



13 March 2014

Ashley Alder
Chairman, IOSCO Task Force on Cross Border Regulation
International Organization of Securities Commissions (IOSCO)
C/ Oquendo 12
28006 Madrid
Spain

**Re: Recommendations on Foundational Principles for Global
Coordination in Cross-Border Regulation**

Dear Mr. Alder:

The Global Financial Markets Association¹ (“GFMA”) appreciates the leadership of the International Organization of Securities Commissions (“IOSCO”) in creating a task force aimed at addressing cross-border regulatory coordination issues (the “Task Force”). GFMA is supportive of the Task Force’s stated intention of issuing a public consultation paper focused on cross-border reform efforts and hosting public industry meetings for continued dialogue. Over the last few years, it has become apparent that a major challenge to the implementation of financial regulatory reform efforts has been diverging (and at times conflicting or duplicative) national and/or regional regulatory frameworks. We believe IOSCO can and should play an integral role in promoting coordination. Consequently, in advance of the Task Force’s consultation paper, we wish to highlight several issues currently impacting cross-border regulatory coordination,² which we believe are immediately actionable by IOSCO.

Current Issues Impacting Regulatory Coordination

Regulatory reform efforts are well underway around the globe, impacting areas including OTC derivatives, legal entity identifiers and resolution. However, due to differing jurisdictional approaches to policy, legal frameworks and implementation timelines, market participants have been facing an untenable reality of incompatible and duplicative compliance requirements while attempting to reconcile their obligations across regimes. This, in part, can be attributed to a trend towards “localization” by regulators, as they operate under the assumption that such an approach will allow for better protection of their home countries from financial risks. However, such localization has actually had the opposite impact, creating inconsistencies and conflicts in regulation, delaying or preventing the making of regulatory recognition decisions. Such differing approaches and outcomes have negatively impacted markets and raised costs, potentially subverting many G20 goals. This was most recently highlighted by confusion stemming from certain U.S. CFTC requirements on Swap Execution Facilities, which created liquidity fragmentation across

¹ The GFMA brings together three of the world’s leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA. For more information, visit <http://www.gfma.org>.

² For further background, please also see the GFMA “Regulatory Recognition Approach” Presentation (7 October 2013) at <http://www.gfma.org/correspondence/item.aspx?id=577>.

trading platforms and cross-border lines.³ While the CFTC has recently issued some relief regarding the treatment of certain qualified multilateral trading facilities in the EU in an attempt to remedy these issues,⁴ problems persist due to the attachment of numerous conditions (and a short timeframe to meet them) and continued concerns of liquidity fragmentation.

In order to avoid similar negative impacts in the future, GFMA supports the development of a universal outcomes-based regulatory recognition framework. While some general international standards regarding cross-border coordination are currently available as a resource, they lack the granularity to be of practical use. At this moment, regulators do not have a global forum for dialogue dedicated to consultation and information sharing in the early stages of policy discussion and rulemaking, which increases the risk of problematic future divergences. Further, there is a lack of consensus criteria for making comparability assessments. Without a clear and consistent approach to addressing these issues, the threat of market disruptions remains likely.

An outcomes-focused recognition approach, where regulators are able to rely on the oversight of other regimes adhering to the same general regulatory objectives, would serve to avoid many of the above referenced issues.⁵ We believe IOSCO can play an important role in facilitating the development of such an approach, and welcome the opportunity to discuss further with the Task Force.⁶ In the interim, we wish to highlight three concrete examples of fundamental, yet achievable, improvements worthy of near term focus: dialogue at the initiation of policy making, reasonable rulemaking timelines coordinated across jurisdictions and processes for identifying and bringing together regulators when differences emerge.

Dialogue at the Initiation of Policy Making

Early dialogue among global policymakers and regulators is essential to ensuring coordination and consistency. It is important that consultation occurs at the onset of policymaking, in order to minimize the potential for conflicting or divisive means of attaining certain policy objectives. As currently being witnessed in the OTC derivatives space through the implementation of Title VII of the Dodd-Frank Act and the European Markets Infrastructure Regulation (“EMIR”), as differences are given time to crystallize, they become difficult, if not impossible, to reconcile. Discussions between policymakers early in the legislative process are necessary to ensure that significant differences in approach can be identified and addressed prior to laws becoming final. These discussions would further help to prevent “first mover” regimes from proceeding in disconnected, unilateral manner which creates market disruptions and regulatory conflicts. Early dialogue aimed at identifying shared values and a commonality of objectives between regimes will allow for superior coordination moving forward.

³ See ISDA Research Note, Footnote 88 and Market Fragmentation: An ISDA Survey, December 2013.

⁴ See CFTC Staff Letters 14-15 (at <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-15.pdf>) and 14-16 (at <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-16.pdf>), 12 February 2014.

⁵ We believe that this is consistent with the approach set forth by G20 Leaders in their 6 September 2013 St. Petersburg Declaration, “We agree that jurisdictions and regulators should be able to defer to each other when it is justified by the quality of their respective regulatory and enforcement regimes, based on similar outcomes, in a non-discriminatory way, paying due respect to home country regulation regimes.”

⁶ We also note that in the FSB’s Chairman’s letter to G20 Finance Ministers and Central Bank Governors, where it was recommended that the G20 commit to an approach characterized by: 1) deferring to each other’s market regulatory regimes where they achieve equivalent outcomes; 2) peer reviews and impact assessments to ensure consistent implementation when we get standards right and refinement of standards when we get them wrong; and 3) enhanced co-operation to avoid domestic measures that fragment the global system. See letter from FSB Chairman Mark Carney to G20 Finance Ministers and Central Bank Governors, 17 February 2014.

Reasonable Rulemaking Timelines Coordinated Across Jurisdictions

Following policy discussions, it is imperative that consideration is given to creating coherent and realistic implementation timeframes at the outset of reform efforts. Failure to account for the different stages of global reform significantly undermines the ability of regulators to address cross-border issues. Where coordination does not exist, market participants are forced to develop compliance systems for “first-mover” regimes, only to later discover that additional builds must take place to come into compliance with regulatory developments in other jurisdictions. Agreement on reasonable and coordinated implementation timelines, with sufficient time for meaningful stakeholder consultation, would allow for an orderly transition – and regulatory recognition – as regimes develop and regulations come into force.

Process for Identifying and Bringing Together Regulators When Differences Emerge

While adherence to the previous two recommendations would serve to minimize instances of conflict, ongoing regulatory dialogue and a flexible system for addressing disputes would serve as a final stop gap in the event of continued incongruities. By identifying and bringing together appropriate parties in each jurisdiction, this would facilitate rapid responses when differences that require jurisdiction-to-jurisdiction dialogue arise. This would also allow each regime to develop in a way that its regulator believes appropriate, while maintaining a coordinated and transparent framework to achieve consistent regulatory objectives. Further, in order to better discern key issues and areas of concern, it is also important to provide for a consistent means of consultation and dialogue with market participants and industry bodies (with reasonable timelines for market participants to respond under), where appropriate. Through this ongoing consultation amongst regulators and interaction with market participants, inefficiencies and areas of conflict can be discerned, and steps can be taken to appropriately address them.

Coordination of Oversight and Supervision

GFMA believes the above referenced improvements in cross-border regulatory coordination are an excellent foundation for a workable regulatory recognition framework. However, additional tools will be needed to support the efficacy of proper oversight and supervision objectives. Clear, detailed standards for comparability assessments, as well as mechanisms for the ongoing assessment of regimes as rulemaking and implementation progress, will be necessary. Such assessment standards are necessary to avoid the risk of inconsistent determinations (e.g., a positive determination in one jurisdiction, and a negative or qualified determination in another). We believe IOSCO can aid this process by developing internationally acceptable, outcomes-focused regulatory benchmarks, similar to past efforts.⁷ Further, we believe it would be beneficial to look to current assessment frameworks which may serve as a roadmap for development of similar mechanisms moving forward.⁸ We also encourage global regulators to engage in ongoing discussion on oversight and supervision to prevent issues (and address any that arise), similar to our suggestion of dialogue at the initiation of policymaking.

Conclusion

GFMA is supportive of IOSCO’s leadership efforts aimed at addressing cross-border regulatory challenges. We believe that well-developed regulation, contributing to efficient and stable financial markets, can play an important role in economic and business recovery. It is our hope IOSCO can promote the coordination of such regulation, by focusing on the immediately achievable and foundational tenants of facilitating early dialogue at the policy-making stage, reasonable and coordinated implementation

⁷ See “*Objectives Principles for Securities Regulation*” (June 2010) and “*Multilateral Memorandum of Understanding: Concerning Consultation and Cooperation and the Exchange of Information*” (revised May 2012).

⁸ Such as the Financial Stability Board’s periodic reports describing progress towards regulatory goals, or the IMF/World Bank Financial Sector Assessment Program (“FSAP”), which assesses a country’s financial sector, systemic stability and economic development against international standards.

timelines, and continued dialogue throughout the implementation process to identify and resolve areas of conflict. GFMA is committed to working collaboratively with IOSCO and the Task Force in the furtherance of coordinated and consistent cross-border regulation. We would be pleased to answer any questions that you might have.

Sincerely,

A handwritten signature in black ink, appearing to read "David Strongin". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David Strongin
Executive Director
Global Financial Markets Association

cc: Greg Medcraft, Board Chair, IOSCO
David Wright, Secretary General, IOSCO