



ICSA

INTERNATIONAL COUNCIL of SECURITIES ASSOCIATIONS

June 15, 2009

Mr Greg Tanzer
Secretary General
IOSCO
C/Oquendo 12
28006 Madrid
Spain

Re: Public Comment regarding IOSCO's Consultation Report on Unregulated Financial Markets and Products

Dear Greg,

The International Council of Securities Associations (ICSA)¹ welcomes the opportunity to provide comments on IOSCO's Consultation Report on Unregulated Financial Markets and Products (hereafter referred to as the Report). First, we would like to thank the members of IOSCO's Task Force on Unregulated Financial Markets and Products for the work that they have done to produce the Report. Overall, the Report provides a well balanced overview of the complex issues that need to be considered across a range of different financial markets and products and the fundamental distinctions that exist between them. The Report also begins the task of tackling how to more effectively oversee and regulate global trading of financial products in the presence of varying national and regional regulatory systems.

We also strongly support the emphasis given in the Report on the need for coordination and integration of regulatory measures concerning not only market integrity and investor protection but also prudential supervision and accounting standards. In our view, all regulatory measures need to be complementary to one another so that the end result is a regulatory system that follows an integrated and rational policy design. Indeed, markets work on an international basis and a lack of cooperation is not satisfactory to prevent and manage the crisis situations. Hence

¹ ICSA is composed of trade associations and self-regulatory organizations that collectively represent and/or regulate the vast majority of the world's financial services firms on both a national and international basis. ICSA's objectives are: (1) to encourage the sound growth of the international securities markets by promoting harmonisation in the procedures and regulation of those markets; and (2) to promote mutual understanding and the exchange of information among ICSA members. More information about ICSA is available at: www.icsa.bz

we consider that the Report should be more explicit in proposing requirements urging regulators to cooperate and to exchange applicable information and data.

ICSA also agrees that the initial focus on the securitisation and CDS markets is a sound analytical approach. Further, the acknowledgment and encouragement given in the Report to industry initiatives that strengthen the operation of the securitisation and CDS markets is particularly welcome. Individual ICSA members have played and will continue to play a significant role in the promotion of these initiatives. ICSA also understands that the effectiveness of these initiatives will be greatly enhanced by appropriate regulatory support.

In addition, given the complexity of the issues raised by the different types of markets and products and the challenge for regulators to have internal resources with a deep knowledge of all the markets and products, ICSA encourages IOSCO to set up working groups with the industry, at an international level, in order to collaboratively examine whether, where and in what form further regulation should be necessary.

Securitisation

With regard to the recommendations in the Report relating to securitisation, ICSA agrees that originators need to provide clear and concise information to investors regarding the quality and risks of the underlying pool of assets. However, we believe the question of whether originators and/or sponsors should be required to retain a long-term economic exposure to securitised products needs to be carefully considered. Whilst we understand the appeal of a retention requirement we see that there are many questions in relation to the practical effectiveness of such measures. Specifically, we would suggest that the imposition of retention requirements would need to take account of developments regarding regulatory capital, as well as accounting and legal treatments. In addition, the calculation of any retention requirements would need to be appropriately flexible in order to take into account differences between various asset classes. Given the difficulties inherent in designing retention requirements that are both suitably flexible and internationally consistent, we would suggest that there are other approaches that would more appropriately align incentives, including through enhanced disclosure and investor due diligence requirements.

In our view, improved information disclosure and the dissemination of that information to investors is fundamental to the soundness of the securitisation market. Efforts to standardise disclosure by issuers, pre- and post- issuance, is an important contributor to improved market confidence. We believe that the focus of regulators and market participants should be on the quality and meaningfulness of the disclosure. Appropriate standards on consistency, transparency and data accessibility should be supported, as these would allow investors to easily compare securitised instruments. The development of standardised risk measurement metrics for these products would also add to comparability and provide investors with an alternative means

to evaluate risk. These are precisely the kind of issues that industry initiatives seek to address and we encourage IOSCO to work with industry towards adoption of these or similar standards.

We believe that originators and issuers need to bear legal responsibility for the accuracy and quality of information produced by them in relation to securitised products. The regulatory system also needs to ensure that investors retain responsibility for their investment decisions, carrying out adequate due diligence and making their own risk evaluations. In our view, restriction on the availability of financial products to certain classes of investors is not a complete solution, as such measures do not prevent uninformed and unsuited investors accessing those products. We would note that the distribution of securitised products depends on financial advisers actively selling them. Therefore, problems arising from the sale of unsuitable securitised products to retail and ‘unsophisticated’ investors, as is highlighted in the Report, should be resolved through effective enforcement of existing investor protection laws and regulations concerning financial advice and conduct.

ICSA agrees with the assessment made in the Report that each jurisdiction will need to assess the scope of existing regulatory parameters and expand that scope only to the extent necessary to take measures identified to restore confidence in the securitisation market.

Credit Default Swaps

ICSA considers that the CDS market has functioned in a fair, orderly and efficient manner during the current crisis and that it continues to enjoy the confidence of market participants. The CDS market along with other OTC derivatives markets has demonstrated clearly observable strength and resilience during the extreme stress testing that arose out of the crisis in the last quarter of 2008. In our view, an appropriate regulatory framework for the CDS market should provide the general policy parameters and legal certainty to allow market-based systems to grow and evolve. Regulations should not prevent market and product innovations nor restrict competition between any specific groups of market participants.

ICSA agrees that the development of central clearing parties for CDS provides a key enhancement to market infrastructure for a large volume of standardised CDS traded in the market and that eligible contracts should be cleared through a CCP. We would encourage authorities to positively respond by providing supportive regulatory structures that would assist the development of CCPs. In particular, authorities need to address the issue of handling the concentration of counterparty risk in the very large central counterparties that will increasingly facilitate global trading of CDS.

However, we would note that it is not possible or desirable to standardise all credit derivative contracts. While a significant portion of CDS can be put into standard form, businesses will continue to need to isolate and hedge risks in a way that is tailored to their commercial activities - which has important benefits for the economy as a whole. The ability of counterparties to customise the economic terms of their CDS transactions also distinguishes CDS from futures

contracts and other exchange traded financial products. Therefore, our support for CCPs is different to the question of the fora through which CDS may be traded. ICSA considers that while vertical integration of CCPs with exchange type trading platforms is a valid model, this should not inhibit or preclude alternative trading through non-exchange electronic trading platforms.

With regard to transparency, the Report does not make an important distinction between disclosure to regulatory authorities, which lies at the core of addressing concerns about systemic risk, and public market transparency. Clearly, it is essential for market participants to provide regulators with the appropriate information so that regulators are able to analyse systemic risk and supervise the conduct of markets. Our principle concern is that national data reporting requirements should be globally consistent with one another, aligned with the technical capabilities of existing IT systems, and should not place excessive demands on compliance staff by requiring them to produce complex manual reports on a regular basis.

We believe that necessary public reporting will develop as an integral by-product of central clearing. Therefore, we consider that for public reporting the focus of the authorities should be to ensure that relevant information, which is available from CCPs, is appropriately delivered to the public.

In closing, we would like to reiterate our thanks to IOSCO for the opportunity to comment on this Consultation Report. Please do not hesitate to contact either René Karsenti (rene.karsenti@icmagroup.org) and/or Marilyn Skiles (miskiles@sifma.org) to discuss the issues contained in this letter.



René Karsenti, Chairman
ICSA Standing Committee on Market Structure