14 March 2022

Martin Moloney, Secretary General
Giles Ward, Senior Policy Advisor
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid
Spain

Via Electronic Mail

RE: IOSCO Consultation Report on Operational resilience of trading venues and market intermediaries during the COVID-19 pandemic

Dear Mr. Moloney and Mr. Ward,

The Institute of International Finance (IIF[i]), the Global Financial Markets Association (GFMA[ii]), and the Bank Policy Institute (BPI[iii]) (collectively "the Associations") welcome the opportunity to respond to the consultation report of the International Organization of Securities Commissions (IOSCO) on "Operational resilience of trading venues and market intermediaries during the COVID-19 pandemic."[1]

Operational resilience is extremely important for both the public and private sectors to maintain confidence in the financial industry and to support financial stability and economic growth. The Associations and their members acknowledge the importance of operational resilience for individual institutions, and across the financial sector, in support of customers, markets and the communities and broader economies they support domestically and globally. This consultation by IOSCO is especially welcome because operational resilience has more recently come into even greater focus due to the impact of the COVID-19 pandemic.

Our members recognize and appreciate the efforts towards global coordination and alignment among policymakers and financial authorities on policy outcomes, terminology, and supervisory approaches. Therefore, the Associations appreciate that IOSCO is considering aligning its own definition of operational resilience with that found in the Basel Committee on Banking Supervision (BCBS) Principles for Operational Resilience[2] and we strongly encourage IOSCO to adopt a definition that is aligned with the BCBS.

The Associations continue to be closely engaged with global standard-setters – including the BCBS, the Committee on Payments and Market Infrastructures (CPMI), the Financial Stability Board (FSB), the International Association of Insurance Supervisors (IAIS), and IOSCO – and key jurisdictional authorities to encourage close and consistent coordination around this evolving discipline. The Associations have been

[1] IOSCO 2022. "Operational resilience of trading venues and market intermediaries during the COVID-19 pandemic" (January).
[2] BCBS 2021. "The BCBS Principles for Operational Resilience" (March).

working together on this topic for nearly four years with our financial institution members, through a joint global Operational Resilience Steering Committee, to ensure that the industry is also closely aligned.

The potential for fragmentation due to divergences in regulatory standards and supervisory oversight poses substantial risks and operational challenges for financial services firms that operate across multiple jurisdictions and, in turn, for the strength and operational resilience of the financial system. We therefore fully support and appreciate any efforts that IOSCO can make to align its work in this area to the proposed approach of the BCBS.

We would welcome further information about IOSCO's planned work program in the area of operational resilience, and our member firms stand ready to contribute to IOSCO's work as appropriate.

Lessons from COVID-19

As the ongoing COVID-19 crisis has highlighted, and as the industry has also noted to the Basel Committee,[3] the private and public sectors must evolve from viewing risks and threats as being mostly sector-specific or geography-specific to thinking about risk and infrastructure on a genuinely global and systemic basis. The financial system globally entered the COVID-19 crisis having built up a high level of financial and operational resilience, and firms have been able to maintain confidence through this highly uncertain and long-running period.

We respond below to specific questions in the consultation report related to the operational resilience experience during the COVID-19 pandemic. We would like to emphasize that, while the COVID-19 experience is naturally top of authorities' and firms' minds at present, we think any IOSCO efforts around operational resilience should be capabilities-driven and agnostic towards exact scenarios. No one can predict the next event, and flexibility is required to respond appropriately to a range of possible disruptions.

Responses to the specific questions in the Consultation Report

Q1. In the context of reviewing operational resilience during the pandemic, is the description of 'operational resilience' and 'critical operations' appropriate for: (a) trading venues; (b) market intermediaries? If not, please explain why and describe your preferred approach?

The Associations would strongly suggest that IOSCO align its definition of "operational resilience", and related concepts, with that of the BCBS. Alignment with the definition of "critical operations" in the BCBS 2021 principles would also help ensure consistency across the financial services industry. It is also important to clarify the 'market intermediaries' in scope (and provide clearer examples of trading venues as well).

Regulators should aim to clarify the scope of their operational resilience requirements and, as much as possible, align with the BCBS to ensure consistency across the financial sector as a whole. There have been examples where industry is unclear as to whether 'critical operations' is synonymous with 'critical functions' (from a recovery and resolution planning perspective). Where these terms are not synonymous, regulators may benefit from IOSCO and other standard setting bodies clarifying when and how they should be used. We

[3] IIF/GFMA 2020. "IIF/GFMA responds to Basel Committee 'Principles for Operational Resilience'" (November).

note that the UK regulators provided guidance on the differences between 'critical operations' and 'critical functions' and how the scope of each term aligns to the statutory objectives of the UK regulators.

IOSCO should, where appropriate, clearly differentiate between operational resilience in the areas of Business Continuity Planning (BCP) and Business Continuity Management (BCM). Acknowledging the value of the IOSCO Committee 2 Report and Committee 3 report, the section (on pages 5-6 of the IOSCO consultation report), is currently written as to suggest that regulated entities should develop only business continuity plans. Whilst it would be beneficial for all firms to adopt proper BCP and BCM processes, additional operational resilience approaches are also required.

We welcome IOSCO clarifying the next steps it will take following this consultation, and whether it expects to develop standards or principles for market intermediaries and trading venues in this area. Finally, it would be useful to know how any future IOSCO standards or principles in this area would apply to financial market intermediaries (FMIs) subject to PFMI principles and IOSCO's cyber resilience guidance.

Q2. Are there other impacts, risks or challenges faced by regulated entities not mentioned in this section?

One important area to stress is the need for public/private collaboration. Firms acknowledge the importance during periods like the COVID-19 pandemic of increased public/private collaboration (including, in the case of a pandemic, increased interaction with government agencies and health experts) to elevate the effectiveness and speed of the response. These relationships and appropriate platforms need to be established and nurtured ahead of times of stress to ensure their value can be used to maximum effect during periods of stress.

Third-party dependencies: given that the impact of COVID-19 has been global and has affected every sector of the economy, the importance of firms understanding their dependencies on third parties has intensified. This focus will continue given the heightened concern about cyber risk in the current geopolitical environment. Firms have had to rely on third parties' recovery plans and assess what level of information they need in order to be reasonably comfortable with reliance on those plans. Supervisors' evaluations of third-party service providers should assess both the service provider's plans for survival, as well as how supervised entities could operate in the absence of the third-party or in the event that the third-party suffers a significant disruption in its operations.

Increased technological challenges: There has been increased technology-focused aggregation risk.

Cyber risk: Cyber threats took on a new urgency in the COVID-19 environment as organizations quickly integrated an increasingly remote workforce. As noted above, new cyber threats continue to emerge in the current geopolitical environment. The cyber space is very fast-moving and opportunistic, and cyber adversaries were quick to take advantage at the start of the pandemic of changes in the way financial institutions' employees interacted with companies, increasing their efforts to target potential victims with tactics such as social engineering, among others. Ransomware, for example, has emerged as a particularly lucrative, and therefore popular, form of attack and has greatly increased in prevalence over the past two years.

Q3. Are there other impacts, risks or challenges from remote work or hybrid working that impact operational resilience?

Human capital and remote working arrangements have been put to the test during the COVID-19 pandemic. The pandemic challenged people across the world and structurally altered working habits. From a very human and practical perspective, firms have had to consider the impacts resulting from differing family, health, and economic circumstances amongst their staff. The impact on employees' own infrastructure (e.g., consumer telecom links, power) when working from home should be taken into consideration. While backup contingency work sites were not used extensively during the COVID-19 stress, they could still play an important role in future stress events especially for top critical roles. Although we are still living and working through the pandemic, companies should analyze the experience of the COVID crisis to re-evaluate if working from home is correlated with any different types of risks and whether the controls are in place to manage these differing risks.

<u>Other major trends would include:</u>

Forbearance and accomodations: changes to operational measures and protocols were required to enable work from home *en masse*. This accelerated the development and implementation of digital solutions for tasks that are essential to effective operations but were previously conducted in person, such as “wet signature” requirements and enabling trading from home. We encourage the regulatory community to consider whether these types of forbearance and other accommodations could become permanent arrangements with appropriate controls and testing. It would also be helpful to include these kinds of accomodations as options in scenario planning and joint testing exercises. There are remaining issues around activities like remote printing and disposal of confidential information, which are harder to address from an operational resilience perspective.

Ability to scale technology: firms quickly had to scale technology to support staff and address logistical issues with equipment. Firms learned that business continuity plans were useful, but that the planning assumptions could, in some cases, be incorrect as the technological challenges materialized faster than many would have expected. This provided an effective test of firms’ ability to respond and demonstrated key elements of effective crisis response management.

Taxation & HR Issues: It will be important to assess how remote work impacts taxation and human resources. An example would be the impact on tax liabilities due to workers that moved because they are allowed to work remotely.

Q4. Are there other lessons learned that can be drawn from the experiences of regulated entities during the pandemic in the context of maintaining operational resilience?

The IOSCO report documents the lessons learned and impacts quite well. The pandemic demonstrated in a very significant way, for potentially the first time, that an international public and private response is essential in managing operationally disruptive events that cross borders. At an appropriate time, once the pandemic is largely behind us, the lessons identified and learned should be considered further, also for non-pandemic events. For example, to consider whether what has been learned be applied to other disruptive events – including geopolitical developments, cyber-attacks, and natural disasters – that may impact multiple jurisdictions simultaneously.

To overcome implementation delays during crisis, many financial firms are considering investing further in the digitalization of their supporting infrastructure and services in order to increase elasticity in adjusting to a shift in demand (i.e., such as virtual desktops and software architecture to provide remote working at scale).

Instead of being a detailed, prescriptive recipe, business continuity plans could include a toolkit of different options (e.g., working from home, alternatives to manual processes, secondary sites, split teams) from which managers can pick the best tools according to the scenario. This is particularly relevant in long-running scenarios such as COVID-19, where there are significant possibilities of other events/crises happening in parallel. This might provide benefits that complement the establishment of runbooks that are often already in place.

All exceptions, exemptions or waivers provided to firms during a crisis (e.g., compensatory controls, alternative procedures or processes) should be adequately documented in a central repository. These should be evaluated for permanent implementation (if they result in efficiencies or process simplification without inordinate risk); otherwise, they should be kept as part of the business continuing planning "toolkit" for consideration in future events. As noted above, we encourage the regulatory community to consider whether these accommodations could become permanent arrangements with appropriate controls and testing.

The shift to mass remote working has also put firms in a better position to respond to future large-scale business continuity events.

Concluding remarks

The IIF, GFMA and BPI reiterate our members' support for advancing operational resilience in the global financial sector, and we hope our feedback is helpful in enhancing the conversation on operational resilience. It is widely recognized that strengthening operational resilience will be an iterative process that requires effective collaboration among market intermediaries, financial institutions in general, and regulators around the world on an ongoing basis. The focus must always be on delivering tangible, outcomes-focused results that achieve genuine resilience enhancements. Continuing this collaborative engagement with a focus on the outcomes for clients, markets and financial stability gives the highest chance of success.

We are grateful for the opportunity to share our feedback on this IOSCO consultation report. We hope our suggestions are useful and we are more than willing to discuss our response in more detail during a meeting. It would be beneficial to understand the next steps IOSCO will undertake on this consultaiton and what other initiatives IOSCO is considering in this area more generally. We remain at your disposal for any questions you might have in relation to the above response.

Yours sincerely,

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[i] The Institute of International Finance is the global association of the financial industry, with more than 450 members from more than 70 countries. Its mission is to support the financial industry in the prudent management of risks; to develop sound industry practices; and to advocate for regulatory, financial, and economic policies that are in the broad interests of its members and foster global financial stability and sustainable economic growth. IIF members include commercial and investment banks, asset managers, insurance companies, sovereign wealth funds, hedge funds, central banks, and development banks.

[ii] GFMA represents the common interests of the world's leading financial and capital market participants to provide a collective voice on matters that support global capital markets. It also advocates on policies to address risks that have no borders, regional market developments that impact global capital markets, and policies that promote efficient cross-border capital flows to end users. GFMA efficiently connects savers and borrowers, thereby benefiting broader global economic growth. The Association for Financial Markets in Europe (AFME) located in London, Brussels, and Frankfurt; 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.

[iii] The Bank Policy Institute is a nonpartisan public policy, research, and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.