

**Implementation Report:
G20/FSB Recommendations related to Securities
Markets**



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I. Introduction

Since 2010, the Financial Stability Board's (FSB's) Implementation Monitoring Network (IMN) has conducted an annual survey of FSB jurisdictions, asking them to self-report the status of implementation of G20/FSB post-crisis recommendations that are in areas not designated as priority under the FSB *Coordination Framework for Implementation Monitoring* (CFIM). Each year, the IMN has published these survey responses at the time of G20 Summits, with the main findings and issues incorporated in G20 reporting.¹

A number of these recommendations relate to securities markets. As the global standard setting body for securities regulation, IOSCO has worked with the FSB on previous IMN surveys. For the 2016 survey, IOSCO coordinated with the FSB to undertake the analysis for recommendations that relate to securities markets, and followed up with IOSCO members in FSB jurisdictions given that they have jurisdiction in most of these areas. IOSCO analysed the responses in relation to securities-related recommendations in the following five reform areas:

- Hedge funds;
- Structured products and securitisation;
- Oversight of credit rating agencies (CRAs);
- Measures to safeguard the efficiency and integrity of markets; and
- Supervision and regulation of commodity derivative markets.

A high-level summary of jurisdictions' implementation status in other (non-priority) areas was published by the FSB following the G20 Leaders' Summit in September.²

This report provides additional insights and analysis of the status of implementation of reforms in each of the above areas based on self-reporting by national authorities in FSB jurisdictions. The responses of these authorities were scrutinised by a review team drawn from members of the IOSCO Assessment Committee, comprising staff from the Australian Securities & Investments Commission (ASIC) and the IOSCO Secretariat, which followed up bilaterally with IOSCO members in FSB jurisdictions to clarify responses and request additional information.

While an effort has been made to ensure completeness and uniformity in reporting, neither the IMN nor IOSCO have undertaken an evaluation of responses to independently verify the status or assess the effectiveness of implementation. A number of these areas are complex and summaries of their implementation status should be treated with caution. Given this, the survey responses do not allow straightforward comparisons between jurisdictions. The status of implementation depicted and the conclusions drawn reflect these limitations.

¹ See <http://www.fsb.org/what-we-do/implementation-monitoring/other-areas/>.

² See *Implementation and Effects of the G20 Financial Regulatory Reforms*, available at <http://www.fsb.org/2016/08/implementation-and-effects-of-the-g20-financial-regulatory-reforms-2/>.

FSB and IOSCO will continue to work together to improve the IMN survey. IOSCO's analysis is designed to help provide further clarity on the recommendations and what is expected of IOSCO members. Given the focus of the post-crisis recommendations on strengthening financial stability, this exercise is consistent with IOSCO's core objective of reducing systemic risk, in addition to the other two core objectives of investor protection and ensuring fair, efficient and transparent markets.

II. Executive Summary

Most responding jurisdictions have taken steps to implement the G20/FSB recommendations and IOSCO guidance in each reform area.³ Implementation is most advanced in relation to hedge funds, structured products and securitisation, and the oversight of CRAs, with most jurisdictions having implemented reforms by 2014.

On **hedge funds**, all responding jurisdictions which permit or have hedge funds reported implementation of the G20 and IOSCO recommendations relating to registration, disclosure and oversight of hedge funds, with almost all reporting implementation of recommendations in relation to international information and enhancing counterparty risk management.

On **structured products and securitisation**, most responding jurisdictions report the introduction of measures to strengthen supervisory requirements or best practices for investment in structured products and to enhance disclosure of securitised products as recommended by the Financial Stability Forum (now the FSB) in 2008 and IOSCO in a number of reports from 2009 onwards.

On **CRAs**, all responding jurisdictions have implemented G20/FSB recommendations to require registration and provide appropriate oversight of FSB jurisdictions in line with IOSCO's *Code of Conduct Fundamentals for Credit Ratings Agencies*.⁴

Implementation of G20/FSB recommendations in other areas is still progressing. A number of responding jurisdictions are progressing implementation of measures to **safeguard the integrity and efficiency of financial markets** and, where relevant, in relation to the **regulation of commodity derivatives markets**.

³ See FSB Report *Implementation of G20/FSB financial reforms in other (non-priority) areas* (2016) available at <http://www.fsb.org/wp-content/uploads/2016-IMN-summary-of-implementation-progress.pdf>.

⁴ First published in December 2004 (Revised May 2008, revised March 2015), available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD482.pdf>.

III. Discussion of Implementation Progress in Reform Areas

A. Hedge Funds

(1) G20 Recommendation

In their London 2009 *Declaration on Strengthening the Financial System*, the G20 Leaders recommended to expand the scope of regulation and oversight to cover hedge funds as follows:

‘Hedge funds or their managers will be *registered and will be required to disclose appropriate information on an ongoing basis to supervisors or regulators*, including on their leverage, necessary for assessment of the systemic risks that they pose individually or collectively. Where appropriate, registration should be subject to a minimum size. They will be subject to oversight to ensure that they have adequate risk management. We ask the FSB to *develop mechanisms for cooperation and information sharing* between relevant authorities in order to ensure that effective oversight is maintained where a fund is located in a different jurisdiction from the manager. We will, cooperating through the FSB, develop measures that implement these principles by the end of 2009.

...

Supervisors should require that *institutions which have hedge funds as their counterparties have effective risk management*. This should include mechanisms to monitor the funds’ leverage and set limits for single counterparty exposures.’⁵

In Seoul in 2010, the G20 Leaders ‘recommitted to work in an internationally consistent and non-discriminatory manner to strengthen regulation and supervision on hedge funds.’⁶

(2) IOSCO Initiatives

IOSCO issued its report on *Hedge Funds Oversight*⁷ in June 2009 (**2009 Report**), setting out six high-level principles on the oversight of hedge funds (covering registration of hedge funds and/or hedge fund managers, ongoing regulatory requirements, risk management systems for those funding hedge funds, disclosure and cooperation between regulators).

⁵ Available at [https://www.treasury.gov/resource-center/international/g7-g20/Documents/London%20April%202009%20Fin Deps Fin Reg Annex 020409 - 1615 final.pdf](https://www.treasury.gov/resource-center/international/g7-g20/Documents/London%20April%202009%20Fin%20Depts%20Fin%20Reg%20Annex%20020409%20-%201615%20final.pdf).

⁶ The Seoul Summit document *Framework for Strong, Sustainable and Balanced Growth* is available at <http://www.g20.utoronto.ca/2010/g20seoul-doc.pdf>.

⁷ Available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD293.pdf>.

In June 2010, IOSCO included Principle 28 in its *Objectives and Principles of Securities Regulation*,⁸ which required regulation to ‘ensure that hedge funds and or hedge fund managers/advisers are subject to appropriate oversight’.

In September 2011, revisions to the *Methodology supporting the Objectives and Principles of Securities Regulation (Methodology)*⁹ incorporated the six principles in the 2009 Report when setting out how implementation of Principle 28 should be assessed.

In addition, IOSCO regularly collects information from members as part of a survey on the global collection of systemic risk information on hedge funds. The latest survey was published in December 2015.¹⁰

(3) Implementation Status

(a) Registration, appropriate disclosures and oversight of hedge funds

The G20 recommendation called on jurisdictions to take steps to register and oversee hedge funds, and to require appropriate disclosure. IOSCO’s guidance in the 2009 Report and the Methodology addressed mandatory registration requirements, disclosure and other aspects of oversight. In reporting on implementation of this recommendation, jurisdictions were asked to take note of Principle 28 of IOSCO’s *Objectives and Principles of Securities Regulation* and Recommendations 1 and 2 of IOSCO’s 2009 Report.

Overall implementation status

Following implementation measures completed in South Africa in 2015, all responding jurisdictions which permit and have hedge funds report having in place an oversight framework that includes registration of hedge funds or their managers and enhanced disclosure of information to investors and regulators on an ongoing basis.

Hedge funds are not permitted in Argentina and there are currently no hedge funds managed or operated locally in Indonesia. In Mexico¹¹ and Saudi Arabia, the general regulatory

⁸ Available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD323.pdf>.

⁹ Available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD359.pdf>.

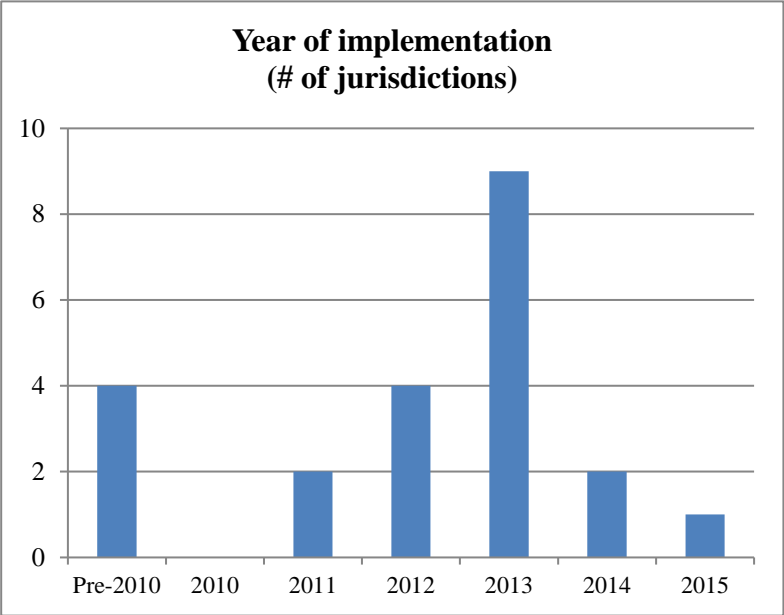
¹⁰ See <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD515.pdf>. The cut-off date of the survey was 30 September 2014, and the participating jurisdictions were Australia, France, Germany, Hong Kong, Italy, Japan, Singapore, the UK, and the US (SEC). India also provided input on regulatory developments affecting hedge funds.

¹¹ The Mexican regulatory framework applicable to mutual funds does not specify the definition, nor the requirements (including registration) for the management or operation of a hedge fund. Whether these types of entities are structured as trusts or other types of special purpose vehicle, they are allowed to provide services only to institutional or sophisticated investors, as defined by the Securities Market Law. The National Banking and Securities Commission (CNBV) has not accepted either the registry of a publicly offered mutual fund, on the assumption that the entity would act as a hedge fund, or the opportunity for retail investors to invest in them.

framework is applicable to hedge funds but both report they do not have any hedge funds registered or established in their jurisdiction.

Jurisdictions report that they implemented this recommendation through primary or secondary legislation (44%), regulation and supervisory guidelines (38%) and other measures such as supervisory action (18%).

While G20 Leaders recommended end 2009 for implementation measures to be developed in respect of hedge funds, considerable progress by jurisdictions to give effect to these measures had been made by the end of 2013.



This reflected the adoption of the Alternative Investment Fund Managers Directive (AIFMD) regulations by European Union (EU) Member States, which moved this recommendation from being reported as lagging in 2013 to being advanced in 2014.

(b) Establishment of international information sharing framework

The G20 recommendation called for mechanisms for cooperation and information sharing in order to ensure effective oversight when a hedge fund is located in a different jurisdiction from the manager. In reporting on implementation of this recommendation, jurisdictions were asked to take note of Principle 28 of IOSCO’s *Objectives and Principles of Securities Regulation* and Recommendation 6 of IOSCO’s 2009 Report. Bilateral supervisory cooperation should also be guided by IOSCO’s *Principles Regarding Cross-border Supervisory Cooperation* (May 2010).¹²

The sixth high-level principle in the IOSCO 2009 Report recommended that regulators cooperate and share information in order to facilitate efficient and effective oversight of globally active hedge fund managers and advisers that pose systemic risks. The Methodology for assessing implementation of Principle 28 addressed the recommendation by requiring regulators to have the power to exchange information with other domestic and international regulators on a timely basis.

* Charts do not include jurisdictions who reported implementation as ongoing or as being not applicable.

¹² Available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD322.pdf>.

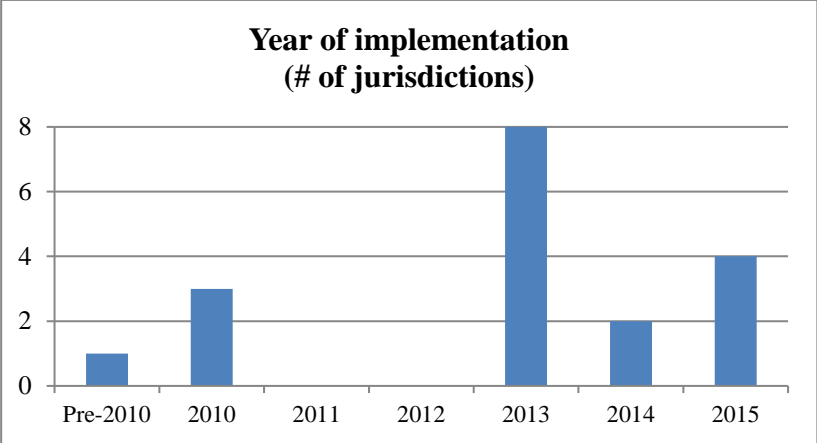
IOSCO has also provided general guidance to jurisdictions in relation to cross-border supervisory cooperation, including a sample memorandum of understanding (MoU) (set out in its 2010 *Principles Regarding Cross-border Supervisory Cooperation*). IOSCO's *Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information*¹³ (MMoU) also provides a basis for cooperation among signatories in relation to enforcement actions.¹⁴

Overall implementation status

Almost all responding jurisdictions which permit or have hedge funds report having taken steps to enhance cross-border information sharing, either through hedge fund specific cooperation arrangements or more general supervisory cooperation arrangements.

As with the recommendation in relation to registration, disclosure and oversight of hedge funds, this recommendation is not applicable for Argentina and Indonesia because hedge funds are either not permitted or are not currently operating locally.

Jurisdictions report that they implemented this recommendation through other measures such as supervisory action (43%), primary or secondary legislation (31%) or regulation and supervisory guidelines (26%).



While G20 Leaders recommended end 2009 for implementation measures to be developed, considerable progress by jurisdictions to give effect to these measures was observed between 2013 and 2015.

China is the only jurisdiction to report that implementation is ongoing, while several other jurisdictions (e.g. Australia, Hong Kong, Singapore and UK), which have classified the

¹³ Available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD386.pdf>.

¹⁴ The IOSCO MMoU, established in May 2002 (revised in May 2012), provides a global framework for enforcement cooperation between securities regulators, thereby helping to ensure effective regulation and to preserve the strength of securities markets. Signatories represent approximately 95% of global securities markets, and the IOSCO MMoU is the leading instrument for multilateral cooperation in the enforcement of securities regulation. All IOSCO members from FSB member jurisdictions are now signatories to the MMoU.

recommendation as fully implemented, recognise the ongoing nature of cooperation work.¹⁵ Some other jurisdictions, which reported implementation as completed, nonetheless report that they continue to assess potential opportunities to enter into further MoUs with foreign authorities.

The timing of implementation between 2013 and 2015 again reflected the adoption of the AIFMD regulations by EU Member States, which paved the way for the development of rules around the use of information by, and the exchange of information between, competent authorities. On 18 July 2013, the European Securities and Markets Authority (**ESMA**) issued the *Guidelines on the model MoU concerning consultation, cooperation and the exchange of information related to the supervision of AIFMD entities*,¹⁶ under which ESMA continues negotiation efforts. The guidelines specify the model MoU is to be complementary to the IOSCO MMoU.¹⁷ As at September 2015, ESMA had approved 44 cooperation arrangements between EU securities regulators and a number of non-EU authorities¹⁸ in relation to the supervision of alternative investment funds, including hedge funds, private equity and real estate funds.

Recent developments

With the Central Bank of Russia having signed the IOSCO MMoU in February 2015, all responding jurisdictions have now become full signatories. Supervisory cooperation through bilateral agreements is an ongoing process in many jurisdictions. A few jurisdictions (Canada, Germany, Russia and Turkey) report an increase in the number of bilateral supervisory cooperation agreements with their foreign counterparts, although comprehensive information on such agreements and their coverage is not available. Other jurisdictions (Hong Kong, Singapore and the UK) point to the IOSCO hedge fund survey as an example of information sharing activities.

While not all relevant jurisdictions – i.e. those where the hedge fund manager and/or the funds are located – have formal supervisory cooperation arrangements in place with respect to hedge funds, there are other more informal arrangements in place to share information (e.g. reliance on general MoUs). In order to determine the effectiveness of existing mechanisms for cooperation and information sharing, one would need to examine both the content of the specific MoUs (where they exist) and the importance of hedge funds between pairs of jurisdictions (where MoUs do not exist).

¹⁵ Australia changed its overall response from ongoing to implementation completed in 2016. Three other jurisdictions did not provide a date of implementation.

¹⁶ Available at https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-998_guidelines_on_the_model_mous_concerning_aifmd.pdf.

¹⁷ This implies that, in order for it to be considered that both the European competent authority and the non-EU supervisory authority have cooperation arrangements in place, as required by the AIFMD, both authorities should be signatories to both the MoU set out in these guidelines and the IOSCO MMoU, or another MoU providing for an equivalent degree of cooperation.

¹⁸ See <https://www.esma.europa.eu/document/aifmd-mous-signed-eu-authorities-updated>.

(c) Enhancing counterparty risk management

This recommendation called on supervisors to require counterparties of hedge funds to have effective risk management, including mechanisms to monitor hedge funds’ leverage and set limits for single counterparty exposures. In reporting on implementation of this recommendation, jurisdictions were asked to take note of Principle 28 of IOSCO’s *Objectives and Principles of Securities Regulation* and Recommendation 3 of IOSCO’s 2009 Report.

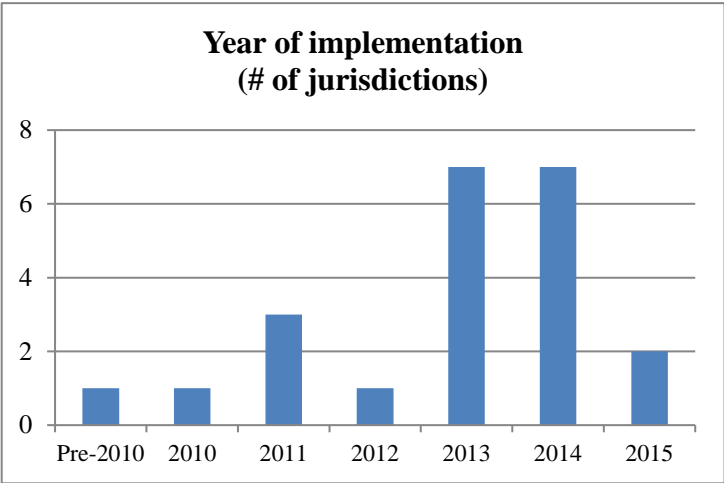
Prime brokers and banks were also the subject of recommendations in IOSCO’s 2009 Report with the IOSCO Methodology on implementation of Principle 28 providing for securities regulators to have the power to obtain information on the hedge fund’s exposure to counterparties, including prime brokers and banks.

Overall implementation status and application

Most jurisdictions report having frameworks in place to obtain information from firms on exposure to leveraged counterparties (including hedge funds) and carry out periodic reviews. All but two jurisdictions (Brazil and China) report implementation of this recommendation as complete. Germany and Turkey report that the implementation has been completed since 2015.

The implementation status is largely unchanged since 2014 when all but four jurisdictions reported implementation of this recommendation as complete.

Jurisdictions report that they implemented this recommendation through regulation and supervisory guidelines (43%), primary or secondary legislation (33%) and other measures such as supervisory action (25%).



B. Structured Products and Securitisation

(1) FSF Recommendation

In its April 2008 *Report of the Financial Stability Forum on Enhancing Market and Institutional Resilience*,¹⁹ the Financial Stability Forum (FSF) (now the FSB) identified that

¹⁹ Available at http://www.fsb.org/wp-content/uploads/r_0804.pdf?page_moved=1.

one of the key issues leading to the crisis was that the market for securitisation of credit risk aggressively developed into an ‘originate-to-distribute’ model of financial intermediation, causing the financial system to become increasingly dependent on originators’ underwriting standards and the performance of CRAs.

In order to enhance the resilience of the global system, the FSF recommended that:

‘Regulators of institutional investors should *strengthen* the requirements or best practices for *firms’ processes for investment in structured products.*’

and

‘Securities market regulators should work with market participants to *expand information on securitised products and their underlying assets.*’

(2) IOSCO Initiatives

In July 2009, IOSCO published a report *Good Practices in Relation to Investment Managers’ Due Diligence When Investing in Structured Finance Instruments*²⁰ which describes the due diligence practices of institutional investors and noted that ‘the unique properties of the specific pool of assets should not be assumed to be identical to the broader asset category. Investment managers should ensure their analysis of the underlying assets is based on information that is relevant for that specific type of underlying asset.’

IOSCO has also published a number of reports providing guidance and making recommendations in relation to securitisation markets. The reports have emphasized the importance of enhancing transparency and disclosure in relation to expanding the information provided to investors in relation to underlying assets.

In September 2009, IOSCO published the *Final Report into Unregulated Financial Markets and Products*.²¹ This report made recommendations to assist financial market regulators in achieving greater transparency and improved oversight with respect to securitised products and credit default swaps. In July 2011, the Joint Forum (under IOSCO’s chairmanship) published the *Report on asset securitisation incentives*.²² This report made three key recommendations: regarding tools to address misaligned incentives; to improve transparency; and to encourage document standardisation and reduce product complexity. IOSCO contributed further in November 2012 in its report on *Global Developments in Securitisation Regulation*²³ making recommendations including in relation to incentive alignment and enhanced transparency.

²⁰ Available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD300.pdf>.

²¹ Available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD301.pdf>.

²² Available at <http://www.bis.org/publ/joint26.pdf>.

²³ Available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD394.pdf>.

More recently, in July 2015, IOSCO and the BCBS jointly published a report on *Criteria for identifying simple, transparent and comparable securitisations*²⁴ which again underscored the importance of information about underlying assets.

(3) Implementation Status

(a) Strengthening of supervisory requirements or best practices for investment in structured products

Overall, implementation of securitisation regulation has taken place in instalments, with some jurisdictions staggering implementation by sector, and others expanding or revising existing regulation in response to better information or policy development.

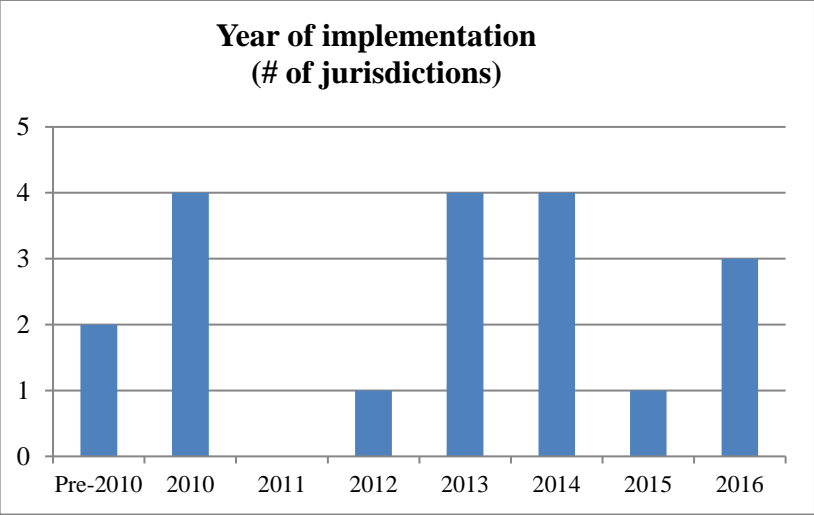
The first recommendation arose out of findings that many institutional investors seem to have had an insufficient understanding of the risk characteristics of the structured products in which they invested and focused on institutional investors (particularly investment managers), rather than issuers, conducting adequate due diligence to reduce the risks presented by structured products. In reporting on implementation of this recommendation, jurisdictions were asked to refer to IOSCO's report on *Good Practices in Relation to Investment Managers' Due Diligence When Investing in Structured Finance Instruments* and the Joint Forum report on *Credit Risk Transfer – Developments from 2005-2007* published in July 2008.²⁵

Twenty-one responding jurisdictions report the implementation of this recommendation as complete, while two jurisdictions (South Africa and the US) report continued implementation efforts.

²⁴ Available at <http://www.bis.org/bcbs/publ/d332.pdf>.

²⁵ Available at <http://www.bis.org/publ/joint21.pdf>.

Switzerland reports that the recommendation is not applicable, given that the extent and materiality of investments in structured finance instruments in Switzerland is low. Investors are reported to benefit from regulation in the jurisdictions in which the instruments are issued. While Argentina reports that it has completed implementation, it also reports that structured products and credit



derivatives are seldom negotiated in the local market and that there are no specific requirements in relation to these investments.

Overall, there is little change since 2014 (when 17 jurisdictions²⁶ reported that implementation had been completed).

However, a number of jurisdictions reported additional or ongoing implementation even though they had earlier indicated their implementation as complete. Most jurisdictions that report implementation as completed have put in place requirements for due diligence policies, procedures for restricting investments and disclosure practices applicable for investment managers for investments in structured finance instruments.

Jurisdictions report that they implemented this recommendation through regulation and supervisory guidelines (44%), primary or secondary legislation (39%) and other measures such as supervisory action (17%).

(b) Enhanced disclosure of securitised products

This recommendation is directed at improving transparency in securitisation markets and called on securities market regulators to work with market participants to expand information on securitised products and their underlying assets. In reporting on implementation of this recommendation, jurisdictions were asked to refer to IOSCO’s *Principles for Ongoing Disclosure for Asset-Backed Securities* (November 2012),²⁷ *Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities* (April 2010),²⁸ and the *Report on Global Developments in Securitisation Regulations* (November 2012) (in particular recommendations 4 and 5).

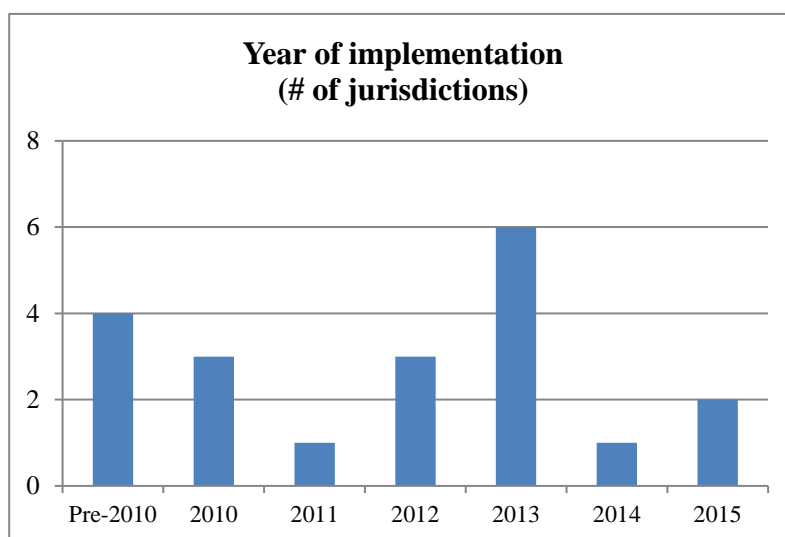
²⁶ Two jurisdictions who have reported implementation as completed since 2014 have not provided a date of implementation.

²⁷ Available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD395.pdf>.

²⁸ Available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD318.pdf>.

All but three responding jurisdictions (Russia, South Africa and Turkey) report that implementation of this recommendation is complete.

Russia and Turkey, which earlier reported implementation being completed in 2014, now report a final rule (for part of the reform) in force with policy measures taken for enhancing disclosure of securitised products since last year's survey.



The recommendation is not applicable to Switzerland as there is no domestic asset backed securities (ABS) market and the jurisdiction has therefore not taken any specific action.

Jurisdictions report that they implemented this recommendation through regulation and supervisory guidelines (41%), primary or secondary legislation (38%) and other measures such as supervisory action (22%).

A number of other jurisdictions mention their active involvement in international work to promote more sound and transparent securitisation transactions. In July 2015, the Basel Committee on Banking Supervision (BCBS)-International Organization of Securities Commission (IOSCO) task force on securitisation markets published non-exhaustive, non-binding criteria (high-level principles) to identify simple, transparent and comparable securitisations.²⁹

C. Improving Oversight of Credit Rating Agencies (CRAs)

(1) G20 Recommendation

In their London 2009 *Declaration on Strengthening the Financial System*, G20 Leaders agreed on more effective oversight of the activities of CRAs, as essential market participants. Specifically, G20 Leaders recommended:

‘All CRAs whose ratings are used for regulatory purposes should be subject to a **regulatory oversight regime that includes registration**. The regulatory oversight regime should be established by end 2009 and should be consistent with the

²⁹ Available at <http://www.bis.org/bcbs/publ/d332.pdf>.

IOSCO Code of Conduct Fundamentals. IOSCO should coordinate full compliance;

National authorities will enforce compliance and require changes to a rating agency's practices and procedures for *managing conflicts of interest and assuring the transparency and quality of the rating process*. In particular, CRAs should differentiate ratings for structured products and provide full disclosure of their ratings track record and the information and assumptions that underpin the ratings process. *The oversight framework should be consistent across jurisdictions with appropriate sharing of information between national authorities, including through IOSCO.*³⁰

In the September 2009 FSB Report to G20 Leaders on *Improving Financial Regulation*, regulators were also recommended to work together towards appropriate, globally compatible solutions (to conflicting compliance obligations for CRAs) as early as possible in 2010.³¹

In 2013 in St Petersburg, G20 Leaders reiterated their position by indicating:

'We encourage further steps to enhance transparency and competition among credit rating agencies and look forward to IOSCO's review of its Code of Conduct for CRAs.'³²

(2) IOSCO Initiatives

IOSCO has been at the forefront of developing guidance about the conduct and regulation of CRAs.

In September 2003, IOSCO developed *Statement of Principles Regarding the Activities of Credit Rating Agencies (CRA Principles)*.³³ At the same time, IOSCO also published *Report on the Activities of Credit Rating Agencies*,³⁴ outlining the activities of CRAs, the types of regulatory issues that arise relating to these activities, and how the IOSCO CRA Principles address these issues. The report highlighted the growing and sometimes controversial importance placed on credit ratings, and found that, in some cases, CRAs' activities are not always well understood by investors and issuers alike.

Then in December 2004, in response to comments received from industry, IOSCO developed and published the first iteration of the *Code of Conduct Fundamentals for Credit Rating*

³⁰ Available at https://www.treasury.gov/resource-center/international/g7-g20/Documents/London%20April%202009%20Fin_Deps_Fin_Reg_Annex_020409_-_1615_final.pdf.

³¹ Available at http://www.fsb.org/wp-content/uploads/r_090925b.pdf.

³² The G20 Leaders' Declaration is available at <http://www.mofa.go.jp/files/000013493.pdf>.

³³ Available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD151.pdf>.

³⁴ Available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD153.pdf>.

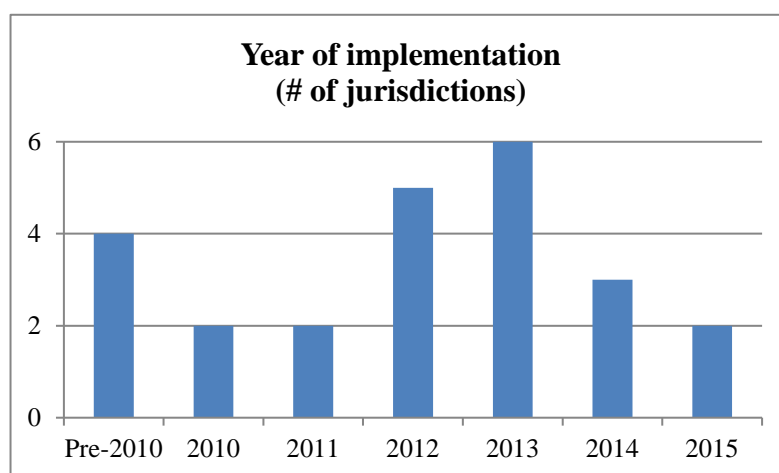
Agencies (CRA Code).³⁵ The CRA Code was revised in May 2008, and then revised again in March 2015 (including material concerning governance, training and risk management).

The 2010 revisions to the IOSCO *Objectives and Principles of Securities Regulation* introduced Principle 22 which required that CRAs should be subject to adequate levels of oversight and the regulatory system should ensure that CRAs whose ratings were used for regulatory purposes are subject to registration and ongoing supervision. The 2011 revisions to the Methodology outlined factors to be taken into account in assessing implementation of Principle 22, including requirement about registration, ongoing supervision and oversight requirements which reflected key elements of the 2008 CRA Code (including quality and integrity, conflicts of interest, transparency and timeliness and the treatment of confidential information).

In July 2013, IOSCO published *Supervisory Colleges for Credit Rating Agencies*³⁶ which provided guidelines on how to constitute and operate supervisory colleges for CRAs. Following the recommendations, later in 2013, the colleges were formed for the three large, globally active CRAs (Fitch, Moody's and S&P). The colleges create a mechanism for sharing and discussing information about compliance with local or regional laws and regulations, the CRAs implementation and adherence to the IOSCO CRA Code, the risks faced or posed by the internationally active CRAs and how the relevant supervisors are addressing these risks. The colleges have at least quarterly calls and annual in-person meetings and are chaired by securities regulators — ESMA³⁷ for Fitch and the US SEC for Moody's and S&P. Other national authorities (e.g. Australia ASIC, Ontario OSC, Mexico CNBV, Hong Kong SFC, Japan FSA and Brazil CVM) are also participating members of the colleges.

(3) Implementation Status

All jurisdictions state that the implementation of reforms related to this recommendation has been completed at this point in time and that requirements for the registration of CRAs have been put in place.



³⁵ IOSCO published a revised *Code of Conduct Fundamentals for Credit Rating Agencies* in March 2015 (available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD482.pdf>) that made significant revisions and updates to the earlier CRA Code revised in May 2008 (available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD271.pdf>).

³⁶ Available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD416.pdf>.

³⁷ In the EU, the ongoing regulation and supervision of CRAs has been transferred to ESMA.

While G20 Leaders recommended that oversight regimes be established by end 2009, implementation across jurisdictions has been staggered. A significant majority of jurisdictions (22) had already reported implementation completed by 2014, with Saudi Arabia and Russia completing implementation in 2015.

Jurisdictions report that they implemented this recommendation through primary or secondary legislation (42%), regulation and supervisory guidelines (40%) and other measures such as supervisory action (19%).

Since 2014, jurisdictions' changes in status reflect additional efforts to revise existing standards. China and Turkey reported having completed implementation of their regulatory frameworks in earlier surveys, but have changed their status in 2016 to implementation ongoing to reflect additional efforts.³⁸ Other jurisdictions also note ongoing work but have not reflected this in their reported status.

Most of the jurisdictions report that their framework for CRAs and/or regulatory oversight is consistent with the IOSCO CRA Principles and/or the IOSCO CRA Code. While 19 jurisdictions³⁹ reported compliance with the IOSCO CRA Code, Australia and Switzerland specified compliance with the more recent 2015 CRA Code.⁴⁰

This demonstrates significant progress compared to February 2011, when IOSCO published *Regulatory Implementation of the Statement of Principles Regarding the Activities of Credit Rating Agencies*⁴¹ which evaluated the implementation of the CRA Principles in Australia, the EU, Japan, Mexico and the US. The report found that, while the structure and specific provisions of CRA regulatory programs differ, the objectives of the CRA Principles were embedded in each of the programs.⁴²

³⁸ The downgrade in implementation status was not included in the Chart to avoid false conclusions on implementation progress.

³⁹ EU (including France, Germany, Italy, Spain, the Netherlands and the UK), Australia, Brazil, Canada, Hong Kong, India, Indonesia, Mexico, Saudi Arabia, Singapore, South Africa, Switzerland, Turkey and the US.

⁴⁰ Australia reported its implementation measures as complete in 2010 through introducing relevant licensing arrangements. Australia's measures to implement the more recent IOSCO CRA Code took place in 2015.

⁴¹ Available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD346.pdf>.

⁴² In 2013 in a letter to the G20 Ministers and Central Bank Governors, IOSCO further reported on a number of jurisdictions who have made progress on implementation of CRA Transparency Provisions. See Appendix A at http://www.iosco.org/library/briefing_notes/pdf/IOSCOBN01-13.pdf.

D. Safeguarding the Integrity and Efficiency of Financial Markets

(1) G20 Recommendation

At their November 2010 meeting in Seoul, G20 Leaders requested that IOSCO develop ‘recommendations to promote markets’ integrity and efficiency to mitigate the risks posed to the financial system by the latest technological developments.’⁴³

At Cannes in 2011, G20 Leaders said in their Summit Final Declaration:

‘We must ensure that markets serve efficient allocation of investments and savings in our economies and do not pose risks to financial stability. To this end, we commit to implement initial recommendations by IOSCO on market integrity and efficiency, including measures to address the risks posed by high frequency trading and dark liquidity, and call for further work by mid-2012.’⁴⁴

(2) IOSCO Initiatives

In response to the G20 request contained in the Seoul Summit document, IOSCO published in October 2011 its report on *Regulatory Issues Raised by the Impact of Technological Changes on Market Integrity and Efficiency*,⁴⁵ which was endorsed in Cannes by the G20 Leaders. This report sets out recommendations to assist regulators of securities markets in addressing technology-driven issues (in particular high frequency trading (**HFT**)). The report asked regulators to:

- Ensure trading venue operators provide fair, transparent and non-discriminatory access; that venues have suitable control mechanisms; and that order flows are subject to appropriate controls.
- Assess the impact of technological developments and monitor market abuse arising from these developments and take action where necessary.

This report followed the publication in May 2011 of IOSCO’s report on *Principles for Dark Liquidity*.⁴⁶ This report asked regulators to ensure:

- Pre-trade and post-trade transparency (particularly from dark pool trading);
- Support or priority for using transparent orders;

⁴³ The Seoul Summit document *Framework for Strong, Sustainable and Balanced Growth* is available at <http://www.g20.utoronto.ca/2010/g20seoul-doc.pdf>.

⁴⁴ See <http://www.g20.utoronto.ca/2011/2011-cannes-declaration-111104-en.html>.

⁴⁵ Available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD361.pdf>.

⁴⁶ Available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD353.pdf>.

- The creation of reporting regime or other means of accessing information regarding trading in dark pools;
- That information is available to market participants about dark pools and dark orders; and
- That the development of dark pools and dark orders are monitored.

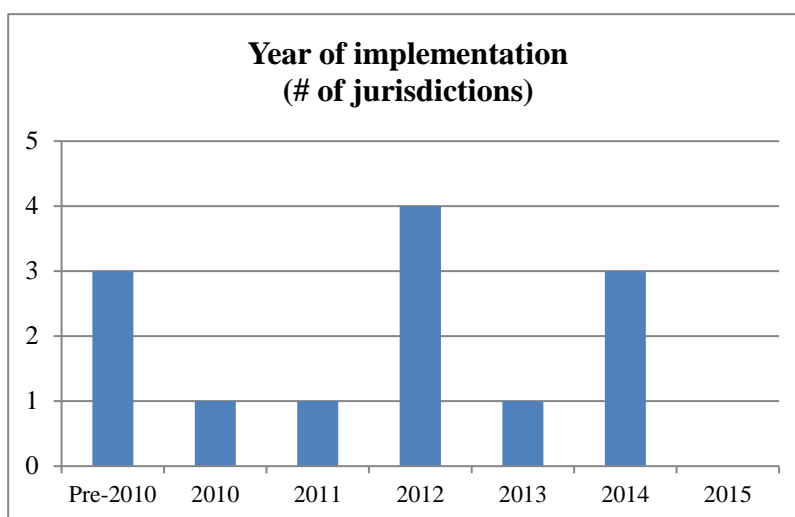
In December 2013 IOSCO published the report on *Regulatory Issues Raised by Changes in Market Structure*.⁴⁷ The report noted issues around market fragmentation and the potential impact on market efficiency and integrity and made recommendations for regulators to monitor, evaluate, and take the necessary steps to facilitate compliance by market participants with relevant rules, such as those relating to order handling.

(3) Implementation Status

In reporting on implementation of this recommendation, jurisdictions were asked to indicate whether HFT and dark pools exist in their markets. They were also asked to indicate the progress made in implementing the recommendations with respect to the three abovementioned IOSCO reports.

Fourteen jurisdictions⁴⁸ reported implementation of relevant measures, with implementation ongoing in seven.

Most jurisdictions which report implementation as complete indicate that their regulation covers or takes into account the key elements, themes and issues arising from IOSCO's recommendations. Of these, four jurisdictions (Brazil,⁴⁹



Singapore, UK and the US) specifically report having completed implementation of all aspects of the relevant IOSCO recommendations.

Four of the seven jurisdictions which report implementation is ongoing are from the EU and note the remaining pieces of legislation are due to be in force in the near future. Recommendations and principles from IOSCO's *Regulatory Issues Raised by the Impact of Technological Changes on Market Integrity and Efficiency* and *Report on Principles for Dark*

⁴⁷ Available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD431.pdf>.

⁴⁸ One jurisdiction who reported implementation as completed did not provide a date of implementation.

⁴⁹ Brazil reported full compliance only with IOSCO's recommendations in relation to HFT set out in *Regulatory Issues Raised by the Impact of Technological Changes on Market Integrity and Efficiency*.

Liquidity are reported to be already covered by various provisions in the EU MiFID, with MiFID II introducing new significant requirements aimed at improving resiliency and efficiency of electronic markets (including algorithmic trading or HFT), ensuring dark trading remains within certain quantitative limits, and that all dark pools are regulated in the same way. In the EU, further progress is contingent on the EU legislative initiatives (CSMAD /MAR/MiFID II/MiFIR) taking effect in 2018. Work on the secondary legislation necessary for the implementation of Market Abuse Regulation (MAR) and MiFID II is almost finalised. MAR and Criminal Sanctions for Market Abuse Directive (CSMAD) entered into application on 3 July 2016. On 2 May 2016, a political agreement was reached that the act amending MiFID II and MiFIR will include inter alia an extension of their date of application by one year (to 3 January 2018) and an extension of the transposition date by one year (to 3 July 2017). These interrelated legislations together cover the scope of reforms needed to implement the G20 recommendation for safeguarding the integrity and efficiency of financial markets and, to a lesser degree, G20 recommendation on regulation and supervision of commodity markets (see below Section E).

A number of jurisdictions (China, Indonesia, Turkey, Mexico and Russia) reported that there were either no dark pools or HFT in their jurisdiction (or both) to warrant (specific) regulation.

Jurisdictions report that they implemented this recommendation through primary or secondary legislation (32%), regulation and supervisory guidelines (35%) and other measures such as supervisory action (32%).

Overall, in response to HFT and algorithmic trading, regulators have continued to monitor, collect data and look for solutions to manage market efficiency.

Recent developments

Five jurisdictions' responses (Argentina, Australia, Brazil, India, Switzerland) directly address international standards. Argentina reports legislation in place that provides the National Securities Commission (CNV) with supervisory and sanction powers that aligns it with international standards. Australia, Brazil and India report compliance with IOSCO's recommendations in the *Regulatory Issues Raised by the Impact on Technological Changes in Market Integrity and Efficiency*. Switzerland reports that as of 1 January 2016, the Financial Market Infrastructure Act and Financial Market Infrastructure Ordinance came into force, which fully implement the G20 commitments on OTC derivatives and bring financial market infrastructure in line with international standards. The package also contains elements on market integrity. A transitional period until 1 January 2018 is granted for parts of the provision and FINMA is currently revising its Guidelines based on the amendments of the Act.

In South Africa, a discussion document setting out considerations for a new market conduct policy framework was published at the end of 2014 and consulted on during 2015. This prefaces the introduction of the new Conduct of Financial Institutions Bill.

A few jurisdictions (Brazil, Canada, India, US) report making further enhancements to their framework since last year, even though they consider having already completed the reforms. Brazil also reports that it is currently testing a new version of the market surveillance system before entering the production phase.

E. Regulation and supervision of commodity markets

(1) G20 Recommendation

G20 Leaders stated, in their 2011 Cannes Final Summit Declaration, that:

‘We need to ensure enhanced market transparency, both on cash and financial commodity markets, including OTC, and achieve appropriate regulation and supervision of participants in these markets. Market regulators and authorities should be granted effective intervention powers to address disorderly markets and prevent market abuses. In particular, market regulators should have, and use formal position management powers, including the power to set ex-ante position limits, particularly in the delivery month where appropriate, among other powers of intervention. We call on IOSCO to report on the implementation of its recommendations by the end of 2012.’⁵⁰

In 2013 in St Petersburg, G20 Leaders further stated that:

‘We also call on Finance ministers to monitor, on a regular basis, the proper implementation of IOSCO’s principles for the regulation and supervision on commodity derivatives markets and encourage broader publishing and unrestricted access to aggregated open interest data’⁵¹

(2) IOSCO Initiatives

In September 2011, IOSCO published *Principles for the Regulation and Supervision of Commodity Derivatives Markets (2011 Principles)*,⁵² which address a range of areas including the design of physical commodity derivatives contracts, enhancing price discovery and transparency and issues related to enforcement and information-sharing.

In 2012 the IOSCO Board commissioned the Committee on Commodity Derivative Markets (Committee 7) to conduct a survey about implementation of the 2011 Principles. The survey results were collated by Committee 7 and reported in October 2012 in the *Survey on the Principles for the Regulation and Supervision of Commodity Derivatives Markets*.⁵³

⁵⁰ See <http://www.g20.utoronto.ca/2011/2011-cannes-declaration-111104-en.html>.

⁵¹ See <http://www.mofa.go.jp/files/000013493.pdf>.

⁵² Available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD358.pdf>.

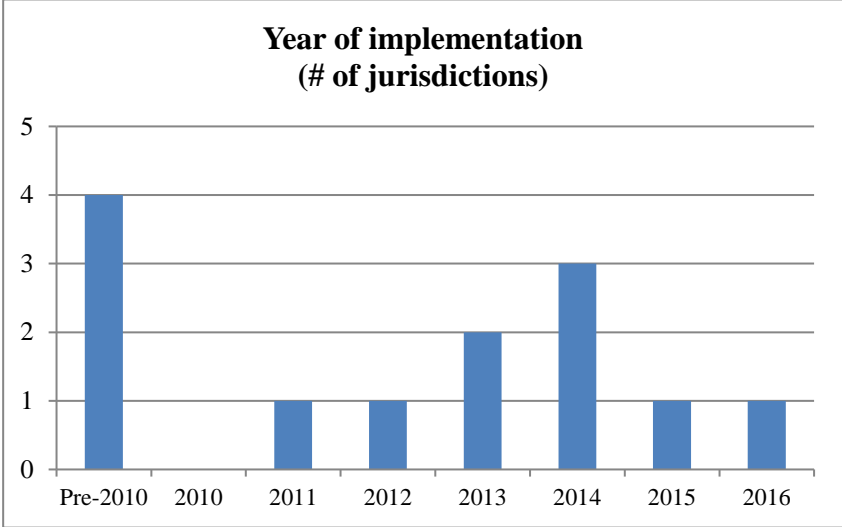
⁵³ Available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD393.pdf>.

This process was repeated for the G20 Brisbane Summit in 2014, in IOSCO’s *Update to the 2012 Report* (September 2014),⁵⁴ with a particular focus on supervision and enforcement and those principles where members were yet to achieve full implementation.

(3) Implementation Status

In reporting on implementation of this recommendation, jurisdictions were asked to indicate whether commodity markets of any type exist in their national markets, and also the policy measures taken to implement IOSCO’s 2011 Principles.

Fourteen jurisdictions⁵⁵ have reported implementation of this recommendation as completed (including Switzerland, which finalised its implementation efforts since 2015). With eight reporting implementation as ongoing (Canada, France, Netherlands, Singapore, South Africa, Spain, Turkey and the UK).



This recommendation is not equally relevant for all responding jurisdictions because commodity markets are either not present or important enough. In their responses, two jurisdictions have indicated that this recommendation was not applicable because either they do not have a commodity derivatives market (Saudi Arabia) or the volume is negligible (Mexico). In addition, Turkey also reports that it has a very nascent commodity market.

Jurisdictions report that they implemented this recommendation through primary or secondary legislation (42%), regulation and supervisory guidelines (42%) and other measures such as supervisory action (17%).

Available data on the size and location of commodity markets remains limited. One of the most reliable sources is the BIS semiannual derivatives survey.⁵⁶ Of the responding jurisdictions that contribute to this survey, six report that they have completed their reforms (Australia, Germany, Italy, Japan, Switzerland, US), while the remaining five (four EU

⁵⁴ Available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD449.pdf>.

⁵⁵ One jurisdiction who reported implementation as completed did not provide a date of implementation.

⁵⁶ Available at <http://www.bis.org/statistics/derstats.htm>.

member states, Canada) report that they are still in the process of implementing them. Further progress in this area in the EU member states is linked to the finalisation of secondary legislation necessary for implementing MiFID II/MAR and its application by member states.