MOODY'S
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Ms. Rohini Tendulkar
IOSCO General Secretariat
International Organization of Securities Commissions
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Consultation-2014-09@iosco.org

Dear Ms. Tendulkar

COMMENT ON IOSCO TASK FORCE ON CROSS-BORDER REGULATION CONSULTATION REPORT

Moody's Investors Service ("MIS") appreciates the opportunity to comment on the Task Force on Cross-Border Regulation ("Task Force") Consultation Report ("the Report"). We welcome the level of detail contained in the Report as well as the key mandate of the Task Force, particularly as it relates to IOSCO facilitating the development and implementation of cross-border regulatory tools.

In our response, we have provided our views on three key issues which we believe, if addressed, would lead to a more effective cross border regulatory framework. These are:

1. Global standards should set the standard and not be seen as minimum standards;
2. More effective levels of cooperation between authorities; and
3. Government support for host regulator supervision.

1. Global Standards

Global markets are more efficient and effective when operating under a consistent regulatory framework. Consistency is best achieved through the implementation of an international standard. In most cases, international standards are seen as only a "minimum standard". The national discretion to adopt more stringent rules, can lead to each jurisdiction doing something (albeit not the same thing) more than the international standard, which in turn can lead to an inconsistent and disjointed global regulatory framework. In some cases, the international standard does need to be adapted to meet the legal norms in a particular jurisdiction. However, in other cases, jurisdictions do adopt additional rules over and above the global standard. We would advocate:

- Clearer endorsement by the G20 of specific global standards to give them more weight in the national implementation phase.[1]
- When global standard setters adopt a particular set of standards, they also record the reasons for not adopting standards that were discussed during the drafting phase. This would provide those implementing at a national level with a clearer rationale for the completeness of the adopted set of standards.
- Global standard setters do more to promote the adopted global standard as in some cases, national implementation can occur based on the draft standards rather than on the final standards.

2. Recognition of Foreign Supervision

[1] G-20 Summit on Financial Markets and the World Economy, G-20 Declaration, November 15, 2008. "We will exercise strong oversight over credit rating agencies, consistent with the agreed and strengthened international code of conduct."

The mere creation of a cross border regulatory framework based on recognition, including where implemented through Multilateral Memorandums of Understanding ("MOUs"), does not always result in a complete acceptance of the supervision of the home/host authority. Notwithstanding the creation of passporting/equivalence regimes and the existence of cooperation agreements, national authorities are often reluctant to rely on the regulatory standard and supervision of an entity outside of its borders[2]. The risk is that a product or service offered on a cross-border basis within a jurisdiction can face more than one set of regulatory rules despite a finding of equivalence.

Tools such as "endorsement" of a product have increased the chances of this happening. This may entail the home authority supervising compliance with the host authority's regulation or *vice versa*, thereby duplicating supervision. Additionally, regulators may add requirements on top of the existing foreign regulatory framework. This leads to a risk of confusion with respect to a national regime's scope and reach. As a consequence, these types of discrepancies are creating operational challenges. For example, MIS operates a global business, providing rating opinions on many issuers across many industries and countries. However, diverging views among jurisdictions often make it difficult to determine which national regulatory framework should regulate the "rating activities" that result in the assignment and monitoring of individual credit ratings[3]. Although currently the location of the lead analyst is used as the standard, regulatory authority is also being claimed based on:

1. use of the rating by local investors;
2. the issuer or financial instrument rated being domiciled and or regulated in the jurisdiction;
3. analytical work being conducted in the jurisdiction;

or a combination thereof.

This results in challenges covering a broad spectrum, ranging from the complex but manageable (e.g., disclosure requirements that differ from jurisdiction-to-jurisdiction) to the more consequential (e.g., short implementation periods and conflicting approaches to managing conflicts-of-interest). To the extent the differences in regimes grow and deepen, regulated entities may be compelled to cordon off their activities on a country-by-country basis, which will undermine the benefits of a global, or even regional, capital market.

3. <u>Broader Government Acceptance</u>

Where institutions conduct activities within a foreign jurisdiction, government authorities within the foreign jurisdiction may put pressure on the regulator to ensure that such activity is being adequately regulated by the host regulator. This indirect responsibility encourages foreign regulators to either subject the activities to national treatment regulation or only partially recognise the authority and supervisory capability of the home regulator. This results in the confusions and inconsistency as described above. To address this issue, and provided the host regulator has performed the necessary due diligence, we would suggest exploring the possibility of providing legislative protection for the host regulator where reliance is placed on the home regulator.

Finally, we believe that regulatory frameworks should be clear as to what triggers jurisdiction and take into account the global mechanisms in place to prevent regulatory duplication and potential conflict of laws. In this regard, we support the further development of memorandums of understanding and other bilateral or multilateral arrangements that will instill the necessary trust and reliance that should exist between regulatory authorities.

We appreciate the opportunity to comment on the Report and would be pleased to discuss our comments further with IOSCO or its staff.

Yours sincerely,

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[2] We support the statement set out in a speech on the "*future of financial reform*" by Mark Carney, Chairman of the Financial Stability Board, that "to avoid the Balkanisation of finance, each regulator must trust others to implement agreed common standards " and that "the FSB will support that with rigorous and transparent peer reviews and implementation monitoring." A transcript of the speech can be found here: http://www.financialstabilityboard.org/wp-content/uploads/The-future-of-financial-reform.pdf.

[3] For example, the credit rating on an issuer based in Japan could be determined by a rating committee whose analysts are physically based in Tokyo, London, and New York. The credit rating itself could be disseminated by a press desk located in another jurisdiction (e.g., in Australia) and may be used by market participants in various jurisdictions.

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