Good Practices on Processes for Deference

Report

The Board
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EXECUTIVE SUMMARY

In June 2019, IOSCO published a report on *Market Fragmentation and Cross-Border Regulation* (the 2019 Report) which examined harmful, unintended market fragmentation in wholesale securities and derivatives markets.[1] Among other things, the 2019 Report considered practical steps IOSCO and its members could take to mitigate the adverse effects of this type of fragmentation and further strengthen cooperation between regulatory authorities.

The G20 has previously stated that jurisdictions and regulatory authorities should be able to defer to one another when it is justified by the quality of their respective regulatory and enforcement regimes, based on similar outcomes, in a non-discriminatory way and paying due regard to home country regulatory regimes.[2] The 2019 Report explored this concept of deference, particularly how its use has evolved in recent years and the lessons that could be learned from how members have applied tools such as substituted compliance, recognition and passporting.[3]

The 2019 Report found that deference between regulators, through the use of cross-border regulatory tools, has significantly increased in recent years, in parallel with increased supervisory and enforcement cooperation. While these developments have helped mitigate some instances of harmful market fragmentation, certain challenges remain. Some of these challenges relate to the underlying processes that authorities rely on to make deference determinations. As a result, the 2019 Report suggested there may be benefit in identifying good and sound practices to make the processes for deference determinations more efficient. IOSCO has identified a number of good practices (the Good Practices), which are the subject of this 2020 Report.[4]

To inform the development of these Good Practices, IOSCO conducted a survey of IOSCO Board Members and Observers, the European Commission (EC) and Members of the Committee on Payments and Market Infrastructures (CPMI)-IOSCO. IOSCO also made use of the deference assessments shared by its members through its repository on deference decisions and, where appropriate, has reviewed external publications.

While this Report notes that there is no "one-size-fits-all" and that not every Good Practice may be applicable in all jurisdictions or in all circumstances, it nevertheless sets out a series of Good Practices with the aim of assisting members in establishing and operating efficient deference

1 https://www.iosco.org/library/pubdocs/pdf/IOSCOPD629.pdf

2 http://www.g20.utoronto.ca/2013/2013-0906-declaration.html. While the G20 Declaration was made in the context of the regulation of OTC derivatives markets, the 2019 Report and the Follow-Up Group have explored market fragmentation in the wholesale securities and derivatives markets.

3 The term "deference" is used here, as it was in the 2019 Report, as an overarching concept to describe the reliance that authorities place on one another when carrying out regulation or supervision of participants operating cross-border. The term is used here in a generic manner and is not intended to refer to the legal framework of any single jurisdiction or regulatory mechanism that may be employed to achieve such deference.

4 Consistent with IOSCO's taxonomy, the Good Practices identified in this Report should be understood as practices that regulators could consider in carrying out their regulatory activities. Such practices would not be reflected in IOSCO's Methodology as they do not represent a standard that IOSCO members are necessarily expected to implement or be assessed against but could be adaptable for use by IOSCO members.

processes that are easily understood by entities being assessed for deference – both authorities and/or firms -- without prejudice to the existing legislative requirements or frameworks that authorities have in place.

The Good Practices identified in this Report cover all phases of deference assessments – from the initial stages to the processes put in place once an assessment determination has been made. They derive from a general consensus by members on the foundational philosophy behind deference determinations and the processes that underpin them, namely that such processes are typically:

I. Outcomes-based – many authorities evaluate whether and to what extent a foreign regulatory, supervisory and enforcement regime achieves outcomes that are generally similar to those achieved by the domestic regime in terms of investor protection, market integrity and the reduction of systemic risk.

II. Risk-sensitive – depending on factors such as the jurisdictional reach or the materiality of risks to domestic participants involved, an outcomes-based assessment, where it occurs, may be adjusted to the scope and the market impacts of allowing access to foreign entities. For example, in-depth analysis and more granular scrutiny may be appropriate in certain cases. In other scenarios, authorities in assessing jurisdictions may decide that they can permit market access for a foreign firm without conducting a deference assessment, for example when the activities of the foreign firm do not exceed a pre-determined threshold, thus building in risk-sensitivity differently.

III. Transparent – authorities generally endeavor to ensure that all parties are informed about the process and criteria they will be subject to as they undergo a deference determination and the criteria and process for withdrawing deference once granted.

IV. Cooperative - underpinned by strong, ongoing regulatory, supervisory and enforcement cooperation – a formalized approach of cooperation (e.g., Memoranda of Understanding (MoUs) or similar arrangements) between authorities is usually a pre-requisite when deference is to be granted. As noted separately in the context of financial market infrastructures (FMIs), authorities with strong, trusted relationships are better able to fully realize the benefits of cooperation and successfully achieve a shared objective.[5]

V. Sufficiently flexible – to allow an assessed jurisdiction to make changes to its legislative or regulatory framework without its positive deference determination being revoked or amended, provided the assessed jurisdiction can demonstrate to the assessing jurisdiction that similar outcomes continue to be assured.

The Good Practices build on this foundational philosophy and focus on issues such as:

[5] Responsibility E of the CPMI-IOSCO Principles for Financial Market Infrastructures (PFMI) describes how authorities should cooperate with each other, but does not prescribe the scope, form or intensity of cooperation. Authorities have flexibility in how they may achieve expected outcomes. See https://www.iosco.org/library/pubdocs/pdf/IOSCOPD644.pdf.

- arrangements assessing authorities could consider for ensuring transparency of deference processes, including the scope, steps and criteria.
- the criteria that assessing authorities could consider when making an outcomes-based assessment of the assessed authority and/or firm, including the nature of the supervisory and enforcement practices in the assessed jurisdiction.
- considerations for assessing authorities around important factors such as the nature and degree of risks that entities from another jurisdiction may pose in their markets.
- considerations around the level of engagement, cooperation and communication between the assessing authority and the assessed authority and/or firm throughout the process and once deference has been granted.
- considerations for jurisdictions with regard to revocation of a deference determination.

A full list of Good Practices is set forth in Annex 1 of this Report.

Chapter 1 – Introduction

Background

To assist in the formation of efficient capital flows globally, authorities often seek to balance three important considerations -- (1) facilitating market access to foreign market participants seeking to conduct business on a cross-border basis, (2) maintaining appropriate levels of investor protection and (3) managing systemic risks.

IOSCO recognized these considerations when it first addressed the question of deference in its 2015 Report on Cross-Border Regulation (2015 Report). There, IOSCO set forth a toolkit of three broad types of approaches for cross-border regulation:[6]

- **National treatment**, which aims to create a level playing field between domestic and foreign firms within one jurisdiction and provides direct oversight to the host regulator. Within this context, jurisdictions may make use of **exemptions** from their regulatory framework or use **substituted compliance**[7] to mitigate the duplication of rules a foreign entity is required to follow.
- **Recognition,** which is based on a jurisdiction's assessment of a foreign regime as equivalent to its own and therefore minimizes duplicative regulations for firms doing cross-border business.[8]
- **Passporting,** where one common set of rules is applicable to jurisdictions covered by the passporting arrangements and provides a single point of entry for firms wishing to operate within these jurisdictions.

In 2019, the Japanese Presidency of the G20 identified market fragmentation as a priority issue on its financial regulatory agenda. At the Presidency's request, IOSCO undertook further work on cross-border regulation to identify how the use of these cross-border tools had developed since publication of the 2015 Report.

IOSCO's 2019 Report identified instances where significant and potentially harmful fragmentation of wholesale securities and derivatives markets had taken place as an unintended result of regulatory differences and made suggestions on how to remedy some of the identified challenges.[9] However, the 2019 Report also found that deference between regulators through the use of cross-border regulatory tools, particularly those identified in the 2015 Report, has increased significantly. Bilateral arrangements in the form of MoUs are now a common tool used by regulators, particularly with respect to exchanges of information. Regulators also have

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6 https://www.iosco.org/library/pubdocs/pdf/IOSCOPD507.pdf

7 Substituted compliance generally allows a jurisdiction to rely on a foreign entity's compliance with another jurisdiction's rules.

8 This Report uses the terms "recognition" and "equivalence" as synonyms. However, EU legislative acts use the word "equivalence" to signify an assessment at jurisdictional-level while the word "recognition" is used to signify an assessment at entity-level.

9 https://www.iosco.org/library/pubdocs/pdf/IOSCOPD629.pdf

developed novel processes to work multilaterally to the benefit of the markets they oversee. Despite these successes, the 2019 Report also noted that some challenges remain and strengthening cooperation between regulatory authorities could further assist in addressing effects on the financial system stemming from harmful market fragmentation.

Some of the challenges identified in the 2019 Report relate to the underlying processes authorities rely on to make deference determinations. The 2019 Report suggested there may be benefit in identifying good and sound practices that some IOSCO members use today in conducting deference assessments, which could be considered by others to make processes of the three types of broad cross-border regulatory approaches for deference determinations more efficient. This Report sets out the Good Practices that IOSCO has identified.

This Report – Identifying Good Practices

The Good Practices outlined in this Report have been identified on the basis of a survey conducted earlier this year of IOSCO Board Members (including Board Observers),[10] the EC, and participating members of the Committee on Payments and Market Infrastructures (CPMI).[11] IOSCO has also considered the deference assessments shared by its members through its repository on deference decisions and has reviewed external publications.[12]

Consistent with IOSCO's taxonomy, the Good Practices identified in this Report should be understood as *practices that regulators could consider in carrying out their regulatory activities. Such practices would not be reflected in IOSCO's Methodology as they do not represent a standard that IOSCO members are necessarily expected to implement or be assessed against but could be adaptable for use by IOSCO members.*[13]

This Report recognizes that there is no "one-size-fits-all" and that not every Good Practice may be applicable in all jurisdictions or in all circumstances. However, these Good Practices could nevertheless represent a helpful way of addressing certain issues.

This Report is divided into three substantive chapters. Chapter 2 focuses on the objectives of deference and provides a brief description of the types of deference determinations that currently exist, building on the 2019 Report. Chapter 3 addresses the Good Practices themselves and sets out how they are currently applied as a way to provide insight into their practical application. Chapter 4 concludes with some final remarks.

These Good Practices could make deference processes more efficient and more easily understood by market participants. As the use of deference continues to increase and evolve

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10 IOSCO Board Observers are the European Securities and Markets Authority (ESMA) and National Futures Association (NFA) as Chair of the Affiliate Members Consultative Committee (AMCC).

11 IOSCO invited CPMI to participate in the identification of these Good Practices as these Good Practices may also be applicable to deference processes relating to market infrastructures. On that basis, CPMI members were also invited to respond to the survey on a voluntary basis.

12 Publications reviewed have included the White Paper on Cross-Border Swaps Regulation by former CFTC Chairman J. Christopher Giancarlo; the CFTC Consultation on Cross-border Application of the Registration Thresholds for certain Requirements Applicable to Swap Dealers and Major Swap Participants(MSPs); the EC's Communication on Equivalence in the area of financial services.

13 IOSCO Taxonomy.

globally, these Good Practices may also need to evolve and be updated accordingly. IOSCO will continue to monitor developments across securities and derivatives markets and jurisdictions with the aim of further encouraging regulatory cooperation and mitigating the risk of market fragmentation and any harmful effects.

Chapter 2 – Objectives of deference and types of determinations

Objectives and benefits of deference

The G20 has previously stated that: "jurisdictions and regulators should be able to defer to each other when it is justified by the quality of their respective regulatory, supervisory and enforcement regimes, based on similar outcomes, in a non-discriminatory way, paying due respect to home country regulatory regimes."[14] Deference therefore could allow authorities in jurisdictions with comparable regulatory, supervisory and/or enforcement standards to promote market access while still effectively overseeing and regulating the cross-border activities of market participants.

IOSCO's survey of regulatory authorities identified that deference can support one or more of the following core objectives:

- Maintaining the orderly functioning of markets,
- Mitigating systemic risk and supporting financial stability, and
- Ensuring adequate investor protection

In addition, deference can also support the following objectives, as identified by some regulatory authorities in their responses:

- Enhancing investor choice,
- Supporting cross-border markets and avoiding unintended and potentially harmful market fragmentation, and
- Ensuring a level playing field between domestic and foreign market participants.

Deference determinations aim to reduce the overlap of potentially duplicative or conflicting regulations and/or supervision and can also provide investors and market participants with wider choices in terms of services, products or investments. Deference can also reduce regulatory arbitrage possibilities and improve efficiencies for regulatory authorities and market participants.

In practice, the extent to which any of the objectives listed above is pursued, and the relative balance between them, depends on various factors, including: the financial sector in question, the type of market participants and domestic regulatory obligations. Other policy considerations such as trade agreement negotiations may also play a role although these considerations are outside the scope of this Report.

Types of deference determinations

As noted above, jurisdictions that defer to one another do so through three broad mechanisms:

- **National treatment**, which aims to create a level playing field between domestic and foreign firms within one jurisdiction and provides direct oversight to the host regulator. Within this context, jurisdictions may make use of **exemptions** from their regulatory

[14] September 6, 2013 St Petersburg Summit G20 Leaders' Declaration.

framework or use **substituted compliance** to mitigate the duplication of rules a foreign entity is required to follow.

- **Recognition,** which is based on a jurisdiction's assessment of a foreign regime as equivalent to its own and therefore minimizes duplicative regulations for firms doing cross-border business.
- **Passporting,** where one common set of rules is applicable to jurisdictions covered by the passporting arrangements and provides a single point of entry for firms wishing to operate within these jurisdictions.

The absence in some jurisdictions of deference mechanisms has varied implications for those market participants engaging in cross-border activities, which may range from an obligation to establish a local entity to registration/authorization in other jurisdictions. In some circumstances, foreign firms would need to subject themselves to the entirety of the regulatory and supervisory regime. This may include requirements beyond the specific activities carried out in that specific jurisdiction.

Where deference mechanisms do exist, the scope of deference determinations may differ. Some jurisdictions' deference determinations are designed to directly facilitate cross-border activities while others may touch upon more specific regulatory issues such as prudential or reporting requirements. Further, these deference determinations may apply to the entire regulatory framework within a financial sector while others may touch upon specific activities only. For example, deference in the clearing sector may be granted for the clearing of certain assets but not others.

How these deference decisions are implemented can also differ. In some circumstances, authorities may undertake deference determinations on a jurisdiction-by-jurisdiction basis ("jurisdictional-level determinations"), thereby facilitating access for all firms located in the same jurisdiction (i.e., regulated providers of financial facilities, services and/or products) within a specific sector from jurisdictions that meet the specified objectives of the determination. In other circumstances, authorities may undertake deference determinations on a firm-by-firm basis ("firm-level determinations") thereby requiring each firm wishing to operate in their jurisdiction to fulfill deference requirements individually.[15] Finally, the scope of deference may also differ between wholesale market services and activities, with more cross-border activity, and, often, more cooperation between regulators may occur, and retail market services and activities which are generally more domestic.

A shared philosophy

As noted above, the G20 has previously stated its support for deference where jurisdictions achieve similar regulatory, supervisory and enforcement outcomes. While it is important to recognize that deference may not be appropriate in all circumstances – in particular where risks

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15 Whereas both types of deference assessments usually include an analysis of the foreign jurisdiction's regulatory and supervisory framework, one of the main differences is the initiation of the assessment, i.e. how a deference process is triggered and the scope of the determination (i.e. whether it applies to all firms from one jurisdiction or to one specific firm). In some cases, the jurisdictional-level deference determination and the firm-level registration/authorization decision are separate processes. For instance, in the EU, in some deference areas, the EC first grants equivalence (jurisdictional-level) before ESMA determines that individual firms from that particular jurisdiction may benefit from deference.

to financial stability or investor protection are considered to be too great by authorities in a particular jurisdiction -- once an authority decides to use deference it may adopt different mechanisms to achieve it. Despite using different mechanisms, IOSCO's 2020 survey found that there is general consensus between jurisdictions on the overall foundational philosophy behind deference determinations and the processes that underpin them.

Specifically, there is general consensus that deference processes are typically:

1. Outcomes-based – many authorities evaluate whether and to what extent the foreign regulatory, supervisory and enforcement regime achieves outcomes that are generally similar to those achieved by the domestic regime in terms of investor protection, market integrity and the reduction of systemic risk.[16]
2. Risk-sensitive – depending on factors such as the jurisdictional reach or the materiality of risks to domestic participants involved, an outcomes-based assessment, where it occurs, may be adjusted to the scope and the market impacts of allowing access to foreign entities. For example, in-depth analysis and more granular scrutiny may be necessary in certain cases. In other cases, authorities in assessing jurisdictions may decide that they can permit market access for a foreign firm without conducting a deference assessment, for example, when the activities of the foreign firm do not exceed pre-determined thresholds, thus building in risk-sensitivity at an earlier stage.
3. Transparent – authorities generally endeavor to ensure that all parties are informed about the process and criteria they will be subject to as they undergo a deference determination and the criteria and process for withdrawing deference once granted.
4. Cooperative - underpinned by strong, ongoing regulatory, supervisory and enforcement cooperation – a formalized approach of cooperation (e.g., MoUs or similar arrangements) between authorities is usually a pre-requisite when deference is to be granted. As noted separately in the context of FMIs, authorities with strong, trusted relationships are better able to fully realize the benefits of cooperation and successfully achieve a shared objective.[17]
5. Sufficiently flexible to allow an assessed jurisdiction to make changes to its legislative or regulatory framework without its positive deference determination being revoked or amended, provided the assessed jurisdiction can demonstrate to the assessing jurisdiction that similar outcomes continue to be assured.

[16] This means that, while the assessing jurisdiction may still conduct a thorough review of the assessed jurisdiction's legislation or regulation, it will focus its attention on the outcomes of the legal texts and supervisory and enforcement practices of the assessed jurisdiction rather than necessarily expect line-by-line comparisons.

[17] Responsibility E of the CPMI-IOSCO Principles for Financial Market Infrastructures (PFMI) describes how authorities should cooperate with each other, but does not prescribe the scope, form or intensity of cooperation. Authorities have flexibility in how they may achieve expected outcomes. See https://www.iosco.org/library/pubdocs/pdf/IOSCOPD644.pdf.

Chapter 3 – Good Practices for Deference Processes

The 2019 Report identified a number of challenges relating to the processes that underpin deference assessments. Among other things, some jurisdictions reflected on the difficulty of providing relevant information when being assessed as they were of the view that there was, at times, a lack of clarity about the criteria that will form the basis of an assessment. Other jurisdictions also indicated they encountered challenges with the lack of indicative timeframes for making assessments and difficulties in keeping up to date with foreign legislation. Finally, some jurisdictions identified challenges related to developing a clear understanding of one another's frameworks, particularly where approaches to regulation may differ or where information is not available in a common language.

Based on these results, and jurisdictions' input to the survey IOSCO conducted earlier this year, IOSCO has identified the following set of Good Practices that jurisdictions can consider when engaging with a foreign jurisdiction or an individual firm in conducting a deference assessment.

The Good Practices apply to all phases of deference assessments and are primarily addressed to authorities in assessing jurisdictions, because they generally hold more control over deference processes. Assessed jurisdictions also play a crucial role in ensuring that the process for achieving deference runs smoothly, and as such, could consider the actions they can take to facilitate the assessment by authorities in the assessing jurisdiction. On that basis, some of these Good Practices are also addressed to authorities in assessed jurisdictions.

These Good Practices are intended to be used without prejudice to the existing legislative requirements or frameworks that authorities have in place and are predicated upon the assumption that the use of deference, or a particular Good Practice, may not be appropriate in all circumstances. Indeed, in some cases, not granting or subsequently reducing the level of deference afforded to another jurisdiction may be necessary to achieve regulatory objectives such as investor protection, market integrity or the reduction of systemic risk.

This Report divides the Good Practices into three areas:

1. Initial stages of the Assessment
2. During the Assessment and
3. Post Assessment: Monitoring, Adjustment, and Revocation.

Initial stages of the Assessment

Good Practice 1: Assessing authorities could consider the most appropriate arrangements for ensuring transparency about their deference processes.

For this purpose, authorities could consider publishing information and/or supplementing legislation in their jurisdiction where necessary, to give more clarity on the process, including how foreign authorities or firms may trigger or apply for an assessment.

It can also be helpful for both the assessing and the assessed jurisdiction/firm to have a discussion at the beginning of the deference assessment to set out and, where possible, to reach a common understanding with regard to:

- The various steps in the assessment process; including, where possible, guidance on how they will be undertaken.
- The criteria and methodology that will form the basis for the deference determination.
- The scope of, and possible limitations, to a deference determination.
- The language they will use, and any translation that may be necessary, as part of their on-going communication and information-sharing, including for any supporting documents.
- High-level, indicative, timeframes towards which both parties will seek to work, to the extent practical and appropriate in the circumstances.

In developing the 2019 Report, IOSCO received strong views that indicated that authorities in assessed jurisdictions sometimes find deference determination processes unclear. Yet, in general, procedural steps in the various processes appear to be broadly similar across jurisdictions – independently of whether the deference determination applies on a firm-by-firm basis or at the jurisdictional-level. Indeed, based on responses to the survey for this Report, the following steps are taken in the majority of cases:

	Determination at a jurisdictional-level: Engagement with foreign authority	Determination on a firm-by-firm basis: Engagement with foreign firm
Step 1	**Formal application not usually needed –** Initial contact with home country regulator and questionnaire sent out.	**Application by Firm** – usually including specific questionnaire and request for specific documentation about the regulatory framework of the entity's home jurisdiction and how the entity complies with the criteria for deference.
Step 2	Desk-based review and analysis of the information.	Desk-based review and analysis of the information.
Step 3	Identification of follow up questions and further contact with the home country regulator.	Further engagement with the firm.
Step 4	Analysis of the responses (this might include public consultation).	As appropriate, engagement with the firm's home authority.
Step 5	Decision and, when the determination is positive, publication.	Decision and, registration with, or authorization by, host authority where necessary.

Many jurisdictions set out their deference processes within their legislative acts and/or regulations. For example, in Singapore, the requirements and processes for recognition of foreign-incorporated market operators and FMIs are set out in Singapore's Securities and Futures Act (SFA) while the European Union (EU) and Switzerland set out their criteria within each piece of legislation.

Some jurisdictions also publish more detailed explanations of the process leading up to deference decisions, including the various considerations involved in this process.[18] In the US, for example, the US Securities and Exchange Commission (US SEC) has developed staff guidance regarding its process for substituted compliance in the security-based swaps markets and a questionnaire with information for jurisdictions to consider when assessing their supervisory and enforcement programs. The guidance sets out questions to consider regarding the regulatory interests reflected in the relevant foreign requirements. The guidance also summarizes relevant US securities law requirements to help applicants understand these requirements and facilitate their applications.[19] In Australia, the Australian Securities and Investments Commission (ASIC) has also published relevant regulatory guidance, consultation papers and information sheets to provide further information on how the processes set out in its legislation will apply in practice.[20] Authorities may wish to consider the benefits of publishing information in this way, either through their website or in other written guidance format. This could include, for example: information on who may trigger a deference assessment (e.g.,

18 See for example the EC's 2017 Staff Working Document on equivalence in financial services.

19 The guidance and questionnaire can be accessed at https://www.sec.gov/page/exchange-act-substituted-compliance-and-listed-jurisdiction-applications-security-based-swap

20 See for example ASIC's Regulatory Guide (RG) 54 – Principles for cross-border financial regulation; RG 138 - Foreign passport funds; RG 146 - Licensing: Training of financial product advisers; RG 172 – Financial markets: Domestic and overseas operators; RG 176 – Foreign financial services providers; RG 178 – Foreign collective investment schemes; RG 190 – Offering financial products in New Zealand and Australia under mutual recognition; RG 249 – Derivative trade repositories; and RG 268 – Licensing regime for financial benchmark administrators.

request of a foreign regulatory authority, firm and/or political body); when a deference assessment can be triggered including possible grandfathering rules (e.g., when deference provisions are new or have been revised); and where a request for deference can be submitted (e.g., regulatory authority or political body).

The absence of published, user-friendly explanations can lead to a lack of clarity on the part of the assessed jurisdiction or firm, which in turn can delay the substantive analysis that underpins the final determination decision. Being clear about the assessment criteria to be used at the first contact with the authority in the assessed jurisdiction or the assessed firm can ensure that appropriate information is shared between both parties from the beginning, and it mitigates the risk of lengthening the process through protracted correspondence.

One mechanism that has been developed by some authorities to clarify what they expect from the other authority or the firm requesting deference is to issue a questionnaire requesting specific information from the assessed firm or the authority in the assessed jurisdiction. For example, the US Commodity Futures Trading Commission (US CFTC) provides the relevant regulatory authority with a questionnaire that is intended to elicit information about the regulatory and supervisory framework that applies to swap trading facilities in the context of assessments to determine whether an exemption from the requirement to register as a swap execution facility (SEF) may be granted. The questionnaire requests detailed responses to each question posed, and such detailed responses would (i) summarize applicable legal requirements, (ii) cite to corresponding statutory and/or regulatory provisions; and (iii) provide electronic links to, or separate copies of, English versions of such provisions. This type of approach can be a useful way for the assessed firm or authority in the assessed jurisdiction to understand the factors that will determine whether it is granted deference while mitigating the risk that the assessing jurisdiction does not receive the information it requires in order to make a decision.

Finally, several IOSCO members who responded to the survey that underpinned the 2019 Report also indicated that having a better understanding of timeframes would be a useful improvement on current deference processes. Some jurisdictions explained that they seek to clarify timelines, at a high-level, at the beginning of their engagement with one another, noting that these timelines may differ on a case-by-case basis. For example, the French Autorité des Marchés Financiers (French AMF) and the Hong Kong Securities and Futures Commission (Hong Kong SFC) adopted such an approach during the negotiations of their mutual fund recognition agreement by seeking to clarify the schedule, deadlines and organization of the meetings with one another. The Monetary Authority of Singapore (MAS) also seeks to provide high-level timelines to the assessed jurisdiction or entity at the beginning of the assessment. While the smooth progress of a deference determination can sometimes be hindered by external or other events, it is also dependent on both parties providing adequate information within appropriate timeframes. On that basis, agreeing to high-level, indicative timeframes, where practical and appropriate, can help ensure authorities retain momentum in their determination process. Such timeframes, to the extent they are in place, could also include checkpoints to discuss and reassess key aspects of the ongoing deference assessment as appropriate, and as further set out in Good Practice 5 below.

During the Assessment

Good Practice 2: The following criteria could be considered by assessing authorities when making an outcomes-based assessment of the assessed jurisdiction /firm:

- The extent to which the assessed jurisdiction's legal or regulatory framework meets the criteria for a deference determination.
- The nature of supervisory oversight and practices in the assessed jurisdiction, including an authority's ability to share, receive and protect non-public information and the authority in the assessing jurisdiction's supervisory relationships with the authority in the assessed jurisdiction.
- The nature of potential enforcement capability and cooperation by an authority in the assessed jurisdiction, including, for example, whether it is a signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMoU) or the Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (EMMoU).
- Any existing analyses of the assessed jurisdiction's legal or regulatory framework, such as reviews of the framework's comparability and adherence or commitment to international standards, where relevant.

When conducting a deference assessment, authorities generally seek to assure themselves that the foreign authority has a sound and transparent legal framework. They also generally seek to assess whether this framework and the supervisory practices that support it can meet outcomes similar to those they seek to achieve in their own domestic framework. In this context, considerations about the strengths of the foreign authority's regulatory framework are also an important factor. Where the determination is at a firm-level, authorities may require the foreign firm to provide a description of its applicable regulatory regime, including an explanation on how it complies with the established criteria considered by the assessing authority. This is the approach, for example, that the Ontario Securities Commission (OSC) and Autorité des Marchés Financiers of Quebec (Quebec AMF) have adopted.

Where international standards exist, authorities such as the Swiss Financial Market Supervisory Authority (FINMA) and the Swiss National Bank (SNB) indicated they make use of international assessments of a foreign jurisdiction's adherence to these international standards to inform their own deference assessments. The CPMI-IOSCO PFMI[21] and the BCBS-IOSCO Margin Requirements for Non-Centrally Cleared Derivatives[22] are examples of such standards.

In many cases, assessing authorities may wish to impose additional minimum requirements (i.e., additional to any existing international standards) that are specific to the financial sector to which they are considering granting deference. For example, in the fund management area, some assessing authorities may expect to see requirements on segregation of assets in the legal framework of the assessed jurisdiction before agreeing to grant access to fund managers from the assessed jurisdiction.

[21] https://www.bis.org/cpmi/publ/d101a.pdf

[22] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD480.pdf

In that context, assessments of the degree of alignment between an assessed jurisdiction's regulatory or legal framework and international standards can provide useful information about the assessed jurisdiction's commitment to international cooperation, although the actual assessments are always based on the jurisdiction's legal framework. Some jurisdictions have sought to facilitate this understanding by developing comparative tables to demonstrate how their framework is aligned with international standards. In such cases, these efforts offer a useful starting point for assessing jurisdictions for deference purposes before they conduct a deeper analysis into additional requirements. For example, the Japanese Financial Services Agency (JFSA) developed a comparison table of the IOSCO Principles for Benchmarks and the Financial Instruments and Exchange Act. Jurisdictions that will be subject to deference determinations could consider undertaking similar exercises as informational background for assessing authorities.

Beyond the regulatory framework, understanding the supervisory and enforcement framework of a jurisdiction is also an important consideration in making a deference determination. Indeed, authorities may have different approaches for launching formal supervisory reviews and/or enforcement proceedings and it is important to understand the authority's philosophy and how it assures itself of the effective oversight of the entities based within its jurisdiction. For a deference assessment, this may include requesting information on the remit and legal ability of an authority in the assessed jurisdiction to supervise the entities under its framework. This may also include requesting data or information on the authority's overall approach to supervising firms within relevant sectors, the level of supervisory resources available and the authority's overall approach to enforcement matters.

An authority's legal ability and willingness to cooperate with an authority in the other jurisdiction for supervisory and enforcement purposes is often an important consideration in granting a deference determination. For example, whether the assessed authority is:

- a signatory to the IOSCO MMoU and EMMoU and/or,
- actively participates in bilateral or multilateral supervisory or enforcement arrangements (e.g., supervisory cooperation MoUs between the authorities; supervisory colleges) as this can provide insight into whether a jurisdiction can meet expected levels of cooperation.

With respect to enforcement-related cooperation, the IOSCO MMoU and EMMoU identify the assistance a signatory commits to provide to another, including:

- the ability to obtain the specific types of information covered by each framework.
- the legal capacity to compel this information, or to obtain testimony, on behalf of a foreign authority.
- the legal capacity to share information with foreign authorities.
- the permissible use of information received under the MMoU and EMMoU.
- maintenance of the confidentiality of the information exchanged.[23]

[23] https://www.iosco.org/about/?subsection=mmou

At a minimum, many assessing authorities expect that the authority in assessed jurisdiction is an MMoU or EMMoU signatory or otherwise can demonstrate satisfactory supervisory and enforcement cooperation before considering whether to grant deference.

Good Practice 3: When authorities are making a deference determination, they could consider important factors such as the nature and degree of risks that entities from another jurisdiction may pose to their markets and/or market participants /investors.

In some instances, considering the nature and degree of risks that firms from another jurisdiction might pose may mean that a jurisdiction decides that firms are able to access its market without registering or without applying for deference. It is important to note that deference is not the only example of how authorities take into account risk when supervising cross-border entities. For example, the degree of risks from cross-border entities is often a factor in determining appropriate registration thresholds when adopting new rules, or when establishing examination priorities for registered firms.

In others, the nature and degree of risks could result in more or less scrutiny according to the risks involved. For example, there are instances where granting deference could have implications for financial stability or investor protection which may lead to the choice of a more risk-sensitive approach to determining whether, and to what extent, deference is possible. This is the risk-based approach adopted for instance by the EU for its equivalence policy.

In such context, some jurisdictions have decided to adopt a two-tiered approach that differentiates between systemically important and non-systemically important entities, such as central counterparties (CCPs), in undertaking firm-level deference determinations.[24] In the EU, the amended European Market Infrastructure Regulation (EMIR) introduces a two-tier system for foreign CCPs based on their systemic importance. Where a foreign CCP is considered systemically important or likely to become systemically important for the financial stability of the EU or for one or more of its Member States, such foreign CCP can only be recognized and permitted to provide clearing services or activities in the EU if it meets specific conditions. Among other consultations that would afford deference to non-US entities operating in US swap markets, the US CFTC is currently consulting on a proposal that would extend deference to CCPs that do not pose substantial risk to the US financial system, defined based on a threshold comprised of two quantitative metrics.[25] Similarly, the US SEC has considered the anticipated level or volume of activity that a non-US entity seeks to effect within the United States when determining whether to grant an exemption from registration as a clearing agency.[26] In Japan, while a systemically important foreign CCP is required to obtain a Japanese license, a foreign CCP whose activity has a minor impact on the Japanese capital market may be exempted from the licensing requirement. JFSA has introduced a new requirement for cooperative

[24] A firm would generally be deemed to be systemically important or otherwise according to the assessor's regulatory framework. For example, the Reserve Bank of Australia (RBA) and the SNB have both set out the criteria through which a CCP is determined to be systemic in their jurisdictions.

[25] Please see the CFTC Consultation on Registration with Alternative Compliance for Non-US Derivatives Clearing Organizations.

[26] Please see the SEC adoption of Standards for Covered Clearing Agencies, https://www.sec.gov/rules/final/2016/34-78961.pdf.

arrangements with home regulators of foreign CCPs prior to their being exempted.[27] This amendment will benefit not only these CCPs by avoiding the burden of duplicative regulation but also JFSA by providing necessary information on these CCPs once cooperative arrangements are in place.

This type of differentiation means that deference determinations relating to a systemically important firm may be subject to a more exacting assessment and an expectation that the outcomes achieved by the assessed authority's regulatory framework and supervisory practices are more closely aligned with those of the assessing authority while smaller, non-systemically important firms may not require the same level of scrutiny. Such a risk-based approach focused on systemic risk may not be appropriate in all circumstances as non-systemic firms may still pose risks to investors that an assessing authority may deem inappropriate.

Where jurisdictions have agreed to grant access to firms they consider systemically important, they may have arranged to have certain levels of supervisory powers over these firms, in particular with respect to their ability to obtain supervisory information about the firms they allow to operate in their jurisdiction (e.g., reporting requirements and/or participating in supervisory colleges or crisis management groups where relevant).

Good Practice 4: Assessing authorities could consider the most appropriate level of engagement with the authority and/or firm in the assessed jurisdiction throughout the determination process, such as facilitating regular check-in points with the view to ensuring the process remains on track.

Good Practice 5: Authorities in assessed jurisdictions or firms could in turn consider how to engage constructively throughout the entire determination process and to cooperate fully with the assessing authority.

Communication between both parties remains a critical element during the assessment process. Assessing authorities will usually have follow-up questions during their reviews of the assessed jurisdiction's framework or a firm's application.

Putting in place agreed check-in points could allow authorities to discuss the ongoing process and provide clarity on any outstanding questions. In addition, it allows both authorities to consider whether any changes in the indicative timeframes may be required.

In this context, the authority in the assessed jurisdiction or the firm being assessed has a key role to play in ensuring the smooth running of the deference process and the authority or firm in the assessed jurisdiction needs to be fully cooperative in the assessment phase by, for instance, constructively engaging in fact-finding exercises.

An example of how jurisdictions have engaged constructively with one another relates to deference determinations processes regarding margin requirements undertaken by authorities in Australia, Hong Kong, Singapore and Japan. These four jurisdictions established a common platform to streamline the approval process for margin rules and enhance mutual understanding of one another's regulatory framework, while maintaining the full discretion for each

[27] Please see JFSA amendment to Cabinet Order for Enforcement of the Financial Instruments and Exchange Act. https://www.fsa.go.jp/news/r1/shouken/20200617/20200617.html (In Japanese only)

determination to be made on a bilateral basis. Through this method, they developed a common questionnaire, conducted teleconferences to exchange information simultaneously and agreed to align their timing for the publication of deference determinations. These authorities reported finding the process more efficient and were able to undertake such an exercise because they believed the underlying international standards were sufficiently detailed as to leave few additional considerations for domestic calibration.

Good Practice 6: If a full deference determination is not otherwise practical or appropriate, assessing authorities could consider the appropriate scope of deference determinations, depending on the overall outcome of their assessment.

Where an assessing authority’s deference assessment leads it to a negative outcome despite certain similarities observed regarding the foreign regulatory, supervisory and enforcement regime in comparison to its own in terms of outcomes, the assessing jurisdiction may consider partial or conditional deference determinations where they deem it appropriate. This could enable cross-border activities with certain restrictions and safeguards and so could help avoid unnecessary market fragmentation.

Partial or conditional deference approaches often include:

- Amending the terms and conditions of the deference determination by adding additional requirements; or
- Limiting the scope of the determination to regulations where outcomes are similar.

In addition, partial or conditional deference approaches can also limit the deference determination for a foreign jurisdiction in time. This may, for example, be applied if the foreign jurisdiction has not yet implemented the legislative acts and regulations deemed relevant and necessary by the assessing authority despite being in the process of doing so. At the same time, such an approach would need to be considered carefully as it could lead to legal uncertainties, which could foster or reinforce existing market fragmentation.

Good Practice 7: Following an assessment, assessing authorities could consider clarifying and providing feedback to the assessed jurisdiction or firm regarding the key facts and circumstances under which a deference determination has been decided – including where this determination is negative.

While jurisdictions do not generally make public the underlying documents that pertain to their determination, they will often publicize when they have granted deference to another jurisdiction or to a specific firm.

While such information may not be publicized, assessing authorities may provide further detail on the final outcome of their assessment to the authority in the assessed jurisdiction or firm itself. When deference has been granted, such further detail may also include the criteria and procedures for revoking, amending or renewing deference determinations.[28] When deference is

[28] Authorities have indicated, for example, that they can decide to revoke a deference decision where (i) there are changes in material facts or circumstances pursuant to which a deference determination was made (e.g. if there has been a substantial change in the regulatory framework of the foreign jurisdiction); (ii) a determination is no longer in the public interest; (iii) the assessing jurisdiction has decided to review

time-limited, the assessing authority could clarify or provide further details about the conditions and timetable under which extension or renewal would be considered

Providing further details on the outcome of the assessment is also useful, particularly where the determination is negative, as it provides the assessed authority or firm with an opportunity to understand the reasons for the negative assessment and potentially provide further clarifications. Where it deems it appropriate, the assessed authority may reconsider its regulatory or supervisory practices in order to obtain a positive deference determination.

For example, under its “Recognised Overseas Investment Exchanges” scheme, the UK Financial Conduct Authority (FCA) will communicate its decision to the jurisdiction or firm shortly after it has reached a decision and, where deference has been refused, will seek to discuss its concerns with the applicant to enable the applicant to make changes to its rules, guidance or other parts of the application.

Post-assessment: Monitoring, Adjustment, and Revocation

Good Practice 8: Authorities in assessed jurisdictions are encouraged to consider sharing regulatory developments in their jurisdiction with the assessing jurisdiction through regular communication between regulatory authorities, if these developments may impact existing deference determinations. Authorities could also consider sharing relevant regulatory developments in international fora, where appropriate.

Good Practice 9: Assessing authorities are encouraged to consider sharing developments in their regulatory framework which may lead to a review of their deference determinations as early as possible to allow authorities in assessed jurisdictions to closely monitor these ongoing developments and act appropriately.

As part of their normal course of business, authorities seek to stay informed of developments in other financial centers. Nevertheless, actively monitoring developments in other jurisdictions remains challenging for most regulatory authorities given the speed, breadth and depth of ongoing changes in foreign markets. This is particularly so where there are different levels of rules or different regulatory entities responsible for rulemaking. As such, very few authorities have formal processes in place to proactively monitor ongoing regulatory developments in other jurisdictions. Instead, most authorities re-evaluate deference based on specific indications that a deference determination requires a review.

To address these challenges, some authorities such as the UK FCA, the US CFTC, the Hong Kong SFC, the Swiss FINMA, the OSC, the Quebec AMF and ESMA, have provisions in their MoUs and other similar cooperation arrangements that provide for notification to each other of material impending changes to their regulatory regimes. As another example, the Hong Kong SFC and the UK FCA as well as the Hong Kong SFC and the Swiss FINMA updated their bilateral Mutual Fund Recognition MoU in light of anticipated regulatory changes in 2019 following regulatory contact to share information on amendments to their respective rulebooks, legislation or supervisory approaches. Other authorities such as ASIC and the RBA also include such notifications as part of their deference determinations.

its own regulatory framework; or (iv) cooperation would require an authority to act in a manner that would violate its own domestic laws and regulations.

IOSCO's Policy and Regional Committees can also act as fora for authorities to learn about developments in one another's jurisdictions while certain jurisdictions have established specific, formal channels of communications by way of annual dialogues. For example, members of the IOSCO Asia-Pacific Regional Committee (APRC) have met annually for the past three years with representatives of the EC and ESMA to consider regulatory developments in the two regions, including emerging trends and the cross-border implications of domestic and regional legislation.

In addition, where a determination is granted at a firm level, some authorities – such as the RBA, ASIC, the Swiss FINMA, the US CFTC and the US SEC - require the firm which has been granted access to highlight any relevant changes to its home legislation as these occur. This can be an additional way to keep abreast of developments in foreign jurisdictions where these may have an impact on deference determinations.

Finally, some authorities – in particular, those that conduct jurisdictional-level deference determinations -- are seeking to develop processes to proactively monitor ongoing regulatory and supervisory developments in other jurisdictions. For example, the UK FCA and the Bank of England, based on their own monitoring of developments in other jurisdictions, will be able to recommend a review of a deference decision to HM Treasury. Furthermore, the EU is implementing a process whereby the EC and ESMA will conduct ongoing monitoring of regulatory and supervisory developments in equivalent non-EU jurisdictions.

There is also an important proactive role for the assessed jurisdiction in the context of monitoring deference determinations. Indeed, the authority in the assessed jurisdiction can provide transparency on relevant market, regulatory and supervisory developments in its jurisdiction on a voluntary and proactive basis and, for instance, play a role in suggesting how to remedy any gaps which the assessing authority may identify in the regulatory or supervisory framework.

Good Practice 10: Where a deference decision may be revoked, within the scope of their competence and as appropriate, authorities could consider:

- putting in place processes to inform the assessed jurisdiction or firm and to consider any remedial action to the extent possible; and/or
- proposing other tools or measures instead of outright revocation or declining to renew a deference determination or its parts, while the parties seek to remedy issues identified.

Some authorities have procedures in place to engage with a foreign authority or firm where they have identified potential gaps or changes in circumstances which could lead to the revocation of a deference determination. This provides the foreign authority or firm or market participant with an opportunity to understand why the deference determination may be revoked or not renewed and to respond by seeking to remedy these circumstances as appropriate.

Some authorities will consult publicly where they are considering full revocation, unilaterally amending or declining to renew a deference determination or its parts, setting out the justification for their decision. Public consultation can be a useful tool, particularly for jurisdictional-level revocations and non-renewals of conditional determinations, as it allows the assessing authority to take steps to fully understand the ramifications associated with its decision and informs market participants of the potential pending revocation. For example, the EU consults publicly on revoking deference determinations and sets out its justification for revoking deference.

Notwithstanding their prerogative to withdraw existing deference determinations, deferring authorities have indicated, that revocation of a deference determination is generally considered a tool of last resort in their engagement with a foreign authority or firm. Before deciding to revoke a deference determination, authorities will, to the extent feasible, often seek to make use of other measures or consider whether there is any other tool within the legislative or regulatory frameworks that may allow for the remediation of identified issues. These may often include such things as:

- Having an enhanced dialogue with the authority or firm in the relevant jurisdiction, to better understand the impact of a particular regulatory change,
- Limiting the scope of the determination,
- Amending the terms and conditions of the deference determination, often by adding additional requirements, and
- Time limiting the existing determination, including a phase-out.

While these practices may not always be possible, both assessing and assessed authorities could consider how to remedy the circumstances that may lead to revocation. However, in some cases, a firm-level revocation of a deference determination is the result of a jurisdiction's internal policy consideration (e.g. where the jurisdiction does not extend deference to firms considered systemically important) and, as such, no remedy may be suitable.

Where a decision to revoke has been taken, some jurisdictions have put in place formal appeal processes. Indeed, in many jurisdictions, the revocation of a deference determination – particularly where determinations are done on a firm-level basis -- can be taken to a tribunal for review. Authorities that do not have these notice processes in place could consider the extent that it may be appropriate to complement their current deference processes where this is within the scope of their competence.

These processes could also address arrangements for managing the expiry or renewal of time-limited deference decisions.

Good Practice 11: Once it has been decided to revoke a deference determination, authorities could consider appropriate steps to implement the revocation, including communications and notice to market participants in order to mitigate cliff-edge risks to investor protection, market integrity and financial stability objectives and allow for the smooth reorganization of market activities.

As outlined above, revocation, non-renewal or discontinuation of a deference determination may be necessary in some cases. If not managed appropriately, revocation can undermine the soundness of financial markets as well as entities operating cross-border needing to reorganize their activities accordingly, and market participants could be impacted as a result.

Such considerations may be particularly concerning where the timeframes between the revocation decision being made and the revocation taking place are not sufficient to allow for a smooth transition and "disconnection" of these markets.

In that context, authorities could identify any potential cliff-edge risks as part of an assessment prior to revoking the decision and – where possible – to put in place mechanisms to mitigate the impact of these risks. For example, authorities may consider using tools such as appropriate notice periods and/or transitional periods to grant entities operating cross-border sufficient time to reorganize themselves appropriately.

However, there may be potential financial stability, market integrity or investor protection implications when continuing to grant deference to a jurisdiction or an entity. In those circumstances, for deferring authorities, it may be appropriate to withdraw deference without delay as other limiting measures may not be sufficient or available in time.

Chapter 4 – Conclusion

Securities and derivatives markets are global by nature. To fully realize the benefits of a global economy, policymakers and regulatory authorities are called upon to develop efficient deference mechanisms and processes that promote safe global capital markets and avoid unintended and harmful market fragmentation which may hinder capital formation, give rise to financial stability concerns and/or limit investor choice.

Many authorities have become aware of the risks associated with such unintended and harmful market fragmentation and have, in recent years, actively considered how their regulatory frameworks may interact with those of other jurisdictions for the benefit of effective global markets. The growth in cooperation, including the use of deference since IOSCO's 2015 Report is a testament to this attempt by regulatory authorities to strengthen cooperation, avoid conflicting requirements and promote cross-border activities.

As noted in the 2019 Report, however, the administrative processes that authorities have in place to undertake their deference determinations may sometimes cause friction and even hinder the overarching goals set out by G-20 leaders in relation to market fragmentation and regulatory deference where it is possible and justified. IOSCO has therefore identified the Good Practices set out in this Report to assist its members deliver on these aims.

These Good Practices aim to help regulatory authorities build trust, mitigate market fragmentation and better manage risks in global cross-border markets. Markets will continue to evolve, and regulatory practices related to cooperation and deference can also evolve accordingly. As novel approaches emerge, either bilaterally or multilaterally, and are adopted by authorities in the future, they could be considered in addition to the Good Practices identified in this report.

Annex 1: Summary table of Good Practices

Good Practice 1: Assessing authorities could consider the most appropriate arrangements for ensuring transparency about their deference processes. For this purpose, authorities could consider publishing information and/or supplementing legislation in their jurisdiction where necessary, to give more clarity on the process, including how foreign authorities or firms may trigger or apply for an assessment. It can also be helpful for both the assessing and the assessed jurisdiction/firm to have a discussion at the beginning of the deference assessment to set out and, where possible, to reach a common understanding with regard to: • The various steps in the assessment process; including where possible, guidance on how they will be undertaken. • The criteria and methodology that will form the basis for the deference determination. • The scope of, and possible limitations, to a deference determination. • The language they will use, and any translation that may be necessary, as part of their on-going communication and information-sharing, including for any supporting documents. High-level, indicative, timeframes towards which both parties will seek to work, to the extent practical and appropriate in the circumstances.
Good Practice 2: The following criteria could be considered by assessing authorities when making an outcomes-based assessment of the assessed jurisdiction /firm: • The extent to which the assessed jurisdiction's legal or regulatory framework meets the criteria for a deference determination. • The nature of supervisory oversight and practices in the assessed jurisdiction, including an authority's ability to share, receive and protect non-public information and the authority in the assessing jurisdiction's supervisory relationships with the authority in the assessed jurisdiction. • The nature of potential enforcement capability and cooperation by an authority in the assessed jurisdiction, including, for example, whether it is a signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMoU) or the Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (EMMoU). • Any existing analyses of the assessed jurisdiction's legal or regulatory framework, such as reviews of the framework's comparability and adherence or commitment to international standards, where relevant.
Good Practice 3: When authorities are making a deference determination, they could consider important factors such as the nature and degree of risks that entities from another jurisdiction may pose to their markets and/or market participants /investors.
Good Practice 4: Assessing authorities could consider the most appropriate level of engagement with the authority and/or firm in the assessed jurisdiction throughout the determination process, such as facilitating regular check-in points with the view to ensuring the process remains on track.

Good Practice 5: Authorities in assessed jurisdictions or firms could in turn consider how to engage constructively throughout the entire determination process and to cooperate fully with the assessing authority.
Good Practice 6: If a full deference determination is not otherwise practical or appropriate, assessing authorities could consider the appropriate scope of deference determinations, depending on the overall outcome of their assessment.
Good Practice 7: Following an assessment, assessing authorities could consider clarifying and providing feedback to the assessed jurisdiction or firm regarding the key facts and circumstances under which a deference determination has been decided – including where this determination is negative.
Good Practice 8: Authorities in assessed jurisdictions are encouraged to consider sharing regulatory developments in their jurisdiction with the assessing jurisdiction through regular communication between regulatory authorities, if these developments may impact existing deference determinations. Authorities could also consider sharing relevant regulatory developments in international fora, where appropriate.
Good Practice 9: Assessing authorities are encouraged to consider sharing developments in their regulatory framework which may lead to a review of their deference determinations as early as possible to allow authorities in assessed jurisdictions to closely monitor these ongoing developments and act appropriately.
Good Practice 10: Where a deference decision may be revoked, within the scope of their competence and as appropriate, authorities could consider: • putting in place processes to inform the assessed jurisdiction or firm and to consider any remedial action to the extent possible; and/or • proposing other tools or measures instead of outright revocation or declining to renew a deference determination or its parts, while the parties seek to remedy issues identified.
Good Practice 11: Once it has been decided to revoke a deference determination, authorities could consider appropriate steps to implement the revocation, including communications and notice to market participants in order to mitigate cliff-edge risks to investor protection, market integrity and financial stability objectives and allow for the smooth reorganization of market activities.

Annex 2: List of Follow-Up Group Members and Observers

Chairs: Mr. Louis Morisset, President, Autorité des Marchés Financiers, Québec

Mr. Jun Mizuguchi, Senior Deputy Commissioner for International Affairs, Financial Services Agency of Japan

Members:

Australian Securities and Investments Commission (Australia)	Mr. James Shipton, Mr. Gerard Fitzpatrick
Comissão de Valores Mobiliários (Brazil)	Mr. Marcelo Barbosa, Mr. Eduardo Manhães Ribeiro Gomes
China Securities Regulatory Commission (China)	Mr. Huiman Yi, Ms. Qinqi Zhu
European Securities and Markets Authority (European Union)	Mr. Steven Maijoor, Mr. Jakub Michalik
Autorité des marchés financiers (France)	Mr. Robert Ophele, Mr. Viet-Linh Nguyen
Bundesanstalt für Finanzdienstleistungsaufsicht (Germany)	Ms. Elisabeth Roegele, Mr. Jan Ole Wagner
Securities and Futures Commission (Hong Kong)	Mr. Ashley Alder, Ms. Julia Leung
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Autorité des marchés financiers (Québec)	Mrs. Sharon Kelly, Mr. Mathieu Simard
Monetary Authority of Singapore (Singapore)	Mr. Lee Boon Ngiap, Mr. Ken Nagatsuka
Comisión Nacional del Mercado de Valores (Spain)	Mr. Sebastián Albella, Mr. Santiago Yraola López
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Financial Conduct Authority (United Kingdom)	Mr. Chris Woolard, Ms. Nausicaa Delfas
Commodity Futures Trading Commission (United States of America)	Mr. Heath Tarbert, Mr. Suyash Paliwal
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