SECURITIES AND FUTURES COMMISSION

Speech

Keynote address at 2015 ISDA Annual Asia Pacific Conference

Mr Ashley Alder
Chief Executive Officer

26 October 2015

Today I would like to reflect a bit on some issues which I know the International Swaps and Derivatives Association (ISDA) cares about deeply.

As you know, in the wake of the financial crisis the Group of Twenty (G20) leaders kicked off an ambitious plan for global financial reforms.

The initial G20 vision was for a set of global, top-down harmonised regulations to prevent future crises.

We have been told that rulemaking is all but finished, and that we are now in the implementation phase. Well, as many of those in the world of over-the-counter (OTC) derivatives know all too well, that is not really the case. As of today, many of these reforms are still very much a work in progress.

And this is as true for the world of derivatives as it is for other projects such as cross-border hree angles. First as a member of the informal grouping of a few regulators known as the OTC Derivatives Regulators Group (ODRG). And then as a member of the Board of the International Organization of Securities Commissions (IOSCO), and finally as Chair of Force on Cross-Border Regulation which finished its work a few weeks ago.

Then in July 2012 we began a consultation on the proposed licensing regime for two new regulated activities. This covers those who deal in or advise on OTC derivatives, as well as clearing agency services.

The action then moved to the Legislative Council (LegCo). In April 2014, the Securities and Futures (Amendment) Ordinance 2014 was passed. This is the basic legal framework for OTC derivatives in Hong Kong.

There were two further consultations in 2014 which led to the first phase of the new regime coming into effect in July this year. This introduced mandatory reporting mainly for interest rate swaps and non-deliverable forwards. These requirements essentially apply to banks, approved money brokers, SFC-licensed corporations and CCPs.

The latest phase of this long journey took place last month, when we began a consultation about the second phase of mandatory reporting and the first phase of mandatory clearing.

Mandatory clearing covers standardised interest rate swaps between major dealers, either local or global.

We think that the limitation to dealer-to-dealer transactions is appropriate   at least in the first phase   because they are the most active participants in the OTC derivatives market and therefore imply the greatest systemic risk.

Now the hard question is how to decide which products should be subject to this obligation?

gauge the nature, depth and liquidity of the market for a product; the level of systemic risk and the market impact of subjecting the product to central clearing. We will also look at whether the product is subject to mandatory clearing in other jurisdictions.

We also propose that new clearing thresholds will be determined by a person
position during a calculation period.

The other piece of the latest consultation is the second phase of mandatory reporting, which will be expanded to cover all OTC derivatives and will require a wider range of transaction-related information to be reported.

The next phase of implementation is slated to begin in mid-2016. We hope the bill can be sent to LegCo for approval in January so we can meet this timeline.

Now I know that ISDA, among others, has complained about the short consultation period. The truth is that the proposals took time to put together despite some late nights and the very tight legislative timetable is a significant limiting factor   I sympathise but I am sure ISDA and others will be assiduous in commenting throughout the legislative process.

In the longer term, I am afraid we have more to come.

For one, we are working on further expanding the coverage of the mandatory reporting and clearing obligations. We will also consider introducing a regulatory regime for systemically important participants

to raise greater awareness of the key issues and challenges faced by IOSCO members on cross-border regulation, including the need for more refined thinking on the concept of

Now, what are these issues? This is what I said at the FSB plenary.

First, national securities regulators are primarily bound by their domestic laws and national interest-driven policy objectives when acting cross-border.

Second, the constitutional authority of international standard setters such as IOSCO is inevitably weak as it is not based on binding treaty obligations and therefore non-binding global standards cannot trump local law. In fact, international standards are rarely referred to directly in securities legislation. If they are not, it is hard for national regulators to take them into account if local law already deals with an issue.

Third, peer pressure to apply international standards on a uniform basis can be effective, but this tends to be far harder in securities markets compared to banks as there is far more multilateral, as in the ODRG. This is despite the fact that all these efforts put a major strain on scarce resources within regulators and local law may be unclear on the subject.

We therefore concluded in our report that the general direction of travel is fairly clear.

ent via recognition to solve cross-border overlaps, gaps and inconsistencies through a combination of more granular international standards implemented at a jurisdictional level, and an increasing emphasis on determining when it may be appropriate to recognise foreign laws and regulations as a sufficient substitute or

The asset management debate

I want to talk about one more recent example of international policy-making just to show that the ISDA community is not the only one having to wrestle with cross-border problems.

Earlier this year we saw that among securities regulators and the G20 and more particularly the FSB, which is made up of mostly central bankers and finance ministers the conversation had turned to the potential systemic importance of firms outside the banking sector.

an aspect of the shadow banking debate.