

# **CARIBBEAN SECURITIES REGULATORS CONFERENCE**

## **IOSCO Initiatives – Information Sharing**

**Philippe Richard, IOSCO Secretary General**

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### **Introduction**

Minister, Chairman, Distinguished Guests, Colleagues, Ladies and Gentlemen,

Allow me to begin firstly by thanking the Securities Commission of the Bahamas and conference organizers for their very kind invitation to participate and make a presentation at this event. A quick look at the agenda for the next couple of days confirms that you have arranged a very stimulating forum so it is an added pleasure to be part of the program.

In the time that has been allotted to me this morning, I wish to cover a range of subjects. Essentially, I will make my contribution in several sections commencing with some background on who IOSCO is and what our organisation is about before moving onto some more specific topics related to our current activities and focus.

## **IOSCO**

For those of you not so familiar with our organisation and the increasing prominence being given to international regulatory standards, I would like to take this opportunity to provide some background.

IOSCO is the international organisation that brings together securities regulators from around the world. It is the world's leading forum for standards setting and cooperation on all matters related to securities regulation.

Our members include securities regulators and other relevant national agencies from more than 100 countries. Together our members regulate more than 90% of the world's securities markets making the spread of our membership base exceptional among international organisations.

IOSCO is well recognised internationally for the unique regulatory role it plays in the global financial community. We work closely with our partners in the banking and insurance sectors to ensure that cross-sectoral issues are properly dealt with.

IOSCO has three core objectives which together aim to deliver better standards of international regulation. These are:

- to protect investors;
- to make markets fair, efficient and transparent; and
- to reduce systemic risk

## **IOSCO Principles**

Since its creation in 1983, IOSCO has been actively engaged in work on sound principles and practices for the regulation of securities markets. In the aftermath of the 1997 Asian financial crisis, IOSCO decided to produce – in a single document – the core objectives and principles of securities regulation reflecting the work which had already been undertaken up to that time.

In furtherance of this initiative, what is now known as the *Objectives and Principles of Securities Regulation* was endorsed by the organisation in 1998. These Principles represent a centerpiece of IOSCO outcomes and they underpin the mission of the organisation in striving to deliver concrete guidance and better standards of corporate governance and integrity within financial markets.

The IOSCO Principles were updated in February 2002 and May 2003 to include reference to work done by IOSCO since 1998 but this is also a reflection of the fact that the Principles are meant to be a living document that can adapt as the need arises.

Together the 30 Principles cover a wide range of areas relating to regulators, their activities and their enforcement of securities regulations, cooperation in regulation and fundamental governance principles affecting issuers, collective investment schemes, market intermediaries and secondary markets.

The IOSCO Principles establish high level benchmarks for the regulatory system in any country. For the purposes of this presentation, there are three in particular which I wish to highlight today:

- the regulator should have the authority to share both public and non-public information with domestic and foreign counterparts;
- regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts; and
- the regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.

I have deliberately chosen to highlight these three Principles because they are the ones related to cooperation in regulation and also because I intend to expand on the theme of information sharing and enforcement a little later in my presentation.

For now though, even the casual observer will note why these Principles start to take on some significance when we pause to consider methods to employ in the fight against financial and corporate crime.

Needless to say, where you have a strong independent regulator, properly resourced, able to share information with other regulators and able to enforce standards dealing with fundamental principles of good corporate

governance, there is no doubt that there is an increase in one's ability to be more effective.

## **Implementation**

Promoting implementation of the IOSCO Principles remains one of the organisation's highest priorities. IOSCO members have resolved to promote high standards of regulation in order to maintain just, efficient and sound markets, to unite their efforts to establish standards, and to provide mutual assistance to promote the integrity of markets by a rigorous application of standards.

Indeed, shortly after the adoption of the IOSCO Principles, the organisation created a special Task Force to work on their implementation. Since that time IOSCO has dedicated considerable resources to promoting the implementation of the Principles, both through internal assessment programs and through cooperation with other international bodies including the IMF and the World Bank.

## **The Fight against Financial Fraud**

In a related development almost two years ago, IOSCO released a landmark report outlining the measures that needed to be taken into account in order to strengthen capital markets against financial fraud. This report was the result of an in-depth study of the financial scandals of a few years ago involving large, global companies. It represented a top-to-bottom review of securities markets regulation aimed at identifying possible weaknesses in the international financial system and how these weaknesses could be addressed.

As many of you will recall, only a few years ago, we witnessed a series of several well-known companies becoming mired in financial scandal. In some of these cases, investors collectively lost hundreds of millions of dollars. A number of the companies were forced into bankruptcy as a direct or indirect result of these collapses.

Taken together, these financial scandals caused many, particularly in governments, to become concerned about investors confidence in the integrity of global capital markets. The repercussions of course could have been very serious.

In response to these corporate collapses, IOSCO recognised that reassuring investors about the integrity of global capital markets was essential to financial stability and economic prosperity. Consequently, the organisation formed a high-level Task Force charged with inquiring into the regulatory issues exposed by these corporate collapses and to identify broad trends.

I note that one of your presenters for tomorrow is Mr. Ethiopis Tafara, Director of International Affairs with the US Securities & Exchange Commission. Along with a number of others, Ethiopis played a leading role in this work and at IOSCO we owe him a lot for his contribution and commitment.

Following intensive consideration of the work of this Task Force, IOSCO adopted an ambitious Action Plan to address a broad number of issues. This reflected the fact that in the course of their work, the Task Force examined a broad range of issues affecting existing corporate governance structures;

auditor standards; continuous disclosure principles; bond market regulation and transparency; roles and obligations of market intermediaries; variations in corporate structures and the role of private sector information analysts.

Although IOSCO was satisfied that in many cases, existing regulatory principles to address weaknesses in capital markets already existed, there nevertheless remained a vital need for the universal implementation of those principles.

This was considered essential in order to overcome potential regulatory deficiencies that might arise especially given the cross-border operations of many issuers in today's capital markets. In other words, simply to have high-level principles is insufficient. There is also a need to follow-up those principles with an active agenda in order to ensure that they are being effectively implemented.

### **IOSCO MMoU**

In May 2002, partly as a result of these historical developments, IOSCO adopted the *Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (IOSCO MMoU). This is significant because the IOSCO MMoU was the first of its kind among financial services regulators, setting forth a new international benchmark for cooperation.

The adoption of this benchmark is tied in closely with the organisation's operational priorities which among other objectives seek to maintain IOSCO as the international standard-setter for securities regulations while at the

same time improving enforcement related cross-border cooperation and implementation of the IOSCO Principles.

In this context, the MMoU represents the ultimate expression of IOSCO Principles 11, 12 and 13 which deal with information sharing as well as enforcement and which you will recall were the Principles which I outlined earlier when discussing the Principles more generally.

As an instrument in the enforcement of international securities regulation, these days the IOSCO MMoU is considered essential since it enables the greater sharing of information across borders thus smoothing the way when it is necessary for enforcement action to be taken against those who have broken corporate or securities laws.

Essentially the IOSCO MMoU facilitates the investigation and prosecution of international securities fraud along with the development of an effective network of administrative and enforcement cooperation among securities regulators. The previous work which IOSCO had carried out has confirmed that this ought to be a high priority if the fight against financial fraud is to have any chance of success.

Put simply, the IOSCO MMoU is a contract signed by a number of securities regulators from around the world which facilitates the more speedy sharing of information when they are conducting investigations into possible securities violations. It provides a standardized framework to share enforcement related information and a gradually expanding international network of participating regulatory agencies.



In doing so, the MMoU enhances the ability and willingness of regulators to cooperate internationally and to better ensure compliance with and enforcement of securities laws and regulations. At the same time, it enhances the capability of regulators to detect and deter cross-border financial crime, which is a crucial outcome in bolstering the confidence of investors worldwide.

Becoming a signatory to the IOSCO MMoU is a statement of one's commitment with regard to mutual assistance and the exchange of information for the purpose of enforcing and securing compliance with the laws and regulations of the relevant jurisdictions.

Signatories must have the legal ability and willingness to gather information central to investigating and prosecuting enforcement matters, provide information to foreign counterparts and protect the confidentiality of information.

It is important to note that the provisions of the MMoU are not intended to create legally binding obligations or to supersede domestic laws. Signatories can quite comfortably execute their responsibilities under the MMoU within their own legal framework if it does not create obstacles to the MMoU provisions.

Interestingly, the main obstacles to becoming a MMoU signatory which have been encountered to date include:

- whether the regulator has access to banking records;
- whether information can be obtained on beneficial owners;
- whether the regulator has the ability to investigate a matter if no domestic law has been violated;
- whether the information obtained can be used in criminal proceedings; and
- confidentiality issues.

### **MMoU Progress**

Despite these obstacles, progress to date in creating an expanding network for cooperation has been very encouraging. Already it is possible to say that the scope for information gathering and enforcement activities has been significantly enhanced.

As of today 43 regulators from around the world have signed onto or provided a firm commitment to sign the MMoU. This represents nearly 40% of the IOSCO membership and is truly a strong endorsement of the organisation's strategic direction in such a short period of time. Another 20% or so of the membership is currently being assessed in terms of meeting the requirements to become a signatory.

The IOSCO MMoU is also already proving its worth in terms of the improved ability of signatories to share information with other regulators. Since January 2003, the number of requests to share information within the

context of the IOSCO MMoU has been steadily increasing. By any objective analysis this is indeed a remarkable achievement.

Nevertheless, much work remains to be done. In 2004, IOSCO adopted a timetable by which all member regulators, which are not already signatories to the MMoU, will be asked to adopt this benchmark by 2010. By this date, all member regulators should have applied for and been accepted as signatories or at least expressed a commitment to seek the legal authority to enable them to do so.

In order to achieve this ambitious aim, IOSCO has increased the resources to members including training programs and targeted technical assistance so that progress is made.

Despite all of this, it is important to note that this lofty objective to strengthen capital markets against financial fraud is not something securities regulators can do alone. Even with the highest quality regulatory standards, fully implemented and enforced, it will still not be possible to totally eliminate financial and corporate fraud.

It hardly needs to be stated that it will take ongoing vigilance by all stakeholders including corporate issuers, investors, auditors, analysts, intermediaries as well as regulators alike in order to minimize market misconduct.

## **Dialogue with certain jurisdictions**

A related initiative that needs to be mentioned here is the work which IOSCO has been carrying out by engaging in a confidential dialogue with certain jurisdictions with which specific cooperation issues have been experienced in this context. Particular attention is being given to those jurisdictions that play an important role in the international financial system.

The objective of this project is to assist each of the identified jurisdictions to make genuine improvements in the level of cooperation they are able to offer their international counterparts in relation to information sharing. IOSCO is pleased with the progress achieved to date in consultations and the positive outcomes already gained in discussions with these jurisdictions and so as a result we are currently exploring the option to expand the group of jurisdictions with which we are dealing in order to overcome any outstanding issues.

## **Conclusions**

In summary, the work which IOSCO is carrying out in the fight against financial fraud has underscored the fact that given the increasingly global nature of modern capital markets, securities regulators must have the capability to take effective action in their investigations including the ability to share enforcement related information directly with their international counterparts.

Our work in this area has confirmed that in modern capital markets, cross-border enforcement cooperation and information sharing is, and will

continue to be, one of the most important tools which securities regulators and law enforcement authorities have at their disposal to prevent, deter, detect and prosecute against financial crime.

Nevertheless, it is also important to recognise that even with the highest quality regulatory standards, fully implemented and enforced; it will not be possible to totally eliminate financial fraud but it will require all of us to remain alert to developments.

For our part, I can assure you that IOSCO is committed to working with all parties to better protect the integrity of global capital markets. Through active cooperation and the implementation of existing standards, we believe that this work will go a long way to significantly strengthen capital markets further by making the occurrence of financial fraud much more difficult to accomplish, easier to detect and less damaging to investors, if and when it does occur.

I would also like to conclude by thanking once again the hosts of this event for the warm hospitality which they have shown. It always makes it that much easier to accept speaking invitations from this part of the world. The beautiful environment also helps!

In conclusion I wish you all an interesting and successful conference.

Thank you.

[ENDS]