

主要国の法定の自主規制機関制度（取引所を除く）

資料 2-4

	アメリカ		イギリス	ドイツ	フランス
	NASD Regulation Inc. 〔業界の自主規制を専門的に行う〕	NASD Dispute Resolution Inc. 〔仲裁、調停を専門的に行う〕	—	—	—
規則制定	あり	なし	なし	なし	なし
会員の調査	あり	なし	なし	なし	なし
会員への制裁	あり	なし	なし	なし	なし
紛争処理	なし	あり	なし	なし	なし

## IOSCO（証券監督者国際機構）

### 証券規制の目的と原則（2003年5月改訂）（抄）

#### B 自主規制に関する原則

- 6 規制体系は、市場の規模と複雑さに照らし適切な程度において、それぞれの分野について一定の直接的な監督責任を担う自主規制機関 (Self-Regulatory Organizations; SROs) を適切に活用するものとするべきである。
  
- 7 自主規制機関は、規制当局の監督下にあるべきであり、その権限及び委任された責務の遂行に当たっては、公正性と秘密保持に係る基準を遵守するべきである。

Objectives and Principles of Securities Regulation  
(International Organization of Securities Commissions)  
May 2003

7. Self-Regulation<sup>16</sup>

7.1. *Principles for Self-Regulation*

- 6 The regulatory regime should make appropriate use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence and to the extent appropriate to the size and complexity of the markets.
- 7 SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.

7.2. *The Role of SROs*

SROs can be a valuable complement to the regulator in achieving the objectives of securities regulation.<sup>17</sup>

Various models of self-regulation exist and the extent to which self-regulation is used varies. The common characteristics of SROs, in most jurisdictions are a separation from the government regulator (although government oversight and authorization generally exists), and the participation of business, industry and, if appropriate, investors in the operations of the SRO.

There can be substantial benefits from self-regulation:

- SROs may require the observance of ethical standards which go beyond government regulations;
- SROs may offer considerable depth and expertise regarding market operations and practices, and may be able to respond more quickly and flexibly than the government authority to changing market conditions.

SROs should undertake those regulatory responsibilities which they have incentives to perform most efficiently. The actions of SROs will often be limited by applicable contracts and rules.

7.3. *Authorization and Oversight*

The regulator should require an SRO to meet appropriate standards before allowing the organization to exercise its authority. Oversight of the SRO should be ongoing.

Moreover, once the SRO is operating, the regulator should assure itself that the exercise of this power is in the public interest, and results in fair and consistent enforcement of applicable securities laws, regulations and appropriate SRO rules.

<sup>16</sup> IOSCO Public Document No. 53, *Legal and Regulatory Framework for Exchange Traded Derivatives*, IOSCO Emerging Markets Committee, June 1996 at pp. 6-9 and *Principles of Effective Market Oversight*, Council of Securities Regulators of the Americas, May 1995 at <http://www.cvm.gov.br/ingl/inter/cosra/inter.asp>.

<sup>17</sup> See generally, IOSCO Public Document No. 110, *Model for Effective Self-Regulation*, IOSCO SRO Consultative Committee, May 2000.

The effectiveness of an SRO may be compromised due to conflicts of interest. The regulator should monitor and address the potential that may arise for conflict of interest. The regulator must ensure that no conflict of interest arises because of the SRO's access to valuable information about market participants (whether or not they are members of the SRO itself). The risk of conflict arising may be acute when the SRO is responsible both for the supervision of its members and the regulation of a market sector.<sup>18</sup>

As a condition to authorization, the legislation or the regulator should require an SRO to:

- have the capacity to carry out the purposes of governing laws, regulations and SRO rules, and to enforce compliance by its members and associated persons with those laws, regulations, and rules;
- treat all members of the SRO and applicants for membership in a fair and consistent manner;
- develop rules that are designed to set standards of behavior for its members and to promote investor' protection;
- submit to the regulator its rules for review and / or approval as the regulator deems appropriate, and ensure that the rules of the SRO are consistent with the public policy directives established by the regulator;
- cooperate with the regulator and other SROs to investigate and enforce applicable laws and regulations;
- enforce its own rules and impose appropriate sanctions for non-compliance;
- assure a fair representation of members in selection of its directors and administration of its affairs;
- avoid rules that may create uncompetitive situations; and
- avoid using the oversight role to allow any market participant unfairly to gain advantage in the market.

Regardless of the extent to which self-regulation is used, the government regulator should retain the authority to inquire into matters affecting investors or the market. Where the powers of an SRO are inadequate for inquiring into or addressing particular misconduct or where a conflict of interest necessitates it, the regulator should take over the responsibility for an inquiry from an SRO. It is important, therefore, to ensure that the information provided by the SRO to the regulator allows these matters to be identified at an early stage.

SRO's should follow similar professional standards of behavior on matters such as confidentiality and procedural fairness as would be expected of the regulator.<sup>19</sup>

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<sup>18</sup> *Principles of Effective Market Oversight*, Council of Securities Regulators of the Americas, May 1995 at <http://www.cvm.gov.br/ingl/inter/cosra/inter.asp>; IOSCO Public Document No. 119, *Issues Paper on Exchange Demutualization*, IOSCO Technical Committee, June 2001.

<sup>19</sup> SROs are generally non-governmental agencies and so will not always be subject to the same standards as apply to a government agency.