

Proposal to the Presidents Committee



Date: 31 March 2011

To: Presidents Committee

From: Executive Committee Chairman and Secretary General

Agenda Item: 3c

Subject: Proposal for a new Committee Structure for IOSCO and potential Amendment to the IOSCO By-Laws

Background

An Executive Committee Task Force on the Review of IOSCO's Strategic Direction (TFSD) was set up in 2009 to review the organisation's strategic direction, its capacity to achieve it and to provide any related recommendations to the Executive Committee.

The Executive Committee agreed and communicated from an early stage to the general membership that it would take a two-stage approach to the strategic review. The first stage settled the substance of the overall Strategic Direction as endorsed last year. The second stage was to consider how this should be implemented in detail. Consultation of members on a new Committee Structure started in August 2010 and has continued through discussions at various meetings.

This was discussed at the meetings of various committees and culminated in a decision of the Executive Committee at its meeting of January 2011 to present the resulting proposal for establishing a single IOSCO Board for endorsement by the Presidents Committee.

Introduction

IOSCO has been actively engaged in an intensive exercise to review its Strategic Direction in the context of the change in the financial regulatory landscape following the crisis. Members have expressed a strong desire to scale up IOSCO's activities, especially in the areas of implementation, standard setting, research and addressing systemic risk issues. At the Presidents Committee meeting in June 2010 in Montreal, members adopted a resolution setting out IOSCO's new mission and strategic goals for 2010 to 2015 and a resolution on the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MOU).

IOSCO's new strategic direction involves new activities, such as building an independent IOSCO research capacity, and the intensification of carefully selected

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activities such as building upon the successful IOSCO MOU and the acceleration of the assessment program of IOSCO's Objectives and Principles.

Through the consultation on Internal Consultation Paper VII on Proposed New Committee Structure of IOSCO, members expressed broad support for a proposed new committee structure of IOSCO¹.

The consensus of the members is that it is important and urgent for IOSCO to revise its committee structure to have a single IOSCO governing committee, to be called the IOSCO Board which will merge the functions of the Executive Committee, Technical Committee and the Emerging Markets Committee Advisory Board. The new committee structure will allow the IOSCO Board to be better aligned with IOSCO's three key functions: Policy and Standard Setting; Regulatory Capacity Building and Market Development; and Coordination, Research and Outreach. It is also considered prudent to have a transition period from 2012 to 2014 to make the necessary arrangements for determination of the composition of the final IOSCO Board, which is expected to be accomplished in 2014.

Proposal to the Presidents Committee: creation of an IOSCO Board

The Executive Committee proposes the creation of a new single committee for IOSCO that sets the strategy, takes decisions on IOSCO's key activities and represents IOSCO to the outside world. This single committee will have the name "**IOSCO BOARD**". The IOSCO Board will subsume the functions of the current Technical Committee, Executive Committee and Emerging Markets Committee Advisory Board (EMCAB).

There are three main reasons for the proposal of a new structure. The Executive Committee believes that the quality and timeliness of IOSCO's standard setting work and the implementation of these standards globally can be improved by rationalizing IOSCO's structure in such a way that it can focus more on its key functions. Secondly, as the securities markets we regulate, and the participants in them, are increasingly interlinked and securities regulators across the globe share common problems, it is important to establish an effective IOSCO-wide governance body for all of IOSCO's core functions while retaining the capacity to respond to tailored capacity building needs of emerging markets. The third reason is that there is an increasing need for IOSCO to contribute with a clear and coherent voice in global discussions within the G20, the Financial Stability Board (FSB), and with the international financial institutions (IFIs). These reasons suggest that the current structure, which is built on a distinction between the interests of members in developed markets (represented by the Technical Committee) and emerging markets (represented by the Emerging Markets Committee), is no longer structurally sound.

¹ Details of the comments made on Consultation Paper VII and responses to them are contained in the Summary of Comments on Consultation Paper VII posted on the IOSCO Members' Forum.

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The final constitution of the IOSCO Board is expected to be determined by the Presidents Committee in 2014. As mentioned above, it is proposed to have a transition period from 2012 to 2014. The constitution of the IOSCO Board during this transition period will be as follows:

- It will include the existing Technical Committee members (18 members);
- It will include the Chair and the Vice-Chair of the Emerging Markets Committee (EMC) , elected on the occasion of the 2012 annual meeting; and
- It will include the Chairs of the four Regional Committees plus two extra members from each region elected on the occasion of the 2012 annual meeting.

The transitional IOSCO Board will have a total of 32 members. If the Chairman of a Regional Committee is a member of the existing Technical Committee, that Regional Committee will be entitled to elect one more ordinary member to the transitional IOSCO Board in addition to the 2 ordinary members elected by it.

A necessary consequence of having an even number of members at the IOSCO Board is for having a mechanism to break a tie. It is therefore proposed that the Chairman of the IOSCO Board should have a casting vote in the event of a tie. However, the intent of the membership is to maintain IOSCO's consensus approach whenever possible and therefore the Board should try to avoid situations where the Chairman is forced to break a tie.

The Technical and Executive Committees will cease to exist on the constitution of the transitional IOSCO Board. With the inclusion in the IOSCO Board of the EMC Chair and Vice Chair and representatives from the Regional Committees, and with the merger of the functions of the EMCAB into the new IOSCO Board, the interests of members from the emerging markets will be represented in the main decisions of the organization. However, the EMC will continue to exist so as to focus on, among other issues, giving input to the IOSCO Board on the market development and regulatory capacity building function of IOSCO. This is because there is a difference in capacities and the specific development needs of emerging and developed markets. The different levels of development within the EMC's membership will also be taken into account by the EMC when defining its work program and priorities. Further, the Executive Committee envisages continuing to use EMC Conferences, in addition to the annual conferences, to facilitate contact with the EMC membership, updating them on recent regulatory developments, and eliciting their development needs.

During the transition period consideration will be given to what objective measures might better be used to determine the participation in the IOSCO Board of the members which regulate the largest capital markets, such as GDP or a basket of market-based indicators (e.g. market capitalisation, derivatives turnover, size of bond market); and

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whether the constitution of the IOSCO Committee permits adequate contribution from the whole membership, including emerging markets.

As mentioned above, during the transition period the IOSCO Board will have 32 members. This is a substantial increase in the size of the current Technical Committee, Executive Committee or Emerging Markets Committee Advisory Board, and therefore will enable the participation of a larger number of members. However, the size of the IOSCO Board should ultimately be reduced to not more than 30 members in order for it to operate efficiently.

The transitional IOSCO Board will consider these issues during the transition period and revert to the Presidents Committee with a proposal for the ongoing constitution of the IOSCO Board, taking into account these considerations.

Draft Resolutions

Two resolutions have been prepared to give effect to the Executive Committee proposal. The first resolution, at Annex-1, makes changes to the by-laws. It:

- Deletes references to the Executive Committee and Technical Committee, and replaces them with references to the IOSCO Board;
- Deletes Sections 17, 18 and 19 which dealt with the constitution of the Executive Committee, and replaces them with a section (new Section 17) which specifies that the composition of the IOSCO Board will be determined by a formal resolution of the Presidents Committee;
- Deletes former Section 29 which provides for the voting system for the present Executive Committee;
- Amends Section 44.2 to provide for a casting vote in the event of a tie, which is necessary because the transitional IOSCO Board will have an even number of members;
- Amends Section 54 to replace the term “General Assemblies” which is not elsewhere used in the By-laws, with the term “Annual Meetings”, which means the same thing and is the term used in Part 4 of the By-laws;
- Amends Section 81 to refer to the role of any Audit Committee created by the IOSCO Board;
- Amends Section 82 to enable this proposal to be used as explanatory material to assist interpretation of the By-laws;
- Makes minor amendments to other Sections to recognize the continuing effect of By-law changes made in 1996.

The second resolution, at Annex 2, establishes the transitional arrangements for the IOSCO Board until the final constitution of the IOSCO Board is determined. This resolution carries into effect the present proposal, as authorised by proposed Section 17 of the By-laws.

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Dates of effect:

The amendments to the by-laws will take effect at the annual meeting in 2012. The draft resolution at Annex-1 also provides for taking any steps that may be needed before the Annual Meeting in 2012 so that the changes in by-laws can be given effect to at the 2012 Annual Meeting. Such steps may include seeking nominations for elections by the Regional Committees/EMC to the IOSCO Board, other logistical issues relating to the conduct of the 2012 Annual Meeting which will include meeting(s) of the transitional IOSCO Board and similar steps. Therefore the Resolution at Annex 1 itself will come into effect immediately after it is passed by the Presidents Committee in April 2011.

Similarly, the Resolution at Annex 2 will come into effect immediately after it is passed by the Presidents Committee in April 2011 as that resolution also provides for taking any steps that may be needed to be taken before the Annual Meeting in 2012 for establishing the transitional IOSCO Board in 2012. However, the transitional IOSCO Board will come into effect at the Annual meeting in 2012 after it is constituted following the designation of representatives to that Board from the EMC and Regional Committees.

A consequence of creating the transitional IOSCO Board at the Annual Meeting in 2012 will be that the Executive and Technical Committees will not elect their office-holders (i.e. their Chairman and Vice-Chairman) as stipulated by Section 25 of the By-laws since these Committees will cease to exist at that Annual Meeting following the constitution of the transitional IOSCO Board.

Recommendation to the Presidents Committee

- The Executive Committee recommends that the Presidents Committee **endorses the proposed new structure of IOSCO set out herein and adopts the attached Resolution at Annex 1 approving the by-law changes to create a single IOSCO Board and make related changes in IOSCO's governance structure in 2014.**
- The Executive Committee also recommends that the Presidents Committee **endorses the attached Resolution at Annex 2 reflecting the transitional arrangements for the IOSCO Board to be constituted at the Annual Meeting in 2012.**

Procedure with regard to Resolutions and Amendment to the By-Laws:

Section 35 of the By-Laws stipulates that a majority of the ordinary members attending the Annual Conference constitute a quorum of the Presidents Committee.

Section 36.1 states that:

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“36.1 Except in extraordinary circumstances, Resolutions on policy matters arising from the work of the Committees of the Organization must be submitted to the Secretary General at least 14 days prior to the first meeting of the Presidents Committee during the Annual Meeting. The Secretary General must then circulate the Resolutions to members of the Committee².”

Section 36.3 stipulates that any amendment to the By-Laws must have the support of 2/3 of the members in attendance.

Section 36.4 of the By-Laws stipulates that any resolution of the Presidents Committee, other than an IOSCO By-Law amendment, must have the support of the majority of the voting members in attendance.

² Presidents Committee