COMMENTS RECEIVED IN RELATION TO THE CONSULTATION REPORT ON

Multi-jurisdictional Information Sharing for Market Oversight

TECHNICAL COMMITTEE OF THE INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS

APRIL 2007

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Market regulation services inc.

Dear Ms. Kunz and Mr. Ochsner,

On behalf of Market Regulation Services Inc. ("RS"), I am pleased to provide our comments on the draft report on Multi-Jurisdictional Information Sharing for Market Oversight.

The attached version of the draft report contains our detailed comments. We also have two more general comments:

1. Initially, the model that is described is one in which a market in one jurisdiction (the Home Market) provides access to participants from another jurisdiction (i.e., individuals or firms that are broker-dealers or investors), but the report then addresses a model in which the Home Market provides access to a foreign market (as opposed to foreign broker-dealers or investors). As a result, the list is very different that it would be if regulators were sharing information relating to individual and firms across boundaries, as opposed to markets sharing information. We believe the former model (access by broker-dealers and investors) is also relevant, and question why it was not considered. The informational issues would obviously be quite different under the two models.

2. The report could also mention the Intermarket Surveillance Group ("ISG") as a venue for multi-jurisdictional information sharing among market regulators (at least among ISG members). Most of the information described in the report is covered under the agreement among ISG members, except for the business arrangements surrounding systems and continuity issues.

We would be pleased to discuss these comments with you further.

Doug Harris
Director of Policy, Research and Strategy
Market Policy and General Counsel's Office
Market Regulation Services Inc.

International Capital Market Association (ICMA)

Thank you for the opportunity to comment on the draft paper which Standing Committee 2 will be seeking to finalise at its January 2007 meeting.

Overall we believe that the paper sets out a comprehensive list of the information which regulators might wish to share on a regular or ad hoc basis in order to properly discharge their responsibilities regarding (i) investment firms in their jurisdictions which are remote members of exchanges in other jurisdictions and (ii) listings and trading of securities or derivatives and associated securities and derivatives in multiple jurisdictions.

Below we have set out a small number of comments on the paper which you might like to take into consideration.

Although the paper makes no recommendations as to 'specific operational arrangements' for the reasons set out in the paper and with which we agree, the second recommendation concerning 'requesting authorities' calls for the authority to seek 'to the degree possible, to obtain necessary information on its own' and to avoid over-burdening the requested authority.

In the context of the first sentence of the recommendation, that information requests should be reasonable, that proposition is sensible and pragmatic. However, to the extent that the information sought is not in the public domain it raises the issue of how, and from whom the information should be requested. If it is to be obtained from the local investment firm which is a remote member of the foreign exchange, the information is in the possession of the local firm, and the requesting authority has the power to obtain the information, that is unexceptionable. If however the proposition is that the requesting authority should approach the foreign exchange directly, other issues become relevant, notably whether the exchange has the right to respond under its local laws, and whether it has immunity from suit by interested parties if it provides such information. In short, it should be recognised that at a minimum the foreign exchange will have had to satisfy itself as to the issues set out in the recommendations concerning requested authorities before responding to direct requests for information. In some circumstances, routing the request via the statutory regulator in the jurisdiction may be the most efficient and effective mechanism even if this does impose a burden on that regulator.

A more general issue concerns the discussion on the range of powers which a jurisdiction have, or might seek to impose, on foreign exchanges which have, or wish to encourage, remote members in the jurisdiction. We recognise that the report aims to be a factual statement of the position as it is today and to avoid any element of judgement as to the preferred option in an increasingly globalised market place. However, to an external reader, the relevant paragraphs in Part VI B and C set out with some clarity that where a regulator is not prepared, or lacks the power, to accept a foreign exchange into its jurisdiction on the basis of an 'equivalence determination' the result can be a significant burden of duplicate regulation, with its attendant costs, on the operation of that exchange. It might therefore be appropriate for the report to acknowledge that reality, while at the same time observing that the Technical Committee is considering these issues in other fora.

Finally, and this may be merely an issue of drafting, Part V A 2 (trading in multiple venues) equates the use of parallel trading to reduce the visibility of trading with fraudulent or otherwise illegal conduct. While there may be a connection, depending on the circumstances of the transaction or series of transactions (such as so-called 'pump and dump' scams) the paragraph implies that this will always be the case, a position with which we would disagree. For example, minimising 'market impact' is a legitimate indeed essential objective for most fund managers when they execute transactions, and recognised as such by most regulators. It is achieved by judicious trading which minimises its visibility. It would be unfortunate if this report was to be read as implying that the Technical Committee had formed a different view.

We would be very happy to discuss these comments with you further if that would be of assistance.

Very best regards.

Yours sincerely

Richard Britton

Swiss Exchange

Dear Ms. Kunz

Thank you and the SC2 for the opportunity to review this interesting and high-level document that describes a topic that is very important to the regulatory community. We believe that all the major factors are covered and have no further comments to make.

If we can be of any further assistance, please do not hesitate to contact us.

Many thanks

Walter Ochsner

Reference to the draft report on "Multi-jurisdictional sharing for market oversight".

Amman Stock Exchange

Dear Ms. Barbara Kunz,

We would like to inform you after reviewing mentioned report, that we found it very important guide that covers most of types of information that market authorities might share in order to facilitate there supervisory oversight. And have no further comments to make.
We would like to thank you for the opportunity to review this report. And for any further assistance, please don't hesitate to contact us.

Best regards
Listing & Operations Dep.
Amman Stock Exchange

BOVESPA

Dear Ms. Susanne Bergstrasser

Further to the IOSCO's SROCC Chairman suggestion for appreciation of the draft report on "Multi-jurisdictional Information Sharing for Market Oversight", I would like to inform you that the team of the São Paulo Stock Exchange (BOVESPA) have evaluated the document and we considered it complete in terms of the necessary information for the regulators' oversight.
Also, since it provides guidance on specific issues, as shown in the several boxes of the text, the paper does not examin all the possibilities, which keeps an important room for further developments of the exchange industry. Therefore, we do not have any particular comment to add at this time.

We thank you for this opportunity and congratulate you for the work.

Best regards,

Cristiana Pereira

Advisor for Development
and International Relations
BOVESPA

Cairo and Alexandria Stock Exchanges

Dear Ms. Bergstrasser

Referring to your letter to Mr. Watanabe, Chairman of SRO Consultative Committee, please find enclosed my few comments on the draft report:

First, I would like to point out that it is a very good report that addresses the importance of sharing information among regulators due to the internationalization of markets to facilitate their supervisory responsibilities.

- On page 8 on second paragraph before item IV, it is mentioned that market authorities rely on bilateral MOU to obtain information but they are structured generally not specific information....In the footnote 14, it is mentioned that there are some exceptions such as SEC and FSA, CFTC and CONSOB etc..regarding specific information...

I think this practice should be encouraged and promoted among authorities via signing MOU that addresses specific type of information, rather than leaving it loose or general in MOU.

Also it could specify not only exact type of information but when it is required... which relates to conclusion section in page 17 that mentions that in this report, no recommendations are made concerning specific operational arrangements.....I think though IOSCO members generally have legal authority to share public and non-public information, I am not sure whether this is done in practice or not? Therefore for practicality reasons, it is better to recommend some operational arrangements even in brief at least for the two cases mentioned -markets offering remote access to foreign participants and trading in multiple venues.

- On page 14 the TC concluded that it is good practice.....to encourage issuers to notify them of other markets on which they have their securities listed" This is fine but what if the issuers themselves are unaware of being traded at other exchanges?

Footnote 18 mentions that the Financial Instruments Directive which will take place in November 2007 requires all regulated markets to inform an issuer whose securities they admit to trading whenever the issuer has not consented to the listing....what about if the country is not in the EU?

Therefore, I think in the recommendation should be made for all markets, two things must be in place: foreign markets inform issuers if they are trading their securities

without being listed on them, and issuers have an obligation to inform their own home markets that they are being traded on other exchanges, after they are notified.

- I do not know but it is sometimes confusing for me as a reader of the document when you mention market but it is meant as member firm which occurs several times in the report.

An example in page 5 paragraph 2.. Jurisdictions take different approaches with regard to how to regulate such foreign markets, I think it is better to mention foreign member firms not to confuse them with the markets/operators themselves. The same paragraph.... In some countries, the foreign market---foreign member firm will need to comply with the same rules and regulations as any domestic market--member firm.

Thank you for your consideration.

Regards,

Dr. Shahira Abdel Shahid
Advisor to the Chairman
Cairo & Alexandria Stock Exchanges (CASE)
Member of SRO Consultative Committee
www.egyptse.com

British Bankers´ Association

Thank you for the opportunity to respond to your consultation report on Multi-Jurisdictional Information Sharing for Market Oversight.

The British Bankers' Association is the principal banking trade association in the United Kingdom representing more than 260 banks, many of which are from other European jurisdictions, or other global markets who have chosen the London international financial centre as the headquarters for their European operations. The BBA speaks for banks representing 95% of the banking assets held in the UK.

We would like to make the following comments to IOSCO:

We welcome IOSCO's acknowledgement that for the purposes of regulated markets and MTFs the EU can not be categorized using "home" and "foreign", due to the existing and forthcoming European regulation governing cross-border activity.

We agree, as stated in the consultation report, that requests for information consume resources, both for the body requesting information and the regulator or company of whom information is requested. We would therefore encourage IOSCO to consider

ways of optimising the size and scope of requests for assistance to limit the breadth of many requests to more manageable levels. We attach as an appendix a copy of a document we prepared with our large international members which could usefully be developed as a tool for IOSCO in this regard.

Under the heading of "Information that may facilitate market trading oversight", IOSCO suggests that information on trader's positions and information on large positions could be shared. We consider that it is possible for such information to be shared among regulators provided information "gateways" permit this. Such information needs to be carefully kept confidential, as obviously it is extremely market sensitive and on no account should be leaked to the market itself.

There must be more clarity on the issue of "home" jurisdiction of a security. If this is defined as the jurisdiction in which a security has its "primary listing", how does this apply to unlisted securities? How does one account for companies that have dualheaded structures? Can "home" be the country of listing for securities that list in "flag of convenience" countries? What definition of "primary listing" is IOSCO considering?

The consultation report discusses Market Authorities sharing information, and all specific examples given are framed as requests from one authority to another. However, in the pre-amble, the paper states:

"Moreover, a market authority may need to obtain confirmation of the legal ability and willingness of a foreign market authority (including the market itself) to cooperate and to enter into an agreement or understanding for the sharing of information"

This seems to raise the prospect that participants in a market should prepare themselves for direct requests for information from foreign regulators. It is our understanding that under MiFID external regulators will approach firms via their domestic regulator, this is the preferable approach. We would appreciate clarity on this issue.

If you would like to discuss our views in further detail, please do not hesitate to contact either John Ewan or Michael McKee.

Yours sincerely,
John Ewan, Director
Michael McKee, Executive Director

APPENDIX 1

INFORMATION SHEET: OVERSEAS REGULATORY INQUIRIES FOR INFORMATION RELATING TO UK BANKING AND SECURITIES BUSINESS

This information sheet has been prepared by the British Bankers Association with the approval of its members to assist overseas regulators and exchanges in obtaining information from banks about banking and securities business booked in the United Kingdom.

1. The usual channel for making a request for information

The correct approach to making a request for information about business booked in the United Kingdom is by contacting the UK Financial Services Authority's Enforcement Division. The Enforcement Division will then contact the bank for information (and can facilitate direct communication between you and the relevant person in the bank where this is appropriate).

Approaching a bank for information about UK business by way of a local branch or subsidiary of the bank can often lead to a slower response and communication difficulties as a bank sets up its procedures to expect to provide assistance on UK business through the FSA route.

Many banks have a central unit, or point of contact, usually within their UK Legal or Compliance Department which is responsible for co-ordinating responses to regulatory inquiries from the FSA or overseas regulators. The FSA will know this point of contact – and an inquiry made through any other route is more likely to be delayed or lost.

The largest banks in the UK carry out a very large volume of transactions as they often operate as a hub for Europe as a whole, and even the Middle East and Africa also. Often the information about these transactions is split over a number of different information systems (e.g. there may be different systems for equities, for bonds, for particular types of exchange traded derivatives) and sometimes over a number of physical locations. Although booked in the UK the transactions may have their origin elsewhere in the world – and therefore there may have to be some cross-border inquiries made within the bank to assist the regulator. This can sometimes mean that it is a much more complicated exercise for these larger banks to gather information and provide it to regulators than might be the case in the regulator's home jurisdiction.

2. Nature of the request

Where possible, explaining the background to the request and/or what the regulator is looking for assists banks to provide a focused response and may simplify the information gathering process. An early dialogue between the regulator and the bank to explain what is required, and why, and to discuss what the bank can provide and to see if it is possible to narrow the information requested is likely to be productive for both the regulator and the bank – and lead to the production of more relevant information. The more focused the request the easier it is to obtain the relevant information speedily e.g. requests to know who the client was in relation to a number of specified trades.

Very general requests can be unclear. Does a request for "proprietary trading" mean proprietary trading done to facilitate a client trade or not? What is meant by "all client sales": all sales by clients to the bank or all sales by the bank on behalf of clients or both?

General requests (e.g. for the clients for all trades between two dates, sometimes over a period of months) often generate large amounts of data and can therefore be disproportionate in the work/time involved and result in unhelpfully wide responses. It is much more difficult to coordinate a wide-ranging response involving a mass of information.

Any enquiry relating to information held by the client or for explanations from the client should be directed by the regulator direct to the client (once the client is known). In particular, regulators are often interested in the underlying reasons for a trade. The client itself is always better placed to know its specific motivations for making a particular trade.

In some case more than one regulator requests information in relation to the same security: it would be helpful if these requests could be co-ordinated by regulators (working with the FSA) to avoid duplicating work unnecessarily.

Experience indicates that often a regulator asks for information about trades because they wish to identify one or more clients of the bank. Therefore it is important for a regulator to indicate if their primary focus is on a bank's proprietary trading or the identity of its clients. This will avoid collection of data which is irrelevant to the investigation.

3. Client Confidentiality

Any information that relates to client's activities raises issues of a bank's legal obligation in relation to client confidentiality and, therefore, banks will often need to be formally required by the FSA to provide the information in order to be able to override these confidentiality obligations.

Even if this is not the case a regulator should bear in mind that a bank will often need to consider the confidentiality implications of a request by a regulator before providing information – and this can sometimes delay the provision of information.

4. Interviewing Bank Staff

If an inquiring regulatory body wishes to interview a UK based employee; the bank is likely to prefer that the interview take place within the UK under domestic law, in order to have the benefit of the full legal protections that apply.

5. Other Practical Considerations

Obtaining information in a large organisation is not necessarily straightforward. The

timeframe for response should be realistic. If a request is urgent the regulator should indicate this to the FSA. If, following contact with the FSA the FSA has facilitated direct contact between the regulator and a co-ordinator within the bank the regulator should feel comfortable calling the co-ordinator if something is required quickly – rather than writing.

Many overseas requests relate to trading from a long time previously, in some cases, a matter of years. This will increase the time needed to obtain the information. It also makes it unlikely that the relevant bank personnel will be able to remember any relevant information. The sooner after the trade or deal in question the request is made the easier and quicker it is to respond. Equally, follow-up questions should be as close as possible to the original request not many months later.

It would be very helpful to know when a request has been closed.