

**REPORT ON THE SELF-EVALUATION CONDUCTED BY
IOSCO MEMBERS PURSUANT TO THE 1994 IOSCO RESOLUTION
ON “*COMMITMENT TO BASIC IOSCO PRINCIPLES OF HIGH
REGULATORY STANDARDS AND MUTUAL COOPERATION
AND ASSISTANCE*”**



INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS

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“Commitment to Basic IOSCO Principles of High Regulatory
Standards and Mutual Cooperation and Assistance”**

Introduction

In 1994, IOSCO issued a report on “*Issues Raised for Securities and Futures Regulators by Under-Regulated and Uncooperative Jurisdictions*” and a subsequent Resolution on “*Commitment to Basic IOSCO Principles of High Regulatory Standards and Mutual Cooperation and Assistance*”.

The Resolution calls for each IOSCO member to renew from time to time “its commitment to basic IOSCO principles contained in the By-Laws and in each subsequent Resolution”. The Resolution also asks that each IOSCO member provide the name of a contact person to assist in the timely processing of all requests for assistance, and periodically conduct a self-evaluation of the securities and futures laws and regulations applicable in its jurisdiction. The self-evaluation process contemplates, specifically, an examination of the laws and regulations in a jurisdiction that:

- require the maintenance of records concerning securities and futures trading, as well as beneficial ownership and control of entities and bank / brokerage accounts;
- impede the member, or other authority in its jurisdiction charged with the administration or enforcement of securities and futures laws, from collecting relevant information or sharing it with foreign securities and futures authorities.

To assist with the self-evaluation process, a detailed questionnaire was provided to IOSCO members.

Responses have now been received from 83 jurisdictions, 7 remain outstanding (*see list attached*). Concerted efforts have been made to obtain self-evaluations from the non-responding IOSCO members, and to obtain clarification of the responses as well as additional information where needed.

The self-evaluation exercise is useful on three levels. The exercise undoubtedly contributes to improving international cooperation and enhancing IOSCO members’ awareness of cooperation. More importantly, however, the self-evaluation process enables “IOSCO to monitor closely the ability of its members to obtain information from

other jurisdictions, and take such steps as may be necessary and appropriate to address the situation in the future”.¹ The exercise also results in a comprehensive compendium of information which will prove invaluable to IOSCO members. Overall, the self-evaluation process appears to be an appropriate method by which members can reaffirm their commitment to IOSCO principles calling for continued progress toward high regulatory standards and mutual cooperation.

This report is divided into three parts:

- the methodology adopted for reviewing and assessing the self-evaluations;
- the results of the review and assessment;
- recommendations.

PART I Methodology Adopted for Reviewing the Self-Evaluations Conducted Pursuant to the IOSCO Resolution on “*Commitment to Basic IOSCO Principles of High Regulatory Standards and Mutual Cooperation and Assistance*”

The first objective in the review process was to draw the attention of all IOSCO members to the importance of fully implementing the Resolution. Obtaining the highest number of responses to the questionnaire would ensure that the self-evaluations comprehensively reflect the prevailing situation in IOSCO member jurisdictions with regard to the maintenance, collection and cross-border exchange of information. This, in turn, would permit wider reflection within IOSCO on the ways to improve and develop the level of regulation and mutual cross-border assistance and cooperation.

The second objective of the review process was to assess the self-evaluations in order to draw targeted conclusions regarding their substance. To this end, a thorough study of each self-evaluation was conducted by review teams consisting of volunteers from the Working Parties on Enforcement and the Exchange of Information of the Technical and Emerging Markets Committees. The review teams sought to glean a clear and precise view of the situation in each IOSCO member jurisdiction with respect to certain core issues that have an impact on the ability of futures and securities authorities to administer and enforce securities and futures laws.

The following core issues were identified:

¹ Cf. 1994 Resolution on “*Commitment to Basic IOSCO Principles of High Regulatory Standards and Mutual Cooperation and Assistance*”.

- The existence within IOSCO member jurisdictions of laws requiring the maintenance of trading records and of information relating to beneficial ownership and control of entities, bank accounts and brokerage accounts.
- The conditions under which information is collected:
 - the ability of an authority charged with the administration and enforcement of securities or futures laws to access relevant information by compulsion or as part of its routine regulatory responsibilities;
 - the existence of domestic blocking or secrecy laws that affect the local collection of relevant information by a securities or futures authority.
- The conditions applicable to cooperation and the exchange of information with foreign authorities:
 - the names of the authorities in an IOSCO member jurisdiction authorized to share information with or, compel information, documents and statements on behalf of a foreign authority charged with the administration or enforcement of securities or futures laws;
 - the existence within an IOSCO member jurisdiction of legislation prohibiting authorities from sharing information with foreign securities and futures authorities.
- Whether legislation is under consideration in an IOSCO member jurisdiction relating to the maintenance, collection or cross-border exchange of information relevant to the administration or enforcement of securities or futures laws, or whether there is any enhancement to existing legislation under consideration.

While the majority of IOSCO members have provided responses on these core issues, the responses are not necessarily consistent with the experiences of other members in seeking information from a number of jurisdictions. Indeed, many IOSCO members have had difficulties obtaining information from other member jurisdictions. The reasons for these difficulties are varied, ranging from the fact that, as indicated below, there may be sufficient records of ownership of accounts and entities that are used as trading vehicles, to obstacles in collecting such information domestically, to impediments to sharing such information with others.

PART II Results of the Review

A. Preliminary Remarks

The high rate of responses from members reflects a consensus as to the usefulness of the self-evaluation exercise as well as their acute interest in improving international cooperation. This consensus and interest should be encouraged by further practical

action. Furthermore, the self-evaluations themselves represent a substantial amount of work and reflection by IOSCO members regarding the conditions under which information is maintained, collected and shared with foreign securities and futures authorities.

B. Results

1. Information Maintained

In most jurisdictions information relating to the ownership and control of entities² is maintained by the entities themselves. In many cases this information is also maintained by various other authorities such as registrars of companies, regulatory authorities and exchanges. Overall, the self-evaluations demonstrate that a substantial number of jurisdictions require the maintenance of information on beneficial ownership and control of entities. This requirement applies particularly to regulated / registered entities, financial institutions and issuers. There remain, however, several jurisdictions that do not require the maintenance of such information.

The self-evaluations reveal that financial and brokerage houses are usually subject to “know your customer” rules³ that appear to stem from anti-money laundering legislation.

There are still a significant number of jurisdictions where the information maintained is inadequate. This is often due to the absence of a legal or regulatory framework that mandates the maintenance of trading records or information on beneficial ownership and control of entities and bank / brokerage accounts. In other instances, the laws requiring record-keeping are too narrow in their scope. This inadequacy of the information maintained is not pronounced in jurisdictions that are in the early stages of developing financial markets, and may be the result of restricted technological or financial resources.

2. Collection of Information

² The term entities includes, without limitation, corporations, partnerships, sole proprietorships and trusts.

³ The “know your customer” rules cited in this report relate to record-keeping requirements designed to ensure that the financial institutions has established the identity of its customer. It is different from the “know your customer” concept employed in the securities and futures areas, which protects investors by requiring intermediaries to evaluate whether particular investments are appropriate for their individual customer.

Generally speaking, there are a variety of governmental authorities in IOSCO member jurisdictions that have at their disposal information relevant to the administration and enforcement of securities and futures laws. The information may be gathered by such authorities as part of their routine regulatory responsibilities or pursuant to legislative authority.

In certain countries, securities and futures regulators have the authority to collect from multiple sources any information relevant to a futures or securities matter. In other jurisdictions, this authority is shared among several governmental authorities or agencies, each responsible for the supervision of specific sectors of financial markets. Several self-evaluations also refer to the role played by judicial authorities in the collection of information.

Although the self-evaluations seem to indicate that authorities in IOSCO member jurisdictions can collect most of the information relevant to the administration and enforcement of securities and futures laws, there are some differences regarding the methods of collection.

Indeed, depending on the country, authorities may collect information through either routine inspections, voluntary cooperation, compulsory powers, informal investigations, or through a combination of these methods. The powers granted to authorities to investigate possible securities and futures violations are often broad and may include the authority to compel any relevant information, document or statement. In some jurisdictions, the powers of compulsion extend beyond regulated individuals and entities, to any other natural or legal person likely to be in possession of relevant information. Furthermore, the exercise of such powers may be subject to privacy laws or a court order.

The collection of information still proves to be difficult in certain IOSCO member jurisdictions, and several of these countries are considering legislative changes to improve the situation. The recurring difficulties are the following:

- limitations in the scope of regulators' authority;
- limitations on authorities' power to compel the information needed to fulfill their functions;
- local secrecy or blocking laws that prevent authorities from obtaining certain information, particularly bank records; and
- laws that require the consent of beneficial owners before information concerning them can be disclosed to an authority.

The IOSCO members from jurisdictions where these difficulties exist note that the criminal authorities generally have access to the information necessary for the investigation of securities and futures violations. However, such access is limited to cases in which the police are investigating potentially criminal violations involving securities and futures.

3. Exchange of Information

A great number of IOSCO member jurisdictions have established channels through which securities and futures authorities can exchange non-public information with their foreign counterparts.

Generally, securities and futures regulators are authorized to share non-public information subject to certain conditions. Of the conditions described in the self-evaluations, the following are the most common: the requirement that the requesting authority also be charged with the administration or enforcement of securities and futures laws; the requirement that a mutual assistance arrangement between the governments of the requesting and requested authority be concluded; and the requirement that the requesting authority agree to limitations on use and disclosure of the information to regulatory purposes and / or for the purposes stated in the request. In other jurisdictions, information relating to securities and futures trading can only be provided pursuant to an order issued by a court or judge; furthermore, the role of judicial authorities is even greater in some countries where they are the only authorities authorized to exchange non-public information on a cross-border basis.

In addition to the more common conditions identified above, the self-evaluations indicate that more onerous conditions exist which can significantly limit the cross-border exchange of information. Indeed, there are a number of IOSCO members that are prohibited from sharing any non-public information with foreign securities and futures authorities, or that can share information only on a case-by-case basis. Other IOSCO members are not authorized to share bank records and certain personal information. Furthermore, many authorities are unable to compel information on behalf of foreign securities and futures regulators because either they lack the authority altogether, or their powers of compulsion cannot be exercised for the purpose of cross-border assistance. Dual criminality requirements also continue to limit the cross-border flow of information.

Thus, while most responses indicate that time is a waste for sharing information, it has been the experience of Working Parties members that such information may not be available upon request. In addition, there have been instances when similar requests for

assistance made by IOSCO members have been treated differently by a particular jurisdiction. Finally, even when information can be shared with an authority in another jurisdiction, it may be impossible for the securities and futures authority to obtain the information.

PART III Recommendations Based Upon the Results of the Review Conducted on the Self-Evaluations

As discussed above, the self-evaluations reveal substantial shortcomings in the ability of many IOSCO members to implement fully the 1994 *Resolution on Commitment to Basic IOSCO Principles of High Regulatory Standards and Mutual Cooperation and Assistance*. In some member jurisdictions, information regarding the beneficial ownership of accounts and transactions and certain types of entities is not maintained; in other jurisdictions, even when the information is maintained, the securities and futures authority or other competent authority cannot obtain the information, frequently due to the existence of blocking or secrecy laws. In a substantial number of member jurisdictions, where the securities and futures authority is in fact able to collect the information, whether through the use of routine regulatory powers or by compulsion, the information cannot be shared with a foreign securities and futures authority.

In view of the above, Working Parties on Enforcement and the Exchange of Information of the IOSCO Technical and Emerging Markets Committees recommend that IOSCO adopt principles, in the areas of comprehensive record-keeping, improved collection of information, strong enforcement powers and removal of impediments to cooperation, that it believes are fundamental to the promotion of strong securities and futures markets.

Accordingly therefore they urge the Committees to: (i) endorse the following principles; and (ii) recommend to the Chairman of each Committee and the Chairman of the Executive Committee that they submit the Principles for approval of the IOSCO Presidents' Committee.

A. Record-Keeping

Contemporaneous records should be maintained sufficient to reconstruct all securities and futures transactions subject to regulation, including records of all funds and assets transferred into and out of securities and futures accounts. For each account, records should be maintained which include information identifying the beneficial owner and controller, and, for each transaction, the account holder, the amount purchased or sold, the time of the transaction, the price, and the individual and the bank or broker and brokerage house that handled the transaction.

B. Collection of Information

Competent authorities within each IOSCO member's jurisdiction should have the power to require information identifying persons who:

- beneficially own or control any public companies or any other entities and business organizations with a direct or indirect interest in publicly held companies; and
- beneficially own or control bank accounts and brokerage accounts.

In order to administer and enforce securities and futures laws and regulations the competent authorities should have the power to obtain on a timely basis the information indicated in this Section and Section A. No domestic secrecy or blocking laws or regulations should prevent or restrict the collection of the information and records referred to above by the competent authorities.

C. Enforcement of Securities and Futures Laws and International Cooperation

Each member of IOSCO should strive to ensure that it or another authority in its jurisdiction has the necessary authority to obtain information, including statements and documents that may be relevant to investigating and prosecuting potential violations of laws and regulations relating to securities and futures transactions; and that such information can be shared directly with other IOSCO members or indirectly through authorities in their jurisdictions for use in investigations and prosecutions of securities and futures violations.

D. Removal of Impediments to Cooperation

Each IOSCO member should assess the legislative framework in its own jurisdiction to determine whether it has the necessary authority to cooperate and share information with other IOSCO members and, to the extent necessary, should work with the appropriate domestic government authorities to identify and remove any impediments to such cooperation.

In addition, IOSCO should continue to monitor the situation in its member jurisdictions and assist members in their efforts to remove any regulatory or practical limitations on their stability to cooperate and provide assistance to other IOSCO members.