Multi-jurisdictional Information Sharing for Market Oversight

Final Report

TECHNICAL COMMITTEE
OF THE
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS

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I. Introduction

At its meeting in Frankfurt, Germany, in October 2005, the TC approved a project specification on "multi-jurisdictional" information sharing. The TC mandated the TC Standing Committee on the Regulation of Secondary Markets (SC2)[1] to examine the types of information that market authorities might share on a bi- or multilateral basis in order to facilitate their supervisory oversight of both (1) securities and related derivatives markets, and (2) parallel listing or trading. The mandate also required SC2 to consider, if appropriate, high level principles or other means to guide the development of operational arrangements in order to help ensure effective information flow between market authorities responsible for oversight of cross-border markets or trading.

II Definitions

As used in this report, the following terms have the meanings set forth below:

- "market" refers to facilities for trading securities and/or derivative products. The term does not include a clearance facility.

- "market authority" refers to an entity within a jurisdiction that regulates markets (pursuant to statute or otherwise), and includes a self-regulatory organization (SRO) (including a market that acts as an SRO).

- "parallel listing or trading" refers to the situation where a financial instrument (including securities), together with related instruments and/or substitute instruments, are listed or traded on a number of different trading venues in different countries.

- "requested authority" refers to a market authority to which a request for information has been made.

- "requesting authority" refers to a market authority that has made a request for information.

[1] The SC2 member jurisdictions are: Australia, Brazil, Canada (Ontario and Quebec), France, Germany, Hong Kong, India, Italy, Japan, Malaysia, Mexico, Singapore, Spain, Switzerland, United Kingdom, United States of America (CFTC and SEC).

III. Background and Purpose

In recent years, issuers have increasingly sought to raise capital internationally. Moreover, many investors, especially institutional investors, have been diversifying their portfolios geographically. As a result, investors from different countries now hold an increasing proportion of many issues of securities and other financial instruments. At the same time, the marketplaces for trading these instruments have also become more international.

There are at least three ways in which this internationalization of the marketplace takes place:

1. Investors (or their agents) can buy and sell foreign securities and derivatives using intermediaries in the country of the market where the financial instruments have their primary listing and/or are predominantly traded.

2. Markets may offer direct (electronic) access to participants in other countries.

3. The same and/or closely related financial instruments are listed and/or traded in parallel in different countries.

In the first case, the home market regulator is the sole market regulator with responsibility for the regulation of the market, though it may still need to share information with foreign regulatory authorities from time to time, *e.g.*, in respect of foreign investors using the market.[2] The second and third scenarios, on the other hand, raise a wide range of issues concerning multi-jurisdictional oversight. This paper therefore focuses on these two latter scenarios and the types of information and information-sharing arrangements in each context that could assist market authorities in meeting their respective responsibilities and objectives.[3]

As part of this project, the TC first examined the general regulatory approaches taken with regard to securities and derivatives markets that offer electronic access in other jurisdictions. It also considered the information that market authorities might usefully share on a routine basis to facilitate their supervisory responsibilities in such circumstances. Second, it examined categories of information that market authorities might share, on a request basis, in connection with the parallel listing and/or trading of securities and related derivatives, and of other derivative contracts and substitute or look-alike products.

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[2] This paper does not address regulatory (*e.g.*, licensing or registration) requirements potentially applicable to foreign intermediaries that conduct business directly with domestic investors, on an unsolicited basis or otherwise.

[3] Regulatory authorities in countries where brokerage firms conduct business on foreign markets using branches or subsidiaries located in the jurisdiction where the market is regulated may still need information from a foreign market if, for instance, they are investigating business activity relating to intermediaries and investors in their own jurisdiction.

The Technical Committee is issuing this report in order to promote, through the issuance of non-prescriptive guidance, the enhancement of the supervision of markets and trading in member jurisdictions through the exchange of information on a routine or ad hoc basis.[4]

IV. IOSCO Principles and Prior Work

IOSCO recognises the need for regulatory co-operation and information sharing in a more globalised marketplace. In its Principles and Objectives of Securities Regulation, it states that: "an increasingly global marketplace [also] brings with it the increasing interdependence of regulators. There must be strong links between regulators and a capacity to give effect to those links. Regulators must also have confidence in one another. Development of those linkages and this confidence will also be assisted by the development of a common set of guiding principles and shared regulatory objectives." Principles 11-13 address the need for cooperation in regulation, including information sharing.[5]

IOSCO has already examined co-operation and information-sharing needs in a market oversight context. This Report builds further on this prior work, which includes:

- *Mechanisms to Enhance Open and Timely Communication Between Market Authorities of Related Cash and Derivative Markets During Periods of Market Disruption (1993 Report).*[6]

- *Guidance on Information Sharing* (1998 Guidance).[7]

- *The Application of the Tokyo Communiqué to Exchange-Traded Financial Derivatives Contracts* (Tokyo Communiqué).[8]

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[4] This Report does not focus on the information that market authorities may need to share in a market and/or firm crisis. The Technical Committee provided in 1998 event-specific guidance to facilitate information by market authorities during periods of market and/or firm crisis. That guidance is available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD86.pdf.

[5] *See* IOSCO Principles and Objectives of Securities Regulation (IOSCO, Oct. 2002).

[6] In this Report (published in October 1993), the Technical Committee identified and described appropriate mechanisms to enhance open and timely communication between cash and derivative markets during periods of unusual price volatility or market disruption. Although the 1993 Report addressed some types of information (such as price and trading activity information) that market authorities consider important and useful, and some of the recommendations could also be included in a list of information needed for routine market oversight, the report did not address the full scope of information that market authorities could find useful for purposes of detecting, deterring and taking disciplinary action against market manipulation and otherwise ensuring market integrity.

[7] *See* footnote 3, *supra*. In the 1998 Guidance, the Technical Committee provided guidance intended to facilitate information sharing by market authorities during periods of market and/or firm crisis. However, it does not address the information that market authorities may find relevant for routine supervisory purposes.

- *Principles for the Oversight of Screen-Based Trading Systems for Derivative Products – Review and Additions* (2000 Report).[9]

- *Report on Trading Halts and Market Closures* (2002 Report).[10]

V. Preliminary Considerations

The two forms of marketplace internationalization we address in this paper present different issues for market oversight, and hence for the types of information that market authorities may require. Moreover, although this Report identifies a wide spectrum of information that market authorities may need to obtain for routine oversight of markets and *ad hoc* market oversight of parallel listing or trading, the need for any particular information item will be affected by a variety of factors. These include the specific regulatory approach adopted by a market authority towards foreign markets that it considers are operating in its jurisdiction, as well as the nature of the impact of a foreign market's activities on the domestic financial market.

A. Factors Determining the Nature of Informational Needs

1. Markets offering remote access to foreign participants

There are significant regulatory ramifications any time a foreign market provides remote access (i.e., direct electronic access) to participants in a host jurisdiction, as contrasted to the situation where the foreign market is accessed only through intermediaries located in the foreign country. This is because the foreign market can now be viewed as conducting, or potentially conducting, an activity within the jurisdiction of the remote member in the same, or a similar, way as a domestic exchange

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[8] Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD85.pdf. In this 1998 Report, the Technical Committee reviewed guidance papers on, among other things, components of market oversight and information sharing for physical delivery derivatives markets produced by the 1997 Tokyo Commodity Futures Regulators' Conference. Among other things, the Technical Committee concluded that the information sharing portion of the oversight guidance (which enumerated types of information that market authorities should be prepared to share on a routine basis and when a specific concern exists about a potential abuse of a market) applied to financial derivatives contracts and contracts for which there is not a deliverable supply.

[9] Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD111.pdf (Oct. 2000). In this report, the Technical Committee discussed the possibility of regulatory duplication, inconsistencies or gaps resulting from cross-border markets and enumerated several broad principles that regulatory authorities with responsibilities arising from the operation of cross-border markets for derivatives products ("relevant regulatory authorities") should consider to address this challenge (in the context of derivatives markets).

[10] Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD138.pdf (Oct 2002). In this report, which updated some aspects of the 1993 Report mentioned above, the Technical Committee discussed the use of trading halts and suspensions, including the desirability of having effective arrangements and communications in the case of securities and derivatives traded in more than one jurisdiction.

Jurisdictions take different approaches with regard to how to regulate such foreign markets. Some countries require a foreign market to comply fully with all domestic laws, *i.e.*, be registered or licensed and comply with the same rules and regulations as any domestic market. Other jurisdictions, however, authorize or recognize a foreign market if it is subject to a regulatory regime in its home jurisdiction that, in their view, provides "comparable" or "equivalent" protections as the regulatory regime in the host jurisdiction. Although the latter regimes may condition their licensing or recognition decisions with provisions that enhance particular areas of regulation, in general they rely on the home market authority to conduct market oversight.[11] Other jurisdictions subject the foreign market to a "special" recognition regime, which is different from the regime applied to domestic markets. For example, some market authorities require the foreign-based exchange to comply with domestic licensing requirements, but may modify those requirements to take into account elements of the market's home regime.

This Report does not opine on, advocate or otherwise evaluate the merits of any particular regulatory approach. However, the different regulatory approaches – whether arising from differences in legal systems, perception of risk, or both will determine the type of information, if any, that market authorities may consider that they need, and might share, for the purpose of fulfilling their supervisory responsibilities.

2. Trading in multiple venues

The parallel listing and trading of financial instruments and/or related or substitute instruments in different countries can take a number of forms. Most commonly, securities traded mainly in their home jurisdiction[12] may also be traded (either in the form of shares or depositary receipts) on markets in one or more other countries. Normally, this occurs when the issuer applies to one or more foreign markets to have its shares (or depository receipts) listed and traded on those markets. Issuers do this mainly when the secondary listing is likely to increase their access to a new pool of investors (or provide other corporate benefits such as raising the company's profile). This trading sometimes becomes a significant proportion of the total trading in a security.

Additionally, some issuers' securities are traded on a foreign market without the issuers having sought a listing or even being aware that the securities are traded in that foreign market. This generally occurs when local intermediaries believe that there is sufficient local trading interest in an issuer and when local law, as well as exchange or market rules, permit such trading.

Parallel listing and trading can also involve derivatives. In some cases, the listing and/or trading of a derivative instrument in one jurisdiction is based on an underlying cash market product (*e.g.*, a share) that is traded principally in another jurisdiction. It also occurs when a derivative contract traded in one jurisdiction is based on the same (or an almost

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[11] In the European Union (EU), 'regulated markets' and other 'multilateral trading facilities' that comply with the EU's harmonized standards are permitted to provide cross-border access without seeking authorization in other Member States.

[12] In respect of parallel trading, the home jurisdiction of a security will normally be the jurisdiction in which it has its primary listing.

identical) underlying asset (or measure) as a derivative contract traded in another. This can occur with derivative contracts based on a commodity (*e.g.*, gold, oil, sugar), as well as on a financial instrument (including an index).

The trading of the same financial instrument, or related instruments, in different jurisdictions provides investors with opportunities to trade those instruments in their domestic, rather than a foreign, environment. It can also provide market users who have the ability to trade in more than one jurisdiction with greater choice of instruments, as well as more options for using trading venues that best suit their trading needs.

There are generally two main types of risks arising out of parallel listing or trading. One possibility is that information in one jurisdiction is not readily available in another. Most commonly, this will be information about the issuer or about regulatory action in respect of an issuer's securities (*e.g.*, a suspension of listing or trading).

The second risk is that listing or parallel trading may present opportunities for market users to use parallel trading to engage in conduct that is illegal in one or both jurisdictions. They might, for instance, use a less liquid trading venue if the intention is to move the price relatively easily in order to create a false or misleading view of the price; or they might use parallel trading to avoid, illicitly, a disclosure requirement when building up a position (long or short), or to disguise the opening or closing out of illegal trading. Depending upon the specific nature of the pricing relationship between the derivative instruments (*e.g.*, one might derive its settlement price from the other) and the potential opportunity for market users to create an adverse effect, such trading could raise a market oversight concern that information sharing could help to mitigate.

Overall, the informational needs of each market authority to address these risks are likely to vary according to the circumstances. In most instances, relevant information is likely of a kind that will be needed only on an ad hoc basis.

B. Issues in the requesting and supplying of information

Parts VI and VII of this paper identify specific types of information that market authorities in different countries may need to assist in their oversight in the contexts that this paper addresses.[13] Whether or not a market authority considers most or only a small proportion of that information to be useful, it also needs to consider the means by which any item of information is obtained and the most efficient channel for obtaining it. This may vary considerably, depending both on the nature of the information, the best source for that information, and the division of regulatory responsibilities in different countries. Moreover, some of the information needed will be publicly available and some will be non-public information. And information can be broken down further, between information that is needed on a non-immediate timescale and that which is required immediately to address a current market event. Also, when trading takes place on a regulated trading center, market authorities are more likely to hold or have access to relevant information. That may not be the case in certain OTC markets, where there may be no issuer consent or notification, or reporting requirements.

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[13] In most instances, SROs, even if functioning as a market authority as understood in this paper, would rely on the government regulator to request and obtain information from a foreign market authority.

For information to be useful to the requester, it needs to be relevant, to arrive in usable form and to be obtainable on a timescale appropriate to the need. All information requests are resource-consuming for a requested authority, some of whom may have limited resources. So it is important that authorities likely to require information give thought to the focus, clarity and prioritization of their information requests. They should also be mindful of the types of public information that they can readily obtain from themselves, in particular via websites. In cases where it seems probable that they will have a regular or frequent need for information, it is sensible for requesting and requested authorities to discuss and clarify at an early stage their respective operational roles in market oversight. This can help to achieve the necessary focus on the objectives of information requests and help the requested authority to understand better the needs of the requesting authority and its supervisory responsibilities. This in turn should help to ensure that the processes for requesting and supplying information are developed and operate as efficiently as possible.

A further important issue in meeting information needs is the arrangements for the sharing of non-public information. Most IOSCO members can share non-public (confidential) information on a routine basis, as long as it is for the purpose of assisting the foreign supervisor in conducting its regulatory or law enforcement function, and as long as assurances are provided by the foreign supervisor that the information shall remain confidential and/or only be used for the purposes for which it was requested. It may be necessary in some jurisdictions for non-public information to be exchanged exclusively through an MOU and exclusively through a specified regulatory authority.

In some jurisdictions, requested information may be in the possession of one or more authorities. For example, the information related to the general supervision of a market may be in the possession of the regulators, whereas the information related to the market oversight of this market may be in the possession of an independent self-regulatory organization (SRO) in charge of market oversight and regulation.

Finally, in some instances, certain market authorities may be able to rely on existing bilateral memoranda of understanding (MOU) to obtain information. Yet some MOUs, which structure the general processes for the sharing of information between market authorities, may only cover law enforcement and may not be designed for general market oversight purposes.[14]

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[14] There are, however, exceptions. The U.S. SEC and the U.K. FSA recently signed an MOU Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Financial Services Firms and Market Oversight. *See* http://www.sec.gov/news/press/2006-36.htm. Additionally, the U.S. CFTC and U.K. FSA signed an MOU to address cross-border market surveillance concerns. Finally, the U.S. CFTC and CONSOB, and the CFTC and AMF, respectively, have entered into supplemental MOUs to facilitate the reciprocal sharing of specific fitness related information with regard to remote exchange members.

VI. Categories of Information that Market Authorities Might Share Concerning the Operation of a Foreign Market in their Jurisdictions

A. Introduction

The scope of information requested by an authority with regard to the operation of a foreign based market in its jurisdiction will be determined by the recognizing jurisdiction's statutes, rules and procedures. It can be divided into two areas:

- Information that may be needed by the market authority in the host jurisdiction before the foreign market is authorized to do business; and

- Information that may be needed on an ongoing basis after market authorization.

This discussion is not intended to provide an exclusive list of the information that market authorities might share. Nor does it imply that a market authority should request all identified items as a matter of course. It reflects, however, the best efforts of IOSCO members to identify information that a requesting authority might potentially need.[15] It is hoped that this discussion will assist a requested authority in understanding in advance why a requesting authority may have an interest in particular information and thereby expedite information sharing and the conclusion of information sharing arrangements where relevant. In seeking information, both requesting and requested authorities should be mindful of the discussion relating to practical issues set out in section V.B., above.

B. Information that may be needed by a market authority in the host jurisdiction before the foreign market is authorized to do business

Whatever their approach to licensing and ongoing oversight, host market authorities normally require a material level of information from a foreign market before they will grant it whatever form of recognition or authorisation they may require under their legislation. In some jurisdictions, the recognition/authorization process, the applicable recognition regime and the attachment of specific conditions to a recognition may be impacted by the regulatory regime in place in the applicant's home jurisdiction, the standing of an applicant vis-à-vis its home market authority (*e.g.*, any oversight and disciplinary actions taken against it) and the governance and organizational arrangements of the market. Moreover, a market authority may need to obtain confirmation of the legal ability and willingness of a foreign market authority (including the market itself) to cooperate and to enter into an agreement or understanding for the sharing of information.

In addition to information relating to the regulation of the market as a trading facility, it will be important for a host market authority to understand any regulatory role of the market and, where relevant, the role of other regulatory bodies in such areas as member oversight and product listing.

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[15] The information items listed in parts VI and VII of the paper reflect the results of a survey that SC2 conducted among its members.

The table below sets forth examples of the types of information that a market authority may wish to obtain as part of the licensing/registration regime for a foreign market. For those jurisdictions that impose the same requirements on foreign markets as they do on domestic markets, the information deemed necessary for effective regulation and the protection of investors will be much more comprehensive than shown by this table, and will reflect a different emphasis and purpose. For example, as such a jurisdiction does not seek to make an "equivalence" determination about the foreign market's home regulatory structure, there would be less of a need for information about that structure, but a much greater need for detailed information about the operation of the market and its ability to comply with the laws and regulations of the host jurisdiction.

For those jurisdictions that conduct an equivalence determination, there may also be a need for additional information under certain circumstances, including where products traded on the foreign market have a particular relationship to the host jurisdiction or its markets, or intermediary participation and activity in the foreign market is likely to be significant.

Information required	**Comment**
Information about the regulatory regime	
Information about the regulatory regime in place in the foreign jurisdiction.	Although the applicant normally describes the regulatory regime under which it operates, a requesting authority is likely to need to explore specific aspects of the regime and oversight arrangements with the market's supervisory authority, and, in countries where regulatory responsibilities (*e.g.*, listing and the oversight of broker-dealers) are allocated to separate authorities, with those other authorities.
Ability of foreign market authority to cooperate and share information, including whether or it can enter into an agreement or understanding for the sharing of information.	A requesting authority will need to know what types of information a market operator can pass directly to a foreign regulator and what types of information need to be passed through the market's regulatory authority.
Information about the market	
Constitution, organisation and activities of the market.	Confidence in a market's governance and organizational arrangements is likely to be a key element in the granting of a licence.
The market's capacity to comply with and implement the purposes of the laws to which it is subject, and to ensure that market participants comply with applicable laws.	A host authority may want to establish both the ability of the foreign market to enforce its rules in respect of host jurisdiction members and to establish whether the market's arrangements with remote members conflict with any of its own supervisory arrangements.
Confirmation of the good standing of the applicant market, including oversight and disciplinary actions taken against it.	Host authorities will want to obtain this information directly from the market authority responsible for the oversight of the applicant.
Instruments traded.	A host authority may be interested in the admission

Information required	Comment
	standards for products (especially in respect of the securities of issuers resident in its own jurisdiction) and the availability of particular types of instruments to retail investors.
Market rules.	A host authority may want to obtain details about the rules: ▪ that provide for fair access, *e.g.*, the allocation of reasonable dues, fees, and other charges among its participants and issuers and other persons using its facilities ▪ that seek to prevent fraudulent and manipulative practices, and promote just and equitable principles of trade ▪ that provide for disciplinary actions against market participants who have violated applicable laws and rules.
Rules setting standards of financial requirements for market participants.	A host authority may want to be satisfied that its firms and investors are adequately protected against default by other market participants, whether the trades are settled through a central counterparty or bilaterally.
Arrangements for the settlement of transactions.	In addition to the above, a host authority may wish to satisfy itself that the clearance and settlement arrangements present no undue legal or operational risk for firms and investors in its jurisdiction.

C. Information that may be needed on an ongoing basis after market authorization

This section highlights the information that market authorities might share for the following three purposes. First, to assist in market oversight for purposes of detecting and preventing fraud, such as price manipulation, trading abuses, misleading conduct and other fraudulent or deceptive practices; second, to help ascertain the financial integrity of a market; and third, to maintain an understanding of the regulatory regime in the market's home jurisdiction.

1. Information that may facilitate market trading oversight

The information needs of a market authority will vary significantly both in terms of the level of detail of the information needed and the frequency of requests depending on the level of oversight that a market authority expects to exercise over a foreign market. Some market authorities may limit their supervision of the market to the activities of the participants of the foreign market that are located in their jurisdiction, whereas others may require comprehensive details concerning all transactions performed on the market. With regard to deliverable commodities, a market authority may find it relevant to exchange information regarding the operations, stocks and use of warehouses that may be connected

with large unusual price movements in commodities traded on the foreign market. The table below sets forth examples of the types of information that a market authority may wish to obtain in order to facilitate market trading oversight.

Information	**Comment**
Notification of remote members/ participants joining/leaving the market.	There may be no need for a market to supply this information if it maintains a publicly available list of members, and/ or remote firms provide their supervisory authorities with information on the foreign markets they access.
Transaction information (*e.g.*, details of a trader's positions, large positions, related OTC and cash positions, trading by an issuer's significant shareholders and officers).	Focus and clarity is particularly important with requests for trading and position information, which markets may consider sensitive and costly to supply.
For commodity derivatives: inventory levels and locations of delivery stocks (details of related warehouse information).	As above.
Specific trading limits, such as price and position limits and any changes thereto.	
Reports of abusive practices and illegal behavior, including insider trading activity, involving remote market participants.	Host market authorities will wish to be made aware of rule infringements and abusive practices involving their firms, but in most cases are likely to be involved in any investigative process at an early stage.

2. Information that may help to assess a market's financial integrity and conduct

Markets generally have to comply with the ongoing obligation to (among other things) have sufficient financial resources to operate. As a result, information from a home market authority regarding the market's ability to perform this ongoing function is valuable.

Any disciplinary action, whether civil, criminal or administrative, related to the activities of the foreign market, may trigger regulatory concerns. As such, information related to any material action would be helpful for market authorities to share on an ad hoc basis since it may have great impact in the foreign jurisdiction.

A market authority's access to information concerning a market's material outsourcing arrangements, and any changes to such arrangements, is critical for effective oversight. For example, many markets have replaced manually intensive order routing and execution procedures with outsourced automated systems that permit electronic routing and execution of certain orders. Regulators have an interest in seeking to ensure that markets take

appropriate steps so that their automated trading systems have the capacity to accommodate current and reasonably anticipated future trading volume levels adequately and to respond to emergency conditions. Market authorities have, therefore, a legitimate interest in obtaining information concerning outsourcing arrangements, including changes to them. The table below sets forth examples of the types of information that a market authority may wish to obtain in order to facilitate its assessment of a market's financial integrity and conduct.

Information	**Comment**
Material changes in the market's corporate structure and governance arrangements, including changes in control/ownership and changes to the arrangements under which it conducts its regulatory functions (*e.g.*, material outsourcing arrangements).	A host authority may require periodic information from a market on recent developments and/or more timely notification of events or developments considered to be of material significance (*e.g.*, changes in control)
Significant changes in the activities of the group, including the products traded.	Host authorities are likely to be particularly interested in new activities or products that carry higher risk levels for the market or its users or which may encourage regulatory arbitrage.
Periodic assessments regarding the financial condition of the market.	This information should, to the extent possible, be based on or a duplicate of that required by the home market authority.
Changes in margin requirements, if any.	Changes in margin requirements - up or down - may have material implications for the prudential management of some market participants.
Material examination findings, subject to confidentiality assurances and agreements	Host market authorities may be interested in obtaining this information since it may impact the market's ability to perform its regulatory functions.
Disciplinary, civil, penal or criminal action related to the activities of the market.	As above.
Material events that could adversely impact the market.	As above.

3. Information necessary for the on-going assessment of the regulatory regime in the foreign jurisdiction

For some host market authorities, the regulatory regime in a market's home jurisdiction is a key factor in the authorization or recognition process. Accordingly, amendments to the laws and regulations in the home jurisdiction governing the activities of the market are part of the information that would be helpful for market authorities to share. However, this information does not necessarily have to be shared on a periodic basis. It may be needed only when the amendments are material. The table below sets forth an example of the type of information that a market authority may wish to obtain as part of its on-going assessment of the regulatory regime in the foreign jurisdiction.

Information	Comment
Relevant changes to the laws and regulations governing the foreign market.	It may be useful for market authorities to automate the process of notifying foreign regulators (using e-mail circulation lists) of relevant changes, or proposals for changes, to regulation of markets in their countries (including the links where the proposals or final regulations may be found).

VII. Categories of Information that Market Authorities Might Share Concerning Parallel Listing or Trading

A. Introduction

As noted earlier, the main purposes for sharing information in relation to parallel listing or trading are to help ensure that market authorities receive information that may assist in preventing disorderly markets and detecting potential market abuse. The types of information that SC2 jurisdictions have identified as potentially useful in each of these contexts are set out in the table in section B, below.

An initial challenge with parallel listing or trading can be to know what form parallel trading takes (*e.g.*, the securities or derivatives on the securities) and where any parallel listing or trading takes place. Where a security has secondary listings in overseas countries, the primary listing authority may not necessarily know where those secondary listings are (even though the issuer itself will know). Moreover, in some cases, a security may be traded in other jurisdictions without any agreement between the trading venue and the issuer and without any need to notify the issuer or a listing or market authority. In discussing this issue in its 'Report on Trading Halts and Market Closures,'[16] the TC concluded that 'it is good practice for the primary listing authority to be aware of the other markets on which a security is listed'[17] – especially those on which it is regularly traded – and ..[to] encourage issuers to notify them of other markets on which they have their securities listed.[18] In the case of derivatives, it may be particularly difficult to know where some trading takes place given the relatively high level of OTC trading in many forms of derivatives. However, where similar contracts are traded in organized marketplaces, such as exchanges, there is likely to be

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[16] Report on Trading Halts and Market Closures (IOSCO Technical Committee, Oct. 2002)

[17] The same report also recommended that listing and market authorities should inform those other markets where a security is listed or traded of discretionary trading halts. It also concluded that regulators should normally require trading venues that provide trading in securities without any formal arrangements with the issuer – particularly exchanges and other organized market facilities – to require the operator to ensure that it, and users of the system, have timely access to information relating to trading halts in the primary market(s) and that similar requirements should apply to operators of derivative trading platforms.

[18] For example, in the European Union, the Markets in Financial Instruments Directive, which will take effect from November 2007, requires all regulated markets to inform an issuer whose securities they admit to trading, whenever the issuer has not consented to the listing.

significant awareness of parallel listing or trading, especially where the contracts trade in open competition.

B. Information that market authorities might share on an ad-hoc basis

The information identified below is not necessarily needed by all regulators, and may have various levels of relevance depending on the needs of each regulator. This information is generally used for market oversight purposes, and/or to assist in determining whether an investigation should be opened into possible securities laws violations.

Information	**Comment**
Financial instruments traded or securities listed on a market.	Requesting authorities may be primarily interested in identifying securities and derivatives that list or trade in parallel (though they may also be interested in other instruments between which there are strong correlations). An issue for regulators is the extent to which there is sufficient case to require, for example, notifications to issuers and/or market authorities when securities are admitted to trading other than on the request of the issuer.
Identification of principal exchanges/marketplaces and applicable government regulator(s).	This information is sometimes carried on market authority websites. Requesting authorities would often find it useful – in this and other contexts – if websites carried an outline description of the regulatory framework for markets, the key regulatory bodies involved and the principal exchanges and trading venues.
Market rules.	Requesting authorities examining listing or trading issues may need to understand the key market rules in other jurisdictions, *e.g.*, listing, margin, recordkeeping, exchange membership requirements, market making rules, specific trading practices (*e.g.*, short selling), antifraud, and last sale reporting and frequency. They may need to understand whether rules are part of the overall regulatory framework or specific to a particular exchange or trading venue.
Information about listing and trading.	Requesting authorities may need to understand differences between the listing and trading process in their markets and parallel markets, including the market structure, trading mode (electronic, manual auction), the data available about orders executed on a market (*e.g.*, short sales), and operational matters (*e.g.*, trading halts, suspension of trading, referrals made to the relevant regulatory authority).
Information about exchange members.	When monitoring for potential cases of market abuse involving parallel listing or trading, a requesting

Information	Comment
	authority will likely be particularly interested about the parties involved in the trading, whether market members or their clients. They may therefore need to know about members who are market-makers in certain foreign securities, restrictions on exchange member trading, restrictions on trading a security in the same market as a related derivative, capital and/or other financial requirements, and identity of exchange members and market participants that have traded specific securities in foreign markets
Trade settlement and clearing procedures and systems.	
Oversight arrangements.	Bi- or multi-lateral oversight and information sharing agreements (between markets or SRO/regulator) and information concerning trading in particular securities.
Disciplinary processes and actions.	(1) disciplinary processes or standards with respect to market participants and issuers, and their associated persons, and (2) specific disciplinary actions against individual market participants and quoted or listed companies, and their associated persons.
Information about investigations into trading of a foreign security.	
Market or issuer reports.	
Market and market member (e.g., intermediary) registration/licensing requirements.	

VIII. Conclusions and Recommendations

Information sharing between regulators in various jurisdictions can play an indispensable role in enhancing market integrity and investor confidence, particularly in light of the globalization of the world's securities markets. Although clearly not a new concept, it has taken on heightened importance because of the reliance, to varying degrees, of a number of jurisdictions on the regulatory regime that exists in a market's home jurisdiction. But even in those jurisdictions where foreign markets are subject to the same regulatory regime and requirements as domestic markets, the sharing of information concerning a foreign market may be helpful, particularly with regard to any regulatory or enforcement action that the home jurisdiction regulator is contemplating that could have flow-through effects that could disrupt an exchange's operation in the host jurisdiction market.

An additional need for information sharing arises where the securities issued and listed for trading in the markets of one jurisdiction trade simultaneously in foreign markets. This need for information sharing may also arise in the case of trading in derivatives based on securities and the trading of derivative contracts based on the same underlying. As noted earlier, this trading can have an impact on trading in other markets, particularly in the issuer's home jurisdiction. In most cases, this information is needed by a market authority for oversight purposes and on an ad hoc basis. Even though much of this information is frequently publicly available, it will often be extremely helpful, particularly in light of language and cultural differences, if the market authority in the foreign jurisdiction provides assistance in locating and/or obtaining the information.

With regard to the "means" for the sharing of information, it should be noted that the original mandate for this project stated that it might be helpful to also identify the means of sharing the information discussed above that might guide the development of operational arrangements. However, as part of its work on this issue, the TC has determined that most IOSCO members generally already have the legal authority to share both public and non-public information, even in the absence of MOUs. Moreover, existing pathways for information sharing, including a well developed body of experience with MOUs, provide adequate operational arrangements for information sharing. Accordingly, this Report makes no recommendations concerning specific operational arrangements.

The TC therefore makes the following recommendations concerning information sharing for market oversight.

Requesting Authorities

Requesting authorities should:

- When envisaging periodic or frequent requests for information, discuss with the requested authorities at an early stage the nature of, and reasons for, their ongoing information needs and seek to establish arrangements that enable that need to be met efficiently from the viewpoint of each party.

- Seek to ensure that their information requests are reasonable. This means, for example, that to the degree possible, an interested authority should seek to obtain publicly available information on its own, and that the burden on the requested

authority to obtain the information should be considered alongside the importance of the information to the accomplishment of the requesting authority's supervisory mission.

Requested Authorities

Requested authorities should:

- Take steps, to the degree possible and consistent with local laws and regulations, to provide upon request the information described in this report.

- Take steps in advance to clarify whether they are able to share such information and the conditions under which such information may be shared, including those relating to confidentiality concerns and whether it is necessary for them to conclude MOUs or other information sharing arrangements in order to share the information.

- Review the language of existing MOUs to determine whether they cover information sharing for market oversight.

- Where obstacles to information sharing exist, take affirmative steps, within the scope of their powers, to encourage the removal of such obstacles.

- Where requested information is in the possession of third parties, seek to obtain that information on behalf of the requesting authority or assist the requesting authority in obtaining the information directly from the third party.

- Review their processes for providing information to requesting authorities and consider whether they can make those processes more efficient.

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ANNEX

FEEDBACK STATEMENT

Multi jurisdictional Information Sharing for Market Oversight

Comments were submitted by the following organizations in response to a preliminary draft of the IOSCO Technical Committee Report *Multi jurisdictional Information Sharing for Market Oversight* that had been circulated to the SRO Consultative Committee in 2006.

One comment was received in response to the public consultation published on the IOSCO web-site in 2007.

Comments submitted by members of the IOSCO SRO Consultative Committee

1. Amman Stock Exchange (AMS) (February 6, 2007)

2. Cairo & Alexandria Stock Exchanges, (CASE) (December 11, 2006)

3. International Capital Market Association, Ltd., (ICMA) London, England (January 5, 2007)

4. Market Regulation Services, Inc., (RS) Toronto, Ontario (January 4, 2007)

5. São Paulo Stock Exchange (BOVESPA)(January 10, 2007)

6. SWX - Swiss Exchange (SWX) (December 22, 2006)

Comment submitted during the public consultation

7. British Bankers' Association (BBA) (March 16, 2007)

Overall Approach and Scope of the Report

In general, commenters were supportive of the draft Report. *See, e.g.,* AMS, BOVESPA and SWX.) One commenter (RS) noted that the Report focused on a market providing access to participants in another jurisdiction and questioned why the Report did not address access by broker-dealers and investors. The Technical Committee on Secondary Markets restricted its inquiry to the *market surveillance* informational needs when a market provides direct access to "participants" in a foreign ("host") jurisdiction.

One commenter noted that some of the information needed may overlap the two situations foreign market/operators and foreign member firms(CASE); another (RS) stressed the distinctly different information that may be needed to address issues that may be relevant to investor access, for example. Both comments seemed to suggest that the Report should address these factual scenarios. However, that focus was not included within the mandate. Again, the focus was on information that would be needed for market surveillance.

Intention

One commenter (ICMA) questioned whether a home jurisdiction ("home market") would actually make inquiries into a labor-intensive matter. However, the Report's intent was in fact that of the commenter, who observed that "it may be appropriate to say that the foreign market/regulator should be prepared to provide this information." The purpose of this Report is to provide examples of the type of information that could reasonably be requested with respect to market surveillance inquiries and therefore eliminate questions concerning the general relevancy of certain information items. The Report makes clear however, that the identified information is not necessarily needed by all regulators, and may have various levels of relevance depending upon the circumstances.

Duty to Inform

One commenter (CASE) suggested that the Report should affirmatively state that foreign markets have an obligation to inform issuers if they are trading their securities without being listed on them, and issuers have an obligation to inform their own home markets that they are being traded on other exchanges after they receive such notification. This issue was recognized in the report at section VII, and points of view expressed by the commenter were discussed by the Technical Committee. However, the Technical Committee did not believe that it should mandate such a requirement. The core concern, however, was raised in the final Report at page 13, which recognizes that a security may be traded in other jurisdictions without any agreement between the trading venue and the issuer and without the need to notify the issuer or a listing or market authority. The Report highlights prior Technical Committee conclusions on this point in its *Report on Trading Halts and Market Closures.* In that report, the Technical Committee concluded that "it is good practice for the primary listing authority to be aware of the other markets on which a security is listed… especially those on which it is regularly traded…and…[to] encourage issuers to notify them of other markets on which they have their securities listed."

Operational Arrangements

One commenter (CASE) observed that the report made no recommendations concerning specific operational arrangements. As noted in the report, the Technical Committee determined that existing pathways for information sharing are well developed and that there was no need to make specific recommendations. The implicit understanding in that conclusion is that the parties do not need additional guidance in drafting such arrangements. The Report notes in section V. B that to the extent non-public information is requested, it may be necessary in some jurisdictions for non-public information to be exchanged exclusively through a MOU and exclusively through a specified regulatory body. Additionally, the discussion in section V. B. contemplates that the parties will negotiate the terms that will guide any ongoing information sharing. Recent examples of specific arrangements addressing cross-border market surveillance arrangements were added to footnote 14.

Burdens

One commenter (ICMA) raised questions under a variety of circumstances regarding issues that could arise in the context of the Report's statement that requesting authorities [should] seek to the degree possible to obtain necessary information on its own and to avoid burdening

the requested authority. Further to this it was mentioned, for example, that exchanges might - according to their laws- not be allowed to provide information to foreign regulators by themselves. The commenter noted that in some cases routing the request via the statutory regulator may be the most efficient way to obtain the information. This concept has been added to the report at foot-note 13. Additionally, the Report did not intend to impose a principle or prescriptive requirements with respect to the manner of obtaining information. Rather, the discussion in section V. B. of the report is intended simply to remind all parties concerned that they should take into account burdens and the public availability of information when making requests. The Technical Committee clarified that only information that is publicly available and can thus easily be obtained by the authority itself should – if possible – be obtained by the requesting authority itself. Reference to the availability of information on the Internet was included to illustrate this point. Non-public information has always to be obtained with the assistance of the foreign/requested regulator.

The BBA endorsed the need to minimize burdens in making requests for information, and attached as an appendix a document the BBA prepared to assist overseas regulators and exchanges in making requests for information relating to UK Banking and securities business. The BBA document is a helpful reference that provides very practical suggestions for expediting the consideration of requests.

Confidentiality

The BBA noted its concern that certain data, such as large position information, be carefully kept confidential. The Report assumes that arrangements to share information would remain subject to applicable confidentiality requirements.

Regulatory Approach

One commenter (ICMA) suggested that the Report should include an observation that jurisdictions that do not recognize or otherwise permit direct access on the basis of an "equivalency" determination results in regulatory burdens. However, consistent with the underlying mandate, the Report did not opine on the benefits or disadvantages of any member's approach to foreign markets. The perception of "burdens" often is subjective, and one that could be countered by assertions that a particular approach was needed for market integrity. In the end these are policy questions that are beyond the mandate of this project.

Clarifications

One commenter (CASE) observed that it was difficult to follow when the Report discussed markets or participants and another commenter (RS) perceived it as a shift in focus within the Report. The final Report was reviewed for such inconsistencies and, hopefully, any inconsistent language has been corrected in the final Report.

Another commenter (ICMA) noted ambiguous text that could be read to equate the use of parallel trading to reduce the visibility of trading (which the commenter observes is a legitimate objective) with fraudulent or otherwise illegal conduct. The final report has revised the language to eliminate this ambiguity.

The BBA suggested that the report clarify the issue of the "home" jurisdiction of a security. Such a discussion, however, would be beyond the scope of the Report, as it would involve a

detailed and voluminous discussion of jurisdiction among the IOSCO members. The purpose of the Information Sharing Report is to provide practical, general guidance as the types of information that market authorities should be prepared to share for market surveillance purposes.

The BBA also questioned whether language in the preamble suggests that market authorities would make requests directly to participants in the market. However, the Report addresses information sharing between market authorities only. Of course, a "home" market authority having jurisdiction over a market in question may need to obtain the underlying information from the market or its participants. Such requests would in all circumstances be governed by the local market authority's laws and regulations.