Implementation Report:

G20/FSB Recommendations related to Securities Markets

THE BOARD

OF THE

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I. Introduction

In 2017, IOSCO once again coordinated with the Financial Stability Board (**FSB**) to undertake the analysis for recommendations that relate to securities market as part of the Implementation Monitoring Network's (**IMN's**) 2017 survey of FSB jurisdictions. A full list of participating jurisdictions is set out at **Appendix I**. Since 2010, the annual IMN survey asks jurisdictions to self-report the status of implementation of G20/FSB post-crisis recommendations that are in areas not designated as priority under the FSB *Coordination Framework for Implementation Monitoring* (**CFIM**). Each year, the IMN has published these survey responses at the time of G20 Summits, with the main findings and issues incorporated in G20 reporting.[1]

A number of these recommendations relate to securities markets. As the global standard setting body for securities regulation, IOSCO has worked with the FSB on previous IMN surveys. Starting in 2016, IOSCO has coordinated with the FSB to undertake the analysis of responses in relation to securities-related recommendations in the following five reform areas:

- Hedge funds;
- Structured products and securitisation;
- Oversight of credit rating agencies (**CRAs**);
- Measures to safeguard the integrity and efficiency of markets; and
- Commodity derivative markets.

In 2017, a high-level summary of jurisdictions' implementation status in other areas was published by the FSB following the G20 Leaders' Summit in July.[2]

This report provides additional insights and analysis of the status of implementation of reforms in each of the above areas based on self-reporting by national authorities in FSB jurisdictions. The responses of these authorities were scrutinised by a review team drawn from members of the IOSCO Assessment Committee, comprising staff from the Securities and Exchange Board of India (**SEBI**) and the IOSCO Secretariat, which followed up bilaterally with IOSCO members in FSB jurisdictions to clarify responses and request additional information.

While an effort has been made to ensure completeness and uniformity in reporting, neither the IMN nor IOSCO have undertaken an evaluation of responses to independently verify the status or assess the effectiveness of implementation. A number of these areas are complex and

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1 See http://www.fsb.org/what-we-do/implementation-monitoring/other-areas/.

2 See *Implementation and Effects of the G20 Financial Regulatory Reforms* (July 2017), available at http://www.fsb.org/2017/07/implementation-and-effects-of-the-g20-financial-regulatory-reforms-third-annual-report/. On 3 November, the FSB published *Implementation of G20/FSB financial reforms in other areas* (November 2017) which provides detailed analysis of the status of implementation based on jurisdictions' responses in the 2017 FSB IMN survey, available at http://www.fsb.org/wp-content/uploads/IMN-summary-report-2017.pdf.

summaries of their implementation status should be treated with caution. Given this, the survey responses do not allow straightforward comparisons between jurisdictions. The status of implementation depicted and the conclusions drawn reflect these limitations.

FSB and IOSCO will continue to work together to improve the IMN survey. IOSCO's analysis is designed to help provide further clarity on the recommendations and what is expected of IOSCO members. Given the focus of the post-crisis recommendations on strengthening financial stability, this exercise is consistent with IOSCO's core objective of reducing systemic risk, in addition to the other two core objectives of investor protection and ensuring fair, efficient and transparent markets.

II. Executive Summary

In 2017, jurisdictions continue to report ongoing work to implement and strengthen G20 reforms (in non-priority areas) in relation to securities markets. In the areas monitored by IOSCO, a total of 11 changes in implementation were observed in 10 jurisdictions.

- Most (five) of these were technical changes to harmonise interpretation of the recommendations (including two downgrades and one upgrade).
- A few (two) changes were within the subcategories of implementation ongoing which reflected additional efforts to strengthen standards.
- Three reported changes in implementation due to completed reforms that resulted in jurisdictions reporting the implementation completed status for the first time.
- One other jurisdiction reporting a final rule approved and due to come into force soon.

Most responding jurisdictions have taken steps to implement the G20/FSB recommendations and IOSCO guidance in each reform area.[3] Implementation is most advanced in relation to hedge funds, structured products and securitisation, and the oversight of CRAs, with most jurisdictions having implemented reforms since 2014.

On **hedge funds**, all responding jurisdictions except one (China) which permit or have hedge funds reported implementation of the G20 and IOSCO recommendations as completed. There were no reported changes for the **recommendation to establish international information sharing frameworks** and only two technical changes for the **recommendation on enhancing counterparty risk management** with one jurisdiction (Argentina) moving from implementation ongoing to not applicable and another (Brazil) reporting implementation completed based on a re-interpretation of the question. The **recommendation on registration, appropriate disclosures and oversight**, was completed in 2016 and not included in this year's survey.

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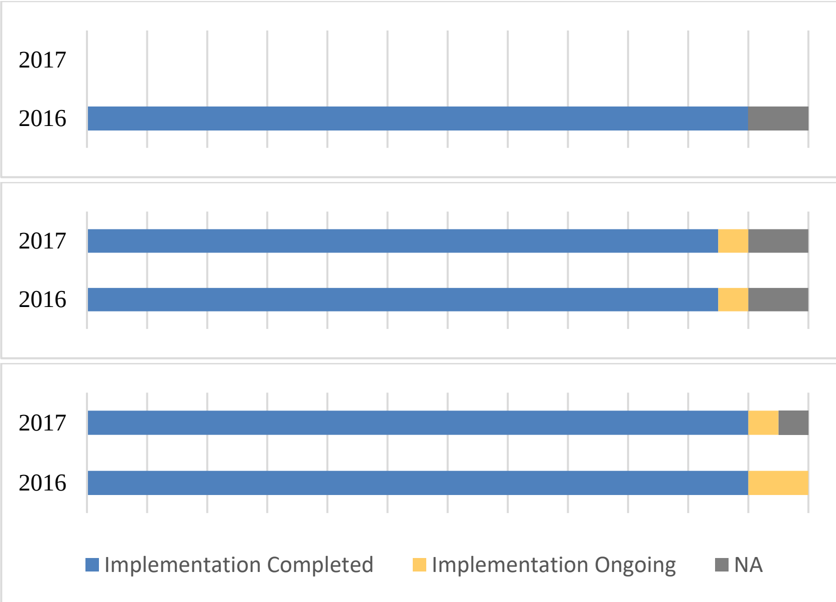
[3] See FSB Report *Implementation of G20/FSB financial reforms in other areas* (November 2017), available at http://www.fsb.org/wp-content/uploads/IMN-summary-report-2017.pdf.

Hedge Funds

Registration, appropriate disclosures and oversight of hedge funds[4]

Establishment of international information sharing framework

Enhancing counterparty risk management

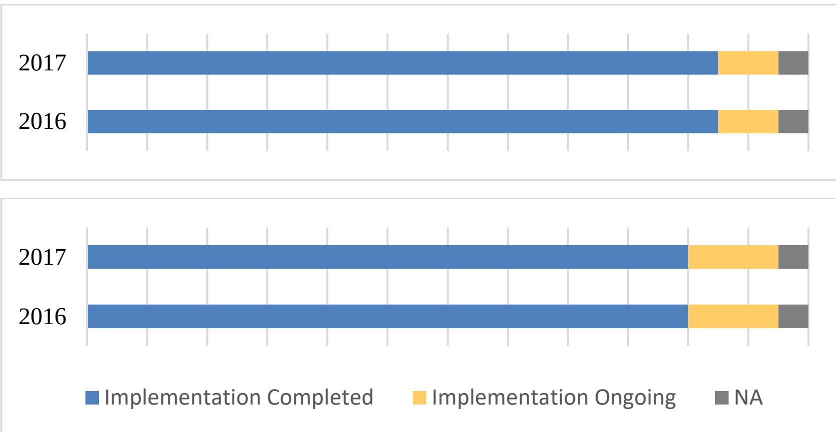


On **structured products and securitisation**, implementation is unchanged since 2016 with 19 responding jurisdictions reporting implementation completed across both the **recommendation on strengthening of supervisory requirements or best practices for investment in structured products** and the **recommendation on enhanced disclosure of securitised products**. Implementation efforts are ongoing in jurisdictions that have earlier completed reforms (to harmonise implementation) as well as in those that have yet to complete implementation, with one jurisdiction (South Africa) reporting a completion of a significant part of its reforms since 2016.

Structured Products and Securitisation

Strengthening of supervisory requirements or best practices for investment in structured products

Enhanced disclosure of securitised products



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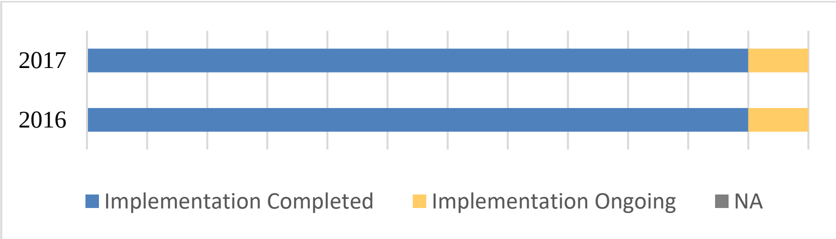
4 No information on implementation of this recommendation was collected in the IMN survey in 2017. See below Section III.A(3)(a).

On **CRAs**, unchanged since last year, all responding jurisdictions have implemented the **recommendation to require registration and appropriate oversight of CRAs** in line with IOSCO's *Code of Conduct Fundamentals for Credit Ratings Agencies*.[5] Two jurisdictions (China and Turkey) report ongoing (additional) efforts but had reported completed implementation of their regulatory frameworks in the 2015 IMN survey.

Oversight of CRAs

Enhancing regulation and supervision of CRAs

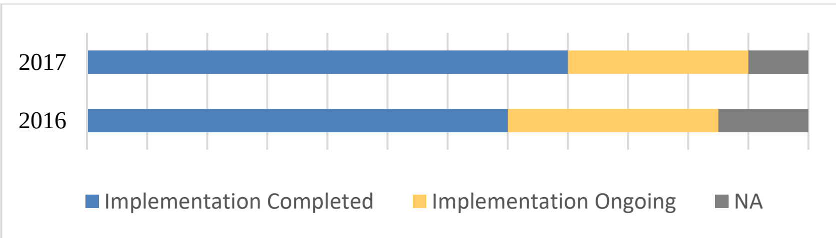


In the two remaining areas, where implementation progress is relatively lower, jurisdictions reported the largest number of changes – both substantial improvements and technical changes for harmonisation.

On **safeguarding the integrity and efficiency of financial markets**, 16 jurisdictions now report implementation completed, with two jurisdictions (Hong Kong and Turkey) reporting implementation completed since 2016 as a result of new trading rules and other reforms. Again, a significant number of jurisdictions reported work underway to harmonise and strengthen existing rules as well as to introduce new rules.

Measures to Safeguard the Integrity and Efficiency of Markets

Enhancing market integrity and efficiency



On **regulation and supervision of commodity derivatives**, overall implementation status is unchanged since last year with Germany revising its status to ongoing (technical change to reflect harmonised view of the EU reforms) and Canada reporting implementation completed (as a result of regulations coming into force in April 2017).

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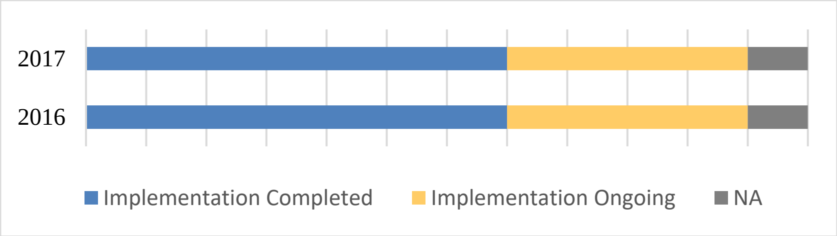
[5] First published in December 2004 (Revised May 2008, revised March 2015), available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD482.pdf.

Commodity Derivative Markets

Regulation and supervision of commodity markets



III. Discussion of Implementation Progress in Reform Areas

A. Hedge Funds

(1) G20 Recommendation

In their London 2009 *Declaration on Strengthening the Financial System*, the G20 Leaders recommended to expand the scope of regulation and oversight to cover hedge funds as follows:

> 'Hedge funds or their managers will be ***registered and will be required to disclose appropriate information on an ongoing basis to supervisors or regulators***, including on their leverage, necessary for assessment of the systemic risks that they pose individually or collectively. Where appropriate, registration should be subject to a minimum size. They will be subject to oversight to ensure that they have adequate risk management. We ask the FSB to ***develop mechanisms for cooperation and information sharing*** between relevant authorities in order to ensure that effective oversight is maintained where a fund is located in a different jurisdiction from the manager. We will, cooperating through the FSB, develop measures that implement these principles by the end of 2009.
> …
> Supervisors should require that ***institutions which have hedge funds as their counterparties have effective risk management***. This should include mechanisms to monitor the funds' leverage and set limits for single counterparty exposures.'[6]

In Seoul in 2010, the G20 Leaders 'recommitted to work in an internationally consistent and non-discriminatory manner to strengthen regulation and supervision on hedge funds.'[7]

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6 Available at: https://www.treasury.gov/resource-center/international/g7-g20/Documents/London%20April%202009%20Fin_Deps_Fin_Reg_Annex_020409_-_1615_final.pdf.

7 The Seoul Summit document *Framework for Strong, Sustainable and Balanced Growth* is available at http://www.g20.utoronto.ca/2010/g20seoul-doc.pdf.

(2) IOSCO Initiatives

IOSCO issued its report on *Hedge Funds Oversight*[8] in June 2009 (**2009 Report**), setting out six high-level principles on the oversight of hedge funds (covering registration of hedge funds and/or hedge fund managers, ongoing regulatory requirements, risk management systems for those funding hedge funds, disclosure and cooperation between regulators).

In June 2010, IOSCO included Principle 28 in its *Objectives and Principles of Securities Regulation*,[9] which recommended regulation to 'ensure that hedge funds and/or hedge fund managers/advisers are subject to appropriate oversight'.

In September 2011, revisions to the *Methodology supporting the Objectives and Principles of Securities Regulation* (**Methodology**)[10] incorporated the six principles in the 2009 Report when setting out how implementation of Principle 28 should be assessed.

In addition, IOSCO regularly collects information from members as part of a survey on the global collection of systemic risk information on hedge funds. IOSCO continues to collect this information biennially, with the second survey published in October 2013,[11] and the third survey published in December 2015.[12] The next survey is due to be published in 2017.

Data on hedge funds is not entirely consistent and comparable, in some part due to the difficulties and differences of defining hedge funds consistently.[13] According to industry estimates, global hedge fund assets in 2016 are between US$3.02 trillion[14] and

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8 Available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD293.pdf.

9 Available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD323.pdf.

10 The IOSCO Methodology was updated in May 2017, available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD562.pdf. The September 2011 version is also available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD359.pdf.

11 Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD427.pdf.

12 See https://www.iosco.org/library/pubdocs/pdf/IOSCOPD515.pdf. The cut-off date of the survey was 30 September 2014, and the participating jurisdictions were Australia, France, Germany, Hong Kong, Italy, Japan, Singapore, the UK, and the US (SEC). India also provided input on regulatory developments affecting hedge funds.

13 Prior to the regulatory reforms following the crisis, there was no statutory definition of hedge funds. Indeed, hedge funds were essentially the product of statutory and regulatory exemptions and negatively defined by reference to what they were not, rather than to what they were.

14 See HFR Global Hedge Fund Industry Report (20 January 2017).

US$3.22trillion.[15] Hedge funds are domiciled locally in a number of reporting jurisdictions while a few jurisdictions report a prevalence of off-shore hedge funds.

(3) Implementation Status

(a) Registration, appropriate disclosures and oversight of hedge funds

The G20 recommendation called on jurisdictions to take steps to register and oversee hedge funds, and require appropriate disclosure. IOSCO's guidance in the 2009 Report and the Methodology addressed mandatory registration requirements, disclosure and other aspects of oversight. In reporting on implementation of this recommendation, jurisdictions were asked to take note of Principle 28 of IOSCO's *Objectives and Principles of Securities Regulation* and Recommendations 1 and 2 of IOSCO's 2009 Report.

Overall implementation status

No information on implementation of this recommendation was collected via the IMN survey in 2017, due to all jurisdictions (that permit and have an active hedge funds market) having reported in 2016 that they have implemented this recommendation.[16]

(b) Establishment of international information sharing framework

The G20 recommendation called for mechanisms for cooperation and information sharing in order to ensure effective oversight when a hedge fund is located in a different jurisdiction from the manager. In reporting on implementation of this recommendation, jurisdictions were asked to take note of Principle 28 of IOSCO's *Objectives and Principles of Securities Regulation* and Recommendation 6 of IOSCO's 2009 Report. Bilateral supervisory cooperation should also be guided by IOSCO's *Principles Regarding Cross-border Supervisory Cooperation* (May 2010).[17]

The sixth high-level principle in the IOSCO 2009 Report recommended that regulators have the authority to cooperate and share information, where appropriate, in order to facilitate efficient and effective oversight of globally active hedge fund managers and advisers and to help identify systemic risks. The Methodology for assessing implementation of Principle 28

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15 See 2017 Prequin Global Hedge Fund Report.

16 See http://www.iosco.org/library/pubdocs/pdf/IOSCOPD546.pdf and http://www.fsb.org/wp-content/uploads/2016-IMN-summary-of-implementation-progress.pdf.

17 Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD322.pdf.

addressed the Principle with its recommendation that regulators have the power to exchange information with other domestic and international regulators on a timely basis.

IOSCO has also provided general guidance to jurisdictions in relation to cross-border supervisory cooperation, including a sample memorandum of understanding (**MoU**) (set out in its 2010 *Principles Regarding Cross-border Supervisory Cooperation*). IOSCO's *Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information*[18] (**MMoU**) also provides a basis for cooperation among signatories in relation to enforcement actions. More details are in Box 1.

Box 1 – IOSCO MMoU

The IOSCO MMoU, established in May 2002 (revised in May 2012), provides a global framework for enforcement cooperation between securities regulators, thereby helping to ensure effective regulation and to preserve the strength of securities markets. Signatories represent approximately 95% of global securities markets, and the IOSCO MMoU is the leading instrument for multilateral cooperation in the enforcement of securities regulation. All IOSCO members from FSB member jurisdictions are now signatories to the MMoU.

In March 2017, IOSCO launched the Enhanced MMoU, which extends the cooperation and information sharing framework to new enforcement powers relating to audit information, compelling testimony, freezing assets, and obtaining and sharing internet and telephone records. This EMMoU is designed to enable IOSCO members to keep pace with technological, societal and market developments; to bolster deterrence; and ensure that IOSCO continues to meet its objectives. The Enhanced MMoU will co-exist with the MMoU, however the objective is for all MMoU signatories to eventually migrate to the EMMoU.[19]

Overall implementation status

The overall implementation status is unchanged from last year's survey. All responding jurisdictions except one (China) that permit or have hedge funds report having taken steps to enhance cross-border information sharing, either through hedge fund specific cooperation arrangements or more general supervisory cooperation arrangements.

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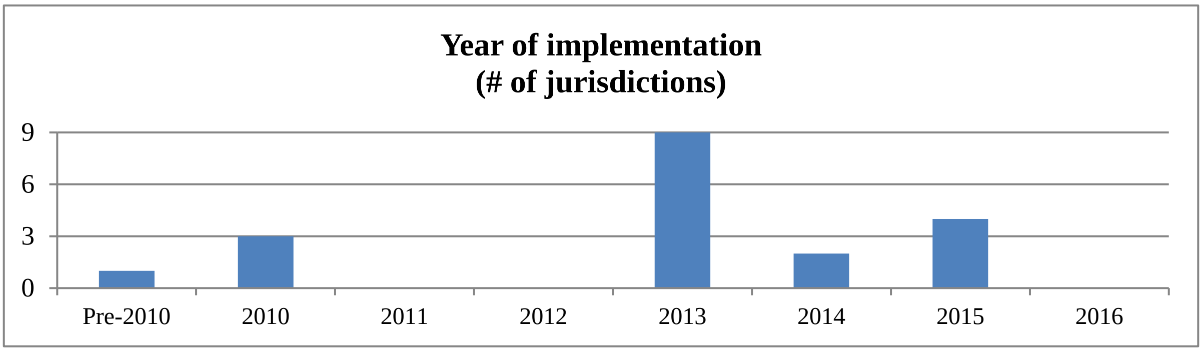
18 Available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD386.pdf.

19 See https://www.iosco.org/about/?subsection=emmou.

* Charts do not include jurisdictions who reported implementation as ongoing or as being not applicable.

Argentina and Indonesia report that this recommendation is not applicable for them because hedge funds are either not permitted or are not currently operating locally.



Jurisdictions report that they implemented this recommendation through other measures such as supervisory action (47%), and less through primary or secondary legislation (22%) or regulation and supervisory guidelines (31%).

While G20 Leaders recommended end 2009 for implementation measures to be developed, considerable progress by jurisdictions to give effect to these measures was observed between 2013 and 2015. This trend of implementation reflects the adoption of the AIFMD regulations by EU Member States. For the purpose of identifying the build-up of systemic risk by the use of leverage and the potential systemic consequences of alternative investment fund managers' activities, the AIFMD and its implementing Regulation contemplates rules on the use of information by competent authorities and the exchange of information between the competent authorities. In 2013, the European Securities and Markets Authority (**ESMA**) issued *Guidelines on the model MoU concerning consultation, cooperation and the exchange of information related to the supervision of AIFMD entities*.[20] The guidelines specify a model MoU, which is complementary to the IOSCO MMoU,[21] for cooperation arrangements that enable parties to exchange and use information for a variety of purposes, including verifying the registrants' compliance with applicable laws and regulations, and identifying the build-up of systemic risk.[22]

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20 Available at: https://www.esma.europa.eu/sites/default/files/library/2015/11/2013-998_guidelines_on_the_model_mous_concerning_aifmd.pdf.

21 This implies that, in order for it to be considered that both the European competent authority and the non-EU supervisory authority have cooperation arrangements in place, as required by the AIFMD, both authorities should be signatories to both the MoU set out in these guidelines and the IOSCO MMoU, or another MoU providing for an equivalent degree of cooperation.

22 See https://www.esma.europa.eu/document/aifmd-mous-signed-eu-authorities-updated. These agreements have been negotiated by ESMA on behalf of 31 EU/European Economic Area (**EEA**) national competent authorities for securities markets supervision.

Since February 2015, all responding jurisdictions are full signatories to the IOSCO MMoU.

Recent developments and trends

China is the only jurisdiction to report that implementation is ongoing. In China, the Legislative Affairs Office of the State Council is reviewing draft regulation refining rules for private funds, which set out high-level rules for the supervision of overseas private fund managers and maintaining effective regulatory cooperation with their home jurisdictions. The China Securities Regulatory Commission (**CSRC**) helped prepare the draft rules.

Almost all jurisdictions identify having bilateral supervisory cooperation agreements in place, usually through general MoUs covering intermediaries (including hedge funds and/or hedge fund managers). A few jurisdictions (Canada, Hong Kong) reported an increase in MoUs in 2016.

- Canada reports that in 2016 the Quebec Autorité des marchés financiers (**AMF**) and the Superintendencia del Mercado de Valores of the Republic of Panama entered into an MOU and in November 2016, the Quebec AMF and the Ontario Securities Commission (**OSC**) became parties to the Multilateral Arrangement for Regulatory, Supervisory and Oversight Cooperation on LCH.Clearnet.
- Hong Kong also reports that the Securities and Futures Commission (**SFC**) and US Securities and Exchange Commission (**SEC**) entered into an MoU on 18 January 2017 which provides for consultation, cooperation and exchange of information related to the supervision and oversight of regulated entities including investment fund managers that operate on a cross-border basis in Hong Kong and the US.

Other jurisdictions (Australia, Singapore, Turkey) report continued ongoing efforts to establish more information-sharing agreements. These agreements are generally made between two national authorities, however, some jurisdictions (Russia, South Africa) report having agreements in place with exchanges and standard-setting bodies.

(c) Enhancing counterparty risk management

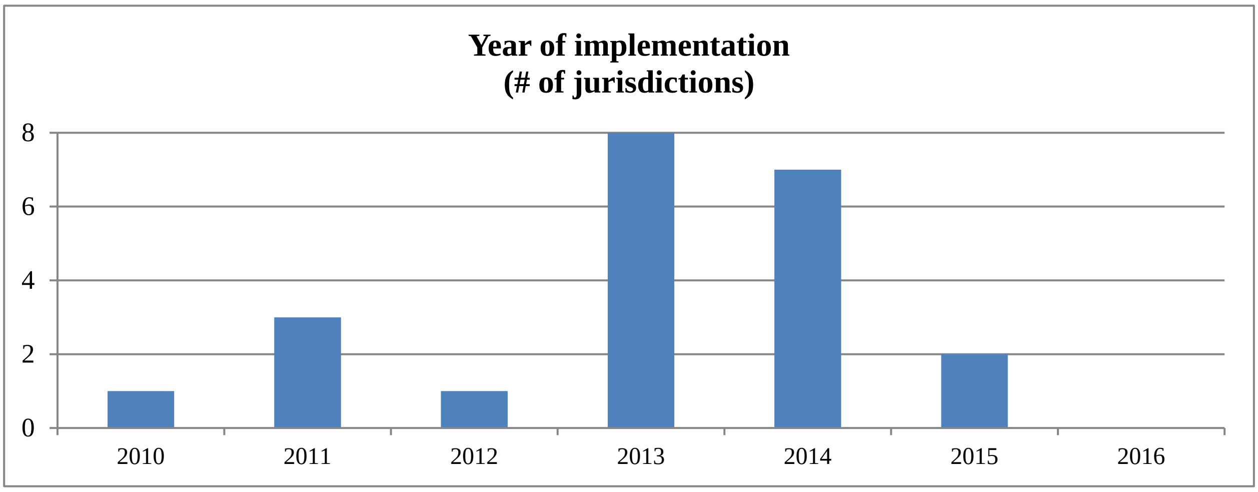
This recommendation called on supervisors to require counterparties of hedge funds to have effective risk management, including mechanisms to monitor hedge funds' leverage and set limits for single counterparty exposures. In reporting on implementation of this recommendation, jurisdictions were asked to take note of Principle 28 of IOSCO's *Objectives and Principles of Securities Regulation* and Recommendation 3 of IOSCO's 2009 Report.

The IOSCO Methodology on implementation of Principle 28 recommended that securities regulators be able to obtain information on the hedge fund's exposure to counterparties, including prime brokers and banks.

Overall implementation status and application

All but one jurisdiction (China) report this recommendation as fully implemented or not applicable. Since last year's survey, Brazil amended its reported status to implementation completed since 2013,[23] while Argentina reported a change in status from implementation completed to not applicable because hedge funds and leveraged counterparties are not allowed.

The implementation status is largely unchanged since 2014 when all but four jurisdictions reported implementation of this recommendation as complete. The overall trend of implementation appears to be aligned with efforts in strengthening capital requirements and other measures for enhancing bank counterparty risk management under Basel III (which is monitored separately by the Basel Committee on Banking Supervision (**BCBS**)).



Jurisdictions report that they implemented this recommendation through regulation and supervisory guidelines (43%), primary or secondary legislation (33%) and other measures such as supervisory action (25%).

Recent developments and trends

China is the only jurisdiction to report implementation ongoing. The CSRC is developing a private fund supervisory information system as well as the third phase of the private fund

23 Brazil amended their status based on a re-interpretation of the question to not include Basel III reforms, as such implementation is reported to be completed since 2013 and does not reflect new developments. The CVM reports that it has in place a comprehensive supervision program on liquidity management practices of funds, including a review of the adequacy of stress tests conducted and actions on mark-to-market practices. CVM has also established a Task Force to review regulation on funds' leverage and to develop ways for improving supervision.

registration information system (with continued efforts to improve counterparty risk monitoring). In addition, the CSRC reports completion of a number of other measures in 2016.[24]

Generally, responses focused on capital requirements and other measures for enhancing bank counterparties risk management. Specifically, for hedge fund counterparties, market risks associated with leverage and derivative activities was a key focus of responses. A few jurisdictions (Canada, China, Indonesia[25]) cited single counterparty or concentration risk as being of concern and reported legislation around single counterparty and/or concentration risk. For example, Canada reports that the Quebec AMF expects to publish a new guideline on concentration risk, which aims to reduce the exposure to a single counterparty.

Regarding prime brokers, jurisdictions' approaches vary. Almost half of the jurisdictions cite regulatory supervision or inspection as a means of monitoring counterparty risk and largely these tend to be for prudential regulation of bank risks. For example, Switzerland reports prime brokerage is a focus in the supervision of the investment bank activities of the two large banks, which includes regular meetings with the risk management units to discuss ongoing hedge fund issues. The UK also reports the Bank of England has an ongoing continuous assessment cycle for major firms, which includes frequent meetings that involve discussion of key exposures with management, and a bi-annual survey of banks' exposures to hedge funds and informing firm supervisors of the results. In the EU, outside of counterparty credit risk, prime brokers dealing with hedge funds as counterparties are, in most cases, investment firms required to comply with MiFID[26] organisational requirements and business codes of conducts, including authorisation, participation in investor compensation schemes and strict corporate governance rules. Activities of investment firms are also subject to ongoing supervision.

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24 These include: Measures for the Supervision and Administration of Money Market Funds (MMF) (which requires fund managers to establish and improve the control system for the MMFs, including enhancing counterparty risk management); revised Measures on Securities Companies' Risk Control Indicators (which brings market risks and credit risks, including those associated with leveraged trading, into supervisory oversight and provides that securities companies' margin trading business with one single client (hedge funds included) shall not exceed 5% of its net capital); and Tentative Measures on the Administration of Risk Control Indicators regarding Subsidiaries of Fund Management Companies Conducting Client-specific Asset Management Business (which set out requirements for a risk control indicator system based on net capital, imposing higher risk coefficients for bond financing and reinvestment in order to urge subsidiaries of fund management companies conducting client-specific asset management business to enhance counterparty risk management including that derived from hedge funds).

25 While there are no hedge funds managed locally, Indonesia reports having regulations in place in the banking sector regarding counterparty risk.

26 Markets in Financial Instruments Directive 2004/39/EC (MiFID I). These requirements will remain applicable according to the MiFID II framework that will come into force in 2018.

B. Structured Products and Securitisation

(1) FSF Recommendation

In its April 2008 *Report of the Financial Stability Forum on Enhancing Market and Institutional Resilience*,[27] the Financial Stability Forum (**FSF**) (now the FSB) identified that one of the key issues leading to the crisis was that the market for securitisation of credit risk aggressively developed into an 'originate-to-distribute' model of financial intermediation, causing the financial system to become increasingly dependent on originators' underwriting standards and the performance of CRAs.

In order to enhance the resilience of the global system, the FSF recommended that:

> 'Regulators of institutional investors should ***strengthen*** the requirements or best practices for ***firms' processes for investment in structured products***.'
>
> ***and***
>
> 'Securities market regulators should work with market participants to ***expand information on securitised products and their underlying assets***.'

(2) IOSCO Initiatives

In July 2009, IOSCO published a report *Good Practices in Relation to Investment Managers' Due Diligence When Investing in Structured Finance Instruments*[28] which describes the due diligence practices of institutional investors and noted that 'the unique properties of the specific pool of assets should not be assumed to be identical to the broader asset category. Investment managers should ensure their analysis of the underlying assets is based on information that is relevant for that specific type of underlying asset.'

IOSCO has also published a number of reports providing guidance and making recommendations in relation to securitisation markets. The reports have emphasised the importance of enhancing transparency and disclosure in relation to expanding the information provided to investors in relation to underlying assets.

In September 2009, IOSCO published the *Final Report into Unregulated Financial Markets and Products*.[29] This report made recommendations to assist financial market regulators in

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27 Available at: http://www.fsb.org/wp-content/uploads/r_0804.pdf?page_moved=1.

28 Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD300.pdf.

29 Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD301.pdf.

achieving greater transparency and improved oversight with respect to securitised products and credit default swaps. In July 2011, the Joint Forum (under IOSCO's chairmanship) published the *Report on asset securitisation incentives*.[30] This report made three key recommendations: regarding tools to address misaligned incentives; to improve transparency; and to encourage document standardisation and reduce product complexity. IOSCO contributed further in November 2012 in its report on *Global Developments in Securitisation Regulation*[31] making recommendations including in relation to incentive alignment and enhanced transparency.

More recently, in July 2015, IOSCO and the BCBS jointly published a report on *Criteria for identifying simple, transparent and comparable securitisations*[32] which again underscored the importance of information about underlying assets.

(3) Implementation Status

(a) Strengthening of supervisory requirements or best practices for investment in structured products

Overall, implementation of securitisation regulation has taken place in instalments, with some jurisdictions staggering implementation by sector, and others expanding or revising existing regulation in response to better information or policy development.

The first recommendation arose out of findings that many institutional investors seem to have had an insufficient understanding of the risk characteristics of the structured products in which they invested and focused on institutional investors (particularly investment managers), rather than issuers, conducting adequate due diligence to reduce the risks presented by structured products. In reporting on implementation of this recommendation, jurisdictions were asked to refer to IOSCO's report on *Good Practices in Relation to Investment Managers' Due Diligence When Investing in Structured Finance Instruments* and the Joint Forum report on *Credit Risk Transfer – Developments from 2005-2007* published in July 2008.[33]

Implementation is unchanged from last year. Twenty-one responding jurisdictions[34] report the implementation of this recommendation as complete, while two jurisdictions (South Africa and the US) report continued implementation efforts.

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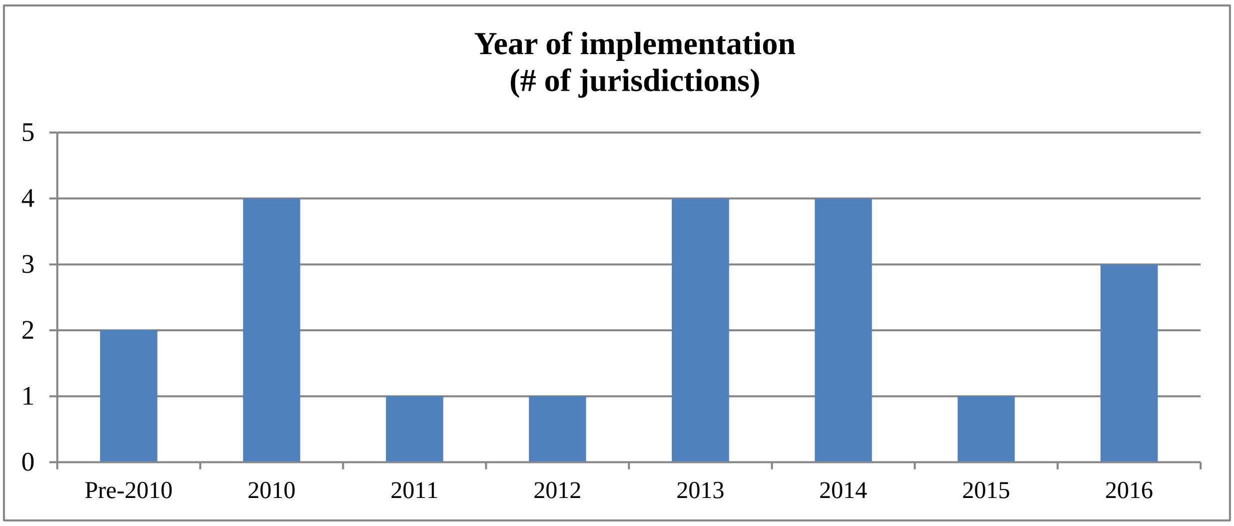
30 Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD355.pdf.

31 Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD394.pdf.

32 Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD572.pdf.

33 Available at: http://www.bis.org/publ/joint21.pdf.

34 One jurisdiction who reported implementation as completed did not provide a date of implementation.



Switzerland reports that the recommendation is not applicable, given the extent and materiality of investments in structured finance instruments in Switzerland is low and investors are reported to benefit from regulation in the jurisdictions in which the instruments are issued. Similarly, while Argentina reports that it has completed implementation, it also reports that structured products and credit derivatives are seldom negotiated in the local market, and only by a few banks that must fulfil the Central Bank of Argentina's (BCRA's) capital requirements.

Jurisdictions report that they implemented this recommendation through regulation and supervisory guidelines (42%), primary or secondary legislation (34%) and other measures such as supervisory action (24%).

Overall, there is little change in implementation status since 2014 (when 17 jurisdictions reported that implementation had been completed). The overall trend of implementation reflects the continued regulatory responses to stem systemic risk concerns observed in structured products market. Most jurisdictions that report implementation as completed have put in place requirements for due diligence policies, procedures for restricting investments and disclosure practices applicable for investment managers for investments in structured finance instruments.

Recent developments and trends

Implementation is ongoing in South Africa and the US. South Africa reports that existing requirements for insurers that originate or invest in structured products will be reconsidered in developing the new Solvency Assessment and Management regime, which will be implemented by end-2017. The prudential requirements under the regime are currently under consultation. In the US, the National Association of Insurance Commissions (**NAIC**) has been engaged in a wholesale review of asset risk factors (which feed into NAIC designations) for all of the investment schedules, which is expected to result in recommendations for significant changes in some areas, while others will likely remain relatively unchanged. Work is near completion for the largest asset class among insurers – bonds – with a likely outcome being increased granularity along with an updating of risk-based capital factors based on recent default and loss severity data.

While securitisation activity can be observed in some sectors, current regulatory efforts reported by jurisdictions (Australia, China, EU member states, India, Indonesia, Italy) are designed to further strengthen and encourage securitisation markets.

- Australia reports that its federal government has — as part of its response to the Financial System Inquiry — accepted recommendations to introduce an accountabilities framework for issuers and distributors and to confer to the regulator 'product intervention powers'.
- China reports that in 2016 the CSRC announced tentative rules for structured asset management products to be designed based on the principle of 'shared interest, shared risk, and matched risk and revenue'. The rules also, to some degree, limit the investment leverage ratio, enhance information disclosure, and prohibit reinvestment into certain subordinated shares of other structured products.
- As part of the Capital Markets Union project, the EU is considering a package of legislative reforms for a new integrated approach to securitisation. On 30 May 2017, the European Parliament, the European Council and the European Commission reached a political agreement. The agreement covers two draft regulations: (i) an EU 'Securitisation Regulation' that will apply to all securitisations and establishes criteria for Simple, Transparent and Standardised (**STS**) securitisations; and (ii) a proposal to amend existing Capital Requirements Regulation 575/2013 (**CRR**) to make the capital treatment of securitisation more risk-sensitive. The draft Securitisation Regulation is applicable to all securitisations, bringing together rules in different legal acts applying to different sectors, and includes strengthened due diligence requirements for investors in securitisation, supported by enhanced risk retention and transparency requirements.
- India reports that the Insurance Regulatory and Development Authority (**IRDA**) also issued IRDAI (Investment) Regulations, 2016, which provides exposure limits and risk management requirements for insurers investing in asset backed securities (**ABS**).
- Indonesia reports that OJK regulation No. 7/POJK.03/2016 requires banks to conduct the process of identifying, measuring, monitoring and controlling the structured product issued. Those processes are required to be supported by a management information system. Moreover, OJK Regulation No. 4/POJK.04/2017 concerning multi asset funds (in the form of collective investment contracts) specifies registration and requirements

and issues related to the underlying assets, governance and risk management, reporting and disclosure, liquidation rules and sanctions.[35]

- Italy reports that IVASS Regulation n.24 concerning Investments and Assets Covering Technical Provisions (June 2016) also covers structured products in terms of governance and investment risk management, and these are treated similarly to derivatives.

Overall, jurisdictions reported implementing regulations on the sell-side as well as on the buy-side. For issuers, more than half of the jurisdictions reported having regulations for securitisation offerings, which covered disclosure and transparency, directed to ensure that products were targeted to an appropriate audience. For investors, particularly institutional investors, regulations contained investment limits, risk management and due diligence.

Some jurisdictions' responses differed on the use of ratings. For example, India requires issuers to appoint a third-party valuation agency (being a credit rating agency registered with SEBI), while EU jurisdictions' regulations note issues around reliance on credit ratings, and the US OCC provides alternative factors to consider instead of ratings. In the EU, CRA III Regulation require collective portfolio managers to not solely or mechanistically rely on credit ratings for assessing the creditworthiness of an entity or financial instrument and the EC recently adopted implementing standards to map the credit rating scales for securitisation positions under the banking regulations. In the US, the NAIC changed the process by which NAIC designations are assigned for each structured security held by an insurance company, replacing reliance on rating agency ratings for non-agency RMBS and CMBS.

(b) Enhanced disclosure of securitised products

This recommendation is directed at improving transparency in securitisation markets and called on securities market regulators to work with market participants to expand information on securitised products and their underlying assets. In reporting on implementation of this recommendation, jurisdictions were asked to refer to IOSCO's *Principles for Ongoing Disclosure for Asset-Backed Securities* (November 2012),[36] *Disclosure Principles for Public Offerings and Listings of Asset-Backed Securities* (April 2010),[37] and the *Report on Global*

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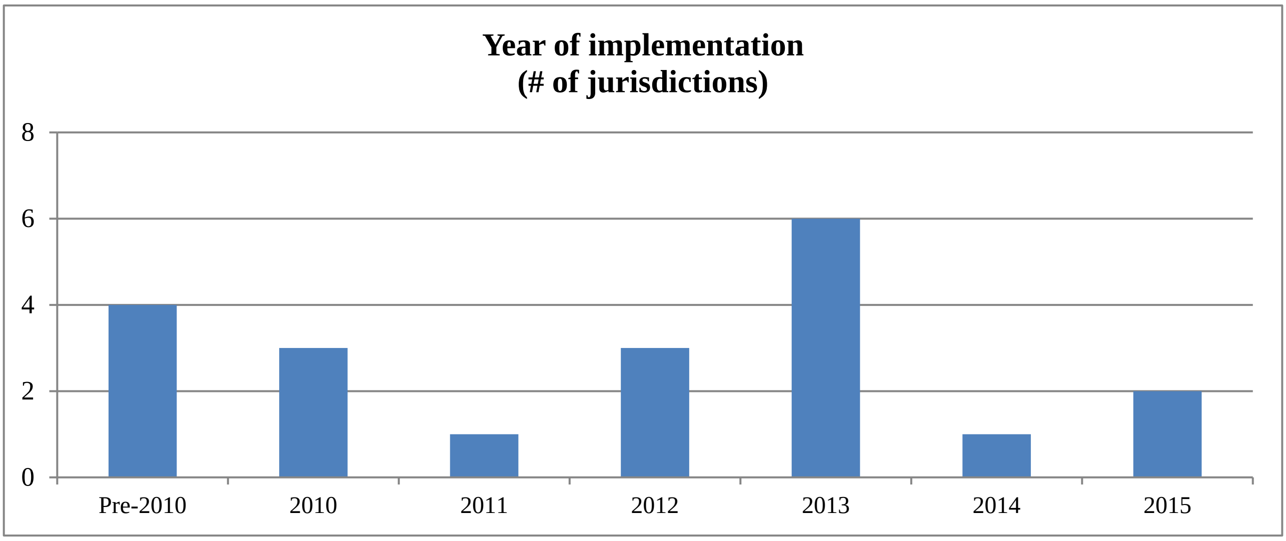
35 Indonesia reports further regulations following the IMN survey reporting date: On 19 July 2017, OJK Regulation No. 52/POJK.04/2017 concerning infrastructure investment funds in the form of collective investment contracts; and on 21 June 2017, OJK Regulation No. 20/POJK.04/2017 (revising 23/POJK. 04/2014) concerning guidelines of issuing and reporting of asset-backed securities participation of secondary financing housing. Both Regulations regulate underlying assets, registration, investment manager requirements, disclosure, governance, risk management, reporting, liquidation, and sanctions. Regulation No 20/POJK.04/2017 also regulates credit enhancement.

36 Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD395.pdf.

37 Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD318.pdf.

Developments in Securitisation Regulations (November 2012) (in particular, Recommendations 4 and 5 of 2012 Report).



Overall implementation is unchanged from last year. All but three responding jurisdictions (Russia, South Africa and Turkey) report that implementation of this recommendation is complete. One of the three (South Africa) noted completion of a significant part of its reforms since 2016, being the Johannesburg Stock Exchange's (**JSE's**) amendments to debt listing requirements to include standardised disclosure of underlying assets in ABS.

Russia and Turkey, which earlier reported implementation being completed in 2014, now report a final rule (for part of the reform) in force with policy measures taken for enhancing disclosure of securitised products since last year's survey.[38] Switzerland reports that the recommendation is not applicable in its jurisdiction as there is no domestic ABS market.

Jurisdictions report that they implemented this recommendation through regulation and supervisory guidelines (43%), primary or secondary legislation (38%) and other measures such as supervisory action (19%).

Overall, there is little change since 2013, when 17 jurisdictions reported implementation completed.

[38] The downgrade in implementation status in 2015 for Russia and Turkey was due to anticipated further developments in legislation and changes in the survey template, respectively. As such, the earlier implementation completed ratings are not included in the Chart.

Recent developments and trends

Three jurisdictions (Russia, South Africa, Turkey) continue to report implementation status as ongoing. In Russia, regulation came into force in May 2016 stipulating additional requirements on disclosure of data concerning securitisations (i.e. mortgage participation certificates) included into quotation lists. South Africa reported the amendment to the JSE Debt Listings Requirements to include a section on standardised disclosure of underlying assets in the ABS, which came into effect in January 2017. While the Turkish Capital Markets Board (**CMB**) had planned to issue ABS prospectus standards compatible with international standards by the end of 2016, Turkey reports that the ABS standard preparation remains work in progress in 2017 due to lack of interest from the market.

A few jurisdictions (Australia, Brazil, EU member states, US) report further progress and related measures for enhancing and augmenting disclosure of securitised products.

- On 9 July 2013, the Australian Securities and Investments Commission (**ASIC**) issued the ASIC Derivative Transaction Rules (Reporting) 2013, which set out the requirements for counterparties to report derivative transaction and position information to derivative trade repositories. The Rules assist with providing transparency on the use of (and exposure to) over-the-counter (**OTC**) derivatives by securitisation vehicles.
- In 2017, Brazil's Comissão de Valores Mobiliários (**CVM**) expects to issue regulation regarding the monthly disclosure of new information by receivable funds, focusing on provisions according to portfolio composition and the collateral types involved. The CVM also intends to launch public consultations on new rules for the securitisation of agribusiness-backed securities and on rules related to mortgage-backed securities (in order to align structuring and disclosure requirements).
- The aforementioned draft EU Securitisation Regulation, amongst other things, includes strengthened disclosure requirements for issuers of securitisation. More generally on disclosure, the European Commission's Packaged Retail and Insurance-based Investment Products (**PRIIPS**) Regulation will impose more detailed disclosure requirements on firms' manufacturing and distributing structured products to retail customers — this might include in a few exceptional cases securitisation products (which are normally sold only to institutional investors). The Markets in Financial Instruments Directive II (**MiFID II**) will also impact the distribution of structured products to investors, including securitisation products. Finally, the CRA III Regulation requires issuers, originators and sponsor entities to report information in respect of Structured Finance Instruments to ESMA and requires ESMA to set up a website for the publication of the information by 1 January 2017. However, this work has been delayed in light of the draft Securitisation Regulation.
- In the US, the Federal Housing Finance Agency (**FHFA**) continues work on its initiative for Fannie Mae and Freddie Mac (the Enterprises) to issue a common single security. On 7 July 2016, the FHFA released 'An Update on Implementation of the Single

Security and the Common Securitization Platform', which announces the planned issuance of final Single Security features and disclosures to the market; and provides information on the ongoing alignment of Enterprise programs, policies and practices and the processes that will be followed to further support the Single Security initiative.

Overall jurisdictions focus on investor protection by requiring disclosure of necessary information in public documents to allow investors to make informed investment assessments at the point of sale and on an ongoing basis. Information requirements vary however they tend to cover: underlying assets, cashflows, risks, terms, structures, agents/parties and issues around alignment of interests. Some regulators (Canada, India, Indonesia, Korea) also require reporting of additional information to regulators for registration, compliance or data collection purposes. In a few jurisdictions (India, Korea) regulators may refuse registration or require changes of disclosure information within registration documents.

Some jurisdictions (Australia, EU, India) reported their regulators, self-regulatory organisations or industry bodies are developing guidance, model rules or templates to facilitate and standardise disclosure documents. In July 2015, the BCBS-IOSCO Task Force on Securitisation Markets published non-exhaustive, non-binding criteria (high-level principles) to identify simple, transparent and comparable securitisations. [39]

As discussed above, the draft EU Securitisation Regulation will also strengthen disclosure requirements for issuers of securitisation and will introduce the Simple, Transparent and Standardised (STS) label identifying best practice. The criteria for STS Securitisations are in line with the BCBS-IOSCO criteria.

C. Improving Oversight of Credit Rating Agencies (CRAs)

(1) G20 Recommendation

In their London 2009 *Declaration on Strengthening the Financial System*, G20 Leaders agreed on more effective oversight of the activities of CRAs, as essential market participants. Specifically, G20 Leaders recommended:

> 'All CRAs whose ratings are used for regulatory purposes should be subject to a ***regulatory oversight regime that includes registration***. The regulatory oversight regime should be established by end 2009 and should be consistent with the IOSCO Code of Conduct Fundamentals. IOSCO should coordinate full compliance;

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[39] Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD572.pdf.

National authorities will enforce compliance and require changes to a rating agency's practices and procedures for ***managing conflicts of interest and assuring the transparency and quality of the rating process***. In particular, CRAs should differentiate ratings for structured products and provide full disclosure of their ratings track record and the information and assumptions that underpin the ratings process. ***The oversight framework should be consistent across jurisdictions with appropriate sharing of information between national authorities, including through IOSCO***.'[40]

In the September 2009 FSB Report to G20 Leaders on *Improving Financial Regulation*, regulators were also recommended to work together towards appropriate, globally compatible solutions (to conflicting compliance obligations for CRAs) as early as possible in 2010.[41]

In 2013 in St Petersburg, G20 Leaders reiterated their position by indicating:

'We encourage further steps to enhance transparency and competition among credit rating agencies and look forward to IOSCO's review of its Code of Conduct for CRAs.'[42]

(2) IOSCO Initiatives

IOSCO has been at the forefront of developing guidance about the conduct and regulation of CRAs.

In September 2003, IOSCO developed *Statement of Principles Regarding the Activities of Credit Rating Agencies* (**CRA Principles**).[43] At the same time, IOSCO also published *Report on the Activities of Credit Rating Agencies*,[44] outlining the activities of CRAs, the types of regulatory issues that arise relating to these activities, and how the IOSCO CRA Principles address these issues. The report highlighted the growing and sometimes controversial importance placed on credit ratings, and found that, in some cases, CRAs' activities are not always well understood by investors and issuers alike.

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40 Available at: https://www.treasury.gov/resource-center/international/g7-g20/Documents/London%20April%202009%20Fin_Deps_Fin_Reg_Annex_020409_-_1615_final.pdf.

41 Available at: http://www.fsb.org/wp-content/uploads/r_090925b.pdf.

42 The G20 Leaders' Declaration is available at http://www.mofa.go.jp/files/000013493.pdf.

43 Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD151.pdf.

44 Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD153.pdf.

Then in December 2004, in response to comments received from industry, IOSCO developed and published the first iteration of the *Code of Conduct Fundamentals for Credit Rating Agencies* (**CRA Code**).[45] The CRA Code was revised in May 2008, and then revised again in March 2015 (including material concerning governance, training and risk management).

The 2010 revisions to the IOSCO *Objectives and Principles of Securities Regulation* introduced Principle 22 which required that CRAs should be subject to adequate levels of oversight and the regulatory system should ensure that CRAs whose ratings were used for regulatory purposes are subject to registration and ongoing supervision. The 2011 revisions to the Methodology outlined factors to be taken into account in assessing implementation of Principle 22, including requirements about registration, ongoing supervision and oversight requirements which reflected key elements of the 2008 CRA Code (including quality and integrity, conflicts of interest, transparency and timeliness and the treatment of confidential information).

In July 2013, IOSCO published *Supervisory Colleges for Credit Rating Agencies*[46] which provided guidelines on how to constitute and operate supervisory colleges for CRAs. Following the recommendations, later in 2013, the colleges were formed for the three large, globally active CRAs (Fitch, Moody's and S&P). The colleges create a mechanism for sharing and discussing information about compliance with local or regional laws and regulations, the CRAs implementation and adherence to the IOSCO CRA Code, the risks faced or posed by the internationally active CRAs and how the relevant supervisors are addressing these risks. The colleges have at least quarterly calls and annual in-person meetings and are chaired by ESMA[47] for Fitch, and the US SEC for Moody's and S&P. Other national authorities (e.g. Australia ASIC, Ontario OSC, Mexico Comisión Nacional Bancaria y de Valores (**CNBV**), Hong Kong SFC, Japan Financial Services Agency (**FSA**) and Brazil CVM) are also participating members of the colleges.

(3) Implementation Status

The overall implementation is unchanged since last year. All jurisdictions state that the implementation of reforms related to this recommendation has been completed at this point in time and that requirements for the registration of CRAs have been put in place.

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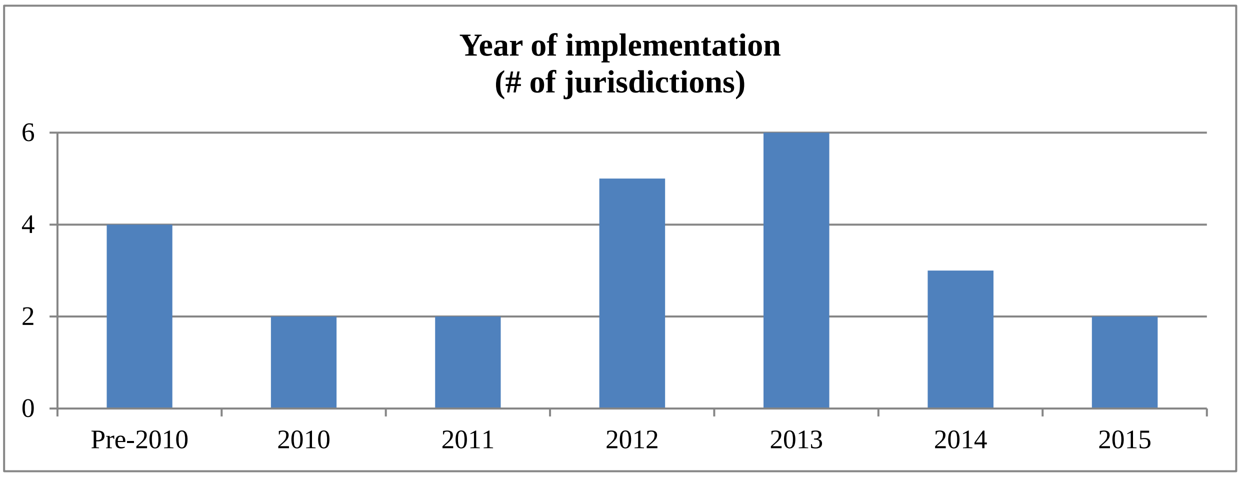
45 IOSCO published a revised *Code of Conduct Fundamentals for Credit Rating Agencies* in March 2015 (available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD482.pdf) that made significant revisions and updates to the earlier CRA Code revised in May 2008 (available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD271.pdf).

46 Available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD416.pdf.

47 In the EU, the ongoing regulation and supervision of CRAs has been transferred to ESMA.

While G20 Leaders recommended that oversight regimes be established by end 2009, implementation across jurisdictions has been staggered. A significant majority (22) of jurisdictions had already reported implementation completed by 2014, with Saudi Arabia and Russia completing implementation in 2015.



Jurisdictions report that they implemented this recommendation through primary or secondary legislation (41%), regulation and supervisory guidelines (39%) and other measures such as supervisory action (20%).

Since 2014, jurisdictions' changes in status reflect additional efforts to revise existing standards. China and Turkey reported having completed implementation of their regulatory frameworks in earlier surveys, but have changed their status in 2016 to implementation ongoing in order to reflect additional efforts.[48] Other jurisdictions also note ongoing work but have not reflected this in their reported status.

Most of the jurisdictions report that their framework for CRAs and/or regulatory oversight is consistent with the IOSCO CRA Principles or the IOSCO CRA Code. While 19 jurisdictions[49] report compliance with the IOSCO CRA Code, only nine jurisdictions specify adherence to the 2015 version of the CRA Code.

This demonstrates significant progress compared to February 2011, when IOSCO published *Regulatory Implementation of the Statement of Principles Regarding the Activities of Credit*

48 The downgrade in implementation status was not included in the Chart to avoid false conclusions on implementation progress.

49 EU (including France, Germany, Italy, Spain, the Netherlands and the UK), Australia, Brazil, Canada, Hong Kong, India, Indonesia, Mexico, Saudi Arabia, Singapore, South Africa, Switzerland, Turkey and the US.

Rating Agencies[50] which evaluated the implementation of the CRA Principles in Australia, the EU, Japan, Mexico and the US. The report found that, while the structure and specific provisions of CRA regulatory programs differ, the objectives of the CRA Principles were embedded in each of the programs.[51]

Recent developments and trends

Most jurisdictions report they have an inspection or supervisory regime relating to CRAs, with some jurisdictions (India, Turkey) noting the regulator's right to take enforcement actions against the CRA and others (EU member states) allowing civil claims from investors and issuers.

A few jurisdictions report additional efforts in monitoring and supervision.

- In Brazil, the first inspections of the three largest CRAs were concluded in 2016, following the inclusion of credit ratings in the regular CVM on-site examinations schedule conducted by its Inspections and Examinations Division in 2015.
- China reports establishing a supervision system in 2016 by which the CSRC has conducted full-scale supervision of nine CRAs so far. The NAFMII also conducts market-based evaluation on certain CRAs who rate non-financial enterprise debt financing instruments.

Some jurisdictions report participation in supervisory colleges for CRAs[52] which facilitates further cooperation and information sharing between authorities and assist their oversight of cross-border CRAs (Fitch, S&P and Moody's). While Hong Kong reports bilateral efforts, with the SFC entering into an MoU with the US SEC on 18 January 2017 for consultation, cooperation and exchange of information related to the supervision and oversight of regulated entities (including CRAs).

In the EU, ESMA is responsible for the ongoing regulation and supervision of CRAs. On 1 December 2016, it launched the European Rating Platform (**ERP**), which publishes all available credit ratings on a central platform operated by ESMA and enables investors, issuers and other interested parties to easily compare all credit ratings for a specific rated entity or instrument issued by all CRAs registered with ESMA. In addition, the EC adopted implementing standards that map credit ratings scales used by CRAs to the risk weight

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50 Available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD346.pdf.

51 In 2013 in a letter to the G20 Ministers and Central Bank Governors, IOSCO further reported on a number of jurisdictions who have made progress on implementation of CRA Transparency Provisions. See Appendix A at: http://www.iosco.org/library/briefing_notes/pdf/IOSCOBN01-13.pdf.

52 There are currently eight members in each of the three supervisory colleges (ASIC, OSC, CNBV, JFSA, CVM, ESMA, US SEC and HK SFC).

categories under EU regulation. This will facilitate the use of credit ratings in the calculation of the capital/solvency requirements for banks and insurance companies. The EC also continues to monitor the development of the market in response to the implementation of the CRA Regulation, parts of which is still underway, before considering the adoption of further measures. In October 2016, the EC published a report on the state of the ratings market and the impact of the CRA III Regulation as well as analysing potential measures that could improve competition.[53] Relatedly, at the end of 2016, there were 26 EU-registered CRAs and 4 certified CRAs (i.e. third-country CRAs whose ratings can be used in the EU subject to an EC decision on the equivalence of the non-EU country regulatory and supervisory regime on CRAs and the establishment of a cooperation arrangement between ESMA and the non-EU authority).

D. Safeguarding the Integrity and Efficiency of Financial Markets

(1) G20 Recommendation

At their November 2010 meeting in Seoul, G20 Leaders requested that IOSCO develop 'recommendations to promote markets' integrity and efficiency to mitigate the risks posed to the financial system by the latest technological developments.'[54]

At Cannes in 2011, G20 Leaders said in their Summit Final Declaration:

> 'We must ensure that markets serve efficient allocation of investments and savings in our economies and do not pose risks to financial stability. To this end, we commit to implement initial recommendations by IOSCO on market integrity and efficiency, including measures to address the risks posed by high frequency trading and dark liquidity, and call for further work by mid-2012.'[55]

(2) IOSCO Initiatives

In response to the G20 request contained in the Seoul Summit document, IOSCO published in October 2011 its report on *Regulatory Issues Raised by the Impact of Technological Changes*

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53 *Report from the Commission to the European Parliament and the Council on alternative tools to external credit ratings, the state of the credit rating market, competition and governance in the credit rating industry, the state of the structured finance instruments rating market and on the feasibility of a European Credit Rating Agency* available at: https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-664-EN-F1-1.PDF.

54 The Seoul Summit document *Framework for Strong, Sustainable and Balanced Growth* is available at http://www.g20.utoronto.ca/2010/g20seoul-doc.pdf.

55 See http://www.g20.utoronto.ca/2011/2011-cannes-declaration-111104-en.html.

on Market Integrity and Efficiency,[56] which was endorsed in Cannes by the G20 Leaders. This report sets out recommendations to assist regulators of securities markets in addressing technology-driven issues (in particular high frequency trading (**HFT**)).The report asked regulators to:

- Ensure trading venue operators provide fair, transparent and non-discriminatory access; that venues have suitable control mechanisms; and that order flows are subject to appropriate controls.
- Assess the impact of technological developments and monitor market abuse arising from these developments and take action where necessary.

This followed the publication in May 2011 of IOSCO's report on *Principles for Dark Liquidity*.[57] The report asked regulators to ensure:

- Pre-trade and post-trade transparency (particularly from dark pool trading);
- Support or priority for using transparent orders;
- The creation of reporting regime or other means of accessing information regarding trading in dark pools;
- That information is available to market participants about dark pools and dark orders; and
- That the development of dark pools and dark orders are monitored.

In December 2013 IOSCO published the report on *Regulatory Issues Raised by Changes in Market Structure*.[58] The report noted issues around market fragmentation and the potential impact on market integrity and efficiency and made recommendations for regulators to monitor, evaluate, and take the necessary steps to facilitate compliance by market participants with relevant rules, such as those relating to order handling.

(3) Implementation Status

In reporting on implementation of this recommendation, jurisdictions were asked to indicate whether HFT and dark pools exist in their markets. They were also asked to indicate the progress made in implementing the recommendations with respect to the three abovementioned IOSCO reports.

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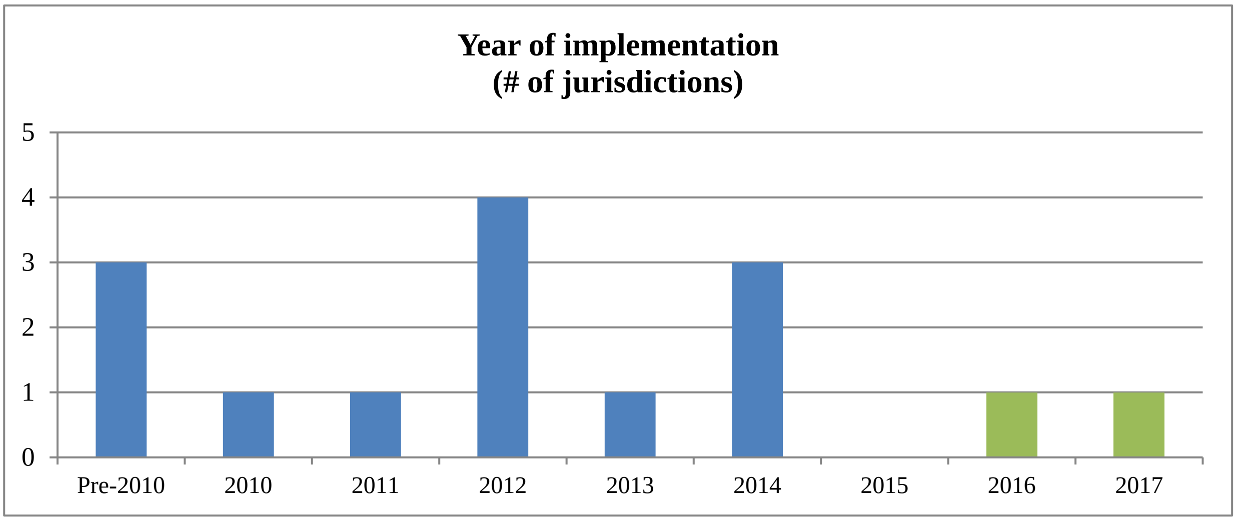
56 Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD361.pdf.

57 Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD353.pdf.

58 Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD431.pdf.

Sixteen jurisdictions reported implementation is completed (including Hong Kong and Turkey which reported completing implementation since last year's survey).[59]



Six jurisdictions (France, Germany, Netherlands, South Africa, Spain and Switzerland) report that implementation is still ongoing, but that the remaining pieces of legislation are due to be in force in the near future.

Two jurisdictions (China,[60] Indonesia) report that the recommendation is not applicable to them because neither HFT nor dark pools exist or are permitted in their markets. While other jurisdictions report implementation status as completed, noting that dark pools do not exist (India, Korea, Russia, Turkey) or are not allowed (Brazil, Mexico); or where there is no specialised regulation of HFT (Russia). In Russia, while the legislation doesn't set any restrictions on dark liquidity, there is currently no 'dark pool' trading system. There is also no specialised regulation of HFT in Russia, but certain requirements to HFTs are set by organised trading rules of the Moscow Exchange, registered by the Bank of Russia.

Jurisdictions report that they implemented this recommendation through primary or secondary legislation (39%), regulation and supervisory guidelines (32%) and other measures such as supervisory action (29%).

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59 Hong Kong reported implementation completed in 2017. Compared to last year's survey response, Turkey has changed its status from not applicable to implementation completed as of 2016. One jurisdiction who reported implementation as completed did not provide a date of implementation.

60 China acknowledges that some relatively active high frequency traders may be trading in the futures markets, however, it reports that the possibility of HFT trading is still low due to the T+1 settlement cycle in the A-Share market and the fact that stock trading in alternative trading venues, including dark pools, is illegal.

While many jurisdictions report completing work in 2014, in response to HFT, algorithmic trading and dark pools, regulators have continued to monitor, collect data and look for solutions to manage market efficiency. In 2016, the US Equity Market Structure Advisory Committee (**ESMAC**) made several recommendations to the SEC addressing topics such as extraordinary market volatility, exchange fee structures, self-regulatory organisation governance and oversight, and equity market structure issues impacting retail customers. In 2017, the EMSAC will continue to consider initiatives related to equity market structure and it is expected that they will make further recommendations to the SEC. In June 2016, the Netherlands AFM and ESMA separately published papers on the impact of HFT strategies[61] and of order duplication[62] (respectively) and their impact on liquidity. In January 2017, the French AMF published a study on the behaviour of high-frequency traders that analyzed their contribution to liquidity in normal market conditions and times of stress.[63] In August 2017, the UK FCA published a study on the impact of dark trading on market quality.[64]

Recent developments and trends

Hong Kong reports implementation completed after the launch of a Volatility Control Mechanism in HKEX's cash market and derivatives market on 22 August 2016 and 16 January 2017 respectively. Hong Kong also reports that another initiative, Pre-trade Risk Management, launched in HKEX's derivatives market in April 2016 had completed the 6-month calibration period.

Compared to last year's survey, Turkey has changed its status from not applicable to implementation completed. Turkey reports that although no dark pool is regulated and operated, some dark orders are permitted in Borsa Istanbul (**BIST**). These newly introduced mid-point orders and trade-at-reference orders are ruled by Equity Markets Implementing Procedures and Principles (amended 30 December 2016). Algorithmic and high frequency trading have now also been defined in BIST's General Letter about Pre-Trade Risk Management (**PTRM**) Application Procedures and Principles dated 5 May 2016. Under this regulation, exchange members are required to test (and assume responsibility for) algorithmic/HFT software, monitor

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[61] AFM, *A case analysis of critiques on high-frequency trading*, available at: https://www.afm.nl/~/profmedia/files/rapporten/2016/case-analysis-critiques-high-frequency-trading.ashx

[62] ESMA, *Order duplication and liquidity measurement in EU equity markets*, available at: https://www.esma.europa.eu/sites/default/files/library/2016-907_economic_report_on_duplicated_orders.pdf

[63] AMF, *Study of the behavior of high-frequency traders on Euronext Paris*, available at: http://www.amf-france.org/en_US/Publications/Lettres-et-cahiers/Risques-et-tendances/HFT.

[64] FCA, *Aggregate Market Quality Implications of Dark Trading*, available at: https://www.fca.org.uk/publication/occasional-papers/op17-29.pdf.

risks, and report to the BIST. HFT users are subject to different pricing schemes. In addition, the BIST has applied base price and price limits in the equity market and introduced a new circuit breaker system.

Most jurisdictions which report implementation as complete indicate that their regulation covers or takes into account the key elements, themes and issues arising from IOSCO's recommendations — with four jurisdictions (Brazil,[65] Singapore, UK[66] and the US) specifically reporting implementation of all aspects. Australia reports compliance with one set of IOSCO recommendations[67] and Canada reports compliance with the majority of IOSCO recommendations and that it is well-positioned to comply with the remaining ones soon. Three others (Argentina, Germany, India, Switzerland) make reference to being in line with international standards.

Most jurisdictions noted market surveillance efforts (Australia, Brazil, Canada, Switzerland) or the monitoring of the impact of technology on markets more generally (China, Italy, Korea, South Africa) or both (Japan, Saudi Arabia, Singapore, Turkey, US). Since last year's survey, Brazil reports that it is currently in its final phase of testing a new version of the market surveillance system. In Canada, the CSA approved the issuance of a Request for Proposals to procure and implement a capital marketplace data repository and analytics system ('Market Analysis Platform' or 'MAP') to efficiently identify and analyse Canadian capital market misconduct. In Japan, legislative reforms are underway in response to the Financial System Council proposal to develop a regulatory framework in which high-speed traders are required to be registered with the Japan FSA while giving consideration to regulatory responses taken by other jurisdictions. This framework is intended to require high-speed traders in the Japanese markets to meet organisational/system requirements (including risk controls) and to allow the Japan FSA to identify transactions and trading strategies of such traders. On 15 November 2016, the US SEC approved a national market system plan to create the Consolidated Audit Trail (**CAT**). The CAT will be a single, comprehensive database that will enable regulators to more efficiently and thoroughly track all trading activity in the US equity and options markets.

On HFT and algorithmic trading, India reports that SEBI, in consultation with Technical Advisory Committee, issued Circular dated 1 December 2016 that reviews the guidelines to be followed by stock exchanges, while facilitating co-location/proximity hosting. In the US, on 25 November 2016 the Commodity Futures Trading Commission (**CFTC**) proposed supplementary rules to amend previously proposed rules on automated trading. In the EU,

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65 Brazil reported full compliance only with IOSCO's recommendations in relation to HFT set out in *Regulatory Issues Raised by the Impact of Technological Changes on Market Integrity and Efficiency*. Brazil also reported that operation of dark pools is not permitted and that there is only one trading venue so the Brazilian market cannot be considered a fragmented one.

66 UK reports that existing MiFID requirements cover recommendations in the IOSCO principles.

67 *Regulatory issues raised by the impact on technological changes in market integrity and efficiency* (2011).

further progress has been based on legislative initiatives recently completed or underway. The Market Abuse Regulation (**MAR**) and Criminal Sanctions for Market Abuse Directive (**CSMAD**) entered into application on 3 July 2016. The MAR updates the existing regime to reflect market developments, strengthens the provision against market abuse across financial instruments, commodity and related derivative markets, and reinforces the investigative and administrative sanctioning powers of regulators. The proposal extends the scope of the market abuse framework to cover any financial instrument admitted to trading on a multilateral or organised trading facility, as well as to any related financial instruments traded OTC which can have an effect on the covered underlying market. MiFID II and the Markets in Financial Instruments Regulation (**MIFIR**) will enter into application on 3 January 2018. MAR and MiFID II aim to increase transparency and integrity in European financial markets, including for derivatives, commodity derivatives and OTC transactions. MiFID II also contains measures specifically targeted at investment firms that engage in algorithmic trading and algorithmic trading techniques. MiFID II should be implemented into national law by mid-2017. Since last year, the EC report adoption of all secondary legislation including implementing measures under MAR and MiFID II/MIFIR. ESMA provides ongoing support for implementation of MAR and MIFID/MiFIR through supervisory guidance in the form of guidelines and Q&As as well as opinions (position limits and ancillary services). Further guidelines namely on trading suspensions are under preparation by ESMA. ESMA has begun to publish Q&As with respect to market structure and transparency issues on the basis of MiFID II / MiFIR level 1 and level 2 legislation.

E. Regulation and supervision of commodity markets

(1) G20 Recommendation

G20 Leaders stated, in their 2011 Cannes Final Summit Declaration, that:

> ‘We need to ensure enhanced market transparency, both on cash and financial commodity markets, including OTC, and achieve appropriate regulation and supervision of participants in these markets. Market regulators and authorities should be granted effective intervention powers to address disorderly markets and prevent market abuses. In particular, market regulators should have, and use formal position management powers, including the power to set ex-ante position limits, particularly in the delivery month where appropriate, among other powers of intervention. We call on IOSCO to report on the implementation of its recommendations by the end of 2012.’[68]

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[68] See http://www.g20.utoronto.ca/2011/2011-cannes-declaration-111104-en.html.

In 2013 in St Petersburg, G20 Leaders further stated that:

> 'We also call on Finance ministers to monitor, on a regular basis, the proper implementation of IOSCO's principles for the regulation and supervision on commodity derivatives markets and encourage broader publishing and unrestricted access to aggregated open interest data'.[69]

(2) IOSCO Initiatives

In September 2011, IOSCO published *Principles for the Regulation and Supervision of Commodity Derivatives Markets* (**2011 Principles**),[70] which address a range of areas including the design of physical commodity derivatives contracts, enhancing price discovery and transparency and issues related to enforcement and information-sharing.

In 2012 the IOSCO Board commissioned the Committee on Commodity Derivative Markets (Committee 7) to conduct a survey about implementation of the 2011 Principles. The survey results were collated by Committee 7 and reported in October 2012 in the *Survey on the Principles for the Regulation and Supervision of Commodity Derivatives Markets*.[71]

This process was repeated for the G20 Brisbane Summit in 2014, in IOSCO's *Update to the 2012 Report* (September 2014),[72] with a particular focus on supervision and enforcement and those principles where members were yet to achieve full implementation.

(3) Implementation Status

While the overall numbers of jurisdiction in each implementation category is unchanged, there have been reported changes in certain jurisdictions. Fourteen jurisdictions[73] report implementation of this recommendation as completed (including Canada, which finalised its implementation efforts since 2016). Eight jurisdictions report implementation as ongoing

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69 See: http://www.mofa.go.jp/files/000013493.pdf.

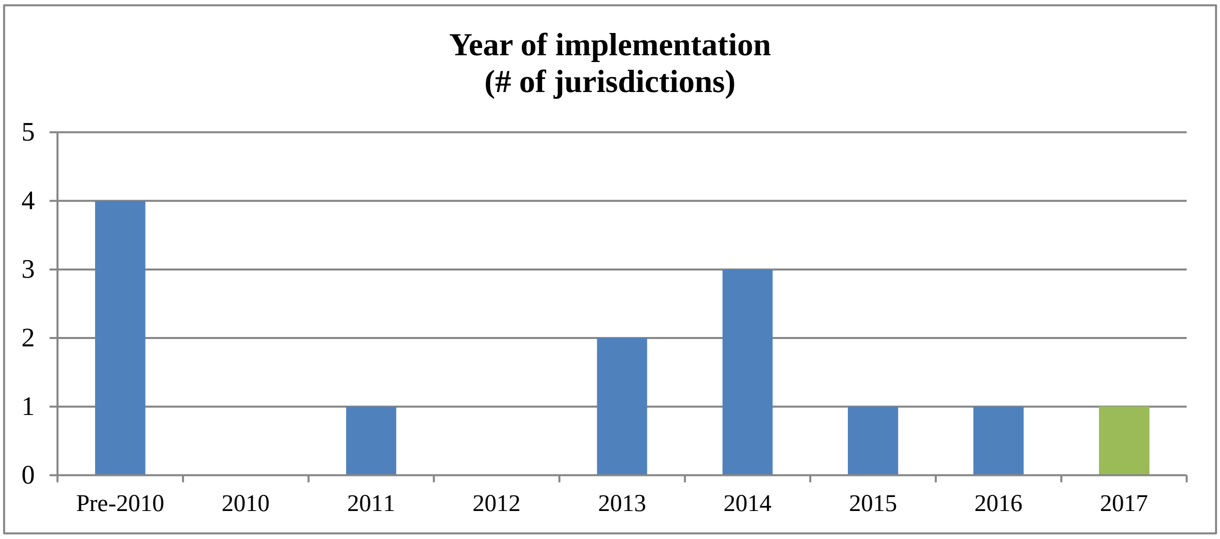
70 Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD358.pdf.

71 Available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD393.pdf.

72 Available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD449.pdf.

73 One jurisdiction who reported implementation as completed did not provide a date of implementation.

(including Germany,[74] which revised its status to implementation ongoing in 2017 to reflect ongoing MiFID II and MiFIR reforms[75]).



The relevance of this recommendation differs across responding jurisdictions because commodity markets are either not present or not important. In their responses, two jurisdictions have indicated that this recommendation is not applicable because they do not have a commodity derivatives market (Saudi Arabia) or the volume is negligible (Mexico). In addition, Turkey also reports that it has a very nascent commodity market but reports that a project to design a new commodity market is ongoing. Spain also reported that its only regulated commodity derivatives market, the Spanish Olive Oil Futures Market (MFAO), ceased operations in Q2 2016.

Jurisdictions report that they implemented this recommendation through primary or secondary legislation (43%), regulation and supervisory guidelines (41%) and other measures such as supervisory action (16%).

Available data on the size and location of commodity markets remains limited. One of the most reliable sources is the Bank for International Settlements' semiannual derivatives survey, however it only covers 11 of the 24 participating jurisdictions.[76] Exchange data also provides

74 In 2016, Germany reported its status as implementation completed due to a different interpretation of the question. Reporting has now been changed to implementation ongoing to be consistent with the EC response with respect to MiFID II/MiFIR and to not reflect any additional domestic reforms.

75 This is consistent with responses from other EU member states except Italy, which reported implementation completed on the basis of its domestic regulatory framework.

76 Available at: http://www.bis.org/statistics/derstats.htm. Of the participating jurisdictions that contribute to the BIS survey, six report that they have completed their reforms (Australia, Canada, Italy, Japan,

useful context for IOSCO's 2011 Principles, which are intended to apply primarily to exchange-traded futures contracts, options on futures contracts and options. According the World Federation of Exchanges (**WFE**) and the International Options Market Association (**IOMA**),[77] commodity derivatives (commodity futures and commodity options) continued to grow, with traded volumes increasing by 28% in 2016. A total of 6.87 billion contracts were traded in 2016 (with commodity futures representing 6.6 billion). As in 2015, commodity futures were the most actively traded class of derivative contract.

Implementation of reforms were noticeable prior to 2010 and following 2013, which is related to general market-wide reforms coming into effect. In many jurisdictions reforms involved amendments to key securities laws and instruments governing capital markets in order to give regulators the power to regulate, monitor and analyze (commodity) derivatives. This includes Argentina (Ley 26.831 enacted in December 2012),[78] China (State Council issued the Regulations for the Administration of Futures Trading in 2007 and revised the Regulations for the Administration of Futures Trading in 2012, 2013, 2016 and 2017),[79] Hong Kong (amendments to the Securities and Futures (Amendment) Ordinance gazette in April 2014), India (amendment to the Securities Contracts (Regulation) Act to merge the Forward Markets Commission with SEBI in September 2015), Japan (a bill to amend the Financial Instruments and Exchange Act was enforced in March 2014 to allow exchange to trade commodity derivatives in addition to securities and/or financial derivatives under Japan FSA supervision), Korea (revision of Financial Investment Services and Capital Markets Act in 2014), Switzerland (implementation of the Financial Market Infrastructure Act and Financial Market Infrastructure Ordinance, which came into force on 1 January 2016).

Recent developments and trends

A number of jurisdictions report actions since last year to strengthen the regulation and supervision of commodity markets, many of which are related to broader OTC derivatives market reforms.

Switzerland, US), while the remaining five (five EU member states) report that they are still in the process of implementing them.

77 WFE IOMA 2016 Derivatives Report (April 2017), available at: http://www.world-exchanges.org/home/index.php/statistics/annual-statistics. This data covers 47 exchanges representing 25 jurisdictions (counting Europe as one). These include the 24 responding IMN jurisdictions except Indonesia and Saudi Arabia (which has no market).

78 The new Capital Market Law provides the CNV with regulatory, supervisory and enforcement powers that were previously absent and was aligned with international standards. The CNV subsequently issued rules and reports implementation completed as of the 4th quarter 2014. For the purposes of the chart, Argentina is counted in 2014.

79 For the purposes of the chart, China is counted as completing implementation in 'Pre-2010'.

Canada updated its status to implementation completed as of April 2017 due to the Regulation on Mandatory Central Counterparty Clearing of Derivatives coming into force. This is in addition to other rules for OTC derivatives that are being developed and implemented. Additional work is underway with the Quebec AMF's plans to update its Derivatives Risk Management Guideline and to develop a new guideline on margin requirements for non-centrally cleared derivatives in order to implement the IOSCO principles.

While reforms are ongoing, Singapore noted completion of a significant part of its reforms, being the passing of the Securities and Futures (Amendment) Bill in January 2017. This will provide MAS with the powers to implement market reforms for OTC commodity derivatives markets. [80] In addition, MAS has begun a process to set out some of the requirements in the IOSCO Principles more explicitly in its requirements to market operators regarding the listing of commodity derivatives contracts (e.g. principle of economic utility).

South Africa reports that substantial progress had been made via the enactment of the Financial Markets Act, which provides a legislative framework to enable regulators to implement the G20 recommendations to reform the OTC derivatives market. South Africa also reports that the Financial Services Board has undertaken a gap analysis in respect of compliance with the IOSCO Principles and, following consultation with the Johannesburg Stock Exchange, has implemented actions to close the identified gaps.

In the US in 2012, a federal court vacated the CFTC's amended position limits rule, which was subsequently re-proposed on 7 November 2013 and 5 December 2016. The re-proposed position limits would provide limits for 25 'core' futures contracts, which include contracts for nineteen agricultural commodities, five metal commodities and four energy commodities. In 2016, the CFTC adopted: an amendment to modify the aggregation provisions of its proposed position limit rule (5 December 2016); amendments to the swap data record-keeping and reporting requirements for cleared swaps to provide additional clarity on reporting obligations for cleared swaps and to improve the efficiency of data collection and maintenance associated with reporting of such swaps (14 June 2016); enhanced rules on cybersecurity and system safeguards risk analysis for derivatives clearing organisations, trading platforms, and swap data repositories (8 September 2016).

Further progress in this area in the EU member states is linked to the finalisation of secondary legislation. In EU member states,[81] implementing MiFID II/MAR are underway. MiFID II

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80 Prior to this, OTC commodity derivatives markets were regulated under the Commodity Trading Act (CTA) administered by International Enterprise Singapore, and did not come within the regulatory framework for financial markets under the Securities and Futures Act (SFA). MAS will transfer the regulatory oversight of commodity derivatives under the CTA to the SFA, such that MAS will regulate OTC commodity derivatives markets, clearing facilities and intermediaries.

81 Note, Italy is the only EU member state to report implementation completed on the basis of domestic regulatory framework. Italy did not take part in IOSCO's 2012 Survey, nor the 2014 Update to the Survey.

introduces position reporting and position limits both on listed and economically equivalent OTC derivatives, in order to prevent market abuse and support orderly pricing and settlement conditions. In application of MiFID II, national competent authorities in EU member states are in the process of setting limits to positions on commodity derivatives which should be ready by 3 January 2018. MiFID II also introduces an ancillary activity exemption. MAD II extends and adjusts the market abuse regime for commodity markets, in particular, toward market abuses across spot and financial markets. The new rules under MAD II/MAR are applicable since 3 June 2016 while the process for the transposition and implementation of MiFID II/MiFIR is underway with application date of 3 January 2018. As of March 2017, the EC has endorsed regulatory technical standards[82] for the application of position limits to commodity derivatives (RTS 21) and on criteria for establishing when an activity is to be considered ancillary to the main business (RTS 20).

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82 With respect to Commission Delegated Regulation supplementing Directive 2014/65/EU of the European Parliament and of the Council.

Appendix I – List of Participating Jurisdictions

1. Argentina (Comisión Nacional de Valores);
2. Australia (Australian Securities and Investments Commission);
3. Brazil (Comissão de Valores Mobiliários);
4. Canada (Ontario Securities Commission and Quebec Autorité des marchés financiers);
5. China (China Securities Regulatory Commission);
6. France (Autorité des marchés financiers);
7. Germany (Federal Financial Supervisory Authority);
8. Hong Kong SAR (Securities and Futures Commission);
9. India (Securities and Exchange Board of India);
10. Indonesia (Indonesia Financial Services Authority (OJK));
11. Italy (Commissione Nazionale per le Società e la Borsa);
12. Japan (Financial Services Agency);
13. Mexico (Comisión Nacional Bancaria y de Valores);
14. The Netherlands (Netherlands Authority for the Financial Markets);
15. Republic of Korea (Financial Services Commission/Financial Supervisory Service);
16. Russia (The Bank of Russia);
17. Saudi Arabia (Capital Markets Authority);
18. Singapore (Monetary Authority of Singapore);
19. South Africa (Financial Services Board);
20. Spain (Comisión Nacional del Mercado de Valores);
21. Switzerland (Swiss Financial Market Supervisory Authority);
22. Turkey (Capital Markets Board);
23. United Kingdom (Financial Conduct Authority); and
24. United States of America (Commodity Futures Trading Commission and Securities and Exchange Commission).

Note: The European Commission’s response was not counted as a jurisdiction.