

## **IOSCO's Final Report on Retail Distribution and Digitalization. International Bulletin of November 2022.**

On 12 October 2022, the International Organization of Securities Commissions (IOSCO) published its final report on Retail Distribution and Digitalization (the Report). The Report aims to assist IOSCO members to implement approaches to meet the growing challenges of digitalization and online activities.

The Report provides a Policy Toolkit, as well as an Enforcement Toolkit, to consider in regulatory and supervisory frameworks. The Policy Toolkit draws on IOSCO members' experiences and practices as obtained through a survey conducted among IOSCO members. The survey aimed to understand the current regulatory frameworks in place related to online marketing and distribution, along with regulatory, supervisory and cross-border challenges of online marketing techniques. The Enforcement Toolkit draws on IOSCO members' experiences and practices as obtained through a survey that explored the investigatory and enforcement challenges posed by online marketing and distribution of financial services and products, as well as specific investigatory techniques, enforcement approaches, potential strategies, and actual experiences, including in international enforcement cooperation, in connection with both authorized and non-authorized businesses.

Digitalization and social media are changing the way financial services and products are marketed and distributed to retail investors, providing greater opportunities for firms to reach a broader investor base and for retail investors to access a wider range of products. Digitalization and social media also present risks associated with the use of behavioral and gamification techniques and financial influencers (finfluencers) that impact retail investor trading behavior.

Developments in digital offerings, including use of new complex products such as crypto-assets, also give rise to novel regulatory and investor protection challenges. As digitalization trends evolve faster than regulatory frameworks, there is an increased risk that retail investors could be exposed to harmful or even fraudulent online activity.

The Report analyses global developments in online marketing and distribution of financial products to retail investors and discusses enforcement challenges encountered by regulators. It sets out examples of how some IOSCO member jurisdictions have addressed these issues.

The Report includes chapters covering the following areas: Online Marketing and Distribution; General Trends and Observations in Digital Offerings; the Use of Social Media in Digital Offerings; the Regulatory Perspective; Cross-Border Activity and Challenges; Inappropriate Behavior and Risk; and Enforcement.

The Report analyses various technological developments, some of which are related to the impact of social media, as well as digital engagement practices and crypto assets. IOSCO has also been analyzing gamification and self-directed trading related issues in detail through the work of its Retail Market Conduct Task Force (RMCTF), findings of which were published in its consultation report<sup>1</sup> on 21 March 2022. Therefore, the findings of the RMCTF relate to some of the topics analyzed in this Report and could be seen as complementary to the findings of this Report.

IOSCO recommendations include firm level rules for online marketing and distribution that IOSCO members should consider. These recommendations require that firms have proper internal rules, policies, processes and tools for their online marketing and distribution, and review them on a regular basis. The policies and procedures should include that any use by firms of targeting, behavioral techniques and gamification elements should be done in a way that ensures fair treatment of financial consumers and aims to avoid potential financial consumer harm.

### **Toolkits**

The Report analyzes the developments in online marketing and distribution of financial products to retail investors

in IOSCO member jurisdictions, both domestically and on a cross-border basis. It presents toolkits of policy and enforcement measures that would assist in addressing the issues and risks associated with online marketing and distribution.

The Policy Toolkit includes measures relate to the following:

- Firm level rules for online marketing and distribution
- Firm level rules for online onboarding
- Responsibility for online marketing
- Capacity for surveillance and supervision of online marketing and distribution
- Staff qualification and/or licensing requirements for online marketing
- Ensuring compliance with third country regulations
- Clarity about legal entities using internet domains

The Enforcement Toolkit measures relate to the following:

- Proactive technology-based detection and investigatory techniques
- Powers to promptly act where websites are used to conduct illegal securities and derivatives activity and other powers effective in curbing online misconduct
- Increasing efficient international cooperation and liaising with criminal authorities and other local and foreign partners
- Promoting enhanced understanding and efforts by, and collaboration with, providers of electronic intermediary services regarding digital illegal activities
- Additional efforts to address regulatory and supervisory arbitrage

Educational materials, warnings and updates on enforcement actions are another critical complement to mitigate and address risks posed by online marketing and distribution to retail investors. Digital fraudsters are always on the move and often hide behind a “digital veil” that make it difficult for IOSCO members to locate, identify and take action against them. Well informed investors are the first line of defense against fraud and unlicensed operators. Therefore, IOSCO continues to support retail investors with targeted and solid financial education initiatives. Such initiatives could work alongside the measures identified in the Reports and included in the Policy and Enforcement Toolkits to help raise investor awareness of the specific risks associated with the cumulative effect of increased complexity of financial products and services, the rapid pace of innovation, ongoing gamification trends and increasing levels and volumes of self-directed trading by retail investors. Raising public awareness of illegal schemes and of regulators’ enforcement actions in an impactful way is an additional and critical tool that authorities can use to limit cross-border online misconduct and retail investor harm and to deter future illegal activity.

## **Regulatory Perspective**

The Report recommends that IOSCO members consider whether they have adequate supervisory capacity or powers to oversee the increasing volume of online marketing and distribution activity. From a regulatory perspective, IOSCO members are encouraged to share experiences and good practices with each other regarding supervision and surveillance of online marketing and distribution.

As the risks of social media use increase, so do the changes in the approaches of regulators. In response to the IOSCO survey, most regulators use tools that are already in place to deter illegal or misleading marketing materials. These include the use of general rules and guidelines already established for advertising, product disclosures, risk warnings, record keeping, general supervisory control requirements, as well as reactive tools such as consumer complaints.

## **Cross border challenges**

Crypto products can deceive investors while escaping regulations that apply to conventional finance products like stocks. The Report describes ways to get around the problem of international crypto marketing, where sales for example, targeted in a country like the U.S. might originate from a different country.

The Report discusses challenges with licensing when marketing and distribution activities cross borders. Measures proposed include crypto companies having qualifications and licensing mandates for their online marketing staff. In addition, IOSCO reflected on third-country regulations stating that while crypto companies are providing their services to foreign clients, they should check if there’s any license they need to have acquired to be able to provide their service in the client’s respective country.

Cross border challenges are also remediated with cross border cooperations. There is consensus across the IOSCO membership that effective regulatory and cooperation techniques are enhanced and enforced through discussions of issues of common interests. Most foreign counterparts provide assistance under information sharing arrangements. The Report further states that new collaboration mechanisms may be developed to help ensure that the home regulator of wrongdoers undertake actions to stop online illegal activities, for example crypto asset-related misconduct, upon request of the foreign regulator that has ascertained a violation.

### **Shutdown of Websites**

Some IOSCO members are empowered to shut down or block access to illegal websites directly or apply for court orders restricting the activities, including the shutdown of websites, freezing assets, or obtaining search warrants. Other authorities reported some positive experience in persuading local web hosts to cooperate with their request for a website to be taken down voluntarily. As the ability to take quick actions to stop violations is critical to minimize investor harm, the power to shut down or block access to illegal websites directly or the existence of appropriate mechanisms for obtaining a court order for this purpose on an urgent or prompt basis are reported as being particularly important to support the effectiveness of the enforcement action.

### **Conclusion**

Developments in online marketing and distribution, including social media, will continue to evolve rapidly. Therefore, IOSCO members need to monitor and keep pace with such developments in online marketing and distribution of services and products by considering the measures included in both the Policy and Enforcement Toolkits.

<sup>1</sup> <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD698.pdf>

### **Useful link:**

[Report on Retail Distribution and Digitalization.](#)