

## **Reformed By-Laws**

### **Explanatory Memorandum**

IOSCO has grown considerably, in membership and importance, since its inception in 1983. The Organization now embraces most of the world's capital markets. Further, with the growth in cross-border transactions and the increased integration of global and domestic capital markets, the Organization's role has become even more significant. IOSCO is now the pre-eminent international organization for securities commissions and one of the most important forums for international cooperation among capital market regulators.

#### **Organizational Review**

In March 1995, at the Sydney meeting of the IOSCO Executive Committee, the Chairman proposed a review (the Organizational Review) of IOSCO's structure and range of activities. The Review's purpose was to fine-tune IOSCO's structure and activities so that the Organization can more effectively implement its important international objectives. The Review was announced at the Annual Conference in Paris in July 1995, and was subsequently extensively discussed in meetings of the Executive Committee.

#### **Reform of By-Laws**

A crucial element of the Organizational Review was to ensure that the rules governing IOSCO's structure and operations, the By-Laws, provided a structure for the Organization that is consistent with its role and operations now and in the future.

To address these issues, the By-Laws were reformed. The Presidents' Committee approved the reform at the 1996 Annual Conference in Montreal. This paper will explain the changes to the By-Laws and their rationale.

#### **Generally**

In general, the reform of the By-Laws makes the By-Laws more consistent and provides a more coherent structure for the Organization. To achieve this, the reform has:

- standardized terminology in the By-Laws used to describe the same matter;
- placed rules dealing with similar matters in the same place;

- used similar rules to deal with similar matters; and
- omitted from the By-Law rules dealing with subsidiary matters, leaving them to be dealt with in subsidiary forms of rules, if at all.

The reform has therefore reworded some rules, divided or consolidated others, relocated some rules and omitted some rules entirely. For this reason, the reform differs significantly, in some respects, from previous drafts of the By-Laws.

In other respects, the reform added to the By-Laws. This was done to:

- clarify the By-Laws where they were previously unclear; and
- address issues that enhance the Organization's ability to fulfil its objectives given its expanded membership and enhanced global significance.

The remainder of this note addresses specific matters in the reform of the By-Laws. It only addresses matters of substance and not changes that arose merely from technical drafting changes. The changes are discussed under the headings of the various Parts of the By-Laws.

## **Preamble**

The Preamble to the By-Laws states the Organization's purposes within the context of the international environment in which it operates. The reform of the By-Laws made only minor changes to the Preamble:

- the recitals to the Preamble now highlight the importance to the Organization of achieving decisions through consensus;
- the Resolutions now recognize promoting the systemic stability of markets as an important role of the Organization; and
- the wording of the recitals and Resolutions now recognize the present state of market development, with markets already having been integrated to a large degree.

## Part 2 - Members

Previously, Part 2 of the By-Laws:

- included some matters that would be better dealt with elsewhere (e.g. the constitution of the Consultative Committee); and
- did not set out a clear step-by-step process for applying for membership.

Part 2 of the reformed By-Laws clarifies the categories of members of the Organization and the process of applying for membership.

The Part now only deals with matters concerning:

- different categories of membership; and
- the membership application process.

The Part omits references to Charter members (past Section 3). While the status of some members as Charter members reflected the inter-American origins of the Organization, no practical significance attached to this category of membership. Further, growth in the Organization and the international nature of IOSCO meant that some may have seen the recognition of Charter members as inconsistent with the global membership and nature of the Organization. Hence the references to Charter members were omitted from the By-Laws.

Previously, the By-Laws used the term “members” to refer to members that are neither affiliate nor associate members. This made it impossible to refer to members collectively simply as “members”, unnecessarily complicating drafting. Section 3 (a) now refers to members that are neither affiliate nor associate members as “ordinary members”. Ordinary members are the only category of member that are members of, and that may vote at meetings of, the Presidents’ Committee. This is merely a matter of terminology. It serves to readily identify members with full voting and membership rights, while simplifying drafting. The change did not render any substantive change to the By-Laws or to the rights of then existing members.

Section 7.1 permits self-regulatory organizations (SROs) from countries with no governmental securities regulator to become (ordinary) members. Section 7.2 causes the membership of such an SRO member to lapse upon a governmental securities regulator from that country becoming an ordinary member. Of course, such an SRO is free to continue as an affiliate member of the Organization.

Section 8.2 clarifies the requirement that associate members of the Organization must have an appropriate responsibility for securities regulation. That is, a day-to-day responsibility for securities regulation, as a body that administers securities laws. (Similarly, Section 6 makes it clear that an ordinary member must be a securities commission or similar governmental agency, with day-to-day responsibility for securities regulation.)

Derivatives regulators with day-to-day supervisory responsibilities in respect of derivatives markets from countries where the national body is already an ordinary member, are eligible to become associate members of IOSCO.

Section 9.1 makes it clear that affiliate membership is intended to enable SROs or international bodies (e.g. the OECD) with an appropriate interest in securities regulation to participate in the Organization's work.

Section 11 requires that applications for ordinary membership include:

- a translation of the primary securities legislation of that country into one of IOSCO's official languages; and
- a Declaration by the applicant that it agrees to abide by the By-Laws and Resolutions adopted to date.

It disposes of the past requirement that an applicant had to state the dates and cities of the Conferences which they had previously attended (previous Section 6 (2)), as the requirement was unnecessary.

Section 13 (b) recognizes the previously unofficial practice of requiring an application for affiliate membership by an SRO to be endorsed by the ordinary members from the country of the body making the application.

### **Part 3 - Structure of the Organization**

Previously, the By-Laws made little mention of the Technical and Emerging Markets Committees. Section 15 (b) redresses this by recognizing the Committees as organs of the Organization.

The operation of these Committees has granted some flexibility through the provisions in Part 6 (Section 50), which set out minimal rules for the governance of these Committees.

Section 15 (e) explicitly recognizes the role of the Consultative Committees in the Organization and allows for more than one Consultative Committee to be created. For example, it may be thought that there is a need for a Committee which provides a forum for a significant number of members who are not members of the Technical Committee but are not appropriate for membership of the Emerging Markets Committee.

Section 18 alters the composition of the Executive Committee. Previously, the Executive Committee was comprised of between 16 and 18 members:

- a representative of each of the 4 Regional Standing Committees;
- up to 12 elected members; and
- the Chairs of the Technical and Emerging Markets Committees, if they are not otherwise appointed (present Section 10).

Under Section 17, the Executive Committee now consists of 19 members:

- the Chairmen of the Technical, Emerging Markets and Regional Committees; and
- 13 elected ordinary members:
  - 1 elected by each Regional Committee from among the members of that region; and
  - 9 elected by the Presidents' Committee.

This:

- expands the membership of the Executive Committee by 3;
- ensures adequate regional representation; and
- ensures an adequate number of openly elected members, the election being determined by an appropriately wide spread of constituencies.

The composition of the Committee continues the appropriate presence of the Chairmen of the Technical and Emerging Markets Committees. Further, it recognizes the expanded membership of the Organization. With the continued appointment of the Chairmen of the 4 Regional Committees, it enables an appropriate recognition of regional concerns. However, there continue to be enough elected, independent members to accommodate the recognition of other constituencies within IOSCO. These members are elected on the basis of 2 different franchises - 9 members elected by the Presidents' Committee and 1 member elected from amongst the members of each of the 4 Regional Committees.

As the elected members are elected on the basis of both general and regional franchises, it helps to ensure that the final composition of the Executive Committee includes members sympathetic to a wide range of concerns. However, By-Laws do not require that elected members act as representatives of their respective franchises - it is expected that they act independently once on the Committee.

Section 29 is consistent with this objective. By requiring each member of the Presidents' Committee to cast each of its vote under proposed Section 17 (d) for 9 different ordinary members, Section 29 helps to ensure that the ordinary members represent a range of IOSCO constituencies.

Section 21 enables the Executive Committee, rather than the Presidents' Committee (past Section 11), to appoint the Secretary General. It is appropriate that the Executive Committee appoint the Secretary General because of the nature of the office and given that the Secretary General is already responsible to the Executive Committee. It is also practically more convenient than appointment by a plenary body with as many members, and which meets as rarely, as the Presidents' Committee.

Under Section 24, the yearly meeting of members is called the "Annual Meeting". Every Annual Meeting held in an even-numbered year is termed a "Biennial Meeting" (Section 25). At a Biennial Meeting, the various Committees of the Organization elect their various office holders until the next Biennial Meeting. (The use of this title is simply a drafting convenience to save on words when discussing the terms of Committee office holders. It carries no significance other than this.)

Part 10 deals further with the organization of the Annual Meeting. It provides a flexible power to make whatever arrangements are necessary or convenient for an Annual Meeting, including, for example, holding it in conjunction with a public conference.

#### **Part 4 - Presidents' Committee**

Section 26 codifies the roles of the Presidents' Committee. The section serve as a useful signpost to the powers and functions of the Committee.

Section 26 (f) recognizes the power of the Presidents' Committee to impose sanctions on members. (This is dealt with in greater detail in Part 2, Sanctions.)

Section 28.2 preserves the effect of past Section 7. That is, the Canadian securities commissions that are members (or "ordinary members") of the Organization continue to have one vote each at Presidents' Committee meetings. However, the Section would achieve this by using references to the voting rights of existing members, rather than by specifically naming Canadian members. This enables the By-Laws to accommodate similar situation arising with other members.

As discussed above, Section 29 makes it clear that voting by Presidents' Committee members for the appointment of the 9 elected members of the Executive Committee is not to be cumulative.

Section 32 makes the Chairman of the Annual Meeting the Chairman of the Presidents' Committee, consistent with the proposed renaming of the yearly meeting of members the "Annual Meeting". In effect, the Chairmanship of the Presidents' Committee is still be able to be shared among members (see Part 10).

Section 33 simplifies the powers of the Chairman of the Presidents' Committee to call meetings of the Committee (past Section 16).

Section 36.1 requires that Resolutions generally be submitted to the Secretary General for circulation to members 14 days in advance of the first Presidents' Committee meeting at an Annual Meeting. This ensures that members receive adequate notice of substantive Resolutions.

## **Part 5 - Executive Committee**

Part 5:

- clarifies some matters relating to the Executive Committee;
- omits some minor rules; and
- provides the Executive Committee with the power to make subsidiary administrative rules that would flesh out rules in the By-Laws.

Section 37 establishes a clear duration for the term of appointment of members of the Executive Committee. Section 38 standardizes the term of the Chair and Vice-Chairman of the Committee consistent with this term.

Section 39 makes it clear that the appointment of the Chairman and Vice-Chairman of the Committee are personal appointments and provides for consequential elections on the vacation of the office. The organizational and leadership abilities that make a person suitable for these offices are specific to that person and not the member organization of which they are president. Consequently, the vacation of either office by the person originally elected warrants a new election.

Section 40 codifies the role of the Executive Committee, providing a comprehensive list of its functions and powers.

Previously, the By-Laws contained some rules (e.g. minor administrative rules, or rules that are so obvious that they go without saying) that were not suited to a basic constitutional document. On the other hand, the By-Laws raised some subsidiary questions of administration and procedure that should be articulated, but were best be dealt with elsewhere.

Now, Section 41 provides for such subsidiary rules, allowing the Executive Committee to make “Protocols” that detail administrative matters that are inappropriate to deal with in the By-Laws themselves. (For example, the election procedure for the Executive Committee, the procedure for the drafting of the Final Communiqué of the Biennial Conference, and perhaps the role of the Secretary General in coordinating a media strategy, might be the subject of Protocols.)

Any Protocol must be consistent with the By-Laws, and circulated to members by the Secretary General. Their status is only that of a Resolution of the Committee.

Section 43 limits the power of the Secretary General to call meetings of the Executive Committee (past Section 28), requiring it to be exercised in consultation with Committee members.

### **Part 6 - Technical Committee and Emerging Markets Committee**

The Technical Committee acts as a forum in which members from larger or more developed jurisdictions may discuss matters of common interest. The Emerging Markets Committee acts as a forum in which members from emerging jurisdictions may discuss matters of common interest.

Previously, the By-Laws only referred once (and in passing) to the Technical and Emerging Markets Committees (past Section 5.1). Section 15 (b) and Part 6 recognize the important role of these Committees in the Organization and provide a framework for their constitution and operation.

Section 49 clarifies the accountability of the Committees, while Section 50 allows for flexibility in their internal working rules.

### **Part 7 - General Secretariat**

The previous rules dealing with the role of the General Secretariat did not fully deal with the duties of the Secretary General. Part 7 of the By-Laws now lists the Secretary General's duties and clarifies to whom the Secretary General reports.

Section 51 comprehensively lists the duties of the Secretary General.

To assist in ensuring members' adherence to the precepts of the Organization, Section 51 (c) makes the Secretary General responsible for monitoring compliance with the By-Laws and Resolutions.

Section 51 (g) makes the Chairman of the Executive Committee responsible for review of the representational role of the Secretary General, rather than the whole Executive Committee.

Section 52 clarifies to whom the Secretary General reports.

Section 54 makes it clear that the records of the Organization are kept at the General Secretariat.

## **Part 8 - Regional Committees**

IOSCO's membership has expanded so that it now covers most of the world's capital markets.

For this reason, Part 8 revises and adds to the previous rules governing Regional Committees (past Sections 37-41).

Firstly, Regional Standing Committees are renamed Regional Committees.

Previously, the process for recognizing a Regional Committee was unclear. Sections 55-58 clarify the process for constituting a Committee.

To permit for future membership growth or political developments, Section 58 allows the existing 4 Regional Committees to be reformed, or supplemented by additional Committees, if the Executive and Presidents' Committees consider this appropriate.

Previously, the grounds for recognizing a Regional Committee (past Section 37) were unclear. Section 57 simplifies the grounds for recognizing a Committee. Section 59 recognizes the 4 existing Regional Committees.

In the past, the By-Laws did not clearly articulate a role for the Regional Committees. Commensurate with their importance to the Organization, Section 60 delineates a clear role for the Committees and yet grants flexibility by allowing new roles to be accorded them as developments dictate. In particular, Section 60 (a) clarifies the role of Regional Committees in acting as forums in which issues before the Executive Committee are discussed on a regional basis.

Sections 61 and 63 standardize the term and the nature of the appointment of the Chairman of any Regional Committee with those of the Chairmen of the Executive Committee, Technical and Emerging Markets Committees and any Consultative Committee.

Consistent with Section 62 (a), Section 63 clarifies the role of Regional Committee Chairmen in coordinating the response of their respective Committees to the Executive Committee and representing their Regional Committees at Executive Committee meetings.

Section 64 provides a degree of flexibility to a Committee to order its own affairs consistently with the By-Laws, as the reformed By-Laws do for other Committees.

The Part omits the rule in past Section 41, which provided that a Regional Committee report to the Annual Conference, as it seemed unnecessary.

## **Part 9 - Consultative Committees**

Self-regulatory organizations and other bodies, including international bodies, perform an important role in the Organization as affiliate or associate members. To recognize the importance of the dialogue between securities regulators, SROs and other bodies in regulating international capital markets, Part 9 formally recognizes the existing Consultative Committee as an integral element of the Organization.

Part 9 provides official recognition to the role of associate and affiliate members, building on past Section 5.1. The Part also provides for flexibility in the composition of Consultative Groups, providing members with a common interest with a forum for discussions regardless of their status. To this end, Section 65 enables the Executive Committee to establish a Consultative Committee. To avoid confusion, Section 66 names the existing Consultative Committee the “SRO Consultative Committee”. Under Section 67, Consultative Committee may comprise any combination of members with an interest in discussing matters of mutual concern.

For example, a Consultative Committee could be formed comprising ordinary and associate members from smaller, developed jurisdictions. Some of these members are presently members of neither the Technical nor Emerging Markets Committees or are members of the Emerging Markets Committee, but their concerns would be more closely allied with members of the Technical Committee. Giving these members a specific Consultative Committee could allow them to represent their particular interests and contribute to IOSCO in a more meaningful way.

The Organization retains some control over the work program of a Consultative Committee by being able to constitute it (Section 65) and by being consulted about the convening of Committee meetings (Section 68).

Sections 69 and 70 standardize the term and the nature of the appointment of the Chairman of any Consultative Committee with those of the Chairmen of the other Committees established by the By-Laws.

Section 71 provides a degree of flexibility to a Committee to order its own affairs consistently with the By-Laws, as the reform does for other Committees.

**Part 10 - Annual Meetings** The Organization previously met every year at a public Annual Conference. The Conference functioned as the Annual Meeting for the Organization, at which important administrative and policy matters are discussed. It provided a significant public profile for the Organization. While the Annual Conference was a source of revenue for the Organization, it was also a considerable cost. Further, it was a considerable administrative burden for the host member.

Part 10 frees up the form of the Annual Meeting of the Organization's members.

It permits an Annual Meeting of members to be held at which policy and administrative matters are discussed (Section 72). This Annual Meeting reduces costs for the Organization, as it may be a short, focused, members-only gathering.

However, members are free to propose any arrangements they wish for the holding of an Annual Meeting. If the Executive Committee accepts any such proposal, the Annual Meeting for a given year may take any form the Executive Committee considers appropriate, having regard to the current events, member and public interest and costs (Section 73).

For example, if members desired, an Annual Meeting could be convened in Montreal, making greater use of the resources of the General Secretariat and the considerable convention facilities of Montreal, reducing costs. Alternatively, an Annual Meeting could be held in conjunction with a public conference, or even held jointly with the annual meeting of another body, such as the FIBV.

To provide a framework in which proposals for the holding of an Annual Meeting could be made, the Executive Committee will promulgate a Protocol concerning Annual Meetings.

**Part 12 - Sanctions**

The Part introduces sanctions to deal with members who persistently fail to pay membership dues.

The history of the Organization is that it is essentially a member-driven body, which derives its strength from the voluntary devotion of the members to matters of common concern. While this has served the Organization well till now, it was thought that the Organization had developed to a stage that consensus and voluntary adherence to Organization decisions may no longer work as well as they have in the past. The size and importance of the Organization is such that it is now inappropriate that members are free to persistently fail to pay membership contributions.

It is believed that the new sanction mechanism will strike the balance between consensus and a firm adherence to the principles of the Organization.

Section 77 enables the Presidents' Committee, upon the recommendation of the Executive Committee, to impose sanctions upon members that repeatedly fail to pay membership contributions. Before recommending the imposition of sanctions, the Executive Committee must give notice to a defaulting member. That member then has an opportunity to put their case. Sanctions range from suspension of membership or voting rights for a period to, in the most serious of cases, exclusion from membership.

Because:

- sanctions can only be imposed for repeated failure to pay membership contributions;
- a member is accorded procedural fairness; and
- the imposition of sanctions requires the approval of the Executive Committee and the Presidents' Committee,

sanctions can only be imposed in serious cases, after due consideration and with the support of a wide range of members.

The sanction mechanism appropriately balances the maintenance of a voluntary, consensus based organization, with one in which the members meaningful contribute to its finances.

Section 80 requires that the imposition of sanctions on a member be publicized in the Annual Report.

### **Part 13 - Annual Report**

The proposed Section 81 makes it clear that the accounts to be included in the Annual Report are to be aligned with the calendar year in respect of which the Report is produced.

**Part 14 - Explanatory  
Memorandum**

Part 14 of the By-Laws ensures that the By-Laws are interpreted purposively, in light of this Memorandum.