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Dear Ms Tendulkar,

**DB response to IOSCO Task Force on Cross-Border Regulation's consultative report**

Deutsche Bank (DB) welcomes the focus of the International Organisation of Securities Commissions' (IOSCO) Task Force on Cross-Border Regulation and the opportunity to provide feedback and suggestions.

The way in which national-level regulations are applied to cross-border activities or transactions can significantly impact the functioning of capital markets, market participants and end-users. Lack of alignment of rules has the potential to frustrate policy objectives such as ending 'too-big-to-fail' and reducing systemic risk where divergence results in distorted competition, higher barriers to entry and increase the potential for arbitrage. There are significant economic costs when liquidity is fragmented and financial markets are not able to efficiently serve the needs of end-users. This is heightened as there is increasing reliance on market-based finance in many jurisdictions (compared to bank lending) in funding economic development.

Accordingly, finding ways to improve regulatory coordination must be a priority for those involved in setting standards – from global bodies such as IOSCO and the G20 to national level legislators and regulatory authorities. Promoting regulatory convergence through a system of recognition is essential, based on the principle that jurisdictions should defer to each other's rules where they achieve similar outcomes.

We support IOSCO attempts to alleviate the potential difficulties. The G20 Communiqué from 2009 stated that "We are committed to take action... to raise standards together so that our national authorities implement global standards consistently in a way that ensures a level playing field and avoids fragmentation of markets, protectionism, and regulatory arbitrage". It is evident that more can be done to achieve this. While the Task Force's work will not apply retrospectively and there can be no 'one-size fits all' approach across all policy areas, there are still improvements which can benefit all relevant parties.



It is appropriate to review IOSCO's role in policy-making and how it can best support use of the tools identified by the Task Force at national level. It is also worth considering IOSCO's role with respect to implementation, with the intention of anticipating potential problems and, as much as possible, eliminating unnecessary complexity and fragmentation.

IOSCO's role can be strengthened while still recognising the legal responsibilities of national level policy-makers (encompassing law-makers and regulatory authorities) and domestic political pressures. However, changes are necessary such that:

- more regard is given to agreements made and endorsed at global level;
- further emphasis and recognition be given to the role of IOSCO in setting global standards, similar to the status afforded to the Basel Committee on Banking Supervision (BCBS) and Financial Stability Board (FSB);
- national-level implementation should support global standards and avoid unnecessary adverse extraterritorial impact, most obviously arising as a result of variation in recognition processes;
- jurisdictions retain sufficient flexibility and discretion to allow for coordination; and
- any changes adopted by IOSCO and its members are in due course endorsed by the G20 and others, such as the FSB.

Our letter provides more detail on three key areas:

- A. Expectations of IOSCO, national level policy-makers and relevant bodies;
- B. IOSCO's role in policy-making; and
- C. IOSCO's role relating to implementation and coordination.

The following suggestions can be applied to other issues being contemplated by IOSCO beyond the most often discussed examples relating to derivatives, such as cybersecurity, product development and market-based financing, non-bank SIFIs, initiatives relating to data, etc.

#### **A. Expectations of IOSCO, national level policy-makers and relevant bodies**

##### *Governance*

The Task Force and the industry have not proposed changes affecting the legal status of IOSCO as an organisation or suggested that it has powers to direct or override decisions made by national policy-makers. Despite this, as noted above, changes should be made to support strengthening IOSCO such that it is viewed similarly to other global bodies



with responsibility for regulatory standard-setting and hence financial market policy issues are viewed alongside measures to promote financial stability.

IOSCO already references cross-border and integrated financial markets in its by-laws. As such, it may not be considered necessary to make revisions. However, IOSCO want to consult its members to reflect the need to enhance its role for cross-border activities along the following lines: “members... **RESOLVE**: *to cooperate in developing, implementing and promoting adherence to internationally recognised and consistent standards of regulation, oversight and enforcement in order to protect investors, maintain fair, efficient and transparent markets, ~~and~~ seek to address systemic risks and support cross-border activities as appropriate”.*

IOSCO should have a clearly articulated and endorsed approach to setting global standards, which can include guidance for subsequent national approaches. It is clear that IOSCO is not in a position to dictate to jurisdictions the tools that can be used, but this does not prevent recommendations from being made.

We recognise that the scope of IOSCO membership is significantly broader when compared to the other global rule making bodies, with over 100 authorities participating. That should not detract from the importance of setting of global standards, but it does suggest that IOSCO will need to take into consideration the principle of proportionality with regard to both developed and emerging markets in considering cross-border issues.

#### *National level policy-making must support IOSCO*

In the medium-to-long term, there is a need for political and legal changes to ensure that IOSCO can play a greater role in overcoming divergence caused by conflicting national requirements, in addition to many of our suggestions which can be implemented already. This will become ever more important to reflect the greater complexity of equivalence processes and the increasing economic importance of emerging economies.

Commonality of expectations regarding standards and implementation, along with flexibility, will reduce the potential for divergence and conflicting ‘pre-requisites’ embedded in national recognition-type processes. Setting out a framework for how cross-border elements will be embedded in IOSCO’s approach will help manage expectations necessary for national policy making and strengthen the perception of IOSCO, and encourage early identification and resolution of possible challenges.

#### *Recognition-type processes*

Global standards and consistency best support recognition-type processes which are a feature of many national regimes. National implementation of standards that require detailed assessment against locally-adapted standards have the potential to undermine global standards in practice. Although political reality and local policy-making processes



will persist, it is reasonable to expect shared objectives and intentions to align with global agreements should prevail.

The 'gold standard' for cross-border recognition should be set by IOSCO, in the same way that the FSB Key Attributes are used for resolution regimes and the Basel 3 framework is accepted as the global standard for prudential regulation for banks. Therefore, while national policy-makers cannot necessarily defer to another jurisdiction on the basis of self assessment or IOSCO peer review analysis, it should still be possible to take into account this work within a national process.

#### *One size does not fit all*

It is undesirable that all issues should be treated in the same manner when there is a cross-border element. Where appropriate, the expectations at political, IOSCO and national level should include the expectation that the jurisdiction-specific mechanisms which allow some form of recognition or equivalence be used, and that IOSCO takes action to support this. It is reasonable to expect IOSCO to coordinate work to identify potential issues at an early stage and seek to work with its members on issues stemming from implementation which have cross-border impacts (see sections (B) and (C) below).

#### *Passporting*

In relation to passporting, consistency of implementation is important. This is not covered extensively in our response as often responsibility is more wide-spread (e.g. elements of tax, data protection, etc) and it is not the case that there is universal appetite for allowing access in this way as a matter of course. That said, consistency of implementation allows for jurisdictions' views to evolve without embedding barriers in the meantime, without creating any expectation of an obligation to allow passporting.

#### *Greater focus on anticipation and emerging risks*

It is reasonable to set expectations and agreed mechanisms for escalating newly-identified issues to the global level for consideration, before final policy is agreed at national level. Even where a unilateral approach is employed, IOSCO can utilise its existing structures to undertake analysis of proposals and provide feedback during the policy development phase. For example, by the Cross-Border Task Force, Committee on Emerging Risks, regional committees and/or Emerging Markets Committee as appropriate.

Following its most recent Board meeting in Seoul in early February, IOSCO noted that "the round table discussion was a good example of IOSCO's resolve to anticipate significant change and understand the different types of emerging risks" so to some extent this is already done. The note also mentioned IOSCO was considering "the role IOSCO might play in the important global dimensions of [the UK fair and effective



markets review]”, which is an example of work done by one jurisdiction with broader relevance.

## **(B) IOSCO’s role in policy-making**

As discussed above, IOSCO should adopt a set of Principles relevant to planning, consultation and implementation.

For each issue being considered, IOSCO should:

- **Identify and articulate cross-border implications.** This includes considering whether a recognition-type process is needed and if so, consider what additional work can be done to support national implementation. Standards can be made more granular or detailed, potentially focused only on certain key areas. This would be applicable also for passporting;
- **Provide guidance for implementation and interpretation to support assessments.** This is particularly relevant if it is agreed that the global standard is Principle-based, but applicable to more detailed standards too. It is evident – as observed by key figures such as FSB Chair Mark Carney, ESMA Chair Stephen Maijoor and CFTC Chair Timothy Massad - that Principles are insufficiently granular for national authorities to use them as the basis of assessments and to take into account IOSCO-coordinated work, there would need to be clear expectations regarding the detail of assessment;
- **Greater use of recommendations regarding proportionality.** IOSCO should identify where it may be appropriate for the policy to be adapted, or adopted at a later stage for emerging markets. Consideration should be given to whether some sort of de-minimis threshold or qualitative approach should be recommended;
- **Recommend common and realistic timetables as part of agreed international standards.** National rule-making processes will inevitably lead to timing differences in practice for finalising rules and implementation, even within the agreed global deadlines. IOSCO should make recommendations with respect to the recognition processes including reiterating the importance on timing and reflecting proportionality, which may mean that an extended timeline is appropriate for emerging/smaller markets. Recognition should allow appropriate, reasonable transitional arrangements and avoid imposing ‘hard’ deadlines on other jurisdictions;
- **Clear statements with regard to cross-border impact assessment.** For cross-border issues, IOSCO should seek to undertake this directly or to coordinate – ideally engaging the FSB, BCBS, market participants and other stakeholders - and share its conclusions. This should include assessments of affected markets, and not focus only on those which dominate by size. Members should be encouraged to consider cross-border issues in their own impact analyses whether or not this is mandatory, as this may support timely engagement;



- **Specify intentions with regard to completion of peer reviews in proposals and final standards.** IOSCO's role should be similar to the BCBS assessment process and evolving FSB approach. This may also build on the approach which will be taken for the purposes of Financial Sector Assessment Programme (FSAP) and other processes. Articulating this at an early stage sets clear expectations for members;
- **Outcomes-focused approach.** Accepting national rules will not match 'line-by-line', provision of guidance which seeks to identify key risks and articulate what 'outcomes-focused' means would be helpful to support consistent interpretation and understanding;
- **Assess the potential cross-border relevance of policies in the context of passporting.** Detailed standards agreed globally can aid passporting by reducing the level of change necessary at a local level, if/when a jurisdiction decides they want to commit to such a regime, or support smaller-scale initiatives (e.g. Asia Region Funds Passport or ASEAN initiatives). Depending on the scale of any passporting arrangements, it may be that IOSCO can provide support or facilitation or a forum for sharing of good practices. It may be that this is more suitable in relation to wholesale products and services, given sensitivity regarding retail consumers, but this should be a decision taken on a case-by-case basis.

### **(C) IOSCO's role relating to implementation and coordination**

IOSCO's role should be expanded beyond setting global standards. Arguably in relation to cross-border issues, its role may be even more important when it comes to national level implementation. We believe that IOSCO should:

- **Undertake more frequent and timely peer reviews and implementation assessments.** These can form the basis for advice and can reduce duplicative and/or conflicting assessments at national level. IOSCO's Assessment Committee should undertake more frequent and earlier peer reviews along the lines of the FSB and BCBS and make public its findings, with more onus on the expectation of changes to be made where necessary and this should take place in some cases when national-level policy is being formulated – akin to the BCBS approach which has positively influenced alignment with global standards when original proposals suggested divergence;
- **Proactive coordination during the implementation phase.** Some key policy issues will necessitate continuing close global cooperation and coordination throughout the implementation phase. Taking the OTC Derivatives Regulators Group and the Working Group on Margin Requirements as examples, proactive coordination can alleviate pressures by seeking to identify ways to cooperate or where potential changes to timing are necessary to allow for reconciliation of different approaches (amongst other aspects). IOSCO is well placed to initiate this, particularly building on the type of analysis set out above. Similarly, there are encouraging precedents for coordination with respect to assessing and responding to the cross-border implications



of national policy – e.g. the work done by the IOSCO Asia-Pacific Regional Committee regarding derivatives and benchmarks;

- **Monitor progress towards implementation.** For example, if there are concerns about the adverse effects of delayed implementation, IOSCO could make recommendations about how the interim period should be handled, albeit within the context of national-level decisions;
- **Close engagement with 'peers'.** Consideration should be given as to whether, due to the significance of cross-border issues for stability and growth, the engagement model with the FSB and BCBS is sufficient. It is important to ensure that policy objectives in the prudential and financial markets sphere are aligned and the development of international financial markets is promoted alongside measures for stability. Closer coordination may also provide additional support for IOSCO's role due to the involvement of other types of regulators.

We trust you find these comments useful. Please let us know if you would find it useful to discuss any of the points made in our response in more detail.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Daniel Trinder".

Daniel Trinder  
Global Head of Regulatory Policy