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REGULATORY RECOGNITION APPROACH

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What is a Regulatory Recognition Approach?

- An outcomes-focused approach under which one regulator relies on the oversight and supervision of the relevant regulated entity by another regulator, in pursuit of the same regulatory objectives - not replication of specific rules across jurisdictions.
- Such an approach could take many forms, including mutual recognition, equivalence determinations or standard setting, for example.
- A regulatory recognition approach, in whatever form it takes, would need a mechanism for global consistency or benchmarking of principles/outcomes - not individual rules.*
- A regulatory recognition approach would be applied to commonly identified areas of regulatory oversight, based on the mutually agreed terms of reference included in a Memorandum of Understanding (“MOU”).

* Such as demonstrated by IOSCO’s [“Multilateral Memorandum of Understanding: Concerning Consultation and Cooperation and the Exchange of Information”](#) (version revised May 2012) and [“Objectives and Principles of Securities Regulation”](#) (June 2010).



Benefits of Regulatory Recognition Approach

- Respects principles of international comity and legitimate regulatory interests of respective jurisdictions
- Encourages coordinated and coherent approaches to regulation, reflecting globally agreed upon standards, while raising the effectiveness and efficiency of oversight
- Avoids conflicting or duplicative regulatory regimes, which furthers economic growth and activity
- Provides for a cost-effective use of regulatory resources, allowing regulators to leverage each other's regimes and gain a more holistic view of the industry, improving safety and soundness
- Reduces regulatory complexity and prevents gaps in oversight



Benefits of Regulatory Recognition Approach (cont'd)

- Allows for flexibility over time, as laws and regulation evolve
- Supports consumer protection without unduly restricting access to global markets or limiting consumer choice
- Supports a level playing field for all market participants, mitigating against unfairness
- Allows opportunity for coordination of timelines between regulators, globally



Key Components of Regulatory Recognition Approach

- Shared values and commonality of objectives in respective regulatory regimes (*see Page 6*)
- Regulatory Principles (*see Page 7*)
- Regulatory Dialogue (*see Pages 8*)
- Agreement on a Memorandum of Understanding (*see Page 9*)
- Flexibility to revise or revoke regulatory recognition, as appropriate, to maintain goals of achieving shared regulatory objectives (*see Page 10*)
- Assessments on adequacy of a regulatory regimes (*see Page 11*)



Shared Values and Commonality of Objectives*

- Protection of investors from misleading, manipulative or fraudulent practices
- Ensuring fair, efficient and transparent markets
- Reduction of systemic risk
- Facilitation of capital formation and economic growth
- Avoidance of significant regulatory costs, complexities and burdens on regulators and market participants alike
- Appropriate legal, tax and accounting framework

** Common statutory or regulatory principles, such as participation in the G-20 Framework ("G-20 Leaders' Statements", The Pittsburgh Summit, Sept. 25, 2009), are a strong example of the existence of such shared values.*



Regulatory Principles

- Responsibilities of regulator are fair, clear and objective
- Regulator is operationally independent and accountable
- Clearly defined statement regarding the role, objectives and scope of authority for respective regulators
- Regulator has adequate power, resources and capacity to perform functions/exercise powers
- Regulator utilizes clear and consistent regulatory process
- Regulatory staff observes high professional standards, exercising powers as appropriate (avoidance of conflicts of interest, appropriate use of information, confidentiality, procedural fairness)



Regulatory Dialogue

- Dialogue between regulators is a key component to achieving recognition:
 - Need for collaborative and confidential regulator-to-regulator dialogue
 - Regular, structured series of meetings with stakeholders, industry participants and representative bodies
 - Reasonable levels of transparency regarding bilateral discussion between regulators on policy issues
- Bilateral coordination to make regulatory recognition determinations based on a common description of outcomes, assuming comparability of supervision and enforcement authority
- Findings of regulatory recognition and focus on comparative regulatory analysis should be based on outcomes, principles and objectives – not measures assessing and requiring rules to be identical
- Discussions between policymakers early in any legislative process are beneficial, so differences in approach can be understood and addressed prior to the regulatory/implementation stage, where issues may be more difficult to reconcile



Memorandum of Understanding

- MOU agreements should generally meet certain standards/benchmarks which detail specific framework*:
 - Cooperation, Consultation and Information Exchange:
 - Authority to share public/non-public information with domestic and foreign counterparts
 - Mechanisms to facilitate such information sharing
 - Cooperative arrangements to allow for assistance in exercising respective functions/powers (as well as limitations on such exercise)
 - Enforcement:
 - Inspection, investigation and surveillance power
 - Enforcement powers
 - Credible/effective use of powers
 - Implementation of compliance program

* Such as demonstrated by IOSCO's "[Multilateral Memorandum of Understanding: Concerning Consultation and Cooperation and the Exchange of Information](#)" (version revised May 2012).



Flexibility to Revise or Revoke

- Need for continued communication and intent to consult regarding ongoing regulatory developments and issues
- Understanding that changes to respective laws and regulations may affect basis and scope of existing arrangements
- Periodic review of assessments
- Clarity regarding process for entry into force, renewal, amendment and termination



Assessments on Adequacy of a Regulatory Regime

- It may be appropriate for assessments regarding the adequacy of regulatory regimes to be made, aiding in regulatory recognition determinations and further providing recommendations. Examples of such assessments and recommendations include:
 - The Financial Sector Assessment Program (FSAP): a joint program of the International Monetary Fund (IMF) and World Bank which assesses a country's financial sector and systemic stability or economic development against international standards, as part of IMF surveillance efforts resulting in policy recommendations.
 - The Financial Stability Board (FSB) seeks to develop and promote the implementation of effective regulatory, supervisory and other financial sector policies, issuing periodic reports describing progress towards these goals. For respective policy areas, the FSB sets standards that are broadly accepted as representing the minimum requirements for good practice that countries are encouraged to meet or exceed.