

Australian Compliance Institute Conference

Securities Regulation: Global Trends and Trans-Tasman Alignment

Jane Diplock AO
Chairman, IOSCO Executive Committee
Chairman, Securities Commission of New Zealand

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Thank you for the opportunity to speak today. Congratulations to the Australian Compliance Institute for organising such a stimulating and timely forum.

I am going to talk about trends in securities regulation, first in the context of the rapid globalisation of capital markets, and second in the context of economic convergence between New Zealand and Australia. First, I will wear my hat as Chairman of the Executive Committee of IOSCO, the International Organisation of Securities Commissions. And second, I will talk about Trans-Tasman convergence mainly as the Chairman of New Zealand's Securities Commission. In fact, each role gives much the same perspective on securities market regulation in the early 21st Century, such is the nature of globalisation.

Global Trends

In Europe and North America, and in Sydney and Wellington, securities regulators are acutely aware of the same fundamental market trends - rapid growth of private sector capital flows within and across national borders, and increasing diversity and complexity in the economic and legal structures employed by market participants. We live in a global market for investment capital. This is, of course, an outgrowth of widespread economic deregulation over the past two decades, and of booming international business and trade.

Globalisation - embraced by most but also despised by some - is a fact of life for securities regulators worldwide. Most would share the perspective of Sweden's Prime Minister, Goran Persson, chair of an OECD Ministers' Forum on the subject earlier this month. Mr Persson gave this succinct view:

“Globalisation offers great opportunity for all mankind. Our task is to seize on the potential of globalisation while combating its costs and disadvantages.”

Securities regulators everywhere can see the potential of globalised capital markets to help fuel economic growth and prosperity. It is our particular task to promote and protect the integrity and stability of those markets so the potential can, indeed, be seized by investors, business people and all others.

In the world view of IOSCO, integrity and stability can be maximised where markets operate with fairness, efficiency and transparency, where investors are protected against fraud, and where systemic risks are properly identified and managed. These are the organisation's core objectives, to be discussed more fully soon.

We securities regulators also recognise Mr. Persson's globalisation "*costs and disadvantages*" in the shape of market conduct that undermines fairness, efficiency, transparency and investor confidence. We know how vulnerable these are in the face of poor market conduct whether it be: weak corporate governance within entities that issue investment securities; failures in accounting or auditing information provided to investors; or criminal fraud and deception. These and other forms of poor conduct strip away integrity and stability. And with the globalisation of capital markets, they become harder for regulators to detect and to combat. In addition, the costs of poor conduct and market instability are, of course, magnified where investors and economic structures are global.

The financial scandals at Enron and elsewhere in recent years have been a real wake up call for policy makers and regulators, at both national and international levels. IOSCO set up a Task Force last year to investigate the regulatory issues raised by these scandals (in particular, the collapse in late 2003 of Italian dairy company Parmalat) which threw suspicion of poor market conduct on to banks and others across the globe. The Task Force's February 2005 report on protecting capital markets against fraud exposed an array of issues behind the scandals - poor corporate governance, failures in auditing and securities issuer disclosure, deficiencies in bond market oversight, the dubious use of complex corporate structures, and questions over the conduct of market intermediaries and analysts. A daunting list!

With all that has happened in recent years, and the level of discussion now occurring, securities regulators in most parts of the world have a much clearer grasp of the challenges to integrity and stability in capital markets, including the globalised market all around them. There is a collective focus on raising standards of conduct, on aligning individual country regulatory frameworks to world-best standards and on increasing cross-border cooperation for regulatory enforcement.

IOSCO Strategy

IOSCO, I am pleased to say, is showing clear leadership. Last month, our annual conference in Sri Lanka was very successful in confirming and extending the organisation's broad strategy to address the issues listed previously and also new issues as they emerge in globalised markets.

For those not so familiar with the organisation, I should at this point provide some relevant background. IOSCO is the world's leading forum for standards setting and cooperation on all matters of securities regulation. Its members include securities regulators and other relevant national bodies from more than 100 countries. Coverage is, in fact, more than 90% of the world's securities markets and rising. Armenia, Gibraltar and Montenegro joined last month. Indeed, our spread of members is exceptional among international organisations and one of IOSCO's real strengths.

I am privileged to Chair the 19-member Executive Committee, IOSCO's principal governing body, along side its Technical Committee and its Emerging Markets Committee. The Technical Committee drives standards setting programmes and the Emerging Markets Committee promotes efficiency in those markets.

IOSCO is well recognised for its unique role in the global financial community. We work with the Basel Committee on Banking Supervision and the International Association of Insurance Supervisors within a body known as the Joint Forum. This deals at the highest level with cross-sectoral issues including, for example, credit risk transfer and financial disclosure standards. As another mark of IOSCO's standing, the International Monetary Fund (IMF) now draws on our work in its Financial Sector Assessment Program for countries worldwide - and I will talk more about this later in the distinctive New Zealand context.

IOSCO's three core objectives have already been mentioned. It promotes regulation

- to protect investors;
- to make markets fair, efficient and transparent and
- to reduce systemic risk.

These are embodied in our Objectives and Principles of Securities Regulation. This core document of IOSCO, adopted in 1998, has been accompanied ever since by a strong expectation that all members will implement the Objectives and Principles in their respective jurisdictions. The 30 Principle statements, along with related standards and benchmarks established for regulation on specific issues, will remain fundamental to the strategy of IOSCO for the foreseeable future.

At last month's conference, members confirmed the absolute importance of the Principles and the need for implementation as widely as possible. We adopted operational measures to hasten the latter in countries which have until now lacked the resources or the will to make significant progress. The other fundamental element of IOSCO strategy is increased international cooperation on matters of information exchange and enforcement. By building robust frameworks and processes for this cooperation, we are providing individual regulatory agencies with more tools to combat the costs and disadvantages of globalisation in capital markets.

International Cooperation

IOSCO adopted the Multilateral Memorandum Concerning Consultation and Cooperation and the Exchange of Information in May 2002. It is a mouthful, usually shortened to "the MOU", and it gives detailed expression to some of our key Principles. As members progressively sign on to the MOU, they will create an expanding network for cooperation - cooperation that should, over time, become seamless with the home jurisdiction information gathering and enforcement activities of each regulator.

To date 27 IOSCO members have signed the memorandum, having demonstrated that they have the legal authority and operational capabilities required to participate in the network.

For some regulators, even in prominent developed nations, qualification to become a signatory has required, or still requires, legislative reform in their local jurisdiction. Each party to the MOU must be able to respond in a timely, efficient and meaningful manner to others' requests for assistance. I should add that Australia and New Zealand are both among the 27 signatories.

There has been growing recognition within IOSCO, fuelled by those high profile financial scandals, that the MOU is critically important to the future of the organisation as well as the effectiveness of individual members. I was personally extremely pleased when our conference confirmed this view and took decisions to force the pace to increase the number of signatories.

Indeed, we have set a deadline of 1 January 2010 for all IOSCO members to come under the MOU. They must either become full signatories under appendix A of the document, or sign on to appendix B which means formal commitment to achieve signatory status within a reasonable period thereafter. Conference agreement on the deadline was a major milestone for IOSCO as an organisation. Given all that I have said so far, the MOU is destined to become the single most important tool available to member regulators as they look out into the globalised capital markets. It may already be so! Certainly the New Zealand Securities Commission, for one, has made good use of the network for cooperation with other securities regulators on serious matters of enforcement under our securities law.

Trans-Tasman Coordination

Let me turn now to regulatory trends in the trans-Tasman context. In New Zealand, we see the bilateral relationship as, on the one hand, very special, and on the other hand, entirely consistent with our commitments to the wider global community of regulators. Given the close nature of Australia-New Zealand relations, you would expect significant coordination in securities regulation, and in the operations of the Securities Commission and the Australia Securities and Investment Commission (ASIC). This is indeed so, although more remains to be done.

Closer Economic Relations, dating from the CER Treaty in 1983, has been a sound basis for Trans-Tasman growth in trade and investment, and for ongoing collaboration between national governments and public agencies. Official figures show just how important each country is to the other when it comes to capital investment - 36% of all Australia's foreign direct investment is in New Zealand and the comparable percentage for New Zealand investment into Australia is 53%. We are two countries who definitely cannot ignore each other, even if we wanted to, and I speak here as an Australian who is very proud to be working for New Zealand and representing that country in international forums.

In securities regulation, we have had to keep pace with the growth of trans-Tasman investment and with capital flows between us. Economic and capital market realities have undoubtedly, at times, run ahead of regulatory decision making and action. In recent years, "coordination" has become the by-word for aligning governmental and regulatory systems under the CER umbrella. The 2000 joint Memorandum on Business Law Coordination made it clear that "... *coordination does not necessarily mean the adoption of identical laws but rather finding a way to deal with any differences so that they do not create barriers to trade and investment*".

As many here will know, Australia and New Zealand have numerous work streams underway for coordination, and in some instances integration, of laws, rules and institutional structures. In April strong contingents of politicians, business people and regulators from both sides of the Tasman met to discuss the creation of a common economic market at the Leadership Forum in Melbourne. Banking supervision has made most headlines in Wellington recently. A trans-Tasman working group has been looking at the best ways to integrate the prudential supervision of banks in the two countries. I offer no views on this although will be very interested to know how the policy debate evolves.

In securities regulation, ASIC and the New Zealand Commission regularly share information particularly in relation to investment scams that sometimes play out on both sides of the Tasman. With reference to IOSCO's MOU on cooperation, we two agencies are obviously well placed to expand our exchanges and to extend cooperation on enforcement matters. Last July, we took the historic step of holding a joint session of both ASIC and the Commission, and at this we had constructive discussion on how to extend that cooperation. Staff in both agencies are working on joint strategies for enforcement and investor education. I should note that ASIC has broader responsibilities than the Commission does in relation to protecting consumers and creditors. Our focus in New Zealand is predominantly on securities issuers and investors, although the difference is not material when it comes to trans-Tasman cooperation on securities market matters.

We are now also working on a proposed scheme for cross-border mutual recognition for securities offerings. This would allow offerings in either Australia or New Zealand to be simultaneously extended to investors in the other country. The issues involved are complex because of the very nature of market conduct regulation.

Conduct regulation proceeds on the basis of disclosure of information and risks around investment products. Mutual recognition of securities offerings must, therefore, involve mutual recognition of disclosure standards as they apply to an initial offering and to an investment throughout its life. We already have in place a scheme under which the Commission or ASIC can grant exemptions from certain securities law requirements for some offerings. The adoption of a formal mutual recognition scheme would bring the agencies still closer together and share regulatory responsibility in respect of cross-border investments.

New Zealand Perspective

From the New Zealand perspective, alignment with Australia is a welcome development that builds on domestic securities market reform since the late 1980s and that recognises the reality of growth in the trans-Tasman capital market. From this perspective also, convergence with Australia demonstrates our commitment to implementing IOSCO principles and standards.

New Zealand is a small economy, keen to attract and hold international investment. It has everything to gain from soundly-based cooperation with Australia and, at the same time, from ensuring that its securities regulation meets the world-best standards established by IOSCO.

Conversely, it has plenty to lose from any erosion in standards or diminution of reputation as a safe and rewarding destination for global capital. In short, New Zealand policy makers are acutely aware of both the opportunities and challenges posed by trends in global capital markets. In this context, we have no doubt about the worth of IOSCO in helping guide New Zealand's regulatory development and in providing benchmarks to measure the progress.

In late 2003, the IMF undertook a Financial Sector Assessment Programme (FSAP) in New Zealand. It involved a comprehensive review of the country's financial system including the supervision of banks and the regulation of securities markets. The FSAP objective when applied to any country (and I believe Australian has yet to be subject to the same scrutiny) is to shed light on risks of financial system instability and of erosion in market integrity. The IMF team concluded that overall New Zealand was in a strong position.

We were, of course, most interested in its detailed assessment of securities regulation. This showed that only two of the 30 IOSCO Principles were not yet implemented in New Zealand. The two areas of divergence were in the regulation of financial intermediaries and of collective investment schemes. Reform is on the agenda in these areas. As the IMF noted, New Zealand is moving to implement IOSCO Principles across the board through legislation which is currently before Parliament in Wellington. This legislation creates comprehensive prohibitions on market manipulation and insider trading, provides the Commission with stronger enforcement powers and introduces higher penalties for offenders.

Conclusion

In this speech, I have outlined how securities regulators are responding to globalisation of capital markets. Financial scandals have injected urgency into the ongoing development of principles, standards and structures for promoting good conduct, and thereby protecting capital market stability and integrity. New Zealand is working within both the context of IOSCO and its trans-Tasman relationship to achieve securities regulation at world-best levels.

IOSCO has developed a clear vision for the future. Its Principles and standards are implemented in capital markets across the globe. Its Multilateral MOU enables member regulators to become part of a seamless network of international cooperation on information exchange and enforcement.

Of course, complex issues will continue to emerge in capital markets, bringing new risks to stability and integrity. In our vision, IOSCO develops further as an organisation capable of detecting issues and risks as they emerge and initiating effective responses. It is a vision easily shared by New Zealand, and indeed, we are committed to making the vision a reality in our part world through cooperative partnership with our Australian neighbour.

Thank you.