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09 April 2010

The work of IOSCO and the financial regulatory framework

Global Financial Crisis Conference,

Bond University, Sydney

9 April 2010

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SP01-2010

Good morning.

I am very pleased to be here to speak at this symposium today. Not simply because our topic – *Global Financial Crisis: The Way Forward* – matters a great deal to people like us, but because its ramifications go so much wider.

They touch those still unaware that financial markets matter to them and their lives, as well as those who believed so until recently – when they discovered that what happens in the markets can send out shock waves that engulf them and their families, their homes and their livelihoods.



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As a regulator, these people are one of my key concerns. We need them to invest in securities markets, and their confidence is key. We need to head market participants towards greater transparency, reduced conflicts of interest, and more focus on the interests of investors.

It is not enough to insist only on compliance with the law. We also work to promote high standards of market conduct. Only high standards will allow the woman on the Bondi tram and the man on the Clapham omnibus to be confident enough in the rules of the game to invest in the securities market.

Once upon a time, the game, and therefore the setting of its rules, was more or less confined to individual jurisdictions. That has changed forever. Financial markets are now global. Money moves across international borders with the click of a mouse.

The systemic implications of what happens in one market can be felt immediately in other markets around the world.

Before the global financial crisis, few investors in Europe or the UK would have imagined that the mis-selling of a mortgage product to an unemployed person in the suburbs of Chicago could have impacted on their economic future and the futures of those around them.

From a regulatory point of view, therefore, merely minding the shop at home is no longer enough. The financial crisis has convinced most of us of the need for greater cooperation between international regulators, particularly in relation to enforcement and supervision.

The International Organization of Securities Commissions (IOSCO) has emerged as a major player in the global financial architecture, and it is this organisation's work that I'd like to focus on today, because it does indeed promise a way forward.



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I intend outlining IOSCO's structure, its perspective on regulation, and several of its important post-crisis projects.

About IOSCO

IOSCO promotes global financial stability, particularly stability in markets, and its members agree on, and apply, consistent international standards for those financial markets. Where standards are not met, IOSCO enables effective enforcement across jurisdictions.

IOSCO's members regulate more than 100 jurisdictions making up more than 90 per cent of the world's securities markets. Most are independently constituted government regulators.

Each member retains the sovereign capacity to set and regulate standards within its own jurisdiction, but the consensus reached through IOSCO on what these standards should be puts the organisation in a unique position. It is one of the very few international organisations with a truly global reach.

The 20th century was the century of structural solutions. By the end of it, some of those post-World War II constructs were appearing outdated. The 21st is likely to be that of networked solutions. The internet and the possibilities it has presented for greater global integration is an apt metaphor for the way in which 20th century solutions are likely to be progressed.

IOSCO's strength lies in its understanding and practice of such solutions.

IOSCO's perspective

IOSCO sees sound regulation of securities markets as vital to global financial stability. It also sees the prudential regulation of institutions as equally crucial. Together, they promote the global financial stability essential for sustainable economic growth.



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Accordingly, we work closely with prudential regulators: the Basel Committee on Banking Supervision and the International Association of Insurance Supervisors. IOSCO is also a founding member of, and has two seats on, the Financial Stability Board (FSB).

We believe good corporate governance is the key to capital market integrity and stability. We also believe that the overwhelming of traditional, centuries-old standards of conduct by unregulated market forces was a major precipitant of the crisis.

We have all discovered the hard way that markets will not always correct themselves. Business ethics can no longer be perceived as a luxury. They are a necessity, if history is not to repeat itself.

IOSCO Principles

In 1998, the organisation endorsed Principles that recognise three objectives for securities regulation: protecting investors; ensuring markets are fair, efficient and transparent; and reducing systemic risk.

Based on these Principles, each jurisdiction can assess and, if necessary, align its laws consistent with its own priorities, traditions, market developments and legal frameworks. The Principles are not an attempt to create a single international body of rules and regulations, but a global benchmark.

The G20 recognised this when it when it included the IOSCO Principles among the standards and codes it committed to seeing implemented and peer-reviewed through the Financial Sector Assessment Programme (FSAP). This is no mere formality: it entails rigorous processes with detailed assessments by experts.



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The G20 has recommended all members undertake an FSAP assessment and that other countries either engage in a self-assessment or an FSAP using the IOSCO principles.

IOSCO Multilateral Memorandum of Understanding

In 2002 IOSCO adopted an MMoU designed to facilitate cross-border enforcement and the exchange of information between national securities regulators.

Three years later it endorsed the MMoU as the benchmark for this international cooperation, and required all 109 members sign up by 2010. All but five have done so.

The MMoU ushered in a new era. It has reshaped cross-border securities-market enforcement and made it easier to track transgressors across markets and political borders. It is a cornerstone of the new post-crisis financial world order.

Identifying systemic risk

IOSCO's post-crisis work has focused on market stability and on identifying the causes of systemic risk. It has analysed the underlying causes of the crisis and initiated work to address crucial aspects of market conduct.

It is also developing its own strategic direction for 2010 onwards, and will emphasise the need for greater vigilance on systemic risks. It is monitoring the unregulated boundaries of otherwise well-regulated jurisdictions, where destabilising products and market practices may well appear.

IOSCO is currently developing a new principle on systemic risks in markets.



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I would like now to outline a number of IOSCO reports produced as a result of its initial work on the sub-prime crisis. Several of these focus on securities market activity currently lying on or beyond the borders of current regulation. These too need to be transparent since they deal with parties working within regulated markets.

Private Equity Conflicts of Interest, November 2009

Private equity firms are one such area. This report draws up principles for mitigating the potential conflicts of interest between a manager and third-party investors that can arise from a firm's obligations to multiple funds. These conflicts pose a risk to fund investors and efficient market functioning.

Private equity firms should manage any conflicts in the best interests of their fund(s), and the overall best interests of fund investors. They should draw up written policies and procedures for application across their whole business, and make sure these are always available to fund investors.

Firms should opt for the most effective mitigation techniques and those yielding most investor clarity. They should implement a well-documented process for consulting investors on conflict-of-interest matters, and they should promptly inform all affected investors on what emerges from investor consultation plus any actions taken.

Finally, private equity firms should ensure all investor disclosure is clear, complete, fair and not misleading.

Joint Forum Report on Special Purpose Entities, September 2009



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Special purpose entities (SPEs) can be useful to institutions and investors. Their defining feature is bankruptcy remoteness. Poor understanding of SPE risk by management and investors, though, can lead to failures.

The report recommends that supervisors ensure market participants assess all SPE economic risks and business purposes throughout the life of a transaction. Assessment should be ongoing, and management should understand the risks.

If at any point financial firm support is evident or likely, SPE activities should be aggregated with the institution's for supervisory assessment and risk-management purposes.

SPE supervisors should support more standardisation of definitions, documentation, and disclosure requirement, and report any divergent material to investors. They should also oversee and monitor SPE activity, and assess its implications for regulated firms.

IOSCO will continue to monitor developments in off-balance sheet financings, including unconsolidated SPEs.

Elements of International Regulatory Standards on Funds of Hedge Funds Related Issues Based on Best Market Practices, September 2009

This report was prompted by retail investors' increasing involvement in hedge funds through funds of hedge funds. It aims to give investors better information in this largely unregulated area.

The report recommends that managers determine if fund-of-hedge-fund liquidity is consistent with that of the underlying hedge funds. Managers should also consider whether conflicts of interest might arise between any underlying hedge fund and other parties.



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Funds of hedge funds' managers should monitor and analyse several aspects of due diligence: the appropriateness of the legal regime and service providers, and the transparency, valuation and reporting arrangements of a specific hedge fund.

The organisational structure, resources and procedures must be capable of taking action on any anomalies due diligence identifies. Managers should regularly assess whether selection procedures for eligible underlying hedge funds have been properly followed, and explain any deviations.

If any aspect of due diligence is outsourced, a fund of hedge funds' manager should ensure conflicts of interest are addressed. They should also see that outsourcing is consistent with the IOSCO *Principles on Outsourcing of Financial Services for Market Intermediaries*.

Exploration of Non-Professional Ownership Structures for Audit Firms, September 2009

Securities regulators and investors rely on audited financial statements. Quality audit-services availability is therefore critical. The EU, Japan and the US all restrict audit firm ownership, and securities regulators have long been concerned that the loss of just one of the big four firms – Deloitte Touche Tohmatsu, Ernst & Young, KPMG, PricewaterhouseCoopers – could disrupt the entire market for independent audit of large companies.

In this report, IOSCO explores the barriers preventing more firms from competing in the market. At the same time it is of course keen to preserve auditor objectivity, independence, professionalism and competence, and thus, audit quality.



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The report suggests that modifying rules for audit firm ownership would give public companies greater choice of audit firm services without compromising the quality of those services.

Principles for Periodic Disclosure by Listed Entities, (Periodic Disclosure Principles) July 2009

This amounts to a guide for companies with securities listed or admitted to trading on a regulated market in which retail investors participate. Periodic reporting is the lynchpin of both investor protection and transparent operation of financial markets.

Information in periodic reports should be relevant, and include independently audited financial statements covering the entire previous financial year. These must be regular, clear, concise and understandable, and should identify who was responsible for producing them.

Financial reporting should be regularly reviewed internally to ensure assets are safeguarded from unauthorised or improper use, and transactions are properly recorded.

IOSCO Good Practices in Relation to Investment Managers' Due Diligence When Investing in Structured Finance Instruments (Investment Manager Due Diligence Practices), July 2009

The due diligence practices this report recommends are designed to help industry and regulators understand and monitor investments in structured finance instruments (SFIs) on behalf of collected investment schemes (CISs).



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SFIs carry different risks from more traditional instruments, thus calling for tailored due diligence.

The report also deals with using third parties to carry out due diligence. Investment managers should understand the third party's methodology and parameters, and understand the basis of that third-party opinion.

Hedge Funds Oversight, June 2009

Hedge funds can provide liquidity, price efficiency and risk distribution, and contribute to global integration of financial markets and offer diversification benefits.

The global financial crisis was not a hedge fund crisis. However, hedge fund activities did amplify its consequences because of their need to quickly unwind positions.

This report suggests that regulation of hedge fund activity would mitigate its risks. Hedge funds and/or their managers or advisers should be registered and subject to regulatory requirements.

Conflicts of interest and other conduct rules should be established. Investors should be entitled to disclosure, and prudential regulation should be mandatory. Prime brokers and banks that fund hedge funds should also be registered, regulated and supervised.

Hedge fund managers/advisers and prime brokers should inform regulators about systemic risk, and regulators should encourage the implementation and convergence of industry good practices.



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Regulators should also have the authority to co-operate and share information with other regulators to mitigate cross-border risks.

Post-crisis accounting issues

The crisis increased the urgency of calls for globally convergent accounting standards to better serve investors in globalised capital markets, and I would like to touch on IOSCO's keen interest in global standard-setting for accounting.

International Financial Reporting Standards (IFRS) are used in more than 100 countries. The US, however, relies on the Financial Accounting Standards Board (FASB). Convergence of these two sets of accounting standards is critical.

The existence of two standards obscures market transparency. It makes it difficult to compare entities that use separate standards, especially those engaged in cross-border activity. It poses an ever-present risk of significant facts being lost in translation.

IOSCO has been closely involved in initiatives to improve transparency through better quality disclosures, and enhancements of international accounting standard-setting governance. This has included formation of the Monitoring Board of the International Accounting Standards Board (IASB).

Conclusion

The global financial crisis was a shocking reminder of how important corporate governance is to global financial stability. Since then, global financial leaders have become more aware of the need for effective market regulation as the virtuous twin of prudential regulation.



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The way forward must be sustainable global growth, and this will only occur in conditions of global financial stability. The structure of financial entities and the interaction between them and the markets must be well regulated.

The new post-crisis global financial architecture may still be under construction, but promising characteristics are already emerging.

Standards are likely to be more convergent, and greater enforcement cooperation across jurisdictions will leave transgressors fewer places to hide.

The purpose of such standards is affecting the drivers of behaviour of market players, to encourage them towards greater transparency, reduction of conflicts of interest, and a focus on the interests of investors. IOSCO's work is directed towards ensuring the drivers of behaviour of those who manage parties in global markets are congruent with the interests of investors in those markets.

In other words, having markets recognise that good governance is now good business.

I firmly believe this is the way forward for us all.

Thank you.