

**COMMENTS RECEIVED IN RELATION TO THE  
CONSULTATION REPORT  
ON**

**An Overview of the Work of the IOSCO  
Technical Committee**



**OICU-IOSCO**

**TECHNICAL COMMITTEE  
OF THE  
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS**

**JUNE 2007**

# Contents

1. The Association of Corporate Treasurers (ACT), UK	3
2. The Institut der Wirtschaftsprüfer (IDW), Germany	5
3. Security Exchange Commission (SEC), Thailand	8
4. UBS Investment Bank; UK	9
5. The European Fund and Asset Management Association (EFAMA), Brussels	12
6. International Federation of Accountants (IFAC), USA	13
7. World Federation of Exchange (WFE), France	17
8. Association Française de la Gestion financière (AFG), France	23
9. Japan Securities Dealers Association (SROCC), Japan	28
10. The European Banking Federation (EBF) Brussels	30
11. International Banking Federation (IBFed), UK	35
12. Institute of International Finance (IIF), USA	41
13. The Association of Chartered Certified Accountants (ACCA), UK	50
14. PricewaterhouseCoopers, USA	55
15. Global Public Policy Committee (GPPC), USA	61
16. International Council of Securities Associations (ICSA), USA	63
17. The Securities Industry and Financial Markets Association (SIFMA)	75

# 1. The Association of Corporate Treasurers (ACT)

TREASURY, RISK  
AND FINANCE  
PROFESSIONALS

ACT

## The Association of Corporate Treasurers (ACT)

The ACT is a professional body for those working in corporate treasury, risk and corporate finance. Further information is provided at the end of these comments and on our website [www.treasurers.org](http://www.treasurers.org).

Contact details are also at the end of these comments.

We have canvassed the opinion of our members through our Policy and Technical Committee.

### General

The ACT welcomes the opportunity to contribute to this consultation.

This document is on the record and may be freely quoted or reproduced with acknowledgement.

### Response

The ACT broadly supports the work of IOSCO and believes the overview lays out a well-balanced programme for public consideration. We believe it important that IOSCO continues to monitor and research in its field of securities regulation although we note that the overview will not necessarily lead to work by IOSCO.

Members of The ACT are equally concerned with IOSCO to ensure the efficiency and integrity of public securities markets. The ACT's view is that market based solutions are almost always preferable to direct or prescriptive regulation and we welcome the emphasis that IOSCO places on ensuring full discussions with stakeholders prior to issuing new principles for securities regulations.

The ACT is the international body for finance professionals working in treasury, risk and corporate finance. Through the ACT we come together as practitioners, technical experts and educators in a range of disciplines that underpin the financial security and prosperity of an organisation.

The ACT defines and promotes best practice in treasury and makes representations to government, regulators and standard setters.

We are also the world's leading examining body for treasury, providing benchmark qualifications and continuing development through training, conferences, publications, including The Treasurer magazine and the annual Treasurer's Handbook, and online.

Our 3,600 members work widely in companies of all sizes through industry, commerce, financial institutions and professional service firms.

Our guidelines on policy and technical matters are available at <http://www.treasurers.org/technical/resources/manifestosept2006.pdf>.

## **Contacts**

**John Grout**, Policy and Technical Director

**T** +44 (0)20 7847 2575

**E** [jgrout@treasurers.org](mailto:jgrout@treasurers.org)

**Martin O'Donovan**, Assistant Director - Policy and Technical

**T** +44 (0)20 7847 2577

**E** [modonovan@treasurers.org](mailto:modonovan@treasurers.org)

**Peter Matza**, Policy and Technical Officer

**T** +44 (0)20 7847 2576

**E** [pmatza@treasurers.org](mailto:pmatza@treasurers.org)

## **Consultation Report: An Overview of the Work of the IOSCO Technical Committee**

The Institut der Wirtschaftsprüfer (IDW) [Institute of Public Auditors in Germany] is pleased to have the opportunity to comment on the above-mentioned consultation report. We support the work IOSCO has done and is continuing to perform at international level. We hope that our comments may be helpful to IOSCO in determining its future work plan and priorities.

### **A Issuers**

#### **A1 Monitoring Developments and the enforcement of accounting standards**

We fully support the IOSCO Technical Committee's („TC“) call, in relation to its monitoring of the IASB, for an appropriate balance between the costs and benefits of accounting standards.

However, it is unclear how the TC makes a cost-benefit assessment when it monitors, or comments upon, IASB exposure drafts. In our view, due to the increasing complexity of some kinds of transactions and the size of many publicly-listed entities, determining the costs and benefits of financial reporting requirements needs not only the application of a “decision usefulness for users” (benefits) perspective, but also a “processes and systems needed by issuers for implementation” (costs) perspective. It appears to us that the latter has been largely ignored by the IASB. This is an issue that the TC may need to consider adding to its work program.

### **Internal Control**

In our opinion, the major question affecting an issuer's ability to prepare financial statements in accordance with accounting requirements is whether the issuer has designed, implemented and maintained

Institut der Wirtschaftsprüfer  
in Deutschland e.V.

Wirtschaftsprüferhaus  
Tersteegenstraße 14  
40474 Düsseldorf  
Postfach 32 05 80  
40420 Düsseldorf

TELEFONZENTRALE:  
+49 (0) 211 / 45 61 - 0

FAX GESCHÄFTSLEITUNG:  
+49 (0) 211 / 454 10 97

INTERNET:  
[www.idw.de](http://www.idw.de)

E-MAIL:  
[info@idw.de](mailto:info@idw.de)

BANKVERBINDUNG:  
Deutsche Bank AG Düsseldorf  
BLZ 300 700 10  
Kto.-Nr. 7480 213

GESCHÄFTSFÜHRENDER VORSTAND:  
Prof. Dr. Klaus-Peter Naumann,  
WP StB, Sprecher des Vorstands;  
Dipl.-Kfm. Klaus-Peter Feld, WP StB CPA;  
Dr. Wolfgang Schaum, WP StB

adequate internal control that facilitates the preparation of financial statements to comply with those accounting requirements. We note, however, that the issue of internal control over financial reporting does not yet appear to figure in TC work at all. We would like to emphasize that by no means are we suggesting or advocating the implementation of a kind of “Sarbanes-Oxley Act” with concomitant management and auditor requirements in relation to internal control. Rather, we are suggesting that the adequate internal control over financial reporting is a prerequisite for the preparation of financial statements in accordance with accounting requirements and that therefore this issue ought to be addressed in the IOSCO work program.

## **B Accountants and Auditors**

### **B1 Monitoring Developments With Respect to Auditing Standards**

The Consultation Paper notes that the substantial evolution of the International Standards on Auditing (ISAs) “might” justify a future IOSCO endorsement for the purpose of facilitating multinational securities offerings and cross-border listings. We would like to point out that currently, not only the EU, but also Canada, Australia, and the U.S. (for audits of the financial statements of private enterprises) are in the process of considering adoption or have commenced processes for the incorporation of the ISAs into national auditing standards. Furthermore, the large networks of accounting firms use the ISAs as a basis for their audit methodologies. In comparison, IOSCO has been considering ISA adoption since the early 1990’s, but not much progress in this respect appears to have occurred. We would strongly encourage IOSCO, through the TC, to set a clear “roadmap” for an ISA endorsement process, because there is a danger that otherwise large parts of the world will be effectively using the ISAs before ISA endorsement by IOSCO actually takes place. In a practical context, this would make IOSCO endorsement irrelevant (and also decrease the weight auditing standards setters give to IOSCO needs).

### **B2 Non-audit services**

We believe that the TC should explore the issue of auditor independence in more detail, by relating it back to its objective, which is to ensure that auditors are sufficiently objective (both in appearance and in fact). Such an objectives based exploration together with an examination of empirical research in this area would reveal that restrictions on non-audit services are not ends in themselves, but serve to safeguard the overall objectivity of the

auditor. This means that some non-audit services add to the quality of audits (e.g., tax services), some have no effect, and only some may be detrimental to audit quality. Currently, regulation in this area seems to be subject to a kind of “race to the most stringent” among regulators without any objective analysis of the costs and benefits to audit quality. We therefore suggest that a more systematic and empirically-based analysis of non-audit services be undertaken.

### **B3 Audit Quality**

We support IOSCO’s exploring the possible drivers of audit quality by means of the forthcoming roundtable and other discussions with auditor oversight bodies. However, to achieve a sound basis for further deliberations, we believe that the TC first needs to undertake a thorough analysis of what the term “audit quality” actually means, and to consult with interested parties to establish a common understanding thereof.

If you have any further questions about our views on these matters, we would be pleased to be of further assistance.

Yours truly,



Klaus-Peter Feld –Executive Director



Wolfgang P. Böhm- Director, International Affairs

## Security Exchange Commission, Thailand

We do appreciate the opportunity to provide input for the work program of the Technical Committee for the immediate years. As a member of the Emerging Markets Committee, the following subject areas would be of our particular interest:

1. Shareholder Activism: A study that comes up with roles of retails and institutional investors and mechanisms that can drive such investors to play a more proactive role in promoting good corporate governance.
2. Audit Quality Review: A survey on members' practices in relation to audit quality review, covering the issues, such as, who should conduct the reviews as well as their roles and responsibilities, subjects that should come under review, frequency and depth of each review etc.
3. Consolidated Supervision: A survey on members' experiences, covering the issues, such as rationale for undertaking consolidated supervision, its pros and cons and requirement for group-related risk data etc.

Besides, we are of the view that further study or in-depth analysis on specific areas of TC's previous reports would also be worthwhile. Suggestions are stated below:

1. Performance Presentation Standards for Collective Investment Schemes: Best Practice Standards (posted on IOSCO web site in February 2003)

It would be helpful if the study could explore further into the effective use of standardized benchmarks in the presentation of fund performance.

2. Regulatory Approaches to the Valuation and Pricing of Collective Investment Schemes (posted on IOSCO web site in May 1999)

It would be helpful if the study could further provide practical methodologies and detailed guidelines for the valuation of derivatives and portfolios with complex strategies within CIS.

3. Principles on Client Identification and Beneficial Ownership for the Securities Industry (posted on IOSCO web site in May 2004) and Anti-Money Laundering Guidance for Collective Investment Schemes (posted on IOSCO web site in October 2005)

To help regulators fulfil the obligations of imposing effective AML/CFT requirements on financial institutions in the capital markets, further studies on, among others, (1) the extent and impact of AML/CFT-related risks involving securities industry (2) the cost-benefit of AML/CFT measures undertaken in the industry and (3) the guideline on how to identify suspicious transactions, would be greatly contributing.

We do hope that our input and comments would be taken into consideration of the TC and should there be any further questions on the matter, please do not hesitate to contact us.

Best Regards,

Ms Wipada Siricharoen  
Senior Assistant Director  
Research Department (International Affairs)  
SEC, Thailand



# **UBS Investment Bank**

## **An Overview of the Work of IOSCO's Technical Committee**

On behalf of UBS Investment Bank (“UBS-IB”), we would like to thank you for the opportunity to respond to the IOSCO consultation report *An Overview of the Work of IOSCO's Technical Committee*.

The IOSCO work programme covers a broad range of issues and also includes many topics of central interest to UBS-IB in a cross-border context, such as multi-jurisdictional information sharing for market oversight, asset freezing and hedge funds valuation. We welcome IOSCO's efforts to formulate common standards of regulation among its members to help promote just, efficient and sound financial markets.

To help meet this objective, we believe there is one area where IOSCO's work would be exceptionally effective for firms. Specifically, we urge IOSCO to address the widely divergent jurisdictional requirements on regulatory shareholder reporting, with a particular focus on standardising globally timetables, thresholds and details required by regulators. We understand that some shareholder reporting requirements are statutory, but even aligning the regulatory-imposed requirements would be a huge improvement and this letter is concerned with the regulatory requirements.

## **Challenges with regulatory shareholder reporting in a global business**

UBS-IB made a substantial multi-million pound investment in the development of a shareholder reporting system in 2000 and spends several million pounds annually to maintain an effective global programme. A large part of this cost is driven by the number of differences in shareholder disclosure requirements and reporting timelines in the jurisdictions in which we are active. For example, some jurisdictions require reporting on collateral movements – even if there is no intention of using the voting rights of the shares – while this information is excluded in others. Moreover, despite attempts by the European Union to harmonise minimum thresholds and standard forms under the Transparency Obligations Directive, Member States continue to impose disparate shareholder reporting rules.

## **Objective of shareholder reporting**

At the heart of shareholder reporting is the objective of providing greater market transparency. Given that all these rules stem from a common objective of ensuring transparency in the market, we would suggest that greater harmonisation should be possible, therefore it would be appropriate for IOSCO to work on promoting common standards in this area to help make this goal easier to achieve for all concerned. Markets are truly global these days, thereby necessitating increased flexibility, coordination and cooperation from regulators worldwide. Hence, differing shareholder reporting requirements represent an anachronism that, given the nature of the global markets, not only does it not provide greater transparency but instead obscures it. A common set of standards would make it easier for the regulators themselves to identify non-compliance and would allow regulators to be able to exchange and benchmark these reports against one another. Finally, if the requirements are difficult for global firms to understand, how much harder is it currently for the intended end-users, such as investors, who must understand and interpret the standards applied in each jurisdiction.

## **Suggested approach to formulating common standards**

We believe that IOSCO's work would be invaluable in: (1) conducting a survey of shareholder disclosure requirements among its members; followed by (2) formulating common standards that would act as best practice for member regulators to set in their home countries.

In respect of item 1 above, we suggest that IOSCO lead a survey aimed at:

- ◆ Understanding the objectives behind the rules;
- ◆ Identifying the information that regulators require in order to fulfill their regulatory objectives;
- ◆ Discovering how these regulatory objectives are communicated to the market; and
- ◆ Finding out how banks are held to task to comply with these requirements.

In respect of item 2 above, IOSCO might consider asking members to:

- ◆ Agree common standards or guidelines of common thresholds to set;
- ◆ Agree common time limits for reporting;
- ◆ Agree what information should be reported; and
- ◆ Formulate standard forms for reporting.

Finally, we understand that IOSCO IFRS has developed a regulatory interpretation and enforcement database to help consistently apply accounting standards throughout the world. A similar concept could be developed in the area of shareholder regulatory reporting to reduce the risk for firms to make different interpretations of the same reporting requirements.

## Other comments

Globally active firms have good access to market information and a deep knowledge about the markets and their respective characteristics. We therefore believe that the development of regulatory and supervisory requirements and international standards would benefit from more industry consultation conducted in collaboration with private sector groups (e.g., the Institute of International Finance (IIF), etc.) and particularly with global firms. Greater interaction between firms and regulators would ensure a beneficial exchange of information to promote proactive responses to the rapidly changing marketplace. For example, as stated in the work programme, IOSCO is investigating direct access to exchanges and other markets. Cross-border exchange mergers are occurring, such as the NYSE/Euronext combination, which provide more open and direct access to markets in multiple jurisdictions. This example demonstrates how market developments have occurred ahead of regulatory changes in national jurisdictions and a better alignment of the two would ensure more efficient regulation.

We also look forward to IOSCO working towards regulatory convergence based on a minimum harmonisation of binding principles and processes to foster mutual recognition. In our view, effective regulation in a cross-border context should become a core part of IOSCO's work programme, especially with a view to reducing the regulatory burden on firms by eliminating duplicative national regulations. One such opportunity is IOSCO's work on multi-jurisdictional information-sharing for market oversight, from which further work on mutual recognition naturally flows. In short, we believe IOSCO's focus on opportunities to eliminate inconsistent regulations among its member regulators will promote efficient and sound markets.

Again, thank you for the opportunity to respond. Please feel free to contact us if you should have any questions.

Yours sincerely

UBS Investment Bank

Penelope Curtis  
Managing Director  
Head of Policy and Strategy,  
Legal & Compliance

Susanne Steyn  
Director  
Global Head of Global  
Shareholder Reporting  
Programme  
Compliance

## **EFAMA**

### **PUBLIC COMMENT ON IOSCO'S CONSULTATION REPORT "AN OVERVIEW OF THE WORK OF THE IOSCO TECHNICAL COMMITTEE"**

EFAMA is grateful for the opportunity to comment on the work program of IOSCO's Technical Committee and believes that this consultation is a very useful step towards a closer dialogue with the financial services industry.

We welcome very much the invitations to attend SC5 meetings from time to time, but we believe that contact with the industry could be further enhanced and structured by means of regular meetings, by the creation of sectorial consultative expert groups (like CESR's), and by better publicizing IOSCO public conferences.

EFAMA fully agrees that it is important that IOSCO continue to anticipate market developments and trends, and be proactive in its activities, rather than event-driven.

Among the specific activities mentioned in the work program, the planned work on point of sale disclosure and customer suitability is a topic of highest importance for the investment management industry, and EFAMA welcomes IOSCO's contribution to the discussion. IOSCO's work, however, should not be limited to Collective Investment Schemes, but should cover the distribution of all competing retail investment products and should aim at creating a regulatory level playing field.

Collective Investment Schemes are experiencing increasing competition from products that are subject to lighter regulation, to the detriment of investor protection. CIS are already the most transparent financial instruments sold to the public, with regard to product information and cost disclosure. The distribution and remuneration mechanisms for CIS are well known to regulators, who, on the contrary, are far less familiar with more recent competitors such as structured products. Before reaching any conclusion and making any recommendation, EFAMA strongly believes that IOSCO's Technical Committee should undertake a detailed study of the different cost and remunerations structures of products competing with CIS at the point of sale.

If the regulatory gap between CIS and competing products is not closed or is widened, CIS will become even less attractive for distributors and the trend for retail clients' investments in less transparent products might strengthen.

We look forward to IOSCO's upcoming publications and remain at your disposal should you wish to discuss further our comments.

Sincerely,

Steffen MATTHIAS  
Secretary General



## International Federation of Accountants

545 Fifth Avenue, 14th Floor, New York, NY 10017 USA  
Tel +1 (212) 286-9344 Fax +1 (212) 286-9570 www.ifac.org

The International Federation of Accountants (IFAC) welcomes this opportunity to comment on the work program of the IOSCO Technical Committee. IFAC considers that this consultation is a very positive development as it provides an opportunity for the large constituency of stakeholders who have an interest in, and are affected by, the work that IOSCO does to have input into the IOSCO work program. We believe that the IOSCO Technical Committee should make this public consultation a regular feature of its activities going forward.

Our comments on the work program are focused on the areas of accounting and auditing and we address each aspect of the work program in turn.

### **A1 Monitoring Developments and the Enforcement of Accounting Standards**

- **Closely monitoring developments in International Financial Reporting Standards, comments on proposed changes and discussion with the International Accounting Standards Board (IASB).**
- **IOSCO International Financial Reporting Standards (IFRS) Regulatory Interpretation and Enforcement Database.**

#### IFAC Comment

IFAC considers that the IOSCO Technical Committee provides valuable input into the work of the IASB, and agrees that this should be an ongoing feature of the work program. We agree with the view expressed in the paper that there needs to be an appropriate balance between the costs and benefits of accounting standards.

IFAC is pleased that the IOSCO Technical Committee has established an IFRS Regulatory Interpretation and Enforcement Database. We consider that this database will assist in promoting convergence and we encourage IOSCO to make this database publicly available. This would improve understanding of regulatory interpretations of IFRS and therefore further increase consistency in application to the extent this is appropriate. Consistency of interpretation of IFRS globally is important, but there are limits to the extent to which this will be achieved in a principles-based environment. Simplicity of accounting standards will be achieved only if IFRS are principles-based. For this to work, differences in interpretation need to be accepted by securities regulators, enforcement authorities, auditors and accountants alike. The sharing of enforcement decisions should not be used as an opportunity to impose a single interpretation across jurisdictions where there may be reasonable grounds for a different view.

We also consider that the IOSCO Technical Committee should analyze the database to see which, if any, IFRS are giving rise to interpretation and enforcement issues and why

and then make this information publicly available. This information would be of value to all those involved with developing and using IFRS and would also be useful to assist in the continual improvement of IFRS themselves.

## **A2 Financial and Non-Financial Disclosure Standards**

- **IOSCO is developing principles for the disclosure that listed issuers provide in their periodic reports.**

### IFAC Comment

IFAC considers that this work should be undertaken by the IOSCO Technical Committee. It would build on and take one step further the earlier work that IOSCO did which culminated in the *1998 International Disclosure Standards for Cross-border Offerings and Initial Listings by Foreign Issuers* which had a significant impact on promoting international convergence in equity offerings worldwide.

## **B1 Monitoring Developments with Respect to Auditing Standards**

### IFAC Comment

IFAC acknowledges the significant contribution of IOSCO to the international audit standard setting process and to the public interest oversight of that process, which demonstrates IOSCO's commitment to the development of high quality auditing standards. We welcome IOSCO's discussion on the possible future endorsement of International Standards of Auditing (ISAs). We hope that IOSCO can move to endorse ISAs in the near future, recognising that:

- ISAs are, or are the basis for, the national standards in many jurisdictions and therefore are implicitly, if not explicitly, accepted by many IOSCO members for domestic listings.
- An endorsement will facilitate multinational securities offerings and cross-border listings.
- Most of the major IOSCO members already accept audits conducted using ISAs for the purposes of cross-border listings.
- The 22 international audit firms who are members of the Forum of Firms have audit methodologies based on ISAs.

IFAC also considers that it would be reasonable for IOSCO to promote convergence or adoption of auditing standards to ISAs, which would have the advantages that:

- The standards would be independent of any particular jurisdiction, and therefore more readily command respect in all jurisdictions.
- With auditors in all jurisdictions following the same set of standards, cross border work would be facilitated and in those rare cases where some differences in standards are necessary or are imposed, auditors would be readily able to identify those differences.
- Cross-border reliance on regulatory monitoring would be facilitated.

## **B2 Non Audit Services**

- **Issues related to auditor independence**

- **IOSCO is closely monitoring the work of IFAC's International Ethics Standards Board for Accountants (IESBA)**

#### IFAC Comment

IFAC is pleased that IOSCO is proposing to continue commenting on the work of the IESBA and we welcome their continuing input in this important area.

#### **B3 Audit Quality**

- **IOSCO is planning to hold a roundtable discussion in June 2007 with its financial market stakeholders on topics relating to the quality of audits.**

#### IFAC Comment

IFAC enjoyed participating in the Roundtable discussion on audit quality.

We note that IOSCO is intending to do some work in the area of audit quality, but that the precise nature of this work has not yet been finalized. Audit quality is affected by a wide range of factors, from the expertise of the particular auditor to the regulatory environment in which audit firms operate. It is an area which is of relevance not only to IOSCO but also to the International Forum of Independent Audit Regulators (IFIAR) as well as to public authorities, other regulators, IFAC and the audit firms.

IFAC would like to discuss with IOSCO the proposed work plan in this area in more detail to gain a greater understanding of what IOSCO seeks to achieve and how IFAC could contribute to that work. This discussion could usefully be held as part of the next meeting between the IFAC Regulatory Liaison Group (IRLG) and the Monitoring Group. IFAC would therefore propose that this issue be added to the agenda for the next meeting between the IRLG and the Monitoring Group.

#### **B4 Audit Contingency Planning**

- **IOSCO is identifying the range of possible considerations by a securities regulator in the event of an audit crisis.**

#### IFAC Comment

IFAC would like to discuss with IOSCO the proposed work plan in this area in more detail to gain a greater understanding of what IOSCO seeks to achieve and how IFAC could contribute to this work. This discussion could also usefully be held as part of the next meeting between the IRLG and the Monitoring Group. IFAC therefore suggests that this issue be added to the agenda for the next meeting between the IRLG and the Monitoring Group.

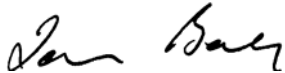
#### **Additional Work**

One issue of concern to IFAC that is not included in the proposed work plan is the place of sovereign debt issuers within capital markets. Central governments raise very large amounts of money through the capital markets and in many jurisdictions, e.g. the United States, the value of trades in sovereign debt is multiples of the value of trades in

corporate equities and bonds. IFAC is concerned that the standards and regulations governing sovereign issuers are not of sufficient quality to protect investors and ensure the stability of capital markets. Disclosure requirements relating to the terms and conditions of government debt offerings vary widely around the world. While the issuance of sovereign debt is not within the sole competence of securities regulators in many countries, IFAC considers that IOSCO could nonetheless usefully undertake work in this area, looking at potential measures that could improve the quality and reliability of information disclosed by sovereign issuers and therefore increase the protection of investors and improve the stability of capital markets.

IFAC appreciates the opportunity to comment on this overview of the work of the IOSCO Technical Committee. If you would like to further discuss any of the issues raised above please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Ian Ball".

Ian Ball.  
Chief Executive Officer





# WORLD FEDERATION OF EXCHANGES

7<sup>th</sup> June 2007

**The following comments are structured in accordance with IOSCO's own Report.**

## **A. Issuers**

Regarding issuers, there are a few areas where WFE may offer support to IOSCO at this time. The first is that within the diversity of the Federation's membership, some exchanges have set up specific market segments where issuers have to comply with higher standards, notably on corporate governance or more broadly on ESG (environment, social, governance) matters. If IOSCO were to choose to explore this, members' expertise and experience to date might prove useful, and would be made available to it.

Also as regards issuers, on the point of their disclosure of financial information, WFE has long held a strongly favourable position on IFRS. Throughout the 1990s, the Federation's precursor institution (FIBV) and several exchange leaders were actively involved in the work of the International Accounting Standards Board. Simply stated, exchanges have an interest in having clear and more explicitly comparable financial information produced for the world's capital markets by the issuers of securities.

At the General Assembly of members in October 2000, the FIBV voted a resolution in support of the development and implementation of what has become IFRS.

The quality of financial information is a critical component of investor protection. At the very outset of IOSCO's own document, this concern is restated. WFE affirms that exchanges and their regulatory authorities have a common base in stressing investor protection, and exchanges can play a particular role here because of their market-neutral position.

As IOSCO returns to this central point, the Federation suggests that it may wish to include in its analyses of investor protection the initiatives taken in the self-regulatory

field, as is stated in the IOSCO Report. IOSCO might do so as this relates to issuers, and of course in other business areas.

## **B. Accountants and auditors**

WFE supports IOSCO work in this field. On behalf of WFE, the Secretary General has served for five years as a member of the International Federation of Accountants (IFAC) Consultative Advisory Group on International Audit and Assurance Standards Board (IAASB) issues. Likewise, IOSCO has also been a long-serving member of this Consultative Advisory Group; in this area, WFE and IOSCO have been effective partners.

In October 2006, to mirror the resolution voted six years earlier in support of IFRS, the WFE General Assembly endorsed the IFAC structure of public oversight and the processes its bodies have established for creating high quality global standards for audit work and assurance reviews. In mailing its 2006 annual report, IFAC noted this endorsement of its work by WFE at the top of its list of achievements last year.

In a related vein, WFE would propose that IOSCO consider adding interactive data, or XBRL (Extensible Business Reporting Language), as a topic of investigation. This technology should prove to be an opportunity for promoting more just, efficient and sounder markets – which ties back to the common interest expressed above on investor protection.

XBRL has been an important subject for WFE since it first figured on the 2003 Annual Meeting agenda, and earlier in the case of several of its members. Numerous exchanges have been involved in promoting XBRL in their national jurisdictions, and have developed specific services based on that IT language.

At the invitation of the XBRL Steering Committee, the WFE Secretary General has been serving as the first chairman of the XBRL Board of Advisors. At the March 2007 meeting of that body, it was resolved to invite a representative of IOSCO to join in this effort. It is critical to broaden the involvement of official institutions at the XBRL Board of Advisors level beyond the central banking representation already present; the XBRL International consortium understands that implementation and ongoing robustness of these standards will not work as well without it. The invitation was extended in April 2007 to the IOSCO Secretary General for him to identify the most appropriate person for this work.

As with the common work both institutions provide on global audit standards, IOSCO and WFE should logically be productive partners on XBRL.

### **C. 1.1 Bond Market Transparency**

WFE supports initiatives that reinforce transparency in financial markets. Transparency enhances investor protection, which remains a paramount concern at every turn of the path.

For the corporate and public debt markets, member exchanges would again underscore the value of transparency, exactly as they do for the trading segments they operate for other financial instruments, and for the very same reasons of fairness to participants.

Some WFE members have conducted studies showing that trade reporting requirements have engendered more transparency in the markets they operate, resulting in narrower spreads and increased secondary market trading volumes, and so greater efficiency over all. But others have shown that according to the market segment, efficiency measures would tend to confirm that professional traders have achieved a high level of liquidity – and therefore efficiency – under the pressure of market conditions alone, without being subject to too much regulation on their operations in the form of reporting. Still other exchanges would want to underscore that perhaps a differentiation by client type (individual versus institutional) as well as market segmentation by type of instrument would be worthy of further reflection. Post-trade transparency enabled by central reporting can be seen as a key element to achieving greater fairness, and this element could be extended to making some information public on pre-trade positions as well.

For the IOSCO Technical Committee, if it chooses to go forward with work in this area, WFE would recommend that it above all investigate different existing models of successful markets. It would appear that there are a variety of ways of advancing in the enhancement of these markets, and monitoring of these segments and client types should take this into consideration. For those markets where pre- and post-trade reporting requirements have been established, and judging by trading liquidity these markets work successfully, the Federation would recommend that these existing rules be respected.

### **C. 1.2 Multi-jurisdictional Information Sharing for Market Oversight**

WFE members favour information sharing across borders as a support to the operations of public regulated capital markets. WFE would be willing to cooperate with IOSCO to the extent legally possible for its members, as this is typically an area of shared responsibility between exchanges and their regulators, in any case. The Federation appreciates the emphasis IOSCO puts into this work, as witnessed by the progressive implementation of its Multi-lateral Memorandum of Understanding (MMOU).

Market surveillance is a core mission for exchanges. WFE is a longstanding supporter of the Inter-market Surveillance Group (ISG). As from earlier this year, the Secretariat has stepped up to provide some practical assistance as ISG positions itself as a more global body with a stated interest in a wider membership. In addition, the Futures Industry Association years ago established a multi-lateral MOU of its own to cover information

sharing in the derivatives markets; this serves as another example of private-sector response to this business need within the Federation's universe.

Logically, the work of ISG and the FIA in the private sector would have many parallels to the spreading implementation of the IOSCO MMOU, and so may be thought of as a complementary contribution from exchanges to the work of their market supervisors. The Federation would indeed go further, and encourage IOSCO to be sure that its MMOU remains the standard for capital markets in this area. This would enhance the timely sharing of information among exchanges and their supervisory agencies in the multi-jurisdictional sense that IOSCO is indicating. Regulatory agencies are often the channel for passing sensitive market information from one jurisdiction to another.

### **C. 2.1. Price formation on fragmented markets**

WFE reconfirms the statement it made in its comment last June to IOSCO, which remains pertinent and of great importance to exchanges:

“The WFE Secretariat would fully support the IOSCO Technical Committee view that competition between trading venues is positive, but unintended side effects on market integrity, efficiency and investor protection must be carefully monitored. These principles should remain the core features of all market organizational arrangements.”

Fragmentation to the extent already seen – and to the extent that could take place in the coming months - is a relatively new phenomenon. It has been made possible due to technological developments in recent years, as well as changes in regulation. It does result directly from competition, which in its pure sense is a good thing; but fragmentation then does raise specific issues that will need addressing by market operators and their supervisory agencies. Unrestrained competition can have certain undesirable side effects.

For the WFE community, while only a minority of markets have regulation that fosters fragmentation, the issues of market integrity raised are of prime concern for exchanges everywhere.

The effects of fragmentation are utterly different according to the size of markets. The few largest capital markets in the world would likely be better able to adapt to these changing trading conditions by using commercially-based solutions. The smaller capital markets are not likely to have the means to do so.

When fragmentation is the result of regulatory changes encouraged by public authorities, the expected beneficial outcomes of such policy changes should be clarified. To evaluate the results down the road, what success measures for the capital markets did the public authorities have in mind when these changes were implemented? How will they know when the new regulations are working as intended, and how will they measure progress being made towards their goals along the way? In understanding these points, exchanges

will be better able to continue to fulfil their responsibilities to the markets in this changing environment.

Are the expected gains from more intense competition greater than the offset of costs arising from fragmentation? Every change in economics has a cost, so what was considered here? If the ultimate aim of competition is more efficient capital markets and so savings for final investors, the WFE would want to be sure that these lower costs for capital formation and secondary market trading are indeed passed on to them. These are the parties whose welfare IOSCO and WFE are charged with safeguarding.

At this time of rapid regulatory change, it behoves all market actors to remain vigilant towards the risk of regulatory arbitrage as an unintended and undesirable result of trading venues not being submitted to the same regulatory constraints as exchanges. There is a need for a level playing field.

Indeed, the notion of fairness of “competition” needs to be underscored. When the WFE Board of Directors met with IOSCO Technical Committee Chairman Prada in January, the point was raised that unequal contributions to support central market infrastructure in these new circumstances does not constitute fair competition in the Federation’s thinking.

The “free-riding issue” will arise if in the post-Regulation NMS and post-MiFID environment, or elsewhere, exchange prices remain the market reference for most purposes, while others trade off them without supporting the central market infrastructure. This may be particularly aggravated by a lack of transparency (pre- and post-trade); e.g. internalization without pre-trade transparency.

To see where the market is in valuing a security, it is likely that there will be a commercial response from the markets themselves that will join together different pools of price discovery. This will be needed in the MiFID context for demonstrating that the new best execution requirements are being met. Today, however, it is hard to see clearly how this will be working after these regulatory changes have taken effect.

One of the key effects of MiFID is the introduction of a new sense of “best execution,” which has been redefined for European Union markets as a broader, more complex goal and obligation of participants. This introduces a different meaning to a globally understood principle of central significance to regulated exchange operations. Because its impact may go well beyond the European Union, IOSCO may wish to evaluate its effects after a pre-established lapse of time.

In sum, WFE would recommend that IOSCO monitor the fragmentation question carefully. IOSCO might want to consider the need to assess the effects of fragmentation over time, taking into account the several factors that combine to set the global cost of a trade transaction. These include the explicit costs, such as exchange fees, brokers fees, clearing and settlement fees; and the implicit costs of market impact, execution time, and opportunity cost.

### **C. 2.2. ‘Direct’ access to exchanges and other markets**

Direct market access (DMA) is a matter of central concern to WFE members.

Historically, the success record of regulated exchanges being able to assure that their participants are good for their orders is solid, and it has been over decades and more. This responsibility on their part must be maintained.

WFE appreciates that changing technology would prompt IOSCO to wish to investigate this area, and can only support such an initiative given the scale and pace of events. Moreover, WFE stands ready to be involved in any such fact-finding research in this complex area, and would suppose that other actor-members of the SRO Consultative Committee would also be involved in drawing up any report. Electronic access may be making this question more acute, and WFE would agree that it is as important to protect the market’s integrity as it is the investors themselves.

The Federation would also want to introduce a word of caution here: there is no clear definition accepted by all exchanges as to the meaning of DMA, and it would also say that the term can be something of a misnomer. But what is understood by exchanges is that there is something of a blurring in the distinction made among end-users of central market transaction services. Given this diversity and each exchange’s need to have a response appropriate for its local market conditions, the Federation would say that this element of the question should remain a commercial issue for each regulated exchange to handle, but clearly IOSCO needs to understand the controls introduced by exchanges to ensure proper and orderly markets notwithstanding such direct access arrangements.

#### **One other issue that WFE would suggest to IOSCO : securities lending**

The WFE is currently studying this wide-spread practice. In particular, the Federation is looking into how securities borrowing is being used in the governance area of public listed entities.

In the Federation’s work, reference is made to the document on this topic written by the IOSCO Technical Committee and the Committee on Payment and Settlement Systems in 1999, “*Securities Lending Transactions: Market Development and Implications.*” Also, the WFE is using the International Corporate Governance Network (ICGN) “*Stock Lending Code of Best Practice,*” published in 2005, and has been working with the author of that report.

Given the rapid increase in the scale of this market practice this decade, with revenues generated now far exceeding on-exchange securities transaction revenues themselves, IOSCO might consider an update of its work, or at least keep the question on its radar screen.

Mr. Massimo Capuano  
Chairman



June 8, 2007

Re: AFG's response to IOSCO consultation on "*An Overview of the Work of IOSCO's Technical Committee*" »

The Association Française de la Gestion financière (AFG)<sup>1</sup> would like to thank IOSCO and the members of the Technical Committee ("TC") for the work that they have carried out in producing the Consultation Report on "*An Overview of the Work of IOSCO's Technical Committee*" last March. We also want to thank the TC for having invited the International Investment Funds Association (IIFA), of which AFG is a member, in Madrid on 26 March to discuss the relevant topics.

On this basis, we are glad to provide for the following comments on the Report. Before entering the substance of the Report itself, we wish to stress some methodology issues.

*On the general relationship between IOSCO and the industry:*

1. We wish to have regular meetings similar to the one we had in Madrid, for instance twice a year (as expected for 2007: March + November), but which should remain informal at this stage. We found the Madrid meeting very fruitful, by reinforcing the practical

---

<sup>1</sup> The Association Française de la Gestion financière (AFG) represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. Our members include 365 management companies and 772 investment companies. They are entrepreneurial or belong to French or foreign banking or insurance groups.

AFG members are managing more than 2500 billion euros in the field of investment management. In terms of financial management location, it makes the French industry *the leader in Europe for collective investments* (with more than 1500 billion euros managed by French companies, i.e. 22% of all EU investment funds assets under management, wherever the funds are domiciled in the EU) *and the second at worldwide level*. In terms of fund domiciliation, French funds are respectively second in Europe and third at worldwide level. In terms of product interests, our association represents – besides UCITS – the employee savings schemes funds, hedge funds/funds of hedge funds as well as a significant part of private equity funds and real estate funds. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA) and of the European Federation for Retirement Provision (EFRP). AFG is also an active member of the International Investment Funds Association (IIFA).

- exchanges of views, and therefore allowing for going beyond mere expressions of written positions in formal contributions;
2. We think that “theme expert groups” (for each Standing Committee) could be set up, as it is currently the case for CESR for instance. We have tested very successfully such an approach with CESR, and we think it might be appropriate to follow such an approach at IOSCO level as well;
  3. In any case, we also think that IOSCO should improve its way of communicating and disclosing information, both when launching new consultations and when setting up public events like public conferences. In the latter case, it happened that we were informed by chance and very late of some public conferences – and in some cases, it has been therefore difficult or even impossible for us to participate and thus provide input;

On the working methodology of IOSCO:

1. *We clearly warn on the danger for IOSCO to look only for “quick wins”, which are sometimes requested by the industry of some countries. As a paradox, looking just for “quick wins” could finally end up with delaying the launch of the really needed actions.*

First of all, should we speak about “legal quick wins” or “practical quick wins”? Getting a “legal quick win” can be rather easy; but it would not guarantee getting any quick wins *in practice*. For instance, in our opinion, regarding the current EU debate on private placement, we do support getting a legal framework for private placement of non-harmonised funds – that some players consider as a “quick win” – but we think that in practice it will only facilitate the *selling* of such funds: it will not facilitate the *buying* of such funds by some types of qualified investors, as long as their investment rules prevent them from buying such funds (e.g. insurance companies, pension funds, etc.). As long as the EU legislative action on private placement is not accompanied in parallel by a similar action to ease the faculty from the demand side to invest in such products, we will not have any quick win *in practice*. Not linking the two parallel actions would end up with launching at a later stage such an action on the demand side – which would mean having wasted time by just focusing in the short term on legal, but incomplete, “quick wins”. Therefore, IOSCO should identify, topic by topic, quick wins to be delivered *in practice*.

Second, and even more widely than just looking for practical quick wins, the approach to be followed by IOSCO should be *pro-active*. In this view, IOSCO should consider how regulation could facilitate innovation and industry developments. It should not wait for scandals, which always imply the risk of “scandal-driven regulation” (such as SOX in the US for instance) which can destabilise or over-constraint a whole national or sectorial industry. Neither should IOSCO rush to only act for one part of the financial industry without considering the whole picture since it could create an unlevel playing field. It has often appeared to us that actions have only been decided for our industry because



it better known to the regulators and already more transparent than the other parts of the industry.

2. *Regarding the debate on mutual recognition, we clearly favour the search for harmonising principles (through a principle-based approach) rather than looking for mutual recognition: the limits of mutual recognition have already been tested unsuccessfully many times and in many areas in the context of cross-border activities.*

In addition, once harmonised principles have been achieved, they have a pedagogic virtue for less advanced financial centres all around the world, by helping them to make their own national regulation converging towards such already harmonised principles;

On the substance of IOSCO's Consultation Report:

1. *As a new and essential topic, we strongly wish that the 2007-2008 IOSCO working programme explicitly deals with the issue of level playing field between financial products (in particular in the case of unfair competition between investment funds on the one hand and capital market products – such as notes or certificates - on the other hand, as the latter are for instance less transparent for investors and benefit from regulations ensuring faster legal processes for domestic and cross-border registrations);*
2. *Generally speaking, we are reluctant to any approach differentiating systematically wholesale from retail. For instance, such an approach does not fit with the fund industry, where there is a blurred line between the two categories very often (e.g. many pure professional/qualified investors, like corporate, invest in products which can be sold to retail investors as well; on the contrary, many retail investors get access to complex/risky products through professional investors). It is not by chance if the UCITS Directive never made any different treatment between retail and wholesale – and it is also probably the reason why only very few misselling scandals occurred in the field of funds, at least in continental Europe;*
3. *As a consequence of the two previous remarks, we do contest the statement and the approach by IOSCO regarding the “Point of sale disclosure and customer suitability” (D.1.2 of the Consultation Report). Why stating: “many retail investors who buy investment products, particularly interests in a collective investment scheme and possibly similar products, may not clearly understand the products or the layers of costs associated with those products”? On the contrary, CISs are the most transparent investment vehicles: for instance, the expenses are disclosed through Total Expense Ratios (TERs), and CIS are fee-based instruments and not spread-based instruments (in the latter case, investors are not able to know the real final cost of their investment). In addition, CIS are usually less risky (through mandatory risk spreading rules – as compared to a single share*

for instance) and in many jurisdictions the provision of fund prospectuses to investors is mandatory. The statement by IOSCO is therefore very concerning for our members;

4. More generally, we wish that the 2007-2008 IOSCO working programme *makes clearer the split of responsibility between the distributors and the producers* – but avoid to only focusing on funds (following the request for a better level playing field that we mentioned above). If regulators, intentionally or not, still continue to focus on fund production and distribution, they will finally contribute de facto to push investors towards risky and less transparent other types of financial products – leading therefore to less investor protection, contrarily to the official mission regulators have to fulfil;
5. *In the same vein, we dispute the fact that soft commissions and incentives are only tackled in the field of asset management (E.1.3 of the Consultation Report)* : soft commissions and incentives may occur in other financial sectors and for other financial products as well;
6. *Beyond the so-called “Valuation of Hedge Fund Portfolios” (E.1.1) and “Elements of regulation for hedge” (E.1.2)*, we clearly wish that the 2007-2008 IOSCO working programme insists even more on the topic of hedge funds (even though IOSCO is already working actively on it) and not only funds of hedge funds, in order to provide for a light but real regulation of the relevant players in the value chain for the two types of funds (at least for on-shore funds), which would facilitate the cross-border marketing and subscription of such products – which is very difficult today in many parts of the world as the regulations are very fragmented;
7. *Regarding Credit Rating Agencies (CRAS) (A.4 of the Consultation Report)*, we strongly support the will of IOSCO to continue to monitor new developments of CRAS’s activities and their impact on the market, as we consider that CRAs are still currently increasing their role on the markets, in particular through the continuous development of structured products (in which many investment funds invest on behalf of their investors, for which they have a fiduciary duty): the need for a high degree of reliance in CRAs’ ratings is crucial for us.
8. *Regarding Audit Quality and Audit Contingency Planning (B.3 and B.4 of the Consultation Report)*, we consider that auditor liability should not constitute an issue as such: some jurisdictions have already capped or are currently capping auditor liability, when other jurisdictions do not see any need to do so. Therefore, this specific issue should be left open at this stage by IOSCO.

\*\*

\*

If you wish to discuss the contents of this letter with us, please contact myself at +33 1 44 94 94 14 (e-mail: [p.bollon@afg.asso.fr](mailto:p.bollon@afg.asso.fr)), Stéphane Janin, Head of International Affairs Division at +33 1 44 94 94 04 (e-mail: [s.janin@afg.asso.fr](mailto:s.janin@afg.asso.fr)) or his deputy Catherine Jasserand at +33 1 44 94 96 58 (e-mail: [c.jasserand@afg.asso.fr](mailto:c.jasserand@afg.asso.fr)).

Sincerely,

Pierre BOLLON

Délégué Général

# Japan Securities Dealers Association

Tokyo Shoken Bldg.  
5-8, Kayabacho 1-chome, Nihonbashi, Chuo-ku  
Tokyo 103-0025, Japan  
Phone : (813) 3667-8451 Fax : (813) 3666-8009

## **SRO Consultative Committee (SROCC)**

The SRO Consultative Committee (SROCC) welcomes the opportunity to comment on the Consultation Report on An Overview of the Work of IOSCO Technical Committee that was released by the Technical Committee (TC) in March of this year. We hope that our comments and input will be of use in further consideration of the TC's work program. Along with the comments on the report, I have included some of my views on the role of the SROCC in IOSCO and the future relationship of the SROCC with the TC and IOSCO's other committees.

### 1. Opportunities to promote just, efficient and sound markets

I welcome the initiative taken by the TC to establish a structured dialog framework between IOSCO and the industry. I share the idea that a strong and close relationship with the industry advances IOSCO's ability to effectively address the wide range of issues in securities markets and provides benefits to the regulatory community and investors worldwide. Such a new dialog framework will enable the industry to directly provide IOSCO with their input even at a very early stage in IOSCO's policy making. I believe that, under the new dialog framework, the SROCC is expected to review such issues as regulatory convergence and better regulation that are related to SROs and should be ready to respond if so requested as the IOSCO's committee in charge of matters concerning SROs. This approach will help the SROCC to continue to define its role within IOSCO as a self regulatory council and ensure that we remain a distinct voice.

### 2. Specific on-going initiatives of IOSCO

We think the TC's Work Program is forward-looking and covers a broad range of tasks that lie ahead of us. The issues listed on the Work Program are all items to be addressed by the international community. The following are our comments on the specific issues listed on the TC's work program.

#### (C.1.1. Bond market transparency)

The SROCC is interested in Bond Market Transparency. While this topic has been discussed in various forums, we think that more attention should be paid to the self-regulation of fixed income markets. This is partly because a growing proportion of the population is reaching retirement age and requiring predictable, secure post retirement income. The SROCC will look closely at developments in the corporate bond market and members may want to examine the need for and the appropriateness of self-regulatory

initiatives to increase the transparency of OTC bond market trading taking into consideration its impact on liquidity and accompanying reporting responsibilities.

(C.1.3. Boiler rooms)

We think that it is increasingly important to cope with this issue. Government authorities need to take the lead in addressing this issue with an international perspective and there may be limits to what SROs can do in that regard. But the SROCC is ready to collaborate or, if possible, co-work with government authorities to tackle this issue.

(C.2.2. "Direct" access to exchanges and other markets)

Amid the ongoing changes and evolution of exchange and other market infrastructure, there is a growing need to examine this issue. If the TC plans to conduct some fact-finding survey on this issue, the SROCC is willing to provide assistance in the survey.

(D.1.2. Point of sale disclosure and customer suitability)

We recognize that SROs need to further study these issues. While asymmetry of information between retail investors and institutional investors is common in every market, there seem to be large differences among jurisdictions in systems to help investors make informed decisions and in retail investor protection regulation. The SROCC would also like to explore desirable systems, rules and requirements related to point of sales disclosure and customer suitability.

(D.2.1. The impact of new technology)

Recent IT innovation has provided financial markets with significant benefits but also many new challenges in every jurisdiction. Therefore, this is a very timely and important theme for IOSCO's deliberations. The SROCC is ready to collaborate and co-work with the Technical Committee in areas where we can contribute to identifying and monitoring the impact of new technology.

(E.1.2. Elements of regulation of hedge funds)

The hedge fund market has rapidly developed and regulators as well as market participants have been paying more attention to these funds and their possible impact on the market. The Pre-Summit Statement by G8 Finance Ministers issued in Heiligendamm, Germany in May this year also touched upon this issue and noted agreement to continue to monitor hedge funds' activities through supervision of their counterparties. The SROCC will also keep watching the development and, if necessary, may take up this issue on its agenda. If so, our main concern would likely be investor protection in view of ongoing retailization of hedge funds.

Not just for the issues mentioned above but for any issues, this committee is willing to co-work with the TC and IOSCO's other committees whenever possible by providing our expertise and insight as SROs.

Best regards,

Tatsuo Watanabe  
Chairman, IOSCO/SRO Consultative Committee  
(Vice-Chairman, Japan Securities Dealers Association)



## RESPONSE

### An Overview of the Work of the IOSCO Technical Committee

#### Consultation Report

1. The European Banking Federation (EBF)<sup>2</sup> is the voice of European banks. The focus of European banks has long been global but the pace of change and the nature and impact of developments on the European stage over recent years equips Europe's banks, and in turn the EBF, to make a very positive contribution to the work IOSCO's Technical Committee is set to undertake. Therefore, **the EBF very much welcomes IOSCO's consultation on an overview of the work of its Technical Committee.**
2. The EBF already enjoys a constructive working relationship in the field of securities with its prime interlocutors in the European arena and most relevantly for IOSCO, the Committee of European Securities Regulators (CESR). Although a direct comparison between the mandate and objectives of IOSCO and CESR cannot be readily drawn, we have very much welcomed the high standards of transparency and thorough nature of CESR's consultation processes. As IOSCO embarks on an ambitious agenda in consultation with the market **we urge the Organization to take note of the successful processes and high standards of consultation CESR currently operates to.**
3. We believe that **the success of IOSCO's ambitions as set out in the Work Program will be underpinned by meaningful and constructive dialogue with the key stakeholders and we feel strongly that Europe's banks have much to**

---

<sup>2</sup> The European Banking Federation (EBF) is the voice of the European banking sector representing the vast majority of investment business carried out in Europe. It represents the interests of over 5,000 European banks, large and small, from 29 national banking associations, with assets of more than €20,000 billion and over 2.3 million employees. Via its member banking associations the EBF calls on the expertise of the major global players engaged in activities as diverse as retail and investment banking, custodianship, post trading activities, fund distribution and at all levels of the value chain to develop its policy positions.

**contribute.** Therefore, the EBF stands ready to provide IOSCO with expertise from banks with global reach which will be delivered in a timely, professional and thoroughly representative manner.

## **I. General Remarks**

4. We take note of the five areas (page 4) upon which the Technical Committee is particularly interested to receive input. Of those five areas, **the EBF will concentrate in the future on regulatory failures in doing so we will bring areas of supervisory inconsistency and inefficiency to the attention of IOSCO.** In addition a focus will be areas where enhanced regulatory cooperation and more common regulatory approaches would improve the position for the industry. In common with colleagues in the International Banking Federation (IBFed), of which EBF is a member, we will **focus primarily on secondary trading and intermediaries issues** e.g. the work of Standing Committees 2 and 3. IOSCO's work on asset management and enforcement is also of great interest to the EBF. However, for the purposes of the present response **the EBF's comments will be mainly limited to IOSCO's overall programme of activities** and the specific ongoing initiatives of the Organization.
5. The **EBF broadly agrees with the proposed focus of IOSCO** as set out in page 6 of the consultation document. The division between issuers, accounting / auditing, trading venues, intermediaries and asset management appears to be a logical one.
6. **The EBF also supports the three way split between exploratory work, regulatory trends in financial activities and enforcement.** Taken together these three elements are of critical importance if IOSCO members are to establish an enabling regulatory framework where the right balance is to be found between the promotion of efficient markets and appropriately protecting the consumer. Importantly, the EBF believes that although regulation should lag and not dictate market developments, the global framework must be nonetheless responsive and capable of accommodating innovation whilst dealing with unforeseen eventualities.
7. In terms of the specific issues to be covered by IOSCO, **we particularly look forward to engaging with IOSCO in respect of the new exploratory work** by entering into a dialogue with IOSCO at the appropriate moment.
8. In terms of the work on regulatory trends in financial services, three issues stand out as being particularly topical and important. These are **bond market transparency** (trading venues), **the intermediaries issues and the aspects to be covered under the work on hedge funds** (asset management). We will go into further details on these and other key subjects in the specific remarks (below).

9. An effective enforcement regime underpins the effectiveness of financial supervision as a whole. Therefore, the enforcement issues IOSCO highlights are just as important as the other parallel work streams. **Here the EBF can make a contribution based on its experience of the market abuse regime in Europe** and importantly the review of that regime currently underway at CESR.

## II. Specific Remarks

### *New exploratory work*

10. The three issues IOSCO highlights in this very important section on **new exploratory work resonate strongly with European stakeholders, despite being global in character.** Arguably the debate around the price formation process on fragmented markets and the impact of technology find their source to a large extent in the pan-European legislation which will reform trading in Europe, the Markets in Financial Instruments Directive (MiFID) where the EBF has particular expertise.
11. IOSCO rightly states that **inefficient price formation** may have an impact on market transparency and this could run counter to the interests of financial markets stakeholders. However, we would argue that this is **just one angle of a complex and intertwined debate** where market specificities and characteristics have to be fully taken into account before coming with pure investor protection considerations.
12. Some **EBF members have already taken the lead on evaluating the impact of new technologies and in particular realising the synergies that new technologies can deliver** in response to regulatory developments be they on the European or global level. The conclusions of this work could usefully feed into the discussion IOSCO foresees throughout the remainder of 2007.
13. The debate surrounding alternative investment strategies (private equity and hedge funds) is of global importance but is currently the source of much, arguably misinformed, debate. **The EBF is following developments and is keen to emphasise that the issues surrounding the rise of private equity and its potential impact on market structure should be de-coupled from the debate surrounding hedge funds.** IOSCO has already come with a useful study of the hedge fund market and we look forward to engaging with the Organization in the preparation of a similar study on private equity.



14. In the meantime, we underline the **many positive effects demonstrated as a result of private equity investment, both on a macro- and a micro-economic level**. Our members have also not to date identified a major cause of concern related to the leverage levels of private equity firms. From our point of view, private equity is therefore not necessarily a priority issue, but we acknowledge the merits of early research and welcome the IOSCO's focus on private equity in that light.

### *Regulatory trends in financial activities*

#### Trading venues: Bond market transparency

15. We would support the conclusions IOSCO has come to in respect of bond market transparency, i.e. **no additional recommendations are necessary at this stage**. Global non-equity markets are characterised by having multiple places of trading and non-equity products are not traded in the same way in all jurisdictions. Therefore, we would have reservations about there being global standards for markets that are organised in rather non-uniform ways and in multiple centres. Since regulation should follow and not dictate market structures, we fail to see how regulatory action could be tailored to the very unique specificities of each non-equity market at this current time.
16. Additionally, IOSCO's analysis is correct insofar as it states that "bond markets' price setting mechanisms [are generally] less transparent than those of equity [...]" which is for good reason to allow these markets to operate efficiently and to provide for the ongoing provision of liquidity in bonds. However, we are concerned that, despite IOSCO eventually coming to the right conclusion, the Organization appeared to have automatically raised the question of how to improve bond market transparency. To our mind **this assumes a starting position of there being an identifiable market failure** that overrides the risk that additional transparency could lead to the collapse of the price formation process and subsequent liquidity in such markets. The EBF has not to date identified a market or regulatory failure which could justify intervention of this nature.

#### Intermediaries issues

17. Two important issues are addressed / to be addressed by IOSCO where we feel that the European experience of MiFID (and the Prospectus Directive) would be a very useful way into a future debate on **conflicts of interest and point of sale disclosure and customer suitability** at the global level.

18. In respect of point of sale disclosure and customer suitability we emphasise from the outset the need to **balance consumer protection measures with market efficiency**. Clearly not all consumers come to the market with the same degree of expertise or knowledge of financial products so an approach differentiated along these lines would be the one promoted by Europe's banks.

Asset Management: Hedge Funds

19. In view of the increasing significance of hedge funds and other alternative investments, **we find it appropriate for the IOSCO to make this a priority work stream**. The EBF has itself started to give careful consideration to these issues and found the IOSCO's report on the regulatory environment for hedge funds particularly useful for that purpose.
20. We believe that the pieces of work additionally envisaged or already started by the IOSCO will be helpful in addressing **potentially difficult characteristics of hedge funds, especially in terms of investor protection**.
21. Regarding the current global debate on the merits and risks of hedge funds, **the recently published report of the Financial Stability Forum clearly shows that the regulatory community should further explore the matter on a global basis with a view to strengthening the stability of the markets**. We look forward to engaging with IOSCO on the results of the Report in parallel with a further examination of self-regulatory initiatives in this arena.

Asset management: Soft commissions and incentives

22. The EBF has already responded to the IOSCO's consultation report on soft commissions. We found the IOSCO's background work on soft commissions helpful to gain a better understanding of the potential problems, but also **agreed with the IOSCO that in view of the currently changing legislation in several jurisdictions, more specific work would not be helpful at the moment**.

I would be happy to discuss with IOSCO, any aspect of this response. Alternatively, please contact Mr. Stephen Fisher, Financial Markets Adviser, ([s.fisher@ebf-fbe.eu](mailto:s.fisher@ebf-fbe.eu); + 32 2 508 37 45).

Yours sincerely,

Guido RAVOET  
Secretary General

**RE: IOSCO Consultation Report: An Overview of the Work of the IOSCO  
Technical Committee**

1. IBFED has pleasure in responding to the above consultation report. The members of the IBFED are the American Bankers' Association, the Australian Bankers' Association, the Canadian Bankers' Association, the Japanese Bankers' Association and the European Banking Federation. Representing approximately 18,000 banks worldwide with assets of about US\$31 trillion, including about 700 of the world's largest 1,000 banks, we believe that the IBFED brings an important perspective to policy issues affecting the banking industry around the world.

**I. General Remarks**

23. We take note of the five areas (page 4) upon which the Technical Committee is particularly interested to receive input. We will **focus primarily on secondary trading and intermediaries issues** e.g. the work of Standing Committees 2 and 3. We shall also focus on the overarching procedures for dialogue between the industry and IOSCO and believe we are well placed to be a key industry partner of IOSCO. In addition a focus will be areas where improve regulatory cooperation and more common regulatory approaches would improve the position for the industry.

24. The **IBFED broadly agrees with the proposed focus of IOSCO** as set out in page 6 of the consultation document. The division between issuers, accounting / auditing, trading venues, intermediaries and asset management appears to be a logical one.
25. **The IBFED also supports the three way split between exploratory work, regulatory trends in financial activities and enforcement.** Taken together these three elements are of critical importance if IOSCO members are to establish an enabling regulatory framework where the right balance is to be found between the promotion of efficient markets and appropriately protecting the consumer. Importantly, the IBFED believes that although regulation should lag and not dictate market developments, the global framework must be nonetheless responsive and capable of accommodating innovation whilst dealing with unforeseen eventualities.
26. In terms of the specific issues to be covered by IOSCO, **we particularly look forward to engaging with IOSCO in respect of the new exploratory work** by entering into a dialogue with IOSCO at the appropriate moment.
27. In terms of the work on regulatory trends in financial services, three issues stand out as being particularly topical and important. These are **bond market transparency** (trading venues), **the intermediaries issues and the aspects to be covered under the work on hedge funds** (asset management). We will go into further details on these and other key subjects in the specific remarks (below).
28. An effective enforcement regime underpins the effectiveness of financial supervision as a whole. Therefore, **the enforcement issues IOSCO highlights are just as important as the other parallel work streams.**
29. Finally and by way of general orientation, IBFED is of the opinion that there ought to be an **appropriate distinction drawn between the regulatory**

**treatment of retail and wholesale issues, as appropriate.** A differentiated approach would afford appropriate supervision for those who require stronger investor protection, i.e. the retail segment whilst not encumbering the wholesale, professional, segment who would by their very nature require a lesser degree of regulatory protection.

## II. Specific Remarks

### *New exploratory work*

30. The three issues IOSCO highlights in this very important section on **new exploratory work resonate strongly with stakeholders, despite being global in character.**
  
31. IOSCO rightly states that **inefficient price formation** may have an impact on market transparency and this could run counter to the interests of financial markets stakeholders. However, we would argue that this is **just one angle of a complex and intertwined debate** where market specificities and characteristics have to be fully taken into account before coming with pure investor protection considerations.
  
32. Some **IBFED members have already taken the lead on evaluating the impact of new technologies and in particular realising the synergies that new technologies can deliver** in response to regulatory developments be they on the European or global level. The conclusions of this work could usefully feed into the discussion IOSCO foresees throughout the remainder of 2007. It is worth noting however that the technological developments that IOSCO highlights will be eclipsed by wider innovations in the financial markets and these will have a significant impact on the shape of financial markets in the future.

33. Private equity is a global issue of global proportions that is currently the source of much, arguably misinformed, debate. **The IBFED is following developments surrounding the rise of private equity and its potential impact on market structure.** IOSCO has already come with a useful study of the hedge fund market and we look forward to engaging with the Organization in the preparation of a similar study on private equity.
34. In the meantime, we underline the **many positive effects demonstrated as a result of private equity investment, both on a macro- and a micro-economic level.** Our members have also not to date identified a major cause of concern related to the leverage levels of private equity firms. From our point of view, private equity is therefore not necessarily a priority issue, but we acknowledge the merits of early research and welcome the IOSCO's focus on private equity in that light.

*Regulatory trends in financial activities*

Trading venues: Bond market transparency

35. We would support the conclusions IOSCO has come to in respect of bond market transparency, i.e. **no additional recommendations are necessary at this stage.** Global non-equity markets are characterised by having multiple places of trading and non-equity products are not traded in the same way in all jurisdictions. Therefore, we would have reservations about there being global standards for markets that are organised in rather non-uniform ways and in multiple centres. Since regulation should follow and not dictate market structures, we fail to see how regulatory action could be tailored to the very unique specificities of each non-equity market at this current time.
36. Additionally, IOSCO's analysis is correct insofar as it states that "bond markets' price setting mechanisms [are generally] less transparent than those of equity

[...]” which is for good reason to allow these markets to operate efficiently and to provide for the ongoing provision of liquidity in bonds. However, we are concerned that, despite IOSCO eventually coming to the right conclusion, the Organization appeared to have automatically raised the question of how to improve bond market transparency. To our mind **this assumes a starting position of there being an identifiable market failure** that overrides the risk that additional transparency could lead to the collapse of the price formation process and subsequent liquidity in such markets. The IBFED has not to date identified a market or regulatory failure which could justify intervention of this nature.

#### Intermediaries issues

37. Two important issues are addressed / to be addressed by IOSCO where we feel that the European experience of MiFID (and the Prospectus Directive) would be a very useful way into a future debate on **conflicts of interest and point of sale disclosure and customer suitability** at the global level.
38. In respect of point of sale disclosure and customer suitability we emphasise from the outset the need to **balance consumer protection measures with market efficiency**. Clearly not all consumers come to the market with the same degree of expertise or knowledge of financial products so an approach differentiated along these lines would be the one promoted by Europe’s banks.

#### Asset Management: Hedge Funds

39. In view of the increasing significance of hedge funds and other alternative investments, **we find it appropriate for the IOSCO to make this a priority work stream**. We believe that the pieces of work additionally envisaged or

already started by the IOSCO could be helpful taken together an analysis of the private sector initiatives in this area.

40. Regarding the current global debate on the merits and risks of hedge funds, **the recently published report of the Financial Stability Forum clearly shows that the regulatory community should further explore the matter on a global basis with a view to strengthening the stability of the markets.** We look forward to engaging with IOSCO on the results of the Report in parallel with a further examination of self-regulatory initiatives in this arena.

Asset management: Soft commissions and incentives

41. We found the IOSCO's background work on soft commissions helpful to gain a better understanding of the potential problems, but also **agreed with the IOSCO that in view of the currently changing legislation in several jurisdictions, more specific work would not be helpful at the moment.**

Yours sincerely,



Sally Scutt Managing Director, IBFED	Pierre de Lauzan Chairman, IBFED Financial Markets Working Group
---	--



Institute of  
International  
Finance, Inc.



**IIF - Institute of International Finance**

1333 H Street, NW  
Suite 800E  
Washington, DC 20005  
Ph: (202) 857-3311  
Fax: (202) 463-0993

*June 8, 2007*

**Institute of International Finance  
Comments on  
An Overview of the Work of IOSCO's Technical Committee, March 2007**

The IIF Working Group on Cross-Border Securities Issues is pleased to take advantage of IOSCO's call for comments on the captioned paper (IOSCO's "Work Program" for 2007). IOSCO's solicitation of industry views on its program and priorities is much appreciated and reflects a strong commitment to constructive dialogue with the industry. We hope that our comments will help IOSCO promote common standards of regulation that will achieve its goals of creating just, efficient and sound capital markets during a period of rapid globalization.

**General Comments**

These comments are given against the background of what seems to be an emerging international consensus on what are often called "better regulation" principles. We will not rehearse the details here, but refer to the principles set out in the IIF's *Proposal for a Strategic Dialogue on Effective Regulation*, ICSA's *Principles for Better*

*Regulation*, and the public-sector statements on better regulation issued by the EU, the UK authorities, the AMF, and other authorities.<sup>3</sup>

As a very general matter, we think that it would be useful for the Work Program to make it an explicit priority to address concerns about the process of cross-border regulation as well as to the substantive issues of promoting “just, efficient and sound” markets. An important contributor to the efficiency of markets is the efficiency and effectiveness of the regulatory structure around them. This is especially true for cross-border markets and firms operating in multiple jurisdictions. As, de facto, the business context becomes more and more globally integrated, but, de jure, regulation remains largely a national function, particular and increasing attention to cross-border issues will be essential to assure the efficiency – and effectiveness – of regulation from both regulators’ and firms’ perspectives. IOSCO is well aware of this fact, but efficiency priorities do not come through nearly as clearly as they might in the Work Plan.

As a further general goal, we would urge that every opportunity be pursued to achieve the degree of convergence necessary to make greater mutual recognition or, as has recently been proposed, substituted compliance, feasible in a reasonable amount of time. While mutual recognition in some form may not be possible in all instances, we believe that consideration of opportunities to reduce barriers to mutual recognition (including reducing unintended or unnecessary differences that complicate mutual recognition) should be built into the process across the board.

We would urge that efficiency and effectiveness priorities as discussed here be incorporated, mutatis mutandis, in the work of regional subgroups of IOSCO.

---

<sup>3</sup> Three essential points of these recommendations are that regulation ought to be needs-driven, evidence-based and accompanied by a plan for regulatory process management. These ideas are developed further on in the paper but the following themes underpin the Institute’s comments on IOSCO’s work program:

1. An evidence-based approach requires an investment by regulators and firms alike in arrangements to gather information and part of this process will inevitably fall to market intermediaries. Thus, a high degree of structured, ongoing public/private sector dialogue is necessary to ensure that the regulators can keep pace with market developments and potential areas of dysfunction;
2. Impact assessment (as opposed to the narrowly interpreted, and often infeasible, concept of cost/benefit analysis) is crucial. It is, therefore, essential to have a well-documented approach to the development and implementation of new or revised regulation.
3. Following on from both those points, “exploratory work” is an essential basis for a needs- and evidence-based regulatory process. In that context, IOSCO’s increased outreach to stakeholders is welcome. We would encourage IOSCO, through the proposed structured dialogue, to solicit input as early in the process of formulation of issues as possible.
4. Finally, it is often easier to create new rules than to repeal or reform existing regulation. We suggest that IOSCO systematically integrate review requirements into any new proposals.

## Specific Comments

Our specific comments refer to the headings of the Work Program.

### 1. Introduction

*1., fourth indent.* As is well recognized, the interdependence of financial markets creates important needs for a consistent global regulatory framework. Regulatory arbitrage is a serious concern, and one that we share. Firms as well as markets would benefit from more consistent, high-level international standards, consistently and fairly implemented. We would note, however, that avoidance of regulatory arbitrage is not (or should not be) the only goal here if truly “just, efficient and sound” global markets are to be achieved. Attention also needs to be paid to consistency as a means of managing down compliance risks, costs, and other inefficiencies for firms, which try to assure high global standards internally. Multiple, overlapping, duplicative, inconsistent, and sometimes conflicting regulatory standards are a serious detriment to those efforts. We believe that reducing these inefficiencies should be an up-front goal, quite as much as avoiding regulatory arbitrage.

*1., fifth indent.* We appreciate IOSCO’s statement that it is “wary of burdening the financial markets with excessive regulations.” Avoidance of excessive regulation should be a primary goal, as it necessarily reduces efficiency and sometimes affects competitiveness. We do not believe that the two ideas of “avoiding excessive regulations” and “reacting pro-actively to any issues that might ... harm investors or the integrity of ... financial markets” are opposed. Rather, an ideal regulatory process would test all existing and proposed new regulatory requirements against emerging better regulation standards (in effect, testing for “excessiveness”), and, at the same time, it would apply a needs-driven, economically based analysis to emerging issues that might require new or modified regulations.

With respect to new regulations, this is sometimes called a “market-failure” analysis, but the term is perhaps misleading in that it does not require serious damage to be done before action is taken; rather it requires a serious economic analysis of the need for any proposed new regulations, including consideration of why the market cannot be counted on to counter anticipated problems. Another useful concept is that new regulations (or old regulations when reviewed) should be justified by “evidence-based” analysis, not legal analysis alone.

A related concept is international regulatory process management. One of the issues that has most concerned the industry recently is the need to implement costly and systems-intensive regulations simultaneously, including Basel II (including its market-risk component), MiFID and several other European Directives, Sarbanes-Oxley, and international accounting standards, among other things. The resulting difficulties have created a perception in public and private sectors alike that there needs to be time to “bed down” new regulations, and that a “regulatory pause” is in order. While we certainly share the sense that a “pause” is in order, there is also a need going forward to define

principles of international regulatory change management based on better ex-ante consultation on regulatory projects. We know that this is well in mind at IOSCO, but more explicit recognition of this need in the Work Plan would be most helpful, especially as the principles reflected in the Work Plan are extended beyond the Technical Committee.

The IIF *Proposal* on effective regulation recognizes that “principles-based” regulation is not a panacea and poses challenges to the private sector quite as much as to the public sector. Still, as numerous public statements from the official sector have recently recognized, the aspiration of making regulation as principles-based as possible is more and more widely shared. As further discussed in the *Proposal*, it is well worth weighing how to make each new or revised regulatory provision as principles-based as possible. Doing so should make the result more manageable, more flexible, and more readily adaptable to the conditions of a rapidly changing, internationalized market, even if, as a practical matter, most provisions will fall on a spectrum somewhere between pure “principles” and pure “rules”.

*1., seventh indent.* With respect to “regulatory failure” in the sense of incompleteness, it would be useful for IOSCO periodically to undertake a review of the implementation of past IOSCO analysis and recommendations.<sup>4</sup>

### **Overview of IOSCO TC Work Program**

It would help prioritization to see recognition of “better regulation” principles in this thematic summary. For example, one might see a statement such as “need for convergence of global standards” or “focus on specific improvements in cross-border implementation.” The letter of April 4, 2007 from IBFed, ICMA, IIF and SIFMA to the Chairman of the Technical Committee sets out some suggestions for such specific topics. Under the Enforcement category for Intermediaries, we think it would be appropriate to put, “improvement of coordination of cross-border enforcement.” We comment briefly on what we mean by this below.

### **2. The Work of the Technical Committee**

*2.A.1., first indent.* We understand why the endorsement of IFRS is “subject to national treatments where needed to address outstanding issues”; however, recent discussions of the SEC “roadmap” have made it clear that such “national treatments” may be an impediment to convergence of accounting standards, or to the highly desired removal of the US reconciliation requirement. We believe it would be appropriate for IOSCO to

---

<sup>4</sup> One example of specific concern to certain members lies with the CPSS-IOSCO recommendations for settlement systems and their assessment methodology published respectively in 2001 and 2002. These recommendations were aimed at operators of settlement systems, which represent a critical piece of the financial infrastructure, but their application to such operators and major market participants may merit reconsideration given the many intervening changes in the markets and the institutional and regulatory structure, especially in Europe, with the consequent questions of redundant or overlapping or outdated regulation.

confront that problem head-on and help find ways to manage down “national treatments” that result in qualifications on the implementation of IFRS in issuers’ financial statements.

*2.A.1., third indent.* We applaud the focus on IFRS consistency and the coordination of IOSCO and CESR databases to assist attainment of consistency. These efforts should be very helpful in attaining the consistency of implementation of IFRS that, as stated above, is becoming a major issue.

Moreover, we would put an equal priority on robust and consistent implementation on international standards on auditing across jurisdictions. We are well aware that IOSCO is very much involved in the work of IAASB through its consultative advisory group, which the IIF also attends, but we think it would be worth giving more prominence to this topic as a fundamental priority.

*2.A.2., first indent.* We look forward to the report on debt disclosure and hope that it can be used not only to set basic standards but to reduce unnecessary differences between national applications of those standards. Consistent, as well as high-quality, requirements across borders would greatly assist firms in assuring good compliance, and also constitute a major step forward in efficient regulation of globalizing markets.

*2.A.3., third indent.* We applaud the attention to the rights of minority shareholders, but with a caveat and a request. The request is that the Task Force put appropriate priority on the efficiency of cross-border regulation of operational matters in carrying out its work. This is another opportunity to devise principles or rules that are uniform across major jurisdictions and avoid the many, largely unintended and unnecessary but burdensome and risk-creating operational differences in rules across jurisdictions that we see today, especially in related areas such as large-shareholding reporting requirements.

*2.A.4.* In addition to reviewing the CRA code, we believe that IOSCO should consider broader regulatory issues related to CRAs as well. Ratings are increasingly important both from market viewpoints and for purposes such as Basel II implementation. Uniform recognition of rating agencies, especially agencies providing ratings of non-G10 instruments would greatly facilitate both good risk management and capital requirement compliance for a number of firms. While recognition procedures are being revamped in the EU and the US, issues about transatlantic consistency may arise and concerns exist about regional rating agencies in non-G10 countries, where lack of recognition by major authorities may limit the usefulness and growth of ratings for both prudential capital and securities-regulatory purposes.

*2.B.* We support efforts to achieve greater consistency in audit procedures, especially as more consistency in audit quality is related to the imperative of removing the current, unproductive requirement for reconciliations between US GAAP and IFRS for US-registered issuers. Generally consistent, reliable audits are an appropriate international goal, but we caution that audit quality is the goal, and consistency should not be insisted upon to an extreme or unrealistic degree, especially as convergence over time can be

expected in the more integrated environment now being created, but time will be required for such convergence to occur in an orderly and healthy manner.

2.C.1.2. Multi-jurisdictional oversight of credit markets is a difficult but top-priority issue. Much as the conceptual problems of mutual recognition, or what Ethiopis Tafara and Robert Peterson have called “substituted compliance” can appear challenging, this is also an area where the international community has the opportunity to make very real efficiency gains. We note that both the G7’s February statement and the new EU-US Transatlantic Framework endorse greater reliance on mutual recognition in securities regulation.

A great deal can be said on this subject. The essential point is simply that multi-jurisdictional *efficiency* should be as much a priority as *oversight*, and perhaps one way to look at it is to say that effective multi-jurisdictional oversight should have as one of its goals improving efficiency. This could take a number of forms, including achieving greater consistency of documentation requirements, making sure, insofar as possible, different jurisdictions’ reporting requirements are consistent as to format, timing, thresholds, etc., and structuring the oversight process to assure good coordination of any eventual enforcement actions affecting more than one jurisdiction.

With increasing cross-border provision of investment services and international investment, greater clarity is required regarding applicable rules and laws. But greater certainty regarding which rules in principle apply in a multi-jurisdictional oversight context is of little help if corresponding arrangements for enforcement are not coherent or efficient. The issue of enforcement and its coordination is therefore of increasing importance. Exchange of information is just one small initial step toward this aim. IOSCO could go further to identify and examine the related issues.

The issue is of course at the centre of current European MiFID discussions: authorities are still seeking coherent enforcement structures for common rules in the context of the many cross border cases that arise. In the broader international context, in which issuers, intermediaries and investors are increasingly likely to encounter similar circumstances, work by IOSCO to review the current situation, identify problems and seek to inform discussion and promote resolution would be to the benefit of all.

2.C.1.4. Enforcement cooperation is clearly one of IOSCO’s most important goals, and the Multilateral Memorandum of Understanding will, when fully implemented, constitute a very great achievement. In the next phase, the focus of cooperation efforts should be expanded to include not only cooperation in fulfillment of regulators’ responsibilities, but, as suggested above, should also extend to coordination with an eye on the impact on firms, when multiple inquiries, investigations, or regulatory actions affect a firm.

2.C.2.1. The discussion of price formation on fragmented markets could be taken to suggest a predisposition unfavorable to the emergence of new and competing venues and structures for price formation, yet that is one likely result of current changes in European

regulation, at least, that is desired as a policy matter by the authorities. Without entering into the details of the complex debate on price formation and best execution, diversity of trading venues can generate benefits from competition, in particular by potentially expanding access to a broader and more diverse population of investors and intermediaries, reducing transaction costs, and sparking innovation. The history and evolution of markets are not the same and have generated different regulatory responses (REG NMS in the United States and MiFID in the European Union), the impacts of which are yet to be measured. While IOSCO is right to be vigilant in considering effects on market transparency, it should avoid approaching the issues in ways that could prejudice the emergence of new structures or new forms of competition.

*2.C.2.2.* Direct access to exchanges has many ramifications. But for present purposes, we note that technological developments such as direct cross-border access to exchanges provide yet another reason why efficiency considerations such as cross-border consistency of regulations should be an equal priority with other IOSCO priorities. In the coming environment, such efficiencies will not only improve performance and reduce risk for firms, and not only increase market efficiency, but will be essential to effectiveness of regulation for all jurisdictions concerned.

As we have said elsewhere, even if such inefficiencies are reduced piecemeal over time, rule by rule (such as large-shareholding disclosure rules or wholesale/retail distinctions), significant improvements can be achieved from both firms' and regulators' points of view.

*2.D.1.1.* Management of conflicts of interest is at the core of good compliance, and the concerns set out here are highly pertinent. However, there is a dimension that seems to be missing: from firms' point of view, it is equally important that they be able to manage conflicts of interest in a consistent manner across jurisdictions. The litigation in Australia that appears to call into question Chinese wall procedures could, especially if it causes echoes in other jurisdictions, have very negative effects on the efforts of well-managed firms to control conflicts in a consistent, clearly understood and effective manner throughout the groups. Fragmenting such procedures is hardly likely to result in good compliance overall, and will certainly cause needless complexity and stress in financial institutions.

*2.D.1.2.* Customer suitability is the foundation of good practice in retail business. But the very concept of suitability depends on clear line-drawing between "retail" and "wholesale" classes of clients (whatever nomenclature is used). The present review of suitability issues could be the lever to achieve greater consistency in wholesale/retail line drawing among major jurisdictions, something that would greatly facilitate operational compliance efforts by globally active firms.

Closely related to suitability is the question of consumer education in financial matters, an issue that is receiving increasing attention in the US, the UK and throughout the EU, as well as from the OECD. Better educated investors will be better able to understand appropriate, useful (as opposed to formulaic) disclosures. As a related matter, we note

that appropriate concern for suitability should not induce divergence toward “merit” regulation intended paternalistically to protect investors but which may in fact block their access to innovative products appropriate to their financial status. Care should also be taken that focus on point-of-sale disclosure and suitability not unduly burden cross-border provision of services or the availability of products originated in one country to investors in others.

Private sector firms can and are playing a role in providing and comparing information upon which clients make investment decisions, and the use of such services clearly affects the suitability analysis of each customer. Regulation of financial advisors (and their remuneration) is of course a subject in itself, but for purposes of this paragraph the essential point is to take into account the client’s access to advice as a part of the suitability analysis. Available advice should be taken into account in the analysis of whether any additional measures regarding suitability are needed.

*2.D.2.1.* We applaud IOSCO’s desire to improve regulators’ understanding of the technical resources available to market intermediaries, including the cost of those resources. Such costs include the cost of searches of records and the cost of maintenance of records. Look-backs can often be very burdensome to carry out, and produce very little useful information. Such data is often stale and reflects subsequently changed procedures. We hope that any discussion of retention and access to electronic records will include some guidance as to managing information requests in a manner consistent with proportionality and other better regulation principles. The term is not used in the Work Program, but there is a very real need for an impact analysis of regulatory inquiries overall, and work on methodologies of structuring inquiries to take into account their cost and management impacts, and secondary impacts within the firm, in a proportionate manner.

### ***Ongoing Consultative Process***

Finally, we would like to endorse as warmly as possible IOSCO’s endeavor to broaden and deepen its ongoing interaction with the financial services community. The Final Communiqué of the 32<sup>nd</sup> Annual Conference refers to consideration of “adopting a process for a more structured dialogue with the financial services community that would lead to improved consultation on various projects and initiatives.” And it sets laudable goals for that dialogue.

As expressed at the Madrid meeting with stakeholders in March, and in the joint associations’ letter of April 4, this could profitably take many forms, but we would suggest a multi-pronged approach along the following lines to assure continued, well-targeted input, involving appropriate levels of expertise:

1. An informal high-level exchange of ideas on the model of the Madrid meeting, perhaps once or twice a year, could be very productive. This need not be more formal than the Madrid meeting, but should be structured to provide a full and frank exchange of views on strategic questions.



2. A structure to assure regular contact by industry with the Standing Committees and Task Forces on technical issues should also be envisioned, to assist those committees in their work and to assure good liaison on developing issues.
3. A “Task Force on Global Capital Markets Convergence” could be extremely useful to maintain priority attention to the unremitting integration of global markets and contribute views on specific issues toward the efficiency and liquidity of cross-border markets.
4. Finally, we understand that consideration is being given to a standing consultative committee of the type used by CESR or CEBS. We believe such a committee could be highly valuable but would urge combining its use with the approaches noted in our April 4 letter in order to assure appropriate coverage in terms of expertise, views represented, and levels of participants.

The IIF looks forward to remaining fully engaged with IOSCO to advance this process. For any questions on the above paper please contact David Schraa, Director of the Regulatory Affairs Department ([dschraa@iif.com](mailto:dschraa@iif.com)).

David Schraa

Director of the Regulatory Affairs Department



## **AN OVERVIEW OF THE WORK OF THE IOSCO TECHNICAL COMMITTEE**

Consultation report issued by the Technical Committee of the International Organization of Securities Commissions  
Comments from ACCA

June 2007

ACCA (the Association of Chartered Certified Accountants) is the largest and fastest-growing global professional accountancy body with 296,000 students and 115,000 members in 170 countries.

We aim to offer the first choice qualifications to people of application, ability and ambition around the world who seek a rewarding career in accountancy, finance and management. ACCA works to achieve and promote the highest professional, ethical and governance standards and advance the public interest.

[www.accaglobal.com](http://www.accaglobal.com)

### **Introduction**

ACCA welcomes the issue of the Consultation Report *An Overview of the Work of the IOSCO Technical Committee* (the Consultation). IOSCO sees itself as *'the most important standard setter in the field of securities regulations'* and, as such, it is important that appropriate consultation takes place with stakeholders and ultimately all those affected by the orderly conduct of securities markets. We believe that this consultation, based on a stand-alone document, is preferable to discussing future work in subject matter related

papers, such as *Strengthening Capital Markets Against Financial Fraud* (February 2002).

We are pleased to offer comments towards the following matters identified in the Technical Committee's (TC) Consultation:

- Opportunities to promote just, efficient and sound markets
- Market risks which might warrant regulatory intervention
- Regulatory failures
- IOSCO's overall programme of activities
- Specific on-going initiatives of IOSCO

In doing so, as the largest and fastest-growing global professional accountancy body, we have confined our comments to those relevant to certain aspects of the market participation viewpoints of issuers, and accountants and auditors (parts 2A and 2B of the Consultation).

## **Issuers**

### **MONITORING DEVELOPMENTS AND THE ENFORCEMENT OF ACCOUNTING STANDARDS**

We note and support IOSCO's vigorous engagement with the international accounting standard setting process. We agree wholeheartedly with the stances taken on the cross-border use of IFRS, reducing the complexity of standards, supporting principles, and achieving an appropriate balance between costs and benefits.

We suggest that, in the interests of transparency and to promoting consistent application of IFRS, the TC may wish to carry out a project to assess the benefits and feasibility of providing public access to certain information from the *IOSCO IFRS Regulatory Interpretation and Enforcement Database*.

### **FINANCIAL AND NON-FINANCIAL DISCLOSURE STANDARDS**

With respect to periodic disclosure, we note that IOSCO is developing principles for the disclosure that listed issuers provide in their periodic reports. These principles are intended to facilitate agreement among regulators on minimum standards for disclosure in periodic reports, particularly annual reports.

ACCA has been actively involved with the unfolding debate on corporate social and environmental responsibility since 1990. We promote transparency and best practice in reporting and disclosure and assurance. The ACCA Awards for Sustainability Reporting now take place in 20 countries in Europe, Africa, North America/Canada and the Asia Pacific region. We use our expertise and experience to collaborate with organisations such as the Global Reporting Initiative to drive forward the sustainability agenda.

We are particularly concerned to promote constructive dialogue on the development of metrics for corporate transparency, therefore, between those whose focus is on what might be termed 'corporate governance related nonfinancial disclosures' and those whose area of interest extends to the wider

aspects of sustainability reporting.

We note that the G8 Heiligendamm Summit Declaration *Growth and Responsibility in the World Economy* (7 June 2007) includes an invitation to 'the companies listed on our Stock Markets to assess, in their annual reports, the way they comply with CSR standards and principles.' We suggest that the TC could do much more, therefore, to contribute to the wider acceptance and improvement of such reporting, which can have an important role in tackling challenges, such as climate change.

## **CORPORATE GOVERNANCE**

We welcome the work done by the Task Force on Corporate Governance (summarised in the Consultation) and believe that the remaining scheduled output will be a useful report. The protection of minority shareholders is an aspect of market operation that has recently achieved greater attention because of the growing impact of private equity deals in certain markets. We would encourage the TC to consider a project to examine the wider effects of private equity on stock market health and perhaps more narrowly on the impact of perceptions that private equity offers a less rigorous regime of corporate governance that may act as a driver for delisting.

### **Accountants and Auditors**

#### **MONITORING DEVELOPMENTS WITH RESPECT TO AUDITING STANDARDS**

The Consultation does not report fully the extent of IOSCO's engagement with the international auditing standard setting process, for example, through involvement in the International Auditing and Assurance Standards Board's Consultative Advisory Group. Nor does it set out the views of the TC on international standards as is done in the Consultation in relation to IFRS. The TC has issued statements on the principles of auditor oversight and auditor independence (October 2002) and we would encourage the TC to examine whether those statements remain wholly valid or are now in need of revision. In addition, we suggest that TC should consider the need for a statement on the development and use of International Standards on Auditing (ISAs). This would be timely as the adoption of ISAs is under consideration in the EU and is generally of growing international significance.

We suggest that such a statement should not only reflect IOSCO's contributions to the current project to clarify and improve ISAs but also establish endorsement criteria and a vision for the longer-term future of robust, principles-based standards.

## **NON AUDIT SERVICES**

We note the work done in relation to auditor independence and, in particular, the recent publication of a survey on the regulation of non audit service provided by auditors.

Although the Consultation notes that there is close monitoring of the development of independence standards and that comments are regularly made to IFAC's International Ethics Standards Board for Accountants, we feel that the TC could do more to publicise its work and views on independence (last announced in October 2002). The IOSCO responses to past exposure drafts of the IFAC Ethics Committee are published, but these are not written to provide general readers with a point of reference, nor has there been any published response to the recent Proposed Revised Section 290 of the Code of Ethics for Professional Accountants, *Independence - Audit and Review Engagements*, and Proposed Section 291, *Independence - Other Assurance Engagements*. In the process of development of auditor independence standards, and indeed other auditor ethical standards, the conflict between principles and rules and the balance between costs and benefits (particularly as smaller entities are affected) are of great significance. In the current debate over Section 290, benchmarking, such as is present in the survey referred to in the Consultation, is playing a large part. We feel that these matters should be covered in an appropriate statement of IOSCO's views which could, as suggested above in relation to ISAs, provide a vision for the longer-term future of a robust, principles-based standard for independence.

## **AUDIT QUALITY**

ACCA was pleased to be represented at the IOSCO Roundtable *Quality of Public Company Audits from a Regulatory Perspective* (1 June 2007). We welcome the decision to publish transcripts and videos of the event as this promotes global consideration of the issues and the views discussed at the event.

As noted in the Consultation, there are many parties examining and addressing issues affecting audit quality. We believe that it is vital that auditor oversight bodies, governments, securities regulators, relevant standard setters and the auditing profession develop a consistent view on the nature of audit quality and the balance between its costs and benefits. We encourage IOSCO to continue, therefore, its constructive dialogues.

## **AUDIT CONTINGENCY PLANNING**

Concentration of the audit market for listed companies and the possibility of the demise or suspension of a major audit firm has received considerable attention in recent years, most recently through the work of the United Kingdom Financial Reporting Council on market-based responses. We agree that it is important that regulators put in place contingency plans for circumstances where, nevertheless, a crisis occurs. This should not be seen as a substitute for companies to make their own contingency plans, but it is a necessary underpinning of the orderly conduct of markets.

ACCA believes that any solutions proposed are unlikely to be successful unless they make sense in a global context. Accordingly we fully support IOSCO's work in this area which will serve to promote common solutions.

David York  
Head of Auditing Practise

TECH-CDR-682.DOC

**The Association of Chartered Certified Accountants**

**29 Lincoln's Inn Fields London WC2A 3EE United Kingdom**

tel: +44 (0)20 7059 7000 fax: +44 (0)20 7059 7070 [www.accaglobal.com](http://www.accaglobal.com)

**PricewaterhouseCoopersLLP**  
300 Madison Avenue New York  
NY 10017  
Telephone (646) 471-3000  
[www.pwc.com](http://www.pwc.com)

June 8, 2007

### **An Overview of the Work of IOSCO's Technical Committee**

We are responding to the invitation to comment on the above referenced consultation report on behalf of PricewaterhouseCoopers. PricewaterhouseCoopers refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.

We welcome the opportunity to provide views on the work program of the IOSCO Technical Committee (Committee). PricewaterhouseCoopers (PwC) has a keen interest in the work of IOSCO and its Technical Committee and we commend the Committee for publicly consulting with stakeholders on its work program.

We have provided comments on the Committee's work program areas focused on accounting and auditing. We welcome future opportunities to work with IOSCO on these and other matters.

#### **A1 Monitoring Developments and the Enforcement of Accounting Standards**

- **Closely monitoring developments in International Financial Reporting Standards, comments on proposed changes and discussion with the International Accounting Standards Board.**
- **IOSCO IFRS Regulatory Interpretation and Enforcement Database.**

#### Comment

We recognize that global capital markets and investors want to be able to compare the financial information reported by companies regardless of the country in which they are incorporated or conduct business. For this reason we understand and appreciate the important

contributions IOSCO has and will continue to make in recommending, supporting or endorsing developments of IFRS and the IASB

We believe IOSCO can play an important role in encouraging national authorities to accept and adopt IFRS standards without modification. To analyse differences arising from the adoption of IFRS in various territories, PwC performed a survey of current adoption procedures in 43 of the world's larger capital market economies (including the 27 EU member states but excluding Brazil, China, India, Japan, Russia and the United States, where convergence with IFRS is still in progress or at an early stage). We found that only two of the countries make a straightforward reference to IFRS as issued by the IASB, and only then in the case of listed companies. In all the other countries a modified reference to IFRS is made, or the accounting framework is referred to using entirely different terminology. We would be happy to share and discuss the results of our survey with IOSCO representatives.

These differences from IFRS as issued by the IASB arise for different reasons – legal adoption processes, delays in adoption, translation differences and other regulatory reasons. Ultimately, the proliferation of different IFRS-based accounting standards may cause confusion and hinder the comparability of financial statements by users on a cross-border basis. We believe IOSCO could help by encouraging its members not to make modifications to IFRS for local use, and encouraging local adoption on a timely basis.

We support IOSCO's objective of encouraging a reduction of complexity of accounting standards and a reduction in the number of exceptions to principles. In dealing with the complexities of global financial markets, principles-based standards are superior to rules-based approaches. Rules increase complexity and can decrease meaningful information. An important pre-requisite for reducing complexity, however, is the recognition that a principles-based approach can successfully exist only in an environment in which professional judgment is respected and therefore can be fully exercised.

We also agree that there should be an appropriate balance between the costs and benefits of accounting standards. Furthermore, we are supportive of the consistent application of IFRS and believe the IFRS Regulatory Interpretation and Enforcement Database could help support consistent application. We note that access to the database is currently restricted to securities regulators. We would encourage IOSCO to make the database more transparent (with appropriate safeguards to prevent it from becoming an alternative IFRS "rulebook") – in the same way as CESR has now started to publish the rationale for enforcement decisions that its members have considered.

## **A2 Financial and Non-Financial Disclosure Standards**

- **IOSCO is developing principles for the disclosure that listed issuers provide in their periodic reports.**

### Comment

We are supportive of IOSCO's efforts in this regard and agree that principles for financial and non-financial disclosure standards will provide greater consistency in the market place, help

(2)



the allocation of capital among companies, and assist investors in making investment decisions. Principles for financial and non-financial disclosure standards should be developed with input from, and in consideration of, all stakeholders in the financial reporting process. Constant advancements in technology should also be considered as it will continue to impact financial reporting and investor needs.

Preparers of financial information for companies that raise capital in public markets currently face a multitude of requirements, standards and guidance. To give an illustration, a company with dual listing in the United States and Europe currently has to cope with: several sets of accounting standards and related interpretations and guidance; European legislation governing the publication of annual and interim financial information; SEC filing rules; and stock exchange requirements. This environment of multiple standards and regulation gives rise to different accounting requirements, different guidance and requirements for management commentary, and to different approaches to the publication of non-GAAP measures and preliminary announcements amongst other challenges.

In our comment letter to IASB/FASB on its recent Conceptual Framework consultation, we suggested there is a need for a framework or hierarchy for the whole corporate reporting model. Further, our ideal model would be a single framework underpinning the preparation of the standards and guidance to support principles necessary to cover all communications needed to ensure the efficiency and effectiveness of the markets.

We hope that standard setters, regulators and other market participants join forces to work toward the creation of a single conceptual framework for corporate reporting. IOSCO could play a uniquely important role in establishing such an initiative. Such an initiative will need to address how all parties might share a common framework and work together so that standards are set in a seamless way (for example, IOSCO could work alongside the IASB's management commentary project team to create principles for periodic financial and non-financial disclosure). If they do not, the result would be increased complexity caused by the continuation of inconsistencies and exception-sourced rules which in turn generates barriers to efficient and effective capital markets.

### **A3 Corporate Governance**

- **IOSCO is to do additional work on how the OECD corporate governance principles can be implemented in practical terms.**

#### Comment

We welcome further work in this area as corporate governance principles impact our relations with the companies we audit. Moreover, we agree that good corporate governance is very important in investor protection, and we support the further work of IOSCO and the OECD in this area.

Financial reporting and auditing are activities that take place – and are strongly influenced by - the business and legal environment. The quality of financial reports is influenced by a number of factors, including the business culture, business ethics, company law and enforcement

(3)

regimes, and corporate governance norms of the country concerned. The audit, even if it is conducted according to high quality standards, cannot compensate for these other factors if they are missing.

For example, PwC has for several years advocated that audit committees can play a valuable role – through effective and informed oversight – in helping to ensure market confidence in high quality financial reporting. We believe that every company listed on world equity markets should have an audit committee or equivalent body that is well resourced, has an appropriate mix of skills (including financial expertise), and which is independent of management.

## **B1 Monitoring Developments with Respect to Auditing Standards**

### Comment

As capital markets and business increasingly globalize, the benefits of auditors using common high quality principles-based standards worldwide become self-evident. Stakeholders want to know that the quality of audits is at a high level regardless of where they are conducted. As with accounting standards, the path to convergence is likely to be staged. A strong international body to help develop those standards is key. Equally, the path will be smoother if national standard setters actively contribute to the international standard setting process, avoid being insular, and are prepared to value the benefits of global consistency over local preferences.

We urge IOSCO to endorse the International Standards on Auditing (ISA) through endorsement of the IAASB/Public Interest Oversight Board (PIOB) due process for setting ISAs. IOSCO representatives are closely involved in the PIOB, the Monitoring Group and the IAASB's Consultative Advisory Group and are therefore well-positioned to understand the process in place and to provide input at the appropriate point and time in the standard setting process. IOSCO can play a crucial role in this process by making suggestions during the consultation process through the IAASB Consultative Advisory Group.

## **B2 Non Audit Services**

- **Issues related to auditor independence**
- **IOSCO is closely monitoring the work of IFAC's International Ethics Standards Board for Accountants**

### Comment

A patchwork approach to auditor independence neither serves the public interest nor is effective in ensuring independence. IOSCO's recent survey highlights the current environment which consists of many differing independence standards that are often inconsistent and apply extraterritorially--in particular, scope of service restrictions. IOSCO's survey provides useful information and serves as a benchmark from which to begin striving for a consistent global independence framework. We believe the framework should be based on a "threats and

(4)

safeguards" approach--as in IFAC's Code of Ethics. IFAC's International Ethics Standards Board for Accountants (IESBA) is revising certain provisions of the Code and we welcome IOSCO's interest in monitoring developments on non-audit services and auditor independence. **B3 Audit Quality**

- **IOSCO is planning to hold a roundtable discussion in June 2007 with its financial market stakeholders on topics relating to the quality of audits.**

Comment

As one of the global accounting networks, we strive for consistent global audit quality. We would welcome the opportunity to work together to address what we perceive as some of the impediments to continuous improvement of global audit quality. Impediments can be caused by differences and weaknesses in the following:

- ⌚ Oversight regimes;
- ⌚ Reporting and auditing standards;
- ⌚ Governance systems;
- ⌚ Independence standards; and
- ⌚ Regulatory enforcement actions and enforcement regimes.

At a Monitoring Group meeting this past January, we and representatives from other networks discussed regulatory impediments to continuous improvement of global audit quality. It was suggested that we meet again with the Monitoring Group in the fall to further discuss these impediments and also discuss the work we as a profession have undertaken to address these matters. We look forward to that meeting. Furthermore, we commend IOSCO for the audit quality roundtable it hosted in Paris in June. We found that discussion to be informative and important and we appreciated the opportunity to participate and contribute our thoughts to that discussion.

The current and planned work outlined in the Committee's consultation will positively impact many of these important public policy concerns. We welcome future opportunities to work with IOSCO on these and other matters.

**B4 Audit Contingency Planning**

- **IOSCO is identifying the range of possible considerations by a securities regulator in the event of an audit crisis.**

Comment

We share IOSCO's concern about the negative impact on markets of a major audit crisis or the demise or suspension of a major firm. We would be pleased to meet with the Technical Committee to share thoughts on considerations should any of these events occur.

We believe IOSCO's principal focus should be on how to avoid an audit crisis or the demise of a major firm and network. As national capital markets become more connected globally and capital flows across borders, the potential for damage that could arise out of the collapse

(5)

of one of the global networks increases significantly. An auditor's opinion lends credibility to the reported financial information on which investors rely to make investment decisions, and a healthy and sustainable auditing profession is crucial to the healthy functioning of capital markets.

Recently, policy makers in a number of jurisdictions have examined issues around the possible collapse of a large audit firm – impacts, causes and potential solutions. Many of those examinations are ongoing. We believe that IOSCO is well-positioned to study issues surrounding audit firm sustainability from a global perspective, with a view toward encouraging national regulators to take a multinational perspective when adopting policy positions on such matters as auditor independence requirements, auditor liability, and enforcement actions. The focus of IOSCO's work should be first on assessing reasonable means to prevent the collapse of a major firm or network and second on managing the effects on investors and the capital markets.

### **Additional Work**

We appreciate the opportunity to comment on the Committee's overview of the work of the IOSCO Technical Committee. Please contact Richard R. Kilgust at +1 646 471 6110 if you wish to further discuss any of the issues raised above.

PricewaterhouseCoopers

Richard R. Kilgust

## **Global Public Policy Committee (GPPC).**

June 8, 2007

### An Overview of the Work of IOSCO's Technical Committee

I am submitting this letter on behalf of the Global Public Policy Committee (GPPC). The GPPC comprises representatives of the six largest international accounting networks\* who meet to discuss capital markets issues of relevance to the organizations and to investors. The GPPC is pleased that the IOSCO Technical Committee has decided to issue a public Consultation Paper on its work program and to seek input from the financial services industry and other interested parties.

As noted in the Consultation Paper, we are in the midst of a rapid evolution of international markets, marked by increasing globalization and interdependence along with technological advances. As the leading international standard setter for the securities markets, IOSCO's role has likewise evolved and grown increasingly important. Similarly, the regulatory environment in which the GPPC member networks operate has changed considerably. Among other things, in the last five years, we have moved from a system of peer review to one of independent oversight that is increasingly being carried out by newly established independent audit oversight regulators. A new organization, the International Forum of Independent Audit Oversight Regulators, has been created to foster communication and cooperation among its members. We welcome these developments and believe that they help to protect investors, strengthen the capital markets, and support the important work of our profession.

As a result of the growing recognition of accounting, auditing, disclosure and corporate governance practices to the health of the capital markets, the IOSCO Technical Committee's work program itself has expanded to include a significant focus on and devotion of resources to these issues. As noted in the Consultation Paper, current Technical Committee work relating to accountants and auditors includes, among other

\* The GPPC comprises representatives of BDO International, Deloitte, Ernst & Young, Grant Thornton International, KPMG, and PricewaterhouseCoopers, and focuses on public policy issues for the profession.

things: (i) monitoring the development and enforcement of accounting standards; (ii) undertaking work projects relating to financial and non-financial disclosure standards; (iii) following developments with respect to auditing standards; (iv) exploring issues relating to auditor independence; (v) examining the drivers of audit quality; and (vi) identifying the considerations for a securities regulator in the event of an audit crisis or threat of an audit crisis. Standing Committee 1 is responsible for much of this work while special task forces have been formed to take on specific projects. Other IOSCO projects on corporate governance and transparency are also relevant to our work.

The GPPC members support the Technical Committee's proposed work program as it relates to accounting and auditing. Many IOSCO members either directly or indirectly regulate accounting and auditing firms, and the GPPC networks, which audit the vast majority of publicly listed companies, play a major role in implementing many of the international standards and principles that IOSCO develops. As such, we are significantly affected by IOSCO's work, and also have a unique perspective to offer. The GPPC thus shares many areas of mutual interest with the Technical Committee. We would be pleased to discuss these on a regular basis and to assist the Technical Committee as the need arises.

The GPPC appreciates the opportunity to comment in response to the Consultation Paper, and looks forward to lending our expertise and assistance as desired by IOSCO.

Yours sincerely,

Richard R. Kilgust

On Behalf of the  
Global Public Policy Committee

Contact Details for Richard R. Kilgust

Office +1 646 471 6110

Fax +1 813 639 2388

Email [dick.kilgust@us.pwc.com](mailto:dick.kilgust@us.pwc.com)

2



**ICSA**

INTERNATIONAL COUNCIL OF SECURITIES ASSOCIATIONS

**Comments on IOSCO Consultation Report, *An Overview of the Work of IOSCO's Technical Committee***

We are writing on behalf of the members of the International Council of Securities Associations (“ICSA”) which is composed of the trade associations and self-regulatory associations active in the world’s major securities markets.<sup>5</sup> We would like to thank the members of IOSCO’s Technical Committee and the IOSCO Secretariat for the work that they have done to produce the *Overview of the Work of IOSCO’s Technical Committee* (“the Report”) that was released in March of this year. We welcome the opportunity to comment on the Report.

ICSA’s members appreciate IOSCO’s significant body of work in recent years on a range of matters that are vital to the efficiency and sound operation of financial markets, especially in a cross-border context. In an increasingly global capital market, it makes sense for discussions of regulatory policy to be placed as far as possible at an international level. The work program for the period ahead, as detailed in the Report, covers an equally important range of issues that are of key strategic significance to the securities industry. Finally, the publication of the Report itself is most welcome as the industry needs to understand the concerns of regulators if it is to respond effectively to those concerns, and to take account of them in its own planning. The Report will help to foster increased communication between IOSCO and the industry, and we hope that the exercise will be repeated at suitable intervals in the future.

We have structured our comment letter to address the specific issues that were raised in the Report. Specifically, this letter responds to the Technical Committee’s request for comment on: (1) opportunities for IOSCO to promote just, efficient and sound markets; (2) market risks that might warrant regulatory intervention; (3) regulatory failures (for example instances where regulation is not effective or where sectoral or national regulations are inconsistent or incomplete); (4) IOSCO’s overall program of activities;

---

<sup>5</sup> The members of the International Council of Securities Associations (ICSA) represent and/or regulate the overwhelming majority of the world’s equity and fixed income markets. ICSA’s objectives are: (1) to encourage the sound growth of the international securities markets by promoting harmonization in the procedures and regulation of those markets; and (2) to promote mutual understanding and the exchange of information among ICSA members.

and (5) specific ongoing activities of IOSCO. Our comments on these specific issues are the following:

## **1. Opportunities for IOSCO to promote just, efficient and sound markets**

IOSCO is clearly already playing a very important role in promoting just, efficient and sound markets both nationally and internationally. However, ICSA members believe that there are a number of areas where IOSCO has not yet focused its attention and which could be important for IOSCO's overall objectives. Specifically, ICSA members suggest that IOSCO could:

### **1.1 Establish a structured dialogue with market participants**

ICSA members consider that a structured dialogue between IOSCO and the industry is crucial, given the rapid pace of change that is taking place within the securities industry on a worldwide basis. Ultimately, regulators and industry participants share the same objective, which is to foster the sustainable growth of the capital market in the most efficient and effective manner possible while protecting investors and ensuring market integrity. We believe that a structured and effective dialogue between IOSCO and the industry will contribute toward achieving that common objective. We commend the Technical Committee for having taken the initiative to begin the process of establishing a more structured relationship with the industry and look forward to the evolution of that dialogue over time.

### **1.2 More actively promote regulatory convergence**

This is an extremely important issue since financial markets are increasingly integrated on a global basis while regulatory regimes remain largely national. As a result, regulations are often different and sometimes contradictory, which imposes substantial costs and inefficiencies on the international capital market. IOSCO's work in developing standards and principles for securities regulators as well as its work in other areas – such as international accounting standards – has been critical in laying the groundwork for increased regulatory convergence. The existing bilateral and multilateral agreements between securities regulators in different jurisdictions also help to mitigate the inefficiencies introduced by different regulatory approaches in an increasingly integrated and global capital market. Despite all of the work done to date, however, firms active in the international capital market are still faced with significant costs arising from the need to comply with different sets of regulations when operating on a cross-border basis.

ICSA members understand that achieving agreement about regulatory convergence among IOSCO members is extremely difficult due to the nature of the organization and the heterogeneity of its membership. However, despite these important structural constraints, ICSA members believe that some work can still be done by IOSCO to promote a greater degree of regulatory convergence.



Specifically, ICSA members believe that IOSCO could encourage regulatory convergence by continuing to focus on the development of high-level global principles rather than specific rules.<sup>6</sup> These principles could then be implemented by individual regulators in accordance with their existing legal and regulatory regimes. ICSA members also believe that IOSCO could promote regulatory convergence by encouraging its members to adopt principles-based and risk-focused regulatory regimes that have clearly defined objectives. The reliance on principles-based and risk-focused regulatory regimes with clearly defined – and in many cases similar – objectives in different jurisdictions should encourage similar policy responses, thereby promoting greater efficiency in the international capital market.

### 1.3 Develop and promote principles for “better regulation”

Over the past several years governments and regulators in a number of jurisdictions have identified and in some cases adopted measures intended to improve the efficiency of their regulations.<sup>7</sup> The “better regulation” initiatives announced to date have included a variety of measures such as a commitment to reduce red tape and unproductive rules, to regulate as lightly as possible, to consult more widely before regulating, and to make regulations straightforward and accessible. In a few jurisdictions, regulators have also undertaken a thoroughgoing and systematic review of their underlying regulatory philosophy as part of their commitment to better regulation.

The adoption of “better regulation” initiatives in a variety of jurisdictions reflects the understanding that regulation has a critical impact on the efficiency of markets and, by extension, on overall economic performance. ICSA members believe that this issue is important to securities market regulators everywhere, since regulators in almost all jurisdictions are charged with protecting the well-being of consumers. While the mandate of consumer protection can be interpreted quite narrowly, at a broader level it clearly includes measures to promote overall market efficiency since more efficient financial markets should promote economic growth and thereby the well-being of consumers.

---

<sup>6</sup> ICSA members acknowledge and are grateful for the important work that IOSCO has already achieved in this area, including its promotion of convergence in the international accounting system.

<sup>7</sup> At the national and international level, a number of governments in Europe as well as the European Commission have adopted “better regulation” initiatives. In addition, regulatory authorities for financial services in Australia, France, Ireland, the Netherlands and the UK have all announced and in some cases already begun to implement “better regulation” initiatives. At the provincial level, the British Columbia Securities Commission had pursued a particularly active “principles based” agenda for a number of years.

Given the importance of this issue, ICSA members would encourage IOSCO to develop and promote principles for “better regulation” that would, at some point in time, be incorporated into IOSCO’s *Objectives and Principles of Securities Regulation*.

From the point of view of ICSA members, any set of principles for better regulation would encourage regulators to carry out rigorous economic analysis prior to implementing new regulations, so that they could determine if the contemplated regulations were necessary and, if so, if the regulations would be the most cost effective method for resolving the problems that have been identified.<sup>8</sup> In addition, principles for better regulation would also encourage the development of regulatory policies that were targeted, proportionate and risk-based and, where possible, that relied on stable principles rather than detailed and prescriptive rules. Finally, principles for better regulation would encourage regulators to develop effective consultation programs that allowed market participants to influence the design and implementation of regulatory policy (see paragraph 1.4 below).

#### 1.4 Develop and promote principles for regulatory consultation

A consultation program that encourages a frank and open exchange of views between regulators and market participants on an ongoing basis is an important element of any program of “better regulation”, as noted above. However, effective consultation is also important in its own right, as it can improve the efficiency of regulatory policy by: (1) allowing financial market participants to better understand the goals and instruments of those policies, thereby greatly strengthening the potential for cooperation between regulators and market participants; and (2) enabling market participants and the general public to provide feedback on proposed regulations, thereby improving the decision making process for regulators while also reducing the risk that new policies will have unintended, and negative, consequences for financial markets.

ICSA members welcome the fact that IOSCO itself has developed and follows a comprehensive consultation program for its own work. However, many individual IOSCO members still do not have effective consultation programs that allow market participants in those jurisdictions to influence the design and implementation of regulatory policy. To remedy that situation, ICSA members would encourage IOSCO to develop principles for regulatory consultation that it would promote to all IOSCO members. In time, these principles could be incorporated into IOSCO’s *Objectives and Principles of Securities Regulation*.

---

<sup>8</sup> For further clarification regarding ICSA’s views on better regulation, see ICSA’s *Principles for Better Regulation*, October 2006. See also Section 3 of this letter.

An effective consultation program, from the point of view of ICSA members, would include either formal or informal “pre-consultation” with industry representatives prior to the design of new regulations as well as measures that would aim to ensure that the actual consultation process includes input from the full range of interested parties.<sup>9</sup> This would require that regulators: (1) encourage input from all relevant parties and (2) allow adequate time for each consultation. Finally, an effective consultation policy would ensure that the feedback received by regulators during the consultation process would be, to the greatest extent possible, incorporated into the regulations that were the subject of the consultation.

### 1.5 Promote financial and investor education

ICSA members believe that financial and investor education is increasingly critical in today’s world, since educated consumers who are able to make informed judgments regarding their investments are more able to promote their own financial well-being while also contributing to higher levels of national savings and a more efficient allocation of capital. Moreover, since educated consumers are able to make more informed choices about financial products and investments, financial and investor education should help regulators and private sector market participants alike to better achieve the critical goal of protecting investors while also helping to build investor confidence in securities markets. To promote investor education on both a national and international level, ICSA members produced and endorsed a set of *Principles and Best Practices for Investor Education* in early 2004. Many ICSA members also participate in the International Forum for Investor Education (IFIE), a non-commercial, private sector organization whose primary objective is to improve investor education on a worldwide basis. We understand that IOSCO will be jointly sponsoring a seminar on investor education with IFIE later this year. ICSA members strongly support that initiative and, given the importance of financial and investor education at both the national and international level, would encourage IOSCO to continue to devote resources to this specific issue.

## 2. Market risks which might warrant regulatory intervention

There are a large number of areas which might warrant regulatory intervention. Many of these, however, are specific to individual jurisdictions and would not necessarily have relevance on a cross-border basis. However, one area that is relevant on a cross-border basis and which concerns nearly all ICSA members is the ongoing evolution of exchanges and other market infrastructure providers.

As IOSCO’s final report on *Regulatory Issues Arising from Exchange Evolution* noted, over the past decade almost all of the world’s major exchanges and many smaller exchanges have demutualized and, in many cases, are involved in an ongoing

---

<sup>9</sup> For further clarification on ICSA’s view of regulatory consultation practices, see ICSA’s *Statement on Regulatory and Self-Regulatory Consultation Practices*, October 2004.

process of consolidation.<sup>10</sup> ICSA members understand that consolidation among exchanges and other market infrastructure providers should in theory bring with it a variety of benefits, including more integrated and liquid markets and lower costs for users. However, there is a possibility that a relatively small number of exchanges will emerge as dominant players in a number of markets, leading to the potential for monopolistic pricing and other forms of uncompetitive behavior, which in turn would have a negative effect on capital formation and the overall efficiency of the economy.

These developments, including changes in the ownership structure and consolidation among exchanges, are extremely important for the securities industry since most of the activity in the industry involves on and off-exchange trading. Demutualization and consolidation among exchanges also raises important public policy concerns, due to the potentially negative impact of those developments on competition, market integrity and economic efficiency. This concern was expressed in the IOSCO report cited above which, among other measures, recommended that:

Regulatory authorities should consider competition issues that may arise in connection with the evolution of exchanges ... where such evolution impacts market integrity, efficiency or investor protection.<sup>11</sup>

ICSA members strongly agree with that recommendation and suggest that IOSCO continue to monitor this issue closely. Moreover, in cases where exchanges and other market infrastructure providers do have dominant or monopolistic market positions, ICSA members believe that appropriate policy measures should be sought to promote effective competition for those entities. If such a policy response is not possible or practical, ICSA members would encourage the relevant authorities to ensure that appropriate governance structures and rules are in place so that the interests of users, the investing public and the economy as a whole are protected. Such a process has already been initiated in the EU, where the European Commission has requested that the industry develop and adhere to an ambitious code of conduct aimed at enhancing transparency and increasing competition in clearing and settlement. ICSA members have also developed a set of *Principles for the Governance of Market Infrastructure* which are intended to provide a framework for the implementation of governance arrangements at market infrastructure providers that would reflect the unique characteristics of the industry and ensure accountability and transparency for owners, users and regulators. Since the process of consolidation among exchanges transcends national boundaries, ICSA members believe that it would be appropriate for IOSCO similarly to promote the further development of a framework of good practices for the governance of exchanges and other market infrastructure providers, perhaps encompassing the ICSA Principles.

---

<sup>10</sup> Technical Committee of IOSCO, *Regulatory Issues Arising from Exchange Evolution: Final Report*, November 2006.

<sup>11</sup> *Ibid*, page 42.

### 3. Regulatory failures

From the point of view of ICSA members, there are several types of regulatory failures that are particularly relevant: (1) failures that arise because the regulation is not addressing an identified market failure;<sup>12</sup> (2) failures that arise when there is an identified market failure but the regulation is not the most efficient way to correct the problem and therefore the costs of the regulation are higher than the benefit; and (3) failures that arise when there is an identified market failure but the regulation is not effective and therefore the net benefits of the regulation are not as great as they could be. This last form of regulatory failure would apply, for example, when regulations for investor protection and market integrity are not sufficient to prevent mis-selling and other forms of inappropriate behavior. It would also apply, for example, where the costs arising from duplicative national regulatory regimes are greater than necessary.

In order to help regulators to identify existing regulatory failures and help to prevent the emergence of new regulatory failures, ICSA members would encourage IOSCO to promote “better regulation” policies and efficient consultation programs among its members, as noted above. A better regulation program would encourage regulators to carry out rigorous economic analysis prior to implementing new regulations so that they could determine if the contemplated regulations were necessary and would be the most cost effective method for resolving the problems that have been identified. Similarly, an effective consultation program can improve the efficiency of regulatory policy by providing input to regulators from market participants while also strengthening the potential for cooperation between regulators and market participants.

In addition, as was also noted above, ICSA members would encourage IOSCO to work toward international regulatory convergence whenever possible. This is important since firms active in the international capital market are faced with different and sometimes contradictory regulations for the same issue in different jurisdictions. While these differences are understandable, and may be extremely difficult to mitigate in the short term, their continued existence imposes a cost on the international capital market which will only increase as national financial markets become more integrated with one another.

---

<sup>12</sup> Market failure is defined here to encompass all situations where a market left to itself does not allocate resources efficiently.

#### 4. IOSCO's overall program of activities

IOSCO's role within the international financial market has clearly changed over the past several years due to the globalization of domestic financial markets and the need for regulators to have greater communication and understanding among themselves. ICSA members believe that IOSCO's importance and work program will continue to expand in the future, as a result of the continuing globalization of financial markets. Therefore, ICSA members would like to offer several suggestions related to IOSCO's overall program of activities, which are detailed below.

##### 4.1 Better prioritize its work program

It appears to ICSA's members that IOSCO's work program continues to be influenced by a variety of factors, including concerns of some individual national regulators as well as broader concerns that affect a larger number of jurisdictions. ICSA members believe that it would be useful if IOSCO were to set clearer priorities for its work program, publicize those priorities so that the industry was aware of what they were, and ensure to the greatest extent possible that all future projects were consistent with those priorities, except in cases when emergency responses were needed. ICSA members would also suggest, as noted above, that IOSCO's priorities include a focus on encouraging regulatory convergence, better regulation and consultation.

##### 4.2 Increase transparency and accountability

IOSCO has clearly become much more transparent in the way it consults with market participants over the last few years. Currently, however, there is little clarity as to whether IOSCO's newer principles and standards are being applied by individual IOSCO members and whether those principles and standards are effective or not. ICSA members recommend that IOSCO regularly survey its members to determine the extent to which IOSCO's principles and standards<sup>13</sup>: (1) are applied by individual regulators; and (2) add value to the regulatory process in individual jurisdictions. This process would be similar to, and complementary with, the current process whereby the implementation of IOSCO's *Objectives and Principles of Securities Regulation* in different jurisdictions is assessed. In the interest of enhanced transparency and accountability, the results of those surveys and/or assessments should be made public.

##### 4.3 Clarify the relationship between IOSCO and other standard setting bodies

Over the past several years, IOSCO has become the leading international standards setter in the field of securities regulation. However, at the same time standards are

---

<sup>13</sup> Other than those detailed in the *Objectives and Principles of Securities Regulation*, which are already reviewed by the IMF in its country assessments.

being issued by other international and supra-national bodies such as CESR, the BIS and others, as well as by national standard setters (e.g. the proposal by Germany's DIN regarding international standards for credit rating agencies). It would be extremely useful for market participants if IOSCO could clarify its relationship with other standard setting bodies. Moreover, in the interest of market efficiency, it is imperative that IOSCO's standards are consistent with the standards issued by other international and national bodies, and vice versa.

## 5. Specific ongoing activities of IOSCO

We would like to offer some comments on some of IOSCO's current and exploratory work, specifically the following:

### *a. Price formation on fragmented markets*

ICSA members understand the need for IOSCO to monitor developments in securities trading given the impact of technological innovations on markets everywhere and the effect of new regulations in many jurisdictions, such as the MiFID in Europe and Regulation NMS in the U.S.

However, ICSA members believe it is important to remember that financial markets are always subject to cycles of competition, fragmentation, and consolidation. This is particularly the case at the current time, due in large part to ongoing regulatory and technological changes that are affecting all aspects of the securities market. As a result of these changes, some markets are becoming more fragmented while there is greater concentration taking place elsewhere.<sup>14</sup>

Given the rapid pace of current market and technological developments, ICSA members believe that it may be too early for IOSCO to carry out any substantive work on the efficiency of price formation on fragmented markets.

Moreover, ICSA members would also note that many market participants and scholars believe that a multiplicity of markets is a sign of innovation and, as long as competition on those markets is genuinely open and fair, is not a problem that requires regulatory intervention. In addition, the market fragmentation that has already taken place may not have had as negative an impact on market liquidity and the price discovery process as feared. For example, largely due to a series of important technological developments, price information can now be consolidated from a variety of markets and venues and smart-routing technologies can ensure that orders are routed to the venue providing the best result. In these circumstances, inappropriate regulatory intervention could negatively impact the pace of technological innovation and the development of markets, which in turn would have an adverse effect on market efficiency and economic growth.

---

<sup>14</sup> This is the case in the U.S., for example, where Reg NMS has concentrated the order flow.

Given the extremely fluid nature of financial markets, ICSA members believe this is an important area where a structured and effective dialogue between IOSCO and market participants could be extremely useful in order to facilitate an exchange of views about these critical market developments.

*b. Direct access to exchanges and other markets*

Our previous comments regarding price formation on fragmented markets (see above) are relevant here. More generally, we would note that direct access to exchanges and other markets raises differing policy issues depending on the type, size and scale of the markets concerned. In addition, ongoing technological and regulatory changes are clearly facilitating disintermediation, although at this stage the extent of disintermediation is fairly limited. One specific area that IOSCO may wish to consider is the extent to which it might become increasingly difficult for regulators to achieve regulatory outcomes against a background of significant disintermediation, particularly when market regulation obligations have been placed mainly on intermediaries.

*c. Managing conflicts of interest at market intermediaries*

ICSA sent a comment letter in response to IOSCO's consultation paper entitled, *Market Intermediary Management of Conflicts that Arise in Securities Offerings*. As noted in that letter, given the wide differences that exist between regulatory and legal regimes in different jurisdictions, ICSA members believe that IOSCO should focus on promoting general principles for managing conflicts of interest rather than specific rules. Moreover, if IOSCO were to develop global principles for market intermediary management of conflicts of interest that arise in securities offerings, we would expect that IOSCO would consult separately with the industry on the design and content of those principles.

*d. Point of sale disclosure and customer suitability*

This is an important issue as there is a wide variation in disclosure and suitability rules between individual jurisdictions. Indeed, customer suitability rules appear to be non-existent in some IOSCO member jurisdictions. In these circumstances, ICSA members would encourage IOSCO to undertake work that would result in greater cross-border consistency (and eventually harmonization) between disclosure and suitability requirements in different jurisdictions. In addition, ICSA members would specifically encourage IOSCO to examine the use of technologically enabled disclosure for "point of sale" information delivered to retail customers and others, in place of rules that require delivery of such information on a hard copy basis.



*e. Impact of new technology*

In general ICSA members believe that IOSCO's interest in this area is quite useful. However, we would note that the discussion in the Report regarding this issue may be too restricted than is necessary since it focuses primarily on record keeping. We would suggest that precisely because of its critical impact on financial markets and market participants, regulators need to carefully study and understand the directions in which technology is developing in order to evaluate whether those changes have undermined, or are likely to undermine, the effectiveness of their existing regulatory approaches. Since technological changes are responsible for a significant share of the market restructuring that is currently taking place and are likely to continue to play the same role in the future, a close and continuing study of new technology should help regulators gain an understanding of the ways that their current policies and approaches may have to be adapted.

*f. Elements of regulation for hedge funds*

As noted above, ICSA members believe that IOSCO should encourage its members to develop a coherent, principles-based and risk-focused regulatory framework that is applied consistently across the financial sector to meet clearly defined objectives, rather than relying on instrument-specific or institution-specific regulations that are developed in isolation. ICSA members also believe that IOSCO should encourage its members to take into account the benefits as well as the risks that accompany financial innovation and the role that market discipline can play in controlling risks to public objectives. On the specific issue of hedge fund regulation, ICSA members generally believe that there would need to be a compelling rationale for special regulation of different types of investment funds. Instead, ICSA members support the work done to date by governments and regulators in a large number of jurisdictions promoting a principles-based approach toward hedge funds and other large pools of capital that relies on both market discipline and strong regulatory oversight. ICSA members would encourage IOSCO to leverage off of the existing work that has already been carried out by various regulators and governments in this area. ICSA members also take note of the recommendations recently issued by the Financial Stability Forum regarding the need to strengthen market discipline for hedge funds.

*g. Soft commissions and incentives*

ICSA sent a comment letter on IOSCO's consultation paper, *Soft Commission Arrangements*, in mid-March. As noted in that letter, ICSA members strongly agree with the main conclusion of that Report, which is that it is too early for IOSCO to develop global principles for soft commissions and incentives.

*h. Private equity*

This is clearly a very important issue for the entire international financial market. However, as noted above in reference to the regulation of hedge funds, ICSA members believe that IOSCO should encourage its members to develop a coherent, principles-based and risk-focused regulatory framework that is applied consistently across the financial sector to meet clearly defined objectives, rather than relying on instrument-specific or institution-specific regulations that are developed in isolation. Again, the need for special regulation of private equity compared with other forms of investment would also need to be established.

In closing, ICSA members would once again like to thank the members of IOSCO's Technical Committee and IOSCO's Secretariat for the work that they did in preparing this Report. We welcome the opportunity to comment on the Report and look forward to further discussing the issues contained in the Report with IOSCO members.

Sincerely,



Kun Ho Hwang, Chairman,  
ICSA Advisory Committee  
and Chairman, Korea Securities  
Dealers Association (KSDA)



Marilyn Skiles  
Secretary General  
ICSA



## **IOSCO Consultation Report: An Overview of the Work of IOSCO's Technical Committee**

The Securities Industry and Financial Markets Association ("SIFMA")<sup>1</sup> appreciates the opportunity to comment on *An Overview of the Work of IOSCO's Technical Committee* (the "Report") published in March 2007. SIFMA applauds IOSCO for its promotion of common standards in the global securities markets. SIFMA believes that such efforts will lead to more efficient and robust securities markets and is happy to provide comments on aspects of the proposed work program for the IOSCO Technical Committee ("Committee") below.

In light of the rapid pace of change in the global securities industry, an ongoing structured dialogue between IOSCO and the securities industry is critical. Regulators and industry participants share the same objective – to create deep, liquid, and efficient capital markets, while protecting investors and ensuring market integrity. We believe that open and ongoing consultation between IOSCO and the securities industry will help achieve these common objectives. In this regard, we applaud the Committee for taking the initiative to begin the process of establishing a more structured relationship with the industry and look forward to the evolution of that dialogue over time. We also believe the Committee's annual conference provides a very useful forum for IOSCO members to discuss issues with capital markets participants.

<sup>1</sup> SIFMA brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

## **1. Mutual Recognition**

Although not a specific topic in the Report, SIFMA believes that recognition of other regulatory systems cuts across many of the topics identified by the Committee. SIFMA supports efforts to facilitate cross-border capital markets transactions. The current nationally-based regulatory framework increasingly does not adequately reflect the global nature of financial services. It is our view that regulatory authorities should be open to accepting each other's regulatory differences when their regulation provides substantively equivalent outcomes. Indeed, in today's capital markets, effective regulation of a global industry can only be realized through cooperation with other regulators. Consequently, IOSCO, as the standard setting body for the global capital markets, can play an instrumental role in promoting regulations that are consistent, and therefore may ultimately allow for recognition of regulatory regimes.

As technology provides investors with global access to financial services and products, recognition of other regulatory systems is an effective way of accommodating differences in national regulation, while preserving investor protections. The time is right for IOSCO to explore recognition and related issues, as government officials and regulators globally are grappling with regulating a global marketplace. We note, for example, the G7 Finance Ministers' recent statement that: "[t]o further liberalize cross-border capital markets, we agreed to explore within the G7 free trade in securities based on mutual recognition of regulatory regimes." More recently, the US and EU agreed to "[w]ork on greater regulatory convergence towards highest quality and most effective regulation and, where appropriate, mutual recognition in the fields of securities regulation." Finally, Canada's budget proposal for 2007 sets forth a proposal to "...eliminate barriers to free trade in securities." SIFMA urges IOSCO to further support and promote these efforts.

## **2. Accounting and Financial Disclosure Standards**

SIFMA supports the Committee's efforts to develop standards related to issuer financial transparency and disclosure, and SIFMA believes that convergence of accounting standards should be a priority for the Committee. The continued powerful expansion of the financial markets across national borders, and the desire of nations to obtain strong, stable, and liquid capital markets in order to fuel economic growth are key forces favoring a convergence of accounting standards. Thriving capital markets require a high degree of investor understanding and confidence. Converging upon a common set of high quality accounting standards contributes immensely to that process.

If an issuer's financial statements are prepared using accounting standards that are not perceived as of high quality or that are unfamiliar, investors will be hard-pressed to accurately understand a company's prospects. Investors may insist upon a risk premium for investing in that company, raising the cost of obtaining capital for those issuers. Additionally, if analyzing the prospects of a company that is using weak or incomplete accounting standards is excessively time-consuming or difficult, it may result in sub-optimal decisions by investors. Without common standards, global investors must incur

2

<sup>2</sup> SIFMA Letter to IOSCO re: *Code of Conduct for Credit Rating Agencies* (Apr. 27, 2007) (available at [http://www.sifma.org/regulatory/comment\\_letters/43521943.pdf](http://www.sifma.org/regulatory/comment_letters/43521943.pdf)).

additional time and effort to understand and convert the financial statements so that they can accurately compare investment choices.

Currently, the International Accounting Standards Board (“IASB”) and the Financial Accounting Standards Board (“FASB”) are working on converging U.S. Generally Accepted Accounting Principles (“GAAP”) and International Financial Reporting Standards (“IFRS”) standards. Reaching such a consensus would provide a tremendous boost to the global capital markets, and greatly benefit investors. SIFMA therefore strongly supports the efforts directed at that laudable goal.

### **3. Credit Rating Agencies**

SIFMA supports IOSCO’s approach to credit rating agency oversight, was involved in developing the *Code of Conduct for Credit Rating Agencies* (“CRA Code”), and is actively monitoring its implementation by the agencies. For additional commentary regarding credit rating agencies, please see SIFMA’s response to IOSCO’s recent consultation on the CRA Code’s implementation.<sup>2</sup>

### **4. Bond Market Transparency**

Given the extensive review currently underway in Europe on possible extension of MiFID equity price transparency provisions to bonds, SIFMA agrees with IOSCO that there is no need for IOSCO to carry out further work on this topic. Some industry associations, including SIFMA, are working on market-led initiatives to extend the transparency available in the wholesale market to smaller investors and retail investors. We would be pleased to provide IOSCO with more information on such initiatives.

### **5. Price Formation on Fragmented Markets**

As IOSCO increases its focus on possible market fragmentation that may result from important changes to the securities exchanges landscape, SIFMA urges IOSCO to keep an open mind and recognize that fragmentation is not incompatible with efficient markets where strong competition and technology are present. While consolidation of exchanges can be observed, so can the emergence of numerous (often exchange-like) trading platforms which provide increased competition in the current trading environment. These “markets” are connected electronically whereby firms use smart order-routing technology to route orders to the best sources of liquidity at the best prices. As a result, it is becoming less relevant whether there are more or less markets trading the same securities: orders are electronically routed to all relevant markets (most of which have transparent order books) thereby increasing competition and providing investors with greater choice in order execution.

Nor is fragmentation necessarily incompatible with efficient price formation and transparency. Even when firms internalize order flow, they are subjected, at least under

3  
3

For more information, see *SIFMA/EPDA/EHYA Response to CESR Call for Evidence on Non-Equity Markets Transparency* (March 7, 2007) at pp. 9-13 (available at <http://www.sifma.org>). MiFID, to equivalent transparency obligations as regulated markets. The mostly decentralized fixed income market provides an excellent example of how the combination of technology, competition and innovation, with the development of the derivatives market (in particular credit default swaps), has led to significant improvements in the pricing and transparency of fixed income instruments.<sup>3</sup>

## **6. Direct Market Access**

SIFMA believes that the current broker-dealer regulatory regime is sufficient to cover direct market access (“DMA”) arrangements with institutional clients. SIFMA supports IOSCO’s fact-finding survey of direct access market models located in Committee member jurisdictions. The need for guidance from the Committee would depend on the results of that survey.

## **7. IPO Conflicts of Interest**

We appreciate IOSCO’s recent efforts to review conflicts of interest in securities offerings. SIFMA agrees, as evidenced by the financial industry’s initiatives over the past few years regarding conflicts of interest, that effective management of conflicts of interest by market intermediaries and regulators builds confidence in the integrity of the offering process and financial markets and is an important aspect of a market intermediary’s corporate governance. We believe that any recommendations should consider the important roles disclosure and reputation have in conflicts management and the initiatives undertaken in the United States by both market intermediaries and regulators to identify and manage conflicts. Further, the industry has made significant steps over the past several years to develop best practices in many areas, including pricing, allocation, and information barriers and we encourage the Committee to look at these practices.

Additional commentary on this issue may be found in SIFMA’s forthcoming letter responding to IOSCO’s *Discussion paper on Market Intermediary Management of Conflicts of Interest that Arise in Securities Offerings*. SIFMA expects to submit this letter shortly.

## **8. Point of Sale Disclosure**

SIFMA supports clear, concise, and meaningful disclosure of compensation practices related to mutual fund sales. Such disclosures can be made meaningful and useful, without at the same time imposing excessive costs on the industry, costs which are ultimately borne by the investing public. Further, we believe that additional disclosure to investors about revenue sharing is useful; but we believe that there are better ways to provide relevant information without imposing excessive costs that investors ultimately have to bear – and without distracting them from other important information. Further, such disclosures should be delivered via the Internet so as to not unduly burden the sales

4

process. For those clients who do not have Internet access, confirmation forms can give them the phone number to request a copy of the information on the website. With better disclosure, many of these issues can be resolved through the working of the competitive marketplace. So long as fund investors and their financial advisors receive clear information regarding compensation practices, they will be able to choose from the universe of products those that are consistent with their objectives and suitable for their investment goals at a reasonable cost.

## **9. The Impact of New Technology**

SIFMA has been active in addressing electronic records issues and appreciates and supports IOSCO's efforts to modernize electronic record retention requirements. The constant stream of new technology causes broker-dealers to keep a constant vigil to ensure that communications are retained or blocked if they cannot be retained. Further, firms are forced to make decisions about what constitutes a communication (and therefore must be retained) often without clear guidance from regulators. The global nature of many firms' businesses has put increased pressure on firms to be sure that communications are retained globally in accordance with the most stringent standards which are currently the U.S. requirements under Rule 17a-4 of the Securities Exchange Act of 1934. This issue can only be solved through clear written guidance from regulators on the types of communications that are required to be retained.

Further, the methods of retention should be principles-based thus allowing firms to explore new retention technologies and strategies which would be more cost-effective and likely more sound than what is permissible under the current overly restrictive standards. There is no "one size fits all" solution for retention of communications and a principles-based approach would be more flexible and adaptable to an ever-changing technological environment.

## **10. Funds of Hedge Funds**

We note IOSCO's further fact finding exercise in relation to funds of hedge funds. As was the case before issuing its consultation document on Principles for Valuation of Hedge Fund Portfolio, we expect that IOSCO will involve relevant industry participants prior to issuing a paper on funds of hedge funds. We also hope that IOSCO will take account of the work carried out by several regulators already on this issue, as well as of the several existing industry driven initiatives to address the hedge fund issues identified in the Report, such as the Alternative Investment Management Association ("AIMA") *Guide to Sound Practices for European Hedge Fund Managers*.

### **9. Private Equity**

While we welcome further fact-finding work of a cross-border nature on the topic of private equity, we are concerned by IOSCO's initial negative bias and starting assumption that there is not sufficient regulation in this area. We urge IOSCO to also

take account of the several benefits that the private equity industry brings to the local and global markets, as well as of the significant work carried out by certain regulators in this area (e.g., the UK Financial Services Authority) and important industry feedback received.

SIFMA and its members stand ready to provide any additional information or guidance regarding these or other subjects of interest to IOSCO. If you have any questions or need further information, please call me at (202) 434-8440.

Sincerely,

Ira D. Hammerman

Senior Managing Director and General Counsel

cc: David G. Strongin, Managing Director  
Melissa MacGregor, Vice President and Assistant General Counsel

6