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IOSCO – via electronic submission to consultation-2014-09@iosco.org

DTCC Public Comment on the IOSCO Task Force on Cross-Border Regulation Consultative Report CR09/2014 (the “Consultation”)

Dear Ms Tendulkar

The Depository Trust & Clearing Corporation (‘DTCC’) would like to thank the IOSCO Task Force for providing this opportunity for industry participants to comment on the content of its research as provided in this consultation.

DTCC is pleased to offer its views based on its varied experience as:

- A leading provider of cross border Trade Repository reporting services for the global OTC and Exchange Traded derivatives space directly in Australia, Canada, the European Union, Japan, Singapore and the United States, as well as agency reporting services in Hong Kong,
- the operator of two US clearing houses (National Securities Clearing Corporation, NSCC, and Fixed Income Clearing Corporation, FICC) currently applying for 3rd country CCP recognition under the terms of the European Market Infrastructure Regulation, EMIR.

In this regard, we provide services in multiple jurisdictions on a cross border basis and have experienced directly, many of the issues identified in the consultation.

Yours sincerely

Larry Thompson
Vice Chairman and General Counsel

Comments

Having read the consultation, there are a number of specific areas in which we would seek to offer constructive comment:

Regulatory cross border 'relations'

As discussed in the consultation, the three main tools that are used by the global regulatory community when applying regulation are national treatment, recognition, and passporting and as stated, each has a number of advantages and disadvantages. Given that the financial markets have been and continue to become increasingly global, we believe there is a reducing case for the sole reliance on national treatment. Of more relevance, particularly in the light of the G20 drive for increased transparency in parallel with the globalization of markets through the interconnectedness of participants, is an increasing focus on recognition and passporting on the assumption that global regulatory harmonization is not feasible at the present time.

Regulatory Data sharing

We have seen the recent example of MAS and ASIC signing a milestone MoU on cross border data sharing (<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2014/ASIC-and-MAS-sign-World-First-Memorandum-of-Understanding.aspx>) and we hope that this is the first of many such agreements, without which the original G20 mandate on global transparency will not be achievable.

As the Task force has identified however, this raises issues of trust between regulators and highlights specific problems, such as the lack of a global dispute resolution mechanism, the existence of legal restrictions and the lack of harmonized requirements that must also be addressed. In this regard, we firmly support the work initiated under the recent FSB Peer Review and the CPMI-IOSCO Working group for harmonization of key OTC derivatives data elements, which we believe will facilitate the global harmonization of reporting requirements and, we hope, lead to an increased focus on potential regulatory harmonization in a broader sense.

Regulatory Timing

There are 2 key elements to timing of regulation:

1. *Timing between jurisdictions:* Where jurisdictions are creating regulation related to similar areas of activity, harmonization of implementing timetables can assist in the avoidance of potential regulatory arbitrage. International organizations such as IOSCO can clearly act as a facilitator of international dialogue in regard of achieving such harmonization where appropriate.
2. *Timing of regulation vs standards:* Typically, standards have been identified after a regulation has been agreed. As an example, in Europe we typically see the development of standards as a post-primary regulation activity in the form of Implementing and Regulatory Technical Standards (ITS/RTS). We believe that this timing should be reversed where possible and standards should be agreed ahead of regulation with the regulation reinforcing the use of specific global standards where appropriate. A good example of this is the Legal Entity Identifier

(LEI) where a clear global standard exists but is not fully supported or implemented on a global basis. In this regard, we are fully supportive of the current FSB consultation into Standards and Processes for Global Securities Financing Data Collection and Aggregation, dated 13 November 2014, which should assist greatly in the creation of an SFTR regime in Europe that would be compatible with similar regimes adopting the same standards. Similarly, the CPMI-IOSCO consultation on key data elements for the OTC derivatives markets should provide a level of global consistency which is welcomed. We would encourage the development of more of such standardization initiatives from international bodies including CPMI-IOSCO and the FSB.

Regulatory resourcing

A common theme in the consultation is reference to resource constraints among the regulatory community. This may be in the form of physical numbers of staff or in the form of local understanding of other regulatory regimes. In this regard, secondment programs between regulators may address at least the latter constraint. As a participant in the global markets, we have seen this work to great effect specifically between EU and Asian authorities where there has been a degree of staff interchange. We believe this has been very helpful in promoting an understanding of the regulatory philosophies and cultures behind certain regulations, and can go some way to addressing the trust issues identified in the consultation.

Regulatory outcomes

The importance of the focus on regulatory outcomes as an approach to cross-border equivalence is a recurring theme throughout the consultation and we cannot emphasise enough, our certainty that such a focus represents the most efficient way to achieve cross border regulatory coherence. As above, however, this introduces issues of trust between regulators and in this regard, a more open global dialogue is vital. In this regard, secondment programs such as those referred to above can provide great benefit, as would the formalisation of IOSCO as a central forum for global regulatory discussion both between regulators themselves, but also between regulators and regulated entities.

On equivalence specifically, it is DTCC's view that any determination of the equivalence of a regulatory regime applying to a third-country entity/Financial Market Infrastructure (FMI) should be based on whether the regulatory and supervisory framework establishes objective and transparent criteria for the establishment and operation of the third country FMI; provides for an effective level of scrutiny and oversight of the third country FMI by its home regulator; and produces regulatory outcomes which are consistent with applicable standards set out in the Principles for Financial Market Infrastructures (PFMIs) established by CPMI-IOSCO.

Conclusion

The consultation identifies 8 activities where IOSCO could play a key global role. We have identified in our comments, areas where we think these activities could add specific value and look forward to working with IOSCO in the future on initiatives aimed at improving the safety, transparency and efficiency of global financial markets.

Finally, as a practitioner in the cross-border space, we have also identified a similar range of issues captured in a recently published white paper which we would refer the Task Force for more details on many of the issues identified.

We have included a link here for your convenience.

http://www.dtcc.com/~media/Files/Downloads/WhitePapers/GTR_WhitePaper_Jan2015.pdf