



**ICSA**

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INTERNATIONAL COUNCIL of SECURITIES ASSOCIATIONS

## **Statement on Regulatory and Self-Regulatory Consultation Practices**

**October 2004**

# ICSA International Council of Securities Associations

The members of the International Council of Securities Associations<sup>1</sup> believe that transparent regulatory systems are essential for the development and stability of capital markets for several reasons. First, regulatory transparency can enhance the effectiveness of regulatory policies because it allows financial market participants to better understand the goals and instruments of those policies, thereby greatly strengthening the potential for cooperation between regulators and market participants. Second, by enabling market participants and the general public to provide feedback on proposed regulations, regulatory transparency improves the decision making process of securities regulators while also reducing the risk that new policies will have unintended, and negative, consequences for financial markets. This is particularly important for topics on which the regulators themselves have little or no first-hand knowledge and experience. Third, regulatory transparency improves accountability since it helps to ensure that the rules and regulations introduced into financial markets are unbiased.

Transparency only brings its full benefits in securities markets regulation if, as in other complex and specialized policy areas, there is at all times effective consultation between securities regulators and market participants as well as between regulators and self-regulators.<sup>2</sup> Consultation requires a genuine invitation to give advice and proper consideration of the advice given. An effective and structured consultation process encourages active cooperation between regulators and market participants and greatly helps to improve the quality and efficiency of the rules and regulations that are finally adopted.

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1. The membership of the International Council of Securities Associations (ICSA) includes self-regulatory and trade associations for the securities industry in ten countries as well as a number of international trade associations. ICSA members represent the overwhelming majority of the world's equity, bond and derivatives markets. ICSA's objectives are to encourage the sound growth of the international securities markets by promoting harmonization in the procedures and regulation of those markets and to promote mutual understanding and the exchange of information among ICSA members. A list of the individual members of ICSA is attached to this document.

2. The term 'regulator' is intended to cover all bodies that are authorized pursuant to law to play a role in the licensing and supervision of the activities of financial services firms, financial markets and financial services products, as well as the bodies that formulate rules, regulations and policies relating to such firms, markets and products. Where the legislature or authorized regulator delegates its authority to a non-governmental entity such as a self-regulatory organization or trade association, the term is intended to encompass such an entity.

Based on these considerations, the members of the International Council of Securities Associations propose the following principles and measures as a framework for regulatory and self-regulatory consultation practices:

## 1. The “Ideas” Stage

*Principle: Regulators should initiate preliminary informal consultation with market participants on proposed measures as early as possible and as widely as possible.*

Consultation brings real benefits at every stage of policy development. Like market research or the testing of engineering prototypes, it should be started at the "ideas" stage, before minds are made up and prejudices hardened and while key proposals can still be radically altered or even abandoned with ease. This can be accomplished by:

### Core Measures

- a. Organizing informal discussions at an early stage with a cross section of experts and those most likely to be directly affected by the proposed regulations and produce a representative analysis of the replies received in a feedback statement;<sup>3</sup>
- b. Formally publishing initial tentative proposals in a preliminary form, e.g. as Discussion Documents or Green Papers, as a means to invite a wide public debate on whether the proposed objectives are appropriate, methods desirable, and the politics feasible; and,

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3. These discussions might also take place through established industry committees, including committees of regulatory organizations with industry member participants that allow regulators the opportunity to discuss policy changes with market participants prior to the formal consultation process.

- c. Allowing constituents to provide comment and feedback prior to final implementation of new or materially amended regulation when exigent circumstances force regulators to file or publish for comment well developed rules or policy proposals without the benefit of early consultation.

## 2. Encouraging broad participation in the consultation process

*Principle: Once new regulations are in the actual proposal stage, regulators should consult with market participants as widely and effectively as possible.*

The heart of any structured and effective consultation program is its ability to target and invite submissions from the full range of interested parties through a variety of media in as open a manner as possible. In a world when national regulations increasingly have international implications, this may include targeting market participants from other jurisdictions. In addition, a structured consultation program should include some indication of the potential cost and benefits of the proposed regulations that are the subject of the consultation. These objectives can be accomplished by:

### Core Measures

- a. Making consultation proposals widely known and available to the full range of interested parties, including market participants, consumers and end-users at the national and international level, through all appropriate means, including public hearings, face-to-face meetings, roundtable discussions, written and Internet consultations;
- b. Allowing all interested parties to be consulted on, or make submissions about, proposed regulations, discussions, documents, guidance, research programs or any other initiatives likely to lead sooner or later to policy action, as well as any relevant mandates from the government;

- c. Establishing working consultative groups composed of market professionals, including professionals from the associations that represent the securities industry and others who are knowledgeable about the specific topic, in order to evaluate proposals where appropriate;
- d. Beginning the formal consultation process at a sufficiently early stage so that regulators are able to take all responses into account;
- e. Ensuring that proper and complete documentation for the proposed regulation is available at the beginning of the formal consultation period;
- f. Publishing, where practical, a rolling annual work program or a statement of priorities; and,
- g. Seeking comment, whenever possible, on the cost and operational implications of the proposed regulations, including their impact on small firms, at a sufficiently early stage in the consultation process so that market participants can analyze them prior to submitting their comments.

**Other Measures:**

The following measures may not be appropriate for all jurisdictions but nonetheless merit consideration:

- (1) Whenever possible, regulators should undertake an initial cost-benefit analysis of any proposed regulations in order to arrive at a comprehensive understanding of the potential costs and benefits of those regulations;<sup>4</sup>

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4. Cost-benefit analysis can help regulators and market participants to establish for any given measure whether the expected benefits of the proposed regulators are “proportionate” and in the aggregate acceptable when measured against the expected costs.

- (2) Regulators should have evidence of a demonstrable market failure prior to proposing or considering new regulations or a substantial alteration of existing regulations; and,
- (3) Once a measure is adopted regulators should undertake a review of the impact of the new regulation to see how far the initial cost benefit analysis has been validated by experience.

### **3. Responding to the feedback received during the consultation process**

*Principle: Regulators should give due consideration to the responses that have been received during the consultation process and respond effectively.*

An effective consultation policy both encourages and requires a genuine dialogue between regulators and market participants. It is critical, therefore, that regulators allow adequate time for the consultation process and are able to respond adequately to the feedback that has been received. For the dialogue to be truly effective, it is also critical that the feedback received during the consultation process is, to the greatest extent possible, incorporated into the regulations that were the subject of the consultation. These objectives can be accomplished by:

#### **Core Measures:**

- a. Allowing those consulted adequate time to respond, which means amongst other things acknowledging the importance of established holidays. For significant issues regulators should consider meaningful time frames for comment, particularly where the proposed regulations involve more than one country, the issues are novel or where organizing a coherent response amongst market participants and users poses major logistical problems;

- b. Informing interested parties of regulators' thinking at various stages of the consultation process, including through the use of concept releases and feedback statements;
- c. Ensuring that all responses to a formal consultation are normally put in the public domain unless the respondent requests confidentiality;
- d. Publishing a summary of the responses received along with a reasoned explanation addressing all major points raised in the consultation process; and,
- e. Consulting for a second time if the response to the first consultation reveals significant problems, or where revised proposals are radically different from the original proposals on which the consultation was based.

#### **4. Encouraging a consultation culture**

*Principle: In order to ensure that consultations are effective, regulators should promote a consultation culture within their organizations.*

In order for a consultation program to be effective on an ongoing basis, personnel at all levels within regulatory organizations need to understand the importance of the consultation process. This is only possible if there is a genuine culture of consultation within the organization itself, which includes a demonstrated commitment to consultation by senior staff, adequate staffing for consultations and an appropriate incentive structure. A consultation culture can be promoted by:

**Core Measures:**

- a. Making consultation with stakeholders part of the organization's mission statement, objectives and business plan;
- b. Providing appropriate staff and other resources in order to ensure that there is effective implementation of the consultation program;
- c. Organizing staff and timetables, whenever possible, to permit a meaningful and effective program of consultation;
- d. Showing a demonstrated commitment to consultation by the top level of management; and,
- e. Educating staff on the requirements of the consultation program.

**Other Measures:**

The following measures may not be appropriate for all jurisdictions but nonetheless merit consideration:

- (1) Regulators should make adherence to the consultation program part of staff performance assessment and reward;
- (2) Regulators should 'stress test' the consultation process to ensure it will work effectively when an intense consultation effort is needed; and,
- (3) Regulators should survey stakeholders regularly to seek their views on the effectiveness of their consultation practices and commission a periodic external independent review of their consultation program.



**5. Providing notice when procedures must be violated**

*Principle: On those occasions where there is a significant departure from the principles set forth in this paper, regulators should publish their reasons.*

*The members of ICSA are as follows:*

Association Française des Entreprises d'Investissement, France

Australian Financial Markets Association, Australia

The Bond Exchange of South Africa, South Africa

The Bond Market Association, United States

Chinese Taiwan Securities Association, Taiwan

Italian Association of Financial Intermediaries, Italy

International Banks and Securities Association of Australia, Australia

International Primary Market Association, United Kingdom

International Securities Market Association, Switzerland

Investment Dealers Association of Canada, Canada

Japan Securities Dealers Association, Japan

Korea Securities Dealers Association, Korea

London Investment Banking Association, United Kingdom

NASD, United States

Securities Industry Association, United States

Swedish Securities Dealers Association, Sweden