

March 16, 2022



Martin Moloney
Secretary General
International Organization of Securities Commissions, Madrid

By email: consultation-02-2022@iosco.org

Dear Mr. Moloney,

IOSCO Consultation Report on Retail Distribution and Digitalisation

The Institute of International Finance (IIF) welcomes the opportunity to respond to IOSCO's [consultation report](#). We **welcome** the important work of IOSCO in seeking to keep abreast of rapid developments in financial intermediation.

The IIF **agrees with IOSCO's regulatory objectives** to ensure effective regulation taking into account the challenges emerging from increased digitalization of marketing and distribution.

Implementation needs to be **principles-based** and **technology-neutral** and should retain room for **innovation**.

The IIF also believes that **existing cross-border and compliance rules** across jurisdictions are **sufficient**; however, the IIF would support further measures and tools (e.g. use of AI in SupTech applications) to enhance supervision, regulatory cooperation and coordination, and enforcement.

Regulators need to ensure the principle of "**same activities, same risks, same regulation**" is applied in the marketing and distribution of financial services as between regulated market participants and those outside the current scope of financial regulation.

Regulators may also consider the **responsibility of online platforms**, which may contribute to problematic market practices as described by IOSCO based on their data-driven business models. Regulators should consider the degree to which regulated firms can control these platforms and other unregulated intermediaries/service providers.

Regulators should ensure their own **registries** are transparent and fully up to date, and adopt technical measures to minimize the opportunities for scams including through fraudulent websites.

Detailed comments and observations on the two consultation questions and the proposed toolkit are set out in the Annex.

The IIF stands ready to engage further on these topics. Please do not hesitate to contact me, Mary Frances Monroe or Laurence White with any follow-up question.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jessica Renier', written in a cursive style.

Jessica Renier
Managing Director, Digital Finance

Annex – Answers to consultation questions

Q. Do market participants agree that the proposed measures included in the policy and enforcement toolkits are appropriate for addressing the specific risks arising from “retail distribution and digitalization”?

A. See our comments in the table below.

Q. Are there any areas that are missing and/or merit IOSCO consideration?

A. We believe that further consideration should be given to the topics of geoblocking and its interaction with virtual private networks (VPNs).

IOSCO proposals & IIF positions

Policy toolkit

IOSCO proposals	IIF position
<p>1. Firm level rules for online marketing and distribution:</p> <p><i>IOSCO members should consider requiring that firms have proper internal rules, policies, processes and tools for their online marketing and distribution, and review them on a regular basis.</i></p> <p><i>This should include that any use by firms of targeting, behavioral techniques and gamification elements should be done in a way that ensures fair treatment of financial consumers and aims to avoid potential financial consumer harm.</i></p>	<ul style="list-style-type: none">• We support effective rules for online marketing and distribution and believe that most regulated market participants already adhere to stringent regulatory and internal, firm-based rules.• Regulators need to ensure the principle of “same activity, same risks, same regulation” is applied as between financial and non-financial service providers.• Where appropriate, they should seek to adjust the regulatory perimeter as needed to maintain consumer protection and market integrity, which may need to extend to entities not presently subject to regulation as market participants.• Regulation should be implemented in a business-friendly way which still allows for innovation while managing risks. For example, the potential for gamification techniques to increase financial engagement literacy, particularly among younger cohorts, should be recognized and understood as well as the risks.
<p>2. Firm level rules for online onboarding:</p> <p><i>IOSCO members should consider requiring that firms apply appropriate filtering mechanisms, policies and procedures for financial consumer onboarding in line with the laws and regulations of the firms’ jurisdiction, the financial consumers’ jurisdiction, and the jurisdiction where the products or services are being marketed or</i></p>	<ul style="list-style-type: none">• We support a principles-based approach, which defines appropriate standards for online onboarding that firms need to adhere to, taking into account differences in jurisdictional approaches.

IOSCO proposals

IIF position

distributed. During the onboarding process, the information provided should be clear, fair and non-misleading.

3. Responsibility for online marketing:

*IOSCO members should require, subject to a jurisdiction's laws and regulations, that **management assumes responsibility for the accuracy of the information provided** to potential investors on behalf of the firm, including those provided via various social media channels, including influencers, and the **timely disclosure** of necessary information regarding potential risks and conflicts of interest to avoid potential financial consumer harm.*

- We are supportive of these proposals, which should be implemented in a principles-based way.
- “Accuracy” may in some jurisdictions be higher than the applicable legal standard, which may be “not misleading” or similar. IOSCO members should not go beyond applicable law in their requirements or expectations, without prejudice to their ability to change the law (if within power) or seek changes in the law.

4. Capacity for surveillance and supervision of online marketing and distribution:

*IOSCO members should consider whether they have the necessary **powers** and have **adequate supervisory capacity** to oversee an increasing volume of online marketing and distribution activity.*

*IOSCO members should also consider ways to develop appropriate **monitoring programs** for the **surveillance** of online marketing and distribution activities, including on social media. Within the context of domestic legal frameworks, considerations for enhancing surveillance and supervisory capacity could include:*

- *The power to request access to content to detect illegal or misleading promotions;*
- *Having regulatory channels in place to report consumer complaints for misleading and illegal promotions; and*
- *Suitable evidence tracking processes in place to cope with the fast pace and changing nature of online information.*

IOSCO members are encouraged to share experiences and good practices with each other regarding supervision and surveillance of online marketing and distribution.

- No further comments (proposal directed at regulators)

5. Staff qualification and/or licensing requirements for online marketing:

*IOSCO members should consider requiring that firms assess the necessary **qualifications for digital marketing staff**. IOSCO members may also consider requiring firms to have specific staff qualification and/or*

- We believe that online marketing does not entail risks that are materially different from other types of marketing. We therefore don't see the need for specific requirements on this topic.
 - We would observe that regulated market participants already are
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IOSCO proposals

licensing requirements for online marketing staff, similar to licensing requirements for sales staff, if such regulatory requirements do not already exist or apply to online marketing staff.

6. Ensuring compliance with third country regulations:

Where firms may have clients from jurisdictions other than where they hold a license, the firm's home regulator should consider requiring their domestic firms to have adequate policies and procedures for onboarding these clients. For example, IOSCO members could require firms to undertake due diligence to determine whether they are required to hold a license in a prospective client's home country and/or whether other regulatory obligations apply, and to retain records of such due diligence.

7. Clarity about legal entities using internet domains:

IOSCO members should consider requiring firms, when they offer products through multiple internet domains, to adopt policies and procedures requiring clear, fair and not misleading disclosure about who the underlying legal entity is offering the product and under what license (and from which jurisdiction). This disclosure should also cover the scope and limitation of services. IOSCO members should also consider prohibiting firms from redirecting clients to a third country website to avoid the regulatory requirements in a jurisdiction.

Additionally, IOSCO members may wish to consider keeping an open register which could enable the public to check and confirm whether a website belongs to a firm authorised to provide services in the jurisdiction and under the law.

IIF position

required to have appropriate human resources including training in most jurisdictions. Regulated market participants can therefore be expected to have in place stringent measures to ensure that relevant staff have the necessary qualifications for marketing, both online and offline.

- Existing cross-border and compliance rules across jurisdictions are sufficient but cross-border cooperation and coordination could be enhanced.
 - However, we would support further measures and tools (e.g. AI SupTech applications) to enhance supervision and enforcement.
 - More stringent requirements concerning modalities of marketing of financial products is a separate topic from licensing.
 - Favorable legal treatments or licensing requirements, currently existing in some countries for third countries' firms, should be maintained and protected. Accordingly, such requirements should not be used so as to override existing exemptions and exclusions (for example, for cross-border business) from the scope of regulation, without legal change.
 - Due diligence requirements should be proportionate to the risk presented.
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- Regulators should ensure that regulation is sufficiently enforced across different domains and platforms.
 - The proposed prohibition on redirections needs to be carefully considered. Such a prohibition may put regulated market participants at a disadvantage from other firms that are free to direct consumers to any website. The role of geoblocking and VPNs should also be further investigated.
 - We support the idea of a public register linking a firm's name with its officially recorded website. Such a register should be kept up to date and be reliable if it is to be useful.
 - As well, regulators must take active steps, in collaboration with mobile phone operators, internet service providers, and others, to avoid their own websites being faked or spoofed.
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IOSCO proposals

IIF position

- Regulators should consider using technical means to ensure that regulated firms can display a “verifiable credential” that is securely linked to the public register.
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Enforcement toolkit

IOSCO proposals

IIF position

1. Proactive technology-based detection and investigatory techniques:

IOSCO members could consider whether to use proactive technology-based monitoring tools and approaches, where appropriate, to support the detection and investigation of potentially illegal digital conduct.

- Fully supportive of enhanced regulatory abilities to monitor appropriate conduct.
 - Strong automated surveillance systems that generate timely alerts and warnings can play an important role in protecting consumers from unlicensed conduct.
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2. Power to promptly take action where websites are used to conduct illegal securities and derivatives activity, and other powers effective in curbing online misconduct

IOSCO members could consider seeking additional powers to be more effective in promptly curbing illegal online conduct, including the power to shut down or block access to illegal websites, or seeking a legal order to do so, where appropriate.

- In the case of fake accounts impersonating regulated market participants, or accounts otherwise engaging in illegal conduct (such as unlicensed advice), regulation needs to reflect the fact that the power to remove a fake or illegal account lies with the social media platform, not the financial service provider.
 - Regulators should develop strong links with “Bigtech” platforms such that any legal powers may be promptly and effectively exercised. Such powers should be designed to avoid unintended consequences. The target needs to be the platforms not the regulated firm that is being impersonated.
 - Such powers should not, de facto, give power to the regulator to override existing exemptions and exclusions (for example, for cross-border business) from the scope of regulation.
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3. Increasing efficient international cooperation and liaising with criminal authorities and other local and foreign partners

IOSCO members could consider ways to increase efficient cross-border cooperation and collaboration in investigations and enforcement actions and enhancing liaison with criminal authorities and other relevant local or foreign partners.

- No comments.
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4. Promoting enhanced understanding by and collaboration with providers of electronic intermediary services on digital illegal activities

IOSCO members could consider initiatives, individually and collectively through IOSCO, to foster more meaningful understanding by and collaboration with providers of electronic intermediary services in curbing digital illegal activities and anonymous website registration.

5. Additional efforts to address regulatory and supervisory arbitrage

IOSCO members could consider additional efforts to address regulatory and supervisory arbitrage in the interest of facilitating international enforcement cooperation and enhancing investor protection on a global scale.

- We support these proposals. Regulators should be better coordinated with existing intermediaries and platforms and should better understand the entire ecosystem of regulated and unregulated participants.
 - While the industry supports regulatory initiatives to avoid regulatory fragmentation, this should be done on a principles-based rather than “one-size-fits-all” way, accounting for specificities of different jurisdictions.
 - Industry should be involved in additional efforts to address regulatory and supervisory arbitrage.
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