and resolved by the foreign regulator, whether there is a dedicated team assigned to the oversight of a specific entity, and whether periodic on-site inspections or examinations are performed.
- **Legal framework for and implementation of international cooperation:** Analysis of the foreign jurisdiction's legal framework provides information about the nature of its

supervisory and enforcement cooperation with other jurisdictions, including its ability to exchange information and cooperate when conducting on-site inspections or examinations. This can be complemented by further information about the foreign jurisdiction's actual track record for international cooperation, which provides a certain degree of assurance in its ability and willingness to provide mutual assistance to the domestic regulator. Past dealings with the foreign regulator based on existing cooperation arrangements provide evidence as to whether it has been generally forthcoming in rendering assistance when called upon.

- **Analysis of results from standardized assessments by international organizations:** Results from standardized assessments¹⁶ conducted by international organizations such as the Financial Action Task Force (FATF), the Financial Stability Board (FSB), the International Monetary Fund (IMF), IOSCO, and the World Bank show the foreign jurisdiction's level of compliance with international principles and standards, such as the IOSCO Principles and Objectives of Securities Regulation. This may be useful to the domestic regulator in evaluating the extent to which predetermined regulatory outcomes can be achieved by the foreign jurisdiction.
- **Membership and status in international organizations, regional communities, or groups:** These reflect certain qualities of the foreign jurisdiction's securities regulatory regime, including the extent to which the foreign regulatory regime complies with international principles and/or standards, the effectiveness of its anti-money laundering and counter-terrorist financing measures, and/or its ability and willingness to cooperate closely and exchange information with the domestic regulator.

There are numerous issues to consider when selecting regulatory outcome measures. Regulators typically select a combination of the above outcome measures to match the needs of the unilateral or mutual recognition concerned, their regulatory philosophies and practices, and the resources and expertise available to conduct the assessment.

Different weights may also be given to the selected regulatory outcome measures. For example, some regulators consider the foreign jurisdiction's level of supervisory oversight as an important outcome measure while others do not assess it at all. Some regulators tend to give more weight to the foreign jurisdiction's enforcement capability than to its level of supervisory oversight because, in some cases, information on the nature, extent, and mechanism of supervision is considered not as relevant in forming a view on whether the foreign regulatory regime achieves the predetermined regulatory outcomes.

4.4.4.3 Gathering Materials for Evaluation of a Foreign Regime

The next step is for the domestic regulator to gather materials for evaluation with respect to the selected regulatory outcome measures. Information is usually gathered from the regular

¹⁶ Examples include the Financial Sector Assessment Program (FSAP), which is a joint effort of the IMF and the World Bank, country peer reviews conducted regularly by the FSB, and thematic reviews conducted by the FSB and by the IOSCO Assessment Committee.

observation and review of foreign regulatory and market developments, foreign regulators, foreign entities in case of unilateral recognition, international organizations, participation in international regulatory fora, external law firms, and central banks in cases where foreign exchange issues are involved. Frequent and extensive discussions with foreign regulatory counterparts are heavily relied upon to address areas of concerns and seek clarifications.

4.4.4.4 Evaluation and Use of Benchmarks

When evaluating materials gathered for the selected outcome measures, regulators find it useful to set benchmarks, where possible, to determine the extent to which the foreign regulatory regime meets the predetermined regulatory outcomes.

Benchmarks commonly used by regulators to evaluate a foreign regime can be divided into 2 main groups: benchmarks that reflect international standards and domestic requirements.

Some respondents have reported using benchmarks that reflect international standards, including:

- aspects of domestic laws and regulations that are as strict as internationally-agreed standards, such as the IOSCO Objectives and Principles of Securities Regulation;
- a grading of “broadly implemented” assigned by international organizations such as the IMF and World Bank (i.e., in connection with the FSAP), or similar scores indicating broad compliance with internationally-agreed principles and/or standards in assessments conducted by other international organizations;
- status as a Board and/or ordinary member of IOSCO, and as a signatory under Appendix A to the IOSCO MMoU; and
- among regulators from emerging markets, membership in the Caribbean Community (CARICOM), the EU, the FATF, the MILA, or the OECD is considered favorably.

Domestic requirements include:

- aspects of domestic laws and regulations that are stricter than or are not based on internationally-agreed standards due to the need to accommodate local market characteristics.

Evaluations of the foreign jurisdiction’s results based on international standardized assessments, international membership and status against the corresponding benchmarks above may be less burdensome, but also would involve a regulator relying on an assessment whose quality it cannot verify.

Evaluations that are based on the other selected outcome measures are typically more complex. Regulators do not have a consensus on the choice and number of benchmarks used when evaluating foreign laws, regulations, requirements, and standards against those of their own jurisdictions, which may be as strict as or stricter than internationally-agreed standards, or may not be based on them at all. Using whatever benchmark(s) that regulators deemed appropriate,

any major differences and conflicts arising from the comparison are highlighted for further discussion and analysis. This allows parties to the assessment to have a better understanding of the rationale behind the differences and conflicts, so that alternative solutions can be explored.

It appears that even though the foreign regulatory regime may operate under different mechanisms, the common emphasis among regulators is on whether the foreign regime can achieve actual regulatory outcomes that are overall substantively similar to those of the domestic regime (as predetermined in the first step of the assessment). Foreign regulatory regimes that satisfy this emphasis are granted a positive determination which can be labelled “equivalence”, “sufficient equivalence” or “comparability” depending on the jurisdiction concerned.

The evaluation of gathered materials may also require a careful weighting of possible defensive responses or retaliation from the foreign jurisdiction in cases where a negative determination is concluded from the assessment. There is a significant range of views from regulators on the importance of this consideration. While some do not think that this is important at all, others believe that any possible defensive responses or retaliation from the foreign jurisdiction may provide important insight into the regulatory relationship and the expected level of cooperation. The uncooperativeness of the foreign regulator is likely to preclude the feasibility of both unilateral and mutual recognition. Others think that this consideration is rather important as they are interested in building a solid and cordial relationship with the foreign regulator.

4.4.5 Timeframe of the Assessment

Some regulators have target timeframes or deadlines to complete the assessment. Others have specific deadlines for the various parts of the assessment, including an assessment of the application’s completeness, followed by the formal assessment of equivalence. However, most regulators do not set a specific timeframe for completion of the assessment since the time taken depends on:

- the availability of resources of the domestic regulator to conduct the assessment relative to the amount of material to be evaluated;
- the complexity of, and the domestic regulator’s familiarity with, the material to be evaluated; and
- the completeness of the material to be analyzed and the time it takes for the foreign regulator or entity to respond to requests for further information and clarification.

Consequently, a number of factors will weigh in the decision of which foreign regulatory regime to assess first. These include:

- the order in which applications are submitted (for unilateral recognition only);
- the foreign jurisdiction’s interest in having a mutual recognition arrangement (for mutual recognition only);
- domestic policy development;

- the extent of cross-border activity or anticipated cross-border activity; and
- the existence of a cooperation mechanism with the foreign jurisdiction.

In many cases, entities from foreign jurisdictions that have yet to be assessed cannot operate in the jurisdiction yet to assess them under unilateral or mutual recognition. One exception to this statement is illustrated in Example 12 below in relation to the operation of foreign clearing agencies in Ontario and Québec.

Example 12: Interim approval to conduct clearing business

The Ontario Securities Commission (OSC) and the Autorité des marchés financiers of Québec (AMF Québec) have the practice of assessing the regulatory and oversight regime of a foreign jurisdiction upon receiving an application from a foreign clearing agency to carry on business in Ontario and Québec. While the regulatory preference is to complete the assessment first, the OSC and AMF Québec may allow certain entities to operate in Ontario and Québec, respectively, in the interim, provided that they comply with certain terms and conditions, including a requirement that a full application for recognition or exemption to recognition be submitted by a certain date. These terms and conditions have an expiry date, by which OSC or AMF Québec expect the entity to submit an application and for the application to be assessed.

4.4.6 Post-Assessment Communication and Re-assessment of Foreign Regulatory Regimes

In most cases, following a determination under either a unilateral or mutual recognition framework, domestic and foreign regulators will communicate to discuss matters regarding the entities and transactions operating cross-border or any regulatory changes that may arise.

In the case of mutual recognition, notification mechanisms are often set out in the MoUs between the domestic and foreign regulators, so that both are informed of any significant changes in the other’s regulatory regime which may have a material impact on the recognition arrangement. In the case of unilateral recognition, foreign entities operating on a cross-border basis are also often required to provide certain notifications to the domestic regulator. In addition, some regulators hold regular meetings with their foreign counterparts to discuss market and regulatory developments.

This ongoing dialogue is essential because regulatory changes may affect the extent to which the foreign regime achieves the necessary regulatory outcomes, such as those affecting the foreign jurisdiction’s:

- regulatory structure;
- supervision of entities under its authority;
- obligations or requirements imposed on these entities; and

- supervision or legislative responsibility for the activities of these entities in the domestic jurisdiction.

Such changes will, in turn, have an impact on the unilateral or mutual recognition arrangement concerned. As a result, a periodic update to the assessment of a foreign regulatory regime will need to be conducted on an ongoing or periodic basis as it evolves and develops.

Some regulators conduct the assessment every four to five years, while others rely on the notifications from foreign regulators on changes to relevant laws and requirements of the foreign jurisdiction, or information about their compliance with international principles and standards.

4.4.7 Examples of Assessments

Examples 13 – 16 below illustrate current approaches of certain regulators in conducting assessments of foreign regulatory regimes under 3 different scenarios:

- **Scenario 1 – Assessment of foreign regulatory regimes which have been implemented and can readily achieve substantively similar regulatory outcomes**

Example 13: Recognition of the equivalence of a foreign regulatory framework and of the foreign regulator’s powers

The Committee of European Securities Regulators (CESR) and the Israel Securities Authority (ISA) entered into discussion of the possibility of establishing an agreement to enable the cross-listings of companies on the Euronext and on the Tel Aviv Stock Exchange (TASE) respectively.

A task force set up by CESR on this matter conducted an assessment of the Israeli regulatory environment on the following items:

- The role and responsibilities of the regulator;
- The powers of the regulator for conducting supervision, investigation and surveillance; and
- The specific sharing of responsibilities among the parties involved for the approval of a prospectus including the role of auditors, accounting standards, pro forma information and other information related to financial statements.

Based on this assessment and in accordance with a statement from the European Securities and Markets Authority (ESMA) on the framework for third country prospectuses under Article 20 of the Prospectus Directive, ESMA declared that a prospectus drawn up according to Israeli laws and regulations, together with a wrap containing further information required by certain items in the Prospectus Regulation which were set out in the statement, can constitute a valid prospectus under the Prospectus Directive for the purpose of its approval by the home competent authority of a EU Member State. Further to this recognition, the Autorité des marchés financiers of France (AMF France) and ISA developed a process to facilitate cross-listing based on the procedures

already accomplished by the home authority when delivering the prospectus to a company for the listing of its shares on the home market. This was translated into a MoU signed in 2008 and updated in 2013. The MoU is to be reviewed periodically by both authorities.

- **Scenario 2 – Assessment of foreign regulatory regimes which have been implemented but requires further efforts to demonstrate substantively similar regulatory outcomes**

It could happen in the assessment process that the foreign regulatory regime cannot readily achieve substantively similar regulatory outcomes, but may ultimately do so. In such cases, efforts from both sides to explore the feasibility of adopting other measures are crucial in order for the foreign regulatory regime to demonstrate substantively similar regulatory outcomes compared to the domestic regime.

Example 14: Limiting the scope of recognition

In preparation for the mutual recognition arrangement on market operators and broker-dealers between ASIC and the U.S. SEC, both sides identified regulatory outcomes and provided information about their respective regimes. Analyses of the operation of the two regulatory systems were undertaken and the comparison was based on consideration given to the general outcomes of the regulatory regime, rather than on comparing regulatory mechanisms used to achieve those outcomes. The comparison identified different obligations about conduct of business requirements applicable to retail clients. These differences meant that the scope of mutual recognition was limited to Australian wholesale clients.

Example 15: Applying the stricter requirement

The Hong Kong Securities and Futures Commission (Hong Kong SFC) and the Malaysia SC entered into a mutual recognition agreement concerning Islamic funds. In preparation for the agreement, both jurisdictions engaged in extensive discussion to assess and analyze each other's regulatory regime, including the overall investment management framework, authorization procedures, operational requirements on the management company, content of offering documents, and requirements on the trustee/custodian and auditor.

In areas where the requirements of the two jurisdictions differ, the stricter requirement would generally apply to ensure regulatory parity between domestic and foreign players, such as:

- Malaysian management companies are required to produce a Chinese language version of the prospectus, provide additional information in the trust deed, offering document, financial report, and upon submission of application, and comply with investment limits pertaining to futures contract, investments in warrants and options, etc.
- Recognized funds from Hong Kong are required to comply with additional Malaysian

regulatory requirements on the content of the offering document, marketing and distribution of unit trust funds, advertisement and promotional materials, and the appointment of a representative for listed funds. In addition, the management company of the fund from Hong Kong must take various other measures to ensure that the fund is Shariah compliant.

- **Scenario 3 – Assessment of foreign regulatory regimes that are in the process of being implemented**

It may not be feasible to assess the foreign regulatory regime as a whole when foreign jurisdictions are in the process of finalizing regulations. The last example in this section illustrates an assessment approach currently employed in such a situation.

Example 16: Use of substituted compliance for assessing developing regimes

The U.S. Dodd-Frank swap provisions and the CFTC’s related regulations apply cross-border to swap activities outside the United States if those activities have a direct and significant connection with activities in, or effect on, commerce in the United States. As such, foreign swap dealers and major swap participants who engage in swap activities above certain thresholds are expected to register and comply with the CFTC’s entity-level requirements and transaction level requirements.

However, in consideration of international comity principles, the CFTC has been conducting assessments of foreign swap regulatory regimes to explore the possibility of relying on the foreign jurisdictions’ supervisory oversight through substituted compliance, where foreign swap dealers and major swap participants can comply with comparable regulations in their home jurisdictions as substitutes for compliance in certain relevant CFTC regulations. The assessments involve consultation with foreign regulators so that the CFTC may better analyze their regulatory regimes.

One of the difficulties in conducting the assessments to determine comparability is that many foreign jurisdictions are still in the process of finalizing and implementing their derivatives reforms. Consequently, the CFTC’s comparability determinations were made on a requirement-by-requirement basis, rather than on the basis of the foreign regime as a whole. Specific foreign requirements were analyzed against specific CFTC requirements for comparability. Using an outcomes-based approach, foreign requirements which are not identical to CFTC requirements may be deemed comparable if they achieve substantively similar regulatory outcomes.

The CFTC has approved a series of broad comparability determinations with respect to several jurisdictions that would permit substituted compliance. It recognizes that some jurisdictions may not have swap-specific regulations in certain areas, and instead may have regulatory or supervisory regimes that achieve substantively similar regulatory outcomes as CFTC requirements, but on a more general, entity-wide, or prudential basis. The CFTC anticipates that it will work with regulators and registrants in such jurisdictions to consider alternative

approaches that may result in a determination that substituted compliance applies, and may need to take into account the timing of regulatory reforms in foreign jurisdictions that have been proposed or finalized, but not yet implemented.

4.4.8 Challenges of Assessing Foreign Regulatory Regimes under Recognition

Common challenges in the assessment process include the following:

- In many instances, jurisdictions have limited human or other resources to assess foreign regulatory regimes. Assessments can be resource-intensive due to the amount and complexity of the materials to be evaluated.

Example 17: Demand on resources for conducting assessments

In preparation for the mutual recognition arrangement between ASIC and the U.S. SEC on market operators and broker-dealers, ASIC deployed one full time senior staff member to conduct a desk based assessment which took 2.5 months. In addition, ASIC sent one senior executive to the U.S. SEC for a month to complete the assessment following liaison with U.S. SEC staff. The U.S. SEC staff also committed a substantial amount of resources, spread across a number of its different offices and divisions and at all levels of seniority, consulting with their ASIC counterparts and independently analyzing and assessing Australian law.

- Regulators often lack the knowledge and expertise to assess foreign regulatory regimes. Without an understanding of the context in which regulations operate, there are limitations as to how much those without practical experience of the foreign regulatory regime can understand. Future changes in foreign requirements and standards, as well as market developments, may place further demands on regulators to keep up to date and assess how these changes may impact the way foreign entities operate cross-border. There may also be a barrier if laws and regulations are written in a foreign language and the domestic regulator has to rely on translations. It was noted that the meaning and intent of regulations may not always be fully captured in a translation.
- Regulatory gaps, inconsistencies, or conflicting requirements identified from comparing domestic and foreign laws and regulations may pose difficulties in the assessment process due to differences in frameworks and policy objectives and priorities. Internationally-agreed standards are not often used as benchmarks for cross-border reviews, possibly because they are not legally binding, unlike mandatory regulatory regimes operating at a jurisdictional level, and often are insufficiently detailed. Furthermore, domestic legal regimes do not normally require international standards to be implemented as part of the domestic regulatory regime. It can therefore be difficult to assess the extent to which regulation in particular jurisdictions deliver substantively similar outcomes to those intended by international standards.

- It is difficult or inappropriate to conduct a review when overseas laws and regulations are not yet in place or are still being finalized.

4.5 Cooperation with Foreign Regulators

Cooperation with foreign regulators is another essential component of unilateral or mutual recognition.

The domestic regulator generally expects a foreign entity to be established and regulated in a jurisdiction which can be relied upon to provide a broad range of assistance, including the sharing of information without delay. This enables adequate supervisory oversight of risks posed by the activities of a cross-border entity affecting domestic investors and markets.

A difference between unilateral and mutual recognition is that in the latter case more supervisory reliance is placed on the foreign regulator. Although each regulator under mutual recognition reserves full authority to enforce its laws and regulations, the foreign regulator continues to be the primary supervisor of the foreign entity operating within the domestic jurisdiction.

Given the importance of cooperation and reliance on foreign oversight under unilateral and mutual recognition, most developed markets, as well as the more mature emerging markets, establish cooperative arrangements with their foreign counterparts to complement the IOSCO MMoU. These usually take the form of supervisory and/or enforcement MoUs, and are negotiated bilaterally or multilaterally between or among domestic and foreign regulators according to their supervisory responsibilities and legal capacity to share information, and usually contain provisions concerning confidentiality, reciprocity, and permitted use of information.

Formal arrangements often complement ad-hoc interactions and informal communications with foreign regulators, and participation in supervisory colleges and international organizations. More detailed guidance is provided in IOSCO's final report on the Principles Regarding Cross-Border Supervisory Cooperation.¹⁷

For many emerging markets which act as host jurisdictions using unilateral recognition, cooperative mechanisms may not be required or established. One of the reasons for this is that some jurisdictions may be in the process of enacting new legislation which, once adopted, will enable transition to a more formal system involving greater reliance on the use of cooperative mechanisms such as MoUs. Others have adopted an informal practice to ensure that supervisory cooperative mechanisms, though not mandatory, are in place to enable effective cooperation with foreign regulators in authorizing and supervising foreign entities operating cross-border. Authorization of these foreign entities may be deferred in the event that the necessary cooperative mechanisms are not yet in place.

¹⁷ See footnote 3.

4.6 Factors for consideration – Market Response, Investors’ Level of Sophistication, and Government Support

Regulators utilizing this approach usually take into account how the market will respond to unilateral and/or mutual recognition, and how these arrangements, if implemented, will impact on the level of capital flows between the jurisdictions. Requests or statements of support from the financial industry may be triggers for home regulators to establish unilateral or mutual recognition. Regulators may also propose such arrangements on their own initiative or in response to requests from other regulators or policy-makers. Many regulators using this tool consult with the industry at an early stage to gauge their demand and preparedness, so that any foreseen implementation difficulties from the industry’s perspective can be flagged. The level of sophistication of domestic investors is also an important consideration.

Example 18: Enhancing investor protection under unilateral and mutual recognition of foreign CIS

Under ASIC's unilateral recognition of Singaporean CIS¹⁸ and the mutual recognition of CIS between Australia and Hong Kong,¹⁹ foreign scheme operators are required to have an internal dispute resolution process and join an ASIC-approved external dispute resolution scheme so that Australian retail investors can have their complaints addressed. These are conditions for granting certain registration, licensing, or disclosure relief under foreign recognition arrangements.

For mutual recognition, several respondents emphasized the importance of a sustained, shared interest among regulators and governments of both jurisdictions in order to drive a market-opening policy.

4.7 Challenges to Cooperation under Recognition

Cooperation between regulators is based on principles of international comity. At the practical level, challenges in relation to recognition include the following:

- **Resource constraints:** Recognition, especially mutual recognition, demands intensive supervisory and enforcement cooperation. The challenge is for regulators to find additional resources to ensure that obligations under mutual recognition arrangements are fulfilled. With an increasing number of international requests, regulators may lack sufficient operational resources to provide timely and accurate information in usable form.
- **Lack of appropriate and effective access to information for supervisory purposes:** This issue mainly concerns unilateral recognition, which involves less cooperation with and reliance on the other jurisdiction when compared to mutual recognition. Regulators have

¹⁸ See details at <http://www.comlaw.gov.au/Details/F2012C00715>.

¹⁹ See details at <http://www.comlaw.gov.au/Details/F2012C00716>.

significantly different views on the channels through which the domestic regulator can receive information about a foreign entity operating cross-border.

Some regulators believe that it is essential for the foreign entity to be able to provide information directly to the domestic regulator for supervisory purposes, because this is often one of the conditions of entry into the domestic market. Some regulators hold the same view because they are legally bound to have direct, unfettered access to those under their oversight. However, others have indicated that having the foreign entity provide information directly to the domestic regulator may conflict with foreign legislation, or may require closer cooperation with the foreign regulator so as to do so in accordance with applicable foreign laws and regulations.

Some also mentioned that they do not need to request information from the cross-border entity as all information filed with the foreign regulator must also be filed with the domestic regulator.

On the other hand, some regulators believe that information requests should only be routed through the foreign regulator. However, some of those who have sought information from foreign regulators have experienced problems because the foreign regulator lacks power to obtain information solely for supervisory purposes. Others, on the contrary, have found it easy to obtain all required information from the foreign regulator.

- **Issues regarding the power to conduct on-site inspections or examinations:** There are differences in regulators' supervisory powers to conduct on-site inspections or examinations of cross-border entities in a foreign jurisdiction. Some regulators lack the power to conduct such inspections or examinations but can instead rely on the foreign regulator's supervision, while others are able to conduct inspections or examinations in cooperation with the foreign regulator, based on bilateral MoUs for supervisory cooperation and provided that advance notice is given to the foreign regulator. Further discussions between regulators on a bilateral or multilateral basis may be appropriate to address these issues.

5. Tool 3 – Passporting

5.1 Definition of Passporting

Passporting, for the purposes of this report, refers to a tool that is based on a common set of rules which are applicable in the jurisdictions covered by the passporting arrangement.

Passporting of financial products and financial services providers allows the holder of a regulatory license or authorization in one jurisdiction that is a party to the passporting arrangement to offer the financial product or provide financial services covered by the authorization or license in any of the other jurisdictions which are parties to the arrangement. No further authorization requirements are needed. The home jurisdiction may only issue an authorization or a license if the financial products or intermediaries meet an agreed set of rules.

In the only currently existing example of passporting under a treaty (i.e., the EU), a central governing body has oversight of all the states participating in the passporting agreement to provide implementation guidance and ensure harmonized supervision practices. Such a central governing body may be necessary to implement passporting effectively in the international context, which may be difficult to create elsewhere.

5.2 Regulatory Objectives of Passporting

Passporting requires extensive convergence and implementation of a common set of rules in each jurisdiction that is a party to the arrangement.

Regulatory objectives of passporting are generally to:

- ensure adequate investor protection through harmonized standards.
- facilitate market access, enhance competition, and improve capital flows.
- enhance convergence in supervision practices.
- reduce risks of regulatory arbitrage.
- strengthen regulatory ties and improve supervisory and enforcement cooperation with foreign market regulators.
- guard against systemic risk in the face of increased access to foreign services, products, and market infrastructures.

5.3 Passporting in the EU

Passporting is extensively used in the EU legislation.²⁰ Most types of financial services providers and products benefit from the possibility of passporting within the EU according to the relevant sectorial legislation. Examples include the regulation of prospectuses for public offering of securities or admissions to trading, management and marketing of CIS in transferable securities (UCITS) and alternative investment funds (AIFs), provision of investment services, the activities of central counterparties and central securities depositories, as well as operating trading platforms.²¹ The passport mechanism introduced under the various sectorial legislation is based on the grant of a single authorization by the home Member State authority valid throughout the EU and the application of the principle of home Member State supervision.²² See Examples 19-21 below.

²⁰ The EU single market developed over time. In 1999, a single market for financial services was established. The EU has its own institutions, including the political institutions which represent either the heads of States or governments, the EU citizens, or the EU as a whole. In the field of financial services, the EU established in 2011 the European System of Financial Supervision (ESFS) in order to ensure financial stability through the consistent implementation of the single rulebook, foster supervisory cooperation and convergence, and ensure confidence in the financial system.

ESMA, as part of the ESFS along with other European Supervisory Authorities (ESAs), has the aim of improving coordination amongst securities regulators and fostering a harmonized implementation of community legislation in EU Member States. ESMA's work on securities legislation contributes to the development of a single rule book in Europe. ESMA also has certain direct supervisory responsibilities for certain entities with pan-European reach, such as credit rating agencies and trade repositories.

ESMA has been granted powers to foster the consistent implementation of EU law as well as to ensure the convergence of supervisory practices of national authorities such as through the use of peer reviews. It has also been granted powers of mediation and binding mediation, as well as the power to address instances of non-application or incorrect application of Union law amounting to a breach thereof.

²¹ In addition to these sectorial legislation, there are other pieces of legislation which underpin the functioning of the passporting system in the EU, while offering protections to investors. These include the Market Abuse Regulation and Market Abuse Directive which support the framework for ensuring investor protection and market integrity. ESMA has also established a MMoU related to exchange of information and cooperation among its members and, in certain circumstances, with ESMA itself in relation to the regulation of securities and financial markets in the EU and in the European Economic Area. In addition, investment firms are subject to capital and prudential requirements derived from the standards of the Basel Committee on Banking Supervision.

²² The principle is subject to limited exemptions. As discussed below in relation to the MiFID passport and the UCITS management company passport, the supervision and enforcement of compliance with conduct of business rules in the territory where the branch is located is entrusted to the host Member State authority.

Example 19: UCITS Passport

The UCITS Directive in the EU facilitates, inter alia, the cross-border marketing of funds which invest in transferable securities, allowing a UCITS authorized by its home Member State to be distributed to investors across the EU upon notification by the home to the host Member State competent authorities. The UCITS passport is based on the principle of home country supervision and the existence of harmonized rules concerning, inter alia, the authorization, supervision, structure and activities of UCITS, and the information that they are required to publish.

Example 20: Prospectus Passport

The Prospectus Directive in the EU introduces a single passport for issuers so that once a prospectus has been approved by the home country authority of the issuer in one Member State, it will be accepted throughout the EU for public offer and/or admission to trading on regulated markets. One of the objectives of this passport is to make it easier and less expensive for companies of all sizes to raise capital throughout the EU, while also ensuring that investors are protected by one set of regulations regarding the drafting, approval, and distribution of the prospectus. The passporting process is based on a notification procedure by the home to the host Member State competent authority, which includes a certificate of approval of the prospectus being issued by the former to the latter authority at the request of the issuer. The main responsibility for the approval of a prospectus and for taking actions in case of irregularities lies with the competent authority of the home Member State. ESMA also has a role in fostering a harmonized approach by providing guidance.

Issuers from non-EU/European Economic Area (EEA) states (“third countries”) may also benefit from the passport in case of an offer to the public or admission to trading on a regulated market in a Member State different from the home Member State of the issuer (as defined in the Directive). This process is described in Example 13.

Example 21

A. MiFID Passport

According to the Markets in Financial Instruments Directive (MiFID) in the EU, investment firms authorized in their home Member State may provide any or all of the investment services and activities for which they have received authorization throughout the EU by establishing branches or under the freedom to provide services, on the basis of the home country authorization and supervision. By way of derogation from this principle, the responsibility for enforcing certain rules in relation to business conducted through a branch within the territory where the branch is located is conferred on the host Member State competent authority.²³ The revised Markets in Financial Instruments Directive (MiFID 2) retains the principle of the EU passport described above.²⁴

²³ For firms operating with a MiFID passport, a Transaction Reporting Exchange Mechanism has been put in place, under which the intra-EU availability of data regarding trades is ensured. Moreover, under the framework of MiFID, the CESR, which was later replaced by ESMA, issued a “Protocol on the Supervision of Branches under MiFID” regarding the practical cooperation arrangements under MiFID for the supervision of business conducted through branches established in a Member State other than the home Member State of the investment management company. CESR issued a “Protocol on MIFID Passport notifications” to harmonize the communication procedure.

²⁴ MiFID does not regulate the provision of services by third country firms in the EU, which remains subject to national regimes and requirements. Firms authorized in accordance with such national regimes do not enjoy the freedom to provide services and the right of establishment in Member States other than the one where they are established. MiFIR introduces a harmonized third country equivalence regime for the access of third country investment firms to the EU when providing services to “professional clients per se” and eligible counterparties. The access is subject to a number of conditions, including an equivalence decision taken by the European Commission and the existence of cooperation arrangements between ESMA and the third country authority. Moreover, MiFID2 introduces a minimum common regulatory framework at Union level with respect to the authorization of third country firms, where a Member State requires that a third-country firm establish a branch to provide investment services, or to perform investment activities in its territory to retail clients or to those retail clients who request to be considered professionals. The conditions includes the existence of appropriate co-operation arrangements between the two countries.

Example 21 (Continued)

B. UCITS Management Company Passport

In addition to the UCITS passport, the UCITS Directive permits a UCITS management company authorized by its home Member State to provide the activities for which it has received authorization throughout the EU by establishing branches or under the freedom to provide services, subject to a notification procedure by the home to the host competent authorities (UCITS management company passport). This means that a UCITS is permitted to be managed by a management company authorized in a different Member State. In such case, the management company is required to comply with the rules of its home Member State which relate to the organization of the management company, as well as with the rules of the UCITS home Member State which relate to the constitution and functioning of the UCITS. To establish a branch, the management company is required to observe the conduct of business rules established by the management company's host Member State.

C. Alternative Investment Fund Managers Passport

The aforementioned UCITS Directive does not cover alternative investment funds (AIFs), which are directed at professional investors. The Directive on Alternative Investment Fund Managers (AIFMD) creates a harmonized regulatory structure for alternative investment fund management across the EU. It sets harmonized regulatory standards for the authorization, ongoing operation, and transparency of all the AIFMs within its scope, including those which have their registered office in a third country. As part of this, the Directive contains provisions for a 'passporting' system which allows the marketing of AIFs (EU and non-EU) to professional investors within the EU by authorized AIFMs (EU and non-EU). The Directive also gives passport rights to authorized EU or non-EU AIFMs in relation to the management of EU AIFs established in a different Member State, either directly or by establishing a branch.

In the EU, holders of an authorized “passportable” activity may either be able to provide their services in other Member States directly, under the freedom of providing services, or by establishing a branch. In order to benefit from passporting, the firm will have to notify its home Member State competent authority that it wishes to provide these services in a particular jurisdiction. The home competent authority will communicate to the host competent authority the passport (by using standardized templates). The possibility for an authorized entity to use its passport extends to the three EEA States, which have agreed to enact legislation similar to that passed in the EU and to adapt the EEA Agreement accordingly, although not all of the relevant legislation has been incorporated into the EEA Agreement yet (the AIFMD being one example).

In the EU, the effectiveness of the passporting arrangement is ensured by substantive implementation of common rules across the jurisdictions involved. There are limitations in the ability of host regulators to prevent or control access to their markets by firms that hold passporting rights in other jurisdictions, or to challenge authorization given by the home Member

State. Often host regulators are expected to contact the home regulator in the first instance in the case of concerns over the conduct or compliance of firms operating in their markets. In other cases where the home and host regulators have agreed on how supervisory tasks are shared, the host regulator may take supervisory action directly. Hence, effective cooperation arrangements and dispute resolution processes will remain important.

5.4 Passporting in Canada

In Canada, members of the Canadian Securities Administrators, other than Ontario, adopted a Multilateral Instrument 11-102 Passport System (MI 11-102). MI 11-102, in effect, provides that a market participant can obtain receipt for a prospectus, seek exemptive relief, or may become registered by generally dealing only with its principal regulator (i.e. the regulator in the Canadian jurisdiction in which its head office is located or with which it otherwise has the most significant connection).

Example 22: Passporting in Canada

The Multilateral Instrument 11-102 Passport System (MI 11-102) in Canada described above provides market participants with a single window and streamlined access to Canada's capital markets:

- Issuers who file a prospectus in multiple Canadian jurisdictions:
 - comply with harmonized prospectus disclosure requirements;
 - are subject to a prospectus review by only one securities regulator, namely, their principal regulator;
 - obtain a receipt for the prospectus from their principal regulator; and
 - have their prospectus automatically deemed to be issued in each of the other relevant jurisdictions following the decision by their principal regulator.
- Market participants requiring discretionary exemptions in multiple Canadian jurisdictions:
 - generally need only file an application in their home jurisdiction;
 - have their application reviewed by their principal regulator;
 - obtain a decision from their principal regulator; and
 - are automatically exempted from equivalent provisions in each of the other relevant jurisdictions following the decision by their principal regulator.
- Firms or individuals that are registered in a category as dealer or adviser in their home jurisdiction and apply for registration in the same category in another passport jurisdiction:
 - make a single submission;

- have the submission reviewed by their principal regulator; and
- are automatically registered in the other jurisdiction if the firm or individual is a member of any self-regulatory organization required for that category.
- Credit rating organizations that wish to be designated as a “designated rating organization” in multiple jurisdictions so that their ratings may be relied upon for securities regulatory purposes:
 - make a single application;
 - have their application reviewed by their principal regulator; and
 - are automatically deemed to be designated in each of the other relevant jurisdictions following the decision by the principal regulator.

In order to implement MI 11-102, the participating provinces and territories adopted specific rule-making powers in their respective statutes. Moreover, a key foundation for the passport system is a set of nationally harmonized regulatory requirements that are consistently interpreted and applied throughout Canada. Although Ontario has not adopted MI 11-102, interfaces have been implemented that provide for decisions made by the Ontario Securities Commission to apply automatically in the jurisdictions of the other provinces and territories.

5.5 Challenges to Passporting

Challenges in relation to passporting include the following:

- Passporting may be difficult to implement outside of an integrated framework of economies such as the EU/EEA, because the standards to be applied require the agreement of all participating states, usually in the form of a treaty or a convention;
- the passporting agreement must be sufficiently granular for participating states to implement the system; and
- In an integrated framework, there is a need for a mechanism to share information among regulators, in particular in the field of supervision, which may be costly to put in place depending on the level of integration.

6. Considerations when using Cross-Border Regulatory Tools

Table 1 on the next page sets out general considerations that may need to be taken into account by regulators when using the cross-border regulatory tools identified in the Toolkit. Table 2 refers to the potential costs and benefits of using these different tools. The tables serve as examples only since the choice of tools for any specific cross-border activity and how they are applied are primarily a function of different approaches under the laws and regulations of different jurisdictions, as well as the type of cross-border activities involved.

Table 1. General Considerations when using Cross-Border Regulatory Tools

<p>1. Type of cross-border securities market activity and associated risks</p>
<p>In any situation, the type of market, product, service, or entity being regulated is critical in determining which tool to utilize and how it might be applied. Depending on the activity involved, the risk posed to the domestic market varies. A more cautious approach may be used where a particular activity could threaten financial stability or harm retail investors.</p> <p>For example, the operation of a cross-border clearing facility could involve issues of financial stability, while the cross-border offering of a managed investment product may involve mainly investor protection issues. If the relevant activity involves sophisticated or institutional investors, rather than retail investors, regulatory obligations may be reduced, for example, by providing certain exemptions, in recognition of the differences between the investors' sophistication. Some types of activity may lend themselves to particular regulatory reliefs, while others, for various reasons, including systemic importance or inherent risk, may continue to be subject to the full array of applicable host jurisdiction regulation or, in some cases, even restrictions on the location of operations.</p>
<p>2. Access to overseas data and documents</p>
<p>Regulators may experience difficulty obtaining access to data and documents due to barriers such as data protection laws and regulations, privacy laws and regulations, client confidentiality laws and regulations, or legal professional privilege. These barriers may preclude the sharing of relevant information with other regulators, including key supervisory information, and will limit the amount of reliance that can be placed on the foreign regulator.</p>
<p>3. Robustness and effectiveness of the foreign regulatory regime</p>
<p>Another factor that could play a part in determining the choice of a cross-border regulatory tool is the content and effectiveness of relevant foreign regulatory regimes. Reliance on a foreign regulatory regime is more likely if the other regime is able to reliably achieve similar regulatory outcomes and objectives as the domestic regime.</p>

Table 2. Cost-benefit considerations relating to Cross-Border Regulatory Tools

	Potential benefits to regulators and securities markets	Potential costs to regulators and securities markets
National Treatment	<ul style="list-style-type: none"> • Enables cost-effective use of finite regulatory resources, which can focus on other regulatory imperatives and avoid expending time and resources in conducting and maintaining assessments of foreign regulatory regimes; • Eliminates the need to make judgments regarding foreign regulatory regimes; • Promotes fairness and creates a level-playing field for all market participants by placing domestic and foreign entities on the same footing, and decreases the risk of regulatory arbitrage; • Promotes transparency in the regulatory process for all market participants accessing the domestic market as they are aware from the outset of the specific requirements necessary to register and operate within the applicable jurisdiction; and • Ensures consistent application of enforcement tools and protections provided to investors and other market participants in the domestic market. 	<ul style="list-style-type: none"> • In the absence of full cooperation with the foreign regulator(s) that also has oversight of the given entity or affiliated entities, the domestic regulator may not readily identify governance and other problems of the foreign supervised entity; • May require licensing / registration and supervision of the same activity by two or more supervisory authorities; and • May discourage cross-border activity by certain market participants, as foreign entities may not wish to conduct business in a jurisdiction which applies national treatment due to the cost of compliance with the different standards and reporting requirements of the host regulator.
Recognition	<ul style="list-style-type: none"> • Potential cost savings in the supervision program, due to reliance on foreign regulators for certain aspects of supervision; • Strengthens regulatory ties once unilateral or mutual 	<ul style="list-style-type: none"> • Bilateral assessments of foreign regulatory regimes can be time consuming, resource-intensive, and complex undertakings. When a number of such assessments have to be completed within a limited

	<p>recognition is established and operates smoothly. This may deepen cooperative efforts between the two (or more) regulators;</p> <ul style="list-style-type: none"> • Promotes understanding of foreign regulatory regimes, potentially allowing for shared best practice; • Allows for increased competition in the domestic market by facilitating entry by foreign entities; and • Operating on a cross-border basis under mutual recognition may involve lower costs for market participants than operating under unilateral recognition. Mutual recognition involves greater reliance on the relevant foreign regulator, and closer cooperation between regulators may reduce the need for direct contact between the foreign entity and the relevant regulator in the host jurisdiction. 	<p>time, some market participants (e.g. those from less developed markets) may be affected as evaluations of larger and more sophisticated markets tend to take priority;</p> <ul style="list-style-type: none"> • Lack of consensus on the appropriate criteria to determine when a domestic regulator may rely on foreign regulatory regimes. Even if the rules as written are identical in both jurisdictions, there is a need to assess the adequacy of the enforcement and supervision programs associated with such rules; • Possible misunderstanding or lack of clarity on whether the domestic or foreign regulator is responsible for oversight and the measures which the responsible regulator is authorized to impose in cases of violations of laws and regulations; • Supervisory information sharing arrangements, which are often bilateral and case-by-case in nature, can require more resource-intensive negotiations as such arrangements are still in development among certain regulators; and • Potential difficulties in establishing a dispute resolution mechanism for investors who have purchased cross-border financial products or services could have an adverse impact on domestic investor protection.
Passporting	<ul style="list-style-type: none"> • Prevents duplication of supervisory work as it provides for shared responsibilities among national regulators and, in the context of Europe, ESMA; • Enhances convergence in supervisory practices and 	<ul style="list-style-type: none"> • May be difficult to implement outside of an integrated economic framework or political structure because the standards to be applied require the agreement of all participating states, usually in the

	<p>enforcement standards among states participating in the passporting agreement and decreases risks of regulatory arbitrage. This can be beneficial from the perspective of investor protection, market integrity, reduction of systemic risk, crime and misconduct, and effectiveness of anti-money laundering and counter-terrorist financing measures;</p> <ul style="list-style-type: none"> • Encourages fair and equal treatment of all market participants, as passporting creates a level playing field for those able to comply; and • Allows for increased competition due to efficient market access. 	<p>form of a treaty or a convention;</p> <ul style="list-style-type: none"> • Effective passporting regimes may also require a central governing body to oversee participating states, provide implementation guidance, and ensure harmonized supervision practices. This is the case for the only currently existing example of passporting under a treaty in the EU and may be difficult to create in other geographical contexts; • Passporting agreement must be sufficiently granular for participating states to implement the system; and • In an integrated framework, it may be costly to put in place a system to share information among regulators for supervisory purposes depending on the level of integration.
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7. Feedback from Consultation Respondents

The Task Force sought additional public comments on the Consultation Report about the different regulatory approaches to cross-border securities market activities set out in the report. These include, among other things, the cross-border regulatory tools themselves (i.e. national treatment, recognition, and passporting), challenges from regulators' and market participants' perspectives, as well as IOSCO's role in cross-border regulation. It was also mentioned in the Consultation Report that findings from this exercise may be relevant to the IOSCO 2020 Working Group, which is tasked to identify and develop IOSCO's priorities over the next five years.

The following is a broad overview of key observations made in consultation responses²⁵:

- Most feedback from financial industry respondents made clear that the industry is concerned about outcomes it believes stem from insufficiently coordinated regulation of cross-border financial activity. These include:
 - (i) challenges arising from differences between multiple sets of conflicting rules (i.e. the impossibility of complying with two sets of conflicting requirements governing a single entity, activity, or transaction);
 - (ii) problems arising from regulatory arbitrage and the implications for competition between jurisdictions; and
 - (iii) circumstances which, whilst not involving conflicts, can lead to operational difficulties, increased costs and workload because of the need to comply with multiple sets of differing regulatory requirements covering the same entity, activity, or transaction (e.g. different reporting requirements leading to higher compliance or transaction costs).

Adequate legal authority for national regulators to act was seen as an essential element to enable them to work on a collaborative basis when dealing with cross-border issues. In the absence of such authority, regulators often have to rely on ad-hoc solutions within their legal competencies that may not allow for elements of reliance on foreign regulators.

- There was clear support among the industry respondents for the use of “recognition” in most circumstances although overall there were relatively few comments on the cross-border regulatory tools themselves.
- Many comments addressed IOSCO's potential role going forward. These respondents broadly advocated for IOSCO playing a larger role to facilitate cross-border regulation, which they believe is crucial to integrated global capital markets, financial stability, and sustainable economic growth. However, the respondents also recognized the difficulty of enabling IOSCO to act with authority given the primacy of local law and regulation, when compared to IOSCO's lack of any legal authority or sanctioning powers.

²⁵ For the avoidance of doubt, the recommendations summarized in Section 7 are those of one or more of the consultation respondents. They are not endorsed by the Task Force or IOSCO.

- A number of specific suggestions were made about how IOSCO could potentially enhance engagement with member regulators. These include:
 - Establish a dedicated IOSCO committee or group to facilitate early discussion of specific cross-border issues among regulators before jurisdictions move to introduce new laws or rules.
 - Create a central hub to facilitate the sharing of information on cross-border impact analyses, regulatory frameworks for selected areas, and recognition decisions made by jurisdictions.
 - Develop a multilateral MoU on supervisory cooperation for IOSCO members.
 - On the timing of rule-making, ensure that IOSCO principles and standards are agreed ahead of national regulation, where possible.²⁶
 - Develop the granularity or detail of IOSCO principles and standards to facilitate reliance on foreign regulatory regimes which are aligned with those principles and standards. Also, ensure that the design of standards takes into account the impact on emerging markets and the principle of proportionality.
 - The IOSCO Assessment Committee should undertake more frequent and earlier peer reviews and make its findings public.
 - The development of sector-specific and more generic guidance on the use of cross-border regulatory tools to facilitate coordination of cross-border regulation.
 - Prioritize specific sectors where there is a clear need to address cross-border inconsistencies and where the regulatory mandates of individual IOSCO members are sufficiently aligned.

- Many commenters addressed IOSCO's further potential engagement with policy-makers, other international regulatory organizations, and the financial industry, and encouraged IOSCO to:
 - engage early with national policy-makers at the legislative stage to provide information on the content and implementation of international principles and standards, as well as the importance of effective regulatory coordination,
 - engage more closely with other international regulatory organizations such as the FSB to ensure that policy and objectives are better aligned. Since cross-border issues are not exclusive to securities markets but affect the whole financial system, some respondents believed that discussion on coordination should involve financial stability, prudential, and market regulators where appropriate, and
 - collaborate more with the financial industry.

²⁶ International efforts led by IOSCO include benchmarks (<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf>), margin for non-centrally cleared OTC derivatives (<http://www.bis.org/bcbs/publ/d317.pdf>), and the Principles for Financial Market Infrastructures (www.bis.org/cpmi/publ/d101a.pdf).

All comments have been made available publicly at:

https://www.iosco.org/about/?subSection=display_committee&cmtID=23&subSection1=2014-11-consultation-report-written-submissions, unless anonymity was specifically requested.

8. Task Force's Response to the Consultation Feedback and Conclusions on Cross-Border Regulation

A diverse cross section of financial industry stakeholders responded to the work of the Task Force. Other stakeholders include national securities, banking and other market regulators, national policy-makers, and supra-national institutions such as the G20 and FSB. Members of the Task Force have considered carefully the contributions of all stakeholders in finalizing this report.

8.1 The Cross-Border Regulatory Toolkit

As detailed in Section 1.2, the first key mandate of the Task Force is to develop a Toolkit of cross-border regulatory options. This has been fulfilled through the survey of IOSCO member regulators to identify and study the different approaches used *in practice* to regulate cross-border financial activities. In doing so, the Task Force has also gained a better understanding of the challenges regulators face, such as the lack of legal certainty and an early warning system as to whether a national regulator's rules may have a cross-border element, a one-size-fits-all application of regulatory reforms initiated in one jurisdiction which may be inappropriate for others, and difficulties in regulatory coordination. Generally, cross-border regulatory challenges may arise from:

- **different philosophies and approaches to international engagement in balancing market access objectives and the desirability of lowering regulatory burdens in the global financial system, while also protecting investors, maintaining market quality, and reducing systemic risk;**
- **different financial market characteristics and stages of development; and**
- **reservations on the part of regulators to outsource regulation to a foreign jurisdiction where, if there were subsequent regulatory failure by the foreign regulator, this could negatively impact the domestic jurisdiction.**

Given these challenges and recognizing the differences in approaches, legal authority, policy objectives and national priorities that impact cross-border regulatory cooperation, Task Force members believe that endowing national regulators with the legal authority to deal with each other more effectively (e.g. through specific information gateways and different types of recognition or substituted compliance regimes) is important to foster more effective cross-border regulatory cooperation and coordination. In short, cross-border regulation, including the use of the Toolkit, is most effective when aligned with domestic legal and regulatory systems and national policies.

In the long run, the Task Force believes that the Toolkit and the considerations on the application of the tools covered in Sections 3 to 6 should be a useful resource for regulators and policy-makers to understand and evaluate existing approaches to cross-border regulation, and to aid them in considering the future development and implementation of cross-border approaches. In addition, the Toolkit has also provided a common language for discussing cross-border issues, which was previously lacking.

8.2 Development of Guidance on the Use of the Toolkit

Section 1.2 also referred to the second key mandate of the Task Force, which is to lay a foundation for the development of guidance on the coordinated use of the Toolkit, if appropriate. Accordingly, members of the Task Force have discussed the appropriateness of doing so, taking into careful consideration the views of surveyed regulators and public consultation comments.

The fact that the Toolkit is a reflection primarily of local law and regulation makes it difficult for a multilateral, membership body such as IOSCO to provide mandatory or uniform guidance on how to use each tool in different situations. Further, the existing global regulatory architecture is not yet conducive, in many cases, to the more centralized and multilateral approach for regulating cross-border financial activity that is favored by many consultation respondents. The Task Force is aware of the apparent disparity between the aspiration of many consultation respondents for a multilateral process centered on IOSCO, and what it sees as the current reality of cross-border engagement, conditioned in large part by differences between “hard” national laws and “soft” international standards, as well as an international regulatory architecture which is not at present anchored in international public law. The practical reality is that, with a few exceptions, regulators are ultimately subject and accountable to domestic stakeholders and bounded by national laws, mandates and national priorities.

In addition, the sheer diversity of participants and activities in securities markets (ranging from different types of financial institutions, investors, market platforms, and infrastructures, which interact in complex ways) compared to the more uniform institution-specific banking and insurance sectors make it harder to address cross-border issues on a multilateral level. This heterogeneity could make it difficult to reach comprehensive solutions at the global level, and attempting to do so may, in some cases, be counter-productive compared to the unilateral and bilateral approaches described in the Toolkit. In fact, the Task Force survey has shown that significant progress has been made by securities markets regulators in a number of areas – most notably OTC derivatives – in using the bilateral approaches described in the Toolkit as the basis for formal engagement aimed at reducing conflicts and inefficiencies arising from different jurisdictional-level regulations applying to cross-border entities and transactions. In addition to consensus building around international standards and peer pressure through implementation monitoring²⁷, the Task Force believes that these bilateral approaches are likely to make the greatest practical difference to the regulation of cross-border financial markets.

The Task Force therefore considers that the general direction of travel for cross-border engagement is clear. The emphasis is towards more engagement via recognition to solve cross-border overlaps, gaps and inconsistencies through a combination of more granular international standards (where appropriate) in specific areas implemented at a jurisdictional level, and an increasing emphasis on determining when, and under what circumstances, it may be appropriate to recognize foreign laws and regulations as a sufficient substitute or equivalent for domestic laws and regulations. The Task Force recognizes that at this stage, increased engagement on

²⁷ This is pursued by the IOSCO Assessment Committee.

recognition is mostly bilateral, though occasionally multilateral²⁸. Multilateral engagement may develop further as major markets grow around the world.

8.3 Next Steps

As mentioned in Section 1.2, the Task Force has also taken into account, among other things, whether IOSCO should facilitate the development and implementation of cross-border regulatory tools. The Task Force recognizes that there is overall support for IOSCO to play a more constructive role on this front among surveyed regulators and consultation respondents. Having balanced these views with the fact that IOSCO is an international, membership body without legal or binding authority over its members, the Task Force has agreed on the next steps below. These next steps are intended to assist members by strengthening their consideration of cross-border implications at the policy-making stage, and to reinforce the general direction of travel for cross-border engagement:

- IOSCO should consider how to be more explicit in incorporating cross-border issues into its policy work. Specifically, policy committees, regional committees, and task forces of IOSCO should highlight to the Board the cross-border impact of any proposed project specification in the relevant subject areas. Meetings of these committees and task forces should also add a standing agenda item to consider the cross-border impact of their ongoing work. Some factors which could be considered include, but are not limited to, the following:
 - Whether the topics that they are discussing have an impact on cross-border activities;
 - Whether there should be more multilateral cooperation prior to the domestic policy-making stage;
 - How the regulatory timing will work among jurisdictions;
 - Whether there could be unintended consequences of policy work and whether there is a reason to communicate with the FSB or other bodies involved with international regulatory work; and
 - The impact on emerging markets.
- IOSCO should consider organizing workshops for regulators on the process and considerations for assessing foreign regulatory regimes under unilateral and mutual recognition, or to foster better understanding of other complex aspects of cross-border regulation. These workshops would provide members with a platform to share information and experiences on, for example, how to conduct assessments to encourage a broader network of bilateral agreements.

²⁸ Examples of multilateral engagements include, but are not limited to, the IOSCO MMoU mentioned in Section 1.1, MILA as illustrated in Example 7, and the passporting arrangements described in Section 5 of this report.

- IOSCO should consider setting up an information repository of supervisory cooperation MoUs entered into by its members to assist other members in developing bilateral arrangements, which may foster new, multilateral approaches in some areas.
- IOSCO should consider setting up an information repository for recognition decisions, including the analyses that informed these decisions. This builds on the process and considerations for assessing foreign regulatory regimes under unilateral and mutual recognition set out in Section 4.4.

The above next steps were deliberated and generally supported by the IOSCO Board. The Task Force recognizes the importance of keeping these next steps under review. In addition, there is consensus amongst Task Force members that IOSCO should have more engagement with the G20 and FSB to create greater awareness of the key issues and challenges faced by IOSCO members on cross-border regulation, including the need for more refined thinking on concepts of “deference”²⁹.

Promoting coordinated and consistent regulatory approaches continues to be a work in progress and cross-border regulatory techniques will continue to evolve. The Task Force is confident that the regulatory Toolkit and the findings in this report will serve as a useful resource for IOSCO members. Inputs from the consultation will continue to be of value as IOSCO members, both collectively and individually, continue to address difficult cross-border regulatory issues.

The Task Force considers that increasing cross-border engagement will in time result in outcomes which are closer to those desired by many who encourage predominantly multilateral coordination, harmonization and convergence of cross-border regulation – although it is clear that cross-border differences will never (and arguably should not) be eliminated altogether.

²⁹ Please refer to the G20 Leaders’ Declaration – Saint Petersburg 2013 at https://g20.org/wp-content/uploads/2014/12/Saint_Petersburg_Declaration_ENG_0.pdf.

Appendix 1

IOSCO's Previous Work relevant to Cross-Border Regulation

In addition to the IOSCO MMoU and final report on the Principles Regarding Cross-Border Supervisory Cooperation³⁰ as mentioned in Section 1.1, IOSCO has focused on various areas of cross-border securities-related activities and has taken the following actions:

- February 2014: The IOSCO Board issued the revised report on Joint Cross-Border Investigations and Related Proceedings³¹ to enhance coordination among regulators in carrying out enforcement actions. The report addresses some of the issues that regulators should anticipate when contemplating joint investigations. It also identifies issues by the stage of investigation at which they will become relevant.
- September 2013: IOSCO adopted measures to encourage non-signatory members to sign the IOSCO MMoU.³²
- April 2007: The Technical Committee of IOSCO published the final report on Multi-jurisdictional Information Sharing for Market Oversight,³³ which provides guidance to enhance the supervision of markets and trading in member jurisdictions through the exchange of information on a routine or ad hoc basis.
- March 2007: The Technical Committee of IOSCO published the final report on International Disclosure Principles for Cross-Border Offerings and Listings of Debt Securities by Foreign Issuers,³⁴ which aims to facilitate a better understanding of issues that should be considered in developing disclosure requirements for debt securities as a means of enhancing investor protection.
- March 2005: The Emerging Markets Committee of IOSCO published the Report on Cross-Border Activities of Market Intermediaries in Emerging Markets.³⁵ This report discusses the international experience of developed jurisdictions, including factors that determine the regulation of a foreign intermediary, information sharing frameworks, and regulatory approaches to foreign versus domestic intermediaries. It also analyzes the regulatory practices of cross-border trading in member jurisdictions of the Emerging Markets

³⁰ See footnote 3.

³¹ *Joint Cross-Border Investigations and Related Proceedings*, IOSCO, February 2014, available at https://www.iosco.org/members_area/file.cfm?file=members-area\documents\pdf\Joint-Cross-Border-Investigations-and-Related-Proceedings-pdf.

³² IOSCO media release on reinforcing standard on cross-border cooperation, 18 September 2013, available at <http://www.iosco.org/news/pdf/IOSCONEWS299.pdf>.

³³ *Multi-jurisdictional Information Sharing for Market Oversight*, IOSCO, April 2007, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD248.pdf>.

³⁴ *International Disclosure Principles for Cross-Border Offerings and Listings of Debt Securities by Foreign Issuers*, IOSCO, March 2007, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD242.pdf>.

³⁵ *Report on Cross-Border Activities of Market Intermediaries in Emerging Markets*, IOSCO, March 2005, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD193.pdf>.

Committee and provides recommendations for emerging markets in regulation of cross-border trading.

- February 2004: The report on the Regulation of Remote Cross-Border Financial Intermediaries³⁶ which, based on the results of a survey conducted amongst the members of the Standing Committee on the Regulation of Financial Intermediaries, identifies and discusses the factors that countries consider in determining how to regulate cross-border service providers that do not have a physical presence within their borders.
- October 2002: The Technical Committee of IOSCO published a report titled Investment Management: Areas of Regulatory Concern and Risk Assessment Methods.³⁷ The report assessed issues of regulatory concern regarding CIS in the hope that international cooperation could be improved if regulators formed a common view of the risks inherent in the CIS business.
- September 1998: IOSCO published the International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers,³⁸ which enhances the comparability of information provided by multinational issuers when conducting a cross-border public offering or listing and ensures a high level of investor protection. These standards are broadly accepted as a disclosure benchmark, and the equity disclosure regimes of many IOSCO members are based on these standards.
- October 1994: IOSCO published the Report on Issues in the Regulation of Cross-Border Proprietary Screen-Based Trading Systems,³⁹ the objective of which was to identify and explore the range of issues relevant to the regulation of, and to discuss the regulatory issues relating to, the cross-border operation of such systems.

Many other IOSCO reports and initiatives also contain elements related to cross-border regulation and activities.

³⁶ *Regulation of Remote Cross-Border Financial Intermediaries*, IOSCO, February 2004, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD162.pdf>.

³⁷ *Investment Management: Areas of Regulatory Concern and Risk Assessment Methods*, IOSCO, October 2002, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD136.pdf>.

³⁸ *International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers*, IOSCO, September 1998, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD81.pdf>.

³⁹ *Report on Issues in the Regulation of Cross-Border Proprietary Screen-Based Trading Systems*, IOSCO, October 1994, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD42.pdf>.

Appendix 2

List of Task Force Members

Chair:	Mr. Ashley Ian Alder, Chief Executive Officer Securities and Futures Commission (Hong Kong)
Vice-Chair:	Prof. Anne Héritier Lachat, Chair of the Board of Directors Financial Market Supervisory Authority (Switzerland)
Members:	Australian Securities and Investments Commission (Australia) Mr. Steven Bardy
	Comissão de Valores Mobiliários (Brazil) Mr. Eduardo Manhães Ribeiro Gomes
	British Columbia Securities Commission (British Columbia) Mr. Michael Brady
	Financial Supervisory Commission (Chinese Taipei) Ms. Yolanda Wu
	European Securities and Markets Authority (European Union) Mr. Patrick Starkman
	Autorité des marchés financiers (France) Ms. Françoise Buisson
	Bundesanstalt für Finanzdienstleistungsaufsicht (Germany) Mr. Philipp Sudeck
	Securities and Futures Commission (Hong Kong) Ms. Christine Kung
	Securities and Exchange Board of India (India) Mr. Amarjeet Singh
	Commissione Nazionale per le Società e la Borsa (Italy) Ms. Nicoletta Giusto
	Financial Services Agency (Japan) Mr. Akiyoshi Kitamura
	Securities Commission (Malaysia) Ms. Foo Lee Mei
	Comisión Nacional Bancaria y de Valores (Mexico) Mr. Jose Loyola Trujillo
	Authority for the Financial Markets (Netherlands) Mr. Niels de Kraker
	Ontario Securities Commission Mr. Jean-Paul Bureaud

(Ontario, Canada)	
Autorité des marchés financiers (Québec, Canada)	Mr. Jean Lorrain
Monetary Authority of Singapore (Singapore)	Mr. Thomas Yee
Comisión Nacional del Mercado de Valores (Spain)	Mr. Santiago Yraola
Financial Market Supervisory Authority (Switzerland)	Mr. Rupert Schaefer
Financial Conduct Authority (United Kingdom)	Mr. Nick Miller
Commodity Futures Trading Commission (United States)	Mr. Jeffrey Bandman
Securities and Exchange Commission (United States)	Mr. Paul Leder

Appendix 3

List of Respondents to the Task Force Survey

- Comisión Nacional de Valores (Argentina)
- Australian Securities and Investments Commission (Australia)
- Comissão de Valores Mobiliários (Brazil)
- Superintendencia de Valores y Seguros (Chile)
- Financial Supervisory Commission (Chinese Taipei)
- Superintendencia Financiera de Colombia (Colombia)
- European Securities and Markets Authority (European Union)
- Autorité des marchés financiers (France)
- Bundesanstalt für Finanzdienstleistungsaufsicht (Germany)
- Securities and Futures Commission (Hong Kong)
- Magyar Nemzeti Bank (Hungary)
- Securities and Exchange Board of India (India)
- Financial Services Agency (Japan)
- Securities Commission (Malaysia)
- Comisión Nacional Bancaria y de Valores (Mexico)
- Conseil déontologique des valeurs mobilières (Morocco)
- Authority for the Financial Markets (The Netherlands)
- Ontario Securities Commission (Ontario, Canada)
- Superintendencia del Mercado de Valores (Panama)
- Polish Financial Supervision Authority (Poland)
- Comissão do Mercado de Valores Mobiliários (Portugal)
- Autorité des marchés financiers (Québec, Canada)
- Financial Supervisory Authority (Romania)
- Securities Commission (Republic of Serbia)
- Monetary Authority of Singapore (Singapore)
- Securities Market Agency/Agencija Za Trg Vrednostnih Papirjev (Slovenia)
- Financial Services Board (South Africa)
- Financial Supervisory Service (Republic of Korea)
- Comisión Nacional del Mercado de Valores (Spain)
- Financial Market Supervisory Authority (Switzerland)
- Trinidad and Tobago Securities and Exchange Commission (Trinidad and Tobago)
- Conseil du marché financier (Tunisia)
- Capital Markets Board (Turkey)
- Financial Conduct Authority (United Kingdom)
- Securities and Commodities Authority (United Arab Emirates)
- Commodity Futures Trading Commission (United States)
- Securities and Exchange Commission (United States)

Appendix 4

List of Respondents to the Task Force Consultation Report

Regulators

- Dubai Financial Services Authority (DFSA)
- European Securities and Markets Authority (ESMA)
- Polish Financial Supervision Authority (PFSA)

Industry representatives and related organizations

- Alternative Investment Management Association (AIMA)
- Associação Brasileira das Entidades dos Mercados Financeiro e de Capitais (ANBIMA)
- Association Française de la Gestion Financière (AFG)
- Association Nationale des Sociétés par Actions (ANSA)
- Association of the Luxembourg Fund Industry (ALFI)
- Better Markets
- CME Group
- Coalition for Derivatives End-Users
- Cross-Border Regulation Forum (CBRF)
- Depository Trust & Clearing Corporation (DTCC)
- Deutsche Bank
- European Asset and Fund Management Association (EFAMA)
- European Association of CCP Clearing Houses (EACH)
- Financial Markets Law Committee (FMLC)
- Global Association of Central Counterparties (CCP12)
- ICI Global
- Institute for Agriculture and Trade Policy (IATP)
- International Banking Federation (IBFed)
- International Regulatory Strategy Group (IRSG)
- International Swaps and Derivatives Association (ISDA)
- International Valuation Standards Council (IVSC)
- Japan Securities Dealers Association (JSDA)
- LCH.Clearnet
- Moody's Investors Service
- Standard Bank of South Africa
- Swiss Bankers Association (SBA)
- Swiss Finance Council (SFC)
- Thomas Murray Data Services
- World Federation of Exchanges (WFE)

Academics

- Dr. Roger Silvers, Assistant Professor of Accounting, University of Utah, David Eccles School of Business