

Principles on Suspensions of Redemptions in Collective Investment Schemes

Final Report



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Chapter 1 - Introduction

In light of the recent developments, where some open-ended collective investment schemes (CIS) or CIS management companies (CIS Operators) were unable to meet redemption requirements, the Technical Committee Standing Committee on Investment Management (TCSC5) decided to investigate whether it should focus on issues pertaining to the suspension of redemptions by CIS responsible entities (as such terms are defined in this paper). In July 2009, TCSC5 circulated an internal questionnaire to its member jurisdictions to assess whether it would be appropriate to develop principles or guidelines in this area and, if so, understand how different jurisdictions' regulatory regimes address the suspension of redemptions by open-ended CIS responsible entities. In April 2010, the questionnaire was additionally submitted to Emerging Market Committee (EMC) members.

The responses to the questionnaire highlighted the global importance of the issue and confirmed that it would be appropriate for TCSC5 to develop principles in this area. With respect to TCSC5 members, all 19 respondents to the questionnaire, except one¹ have had to deal with suspensions of redemptions. In the case of EMC members, 11 out of 19 respondents experienced suspensions. However, differences in experience exist, in particular, regarding the length of the suspension periods, which vary between a few days to years. Overall, various open-ended CIS types were affected, in particular real-estate funds, money market funds, bond funds and funds of funds. The causes of suspensions were mainly the closure of specific stock exchanges and markets or the illiquidity of investments including valuation difficulties and significant redemptions. Although suspensions turned out to be a global event, the experience has shown that the number of suspended CIS remained a rather small fraction of the overall market and spillover effects, which are one of the risks suspensions may entail, did not occur widely in the CIS market.

The responses to the questionnaire showed that members' regulations addressing liquidity and suspensions of redemptions varied across jurisdictions. The heterogeneous requirements become obvious in particular in the area of the criteria for the suspensions, liquidity requirements and disclosure to investors (pre-sale and ex-post). While some jurisdictions impose very specific liquidity limits, others have rather sparse requirements concerning the management of liquidity risks.² While some jurisdictions provide responsible entities with discretion to suspend redemptions, others require prior approval from the competent authority.

Moreover, some members have adopted specific provisions that limit redemption rights to deal with liquidity problems, e.g. the creation of 'side pockets' or the setting up of *gates*.

As a result, TCSC5 received a formal mandate in January 2010 to develop, if appropriate, principles or guidelines addressing the suspension of redemptions by responsible entities of open-ended CIS. Accordingly, TCSC5 established a working group to develop appropriate principles or guidelines.

¹ However, in this jurisdiction, CIS also faced liquidity problems and high redemption requests but dealt with these issues by imposing a levy/discount, see Chapter 4 (c) vi c).

² TCSC5 has initiated a review of liquidity risk management policies and practices at funds and received the IOSCO Technical Committee's (TC) approval for a formal mandate to assess the appropriateness of developing additional guidelines on the aspects and tools which should be considered in an appropriate liquidity risk management process.

On this basis, the working group has thoroughly discussed these issues and has developed principles regarding the suspension of redemptions for responsible entities of open-ended CIS. The principles cover generally all types of open-ended CIS, i.e. all CIS which offer a continuous redemption right. Moreover, with a view to the risks of suspensions, the principles cover open-ended CIS irrespective of the type of investor to which they are offered, i.e. institutional or retail investors. However, not all principles would necessarily be appropriate for, or apply to, specific non-retail CIS which are not offered to the public and are not subject to approval/registration but instead are subject to specific rules under their national applicable law and regulation (notably as regards their structure, investments, operation, marketing).

The aim of this report is to outline principles against which both the industry and regulators can assess the quality of regulation and industry practices concerning suspensions of redemptions. Generally, these principles reflect a level of common approach and are a practical guide for regulators and industry practitioners.

The principles are addressed to the entity/entities responsible for the overall operation of the CIS and in particular its compliance with the legal/regulatory framework in the respective jurisdiction and thus for the implementation of the principles (**the responsible entity**). The delegation of activities may not be used to circumvent the principles. In fact, there should be compliance with the principles, whether activities are performed directly or through a third party. The principles are based on the CIS responsible entities' basic duty to manage CIS liquidity on an on-going basis so as to avoid suspensions to the extent possible.

Although addressing the responsible entities, the principles do not provide direct applicable standards to firms. As stated above, the principles need to be implemented and respected by the jurisdictions. They obviously have to be transposed within the context of the specific legal structures prevailing in each jurisdiction. Hence, the implementation of the principles may vary from jurisdiction to jurisdiction, depending on local conditions and circumstances.

Chapter 2 Risk of Suspensions

Direct impact on the investor

The redemption of units is a fundamental right of investors in open-ended CIS. Investors in open-ended CIS expect to be able to redeem on a regular and continuous basis. If the risks of the CIS product or the possibility of the suspension are not adequately disclosed to the investor there may be heightened regulatory concerns. Suspensions of redemptions prevent investors from having access to their money. This can denote serious consequences for retail investors, particularly, if they are not prepared for the possibility of a suspension. Moreover, if institutional investors or, in particular, another CIS is significantly invested in a suspended CIS, the suspension directly impacts this CIS and leads to further liquidity or pricing issues throughout the related market(s).

Also, in the absence of relevant rules, suspensions may be carried out in non-satisfactory conditions leading to, for example, an unequal treatment of investors. For instance, where certain investors are informed before others of the intention to suspend and rush to request the redemption of their units before the suspension becomes effective.³

Confidence and Reputation

The suspension may not only directly impact the investor but, depending upon the scale of the CIS, also may have indirect macroeconomic or market-wide implications.

Suspension generally has an adverse impact on investor confidence. This may cause spillover effects. The fact of suspension in one CIS, or a small group of CIS, increases concerns about further suspensions and may thus lead to disinvestments/withdrawals in other CIS possibly causing further CIS suspensions.

Since confidence is crucial for the stability of the financial systems, it is possible that, in the case of a poor information/disclosure policy, the loss of investor confidence not only impacts the CIS industry but also affects other parts of the financial industry. For example, investors may abstain from investing in other financial investments due to a general loss of trust in the financial system.

The suspension may also impact the reputation of the CIS, the responsible entity and if different the CIS Manager or Operator. The suspension may be seen by investors as a major problem within the CIS and/or its management, and could lead to a run on the CIS once the redemption suspension is lifted. In this case, suspension not only temporarily affects the CIS but may lead to problems within the responsible entity in the long run (e.g. reputational impact). Moreover, if the responsible entity is part of a group, for example, an affiliate of another financial institution the reputational loss may also impact the other group members.

Market impact

As mentioned above, the recognition of a suspension in one or more CIS could lead to extraordinary withdrawals in further CIS. These withdrawals may lead to liquidity problems

³ Such a practice is not permitted.

within the CIS forcing it to sell assets. A forced sale may, if the CIS is large relative to a particular market or sector, stress the market and lead to further price declines. Such price declines may be reflected in lower CIS prices possibly causing further withdrawals and thus possibly ending in a *vicious circle scenario* (outflows - fire sales – poor performance – outflows). As a result, it may be appropriate for the responsible entity to consider suspending redemptions in certain limited circumstances, such as a run on CIS assets. It should be stressed that such a suspension of redemptions could also exacerbate market uncertainty and cause unit-holders/shareholders⁴ in other CIS to redeem, fearing that more CIS will suspend redemptions. This could have a major impact on the economic sector(s) concerned.

Impact on counterparties

Liquidity problems due to extraordinary withdrawals caused by significant suspensions of other CIS (but also liquidity problems in general) may not only prevent CIS from meeting redemptions but also other payment obligations (e.g., margin calls). Liquidity problems therefore not only impact investors but also may impact counterparties.

⁴ For brevity, the term unit-holder will be used hereafter.

Chapter 3 Principles

The principles are structured according to the time frame of a suspension. Thus, this chapter starts with principles on procedures for liquidity management that should be implemented to mitigate the risk of suspension owing to a lack of liquidity. Thereafter, the chapter covers principles with regard to suspension events and the process for the decision to suspend. Subsequently, the principles address the time during the suspension (once decided) and its ending. Finally, the chapter includes some examples of alternative measures used in certain jurisdictions to deal with illiquidity. On this basis, the principles chapter is divided into six subsections:

- (a) Management of liquidity risk;
- (b) Ex-ante disclosure to investors;
- (c) Criteria/Reasons for the suspension;
- (d) Decision to suspend;
- (e) During the suspension; and
- (f) Examples of alternative measures to deal with illiquidity in certain jurisdictions.

A. Management of liquidity risk

Principle 1

The responsible entity should ensure that the degree of liquidity of the open-ended CIS it manages allows it in general to meet redemption obligations and other liabilities.

The maintenance of adequate liquidity in open-ended CIS is fundamental in order to ensure that suspensions of redemptions are avoided. The redemption frequency (dealing frequency) of the CIS should reflect the overall liquidity of the CIS's portfolio and vice versa.

Some jurisdictions address this by having an explicit definition of liquidity and setting requirements on the amount of liquidity (as percentage of net asset value (NAV)) to be held in the portfolio of a CIS. Other jurisdictions deal with liquidity on a more principle-based regime by imposing requirements upon CIS Managers or if different upon responsible entities. However, in any case, the degree of the portfolio liquidity should be appropriate and in accordance with the redemption obligations (as provided in the CIS prospectus and as the case may be, in its constitutive documents). Although the borrowing of the necessary cash can be used to facilitate redemption requests, the routine use of borrowing is not an appropriate way to manage the CIS liquidity risk. When managing the liquidity of a CIS, the responsible entity should also consider extreme liquidity circumstances, i.e. shortages of liquidity of assets, global and/or market events and atypical redemption requests. Nevertheless, this principle does not prohibit the responsible entity from suspending redemptions in exceptional circumstances as described below.

Besides the consideration of redemption obligations, the liquidity of the CIS must also be appropriate to deal with other liabilities or payment commitments which result for example from margin calls or collateral requirements for derivative positions.

Principle 2

Before and during any investment, the responsible entity should consider the liquidity of the types of instruments and assets and its consistency with the overall liquidity profile of the

open-ended CIS. For this purpose, the responsible entity should establish, implement and maintain an appropriate liquidity management policy and process.

To ensure adequate portfolio liquidity the responsible entity should consider the liquidity of the instruments and assets and their effect on the overall liquidity of the whole CIS portfolio before and during the investment into such instruments/assets. The responsible entity should only invest in instruments/assets if this investment does not compromise the ability of the CIS to comply with its redemption obligations or liabilities. Some jurisdictions also deal with this issue by implementing eligibility criteria with regard to the liquidity of financial instruments/assets for open-ended CIS.

In order to ensure ongoing compliance with redemption obligations and liabilities, the responsible entity should establish, implement and maintain an appropriate and proportionate liquidity risk management policy and process, which could be part of the overall risk management arrangements⁵.

B. Ex-ante disclosure to investors

Principle 3

The responsible entity should clearly disclose the ability to suspend redemptions in exceptional circumstances to investors prior to their investment into the CIS.

CIS investors should be aware of the risk of the suspension of redemptions prior to their investment in open-ended CIS. Information should be available regarding the possibility that their right to redeem may be suspended in exceptional circumstances. Therefore, the CIS constitutional documents and/or prospectus should clearly disclose that redemptions may be suspended in exceptional circumstances. In jurisdictions where the responsible entity has discretion to suspend and/or the national law does not contain a definition of exceptional circumstances, it is recommended not to define in the CIS documentation the terms “exceptional circumstances” specifically on the grounds that such a definition would in practice inevitably become out of date, or exclude circumstances which might be considered exceptional in the future. Instead, it is recommended to use non-exhaustive examples of what might constitute “exceptional circumstances” (e.g., exchange closures).

C. Criteria/Reasons for the suspension

The Technical Committee Statements on *Suspending Redemptions: A Case-Study from 11 September 2001 and General Principles*⁶ from October 2002 describes as criteria of a suspension the “exceptional circumstances”. In detail, the report states: “Generally, suspensions may be justified only in exceptional circumstances where fair valuation of CIS interests is difficult or impossible to carry out. Emergency situations may also mean that CIS assets cannot be readily disposed of by a CIS so that the CIS cannot meet redemption

⁵ The IOSCO TCSC5 currently develops guidelines on the aspects and tools which should be considered in an appropriate liquidity risk management process.

⁶ See *Suspending Redemptions: A Case-Study from 11 September 2001 and General Principles*, Statement of the Technical Committee of IOSCO, November 2002, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD135.pdf>.

requests and hence a redemption suspension may be justified. In most cases, if circumstances are severe enough to justify a suspension of redemptions, then purchases should also be suspended.”

Principle 4

Suspension of redemptions by the responsible entity may be justified only a) if permitted by law and in exceptional circumstances provided such suspension is exclusively in the best interest of unit-holders within the CIS, or b) if the suspension is required by law, regulation or regulators.

The decision to suspend is a two step approach.

a) Exceptional circumstances and best interest of unit-holders

i) Exceptional circumstances

First, suspensions are only justified in exceptional circumstances. Generally, these suspensions should be temporary situations. Moreover, exceptional circumstances are rare, such as where fair and robust valuation of the assets (e.g. because of lacking liquidity in the market place which could include certain *fire sale* scenarios), in which the open-ended CIS is invested, is not possible.

Possible reasons for suspension of redemptions are indicated below, however, this is not meant to define an exhaustive list. In any case, the responsible entity should be able to demonstrate that circumstances are exceptional.

Market failures, exchange closures

Regulators and the responsible entity may consider that exceptional circumstances occur when markets are affected by unexpected events which impact the functioning of exchanges or the regular course of transactions. In such cases, it might be impossible to price assets accurately or to regularly honour redemption requests and pay the related redemption proceeds. If a significant proportion of assets in the CIS is affected such circumstances will likely justify a suspension. If only a small proportion of assets is affected and fair valuation is possible, a suspension may not generally be justified (provided the equal treatment of investors can still be ensured). Such unexpected events could be also related to political, economic, military, monetary or other emergencies.

Operational issues

Exceptional circumstances can also be caused by unpredictable operational problems and technical failures (e.g. a black out). Those operational problems could temporarily hamper transactions or affect the valuation of the assets. Also the failure of a key third party that acts for the CIS can impose operational problems.

However, such cases can only be considered as exceptional circumstances if they are reasonably unpredictable and occur in spite of appropriate diligence of third parties, adequate and effective disaster recovery procedures and systems and contingency plans for such cases. Otherwise poor management as described below would be the reason for the suspension, rather than unpredictable circumstances.

Liquidity issues

The responsible entity is responsible for managing the open-ended CIS so that units can be redeemed and thus should have in place and maintain sound liquidity management arrangements to meet that obligation (see Principles 1 and 2). A suspension which arises as a result of poor liquidity management within a CIS is generally not acceptable. Suspension as a result of a lack of liquidity should therefore only be a last resort in cases where despite appropriate liquidity management the CIS has to face unforeseeable liquidity issues. In such a case the responsible entity must carefully decide whether, in the interest of protecting investors, dealings in the CIS should be suspended to stop a spiral (vicious circle scenario) as mentioned under Section 2.

Poor Management

Nevertheless, it should be mentioned, that it may be reasonable to suspend redemptions when facing *operational or liquidity issues*, although the reason for the suspension is poor management rather than unpredictable circumstances, if this is in the best interest of the investors. In such a case the competent authority could take measures and consider exercising their powers according to the national law, such as imposing sanctions or penalties against the persons responsible for the infringement of rules.

Other events

There may be other events such as natural disasters or catastrophes, which make it impossible to value, or dispose of and obtain payment for all or some of the CIS' property.

ii) Best interest of investors

Second, it must be clear, that the suspension is exclusively in the best interest of the unit-holders collectively. The responsible entity should only suspend redemptions when it is in the interest of unit-holders and when the fair and equal treatment of incoming, ongoing and outgoing investors is maintained.

b) Suspension required by law, regulation or regulators

Notwithstanding, national law, regulation or the regulators itself may require in specific circumstances the suspension of redemptions.

D. Decision to suspend

Principle 5

The responsible entity should have the operational capability to suspend redemptions in an orderly and efficient manner.

a) Implementation of processes in advance

In advance of any suspension event, the responsible entity should implement a decision making process and draw up plans/processes for potential suspension events. Thus, to prepare for the possibility of a suspension, the responsible entity should already have in place

processes and procedures to react immediately in the case of events as described above (emergency plan). Such emergency plans could in advance of a potential suspension event set out the personnel within the responsible entity to be involved in making the decision to suspend and their roles.

Emergency plans should also describe interactions and communication channels with relevant third parties, e.g. the depositary and the competent authority as well as intermediaries or distributors.

Moreover, procedures should describe potential avenues that probably can avoid a suspension as well as objective criteria for reaching the decision to suspend.

The notification procedure to the competent authority could also be specified. Moreover, as one of the key considerations is putting in place an effective communication strategy targeting investors, it will be useful to have a detailed communication plan in place. In addition to contacting investors, plans for the information of intermediaries should be specified to ensure their immediate action.

The responsible entity should also be prepared to deal with queries from investors or other parties that might have to intervene after a suspension.

b) When a suspension event arises

Where a responsible entity arrives at the point to consider a suspension, the responsible entity should thoroughly analyse the situation. Such an assessment may require expert analysis (e.g. external legal counsel) and should therefore involve all relevant persons and relevant internal controls. Independent oversight should be implemented to avoid conflicts of interests.

Some jurisdictions require the prior agreement of the depositary and/or the prior agreement, prior approval or pre-notification of the competent authority. In other jurisdictions, where the responsible entity has discretion to decide a suspension, in any case, an early engagement with the depositary and also with the competent authority is essential and is therefore a sensible course of action.

Before the responsible entity determines that it is in the best interest of unit-holders to suspend redemptions, the responsible entity should ensure that any alternative course of action has been considered and discounted. The responsible entity should ensure that any suspension is temporary and consistent with the disclosure and other provisions set out in the CIS constitutive documents and/or prospectus.

In case of an unforeseen increase in illiquid assets, the responsible entity should take into account where possible, the investor profile. For example, if the CIS was exclusively sold to institutional investors, the responsible entity may be able to seek information from those investors and manage the situation with a view to avoiding the need to suspend (even for example by accepting in specie redemptions if permitted and where the NAV of the assets is not in question).

Other considerations that should be taken into account are for example expected redemption requests and the responsible entity's view of the market, in particular whether illiquidity is

likely to be short term and whether the pressure to sell assets would be likely to result in *fire sale* prices and a vicious circle scenario as mentioned in Chapter 2.

Principle 6

The decision by the responsible entity to suspend redemptions, in particular the reasons for the suspension and the planned actions should be appropriately:

- a) documented;*
- b) communicated to competent authorities and other relevant parties;*
- c) communicated to unit-holders.*

a) Documentation

The responsible entity should document the decision to suspend redemptions in a timely manner. Such documents should, where appropriate, describe in detail the reasons for the decision and explain the actions planned (with a view to the resumption of normal operations or to liquidation of the CIS).

Where appropriate, the responsible entity should also define objective criteria, the meeting of which will trigger the resumption of normal operations or the liquidation of the CIS. Such objective criteria can assist in what might otherwise be viewed as a purely subjective decision. The responsible entity should also consider how long a suspension should continue before it takes other actions in the best interest of the investors. National regulation may require additional documentation.

b) Communication to the competent authority and other relevant parties

The decision to suspend should be communicated to the competent authority.

The competent authority should be provided with all relevant information. The information to the competent authority should in particular include the documents referred to in Principle 6 a), i.e. the reasons for the suspension as well as any information the competent authority requires. The information should be filed as soon as practical. Depending on national rules, some jurisdictions may require a prior authorisation of the suspension or information before the suspension becomes effective. As described in the principle above, in any case an early engagement with the competent authority is necessary.

Moreover, competent authorities of those jurisdictions where the CIS is authorized to be marketed publicly should also be informed.

In any case, if the information filed with the competent authority indicates that the suspension is a result of poor management rather than external unpredictable factors (see Principle 4), the competent authority could take measures and consider exercising powers according to the national law, such as imposing sanctions or penalties against the persons responsible for the infringement of rules.

Other relevant parties, e.g. intermediaries and distributors should also be informed as soon as practical. In particular, the immediate cessation of active distribution of the CIS should be ensured (please refer to principle 7 hereunder).

c) Communication to unit-holders

Unit-holders should be appropriately informed about the decision to suspend redemptions. The equal treatment of unit-holders requires the information to be communicated in an appropriate and timely manner to all unit-holders and not only to the redeeming ones. The communication strategy of the responsible entity is crucial to avoid a heavy loss of confidence and reputation and therefore also spillover effects in the market, as discussed above. The information communicated to unit-holders and other interested persons should therefore be clear and comprehensive.

E. During the suspension

Principle 7

During the suspension of the redemptions, the responsible entity should not accept new subscriptions.

A suspension of redemptions should also imply a suspension of subscriptions. One exceptional situation, if permitted by national law, may be where the calculation to the unit price based on NAV could be achieved through objective and reliable means during a suspension.

However, in cases where subscriptions are allowed during the period of the suspension of redemptions by national law as a reliable NAV calculation can be ensured, any prospective subscriber should be informed about the suspension in a clear and comprehensive manner prior to the subscription, and given a chance to cancel the subscription order, before the order is accepted.

Principle 8

The suspension should be regularly reviewed by the responsible entity. The responsible entity should take all necessary steps in order to resume normal operations as soon as possible having regard to the best interest of unit-holders.

The responsible entity should review the decision to suspend redemptions on an ongoing basis during the period of suspension.

The responsible entity should monitor the market and the liquidity of respective instruments/assets held by the CIS on an ongoing basis. Within the regular review of the suspension the responsible entity should also take into account the expected redemptions. In the case of institutional investors or known large retail investors, the responsible entity should stay in close contact to obtain information from investors without prejudice to the principle of equal treatment of unit-holders. The expectation of redemption requests is necessary to know the level of liquidity that it will need to generate in order to meet the redemption requests after the lifting of the suspension to avoid rapidly suspending again.

The responsible entity should consider the length the suspension is in place and how long it may continue. The acceptable length of the suspension depends on the circumstances and the particular reasons for the suspension and on the applicable national law in some jurisdictions. The acceptable length may also depend on the way the CIS was marketed to investors. For example, if the CIS was marketed as highly liquid, the maximum suspension period generally

should be short. The responsible entity will need to consider alternatives sooner than otherwise.

Because the CIS in question are open-ended funds that offer redemption on a continuous basis, it is unacceptable that suspensions of redemptions remain in force for a long time. In this case the temporary problems affecting the CIS have become more structural and persistent. It could be argued that the longer a suspension lasts, when considering the interests of all unit-holders, increasing consideration should be given towards those who wish to access their money. The responsible entity should then consider alternatives, such as liquidation, or, if allowed, the changing of the CIS structure (e.g. to a closed end fund, or changes to the redemption policy) or the setting-up of side pockets (see following Chapter), unless the responsible entity and unit-holders of the CIS in accordance with applicable law agree to maintain the suspension so as to avoid liquidation.

However, those provisions may not be fully applicable in cases where competent authorities have authorized the suspension only for a limited period of time (e.g., only for the time the stock market is closed in response to an exceptional event).

Principle 9

The responsible entity should keep the competent authority and unit-holders informed throughout the period of suspension. The decision to resume normal operations should also be communicated as soon as practical.

a) Unit-holders

The communication strategy of the responsible entity should not end with the disclosure of the decision to suspend.

The responsible entity should ensure that unit-holders are kept updated throughout the suspension. The responsible entity should also deal with queries/questions from unit-holders and other interested parties. Moreover, any person who requests redemption or subscription of units should be informed that all dealings in units have been suspended. The resumption of dealings should immediately be communicated to unit-holders.

b) Competent Authority and other relevant parties

Where changes to the information originally submitted to the competent authority occur, the responsible entity should immediately inform the competent authority. Throughout the suspension the responsible entity should stay in close contact with the competent authority. The competent authority should also be informed of the proposed date for the resumption of normal operations.

Other relevant parties (e.g. intermediaries, distributors and depositories) should also be kept updated during the suspension.

F. Examples of alternative measures to deal with illiquidity in certain jurisdictions

Some jurisdictions also allow alternative tools to the suspension of redemptions to deal with extraordinary circumstances. For example, the activation of gating mechanisms or the creation of side pockets for specific open-ended CIS may be seen as an alternative to a

suspension or a full suspension, respectively. Moreover, the creation of a side pocket may be an alternative to the liquidation of the complete CIS.

a) Gating Mechanism

Gates allow the responsible entity to manage redemption requests in open-ended CIS. By using a gate, the responsible entity constrains the redemption amounts to a specific proportion on any one redemption day. For example, if the amount of redemption orders from one or more unit-holders exceeds the specific limit in relation to the CIS net assets, the redemption orders will only be partially executed. All redemption orders on the particular day will be proportionately reduced (due to equal treatment no *first come first served* principle) and the percentage of orders above the limit will either be denied or postponed and executed on the next redemption date. Gates could therefore deal with excess redemption requests that could arise in crisis periods. However, gates may only address extreme amounts of redemptions but not redemptions in general. They may be therefore less effective in the case of persisting large scale redemption requests. In any event, it is up to the responsible entity to assess whether the conditions required under national law are met and to decide, on the basis of its assessment, whether to activate gates.

Gates could be considered a restriction of unit-holders' rights to have their units redeemed. Hence, regulatory regimes of jurisdictions allowing for gates should provide for safeguards in relation to the activation of gates. In particular, for the purpose of protection and equal treatment of unit-holders, the constitutive documents and/or the CIS prospectus should specify that gates are applicable for the CIS and provide for a description of the gate mechanism (e.g. the predetermined thresholds for activating the gates). Depending on the jurisdiction authorizing them, gates may either cover extreme cases, or to the contrary, cover common redemptions. In the latter case, some jurisdictions may allow specific types of CIS a certain amount of flexibility in making use of those mechanisms as part of the regular liquidity management. In any case, gate mechanisms shall be set up with a view to a high degree of transparency and ensuring at all times the fair and equal treatment of investors.

b) Side Pockets

Some jurisdictions may allow the creation of side pockets for the illiquid assets held in a CIS portfolio, as a way to deal with more persistent episodes of illiquidity or valuation problems for a specific amount of assets in the CIS.

A side pocket is created when specific assets in the CIS portfolio are segregated and ring-fenced from the rest of the CIS portfolio. Jurisdictions may set a specific limit in relation to the NAV which is allowed to be assigned to the side pocket (maximum size of a side pocket).

1. In some jurisdictions, the creation of a side pocket requires that:

- (i) either a new CIS be created in addition to the original CIS:
 - in some jurisdictions, the new CIS will hold the liquid assets whereas the existing CIS will hold the illiquid ones;
 - in some other jurisdictions, the new CIS will hold the illiquid assets whereas the existing CIS will hold the liquid ones.

- (ii) or depending on the jurisdiction concerned, that two new funds (one holding the liquid assets and one being the side pocket) be created in lieu of the original CIS.

Hence, in these jurisdictions, the setting up of a side pocket implies the co-existence of two separate funds (either the original CIS and the new one, or depending on the jurisdiction, two new funds) so that a clear segregation is ensured between the liquid and the illiquid assets of the original CIS. In fact, the two funds are:

- the side pocket (being either the original or the new CIS depending on the jurisdiction) comprises the illiquid assets whose liquidation or sale would not be in the best interest of the investors at the time of the side-pocket creation (for instance, if they are particularly distressed due to exceptional market turmoil). This side pocket is not due to be actively managed so that its management objective consists in liquidating the assets held by seeking the best timing and market opportunities in the best interest of investors (hence, the assets in the side-pocket cannot be transferred to the other CIS holding the liquid assets);
 - and the other CIS consisting of the assets for which there are no liquidity problems.
2. Other jurisdictions treat side pockets as pools of assets that are only virtually segregated from the rest of the portfolio in the accountings of the CIS but formally the original CIS remains and includes the liquid assets as well as the assets in the side pocket.

However, in both cases the valuation of the segregated assets is done separately. In case of virtual segregation, the NAV of the CIS is based only on the liquid assets that have not been segregated i.e., not placed in a side pocket. New subscriptions are only possible for the liquid part (or the new liquid CIS, respectively) and based on the NAV calculated on the basis of the liquid assets, which does not include the assets segregated in the side pocket. Also, in both cases the unit-holder benefits from the proceeding of redemptions for the liquid CIS portfolio.

Only the proportion of assets assigned to the side pocket cannot be redeemed. Nevertheless, the unit-holder still participates in the side pocket performance and receives the proceeds of the liquidation of the side pocket's instruments/assets. In the case of the creation of a new closed end fund, unit-holders of the original CIS are provided with units of the new side pocket fund and of the new liquid fund in the same proportion as their investment in the original CIS.

As indicated earlier, the side pocket is in general not subject to full management activities as the purpose of its management is to liquidate the assets held in the best interest of unit-holders.

The reasons and circumstances for the creation of side pockets may differ from those of the suspension. The creation of a side pocket might be reasonable if factors that prevent the sale of assets are likely to persist over time and are not temporary. In such cases it might be advantageous to investors for the responsible entity to segregate and effectively suspend only the illiquid part, rather than to suspend the redemptions of the whole CIS.

However, regulators should treat the creation of side pockets carefully, since this possibility embeds a moral hazard problem. The creation of a side pocket might not give rise to the

same reputational risk as in the case of a full suspension. Therefore, a responsible entity may hide poor liquidity management and could also have a greater incentive to invest in illiquid assets to gain additional yield due to higher liquidity premia. Moreover, a responsible entity may hide poor management via side pockets to improve the performance of the remaining CIS (even if the CIS will incur a loss corresponding to the value of the assets included in the side pocket).

A regulatory framework that allows the creation of side pockets should therefore be appropriate to address these moral hazard problems. Equivalent principles to those set out above for the suspension could apply to the creation of side pockets. In particular, the possibility of setting up a side pocket should have been known *ex-ante* by the unit-holders through the constitutive documents and/or prospectus. The decision to set up a side pocket should always be communicated to the competent authorities according to the national rules. The responsible entity should be required to set out in writing the decision to set up a side pocket explaining the reasons for their actions. In this respect, a responsible entity should keep adequate records of all relevant documents. The responsible entity should immediately inform unit-holders about the functioning of the side pocket that has been set up, the reasons for its creation and planned future actions. The responsible entity should liquidate the assets of the side pocket as soon as possible in the best interest of unit-holders. Moreover, the regulatory framework may provide for a maximum amount of assets that could be segregated to the side pocket.

c) Discount

A few jurisdictions allow the application of a discount on the redemption price determined on the basis of the NAV, for redemption purposes in case of stressed markets or unusual and significant number of redemptions. The regulatory framework that allows such mechanisms should appropriately address related transparency and discretion issues. In particular, such a discount should only be applied if the reasons for its application were properly disclosed *ex-ante* in the prospectus. The discount should be applied consistently to all redemptions completed on the same day, and the amount of the discount shall benefit those unit-holders that did not redeem their units. The responsible entity should communicate the reasons and the mechanisms used to calculate the discount to unit-holders and the competent authority.

Appendix I: Feedback Statement on the Public Comments received by the Technical Committee on the *Consultation Report – Suspension of Redemptions in Collective Investment Schemes*

Fifteen responses were received in relation to the Consultation Report - Principles on Suspensions of Redemptions in Collective Investment Schemes (suspension principles) as developed by the IOSCO Technical Committee (TC) and put out to public consultation from 8 March 2011 until 30 May 2011.

Non-confidential comments were submitted by the following organizations:

Association Française de la Gestion Financière (AFG)

Christoph Barnard

BlackRock

Bundesverband Investment und Asset Management e.V. (BVI)

Depository And Trustee Association (DATA)

Dubai Financial Services Authority (DFSA)

European Fund and Asset Management Association (EFAMA)

Financial Services Board (FSB)

Hedge Fund Standards Board (HFSB)

INVERCO - Spanish Association of Collective Investment Schemes and Pension Funds

Investment Management Association (IMA)

International Investment Funds Association (IIFA)

Investment Company Institute (ICI)

National Futures Association (NFA)

Zentraler Kreditausschuss (ZKA)

IOSCO took these comments, and those submitted on a confidential basis, into account in preparing the final report. This feedback statement summarizes the main issues raised in the responses received and notes where any changes have been made to the report.

These responses can be viewed in Appendix III of this document.

By way of introduction, the vast majority of the respondents to the consultation welcomed and strongly supported the IOSCO work in relation to the suspension principles. A few respondents also described the IOSCO work as being important and valuable.

General Comments:

1. Most respondents agreed with the suspension principles. Several respondents specifically pointed out the fundamental feature of redemptions in open-ended CIS and the possibility of confidence damage by suspensions (ZKA, BVI, IIFA). One respondent highlighted the value of the suspension principles for both, regulators and industry (IIFA).
2. Several respondents specifically appreciated the policy impetus to standardise procedures and achieve convergence surrounding suspension of redemptions. It was reported that the recent events have highlighted the need for international standardization and respondents stressed that the IOSCO work was particularly timely notably in the context of the financial crisis where several suspensions occurred (BlackRock, AFG, FSB).
3. One respondent, however, mentioned the necessity for manager flexibility with regard to unique and dynamic markets in crises environments, hence highlighting potential conflicts of manager duties towards investors with too detailed regulatory frameworks reducing flexibility (BlackRock). To the contrary, two respondents supported a more binding character for the principles by removing words “generally” and replacing “should” by “shall” (AFG, FSB). Again in contradiction, one respondent (IMA) suggest using “could” instead of “should” to highlight the guiding character.
4. Some respondents especially highlighted the importance of the disclosure and communication requirements in the suspension principles since communication as much as possible and robust processes are important during extreme circumstances.
5. Few respondents (EFAMA, IMA, BVI) criticized in general the creep in the language used in IOSCO documents, from statements aimed at regulators to command to firms. They recommended clarifying that it is a matter for regulators to consider the report and transpose the guidance in each jurisdiction.

Specific Comments:

Chapter 1 Introduction

- (i) Three respondents (EFAMA, IMA, BVI) pointed out that the principles are written in a way that suggests direct application to CIS operators and that this may be misleading to market participants. Particularly the last paragraph in the introduction, which defines the responsible entity and its last sentence leads to this implication. However, the paragraph before highlights the aim of the report as to outline principles against which both, the industry and regulators can assess the quality of regulation and industry practices concerning suspensions of redemptions.

Respondents highlighted that IOSCO principles can influence industry best practice but cannot supersede binding legal national rules.

Hence, the respondents suggested that the language of the report should reflect that it is a matter for regulators in each jurisdiction to consider the report and where appropriate take action (e.g. transposition or amendments to regulation). For clarification, the respondents suggested using the wording as in the IOSCO report on Examination of Governance for CIS – Part II, page 5¹.

- IOSCO added a clarification to the end of the introduction section similar to the wording used in the Technical Committee report on *Examination of governance for CIS – Part II*:

“Although addressing the responsible entities, the principles do not provide direct applicable standards to firms. As stated above, the principles need to be implemented and respected by the jurisdictions. They obviously have to be transposed within the context of the specific legal structures prevailing in each jurisdiction. Hence, the implementation of the principles may vary from jurisdiction to jurisdiction, depending on local conditions and circumstances.”

- (i) Two respondents (FSB, AFG) pointed out that the term “entity responsible for the operation” may be too vague, although they acknowledged that it might be difficult to find a more precise definition at global level. They suggested to use “the entity responsible for the financial management of the CIS” complemented by a non-exhaustive list of such entities including management companies.
- IOSCO is of the view that the definition of the responsible entity is sufficiently clear having in mind the differences in jurisdictions.

Chapter 2, the Risk of Suspensions:

- (i) One respondent (Christoph Barnard) stated with regard to the second sentence of Chapter 2 that investor expectations for redemption on a regular basis are the result of poor expectations management. As later principles require that the possibility of a suspension must be disclosed *ex ante*, it could be more appropriate to state that “Investors in open-ended CIS expect to be able to redeem...in normal market conditions”.
- IOSCO did not change the sentence, as also several other respondents point out that investors indeed expect regular redemptions in general.
- (ii) One respondent (Christoph Barnard) highlighted with regard to the second paragraph of Chapter 2 that the information of several investors before others would be similar to front running and must be banned.
- IOSCO added a footnote to clarify that such practices are prohibited.

¹ *Examination of Governance for Collective Investment Schemes - Part II*, Report of the Technical Committee of IOSCO, June 2006, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD220.pdf>.

- (iii) Two respondents suggested balancing the fundamental right to redeem with the recognition that suspensions are a fundamental investor protection tool (IMA, EFAMA).
 - IOSCO did not change the wording, since it becomes clear from the report in which circumstances suspensions may be used (i.e., interest of investors).
- (iv) One respondent (HFSB) referred to the subsection “market impact” in Chapter 2 and specifically the “danger of vicious circle”. This respondent pointed out that this is a sensible issue and questioned whether the decision to suspend should be based on the fair treatment of investors as well as on market impacts (vicious circles). The inclusion of the consideration of market impacts justifying the suspension would cause additional clarifications. The respondent recommended clarifying that where a fund is invested in liquid assets, redemptions should be honoured as long as fair treatment of investors can be ensured. Market wide assessments (i.e. “vicious circles”) should not explicitly be incorporated in the criteria for suspensions on redemptions.
 - Chapter 2 deals with a discussion on potential risks of suspension and does not aim to anticipate the criteria for the suspension decision. IOSCO considers this comment in Principle 4.
- (v) One respondent (DFSA) suggested expanding the discussion on risks in Chapter 2 to risks for the financial stability. The respondent believed that this aspect is of significant importance and should be addressed expressly. Specifically the respondent suggested extending the wording on the impact on counterparties to cover systemic risks that may arise if a CIS, in which significant financial institutions have invested, were to suspend redemptions in unexpected circumstances.
 - IOSCO did not change the Chapter as potential wider impacts of suspensions are already described.

Chapter 3, Principles:

- (i) One respondent (IMA) proposed to change the second sentence of Chapter 3 from “...to avoid suspension“ to “...to mitigate the risk of suspension owing to a lack of liquidity” in order to make clear that the goal is to mitigate risk and not to avoid risk.
 - IOSCO changed the wording according to the respondents proposal.

A: Management of liquidity risk:

- (i) Three respondents (IMA, BVI, EFAMA) stressed that the liquidity management policy and process is usually incorporated in the overall risk management policy and process which identifies all relevant risks (including liquidity risk) and hence IOSCO should not require liquidity management as separate arrangements.

- IOSCO added a sub sentence at the end of the explanatory text of this principle clarifying that liquidity risk management could be part of the overall risk management arrangements.
- (ii) One respondent (HFSB) agreed on the principles and on further details on the liquidity management process to be developed by IOSCO. This respondent highlighted the work done in this context by HFSB which could be considered by IOSCO.

B: Ex-ante disclosure to investors:

- (i) Several respondents (IMA, EFAMA) criticized the last two sentences of the explanatory text of Principle 3 which state that “*where... national law does not contain a definition of exceptional circumstances, it is recommended not to define in the CIS documentation the terms “exceptional circumstances” ... Instead, it is recommended to use examples of what might constitute “exceptional circumstances”.*”

Instead one respondent proposed that it is sufficient that disclosure includes that suspensions may occur in exceptional circumstances when justified in the interest of unit-holders (IMA).

Another proposal relates to the clarification in the text that the examples or explanation is not exhaustive, so as not to preclude any decision by CIS operators (EFAMA).

- IOSCO clarifies in the text that the examples or explanation does not imply an exhaustive list.

C: Criteria/Reasons for the suspension:

- (i) Two respondents (IMA, EFAMA) proposed to add an additional category to the list of exceptional circumstances:

“Other events

There may be other events such as natural disasters or catastrophes, which make it impossible to value, or dispose of and obtain payment for all or some of the CIS’s property”.

- IOSCO followed the suggestion and added a sentence to the criteria.
- (ii) Few respondents (AFG, EFAMA, FSB) argued that the requirements that suspensions are justified “*in the best interest of **all** unit-holders*” is too absolute. In practice redemption may be in the interest of a few unit-holders while suspension is in the interest of the majority. One respondent (AFG) suggested stating that suspension should be done “*exclusively in the best interest of unit-holders*”.

- IOSCO followed the suggestion to delete “*all*” and add “*exclusively*”.

Nevertheless, the decision to suspend must be in the best interest of the collective.

- (iii) Two respondents (ICI, DFSA) mentioned that in some jurisdictions, the possibility to suspend is permitted by law only in limited circumstances. Hence, the manager has less discretion. One respondent (ICI) proposed to add “...or *permitted by law*” to principle 4. The other respondent (DFSA) proposed to expand the principle to cover “*where responsible entities are **permitted** to suspend redemptions under applicable laws*”.
- IOSCO clarifies that suspensions are only possible if permitted by law. However, IOSCO wants to avoid the impression that suspensions are always justified if permitted by law as this would change the meaning of the principles.
- (iv) One respondent (HFSB) referred to the first paragraph of the explanatory text stating that “*Besides valuation, suspensions may also be justified if it is not possible to sell assets at prices other than at ‘fire sale’ prices in order to meet the redemption requests.*” The respondent pointed out that this is a sensible issue and questioned whether the decision to suspend should be based on the “fire sale prices”. The inclusion of the consideration of market impacts justifying the suspension would cause additional clarifications. The respondent recommended leaving the fair valuation as criteria but not refer to fire sale prices. The criteria “fair and robust valuation is not possible” (e.g. because of lacking liquidity in the market place) is likely to include certain fire sale scenarios. However, this should not be generalised.
- IOSCO deleted the last sentence of the paragraph, but explained that fire sale scenarios may be included in order to take the respondents proposal into account.
- (v) One respondent (HFSB) mentioned potential conflicts of interest which could arise from a governance perspective as the responsible entity in charge of determining when suspending may be the fund governing body or the managing entity. For example, the manager has an incentive to suspend redemptions in order to avoid loss of management fees as a result of redemptions. The respondent suggested identifying potential mechanisms, such as independent boards (where investors delegate decision making authority). They give a strong preference for independent governance models to manage such situations.
- IOSCO took this comment and added in the explanatory text of principle 5 that independent oversight on the decision should be implemented to deal with conflicts of interest.

D: Decision to suspend:

Principle 5:

- (i) Two respondents (IMA, BVI) mentioned that purely objective criteria (e.g. Principle 5, third paragraph and Principle 6a, second paragraph) are difficult to

set out as in practice often subjective inputs are involved and given that exceptional circumstances are not capable of full specification.

- IOSCO regards the text as sufficient. Defining objective criteria does not exclude subjective inputs in the decision making process.

Principle 6a:

- (i) One respondent (IMA) proposed to replace the wording “*should*” by “*could*”.
- IOSCO decided to keep the wording unchanged as the documentation and communication is important.

Principle 6b:

- (i) One respondent (IMA) pointed out, that national rules do not require notification/communication of the planned actions with regard to the suspension to competent authorities. The respondent suggested referring to providing any information the authority may require.
- IOSCO took the respondents proposal into account and deleted “planned action” while adding “*any information the competent authority requires.*”

E: During the suspension:

Principle 7:

- (i) While the current wording of principle 7 “*should generally not accept new subscriptions*” allows for discretion and flexibility, many respondents (AFG, EFAMA, DFSA, FSB) were of the opinion that the responsible entity should be prohibited entirely from accepting new subscriptions as it is unclear at which price the new subscriptions would take place, if allowed. The respondents mentioned the potential danger to allow for that flexibility.

One of those respondents (DFSA) additionally pointed out the current inconsistency between “*should generally not*” and “*cannot*”, in the second sentence of the principle as this may be misleading. Hence, suggesting simply using “*should not*”.

However, DFSA additionally stated that it could be mentioned in the explanatory text that there may be an exceptional situation “*where the calculation to the unit price based on NAV could be achieved through objective and reliable means during a suspension*”.

To the contrary, one respondent (Inverco) was of the view that IOSCO should be more flexible, as in most cases a reliable valuation is not possible and hence subscriptions will not be allowed in most cases. The respondent suggested to state that “*subscriptions might be accepted whether this is in the best interest of*

the unit-holders”.

- IOSCO took the proposals into account by deleting the term “*generally*” and adding a possible exemption in the explanatory text.
- (ii) Two respondents (IMA, EFAMA) proposed to add the wording “*before the order is accepted*” at the end of the sentence “*..., and given the chance to cancel the subscription order*”, in the explanatory text, in order to make clear that the matter is to cancel orders rather than contracts.
 - IOSCO took the proposals into account by adding the proposed sentence.

Principle 8:

- (i) One respondent (BVI) proposed to change the wording in the first sentence of the explanatory text. It is proposed to delete the word “*formally*” and replace the wording “*an ongoing basis*” by “*a regular basis*”.
 - IOSCO decided to only partially change the wording as the monitoring on an ongoing basis would be necessary.
- (ii) One respondent (IMA) proposed to recommend in the explanatory text that in case of long lasting suspensions, regulators should give consideration to regulatory tools available or to increase regulatory tools (e.g. ability to set up side pockets).
 - As the consideration of alternatives (including side pockets) is already recommended in the explanatory text (last paragraph), IOSCO decided not to change the wording.
- (iii) One respondent (ICI) indicated that in some jurisdictions the possibility to suspend is permitted by law only in limited circumstances. Also, the length of the suspension may be specified or the regulator authorizes the suspension only for a limited period of time (e.g., the closure of the stock exchange). Hence, the manager has less discretion and the review of the decision to suspend on an ongoing basis is not fully applicable.
 - IOSCO decided to add for clarification the sentence “*However, those provisions may not be fully applicable in cases where competent authorities have authorized the suspension only for a limited period of time (e.g., only for the time the stock market is closed in response to an exceptional event).*” to the explanatory text.

Principle 9:

- (i) Some respondents (IMA, EFAMA, FSB) proposed to add the information of unit-holders can be done by website or other durable means as individual information may be too burdensome.

- IOSCO decided not to follow the proposal to specify the medium for information.

F: Examples of alternative measures to deal with illiquidity in certain jurisdictions:

- (i) Two respondents (IMA, EFAMA) did not agree with the recommendation that “*a good management practice for the responsible entity would be not to charge any form of management fee or performance fee on side pockets.*” The respondent argued that if the suspension is not due to poor liquidity/operational management, fees are still reasonable. The important point should be to ensure investors are informed whether management or performance fees are continued to be charged.
 - (ii) One respondent (EFAMA) suggested mentioning redemptions in kind as another way to alleviate liquidity pressure.
 - (iii) One respondent (EFAMA) mentioned that gates may not only address extreme amounts of redemptions but could be installed as a general tool to discourage excessive redemption requests.
 - (iv) Two respondents (AFG, FSB) suggested to replace the word “*Discount*” by “*Liquidity cost impact on redemption price*” as “Discount” may be ambiguous.
- IOSCO decided not to follow the proposals. A specific workstream of IOSCO TCTCSC5 is dealing in more detail with liquidity measures.

Appendix II - List of Working Group Members

| | | |
|------------------|---|--|
| Chair | Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) | Germany |
| Members | Autorité des marchés financiers (AMF) | France |
| | China Securities Regulatory Commission (CSRC) | China |
| | Comissão de Valores Mobiliários (CVM) | Brazil |
| | Central Bank | Ireland |
| | Swiss Financial Market Supervisory Authority (FINMA) | Switzerland |
| | Financial Services Authority | United Kingdom |
| | Securities and Exchange Commission | United States of America |
| Industry experts | Jane Heinrichs | Investment Company Institute |
| | Andre Jäger | Universal Investment GmbH |
| | Emmanuel Courant | Edmond de Rothschild Investment Managers |

Appendix III Public Comments Received by the Technical Committee on the *Consultation Report – Suspension of Redemptions in Collective Investment Schemes*

Association Française de la Gestion Financière (AFG)

Christoph Barnard

BlackRock

Bundesverband Investment und Asset Management e.V. (BVI)

Depository And Trustee Association (DATA)

Dubai Financial Services Authority (DFSA)

European Fund and Asset Management Association (EFAMA)

Financial Services Board (FSB)

Hedge fund standards Board (HFSB)

INVERCO - Spanish Association of Collective Investment Schemes and Pension Funds

Investment Management Association (IMA)

International Investment Funds Association (IIFA)

Investment Company Institute (ICI)

National Futures Association (NFA)

Zentraler Kreditausschuss (ZKA)



SJ – n° 2883/Div.

Mr. Mohamed Ben-Salem
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid
Spain

10th May, 2011

Re: ASSOCIATION FRANCAISE DE LA GESTION (AFG)'s comments on IOSCO
Consultation Report regarding Principles on Suspensions of Redemptions in Collective
Investment Schemes

Dear Mr. Ben-Salem:

The ASSOCIATION FRANCAISE DE LA GESTION FINANCIERE (AFG) – French Asset Management Association¹ – would like to thank the International Organization of Securities

¹ The Association Française de la Gestion financière (AFG) represents the France-based investment management industry, both for collective and discretionary individual portfolio management. Our members include 416 management companies as well as 558 investment companies and 56 affiliate members. These management companies are entrepreneurial or else belong to French or foreign banking and insurance groups.

AFG members manage more than 2,600 billion euros in the field of investment management. In terms of financial management location, that makes the French industry the leader for collective investments in Europe (with more than 1,300 billion euros managed by French companies, i.e. 20% of all EU investment fund assets under management, wherever the funds are domiciled in the EU) and number two internationally. In terms of fund domiciliation, French funds are number two in Europe and number three internationally. Regarding product interests, our association represents, besides UCITS, employee saving schemes, hedge funds/funds of hedge funds as well as a significant part of private equity funds and real estate funds. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA) and of the European Federation for Retirement Provision (EFRP). AFG is also an active member of the International Investment Funds Association (IIFA).

Commissions (IOSCO) for the opportunity to submit comments on the Consultation Report regarding ‘Principles on Suspensions of Redemptions in Collective Investment Schemes,’ issued last March.

We would like to offer the following comments regarding the IOSCO Report:

1. We approve and support the Principles proposed by IOSCO. Such Principles show the path for achieving a minimum regulatory convergence on this topic at the international level.
2. However, AFG would like for IOSCO and its members to resolve some drafting ambiguities. In particular, in some cases the Principles do not appear to be binding, as they use “should” rather than “shall.” We think that if IOSCO wishes to help regulatory convergence, the Principles should be binding, while of course letting IOSCO’s members apply them through appropriate provisions adapted to national contexts. In other cases, in our opinion, words like “generally” should be removed, for the same reason.
3. Regarding the general concepts mentioned in the Report, the wording “responsible entity” should be a bit more specific, although we acknowledge that it might be difficult to find a more precise definition at global level. IOSCO states that “responsible entities” are those responsible for the “overall operation” of the CIS. We think that the notion of “*overall operation*” is too vague. Instead, we suggest, for instance, “the entity responsible for the *financial management* of the CIS,” complemented by a non-exhaustive list of such entities, including for instance, Management Companies and Investment Advisers.
4. Regarding Principle 2 on the *Management of liquidity risk*, and illustrating the remark made in point 2 above, AFG maintains that the use of “should” is not enough: it should be replaced by “shall” for the reason mentioned in point 2.
5. Regarding Principle 3 on *Reasons for the suspension*, we believe that this Principle should be reinforced by stating that such suspension is “*done exclusively*” in the best interest of shareholders. Conversely, and very importantly, the use of “*all*” shareholders is probably too absolute as it is very difficult to guarantee in practice that it is beneficial to all shareholders. For example, in some cases, the objective personal best interest of some shareholders might be to redeem and this would be prohibited by the suspension, which is in the interest of the vast majority of shareholders.
6. Regarding Principle 6 (*‘During the Suspension’*), we think that the responsible entity should be prohibited from accepting new subscriptions. For instance, at which price/value would the new subscriptions be done if new subscriptions were allowed? The flexibility proposed by IOSCO (“*generally*”) seems potentially dangerous.
7. Regarding Part F of the Report, the notion of letter c, “*Discount*,” is ambiguous. If it is related to the cost of liquidity, maybe another word should be used, e.g. “Liquidity Cost impact on redemption price.”

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We thank you in advance for your consideration of the views expressed above.

If you wish to discuss the contents of this letter with us, please contact myself at +33 1 44 94 94 14 (e-mail: p.bollon@afg.asso.fr) or Stéphane Janin, Director, Head of International Affairs Division, at +33 1 44 94 94 04 (e-mail: s.janin@afg.asso.fr).

Sincerely,

(signed)

Pierre BOLLON

Mohamed Ben-Salem
IOSCO
Calle Oquendo 12
28006 Madrid
Spain
CIS-Suspensions@iosco.org

Chris Barnard
Germany

04 April 2011

- **Public comment on IOSCO's Consultation Report on Principles on Suspensions of Redemptions in Collective Investment Schemes**

Dear Mr. Ben-Salem.

Thank you for giving us the opportunity to comment on your Consultation Report "Principles on Suspensions of Redemptions in Collective Investment Schemes".

I welcome and support your main principles. The most important principles to uphold concern managing investors' reasonable expectations and maintaining the equity principle¹.

Managing investors' reasonable expectations

You mention in Chapter 2 that: "Investors in open-ended CIS expect to be able to redeem on a regular and continuous basis". I believe that this could in itself be a problem due to poor management of investors' expectations. The possibility that redemptions could be suspended in exceptional circumstances should be made clear (ex ante) in the CIS constitutional documents, prospectuses and other marketing materials, and also confirmed by the distributor at point of sale.² This is similar to your commentary in subsection B of Chapter 3.

As long as investors' reasonable expectations are managed, then it would be appropriate to amend your statement in Chapter 2 to "Investors in open-ended CIS expect to be able to redeem on a regular and continuous basis in normal market conditions", for example. Managing investors' expectations is key to many of the issues that you have raised, including confidence and reputation and market impact, which were also mentioned in Chapter 2.

¹ The equity principle states that unitholders not involved in a unit transaction should remain unaffected by that transaction.

² See www.mlc.com.au/.../unit_pricing_philosophy for an example of this: "We strike a unit price every day. However, we may suspend prices in order to ensure equity between investors if we don't believe we can accurately or reliably calculate a price for a particular day. An example would be when one or more of the major stock exchanges are closed."

Maintaining the equity principle

It is fundamental to the operational and financial integrity of CIS that their valuation, pricing and transactions (redemptions and subscriptions) comply with the equity principle.³ For example, you mention in Chapter 2 of cases where “certain investors are informed before others of the intention to suspend and move to request the redemption of their units before the suspension becomes effective”. This clearly create a two-tiered market, in which certain investors have access to information which allows them to trade unfairly. This is not dissimilar to front running, and the practice should be banned. This is a specific example, but it illustrates just why the equity principle should hold in practice.

The equity principle is similar to your Principle 3 in subsection C of Chapter 3. Maintaining the equity principle also obviates some of the other issues that you have raised, including the best interest of investors, gating mechanisms and side pockets, which were all mentioned in Chapter 3.

Yours sincerely

C.R. Barnard

Chris Barnard

³ For example see Regulatory Guide 94: Unit pricing: Guide to good practice, Australian Securities & Investments Commission, August 2008.

30 May 2011

Mr Mohammed Ben-Salem
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid
Spain

RE: IOSCO Consultation Report on Principles on Suspensions of Redemptions in Collective Investment Schemes

Dear Mr. Ben-Salem:

BlackRock welcomes the opportunity to respond to IOSCO's Consultation Report on Suspensions of Redemptions in Collective Investment Schemes. The IOSCO Consultation Report addresses an important set of issues that have arisen following the 2008 financial crisis. We appreciate that there is, following the 2008 crisis, a policy impetus to standardise procedures surrounding the suspension of redemptions.

Redemption gates and other measures such as the use of side pockets may, in theory, be essential to protect investors in the event of unusual or unforeseeable market conditions. However, our experience has taught us that **end-investors were best served during the crisis by the investment manager having the flexibility** to adapt to the unique and dynamic challenges the market posed at that time. We also found that during such circumstances it is imperative above all to communicate as much as possible with all parties involved.

Therefore, **we believe that the application of a detailed regulatory framework in this area could, at times, conflict with the investment manager's fiduciary duties towards its investors and may result in adverse impacts and unintended consequences.** This would especially be the case, we believe, for funds investing in less liquid assets such as real estate. For example, a liquidity buffer would not be appropriate for illiquid asset classes. Where the asset class is inherently illiquid, a liquidity buffer might also encourage early redemptions if investors know they could take advantage of it.

Likewise, **in crisis situations being unable to suspend redemptions may well result in assets being realised at lower prices ("fire sale") than may be possible in a structured realisation process. This may, as a result, compromise the investment manager's ability to fulfil its fiduciary duty to clients.** This would especially be the case when the portfolio has enough liquid assets to fund current redemptions but would leave behind a more concentrated illiquid portfolio.

By way of context, it should also be noted that **for those funds that experienced liquidity issues during the crisis, it was just as likely a result of the failure of a service provider (i.e. following the Lehman bankruptcy) as it was illiquidity of the markets** that drove suspensions, gates and/or side pockets. We feel that the draft Principles do not adequately recognise this past reality, or the possibility of similar future liquidity events, as they continuously stress the "temporary nature" of suspensions.

In terms of the specific proposals dealing with the criteria / reasons for the suspension (Chapter 3C 3.a) **we are troubled by the reference to "poor management" in respect of operational or liquidity issues.** Ultimately, the investment manager cannot guarantee that protective measures will work in all cases so extreme caution should be exercised in respect of a competent authority concluding that a suspension was due to "poor management".

Finally, there are a number of instances where **"notice" to regulators** would seemingly be required by the Principles. This concept **would not work for funds advised by US-registered**

BLACKROCK

investment advisors, as the SEC is not set up to receive such notice or monitor illiquidity as proposed.

Provided the issues raised above are taken into consideration, with **appropriate consideration of the case of funds of illiquid assets, we could nevertheless support of much of the thinking and draft Principles set out in the Report**. In particular we strongly support IOSCO's recommendations in respect of *ex-ante* disclosure to investors (Chapter 3B) and implementation of the processes in advance of the decision to suspend (Chapter 3D 4.a) would, we believe, result in more robust processes.

In conclusion, the Principles set out a **reasonable theoretical framework** to address the issues identified following the recent financial crisis. However, as expressed above, we have concerns about the **possible unintended consequences on end-investors**, our clients, and the possibilities of **BlackRock fulfilling its fiduciary duty towards those clients**, arising from being required to apply the framework on an ongoing basis in relation to funds of inherently lower liquidity assets and/or in exceptional conditions of stressed liquidity.

If we can answer any questions or provide further information regarding this important topic, please do not hesitate to contact us.

Sincerely,

Geoff Radcliffe
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About BlackRock

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committed, and has made a strong contribution, to the restoration of financial stability worldwide.



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Via e-mail to: CIS-suspensions@iosco.org

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May 26th, 2011

SPAIN

IOSCO Consultation Report concerning Principles on Suspension of Redemptions in Collective Investment Schemes (CR01/11)

Dear Mr. Ben-Salem

BVI¹ gladly takes the opportunity to comment on the principles to govern suspension of redemptions in CIS proposed by the Technical Committee of IOSCO.

General observations

The right to redeem units is certainly a fundamental feature of open-ended investment funds and deserves further consideration in light of the latest financial crisis which has caused liquidity problems in some CIS. In this regard, we very much appreciate the overall approach suggested by IOSCO as a pragmatic way to deal with potential liquidity risks and valuation difficulties in open-ended funds.

Director General:
Stefan Seip
Managing Director:
Thomas Richter
Rudolf Siebel

¹ BVI Bundesverband Investment und Asset Management e.V. represents the interests of the German investment fund and asset management industry. Its 85 members manage currently assets of some EUR 1.8 trillion both in mutual funds and mandates. For more information, please visit www.bvi.de.

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However, we are concerned about some passages of the Consultation Report which suggest its direct application to CIS operators. Especially on page 5, IOSCO states the following:

“ The principles are addressed to the entity/entities responsible for the overall operation of the CIS and in particular its compliance with the legal/regulatory framework in the respective jurisdiction and thus for the implementation of the principles (...). The delegation of activities may not be used to circumvent the principles, and there should be compliance with the principles whether activities are performed directly or through a third party.”

These statements imply a degree of direct effect of the forthcoming principles which is misleading to market participants. Hence, it should be clarified that the IOSCO principles are in the first place directed to regulators who should be expected to consider the continued appropriateness of the national requirements in light of the final IOSCO report. As regards the effect on the industry, the IOSCO principles can influence best practice standards, but they can never supersede binding legal rules existing at national level.

Comments on the proposed IOSCO principles

With regard to the proposed principles for suspension of redemptions, we would like to provide the following views:

1. Principle 2 on liquidity management (page 9)

IOSCO suggests that the CIS operator “*should establish, implement and maintain an appropriate liquidity management policy and process*”. In this context, we would like to point out that the UCITS Directive governing the most European retail funds does not require the establishment of a separate “liquidity management policy”. Rather, management of liquidity risks is deemed part of the general risk management process and covered by a comprehensive policy identifying all risks relevant to a UCITS.² In order to account for such holistic approaches to risk management, CIS operators should thus be required to deal with liquidity risks of a CIS portfolio as part of their risk management arrangements.

² Cf. Article 38 para. 1 of Commission Directive 2010/43/EC (UCITS Implementing Directive).

2. Principle 3 on exceptional circumstances justifying suspensions (page 10-11)

We share IOSCO's view that it is not practicable to establish an exhaustive list of exceptional circumstances which could justify suspension of redemptions. It is very important that any specification provided in this context is clearly flagged as explanatory and not meant to prejudice any decision of CIS operators taken upon real life events.

With regard to liquidity issues as possible reason for suspension, it should be made clear that cases where a fund investing in illiquid assets such as real estate is unable to meet redemption requests in spite of proper liquidity management in accordance with regulatory requirements can also qualify as exceptional circumstances. In any event, suspension must not be deemed as arising from poor liquidity management if the CIS operator has observed all regulatory standards applicable in this regard.

3. Principle 4 on operational capacity to suspend redemptions (page 11-12)

In terms of processes to be implemented in advance, IOSCO proposes that *"procedures should describe potential avenues that probably can avoid a suspension as well as objective criteria for reaching the decision to suspend"*. Given that exceptional circumstances are not capable of full specification, it appears hardly feasible to set out purely objective criteria to this effect. Instead, it appears sufficient to require CIS operators to retain adequate documentation of the decision-making process in accordance with principle 5 of the IOSCO consultation.

4. Principle 6 on operations during the suspension (page 13)

This section requires that if subscriptions are permitted during the suspension period, *"any prospective subscriber should be informed about the suspension in a clear and comprehensive manner prior to the subscription, and given a chance to cancel the subscription order"*. In our view, if an investor has received clear and comprehensive information about the suspension and on this basis still decides to proceed, then the provision of cancellation rights should not be necessary.

5. Principle 7 on review of the suspension decision (page 14)

We suggest rephrasing the first sentence of the explanatory text to better fit with the overriding principle:

*“The responsible entity should ~~formally~~ review the decision to suspend redemptions on **a regular** basis during the period of suspension.”*

Moreover, the term “prolonged” in the first sentence of the last paragraph should be replaced by “longer” in order to avoid misapprehension to the effect that it should be forbidden to renew a decision to suspend. The result would be otherwise that CIS operators would attempt to set excessively long initial suspension periods in order to avoid redemption difficulties to continue at expiry. Such outcome would clearly not be in the interest of CIS investors.

With regard to examples of alternative measures to deal with illiquidity in certain jurisdictions discussed in section F, it is important to acknowledge that the gating mechanism described under letter a) may not only “address extreme amounts of redemptions”, but can be installed as a general disciplining tool to discourage excessive redemption requests as some jurisdictions allow e.g. 10% gate per redemption date. In terms of possible discount on the redemption price pursuant to letter c), differentiation between dilution levies, redemption charges, holdbacks and swing pricing systems would be helpful in order to evaluate possible effects of such mechanisms on fund liquidity. The availability of redemptions in kind could also be mentioned as another means to alleviate liquidity pressure.

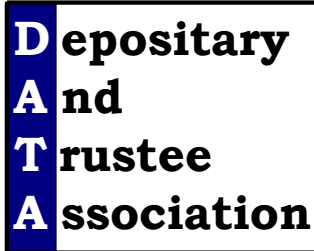
We hope that our remarks will assist IOSCO in refining its views on the regulatory principles for suspension of redemptions in CIS and remain at your disposal for further exchange of views.

Yours sincerely

BVI Bundesverband Investment und Asset Management e.V.

Marcus Mecklenburg

Dr. Magdalena Kuper



31 May 2011

Mohamed Ben-Salem
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 MADRID
Spain

Dear Mohamed,

Principles on Suspensions of Redemptions in Collective Investment Schemes

The Depositary and Trustee Association (DATA) represents all depositaries and trustees of UK based authorised unit trusts and open-ended investment companies. At the end of March 2011, the members of DATA were responsible for safeguarding £583.2 billion of funds under management.

DATA welcomes the opportunity to provide comments on the above consultation.

We support the response submitted by the Investment Management Association (IMA) and note that, in a number of areas, the principles are consistent with existing UK rules and with guidance which the IMA has produced for its membership on the subject of suspensions, in conjunction with DATA.

Yours sincerely

David Morrison
DATA Chairman

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30 May 2011

Mr Mohamed Ben-Salem
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid
Spain

By email: CIS-Suspensions@iosco.org

Re: Public Comment on Suspension of Redemptions in Collective Investment Schemes

The Dubai Financial Services Authority (DFSA) is pleased to provide comments on the IOSCO draft Principles on suspension of redemptions in open-ended Collective Investment Schemes (CIS). Our comments are arranged under general and technical comments.

General Comments

Whilst Chapter 2: "Risk of Suspension", alludes to systemic issues that can arise from suspension of redemptions in a CIS, it does not adequately deal with risks to systemic stability that may arise from such suspensions. We believe that this aspect is of significant regulatory importance and hence should be addressed expressly. Some of the discussion in the draft can be easily extended to cover this aspect. For example, the discussion on the impact on counterparties can be extended to cover systemic risks that may arise if a CIS, in which significant financial institutions have invested, were to suspend redemptions in unexpected circumstances.

While the Principles are directed at responsible entities (REs) of a CIS, in the body of the discussion, there are references to measures that should be adopted by the competent authority or the regulatory regime to ensure the effective usage of suspension of redemptions by REs. Examples include the actions that a regulatory authority could take or consider if the information provided to the regulator indicates that the suspension is due to poor management rather than external unpredictable events (see under Principle 5(a)) and the need to provide safeguards and other measures if the use of side pockets and gating mechanism are allowed to be used in jurisdictions (see the last paragraph in pg 15 and fourth paragraph of pg 17). These examples indicate that measures directed at the RE alone are insufficient to ensure effective use and proper conduct of suspension of redemptions; that regulatory measures are also needed to achieve this end. Therefore we suggest that regulatory measures which need to work in conjunction with measures addressed to RE's should be identified and dealt with discretely.

There is also some ambiguity as to the effect intended to be achieved by the Principles, mainly stemming from the lack of consistency in the use of language. For example, some Principles contain “should” in reference to measures that should be adopted by REs (see Principles 1, 2, 4 and 5), which seem to be more mandatory than the use of the more permissive “may” which occurs in other Principles (see Principle 3). Such inconsistencies should be removed.

We also found some areas of the paper to be repetitive and a careful edit will be helpful.

Technical Comments

Principle 3 provides that suspension of redemptions can be justified only in exceptional circumstances provided such suspension is in the best interests of all Unitholders or if the suspension is required by law. If any jurisdiction requires suspension of redemptions under specified circumstances, compliance with the requirement would be mandatory. However, the applicable laws may also permit suspension of redemptions in specified circumstances, leaving some discretion for the REs in those jurisdictions to suspend redemptions provided the relevant criteria defined in the law are met. Therefore, Principle 3 should be expanded to cover where RE’s are “permitted” to suspend redemptions under applicable laws in defined circumstances.

Principle 6 is ambiguous and seems to contain some inconsistency. It starts by stating that the RE should not generally accept subscriptions during a suspension of redemptions but goes on to provide that subscriptions “cannot” be accepted if a reliable, meaningful and robust valuation is not possible. Generally, suspension of redemptions occurs when assets cannot be liquidated to meet redemption requests, which is often the result of the illiquidity of the asset, which often accompanies the lack of a reliable, meaningful and robust mechanism to value those assets. Therefore, the Principle should simply provide that REs should not accept subscriptions during the suspension of redemptions. The discussion of the Principle could then focus on exceptional situations, if any, where the calculation of the unit price based on NAV could be achieved through objective and reliable means during a suspension and hence could support continuing subscriptions.

We are happy to provide any further clarifications if necessary. Please do not hesitate to contact the undersigned if further clarification or assistance is required.

Yours faithfully,

Dharmika Amukotuwa
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**EFAMA Reply to the
IOSCO Consultation Report on Principles on Suspensions of Redemptions
in Collective Investment Schemes**

EFAMA is the representative association for the European investment management industry. It represents through its 27 member associations and 56 corporate members approximately EUR 14 trillion in assets under management, of which EUR 8 trillion was managed by approximately 53,000 funds at the end of 2010. Just under 36,000 of these funds were UCITS (Undertakings for Collective Investments in Transferable Securities) funds.

EFAMA welcomes the opportunity to comment on IOSCO's proposed Principles regarding Redemptions, a key feature of open-ended CIS which deserves consideration in view of the liquidity problems during the financial crisis.

General Comments

EFAMA members are concerned by the last paragraph of page 5, which states that *"The principles are intended to provide general standards by which a regulatory regime should approach and oversee suspension of redemptions. The principles are addressed to the entity/entities responsible for the overall operation of the CIS..... Delegation of activities may not be used to circumvent the principles, and there should be compliance with the principles..."*. This implies a direct effect on market participants, and contradicts the previous paragraph on page 5, which indicates that *"the aim of the report is to outline principles against which both the industry and the regulators can assess the quality of regulation and industry practices...."*.

Also IOSCO's paper "Examination of governance for CIS - Part II" (issued in February 2007) included a set of principles and made clear that they would need to be transposed in each jurisdiction (Page 5).

The language of the report should reflect the fact that IOSCO Principles offer practical guidance, but do not have a direct effect, and that it is a matter for the regulator in each jurisdiction to consider the report and, if appropriate, to take action. As regards market participants, IOSCO principles cannot supersede binding legal rules at national level.

EFAMA largely supports the IOSCO proposals, but wishes to offer the following detailed comments:

Chapter 2 – Risk of Suspensions

EFAMA believes it would be helpful to balance the fundamental right to redeem (Page 6) with the recognition that the ability to suspend is a fundamental investor protection tool. Suspensions of redemptions are a vital tool that is used in exceptional circumstances by CIS managers, when it is in the collective interests of unit-holders to do so.

Chapter 2 – Principles

A. Management of liquidity risk

IOSCO states that *“the responsible entity should establish, implement and maintain an appropriate liquidity management policy and process”* (page 9). EFAMA points to the fact that the UCITS Directive governing the most European retail funds does not require the establishment of a separate “liquidity management policy”. Rather, management of liquidity risks is part of the general risk management process and subject to a policy identifying all risks relevant to a UCITS. This holistic approach to risk management would require CIS operators to deal with the liquidity risk of a CIS as part of their risk management arrangements, rather than proposing a specific liquidity management policy.

B. Ex-ante disclosure to investors

EFAMA agrees that disclosure has to be provided to investors prior to investment. However, the report suggests that *“where national law does not define exceptional circumstances, it is recommended not to define in the CIS documentation the term ‘exceptional circumstances’..... Instead, it is recommended to use examples of what might constitute exceptional circumstances”*. We do not consider that the use of examples is the best way to inform potential investors, as an exhaustive list of exceptional circumstances would not be practicable, in view of varying real life circumstances. If a list is used, it should be clearly stated that it is only explanatory and not exhaustive, so as not to preclude any decision by CIS operators.

Some EFAMA members believe that cases where a fund investing in illiquid assets such as real estate is unable to meet redemption requests in spite of proper liquidity management in accordance with regulatory requirements should also qualify as “exceptional circumstances”. In any event, suspension must not be deemed as arising from poor liquidity management if the CIS operator has observed all regulatory standards applicable in this regard.

C. Criteria/Reasons for suspension

We believe that the requirement that the suspension of redemptions be justified *“in the best interest of all unit-holders”* (page 10) is too absolute, as in practice it is very difficult to guarantee that it is beneficial to all shareholders. For example, the best interest of some shareholders might be to redeem while a suspension might be in the interest of the vast majority of shareholders.

It might be worthwhile adding to the list of exceptional circumstances (on page 10) other events such as natural disasters or catastrophes.

D. Decision to suspend

The report suggests on Page 11 that “*procedures should describe potential avenues that probably can avoid a suspension as well as objective criteria for reaching the decision to suspend*”. EFAMA members recommend that the content of any plans and processes be left to the relevant entity, and are skeptical that exceptional circumstances can be detailed in advance, therefore it should be sufficient to require CIS operators to retain adequate documentation on the decision-making process in accordance with principle 5 of the IOSCO consultation.

E. During the suspension

Principle 6 states that “*During the suspension of the redemptions, the responsible entity should generally not accept new subscriptions*”. Some EFAMA members are of the opinion that the responsible entity should be prohibited entirely from accepting new subscriptions, as it is unclear at which price/value the new subscriptions would take place, if allowed.

Most EFAMA members agree with Principle 6, but suggest that the words “*before the order is accepted*” should be added at the end of this sentence. It is unnecessary to give prospective subscribers a chance to cancel the subscription order, as long as they have been comprehensively informed about the suspension and they decided to proceed nonetheless.

On page 14 the report suggests that during prolonged suspensions “*when considering the interests of all unitholders*” increasing consideration should be given towards investors who want to access their money. Once again, we wish to point out that in practice it is very difficult to reconcile the interests of all shareholders in widely held funds.

Regarding communications with unit-holders, the report (page 14) indicates that resumption of dealings should immediately be communicated to unit-holders. The guidance should indicate that this might be done by website or other durable means, but that individual communications to each unit-holder will not be required, as in the case of widely held funds they would be extremely burdensome and costly for the fund.

F. Examples of alternative measures to deal with illiquidity in certain jurisdictions

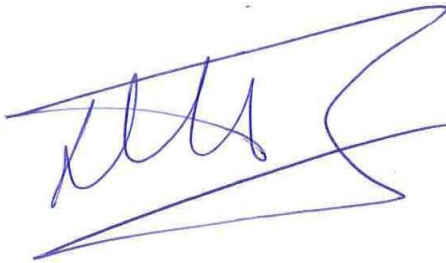
Firstly, the availability of redemptions in kind could also be mentioned as another way to alleviate liquidity pressure.

The gating mechanism described under letter a) may not only “address extreme amounts of redemptions”, but could be installed as a general disciplining tool to discourage excessive redemption requests: some jurisdictions for example allow a 10% gate per redemption date.

At the end of section b) on side pockets, the report states that that *“a good management practice for the responsible entity would be not to charge any form of management fee or performance fee on side pockets”*. We disagree if the suspension is not due to poor liquidity management/poor operational management. The suspension was carried out in the interests of unit-holders, and if side pockets are determined to be the best way to manage liquidity issues, then the manager should still be entitled to management or performance fees if appropriate. The selling of illiquid assets requires active management skills which deserve remuneration. It is important, however, that investors should be informed whether fees may (or may not) continue to be charged.

We hope our comments will be helpful and remain at your complete disposal should you have any questions.

Sincerely,



Peter De Proft
Director General

Brussels, 30 May 2011

Thank you for the opportunity to comment on the IOSCO consultation report dated March 2011 regarding Principles on Suspension of Redemptions in Collective Investment Schemes.

We would like to express the following comments:

1. We support the Principles proposed. Such Principles show the path for getting a minimum regulatory convergence on this topic at worldwide level.
2. However, we wish IOSCO and its members to solve some drafting ambiguities. In particular, in some cases the Principles do not appear as binding, by using “should” and not “shall”, while we think that if IOSCO wishes to help regulatory convergence the Principles should be binding – although letting of course IOSCO members to apply them through appropriate and adapted national provisions. In other cases, notions as “generally” should be removed, for the same reason.
3. Regarding the general notions used in the Report, the wording “responsible entity” should be a bit more specific - although we acknowledge that it might be difficult to find a more precise definition at global level. IOSCO means that “responsible entities” are those responsible for the overall operation of the CIS. We think that the notion of “overall operation” is too vague. Instead, we would suggest for instance “the entity responsible for the financial management of the CIS”, complemented by a non-exhaustive list of such entities, including for instance Management Companies.
4. Regarding Principle 2 on the Management of liquidity risk, and illustrating the remark at point 2 above, the use of “should” is not enough: it should be replaced by “shall”, for the reason mentioned in point 2.
5. Regarding Principle 3 on Criteria/Reasons for the suspension, we consider that this Principle should be reinforced, by stating that such suspension is “done exclusively” in the best interest of shareholders. But conversely, the use of “all” shareholders is probably too absolute as it is very difficult to guarantee in practice that it is beneficial to all shareholders (e.g. in some cases the objective personal best interest of some shareholders might be to redeem and they are blocked by the suspension – which is in the interest of the majority of shareholders).
6. Regarding Principle 6 (‘During the Suspension’), we think that in all cases the responsible entity should not accept new subscriptions. For instance, on which price/value would the new subscriptions be done if some new subscriptions were allowed? This flexibility proposed by IOSCO (“generally”) appears as potentially dangerous.
7. Regarding Principle 8 in the same Part (During the Suspension) at the end of the Principle a clarification should be done: “(...) communicated immediately to the Competent Authority, and to all unit-holders at the same time through any means – apart from individual information, too burdensome.” It seems necessary first to clarify to whom it should be communicated, second to make sure that all unit-holders are

informed at the same time, and third that an appropriate means is used in order to reach all unit-holders at the same, without being an individual information - which would appear disproportionate and burdensome.

8. Regarding Part F, c) of the Report, the notion of letter "Discount" is ambiguous. If it is related to the cost of liquidity, maybe another notion should be used, e.g. "Liquidity Cost impact on redemption price".

We trust that these comments are of assistance.

Kind regards



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'To promote and maintain a sound financial investment environment in South Africa'

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IOSCO Consultation Report CR01/11: Principles on Suspension of Redemptions in Collective Investment Schemes

1. Introduction

The Hedge Fund Standards Board (HFSB) was set up to act as custodian of the Hedge Fund Standards published by the Hedge Fund Working Group in 2008 and to promote conformity with them. It is also responsible for ensuring that they are updated and refined, as appropriate. Over 100 stakeholders, including hedge fund managers and investors have committed to the HFSB process. The HFSB expects its Hedge Fund Standards to be widely adopted and an increasing number of investors to use the Standards in their due diligence.

The Hedge Fund Standards Board (HFSB) is pleased to respond to the IOSCO Consultation on Principles on Suspension of Redemptions in Collective Investment Schemes (CIS).¹

It is important to highlight that the HFSB has consulted in the past on similar issues in its Consultation Paper CP1/2009.² The findings from that consultation were incorporated in the Hedge Funds Standards in 2010.

2. General observations

The HFSB agrees with the overall assessment in Chapter 2 of the Consultation Report, and in particular with the risk of unfair treatment of investors. The report highlights the potential adverse impact on investor confidence and potential spillover effects that suspension of redemptions can have (p. 6).

- ***It is important to highlight that “not suspending redemptions in instances where fair treatment of investors cannot be guaranteed any more” can be equally damaging: In a distress scenario, non-redeeming investors may fear being left with the illiquid remainders of a portfolio (“bottom of the barrel risk”), while redeeming investors are paid off from the proceeds of the sale of the liquid portion of a portfolio. This situation creates a perverse incentive: All investors will want to “rush to the exit” by redeeming. This creates a classic prisoners’ dilemma, with no incentive to hold back individual investors, who are behaving rationally in their own narrow self-interest.***

¹ <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD349.pdf>

² HFSB Consultation section: <http://www.hfsb.org/?page=11474>

- ***Also, this not only creates runs on individual funds, but can also have “spillover” effects for other similar CIS in a similar manner as the Consultation Report describes spillover effects from suspending redemptions.***

In the context of the market impact assessment (p.6), the Consultation Report raises a sensitive issue: when significant redemptions affect an individual CIS and force it to liquidate its portfolio, this can lead to price decline in the relevant underlying market with further outflows in other CIS. The Consultation Report proposes that it may be appropriate for the responsible entity to consider suspending redemptions in certain limited circumstances, such as run on CIS assets.

This raises a very important question: should decisions about suspensions of redemptions be based on issues relating to fair treatment of investors in the relevant fund as well as “vicious circle scenarios” (i.e. redemptions causing a strong market correction/runs on funds)?

| | | Market wide perspective | |
|----------------------------------|--|--|--|
| | | <i>“no market distress”</i> | <i>“danger of vicious circle”</i> |
| Fund specific perspective | <i>“Fair treatment of investors can be ensured”</i> | (1) ⇒ No need to restrict redemptions | (2) ⇒ ?? |
| | <i>“Fair treatment of investors cannot be ensured”</i> | (3) ⇒ Restrictions around redemptions justified | (4) ⇒ Restrictions around redemptions justified |

Inclusion of “danger of vicious circle” into the criteria for justifying suspensions of redemptions requires further clarification:

1) Are distress situations realistic, where an individual fund is able to fairly treat his investors (e.g. by liquidating its assets), while at the same time cause distress to other investors (i.e. falling prices, etc)?

2) Are individual fund managers or the funds’ governing bodies at all equipped to make judgements on “danger of vicious circles/disorderly markets” when making decisions about suspensions of redemptions in relation to their clients?

3) In a situation where investors could still be treated fairly (e.g. by liquidating the fund), while markets might be affected, does this mean fund managers or the respective fund boards should take action against the best interest of their investors?

4) What impact do such suspensions (on the basis of presumable “vicious circles”) have on price formation in the market place?

5) This raises a broader question: is it at all necessary to introduce “vicious circles” as a concept for justifying suspensions?

HFSB recommendation:

The HFSB has stated in the past that where a fund is invested in liquid assets, redemptions should be honoured as long as fair treatment of investors can be ensured, but has not explicitly incorporated market wide assessments (i.e. “vicious circles”) in the criteria for imposing restrictions around redemptions. The HFSB would recommend reviewing Chapter 2 to clarify that restrictions of suspensions are only justified when fair treatment of investors cannot be ensured.

3. Observations on the principles

The HFSB broadly agrees with the principles set out in the IOSCO Consultation Report. However, we would like to make the following observations.

- *The inclusion of “fire sale prices” as criteria for defining exceptional circumstances will need further assessment (i.e. what constitutes a “fire sale price”). This is in line with the assessment included in the General Observations of this consultation response in section 2. (3.1)*
- *Conflicts of interests arising in the context of decisions about suspensions of redemptions need to be considered. (3.2)*
- *The HFSB’s work on liquidity risk management (in a hedge fund management context) might provide relevant insights for IOSCO on improving understanding and practices in this area. (3.3)*

3.1 Definition of “fire sale” prices

The IOSCO Consultation report sets out an approach for the decision to suspend redemptions (Chapter 3, C: Criteria/reasons for the suspension, a) Exceptional circumstances).

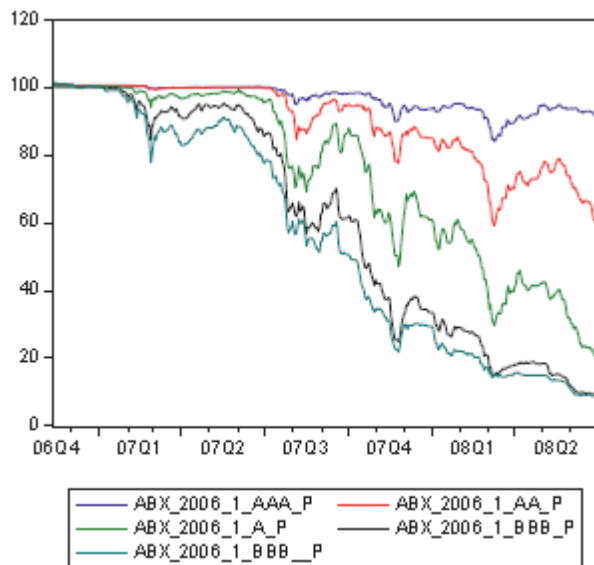
Step one of this approach highlights two criteria to describe the characteristics of exceptional circumstances:

- a) Fair and robust valuation of the asset is not possible
- b) Asset can only be sold at fire sale prices (in order to meet redemption requests)

The HFSB believes that further clarification is required around the concept of “fire sale prices” and it might be useful to assess what impact “suspensions of redemptions” in such circumstances has on the price formation process.

As seen during past financial crises, strong market corrections can occur (and tend to happen more frequently than some standard models seem to predict) and in many instances, the price corrections are not temporary in nature, but sustainable and thereby justified in hindsight (i.e. when a bubble bursts), with prices ultimately settling at much lower levels. The ABX index, a widely followed index of valuations of US subprime mortgages, provides an example of this (see Illustration 1).

Illustration 1: Time series of ABX prices³ (for H1/2006 vintage mortgages, for different rating classes)



Source: ECB, <http://www.ecb.int/pub/pdf/scpwps/ecbwp1056.pdf> p. 35.

Market-based systems usually provide a framework for price discovery, balancing of supply and demand and competition. If it is intended to encourage suspensions of redemptions during times of market price correction, where what is described as “fire price selling” is likely to be occurring, it is important to acknowledge that this affects the price discovery process in the market place and can also reduce liquidity: while the suspension can cushion the drop in market prices, it might also prevent investors from entering the market for fear of overpaying for the asset.

It is obviously very difficult to assess during the actual market correction whether a new price discovered in the market place represents a “fire sale” and potentially only a temporary correction or overreaction of the market, or whether it is reflective of a longer term adjustment of prices. **What should be avoided are the situations when restrictions around redemptions are enacted based on presumable “fire sale prices” even though price discovery is correct and investor redemption requests could actually be honoured.**

HFSB recommendation:

While the HFSB agrees with the first criterion (a) mentioned above, it believes that it is unclear how “fire sale prices” justifying suspensions of redemptions can be defined and distinguished from situations where justified corrections in market prices are underway, and where suspensions of redemptions would not only hurt investors in the fund (who cannot redeem), but will also slowdown the discovery of a new market price where buyers are willing to step in.

A feasible approach could be to restrict exceptional circumstances to criterion (a) [Fair and robust

³ The ABX index family is based on credit default swaps (CDS) written on US home equity loan (HEL) MBS and track the price of credit insurance of such deals. The indices are traded on price rather than in spread terms (see Illustration 1)

valuation of the asset is not possible, e.g. because of lacking liquidity in the market place]. This could likely include certain “fire sale” scenarios, where fair and robust valuation of the asset is not possible, but not to generalise as all types of “fire sale” scenarios.

3.2 Conflicts of interest

The IOSCO paper refers to the “responsible entity” in charge of determining what is in the best interest of unit-holders when suspending redemptions. In some instances, this might be the fund governing body, in others it might be the managing entity.

From a governance perspective, the HFSB would like to point out potential conflicts of interests, and how they are properly managed / overseen.

Obvious examples of such a conflict are situations where a manager has an incentive to suspend redemptions in order to avoid loss of management fees as a result of redemptions.

Therefore, it might be helpful to identify potential mechanisms, such as independent boards (where investors delegate decision making authorities) vis à vis more rule-based mechanisms (e.g. where the manager is directly in charge of making such decisions).

Proper handling of such situations by the “responsible entity” is crucial in improving investor confidence in asset management and overall capital markets in situations of distress, and thus should not be underestimated.

The Hedge Fund Standards give a strong preference for independent governance models to manage such situations of distress.

3.3 Liquidity risk management

The HFSB agrees that it is important to consider the liquidity of the types of instruments and assets and their consistency with the overall liquidity profile of the open-ended CIS before and during any investment. In this context, the dynamic nature of the liquidity of assets and instruments should be taken into account. As seen during the crisis, liquidity can fluctuate significantly and highly correlate with other factors and events (margin calls, investor redemptions, cancellation of credit lines).

Therefore, the HFSB agrees that further guidelines do help clarify the tools and mechanisms that improve the overall approach to liquidity risk management and would like to highlight its own work in this area, which might be of relevance to IOSCO’s efforts. **The Hedge Fund Standards contain a dedicated section covering “Liquidity Risk Management” (Standard 12) as part of the broader risk management framework, covering the liquidity risk management framework, stress testing, and the inter-linkage with other areas of risk management (i.e. market risk). Appendix A includes the relevant section on liquidity risk management.**

The HFSB would be happy to work more closely with IOSCO on issues relating to liquidity risk management and other areas where common principles for asset managers are required.

Appendix A

Liquidity risk management – Standards and Guidance [12]

- **A hedge fund manager should develop a liquidity management framework, the primary role of which is to limit the risk that the liquidity profile of the fund’s investments does not align with the fund’s obligations.**

This could include forecasting the liquidity position of the fund and tracking liquidity measures (e.g. ratios such as “available cash/Value-at-Risk”) which allow the hedge fund manager to assess the probable development of the fund's liquidity position relative to the portfolio’s inherent risk.

The nature of this framework would depend on the categories of assets and leverage profile of the hedge fund.

- **A hedge fund manager should regularly conduct stress testing and scenario analysis of the fund’s liquidity position.**

Potential stress events could include:

- margin calls due to sudden severe market shocks (e.g. significant equity price falls);
- reduction in liquidity in certain market segments relevant to the fund;
- a sudden increase in collateral requirements for funding positions (thereby reducing assets available for sale to meet liquidity needs);
- investor redemptions (as per the fund’s redemption policies) (where relevant³⁴); and
- cancellation of credit lines (as per notice periods agreed between the fund and Counterparties, such as prime brokers).

The stress testing/scenario analysis should also take account of the impact of market risk stresses on the liquidity position of the fund (see following market risk management standard).

It has been widely found that in stress situations unexpected correlations can appear. Hedge funds have been faced with sudden liquidation challenges due in part or in whole to rapid market movements, for example in currencies, commodities or equities.

Source: Hedge Fund Standards, <http://www.hfsb.org/?section=11502>

INVERCO RESPONSE TO THE IOSCO CONSULTATION REPORT ON PRINCIPLES ON SUSPENSIONS OF REDEMPTIONS IN COLLECTIVE INVESTMENT SCHEMES

1.- INTRODUCTION

INVERCO (Spanish Association of Collective Investment Schemes and Pension Funds) represents more than six thousands collective investment schemes and more than 1,300 pension funds, with more than EUR 303 billion in assets under management.

INVERCO thanks IOSCO for its excellent work on investment manager's practices and welcomes IOSCO's commitment to work in close cooperation with the industry practitioners.

INVERCO strongly supports the proposed principles, which will become a helpful tool to allow both the industry practitioners and regulators an accurate assessment of the quality of regulation and industry practices concerning suspensions and redemptions in open-ended collective investment schemes. A fair treatment of this issue is crucial to avoid that certain isolated episodes may spillover their effects through the whole sector, which is one of the major risks that suspensions may entail.

The aforementioned principles fit perfectly the applicable legal framework for suspension of redemptions in Spain. Only a brief comment regarding principle 6, about circumstances under which suspension of redemptions should also give rise to suspension of subscriptions, should be made.

Although IOSCO principle 6 does not explicitly prohibit new subscriptions during the suspension period, in practice it is very unlikely that the requirements set forth to attend new subscriptions are met, in particular the provision according with such new subscriptions are only admissible whether "*a reliable, meaningful and robust valuation of the assets is possible*"; situation which is highly improbable, considering the exceptional circumstances which lead to suspend redemptions.

Therefore principle 6 should be enunciated in more flexible terms, in order to allow certain subscriptions that may result in the benefit of those investors who need to redeem their units without detriment of those who decide to stay in the CIS until normal operations are resumed.

2.- COMMENTS

According to IOSCO principle 6, "*during the suspension of the redemptions, the responsible entity should generally not accept new subscriptions. Subscriptions cannot be accepted if a *reliable, meaningful and robust valuation of the assets is not possible*".*

This principle assumes that during the suspension of the redemptions, the responsible entity should not generally accept new subscriptions, which is adequate, as normally the same reasons that recommend the suspension of redemptions are likely to justify the need to avoid

subscriptions (i.e. exceptional circumstances such as market failures, exchange closures and operational or liquidity issues).

Notwithstanding, although the first sentence of the principle is stated in flexible terms (*“during the suspension of the redemptions, the responsible entity should generally not accept new subscriptions”*), the second sentence provides for a prohibition to accept new subscriptions (*“Subscriptions cannot be accepted...”*) in certain cases, in particular whether a reliable, meaningful and robust valuation of the assets is not possible.

Unfortunately, the reasons which trigger suspensions of redemptions will, in most cases, prevent a *“reliable, meaningful and robust valuation”*, so when an exceptional circumstance leads to suspend the redemptions, the same exceptional circumstance will probably prevent the responsible entity from making a reliable, meaningful and robust valuation of the CIS assets, closing it to new subscriptions in application of IOSCO principle 6.

This is the case for entities applying U.S. GAAP or IFRS in their reporting obligations, where assets valuation is based on the *“fair value”* principle, which is defined as *“the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date”* and whose measurement is based on a hierarchy which categorises the inputs used in valuation techniques into three levels, giving the highest priority to (unadjusted) quoted prices in active markets for identical assets or liabilities and the lowest priority to unobservable inputs (IFRS 13 and FAS 157).

In the absence of active markets for certain instruments, the management must estimate its fair value, and it is not easy to ascertain whether such valuations would be deemed to comply with the IOSCO standard.

As a conclusion, the current wording of IOSCO principle 6 would lead to a prohibition to admit new subscriptions when the redemption are suspended, prohibition which, in our opinion, will not always result in the best interest of the investors.

For example, in order to protect the investors and to avoid reputational risk the Fund promoter or its management company might be interested in subscribing the units of those investors who need liquidity, while certain investors could be interested in redeeming their units, although the net asset value applied to these subscriptions and redemptions were not completely based on an accurate valuation that, under the suspension of redemptions period, may not always be possible.

Arrangements as that mentioned in the previous paragraph would not be compliant with the current wording of IOSCO principle 6, therefore it would be welcomed a more flexible provision, that avoids an active marketing of the CIS during the suspension, but which does not prevent investors to redeem their units when they need it and there is an investor or entity willing to buy them. To his goal, it is proposed the following provision:

“During the period of suspension of redemptions, the collective investment scheme should no longer be actively marketed. Notwithstanding, new subscriptions might be accepted whether this is in the best interest of the unitholders”

Madrid, 30th May 2011

Via post and email to: CIS-suspensions@iosco.org

20 May 2011

Mohamed Ben-Salem
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 MADRID
Spain

Dear Mohamed,

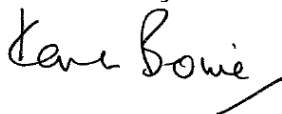
Principles on Suspensions of Redemptions in Collective Investment Schemes

The IMA represents the asset management industry operating in the UK. 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 around £3.8 trillion of assets, which are invested on behalf of clients globally. These include 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-authorized investment funds (i.e. unit trusts and open-ended investment companies, the vast majority of which are UCITS).

We welcome the opportunity to comment upon IOSCO's proposed principles. In a number of areas the principles are in line with existing UK rules and with guidance which we have produced for our membership on the subject of suspensions, in conjunction with UK depositaries

We attach our detailed comments and recommendations, which we would be happy to discuss with you at any time. As a general point, we observe that there seems to have been a creep in the language used in IOSCO documents, from statements clearly aimed at national regulators to statements written in the form of direct commands to firms. IMA has long-supported the work of IOSCO on CIS issues, and was an early contributor to this work, but we question on what basis IOSCO has the powers to issue direct instructions or guidance to firms. We therefore request that the language is reviewed and amended as appropriate.

Yours sincerely



Karen Bowie
Senior Adviser - Product Regulation

IOSCO Principles on Suspensions of Redemptions in Collective Investment Schemes

Consultation Report IMA's comments

Chapter 1 Introduction

Status of report

The report is written in a way that suggests direct application to CIS operators. For example, in the last paragraph on page 5 there is a statement that *"The principles are intended to provide general standards by which a regulatory regime should approach and oversee suspension of redemptions. The principles are addressed to the entity/entities responsible for the overall operation of the CIS..... Delegation of activities may not be used to circumvent the principles, and there should be compliance with the principles..."*. This implies a degree of direct effect, which IOSCO Principles do not have. It is also at odds with the previous paragraph on page 5, which indicates that *"the aim of the report is to outline principles against which both the industry and the regulators can assess the quality of regulation and industry practices...."*.

We recognise and appreciate the important role of IOSCO in proposing principles that provide general standards for how regulatory regimes should approach the suspension of redemptions. However in the light of the above point, we ask that the last paragraph on page 5 (and similar statements elsewhere in the report) be removed or modified. The language of the report should reflect the fact that it is a matter for the regulators in each jurisdiction to consider the report and whether it is appropriate to take any action (for example, changes in regulation) in the light thereof. This is particularly important given that the paper is aimed at all types of CIS, so covers unregulated open-ended CIS, for example as well as authorised funds.

We note that IOSCO's paper "Examination of governance for CIS - Part II" (issued in February 2007) includes a set of principles and makes clear that they would need to be transposed in each jurisdiction (Page 5).

The language in this report should similarly reflect the fact that the principles offer practical guidance. The word "could", rather than "should", would better reflect the fact that it is guidance.

Chapter 2

Ability to suspend being a valuable tool

We believe that more should be made of the fact that the ability of a CIS to suspend is a fundamental investor protection tool. The report talks of the right to redeem being a fundamental right (Page 6). It would be useful to balance this with a statement that the ability to suspend is a fundamental investor protection tool. Whilst, clearly, managers do not wish to have to suspend, it is a vital tool that is used in exceptional circumstances and when it is in the collective interests of unitholders to do so. It should be viewed as part of the investor protection toolkit.

Chapter 3

Management of liquidity risk

The first sentence (Page 8) refers to liquidity management being a way to avoid suspensions of redemptions. We suggest that this should be amended to read “to mitigate the risk of suspension owing to a lack of liquidity”. This would make clear that the goal is to mitigate risk. Clearly, even with good liquidity management, it may not be possible in all circumstances to avoid suspension due to liquidity issues created by extreme market events.

At the top of page 9, there is a statement that *“the responsible entity should establish, implement and maintain an appropriate liquidity management policy and process”*. It is appreciated that the paper covers all open-ended CIS, not just UCITS, but we suggest that a better approach is to propose that a relevant entity should consider liquidity management as part of its risk management arrangements (rather than proposing a specific liquidity management policy). This approach would cater for regulatory systems in which risk management is dealt with as a whole rather than through requiring a number of separate policies dealing with different types of risk. For example, in the context of UCITS, there is no specific UCITS Directive requirement to establish a “liquidity management policy”. Rather, there is a requirement in UCITS IV (Commission Directive 2010/43/EU, Art 38) to *“establish, implement and maintain....a risk management policy which identifies the risks the UCITS...are or may be subject to”*.

The section also says *“the responsible CIS entity should only invest in instruments/assets if this investment does not compromise the ability of the CIS to comply with its redemption obligations..”*. We consider that it would be better to say that the purchase of an investment or asset may be made only if its liquidity does not compromise the entity's redemption obligations. This makes clear that one can invest in an illiquid investment/asset if the portfolio, taken as a whole, is sufficiently liquid that the entity can meet its redemption obligations.

Ex ante disclosure to investors

This section (Page 9) indicates that *“where national law does not define exceptional circumstances, it is recommended not to define in the CIS documentation the term ‘exceptional circumstances’.... Instead, it is recommended to use examples of what might constitute exceptional circumstances”*.

The UCITS Directive (Art 84) allows a fund to suspend, in accordance with national law, only in exceptional circumstances where the circumstances so require and where the suspension is justified having regard to the interests of unitholders. It is likely that many EU jurisdictions base their prospectus disclosure on this UCITS article. This means that the current disclosure is to the effect that suspensions may occur in exceptional circumstances when justified in the interests of unitholders. This disclosure should be considered sufficient. We do not agree with the proposed requirement for disclosure of examples. This would be a new requirement for UCITS and other CIS managers, would be a potentially costly exercise and would bring questionable, if any, real benefit to investors.

Criteria/reasons for suspending

It may also be worth adding the following to the list of exceptional circumstances:

“Other events

There may be other events such as natural disasters or catastrophes, which make it impossible to value, or dispose of and obtain payment for all or some of the CIS's property”.

Alternatively, reference to natural disasters or catastrophes could be added to the list of unexpected events listed in the third paragraph in section 3a) on pg 10.

Decision to suspend

Implementation of processes in advance (page 11) - This section uses both “should” and “could”. We recommend that the word “could” is used throughout. It should be left to the relevant entity to decide what it needs to put in place in advance. For example, in the case of a highly liquid UCITS, it may not be proportionate to put in place detailed plans/processes in advance. The content of any plans should be left to the relevant entity; hence, the use of the word ‘could’ to indicate that these are suggestions for consideration.

Page 11 also suggests that procedures describe “*objective criteria for reaching the decision to suspend*”. Given that it is expected that suspension will take place only in exceptional circumstances, it will be difficult to set out purely objective criteria in any detail on how to reach this decision in advance.

Documentation (page 12) – This section also refers to the defining of objective criteria for the resumption of normal operations. It may be useful for the guidance to provide some examples of these criteria. In reality the decision to resume normal operations is expected to require a number of subjective inputs too, such as a view on market liquidity.

Communication to the competent authorities and other relevant parties (page 13) – In the UK, because of the direct involvement of the depositary, our rules do not require notification of planned actions to the regulator. The rules require notification of the suspension, the reasons therefor and notification of the lifting of the suspension. It would be preferable if the paper simply referred to providing such information as the relevant competent authority may require. That would be broad enough to cover all eventualities.

The last paragraph of this section (Page 13) should be amended. We believe that this should not be a regulatory requirement. The key is to ensure that investors in the CIS are notified as are investors seeking to place deals. In the UK, rules are already in place for authorised funds to ensure that this is done.

Naturally, entities are likely to wish to notify intermediaries/distributors, but that should simply be a matter for an entity to consider as part of its communication strategy. In addition, it should be noted that in practice it would be difficult for “*immediate cessation of active distribution of the CIS*” to be achieved in any event given that there may be a number of layers of intermediation.

During a suspension

This section requires that if subscriptions are allowed, any potential subscriber should be informed in a clear and comprehensive manner prior to the subscription, and given the chance to cancel the subscription order (Page 13). We suggest that the words “before the order is accepted” is added at the end of this sentence to make clear that the matter under discussion is the cancellation of orders rather than the cancellation of contracts. In the latter case, if an investor has been given clear and comprehensive information prior to the subscription and still decides to proceed, then unless national law requires the provision of cancellation rights, it is not necessary to give such rights.

Page 14 indicates that in the case of potentially longer lasting suspensions, the responsible entity should consider alternatives unless all unitholders agree to maintain the suspension so as to avoid liquidation. This is unlikely to be achieved in widely-held funds. It would be helpful if the IOSCO guidance were to include a recommendation that regulators give consideration to the regulatory tools available in the event of a longer lasting suspension and to increasing the regulatory tools available to deal with such instances. This might, for example, include making available the ability to set up side pockets.

As regards communications with unitholders, this section (page 14) indicates that resumption of dealings should immediately be communicated to unitholders. The guidance should indicate that this might be done by website or other durable means. In the UK, for example, the notification to unitholders of the suspension must inform unitholders how to obtain information regarding the suspension. This includes being able to direct them to a website on which details regarding the suspension are published.

Side pockets

The final paragraph on page 17 states that *“a good management practice for the responsible entity would be not to charge any form of management fee or performance fee on side pockets”*. If the suspension is not due to poor liquidity management/poor operational management, this suggestion is not reasonable. Relevant entities will have suspended in the interests of unitholders. If it is then determined that side pockets are the best way to address the issue in the interests of unitholders, then the manager should still be entitled to management or performance fees if appropriate. The selling of illiquid assets requires active management skills. The important point is that investors should be informed that management or performance fees may (or may not) continue to be charged.



International Investment Funds Association
Association internationale des fonds d'investissement

May 30, 2011

Via Electronic Mail (CIS-Suspensions@iosco.org)

Mr. Mohamed Ben-Salem
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid
Spain

Re: *Public Comment on Suspensions of Redemptions in Collective Investment Schemes*

Dear Mr. Ben-Salem:

The International Investment Funds Association (the "IIFA") welcomes the opportunity to comment on the consultation report on Principles on Suspensions of Redemptions in Collective Investment Schemes (the "Report") issued by the Technical Committee of the International Organization of Securities Commissions ("IOSCO"). The IIFA is comprised of 39 national and regional associations representing investment funds from around the world.¹ Recognizing the importance of the role of investment funds and of their responsibilities to investors, the mission of the IIFA is to promote the protection of investment fund investors, to facilitate the growth of the investment funds industry internationally, to act as a medium for the advancement of understanding of the investment fund business around the world, and to encourage adherence to high ethical standards by all participants in the industry.

The IIFA supports IOSCO's issuance of the principles in the Report, which provide general standards against which regulators and the industry can assess the quality of regulation and industry practices concerning the suspension of redemptions by open-ended collective investment schemes ("CIS").² In addition, the Report contains useful information about how various jurisdictions approach the suspension of redemptions by CIS and alternative measures to deal with illiquidity in certain jurisdictions, which may assist regulators in the evaluation of their respective jurisdiction's regulations and inform the industry's consideration of these issues. We are pleased that the Report recognizes that the principles

¹ As of the end of the third quarter 2010, these associations together represented assets under management of close to € 17 trillion or US \$23 trillion.

² The Report recognizes that the principles reflect a level of common approach and that local conditions and circumstances may dictate the implementation of the principles in a particular jurisdiction.

provide only general standards, and that local conditions and circumstances may dictate the implementation of the principles in a particular jurisdiction. We agree with the tenor of the Report – that the suspension of redemptions is an extra-ordinary event.

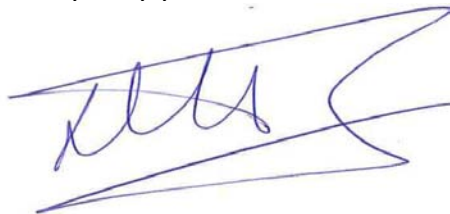
We concur with the conclusion of IOSCO’s Technical Committee Standing Committee on Investment Management (“TCSC5”) that the suspension of redemptions for open-ended CIS is an issue of global importance. The ability to redeem units on a regular and continuing basis is a key feature of open-ended CIS. This feature distinguishes open-ended CIS from many other investment products and other types of collective investment schemes, and is an integral part of a retail or institutional investor’s decision to purchase units of an open-ended CIS.

Investors in open-ended CIS expect to be able to redeem their units. To the extent that open-ended CIS do not meet the expectations of investors and the market with respect to the rights of investors to redeem units, the confidence of investors in open-ended CIS may be severely undermined. Investor confidence is critical to the fund industry’s ability to serve the needs of investors and, as noted in the Report, the loss of investor confidence may have a detrimental impact on other parts of the financial industry and the market. With the goal of maintaining and strengthening investor and market confidence in open-ended CIS, the Report’s eight principles can serve as a basis for the establishment of sound regulatory practices regarding the suspension of redemptions.

* * * * *

We appreciate the opportunity to express our views. We also refer you to the letters submitted by the individual investment fund associations that are members of the IIFA, which may provide more detail on association experiences or additional comments. Please contact me at peter.deproft@efama.org, or IIFA’s Secretary, Ralf Hensel (rhensel@iifa.ca) if you have any questions or require any clarification concerning our comments.

Very truly yours,



Peter DeProft
Chairman

PDP/rh



May 27, 2011

Via Electronic Mail (CIC-Suspensions@iosco.org)

Mr. Mohamed Ben-Salem
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid
Spain

Re: Public Comment on Suspensions of Redemptions in Collective Investment Schemes

Dear Mr. Ben-Salem:

The Investment Company Institute¹ (the “Institute”) welcomes the opportunity to comment on the IOSCO Technical Committee’s consultation report, Principles on Suspensions of Redemptions in Collective Investment Schemes, which proposes principles against which both the industry and regulators can assess the quality of regulation and industry practices concerning suspensions of redemptions (the “Report”).² Although the Institute supports the proposed principles, we believe that the principles and the accompanying text should be revised in certain places to make clear that the laws of some jurisdictions may prohibit the suspension of redemptions, or severely limit the circumstances under which the responsible entity may suspend redemptions, and therefore certain principles and text would not fully apply.

In the United States, the ability of an open-ended investment company registered under the Investment Company Act of 1940 (a “RIC”) to suspend redemptions is extremely limited. Under the Investment Company Act, an open-ended RIC cannot suspend the right of redemption or postpone the date of payment more than seven days after the tender of the security, except: (1) during any period during which the New York Stock Exchange (the “NYSE”) is closed (except for customary

week-end and holiday closings) or during which trading on the NYSE is restricted; (2) any period during which an emergency exists, as defined by the rules issued by the U.S. Securities

¹ The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$13.1 trillion and serve over 90 million shareholders.

² The report is available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD349.pdf>.

and Exchange Commission (“SEC”), as a result of which disposal by a fund of portfolio securities is not reasonably practicable or it is not reasonably practicable for the fund to determine fairly the value of its assets;³ and (3) such other periods as the SEC may by order permit to protect a fund’s investors.⁴ In order to facilitate the orderly liquidation of a money market fund, a recently adopted SEC rule permits money market funds to suspend redemptions and postpone payment of redemption proceeds if: (1) the fund’s board, including a majority of disinterested directors, determines that the deviation between the fund’s amortized cost price per share and the market-based net asset value per share may result in material dilution or other unfair results; (2) the board, including a majority of disinterested directors, irrevocably has approved the liquidation of the fund; and (3) the fund, prior to suspending redemptions, notifies the SEC of its decision to liquidate and suspend redemptions.⁵

The approach under U.S. law allows for suspensions of redemptions in an extremely limited manner. Therefore, we feel that the Report should also address circumstances in which a responsible entity does not have the discretion to suspend redemptions or in which the national law specifies what may be done. If a responsible entity does not have the discretion to suspend redemptions, certain principles and accompanying text would not be fully applicable. For example, we believe that Principle 3 should be revised to read (new text in italics): “Suspension of redemptions by the responsible entity may be justified only in exceptional circumstances provided such suspension is in the best interest of all unitholders within the CIS or if the suspension is required *or permitted* by law.” This change would address circumstances in which the regulatory authority permits rather than requires suspension. Further, we believe the text accompanying Principle 3 should recognize that, while the two step approach outlined in the Report may guide the steps that should be taken by a responsible entity when considering the suspension of redemptions, other steps or conditions may be specified by law.

We also recommend adding commentary to the text accompanying Principles 5 and 7 to acknowledge that a jurisdiction’s specific legal requirements may shape or constrain the actions taken by the responsible entity.⁶ For example, with respect to Principle 5, national law may dictate that certain documentation be provided and that certain information is communicated to the regulator and/or unitholders in connection with a suspension of redemptions.⁷ Similarly, the

³ An example of such an exception would be an emergency that affects markets or funds, such as the assassination of President Kennedy in 1963, the blackouts that affected lower Manhattan in 1990, or earthquakes or other natural disasters. The SEC must declare an emergency to exist to trigger an exception.

⁴ See Section 22(e) of the Investment Company Act of 1940.

⁵ See Rule 22e-3 under the Investment Company Act of 1940.

⁶ Principle 5 provides that “The decision by the responsible entity to suspend redemptions, in particular the reasons for the suspension and the planned actions should be appropriately: a) documented; b) communicated to competent authorities and other relevant parties; c) communicated to unitholders.” Principle 7 provides that “The suspension should be regularly reviewed by the responsible entity. The responsible entity should take all necessary steps in order to resume normal operations as soon as possible having regard to the best interest of unitholders.”

⁷ In the case of U.S. money market funds, for example, Rule 22e-3 under the Investment Company Act specifies that, prior to suspending redemptions, the fund must notify the SEC of its decision to liquidate and suspend redemptions by electronic mail. We believe that the SEC’s rule meets this Principle.

Mr. Mohamed Ben-Salem

May 27, 2011

Page 3 of 3

actions that a responsible entity should take to review the suspension of redemptions as described under Principle 7 would not apply in certain circumstances, such as if a jurisdiction has authorized the suspension of redemptions only for the period of time that the stock market is closed in response to an exceptional event. The provision specifying that the responsible entity should formally review the decision to suspend redemptions on an ongoing basis would not be fully applicable in these situations.⁸

* * * * *

We appreciate the opportunity to express our views and invite you to contact me (202-326-5813 or solson@ici.org) or Eva Mykolenko (202-326-5837 or emykolenko@ici.org) if you have any questions about our comments.

Sincerely,

/s/ Susan M. Olson

Susan M. Olson
Senior Counsel – International Affairs

⁸ Because Rule 22e-3 under the Investment Company Act only may be used if a board of a money market fund has irrevocably determined to liquidate the fund, Principle 7 would also not apply in this situation.



May 27, 2011

Mr. Greg Tanzer
Secretary General
IOSCO
C/ Oquendo 12
28006 Madrid
Spain

Re: Public Comment on the Principles on Suspensions of Redemptions in Collective Investment Schemes Consultation Report

Dear Mr. Tanzer:

National Futures Association (NFA) appreciates the opportunity to comment on the IOSCO Technical Committee's Principles on Suspensions of Redemptions in Collective Investment Schemes (CISs) Consultation Report. NFA is a registered futures association under the U.S. Commodity Exchange Act (CEA) and an affiliate member of ISOCO. NFA is the industry-wide self-regulatory body for the U.S. futures industry and regulates the activities of close to 4,000 member firms and approximately 53,000 registered account executives who work for those firms.

One of NFA's responsibilities is to monitor the regulatory requirements for registered commodity pool operators (CPOs) and their non-exempt commodity pools. We work closely with the U.S. Commodity Futures Trading Commission (CFTC) to provide effective and efficient regulation that protects customers without imposing undue burdens on the futures industry. Over 1,200 CPOs are registered with the CFTC, and the vast majority are NFA Members.

As stated in the Introduction, the principles generally cover all CISs which offer a continuous redemption right. Chapter 2 further states that investors in open-ended CISs expect to be able to redeem on a regular and continuous basis. Additionally, the narrative accompanying proposed principle 7 refers to CISs as open-ended funds that offer redemption on a continuous basis. Therefore, it appears that the proposed principles outlined in this report would not apply to CISs that offer periodic redemption rights. NFA recommends in order to avoid any ambiguity in this area it may be helpful to clearly state that the principles do not apply to CISs with periodic redemption rights.

If you have any questions concerning this letter, please contact me at kwuertz@nfa.futures.org.

Respectfully submitted,

Karen K. Wuertz
Senior Vice President,
Strategic Planning & Communications

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ZENTRALER KREDITAUSSCHUSS

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Principles on Suspensions of Redemptions in Collective Investment Schemes - Consultation Report

Comments of the Zentraler Kreditausschuss¹

Dear Mr Ben-Salem,

Many thanks for the opportunity to comment on the above consultation report. Collective investment schemes allow small and large-scale investors to diversify their investments within a single product. Investments of this kind have proved highly profitable over recent decades and, owing to the internal stability achieved by the wide spread of assets, they offer the prospect of sound performance even in a difficult market environment. The schemes have proved especially valuable in countries where demographic trends mean citizens increasingly need to make private provision for old age.

¹ The Zentraler Kreditausschuss is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen und Giroverband (DSGV), for the savings banks financial group, and the Verband deutscher Pfandbriefbanken (VdP), for the mortgage banks. Collectively, they represent more than 2300 banks.

German banks share IOSCO's view that suspensions of redemptions in collective investment schemes can damage investor confidence. The financial crisis saw a rise in the number of suspensions, posing a significant challenge for regulators.

We would nevertheless point out that, in the past, suspensions of redemptions have occurred only in very extreme market situations (financial crisis in autumn 2008 or after the events of September 11, 2001).

What is more, the risk of suspension seems essentially to be confined to collective investment schemes with an inherent problem of maturity transformation (e.g. real-estate funds, since property cannot be sold at short notice).

It should also be borne in mind that suspending redemptions can, in some cases, actually be in the interests of investors since assets sold at fire sale prices would have an adverse effect on the fund's performance. We believe the important point is that investors are sufficiently well informed about the risk of suspension and, should a suspension occur, are adequately advised of when the fund is likely to be reopened.

The closure of a collective investment scheme can, moreover, be guarded against by specifying certain redemption periods or dates for large investors or certain client groups. This gives the fund management a degree of planning certainty. In Germany, by contrast, rules which do not differentiate between different categories of investor were recently introduced in the Act to Strengthen Investor Protection and Improve the Operation of Capital Markets (*Gesetz zur Stärkung des Anlegerschutzes und Verbesserung der Funktionsfähigkeit des Kapitalmarktes*).

Our above comments notwithstanding, we welcome the work undertaken by IOSCO and are happy to offer it our support.

Yours sincerely
on behalf of the Zentraler Kreditausschuss
Bundesverband deutscher Banken


Herbert Jütten


Patrick Arora