Lessons Learned from the Use of Global Supervisory Colleges

Final Report

OICU-IOSCO

The Board

OF THE

INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS

FR02/22	**JANUARY 2022**

Copies of publications are available from:
The International Organization of Securities Commissions website www.iosco.org

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Chapter 1 – Introduction

1.1.Background

Securities market regulators recognize the benefits of strong cooperation and information-sharing in supervising cross-border markets.[1] The Global Financial Crisis of 2008 (GFC) reinforced in securities market regulators the view that efficient and effective markets require fair, effective and comprehensive market regulation vigorously implemented and enforced by securities regulators with comprehensive inspection, enforcement and oversight powers backed by adequate resources and staff expertise.[2] This view still holds true today.

During the post-crisis period, when solutions were being sought by securities regulators, it became evident that the globalization of securities markets and the increase in cross-border activity raised specific challenges in terms of supervision. Jurisdictions have become increasingly interconnected, also as market participants make more use of technology. However, there may be an imbalance in the level and amount of information available to regulators and differing degrees of information sharing among jurisdictions. Enhancements to supervisory cooperation could encourage sharing of information, including during times of market stress.

In the years immediately following the GFC, international organizations such as IOSCO, the Bank for International Settlements (BIS), the Financial Stability Board (FSB) and others recognized the importance of improving supervisory and regulatory cooperation. It became clear that, without such enhanced cooperation and information-sharing among the world's securities regulators and supervisors, many of the regulatory reforms proposed to respond to the GFC around the world may prove insufficient to the tasks for which they are being designed.[3] In light of this recognition, these international organizations, and others, turned their attention to finding solutions to increase cooperation and information-sharing and to finding different types of collaborative mechanisms to foster greater supervisory cooperation, including *ad hoc* discussions, memoranda of understanding (MoUs), supervisory colleges and networks of regulators.

Recognizing the importance of further enhancing supervisory cooperation within the context of securities markets, in 2010, IOSCO published its final report entitled ***Principles Regarding Cross-Border Supervisory Cooperation*** (2010 Report), which was accompanied by a sample Memorandum of Understanding (Sample MoU),[4] and set out how securities regulators could better build and maintain cross-border cooperative relationships amid the challenges of globalization that would allow them to more effectively oversee market participants that

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1 For the purposes of this report, the words "securities markets" are used, where the context permits, to refer compendiously to the various market sectors. In particular, where the context permits, they should be understood to include reference to the derivatives markets. The same applies to the use of the words "securities regulation." (IOSCO Methodology For Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation, May 2017).

2 IOSCO's *Principles Regarding Cross-Border Supervisory Cooperation*, 2010, p.3: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD322.pdf

3 Ibid, p. 3.

4 Ibid, p. 44.

operate in multiple jurisdictions across the globe. The 2010 Report also suggested that regulators and supervisors should explore opportunities to further collaborate to identify, assess, and mitigate emerging global risks. In 2012, CPMI-IOSCO also issued the Principles for Financial Market Infrastructures (PFMI), which are international standards for systemically important payment systems, central securities depositories, securities settlement systems, central counterparties and trade repositories. The PFMI are designed to enhance the safety, efficiency and resilience of these financial market infrastructures supporting global financial markets. Responsibility E *Cooperation with other authorities* of the PFMI covers cooperation with other authorities. CPMI-IOSCO has recently released a report on the experience of authorities with cooperation based on Responsibility E.[5]

In 2013, IOSCO established a Task Force on Cross-Border Regulation to assist regulators with the challenges they faced in ensuring the effectiveness of domestic regulation without unduly constraining the cross-border offering of financial services or products. In 2015, based on the work of this Task Force, IOSCO published its final report entitled ***IOSCO Task Force on Cross-Border Regulation***[6] (2015 Report).

The 2015 Report indicates that cross-border regulation is moving towards more engagement via different forms of recognition to solve regulatory overlaps, gaps, and inconsistencies. The report presents a series of concrete next steps aimed at supporting cross-border regulation and embedding the consideration of cross-border issues more effectively into IOSCO's work.

Among other things, the 2015 Report acknowledged that internationally active market participants with affiliates or branches in multiple jurisdictions present a challenge to regulators and supervisors, as each may mainly have perspective on the market participant's activities conducted in its jurisdiction. Moreover, each internationally active market participant may be overseen by multiple authorities located around the world, but the scope and particulars of legal frameworks can vary across jurisdictions.

1.2. IOSCO's work on market fragmentation

Since 2015, some regulators and market participants noted that certain parts of the financial markets have become fragmented, often along jurisdictional lines, which may be an unintended result of the implementation of the post-GFC regulatory reforms and their national implementations.

In 2019, the Japanese Presidency of the G20 identified market fragmentation as a critical issue affecting the global economy. Informed by Japan's G20 Agenda, IOSCO determined it was timely and relevant to explore the potentially adverse impact of market fragmentation on the global securities markets.[7]

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5 https://www.bis.org/cpmi/publ/d189.pdf

6 *IOSCO Task Force on Cross-Border Regulation* - Final Report, available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD507.pdf

7 IOSCO agreed to contribute to the FSB's corresponding project on market fragmentation to avoid duplication of the work. As noted, IOSCO's work is focused on market fragmentation in securities markets.

As a result, with the IOSCO Board mandate relating to fragmentation in securities markets, IOSCO formed a Follow-Up Group to its Cross-Border Task Force (Follow-Up Group) in 2019 and mandated it to:

- examine where market fragmentation has taken place in securities markets and the potential reasons for any such developments;[8]

- take stock of the progress and experiences of IOSCO member authorities in assessing foreign regulatory regimes, including any lessons learned, policy implications and areas that could be improved; and

- establish information repositories for recognition decisions and supervisory cooperation MoUs entered into by IOSCO members.

Based on the Follow-up Group's work, in 2019, IOSCO published a report entitled ***Market Fragmentation and Cross-Border Regulation***[9] (2019 Report), which noted that deference between regulators has increased significantly and novel ways to improve cooperation have developed in recent years. At the same time, the 2019 Report recognized that several challenges remain. In this respect, the report proposed several practical steps that could strengthen cooperation between regulatory authorities and further assist regulators in addressing the adverse effects of market fragmentation.

To achieve the different aspects of its mandate, the Follow-up Group's work was divided into the following three distinct, yet related, workstreams:

(i) ***Workstream 1: Fostering mutual understanding***:

a) identifying possible fragmentation and cross-border regulatory issues early by holding annual sessions at each Regional Committee (RC);
b) asking the Affiliate Members Consultative Committee (AMCC) to develop an annual report on harmful fragmentation; and
c) using the RC as a forum for members to share jurisdictional updates where these might have a cross-border impact.

(ii) ***Workstream 2: A process for deference***:

Developing a follow-up questionnaire for Board members to identify:
a) the practical step-by-step processes for deference;
b) how these compare to the processes set forth in both the 2015 Report and 2019 Report; and
c) how jurisdictions seek to mitigate the challenges identified by Board members in the 2019 Survey as part of their deference assessments.

(iii) ***Workstream 3: Deepening supervisory cooperation***:

8 We note that the focus of the Follow-Up Group's work has been on market fragmentation in the wholesale as opposed to retail markets.

9 https://www.iosco.org/library/pubdocs/pdf/IOSCOPD629.pdf

a) leveraging the MoU knowledge-base that IOSCO is developing to seek to identify common practices and themes in MoUs signed by IOSCO members and extract lessons learned from their development and application; and
b) canvassing the experiences of IOSCO members who have participated in global supervisory colleges or similar colleges allowing cross-border cooperation as well as other relevant stakeholders to identify good practices in the establishment and conduct of supervisory colleges where appropriate.

In June 2020, the Follow-up Group completed its work on deference under **Workstream 2 – a process for deference,** with IOSCO's publication of a report entitled ***Good Practices on Processes for Deference*** (2020 Report).[10]

In terms of its work under **Workstream 1 – fostering mutual understanding**, the Follow-up Group has worked closely with, and will continue to cooperate with, IOSCO's four RCs[11] and its AMCC to discuss possible fragmentation and cross-border regulatory issues with the objective of detecting any potential issues as early as possible.

This Report presents the Follow-up Group's completed work on supervisory colleges under **Workstream 3 – deepening supervisory cooperation**, which both the 2019 Report and the 2010 Report identified as one of the collaborative mechanisms that securities regulators may use to foster greater supervisory cooperation and to obtain a more complete picture of an internationally active market participant.

1.3.Methodology

To inform the development of this "Lessons Learned from the Use of Global Supervisory Colleges" Report, the Follow-up Group took into account, among other things, the following:

- A survey on supervisory colleges conducted with IOSCO members; and

- A literature review on supervisory colleges to build on experience gained in various existing reports.[12]

Survey on Global Supervisory Colleges

In May 2021, IOSCO conducted a survey of all IOSCO members (including self-regulatory authorities) that have participated in global supervisory colleges or similar colleges (Survey) providing for cross-border cooperation among various jurisdictions, to reflect perspectives and experiences in their jurisdictions by responding to the Survey on their use of supervisory colleges in the securities markets. The Follow-up Group also sought input from the CPMI-IOSCO Policy Standing Group (PSG) in order to consider the PSG's perspective and the

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[10] IOSCO's ***Good Practices on Processes for Deference Report):*** https://www.iosco.org/library/pubdocs/pdf/IOSCOPD659.pdf

[11] IOSCO has the following four RCs: European Regional Committee (ERC); Asia-Pacific Regional Committee (APRC); Africa/Middle-East Regional Committee (AMERC); and Inter-American Regional Committee (IARC).

[12] Please refer to Annex 1 for a complete list of the documents considered as part of the literature review.

experience of its members with regard to the establishment and operation of cross-border colleges within CPMI-IOSCO's remit.

The objective for the Survey was threefold:

(1) to identify good practices in the establishment and conduct of existing and future supervisory colleges, where appropriate, drawing upon existing guidance and responses to the Survey;

(2) to identify practical issues which could be raised and usefully addressed through these colleges; and

(3) to identify sectors or areas of securities markets where the use of supervisory colleges could be beneficial.

A total of 25 responses to the Survey were received, including five responses from central banks. [13]

Literature Review

To further inform its work, the Follow-up Group also carried out a literature review of existing reports and documentation prepared by other standard-setting bodies and regulators, as well as certain academic papers. This literature review was helpful in contextualizing the use of supervisory colleges, while also allowing the Follow-up Group to build on IOSCO's previous work on supervisory colleges within the context of credit rating agencies (CRAs) and adapt it to a broader use.

1.4.Terms and Descriptions

The terms and descriptions below, which refer to terms commonly used in the securities industry, will also apply in this paper. Frequently used terms are:

- **Supervised entity**: a regulated market participant that operates in different jurisdictions including through branches, divisions, or affiliates.

- **Principal jurisdiction**: jurisdiction where the headquarters of a supervised entity is located. May also be referred as the home jurisdiction.

- **Principal regulator**: securities market authority that supervises the headquarters of a supervised entity. May also be referred as the home regulator or supervisor.

- **Local jurisdiction**: jurisdiction where a branch, a division or an affiliate of a supervised entity that is headquartered in another jurisdiction is located. In the context of this report, local jurisdiction may also refer to a jurisdiction where a supervised entity may be

[13] Australia ASIC, Bank of Canada, Brazil CVM, China CSRC, EU ESMA, France AMF, France Banque de France, Germany Bundesbank, Germany BAFIN, Hong Kong SFC, Ireland CBI, Japan FSA, Korea FSS/FSC, Mauritius FSC, Mexico CNBV, Netherland De Nederlandsche Bank, Ontario OSC, Quebec AMF, Singapore MAS, Spain CNMV, UK FCA, US FINRA, US CFTC, US SEC, US NFA.

providing products or services to individuals or entities without having an established physical presence – for example, via reverse solicitation or online marketing. May also be referred as a host jurisdiction.

- **Local regulator**: securities market authority of the local jurisdiction. May also be referred as a host regulator or supervisor.

1.5 Structure of the report

This report adopts the following structure: Chapter 2 provides an overview of the international guidelines and practices followed by global supervisory colleges across various sectors of financial services and the reasons for the use of supervisory colleges for cross-border regulation. Chapter 3 then delves into the functioning of these colleges and, on the basis of the Survey responses received and the literature review undertaken, sets out a series of Good Practices that could be considered for the creation and use of global supervisory colleges in securities markets. Chapter 4 then concludes with a discussion on areas of securities markets where the use of global supervisory colleges in the future could be beneficial.

Chapter 2: Global supervisory colleges at present

2.1 What are supervisory colleges?

Both the 2019 Report and the 2010 Report identified supervisory colleges as one of the collaborative mechanisms that securities regulators may use to foster greater supervisory cooperation**.** They have been identified as an important tool to be considered for achieving effective and efficient supervision of internationally active market participants.

While there is no uniform definition or structure for global supervisory colleges, they are typically understood to have one or more of the following features: providing for cooperation among regulators and supervisors from various jurisdictions, facilitating the exchange of information necessary for the carrying out of the mission of authorities involved in the supervision of a specific supervised entity and/or identifying issues or problems early and addressing them quickly, acting cooperatively as appropriate.

A number of international bodies and standard setters, including IOSCO, have identified high-level principles relevant to the establishment of supervisory colleges. For example, in 2013, IOSCO published a final report entitled ***Supervisory Colleges for Credit Rating Agencies,***[14] which recommends establishing supervisory colleges for internationally active CRAs and provides guidelines on how to constitute and operate such colleges.

Additional relevant papers include the 2010 Report which sets out common elements of supervisory colleges and the 2014 Basel Committee on Banking Supervision's ***Principles for Effective Supervisory Colleges*** (BCBS Report) which lays out seven Principles that assist bank supervisors in running colleges.[15]

IOSCO General Principles for Supervisory Cooperation:

The use of global supervisory colleges is also supported by several of the IOSCO General Principles for Supervisory Cooperation set out in the 2010 Report,[16] such as:

- Authorities should, on the basis of mutual trust, consult, cooperate and be willing to share information to assist each other in fulfilling their respective supervisory and oversight responsibilities for regulated entities operating across borders, such as intermediaries, collective investment schemes, hedge funds, CRAs, clearing organizations, trade warehouses and markets.

- Mechanisms for supervisory cooperation should be designed to provide information both for routine supervisory purposes and during periods of crisis.

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[14] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD416.pdf

[15] BCBS 2014 Report: *Principles for Effective Supervisory Colleges* https://www.bis.org/publ/bcbs287.pdf

[16] IOSCO's *Principles Regarding Cross-Border Supervisory Cooperation*, 2010, p. 4, available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD322.pdf

- As appropriate, authorities should enter into MoUs to share relevant supervisory information in their possession.

- Authorities must establish and maintain appropriate confidentiality safeguards to protect all non-public supervisory information obtained from another authority.

Among other things, the 2010 Report identifies **common elements of supervisory colleges**[17] that could be considered as modified within the context of this report:

- Oversight of an identified regulated internationally active market participant;

- Two or more regulators, central banks or other financial authorities with a direct regulatory interest in the market participant;

- Periodic face-to-face or virtual meetings;

- Emphasis on cross-border communication and oversight of firm-wide risk on an ongoing basis as well as during a crisis;

- Exchange of supervisory information, where appropriate and consistent with national laws; and

- Recognition that non-institution specific information may have a wider interest beyond those authorities with direct regulatory oversight.

In many cases, supervisory colleges may need to be supplemented by a written arrangement, usually taking the form of an MoU, that establishes a framework for the exchange of non-public information with an emphasis on confidentiality safeguards, as well as language on potential onward sharing of non-public information and permissible uses of non-public information.

BCBS Principles for Effective Supervisory Colleges

As an illustration, the BCBS Report includes several key elements for the operation of a supervisory college for banking groups in connection with the seven Principles set out in the report:[18]

- Colleges should enhance information exchange and cooperation among supervisors to support effective supervision of international banking groups.

- College members should make their best efforts to share appropriate information with respect to the principal risks and risk management practices of the banking group.

[17] IOSCO's Principles Regarding Cross-Border Supervisory Cooperation, 2010, p. 34, available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD322.pdf

[18] Basel Committee on Banking Supervision, Principles for effective supervisory colleges, June 2014: https://www.bis.org/publ/bcbs287.pdf

- Mutual trust and relationships are key for effective information-sharing. Formal confidentiality arrangements, such as contained in MoUs, among college members facilitate this process.

- Colleges should promote collaborative work among members, as appropriate and within legal constraints.

- Sharing and allocation of tasks does not absolve supervisors of their obligations. In particular, collaborative work should not imply delegation of an individual supervisor's responsibilities, or of joint decision-making responsibilities.

- Colleges are not intended to be decision-making bodies but should provide a framework to enhance effective supervision of international banking groups and could inform decision-making in that regard.

- Physical meetings should be held on a regular basis as agreed by the college's members and, for the core colleges of the largest banking groups, at least annually. In between physical meetings, use of video and/or audio conferences should be considered to facilitate exchange of supervisory assessments.

2.2 Why are supervisory colleges used?

Supervisory colleges also can provide a platform for communicating key supervisory messages such as high-level findings from supervisory exercises among college members to help the development of the common understanding of the risks related to the supervised entity. In addition, they can provide an opportunity to learn about the objectives and practices of the other regulators involved. They may also serve as a conduit to develop individual supervisory work initiatives and to improve consistency of supervisory approaches. With respect to the latter, supervisory authorities may seek to collaborate, to the extent legally permissible, regarding their supervisory activities and may undertake joint work with other college members (such as thematic analysis and joint research projects) to increase the efficiency and effectiveness of the supervisory activities of the individual supervisory authority. Some Survey respondents also mentioned that supervisory colleges can provide a network to a participating authority that enables its staff to contact the right people at different authorities involved in the supervision of a supervised entity.

Globally, supervisory colleges can contribute to the stability of the financial system, by providing a platform for strong supervisory cooperation and coordination.[19] Supervisory colleges can serve as one type of effective communication and coordination channel that can be leveraged further to foster trust and collaboration with the aim of systematically mitigating unnecessary market fragmentation.[20]

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[19] International Association of Insurance Supervisors (IAIS) Application Paper on Supervisory Colleges, October 2014, available at: https://www.iaisweb.org/page/supervisory-material/application-papers//file/34551/application-paper-on-supervisory-colleges

[20] https://www.asifma.org/wp-content/uploads/2020/08/asifma-fragmentation-paper-f20200804.pdf (ASIFMA Report).

As discussed in the FSB's ***Report on Market Fragmentation***, supervisory colleges have positively contributed to greater cross-border information sharing since the GFC.[21] Furthermore, according to a report published in 2020 by the Asia Securities Industry and Financial Markets Association entitled ***Addressing Market Fragmentation through the Policymaking Lifecyle*** (ASIFMA Report), the existing scopes and mandates of supervisory colleges can be further expanded to formally include assessment of cross-border regulatory fragmentation and its effects at both the national and regional levels, particularly during the implementation phase of the policymaking lifecycle.

Finally, supervisory colleges can assist supervised entities as it allows them an opportunity to discuss, in one college setting, their risks and their business models with different regulators involved in their oversight, reducing their burden.

2.3 What sectors of finance are they currently used in?

While global supervisory colleges have been historically used in the financial market sectors, including banking and insurance, and have been implemented for CRAs and central counterparties (CCPs), their use is not yet widespread in other sectors of securities markets.

Accordingly, the 2019 Report proposed, taking into account any existing and relevant work undertaken by other standard setting and supervisory bodies, that IOSCO could explore whether and how existing supervisory colleges currently achieve their stated goals and, if appropriate, identify ways to increase their use.

Most Survey respondents stated that they participate in supervisory colleges for CRAs, financial market infrastructures (FMIs) such as CCPs, and market intermediaries. A minority of respondents stated that they participate in other types of colleges (e.g., audit firms, asset management, trading venues).

Please refer to Chapter 4 for other sectors and areas of securities markets where supervisory colleges could be used.

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[21] Financial Stability Board. FSB Report on Market Fragmentation. (4 June 2019). Retrieved from: https://www.fsb.org/wp-content/uploads/P040619-2.pdf

Chapter 3: The functioning of global supervisory colleges and areas of improvement

In this chapter, we explore the functioning of supervisory colleges and discuss areas where the Survey of supervisory authorities has highlighted where these supervisory colleges could be improved. Where this is the case, the report sets out a series of good practices that regulators and supervisors could consider for global supervisory colleges in securities markets, drawing on existing practices and proposing new ones where appropriate.

The good practices set out below are not "one-size-fits-all" and not every good practice may be applicable or appropriate to all supervisory colleges, which vary widely in scope and the type of supervised entity. The aim of the good practices is to assist members in establishing and maintaining a supervisory college, and the good practices should not be construed as formal expectations nor recommendations by IOSCO. In considering whether there may be a benefit to adopt these practices, regulatory and supervisory authorities should consider the balance between the benefits they may have compared to the overall resources required to implement and maintain them.

3.1. Areas of focus

Across insurance, banking and FMIs, supervisory colleges have been set up to assist regulatory and supervisory authorities in developing a full overview of the risk profile of entities under their direct supervision that operate cross-border.

Supervisory colleges can provide a framework where these regulators can discuss topics of relevance to the supervision of the entity. Based on the Survey responses, college discussions concentrate on topics such as the business model and the strategy of the entity, its organizational requirements, risks stemming from its operations and other matters.

With regard to CRAs, for example, the type of information that could be discussed or shared includes information on inspection or examination findings regarding the CRA's compliance with local or regional laws and regulations; the CRA's implementation and adherence to the IOSCO Code of Conduct for CRAs; and the establishment and operation of rating models and methodologies, internal controls, procedures to manage conflicts of interest, and procedures for handling material non-public information.[22]

In the banking, securities, and insurance sectors, where certain firms are subject to capital requirements, these could also be discussed as part of the supervisory college. One specific example, as set out by BCBS for the banking sector, is how the introduction of the Basel Framework has been assisted by supervisory colleges: "*The introduction of the Basel framework, particularly Basel II, underscored the need for supervisory cooperation, as supervisors worked together on topics such as model review and approval. Supervisory colleges have since played an increasingly important role in sharing information and*

[22] Supervisory Colleges for Credit Rating Agencies, IOSCO, 2013, available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD416.pdf

coordinating supervisory activities related to implementation of Basel standards, especially for large internationally active banking groups."[23]

In practice, these types of subjects are addressed through a discussion of the main, high-level, findings of supervisory reviews and in discussion with the entity itself, which is often invited to participate in one part of the supervisory college.

Overall, surveyed participants in supervisory colleges stated their participation is particularly useful with regard to enhancing the quality of the information they have access to with regard to the operations, corporate structure and resources of a market participant. They stated it provided them with better information for consideration within their own supervisory activities. Indeed, many observed this ability to share information and good practices allowed them to better identify and assess risks stemming from the supervised entity's operations.

Global supervisory colleges therefore typically discuss broad themes and, while generally helpful to college members, some respondents to the Survey highlighted areas where discussions in supervisory colleges could be enhanced. For example, respondents in some jurisdictions suggested that discussing differences in regulation between participating members could be helpful, notably given how these differences may affect the subsidiaries of internationally active market participants. This may be particularly helpful when a subsidiary of the supervised entity needs to comply with both local regulations and regulations in the principal jurisdiction.

Several Survey respondents also emphasized that supervisory and enforcement actions remain within the scope and the discretion of the relevant regulator or supervisor and are subject to the applicable jurisdiction's legal framework. In particular, respondents indicated that enforcement actions follow the laws and regulations and any limitations that exist in the relevant jurisdiction's applicable legislation. Supervisory colleges do not have direct supervisory powers over the supervised entity nor the power to limit the authority or discretion of the relevant regulators or supervisors over the supervised entity.

Good Practice 1: A global supervisory college could serve as a **forum** to facilitate: (1) the exchange of information and collective risk assessment among supervisors of the supervised entity, where appropriate and legally permissible; (2) cooperation with regard to supervisory activities, including possible consideration of conducting thematic analysis of issues of common interest, where appropriate and legally permissible; and (3) presentations from the supervised entity (where appropriate and, if practicable, in person or by video).

The college also could, on the back of its discussions, consider whether any emerging risk issue might merit a potential policy response.

[23] Principles for Supervisory Colleges, Basel Committee on Banking Supervision, 2014 ("BCBS Report"), available at https://www.bis.org/publ/bcbs287.pdf

Crisis Management Arrangements

Crisis preparedness plans may also be discussed in supervisory colleges, and authorities and market participants benefit from the implementation of cross-border crisis management groups for resolution, as do FMIs for example.[24]

In banking and securities sectors, where crisis management groups exist for the global systemically important banks (G-SIFIs), the FSB has set out the key attributes that effective resolution regimes for financial institutions should have and encourages its members to set these out in their legislative frameworks.[25] One of these attributes is the organization of a crisis management group (CMG) to enhance coordination and cooperation between home and host authorities by preparing for the effective management and/or resolution of a cross-border financial crisis affecting the institution and carrying out recovery and resolution tasks such as the management of recovery and resolution plans.

For example, in banking, the Key Attributes call for CMGs in the case of G-SIFIs while, in the context of FMIs, the FMI annex to the Key Attributes advises that:

"[CMGs] or other arrangements based on the cooperative arrangements maintained under Responsibility E [of the *CPMI-IOSCO Principles for Financial Market Infrastructures* (PFMI)] that achieve an equivalent outcome should be maintained for all FMIs that are systemically important in more than one jurisdiction, as determined by the oversight or supervisory authorities and resolution authorities in those jurisdictions."[26]

Authorities in participating jurisdictions can cooperate – both *ex ante* and during a crisis – by sharing information and discussing assessments of the activities and the state of the entity within their jurisdictions so as to ensure they are able to pursue their functions within their own jurisdiction in the management and resolution of a crisis, and to preserve financial stability.[27]

Crisis preparedness plans are not typically discussed in supervisory colleges implemented for CRAs or other supervisory colleges within securities markets where these colleges exist, and some Survey respondents suggested that *ad hoc* arrangements for exchanging information among college members (e.g., special conference calls) could be set up within a supervisory college in the event of unexpected emergencies that might impact the activities of the entity or raise financial stability concerns. Using the case of the Covid-19 crisis as an example, some

[24] The FSB Key Attributes of Effective Resolution Regimes for Financial Institutions1 ('Key Attributes') require home and key host authorities of FSB-designated global systemically important financial institutions ('G-SIFIs') to maintain Crisis Management Groups ('CMGs') to prepare for and manage a cross-border financial crisis affecting the firm. Among other things, CMGs provide a forum for the discussion and agreement of resolution strategies and plans and the coordination of resolvability assessments. Ref.: Guidance on Cooperation and Information Sharing with Host Authorities of Jurisdictions where a G-SIFI has a Systemic Presence that are Not Represented on its CMG, November 2015: https://www.fsb.org/wp-content/uploads/Guidance-on-cooperation-with-non-CMG-hosts.pdf

[25] Key Attributes of Effective Resolution Regimes for Financial Institutions ("Key Attributes"), FSB, 2014, available at https://www.fsb.org/wp-content/uploads/r_141015.pdf

[26] Key Attributes, Appendix II, Annex 1, at §9.1

[27] Key Attributes

indicated that such arrangements could be helpful in terms of exchanging views and information about how the entity is coping with the crisis.

These types of *ad hoc* crisis management arrangements among college members, or a form thereof could, where appropriate, also be helpful in coordinating supervisory actions to mitigate any spillover effects arising from the default of firms that are systemically important in multiple jurisdictions in the context of the securities markets, where such CMGs do not currently exist.

Good Practice 2: Global supervisory colleges could maintain an element of flexibility which allows them to meet and discuss issues in a **crisis situation.**

3.2. Governance of global supervisory colleges

Establishment of global supervisory colleges

In certain jurisdictions, the mandate for establishing colleges stems from the local or regional legal framework. Based on the Survey, most jurisdictions do not seem to have specific supervisory college provisions set out in their legal regimes and jurisdictional authority exists without specific provisions relating to supervisory colleges. Some authorities indicated they generally considered establishing a supervisory college following recommendations stemming from international organisations' work, where specific risks have been identified which merit particular cross-border cooperation, for example, for CRAs where IOSCO set out recommendations or for CCPs where IOSCO and CPMI made recommendations that authorities may do so as part of their implementation of Responsibility E *Cooperation with other authorities* of the PFMI.

The establishment of a global supervisory college will typically be based upon a written arrangement that would include key features of the college, such as: (i) how the supervisory college will be organized; (ii) how college membership will be determined; and (iii) the scope of regulatory issues that the college will consider. Most Survey respondents agreed that these written arrangements were an important feature of supervisory colleges to enhance cooperation among college members.

Information-sharing

For several Survey respondents, the framework for sharing information through global supervisory colleges is efficient and can be useful to inform and enhance a regulator's supervisory approach or actions.

While there is typically no specific requirement in law for participation in global supervisory colleges, participating jurisdictions generally have legal or regulatory requirements with regard to sharing information with other authorities, including foreign authorities. Therefore, supervisory colleges are typically underpinned by written multilateral cooperation arrangements, such as MoUs, that include provisions on the use and confidentiality of non-public information. Bilateral MoUs may also be used, meaning that each college member would have an MoU with each of the other participants in the supervisory college. These bilateral MoUs are non-binding and will typically cover topics such as information exchange, notification arrangements and confidentiality or professional secrecy.

Good Practice 3: Global supervisory colleges could consider governance by an **underlying written arrangement** that addresses cooperation and information sharing during business as usual and in crisis situations and establishes shared understandings for the use and confidentiality of non-public information shared among college members.

Good Practice 4: Information sharing gateways and confidentiality safeguards could be established through the development of a **multilateral confidentiality arrangement** among the members of a global supervisory college (or when available, through existing bilateral supervisory MoUs between members). In developing a confidentiality arrangement, the college may take into consideration the confidentiality and permissible use provisions of the "Annotated sample Memorandum of Understanding" in the 2010 IOSCO "*Principles Regarding Cross-Border Supervisory Cooperation*."

Chairperson

Before the supervisory college is formally established, supervisors will often discuss and reach an understanding on which of them is the principal regulator for the supervised entity and which authority, as such, will become the Chair of the global supervisory college. This regulator or supervisor is usually the one where the headquarters of the entity are formally established (i.e., the principal regulator).

The Chair authority typically takes overall responsibility for planning and coordinating the work of the various college structures that might underpin a global supervisory college. This will include coordinating the activities of the college and the more administrative tasks attached to that role such as selecting initial college members, maintaining the list of college members, planning meetings, setting the agenda, distributing relevant information to participating members, organizing presentations and chairing the meetings. The Chair also plays a key role in facilitating communication between college members, acts as a central point of contact for any matter related to the college's internal organization and operations and, where appropriate and possible, invites third-party attendees such as the supervised entity.

In terms of the annual organization of activities of the supervisory college, the Chair is also typically in charge of the planning cycle for the activities to be carried out by the supervisory college. As noted by IAIS, *this process usually begins with the draft of a workplan and ends with an evaluation of the supervisory college activities. During the cycle, a number of activities revolve around planning, conducting and follow up of supervisory college meetings, ad hoc or regular information exchange and other supervisory college activities.*[28]

Generally, Survey respondents indicated the role of the Chair is useful, noting they believed that collecting information on supervisory plans and concerns as well as key projects and implications on risk management before a supervisory college meeting took place was helpful as it allowed them to come to the meeting ready to discuss specific points, while also permitting them to meet their own objectives. College members who would like to discuss their and other members' supervisory plans and concerns, as well as key projects and implications for risk

[28] Application Paper on Supervisory Colleges, IAIS, 22 October 2014, page 17, available on the IAIS Website: https://www.iaisweb.org/page/supervisory-material/application-papers//file/34551/application-paper-on-supervisory-colleges.

management, could notify the Chair and share this information directly with other college members, with adequate notice before a supervisory college meeting. Interested members could likewise share their information prior to a meeting, subject to adequate notice.

The Chair's approach is, however, not consistent across supervisory colleges. Some Survey respondents suggested that development of an agenda could be an important element of supervisory colleges in securities markets.

Good Practice 5: In general, the relevant principal regulator of a supervised entity could appoint a representative as the **chairperson** of the global supervisory college, unless the principal regulator designates the chairperson function to a local authority.

Good Practice 6: The chairperson, typically in charge of planning the cycle of activities for the supervisory college, could consider developing an agenda available to all college members to help prepare for supervisory college meetings.

3.3. Membership

Membership is a key element of how a global supervisory college will be designed and structured. In many instances, the Chair authority is responsible for selecting participating members, although it may discuss new membership applications with (or, in some cases, may be required to obtain consent from) existing members where the supervisory college has already been set up. In many cases, the membership criteria are suggested in IOSCO or other international organizations or jurisdiction's reports or set forth in the MoU for the supervisory colleges or in the applicable domestic guidance.

IOSCO's *Principles for Supervisory Colleges for Credit Rating Agencies* sets out important criteria in the selection of participating members to ensure the effectiveness of the colleges.

The three most important criteria for CRA college membership are:

(i) The internationally active CRA has a separately incorporated significant affiliate or branch physically located in the jurisdiction of the IOSCO member, which: a) issues ratings in the name of the CRA; and b) is subject to the global policies and procedures of the internationally active CRA.

(ii) The IOSCO member has the statutory authority to directly supervise the CRA's affiliate or branch as a CRA, including the ability to conduct examinations and/or inspections, to compel documents, evidence, and other information, and to initiate enforcement actions for violation of statutes and regulations relating to its activities as a CRA.

(iii) The IOSCO member has the authority (or delegated power) and willingness to share relevant information with other members of the CRA college and the legal authority to safeguard the confidentiality of non-public information it receives from other members of the CRA college.[29]

[29] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD416.pdf

While language may differ, these types of criteria are similar in other sectors. In practice, while relying on those or similar criteria, the Chair of a supervisory college may take a functional approach inviting authorities that have an interest at stake in the supervised entity.

For example, where FMIs are concerned, PFMI Responsibility E *Cooperation with other authorities* calls for flexibility in cooperation among relevant authorities.[30] In this context, key consideration 6 of Responsibility E states that "*When assessing an FMI's payment and settlement arrangements and its related liquidity risk-management procedures in any currency for which the FMI's settlements are systemically important against the principles, the authority or authorities with primary responsibility with respect to the FMI should consider the views of the central banks of issue. If a central bank of issue is required under its responsibilities to conduct its own assessment of these arrangements and procedures, the central bank should consider the views of the authority or authorities with primary responsibility with respect to the FMI*."[31]

Where appropriate and in certain circumstances, an authority that has statutory responsibilities over the operations or activities of the supervised entity, where FMIs are concerned for example, could be invited to participate in the college.[32] This could be the case where operations or activities of the supervised entity would have a severe impact on financial stability in the jurisdiction of the authority in question or would severely impact the operations or activities of entities that this authority directly supervises, or because a material event affecting these other regulated entities would adversely impact the supervised entity and therefore would be of interest to the principal regulator.

Sometimes, however, the Chair may seek to keep the college manageable. While limiting participation may facilitate the functioning of the global supervisory college, it may exclude certain supervisors who would meet the criteria, for example from emerging markets, despite the potential for entities that are subject to these colleges having importance within their jurisdictions.

This suggests membership selection consideration could be left sufficiently flexible to accommodate relevant supervisors with a direct regulatory interest in the entity. Respondents to the Survey suggested criteria such as: (i) purpose of the college; (ii) geographic profile and significance of the local branch, division or affiliate within the supervised entity; (iii) operational integration across jurisdictions; and (iv) risks and vulnerabilities in supervising the market participant that could be identified as specific, high-level, requirements with further guidance developed to assist regulators.

Good Practice 7: In order to become a **member of a global supervisory college**, an authority located outside of the supervised entity's principal jurisdiction should meet the following criteria:

[30] IOSCO and the Committee on Payments and Market Infrastructures (CPMI) work together to enhance coordination of standard and policy development and implementation, regarding clearing, settlement and reporting arrangements including financial market infrastructures (FMIs) worldwide.

[31] https://www.bis.org/cpmi/publ/d101a.pdf

[32] As noted above, the PFMIs are the international standards for FMIs. Those PFMIs fall within the responsibility of CPMI-IOSCO.

(1) The authority has the legal authority to directly supervise the supervised entity, its significant branch, division or affiliate located in its jurisdiction (e.g., the largest branches, divisions or affiliates of the supervised entity or the supervised entity's key decision-makers are located in the local jurisdiction) or, where it is appropriate, the authority has direct statutory responsibilities over the operations or activities of the supervised entity.[33] Legal authority may include the ability to conduct examinations and/or inspections, to compel documents, evidence, and other information, and to initiate enforcement actions for violation of statutes and regulations relating to the activities of the supervised entity, its branches, divisions or affiliates.

(2) The authority has the legal authority (or delegated power and approvals) and is willing to share relevant information with other members of the college and the legal authority to safeguard the confidentiality of non-public information it receives from other members of the college.

Global Supervisory College Transparency

One other related and important aspect to note is that there may sometimes be a lack of transparency regarding the criteria considered by a Chair authority when making membership decisions. This point was raised by some Survey respondents as an area where further improvements could be made to allow them to express interest in seeking membership in specific colleges. It was also raised that, in certain cases, some IOSCO members did not know of the existence of a college and its members. IOSCO is addressing the matter and developing appropriate processes to share information on future supervisory colleges.

Some Survey respondents have called for the publication of, at a minimum, the calendar for global supervisory colleges, to provide an opportunity for those regulators involved in the supervision of the supervised entity who may have an interest in attending a meeting to register their interest. However, meeting attendance would involve satisfaction of membership criteria and likely an underlying written arrangement with each existing member or an existing colleges-based arrangement well in advance of a meeting.

Supervisory colleges could consider providing key information regarding the list of their members and their membership criteria and developing appropriate sharing processes, including through a protected platform, for example on IOSCO's website. The college Chair should also be transparent with the affected regulator regarding the details related to a membership decision.

[33] The authority may have direct statutory responsibilities over the operations or activities of a supervised entity where these operations or activities would severely impact financial stability in the authority's jurisdiction and/or the operations or activities of entities that this authority directly supervises, or a material event affecting these other regulated entities could adversely impact the supervised entity. As noted in the Good Practice, this broader approach to core membership may however not be applicable in all circumstances. For example, it is not applicable in the case of CRA Colleges where only an IOSCO member which supervises a CRA's affiliate or branch can form part of a core college, as per the 2013 IOSCO Report on Supervisory Colleges for Credit Rating Agencies.

Good Practice 8: There could be **transparency to regulators** regarding the fact that a global supervisory college exists; members of the college; and how members are added or removed.

Good Practice 9: The calendar of meetings for these supervisory colleges could have transparency and be made available.

3.4. The "Core-Extended Approach"

The specific design of the college, typically based on current international principles for various sectors of financial markets, generally takes into account the structure of the supervised entity's international operations. For example, in banking, BCBS recommends considering *the significance of a bank's operations in host jurisdictions to advance macroprudential objectives, in conjunction with the significance of such operations to the overall banking group.*[34] A similar approach is reflected in insurance as well as for CCPs and CRAs.[35]

In practice, global supervisory colleges are generally designed as groups where only the most potentially affected local supervisors that have a significant statutory interest are invited to attend discussions, in an attempt to achieve efficiency. These are typically referred to as having a "single college structure" and are those that tend to be used for CRAs and CCPs, for example.

However, as supervisory colleges are generally also designed to focus on broad themes that are common irrespective of jurisdictional requirements, some respondents to the Survey highlighted some areas of improvement in the design of the college.

Specifically, they noted it would be useful to form *ad hoc* subgroups comprised of selected college members on specific topics to allow regulators specifically interested in that topic to conduct an analysis of the supervised entity's specific activities. This would be especially true where the number of the participating authorities in the global supervisory college is large, and the topics of interest may vary among its members. While the high-level findings and outcomes of the discussion could then be shared with the college plenary, this was seen as another way to improve the efficiency of supervisory colleges.

In that context, some colleges have adopted a "core-extended" structure which allows smaller local regulators that may have some interest in the supervision of the internationally active market participant to gain some insight into the discussions taking place in the supervisory college. In this context, the single college structure is combined with a broader "extended" college – also called a "universal" or "general" college[36] – where other supervisory authorities are allowed to participate with the aim of broader information-sharing.

[34] *Principles for effective supervisory colleges*, BCBS. June 2014, supra fn. 18.

[35] https://www.iaisweb.org/page/consultations/closed-consultations/2021/draft-revised-application-paper-on-supervisory-colleges

[36] https://www.bis.org/publ/bcbs276.pdf

Potential Benefits

This type of core-extended structure can be particularly helpful in maintaining the efficiency of the supervisory college by allowing supervisory authorities to discuss and focus on specific risks or issues related to the supervised entity, its different branches, divisions or affiliates while being sufficiently flexible to involve a broader set of members and gather information on regional and global issues that may be relevant to all members. In addition, this type of structure also has the additional benefit of preventing the duplication of supervisory colleges, an issue raised by some Survey respondents.

At the moment, this type of approach is used in the banking sector but does not appear to be in use for CCPs or other areas of securities markets though some Survey respondents have called for further development of this type of structure.

Moreover, the "core-extended" structure can be particularly convenient in terms of involving authorities in emerging markets economies in broader discussions about the impact a supervised entity may have or understanding the type of risks a branch or affiliate in those jurisdictions may be taking that could impact the broader group. Indeed, a supervised entity may be particularly important for the economy of an emerging market jurisdiction without the local regulator being invited to participate in the global supervisory college. This may be because the activities of the supervised entity in its jurisdiction are small in comparison to its activities elsewhere. As such, while supervisors in emerging markets may lack the type of resources, knowledge and experience available in developed jurisdictions, they can be as, if not more, adversely affected in absolute terms by the activities of certain entities operating on a cross-border basis.[37] Survey respondents from emerging jurisdictions agreed with the view that participating in supervisory colleges allowed them to learn from the practices of more experienced supervisors.

This inclusiveness is one aspect identified as an area of potential improvement, and key to further developing the use of global supervisory colleges in the securities sector. However, for such an approach to function effectively and to avoid undermining the usefulness of colleges, it is important to consider criteria such as membership of both the core and extended group, the remit of their activities and responsibilities and how information will be shared across the groups.

Membership Criteria

As noted above, single college structures typically include: (i) the principal jurisdiction of the supervised entity; (ii) the local jurisdictions where the supervised entity has significant branches, divisions or affiliates (e.g., the jurisdictions where key decision-makers are located, where the largest branches or affiliates of the supervised entity are located); and, where appropriate, (iii) jurisdictions where an authority has significant direct statutory responsibilities over the operations or activities of the supervised entity. In that regard therefore, the membership of the "core group" could consist of the same membership as described in Section

[37] Alford, Duncan, *International Financial Reforms: Capital Standards, Resolution Regimes, and Supervisory Colleges and Their Effect on Emerging Markets* (February 19, 2012), available at: SSRN: https://ssrn.com/abstract=2007979 or http://dx.doi.org/10.2139/ssrn.2007979

3.3. On the other hand, authorities invited to participate in the "extended" group of the supervisory college could include:

- Jurisdictions where the supervised entity has a small locally regulated branch, division or affiliate in the jurisdiction, specifically where that small entity is of particular importance to the jurisdiction's domestic market, conducts operations in that jurisdiction or provides services to domestic market participants such as financial institutions;

- Jurisdictions where a locally regulated service provider is located to which the supervised entity, that may not be regulated by the local regulator, is outsourcing critical or important functions, services or activities that would otherwise be undertaken by the supervised entity itself.

The use of third-party service providers by regulated entities to carry out, or otherwise support, some of their regulated business activities is of growing importance in the securities markets. While outsourcing can deliver benefits, it may also raise concerns about risk management and compliance when such tasks are outsourced to entities that are not regulated in the jurisdiction and/or are based in different jurisdictions.[38] In particular, it can diminish a regulator's ability to regulate or supervise certain functions within firms or other regulated entities. As such, participation in the "extended group" of a local regulator that regulates a service provider to which the supervised entity is outsourcing certain functions, services or activities can be valuable to foster a better comprehension of the risk management of the supervised entity and obtain a complete picture of its activities.

Core supervisory college members could consider whether or how a tiered structure could be established, with clear membership criteria for core and extended members and a process for how the two groups will be run. For example, as discussed above, this core-extended approach could be run along topical lines – with an extended membership meeting to discuss the outsourcing activities of a supervised entity and the risks these activities may bring about. In this context, the core college could be joined by jurisdictions where the supervised entity is outsourcing its activities.

A core-extended approach could be tiered, where members in jurisdictions with a smaller footprint provide an overview of their findings to the core group and members of the core group, on the other hand, provide an overview of their supervisory approaches and activities to the members in the extended structure. The core group could then work closely with the extended group to aggregate and disseminate information efficiently to allow the core group to consider what type of risks they may need to consider themselves.

Information-sharing and Confidentiality

The existence of a "core-extended" structure raises considerations or concerns about the confidentiality of non-public information that is shared by the core regulators with the local regulators in the "extended" group. Even with the existence of cooperation and confidentiality arrangements for the supervisory college, the core regulators may face restrictions on information they can share with the "extended" group due to confidentiality concerns

[38] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD687.pdf

(including legal frameworks governing confidentiality) or other limitations. In such a case, regulators that are members of the "extended" group may find their participation in the college less valuable if they do not receive sufficient relevant information from the core regulators about the supervised entity.

As such, if a "core-extended" approach is adopted, it is of the utmost importance to have clear membership criteria and strike the right balance in the information that the core regulators can share with the "extended" members while complying with the laws and regulations of their jurisdictions. In addition, written confidentiality and information-sharing arrangements should be in place to create a safe and secure environment for information exchange. As discussed above, the "core-extended" approach could be beneficial for both the core members and extended members of the supervisory college but establishing and implementing such an approach raises logistical and operational challenges as well as requires additional resources.

Good Practice 10: Global supervisory colleges could, where appropriate, consider adopting a **core-extended structure**, to allow relevant authorities to participate in information exchange about the supervised entity. There should be clear criteria for membership of the core and extended parts of the college.

(1) The **core college** members could be authorities that follow the criteria as set out in Good Practice 7.

(2) Global supervisory colleges could include an **extended college** consisting of a larger group of authorities. The principal regulator could determine the membership criteria as appropriate but could consider:

a) Jurisdictions where the supervised entity has a small locally regulated branch, division or affiliate in the jurisdiction, specifically where that small entity is of particular importance to the jurisdiction's domestic market, conducts operations in that jurisdiction or provides services to domestic market participants such as financial institutions;

b) Jurisdictions where a locally regulated service provider is located to which the supervised entity, which may not be regulated by the local regulator, is outsourcing critical or important functions, services or activities that would otherwise be undertaken by the supervised entity itself.

3.5. Organizational procedures

For most jurisdictions, the framework for sharing information through supervisory colleges is seen as efficient and can be useful to inform and improve each authority's supervisory program.

Meetings Formats and Workplan

Global supervisory colleges tend to meet in person at least once a year, with periodic meetings organized as appropriate and required. The importance of having at least one in-person meeting was seen as a critical feature of effective cooperation both by IOSCO in its 2013 *Report on*

Supervisory Colleges for Credit Rating Agencies and by BCBS in its *Good Practices*. Survey respondents were supportive of this frequency in the meetings, suggesting the approach set out for other supervisory colleges could be extended to any new supervisory college in securities markets.

Good Practice 11: A global supervisory college should hold at least one in-person **meeting per year**, if practicable, as well as periodic remote meetings if necessary. Where necessary or appropriate, meetings may be held via video or audio conference calls.

Survey respondents also noted that the efficiency of a supervisory college meeting depended on receiving an agenda ahead of the meeting in order to be prepared to share relevant information. As college members are best placed to determine information that they may believe is relevant, it could be helpful for each member to share the information with the group prior to meetings and calls. It is also helpful to share contact information for the members, as this may encourage separate bilateral discussions between regulators and supervisors, which enable the building of a common discussion agenda for the most relevant topics and assist all members in fulfilling their objectives and help inform any next steps.

It was also noted that it is most efficient and beneficial to receive any relevant materials provided by the supervised entity before the supervisory college meeting, allowing members of the college to take note and have more time for detailed questions and explanations. These practices are important if supervisory colleges are to serve as a forum to facilitate risk assessment by supervisors and, where appropriate, cooperation with regard to supervisory activities.

Nevertheless, Survey respondents also suggested that the pre-organized calendar for global supervisory colleges can sometimes make them appear inflexible, notably in the face of an emerging financial crisis or stress on a firm. As such, it is important for supervisory colleges to achieve balance between setting out agendas in advance to ensure participants can prepare and have fruitful discussions while also remaining sufficiently flexible to cater for ad hoc meetings, for example in global crisis situations such as Covid-19.

Third-party Invitees

Subject to appropriate confidentiality arrangements, it may be useful and beneficial for the college or its members to invite certain third-parties. It may also be useful and beneficial for college members to invite the supervised entity itself to college meetings, allowing it to directly explain to college members certain aspects of its activities, controls, systems and risk management, or voice specific concerns, for example about challenges relating to contradictory or superseding regulatory requirements. In addition, the Chair of a global supervisory college may invite a third party to portions of a particular meeting if appropriate and within the mandate of the college and agreeable to other college members. For example, such a third-party invitee may be another regulator or supervisor that does not supervise any branch, division, affiliate or service provider of the supervised entity nor have activity of direct supervisory interest but that has a particular interest in the supervised entity's business within its jurisdiction. A representative from an investor protection association that could discuss the impact of the supervised entity on retail investors in a market or a jurisdiction is another example. In all cases, and subject to appropriate confidentiality arrangements, such discussions may lead to constructive exchanges between the members and may help to obtain a more complete picture of the supervised entity. In each case, members would need to be mindful of discussion or disclosure of any non-public information and the terms of any underlying written arrangement on safeguarding the confidentiality of such information. The third-party invitees should be bound by similar confidentiality obligations as the college members and, if relevant, sign any undertaking to this end.

Emerging Risks

In addition, given the level of expertise of college members, Survey respondents saw a role for global supervisory colleges in identifying potential emerging risks arising at the level of the market participant as this could provide an indicator of potential emerging risks across a specific sector. Emerging risk information, as appropriate, could also inform policy discussions, including at the international policy and standard-setting level such as IOSCO.

Good Practice 12: Global supervisory colleges could also provide a forum for informal discussions about **emerging risks**.

Ensuring Effectiveness

Certain Survey respondents provided some examples of follow up actions that might be taken following a college meeting, such as preparing a summary of the discussions and action points to be transmitted to college members and establishing a list of questions and issues raised during the meeting that individual members may determine could use follow-up. Such a list could include the nomination of a contact person who will be responsible for liaising on the follow up issues. Individual college members are in the best position to collect this information and determine what is appropriate to formally document and, to the extent legally permissible and appropriate, share with others in their jurisdictions.

Other Survey respondents suggested developing a post-college coordinated feedback plan, if appropriate, that could identify a list of key areas that the supervised entity should seek to address. If this is the case, such a plan could be followed by a feedback letter to the supervised entity outlining the key areas identified by college members as well as the next steps, if appropriate. However, any feedback should not hinder individual regulators from ensuring compliance with relevant legal requirements.

It was also noted that the post-college feedback to the supervised entity can be effective when the principal regulator leads the drafting of the feedback and is responsible for delivering and following up on that feedback. However, as member jurisdictions may include feedback and follow-up directly with the supervised entity as part of their examination and inspection plans, colleges may prefer that each member provide feedback and follow-up as it considers appropriate directly to the supervised entity.

Good Practice 13: Global supervisory colleges could consider different practices in order to ensure their own effectiveness, such as preparing recaps of action points after meetings to address and monitor next steps, flag follow-ups, or nominate a contact person to centralise queries from members between meetings.

Chapter 4: Areas of consideration for new supervisory colleges

As noted above, while supervisory colleges have been organized for CRAs and CCPs, their use is not yet more widespread in the securities markets. A minority of Survey respondents stated that they participate in other types of colleges (e.g., audit firms, asset managers, trading venues).

The 2019 Report on market fragmentation suggested that IOSCO could, in its analysis of the current use of supervisory colleges, consider where else in securities markets their use could be beneficial. As such, in its Survey, IOSCO sought input from its members on where potential areas of expansion in the use of these supervisory colleges could take place. Respondents to the Survey have suggested the following areas:

- Market Intermediaries;
- Asset management;
- Financial benchmarks administrators; and
- Crypto-asset platforms.

Each of these areas is explained in detail below, including why it may be beneficial to have supervisory colleges for internationally active market participants in these sectors. These considerations are broadly driven by two aspects: (i) interconnectedness, i.e., market participants in this sector are doing business across multiple jurisdictions and/or conduct activities which could have spillover effects on other jurisdictions; and (ii) new emerging areas where supervisory knowledge has perhaps not yet been fully developed.

The considerations discussed under this Good Practice 14 are presented as examples, for illustration purposes, and stem from certain members' Survey responses. This report should not be construed either as formal expectations or as recommendations by IOSCO for potential colleges. In considering whether there may be a benefit in setting up new colleges for market participants in these sectors, it is important for authorities to have due regard for the balance between the benefits setting up a supervisory college could bring compared to the resources required for setting them up.

Good Practice 14: Global supervisory colleges could be considered for **internationally active** supervised entities that have significant cross-border operations and have affiliates and/or branches located in multiple jurisdictions where they are supervised by a regulator or a supervisor, especially if their activities are determined to have systemic importance. In general, a supervisory college could be appropriate for a supervised entity that has a significant cross-border presence, is organized as a group, and has separate legal entities and/or branches located in multiple jurisdictions.

4.1. Market intermediaries

A few Survey respondents have suggested that it would be beneficial to establish supervisory colleges for market intermediaries, such as dealers or brokers, that operate and do substantial business in several jurisdictions (global market intermediaries) where these are not already the subject of supervisory colleges.

"Market intermediaries" generally include those who are in the business of managing individual portfolios, executing orders and dealing in, or distributing, securities. Market intermediaries generally include "investment advisers", which are those principally engaged in the business of advising others regarding the value of securities or the advisability of investing in, purchasing or selling securities.

In the last years, market intermediaries have increasingly reached across borders to provide their services in an effort to augment their client base. Some market intermediaries have established subsidiaries in additional jurisdictions to provide services to investors located in these other jurisdictions. Others have expanded the services they provide to clients located in the principal jurisdiction, such as offering executions of foreign securities in foreign markets.

Global market intermediaries may be registered or licensed in several jurisdictions under different registration categories (e.g., dealers, brokers, agents, investment advisers, portfolio managers) and offer different types of financial products and services to investors. They play a key role in facilitating the sales process of financial products by linking the product manufacturer to the investors.

The regulation of market intermediaries focuses heavily on the protection of investors and may depend, in part, on their functions, i.e., whether the market intermediary trades on behalf of customers or whether the market intermediary has custody of customer assets.

The jurisdictions' securities regulations applicable to the various types of market intermediaries generally address entry criteria, capital and prudential requirements, conduct of business, ongoing supervision and discipline of entrants, the consequences of default and financial failure and minimum standards to treat investors in a just and equitable manner. Jurisdictions' regulation generally provides that duly licensed or registered market intermediaries should conduct their businesses in a way that protects the interests of their clients and helps preserve the integrity of the market. As such, there should be a comprehensive system of inspection, surveillance and compliance programs. Furthermore, when a breach of law occurs, investors should be protected through the strong enforcement of the law.

The failure of a market intermediary can have a negative impact on customers and counterparties and may have systemic consequences. As such, a supervisory college could help increase information-sharing and supervisory cooperation among regulators that supervise a market intermediary with cross-border activities. For example, where appropriate, colleges could be useful in identifying and assessing emerging issues and risks that may have cross-border implications in areas such as the risk profile of the firm, its financial condition and its compliance culture with respect to the conduct of business requirements.

In addition, shared information on a supervised global market intermediary among involved regulators in different jurisdictions participating in the college should help provide a given regulator with a much clearer picture of the amount of risk the firm has taken on, its financial condition, its compliance operations, and how these aspects may have an effect on the investors in its jurisdiction. It may also help the involved regulators determine whether a global market intermediary activity presents a systemic risk, for example, by sharing information on capital reserves held across jurisdictions. In addition, a college may also allow the involved regulators to better assess potential threats to investor protection, for example, by the sharing of information on whether a market intermediary that holds customer funds and assets in multiple jurisdictions is keeping them safe and in a manner consistent with securities regulatory requirements.

4.2. Asset managers

A few Survey respondents also suggested supervisory colleges could be established for big asset managers that carry out cross-border activities.

Asset managers are market participants that manage client assets through individual accounts and/or investment funds. Generally, the asset manager will do so in accordance with a specified investment mandate as set out in the prospectus for the investment fund that it manages or in a bilaterally agreed investment document for individual accounts. Given their function, several asset managers – through the investment funds they manage on behalf of their clients – conduct activities across jurisdictions and with counterparties in many different jurisdictions as well. Generally, such asset managers create branches or affiliates in the jurisdictions where they distribute their products and services.

Some of these asset managers have an active presence in many jurisdictions globally. A few respondents suggested that a supervisory college may help increase information-sharing and supervisory cooperation among regulators that supervise an asset manager with significant presence across various jurisdictions or that distributes/markets its investment funds across borders. It could also be useful in identifying and assessing emerging issues in capital markets that could impact an asset manager's provision of advice.[39]

In the case of asset managers, they may distribute/market their investment funds in local jurisdictions where they do not have a physical presence by way of passporting or mutual recognition. As such, a new college for an asset manager may consider inviting as a third-party invitee an authority in a jurisdiction where managed investment funds are significantly distributed/marketed by the asset manager as this jurisdiction may provide insightful information on how these funds are distributed in the jurisdiction and their client base.

4.3. Financial benchmark administrators

One Survey respondent has suggested that it could be beneficial to conduct a supervisory college for financial benchmarks administrators.

Financial benchmarks are widely used as a reference for a large number of financial instruments or contracts. In recent years, both IOSCO and other standard setting and

[39] The suspension of redemptions, for example, of an investment fund managed by an internationally active asset manager could have a major impact on its reputation, which could impact investor perception of other investment funds managed by this asset manager.

international bodies have sought to create an overarching framework of principles other standards to enhance the accuracy, robustness and integrity of financial benchmarks and the benchmark setting process.

In 2013, IOSCO published its final report of Principles for Financial Benchmarks (The 2013 Benchmarks Report),[40] which introduce measures to enhance the integrity, the reliability and the oversight of benchmarks by establishing guidelines for benchmark administrators, as well as to prevent conflicts of interest. These measures were introduced in light of concerns over the integrity and fragility of certain benchmarks raised following investigations and enforcement actions into the attempted manipulation of major interest rate benchmarks.

Following the publication of the 2013 Benchmarks Report, several jurisdictions have introduced comprehensive regulatory regimes for the designation and regulation of benchmarks, as well as persons or companies that administer them (e.g., Canadian regulatory regime for financial benchmarks in April 2021) in order to implement jurisdictional rules that are robust, reliable, and aligned with international standards. Among other things, such rules provide that the benchmark administrator maintains strong and appropriate systems and controls.

Regulators that could participate as members of a supervisory college for internationally active benchmark administrators (i.e., firms that offer to administrate benchmarks in different jurisdictions) could have implemented:

- rules that govern financial benchmarks administrators and supervise an administrator through designation or registration; and

- an annual oversight program for administrators of financial benchmarks to review compliance with such rules.

Global supervisory colleges could be developed for key internationally active benchmark administrators to help ensure better supervisory cooperation between involved regulators and the effective exchange of information gathered by the involved regulators related to the reliability of a benchmark administrator, its operational resilience, its reliance on third parties to provide critical services and the accuracy, robustness, and integrity of the financial benchmark it administrates. Such information may be helpful for an involved regulator to access valuable information on the benchmark administrator as well as to help monitor the development and evolution of the legal and supervisory benchmark frameworks.

4.4. Crypto-asset platforms

One Survey respondent suggested colleges may be beneficial in view of developments in the crypto-asset industry. In that regard, IOSCO has observed that many issues and risks associated with trading on crypto-asset trading platforms (CTPs) are similar to issues and risks associated with trading traditional securities or other financial instruments on trading venues and many regulatory issues related to CTPs are common to traditional securities trading venues.[41]

[40] IOSCO Principles for Financial Benchmarks: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf

[41] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD649.pdf

Authorities in the financial sectors have been observing and responding to the growth and development of the crypto-asset and digital finance industry over the last few years. While this industry is growing rapidly and constantly evolving, jurisdictions' authorities have been providing guidance on the regulatory regimes applicable to CTPs and service providers, including which regulators have supervisory powers over them, which can vary across jurisdictions. In recent years, the number of crypto-assets has grown exponentially and jurisdictions and authorities, including IOSCO members, have raised concerns about crypto-assets in areas ranging from disclosure, trading, custody, clearing and settlement, accounting, valuation, and intermediation, to the exposure of investment funds to crypto-assets.

In particular, CTPs dedicated to the secondary trading of crypto-assets have established themselves in various jurisdictions while allowing investors from across the globe to sell and purchase crypto-assets on their platforms. This emerging area has brought with it new risks, leading IOSCO to set out recommendations in its final report regarding the regulation of these trading platforms: ***Issues, Risks and Regulatory Considerations Relating to Crypto-Asset Trading Platforms*** published in 2020, and a toolkit to assist its members in addressing associated risks.[42]

IOSCO highlighted that some of the issues relating to the regulation of trading venues also arise with respect to CTPs. Specifically, there is the risk of regulatory arbitrage, the risk that an unregulated CTP operates and provides access to participants and the risk that a CTP provides access to participants in a jurisdiction in which this is not permitted. These risks highlight the need for appropriate cooperation and communication between regulatory authorities seeking to ensure investors are protected.

Some regulatory authorities have only just begun to implement regulation on CTPs and the crypto-asset sector more generally and there are different specific supervisory approaches in different jurisdictions. With different supervisory approaches taken by regulators, effective information-sharing and cooperation are important to manage the risks associated with this global trading of crypto-assets, and one Survey respondent suggested that supervisory colleges may be beneficial. Where the operations of CTPs involve multiple jurisdictions, and information-sharing arrangements exist, regulatory authorities could share information and communicate information about CTP operations, to the extent permitted by such information-sharing arrangements and any applicable legal requirements. They could also share information and cooperate as appropriate and legally permissible and could coordinate to the extent permitted by existing arrangements, such as through multilateral or bilateral arrangements like MoUs.

In that context, some noticeable features of the crypto-asset sector could potentially benefit from the use of supervisory colleges.

The operation of CTPs may purport to be "decentralized." Intra-group delegations are frequently used to develop, deploy and maintain critical services for the sake of efficiency and agility. For regulators who have the authority to oversee a CTP through formal registration or

[42] *Issues, Risks and Regulatory Considerations Relating to Crypto-Asset Trading Platforms*, Final Report, IOSCO, February 2020. P. 30, available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD649.pdf.

licensing, forming a college with peer supervisors could help regulators discuss and better understand overall business operations and risks of the CTP.

In addition, cross-border crypto-asset related services provided where the CTP does not have a physical presence could pose spillover effects in jurisdictions where their investors are based. While some jurisdictions have a regulatory and supervisory framework that deters unlicensed or unregistered activity within their jurisdiction, unlicensed cross-border activity may pose additional challenges and supervisory colleges for market participants such as CTPs could assist authorities in identifying and mitigating the harms arising from such unlicensed cross-border activities.

Regulators forming a college could also consider implementing an extended version of a supervisory college: (i) regulators in jurisdictions without regulatory frameworks for CTPs that provide services for investors in their jurisdictions; or (ii) non-securities regulators such as consumer or data protection authorities or prudential regulators as appropriate. The involvement of such authorities might help the principal regulator, for example, understand whether the CTP it supervises is conducting activities in other jurisdictions which could cause spillover effects, including investor/consumer/market harms and stability concerns.

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Annex 1: Final Good Practices for Global Supervisory Colleges in Securities Markets

Good Practice 1: A global supervisory college could serve as a **forum** to facilitate: (1) the exchange of information and collective risk assessment among supervisors of the supervised entity, where appropriate and legally permissible; (2) cooperation with regard to supervisory activities, including possible consideration of conducting thematic analysis of issues of common interest, where appropriate and legally permissible; and (3) presentations from the supervised entity (where appropriate and, if practicable, in person or by video).
The college also could, on the back of its discussions, consider whether any emerging risk issue might merit a potential policy response.

Good Practice 2: Global supervisory colleges could maintain an element of flexibility which allows them to meet and discuss issues in a **crisis situation**.

Good Practice 3: Global supervisory colleges could consider governance by an **underlying written arrangement** that addresses cooperation and information sharing during business as usual and in crisis situations and establishes shared understandings for the use and confidentiality of non-public information shared among college members.

Good Practice 4: Information sharing gateways and confidentiality safeguards could be established through the development of a **multilateral confidentiality arrangement** among the members of a global supervisory college (or when available, through existing bilateral supervisory MoUs between members). In developing a confidentiality arrangement, the college may take into consideration the confidentiality and permissible use provisions of the "Annotated sample Memorandum of Understanding" in the 2010 IOSCO "*Principles Regarding Cross-Border Supervisory Cooperation*."

Good Practice 5: In general, the relevant principal regulator of a supervised entity could appoint a representative as the **chairperson** of the global supervisory college, unless the principal regulator designates the chairperson function to a local authority.

Good Practice 6: The chairperson, typically in charge of planning the cycle of activities for the supervisory college, could consider developing an agenda available to all college members to help prepare for supervisory college meetings.

Good Practice 7: In order to become a **member of a global supervisory college**, an authority located outside of the supervised entity's principal jurisdiction should meet the following criteria:

(1) The authority has the legal authority to directly supervise the supervised entity, its significant branch, division, or affiliate located in its jurisdiction (e.g., the largest branches, divisions or affiliates of the supervised entity or the supervised entity's key decision-makers are located in the local jurisdiction) **or**, where it is appropriate, the authority has significant direct statutory responsibilities over the operations or activities

of the supervised entity.[43] Legal authority may include the ability to conduct examinations and/or inspections, to compel documents, evidence, and other information, and to initiate enforcement actions for violation of statutes and regulations relating to the activities of the supervised entity, its branches, divisions, or affiliates.

(2) The authority has the legal authority (or delegated power and approvals) and is willing to share relevant information with other members of the college and the legal authority to safeguard the confidentiality of non-public information it receives from other members of the college.

Good Practice 8: There could be **transparency to regulators** regarding the fact that a global supervisory college exists; members of the college; and how members are added or removed.

Good Practice 9: The calendar of meetings for these supervisory colleges could have transparency and be made available.

Good Practice 10: Global supervisory colleges could, where appropriate, consider adopting a **core-extended structure**, to allow relevant authorities to participate in information exchange about the supervised entity. There should be clear criteria for membership of the core and extended parts of the college.

(1) The **core college** members could be authorities that follow the criteria as set out in Good Practice 7.

(2) Global supervisory colleges could include an **extended college** consisting of a larger group of authorities. The principal regulator could determine the membership criteria as appropriate but could consider:

a) Jurisdictions where the supervised entity has a small locally regulated branch, division or affiliate in the jurisdiction, specifically where that small entity is of particular importance to the jurisdiction's domestic market, conducts operations in that jurisdiction or provides services to domestic market participants such as financial institutions;

b) Jurisdictions where a locally regulated service provider is located to which the supervised entity, which may not be regulated by the local regulator, is outsourcing critical or important functions, services or activities that would otherwise be undertaken by the supervised entity itself.

[43] The authority may have direct statutory responsibilities over the operations or activities of a supervised entity where these operations or activities would severely impact financial stability in the authority's jurisdiction and/or the operations or activities of entities that this authority directly supervises, or a material event affecting these other regulated entities could adversely impact the supervised entity. As noted in the Good Practice, this broader approach to core membership may however not be applicable in all circumstances. For example, it is not applicable in the case of CRA Colleges where only an IOSCO member which supervises a CRA's affiliate or branch can form part of a core college, as per the 2013 IOSCO Report on Supervisory Colleges for Credit Rating Agencies.

Good Practice 11: A global supervisory college should hold at least one in-person **meeting per year**, if practicable, as well as periodic remote meetings if necessary. Where necessary or appropriate, meetings may be held via video or audio conference calls.

Good Practice 12: Global supervisory colleges could also provide a forum for informal discussions about **emerging risks**.

Good Practice 13: Global supervisory colleges could consider different practices in order to ensure their own effectiveness, such as preparing recaps of action points after meetings to address and monitor next steps, flag follow-ups, or nominate a contact person to centralise queries from members between meetings.

Good Practice 14: Global supervisory colleges could be considered for **internationally active** supervised entities that have significant cross-border operations and have affiliates and/or branches located in multiple jurisdictions where they are supervised by a regulator or a supervisor, especially if their activities are determined to have systemic importance. In general, a supervisory college could be appropriate for a supervised entity that has a significant cross-border presence, is organized as a group, and has separate legal entities and/or branches located in multiple jurisdictions.