



## Alternative Investment Management Association

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Dear Rohini,

### IOSCO Task Force on Cross-Border Regulation: Consultation Report

The Alternative Investment Management Association<sup>1</sup> (AIMA; we) welcomes the opportunity to respond to the IOSCO Task Force on Cross-Border Regulation's Consultation Report<sup>2</sup> (the Consultation Report).

AIMA represents participants in the global hedge fund industry, many of whom operate in multiple jurisdictions, entering into a broad range of transactions. The way in which individual jurisdictions approach the regulation of cross-border transactions or entities that operate across national borders has a significant bearing on the ability of our members to access different markets and regions. Ultimately, coherent and consistent cross-border regulation promotes financial integration and fosters liquidity across a broad range of global markets.

The Consultation Report helpfully summarises IOSCO's work to-date in this area, including the publication in May 2010 by the Technical Committee of IOSCO on the Principles Regarding Cross-Border Supervisory Cooperation<sup>3</sup>. These Principles have played a welcome role in providing regulators with an overview of the cooperative mechanisms available to them, also considering the link between cross-border cooperation and effective supervision.

The present Consultation Report builds on the work of the Principles, by presenting a detailed overview of the cross-border regulatory toolkit, grouping tools according to whether they reflect the logic of "national treatment", "recognition" or "passporting" (as particularly relevant in the European context). We believe that the illustration of these different approaches through brief examples from individual members' regulatory frameworks provides a useful basis for exploring how each works in practice and what the benefits and shortcomings of each might be.

However, at the same time we feel that the Consultation Report falls short in terms of ambition. First, it takes a highly cautious approach to the issue of how regulators might go about choosing cross-border regulatory tools. While it is certainly true that the "choice of cross-border tools and how they are applied are inherently situation- and jurisdiction-specific considerations"<sup>4</sup>, we believe that it is nonetheless reasonable for IOSCO to emphasise the value of particular approaches over others.

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<sup>1</sup> Founded in 1990, the Alternative Investment Management Association (AIMA) is the global representative of the hedge fund industry. We represent all practitioners in the alternative investment management industry - including hedge fund managers, fund of hedge funds managers, prime brokers, legal and accounting firms, investors, fund administrators and independent fund directors. Our membership is corporate and comprises over 1,500 firms (with over 8,000 individual contacts) in more than 50 countries, who collectively manage more than \$1.5 trillion in assets.

<sup>2</sup> <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD466.pdf>

<sup>3</sup> <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD322.pdf>

<sup>4</sup> Consultation Report, p.35

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To make this approach more feasible, we would encourage IOSCO to revisit the scope of its work. As IOSCO rightly notes:

“[T]he regulatory objectives of a jurisdiction using a particular tool may focus on particular elements of domestic securities regulation, such as enabling market access and cross-border securities market activities, or on protecting investors and preventing the importation of risks. The cross-border tools used by jurisdictions are typically designed to achieve varying objectives, and different regulatory objectives involving the same tool do not have to be mutually exclusive.<sup>5</sup>”

Given the diverse objectives that tools might seek to advance, we believe that it makes sense to focus on those markets that are already global in nature and characterized by a significant volume of cross-border activity between wholesale market participants, notably OTC derivatives markets.

In this context, there is a very clear alignment of regulatory objectives between authorities, given the fact that the G20 mandate has driven their respective regulatory reforms. Therefore, there is a stronger basis for ensuring that the cross-border tools employed in this context are consistent and compatible.

Second, we note that the Consultation Report emphasizes the limited desire on the part of IOSCO members to create a stronger role for IOSCO:

Based on the survey responses, there was little support for IOSCO to attempt to coordinate the timing among jurisdictions’ implementation of cross-border regulatory tools or to facilitate the settlement of disputes arising from the assessment of foreign regulatory regimes.<sup>6</sup>

This is in strong contrast to the views expressed by industry participants in response to the questions presented in the course of the meetings held by the Task Force in Hong Kong, London and Washington D.C. in April 2014.

As acknowledged in the report, “they expressed a clear preference that regulators agree to harmonize rules that would apply to large firms operating cross-border, before the enactment of domestic rules which have a cross-border effect on firms. They identified challenges stemming from a lack of sufficient coordination among regulators in supervising cross-border businesses and sharing information on regulatory requirements or approaches. In certain cases, industry representatives believe that a lack of coordination among regulators in setting implementation dates for rules impacting global markets and promulgating duplicative, inconsistent and conflicting requirements which lead to significant compliance burdens and unnecessary barriers to cross-border trading and investment.

“From the industry’s perspective, many of the current cross-border challenges arise due to the fact that there is an inherent focus on domestic markets among regulators as they generally have as their primary responsibility the regulation of their domestic territory and are explicitly required by national law to consider the impact of their rule-making, supervision and enforcement on their domestic market as a priority, rather than consider any effect outside their jurisdiction. Further, if instead regulators were also to focus on the impact of cross-border inconsistencies, there would be improved implementation of rules and increased coordination between regulators both domestically and internationally.”<sup>7</sup>

Again, we would suggest that in terms of finding a way forward IOSCO consider further specific sectors where there is a clear need to address cross-border inconsistency and where the nature of the regulatory mandate of individual IOSCO members is sufficiently aligned that there might be greater scope successfully to develop a greater role for IOSCO.

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<sup>5</sup> Consultation Report, p.7

<sup>6</sup> Consultation Report, p.46

<sup>7</sup> Consultation Report, p.43



In this regard, the various possibilities set out on pp. 44-46 of the Consultation Report are sensible and closely reflect many of the options that AIMA has previously promoted, notably:

- i. **Development of clear regulatory hierarchies:** Where an entity conducts the same activity in more than one jurisdiction, then the potential for overlap is likely to arise. Accordingly, IOSCO could look to develop a formal framework - or hierarchy - to determine which regulator should have jurisdiction in a given situation. For example, where a transactional requirement arises in respect of a transaction between two entities (say central clearing of an OTC derivatives contract), then the hierarchy could stipulate which set of rules would apply to the transaction, e.g. the rules of the jurisdiction of the dealer counterparty to the trade. Essentially, there should be a lead regulator established and any other regulator that has an appropriate interest in the transaction could be granted access to relevant information about the transaction.
- ii. **Development of an overarching set of Principles for Defining a Sound Regulatory Perimeter:** Focusing on those markets that are already global in nature and characterised by a significant volume of cross-border activity -such as OTC derivatives or asset management - IOSCO should seek to develop sector-specific indicators of the activities that should be subject to local regulation.
- iii. **Tackling cross-border issues in all sectoral principles:** An approach to IOSCO sectoral principles whereby all new principles would address issues of cross-border application of rules, to the extent relevant. A good example of this development was IOSCO's work on margin for non-cleared derivatives.
- iv. **Development of additional information exchange mechanisms:** IOSCO should seek to build on the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information with a view to supporting the agreements made between regulators according to the hierarchy described above.
- v. **Creation of a cross-border advisory forum:** In order to ensure the effective application of this framework, we support the longer-term ambition of IOSCO developing a more formal dispute resolution mechanism, in order to provide a forum for IOSCO members to discuss specific issues arising from particular cross-border roles. However, a more realistic first step could be the creation of an advisory forum, supported by the IOSCO secretariat, in which competent authorities could discuss the appropriate application of the IOSCO Principles for Defining a Sound Regulatory Perimeter, as well as the application of the associated regulatory hierarchy and potentially seek non-binding mediation on issues brought to the forum by the relevant competent authorities.

It is unfortunate, therefore, that the Consultation Report does not yet recommend a specific area in which IOSCO could seek to take a more prominent role. While we appreciate that a formal dispute resolution mechanism is not a realistic ambition at this stage, we remain of the view that a cross-border advisory forum could be an achievable goal and would be able to build on the understanding gained through the work of the Task Force on the Consultation Report. In terms of specific work tasks, the advisory forum could, for example, support members in developing a process for assessing foreign regulatory regimes, drawing on the compendium of approaches presented in Appendix 1 of the Consultation Report.

If the forum were to be successful and valuable to IOSCO members, it would then be possible to revisit the consideration of what IOSCO's role should be in the space, with a view to potentially progressing further projects that serve to reduce cross-border conflict, in the interests of a more integrated, better regulated market.



In conclusion, we believe that IOSCO has an important opportunity to shape its members' approaches to cross-border regulation and strongly encourage IOSCO to identify and promote specific proposals with respect to its own role in coordinating its members' activities in this space.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Jiří Król". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Jiří Król  
Deputy CEO  
Alternative Investment Management Association