

GUIDANCE ON INFORMATION SHARING



Report by the Technical Committee of IOSCO

November 1997

PURPOSE: The Technical Committee is issuing this event-specific Guidance on Information Sharing (“Guidance”) to facilitate information sharing by Market Authorities during periods of Market and / or Firm crisis.

DEFINITIONS

In this paper, the following terms have the meanings set forth below:

1. “Customer” refers to a person or other entity, including an affiliated entity, on whose behalf a Firm engages in investment services business, or for whom a firm carries an account, subject to supervision by a Market Authority. The precise definition of Customer varies from one jurisdiction to another.
2. “Event Types I, II and III”:
 - Event Type I: Financial crises at a Firm in one jurisdiction with potential to adversely affect Markets, Firms and / or Customers in other jurisdictions.
 - Event Type II: A major market move caused by (1) unanticipated adjustments in fundamental supply and demand factors, or (2) hostilities or political actions.
 - Event Type III: Unusual price movements or market volatility in a particular security or derivative traded on a Market or by regulated Firms which is related to a security or derivative traded on other Markets.
3. “Firm” refers to an entity whose investment business activities are subject to supervision by a Market Authority. Investment business includes securities and derivatives business.
4. “Market Authority” refers to an entity in a particular jurisdiction which has statutory or regulatory powers with respect to the exercise of regulatory functions over Firms and / or Markets in the jurisdiction. Depending upon the jurisdiction, a Market Authority may be a regulatory body, a self-regulatory organization, and / or a Market.
5. “Market” refers to facilities for trading securities and / or derivative products. The term includes the clearinghouse or clearing facilities for a Market.
6. “Requested Authority” refers to a Market Authority to which a request for information has been made.
7. “Requesting Authority” refers to a Market Authority that has made a request for information.

I. Introduction and Recommendations

Purpose and Background

1. This Guidance is intended to provide non-prescriptive practical guidance to Market Authorities for sharing information during periods of Market and / or Firm crisis by (1) identifying in advance the types of core information which Market Authorities would need to be able to obtain and be prepared to share in order to assist in assessing and managing the impact of a Market and / or Firm crisis (see Addendum A), (2) explaining the relevancy of this information, and (3) providing illustrations of the types of questions which Market Authorities may use to request information from another authority (see Addendum B).
2. This Guidance builds upon prior IOSCO work on information sharing, as reflected in reports on Principles for Memoranda of Understanding (September 1991), Mechanisms to Enhance Open and Timely Communication Between Market Authorities of Related Cash and Derivative Markets During Periods of Market Disruption (October 1993), Resolution on Commitment to Basic IOSCO Principles of High Regulatory Standards and Mutual Cooperation and Assistance (1994), Report on Cooperation Between Market Authorities and Default Procedures (March 1996) and Client Asset Protection (August 1996).
3. The Technical Committee also emphasizes the role of transparency of market mechanisms in assessing and addressing Firm and Market crises. In this regard, reference is made to the following IOSCO reports which recommend disclosure of market mechanisms that may become important to Market Authorities during a crisis: Report on Cooperation Between Market Authorities and Default Procedures (March 1996) and Disclosure Framework for Securities Settlement Systems (April 1997).
4. This paper does not address the universe of information which Market Authorities may find relevant for supervisory purposes. Rather, it focuses on the information which Markets Authorities may need to share during a Market and / or Firm crisis.
5. This Guidance reflects the experiences of Technical Committee members in identifying information needs concerning Markets and / or Firms, and the specific inquiries which have been made by various members under relevant information sharing arrangements or otherwise to address Market and / or Firm events.
6. These experiences suggest that core information can be identified which likely would need to be accessed and shared by Market Authorities to assist in assessing and addressing the impact of Market and / or Firm events. The Technical Committee believes that facilitating the sharing of core information should be viewed as an essential element of a Market Authority's emergency preparedness planning and of addressing a crisis.
7. This report identifies three generic types of Market and / or Firm events: Type I (Firm financial crisis), Type II (market-wide volatility) and Type III (unusual price movements or

Market volatility in a particular security or derivative). This event-specific structure is intended to alert Market Authorities to contexts in which they may need to share information.

8. The discussion of each event includes a discussion of the relevancy of particular core information. The discussion is intended to assist a Requested Authority in understanding in advance why a Requesting Authority with a concern affecting a Market and / or Firm may have an interest in particular information and thereby expedite information sharing during a period of crisis.
9. While this format provides a useful organizing methodology, the specific events and the associated information are not mutually exclusive or exhaustive. Actual events will present unique factual circumstances and raise different regulatory concerns.

Recommendations

10. The Technical Committee encourages Market Authorities to take all appropriate steps to have prompt access to the core information and to be able to share such information with relevant Market Authorities through appropriate channels.
11. Specifically, the Technical Committee recommends that:
 -  Market Authorities maintain or have access to the core information enumerated in Addendum A of this report and be in a position to share it in the event of a Market and / or Firm crisis;
 -  Market Authorities undertake assessments of whether they maintain or have access to the core information and take steps in advance to secure the availability of such information;
 -  Market Authorities take steps in advance to clarify whether they are able to share such core information and the conditions under which such information may be shared, including those relating to confidentiality concerns; and
 -  Where obstacles to information sharing exist, Market Authorities take affirmative steps, within the scope of their powers, to encourage the removal of such obstacles.

In so doing, the Technical Committee recognizes that a Market and / or Firm crisis can adversely affect the ability to generate or to produce accurate and timely information. If the crisis is the result of fraud or operational failure, the quality of information may be compromised.

II. Preliminary Considerations

12. It is of critical importance that Requesting and Requested Authorities have a clear understanding of and agreement on what information is sought and what is supplied and the use to which it will be put. For example, where a request is made for the “largest” exposures on a market, both Market Authorities should clearly understand the basis for determining such exposures and whether the data will be provided on a gross or net basis, and whether hedging positions will be taken into account.
13. The task of assessing and responding to a Market and / or Firm crisis can strain the resources available to Market Authorities. Therefore, Requesting Authorities should consider alternative sources of information, and prioritize and focus information requests to the Requested Authority.
14. Conversely, the Requested Authority should be sensitive to the needs of the Requesting Authority for information necessary to address the same or collateral events in or affecting a Market or Firm subject to the Requesting Authority’s jurisdiction.
15. In some jurisdictions, the requested information may be in the possession of one or more authorities. For example, the prudential regulation of Firms may be the responsibility of an authority other than the authority responsible for secondary Markets. In those circumstances, the authorities should use best efforts to develop cooperative mechanisms to access relevant core information.
16. There may be legal and / or practical reasons which prevent the exchange of information in some jurisdictions or legal conditions which must first be met. For example, in some jurisdictions information which discloses the positions and funds of individual Customers may not be available under relevant bank secrecy and similar laws. Most jurisdictions require that confidential information concerning certain types of Market or Firm specific information be given confidentiality treatment by the Requesting Authority similar to that accorded by the Requested Authority.
17. In order to avoid unnecessary delays, the Requested Authority should pass on portions of the requested information as they become available and consult on procedure as appropriate.
18. Finally, although this Guidance does not imply any notice obligation, where an authority believes that events affecting a Market and / or Firm subject to its jurisdiction may affect adversely Markets and / or Firms in another jurisdiction, it should consider whether it would be appropriate to notify relevant Market Authorities of such Market and / or Firm event.

III. Core Information Which May Need to be Shared During Specific Market or Firm Events

19. The purpose of the following discussion under the three scenarios is to identify the types of core information which may be relevant to share during specific events (Event Types I (Firm financial crisis), II (market-wide volatility) and III (unusual price movements or Market volatility in specific securities or derivatives). This discussion is not meant to limit the applicability of core information to any single event, nor is the discussion of relevant information intended to be exclusive or exhaustive.
20. For example, a Market drop related to an external event (e.g., Type II) also could cause a financial crisis at one or more Firms (Type I). Conversely, events at a major Market participant could have severe Market effects, triggering regulatory concerns on the Markets on which the participant or its affiliates is trading. In either case, some of the same core information may be relevant to assist in assessing and managing the response to the event.
- A. *Event Type I: Financial crises at a Firm in one jurisdiction with potential to impact Markets, Firms and / or Customers in other jurisdictions. (e.g., Barings Plc.)*^{1/}

Relevant Core Information

-  information on crisis Firm (i.e., an organizational “map” or chart of entity and affiliates);
-  financial resources / financial status of crisis Firm (i.e., capital, liquidity, trading positions, counterparty exposures);
-  details of any significant margin calls made and not satisfied or mark to market settlement exposures at clearing houses;
-  status of Customer positions, funds and assets held by crisis Firm (e.g., whether non-affiliate Customer positions are segregated from firm positions and whether such positions have been frozen);
-  legal, regulatory, and other actions being taken or which may be taken under contingency plans or otherwise to address the crisis.

^{1/} See Windsor Declaration (May 17, 1995) and Final Report of Windsor Co-Chairmen of the May 1995 Windsor Meeting to the Technical Committee of IOSCO (August 1996).

Discussion

21. A crisis at an identified Firm may have effects in another jurisdiction. For example, a Firm in the jurisdiction of the Requesting Authority may clear and / or trade through the crisis Firm and trading losses by a Firm in one Market may affect the financial integrity of its affiliates in other markets. Moreover, where a Firm is in default, counterparties in a number of Markets may be adversely affected and Market participants may be subject to assessments to cover the defaulting Firm's obligations.
 22. The Requesting Authority may need to request information to determine whether Customers, Firms and / or Markets subject to its jurisdiction are affected by the financial crisis at the Firm, and to consider appropriate action.
 23. Accordingly, the Requesting Authority may need to obtain information on the organizational structure and financial status of the Firm in crisis, including how its resources would be affected by price moves, the instruments it is trading, and / or the status of Customer positions, funds and assets held by the Firm.
- B. *Event Type II: A major Market move caused by: (1) unanticipated adjustments in fundamental supply and demand factors (e.g., 1987 Market crash,^{1/} tin crisis of 1985, the 1994 Mexican Peso crisis), or (2) major hostilities or political actions (e.g., Persian Gulf War and Iraqi oil embargo)*

Relevant Core Information

-  Firms with the largest exposures on the Market;
-  details of any significant margin calls made and not satisfied or mark to market settlement exposures at clearing houses;
-  legal, regulatory, and other actions being taken or which may be taken under contingency plans or otherwise to address the crisis;
-  trading data such as trading volume, short selling and program trading transactions;
-  aggregate Market data, such as open interest of related products;

^{2/} Report of The Presidential Task Force on Market Mechanisms (January 1988) submitted to the President of the United States, the Secretary of the Treasury and the Chairman of the Federal Reserve Board.

-  aggregate margin and liquidity facilities (e.g., lines and letters of credit, guarantee deposits with clearing organizations, etc.) available to the Market.

Discussion

24. Major price movements and Market volatility can have effects on other Markets and / or Firms. For example, Firms in many jurisdictions may be trading on the affected Market, a Firm could be affected by the default of a foreign affiliate, and trading halts in one Market may cause a shift of trading to another Market trading the same or a related product.
25. The Requesting and Requested Authorities may need to share information to ascertain the potential impact of the event, including its dimensions and the Firms / Customers and the financial instruments affected by the event, and to develop approaches to minimize adverse effects.
26. Accordingly, identifying the Firms with the largest exposures on the affected Market may permit the Requesting Authority to ascertain whether any of its Firms are affected, directly or through affiliates, and whether any of its Markets may be affected by financial or operational concerns at such Firms.
27. Thus, these inquiries are directly related to the Requesting Authority's prudential oversight of its regulated Firms. Where problem Firms are identified, questions illustrated in Event Types I and III may follow.
28. Other questions are directed to ascertaining the nature of the problem and what specific steps have been or will be taken by the Market Authority to address the problem. Questions concerning risk management analyses, settlement delays, margin calls and daily pays / collects will permit the Requesting Authority to gauge the magnitude of the problem, as well as to assess the potential exposure of clearing Firms.

- C. *Event Type III: Unusual price movements or Market volatility in a particular security or derivative traded on a Market or by regulated Firms which is related to a security or derivative traded on another Market (e.g., Sumitomo Corporation)^{1/}*

Relevant Core Information

-  Firms / Customers controlling or owning the largest long / short positions in the relevant securities or derivatives;

^{3/} See London Communiqué (November 26, 1996).

-  concentration and composition of positions in the relevant securities or derivatives, including Firm positions and Customer positions, both on organized Markets and in the OTC markets;
-  characteristics of related instruments, such as terms of the underlying cash market instrument or physical commodity, procedures for delivery or cash settlement, and deliverable supply of the relevant cash market instrument or physical commodity.

Discussion

29. Where there are cross-listings of securities or derivatives or other relationships between instruments or products in different Markets, or overlap between the delivery specifications of the underlying cash market instrument or physical commodity, or overlapping delivery points of derivatives traded on different Markets, unusual price movement or Market volatility in one Market may affect the price formation in another Market.
30. In such circumstances, the Requesting Authority may seek to obtain information to assess the degree to which unusual price movements in the related Markets may be related to large concentrations of positions held in one or more Markets.
31. Once a potential effect on areas subject to its jurisdiction has been identified, the Requesting Authority may seek information on the composition of the Markets in relevant products, including the Firms / Customers controlling or owning the largest long / short positions and the scope of the deliverable supply of the relevant cash market instrument or physical commodity.
32. The initial relevant inquiry thus will pertain to the composition of the Market. Information about the identity of the Firms / Customers with the largest exposures in the relevant security or derivative may lead to further inquiry to determine (1) whether one or more entities are acting in a concerted manner and (2) identities of related Firms that may be affected financially.

ADDENDUM A

CORE INFORMATION

Core information which Market Authorities should be prepared to share in order to assist in assessing and managing the impact of a Market or Firm crisis.

Firm Information

-  information on crisis Firm (i.e., an organizational “map” or chart of entity and affiliates);
-  financial resources / financial status of crisis Firm (i.e., capital, liquidity, trading positions, counterparty exposures);
-  details of any significant margin calls made and not satisfied or mark to market settlement exposures at clearing houses.

Customer Information

-  status of non-affiliate Customer positions, funds and assets held by crisis Firm (e.g., whether such Customer positions are segregated from firm positions and whether such positions have been frozen).

Market Information

-  concentration and composition of positions in the relevant securities or derivatives, including Firm positions and Customer positions, both on organized Markets and in the OTC markets;
-  Firms / Customers controlling or owning the largest long / short positions on the Market;
-  Firms with the largest exposures on the Market;
-  characteristics of related instruments, such as terms of the underlying cash market instrument or physical commodity, procedures for delivery or cash settlement, and deliverable supply of the relevant cash market instrument or physical commodity;

-  trading data such as trading volume, short selling and program trading;
-  aggregate Market data, such as open interest of related products;
-  aggregate margin and liquidity facilities (e.g., lines and letters of credit, guarantee deposits with clearing organizations, etc.) available to the Market.

Emergency Procedures

-  legal, regulatory, and other actions being taken or which may be taken under contingency plans or otherwise to address the crisis.

ADDENDUM B

ILLUSTRATIVE INQUIRIES

Illustrations of the types of questions which a Market Authority may use to request information from another Market Authority in order to assess and manage the impact of a Market or Firm crisis.

As noted above, the specific events and the associated information are not mutually exclusive or exhaustive. For example, under Event Type II, once specific Firms / Customers and derivatives / derivative groups have been targeted for heightened surveillance or further inquiry, the types of information described under Event Types I (as to Firms) and III (as to concentration of positions) may be among the types of information which may need to be shared. Actual events will present unique factual circumstances and raise different regulatory concerns.

- A. *Event Type I: Financial crises at a Firm in one jurisdiction with potential to impact Markets, Firms and/or Customers in other jurisdictions. (e.g., Barings Plc.)*

Inquiries

1. What actions, if any, have been taken in the jurisdiction of the Requested Authority to address the crisis at the Firm?
2. Does the Firm carry accounts of Customers located in the jurisdiction of the Requesting Authority? If so, who are they and what type of account is each such account? On which Markets does the Firm trade for these Customers, what derivatives is it trading and who are the brokers which carry the accounts? Does the Firm have any accounts with Firms located in the jurisdiction of the Requesting Authority? If so, what type of accounts and with which Firms?
3. Provide a world-wide organizational map or chart of the affected Firm. Please identify (a) Markets (other than those in the jurisdiction of the Requesting Authority) of which the Firm is a member, and (b) whether the Firm is affiliated with any Firm located in the jurisdiction of the Requesting Authority, or if the information is readily available from other sources, such other sources.
4. Provide information on the Firm's financial status [e.g., does the Firm have significant margin calls it needs to meet and, to the best knowledge of the Requested Authority, will it be able to do so (i.e., sufficiency and type of margin, nature of margin delivery facility, status of credit lines, whether Firm has drawn on available credit lines, and other liquidity facilities or resources); whether the Firm's positions have been reconciled with the clearing houses and other brokers with which it has accounts; and Firm's current capital position in relation to any requirement].

5. Has the Firm or Market Authority conducted any risk management analyses (i.e., stress tests / what if analyses) regarding how the Firm's resources would be affected by price moves or settlement delays? If so, what are the conclusions?
 6. If an insurance, compensation or similar plan exists to protect Customer assets in part or in full, whether private or governmental, please provide details. Is the Firm in compliance with relevant client money protection rules? How much is required to be protected, how much is available and where are such accounts maintained? How much is on deposit with clearing houses and other brokers, how are such deposits carried (e.g., commingled or separate accounts) and in what form are such deposits (e.g., Government securities or cash)?
 7. If client money protection rules apply, does the Firm carry the accounts of any affiliated entities? If so, are such accounts carried as non-affiliate Customer or proprietary accounts for client money/segregation purposes?
 8. If the Firm is unable to continue in business, are arrangements being made to transfer Customers' positions, funds and assets to solvent Firms or otherwise to liquidate the Firm's assets? If so, please describe.
 9. If in the course of addressing the crisis the Requested Authority becomes aware of any information that the Requested Authority believes could affect adversely the financial viability of any Firms regulated by the Requesting Authority, the Requested Authority should consider whether it would be appropriate to inform the Requesting Authority of such information.
 10. Key dates when funds are due or payable, such as important settlement dates, maturities of major funding arrangements, planned public announcements, or dates related to administration, receivership or other proceedings.
 11. To the best of the knowledge of the Requested Authority, extent to which shareholder or other support or buy-out options or contingency procedures are available.
- B. *Event Type II: A major Market move caused by: (1) unanticipated adjustments in fundamental supply and demand factors (e.g., 1987 Market crash, tin crisis of 1985, the 1994 Mexican Peso crisis), or (2) major hostilities or political actions (e.g., Persian Gulf War and Iraqi oil embargo)*

Inquiries

1. Identify the Firms which have the "largest" Customer and Firm trading exposures, consistent with guidance in paragraph 16 above, and their positions.

2. Have any Firms, whether or not among the largest Firms, been identified by a Market Authority as having operational or financial problems such as but not limited to: margin call deficiencies or late payments, unusually large draws on credit lines, any delays in the settlement process, failures by Firms to respond to instructions, declarations of defaults, required transfers of Customer positions, violation of any required capital requirements, shortfalls in Customer funds? Provide details.
3. Has a Market Authority conducted any risk management analyses of the potential effect of price moves or settlement delays on Firms and / or on the clearing organization? If so, please provide details.
4. Have any actions, including emergency actions, been taken by any Market Authority (including, for example, triggering of alerts, circuit breakers, changes in position limits, trading restrictions or changes in margin)?
5. What are the significant dates (e.g., settlement dates or final delivery dates) for the affected derivatives or transactions?
6. Where the settlement bank is not a Central Bank, is there any reason to question the ability or intent of settlement banks to make payments?

C. *Event Type III: Unusual price movements or Market volatility in a particular security or derivative traded on a Market or by regulated Firms which is related to a security or derivative traded on another Market (e.g., Sumitomo Corporation)*

Inquiries

1. Identify the Firms which have the “largest” Customer and Firm trading exposures consistent with guidance in paragraph 16 above, and their positions.
2. Do any Firms / Customers own or control a large position in relevant securities and derivatives, whether on organized Markets, in the OTC Markets or on forward Markets?
3. If the concern is with a possible disorderly Market, further questions would address the characteristics of the underlying product, e.g., the supply of the product available for delivery under the relevant derivative, who are the principal beneficial owners of the underlying stocks or deliverable supplies, and what are their delivery intentions or obligations?

4. Does the Requested Authority have reason to believe that one or more Firms / Customers with large positions in the relevant security or derivative acting alone or in concert are a significant cause of the unusual price movements or Market volatility?