

25 April 2016

Paul P. Andrews
Secretary General
International Organization of Securities Commissions
C/Oquendo 12
28006, Madrid
Spain

Dear Mr Andrews,

IOSCO Task-Force on Cross-Border Regulation: Final Report

The Financial Markets Law Committee (the "FMLC" or the "Committee") is an independent body of legal experts established 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.

The FMLC has written extensively on the question of international coordination in the field of financial markets law and regulation.¹ In October 2012, the Committee initiated a series of seven panel discussions and seminars to examine the need for inter-jurisdictional coordination in countries' implementation of G20 finance track commitments and this work was followed by a discussion paper on the same theme, published in February 2015 (the "Discussion Paper"). Shortly after its publication, the Discussion Paper was submitted to, among others, the Task Force on Cross-Border Regulation established by the International Organization of Securities Commissions ("IOSCO") in the context of its November 2014 Consultation Report on a toolkit for cross-border regulation (the "2014 Consultation").² Here, the FMLC's objective was to draw attention to the extensive analysis of cross-border regulatory conflict or inconsistency annexed to the Discussion Paper and to its own recommendations for mitigating such conflict, as well as to offer any further assistance as IOSCO might find helpful.

The FMLC's Discussion Paper was received with widespread approbation by public institutions, international and national authorities, regulators, governments, stakeholders, industry associations and academics. Moreover, its publication garnered substantial feedback, which was analysed in a feedback statement published later the same year.

¹ FMLC Discussion Paper entitled "Coordination in the Reform of International Financial Regulation", dated 2 February 2015. The Discussion Paper is available at: http://www.fmlc.org/uploads/2/6/5/8/26584807/fmlc_interim_feedback_statement_coordination_in_the_reform_of_international_financial_regulation.pdf.

FMLC Interim Feedback Statement: FMLC Discussion Paper on Coordination in the Reform of International Financial Regulation, dated 21 September 2015. The Feedback Statement is available at: http://www.fmlc.org/uploads/2/6/5/8/26584807/fmlc_interim_feedback_statement_coordination_in_the_reform_of_international_financial_regulation.pdf.

² The Consultation is available at: <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD466.pdf>.

T +44 (0)20 7601 4286
contact@fmlc.org

8 Lothbury
London
EC2R 7HH
www.fmlc.org

Registered Charity Number: 1164902.

In the Autumn of 2015, not wishing to lose the momentum generated by the Discussion Paper, the Committee established a Steering Group of experts, chaired by John Taylor,³ to examine the topic of coordination in international regulatory reform and to make suggestions for further progress. In its report to the FMLC in March 2016, the Steering Group made a recommendation, *inter alia*, as to further work on multilateral and bilateral understandings regarding supervision and enforcement. This letter reflects and endorses that recommendation.

The FMLC recognises the desirability of increased cooperation among supervisors of cross-border financial entities and it has considered how, if at all, the use of Memoranda of Understanding (“MoUs”) between national regulators and supervisors can be improved and their effectiveness maximised. In this context, the Committee welcomes the *Final Report on Cross-Border Regulation* published by IOSCO last year as a follow-up to the 2014 Consultation.⁴

In particular, the FMLC wishes to comment on the observation, at page 49 of the Final Report, that as part of the next steps:

IOSCO should consider setting up an information repository of supervisory cooperation MoUs entered into by its members to assist other members in developing bilateral arrangements, which may foster new, multilateral approaches.

The Committee welcomes this proposal. One benefit of such a repository, from the perspective of the FMLC, would be the opportunity to develop drafting recommendations on the basis of clauses or agreements found to be particularly efficacious. In due course, these could give rise to templates for MoUs with all the benefits that standardisation and uniformity can bring, including settled expectations as to their interpretation. The FMLC would like to take this opportunity to encourage the development and use of effective templates for MoUs among regulatory and supervisory authorities.⁵ The Committee and the members of the FMLC Steering Group would be pleased to assist IOSCO in its efforts to develop such templates.

³ Members of the Steering Group act in a purely personal capacity. The names of the institutions they ordinarily represent are given for information only. John Taylor is the former General Counsel of the European Bank for Reconstruction and Development and former International Director of Berwin Leighton Paisner LLP. The other members of the Steering Group (in alphabetical order) are: Professor Douglas Arner (University of Hong Kong), Whitman Knapp (GTBInsights LLC), Professor Takashi Kubota (Waseda University, Japan), Michel Prada (Chairman of the Trustees of the International Financial Reporting Standards Foundation), Professor Hal Scott (Harvard University Law School, Director of U.S. Committee on Capital Markets Regulation and Co-Chair of the Council on Global Financial Regulation), Professor René Smits (University of Amsterdam) and Professor Shen Wei (Koguan Law School of Shanghai Jiao Tong University, China).

⁴ The Final Report is available at: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD507.pdf>.

⁵ The FMLC has previously written on templates for supervisory colleges. See FMLC and U.S. Committee on Capital Markets Regulation paper entitled “Comment Paper on issues of Legal Uncertainty Relating to Recognition and Supervision of Central Counterparties”, dated 1 September 2015, at paragraph 36 to 39. The comment paper is available at: http://www.fmlc.org/uploads/2/6/5/8/26584807/fmlc-ccmr_joint_statement_1_september_2015.pdf.

See also FMLC Discussion Paper supra n.1, paragraphs 3.7 and 4.8.

I and members of the FMLC Steering Group would be delighted to meet you to discuss the issues raised in this letter. Please do not hesitate to contact me to arrange such a meeting or should you require further information or assistance.

Yours sincerely,



Joanna Perkins

FMLC Chief Executive

Copied to: Greg Medcraft and Ashley Alder

FINANCIAL
MARKETS
LAW
COMMITTEE