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Re: Recommendations on Global Regulatory Coordination and Responses to IOSCO Task Force on Cross-Border Regulation Roundtable Question Sets

The Global Financial Markets Association ("GFMA")[1] and the Japan Financial Markets Council ("JFMC")[2] (together, "the Associations") appreciate the efforts of the IOSCO Task Force on Cross-Border Regulation (the "Task Force") to address the current issues impacting extraterritorial regulation. The recent Task Force Roundtables conducted in Hong Kong, London and Washington, DC were productive and informative exercises, allowing industry participants to share views and concerns regarding the current state of play. We look forward to commenting on the Task Force's public consultation and hope the Roundtables and follow up communications are helpful to this process.

Given the global nature of today's markets, it is vital that cross-border regulatory developments are conducted in a coordinated manner. The Associations support increased dialogue and coordination between authorities from differing jurisdictions, along with the development of an outcomes-focused approach to regulatory recognition.[3] We further believe IOSCO should play an integral role in

[1] The GFMA brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA. For more information, visit http://www.gfma.org.

[2] The Japan Financial Markets Council (JFMC) is an association which includes representatives from five Japan-based institutions and five international firms active in Japanese capital markets. Its aim is to ensure that authorities deciding on regulatory initiatives that have a global impact are aware of and take into account the effect of new regulations on Japanese capital markets. The current JFMC members are: Bank of Tokyo-Mitsubishi UFJ, Daiwa Securities Group, Mizuho Securities, Nomura Holdings, SMBC Nikko Securities Inc, BNP Paribas, Citigroup Japan Holdings Corp, Deutsche Bank Group, JPMorgan Securities Japan Co., Ltd. and Morgan Stanley Japan Holdings. The co-chairs of the JFMC are the representatives from Morgan Stanley and Nomura. For more information please look at www.japanfmc.org.

[3] In this paper, the term "regulatory recognition" refers to the multiple approaches regulators may use to defer to the supervision and oversight of another regulator under certain appropriate circumstances, including "equivalence," "mutual recognition," "substituted compliance," etc.

facilitating efforts aimed at achieving these goals. "Localized" approaches to regulation (based on the assumption that such an approach will allow for better home country protection) have negatively impacted financial markets and their users - including corporates - through the promulgation of duplicative, inconsistent and conflicting regulatory requirements, causing fragmented markets and the possibility of regulatory arbitrage. As a result, market participants, including financial institutions, investors and commercial end-users, are faced with significant (and at times irreconcilable) compliance burdens, increased costs and unnecessary barriers to cross-border trading and investment. At the same time, regulators are faced with increased supervision and oversight obligations despite resource limitations, owing in part to an unwillingness to rely on the oversight of other comparable regimes. Consequently, it is imperative that IOSCO work to address the lack of regulatory trust and cross-border coordination currently being witnessed.

Prior to the release of the Task Force's formal consultation, we wish to provide input on several of the topics discussed at the recent Roundtables and reiterate points from GFMA's 13 March 2014 letter to the Task Force (the "GFMA letter")[4]. Further, we wish to express our support of other industry efforts aimed at addressing the Task Force's request for input, including those of the Cross-Border Regulation Forum ("CBRF"), in which the GFMA member associations participated. The Associations support the observations and recommendations contained in the CBRF's 28 May 2014 letter.

Establishing a Strong Base for Cross-Border Regulatory Coordination

During the Roundtables, the Task Force sought feedback on IOSCO's possible role in cross-border regulatory coordination efforts, asking: "***[h]ow can cross-border regulatory approaches be made to work in a more coordinated and effective manner, including at the level of regulatory authorities?"*** and ***"[w]hat role do (i) IOSCO and (ii) the industry have in relation to the development and implementation of cross-border regulatory approaches?"***.

In the GFMA letter, three "quick to implement" recommendations for improving cross-border regulatory coordination were provided, which we believe IOSCO could facilitate:

1. Enhanced international dialogue between political officials and legislative/regulatory authorities at the initiation of policy development. This would allow for coordination during the creation of financial laws and policies with an extraterritorial impact (taking into account the diverse political and regulatory circumstances of respective jurisdictions). It would also allow for early identification of key issues and possible conflict areas before final laws and regulations are adopted. Regulators should continue this dialogue in order to prevent divergences during implementation. Additionally, industry stakeholders should be consulted throughout, to ensure the process has the added benefit of their helpful insights. Early communication makes reconciliation more likely.

2. International coordination amongst regulators in establishing reasonable implementation timetables. This should take account of the need to ensure consistency where the aim is to address cross-border risks. It should also consider how approaches to regulatory recognition would work for regimes at different stages of implementation.

[4] See GFMA Comment Letter, "Recommendations on Foundational Principles for Global Coordination in Cross-Border Regulation" (13 March 2014) (available at http://www.gfma.org/correspondence/item.aspx?id=578).

3. Development of bilateral cooperation/consultation mechanisms for identifying areas of conflict and bringing together regulators in the event issues emerge later in the process. Such mechanisms should swiftly resolve areas of contention through internationally-consistent solutions. This would include continuous regulatory dialogue, a flexible system for addressing disputes and robust information sharing protocols. IOSCO should play a pivotal role in developing and facilitating such mechanisms.

The Associations believe IOSCO is well-situated to take a larger leadership role in addressing the many cross-border challenges facing markets today. Given its unique position, IOSCO can serve as a global "clearing house" for the identification of key goals, issues and possible conflict areas arising in cross-border political and regulatory spaces. This would open the lines of communication between jurisdictions, encouraging trust, coordination and transparency. Further tools will be necessary, however.

The development of an outcomes-focused regulatory assessment mechanism that reviews the adequacy of rulemaking from its initial stages, and on an ongoing basis thereafter, would prove valuable. IOSCO may look to develop a peer review system for these assessments, which would provide a clear and transparent basis for jurisdictions to make regulatory recognition determinations.[5] This would include assessment of how the implementation of rules is supervised and firms' compliance with these rules on the ground. Previous IOSCO efforts aimed at developing high level regulatory principles, assessments and flexible information sharing standards should serve as a useful reference going forward.[6] This process should not be static - regulators should continue dialogue even after recognition has been provided for. Periodic evaluation of regimes will be necessary to identify and resolve any conflicts when they emerge.

In a 4 April 2014 letter to the G20, Financial Stability Board ("FSB") Chairman Mark Carney highlighted the need for enhanced cooperation, outcomes-based regulatory deferral processes and the building of trust between regulators.[7] Efforts must be made to address these issues, in order to reduce transaction costs, foster competitive markets and facilitate cross-border trading and investment - especially for corporate end-users.[8] It is our view that IOSCO has the unique regulatory knowledge and experience to develop a framework that enables coordinated approaches to cross-border policy making and regulation that achieve these ends.

Steps Towards Cross-Border Regulatory Coordination

During the Roundtables, the Task Force sought examples and industry views regarding "***…the most successful … cross-border regulatory approaches.***" Unfortunately, there are few clear-cut

[5] IOSCO may look to the Financial Stability Board's periodic reports describing progress towards regulatory goals, or the IMF/World Bank Financial Sector Assessment Program ("FSAP"), which assesses a country's financial sector, systemic stability and economic development against international standards.

[6] See IOSCO releases: "*Objectives and Principles for Securities Regulation*" (May 2003 & June 2010); "*Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation*" (Sept. 2011 and Aug. 2013); "*Principles Regarding Cross-Border Supervisory Cooperation*" (May 2010); and "*Multilateral Memorandum of Understanding: Concerning Consultation and Cooperation and the Exchange of Information*" (revised May 2012).

[7] See 4 April 2014 Letter from FSB Chair Mark Carney to G20 Finance Ministers and Central Bank Governors, "Financial Reforms – Update on Progress" (available at http://www.financialstabilityboard.org/publications/r_140411.pdf).

[8] For example, via cross-border coordination in the production of prospectuses.

examples to highlight. "Passporting" has proven somewhat effective in fostering coordination in certain regional markets, but this is limited in scope. On a larger scale, "top down" approaches to regulation, through the development of high-level global principles, provide for some level of cross-border coordination and regulatory flexibility. In many instances, however, these efforts have been counteracted as local authorities diverge during implementation. Below, we point to several recent attempts to coordinate cross-border regulation, but note their limited success.

Undertakings for Collective Investment in Transferable Securities ("UCITS")

In the case of regional coordination, passporting has proven effective in certain instances. In the European Union ("EU"), the UCITS regime resulted in a coordinated framework for the treatment and sale of collective investment schemes within the region. This effort removed unnecessary barriers and burdens impacting retail collective investment schemes, and enabled shares of covered products to be sold throughout all EU member states once recognized in one. As acknowledged in the CBRF letter, however, the UCITS regime is not without its limitations (e.g., linkages with insolvency regimes in Europe and limited geographic scope/impact).

Passporting is also utilized as a tool to aid growth in developing markets. Through the efforts of Asia-Pacific Economic Cooperation ("APEC"), the Asia Region Funds Passport ("AFRP") is under development. Similar to the UCITS regime in the EU, the AFRP would establish a regulatory arrangement for the cross-border offer of mutually recognized regional fund vehicles in participating economies. Thus, regulatory recognition approaches like passporting can be an effective tool for facilitating continued growth and avoidance of fragmentation in developed and emerging markets, though limited in light of its regional scope. The Associations support IOSCO's facilitation of the development of further passporting regimes, where appropriate.

Legal Entity Identifier ("LEI")

In an effort to overcome the fragmentation of firm identifiers, GFMA has been actively engaged in the development of a global LEI system. The establishment of an LEI system is a foundational and critically important step towards the improved measurement and monitoring of systemic risk. A global, standardized LEI will enable organizations to measure and manage counterparty exposure more effectively, while providing substantial operational efficiencies and customer service improvements to the industry. To date, significant progress on this important initiative has been made. Regulatory authorities in the United States ("US") and EU have taken initial steps at implementing LEI reporting, while others including Canada, Australia and Hong Kong have embraced the concept. We will continue to monitor the ongoing progress and work to ensure continued efforts towards coordination.

Margin Requirements for Non-Centrally Cleared Derivatives

The Basel Committee on Banking Supervision ("BCBS") and IOSCO *"Final Framework on Margin Requirements for Non-Centrally Cleared Derivatives"* (the "Final Framework")[9] is a recent example of an attempt at "top down" coordination. Leaving aside remaining concerns over the final outcome and emerging divergences in national implementation, the Associations support the general efforts of the BCBS and IOSCO to develop "top down" global principles through regulatory dialogue and public feedback. While constructive, however, this process was not without its flaws.

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9 BCBS-IOSCO, "Final Framework on Margin Requirements for Non-Centrally Cleared Derivatives" (Sept. 2013).

The consultation process began well after lawmaking and rulemaking processes were underway and key issues had been settled in many jurisdictions. Had the consultation and dialogue occurred earlier on in the process, many of the remaining concerns may have been avoided. The consultation process further failed to adequately take into account the unique issues facing developing markets. Non-centrally cleared derivatives are an important tool for capital market funding and end-users needing to hedge commercial risk – including for emerging economies. Some aspects of the Final Framework, however, did not consider the current level of regulatory development in emerging markets. For instance, many Asian countries do not yet have in place the custodial or legal regimes for segregation or netting as envisioned by the Final Framework.[10] Imposing potentially onerous requirements would impede further market development.

Current divergences in the implementation of the Final Framework by national regulators present significant additional concerns. The recent European Banking Authority ("EBA"), European Securities and Markets Authority ("ESMA") and European Insurance and Occupational Pensions Authority ("EIOPA") consultation paper on regulatory technical standards for uncleared derivatives contracts appears to depart from certain key aspects of the Final Framework.[11] Such divergences stand to negate coordination efforts, create significant competitive issues and drastically increase the cost of non-cleared OTC derivatives transactions. Thus, it bears continued monitoring as to how regulatory authorities will apply the Final Framework in their home countries.

The Impact of Localized Cross-Border Policy and Regulation

IOSCO also sought insights and examples regarding the following: "***… least successful cross-border regulatory approaches***"; ***"[i]n which areas could international standards enhance coordination, effectiveness and efficiency?"; "[e]xamples of challenges (e.g. costs, risks, gains and losses) across business lines (e.g. asset management, ECM, DCM (FICC), corporate finance / underwriting, advisory, private banking, etc) with respect to cross-border businesses"; "[t]he effects of regulatory duplication, gaps or conflicts (e.g. EMIR, Dodd-Frank, SEF rules, etc.), including restructuring and regulatory costs";*** and ***"[e]xamples of regulatory arbitrage that your firm has encountered in securities markets which could have systemic implications"***.

Despite growing calls for global coordination, many lawmakers and regulatory authorities have taken a localized, "bottom up" approach to policy and rulemaking. The following examples illustrate the negative consequences of uncoordinated approaches, and areas where coordination efforts would be useful. In addition to these examples, we direct the Task Force's attention to the case studies cited in the CBRF letter of 28 May 2014, which further illustrate the need for the development of cross-border coordination processes and assessment mechanisms.

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[10] See SIFMA Comment Letter, "Margin Requirements for Non-Centrally Cleared Swaps and Securities-Based Swaps", Pages 13-14 (12 March 2014) (available at http://www.sifma.org/issues/item.aspx?id=8589947977).

[11] EBA-ESMA-EIOPA, "*Regulatory Technical Standards on Risk Mitigation Techniques for OTC-Derivative Contracts not Cleared by a CCP under Article 11(15) of Regulation (EU) No 648/2012*" (April 2014). Such divergences include: the addition of explicit diversification requirements on collateral and an outright ban on re-hypothecation and other re-use of eligible collateral for the posting of initial margin; treatment of EU vs. non EU end-users for variation margin; and the requirement that EU counterparties collect initial margin from non-EU counterparties, even if they would otherwise be exemptive under a non-financial counterparty threshold had they been established in the EU.

Clearing Requirements

The implementation of the IOSCO and Committee on Payment and Settlement System ("CPSS") *Principles for Financial Market Intermediaries* ("PFMI") has suffered from divergences in implementation on the national level and a trend towards proscriptive, "rule-by-rule" recognition determinations. Under EMIR, non-EU CCPs must apply for recognition in order to provide clearing services to market participants or trading venues established in the EU. Without such recognition, a third-country CCP will not be able to accept EU clearing participants (or their foreign branches) as members, or clear contracts that will be subject to forthcoming EU clearing mandates. At the same time, the EU's Capital Requirements Directive IV ("CRD IV") imposes prohibitive capital charges on EU institutions utilizing CCPs that are not recognized by the EU.

Currently, non-EU-recognized CCPs may operate in the EU through 15 June 2014 without CRD IV charges applying, though further transitional relief through 15 December 2014 is expected. While such transitional relief is helpful, to date there has been no EU recognition of a third country CCP, and there is no guarantee recognition will be provided - even with an extension. Ongoing uncertainty will cause continued market disruptions. Recent communications to the European Commission ("EC") from other regulatory authorities highlight the significance of this issue. In a 6 May 2014 letter, US Commodity Futures Trading Commission ("CFTC") Commissioner Scott O'Malia noted his concerns over potential market disruption and dislocation in the event US CCPs were not recognized in the EU.[12] In letters sent by the IOSCO Asia Pacific Regional Committee ("APRC") to the EC on 22 November 2013 and 21 March 2014, similar concerns were expressed, specifically regarding the impact to Asian jurisdictions. In these letters, the APRC noted that "imposing conditions and standards that are not relevant, appropriate or even feasible for such non-EU CCPs would give rise to severe problems" including market fragmentation, liquidity contraction and prohibitive costs. The APRC further noted that without further transitional relief and eventual CCP recognition, EU financial institutions would effectively be forced to withdraw from clearing and trading in Asia.[13]

At the same time, CFTC Derivatives Clearing Organization ("DCO") rules present further difficulties. The CFTC requires non-US CCPs meeting the Commission's DCO definition to register as such, unless granted an exemption. Many foreign authorities are hesitant to allow their local CCPs to register as DCOs, as this would place them under the direct oversight of the CFTC. Problematically, in several jurisdictions (particularly those in Asia), local CCPs subject to DCO registration requirements are the only clearing option. Should those CCPs be unwilling or unable to register with the CFTC as a DCO, market participants subject to CFTC regulation will be effectively shut out of those local markets with respect to products subject to the local clearing mandate. Further, as it relates to US-EU CCP recognition specifically, the CFTC's DCO rules do not contemplate allowing exempt non-US DCOs to clear for US clients - only clearing members. This may prevent EU authorities from recognizing the US CCP regime as equivalent.

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[12] Available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/omailalettertobarnier050614.pdf.

[13] See 22 Nov. 2013 letter (available at http://www.iosco.org/committees/aprc/pdf/20131122_APRC_letter_to_EU.pdf); see 21 March 2014 letter (available at http://www.iosco.org/committees/aprc/pdf/20140321_APRC_letter_to_EU.pdf).

Segregation

Divergent collateral segregation requirements represent another serious issue impacting central clearing. When a US-registered Futures Commission Merchant ("FCM") becomes a clearing member of a European CCP, it is required to offer individual segregation to its European clients. Problematically, US FCMs are not permitted to offer individual segregation under CFTC regulations – thus creating a clear conflict of regulatory requirements. Industry groups continue to work with applicable regulators in the EU and the US to remedy this issue.

Derivatives Trading Platform Requirements

CFTC rules on Swap Execution Facility ("SEF") registration further highlight the problems posed by "bottom up," localized approaches to regulation which attempt to address conflict through complicated and highly conditioned relief measures. The CFTC was the first regulator to mandate trading of derivatives on regulated platforms, requiring platforms meeting its SEF definition to register beginning in October 2013. Mandatory SEF trading requirements for certain products on SEFs began in February 2014. The implementation of these rules caused considerable confusion in non-US markets, as there was question as to whether access to foreign platforms by certain market participants would trigger SEF registration requirements. Reports indicate that liquidity has been bifurcated between US and non-US pools due to this uncertainty.[14]

The CFTC's fragmented and piecemeal approach has caused market disruptions and increased costs to market participants.[15] In March 2014, the CFTC issued amended relief to European Multilateral Trading Facilities (or "MTFs") in an attempt to address these issues.[16] Unfortunately, the relief was of little practical use, as its provisions essentially required the MTF to come into compliance with many of the CFTC's rules in order for it to apply, and to do so in a limited timeframe. In a recent speech, CFTC Commissioner O'Malia noted that such "relief" is not sufficient, and that market fragmentation can be reversed only through a regulatory recognition process.[17]

Disclosure of Asset-Backed Securities (Regulation AB)

The US Securities and Exchange Commission ("SEC") recently proposed revisions to its Regulation AB ("Reg. AB"), seeking feedback on approaches for the dissemination of potentially sensitive asset-level data. Of concern is that the Reg. AB proposals risk exposing non-US sponsors and issuers seeking to offer asset-backed securities ("ABS") to US investors (as well as certain US sponsors and issuers seeking to offer ABS to European and other non-US investors) to non-aligned compliance requirements regarding privacy protections – especially issuers in Europe and Australia.

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[14] See ISDA Research Notes: "Footnote 88 and Market Fragmentation: An ISDA Survey" (December 2013); Cross-Border Fragmentation of Global OTC Derivatives: An Empirical Analysis" (January 2014); and "Made-Available-to-Trade: Evidence of Further Market Fragmentation" (April 2014).

[15] *Id.*

[16] Available at http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-16.pdf.

[17] See CFTC Commissioner O'Malia Keynote Address, "*We Have the Power to Reverse the Negative Impact of the Commission's Rules on Market Structure*", Derivatives 2014: A Market in Transition - A TabbForum Event (6 May 2014).

This risk of conflicting privacy compliance requirements is the clear result of uncoordinated regulatory efforts. Several aspects of the SEC's proposal conflict with ABS disclosure regimes implemented or proposed by the EU, the Bank of England, the European Central Bank, ESMA and the Reserve Bank of Australia.[18] Absent the ability for authorities to recognize other regimes, ABS issuers will be forced to comply with multiple (and at times conflicting) disclosure requirements. This will result in unduly burdensome costs and barriers to cross-border ABS offerings. GFMA and the Australian Securitisation Forum ("AuSF") recently submitted a letter calling for the SEC to provide a framework for the recognition of other authorities' data dissemination rules, in order to prevent these conflicts.[19]

Benchmarks

IOSCO published its "*Principles for Oil Price Reporting Agencies*"[20] in October 2012, and later its "*Principles for Financial Benchmarks*"[21] in July 2013. A number of jurisdictions and financial firms around the world have been working towards the implementation of these principles. In September 2013, however, the EC published its own proposal, "*Regulation on Indices Used as Benchmarks in Financial Instruments and Financial Contracts*".[22] As with Article 25 in EMIR, the EC proposal introduces a strict equivalence and recognition regime for benchmarks and indices produced by administrators outside the EU. As with EMIR, the recognition process would require an equivalence decision from the EC in regards to the regulatory framework of the jurisdiction of the administrator.

This could have a significant negative impact for European entities operating in third countries, as it restricts the number of indices available to them. Since the scope of the regulation goes beyond that of the IOSCO principles, jurisdictions seeking to implement the IOSCO principles to varying degrees will only be able to do so in respect to those that are considered to be systematically important benchmarks, such as the 'IBORS', exacerbating problems. Given that the EC proposals are still at a very early stage in the political process, our call for engagement between regulators and policy-makers across jurisdictions is key in order to achieve regulatory convergence.

EU Bank Structure Reform

It is currently unclear how an EU bank structure reform proposal (the "EU Proposal") will work in relation to other existing EU regulations (e.g. Capital Requirements Regulation/CRD IV and the Banking Recovery & Resolution Directive) or other international legislation. For example, EU subsidiaries of US banks are subject to the US Volcker Rule, and could also be subject to the EU Proposal and the Vickers Proposal in the United Kingdom, unless the EC grants derogation in response to an application from the third country's relevant National Competent Authority ("NCA"). It is not clear if the relevant NCA would apply for derogation (nor whether derogation would be granted with respect to the Vickers Proposal). Further, EU branches of US banks subject to

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18 See GFMA-AuSF Comment Letter on "Re-Opening of Comment Period for Asset-Backed Securities Releases" (28 April 2014) (available at http://www.gfma.org/correspondence/item.aspx?id=589).

19 *Id.*

20 Available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD391.pdf.

21 Available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf.

22 Available at http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52013SC0336.

the Volcker Rule could also be subject to the EU Proposal, unless the EC makes an equivalence determination with respect to the US (thus not imposing EU requirements). It is uncertain on what basis the EC would make such an equivalence determination with respect to the Volcker Rule and what that outcome might be. What is apparent is that the proposed changes would have a significant impact on EU banking institutions and their ability to meet the needs of their clients. At the same time, it is unclear how Asian regulators will respond to these proposals, since the structural reform of EU banks has the potential to create significant impact on banks operating in their jurisdiction, as well as the local capital markets.

The above examples provide clear evidence of the need for global coordination in policy and rulemaking and approaches, as well as mechanisms to facilitate regulatory recognition. Localized approaches to regulation have fostered conflict, as authorities engage in non-transparent, "rule-by-rule" recognition exercises instead of more beneficial outcomes-based assessments. As CFTC Commissioner O'Malia stated in his opening remarks before a recent meeting of the Commission's Global Markets Advisory Committee, it seems as if regulators are proceeding down a path to highlight differences rather than recognize commonalities.[23] Conflicts are being inadequately addressed through proscriptive and reactive measures (i.e., relief, deferral of compliance dates etc.) that are lacking on a practical level and often create further conflict. While we support the use of guidance, relief and other similar tools, the use of these measures must be appropriate. These measures should also take into account the unique characteristics of other jurisdictions, as well as differences in timing and implementation schedules. Where such measures are necessary, they should be utilized in a reasonable, timely and consistent manner, serving to provide effective relief and gives clarity to market participants.

The Problematic "One-Size-Fits All" Approach

Lastly, IOSCO solicited feedback on ***"[w]hether regulatory differences (due to local conditions and varying stages of market development), may be justifiable and/or accommodated"***. The Associations believe that "one-size-fits-all" approaches to regulation are not realistic. Different jurisdictions will ultimately enact regulations they believe to be necessary and appropriate for the unique issues impacting their respective markets. We believe that top down approaches to regulation are far more effective. Where high-level principles are developed through early and continuous dialogue between policy makers and regulatory authorities, there is less chance for conflict (so long as national authorities do not significantly diverge in their respective implementations). This approach would further facilitate the use of regulatory recognition, as there is coordination and agreement on the over-arching principles and standards that local authorities will implement. IOSCO must ensure, however, that the feedback and concerns of non-US/EU authorities are taken into account in this process, to ensure dialogue is not dominated by US and EU authorities.

With respect to implementation, where authorities impose more stringent rules or those with no corollary, a "rule-by-rule" approach to regulatory recognition is not feasible. In this regard, IOSCO should also work to develop a common interpretation of what is meant by "regulatory recognition", promoting that such determinations are made based on regulatory outcomes rather than a line-by-line comparison of different rule texts or legislative acts. This is especially true for developing jurisdictions, where certain rules may not be relevant, appropriate or feasible. Some markets may not yet be at the stage in their development to warrant certain requirements or support related technological or

[23] See CFTC Commissioner O'Malia Opening Statement at 21 May 2014 CFTC Global Markets Advisory Committee Meeting (available at http://www.cftc.gov/PressRoom/SpeechesTestimony/omaliastatement052114).

operational builds. As such, coordinated, flexible, outcomes-based approaches to cross-border coordination that take into account the specific needs and characteristics of all markets (including those of developing jurisdictions) must be utilized.

Conclusion

The Associations are supportive of IOSCO's leadership efforts in addressing cross-border regulatory challenges. We believe that well-developed regulation, contributing to efficient and stable financial markets, can play an important role in economic and business recovery. It is our hope that IOSCO can promote the coordination of such regulation. We are committed to working collaboratively with IOSCO and the Task Force in the furtherance of coordinated and consistent cross-border regulation that will achieve good outcomes for market participants, including end-users, and would be pleased to answer any questions that you might have.

Sincerely,

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cc: Greg Medcraft, Board Chair, IOSCO
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