

Ms. Rohini Tendulkar
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid
Spain

3rd March 2015

info@iosco.org

Dear Ms Tendulkar,

Re: Public Comment on the Task Force on Cross-Border Regulation

The International Banking Federation (IBFed) is the representative body for national and international banking associations from leading financial nations around the world. Its membership includes the American Bankers Association, the Australian Bankers' Association, the Canadian Bankers Association, the European Banking Federation, the Japanese Bankers' Association, the China Banking Association, the Indian Banks' Association, the Korean Federation of Banks, the Association of Russian Banks, and the Banking Association of South Africa. This worldwide reach enables the IBFed to function as the key international forum for considering legislative, regulatory, and other issues of interest to the banking industry and to our customers.

The Financial Markets Working Group of the IBFed appreciates the opportunity to provide comments to the IOSCO consultation report entitled, *IOSCO Task Force on Cross-Border Regulation* (Report). We commend IOSCO for allowing ninety days to comment on the Report, which allows for time necessary to review, analyze, and discuss the Report's contents and to coordinate a substantive response. We believe this will facilitate meaningful discussions that will help lay the foundation for thoughtful and sensible cross-border standards, principles, or legal framework.

In general, we reiterate our support of IOSCO's efforts to implement the G20 mandate to improve global financial stability and promote transparency of the global securities markets, of which cross-border regulation is a fundamental component. We continue to believe that a successful approach to cross-border regulation will focus on managing unreasonable and outsized risks, rather than trying to eliminate risk altogether. Moreover, at the outset, IOSCO, other international bodies, and regional and national jurisdictions should attempt working within the existing global market systems rather than impose new, untried frameworks. Finally, the input of industry and market participants is vital to ensure an approach that is workable and which encourages satisfactory consensus and convergence,

while continuing to be mindful of the legal and regulatory differences and approaches of the differing jurisdictions, particularly where justified by country-specific objectives. This would avoid a prescriptive, “one-size-fits-all” approach that would neither be practical nor effective.¹

We believe cross-border regulation should first identify instances of regulatory duplication, gaps, and conflicts. This may form the basis of common definitions and classifications, which would facilitate – and here IOSCO could play an important role – in the establishment of global operating standards, principles, or legal framework in appropriate areas. At the same time, in contested areas of cross-border regulation, affected regions initially should be allowed to work out their differences, which would minimize the need for possibly disruptive international prescriptions from IOSCO. For example, to the degree there are inconsistencies between EMIR and Dodd-Frank, European and U.S. authorities should be allowed a reasonable opportunity to address and resolve their differences before an international solution is considered, proposed, and pursued. Furthermore, the equivalence of jurisdictions’ regulations should be explored in areas where there is simultaneous application of duplicative or conflicting regulations to the same transactions or intermediaries, and where such equivalence can facilitate, rather than burden, an efficient global market system. Redundancy of rules and duplication of reporting in particular should be eliminated or at least reduced, where possible.

The Report identifies and describes three regulatory tools that IOSCO members use or consider using in responding to the regulatory regimes of other national authorities: National Treatment, Passporting, and Recognition. Of these, we believe that Recognition generally provides the best avenue for developing a coordinated and sustained approach to cross-border regulation.²

National treatment is intended to promote predictability, transparency, and efficiency in the regulation of cross-border activities. It allows a host regulator to exercise greater oversight and supervision of foreign entities, while enabling market participants to become aware of the specific requirements necessary to register and operate within the applicable jurisdiction. National treatment, however, raises the costs of compliance with national laws and thus may ironically serve to circumscribe and restrain cross-border activity. National treatment further may encourage national authorities to push for extraterritorial application of their laws, which would further reduce opportunities for cross-border solutions. The U.S. Volcker Rule, for example, extends national application of its prohibited activity to foreign bank investments in foreign public funds, and provides exemptions only if such funds are structured in the same manner as U.S. mutual funds, which would be both costly and inconsistent with the way public funds are typically structured in the foreign bank’s home jurisdiction.³

¹ See Report at 2 (“The [IOSCO-established] Task Force will not prioritize one regulatory tool over another because there is an overall recognition that any attempt to fashion a one-size-fits-all approach would likely be unworkable because it would not recognize the nuances and realities of cross-border securities regulatory activity.” We note that IOSCO appears to share this view in at least one related area. In its recent final report, *Risk Mitigation Standards for Non-centrally Cleared OTC Derivatives*, stated that with respect to risk mitigation standards, “IOSCO is of the view that prescriptive, one-size-fits-all standards would not be practical or meaningful.” See IOSCO Appendix. Feedback Statement, p. 2.

² By “cross-border regulation,” we do not include everything under the IOSCO umbrella. For example, the IBFed views expressed in this comment letter do not apply to accounting or tax issues, which may warrant separate consideration and discussion.

³ Non-U.S. banks and their trade associations are attempting to obtain relief from this interpretation of the Volcker Rule from the U.S. Federal Reserve but thus far have been unable to secure regulatory relief.

Passporting generally permits the holder of a regulatory license or authorization in one jurisdiction that is a party to the passporting arrangement to operate in any jurisdiction which is a party to the arrangement. Passporting, however, requires a significant amount of coordination among member countries' regulatory authorities and must be adequately granular in order to work effectively. Given the fragmented condition of critical sectors of the financial markets (such as central counterparty clearing houses (CCPs)), it would be a time-consuming and laborious effort to attain common regulatory standards. Passporting further would be limited only to those countries that choose to participate in the arrangement.

Recognition permits a national authority to recognize that the foreign regulatory regime is sufficiently comparable to the national authority's regime to allow for reliance on the foreign jurisdiction's regulatory regime. The challenge to Recognition includes (i) limited resources to assess foreign regulatory regimes, (ii) identifying the regulatory gaps, inconsistencies, or conflicting requirements that may be problematic to recognition, and (iii) lack of appropriate and effective access to information for supervisory purposes and limited power to conduct on-site review and examinations.

Nevertheless, of these three regulatory tools, we believe that Recognition provides the most promising option for cross-border regulation by enhancing cross-border legal and commercial certainty for banks and their affiliates and investors. We believe Recognition supports an outcomes-based regime whereby regulatory compliance costs can be reduced while streamlining the operation of the global financial markets. Recognition further would allow market participants to coordinate their domestic and foreign activities without having to face duplicative, conflicting, or inconsistent rules abroad. This could begin as a principles-based approach or general legal framework and then focus initially on the areas in which Recognition could most readily take root.

An area that appears ripe for Recognition as a regulatory tool is in financial reporting requirements. Reporting often involves a market participant providing identical or substantially similar information to national authorities on multiple forms, each of which has been drafted and is used by that national authority's regulators. General recognition of one set of reporting requirements by multiple national authorities would greatly improve the quality of data and simplify its use by regulators. Moreover, it need not initially involve all reporting. Working with national authorities and market participants, IOSCO could determine which reporting requirements are most similar, and begin a move for recognition based on these requirements.

We view IOSCO as exercising an important role in developing recognition standards, whether accomplished through a principles-based approach or through a general legal framework. First, as stated in the Report, IOSCO could promote international dialogue between policy makers and regulators among national authorities.⁴ This could facilitate coordination among national authorities by identifying areas of agreement and disagreement

⁴ As we have stated previously, given the importance of sustained international dialogue, IOSCO may want to consider a college of supervisors as a means to foster the development of standardized supervisory outcomes and regularized understanding of risk across jurisdictions. See Letter to Bank for International Settlements from IBFed, Global Financial Markets Association, and Institute of International Finance (22 April 2014) for a more detailed discussion on how a college of supervisors can enhance the effectiveness and efficiency of cross-border supervision and oversight.

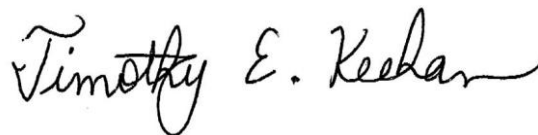
and work toward the ability to resolve conflicts arising from the cross-border impact of certain cross-border laws or regulations. Second, IOSCO could act as a repository of information whereby experiences of cross-border regulatory tools, including Recognition, may be shared and evaluated by both regulatory authorities and market participants. Third, IOSCO could offer its services as a mediator, on an informal and non-binding basis, for disputes between national authorities on the application of law where Recognition is implicated. Fourth, IOSCO could act as a forum to bring together regulators and market participants in multiple geographical markets to discuss instances where working toward Recognition in a particular regulatory area would be particularly helpful. For example, through informal consultations and periodic roundtable discussions, IOSCO can encourage concerted efforts among national authorities to work toward a transparent and efficient aggregation of OTC derivatives data. IOSCO's promotion of market-driven and industry-led initiatives could minimize duplication, conflict, and the resulting costs that otherwise would be incurred by additional regulation on market participants and on other financial institutions.

Thank you for your consideration of these views concerning the Report. We look forward to working with IOSCO in this critical area. If you have any questions or wish to discuss, please contact any of the signatories below.

Yours sincerely,



Mrs Sally Scutt
Managing Director
IBFed



Mr Timothy E. Keehan
Chairman
IBFed Financial Markets Working Group