

CONVERGENCE IN THE REGULATION OF INTERNATIONAL FINANCIAL MARKETS

WILTON PARK CONFERENCE 11-12 NOVEMBER 2005

PANEL 2 - PRINCIPLES OF FINANCIAL REGULATION

Philippe Richard, IOSCO Secretary General

I am delighted to be here today at this conference that brings together so many industry participants from around the world and I feel privileged that on behalf of IOSCO, I am able to make a small contribution to your deliberations. As usual I should begin by saying that all opinions expressed here are my own and not necessarily those of IOSCO.

The convergence topic is being raised at an interesting time for the global financial services community. Although the debate itself is certainly not new, recent years have witnessed a change of focus as the question has moved more towards coordinated attempts to achieve an international level of convergence. In the past years, after the Asian financial crisis and more recently, after the dot com bubble burst and the corporate scandals, the emphasis was on designing the right international financial framework and on strengthening internal controls, independence and disclosure. We began with the 12 international key standards and ended up with the more recent initiatives taken by IOSCO to fight financial frauds. Sarbanes-Oxley is the best known example of national initiatives to tighten the rules. It seems that now the emphasis is more on convergence, enforcement and “good/better regulation” instead of “more regulation”.

Increasingly, convergence and consistency of international principles of financial standards is becoming a central consideration to future directions, particularly for those of us involved in setting international standards. The private sector is also well aware of this issue and its consequences in terms of potential regulatory burden, particularly for international financial institutions.

The historical context for the development of international principles cannot be overlooked. Factors influencing convergence have included such wide ranging aspects as financial liberalisation and technological advances. Such issues have made themselves felt across financial institutions and markets as well as across different types of financial institutions and across national borders.

In my remarks today, I wish to draw attention to some of the efforts and developments in the convergence debate, explore aspects of cross-border convergence within securities regulation and finally to examine cross-sectoral developments that reflect how consensus has led to convergence at the international level as well. These approaches reflect, I feel, an underlying agreement on how markets and intermediaries should operate to protect a reasonable level of financial stability.

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In securities regulation, developments in convergence have primarily had an impact across borders. It has certainly been a significant feature in recent years. Indeed, it can be seen that since the time IOSCO was created in 1983, convergence has been integral in our deliberations and it has actively influenced our policy responses in the development of sound principles and practices for the regulation of securities market worldwide.

In the aftermath of the 1997 Asian financial crisis, IOSCO produced a document which outlined the core objectives and principles of securities regulation. The point of this exercise was to produce a single benchmark against which countries could measure their securities regulatory framework. At the same time however, it was important for these principles to take into account local differences in market structures.

Ultimately, these Principles which were adopted by the Organisation in 1998 do precisely that. We believe that one of the reasons for their success lies in their degree of flexibility, providing sufficient guidance without being overly prescriptive. Today the IOSCO Principles are accepted by the global financial community as one of the key standards relevant for sound, stable and well-functioning financial systems.

We believe that a measure of their success lies in the fact that the IOSCO Principles are among the core standards that the World Bank and the IMF use when assessing a country's financial system and in conducting their Financial Sector Assessment Programmes (or FSAP).

The 30 Principles which seek to arrive at the same high convergence standard in all markets cover all aspects of a securities regulatory system and relate to regulators and self-regulation, enforcement and cooperation, issuers, intermediaries, collective investment schemes, secondary markets and clearing and settlement.

More recently IOSCO has followed through the broad goal of convergence by carrying out cross-border activities in a number of more specific policy areas.

In the policy arena of exchanges for instance, the IOSCO focus is on the policy implications arising from exchange demutualisation and cross-border linkages. Given the continuing number of exchanges that have chosen to demutualise and obtain stock exchange listings in recent years, IOSCO has been examining the regulatory issues associated with this trend.

The IOSCO objective is to explore broad framework approaches that could be considered by regulators in countries where demutualisation might occur in the future and the regulatory issues that they raise including the maintenance of public interest and conflicts of interest. Concerns raised are for instance whether for-profit and competing exchanges are still able to have a "regulatory" approach to their decisions and choices. The fact-finding exercise seems to reveal that although the approach may vary from jurisdiction to jurisdiction, most countries have continued to regard and value exchanges as front-line market regulators. One of the objects of the exercise is to hopefully lay down the

extensive regulatory framework that would be essential when these developments take place. The challenge for regulators is to allow normal commercial practices while recognizing the need to protect the principles of pricing integrity, client interests and best execution.

We are currently in the process of considering a range of these issues, including in the world's emerging economies, and we anticipate that a report on these issues will be publicly released by IOSCO in the near future. We anticipate a great deal of interest in this area so it is a case of "watch this space" for four future announcements.

In the accounting arena, many of you will already be familiar with a similar debate surrounding the development and use of international financial reporting standards. This particular convergence debate has by any objective analysis been rather fraught and intense but clearly reflects the complicated nature of the issues involved.

There is broad consensus over the importance that internationally accepted financial reporting standards (IFRS) will play for the proper functioning and stability of the financial system. But as we have seen, it is one thing to agree on the importance of common financial reporting standards, and quite another to agree on a specific set.

In the course of this particular debate it has been helpful for IOSCO to remind stakeholders that accounting standards setting is not just a continuous process but one that must respond to changes and developments in the markets and most importantly to the information needs of investors. Informed decision making requires full, accurate and timely disclosure but also comparability and reliability of financial information. The latter is ensured by high and internationally acceptable accounting standards.

IOSCO remains confident that the requisite determination is there to solve the remaining issues causing differences in accounting among national standards setters and to create a high quality set of global accounting standards. The famous Norwalk Agreement reached in October 2002 between the IASB and US FASB was a major step forward in that field. IOSCO's recent initiative on information sharing on IFRSs, through a database cataloguing decisions made by regulators concerning the interpretation and enforcement of IFRSs, will facilitate the full recognition of IFRS by the financial regulatory community.

Likewise, we have also seen increasing levels of convergence in general corporate governance standards and the processes that cover the wide span from securities markets intermediaries to external auditors to financial analysts.

More recently we have achieved broad consensus on revised debt disclosure principles. Some of you may be aware that recently IOSCO has released new updated international disclosure principles for cross-border offerings and listings of debt securities. The principles represent an important step in enhancing the comparability of information provided by multinational issuers when conducting cross-border offerings or listings. You might remember that in 1998, IOSCO published the "International Disclosure

Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers” which contained detailed disclosure standards applicable to equity securities. This follow-up project, now for public consultation, is the natural and necessary complement to a work done at the end of the nineties.

On the whole, the IOSCO principles perfectly embody the required degree of flexibility in the debate on convergence. In this case, the IOSCO principles do not override existing requirements in each jurisdiction but seek to provide adequate guidance to securities regulators. In this way, they can be seen as benchmarks upon which countries can tailor their individual disclosure and regulatory regimes. In the case of the Debt Disclosure Principles it is worth noting that we have used a principles-based format to provide enough flexibility and adaptability to a broader range of debt securities.

It has been our belief within IOSCO for some time that in seeking to achieve international convergence, this type of principles based approach works best of all since it allows for greater adaptability across the board. This we would argue is crucial to successful outcomes and if there is one message that I wish to stress in this debate here today, then that is it. Essentially the principles of convergence are there to establish a regulatory framework that enables effective implementation in each jurisdiction without imposing full regulatory harmonization.

In a moment I wish to say more about the emerging importance of implementation in order for convergence principles to succeed. In doing so I wish to briefly mention the IOSCO Multilateral Memorandum of Understanding (MOU) and how it represents a more recent example of how the drive towards convergence has led to the adoption of this crucial international standard.

Adopted in 2002, the IOSCO MOU was the first multilateral arrangement of its kind among financial services regulators, setting forth a new international benchmark for cooperation. Key elements which prompted the decision to seek convergence were growing concerns related to the use of securities markets for criminal purposes.

In addition, there was recognition that in the wake of the 11 September 2001 events, increased market integration and growing cross-border securities activities justified the development of new cooperative instruments to deepen international enforcement efforts particularly in dealing with such issues as terrorist financing.

The IOSCO MOU provides securities regulators with an essential instrument to facilitate investigation and prosecution of cross-border securities violations, as well as enhance the enforcement of securities laws and regulation in each jurisdiction.

Currently there are approximately 30 countries around the world which have adopted the MOU and earlier this year at its Annual Conference which took place in Colombo Sri Lanka, IOSCO adopted an ambitious timetable where it is hoped that by the year 2010, all members will have moved to meet this international benchmark.

It is important to recognize that the IOSCO MOU does not supersede national legislative frameworks but seeks to fully use them. It also provides a means to seek related modifications when legal obstacles are identified. The IOSCO MOU does not replace existing bilateral arrangements. It does however complement them and may in time reduce the need for bilateral agreements by providing an effective multilateral cooperative framework.

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Finally, in this contribution I would like to explore some of the broader cross-sectoral aspects of the convergence debate.

During recent years we have witnessed a great deal of effort being directed towards achieving the necessary consensus that has been an essential precursor to development of the international regulatory principles. This is as true for both the Basel Committee on Banking Supervision as well as the International Association of Insurance Supervisors (IAIS) as well as for IOSCO. Fortunately, all three international organizations have a strong close collaborative relationship and we have long since recognized that achieving agreement on principles is a fundamental element of our mission.

All three international regulatory organizations aim to formulate broad supervisory standards and guidelines that can be implemented according to the individual system in each country. In that way, the approach is to encourage common approaches and common standards.

A few years ago, a working group comprising representatives from the Basel Committee, the IAIS and IOSCO was established, under the Joint Forum umbrella, to compare the core principles issued by the three organizations and to try and understand the differences where they arose.

Interestingly, although each of the three sectors had been working independently in drafting its principles, there was a great deal of similarity in the approaches taken; in all cases, the process involved extensive and broad consultations within the sector.

In both structure and content, the core principles reflect characteristics of the respective sector and the nature of the supervised financial institutions, intermediaries and markets. Some of the similarities and differences among the core principles reflected intrinsic characteristics of the banking, insurance and securities sectors.

Importantly, it should be noted that there is no evidence of underlying conflict or contradiction between the three sets of core principles in the three sectors. On the contrary, there are numerous areas of common ground such as with organization of supervisory regimes. In a way, the three sectors had moved towards a level of convergence even though this had not been the original intention.

This of course should not be overstated. There are indeed some differences between the sectors' principles – some arising from intrinsic differences between the three sectors and related to different business models; others not readily explained in this way. However, on the whole there is a great deal of convergence in the core principles across the three sectors.

In the field of investor protection for instance, IOSCO has maintained a strong focus on the objective of investor protection through adequate disclosure and suitability mechanisms while our partners in banking have focused more on the protection of the financial institutions and its depositors. Ultimately, this remains one of the fundamentals in the development of international regulatory principles; that is the need to ensure that the principles agreed upon will further or enhance investor protection mechanisms. This constant concern for investor protection appears clearly in the Preamble of IOSCO By-Laws and in several of the 30 IOSCO Principles, particularly in our Principle 23 (priority to clients interest and market integrity, know your customer/suitability rules...)

The level of coordination and cooperation among the sectors is also strong. We all work within the Joint Forum to achieve this and the international coordination which is achieved through the Financial Stability Forum (FSF) cannot be underestimated particularly since the FSF recognizes and places such prominence on the twelve key financial standards.

Although they retain slightly different missions, mention should also be made of the bodies such as the IMF, the World Bank and the OECD where it is a similar picture. In the case of the latter of course there is the existence of the OECD Principles of Corporate Governance, which were revised last year but which remain broad ranging in their overall outlook. As a follow-up to its recent Report on Financial Fraud, IOSCO has decided to set up a Task Force to work, among other topics, on board member independence. The starting point is the relevant OECD Principle and the Task Force includes a representative from the OECD. Another significant example of international coordination is the Discussion Paper on the compliance function at market intermediaries where a careful analysis of CESR, BCBS and IOSCO Principles ensured substantial consistency.

To sum up before concluding, one of the key issues is that when international bodies such as IOSCO seek to achieve convergence, we try and do so while respecting the historic and cultural differences between financial markets in individual countries. Therefore the principles we propose need to be broad in their outlook and seek to establish the framework under which the financial markets continue to operate.

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In closing I would like to give you an example of what we could consider as best practice for international standardization. Let us take a typical cross-border and cross-sector issue – a typical global issue – where there was a strong need for international guidance without having numerous sets of regulatory frameworks in numerous jurisdictions. I have in mind the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies endorsed by IOSCO in December 2004. We agreed on a set of high level principles, after consultation with other standard setters and the industry. The Code Fundamentals is based on a “comply or explain” approach that can be tested by market participants and revisited by IOSCO in the future should experience dictates that modifications are necessary. This in my view is good regulation.

To conclude, I wish to reiterate something I mentioned earlier. The diversity in the structure of securities markets around the world, the varying degree of development of those markets, and the mixture of institutional arrangements to regulate those markets, present great challenges to all of us in the context of the convergence debate but they are important features that ultimately influence the dynamic as well as the outcomes we reach.

Thank you.

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