

UPDATE ON CGSR DEVELOPMENTS

My remit here this morning is to say a little bit by way of update about what has been happening within the Caribbean Group of Securities Regulators, particularly as these activities may relate to the promotion of financial stability within the region. But first I think I should say a little bit about the CGSR itself. The grouping came out of an idea that was born right here in Trinidad and Tobago almost exactly 8 years ago - in February 2002 to be exact - when Trinidad and Tobago and the Trinidad and Tobago Securities and Exchange Commission hosted the Conference of the Council of Securities Regulators of the Americas (COSRA).

The regional regulators who attended that meeting were struck by the fact that despite our strong regional ties and similarity of interests, regional regulators only met as a group at COSRA Meetings or at the annual conference of IOSCO – the International Organization of Securities Commissions. Regulators from Trinidad, Jamaica, Barbados, Bahamas, and the Eastern Caribbean then resolved to form an Association of Caribbean Securities Regulators. And so the CGSR was born with the agreed aim of providing regional securities regulators with a forum for discussion of issues and problems that may be of special or even unique interest to them. Since then the CGSR has evolved to the point where today it lists on its website a total of 11 Members and 9 Associates.

I should mention that while the CGSR has been structured as the institutional mechanism for facilitating joint action by regional securities regulators on matters of mutual interest and concern, it has operated on another level as well. The CGSR has also provided a basis on which regional regulators have been able to build among themselves an informal network that has made for easy and informal communication and collaboration on even day-to-day regulatory matters that may arise from time to time.

The essence of the CGSR's mandate therefore is regulatory cooperation and this has become increasingly important as the process of regional financial integration has deepened over time. Through the integration process we are now at a point where market

disturbances occurring in any one part of the collective regional space are likely to be quickly transmitted to other jurisdictions. We have only to consider how quickly and how deeply the impact of the failure of CL Financial reverberated throughout the region and the speed with which this occurred.

The great challenge of course is the fact that we are attempting to regulate activities and sometimes behaviour across an integrated market, while operating out of sovereign jurisdictions, each with its own separate and different legislative framework. And even where the provisions of the law happen to be fairly closely aligned from one jurisdiction to another there has been a propensity for differences to arise at the level of interpretation.

While legislative harmonization remains the long-term objective, the members of the CGSR understand that much can be achieved in the meantime if we can agree and reach understanding on various protocols for collaboration and cooperation to better manage cross-border regulatory issues. With that as background I would now like to highlight some of the initiatives in which regional securities regulators have been engaged in support of the cause of regional financial stability.

The first and perhaps most significant of these is the ongoing effort to finalize and put in place a Multilateral Memorandum of Understanding Among the Regional Securities Commissions for the Exchange of Information and Co-operation and Consultation. Regulatory cooperation and in particular the ability and willingness to engage in information sharing has emerged as a major pillar of global regulatory practice to the point where IOSCO, the International Organization of Securities Commissions, has made accession to its own MMOU the central obligation of membership in that organization.

The MMOU among regional securities regulators is meant to establish and concretize the commitment of regional securities commissions to the sharing of information for regulatory purposes. Its stated intent is to establish a framework to provide assistance to

the full extent permitted by the laws, regulations and rules of their respective jurisdictions for the exchange of information between the commissions and to enforce or secure compliance with any laws, regulations or rules relating to the functions and duties of the commissions. Accession to the MMOU will commit its members to provide one another with assistance within an agreed framework for coordination, consultation and cooperation to the full extent permitted by their respective laws. Following completion of the consultative process which is currently in train the CGSR hopes to have the MMOU ready for signature by its members by the time it convenes its Annual Conference scheduled for October 2010.

The second major initiative is the Common Code on Takeovers. The need for such a code came sharply into focus in 2008 in the course of a competitive takeover bid for Barbados Shipping and Trading (BS&T), a company registered in Barbados and listed in both Barbados and Trinidad and Tobago. The bidders were two companies which were incorporated in Trinidad and Tobago. That transaction raised critical issues of appropriate disclosure standards as well as market conduct. But just as critically it illustrated quite clearly the confusion that could arise in the absence of agreement on a single set of standards to be applied by the regulators. Not surprisingly, the authority of the courts had to be invoked when questions arose as to how the application of the law in one jurisdiction would affect investors in the other.

Based on the lessons from the BS&T experience the region's securities regulators with the support of CARTAC have been moving to put in place a set of rules and a Common Code on Takeovers. Among other things, the rules would specify which jurisdiction would have authority over takeovers that involve companies which are incorporated in one country in the region but are listed on multiple regional exchanges. The rules have been fully drafted and are currently under review by regional regulators. Once in place they should go a long way towards avoiding the type of disorderly situation that attended the BS&T takeover episode.

It will not solve all the problems, however. More recently there has been at least one instance in which the attempt by a cross-listed company to increase its issued share capital experienced some complications when regulators in two regional jurisdictions opted for varying interpretations of the applicable law. In so doing they sought to apply differing conditions for registration for the shares, notwithstanding the fact that the relevant legislative provisions in the two jurisdictions were not materially different. This has exposed an area in which there clearly remains the need for dialogue and discussion among regional regulators.

A third area of focus for members of the CGSR is that of credit rating agencies. The role of credit rating agencies came into sharp focus following the onset of the global financial crisis and the part these institutions played in creating the conditions that led to the crisis. A fall-out of these developments is that regulators all over the world are now seriously reconsidering the question of regulatory reliance on ratings performed by these agencies with a view to determining the extent to which such reliance should be continued. The discussion has also focused heavily on how credit rating agencies can be regulated and monitored in order to provide the market as well as regulators with some assurance of the integrity of their ratings procedures.

The related issue of recognition of credit rating agencies, and in particular regional credit rating agencies has come to the fore for the Trinidad and Tobago Securities and Exchange Commission, in particular. This is because forthcoming new legislation and guidelines (on Repurchase Agreements) assign a role to credit ratings in the risk assessment of certain securities. Credit ratings also play a crucial role in the capital adequacy rules for banks under the Basel II capital accord. While a small number of established credit rating agencies already enjoy wide international recognition the TTSEC and the Central Bank of Trinidad and Tobago have been grappling jointly with the question of whether, and subject to what rules should similar status be accorded to credit rating agencies established within the region.

In this regard the pioneering work done by the Financial Securities Commission of Jamaica has been particularly helpful. In November 2005, the Financial Services

Commission (“FSC”) developed a regulatory model whereby CRAs would be subject to a process of recognition or de-recognition. Elements of the approach included;

- i. an initial assessment based on elements such as organizational structure, financial resources, size, experience, among others.
- ii. periodic regulatory review of the agency’s operations, and
- iii. comprehensive disclosure requirements

In April 2008, the FSC gave recognition to the single existing regional agency on the basis of the guidelines established while in Trinidad and Tobago a proposed recognition regime is expected to be rolled out for industry comment in the very near future.

While Jamaica and Trinidad and Tobago have moved ahead on the issue of CRAs it has also been placed on the agenda of the wider CGSR alongside other matters that regional regulators have identified as being of high priority. These include

1. the need for the CGSR to rejoin the processes of CARICOM particularly since it is within this forum that the discussion on legislative harmonization is taking place;
2. the need to advance the development of a mutual recognition framework among member countries of the CGSR; and
3. the need to develop and sustain appropriate programmes of training for regional regulators.

It is quite an important agenda but one on which the CGSR is confident that it will be able to deliver in the months ahead.