PUBLIC COMMENTS RECEIVED
ON THE
IOSCO TECHNICAL COMMITTEE REPORT ENTITLED
ANTI-MONEY LAUNDERING
GUIDANCE FOR COLLECTIVE INVESTMENT SCHEMES

INTERNATIONAL ORGANIZATION OF SECURITIES AND COMMISSIONS

October 2005

List of organizations that have provided comments:

- Management Funds Association, USA
- Investment Company Institute, USA
- Investment Management Association, UK
- The Investment Funds Institute of Canada, Canada
- Association Française de la Gestion Financière, France
- Schulte Roth & Zabell LLP, USA

VIA ELECTRONIC MAIL: mail@oicv.iosco.org

May 18, 2005

Mr. Philippe Richard
IOSCO Secretary General
Oquendo 12
28006 Madrid
Spain

Re: Public Comment on *Anti-Money Laundering Guidance for Collective Investment Schemes*

Dear Mr. Richard:

Managed Funds Association ("MFA") appreciates the opportunity to provide its comments to the Technical Committee of the International Organization of Securities Commissions ("IOSCO") regarding its Consultation Report entitled *Anti-Money Laundering Guidance for Collective Investment Schemes* (the "Consultation Report").

MFA is the only U.S.-based global membership organization dedicated to serving the needs of those professionals throughout the world who specialize in the alternative investment industry, including hedge funds, funds of funds and managed futures funds. MFA's over 900 members include professionals from the majority of the 50 largest hedge funds, which manage a significant portion of the estimated $1.5 trillion invested in hedge funds.

We support the guidance contained in the Consultation Report. We believe that the collective investment schemes ("CIS") discussed resemble those entities categorized as mutual funds in the United States. While our trade association deals with hedge fund, rather than mutual fund, matters, we endorse the anti-money laundering programs, client identification and verification procedures and client due diligence procedures included in the Consultation Report.

In March 2002, MFA issued its own *Preliminary Guidance for Hedge Funds and Hedge Fund Mangers on Developing Anti-Money Laundering Programs*, which we have attached for your review. You will see that our recommendations for hedge funds and hedge funds managers mirror many of IOSCO's recommendations for CIS in the Consultation Report. For your information, we have also included MFA's comment letters on the topic of anti-money laundering. Attached are our November 25, 2002 and July 7, 2003 letters to the U.S. Department of Treasury Financial Crimes Enforcement Network ("FinCEN") regarding Section 352 of the USA PATRIOT Act.

We applaud the work you have done in the important area of anti-money laundering and we hope that the materials we have provided will prove useful. Please call me at (202) 367-1140 if we can provide additional information.

Respectfully submitted,

/s/ John G. Gaine

John G. Gaine
President

Enclosures

INVESTMENT COMPANY INSTITUTE

May 17, 2005

VIA E-MAIL

Philippe Richard
IOSCO Secretary General
Oquendo 12
28006 Madrid
Spain

Re: Public Comment on Anti-Money Laundering Guidance for Collective Investment Schemes

Dear Mr. Richard:

The Investment Company Institute[1] appreciates the opportunity to express its support for the Technical Committee's recent report providing anti-money laundering guidance for collective investment schemes (CIS).[2] The Institute strongly supports effective rules to combat potential money laundering activity in the financial services industry and supports many of the concepts in the report. We commend the Technical Committee on their work in this area.

Despite our general support, we have concerns over three aspects of the report. First, we are concerned that the report overstates, in certain respects, the responsibility of CIS to verify the identity of beneficial owners of accounts held by intermediaries. Second, we are concerned that the report may inappropriately suggest that CIS should be treated like securities firms with respect to the types of information they are expected to collect from investors. We believe it is critical that AML rules applicable to CIS take into account the nature of the fund business and the characteristics that distinguish it from traditional banking and brokerage businesses. This is particularly important with respect to the types of information collected about investors, where funds and securities firms employ significantly different business models. Third, we are concerned that the report is overly prescriptive in the section dealing with the performance of AML responsibilities by other financial institutions or service providers. These comments are explained in greater detail below.

[1] The Investment Company Institute is the national association of the U.S. investment company industry. More information about the Institute is attached to this letter.

[2] Anti-Money Laundering Guidance For Collective Investment Schemes, Report of the Technical Committee of IOSCO (Feb. 2005). The report is available on the IOSCO web site at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD188.pdf.

Verification of Beneficial Owners

The report states that an "open-end CIS has a responsibility for verifying the identity of the investor, and the beneficial owner of the investor when it is apparent that an account is beneficially owned by a party other than the investor."[3] We do not believe that this standard should be applied in all cases, and we request that IOSCO recognize at least one exception in its final report: purchases of fund shares in the U.S. that are cleared and settled through the National Securities Clearing Corporation's Fund/SERV system.

The NSCC introduced Fund/SERV in 1986 to electronically connect brokerage firms and other financial institutions with fund families. Its automated process enables thousands of firms to deal with hundreds of fund families offering thousands of funds via a single, standardized clearance and settlement system. More than 65 million mutual fund accounts reside on fund transfer agency systems through the use of the Fund/SERV system, and Fund/SERV processes more than 400,000 transactions daily with a daily value of over six billion dollars.

U.S. regulators have agreed that where NSCC member firms initiate purchases of CIS shares on behalf of investors (the firm's customers) that are cleared and settled through Fund/SERV, those firms are the CIS's "customers" and the investors are not.[4] As a result, in the U.S., CIS are *not* required to verify the identity of the beneficial owners of these accounts, even though it is apparent (to use the term in the IOSCO report) that they are different from the record owners. We believe that this interpretation is both clearly supported by the text of the applicable U.S. AML rules and, more generally, fully consistent with AML regulatory policy. We respectfully request that IOSCO concur with this view in its final report.

Information to be Collected From Investors

The report makes reference to the general "know your customer" procedures that are described in detail in IOSCO's CIBO Principle 3, which includes "obtaining information about the client's circumstances, such as financial background and business objectives, in order to develop a business and risk profile and to ensure that transactions being conducted are consistent with that profile (including, where necessary, the client's source of funds.)" CIBO Principle 3 is applicable to securities firms.

It is unclear whether the report's reference to CIBO Principle 3 suggests that CIS should follow the same model as securities firms. We strongly recommend that IOSCO clarify in the final report that CIS should not.

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[3] *See* page 11 of the report, under the heading "Responsibility for client identification and verification."

[4] *See* the answer to question 2 in the Guidance from the Staffs of the Department of the Treasury and the U.S. Securities and Exchange Commission: Questions and Answers Regarding the Mutual Fund Customer Identification Program Rule (31 CFR 103.131) (August 11, 2003). The guidance is available on the SEC's web site at http://www.sec.gov/divisions/investment/guidance/qamutualfund.htm).

AML rules applicable to CIS must take into account the nature of the CIS business and the characteristics that distinguish it from traditional banking and brokerage businesses. At least in the U.S., CIS, their underwriters, and their transfer agents typically have no face-to-face contact with investors. Unlike many retail securities firms, a CIS underwriter in the U.S. generally does *not* make investment recommendations to investors and is *not* required by U.S. regulators to make suitability determinations with respect to transactions involving CIS shares. As a result, the underwriter often collects only limited information about shareholders.

We urge IOSCO to recognize that CIS have less information available to them in making AML determinations than other types of financial institutions and to encourage IOSCO members to adopt AML rules applicable to CIS that take this operating reality into account. We have asked U.S. regulators to do the same. For example, we have asked U.S. regulators to clearly state that mutual funds are expected to monitor for suspicious activity and file suspicious activity reports based on the information obtained by the fund, its underwriter, or its transfer agent in the normal course of establishing a shareholder relationship or processing transactions.[5]

Delegation of AML Compliance Functions

We are pleased that the report provides that CIS may sub-contract performance of certain AML compliance functions to service providers.[6] We are concerned, however, that the report is overly prescriptive in setting forth how CIS should select and monitor such subcontractors.

As the report notes, a CIS does not relieve itself from liability by sub-contracting AML compliance functions. The retention of liability in this context provides a powerful incentive for CIS to take appropriate steps in selecting a subcontractor and ensuring that it performs as expected. As a result, we do not believe that it is necessary for securities regulators to dictate the terms of the relationship between the CIS and the subcontractor to the level of detail suggested by the report. Accordingly, we strongly recommend that IOSCO use less prescriptive terms in this section of the report.

* * * *

The Institute appreciates the opportunity to support IOSCO's work on this topic and to share our concerns. If you have any questions concerning our views or would like additional information, please contact me at (202) 326-5826 or Bob Grohowski at (202) 371-5430.

Sincerely,

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[5] *See* Letter from Craig S. Tyle, Investment Company Institute, to Judith R. Starr, FinCEN, dated March 21, 2003, available at http://www.ici.org/statements/cmltr/03_treas_sar_com.html#TopOfPage. The SAR rule for mutual funds has been proposed, but has not yet been adopted.

[6] *See* pages 20-21 of the report, under the heading "Sub-contracting to others."

Mary S. Podesta
Senior Counsel

About the Investment Company Institute

The Investment Company Institute is the national association of the U.S. investment company industry. Its membership includes 8,512 open-end investment companies (mutual funds), 650 closed-end investment companies, 143 exchange-traded funds, and 5 sponsors of unit investment trusts. Mutual fund members of the ICI have total assets of approximately $7.959 trillion (representing more than 95 percent of all assets of US mutual funds); these funds serve approximately 87.7 million shareholders in more than 51.2 million households.

17 May 2005

Mr Philippe Richard
IOSCO Secretary General
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Dear Mr Richard,

Public Comment on *Anti-Money Laundering Guidance for Collective Investment Schemes*

The IMA represents the UK-based investment management industry. Our members include independent fund managers and the investment arms of retail banks, life insurers and investment banks. They are responsible for the investment of over £2 trillion of funds (based in the UK, Europe and elsewhere) including institutional funds (eg. pension schemes and life assurance funds), private client accounts, regulated investment funds and a wide range of other pooled investment vehicles.

More particularly in the context of your consultation report, our members include the operators of 99%, by value, of UK-authorised collective investment schemes. We are, therefore, grateful for the opportunity to comment on the proposed IOSCO guidance.

Broadly, we welcome the clarification and consistency that IOSCO is seeking to bring with regard to the application of global anti-money laundering standards insofar as the operation of collective investment schemes is concerned. However, we have a number of concerns with some of the detail of the proposed guidance, which we would suggest is aligned too closely to a particular model for the operation and governance of CIS. This model differs in certain key respects from that which operates in the UK. We believe it is important that any guidance of this nature is sufficiently principles-based that it can be adapted and applied sensibly across different CIS models.

The principal difference is that the model envisaged in the guidance is one of "self-managed" schemes that are responsible individually for meeting the various legal and regulatory obligations. Whilst the proposed guidance recognises the existence of "CIS complexes", it still focuses on the responsibilities of an individual CIS within the complex.

In the UK, however, regulated funds (units trusts and open-ended investment companies) are required to be operated by firms - authorised fund managers (AFMs) - that are specifically authorised and regulated by the FSA for that purpose. The AFM has total responsibility for the compliant operation of all the schemes it manages (for which it is overseen day-to-day by an independent FSA-authorised trustee/depositary firm) and for meeting the relevant anti-money laundering obligations.

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Furthermore, unlike in other markets, the AFM usually deals as *principal* in the purchase and sale of units/shares with investors, in which case the CIS itself has no involvement, nor does it appoint a transfer agent to act on its behalf, in investor transactions.

The principal areas of the proposed guidance where we foresee some difficulty, either in connection with the aforementioned points or for other reasons, are set out below:

I. Background

We have no comments on this section.

II. CIS industry

Open-ended, exchange-listed and hybrid CIS

We concur in principal with the distinction that is made between "open-end" and "exchange-listed" CIS. The text might be simplified considerably, however, and part C removed altogether, if the guidance talked instead of “directly-traded” (traded directly between the investor and the CIS or AFM) and “exchange-traded” units/shares. In addition, there appears to be an assumption that exchange-traded shares will be registered in the nominee of the broker/dealer concerned, which will not necessarily be the case.

The key trigger in the process, from an identity verification perspective, is the transaction to buy or sell the units/shares. If this is carried on an exchange, the CIS/AFM is not involved in the transaction with the underlying investor (irrespective of how the units/shares are to be registered), but the broker/dealer concerned will in any event have an obligation to verify their customer. However, if the units/shares are traded directly with the CIS or the AFM, the obligation would rest with them, as appropriate.

Legal, management and distribution structure of open-end CIS

This section is at the heart of the issues that we raised at the outset. The guidance recognises various constitutional structures of CIS, but does not describe the model that exists in the UK, under which the AFM is responsible by virtue of regulation for the operation of the scheme and where the role of the trustee/depositary is one of oversight to protect the interests of investors. It is assumed that the CIS will deal in units/shares in its own right or appoint a transfer agent to deal on its behalf.

As we mentioned earlier, the result is that a number of the recommendations do not read across easily to the UK model in terms of where the responsibility should lie.

By contrast, we note that the IOSCO paper “Examination of Governance for Collective Investment Schemes”, which was published in February, considers in more detail the various different constitutional models that exist, and discusses in particular the respective roles of the trustee/depositary and the unit trust manager/ACD in relation to UK funds. We believe it would be helpful if this paper included guidance on the application of the principles in the context of the differing CIS models that exist.

III. Anti-money laundering programs

The guidance specifies a number of requirements regarding the documentation of AML policies and procedures, staff training and the appointment of a suitable individual to implement/oversee the process. These are consistent with the existing regime in the UK.

IV. Client identification and verification procedures

Responsibility for client identification and verification

We welcome the inclusion of a risk-based approach in both customer identification and know your customer (KYC). This is consistent with the FATF recommendations and reflected in the text of the forthcoming 3rd EU Directive on money laundering, and is a growing feature of the UK regime.

We are concerned, however, that detailed KYC procedures described in the guidance should be suggested as a possible mechanism that may be used *where appropriate*. In many low risk situations it should be perfectly adequate to consider an individual customer's transaction pattern against those of other investors rather than against their individual profile, the compilation of which would involve a level of cost to the firm and intrusion on the investor that is disproportionate to the money laundering risk.

Verifying investor identity

The guidance indicates that the CIS (which, again, we suggest should also be capable of being interpreted as referring to the AFM) must verify the investor's identity where the units/shares are purchased through a market intermediary.

In the UK, the intermediary is regarded in these circumstances as the "customer", acting as agent for the underlying investor. UK law provides that where the customer is a firm that is subject to appropriate AML regulation and supervision, the AFM has no obligation to conduct any verification of the underlying investor's identity, even if the investment is registered in the investor's name. We are concerned, therefore, that the IOSCO guidance in its current form would be super-equivalent in this respect to the legal position in the UK.

Timing of identification and verification

We welcome the recognition of the potential need to verify identity before, during or after a transaction. This is consistent with the UK approach, as are the recommendations to freeze/terminate the relationship and possibly file a suspicion report if satisfactory evidence of identity is not forthcoming.

Potential low risk situations

The guidance refers to employer-sponsored pension plans/superannuation schemes in which the investor participates through payroll deductions and appears to suggest that, as such schemes are not well suited to money laundering, no customer due diligence is required in the case of CIS that are offered as part of these schemes.

We would argue that the CIS/AFM concerned should, in fact, conduct some basic due diligence in order at least to establish that the scheme/employer is genuine. We would agree, however, that there should be no need to look at the individual scheme investors.

The guidance relating to new investments in CIS operated within the same CIS complex has no place in the UK model, where the obligation to verify identity in any event rests at the AFM (complex) level, rather than with the individual CIS.

V. Performance of client due diligence procedures by others

To the extent that one entity might rely upon another to satisfy the first's legal and regulatory obligations, we would agree that such reliance should be subject to a contractual agreement

and that the compliance of the second entity would need to be kept under periodic review. This is very much the case generally where operational functions, including those concerned with anti-money laundering, are sub-contracted.

We believe, however, that this would be unworkable where large numbers of financial intermediaries may be introducing investors to the CIS/AFM - to conduct initial and ongoing due diligence on perhaps thousands of introducers would be impracticable.

However, we welcome the statement that reliance would be “measured on a reasonableness standard” and that, provided the basis for reliance is reasonable and other jurisdiction-specific criteria are met, the CIS should not be sanctioned for failure of intermediary. We would argue, for example, that the regulation and supervision of an intermediary by an appropriate regulatory authority (ie. one whose scope included the prevention of money laundering) would be a reasonable basis for such reliance.

In conclusion, we agree it would be beneficial for the CIS industry globally to have a consistent understanding of its AML responsibilities. We would suggest, however, that the draft guidance is overly detailed in some areas and should focus more on the principles of what should be done in relation to CIS investment, leaving national regimes to determine who should undertake the work as appropriate given the particular CIS model that is being used.

We should be happy to discuss or provide further clarification on any points you may have in relation to the above comments.

Yours sincerely

David Broadway
Senior Technical Adviser

IFIC
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May 3, 2005

IOSCO Secretary General
Oquendo 12
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Spain
Attn: Mr. Philippe Richard

Dear Sirs/Mesdames:

Re: IFIC Comment on Anti Money Laundering Guidance for Collective Investment Schemes

We are pleased to provide the comments of The Investment Funds Institute of Canada ("IFIC") and its Members with respect to the Anti-Money Laundering Guidance for Collective Investment Schemes (the "Consultation Report") published for comment by the Technical Committee of the International Organization of Securities Commissions ("IOSCO").

Founded in 1962, IFIC is the industry association of the Canadian investment funds industry. Together with its affiliate, The Canadian Institute of Financial Planning, IFIC provides innovative and effective services to support and enhance the investment fund industry in its drive to provide the leading investment vehicles for Canadians. Members participate directly in the governance of IFIC through the election of Directors, and in IFIC's policy and advocacy initiatives through participation on IFIC standing committees, sub-committees and working groups. IFIC membership is restricted to investment fund managers and dealers managing over $500 billion in assets on behalf of Canadian investors, and service providers to such firms.

1. Background

In Canada, *The Proceeds of Crime (Money Laundering) Act*, Canada was passed in June 2000. The main aim of the Canadian Parliament with this Act was to strengthen the detection and deterrence of money laundering in Canada and around the world by:

- requiring financial intermediaries to report suspicious and other prescribed transactions, and to keep records pertaining to customer identification, and
- requiring persons or entities transporting large amounts of currency or monetary instruments across the border to report such movements to Customs officials and
- establishing the Financial Transactions Reports Analysis Centre of Canada ("FINTRAC").

FINTRAC is an independent agency, reporting to the Minister of Finance, who is accountable to Parliament for the activities of the Centre. FINTRAC is required to operate at arm's length from the investigative bodies to whom it is authorized to make disclosures of financial intelligence.

In October 2001, in response to the tragic events of September 11th, the Financial Action Task Force ("FATF") issued new international standards calling upon member countries to focus their monitoring of financial services and transactions on terrorist financing, in addition to money laundering.

Two months later the Canadian Parliament, through the *Anti-terrorism Act*, Canada, expanded Canada's anti-money laundering regime to guard against the use of the financial system by terrorist groups.

The *Anti-terrorism Act* amendments to FINTRAC's enabling legislation changed the name of Canada's enabling legislation to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act.*

The *Anti-terrorism Act* changes expanded the reporting requirements to FINTRAC in three key ways:

- suspicious transaction reporting would also include suspicions of terrorist financing, in addition to money laundering;
- a new requirement was put in place for FINTRAC to receive reports on known terrorist property and any transactions related to such property; and
- FINTRAC was authorized to receive voluntary information related to suspected terrorist financing, not just money laundering.

Amendments also required that, where FINTRAC had reasonable grounds to suspect that financial intelligence would be relevant to the investigation or prosecution of terrorist activity financing offences, such intelligence would be provided to the police. A similar authority was also created in relation to disclosures to the Canadian Security and Intelligence Service ("CSIS") of information related to suspected threats to the security of Canada (which includes suspected terrorist activity financing).

2. Application of Canadian Money Laundering and Terrorist Financing Legislation to Collective Investment Schemes ("CIS")

In Canada, the requirements of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* apply to "securities dealers", who are defined in the Regulations to the *Ac*t as "person[s] or entit[ies] that are authorized under provincial legislation to engage in the business of dealing in securities or to provide portfolio management or investment counseling services".

FINTRAC Guideline for Securities Dealers

FINTRAC, in conjunction with input from IFIC and the Canadian mutual funds industry prepared a Guideline[1] specifically for securities dealers to assist them in meeting their record keeping and client identification obligations.

The Guideline addresses: **Records To Be Kept** (including Large Cash Transaction Records, Account Opening Records, Certain Records Created in the Normal Course of Business and Client statements), **Client Identity** (including when and how clients must be identified, Client Identity for Large Cash Transactions, Client Identity for Accounts: Individuals, Client Identity for Accounts with Entities and General Exceptions to Client Identification), and **Third Party Determination and Related Records** (including When Third-Party Determination Have To Be Made, Third Party Determination for Large Cash Transactions, Third Party Determination When Opening Accounts and Exceptions to Third Party Determination or Related Records).

IFIC Money Laundering and Terrorist Financing Detection and Deterrence Practice Guideline

In 2002, IFIC retained consultants to develop a Money Laundering and Terrorist Financing Detection and Deterrence Practice Guideline for IFIC Members in an effort to assist them in complying with their obligations under the *Act*. Page 12 of the Guideline is a chart that illustrates the different functions within the mutual funds industry and the possible flow of funds and information. We have included page 12 of the IFIC Guideline for your reference.

3. In Closing

We believe that Canada's anti-money laundering regime is in line with the global standards set out in the Consultation Report as it was developed in accordance with the 40 recommendations set out by the FATF that outline the basic framework for anti-money laundering efforts, define international standards covering the criminal justice system, law enforcement, the financial system and its regulation, and international co-operation.

[1] Guideline 6 – Record Keeping and Client Identification is currently being revised. The most recent version of the Guideline may be viewed at FINTRAC's website at http://fintrac.gc.ca/publications/guide/guide_e.asp#q.

We are grateful to the Technical Committee for its initiative and continued work and look forward to participating further in the development of truly international standards in this important area.

Should you have any questions or require further information, please do not hesitate to contact either John W. Murray, Vice President, Regulation & Corporate Affairs at (416) 363-2150 x 225 /jmurray@ific.ca or Aamir Mirza, Legal Counsel, Regulation at (416) 363-2150 x 295 / amirza@ific.ca.

Yours truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

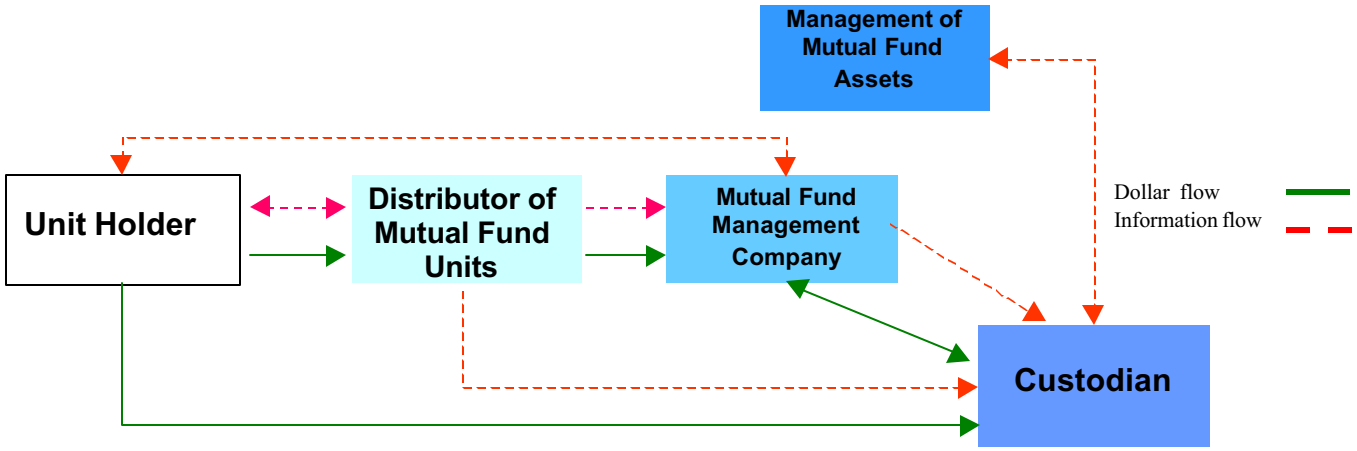
By:

Original signed by John W. Murray

For: Hon. Thomas A. Hockin
President & Chief Executive Officer

MUTUAL FUND INDUSTRY

The chart below illustrates the different functions within the mutual fund industry & the possible flow of funds and information:



Applicability of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act Legislative Requirements:

Functions / Requirements	Distributor of Mutual Fund Units	Mutual Fund Management Company	Management of Mutual Fund Assets	Custodian Note 1
Ascertain Identity including check to the OSFI list	✓	✓ Reliance on distributor Note 2	N/A	✓ Reliance on distributor Note 2
Reporting	✓ Suspicious, Terrorist Property and Large Cash transactions	✓ Suspicious transactions Note 3	N/A (For example, the legislation and FINTRAC are not concerned about the identity of the company whose shares are being purchased by the fund. This is a discretionary function and self reporting is not required.)	✓ Suspicious and Terrorist Property transactions Note 4
Record Keeping	✓	✓ Note 5	N/A	✓ Note 5
Compliance Regime (Appointment of Compliance Officer, Development and Review of Policies and Procedures, Training)	✓	✓	N/A	✓

Notes:

✓ The legislative requirements are applicable provided the organization is provincially licensed and/or registered to deal in securities.

1. A custodian must be either a Canadian chartered bank, a Canadian trust company having shareholder equity of not less than $10 million or an affiliate of a Canadian chartered bank or trust company that meets prescribed financial qualifications and that is incorporated under Canadian Federal, Provincial or Territorial law.
2. Reporting entities do not have to identify the individual authorized to give instructions for an account opened for the sale of mutual funds if another securities dealer is involved and the reporting entity has reasonable grounds to believe that the other securities dealer has ascertained identity. All securities dealers are required to check against the OSFI list.
3. Mutual fund management companies have a responsibility to report suspicious transactions to FINTRAC <u>if they have knowledge which causes them to be suspicious, for example</u>:
   - Customer account level: A customer who utilizes a number of different securities dealers to make large investments in a mutual fund, and then redeems these investments all to the same account, may be using the mutual fund, and the structure of the industry, to assist with the layering phase of the money laundering process.
   - Securities dealer level: A securities dealer makes a payment to the mutual fund company using an unknown third party cheque. The mutual fund company will want to review this unusual transaction and report it if it is determined to be suspicious. Another example: a securities dealer may create the illusion of trading by performing match trading to assist a money laundering process.
4. Custodians are required to report transact ions identified as suspicious of money laundering. For example, investments are funded by significant international wire payments from countries where there is no effective anti-money laundering system. Custodians are also required to report the receipt of $10,000 or more in cash. Practically, the custodian function in the mutual fund industry does not receive cash funds directly (cash funds are usually directed to the banking side of the business).
5. Reporting entities can rely on staff, agents or other contractors to keep records on their behalf.

SJ - n° 2003/Div.

Mr Philippe Richard
IOSCO Secretary General
Oquendo 12
28006 Madrid
Espagne

Paris, May 16 2005

AFG RESPONSE TO IOSCO CONSULTATION ON ANTI-MONEY LAUNDERING GUIDANCE FOR COLLECTIVE INVESTMENT SCHEMES

Dear Mr Richard,

The Association Française de la Gestion financière (AFG) represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. Our members include management companies and investment companies. They are entrepreneurial firms or belong to French or foreign banking, insurance or asset management groups. AFG members are responsible for the management of over 1800 billion euros in the field of investment management - making the French industry a leader in Europe (for collective investment in particular, with more than 20% of EU investment funds assets under management) and one of the top ones at global level. In the field of collective investment, our industry includes – beside UCITS – a significant part of products such as regulated hedge funds and private equity funds. We are also a member of the European Fund and Asset Management Association (EFAMA).

Therefore, we hope that AFG (through the size and diversity of its membership) can provide with a helpful contribution to IOSCO, based on our members' experience.

We appreciate the opportunity to support IOSCO's consultation paper on "*Anti-money Laundering Guidance for Collective Investment Schemes*".

We agree with IOSCO that market intermediaries must have put in place policies and procedures designed to minimize the risk of the use of their business as a vehicle for money laundering – along the lines of the IOSCO document dated February 2002. We also support the FATF 40 Recommendations on combating money laundering and the financing of terrorism.

However, we are concerned by the way IOSCO – through this new consultation document – suggests applying these global standards to the operation of collective investment schemes in particular. We agree with adapting FATF Recommendations to CIS, but adaptation ("*additional clarification*" as stated by IOSCO in its report) should mean taking into account the specificities of the industry and not constitute an *additional layer* of requirements as compared to the FATF Recommendations (e.g. the requirement for using external auditors).

We therefore urge IOSCO not to go beyond the 40 FATF Recommendations if it should lead to additional requirement for CIS. For instance, AFG considers that many oversight functions should not and indeed cannot be managed at the level of the CIS itself. Very often, the CIS does not have any contact with the client and therefore oversight functions should be managed at the level of the management company or of the depositary.

We hope that IOSCO will follow such a way and are looking forward to reading the next version of the paper on the subject. Do not hesitate to ask us sharing our experience and our members' one with IOSCO members if you find it helpful.

If you would like to discuss the contents of this letter with us, please contact myself on 00 33 1 44 94 94 14 (e-mail: p.bollon@afg.asso.fr), or Stéphane Janin on 00 33 1 44 94 94 04 (e-mail: s.janin@afg.asso.fr).

Yours sincerely.

(signed)

Pierre Bollon