



ICSA

INTERNATIONAL COUNCIL OF SECURITIES ASSOCIATIONS

1 March 2013

Masamichi Kono, Chairman
IOSCO Board
Calle Oquendo 12
28006 Madrid
Spain

David Wright, Secretary General
IOSCO Board
Calle Oquendo 12
28006 Madrid
Spain

Re: Best practices for regulatory consultation

Dear Mr. Kono and Mr. Wright:

We are writing to you on behalf of the members of the International Council of Securities Associations (ICSA), which is the global forum for associations that represent and/or regulate securities markets around the world.¹ ICSA members have recently approved a set of best practices for regulatory consultation, which we are sending to you for your review. The intention of these best practices is that they could serve as guidelines for establishing or reinforcing regulatory consultation programs both at the national and the international level.

As you are undoubtedly aware, regulatory transparency has long been recognized a key element of governance.² In terms of securities market regulation, regulatory transparency is important as

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 harmonization 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

² As Kaufmann and Weber note in their recent article on the issue, "Historically transparency in regulation is seen as a constitutional instrument for empowering the people as opposed to empowering the monarch with absolute sovereignty." Christine Kaufmann and Rolf H. Weber (2010), "The Role of Transparency in Financial Regulation", *Journal of International Economic Law* 13 (3):779-797.

it can enhance the effectiveness of regulatory policies, improve the decision-making process of regulators and provide credibility for regulatory decisions. For these reasons, regulatory transparency is crucial for maintaining the accountability of regulators.

ICSA's *Best Practices for Regulatory Consultation* are based on the understanding that an effective and structured regulatory consultation process is a crucial component of and contributor to a transparent regulatory system. As is noted in the enclosed document, an effective and structured consultation process, "... will help to improve the quality and efficiency of the rules and regulations that are finally adopted as well as encouraging greater cooperation between regulators, market participants and other stakeholders". We are aware that IOSCO's *Methodology for Assessing Implementation of IOSCO's Objectives and Principles of Securities Regulation* implicitly recognizes this issue under Principle 4 of the *Objectives and Principles of Securities Regulation*, which calls for regulators to adopt clear and consistent regulatory processes. Specifically, the *Methodology* stresses that regulators should, in the formulation of regulatory policy, "... have a process for consultation with the public, including those who may be affected".³

The enclosed *Best Practices for Regulatory Consultation* are derived in part from an earlier document that was issued by ICSA in 2004. However, the focus of the current document reflects the important policy changes that have taken place since the onset of the global financial crisis, in particular the substantial and far-reaching regulatory reforms that have been proposed and in many cases implemented in a large number of jurisdictions in response to G20 Directives as well as domestic considerations. Because of time frames imposed by the G20, the FSB and national legislators, the amount of time allocated for consultation on proposed regulatory reforms has been compressed in many jurisdictions at the same time that stakeholders have often found themselves needing to prepare comments simultaneously on a large number of proposed reforms, some of which would have a major impact at both the national and the global level. As a result, established standards for regulatory consultation have been eroded, even in those jurisdictions with well developed consultation programs, thereby reducing regulatory transparency. At the

³ See IOSCO (2011), *Methodology for Assessing Implementation of IOSCO's Objectives and Principles of Securities Regulation*, page 34.

same time, little or no progress has been made toward establishing formal regulatory consultation programs in those jurisdictions without such processes.

We suggest that there is an acute need for enhanced regulatory consultation at the current time precisely because of the substantial and far-reaching reforms that are being implemented in many jurisdictions. Given their expertise, industry participants and other stakeholders have valid and in many cases quite detailed comments upon and suggestions for many of these regulations. However, because the time frames for consultations have become so compressed, there is the sense among many market participants that they are not being allocated sufficient time for their responses and that the responses they do submit are not being taken into account.

We suggest that there is also a need for enhanced regulatory consultation at the current time because of the importance of ensuring that regulations in different jurisdictions for the same financial markets and products are as consistent with one another as possible. In light of the amount of regulation that has been proposed in recent years with extraterritorial or cross-border impact, structured regulatory consultation programs can help to ensure that regulators and stakeholders from other jurisdictions are able to comment appropriately on any proposed regulations from other jurisdictions that would affect their own markets and/or financial firms. Structured regulatory consultation programs should also help to ensure that regulators in the home jurisdictions have the time to take those comments into account.

ICSA members are very appreciative of the IOSCO's own consultation program, which was formally inaugurated in early 2005. However, we are concerned that in the current environment regulators in many jurisdictions have forgotten about the benefits of maintaining structured regulatory consultation programs while regulators in other jurisdictions, particularly the emerging market economies, may feel no compulsion to establish such programs. Therefore, we believe that it would be extremely useful for IOSCO to promote the adoption of comprehensive consultation programs by its members. This could be done, for example, through the development of global principles for regulatory consultation as well as the initiation of a broad dialogue among IOSCO members regarding the importance of implementing and maintaining structured regulatory consultation programs. In addition, we believe that in due time the

Methodology for Assessing Implementation of IOSCO's Objectives and Principles of Securities Regulation could be revised to include more guidance regarding how the effectiveness of consultation programs in individual jurisdictions could be assessed.

We look forward to hearing from you on this regulatory consultation agenda at your earliest convenience. Our ICSA working group would be delighted for an opportunity to meet with IOSCO officials in Madrid to exchange views on this subject in more detail.

Yours Sincerely,



Jong Soo Park, Chairman
International Council of
Securities Associations (ICSA)



Ian C.W. Russell, Chairman
ICSA Standing Committee on
Regulatory Affairs

cc: Greg Medcraft, Chairman
Australian Securities & Investments Commission

Tajinder Singh, Deputy Secretary General
IOSCO