



ASIC

Australian Securities & Investments Commission

Capital markets across the globe: Integration or fragmentation?

*A speech by Greg Medcraft, Chairman,
Australian Securities and Investments Commission*

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Introduction

Thanks for the opportunity to share with you some of my thinking on this topic.

As a small open economy, fragmentation – or significant differences in regulatory approaches between jurisdictions – is a real issue for us. It means that regulated firms and issuers have to consider differences in regulation when engaging in cross border activity.

This creates hurdles for Australian regulated entities wanting to do their business offshore. This is because they need to register in each jurisdiction in which they want to operate and also be on top of different sets of regulatory requirements.

This also creates hurdles for issuers and investors wanting to access markets other than their own. These hurdles reduce the range of opportunities for Australian investors and the sources of finance for Australian businesses.

So, we have taken the issue of fragmentation really seriously, both domestically and in our participation and leadership of international organisations. We acknowledge there will be differences and there will be concerns to ensure, for instance, that investors can still take action when things go wrong in their home jurisdiction – but we need to ensure these differences are minimal.

We see the risks of fragmentation being addressed in three ways:

- working to ensure that national laws and regulations are as consistent as they can be
- collaborating on supervising those laws, and
- cooperating in enforcing those laws.

Let me briefly touch on each of these.

Consistency in laws and regulation

The first ‘C’, consistency, is about working toward ensuring our respective national laws and regulations are as closely aligned as they can be. We need to recognise that, because of differences in our regulatory and legal frameworks and philosophies, having the same laws in place everywhere is a pipedream.

But we can reduce the differences in national laws in a number of ways. We see four ways in which this can be done:

- adopting and implementing globally agreed standards and guidance
- recognising regimes which achieve similar regulatory outcomes through equivalence processes
- developing passporting or mutual recognition arrangements, and
- coordinating implementation of new regulation.

Let me touch on each of these areas. The International Organization of Securities Commissions (IOSCO) has been active in each and we in Australia have a lot of experience in each.

Globally agreed standards and guidance

The first is about adopting and implementing globally agreed standards and guidance.

IOSCO’s *raison d’être* as the key global reference point for securities regulation is to develop standards and guidance for use by our members with a view to building consistency of approach.

This has been done – increasingly ahead of the game – in a number of areas as the foundation for national approaches. The regulation of credit ratings agencies, financial benchmark administrators and of financial markets infrastructure are all good examples. In Australia, we have used these standards as the basis for our domestic laws.

IOSCO is also using its implementation assessment processes to monitor the implementation of IOSCO’s guidance in each of these areas, the aim being to ensure consistent approaches are taken.

Equivalence processes

IOSCO and Australia have both been active in the second area, developing and applying equivalence processes.

For instance, IOSCO last year published a report on Cross Border Regulation that described the ways in which we could address any differences that emerge in the way in which we implement international guidance, including equivalence processes.

Australia has applied these processes with both Europe and the United States in a number of ways, in particular in the regulation of:

- credit rating agencies
- trade repositories, and
- central counterparties.

The OTC Derivatives Regulators Group (of which ASIC is a member) has also been an important vehicle for discussions in the OTC derivatives reform space.

Mutual recognition and passporting

In the third area – developing mutual recognition and passporting arrangements – we in Australia have also been very active. This includes our work on the Asia Regions Funds Passport and mutual recognition arrangements with New Zealand, the United States and Hong Kong. We also see similar integration measures in ASEAN, East Africa and South America.

Improve coordination in implementation

And fourthly, we have also participated in measures to improve coordination in implementation.

Our regulatory systems and legislative processes are different. So, even if we wanted to, we can't guarantee we will do things at the same time. This has implications for those wanting to do business across borders.

We have been mindful of this – and mechanisms – generally informal – have been developed to help us to communicate our plans and allow us to coordinate when reforms are being introduced. The OTC Derivatives Regulators Group is one such forum for doing this – and the Financial Stability Board's reporting on the implementation of OTC derivatives reform also helps us coordinate implementation.

The IOSCO Asia-Pacific Regional Committee also has an initiative with the EU to set up regular dialogue about regulatory reform initiatives. Meeting for the first time in October this year, this forum can respond to issues we have had in Asia with European reform proposals – with implications for our region – being developed without advance consultation.

Cooperating in supervision

Let me now turn to the second of the ways in which we can address fragmentation – the second ‘C’, cooperating in supervision.

Making our laws and legal frameworks consistent is one thing but ensuring they take effect as intended is another. This requires regulators to work together in supervising the laws they put in place and share information about firms which do business across borders to identify the risks they pose.

IOSCO has been active in this area – developing Principles for Cross Border Supervisory Cooperation in 2010 together with a sample memorandum of understanding (MOU) for use by members. We have used this sample a number of times in recent years to guide the increasing number of MOUs we have entered into in recent times, including general purpose MOUs with regulators in Korea, Luxembourg and the United States.

We have also entered into MOUs in relation to specific areas in recent years – including with EU jurisdictions in relation to the EU’s Alternative Investment Fund Managers Directive and with Europe, the United States and regional regulators in relation to OTC derivatives regulation.

We are also developing MOUs to facilitate ease of access by our fintech start-ups to other markets. We have entered into agreements with the United Kingdom and Singapore and are discussing them with other jurisdictions.

Cooperating in enforcement

And finally let me comment on the third of the measures we are using to address fragmentation – the third ‘C’, cooperating in enforcement.

We see this as critical to making the regulatory frameworks we put in place work. IOSCO has played a leading role here through the development of the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMOU) – which now has 109 signatories. The MMOU is also being updated to ensure members can share metadata information in relation to digital and voice communication.

Conclusion

So, in conclusion – and as I have laid out – regulators globally, both bilaterally and through multilateral bodies like IOSCO, are cooperating to improve cross border regulatory outcomes.

They are doing this pragmatically, accepting that there are a variety of different regulatory and institutional frameworks – and needs – across jurisdictions.

However, I am confident that our financial system will continue to integrate globally and that regulators will continue to take steps to facilitate this, while also ensuring that markets are fair and efficient and that the interests of investors are protected.

Thank you.