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IOSCO publishes recommendations to enhance commodity futures markets oversight

The International Organization of Securities Commissions' (IOSCO) Technical Committee has today published a final report prepared by its Task Force on Commodity Futures Markets (Task Force) which contains recommendations to improve the supervision of commodity futures markets and global regulatory cooperation.

The Task Force, which was formed following concerns around the price rises and volatility in agricultural and energy commodities in 2008, focused on whether futures market regulators' supervisory approaches were appropriate in light of recent market developments. While reports reviewed by the Task Force concluded that fundamentals rather than speculative activity was the plausible explanation for price changes, the Task Force has made a number of recommendations to improve the transparency and supervision of these markets.

The recommendations focus on the ability of futures market regulators to access relevant information concerning related commodity markets over which futures market regulators generally do not have jurisdiction, such as the cash and OTC derivatives markets, improving regulators' supervisory and enforcement powers and the enhancement of global cooperation. The recommendations aim to achieve these objectives through:

- Evaluating regulators' oversight programs against the standards set forth in the Tokyo *Communiqué*;
- Reviewing regulators' powers to ensure they are able to access the information necessary for effective market surveillance;

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- Promoting improvements or eliminating impediments to regulators' legal and regulatory frameworks that may inhibit their ability to detect and enforce manipulation cases; and
- Establishing periodic meetings among futures market regulators to share concerns on trends and developments in commodity markets as well as the sharing of market surveillance and enforcement techniques.

Kathleen Casey, Chairman of the Technical Committee, said:

“Commodities markets, and the trade in their related futures, are fundamental to a vibrant global economy. Given the growth in these markets, and recent volatility in commodities prices, there are concerns about the possibility of market manipulation involving both these futures markets and related physical and OTC derivative markets.

“The complexity and frequent opacity of factors that drive price discovery in the futures markets, combined with the critical importance of commodities markets to the world's economy, argue for continued vigilance to promote the transparency of futures market price formation and the interconnections between regulated futures and related commodity markets. IOSCO believes that the recommendations published today will ensure that regulators have the appropriate information and tools available to them to monitor futures markets effectively and act against any market manipulation.”

RECOMMENDATIONS

Improved transparency of fundamental commodity market price information

Futures market regulators should promote improvements in the availability and quality of information on commodities related to commodity futures in order to reduce market uncertainty and to understand the fundamentals driving the market. These include improvements in the following areas:

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Underlying data – futures market regulators should:

- support initiatives to promote transparency in the underlying market;
- encourage market participants to publish appropriate information in an accurate and timely manner;
- encourage private organizations that collect relevant fundamental commodity information to adopt best practices and evaluate the changes needed to enhance fundamental cash market data.

OTC Data – futures market regulators should

- evaluate and develop recommendations to improve access to and the usefulness of OTC derivatives market data.

Data dissemination

- disseminators of cash market data are relied upon by markets and commercial users. Where appropriate, ways in which the reliability of this market data could be improved should therefore be considered. These could include requiring accountability for false and misleading data, development of best practices and increased transparency of methodologies.

Transparency and Market Surveillance

In order to enhance commodity market transparency futures markets regulators should review their authority and powers to ensure that they:

- can access information to identify concentrations of positions and the overall composition of the market, including the authority to access a trader's related financial and underlying market positions;
- are capable of taking into account a trader's related financial and underlying market positions;
- have the willingness and ability to share all relevant information, in order for a comprehensive understanding of price formation and market conduct, with their domestic and international regulatory counterparts;

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- obtain the necessary legal powers to develop information sharing agreements with national authorities responsible for any relevant cash market commodities, as well as maintaining informal contacts;
- develop information sharing arrangements to address the parallel trading of derivatives contracts on exchanges in different jurisdictions where this appears to be appropriate due to links between the specific commodities markets;
- provide adequate resources to support market surveillance programs.

Enforcement Powers

Where necessary futures market regulators should:

- review their existing statutory and administrative market abuse authority to determine whether it adequately allows for the prosecution of attempted manipulation;
- address any legal obstacle to obtaining information from any financial and underlying markets used to manipulate commodity futures markets, cooperate with any relevant domestic and international authorities to share supervisory information and to assist in possible investigations of abusive conduct;
- ensure they have the ability to investigate all entities, both regulated and non-regulated, for potential manipulative conduct;
- ensure they have sufficient resources for enforcement programs that target complex manipulative and other abusive trading conduct;
- consider enhancing record keeping requirements i.e. telephone recording and record retention periods, which could benefit enforcement investigations.

Enhancing Global Co-Operation

Constantly evolving abusive trading strategies across multiple markets challenge regulators surveillance and enforcement capabilities, therefore futures market regulators should:

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- convene periodically to discuss informally their concerns and experiences regarding commodity market activity surveillance, investigations and enforcement cases. These meetings may also serve as a basis for organizing commodity markets scenario modelling exercises;
- encourage gathering information in a format that can facilitate sharing and analysis of data;
- consider how cooperation can fit within the existing IOSCO framework.

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NOTES FOR EDITORS

1. [*Commodity Futures Markets*](#) – Final Report of the Technical Committee of IOSCO, March 2009, is available on the IOSCO website.
2. [*IOSCO to examine commodities markets developments*](#), IOSCO Media Release 1 October 2008, is available on the IOSCO website.
3. The [*Tokyo Communiqué*](#) was issued following a conference of commodity futures markets supervisors in Tokyo in October 1997. The conference issued a communiqué which endorsed two guidance papers, one on best practices for the design and/or review of commodity contracts and another on market surveillance and information sharing. The guidance represent the first occasion on which regulators responsible for overseeing commodity derivatives markets agreed to international standards for the supervision of these markets.
4. The following IOSCO members participated in the Task Force: Comissão de Valores Mobiliários (Brazil); Ontario Securities Commission (Canada, Ontario); Autorité des marchés financiers (Canada, Quebec); Dubai Financial Services Authority (Dubai); Autorité des marchés financiers (France), Bundesanstalt für Finanzdienstleistungsaufsicht (Germany), Securities and Futures Commission (Hong Kong), Commissione Nazionale per le Società e la Borsa (Italy), Ministry of Economy, Trade and Industry (Japan); Kredittilsynet (Norway), Eidgenössische Bankenkommision (Switzerland), Financial Services Authority (United Kingdom), Commodity Futures Trading Commission (United States).
5. The [*Technical Committee*](#), a specialised working group established by IOSCO's Executive Committee, is made up of fifteen agencies that regulate some of the worlds larger, more developed and internationalized markets. Its objective is to review major regulatory issues related to international securities and futures transactions and to coordinate practical responses to these concerns. Ms. Kathleen Casey, Commissioner of the United States Securities and Exchange Commission, is the Chairman of the Technical Committee. The members of the Technical Committee are the securities regulatory authorities of Australia, France, Germany, Hong Kong, Italy, Japan, Mexico, the Netherlands, Ontario, Quebec, Spain, Switzerland, United Kingdom and the United States.
6. IOSCO aims through its permanent structures:
 - to cooperate together to promote high standards of regulation in order to maintain just, efficient and sound markets;
 - to exchange information on their respective experiences in order to promote the development of domestic markets;
 - to unite their efforts to establish standards and an effective surveillance of international securities transactions;

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- to provide mutual assistance to promote the integrity of the markets by a rigorous application of the standards and by effective enforcement against offenses.

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