

Objectives and Principles of Securities Regulation



OICU-IOSCO

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Part II - The Regulator

Part II describes the desirable attributes of a regulator¹¹ and the potential role of self-regulatory organizations, the enforcement and compliance work of the regulator and the need for close cooperation between regulators.

6. The Regulator

6.1. *Principles Relating to the Regulator*

- 1 The responsibilities of the regulator should be clear and objectively stated.**
- 2 The regulator should be operationally independent and accountable in the exercise of its functions and powers.**
- 3 The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.**
- 4 The regulator should adopt clear and consistent regulatory processes.**
- 5 The staff of the regulator should observe the highest professional standards, including appropriate standards of confidentiality.**

6.2. *Clear Responsibility*¹²

The capacity of the regulator to act responsibly, fairly and effectively will be assisted by:

- a clear definition of responsibilities, preferably set out by law;
- strong cooperation among responsible authorities,¹³ through appropriate channels;
- adequate legal protection for regulators and their staff acting in the bona fide discharge of their functions and powers.

The packaging of products and services may be such that a single product or service exhibits characteristics traditionally associated with at least two of the following: securities, banking and insurance. Legislation should be designed to ensure that any division of responsibility avoids gaps or inequities in regulation. Where there is a division of regulatory responsibilities, substantially the same type of conduct generally should not be subject to inconsistent regulatory requirements.

¹¹ In this document, the term “regulator” is used compendiously. There need not be a single regulator. In many jurisdictions, the desirable attributes of the regulator described in this document are in fact the shared responsibility of two or more government or quasi-government agencies.

¹² See IOSCO Resolution No. 1: *Resolution on the Regulation of Securities Markets* (P.C.), April 1983.

¹³ Here the term “responsible authorities” encompasses those who are responsible for aspects of securities regulation and other law enforcement governmental and regulatory bodies.

6.3. *Independence and Accountability*

The regulator should be operationally independent from external political or commercial interference in the exercise of its functions and powers and accountable in the use of its powers and resources.

Independence will be enhanced by a stable source of funding for the regulator.

In some jurisdictions, particular matters of regulatory policy require consultation with, or even approval by, a government, minister or other authority. The circumstances in which such consultation or approval is required or permitted should be clear and the process sufficiently transparent or subject to review to safeguard its integrity. Generally, it is not appropriate for these circumstances to include decision making on day-to-day technical matters.

Accountability implies:

- a regulator that operates independently of sectoral interests;
- a system of public accountability of the regulator;
- a system permitting judicial review of decisions of the regulator.

Where accountability is through the government or some other external agency, the confidential and commercially sensitive nature of much of the information in the possession of the regulator must be respected. Safeguards must be in place to protect such information from inappropriate use or disclosure.

6.4. *Adequate Powers and Proper Resources*

The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.

What this means in practical terms is the subject of elaboration in this document. It includes powers of licensing, supervision, inspection, investigation and enforcement, all of which are discussed in later sections.

It necessarily requires adequate funding for the regulator in order to enable the regulator to exercise its tasks. The level of resourcing should recognize the difficulty of retaining experienced staff who have skills that are valuable to the private sector.

The regulator must ensure that its staff receives ongoing training as required.

6.5. *Clear and Consistent Regulatory Processes*

In exercising its powers and discharging its functions, the regulator should adopt processes which are:

- consistently applied;
- comprehensible;
- transparent to the public;
- fair and equitable.

In the formulation of policy, the regulator should:

- have a process for consultation with the public including those who may be affected by the policy;
- publicly disclose its policies in important operational areas¹⁴;
- observe standards of procedural fairness;
- have regard to the cost of compliance with the regulation.

Many regulators have authority to publish reports on the outcome of investigations or inquiries, particularly where publication would provide useful guidance to market participants and their advisers. Any publication of a report must be consistent with the rights of an individual to a fair hearing and the protection of personal data, factors that will often preclude publicity when a matter is still the subject of investigation.

Regulators should also play an active role in the education of investors and other participants in capital markets.¹⁵

6.6. *The Conduct of Staff*

Staff of the regulator should observe the highest professional standards and be given clear guidance on conduct matters including:

- the avoidance of conflicts of interest (including the conditions under which staff may trade in securities);
- the appropriate use of information obtained in the course of the exercise of powers and the discharge of duty;
- the proper observance of confidentiality and secrecy provisions and the protection of personal data;
- the observance of procedural fairness.

¹⁴ In some operational areas, and in some cases, particularly in the areas of surveillance and enforcement, consultation and disclosure may be unnecessary or inappropriate as it may compromise the effective implementation of the policy.

¹⁵ See IOSCO Public Document No. 83, *Securities Activity on the Internet*, IOSCO Technical Committee, September 1998 (in particular, Key Recommendations 17 - 20 and text) and IOSCO Public Document No. 120, *Securities Activity on the Internet II*, IOSCO Technical Committee, June 2001.