



June 5, 2014

Via Email: xbr@sfc.hk

Ashley Alder
Chairman, IOSCO Task Force on Cross-Border Regulation
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid
Spain

Re: Managed Funds Association Comments on Cross-Border Regulation

Dear Chairman Alder:

Managed Funds Association (“MFA”)¹ commends the International Organization of Securities Commissions (“IOSCO”) for its thorough inquiry into cross-border regulatory issues. MFA appreciates the opportunity to participate in the meeting of the IOSCO Task Force in Washington, DC on April 28. MFA welcomes the opportunity to provide additional comments to the Task Force.

MFA’s members operate and invest in markets around the world and rely on regulators establishing clear and effective rules that promote fair markets, create level playing fields, and avoid impediments to cross-border investments. MFA has consistently supported a number of regulatory reforms including registration requirements for hedge fund managers, regulatory reporting on a confidential basis, central clearing and protection of customer collateral in derivatives markets, and systemic risk regulation. MFA supports the efforts of the G-20, IOSCO, and others seeking to ensure thoughtful and consistent regulation of markets and market participants in all jurisdictions, which creates a level playing field for market participants and avoids regulatory gaps, as appropriate.

¹ Managed Funds Association represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent and fair capital markets. MFA, based in Washington, DC, is an advocacy, education and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, the Americas, Australia and many other regions where MFA members are market participants.

MFA believes that coordination among regulators at all stages of rulemaking is necessary to achieve an effective cross-border approach to regulation. Such coordination requires regulators to engage with each other prior to proposing rules formally, during the rulemaking and implementation process, and post-enactment, to ensure that rules are working as intended and to address unintended consequences. We also encourage regulators to ensure that the rulemaking process in all jurisdictions provides an opportunity for review and comment by interested market participants, which is a critical part of developing rules that are well designed to address policy concerns while limiting unintended consequences. Absent a commitment at all stages of the rulemaking process, we believe that cross-border regulations will fail to achieve the intended goals.

We recognize that coordination and harmonization across jurisdictions can, and should, mean different things for different types of regulations.² As discussed below, we believe that certain types of regulation (such as investment manager registration and regulation) can best be harmonized through a framework of home jurisdiction regulation recognized by other jurisdictions, while other types of regulation (such as market-wide derivatives market reform) likely require rules in each relevant jurisdiction, which should be coordinated and harmonized on a global basis, as appropriate. Whichever framework for coordination is adopted, MFA believes that regulators should have as primary goals creating a regulatory framework that avoids gaps that leave market participants or activities unintentionally unregulated, unnecessary duplication, inconsistent rules that create conflicts for market participants operating across jurisdictions, and rules that create structural or other unnecessary impediments for non-local market participants.

Home State Jurisdiction

We believe that a home state jurisdiction approach is most sensible with respect to investment manager registration and regulation. Some of the principal policy goals underlying the registration and regulation of investment managers, particularly managers to private investment funds with sophisticated investors, are ensuring regulatory oversight, collecting information through reporting requirements, ensuring proper disclosure to clients, and safeguarding client assets. We believe that these policy goals can be accomplished if a manager is registered in its primary jurisdiction with rules addressing these issues.

On the other hand, requiring managers to register in multiple jurisdictions and subjecting them to full regulatory frameworks in multiple jurisdictions creates unnecessary duplication or, worse, inconsistencies and potential conflicts. Investment manager registration and regulation in the EU under the Alternative Investment Fund Manager Directive (the “AIFMD”) and in the U.S. under the Investment Advisers Act of 1940 provides an example of multiple regulatory frameworks that are intended to accomplish similar goals but create unnecessary duplication and inconsistency (*e.g.*, systemic risk reporting, rules regarding custodians).

Once a manager is registered and subject to rules designed to accomplish the agreed-upon underlying policy goals, regulators could address sharing of information, examination and inspection programs, and enforcement through cooperation agreements and memoranda of understanding. This approach would ensure that all regulators have access to information about registered managers and their activities and ensure that registered entities are subject to appropriate examination and

² We also note that some types of issues do not raise cross-border issues and may be addressed solely in the local jurisdiction.

inspection by regulators. To facilitate this approach, local regulators could adopt notice filings in their jurisdiction, though such filings should not be used as a backdoor means to adopt substantive requirements.

With respect to regulation of managers of private investment funds, it is important to develop a uniform approach regarding which jurisdiction is the relevant home state. We believe the home state should be the location of the primary manager, which is the entity that has ultimate responsibility for the investment decisions and other day-to-day decisions of the investment fund(s). Further, because this area of regulation is focused on the manager, rather than the fund directly, we believe the location of the manager should determine which country is the home state for purposes of registration and regulation.

Coordinated Rules in Multiple Jurisdictions

In the case of certain types of regulation (*e.g.*, regulation of the derivatives market), we believe that it makes sense for each relevant jurisdiction to have a separate regulatory framework that applies to market activity that occurs within the jurisdiction. However, because of the global nature of the financial market, and because market participants and their activities are often subject to regulation in multiple jurisdictions, we also feel strongly that it is important for regulators to coordinate and harmonize those regulations on a global basis.

Such harmonization is necessary to ensure that the scope of the various regulations will not be duplicative and that related substituted compliance regimes will give sufficient deference to comparable regulations. For example, we are supportive of implementing central clearing in the derivatives market because it reduces systemic, operational and counterparty risk. We also appreciate the need to ensure that where derivatives trading activities have a direct and significant effect on a jurisdiction, those activities are subject to adequate regulation in that jurisdiction. However, if the parties to a trade are organized in different jurisdictions, that trade could be subject to regulation by multiple jurisdictions. We agree that it is important to ensure robust regulation of the trade and its parties, but we also support ensuring that each jurisdiction's requirements are not duplicative, conflicting, or without deference to the other jurisdiction's regime to the point that it impairs the parties' ability to transact.

It is also critical to coordinate market-wide reforms in order to avoid creating structural or other impediments to cross-border market activity. For example, in the derivatives market, it is important that a jurisdiction's approval of third country central counterparties ("CCPs") not become unreasonably difficult to obtain, and that no jurisdiction implement rules requiring a market participant to trade with only counterparties from that jurisdiction. Imposing such restrictions on the available CCPs and counterparties within the derivatives market could potentially result in the market becoming fragmented along jurisdictional lines. It could also cause significant harm to the markets by, among other things, impeding competition, impairing portability, limiting participant access to clearing and their ability to operate in certain jurisdictions, and ultimately creating artificial barriers across a global marketplace and instrument type.

We recognize that, in the case of certain types of regulation, the regulatory regimes of different jurisdictions may need to diverge to a certain extent to, for example, account for differences in the scope and nature of the market participants and activities. However, regulations that are too inconsistent will be costly, burdensome and, in some cases, impair market participants'

activities. We appreciate the ongoing joint efforts of IOSCO and its member regulators to avoid any disharmony and/or duplication between different jurisdictions' regulations, to the extent possible, and we encourage continued efforts in this regard.

Conclusion

MFA appreciates IOSCO's efforts to address issues regarding cross-border regulation. We would be very happy to discuss our comments further with IOSCO or its member regulators. If IOSCO has any comments or questions, please do not hesitate to contact Benjamin Allensworth or the undersigned at +1 (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

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