

Presentation for the hearing with the Economic and Monetary Affairs Committee Of the European Parliament December 20, 2006

Madame la Présidente, Ladies and Gentlemen Members of Parliament,

It is indeed an honour for me as the chairman of IOSCO's Technical Committee to be invited before your committee to make a presentation of this organisation which plays a major role in the field of regulation of securities markets among the globe.

IOSCO is an organisation that brings together nearly all the Securities Commissions of the world. It gathers together in one forum 120 Commissions including all the securities regulators from the world's major markets and from the significant emerging markets. IOSCO is non-governmental; it is run by an Executive Committee currently chaired by Mrs Jane Diplock, the Chairperson of the Securities Committee of New Zealand. The Vice-Chairman is the Chairman of the Chinese Securities Regulatory Commission, Mr Shang Fulin.

IOSCO's internal organisation

IOSCO's internal organisation includes two other important committees; the Emerging Markets Committee, currently chaired by the Chairman of the Securities and Exchange Board of India, Mr Damodaran, and the Technical Committee, that I have the honour of chairing. The Technical Committee brings together the 15 securities commissions of all of the major markets. It includes the two US authorities, the SEC and the CFTC, the British FSA, the German BAFIN, the Japanese FSA, the Dutch AFM, the Italian CONSOB, the Spanish CNMV, the Swiss Commission fédérale des Banques, the Securities and Futures Commission from Hong Kong, the Australian ASIC, the Mexican CNBV, the Ontario Securities Commission, the AMF from the Quebec, as well as the French AMF. The chairs of the Emerging Markets Committee and of the Executive Committee also participate in the Technical Committee meetings. This Committee plays an essential and central role in IOSCO as it is, to a certain extent, the standard-setting Committee. As such, it has drawn up the international standards used in financial markets worldwide. For example, it is the Technical Committee that drafted IOSCO's 30 Objectives and Principles of securities regulation adopted by the organisation in 1998, as well as its implementation standards. It is again this committee that adopted a resolution on the use of IFRS for cross border transactions. I will come back to the subject of the TC's recent accomplishments in a moment. Clearly, these standards, once drafted by the TC, must be presented as resolutions by the Executive Committee to the full membership for adoption by the Presidents' Committee in order for them to become the Standards of the organisation.

IOSCO members are also organised in four regional committees: European, Asian-Pacific, African and Middle Eastern and Inter-American. Their role is to enhance internal communication and to ensure that the regional viewpoint is properly considered. IOSCO is managed by a General Secretariat based in Madrid, with a limited staff.

IOSCO's role in the international arena

As I mentioned previously, IOSCO is a non-governmental organisation as are the Basle Committee of banking supervisors, and the IAIS for the insurance sector. These three committees have formed a joint Committee, the Joint Forum, where they deal with common issues. In addition, IOSCO participates in the Financial Stability Forum. This organisation was created in the aftermath of the Asian and Russian market crises in 1999. It brings together the enlarged G7 Finance Ministers and Central Banks, as well as the representatives of IFIS, including the World Bank and the International Monetary Fund, both governmental institutions. IOSCO, represented at the FSF by the Chairmen of the Technical Committee and of the Emerging Markets Committee, can present its views and its projects, and may also be mandated by the FSF to examine specific issues. This link between regulators and executive bodies on a global level is essential to face the challenges of the globalisation of financial markets; it gives legitimacy to IOSCO's Standards; it also seems to me to be a significant step forward in the building of a global architecture for financial supervision.

The Technical Committee has created five permanent subgroups, the Standing Committees, to follow the primary market issues including all aspects related to auditing and accounting issues, secondary market evolution, intermediaries regulation, cooperation and enforcement matters as well as asset management. On an ad hoc basis, it would create task forces such as the one on combating financial fraud or, currently, on audit concentration.

In 1998, IOSCO adopted its Objectives and Principles of securities regulation. The statement of purpose that accompanied their initial publication indicated that: "The Objectives and Principles encourage countries to improve the quality of their securities regulation." And "represent international consensus on sound prudential principles and practices for the regulation of securities markets".

The 30 principles are based on three objectives of securities regulation:

- investor protection,
- ensuring that markets are fair, efficient and transparent, and
- reduction of systemic risk.

They are grouped into eight categories: principles for the regulator, including principles for self-regulation; for enforcement and for cooperation; for the regulation of issuers, for that of collective investment schemes, for that of market intermediaries and for the regulation of secondary markets.

In the aftermath of September 11, IOSCO reacted by reinforcing the requirements for cooperation amongst its members. A multilateral memorandum of understanding regarding the sharing of information was approved in 2002. Considered to be the international standard in terms of cooperation, it is expected that all IOSCO members will have signed it by 2010. Signature of the MMOU is dependent on the positive evaluation by an ad hoc Committee tasked with verifying that the legal and administrative framework allows the securities commissions in each country to fulfil their obligations vis-à-vis their peers. This agreement is quite stringent and numerous countries, including some European ones, will have to change their national rules in order for their securities commission to be able to sign it. Furthermore, the ability to sign the agreement is a condition for adhering to the organisation.

This agreement has also provided the opportunity to initiate a dialogue with non cooperative jurisdictions, the off-shore centres, in order to lead them to an improved cooperation. This dialogue is led by IOSCO in conjunction with the work of the FSF, thereby increasing its effectiveness.

In addition to the general principles I have described to you, IOSCO has specialised standards. It is worthwhile mentioning in this context those on prospectuses for cross-border offers. Another example, following the financial scandals and on the basis of the Parmalat report, is the standards on the independence of analysts and auditors which have been adopted. Particular attention has been paid to audit activities and its most prominent issues. The focus is on the scope of non audit services offered and particular attention will be made to aspects related to investor protection.

Interaction between IOSCO and Europe

Although IOSCO's standards are intended to be used globally, there is quite naturally a concentration of interaction between IOSCO and Europe, due of course to the fact that several of the Technical Committee members, i.e. major markets, are European. This also logically means that many of the IOSCO standards have already found their way into national legislation throughout Europe and have served as inspiration for some of the directives in the Financial Services Action Plan. This is the case for instance for the prospectus and market-abuse directives as well as the texts regarding financial analysts that are found in the MIFID and MAD directives. As another example, I would like to mention the code of conduct for credit rating agencies which IOSCO developed and which CESR has chosen to use in order to evaluate the agencies.

IOSCO and dialogue with market participants

As Chairman of the TC, I consider it very important to enhance the dialogue between market participants and supervisors. Besides the work undertaken by its SRO's Consultative Committee, IOSCO has already taken some important steps in this field, namely by adopting a process for consultation on its various projects and initiatives. This dialogue is essential for establishing principles and standards that respond to the challenges of market evolution, to the risks that might arise and to better regulation. Moreover, this dialogue is crucial for improving the

implementation process of international principles in a manner that leads to more convergence, more harmonised practices and paves the way for the removal of barriers to the development of cross border activities. At a recent meeting of the TC, I proposed that a more structured dialogue with Industry be established. The idea was well received and we have begun working on a framework for it.

Specific topics (exchanges, internal control and hedge funds) and looking ahead

I would like to say a few words now on some specific topics including exchange evolution, internal control and hedge funds, before moving on to the upcoming agenda for IOSCO and the Technical Committee in particular. These are not new topics for you.

On exchange evolution, the Technical Committee has focused on two issues. The first one is the impact of demutualisation and concentration on the regulatory framework and the relationship with users. The second one is the impact of the diversification of trading venues on market efficiency. Different jurisdictions are taking different approaches to the question of fragmentation of liquidity. In Europe, this question arises in the context of the MIFID while in the United States it arises in the context of Regulation NMS. At the Technical Committee meeting in London last month, one of the discussion panels highlighted the issue regarding the oversight of markets having cross border activity as well as the question of the mutual recognition of market regulation in order to facilitate these activities. The IOSCO TC has launched a project on the evolution of market structures and the consequences in terms of regulation. We have also just adopted a report on Regulatory issues arising from Exchange evolution. This subject will continue to be closely monitored by IOSCO with a special focus on cross border issues.

IOSCO, together with the CPSS, established standards on post trade activities. Post trading evolution is still on the agenda of both IOSCO and the European authorities. As the most basic pillar of the infrastructure supporting financial markets, it is becoming a key item for the trans-Atlantic dialogue. The growth of the derivatives markets and the related growth of the clearinghouses supporting them in the US and elsewhere, combined with developments in the European environment will lead to the need to review existing standards and guidelines.

The subject of cross-border ventures also brings to mind that of financial information, one of utmost importance for IOSCO. The need to progress toward the definition of internationally recognised standards that foster the capacity of issuers to raise capital globally is undeniable. IOSCO has done a lot in this field since we adopted, in 2000, a resolution on the use of international accounting norms for cross border operations which enhanced IASB's legitimacy and fuelled the initiative toward the adoption of the IFRS by a large range of countries including, as you know, members of the European Union. We are now focusing on convergence, implementation and also interpretation, through the building of an IOSCO database to be interoperated with the CESR database, and through a close relationship with IASB's interpretation Committee, the IFRIC. We are also focusing on monitoring the standard setting by IFAC and participating in global initiatives regarding audit quality, audit supervision, and the evolution of audit industry.

IOSCO originated in 2003, together with IFAC, the World Bank, the Basel Committee and the IAIS, the process whereby the standard setting in the field of audit would be monitored by the relevant international organisations. Hence the establishment of the so-called "Monitoring Group" the creation of a Public Interest Oversight Board located in Madrid and the definition of the respective roles of IFAC and its special committees.

It is good news that after some discussions, the EU joined the process in 2006 and I foresee the new IFIAR participating also in the common undertaking.

Following the release of a report on financial fraud, the Technical Committee has initiated a study on the internal control requirements of issuers. This subject is not a new one; however, what has changed in recent years is both the amount and intensity of the attention paid to it. In 2002, the European Commission proposed changes to the 4th and 7th Council Directives with regards to the written description of the principal attributes of firms' internal control and risk management systems; while, in the same year, in the US, section 404 of the Sarbanes Oxley act was implemented requiring public firms' management to commit themselves to implement and maintain an internal control process. We have currently very different systems of reference used in the implementation of internal control programmes and it would certainly be useful to look at the best way in which to converge guidelines and principles on internal control in order to facilitate comparison by investors in all parts of the world.

Regarding hedge funds, I think it is fair to say that regulators agree in general that hedge funds, while they benefit to market efficiency through arbitrage, investment capacity and provision of liquidity, do indeed present a number of risks. In order to address them, it is important to be as clear as possible when describing them.

The first risk is systemic risk, due to the possible failure of a major hedge fund or a chain of hedge funds. Although the LTCM remains in our collective memory, it appears today that the robustness of the financial system has improved since then, in part due to risk control by banks and brokers and the better coordination between regulators internationally. This coordination has certainly helped to better control risks, as shown by the recent failure in the US of Amaranth. Nonetheless, regulators must remain vigilant.

The second risk is that of market abuse, i.e. potential price manipulations or insider trading. The search for higher and higher returns and the practice of super performance commissions for hedge fund managers might encourage some to test the limits of regulation. The subject of market abuse is of course not just an issue for hedge funds, who are also subject to the MAD. The question is that of the techniques used by hedge funds or their counterparts in the market and the corresponding opacity that render implementation of the market abuse texts difficult. The recent explosion in the OTC derivatives market, with a growing number of underlying instruments that are more or less correlated and that give rise to a variety of arbitrage strategies, has created a new technical challenge for regulators as a result of the speed of transactions and their cross-border nature. In the United States, the industry has responded with an initiative managed by the DTCC that will ultimately streamline the derivatives post trading process and that includes the famous "Trade Information Warehouse" which should constitute a gigantic database, for credit derivatives and which will ultimately be expanded to include interest rate and equity derivatives. The topic of OTC derivatives is rapidly becoming a global question where we expect Europe to play a role in setting the example in terms of information sharing and market surveillance.

The third risk is that of shareholder activism that is carried perhaps too far such that it translates into an impact on the corporate governance of listed companies. IOSCO is particularly interested in corporate governance and has recently established a task force, chaired by the Chairmen of the Spanish and Australian Commissions, on this subject. The Task Force will, in the future, work on the protection of minority shareholders and will examine the possibility of working on takeovers. It might decide that it should look into the governance policies of hedge funds at some point, as it has already analysed, in depth, the governance of general purpose Collective investment schemes.

The fourth risk relates to operational risk and internal control, in other words the risk of a poor or incorrect valuation of illiquid and/or complex assets and its impact on the fund's performance. Given the importance of valuation and the challenges presented by the assets and liabilities carried by hedge funds, IOSCO decided that a set of valuation principles may prove of value to CIS regulation and global markets in general and has decided to concentrate on hedge funds. In coordination with the FSF, the Technical Committee is now focusing specifically on these questions, as valuation is an area of risk for investors, market counterparties and participants. A preliminary report is expected to be released during mid-2007.

The last risk I would like to mention is that of mis-selling or, in other words, the inappropriate marketing, in this case of alternative investment products to clients who may not be aware of the related issues and risks. Its frequency is all the more imaginable today given the widespread use of sophisticated marketing techniques. IOSCO is addressing these questions in the context of its participation in the Joint Forum. It has already published a report in March of this year entitled "*The Regulatory Environment for Hedge Funds: a Survey and comparison*".

Making alternative investment vehicles more easily available to institutional investors is an idea that has been put forward in one of the European Commission's Expert Group reports this past summer. It is in the context of possible reforms such as these that one must keep in mind the need to prevent inappropriate or even abusive sales. It would appear that the recommendation allowing a wider distribution of funds of hedge funds may provide the best option at this time. An integral part of such an effort could include the adoption, on a European level to start with, of the mutual recognition of funds of hedge funds.

More generally, the questions of how potential investors are selected, the conditions under which sales are made, as well as the context in which investment advice is given, are of interest to all of us in this room. IOSCO members will be keen to learn in what direction the European Commission will go, both in the follow-up to its

White Paper on asset management as well as the implementation of the MIFID with regards to the marketing of financial products.

Conclusion

I would like now to conclude with a few remarks on the upcoming work program.

We have to face two challenges: firstly ensuring a thorough implementation of the standards by a large number of IOSCO members, and secondly identifying risks and concerns that may be caused by the evolution of the financial markets. Clearly however, the issues we are working on are slowly, but inevitably, converging from region to region and globally, be they related to issuers, such as internal control and disclosure, to intermediaries such as trading and post trading, or related to retail investors such as those regarding the marketing of financial products.

Within the Joint Forum, Technical Committee members are working on a mandate regarding the marketing of financial products which is essential, as we consider that disintermediation has led to a transfer of risk from financial institutions to households through pension funds and collective investment schemes. In particular, we will concentrate on information for the investor at the point of sale and the impact of increasingly complex products on assessing the suitability of investment.

I have already mentioned some of the other top priorities which include the question of the possible fragmentation of markets and its effect on the price formation process and investor protection and can add the issue of those aspects related to cross border cooperation, in particular related to enforcement of sanctions.

It is, of course, impossible to foresee future events and the role of regulation which is evolving and must continue to evolve in response to market needs. In Europe, the legislative structure is already highly unified and coherent, thanks to the FSAP. In the United States, regulators are beginning to question their model, as the recent Interim Report from the US Committee on Capital Markets Regulation stressed. The Asian markets, as well as other emerging markets, are also looking at their regulatory models given the rapidly expanding globalisation of financial markets. We have been recently experiencing a relatively calm period in global financial markets. We should, nonetheless, resist the temptation to become complacent and we should keep alert. I mentioned earlier that dialogue with all stakeholders is important to IOSCO, it is in fact essential, particularly in a context where national and regional topics take on global significance.

It is also why I think it is important to have had the opportunity to share a few thoughts with you this morning.