PUBLIC COMMENTS RECEIVED
ON THE IOSCO CONSULTATION REPORT ENTITLED
EXAMINATION OF GOVERNANCE
FOR COLLECTIVE INVESTMENT SCHEMES

INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS

June 2006

List of Organizations that have provided comments:

- Assogestioni
- Association Française de la Gestion Financière (AFG)
- The Association of the Luxembourg Fund Industry (ALFI)
- BVI Bundesverband Investment und Asset Management (BVI)
- Club des Déontologues
- The Directors' Office, Luxembourg
- European Fund and Asset Management Association (EFAMA)
- The Investment Company Institute (ICI)
- The Investment Funds Institute of Canada ("IFIC")
- The Investment Trusts Association, Japan
- Investment Management Association (IMA)
- Portuguese Association of Investment Funds, Pension Funds and Asset Management (APFIPP)

June 2006

ASSOGESTIONI
associazione del risparmio gestito

Milan, 6 May 2005,

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

Dear Mr. Richard,

Re: Public Comment on Examination of Governance for Collective Investment Schemes

Assogestioni welcomes the opportunity to comment on the consultation paper "*Examination of governance for collective investment schemes*".

Assogestioni is the Italian Association of fund and asset managers. Our membership covers all Italian asset managers and the majority of foreign managers operating in Italy. At the end of 2004, its 218 members managed total assets for more the euro 940 bn. and included fund and portfolio managers, pension funds, banks and insurance companies.

Our association is active in promoting good governance amongst our members and in the financial markets at large. Assogestioni has drafted a Code of Conduct and a Independence Protocol fostering independence and fair behaviour of asset managers and envisaging methods of sanctioning actions contrary to such principles.

As a general remark, we agree with the aim of the IOSCO Technical Committee to identify common international principles in the area of governance of CIS in order to ensure that "CIS are organized and operated efficiently and exclusively in the interest of CIS investors and not in the interest of the CIS insiders". Such principles should be sufficiently broad to allow for difference in structure and legal frameworks amongst national industries and sufficiently firm to guarantee investors protection.

Among these general principles we share IOSCO's view that, together with the principle of transparency, there is also the need to provide for independent review and oversight of the activity of the asset manager in order to oversee and address conflicts of interest, to ensure compliance with obligations and to protect the interests of CIS investors.

We believe that appropriate procedures must be in place to make sure that the reviewer adopts an "outside perspective" and ensure the separation and isolation of the reviewer from the operator. A variety of forms of organization of CIS allows for different ways to implement this principle and define the independence of the entity.

It is our view that, as provided for in the Italian and European legislation (UCITS):

- the obligation that the Depositary reports directly to the authorities any irregularity;
- the prohibition of any overlap between administrative and executive directors of the operator and the depositary;
- the obligation for the depositary to act independently and in the interest of participants

are an effective way to ensure the independence of the reviewer over the activity of asset managers and to offer protection to investors against conflict of interests.

We appreciate IOSCO's work on this issue that we believe it to be of the uttermost importance for the industry and we would be glad to discuss the matter further, would you deem it useful.

Yours sincerely

Fabio Galli
Director General

SJ - n° 2003/Div.

Mr Philippe Richard
IOSCO Secretary General
Oquendo 12
28006 Madrid
Espagne

Paris, May 11 2005

AFG RESPONSE TO IOSCO CONSULTATION ON EXAMINATION OF GOVERNANCE 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. Some are entrepreneurial ones; others 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 hedge funds, real estate funds and private equity funds. We are also a member of the Fédération Européenne des Fonds et Sociétés d'Investissement/European Fund and Asset Management Association (FEFSI/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 "*Examination of Governance for Collective Investment Schemes*".

We agree with IOSCO that, although the definition of CIS governance can be developed from the concept of corporate governance, a definition of CIS governance must recognize the differences between the nature and purposes of CIS and the operating companies in which they invest.

In particular, we agree that a common objective for regulators should be to develop a governance framework for the organization and operation of CIS that seeks to ensure that CIS are organized and operated efficiently and exclusively in the interests of CIS investors, and not in the interest of CIS insiders.

Moreover, we share IOSCO's view that the definition must recognize the fact that CIS are structured and regulated differently among the jurisdictions of SC5 members. The way in which potential conflicts of interest in the operation of funds are addressed reflects differences in law, policy, and business structures very often.

More specifically, we do share IOSCO's view that entities such as trustees or depositaries can be considered, among others, as *Independent Entities* for the purpose of independent review – as long as (as stated by IOSCO) these entities are *"legally and economically independent from the CIS operator*". Instead of adopting a 'one size fits all' approach which might harm many regional industries, IOSCO is right when accepting that such independent entities can ensure CIS are operated exclusively in the interest of CIS investors; if necessary, IOSCO could advocate for a clear definition of what should be the responsibilities of such entities.

We are now looking forward to reading your next paper on the subject and ready to share our experience with IOSCO 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

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

Luxembourg, May 10, 2005

Monsieur le Secrétaire Général,

According to PriceWaterhouseCoopers and based on figures provided by Lipper, Luxembourg domiciles over 70% of "true cross-border funds" (i.e. fund or sub-funds registered for sale in at least two EU countries except their home state). 42 out of the 50 biggest promoters in the EU have chosen Luxembourg as their center of operations, thereby confirming that the Grand-Duchy provides for the right balance between reputation, investor protection and efficiency.

The Association of the Luxembourg Fund Industry (ALFI) is the representative body of the Luxembourg fund industry. Its membership includes funds as legal entities and professionals of the fund sector, among which depositary banks, fund administrations, transfer agents as well as asset managers.

ALFI would like to thank you for this opportunity to provide input on the IOSCO "Examination of Governance for Collective Investment Schemes" and therefore attach a memorandum describing CIS Governance in Luxembourg.

As a general comment, ALFI agrees that there should be independent oversight in a CIS and that different solutions are available to reach this goal. It is our aim to provide for a regulation that takes these different solutions into consideration while at the same time complying with guidance inter alia from the EU Commission, the EU Council and CESR.

We hope that you will find this description of the Luxembourg "model" helpful and remain

Sincerely Yours

Charles Muller

Director Legal and Tax

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Bundesverband Investment
und Asset Management e.V.

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

May 11, 2005

Public Comment on Examination of Governance for Collective Investment Schemes

Dear Mr. Richard,

BVI[1] welcomes the opportunity to comment on IOSCO's consultation report relating to examination of governance for collective investment schemes.

We are highly supportive of the approach taken by IOSCO in order to account for the divergent governance schemes existing throughout the world. In this respect, we share the notion that structural divergences rule out the possibility to install universal rules of CIS governance.

As IOSCO comprehensively elaborates in the draft report, developed investment fund legislations in the world have produced different approaches of fund governance, each of which is consistent with the characteristics of the relative legislation. As a result, none of these approaches may in general be regarded as superior compared to others. Therefore, international harmonisation efforts should focus on the development of common standards which might be put into effect within each governance model. This policy has been adopted by IOSCO in having proposed the independent review and oversight as an overriding principle of CIS governance.

[1] BVI Bundesverband Investment und Asset Management e.V. represents the interest of the German investment fund and asset management industry. Its 75 members currently manage more than 7,200 investment funds with assets under management in excess of € 1,000 bn. The units of these funds are held by some 15 million unit holders.

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We endorse IOSCO's view that all governance systems should subject CIS Operators to control and oversight provided by an Independent Entity. In particular, concerning the conditions of independence which are to be met by the overseeing bodies, we think that IOSCO has managed to provide for a high standard of investor protection while keeping in mind specific features of national industry.

As laid down in the first principle of CIS Governance (page 10 of the report), the Independent Entity's main objective should be ensuring the lawful and proper conduct of CIS Operator from "an outside perspective". Accordingly, the main focus of the definition does not lie on the legal or economic independence of the oversight entity, but on the ability to perform its duties in an autonomous manner, and thus on the so-called functional independence. BVI is in complete agreement with IOSCO that functional independence from the CIS Operator may be reached within the same corporate group, provided there are appropriate mechanisms in place which warrant the absence of any interference with respect to the conduct of oversight.

Under many legislations, including Germany, the depositary appointed as a controlling entity is by virtue of law required to act independently of the CIS Operator and in the sole interest of investors when performing its oversight duties. In addition, general managers, authorised signatories and agents of CIS Operator are legally prevented from being simultaneously employed by the depositary or vice versa. Bearing in mind the depositary's liability towards the investors for the proper performance of its duties, we are of the opinion that such legal arrangements fully provide for an autonomous and impartial oversight of the operation and organisation of CIS.

In summary, it must be emphasised that it is the effectiveness of the oversight function that should be sought and ensured by general principles of CIS governance. The absence of legal or economic ties between fund manager and supervising entity marks only one way of achieving the necessary level of independence.

We hope that our comments are helpful to the future work of IOSCO on CIS governance and remain at your disposal for any in-depth discussion.

Yours sincerely

BVI Bundesverband Investment und Asset Management e.V.

signed Stefan Seip signed Marcus Mecklenburg

CLUB DES DEONTOLOGUES
ASSOCIATION – Loi de 1901

Monsieur Philippe RICHARD
Secretary Général
IOSCO
Oquendo 12
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Paris, le 22 avril 2005

Monsieur le Secrétaire général,

A la suite de la publication du rapport sur la gouvernance des produits d'investissement collectifs de votre institution, notre association, présidée par monsieur Edmond ALPHANDERY a demandé à notre groupe de faire les commentaires éventuels.

Vous trouverez ci-joint les conclusions de nos débats. La France est en effet apparemment le seul pays ou il existe une obligation pour les sociétés de gestion de disposer d'un déontologue dont la mission est de s'assurer que toutes les décisions prises le sont dans l'intérêt de la clientèle. Même si la tendance actuelle est de noyer cette fonction dans une fonction plus large et plus juridique de « conformité », l'appui que peut constituer le déontologue pour les conseils ou comité de suivi des OPCVM est suffisamment significatif pour valoriser cette fonction dans les sociétés de gestion.

Je reste à votre disposition et vous prie de croire, Monsieur le Secrétaire Général, en l'assurance de mes sentiments distingués.

Patrice DAUDIER de CASSINI
Président

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MEMBRE DU CENTRE NATIONAL DES PROFESSIONS FINANCIÈRES

CENTRE NATIONAL DES PROFESSIONS FINANCIERES
CLUB DES DEONTOLOGUES

PUBLIC COMMENT ON « EXAMINATION OF GOVERNANCE FOR COLLECTIVE INVESTMENT SCHEMES »

The above document has been discussed by the members of the french "CLUB DES DEONTOLOGUES", the word "*déontologue*" beeing used by the French regulators (AMF) as the person, in charge of :

1- "ensuring the integrity of the financial market"
2- "ensuring that decisions are taken exclusively in the interest of clients"

In France, according to regulations, every asset management company must designate a person in charge of deontology, le déontologue.

Considering the subject of CIS, there are two types of collective investment schemes in France :

- SICAV, which are the same type of CIS as described in your paper, organized under the corporate form with a board of directors,
- and FCP, mutal funds without corporate form, which are entirely managed by the asset management company.

We must accept the fact that, apart from this legal difference, the objectives of governance are the same, SICAV, having, mainly theoretically in fact, more independance due to its board of directors.

In fact, both have been mainly managed by the asset management company, the CIS operator, taking most of investment decision concerning these two investment schemes.

French regulators have edicted a number of rules to ensure that the operators act in the best interests of investors. They are mentioned in your appendix 3. Among them, the obligation for each CIS operator, asset management company, to have a déontologue must be considered as part of CIS governance and seem to be specific to France.

I. ROLE OF THE "DÉONTOLOGUE"

We will concentrate on the second part of the mission, as only this subject is concerned by the IOSCO paper. In this respect, the déontologue is in charge of the governance topics mentioned in your Corporate model 2 –Depository except investment decisions i.e. :

- controling that investment decisions are taken in accordance with the funds objective as specified in the prospectus
- ensuring the management fees have been calculated according to the prospectus and presented in the annual report of the funds in a comprehensive manner
- make sure that in the "know your customer" procedure of the asset management firm, the customer is informed of the risks involved when investing in the related funds
- make sure that relevant and regular information is sent to the customers

- be involved in the resolution of conflicts of interest arising from certain transactions

At least once a year, the déontologue produces a report on its findings presented to the management of the company.

Often considered as the Compliance officer, the déontologue has a specific duty to help solving the conflicts of interest which is significantly different from complying with regulations.

II. RESPONSIBILITY

The déontologue has an obligation to inform the persons acting for the asset management company of their obligations concerning the customers, he has himself the obligation to perform the controls mentioned previously, and to report to the top management. Its responsability stans there and presently, there is no obligation of “wistle blowing” towards external auditors or regulators.

To give him more power, its designation must be approved by the board of directors of the management company and the regulator must be informed.

III. INDEPENDENCE

The question of independence of the déontologue is a main concern of our working group. In fact, when the déontologue is an employee of the asset management company, which is the most frequent case, he can be himself in conflict of interest with its company. A frequent example is the cost involved for the company if the recommendation is to reimburse customers in certain cases of errors or mis-buying or selling. We have not found a definite solution to this question of independence in this situation, the problem arising mainly in small entities.

A new profession is arising, “external déontologue”. In this case, the asset management company contracts with a specialized consulting firm which put at its disposal a person having the experience and knowledge to fullfill the function of “part-time déontologue”. Although it is the company which pays the fees of the déontologue, he has more power to impose his views on various subjects and particularly conflicts of interest. First, he has the experience of other companies and can make recommendations on a bench-mark of good pactices. Second, the company has paid for a recommendation and hesitates to ignore the work done. Third, if following his conclusions, the company decides to cancel the contract, he does not looses his job !

IV. CONCLUSION

The role of the déontologue cannot be ignored in the process of CIS governance. In France, it must be considered as the most important and almost unique actor of protecting the interests of the customers. Of course the role of the regulatory authority cannot be minimized, but its action is mostly after as the déontologue acts in prevention.

The Directors' Office

Mr. Philippe Richard
IOSCO Secretary General
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Spain

Luxembourg, May, 10th 2005

Ref. Public comment on "*Examination of Governance for Collective Investment Schemes*"

Dear Sir,

The Directors' Office would like to thank IOSCO for having taken the initiative of researching, documenting, and analyzing different governance models of Collective Investment Schemes [CIS]. We think that this work is both timely and useful. Moreover we believe that it will naturally stimulate further works and globally enhance the efficiency of fund governance models to the benefit of the investing public.

Our company has been incorporated in Luxembourg as a CSSF regulated company with the primary objective to provide to individual funds directors the required professional resources and infrastructure enabling them to better perform their oversight and governance duties, particularly within the frame of the European Commission UCITS III Directive on investment funds. Our company is exclusively owned by its individual associates. No financial relation exists between the company and any CIS operator or service provider. The management and the associates of *The Directors' Office* participate in the works of several European and international professional bodies in the fields of investment and funds management, of risk management and of corporate governance.

On the IOSCO consultation report, we share your understanding that CIS governance is *"a framework for the organization and operation of CIS that seeks to ensure that CIS are organized and operated efficiently and exclusively in the interest of CIS investors, and not in the interest of CIS insiders"*. We agree on the universal principle that sound CIS governance is build on independent review of the CIS operator. We understand that such independent review and oversight may take different forms and structural models in different jurisdictions. We note your efforts to encompass the diversity of CIS governance models into two dimensions: firstly the corporate versus the contractual *legal structures*, and secondly *oversight functions* exercised by one "independent entity", ie either by the board of directors or by the depositary or by the trustee. We value the detailed appendixes already applying the "two dimensions" CIS Governance models to the concrete situations of several leading countries. We look forward to subsequent IOSCO works and report on the precise functions and tasks entrusted to such independent entities.

But, without waiting for such a good continuation, may we address some issues:

- Although in the report is there an explicit statement[1] that the functions of the depositary and those of the board of directors are not equivalent, the overall structure and the contents of the report convey the idea that their respective functions are comparable and somewhat interchangeable. The Corporate Model n°2 is even using depositary as a substitute of board of directors[2]. We disagree and we think that the nature, the scope and the frequency of the functions of depositary on one hand and of the board of directors on

[1] See Item IV B on Page 8
[2] See Item iV B on page 8 and Chart 1 on Page 10.

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the other hand are different, yet complementary. For instance, the exercise of duties of the depositary is permanent while the one of the board of directors is not. Or the board of directors should – among others- guide the strategy and the performance of the investment company that are not the precinct of the depositary, which should be more protective and reactive. Etc.

- We reckon that investment companies do share the same governance principles as regular commercial companies, but that the multiplicity of CIS legal structures[1] among CIS operator groups may render the strict application of such governance principles more detrimental than beneficial to the investing public in the absence of specific governance adaptations, such as pooled or cluster boards in the USA or authorized corporate directors in the UK. Similar governance specificities are being developed in several other countries. Such applications should not be made at the expenses of the CIS governance principles.

- Not all legal forms – be corporate or contractual - are equivalent in protection and in the preservation of investors' rights. We should not be misguided by the fact that – over time - most CIS operators groups have been indifferently opting between corporate or contractual forms for simple tax reasons or just to match historical market habits. The fact remains that the rights of investors in contractual or corporate CIS are not the same. One could have expected from IOSCO to remind the market of the differences of such rights. One could also have expected from IOSCO to express wishes to protect and to facilitate the exercise of CIS investors' rights enabling CIS to play their crucial role in the global governance chain.

- More broadly, it should not be implied from the report that all four CIS governance models [different legal forms combined with different entities] are as efficient in providing value and protection. The absence of catastrophic occurrences in most countries over many years is no proof of the governance equality of their CIS governance systems, nor is it of the superiority of any governance system with respect to another. Yet we think that across all CIS governance systems, one single cause for robustness should have been better stressed: the existence and the interactions of several independent review mechanisms [or entities], rather than the over-reliance on any single one, be board or be trustee/ depositary.

- Finally, we would like to draw the attention on a relative absentee in the consultation report: the management company of CIS, be under contractual or corporate form. Not only as stated, the management company is committed with the fiduciary duty of acting on behalf exclusively of CIS unit holders best interest[2], but it should have the means and the organization of achieving such duties. This has been insufficiently stated. It practically implies to have the management company adopting in turn proper governance principles, including its own set of adequate independent review mechanisms.

We trust that IOSCO subsequent works will address and clarify those issues We highly appreciate the occasion given to us to comment on the IOSCO report in CIS governance. Should you wish to be provided with any further information or should you like to discuss further any issues, please don't hesitate to contact us.

Sincerely yours,

Yves Wagner
Member of the Board of Directors

Patrick Zurstrassen
Chairman of the Board of Directors.

[1] Our best estimation of the number of CIS investment and management companies in Europe is around 20.000.

[2] See V A . Page 8

efama
European Fund and Asset Management Association

Mr. Philippe Richard
Secretary General
IOSCO
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Spain

Ref. 05-1040
In advance by e-mail : mail@oicv.iosco.org
and fax: 34 (91) 555 93 68

13 May 2005

Dear Mr. Richard,

RE: Examination of Governance for Collective Investment Schemes

On behalf of the European Fund and Asset Management Association[1] we welcome the opportunity to express our support for IOSCO's consultation paper "Examination of Governance for Collective Investment Schemes".

EFAMA endorses IOSCO's view that the CIS should be "organized and operated efficiently and exclusively in the interests of CIS investors, and not in the interests of CIS insiders". To this end, structures and procedures have to be in place to fulfill the crucial role of guarantors of independent review and oversight.

Independent oversight must involve Independent Entities that are capable to assess whether CIS operators comply with applicable rules and obligations. We believe that, besides the entities mentioned in the report, also auditors can act as an Independent Entity, provided that their obligations and reporting lines are organized accordingly.

Due to the differences in regulatory environments, fund structures and financial environments, diversity is understandable, therefore the different systems currently in use in Europe are appropriate and fulfill their duty to protect investors' interests.

We share IOSCO's conclusions that "the concept of independence assumes different forms among the various CIS Governance structures", and do not believe that one model is intrinsically superior to others. Each of them has certain slight advantages and disadvantages: more independence for the Board of Directors (depending on its composition), but less involvement in the day-to-day business vs. the depositary and auditor models). However, they can all represent the best solution for the given environment, and, above all, they guarantee globally a level playing field for CIS operators and investors.

[1] EFAMA, previously FEFSI, the Brussels-based European Fund and Asset Management Association, represents the interests of the European investment management industry (collective and individual portfolio management). Through its member associations and corporate members from 19 EU Member States, Liechtenstein, Norway, Switzerland and Turkey, EFAMA represents the European asset and fund management industry, with some 41,100 investment funds and EUR4.7 trillion in net assets under management. For more information, please visit www.efama.org.

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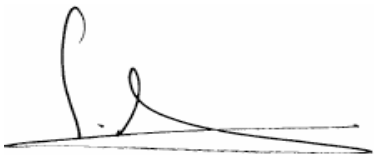
We also acknowledge that some conflicts of interest may arise in the case of Independent Entities related to the CIS operator, but such conflicts can be dealt with through additional legal requirements, as suggested by IOSCO.

Finally, while speaking about CIS Governance and investor protection, EFAMA wishes to recall the central role of compliance in CIS operations. Without a functioning compliance structure and a real compliance mentality embedded in the CIS operator, any oversight entity –no matter how independent -- faces an arduous task and might eventually fail to protect investors. For this reason, EFAMA would welcome the adoption of an industry code of conduct by fund management companies embedding compliance principles and guaranteeing investor protection.

After all, it is in the industry's best interest to ensure that independent oversight really works and is fully supported by an equally independent compliance function.

We look forward to IOSCO's subsequent report on Independent Entities functions and are at your disposal should you wish to discuss further any of our comments.

Yours sincerely,



Steffen MATTHIAS
Secretary general

Cc: Mr. Hubert Reynier

May 11, 2005

Via Email

Mr. Philippe Richard
IOSCO Secretary General
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Spain

Dear Mr. Richard:

On behalf of the Investment Company Institute,[1] we appreciate the opportunity to support IOSCO's consultation paper on "Examination of Governance for Collective Investment Schemes." We strongly agree that a common objective for regulators should be to develop a governance framework that "seeks to ensure that CIS are organized and operated efficiently and exclusively in the interests of CIS investors, and not in the interest of CIS insiders." The concept IOSCO sets forth of requiring independent review of those who operate collective investment schemes (funds) is an appropriate means to accomplish this objective. We have concerns, however, whether IOSCO should consider affiliates of a fund operator to be independent for these purposes.

The consultation document observes that all jurisdictions impose on fund operators an overriding obligation to act in the best interests of investors. To help assure that fund operators meet their obligations, IOSCO has proposed a set of standards based on the principle that fund governance should provide for the independent review of the actions of the operator in managing CIS assets. IOSCO states that the objective of the independent review is to provide an "outside perspective" to protect investors and describes the types of private entities (collectively to be known as "Independent Entities") that can have this role in various jurisdictions. IOSCO further states that the Independent Entity should have sufficient powers to exercise its functions and, in principle, should not be permitted to delegate its responsibilities. We believe a fund governance framework based on independent review is an appropriate way to seek to assure that funds are organized and operated in the interest of their investors.

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[1] The membership of the Investment Company Institute includes 8,633 open-end investment companies ("mutual funds"), 622 closed-end investment companies, 126 exchange-traded funds, and 5 sponsors of unit investment trusts. Our mutual fund members have assets in excess of $7.3 trillion, accounting for approximately 95% of total industry assets. Individual owners represented by ICI member firms number 86.6 million as of mid 2003, representing 50.6 million households.

We question, however, the notion that trustees and depositaries affiliated with the fund operator (for example, entities that control, are controlled by, or are under common control with the fund operator) can be considered Independent Entities for purposes of an *independent* review requirement. Although the consultation document states that reviewing entities "desirably" should be legally and economically independent from the fund operator, IOSCO nevertheless intends that affiliates can fulfill this role. The report notes in this regard that some jurisdictions that permit an affiliated depository to oversee the fund operator impose additional conditions, *e.g.* making the affiliated depository jointly responsible for possible misconduct or fraud by the fund operator. In our view, imposing additional obligations on an affiliate does not turn an affiliate into an independent entity. As a member of the same corporate group as the fund operator, an affiliated depository or trustee has an economic interest in the success of the corporate enterprise that could impair its ability to provide independent oversight of the fund operator.

In support of our position, we note that the consultation document states that governance standards for CIS should be developed from the concepts of governance that have been broadly developed for corporate issuers, taking into account differences in the nature and purposes of CIS and those issuers. The concept of "independence" has an agreed meaning in corporate governance that cannot be stretched to include affiliates of an insider. For example, we do not believe that a company could assert that an executive of its affiliate that serves on the company's board should be considered an "independent director" under a listing rule that requires that independent directors comprise a certain percentage of the company's board.

In the consultation document, IOSCO notes that the way in which jurisdictions seek to address potential conflicts of interest in the operation of funds reflects differences in law, policy, and business structures. We agree that it is appropriate for each jurisdiction to determine the standards that will apply to funds sold to the jurisdiction's investors. Accordingly, we believe IOSCO should acknowledge that the fund governance framework in some jurisdictions does not require a review mechanism by persons independent of the fund operator.

We express no opinion whether, or under what conditions, a system that relies upon affiliates to oversee fund operators achieves regulators' objectives of protecting fund investors. Rather, we respectfully suggest that it would be a mistake for IOSCO to take the position that affiliated trustees and depositories should be considered *independent* reviewers.

* * *

We appreciate the opportunity to comment on the IOSCO paper on CIS governance. If we can provide any other information or if you would like to discuss further any issues, please contact me at (202) 326-5826 or at podesta@ici.org or Jennifer S. Choi at (202) 326-5810 or jchoi@ici.org.

Sincerely,
/s/
Mary S. Podesta
Senior Counsel

THE INVESTMENT FUNDS INSTITUTE OF CANADA
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BY MAIL & E-MAIL: mail@oicv.iosco.org

May 5, 2005

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Attn: Mr. Philippe Richard

Dear Sirs/Mesdames:

Re: IFIC on Examination of Governance 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 Examination of Governance 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. General

In Canada, the Canadian Securities Administrators ("CSA"), an association of the 13 securities regulators of Canada's provinces and territories, are responsible for developing a national system of securities regulation, policy and practice to coordinate and harmonize regulation of the Canadian capital markets.

The CSA in conjunction with Canada's investment funds industry have, for the past several years, been actively pursuing the development and implementation of a mandatory fund governance regime for Canadian mutual funds. In March 2002, the CSA released for public comment CSA Concept Proposal 81-402 - *Striking a New Balance: A Framework for Regulating Mutual Funds and their Managers* ("Concept Proposal 81-402")[1]. Concept Proposal 81-402 set out a system of fund governance in which a group of independent individuals would be charged with overseeing all of the fund manager's activities. Among other things, this group would be required to oversee performance, monitor fees, and act as an audit committee. After extensive comment from IFIC and market participants the CSA significantly revised their thinking about mutual fund governance and in January, 2004 released for public comment Proposed National Instrument 81-107 – *Independent Review Committee for Mutual Funds* ("Proposed NI 81-107")[2].

Proposed NI 81-107 set out a mandatory fund governance regime focused on conflicts of interest. Under Proposed NI 81-107, each mutual fund manager would be required to establish an independent review committee ("IRC") for its funds. The IRC would be charged with reviewing all matters involving a conflict of interest between the fund manager's own commercial and business interests and its fiduciary duty to manage its mutual funds in the best interests of those funds. These conflicts would include transactions with entities that are related to the manager, trades between mutual funds, certain changes which currently require an investor vote (referred to as fundamental changes), and circumstances in which a reasonable person would question whether the manager is in a conflict of interest situation. Where there is a conflict of interest, the fund manager would be required to refer the matter to the IRC and obtain its recommendation. The manager would be allowed to proceed even where the IRC did not agree, but would be required to disclose the IRC's position and the reason for not following the IRC's recommendations to the fund's unitholders.

The comment period for Proposed NI 81-107 expired in April, 2004 and the CSA once again received many comments from IFIC, market participants and investor advocates. The CSA continues to develop and refine its approach to mutual fund governance and

[1] At: http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part8/cp_20020301_81-402_proposal.pdf . The consideration of international perspectives in the development of Concept Proposal 81-402 was based on a review of the following reports issued by IOSCO's Technical Committee on the regulation of Collective Investment Schemes:

- Report on Investment Management – Principles for the Regulation of Collective Investment Schemes and Explanatory Memorandum July 1995
- Objectives and Principles of Securities Regulation September 1998
- Summary of Responses to Questionnaire on Principles and Best Practices Standards on Infrastructure for Decision Making for CIS Operators May 2000
- Conflicts of Interest of CIS Operators May 2000
- Delegation of Functions December 2000

[2] At: http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part8/rule_20040109_81-107_review-mutual.pdf .

plans to issue a revised version of Proposed NI 81-107 for public comment in the near future.

The CSA face many challenges in developing a workable fund governance regime: they must ensure that regulation keeps pace not only with the complexity and creativity of the industry, but also with global standards. In seeking to fulfill these objectives, the CSA must also strike the correct balance between protecting investors and fostering fair and efficient capital markets while remaining cognizant of the fact that the Canadian mutual fund industry operates in an increasingly global marketplace where adherence to world standards will be central to its continued success.

IFIC and its Members recognize these challenges and continue to work with the CSA to establish an effective system of mutual fund governance. We support any initiative that will increase real investor protection in a practical and efficient manner.

Our specific comments on the Technical Committee's Consultation Report are set out below.

2. Primary Principle for the Governance of Collective Investment Schemes ("CIS")

The Consultation Report notes that "as a primary principle, CIS Governance must provide for independent review and oversight of the organization and operation of the CIS" and that "Independent Entities should be empowered with sufficient conditions to exercise its functions in an effective independent manner".[3]

We believe that it is important to keep the following points in mind when considering how to best establish the independent review and oversight function of any mutual fund governance regime.

There is a Need to Move Towards "Better" Rather than "Increased" Regulation

Today, mutual fund management in Canada and elsewhere is a mature and highly transparent industry with practices that are well established. Our industry, nonetheless, remains burdened by an onerous regulatory regime that is far more costly and complex than the regulatory structures applicable to other retail financial products offered today to Canadian investors (including segregated funds, pooled products, exchange traded funds, "folios" and wrap accounts).

For any form of mutual fund governance to be a net benefit to investors, the costs must not outweigh the benefits to investors. A governance regime should not represent an added layer of regulation, but rather should be introduced as a streamlined and efficient replacement to existing aspects of a regulatory regime that would be rendered redundant by the institution of a mutual fund governance mechanism.

[3] At page 10 and 11 Part VI (Broad General Principles of CIS Governance).

Additionally, as alternative products become more dominant, developing parity between the regulatory regimes of mutual fund and non-mutual fund collective investment or "pooled" products becomes increasingly important. It is essential that similar products be regulated similarly otherwise, advisors and investors will be tempted eschew the benefits of better governance in favour of cheaper financial products that offer similar attributes but less protection.

Fund Governance and Fund Manager Roles are Not Equal

Fund governance is intended to ensure appropriate oversight of the manager. In delineating the scope of this oversight role, particularly with respect to proposals to vest independent governance boards with the power to call for the termination of the fund manager (a proposal that was articulated by the CSA in Concept Proposal 81-402 and subsequently dropped from Proposed NI 81-107), it must be borne in mind that the roles of independent governance boards and the mutual fund manager are not equal or similar.

It is the business of a mutual fund manager to make investment and other decisions on behalf of the fund's investors. The power to act in this manner is conferred by investors themselves who, at first instance and through an exercise of individual judgment, select a particular fund manager from among a host of market participants to whom they will entrust their funds and the fulfillment of their investment objectives.

A mutual fund manager cannot coerce individuals into subscribing to units of its fund neither can it force them to refrain from redeeming them. Fund managers thus serve at the pleasure of investors and have no ability to ensure the security of their tenure through compulsion.

The right and privilege to continue to act on behalf of investors is thus earned and subject to reaffirmation on a continual basis, as nothing bars an investor from moving to a more appealing product/manager combination.

The legitimacy of a fund manager to act on behalf of unitholders arises from the agreed assumption of continuous public accountability and the fulfillment of specific objectives. An independent governance board would not be charged with or specifically chosen to fulfill these responsibilities and thus cannot be vested with the same level of authority and legitimacy that comes only with their assumption. Independent governance agencies should, therefore, not be empowered to an extent that would potentially give them the ability to undermine or impair the choices made by individual investors.

Competitive Market Forces Discipline Mutual Fund Manager Conduct and Should Not be Discounted

The mutual funds industry in Canada and globally is highly competitive. Global industry participants undergo a constant struggle by competing in the same markets for the same investor dollars.

Mutual fund managers must continuously offer and successfully sell units in the market so as to ensure an ongoing ability to replenish redeemed assets. This function lies at the heart of a fund manager's success and profitability and ensures that the fund manager, as the owner of a business enterprise, has a long-term interest in the welfare of the fund and its ongoing appeal to current and potential investors.

In attracting investors and setting the basic features of a fund, the fund manager will be necessarily limited by the competitive restraints imposed by the market and a fund whose basic features are not comparable to those of its peer group will quickly lose appeal with investors.

There is a significant degree of overlap between the best interests of shareholders and the wishes of fund management. The adoption of a fund governance regime, in any form, must recognize the commercial mechanisms of strenuous competition and the need to preserve and enhance firm reputation and how these factors continually ensure the alignment of fund manager and investor interests. In Canada, we believe that a realistic appraisal of these forces as entrenched elements of the Canadian mutual funds market illustrates that they are not antagonistic to the goals of our industry's regulatory framework but rather work in conjunction with it.

The Need to Pursue Investor Protection While Fostering/Preserving a Streamlined and Commercially Viable Industry

The implementation of any fund governance regime must consider the overall impact of its cost implications upon the business operations of market participants so as to ensure that such initiatives are pursued and implemented in a financially viable and responsible manner. The fundamental purpose of any governance regime for CIS can only be to provide investors with a more efficiently operating and cost-effective regulatory framework that will facilitate the delivery of improved service while preserving investor choice.

3. In Closing

The Technical Committee notes in its Consultation Report that it will, in a subsequent report, develop the precise functions and tasks that should be entrusted to Independent Entities. We trust that you will find our comments helpful and look forward to opportunities for further input. We are grateful to the Technical Committee for its continued work and look forward to future reports on this important initiative.

Please contact 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 should you have any questions.

Yours truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

Original signed by John W. Murray

By:

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

April 22, 2005

Mr. Philippe Richard
Secretary General
International Organization of Securities Commissions (IOSCO)
Oquendo 12, 28006 Madrid
Spain

Dear Mr. Richard,

Re: "Examination of Governance for Collective Investment Schemes" (February 2005)

The investment fund management companies and the Investment Trust Association in Japan make the continuous effort to establish the robust governance regime suitable for the Japanese legal framework for the best interests of investors. We also believe a CIS governance based on the independent review is one of appropriate ways to assure that CIS are organized and operated in the best interest of their investors.

However, each country legally requires CIS operators to fulfill fiduciary duties to investors and takes steps necessary for ensuring that these fiduciary duties are fulfilled. In Japan, there are various frameworks for ensuring the interests of investors such as supervisions and inspections by the authority, prohibited activities set forth by the law, rules of the self-regulatory organization and outside auditing.

We believe that each country should be able to determine whether it adopts the independent review requirement or not after due consideration in the light of its own system. We do not consider that it is necessary to

uniformly require every country to adopt the single system for the CIS governance, if the country would already have taken the effective measures for ensuring the interests of investors

Yours sincerely,

Yoshiaki Kaneko
Vice Chairman
The Investment Trusts Association, Japan
2-1, Nihonbashi, Kabutocho, Chuo-ku
Tokyo 103-0026, Japan

(For your reference)
The Investment Trusts Association, Japan, is the self-regulatory organization whose membership includes 95 investment fund management companies and 12 securities firms.

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

11 May 2005

Dear Mr. Richard

Examination of Governance for Collective Investment Schemes

The IMA represents the UK-based investment management industry. Our Members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of about £2 trillion of funds (based in the UK, Europe and elsewhere), including authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. In particular, our Members represent 99% of funds under management in UK-authorised collective investment schemes (i.e. unit trusts and open-ended investment companies).

The IMA is pleased to express its support for your Consultation Document on Examination of Governance for Collective Investment Schemes and, in particular, strongly endorses the proposition that CIS Governance requires a framework for the organisation and operation of CIS that seeks to ensure that CIS are organized and operated efficiently and exclusively in the interests of CIS investors, and not in the interest of CIS insiders.

Of direct relevance to this Consultation, you should note that in January 2004, the Board of Directors of the IMA set up a Working Party with a broad remit to consider whether there were changes that the IMA should be seeking to promote in the way that UK authorised collective investment schemes are governed, with a view to making recommendations to the UK's Financial Services Authority and the UK CIS industry.

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In February 2005, following consultation with IMA Members and consideration by the Working Party of Member feedback, the Board of IMA adopted and issued a formal report, proposing industry standards and recommending changes to the existing regulatory regime. A copy of the report is attached to this letter. Implementation of the recommendations is currently in progress.

We note with interest that "SC5 will later develop the principle of independence regarding the functions that should be entrusted to the entity responsible for reviewing the CIS Operator and CIS activities…..". We look forward to SC5's conclusions, as United Kingdom regulation is super-equivalent to the UCITS Directive requirement concerning the relationship between the manager and depositary, not permitting both entities to be members of the same group of companies. The UK is, we believe, the only EU jurisdiction to be super-equivalent in this way, and recent consultation with IMA members has confirmed that they believe that this separation is a fundamental element of investor protection.

We look forward to the results of ongoing IOSCO work on the subject of CIS Governance and will be very happy to discuss the points raised above, or any matters raised in the IMA report, if this would be helpful to you.

Yours sincerely

Jim Irving
Senior Adviser - Regulation

APFIPP
ASSOCIAÇÃO PORTUGUESA DE FUNDOS
DE INVESTIMENTO, PENSÕES E PATRIMÓNIOS

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

Lisbon, 10th May 2005

Subject: **Public comment on "*Examination of Governance for Collective Investment Schemes*"**

Dear Sir,

APFIPP, which is the Portuguese Association of Investment Funds, Pension Funds and Asset Management, welcomes the opportunity to submit its comments on IOSCO consultation concerning "*Examination of Governance for Collective Investment Schemes*".

Great attention has been given to Governance, and for the Investment Fund Industry it has been one of the issues on the top of the agenda, and even the UCITS Directives contain several Governance Principles. APFIPP has been following the developments made in this area, and is of the opinion that the self-definition of Governance Standards by the Fund Industry is important to stress the transparency of this activity and to confirm that CIS Operators are committed to act in the best interest of investors.

As stated on Appendix 3, the Model of CIS Governance in Portugal is the Contractual Model 1, therefore all Portuguese CIS must have a depositary that is responsible not only for the custody of assets but as well as for overseeing the CIS Operator and CIS activities. The Management Company and the Depositary, while exercising their functions, must act in an independent manner and in the exclusive interest of the unit-holders, and both are jointly responsible upon unit holders for the accomplishment of the obligations acquired in the law and in the CIS rules.

In the view of the Association, most of the principles stated on the Consultation Report are already in practice in the Portuguese Market, and the CIS activity is strongly monitored and supervised. Many of the principles are not left to a self-regulated approach but are, in fact, regulated or required by law. For example, in spite of many Management Companies having a compliance officer, very recently CMVM has made a public consultation of a new regulation that will enforce this figure in the Portuguese Market.

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Thank you for all your attention to this issue, and should you need any further clarification APFIPP is at your disposal.

Yours sincerely,

João Faria
Member of The Board

Manuel de Vasconcelos Guimarães
President