FINANCIAL MARKETS LAW COMMITTEE

Interim Feedback Statement

Discussion Paper on Coordination in the Reform of International Financial Regulation

Addressing the Causes of Legal Uncertainty

September 2015

www.fmlc.org

FINANCIAL MARKETS LAW COMMITTEE

This feedback statement has been prepared by the FMLC Secretariat.[1]

This feedback statement presents the feedback which the FMLC Secretariat has received in response to the FMLC's Discussion Paper on Coordination in the Reform of International Financial Regulation. It therefore reflects the views of the respondents and does not purport to represent the views of the FMLC. A list of FMLC Committee Members is available at: www.fmlc.org.

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1 INTRODUCTION AND EXECUTIVE SUMMARY

Introduction

1.1 The role of the Financial Markets Law Committee (the "FMLC" or the "Committee") is to identify issues of legal uncertainty or misunderstanding, present and future, in the framework of the wholesale financial markets which might give rise to material risks and to consider how such issues should be addressed.

1.2 On 2 February 2015, the FMLC published a Discussion Paper on Coordination in the Reform of International Financial Regulation (the "Discussion Paper").[2] The Discussion Paper considers the challenges the G20 has faced in implementing the core recommendations adopted in Pittsburgh in 2009 for strengthening global financial stability, in particular the recommendations on regulatory reform in the areas of capital requirements, OTC derivatives, compensation, accounting standards and bank resolution.

1.3 The challenges experienced by the G20 include achieving cross-border consistency and establishing appropriate and harmonised timetables for the implementation of the G20 commitments. While significant progress has been made, a large degree of fragmentation across jurisdictions has occurred, resulting in legal uncertainty in the conduct of cross-border financial activity. The Discussion Paper outlines various solutions to address this fragmentation and resulting issues of legal uncertainty, discussing their respective merits.

1.4 The Discussion Paper is the outcome of a series of seminars and meetings, and discussions with stakeholders, on the topic of the international harmonisation of law and regulation.[3] This series served as a discussion forum, fostering debate and garnering a wide range of perspectives on the topic, which informed the paper. The Discussion Paper is not an end point, however, and is intended to generate further debate and to catalyse action. It was published on the FMLC website and launched at

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[2] "Coordination in the Reform of International Financial Regulation" (February 2015) available at: http://www.fmlc.org/uploads/2/6/5/8/26584807/fmlc_g20_discussion_paper.pdf.

[3] The FMLC initiated a series of seven panel discussions and seminars in October 2012, which included the FMLC's autumn seminars in 2012, 2013 and 2014 on: (i) "Equivalence and Reciprocity"; (ii) "Future Challenges in Global Securities Regulation" and (iii) "International Regulation and Cooperation in the Post-Crisis Environment". The stakeholders included representatives from global financial institutions, international law firms, the Institute of International Finance and the Centre for the Study of Financial Innovation. Given the involvement of the UK authorities in discussions concerning the authorisation and recognition of central clearing counterparties, Sonya Branch, Stephen Parker and Sean Martin took no part in the preparation or discussion of the Discussion Paper and it should not be taken to represent the views of the Bank of England, HM Treasury or the Financial Conduct Authority.

the FMLC's Spring Seminar on 24 March 2015, where a questionnaire on the Discussion Paper was distributed and feedback invited.[4]

1.5 The FMLC also sent a copy of the Discussion Paper to relevant international and public institutions, national authorities and regulators, governments, stakeholders, industry associations, private institutions and academics inviting their views and contributions on the Discussion Paper and presented the Discussion Paper at various international law firms. The Discussion Paper has been the subject of a roundtable discussion hosted by the Centre for the Study of Financial Innovation and an article commending it written by Howard Davies, former head of the Financial Services Authority and former Deputy Governor of the Bank of England.[5] The FMLC has recently hosted a roundtable series on the Discussion Paper, inviting interested stakeholders to form discussion groups.[6]

1.6 A significant amount of feedback has been received on the Discussion Paper via the different channels mentioned above and is summarised in this feedback statement. Going forward, the FMLC Committee has resolved to set up a steering group to assess the feasibility of the solutions identified in the Discussion Paper and, where appropriate, draw up draft recommendations for the FMLC to consider.

Executive Summary

1.7 While much of the feedback has been by way of the different discussion fora mentioned above, the FMLC has separately received 16 responses by way of letter or electronic email and 15 responses by way of the questionnaire. Of the 16 written responses, 4 responses were from governments or international and public institutions;

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4 "As Good as it Gets? Convergence and Divergence in Global Financial Regulation". The questionnaire has also subsequently been distributed to further interested parties. It is set out in the Annex to this feedback statement.

5 http://www.project-syndicate.org/commentary/financial-system-legal-uncertainty-by-howard-davies-2015-04. The FMLC Chief Executive was also invited to the Turkish Embassy to meet two of its representatives to discuss the themes of the paper. The FMLC Chief Executive met a representative of the U.S. Securities and Exchange Commission, to discuss whether the FMLC might be prepared to undertake further work on models of joint supervision between regulators as a follow-up to the paper and met separately with a representative of the Financial Stability Board and four representatives of a multilateral development bank to discuss the paper.

6 The first roundtable discussion was held on 10 July 2015 and was attended by a representative from the Association for Financial Markets in Europe ("AFME"), a representative from the Loan Market Association, Simon Puleston-Jones from FIA-Europe and Sui-Jim Ho from Cleary Gottlieb Steen & Hamilton LLP. It was followed by the second roundtable discussion on 22 July 2015, attended by Peter Beales from AFME and Michael Sholem from Davis Polk & Wardwell LLP. The third roundtable discussion was held on 2 September 2015 and was attended by Andrew Procter of Herbert Smith Freehills LLP and John Ahern of Jones Day. The roundtable series was concluded with the fourth roundtable on 4 September 2015, which was attended by Alex Bouchier of The Royal Bank of Scotland plc, Antony Hainsworth of Société Générale and Arun Srivastava of Baker & McKenzie LLP.

1 response was from a securities regulator; 9 responses were from industry associations and global financial institutions; and 2 responses were from academics.[7] Of the 15 questionnaire responses, 5 were from international law firms or in-house legal counsel, 2 were from global financial institutions, 4 were from industry associations, 1 was from a financial services company, 2 were from risk management companies and 1 was anonymous.[8]

1.8 This feedback statement focuses primarily on the written responses and the responses to the questionnaire. Feedback from the various discussion fora (e.g. the roundtable discussions) is also included where appropriate and as indicated. In each case, comments are made in a purely personal capacity. Where given, names of institutions that any of the respondents ordinarily represent are for information purposes only.

1.9 The responses generally cover all areas of the Discussion Paper. Some respondents have provided their views on the challenges to regulatory consistency and systematic cooperation, while others have commented on the factors contributing to these challenges, identifying certain limitations in the current political and standard-setting frameworks. The majority of responses, however, focus on the proposed solutions in the Discussion Paper, assessing their feasibility.[9] Some responses go further, suggesting additional solutions. The following sections of this feedback statement summarise each category of response.

1.10 Several common themes have emerged from the written feedback taken as a whole. A common theme permeating many responses is the *reality* of the political and legislative backdrop against which the G20 operates and the heterogeneity of each jurisdiction: for example, solutions to address the lack of international coordination cannot be crafted in a vacuum but must be designed with the realities of the context in which they will operate in mind. A related theme in many responses is how to reconcile a perceived chasm between the national and international levels: in the national sphere, concerns of national sovereignty cultivate reluctance on the part of jurisdictions to cede power to international bodies whose democratic legitimacy they may question,

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7 The written responses contained varying levels of detail: some provided in depth comments, while others acknowledged the contribution made by the Discussion Paper in terms of highlighting the issues and seeking a way forward. For example, the Council of the European Union commented that the Discussion Paper is "a deeply comprehensive study on the challenges facing international financial regulation".

8 The questionnaires comprised 11 questions, which are set out in the Annex to this feedback statement. Two questions were skipped by one respondent (questions 7 and 9) and one question (question 11) was skipped by seven respondents.

9 In the case of the questionnaires, 9 out of the 11 questions relate to the proposed solutions.

notwithstanding that these international bodies may be better situated and equipped to tackle global issues.

1.11 These themes flowed through the roundtable discussions, in the case of the first roundtable in the guise of *political will*, colouring the discussions. In the words of a participant at the first roundtable from an industry association: "political will underlines and undermines the implementation process". Another participant from an industry association observed that politics could not be divorced from the process and work had to be undertaken within its confines. The roundtable discussions also centred around how to grow political will, with suggestions that it was an incremental process. A participant at the first roundtable from an industry association called for a "project management approach" to be adopted and a "roadmap" designed to drive the process forward step by step.

1.12 Another dominant theme which manifested itself in the roundtable discussions was the roles of the International Organization of Securities Commissions ("IOSCO") and the Financial Stability Board (the "FSB"). The participants were conflicted here, on the one hand desirous of an enhanced role for these bodies (stemming from a perceived need for an entity to "own the process" and inject leadership and structure into it),[10] while at the same time cognisant of inherent limitations, such as political will, the legitimate scope of their mandates, the need for due process and deficiencies in their representation. Participants at the third roundtable were also concerned about coordinating the various bodies operating under the G20 umbrella and their different agendas.[11]

1.13 The questionnaires cast the spotlight on the proposed solutions. Based on responses and ranked in order of preference, the two most popular solutions were the development of an international framework on mutual recognition and formalising early multilateral discussion and consultation among regulators and standard-setters, followed by the development of additional multilateral memoranda of understanding between regulators, the establishment of dispute resolution procedures, broadening the powers of the FSB to oversee implementation of the G20 commitments and equipping the G20 with a permanent Secretariat. The least popular solution with

[10] See section 5.8 below.

[11] See section 5.4 and footnote 51 below.

questionnaire respondents was including representatives of national legislatures in formulating international standards.[12]

1.14 As set out in more detail in section 4 below, the questionnaire feedback largely corresponds with the written feedback in terms of preferred solutions, with a few exceptions. Based on the written feedback, respondents were not as optimistic about developing multilateral understandings regarding supervision and enforcement and refreshing the FSB's mandate. They also had some reservations on the establishment of dispute resolution procedures and the development of an international framework on mutual recognition

2 CHALLENGES TO REGULATORY CONSISTENCY AND SYSTEMATIC COOPERATION

2.1 The Discussion Paper begins by noting various challenges to regulatory consistency and systematic cooperation in the implementation of the G20 commitments.[13]

2.2 Three responses touched on this area, however, instead of focussing directly on the challenges to *implementation per se*, they commented on the wider challenges to regulatory consistency and systematic cooperation.

2.3 A respondent from the European Private Equity & Venture Capital Association (Michael Collins, Deputy Chief Executive & Director of Public Affairs) noted the importance of culture and the need for a greater emphasis to be placed on international consistency. Using the European Supervisory Authorities as an example, he noted that while their founding regulations referenced the need for international supervisory cooperation, not only might this benefit from further reinforcement in their legislative frameworks, but this rhetoric also needed to be internalised and adopted as part of their cultural landscape.

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[12] This contrasts to discussions at the inaugural meeting of the steering group. The steering group were strongly of the view that engagement at the national level was a vital component of the process, capable of bestowing legitimacy, increasing transparency, enhancing accountability and facilitating "buy-in". They shared a concern that national legislatures felt excluded from the process and that "the game was being played elsewhere". See section 6.3 below and sections 4.10 *et seq*.

[13] These challenges included: (i) the difficulty of jurisdictions achieving deadlines and coordinating timetables; (ii) jurisdictions taking unilateral action outside of internationally agreed standards; (iii) jurisdictions adopting an approach of "super equivalence" in implementation; (iv) the adoption of an uneven approach across jurisdictions to determinations of equivalence and (v) the non-binding nature of memoranda of understanding between national regulators and supervisors and the inability of supervisory colleges to make binding decisions.

2.4 As an overarching observation, a respondent from a global financial institution commented that the current approach to regulatory cooperation appears to be of an *ad hoc* nature, not adhering to any particularly transparent or principles-based resources. The net result is:

> a cacophony of regulations…on selective topics that is often dominated by one jurisdiction or…focused on one subsector of financial services that its relevance to banking or insurance is non-existent—thereby leaving these groups with no process.

2.5 A similar observation, highlighting the need for a more systematic approach, was made by a respondent from the Institute of International Finance. The respondent noted the difference between the elements of the G20 program where there is a defined structure—giving the Basel regulatory framework as an example—and those where there are not, such as Derivatives. The respondent observed that the Basel framework has been more successful at defining a common global program.

3 FACTORS CONTRIBUTING TO THE CHALLENGES TO IMPLEMENTATION OF THE G20 COMMITMENTS

3.1 Having considered the challenges to implementation of the G20 commitments, the Discussion Paper goes on to identify eight factors which contribute to these challenges, mainly residing in the political and standard-setting frameworks.[14]

3.2 Two respondents touched on contributory factors. Their comments are capable of being reduced to observations on political undercurrents, which resonate with many responses to the proposed solutions in the Discussion Paper as set out in section 4 below. The same sentiment can also be found in the questionnaire responses. One of the questions required the contributory factors to be ranked in order of their significance vis-à-vis the challenges to implementation. 54% of respondents were of the view that the lack of equal commitment of governments to international principles agreed by the G20 was the principle contributory factor, followed by international commitments being constrained by domestic legislative processes.

[14] These factors are: (i) discontinuity in the G20 handover process; (ii) Governments may not be equally committed to the G20 commitments; (iii) international commitments may be constrained by domestic legislative processes; (iv) implementation timetables may not be sufficiently coordinated; (v) there may be no consensus regarding deference measures; (vi) the FSB and international bodies have limited powers; (vii) there are concerns about regulatory cooperation, supervision and enforcement and (viii) there is a lack of a formal grievance procedure.

3.3 Professor Rosa Lastra of Queen Mary University of London viewed a domestic bias and the ultimate inadequacy of national legislation as a means to resolving international problems as contributing to the challenges. She considered that "cross-border banking and finance requires cross-border rules, cross-border supervision and cross-border crisis management", yet observed that notwithstanding the internationalisation of the financial markets, regulation remained nationally based, constrained by the domain of domestic jurisdictions. In her view, national legislation was in any case not fit for this global purpose.[15]

3.4 This perceived national bias was seen to have its roots in political will. As noted in the Executive Summary above, political will and its importance was a dominant theme of the first roundtable. It also manifested itself in some other written responses. A respondent from the British Bankers' Association (Anthony Browne, Chief Executive Officer) observed that while the Discussion Paper acknowledges the constraints on the G20 commitments emanating from governments and domestic legislative processes, there is not enough recognition of how fundamental these constraints are.[16] He therefore counselled that further consideration ought to be given to the interaction between international policy making and the political and legislative remit of political leaders and regulatory authorities:

> this should be viewed as central to reviewing the international approach to policy making. Without addressing this point, it is not clear how technical mitigants, no matter how worthy, can result in fundamental change.[17]

3.5 He also attributed the legal uncertainty in the conduct of cross-border financial activity to the G20 process not being treaty-based.[18] By taking the form of agreements between regulatory authorities which must be incorporated into national legislative

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15 "We know that financial markets, stability and systemic risk all transcend national boundaries and yet we continue to elevate the role of the sovereign state to a level at which it is not a capable actor".

16 For example, he noted: "[i]t is important for the industry, however, to continue to recognise the framework in which policymaking operates and the need for requests for coherence to be cognisant of the constraints faced by policymakers".

17 Anthony Browne also observed that momentum has lagged in certain areas of the G20 agenda, perhaps influenced by governments' political agendas.

18 This contrasts with the view set out in the Discussion Paper that the character of the G20 as an informal, flexible forum without a legal or treaty basis has a positive advantage in being able to act quickly and consider a wide range of issues. This is tempered with a recognition in the Discussion Paper, however, that this informality needs to be balanced with a degree of structure. See section 4.6 of the Discussion Paper (*Mechanisms to assist the functioning of the G20*) on page 21.

and regulatory frameworks, the process naturally gives rise to inconsistencies in the way the agreements are implemented with resulting fragmentation and legal uncertainty.[19] He further noted that while the FSB and certain standard-setters have coordinated valuable implementation monitoring exercises, they lacked the power to compel national authorities to implement requirements in a certain way.[20]

4 PROPOSED SOLUTIONS

4.1 Having exposed the legal uncertainty which arises in the global wholesale financial markets where there is a lack of international consistency and cooperation, the Discussion Paper outlines nine potential solutions as a means of addressing the uncertainty.[21]

4.2 As mentioned in the Executive Summary above, most of the feedback relates to the proposed solutions. Out of the 14 written responses received, 10 commented on the solutions. All respondents to the questionnaire commented on the solutions and they formed the basis of the roundtable discussions.

4.3 This feedback statement sets out the feedback received in respect of each solution. Presented as a statement of priorities, formalising early multilateral discussion and consultation among regulators and standard-setters, developing a globally acceptable mutual recognition framework and instituting dispute resolution procedures are at the top, having received the most feedback, largely in positive terms. At the other end of the spectrum, the solutions receiving the least feedback are developing a framework for agenda-setting at the G20, refreshing the FSB's mandate, early and ongoing

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19 A similar comment was made by a respondent from a global financial institution who observed that regulators' growing expectation of contractual solutions placed an unrealistic burden on the banking industry and created uneven outcomes. In his view, moves should be made instead to international treaties. A preference for a treaty based approach was also expressed by a participant at the first roundtable from an international law firm who felt that such an approach would have more substance, although he recognised that it may be politically difficult to achieve.

20 The same respondent from the global financial institution echoed this comment in the context of the proposed solution in the Discussion Paper suggesting an enhanced role for the FSB as part of a "bottom-up" approach. He noted that there were limits to what the FSB could achieve: not only did it lack teeth but there also required to be inter-state momentum and political will. See section 4 below.

21 The proposed solutions are: (i) formalising early multilateral discussion and consultation among regulators and standard-setters; (ii) instituting early and ongoing engagement with national legislatures; (iii) further development of the G20 commitments and phased timetables set between the G20 and the FSB; (iv) development of common principles regarding consistency and assessments of comparability; (v) refreshing the FSB's mandate; (vi) mechanisms to assist the functioning of the G20, such as a framework for agenda-setting at the G20; (vii) a permanent G20 secretariat; (viii) multilateral understandings regarding supervision and enforcement and (ix) formal and informal dispute resolution procedures for cross-border supervision and enforcement.

engagement with national legislatures and further development of the G20 commitments and phased timetables set between the G20 and the FSB.

4.4 The more popular solutions could also be categorised as those requiring the least change and a lower level of intervention, such as the first solution encouraging early discussion and consultation. This accords with the sentiment expressed by the participants at the second roundtable. They suggested that some solutions, such as establishing a permanent G20 secretariat or a formal dispute resolution forum, involved too big a step and could get stuck, halting overall progress. Instead, as a participant from an industry association observed, smaller steps were preferable and easier "to keep on the horizon".[22]

Formalising early multilateral discussions and consultation among regulators and standard-setters

4.5 Six responses commented on this solution and were on balance in favour of early multilateral engagement. This accords with the responses to the questionnaire where 87% of respondents concurred with a "bottom-up" approach.[23] A participant at the first roundtable from an industry association felt that early multilateral engagement was an "easy win" being reasonably straightforward to institute, while at the same time effective. This view was affirmed by participants at the third roundtable. They also thought it might mitigate front-running and encourage a multitude of voices to join a vital debate.[24]

4.6 The respondent from the Institute of International Finance and a respondent from a global financial institution also agreed that formalising early multilateral discussions

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22 A similar comment was made by Peter King, a partner of Weil Gotshal & Manges LLP. In his response to the questionnaire, he suggested that instead of seeking a "perfect solution", key sectors and countries should be focussed on, such as US/EU coordination. Similar views were also expressed at the first and third roundtables. At the first roundtable, noting the plethora of solutions proposed in the Discussion Paper, a participant from an international law firm emphasised a need for prioritising them and focussing on a few in the first instance, in order to harness momentum and increase the chances of effective realisation. Participants at the third roundtable felt that the most attainable solutions should be targeted first.

23 A "bottom-up" approach was also endorsed by a representative of a multilateral development bank in a call with the FMLC Chief Executive to discuss the Discussion Paper.

24 See section 4.16 below.

would be beneficial.[25] The respondent from the global financial institution was of the view (shared by a participant at the first roundtable from an industry association) that instituting cross-border cooperation and high level agreement from the outset would ameliorate some of the issues with equivalence determinations, as the scope for differences in implementation would be narrowed by the early discussions and consultations.[26]

4.7 The same respondent further observed that, while the "bottom-up" approach may have its own shortcomings,[27] there may be circumstances where its use could serve as an early indicator of potential future problems. As a further example of where a top-down approach had caused legal uncertainty, he mentioned the clearing obligation procedure under Regulation (EU) No 648/2012 (EMIR) whereby Central Counterparties ("CCPS") are authorised/recognised to clear particular classes of over-the-counter derivatives which may or may not subsequently become subject to mandatory clearing.

4.8 Michael Collins agreed with the need for international dialogue and consultation before legislatures committed to a course of action but cautioned that such dialogue and consultation needed to be hard-wired into *all* levels of the process e.g. in the case of the EU, in relation to Level II and Level III text and not just Level I text. A related comment was made by a respondent from a global financial institution who noted that regulators needed to balance the practice of linking with industry associations with the need to engage with individual firms.[28]

4.9 Anthony Browne endorsed the suggestion in the Discussion Paper of establishing a working group to draw together G20 national regulatory authorities with the FSB,

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25 The respondent from the global financial institution drew attention to the proposal made by the Global Financial Markets Association to the B20 Task Force for Financing Growth in its letter dated 14 April 2015 and encouraged it to be taken into account. The letter suggested, *inter alia*, that the FSB (in consultation with other appropriate international standard-setting bodies, such as IOSCO) could design a model Memorandum of Understanding that member jurisdictions could use as a framework for financial regulatory consultations.

26 The participants at the first and second roundtables also went further suggesting, as an additional solution, cross-border impact statements as a means of avoiding too much reliance being placed on early multilateral discussions. See section 5.7 below.

27 A participant at the first roundtable from an international law firm cautioned that early engagement could result in divergence due to involving too many stakeholders. He queried whether it could also open up the legitimacy of decision-making processes to challenge. Analogous comments were also made in relation to the proposed solution to institute early and ongoing engagement with national legislatures. See sections 4.11 and 4.12 below.

28 Similarly, as part of his response to the questionnaire, Tatsufumi Shibata from the Japan Bank for International Cooperation considered that coordination among market participants was also an important factor, particularly since they act internationally. He suggested that fora like the Quadrilateral group including practitioners across jurisdictions should play a larger role to complement regulators' work.

other international standard-setters and market participants to provide advice and analysis on potential implementation issues.[29] He noted that such an approach may also support the coordination of national timetables and help to mitigate the likelihood of unintentional extraterritorial effects.

Early and ongoing engagement with national legislatures

4.10 Two responses commented on this solution, both putting forward cautionary remarks, shared by participants at the second and fourth roundtables, although the participants at the fourth roundtable were more measured (see 4.13 below). Respondents to the questionnaire were divided as to the merits of this solution. In comparison, the steering group were united in their support for this solution.[30]

4.11 Anthony Browne agreed that the engagement of national legislatures with the policy making process is critical to *both* enhancing the legitimacy of the outputs from international standard-setters and achieving more consistent implementation and outcomes.[31] However, he tempered this with the comment that there is an equal risk that local lawmakers could increase the potential for divergence rather than consistency.

4.12 The respondent from the Institute of International Finance was also of the view that early and ongoing engagement with national legislatures may not be overly productive. He warned that it risked complicating and even holding up the process.[32]

4.13 Cognisant of the limits of early engagement, the participants at the fourth roundtable were nevertheless more sanguine and called for a longer term view to be adopted—while the process might be slowed down in the short term, instituting engagement

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29 See section 4.1 (*Formalising early multilateral discussion and consultation among regulators and standard-setters*) on pages 15 and 16. As examples of such a group, the Discussion Paper mentions the Official Sector Steering Group and Market Participants Group set up by the FSB for the purposes of transitioning benchmarks. By way of further example, Anthony Browne cited the Enhanced Disclosure Task Force established by the FSB to develop principles for enhanced risk disclosures and suggested that it serve as a model for utilising market expertise to develop global standards.

30 See footnote 12 above.

31 The same view was expressed by participants at the fourth roundtable. They agreed that engagement was important to obtain "buy-in" at the national level, as well as identify what was feasible as a practical matter, taking into account local particularities and politics. However, they acknowledged the flip side that engagement risked slowing down and obfuscating the process.

32 The participants at the second roundtable generally concurred with these views, noting that engagement could turn into too much of a "talking shop". Participants at the fourth roundtable emphasised the need to get the right *balance* of engagement.

upfront might expedite the *overall* process by ironing out issues which would otherwise cause delays at a later stage.

Further development to the G20 commitments and phased timetables set between the G20 and the FSB

4.14 Two responses commented on this solution, one underlining the existence of a political bulwark. A political undertone could also be found in the third roundtable discussions in this context (see section 4.16 below). A participant at the second roundtable from an industry association considered setting timetables to be of equal importance to ensuring sufficient granularity of the G20 commitments.[33]

4.15 Anthony Browne agreed that, in principle, the objective of agreeing consistent timetables for implementation of the G20 principles is sound. However, he observed that it had to be balanced with the reality that countries are subject to domestic political timetables which result in divergent approaches. He also voiced a concern that the G20 lacked teeth in terms of setting and enforcing deadlines. While a failure to comply could be highlighted, the G20 lacked effective sanctions to impose on a country which failed to meet the timetable. In his view, underlying all this was a reluctance of some countries to cede national sovereignty.[34]

4.16 At the other end of the spectrum, instead of focussing on deadlines, the participants at the third roundtable observed the temptation for countries to front-run in respect of implementation and the race to get in first, with the concomitant but often unmet expectation that other countries would follow their lead. This was countered with the suggestion of instituting a *start date* for implementation as part of a timetable.

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[33] "Granularity", in terms of the need for sufficient granularity of standards, was a common thread running through the roundtable discussions and responses, rearing its head in several different contexts, such as in relation to mutual recognition (see section 4.22 below).

[34] Anthony Browne provided the example of the FSB and the Basel Committee monitoring the implementation of key G20 agreements, including Basel III. He noted that where non-compliance has been highlighted e.g. divergences between Directive 2013/36/EU (CRD IV) in the EU and Basel III, this has raised questions about the Basel Committee's mandate vis-à-vis the European Parliament's mandate.

Common principles regarding consistency and assessments of comparability

4.17 It is apparent from the feedback and discussions that the question of how best to craft the process for mutual recognition and substituted compliance is at the forefront of many minds.[35] 87% of respondents favoured the development of an international framework on mutual recognition or substituted compliance. This contrasts with the written responses: of the four responses which commented on this solution, three were not sold on a formalised global framework for mutual recognition. This solution was also touched on in the roundtable discussions (see sections 4.20, 4.22 and 4.24) and in a call between the FMLC Chief Executive and a representative of a multilateral development bank (see section 4.23 below).

4.18 A respondent from a global financial institution endorsed the suggestion in the Discussion Paper of a formal framework for mutual recognition, however, considered that it should be entered into on a bilateral basis.[36] In his view, given the plethora of financial regulation, it was an opportune time, through the FSB (perhaps in collaboration with the Organisation for Co-operation and Development), to design a model process for mutual recognition, which could be formulated initially as a model Memorandum of Understanding to facilitate "buy-in".[37] The rationale for a bilateral approach stemmed from past experience which demonstrated that if certain key jurisdictions adopted a formalised mode of cooperation and rules, those practices often gained traction and could metamorphose into a template for multilateral undertakings. He also thought that adopting a more modest bilateral approach (which could later be standardised) was likely to be more achievable than a more complicated global framework in the first instance.

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35 See also for example the comment paper which the FMLC has recently co-authored with the Committee on Capital Markets Regulation on mutual recognition of EU and US CCPs. The paper calls for a "clear legal framework for equivalence determinations coupled with an approach which accommodates regulatory differences where possible by tailoring conditions or exceptions to address specific issues" (see paragraph 27 on page 10). As the paper illustrates, building on the Discussion Paper where issues of equivalence and substituted compliance in the context of CCPs are discussed in paragraph 1.5 of Annex 1 (*Examples of Legal Uncertainty Caused by Shortcomings in the Coordination of International Financial Regulation*), there is a need for a more structured approach to this area. See "Resolving Issues of Legal Uncertainty Relating to the Recognition and Supervision of Central Counterparties" (September 2015) available at: http://www.fmlc.org/uploads/2/6/5/8/26584807/fmlc-ccmr_joint_statement_1_september_2015.pdf.

36 This contrasts with the approach in the Discussion Paper. The Discussion Paper notes that the process for determining equivalence or "substituted compliance" is currently unfolding as a bilateral process between the G20's member jurisdictions although further notes that "[a] multilateral approach to assessments of comparability is preferable to a unilateral or bilateral determination, although, for the time being, the latter clearly have an important role to play". See section 4.4 (*Common Principles regarding consistency and assessments of comparability*) on pages 18, 19 and 20 of the Discussion Paper.

37 This is similar to a suggestion by another respondent from a global financial institution who suggested a model Memorandum of Understanding as a mechanism for formalising early multilateral discussions and consultation among regulators and standard-setters. See footnote 25 above.

4.19 The respondent went on to outline seven principles for the model process, which would underpin financial regulatory drafting and enhance predictability. Many of these principles correspond to other solutions outlined in section 4 of the Discussion Paper for the purposes of enhancing coordinated implementation of the G20 commitments, for example (b), (e) and (f).[38]

4.20 Another respondent from a global financial institution voiced some words of caution against developing a globally acceptable mutual recognition framework or benchmark. Using Directive 2014/65/EU (MiFID II), banking structural reform and benchmarks as an example, the respondent observed the detrimental effects of requirements for mutual recognition frameworks and processes for third countries in these areas and the difficulties inherent in seeking to influence other jurisdictions to cooperate in the interests of market access. He endorsed a flexible "outcomes-based approach" to assessments regarding equivalence and substituted compliance.[39] With the starting point that consensus on content was impossible, the participants at the second roundtable reflected on an outcomes-based approach but were unconvinced. Instead, noting the *realpolitik*, they suggested a pragmatic approach which underlined the importance of countries working together and communicating effectively, rather than focussing overly on detail.

4.21 Anthony Browne was also more circumspect and felt that a legally binding framework for mediation in relation to the determination of equivalence was unrealistic.[40] He preferred the alternative suggestion in the G20 of a less formalised approach, noting

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38 (a) transparency;

(b) initiation of regular dialogue at the beginning of the regulatory drafting process;

(c) identification of key issues and frictions early in the process;

(d) performance of comprehensive impact assessments that are transnational in scope;

(e) timetables for coordination of implementation timeframes for parallel regulations;

(f) provision of a mechanism for managing (not necessarily resolving) regulatory conflicts; and

(g) the aim of drafting rules with mutual recognition of results-orientated regulatory regimes in mind and to avoid extraterritorial application.

39 See section 4.4 (*Common Principles regarding consistency and assessments of comparability*) on page 20 of the Discussion Paper. Such an approach was also proposed by the OTC Derivatives Regulators Group in a recent report on agreed understandings to resolving cross-border conflicts etc. See 4.4 (*Common Principles regarding consistency and assessments of comparability*) on page 20 of the Discussion Paper. The Discussion Paper, however, preferred a "detailed methodology to be developed and reflected in national legislation" to an outcomes-based approach (see page 20).

40 See section 4.4 (*Common Principles regarding consistency and assessments of comparability*) on page 19 of the Discussion Paper.

that it was important to develop a common understanding of the principle of mutual recognition and the role this could play in reducing legal uncertainty.[41]

4.22 Similarly, the roundtable participants also favoured a less formal approach, suggesting that IOSCO could draft guidelines (such as those for benchmarks) to be used as a proxy for mutual recognition and deference, subject to the caveat that any such guidelines or principles were sufficiently granular.[42] The participants at the first roundtable mooted the FSB considering a level above this, in terms of what deference means and looks like and whether a deference requirement itself could be one of the requirements for deference.

4.23 Some alternative suggestions were also put forward by other respondents. The representative of the multilateral development bank considered that the G20 should make a formal commitment to harmonisation in the implementation of their commitments which could then be codified in states' national legislation.

4.24 Another respondent from a global financial institution considered that a more consistent EU approach to equivalency determinations was required in the first instance and more needed to be done in this area to ensure crucial equivalency mechanics were in place for the benefit of third country entities.[43] A similar comment was made by two participants at the first roundtable from industry associations who felt that there was a lack of transparency as regards the equivalence process due to the absence of a principled framework for determinations. They also suggested that it may be beneficial *educating* regulators as to the operations of the relevant markets, in advance of regulations affecting such markets.

Refreshing the FSB's mandate

4.25 Three responses commented on this solution, generally sanguine as to its merits. The questionnaire respondents were more positive, with 71% of the view that broadening

41 See section 4.4 (*Common Principles regarding consistency and assessments of comparability*) on page 18 of the Discussion Paper.

42 See footnote 33 above on granularity.

43 By way of example, the respondent noted the perceived lack of progress of the EU/US equivalency determinations and the lack of visibility as to whether the regulatory deadlines would be met. See the FMLC joint paper referred to in footnote 35 above.

the FSB's mandate so that it had more powers to oversee the implementation of the G20 commitments could assist with regulatory harmonisation.

4.26 Anthony Browne agreed in principle that the role and remit of the FSB should be kept under periodic review by its leadership, however, he did not think it was immediately apparent which further enhancements were currently appropriate.

4.27 A similar view was held by a respondent from the FSB who noted that the Charter of the FSB, including its mandate, was recently refreshed in 2012 in the context of its incorporation. The respondent went on to acknowledge though that, while not urgent, this did not necessarily rule out further review based on the two years of experience as a legal entity or other developments.

4.28 The question in the Discussion Paper as to whether the FSB should be granted a formal mandate to settle principles for equivalence/substituted compliance was met with less enthusiasm.[44] A respondent from a global financial institution was not convinced that an arbitrator or other third party such as the FSB could have a meaningful role in settling differences of approach. He felt it would only be appropriate for settling differences of opinion at a technical level as opposed to political disputes.[45]

4.29 A respondent from a global financial institution was similarly sceptical as to whether "global watchdogs" such as the FSB having enhanced powers would be effective. Acknowledging that there may be limited, targeted areas where this might be useful, the respondent nevertheless felt that watchdogs could not compel governments to act and observed that many of the international issues ultimately needed inter-state momentum and political will.

Mechanisms to assist the functioning of the G20: a framework for agenda-setting at the G20

4.30 One response commented on this solution.

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44 See section 4.5 (*Refreshing the FSB's mandate*) on page 21 of the Discussion Paper.

45 This corresponds with research undertaken in the context of preparing the IOSCO Consultative Report of the IOSCO Task Force on Cross-Border Regulation (24 November 2014), available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD466.pdf, which demonstrated more support for a "conflict of regulations" framework, rather than a formal dispute resolution mechanism. See section 4.4 (*Common Principles regarding consistency and assessments of comparability*) on page 19 of the Discussion Paper.

4.31 Anthony Browne welcomed the steps taken by the Australian G20 presidency to streamline the G20 agenda and agreed that the focus of the G20 going forward should be on coordination, alignment and consolidation to support economic growth.

A permanent secretariat

4.32 Three responses commented on this solution of which two were generally in favour of establishing a permanent secretariat, although noting some caveats. This proportion was reflected in the responses to the questionnaire: two-thirds of respondents generally favoured this solution. It was also endorsed by a representative of a multilateral development bank in a call with the FMLC Chief Executive to discuss the Discussion Paper.

4.33 Conversely, participants at the roundtables were less convinced. While acknowledging there were merits, they elucidated concerns about bureaucracy, legitimacy and practicalities such as funding and location. They also identified a geographic split between the EU and US in respect of this solution, with the former more in support and the latter with more reservations. Participants at the fourth roundtable conceded that a secretariat could assist in mediating disputes on the interpretation of international memoranda in the absence of a dispute resolution mechanism.

4.34 Michael Collins also agreed that there were merits in establishing a permanent secretariat but cautioned that much would depend on its resources—it would need to be reasonably sized to be able to engage effectively with stakeholders—and those that staffed it e.g. in terms of their experience, diversity of backgrounds, expertise and seniority.

4.35 This differed slightly to a suggestion by Anthony Browne for a modest secretariat for the G20 or Troika to ensure continuity between presidencies and maintain the focus on key priorities. Participants at the third timetable adopted a similar view. They acknowledged the importance of continuity but expressed concern over establishing another body, arriving at the compromise of a secretariat with a limited and more administrative remit. Participants at the fourth roundtable concurred with a less formal approach but preferred establishing a registry of finance and dispute resolution experts.

4.36 A counter-view was put forward by the respondent from the Institute of International Finance who had reservations about establishing a permanent secretariat, observing that it might risk pre-empting FSB prerogatives.

Multilateral understandings regarding supervision and enforcement

4.37 Three responses commented on this solution, generally in favour of some type of formalised multilateral understanding. More support was garnered from the respondents to the questionnaire where 79% favoured the development of additional multilateral memoranda between regulators. It was also touched on at the roundtables and at a meeting between the FMLC Chief Executive and several representatives of a multilateral development bank (see section 4.38 below).

4.38 Anthony Browne noted the importance of colleges of supervisors and how they supported national supervisors. In his view, there was scope to make the role of the colleges more explicit and, as noted in the Discussion Paper,[46] removing obstacles to information sharing between regulators created by national rules on data protection and bank security could promote efficient cross-border cooperation. The representatives of the multilateral development bank advocated against making decisions of regulatory colleges binding as being potentially controversial, cautioning that their design should not have the effect of disadvantaging emerging economies.

4.39 The Discussion Paper provides the examples of multilateral memoranda of understandings between regulators and specially constituted bodies as a means of fostering inter-jurisdictional cooperation, consistency and predictability in supervision and enforcement.[47] Professor Rosa Lastra concurred with the general approach of establishing a special body but was of the view that it needed to be a formal organisation where policy-makers met regularly and which had an appeal function if there was not a convergence of regulatory standards.

4.40 Professor Emilios Avgouleas of the University of Edinburgh commented that there were limits to regulatory cooperation and instead advocated some form of a global agreement on uniformity of standards. He acknowledged that, in the field of bank supervision, regulatory cooperation mainly driven by the FSB had made significant

46 See section 4.8 (*Multilateral understandings regarding supervision and enforcement*) on page 25 of the Discussion Paper.

47 See section 4.8 (*Multilateral understandings regarding supervision and enforcement*) on pages 24 and 25 of the Discussion Paper.

progress fostering trust among bank regulators and mutual respect. However, using the example of an international crisis involving the use of the bail-in tool in the cross-border resolution of a globally systemically important bank, he remained concerned that current progress in regulatory cooperation could still be highly tested, lending support to his call for more formalised global agreement.

Formal and informal dispute resolution procedures for cross-border supervision and enforcement

4.41 Four responses commented on this solution, generally in support of the establishment of dispute resolution procedures. This largely reflects the responses to the questionnaire where 73% were of the view that establishing a standing dispute settlement forum or register of dispute resolution experts would be beneficial. Conversely, in a call with the FMLC Chief Executive to discuss the Discussion Paper, a representative of a multilateral development bank observed that a full dispute resolution mechanism would likely be unachievable. The roundtables were initially divided. While participants at the first roundtable were on balance neutral, participants at the second and third roundtables were polarised. The former shared the scepticism evinced by the representative of the multilateral development, while the latter felt that a disciplinary mechanism was vital to underpin the G20 process and was the *missing link*. At the end of their discussions, however, they largely reached the same conclusion, shared by participants at the fourth roundtable, that a less formal dispute mechanism would be optimal. See sections 4.44, 4.45 and 4.47 below.

4.42 Professor Rosa Lastra supported the establishment of a dispute resolution procedure at the global level. In her view, this was the natural corollary of cross-border rules.

4.43 Anthony Browne agreed that there were merits to establishing a standing dispute settlement forum or mechanism, however was slightly sceptical as to its feasibility, it being perhaps better placed in the "longer-term category". He acknowledged that the on-going negotiation for a transatlantic trade and investment partnership between the EU and US could serve as an opportunity to develop and trial such a mechanism and that the benefits which would accrue from such an approach should be promoted.

4.44 Participants at the first roundtable generally felt that there were benefits to establishing a dispute settlement forum or mechanism, however shared reservations as to how it would operate in practice, evincing a need for a nuanced approach. For example,

they queried whether "one size would fit all", viewing the adoption of the same resolution mechanic for all types of disputes in a negative light. In a similar vein, they wondered if there was more appetite for a small/low level disputes resolution forum. An overarching concern was aired as to the legitimacy of the mechanism and the need to ensure it was transparent.

4.45 The participants at the second and fourth roundtables preferred the less formal approach, endorsing the suggestion in the Discussion Paper of a facilitative panel of experts as a more appropriate and realistic option.[48] A participant at the third roundtable thought that the deficiencies in coordination in implementation of the G20 commitments could be attributed to a lack of opprobrium for failure. He suggested a "market led discipline" as a means of sanctions, however acknowledged the issues associated with instituting a global sanctions regime, such as countries being unwilling to compromise their sovereignty. This led to the concession of a facilitative panel of experts.

4.46 The Discussion Paper noted that, if an appetite emerged for a formal dispute resolution process, the model most often suggested by proponents of such a process was the Dispute Settlement Body of the World Trade Organisation ("WTO").[49] The General Counsel of a Central Bank in Europe commended the suggestion of dispute resolution procedures, supporting the WTO model as the right approach to determine compliance with international obligations and contribute to the effective enforcement of financial standards.

4.47 A counter-view to this was expressed by a respondent from a global financial institution who did not consider the WTO model appropriate, citing three main reasons.[50] This view was supported by participants at the first and second roundtables.

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48 See section 4.8.1 (*Formal and informal dispute resolution procedures for cross-border supervision and enforcement*) on page 26 of the Discussion Paper.

49 See section 4.8.1 (*Formal and informal dispute resolution procedures for cross-border supervision and enforcement*) on page 26 of the Discussion Paper.

50 (a) WTO disputes are in relation to trade and not jurisdictional differences—sanctions do not sit well with aspirations of cross-border harmonisation;

(b) the WTO has a set of rules which are used to regulate trade disputes but there are no equivalent global rules for cross-border regulatory disputes. Accordingly, he counselled that it would be more appropriate to advocate for clearer cross-border guidelines in the first instance, before thinking about a formal platform within which those guidelines could be applied; and

(c) there are practical difficulties to submitting to dispute resolution/conflict resolution which cast doubts on whether a model can usefully be developed: it is unlikely that jurisdictions will want to or feel able to cede their sovereign powers to the determination of a third party.

5 ADDITIONAL SOLUTIONS

5.1 Four respondents looked beyond the nine solutions outlined in the Discussion Paper and suggested further solutions and avenues, in general more fundamental and overarching, than particular. This contrasted with the participants at the first and second roundtables who adopted a slightly more specific approach (see sections 5.6 and 5.7 below).

5.2 Anthony Browne observed that section 3 of the Discussion Paper (which identified contributory factors to the challenges to implementation) *implicitly* recognised that the drivers of inconsistency were broader than merely shortcomings in the way the G20 process has operated. He therefore suggested a more fundamental appraisal of the issue, starting with an articulation of criteria for where it is in the interest of the sovereign jurisdictions to seek consistent outcomes from financial regulation. Examples of such criteria would be where the market or activity in question was global in nature and there was a risk that differing national approaches would result in:

(a) financial instability or the risk of spill over of activity from the regulated sector to the unregulated or opaque;

(b) price distortion or the risk of arbitrage; and

(c) increased cost and complexity for clients and firms.

Where these criteria were met and there was scope for coordinated action, he counselled that the desire for technocratic solutions that would deliver consistent international approaches or policy outcomes must then be balanced with a "reality check" in respect of the heterogeneity of each jurisdiction vis-à-vis its political landscape, existing law or regulation, size and structure of the industry or activity in question and societal preferences. He observed that it was often too easy to overlook these basic but fundamental factors.

5.3 A similar comment was made by Professor Rosa Lastra who also advocated delineating the functions or sub-functions that required a supra-national or international structure and the functions that were best left at the national level.

5.4 Anthony Browne also made some overarching comments about the international standard-setters operating under the G20 umbrella, in terms of a perception that they may possess divergent approaches to pursuing the financial regulatory reform initiatives.[51] While acknowledging that this may stem to some degree from their different mandates and membership, he felt it was also attributable to a general lack of consistency as regards due process and impact assessments. In his view, these issues at the level of the international standard-setters filtered down to the implementation level and affected the ability of jurisdictions to implement agreements consistently. As a way to address this, he suggested that the FSB be tasked with developing minimum standards of due process which the international standard-setters would be expected to follow.

5.5 As a related point, he suggested that the membership of the international standard-setters and their balance of power to influence decisions also be considered. He observed that the G20 was not fully representative of global markets and that the participation of countries in the different international standard-setters varied. In his view, if the G20 were to be viewed as promoters of coherent and truly global standards, they had to be seen to be representative:

> [t]oo often, the post financial crisis agreements have been criticised for being developed by the North Atlantic countries with limited input from emerging markets.[52]

5.6 A participant at the first roundtable from an industry association thought it was critical to look at the international regulatory process through the lens of those on the ground subject to it. From their perspective, it was not fit for purpose and they were entitled to expect more from regulators and standard-setters.[53] The sequitur to this, in his opinion, was a global call to IOSCO and the G20 to demand collaborative action and the adoption of a project management plan. To instigate this, he proposed a letter from multiple industry associations to David Wright, Secretary General

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51 A similar concern was expressed by the participants at the third roundtable—see section 1.12 above.

52 This concern was also voiced by the participants at the fourth roundtable.

53 Similarly, a respondent from AFME (Peter Beales, Senior Adviser) observed that, when viewed through the prism of providers and consumers of financial services, it became ever more critical for policy makers and competent authorities to appreciate better the effect on those on the ground of the current complexity and confusion surrounding a range of aspects of the regulation of cross-border business (as exemplified in Annex 1 of the Discussion Paper) in terms of the serious potential for undermining legal certainty and exacerbating conflicts of law. In his view, such an understanding should assist their appreciation of the urgency to address the current disharmony, as well as set the foundations for an in-depth consideration of how the policy/rule making process could be better shaped to reduce these risks.

of IOSCO, copied to President Juncker, Lord Hill and Frans Timmermans of the European Commission.

5.7 The participants at the first and second roundtables also proposed the production of cross-border impact statements in respect of any proposed regulation. It was suggested that these could be carried out by the FSB. Participants from an industry association thought that this might alleviate some of the pressure on early multilateral discussions and consultation among regulators, as well as ease the process for mutual recognition.

5.8 Finally, a respondent from the Association for Financial Markets in Europe (Peter Beales, Senior Adviser) highlighted the extensive and ongoing work of the Cross-Border Regulation Forum ("CBRF") on developing a more comprehensive and coherent form of regulation of cross-border business.[54] Imbued with the benefits of a broad membership,[55] in his view, the CBRF's thinking had an important role to play in the regulatory architecture, feeding into the convergence and harmonisation process. Central to this was the CBRF's recommendation for an enhanced role for IOSCO to assist the G20 with coordination of cross-border regulation.[56]

6 CONCLUSION

6.1 As is evident from this feedback statement, the Discussion Paper has generated a huge response. The FMLC has received comments from a diverse range of entities which include Central banks, government bodies, global financial institutions, industry associations and international law firms. These entities also represent a wide geographic reach taking in South America, North America, South Africa and Europe, as well as other countries. Their feedback reinforces that coordination of international

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54 See for example the CBRF's response (available at: http://www.iosco.org/library/cross-border-taskforce/pdf/CBRF%20Submission.pdf) to the IOSCO Task Force on Cross-Border Regulation, *Consultation Report* (24 November 2014), available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD466.pdf. Peter Beales noted that the CBRF's case studies had also been welcomed by IOSCO: see Cross Border Regulation Forum, *Key Issues and Challenges Relevant to the Regulation of Cross Border Business in Financial Services* available at: http://www.icsa.bz/img/letter_pdf/Annex_13.CBRF_Response_to_IOSCOQuestionnaire__final_ver_13.1_28_MAY_2014.pdf.

55 The CBRF was formed in 2014. Included in its broad membership are an international group of financial services trade associations, investment banks, brokerage houses, market infrastructure operators and consumers of financial services.

56 See the CBRF's response to IOSCO at footnote 55 above.

financial regulation is an issue of significant importance on the global agenda and demonstrates substantial commitment to progressing it.

6.2 The Discussion Paper contributes to an ongoing discourse, however, the premise of the paper is that *action* should be taken to address the legal uncertainty arising from inconsistent implementation of the G20 commitments. This premise informed the nine potential solutions set out in the Discussion Paper. The extensive feedback received has enabled these solutions to be rigorously critiqued, revealing those favoured and likely to gain traction, while separating out those which are perceived to be less attainable. The feedback has also highlighted certain obstacles of a systemic nature, which should be borne in mind when formulating action plans.

6.3 In terms of building on the Discussion Paper and its feedback, with a view to taking forward the potential solutions, several individuals, galvanised by the paper, accepted an invitation from the FMLC to form a steering group.[57] The *raison d'être* of the steering group, which underpins its remit and informs its steps, is to explore the prospects for *action*. The steering group will evaluate this feedback statement and the Discussion Paper in order to filter the solutions, reshaping them along the way as necessary. In this regard, the solutions are not immutable but serve as malleable starting points. The steering group will determine which solutions best lend themselves to being actioned and in which form, thereafter drawing up recommendations for next steps by those best placed to implement them. The objective of this process is to precipitate change. The next chapter has begun.

[57] Professor Douglas Arner, Professor Hal Scott, Mr John Taylor, Mr Whitman Knapp, Professor Takashi Kubota, Mr Michel Prada and Professor René Smits. The steering group held an inaugural telephone conference on 26 August 2015 to discuss various preliminary matters.

ANNEX

QUESTIONNAIRE QUESTIONS

1. Do you agree that despite the improvements in the regulation of financial services brought about by the G20, challenges remain, giving rise to issues of legal and regulatory uncertainty for market participants who engage in cross-border activity?

2. To what extent do you agree that the following factors present challenges to the consistent implementation of G20 commitments. Please rank your preferences in the order of importance, with #1 being the most important.

   (a) Discontinuity in the G20 handover process

   (b) Governments may not be equally committed to international principles agreed by the G20

   (c) International commitments may be constrained by the domestic legislative processes

   (d) Insufficiently coordinated timetables

   (e) No consensus regarding deference measures

   (f) FSB and international bodies have limited powers

   (g) Concerns regarding regulatory cooperation, supervision and enforcement

   (h) Lack of a formal grievance procedure

3. Would the development of an international framework on mutual recognition or "substituted compliance" help in addressing the issues arising from differences in national legislative frameworks?

4. Is it true that international regulatory reform would benefit from the greater involvement of market participants, supervisors from multiple jurisdictions and a wide array of regulators—described as a "bottom up" approach in the FMLC paper?

5. Do you think that including representatives of national legislatures in the formulating of international standards would help ensure the standards have a better chance of being implemented into domestic law?

6. Who should be setting the timetable for implementing internationally-agreed regulatory reforms?

7. Do you agree that broadening the FSB's mandate so that it has more powers to oversee the implementing of the G20 commitments into national law could assist in maintaining momentum towards international regulatory harmonisation?

8. Do you agree that equipping the G20 with a permanent Secretariat might improve continuity between presidencies and maintain focus on key commitments at meetings between G20 summits?

9. Do you agree that the development of additional multilateral memoranda of understanding between regulators would be beneficial to the objective of achieving consistency in financial regulation?

10. Do you agree that the establishment of a standing dispute settlement forum or the establishment of a registry of finance and dispute resolution experts would be useful for addressing conflicts that arise in the context of cross-border supervision and enforcement of international standards?

11. Do you have other suggestions or comments on how coordination in the implementation of international financial regulation might be achieved?