

**Peer Review of Implementation of Incentive
Alignment Recommendations for Securitisation
— Report of Key Preliminary Findings to the
G20 Leaders' Summit**



IOSCO

**THE BOARD
OF THE
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1 Executive Summary

This report (**Report**) sets out the key preliminary findings of a review (**Review**) by the International Organisation of Securities Commissions (**IOSCO**) of member progress in adopting legislation, regulation and other policies in implementing recommendations about incentive alignment for securitisations made in IOSCO's November 2012 Report *Global Developments in Securitisation Regulation*.

The key preliminary findings set out in this Report are made solely on the basis of the self-assessments provided by participating jurisdictions. For the purposes of preparing the Report, neither the self-assessed ratings nor the supporting information provided by the participating jurisdictions have been independently verified. The only revisions made were to ensure the reporting scale as it relates to the date on which measures took effect is consistent with other information provided in the self-assessment.

The key preliminary findings set out in this Report are therefore subject to confirmation (and possible change) by the Review Team following the preparation of a second, more detailed final report and analysis, which will be published in Q2 2015. Participating jurisdictions were given an opportunity to confirm the way their self-assessments have been reported in this Report, although not all participating jurisdictions had done so at the time of preparing this Report.

The Review is being conducted by a review team comprising staff of ASIC, CNMV Spain, UK FCA, AFM Netherlands, US SEC, Japan FSA, South Africa FSB and the IOSCO Secretariat (**Review Team**). The Review Team is chaired by ASIC.

2. Introduction

In May 2014, the IOSCO Board approved Terms of Reference for this Review.

2.1 IOSCO Recommendations for Incentive Alignment for Securitisation

In July 2011, the Financial Stability Board (**FSB**), through its Standing Committee on Supervisory Regulation and Co-operation (**FSB SRC**) requested that IOSCO, in coordination with the Basel Committee on Banking Supervision, conduct a stock-taking exercise to review current national and international regulatory initiatives on risk retention, transparency and standardisation of securitisation, and develop policy recommendations as necessary.

In response to this request, IOSCO, through its Taskforce on Unregulated Markets and Products (**TFUMP**), undertook a project to describe and analyse global regulatory and industry initiatives on risk retention, transparency and disclosure standardisation, and develop a series of recommendations.

The project involved a survey of IOSCO members, a public consultation paper and an industry roundtable. The Final Report (*Global Developments in Securitisation Regulation*) (**Final Report**) was published by IOSCO in November 2012 and, as requested, made a number of recommendations regarding risk retention, transparency and standardisation, and also in relation to further issues for consideration.

Summaries of the recommendations in the Final Report, which pertain to incentive alignment (**Incentive Alignment Recommendations**), are set out below.

Recommendation 1: Evaluation, Formulation and Implementation Deadline of Approaches to Align Incentives, including Risk Retention Requirements

Jurisdictions should evaluate and formulate approaches to aligning incentives of investors and securitisers in the securitisation value chain, including where appropriate, through mandating

retention of risk in securitisation products. Any exemptions to the risk retention requirements should be limited and warranted.

They should endeavour to take any necessary steps to implement such approaches to comply with the elements set out in Recommendation 2 by mid-2014.

Recommendation 2: Elements of the Incentive Alignment Approach and Risk Retention Requirements

Jurisdictions should clearly set out the elements of their incentive alignment approach with risk retention being the preferred approach. Where risk retention is mandated, the applicable legislation, regulation and/or policy guidance should address the following elements:

- The party on which obligations are imposed (i.e. direct and/or indirect regime, based on an assessment of the most efficient and effective way of achieving risk retention);
- Permitted forms of risk retention requirements (e.g. vertical, horizontal, etc.);
- Exceptions or exemptions from the risk retention requirements. (These exemptions should be consistent with the objectives of incentive alignment.)

All jurisdictions should ensure that domestic legislation, regulation and policy guidance require that the method chosen for compliance with the incentive alignment approach be disclosed.

Recommendation 3: Harmonised Alignment of Incentive and Risk Retention Approaches

Regulators should seek to minimise the potentially adverse effects to cross border securitisation transactions resulting from differences in approaches to incentive alignment and risk retention.

In addition, Recommendation 3 provided that the IOSCO Assessment Committee (AC) will:

- Conduct a peer review to assess implementation of incentive alignment approaches, including risk retention requirements in line with Recommendation 2 of the Final Report and the three elements that it sets out; and
- Make recommendations to address any difference in approach that may cause material adverse effects to cross-border transactions and to ensure convergence and harmonisation and monitor implementation of the recommendations.

2.2 Reasons for the Thematic Review

A Thematic Review of the Recommendations is being undertaken to:

- Take forward Recommendation 3 of the Final Report.
- Identify what measures have been taken or planned, across jurisdictions, to adopt the Recommendations (**Adopting Measures**); and
- Identify any differences in these Adopting Measures, with commentary on whether these differences warrant further policy consideration and implementation monitoring.

In September 2013, the G20 Leaders in St Petersburg called for IOSCO to launch a peer review on the implementation of incentive alignment regimes (including risk retention requirements) and report its progress to the G20 in late 2014.¹

The FSB noted the project in its Forward Work Plan.

This Report describes how the Review was conducted, and sets out key preliminary findings. A Final Review Report will be published by IOSCO in Q2, 2015.

3. Methodology

3.1 Nature of the Review and Objectives

The objectives of this Review are to:

- Describe the Adoption Measures² that have been taken or are proposed to be taken in line with the Incentive Alignment Recommendations;
- Chart the relative status of jurisdictions' progress in implementing the Adoption Measures against an agreed scale;
- Explain how each participating jurisdiction is implementing, or proposes to implement, the Incentive Alignment Recommendations.

The Review is not a review of the consistency of the measures to be taken against the Incentive Alignment Recommendations. It will assess the status and timeliness of incentive alignment approaches implementing the Incentive Alignment Recommendations. A Review of the consistency of the measures taken against those recommendations may be undertaken at a future date, to be determined based on the findings of this Review.

3.2 Methodology

The Review is being undertaken as a desk-based exercise, using responses provided by IOSCO Members to a questionnaire designed and developed by the Review Team (**Review Questionnaire**). The Review Questionnaire was circulated on 14 August 2014, with responses due on 15 September 2014.

The questionnaire asked participating jurisdictions to chart the relative status of jurisdictions' progress in implementing adoption measures as at 30 June 2014 using the following rating scale:

1. Final Adoption Measures taken and, where relevant, in force;
2. Final Adoption Measures published but not taken or in force;
3. Draft Adoption Measures published;
4. Draft Adoption Measures not published; and

¹ See *G20 Roadmap Towards Strengthened Oversight and Regulation of Shadow Banking* (September 2013) <http://en.g20russia.ru/load/782788663>.

² Adoption measures comprise a number of actions. They include: the assessment by jurisdictions of the nature of the incentives of issuers and investors in the securitisation value chain; the development of approaches to align incentives in the securitisation market; and the implementation of these approaches to align incentives.

5. Not applicable.

3.3 Jurisdictions Participating in the Review

All IOSCO Members from FSB jurisdictions and IOSCO members from non-FSB jurisdictions with a significant securitisation sector were asked to participate in the Review. Other IOSCO Members were given the opportunity to volunteer to participate in the Review.

In the absence of globally comparable data on the size of securitisation markets and activity at a national level, the Review Team agreed that a proxy for jurisdictions with a significant securitisation sector would be those jurisdictions which had actively participated in recent IOSCO policy work on securitisation (through TFUMP).

IOSCO members from 26 jurisdictions indicated an intention to participate in this project, including members in all but one FSB jurisdiction. The IOSCO member from that jurisdiction, Switzerland, indicated it would not participate because it said Switzerland did not have domestic securitisation activity.

A list of jurisdictions invited to participate in the Review is contained in Appendix 1 to this Report.

At the time of drafting this report, self-assessments had been provided by 24 IOSCO members (including 23 members from FSB jurisdictions)³. This includes a self-assessment provided by Indonesia, received on 6 November. The results of that self-assessment are not included in this report because they require further clarification and discussion. The self-assessment will be included in the Final Review Report.

As such, the findings of this Report are based on 23 self-assessments.

4. Summary of Key Preliminary Findings

The Preliminary Findings report summarises self-assessments of jurisdictions' responses to questions about Adoption Measures in relation to the following aspects of Recommendation One of the Incentive Alignment Recommendations:

- **Evaluation** of the incentives of investors and securitisers along the securitisation value chain (Question 1 (i) of the Review Questionnaire) ;
- **Formulation** of regulatory approaches to align incentives of investors and securitisers along the securitisation value chain (Question 2 (i) of the Review Questionnaire);
- **Implementation** of incentive alignment approaches as set out in the 2012 Report's Recommendations (Question 3 (i) of the Review Questionnaire).

³ Autorité des marchés financiers (France), Central Bank of Ireland, China Securities Regulatory Commission, Japan Financial Services Agency, Republic of Korea Financial Services Commission/Financial Supervisory Service, Mexico Comisión Nacional Bancaria y de Valores, Commissione Nazionale per le Società e la Borsa (Italy), USA Securities and Exchange Commission, Brazil Comissão de Valores Mobiliários, Securities and Exchange Board of India, Canada (Ontario Securities Commission and Quebec Autorité des marchés financiers), South Africa Financial Services Board, Australian Securities and Investments Commission, Germany Federal Financial Supervisory Authority, Hong Kong Securities and Futures Commission, Netherlands Authority for the Financial Markets, Central Bank of Russia, Saudi Arabia Capital Market Authority, Monetary Authority of Singapore, Spain Comisión Nacional del Mercado de Valores, Capital Markets Board of Turkey, UK Financial Conduct Authority, Comisión Nacional de Valores Argentina and Otoritas Jasa Keuangan (Indonesia).

These responses are reported in this summary because they provide a high level and early indication of progress jurisdictions are making in addressing the recommendations.

4.1 Summary of Self-assessments

The preliminary findings show that there has been good progress in implementing the Adoption Measures for the Incentive Alignment Recommendations, with a majority of responding jurisdictions having taken some steps to do so.

Specifically self-assessments indicate that, as at 30 June 2014:

- In 10 FSB jurisdictions, and 1 non-FSB jurisdiction all final Adoption Measures had been taken and, where relevant, were in force⁴;
- In 4 jurisdictions, some actions had been taken, which in most cases includes drafts having been published in relation to at least one Adoption Measure⁵;
- In 7 jurisdictions, no action had been taken, with no draft Adoption Measures having been published⁶.

Self-assessments in 1 jurisdiction indicated relevant measures were not applicable⁷.

4.2 Findings Summary Tables

The tables below show preliminary findings, being the self-assessed responses from each jurisdiction to Questions 1(i), 2(i) and 3(i) of Section A of the Review Questionnaire.

The first table (Table 1) shows, for each jurisdiction, implementation status in relation to each Adoption Measure.

The second table (Table 2) shows a listing of jurisdictions by implementation status for each Adoption Measure.

Table 1 – List of implementation status by jurisdictions reporting as at 30 October 2014

	<i>Evaluating the incentives of investors and securitisers along the securitisation value chain</i>	<i>Formulating approaches to align the incentives of investors and securitisers in the securitisation value chain</i>	<i>Implementing incentive alignment approaches in line with the elements set out in Recommendation 2</i>
Argentina ⁸	Draft adoption measures not published	Final adoption measures taken	Final adoption measures taken and in force
Australia	Draft adoption measures published	Draft adoption measures published	Draft adoption measures published
Brazil	Final adoption measures taken	Final adoption measures taken	Final adoption measures taken and in force

⁴ These jurisdictions are Brazil, France, India, Ireland, Netherlands, Russia, Turkey, Germany, Italy, Spain and the United Kingdom.

⁵ These jurisdictions are Argentina, Australia, Canada and the United States (subject to the comment made in footnote 16 below).

⁶ These jurisdictions are China, Hong Kong, Japan, Korea, Mexico, Singapore and Saudi Arabia.

⁷ This jurisdiction is South Africa.

⁸ The Argentinian self-assessment notes that draft adoption measures have not been taken in relation to evaluation of incentives because of market practice.

	<i>Evaluating the incentives of investors and securitisers along the securitisation value chain</i>	<i>Formulating approaches to align the incentives of investors and securitisers in the securitisation value chain</i>	<i>Implementing incentive alignment approaches in line with the elements set out in Recommendation 2</i>
Canada	Draft adoption measures published	Draft adoption measures published	Draft adoption measures published
China ⁹	Draft adoption measures not published	Draft adoption measures not published	Draft adoption measures not published
France	Final adoption measures taken	Final adoption measures taken	Final adoption measures taken and in force
Germany	Final adoption measures taken	Final adoption measures taken	Final adoption measures taken and in force
Hong Kong ¹⁰	Draft adoption measures not published	Draft adoption measures not published	Draft adoption measures not published
India	Final adoption measures taken	Final adoption measures taken	Final adoption measures taken and in force
Ireland	Final adoption measures taken	Final adoption measures taken	Final adoption measures taken and in force
Italy	Final adoption measures taken	Final adoption measures taken	Final adoption measures taken and in force
Japan ¹¹	Draft adoption measures not published	Draft adoption measures not published	Draft adoption measures not published
Korea	Draft adoption measures not published	Draft adoption measures not published	Draft adoption measures not published
Mexico ¹²	Draft adoption measures not published	Not applicable	Not applicable
Netherlands	Final adoption measures taken	Final adoption measures taken	Final adoption measures taken and in force
Russia	Final adoption measures taken	Final adoption measures taken	Final adoption measures taken and in force
Saudi Arabia	Draft adoption measures not published	Draft adoption measures not published	Draft adoption measures not published
Singapore ¹³	Draft adoption measures not published	Draft adoption measures not published	Draft adoption measures not published
South Africa ¹⁴	Not applicable	Not applicable	Not applicable
Spain ¹⁵	Final adoption measures taken	Final adoption measures taken	Final adoption measures taken and in force
Turkey	Final adoption measures taken	Final adoption measures taken	Final adoption measures taken and in force
United Kingdom	Final adoption measures taken	Final adoption measures taken	Final adoption measures taken and in force
United States ¹⁶	Draft adoption measures published	Draft adoption measures published	Draft adoption measures published

Key	
1	Final adoption measures taken (and in force, where relevant)
2	Final adoption measures published

⁹ The Chinese CSRC advises that, while, as of the response date, drafting of measures was not complete, it is in progress and is expected to be completed by the end of 2014.

¹⁰ The Hong Kong self-assessment notes measures have not been taken because of the small size of the domestic market.

¹¹ The Japanese self-assessment notes that draft adoption measures were published in September after the cut-off date for the self-assessment.

¹² The Mexican self-assessment, although rating the formulation and implementation of approaches to incentive alignment as 'Not applicable', foreshadows some legislative reform.

¹³ The Singapore self-assessment notes measures have not been taken because of the small size of the domestic market.

¹⁴ The South African self-assessment rated measures as 'Not applicable' because of market practice.

¹⁵ The Spanish self-assessment is subject to final confirmation.

¹⁶ The US SEC notes that as at 30 June 2014, draft adoption measures had been published. The self-assessment notes that 'Final Adoption Measures had been taken or, where relevant, were in force with relevant rules issued on October 22 2014.

	but not taken or in force
3	Draft adoption measures published
4	Draft adoption measures not published
5	Not applicable

Table 2 – List of Jurisdictions reporting as at October 30 by implementation status

Question 1(i): Which of the following stages best describes your jurisdiction's actions to evaluate the incentives of investors and securitisers along the securitisation value chain?

Final adoption measures taken	Final adoption measures published but not taken	Draft adoption measures published	Draft adoption measures not published	Not applicable
11	0	3	8	1
Brazil, France, Germany, India, Ireland, Italy, Netherlands, Russia, Spain, Turkey, UK		Australia, Canada, United States	Argentina, China, Hong Kong, Japan, Korea, Mexico, Saudi Arabia, Singapore	South Africa

Question 2(i): Which of the following stages best describes your jurisdiction's regulatory reforms on formulating approaches to align the incentives of investors and securitisers in the securitisation value chain?

Final adoption measures taken	Final adoption measures published but not taken	Draft adoption measures published	Draft adoption measures not published	Not applicable
12	0	3	6	2
Argentina, Brazil, France, Germany, India, Ireland, Italy, Netherlands, Russia, Spain, Turkey, UK		Australia, Canada, United States	China, Hong Kong, Japan, Korea, Saudi Arabia, Singapore	Mexico, South Africa

Question 3(i): By mid-2014 (i.e. end June 2014), which of the following stages best described your jurisdiction's actions to implement incentive alignment approaches in line with the elements set out in Recommendation 2?

Final adoption measures taken and in force	Final adoption measures published but not in force	Draft adoption measures published	Draft adoption measures not published	Not applicable
12	0	3	6	2
Argentina, Brazil, France, Germany, India, Ireland, Italy, Netherlands, Russia, Spain, Turkey, UK		Australia, Canada, United States	China, Hong Kong, Japan, Korea, Saudi Arabia, Singapore	Mexico, South Africa

Appendix 1 – List of Jurisdictions Invited to Participate in the Review

The following jurisdictions were asked to respond to a Questionnaire as part of the Review.

FSB Members

Argentina

Australia

Canada (Ontario and Quebec)

Brazil

China

France

Germany

Hong Kong

India

Indonesia

Italy

Japan

Korea

Mexico

Netherlands

Russia

Saudi Arabia

Singapore

South Africa

Spain

Switzerland

Turkey

United Kingdom

United States of America

Non-FSB Members with Significant Securitisation Activity

Dubai

Ireland

Other IOSCO Members

Mauritius

Nigeria