

23 February 2015

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

**RE: IOSCO Task Force on Cross-Border Regulation Consultation Report CR09/2014**

Dear Ms. Tendulkar,

The World Federation of Exchanges (“WFE”) is the global association representing the interests of 64 publicly regulated stock, futures, and options exchanges, as well as the CCPs that many of these exchanges operate. WFE’s members include the full continuum of market operators including global exchanges and developing exchanges from emerging markets. WFE works with policy makers, regulators, and government organizations to promote the development of fair, transparent and efficient markets around the world. WFE’s global membership continues to support the work of the IOSCO Task Force on Cross-Border Regulation (“Task Force”) and we are pleased to contribute our views in response to the Task Force Consultation Report.

As IOSCO notes in the consultation paper, given the global nature of financial markets, “securities regulators often have regulatory interests that extend beyond their borders”. This undoubtedly creates a challenge for regulators in balancing “any potential trade-offs between increasing market access and financial activity on the one hand, and maintaining appropriate levels of investor protection and preventing the importation of risks on the other.” WFE’s members reside in: 1) jurisdictions that are at the forefront of defining the post-crisis regulatory landscape as well as: 2) emerging markets jurisdictions. Therefore, we are both very aware of and sympathetic to the diverse challenges that regulators from around the world face.

We strongly support the creation of a coherent framework that, where suitable, assists regulators in adopting cross-border regulatory approaches that streamline cross-border access to well-regulated markets thereby increasing the liquidity and efficiency of global markets and the transparency of market transactions. Regulated markets and market participants currently face a range of cross-border challenges and we commend the Task Force for its efforts to analyse these issues and make workable recommendations.

To improve cross-border access, it is important that exchanges are able to attain and maintain cross-border recognitions and/or exemptions on reasonable, transparent, and certain terms. We support the mutual recognition of markets between jurisdictions based on international principles and standards, and measured on the basis of the equivalence of regulatory outcomes while reciprocity needs to be ensured. Mutual recognition based on common standards ensures market participants have access to exchanges, and ensures that those exchanges and trading venue operators compete on a level playing field, measured by similar regulatory outcomes.

### ***Current Cross-border Challenges***

The challenges that exchanges face particularly in the post-crisis regulatory environment, may generally be classified as follows:

- The extra-territorial application of market regulation may have the effect of not only requiring a market infrastructure to ensure that it is compliant with the standards determined in another jurisdiction, but also that the regulation of the jurisdiction within which it operates is regarded as substantially equivalent to the regulating jurisdiction. This is not for purposes of providing products and services in other jurisdictions but in many instances simply to be able to continue to provide products and services in its home market.
- The approach to recognition (or determinations of equivalence) as well as the authority (or types of authority), standards and processes for making determinations of equivalence vary across jurisdictions and, in some instances, within jurisdictions, depending on the entity requesting deference or the scope of deference being granted. In the absence of strong multilateral principles, decisions about the equivalence of regulations can be based on line-by-line assessments rather than mutually-agreed outcomes. This can complicate and/or delay decisions since national rules inevitably differ in terms of timing and substantive requirements.
- The decision-making process around equivalence assessments and granting of foreign licences is often opaque and lacks procedural deadlines. As a result, these processes can become delayed or subject to political influence.
- Even after receiving recognitions and exemptions, exchanges (particularly those operating across multiple jurisdictions) face complex ongoing obligations. The recognition and exemption rules in most major jurisdictions explicitly require ongoing cooperation, information sharing or reporting by the foreign exchange and may also result in additional obligations under the terms and conditions of access. These ongoing obligations can vary significantly, and the cost for a global business can be substantial. Whilst we acknowledge the importance for national regulators of ensuring appropriate investor protection, there are undoubtedly benefits associated with harmonized international standards regarding the ongoing obligations facing recognized exchanges.
- Finally, the limited regulatory resources within jurisdictions often results in protracted review and approval processes which can be particularly detrimental to smaller, emerging markets which rely on access to outside market participants for capital formation and enhanced liquidity and price discovery.

Practically, exchanges often need formal recognitions to offer market access and exchange-traded products to participants in foreign jurisdictions, or to ensure the appropriate status of exchange-traded products in foreign jurisdictions. While we recognize the technical and other complexities associated with the cross border operation of exchanges, we have noted several current examples cross border regulatory approaches that are effective as well as instances where current approaches might be enhanced:

- For derivatives, US CFTC administers a Foreign Boards of Trade (FBOT) regime whereby foreign exchanges gain access to US market participants. At present non-US exchanges from more than 15 jurisdictions are either registered FBOTs or have applications pending.
- The US SEC meanwhile has never provided a recognition regime for non-US equities exchanges seeking access into the US market.

- At the national level in Europe there are often recognition systems in place. For instance, the UK has administered a highly effective Recognized Overseas Investment Exchange regime for many years.
- On a regional level in the EU, a list of equivalent non-EU markets under MiFID I has been expected since 2007 but has not yet been published by the European Commission. This has caused uncertainty for commercial end-users subject to other aspects of EU regulation and created regulatory arbitrage away from non-EU based exchanges.
- In Latin America, the *Mercado Integrado Latinoamericano* (MILA) integrates the stock markets of Chile, Colombia, Mexico and Peru using mutual recognition agreements. As a result, trading of cash equities by order routing through the brokers of the participating countries to the original markets is now possible.

Unlike the CPMI-IOSCO Principles for Financial Market Infrastructures for CCPs or the IOSCO Principles for Financial Benchmarks, it is more difficult to point to a single set of current international standards outlining appropriate governance and oversight practices for equities, derivatives, and options exchanges. The IOSCO Principles for the Oversight of Screen Based Trading Systems were expanded in 2000 to consider cross-border issues, and could be further updated and revised for this purpose.

These challenges have had several negative impacts on market infrastructure and market participants:

- Uncertainty around the regulatory status of exchange and exchange-traded products disrupts market activity while also generating incentives for regulatory arbitrage.
- Liquidity is constrained and fragmented where market participants lack cross-border access to liquidity pools. This increases the costs of capital formation or engaging in risk-management and is a drag on efficiency. Additionally, this inhibits the ability of emerging markets to gain access to capital or to develop their own regional or global benchmark products.
- Furthermore, the application of disparate standards may constrain smaller, emerging economies from developing stronger, deeper and more liquid regional markets.
- Uncertain or constrained access to regulated markets works against a major G20 reform initiative – to encourage greater transparency in the financial markets.

### ***Response on preliminary suggestions contained in the consultation paper***

WFE supports greater leadership of international organizations such as IOSCO, CPMI and the FSB in the development and implementation of international standards that can improve cross-border recognition of and access to exchanges globally. To this end, WFE supports the following recommendations for IOSCO to further develop this international framework, based on the possible roles for IOSCO identified in Section 8 of the Consultation Report:

- Development of informative guidance on cross-border regulatory tools – as part of this guidance IOSCO should identify the need for transparent, standardized processes that base recognition on the equivalence of outcomes.

The guidance could helpfully describe the types of information that must be shared as part of any recognition arrangement and the frequency and format of that information, thereby standardizing these information-sharing arrangements across jurisdictions, and reducing the burden on exchanges facing multiple sets of ongoing obligations in order to satisfy the terms of their recognition and access.

Furthermore, this guidance should emphasize that recognition processes should contain deadlines that encourage timely decision-making.

IOSCO could also identify scenarios and situations where there is a need for: 1) the use of targeted relief where new rules will put markets in conflict with their home obligations, and: 2) the appropriate use of transitional arrangements to ensure that markets are not fragmented and market participants are not denied access.

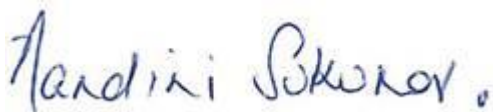
- Additionally, IOSCO could develop and promote guidelines for assessing foreign regulatory regimes, and increasing level of granularity of standards—international standards (for instance the CPMI-IOSCO PFMI and the IOSCO Principles for Financial Benchmarks) can provide a baseline set of outcomes on which regulators can base their cross-border assessments of equivalence. Additional or expanded IOSCO standards regarding the oversight of equities, futures, and options markets could similarly facilitate and encourage outcomes-based recognition based on generally-agreed upon goals for markets, taking into account different jurisdictions’ market size and development.

We support the proposition that IOSCO continue to develop international standards and principles and that reference to these for the purpose of equivalence determination be encouraged. Relatedly, we would encourage IOSCO to continue to urge regulators to limit the extra-territorial reach of their legislation by relying on compliance with international standards.

- For smaller markets, the provision of technical assistance where IOSCO assists regulators when cross-border regulatory tools are formulated and when regulators are assessing foreign regulatory regimes for their ability to achieve similar regulatory outcomes would be useful. As suggested, this could extend as far as providing technical assistance in conducting equivalence or comparability assessments of overseas regulatory regimes.

As the voice of global stock, futures, and options exchanges WFE is pleased to submit the perspectives of its member exchanges on the cross-border challenges they face, as well as identify solutions from the Task Force that would be effective in addressing these challenges. We would be happy to discuss these challenges and recommendations in further detail.

Sincerely,

A handwritten signature in blue ink that reads 'Nandini Sukumar'.

Nandini Sukumar  
Acting Chief Executive Officer  
The World Federation of Exchanges