Survey on the Principles for the Regulation and Supervision of Commodity Derivatives Markets

Final Report

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Contents

Abbreviations

Regulators

- Argentina - Comisión Nacional de Valores (CNV)
- Australia - Securities and Investments Commission (ASIC)
- Brazil - Comissão de Valores Mobiliários (CVM)
- Canada (Alberta) - Alberta Securities Commission (ASC)
- Canada (Manitoba) - Manitoba Securities Commission (MSC)
- Canada (Ontario) - Ontario Securities Commission (OSC)
- Canada (Québec) - Autorité des marchés financiers (Québec AMF)
- China - China Securities Regulatory Commission (CSRC)
- Chinese Taipei - Financial Supervisory Commission (Chinese Taipei FSC)
- Denmark - Danish Financial Supervisory Authority (Danish FSA)
- Dubai - Dubai Financial Supervisory Authority (DFSA)
- France - Autorité des marchés financiers (AMF)
- Germany - Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)
- Gibraltar - Financial Services Commission (Gibraltar FSC)
- Greece - Hellenic Republic Capital Market Commission (HRCMC)
- Hong Kong - Securities and Futures Commission (SFC)
- Hungary - Hungarian Financial Supervisory Authority (Hungarian FSA)
- India - Forward Markets Commission (FMC)
- Japan - Ministry of Agriculture, Forestry and Fisheries (MAFF)
- Japan - Ministry of Economy, Trade and Industry (METI)
- Korea - Financial Services Commission (FSC)
- Luxembourg - Commission de surveillance du secteur financier (CSSF)
- Malaysia - Securities Commission (SC Malaysia)
- Mexico - Comisión Nacional Bancaria y de Valores (CNBV)
- The Netherlands - Authority for the Financial Markets (AFM)
- Norway - Financial Supervisory Authority of Norway (FSAN)
- Panama - Superintendencia del Mercado de Valores (SMV)
- Portugal - Comissão do Mercado de Valores Mobiliários (CMVM)
- Romania - Romanian National Securities Commission (RNSC)
- Saudi Arabia - Capital Market Authority (CMA)
- Singapore - Monetary Authority of Singapore (MAS)
- South Africa - Financial Services Board (FSB)
- Switzerland - Swiss Financial Market Supervisory Authority (FINMA)
- Turkey - Capital Markets Board (CMB)
- United Arab Emirates - Securities and Commodities Authority (SCA)
- United Kingdom - Financial Services Authority (FSA)
- United States - Commodity Futures Trading Commission (CFTC)

Other Regulators mentioned

- European Securities and Markets Authority (ESMA)
- Hong Kong Monetary Authority (HKMA)

- Agency for the Cooperation of Energy Regulators (ACER)

Exchanges

- Australian Securities Exchange (ASX)
- Dubai Mercantile Exchange (DME)
- Hong Kong Futures Exchange (HKFE)
- IntercontinentalExchange (ICE)
- ICE Futures Europe (IFE)
- Hong Kong Mercantile Exchange (HKMEx)
- London Metal Exchange (LME)
- London International Financial Futures and Options Exchange – LIFFE
- New York Mercantile Exchange - NYMEX
- NYSE Euronext, Inc. (NYSE Euronext)
- NYSE Liffe Paris
- Powernext
- Tokyo Commodity Exchange (TOCOM)

Legislation/Regulation

- Commodity Derivatives Act (CDA) –a Japanese law
- European Market Infrastructure Regulation (EMIR) –a European Regulation
- Market Abuse Directive (MAD) –a European Directive
- Markets in Financial Instruments Directive (MiFID) –a European Directive
- Markets in Financial Instruments Regulation (MiFIR) –a European Regulation
- Regulation on Energy Market Integrity and Transparency (REMIT) – a European Regulation
- Recognised Investment Exchange and Recognised Clearing House sourcebook (REC) - a UK book of rules and guidance for exchanges and clearing houses
- Recognised Investment Exchange (RIE) –the UK terminology for a UK Regulated Market

Summary of IOSCO Survey on Implementation of the IOSCO Principles for the Regulation and Supervision of Commodity Derivatives Markets

Introduction

At the G20 summit in Cannes in November 2011, the G20 endorsed IOSCO's report and its common principles for the regulation and supervision of commodity derivatives markets. In their declaration the G20 stipulated that Market Authorities[1] should be granted effective intervention powers to address disorderly markets and prevent market abuses. In particular it was stated that they should have the ability to use formal position management powers, including the power to set ex-ante position limits, particularly in the delivery month where appropriate. The G20 Leaders re-affirmed their commitment to enhance transparency and avoid abuse in financial commodity markets, including over-the-counter (OTC) markets. In the G20 declaration at the summit in Los Cabos, Mexico, on June 19th 2012, IOSCO was called on to "report on the implementation of its recommendations on commodity derivatives markets by November 2012."

In April 2012, IOSCO commissioned a survey on commodity market regulation to be answered by all its members. Answers were received from 37 market regulators and collated by the IOSCO Committee on Commodity Futures Markets (Committee 7). The survey results are contained within this document and show how regulators globally undertake and execute the regulation of both financial and, in some cases, physical commodity markets. For additional information, please see the accompanying spreadsheet, showing results in a color-coded format, and the survey tables offering a more detailed compilation of responses.

Results show that the majority of respondents were broadly compliant with the Principles. Where respondents were not in compliance it was mainly due to the fact that there are no commodity derivatives markets in that jurisdiction. Moreover, not all of the reporting jurisdictions have commodity derivative markets of the same size and complexity and therefore do not currently have regulation which directly addresses these Principles.

Where commodity derivative markets exist and Market Authorities acknowledged non-compliance, many of those Market Authorities have proposed initiatives aimed at achieving full compliance in time. IOSCO will use this survey to discuss approaches to assist Market Authorities in implementing the Principles.

Completing the survey has provided the responding Market Authorities with the opportunity to self-audit current regulatory practices, which will prove useful for their ongoing work.

[1] A Market Authority is a governmental regulator, a self-regulatory organization or a regulated market.

Principles on Contract Design

Principle 1: Accountability – *Market Authorities should establish a clear framework as to design and review criteria or procedures for commodity derivatives contracts. Market Authorities should be accountable for compliance with statutory and/or self-regulatory standards on a continuing basis and should retain powers to address the provisions of existing contracts which produce manipulative or disorderly conditions. At a minimum a statutory Market Authority should have legal powers to address and where necessary to vary contract provisions which produce, or are deemed likely to produce, manipulative or disorderly conditions.*

Nearly all members who responded to the survey have a clear set of regulations, policy statements or guidelines that establish a framework that governs the design of commodity derivatives contracts. Members generally have listed statutes or rules that impose a legal obligation on the Market Authority to comply with commodity contract design standards. Some jurisdictions, such as Saudi Arabia and Denmark, which do not presently have commodity derivatives markets, do not have statutes or rules specifically relating to commodity contracts.

Nearly all members are in jurisdictions where the Market Authority has the power to address contract provisions that produce manipulative or disorderly conditions. In general, members approve, or have the authority to disapprove, contracts that trade on commodity derivative markets. Exchanges or the regulators in most jurisdictions have explicit authority to intervene to limit or suspend trading to address market integrity concerns.

Japan's MAFF and METI are notable in their authority because they are also the regulator for the underlying physical markets. Market Authorities that do not regulate the underlying physical market use a variety of methods to assess the underlying markets. For example, the U.S. CFTC requires all large futures traders to keep records of their related cash transactions, the Brazilian CVM works with an institute at the University of São Paulo to survey market participants, and a number of other Market Authorities have divisions that conduct analysis of the underlying market to detect changes. Approximately half of surveyed regulators have formal rules or guidelines that trigger re-evaluation. However, other Market Authorities stated they would re-evaluate the terms of a derivatives contract if there were a change in the underlying product. Finally, most Market Authorities have a procedure for addressing commercial participants' concerns about commodity derivatives contracts. In Germany, for example, there is an informal involvement of commercial participants through the Exchange Council.

Principle 2: **Economic Utility** – *Contracts should meet the risk management needs of potential users and promote price discovery of the underlying commodity. The design and/or review of commodity derivatives contracts should include a determination that the contract can meet the risk management needs of potential users of the contract and/or promote price discovery of the underlying commodity. The determination of economic utility may be supported by surveys of potential contract users or may be implied - for example, from an analysis of the physical market. The regulator should, as a minimum requirement, be informed of the type of products to* *be traded on an exchange or trading system and should review and/or approve the rules governing the trading of the product.*

The majority of respondents employed specific regulation to ensure the integrity of the processes for satisfying the risk management needs of potential users and the promotion of price discovery in the underlying commodity. Others opted for a more informal process in obtaining feedback from stakeholders. Contract design, in a number of cases, is an interactive process between the exchange introducing the product and the regulator (for example, between the DFSA and DME in Dubai). Similarly, Hong Kong's HKFE and HKMEx use feasibility studies and the input and commentary from participants to gauge market demand. This process aims at simultaneously weighing risk assessment measures and achieving proper design. Some participants do not have a set of rules in place or a formalized process of assessment, but rely instead on market forces to determine the ultimate success of a product.

Those respondents in jurisdictions with commodity derivative exchanges affirmed they have a minimum requirement to be informed of new products. Jurisdictions required either direct approval by the regulator or a review process which in some instances (e.g. the U.S. and Argentina) relies on a self-regulatory body being responsible for the design or oversight of the product but requires submission to the regulator for approval or review. Almost all jurisdictions could point to specific rules or regulations that enforce either the reporting or approval process. In the German example, the review and approval process is entirely the exchange's responsibility. The exchange, however, has an obligation to report to the regulator, who can reject the product if it is deemed to affect the orderly conduct of trading.

Principle 3: Correlation with Physical Market - *Contract terms and conditions generally should, to the extent possible, reflect the operation of (i.e., the trading in) the underlying physical market and avoid impediments to delivery.*

All respondents who have commodity derivative exchanges in their jurisdictions indicated that contract design needs to reflect prevailing market practices and needs, as much as possible, to reflect price conditions in the underlying market and facilitate convergence. The design process is left to exchanges, which must respect their own rules relating to contract specifications and unimpaired delivery, with the aim of reducing non-convergence and manipulation. In cases where exchanges set rules governing this process, the regulator must approve these rules. In other cases, the product itself is submitted to the regulator for review and approval. In both cases, some jurisdictions enforce specific criteria for this process, while others have adopted a more interpretive approach with wider parameters of analysis.

Hong Kong's HKFE and HKMEx have a more interactive approach with their stakeholders, conducting feasibility studies and using models based on product ideas, market opportunity, competitive advantage, key success factors and business risks. The responses from the other jurisdictions largely indicated a similar process but did not specifically delineate how their exchanges arrived at their contract designs.

Principle 4: Promotion of Price Convergence through Settlement Reliability - *Settlement and delivery procedures should reflect the underlying physical market and promote reliable pricing relationships and price convergence and should be regularly evaluated to ensure that they meet this standard. Settlement and delivery terms should be specified and made available to market participants.*

A majority of jurisdictions adhere to this Principle. Although all jurisdictions considered it a desirable goal that the settlement price in a physical commodity derivatives contract be a reliable indicator of transactions in the physical market, not all had directives in place to facilitate this objective.

China did not experience problems in this regard, which they attribute to their having only physically delivered contracts, but the CSRC explained it will adopt cash-settled futures-product guidelines when needed. France, too, cited only physical deliveries on contracts at NYSE LIFFE Paris and Powernext. Germany imposes no such condition on the markets it oversees. Although it has no official requirements, SC Malaysia will seek comments from the market to ensure that derivative contracts can serve as a reliable indicator. Other jurisdictions that indicated no requirements were Mexico, Panama, Portugal, and South Africa. In the case of South Africa, "masters studies" are conducted from time to time to confirm the relationship between the futures market and the physical market.

The other half of the respondents employs rules and regulations that impose requirements on the Exchanges to promote product design aimed at achieving price convergence. The U.K. FSA cited Article 37 of MiFID Implementing Regulation and REC 2.12.e 1 & 2, and the CFTC described monitoring cash settled contracts for the integrity of the cash price series used to settle futures contracts. Most other jurisdictions were able to point to specific regulation imposed by the regulator or the exchange that would enhance delivery procedures and tighten the price relationship between the contract and the underlying commodity.

Principle 5: Responsiveness - *The views of potential contract users should be taken into account in designing commodity contracts.*

Where applicable, jurisdictions were highly compliant with this Principle. The differences arose in the methods used to achieve the end results. Most jurisdictions employed regulation to encourage market or stakeholder feedback that is used by the exchanges to design contracts. The U.K. FSA stipulates that as part of their submission to the FSA for new financial products, "the [Recognised Investment Exchanges] ("RIEs") must evidence that they have consulted with market participants on the suitability of the contract specifications and other requirements." Similarly, the U.S. CFTC cited Part 38 Appendix C which requires the "designated contract market … [to] consult with market users to obtain their views and opinions during the contract design process…"

Japan's MAFF and METI both cited the same regulations which, as part of the criteria for the authorization, licensing, and approval of a new commodity market, require confirmation that a satisfactory number of participants with an overall experience in trading the underlying commodity be involved. The requirement to publicly notify participants of a commodity product also ensures the views of stakeholders are taken into account.

Other jurisdictions rely on the exchanges to adequately consult with stakeholders without the need for regulation. Canada's AMF, ASC and MSC all rely on the exchanges to demonstrate to the regulator that they have taken sufficient steps to ensure there is market demand for the product and that market needs are being met in this respect. Mexico's derivative exchange looks to design products that satisfy participant needs but no formal regulatory structure is in place to ensure this.

Principle 6: Transparency - *Information concerning a physical commodity derivatives contract's terms and conditions, as well as other relevant information concerning delivery and pricing should be readily available to Market Authorities with respect to all derivatives transactions within its jurisdiction and to market participants in organized derivatives markets.*

Without limiting the factors that a Market Authority includes in those terms and conditions, market rules should specify, for example:

- *i) Minimum price fluctuations (price ticks);*
- *ii) Maximum price fluctuations (daily price limits), if any;*
- *iii) Last trading day;*
- *iv) Settlement and delivery procedures;*
- *v) Trading months;*
- *vi) Position limits, if any;*
- *vii) Reportable levels at end-user level; and*
- *viii) Trading hours.*

The vast majority of respondents have rules requiring that relevant information concerning physical commodity derivatives contracts be made available to Market Authorities. Countries in which Market Authorities do not have access to such relevant information include Greece, Gibraltar, Mexico, and Saudi Arabia, none of which have a commodities derivatives market. Generally, the national regulator – or the market itself when it has been delegated authority – has full access to clearing and margining information. Information is generally available on the internet, usually through the market's website. In some jurisdictions that do not have commodities markets existing equities rules would apply to any future commodity derivatives.

Most respondents have commodity derivative exchanges that provide incentives to market-makers, and these incentives are subject to regulatory oversight. Denmark, Greece, Gibraltar, Hungary, Mexico, and Saudi Arabia do not have commodities derivatives markets. India, Norway, Panama, and UAE either do not have these markets and, if they do, they do not publicize and/or regulate incentive schemes. Incentive schemes for market-makers are generally published on the market's website for public viewing. Incentive schemes are treated in various ways. In most cases, they are bilateral agreements (sometimes standardized) between the exchange and the participant/market-maker, and subject to Market Authority approval; in some cases, incentive schemes are considered rules of the exchange and subject to oversight. Some noteworthy structures are to be found in Brazil, which incentivizes hedgers but requires them to declare their status as hedgers at the time of registration, and Hong Kong's HKFE, which incentivizes liquidity providers in the gold futures market.

Principles for Surveillance of Commodity Derivatives Markets

Principle 7: Framework for Undertaking Market Surveillance – *Market Authorities should have a clear and robust framework for conducting market surveillance, compliance and enforcement activities and there should be oversight of these activities. A market surveillance program should take account of a trader's related derivatives and physical market positions and transactions. Market surveillance programs should be supported by sufficient resources, access to physical market data and analytical capabilities.*

Nearly all respondents to the survey have a clear and robust framework, derived from statute, regulations, rules or agreements, for conducting market surveillance, compliance, and enforcement activities. The exceptions are Panama and the UAE, which indicated that they do not have such a framework in place. However, four jurisdictions that responded in the affirmative (Canada (Québec), Canada (Ontario), Denmark and Saudi Arabia) do not presently have an underlying commodities market at this time, but indicated that an appropriate framework for surveillance, compliance and enforcement either already exists, or would exist, when a commodities market came into being.

A significant majority of respondents indicated that they monitor the day-to-day trading activity in their markets, both in real-time and post-trade. Denmark does not have a framework and indicated that, were it to have an underlying commodities market, surveillance would be conducted both post-trade by the Danish FSA, and in real-time by the regulated market. Germany indicated that surveillance of one commodity futures exchange is currently conducted only on a T+1 basis, but that it expects to introduce real-time surveillance.

A significant majority of respondents indicated that their surveillance program monitors the conduct of market intermediaries through examination of business operations, and collection and analysis of trade information. Most affirmative respondents indicate that this type of monitoring occurs on a T+1 basis. None of the negative respondents (Argentina, Denmark and Panama), seem to have plans to adopt this type of monitoring in the near future. Luxembourg's response suggests, a more detailed reporting regime will exist across the European Union with the implementation of EMIR, MiFIR and MiFID II legislation.

Most respondents confirmed that arrangements are in place to permit Market Authorities to analyze on-exchange and related physical market and OTC derivatives activities, when needed, on an aggregated basis. However, a number of affirmative respondents clarified that these arrangements are currently only in place for on-exchange activities, and not for OTC derivatives activities (although many respondents generally indicated that new laws and/or regulations will be introduced requiring the analysis of OTC activity). Most of the negative respondents (Argentina, Hungary, Malaysia, Mexico, Panama and Romania) indicated that they did not have current plans to institute arrangements that would permit aggregated analysis, although Panama and Malaysia indicated they intended to examine the issue.

A significant majority of respondents indicated that their surveillance programs are adequately resourced to meet the requirements of Principle 7. Among the respondents who indicated they were not sufficiently resourced, a lack of either skilled personnel, or of clarity with respect to organizational structure, was cited as the cause.

Principle 8: Monitoring, Collecting and Analyzing Information – *Market Authorities should develop, employ and maintain methods for monitoring of trading activity on the markets they supervise, collecting needed information and analyzing the information they collect that are efficient and suitable for the type of market being supervised. Effective monitoring of orders and electronic transactions requires real-time monitoring capabilities, supported by automated systems that detect trading anomalies. Monitoring, collection and analysis should also focus on intra-day trading.*

The vast majority of respondents have developed, employed, and maintained methods for i) the monitoring of trading activity on the markets they supervise, ii) the collection of needed information, and iii) the analysis of the information they collect. The two exceptions were Argentina's CNV and Panama, both of which have noted that they are working on steps to improve their monitoring of such markets. However, a number of respondents who answered in the affirmative to the above principle indicated that they are reviewing their current systems in order to implement changes.

Amongst affirmative respondents, there is a spectrum in terms of the type of monitoring, and in terms of the size and sophistication of the markets regulated. The survey indicated that the majority of jurisdictions use methods supported by automated systems to collect and analyze data for trading patterns and trading anomalies. As for those respondents who do not use automated systems, the current systems of review are sufficient in most cases due to the size of the respective markets.

Furthermore, the survey indicated that a significant majority of respondents carry out market surveillance programs that take into account intra-day trading. Once again this type of monitoring of larger and more sophisticated markets is more complete.

Principle 9: Authority to Access information - *Market Authorities should have the authority to access information on a routine and non-routine basis for regulated commodity derivatives markets as well as the power to obtain information on a market participant's positions in related over-the-counter (OTC) commodity derivatives and the underlying physical commodity markets. In particular, Market Authorities should have the power to:*

i) *access information that allows the reconstruction of all transactions on a regulated commodity derivatives market (audit trail);*

ii) access information that permits them to identify large positions (i.e., "large *exposures" or "concentrations") and the composition of the market in question;*

iii) access information, if needed, on the size and beneficial ownership of positions held by a market participant in order to aggregate positions held under common ownership and control;

iv) access information about a market participant's transactions and positions in related OTC and physical commodity markets; and

v) take appropriate action where a commodity derivatives market participant does not make requested market information available to the Market Authority.

Market Authorities should review the scope of their authority to obtain such information and if necessary to request such power from the relevant legislature or other appropriate governmental bodies.

All respondents in jurisdictions with commodities derivatives markets have authority to require access to relevant information concerning transactions and large position holders, and to sanction non-cooperative parties. Even in some markets that do not currently have commodity derivatives markets these powers would come into effect, under the current framework, as soon as a commodity derivative market is authorized. A mix of approaches are used, without a definitive favorite; some require trade logs to be sent to the regulator, whereas others require that only trade information be sent that could reconstruct the trade within a reasonable period of time. Other respondents delegate such authority to the exchange that is responsible for developing procedures and policies for the reconstruction of audit trails. Many respondents also have the ability to require exchanges to publish position limits or at least identify high concentrations of capital. Some require the submission of reports; whereas others are more passive and require records to be kept that allow an investigation to determine position levels and beneficial ownership. Some respondents lack access to individual participants' positions and transactions, such as the UAE. In Europe, EMIR will require that Market Authorities have such power. Sanctioning abilities vary widely but nearly all have the ability to fine, imprison, and suspend the licenses of non-cooperative parties.

Principle 10: Collection of Information on On-Exchange Transactions – *In respect to on-exchange commodity derivatives transactions, a Market Authority should collect information on a routine and regular basis on:*

i) the pricing of contracts throughout the trading day in real time;

ii) daily transactional information including time and date of trade, commodity contract, delivery month, expiry date, buy/sell, quantity, counterparties to the contract, and price of the contract;

iii) daily reports of end-of-day positions held by market intermediaries (both "whole firm" and by individual trader) and by other market participants, where the size of the position is above a specified level ("large position"). Information *collected should permit a Market Authority to identify each position holder (by name or code) down to the first customer level, and the size of position, by contract month, for each position holder;*

The Market Authority should have the capability to aggregate position holder information promptly in order to identify positions under common ownership or control; and

iv) where appropriate, warehouse stocks or other deliverable supply.

The majority of respondents in jurisdictions with commodities derivatives exchanges (or comparable trading facilities) indicated that a relevant Market Authority has access to information relating to the pricing of contracts. A substantial portion of these respondents indicated that such access is exercised by the exchanges themselves as an element of their trading surveillance functions. Similarly, a large majority indicated that Market Authorities have access to daily transaction data. In most cases, these data are collected by the exchanges and made available to the Market Authorities through the provision of a daily or periodic report, or in response to ad hoc requests. Where respondents provided information with respect to the type of data collected, virtually all indicated that these data referenced time and date of trade, contract, delivery month, expiry date, buy/sell, quantity, and counterparties. In a few cases, the respondents indicated that the collected information would not allow them to provide specific information relating to the ultimate beneficial party to the transaction. A substantial majority also indicated that Market Authorities had access to end-of-day report of positions held by intermediaries. Many respondents indicated that these position reports detail all outstanding positions down to the beneficial holder level, while others could only detect positions to the first customer level. A large majority of respondents indicated that data are available to differentiate proprietary positions from those held for customers. Approximately half of the respondents indicated that they do not receive reports on warehouse stocks or supplies of underlying commodities as their markets did not provide for physical delivery of commodities underlying. However, even those who receive this type of warehouse or underlying information indicated that this information is not available on a routine basis, but is only available to the Market Authority on request. Only one respondent indicated that they collect this information on a routine and regular basis.

Most respondents indicated that the information collected allows Market Authorities to identify position holders down to the first client level. However, about half of the respondents indicated that the information would only be available upon request to the intermediary (exchange, clearing house or participant) collecting this information. Less than half of the respondents indicated that information was available to identify the type of trading conducted in an account. The type of information that is collected by these respondents reveals: (i) whether the account is a proprietary or client account; (ii) whether the account is for commercial or institutional entities or for individuals; and (iii) whether the account is for hedging or speculative purposes. The number of respondents collecting each type of information was roughly equal.

Principle 11: ***Collection of OTC Information*** – *In respect of OTC commodity derivatives transactions and positions, a Market Authority should consider what information it should collect on a routine basis and what it should collect on an "as needed" basis. A Market*

Authority that has access to a relevant Trade Repository's ('TR') data should take such broader access into account, as well as its statutory obligations with respect to the TR, in constructing its data collection policies.

The majority of respondents collects specifically defined information on a regular basis and will have an obligation to report post-trade data in line with global and local regulatory rule-making.

Canadian securities regulators have been examining what information would be required from a Trade Repository on a continuous and as needed basis. Hong Kong will introduce a mandatory reporting obligation whereby certain specified OTC derivatives transactions (i.e. reportable transactions) must be reported to the trade repository ("TR") that will be set up by Hong Kong's HKMA. The Hong Kong SFC will consider the types of information that should be collected from the TR, and it will discuss this with HKMA. The CFTC passed rules in the second half of 2011 related to the collection of the OTC data, but historically CFTC has only collected OTC information for related markets on an as needed basis through its "special call". Similarly, the French AMF currently has the ability to request any OTC information on an "as needed" basis.

As there is currently no commodity derivatives market in Saudi Arabia, there is only limited transaction reporting for OTC transactions. In Switzerland OTC reporting to trade repositories will be adopted within the coming months in line with many other jurisdictions.

Principle 12: Large Positions – *Market Authorities should require the reporting of large trader positions for the relevant on-exchange commodity derivatives contracts. The Market Authority should have the ability to aggregate positions owned by, or beneficially controlled on behalf of, a common owner.*

The vast majority of respondents that have a regulated commodity market in their jurisdiction note that they have the means to identify large trader positions for the relevant on-exchange commodity derivatives contracts.

Within the majority, there were some respondents that specifically require in their exchange rules and/or laws large trader position reports, such as the Hong Kong SFC, the U.K. FSA (regarding ICE Futures Europe and LIFFE), Japan's MAFF and METI, China's CSRC, and Dubai's DFSA. There were also other jurisdictions where there is no specific requirement for large trader positions reports, but where, by virtue of other reporting obligations, large trader positions could be identified. For example, Brazil and Romania both require the reporting of all trades and positions, as does Australia's ASIC. Canada (Alberta)'s market surveillance staff monitors the large traders' activities through the exchange's daily reports on member positions and transactions.

India's FMC and a large number of European Union countries are in the process of implementing these provisions, but are either in discussion with the exchanges, or are completing reviews of legislation. The remaining small minority of respondents either did not have a regulated commodity derivatives market or did not express an intention to implement this Principle.

A vast majority of respondents have the ability to aggregate positions owned by, or beneficially controlled on behalf of, a common owner. However, the extent and means by which each Market Authority has this ability varies by respondent.

Australia's ASIC, Brazil's CVM, Hong Kong's SFC, Singapore's MAS, South Africa's FSB Canada (Alberta) and Canada (Québec) all have systems or database analysis tools in place to allow them to group positions. Other jurisdictions can request beneficial ownership information from the respondents or the exchange and would be able to aggregate positions based on this information. In Japan, both MAFF and METI can aggregate positions based on the information submitted under Commodity Derivatives Act (CDA) to commodity exchanges, or they can request the information from the Commodity Exchange. Further examples can be seen in the U.K., where the FSA can request this information from the Recognised Investment Exchanges (RIEs).

India's FMC and Saudi Arabia's CMA both have the ability to aggregate positions based on beneficial owner information, and based on external parameters such as tax authority identifier numbers or prior knowledge of national corporate structures. Both the Netherlands AFM and Panama are intending to adopt regulations that would enable the Market Authority to identify beneficial control and aggregate related positions.

Principles to Address Disorderly Commodity Derivatives Markets

Principle 13: ***Intervention Powers in the Market*** - *Market Authorities should have, and use, effective powers to intervene in commodity derivatives markets to prevent or address disorderly markets and to ensure the efficiency of the markets. These powers should include the following:*

i) *Position Management Powers, Including the Power to Set Position Limits - Market Authorities should have and use formal position management powers, including the power to set ex-ante position limits, particularly in the delivery month.*

These should necessarily include position management powers that:

a) *Establish a trader's automatic consent to follow an order of the Market Authority when that trader's position reaches a defined threshold size or any size, which the Market Authority considers prejudicial to orderly market functioning, taking into account all relevant circumstances. They should also require such a trader to comply with the Market Authority's order, either not to increase a position or to decrease a position; and*

b) *Authorize a Market Authority to place ex-ante restrictions on the size of a position a market participant can take in a commodity derivatives contract (i.e., position limits).*

ii) Other Discretionary Powers - Market Authorities should also have the powers to employ any of the following measures, as appropriate, to address market disruption or the perceived threat of such disruption or to assist market surveillance efforts:

- *a) the imposition of price movement limits;*
- *b) calling for additional margin, either from customers or from clearing members on behalf of their clients;*
- *c) ordering the liquidation or transfer of open positions;*
- *d) suspending or curtailing trading on the market (e.g., trading halts and circuit breakers);*
- *e) altering the delivery terms or conditions;*
- *f) cancelling trades;*
- *g) requiring owners of positions to specify delivery intentions; and*
- *h) requiring traders to disclose related OTC derivatives or large physical market positions.*

The vast majority of respondents answered that Market Authorities do have the power to set ex-ante position limits. In most cases, this power was held by the exchange within each jurisdiction. For example, in Hong Kong, both the HKFE and HKMEx rules provide authority for setting position limits. Other examples include the case of the U.K. and the three main derivatives exchange (ICE Futures Europe, LIFFE and LME), and in Japan where, under the CDA, a commodity exchange is responsible for the detailed regulations on matters relating to trade and contracts. In France, the power to place position limits is with the clearing house.

In some jurisdictions, the regulators have the authority to set position limits. In the U.S., under the Dodd Frank Act, the CFTC is required to design and enforce a revised series of position limits and has issued final rules for this. In Malaysia, the SC Malaysia has the power to impose a limit on the positions that are held or controlled in any one contract. In Hong Kong, the SFC has the power to set statutory position limits. In India, the position limits are prescribed by the governmental regulator.

A number of respondents mentioned that they had approval powers or powers to influence the rules of the exchange. These respondents include the Singapore MAS, which requires the exchanges to request approval for changes to their framework for setting, varying, or removing any position limited on the commodity futures contracts traded in their market. FINMA in Switzerland can influence the exchange to amend rules. For those respondents who did not have formal position management powers for commodity derivatives, this was either due to their not having a commodity derivatives market (e.g. Mexico, Saudi Arabia) or due to there not being any explicit legislation (e.g. Norway). Panama did not have any powers in place but is currently reviewing the implementation of this power.

A majority of the respondents have powers that permit various measures of intervention, either at the Market Authority level or at that of exchanges and clearing houses.

In the U.K., margins are not managed by the Market Authorities, but by the clearing house regulated by the FSA under the Recognition Requirements. In the U.K., all other powers mentioned are vested with the three RIEs. However, regarding sub-question (h), there is no requirement to disclose, but the information is available to the RIEs on request. Similarly in Argentina, where all the mentioned powers are vested with the self-regulated markets, there are no regulations requiring traders to disclose OTC transactions that are not registered or formalized.

Many respondents have powers shared with market operators and clearing houses. In Canada, the Canadian Derivatives Clearing Corporation can make margin calls if it deems necessary, and otherwise, all other powers are vested with the regulatory authority or the exchange. In the U.S., the CFTC and the market operators both have the power to suspend and halt trading, set margin, price limits, and circuit breakers, or otherwise intervene in the market. In Romania, these powers are also shared among the market operators, the clearing houses, and the regulator.

Japan's MAFF and METI both have direct powers under CDA for these intervention powers; in addition Commodity Exchanges have similar powers under their own market rules. India's FMC, Hong Kong's SFC and Dubai's DFSA are examples of jurisdictions where the respondents have stated that they are able to exercise all these powers under broader provisions in their regulations.

The majority of respondents have used intervention powers in their markets. The situation that warranted the use of these powers has varied by jurisdiction, albeit with common elements among all jurisdictions.

Most Market Authorities exercise powers to call for additional margin, as part of their risk management procedures. For example, in South Africa, clearing members often call for additional margin when they view their clients' and relevant positions as risky. India's FMC also utilizes additional margin calls when mitigating uni-directional price movements and Norway's FSAN cited that additional margin calls from the clearing houses are common. China's CSRC used the power to call for additional margin in the early phase of development in China's futures market.

In times of high volatility, the Market Authorities exercise the powers of setting price limits, for example, Germany's BaFin, or intra-day margins as introduced by ASX 24 during the global financial crisis.

A large number of Market Authorities invoke such powers, either in times of economic and financial crisis (for example, Argentina and Australia) or when dealing with a specific incident of market abuse, such as MF Global. U.S. CFTC used their powers when responding to the MF Global issue, which is one of only four instances where the CFTC has invoked these powers since 1980. Dubai's DFSA, Hong Kong's HKMEx and Germany's BaFin also used the power of cancelling trading privileges when responding to MF Global.

There are, however, some Market Authorities that have not used these powers, either because market intervention measures are entirely delegated to market operators and there is no need for the Market Authorities to be involved (Canada (Alberta)), or because no need has yet arisen.

Principle 14: ***Review of Evolving Practices*** *- Market Authorities should have or contribute to a process to review the perimeter of regulation to ensure that they have the power to address evolving trading practices that might result in a disorderly market. Exchanges and self-regulatory organizations play a critical and complementary role with governmental regulators in identifying such practices.*

All respondents except three stated that they either contribute to or have a process to enable them to review the perimeter of regulation in their jurisdiction. Many Market Authorities have a rolling review system in place to ensure that recent and current trade practice issues are within their regulatory perimeter. The SC Malaysia, for example, follows a dual cycle process, whereby longer-term structural issues follow a ten year cycle and shorter-term issues follow a twelve month cycle. In addition to these regular assessment cycles, the SC Malaysia also identifies issues as they arise on an ad hoc basis. The DFSA also conducts a rolling review of their Rulebook Modules, and the South Africa FSB also has a five year review cycle in place for all legislation falling under their regulatory responsibilities.

A number of Market Authorities have specific advisory bodies tasked with policymaking, such as the Companies and Markets Advisory Committee (CAMAC) and the Council of Financial Regulators (CFR) in Australia, the Risk Identification Committee (CIR) in Brazil, the Securities Council (Wertpapierrat der BaFin) in Germany and the Canadian Securities Administrators (CSA) in Canada. The CSA in Canada is currently finalizing a new rule that was deemed necessary to ensure that the risks associated with electronic trading were managed efficiently.

The role of reviewing the perimeter of regulation is often viewed as a shared or delegated responsibility between the market authority and the market operators. The U.K. FSA and the RIEs both have responsibilities and obligations to ensure that regulation is adapted to the needs and risks in the market. Similarly in the U.S., the CFTC has the responsibility to issue new rule makings and to recommend changes in law to address evolving trading practices that might result in a disorderly market. However, the Designated Contract Markets ("DCMs") are required to have continual capacity and responsibility to ensure that their rules and resources are adequate to efficiently regulate their markets.

Principles for Enforcement and Information Sharing

Principle 15: ***Rules and Compliance Programs*** *- Market Authorities should have rules, compliance programs, sanctioning policies and powers to prohibit, detect, prevent and deter abusive practices on their markets, including manipulation or attempted manipulation of the* *market. The rules and compliance programs should take account of the whole position of the market participant (i.e., all positions under common ownership and control). There should be clarity as to what constitutes manipulative, abusive conduct or other prohibited conduct.*

Specific practices which Market Authorities should seek to detect and prevent include, among others:

- *i) causing, or attempting to cause, artificial pricing in the market;*
- *ii) creating a false or misleading appearance of active trading;*
- *iii) disseminating false or misleading information in respect of the market or conditions that affect the price of any commodity derivatives contract;*
- *iv) creating, or attempting to create, a corner or squeeze, in which an abusive controlling position is accumulated in the physical and/or futures or OTC markets, forcing those holding short positions to settle their obligations, by purchase or offset or otherwise, to their detriment;*
- *v) abuse relating to customer orders;*
- *vi) "wash trades", involving no change of beneficial ownership or economic purpose;*
- *vii) collusive trades, which seek improperly to avoid exposure to the pricing mechanism of the market;*
- *viii) violation of applicable position limits;*
- *ix) concealment of a position holder's identity, and misuse of information.*

Most of the respondents do have legislation in place that determines what constitutes manipulation. The majority of these use a two-tier approach, with laws and statutes defining market abuse and market rules providing further detail as to what constitutes market abuse.

For example, the U.K. FSA's Code of Market Conduct, which represents the FSA's implementation of the Market Abuse Directive (contained in the U.K. Financial Services and Markets Act 2000), governs what is market abuse. The RIEs monitor market abuse types under the relevant exchange rules. The DFSA and SC Malaysia also define prohibited conduct and offences in their primary legislation, whereas the exchanges implement rules, in addition to statutory provisions, through their rule books.

Some respondents cited only statutory provisions. An example is Switzerland, where FINMA regulated entities were bound by the FINMA circular on market conduct rules and where non-FINMA regulated entities were bound by the Criminal Code. This is now changing however, with authority given to FINMA even for non-regulated entities, as long as there is a link to the regulated market. Similarly, in Saudi Arabia, explicit power has been given to the CMA to combat manipulation, which is done through the Capital Market Law and Market Conduct Regulations.

A small number of respondents did cite exemptions in their jurisdictions which are not subject to market abuse provisions, either at the regulatory or market operator level. For instance, HKMEx allows, in some instances, that members may engage in pre-execution discussions with regard to transactions executed on the exchange, and block trades are also permitted for pre-execution discussion transactions. Japan's MAFF and METI also exclude block traders from the main provisions surrounding market abuse, but with the caveat that certain conditions are met for block traders, according to the exchange rules.

In Mexico, the rules that govern derivative exchanges only require that the exchanges oversee correct price formation and they do not govern market manipulation. Panama does not have these provisions in place for commodity derivatives. In India, the FMC is in the process of formulating comprehensive guidelines prescribing what constitutes manipulation, abuse, or other prohibited conduct.

Most jurisdictions where statutes and rules prohibit manipulation also cover attempted manipulation by virtue of the terminologies used in the definitions. For example, "attempt to use or employ" (CFTC), "intends" (Argentina CNV), "attempt" (Australia ASIC / Danish FSA / India FMC) "aiming at" (Brazil) or "which may result" or "is likely to" (DFSA). In Germany, the definition states that a practice is abusive if it has the intention to influence.

However, there were some jurisdictions where attempted manipulation was not covered. In the U.K., under EU Legislation, the authorities only have the power to sanction for actual manipulation due to the fact that the burden of proof is that the market impact has to be evidenced. The current revision of the Market Abuse Directive and resulting new Directive proposes to address this by providing the power to sanction attempted manipulation. The same is the case in Norway, Romania and France, although, under the rules of France AMF, prohibition of transactions or orders with regard to manipulation does include those that are likely to give false or misleading signals.

In Brazil, attempted manipulation is not governed by the Market Authorities' rules or regulations, but is punishable under criminal law. Similarly, in the Netherlands, although attempted manipulation is not captured under administrative law, the Public Prosecutor is able to investigate market manipulation as a felony and as an economic criminal offence, and these powers do extend to attempted manipulation.

Almost all respondents affirmed that their Market Authorities have a compliance program with the required powers in place to detect, deter, and refer any prohibited conduct, and sanction any prohibited conduct. However, where these powers, responsibilities, and obligations lie varies across jurisdictions.

For example, in the U.K. all exchanges have compliance monitoring plans in place to visit and audit their members, whereas in Australia, ASIC has a timetable for review of individual market participants to ensure their ongoing compliance. Canada (Manitoba) has a dedicated compliance department which conducts periodic on-sight reviews of exchange and clearing house operations to determine compliance.

Sanctioning powers are often split between Market Authorities and market operators; France AMF can impose administrative sanctions and the U.K. FSA is the sole authority for sanctioning market abuse in the U.K. In China, futures exchanges have the power to impose disciplinary sanctions on self-regulatory violations, but the CSRC will impose administrative penalties on violations of regulations. As part of the overall governance framework of SC Malaysia, a Sanctions Committee was established to deliberate and decide on the appropriate administrative sanctions following breaches detected by its Supervision Division.

The powers to detect and deter prohibited conduct most often seem to lie with the market operators, for example in Alberta, Norway, or Dubai. Malaysia adopts the approach of co-operative regulation in which SC Malaysia and Bursa Malaysia undertake supervision of market participants in detecting breaches of relevant laws, rules and regulations.

The referral for enforcement action also naturally differs, depending on where the detection of market abuse occurs. In the U.K., with the RIEs primarily responsible for the detection of prohibited conduct, the referrals are from the RIEs to the U.K. FSA. In Australia, the situation is similar, with referrals directed to ASICs deterrence team and then potentially on to the Market Disciplinary Panel or Director of Public Prosecutions. In Malaysia, the exchange is required under its rules to refer to the SC those cases where the securities laws have been breached.

Principle 16: Framework for Addressing Multi-Market Abusive Trading - *The overall framework for market surveillance and enforcement within a jurisdiction should be structured to provide for active and coordinated detection and enforcement action against manipulative or abusive schemes that might affect trading on multiple exchange and OTC markets, as well as the underlying physical commodity markets.*

Where there are multiple exchanges in a jurisdiction, the majority of the respondents have a framework in place to share information across exchanges. However, most jurisdictions surveyed have only one derivatives market.

In terms of regulatory jurisdiction over the OTC and physical market, responses were varied. Where a commodity derivatives market exists, the majority of financial regulators have the ability to investigate market abuse in the underlying physical market if the price of the related derivative is deemed to have been affected.

In the case of wholesale electricity and gas markets in the European Union, for example, there is a provision under the REMIT legislation for close cooperation between ACER, ESMA and both national physical market regulators and national financial market regulators.

In terms of the reach of regulation into the OTC markets, many European financial regulators will have greater jurisdiction over these markets when the EMIR legislation on mandatory reporting of OTC transactions to trade repositories comes into force in early 2013. Similarly, the Canadian Securities Administrators (CSA), which comprises the 13 Canadian securities regulatory authorities, has established the CSA Derivatives Committee to review the state of the OTC derivatives markets in Canada.

Authorities such as the U.S. CFTC, Japan's MAFF and METI, Singapore's MAS and Australia's ASIC have the authority and techniques to investigate trading positions whether listed, OTC, or underlying physical contracts, if those transactions are deemed to have been traded with the intent to fluctuate on-exchange quotations.

Principle 17: Powers and Capacity to Respond to Market Abuse - *Market Authorities should have adequate powers and capacity to investigate and prosecute actual or suspected market abuse, including attempted manipulation. IOSCO members that are responsible for the oversight of commodity derivatives markets should have all of the powers required by the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMOU).*

With very few exceptions, respondents to this question have the power to obtain documents and any information from a market participant in the case of investigations into market abuse.

Not all respondents have the power to initiate criminal proceedings themselves. However, those without direct powers to prosecute have power to refer market abuse cases to the public prosecutor in their respective jurisdictions.

The table below summarizes the 'A' and 'B' signatories to the IOSCO MMOU, which allows for the exchange of information between regulatory authorities.

A Signatory	B Signatory	Not a Signatory
Argentina CNV	Panama	Canada MSC
Australia ASIC		Greece HCMC
Brazil CVM		Gibraltar FSC
Canada AMF		India FMC
Canada ASC		
Canada OSC		
China CSRC		
Denmark DFSA		
Dubai DFSA		
France AMF		
German BaFin		
Greece HCMC		
Hong Kong SFC		
Japan MAFF		
Japan METI		
Korea FSC/FSS		
Luxembourg CSSF		

SC Malaysia		
Mexico CNBV		
Netherlands AFM		
Norway FSAN		
Portugal CMVM		
Saudi Arabia CMA		
Singapore MAS		
Switzerland FINMA		
UAE SCA		
U.K. FSA		
U.S. CFTC		

Principle 18: Disciplinary Sanctions against Market Members - *The relevant Market Authority should have and use effective powers to discipline its members or other authorized market participants if an abusive practice has occurred in the market. There should be clarity as to the types of disciplinary actions which can be taken.*

The responses to this question fall into two categories; first, those jurisdictions where self-regulatory organizations (SROs) are responsible for imposing sanctions directly upon the exchange members; and, second, where financial regulatory authorities impose sanctions themselves. Details of disciplinary procedures and penalties are available to the public (with very few exceptions) via exchange websites or those of the financial regulator.

As stated above, the majority of respondents to this question do not have self-regulatory regimes for their financial markets. In these jurisdictions, derivative exchanges still retain the first-line authority to discipline their members for market abuse. However, financial regulators have formal legal powers to discipline market members through national legislation. Penalties vary, though in the majority of cases, financial regulators have the power to issue public and private warnings and reprimands, impose fines, order disgorgement of illicit gains, or insist on restitution. Regulators can also impose conditions on, and even prohibition of, trading, as well as order suspension or expulsion from membership, and, where appropriate, a criminal referral.

Self-regulated derivatives markets such as Argentina, Canada (Québec) and Norway have SROs that may apply disciplinary sanctions to both members and intermediaries' members who engage in abusive behavior. Each market has established monitoring and control divisions within their derivatives exchanges and, as a result, can dispense penalties through their own disciplinary committees or special committees These sanctions can range from warnings, fines and suspension to revocation of authorization of an approved person or permit holder, the expulsion of the approved participant, and restitution to any person who has suffered a loss as a result of acts or omissions of a person under the jurisdiction of the exchange.

In Australia a hybrid model of the two above categories exists where the SROs are responsible for imposing sanctions directly upon the exchange members and the financial regulatory authorities impose sanctions themselves.

All Market Authorities make publicly available their disciplinary actions, usually through publication on regulatory or exchange websites.

Principle 19: Disciplinary Sanctions Against Non-Members of the Market

The relevant Market Authority should have power to take action against non-members of regulated commodity derivatives markets or other market participants if they have engaged in abusive or manipulative practices, or are suspected of doing so. Market authorities may require contractual relationships between members and customers that enable action to be taken. It is anticipated that enforcement powers will usually be embedded in statute and would be exercised by a government body, including a public prosecutor or the courts.

In addition, Market Authorities should be able to intervene, or cause the exchange to intervene, in the market to address or to prevent an abuse by non-members, using appropriate measures - through members - such as for example by raising the level of margin, imposing trading limits and liquidating positions, as well as removing trading privileges. Any intervention action should be timely.

Most Market Authorities have the power to take action against non-members of a regulated commodity derivatives market. Generally these actions against non-members are taken by the governmental regulator. In Singapore, if exchanges detect any suspicious activities by non-members, they refer such cases to the regulator, MAS, for further investigation. MAS can undertake civil penalty actions against any person who contravenes market conduct provisions. Additionally, MAS can refer criminal offences for prosecution by the Attorney-General's Chambers.

Nearly all Market Authorities are able to intervene in the market to address or prevent abuse by non-members. This power is often reserved to the governmental regulator. For instance, German Securities Trading Act (Wertpapierhandelsgesetz–WpHG) §4(2)) provides that the regulator, BaFin, may issue all orders appropriate and necessary to prevent disorderly trading, including measures that may affect members and non-members alike. In Luxembourg, the CSSF may order the cessation of any practice contrary to the law on market abuse or suspend trading of the financial instruments concerned under Article 29 of MAD.

Principle 20: Information Sharing - *Market Authorities should cooperate with one another, both domestically and outside their jurisdiction, to share information for surveillance and disciplinary purposes. In particular Market Authorities should have arrangements that allow them to share information on large exposures in linked markets and on supplies relative to these markets. These arrangements should take account of (as applicable):*

i) The Exchange International Information Sharing Memorandum of Understanding *and Agreement (Exchange International MOU)*[2] *and the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations (Declaration),*[3] *which facilitate the identification of large exposures by firms that could have a potentially adverse effect on multiple markets;*

ii) The IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMOU); and

iii) Guidance issued by IOSCO in respect to information sharing, such as IOSCO's Principles Regarding Cross-Border Supervisory Cooperation,[4] *Report on Multi-jurisdictional Information Sharing for Market Oversight,*[5]*and Guidance on Information Sharing.*[6]

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2 The development of the *Exchange International MOU* was one of the achievements that resulted from the FIA sponsored Global Task Force on Financial Integrity, which was convened to address the cross-border issues that were identified in connection with the failure of Barings Plc.

3 The *Declaration* was developed through discussions at the CFTC's international regulators conference, and was motivated by work recommendations issued from the Windsor Conference and Tokyo Conference, which were convened by the CFTC, the U.K. FSA and Japanese regulators (Ministry of International Trade and Industry (MITI) and the Ministry of Agriculture, Forestry and Fisheries (MAFF)) to respond to the cross-border issues raised by the failure of Barings Plc. The *Declaration* was developed to address instances in which an exchange would not be able to share information directly with another exchange under the *Exchange International MOU.*

4 See *Principles Regarding Cross-Border Supervisory Cooperation*, Final Report of the Technical Committee of IOSCO, May 2010, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD322.pdf.

5 See p.11 *Multi-jurisdictional Information Sharing for Market Oversight,* Final Report of the Technical Committee of IOSCO, April 2007, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD248.pdf Among the information cited as possibly being useful is: transaction information e.g., details of trader's positions, large positions, and related underlying market positions and inventory levels and locations of delivery stocks and details of related warehouse information.

6 *Guidance on Information Sharing* (IOSCO 1997) – Internal Document. The Guidance provides that in dealing with unusual price movements or market volatility, markets and regulators should be prepared to share the following information: i) firms/customers controlling or owning the largest long/short positions in relevant securities or derivatives; (ii) concentration and composition of positions in the relevant securities or derivatives, including Firm positions or Customer positions, both on organized markets and in the OTC markets; and (iii) characteristics of related instruments, such as terms of the underlying physical market instrument or physical commodity, procedures for delivery or cash settlement, and deliverable supply of the relevant physical market instrument or physical commodity.

See also *Principles of Memoranda of Understanding*, Report of the Technical Committee of IOSCO, September 1991, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD17.pdf

Mechanisms to Enhance Open and Timely Communication Between Market Authorities of Related Cash and Derivative Markets During Periods of Market Disruption, Report of the Technical Committee of IOSCO, October 1993, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD29.pdf.

Report on Cooperation Between Market Authorities and Default Procedures, Report of the Technical Committee of IOSCO, March 1996 available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD49.pdf.

Nearly all respondents have the ability to cooperate with one another both domestically and internationally. Domestic regulatory cooperation varies based on the scope of the derivatives regulator relative to other authorities in the jurisdiction. Internationally, most regulators share information through Memoranda of Understanding. Most commonly regulators mentioned the IOSCO Multilateral Memorandum of Understanding ("MMOU") as the agreement used for information sharing with foreign regulators in the context of derivatives.

Most jurisdictions do not have linked contracts that would require arrangements to share information in linked markets. The U.S. CFTC and U.K. FSA notably have an MOU which covers information sharing in contracts that are linked on U.K. RIEs and U.S. DCMs. These agreements are particularly relevant since there are linked energy contracts that trade on both ICE Futures Europe (in London) and NYMEX (in New York). Other authorities, such as the DFSA for the DME also put agreements in place to share this information ahead of developing volumes.

As a restriction on information sharing, twelve jurisdictions cited blocking laws or other restrictions on information sharing. For example, China stated that under the Regulation for Information Disclosure, the CSRC can decline to respond to any request for regulatory information that may harm futures market operations, legitimate interests of investors, national security, public security, economic security, or social stability. However, some jurisdictions are proposing to amend their rules to allow for more expansive information sharing with regulators. Argentine CNV has proposed to amend the Public Offering Securities Law No. 17,811, which would disable bank secrecy rules relating to information sharing.

Principle for Enhancing Price Discovery on Commodity Derivatives Markets

Principle 21: Commodity Derivatives Market Transparency. *Market Authorities should publish the aggregate exposures of different classes of large traders, especially commercial and non-commercial participants, within the bounds of maintaining trader confidence.*

Aggregate public reporting of positions by class of trader is currently only undertaken in Brazil, Japan, Chinese Taipei, U.K. and U.S. However, the European Union has plans to adopt this type of reporting.

The U.S. CFTC publishes a weekly report, known as the Commitment of Traders (the "COT Report"), which provides the public with the aggregate long and short exposures for different classes of traders in commodities where there are twenty or more large traders. The COT Report provides insight into whether end-users, such as producers and merchants, or dealers and managed funds, make up the bulk of the open interest in a given commodity.

Japanese commodity exchanges publish similar reports and disaggregate holdings into two or seven categories of traders. Taifex in Taipei publishes the aggregated top five and top ten largest buy side and sell side positions in each contract.

In the U.K. the LIFFE and ICE Futures Europe exchanges have adopted COT Reports that are in a compatible standard to the one used by the CFTC. LME currently does not publish COT Reports, but notes that this type of public reporting will be mandatory throughout the European Union under article 60 of MiFID II. Article 60 would require regulated listed markets, Multilateral Trading Facilities and Organized Trading Facilities that admit trading of commodity derivatives to publish a weekly report showing aggregate positions held by different categories of traders for the different financial instruments traded on their platforms.

In China, the futures exchanges publish their members' open interests and trading volumes, and CSRC is considering the feasibility of introducing CFTC COT reports.

Other regulators who responded expressed an interest in examining this Principle to see how it could be implemented in their jurisdiction.