

# **Principles on Point of Sale Disclosure**

## **Final Report**



**OICU-IOSCO**

**TECHNICAL COMMITTEE  
OF THE  
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS**

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## **Foreword**

The International Organization of Securities Commissions' (IOSCO) Technical Committee's Standing Committee on the Regulation of Market Intermediaries (TCSC3) and the Standing Committee on Investment Management (TCSC5) (known collectively as the Joint Group) have jointly authored the *Principles on Point of Sale Disclosure* Final Report. The Report sets out principles that are designed to assist markets and market authorities when considering point of sale disclosure requirements.

## Chapter 1 Introduction

This Report was produced by the Joint Group according to the *Joint Project Specification on Point of Sale Disclosure to Retail Investors*,<sup>1</sup> approved by the Technical Committee (TC) in February 2007.

Although TCSC3 and TCSC5 mandates relate to collective investment schemes (CIS) and *similar products*, this Report focuses only on CIS. The Joint Group carefully considered product scope at the outset and limited it to CIS. Similar products were considered by the group, but generally these included products unique to particular jurisdictions<sup>2</sup> or *wrapped* insurance products that may not be subject to the regulatory jurisdiction of securities regulators. Although we do not consider it appropriate to extend the scope of this paper, we do encourage regulators in the respective jurisdictions to consider how these principles could be adopted for similar products.<sup>3</sup>

This Report analyzes issues relating to requiring *key information* disclosures to retail investors relating to CIS<sup>4</sup> and their distribution prior to the *point of sale* (POS).<sup>5</sup> It also sets out principles in Chapter 7 to guide possible regulatory responses. The report does not examine issues relating to the suitability of CIS<sup>6</sup> and does not purport to describe or address *all* disclosure obligations of the intermediary (e.g., relating to general information on the intermediary's range of services, the safeguarding of client assets, client categorization or information that needs to be disclosed in the client agreement).

Transparency in the market place, particularly disclosure of information to investors, has always been a high priority and goal of regulators in seeking to ensure that markets run efficiently and with integrity. Enhancing POS disclosure, i.e., helping to ensure that investors are able to consider key information about CIS products before they invest, clearly can contribute to this goal. The recent crisis in the financial markets has highlighted the critical role that accurate, understandable and meaningful disclosure can play. This and other IOSCO projects can assist regulators in developing a path towards renewed investor trust in both the producers of financial products and the intermediaries that sell them.

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<sup>1</sup> The term *retail investor* is not defined in most jurisdictions for regulatory purposes. However, in most jurisdictions, persons who do not fall within the definition of an *institutional* or *professional* investor (e.g., *individuals or entities that meet certain net worth or asset levels*) are generally treated as a retail investor. As used in this paper, therefore, the term 'retail investor' should be generally understood to have a meaning consistent with this broadly accepted approach.

<sup>2</sup> For example, 529 plans in the U.S. and other unique U.S. products.

<sup>3</sup> For example, Italy has extended the rules of fairness and transparency to the sale of financial products by both banks and insurance companies.

<sup>4</sup> Section 11.2 of the IOSCO principles defines a CIS as including "authorized open ended funds that will redeem their units or shares, whether on a continuous basis or periodically... [including] closed end funds whose shares or units are traded in the securities market... [and] unit investment trusts, contractual models and the European UCITS (Undertakings for Collective Investment in Transferable Securities) model." While a CIS is generally defined as including closed end funds, for purposes of this paper closed end funds will be excluded from the definition.

<sup>5</sup> For purposes of this report, *point of sale* refers to the moment at which a customer requests that a product be purchased.

<sup>6</sup> We note that the Joint Forum published in April 2008 its report on *Customer Suitability in the Retail Sale of Financial Products and Services*.

In developing this Report, the Joint Group first wrote an Issues Paper that examined the issues raised by POS disclosure, including:

- whether regulatory disclosures are in fact effective in addressing information asymmetries that exist between investors, producers and sellers;
- what constitutes key information;
- how information should be delivered and whether a *layered approach*<sup>7</sup> should be used;
- what exactly should be understood as delivery;
- at what point in time the information should be delivered;
- use of plain language rather than technical jargon; and
- the format of disclosures.

The Issues Paper was provided to various industry and investor associations on an informal basis in July 2008. It solicited comment on whether the appropriate issues had been identified. Those who commented generally agreed that the Joint Group had identified the key issues. A number of more specific comments have been taken into account in drafting this Report.

This report analyzes in significant detail the key issues raised in the Issues Paper. In addition, our examination of possible disclosure of key information has highlighted the following important points:

- No matter what disclosures are mandated, they will not have the intended effect (i.e., having retail investors engage in a deliberate and informed investment process) if the investor either does not read and/or understand the information provided. Regulators should therefore consider measures to help improve retail investor education in order to enhance their financial literacy and ability to read investment documentation and make informed investment decisions;
- In general, new POS disclosure requirements should not be imposed without the benefit of consumer testing or assessment to help determine the likely effectiveness of new disclosure requirements. For example, as explained in greater detail below, research indicates that retail investors exhibit a range of behaviours and biases in the decision-making process, including acting on emotion, rather than on facts. These behaviours should be understood and considered to the greatest degree possible when developing a regulatory approach; and

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<sup>7</sup> See definition in Chapter 4.A.

- The principles set forth in Chapter 7 to this report may also be applicable to non-retail investors.

Finally, the Joint Group is aware that some members of the CIS industry are of the view that if CIS products are subjected to enhanced POS disclosure requirements, this might place them at a competitive disadvantage versus other financial products, which may not be subject to the same requirements. The merits of this argument are not analyzed in great detail in this Report (although it is discussed in Chapter 5.B.), partly because of the challenge in identifying truly comparable products that are as popular with the retail investor.

In addition, IOSCO would encourage further work by appropriate bodies on POS disclosure regarding products similar to CIS. Although the principles set out in Chapter 7 are developed with specific reference to CIS, pending future work by IOSCO, regulators in the respective jurisdictions are encouraged to review their local conditions and, to the extent possible, consider adopting the principles set out herein to products similar to CIS.

## Chapter 2 Research: The Main Findings

### A. The Need for Effective Disclosure for Retail Investors

#### Summary

Retail financial services may be characterized by *information asymmetries* – where the supplier of the product has more information about the product (and the terms under which it is sold) than the buyer. Such an information asymmetry can put retail investors at a disadvantage. Markets are generally more efficient when accurate information is available to both consumers and suppliers.

Retail investors should be able to base their investment decisions on solid information. Whether an investor is guided by an advisor's or market intermediary's recommendations, or is largely self-directed, the investor should have the necessary information to understand what he or she is buying, its cost and its risk/reward profile. The investor should also understand a market intermediary's associated conflicts of interest, i.e. an intermediary may promote the sale of a product because it is in its own financial interest to do so (rather than the investor's).

As indicated by the research described below, some retail investors who buy CIS may not clearly understand, for example, the layers of costs associated with purchasing those products, any guarantees being offered by the product, or the risks of investing in the product. In some jurisdictions, many retail investors may not clearly understand their dealer's (or adviser's) financial stake (and thus conflicts of interest) in selling those products, including so-called *revenue sharing* arrangements.

Traditionally, the CIS prospectus has been the investor's primary source of information about a fund. As described in Chapter 3, regulators have explored ways to make prospectus disclosure more meaningful for retail investors. One example is the creation of simplified prospectuses that seek to communicate key information in a meaningful way. However, issues remain.

#### Disclosures relating to distribution and intermediaries

Two areas of particular significance in relation to distribution and intermediaries are the disclosure of costs, and the handling of the potential for conflicts of interest:

- **Costs:** CIS investors may, directly or indirectly, incur distribution-related costs that can reduce their investment returns. The type and amount of those costs often vary among funds and among share classes issued by the same fund.

For instance, some CIS' issue share classes that impose sales fees, or loads, on investors when they purchase the fund shares.<sup>8</sup> CIS' may also sell share classes with sales fees or loads that investors must pay when they redeem fund shares,<sup>9</sup> which may vary depending on how long the investor has held the shares. Some CIS' also use

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<sup>8</sup> For example, *front-end* sales loads, *subscription fees* or *entry charges*.

their assets to pay distribution-related expenses, including compensation of intermediaries in connection with distributing fund shares. These charges, loads, or fees reduce the returns that investors earn, raising important disclosure issues relating to costs.

- **Conflicts of interest:** Intermediaries that sell CIS shares to retail investors may face various forms of conflicts of interest. These conflicts can give intermediaries and their personnel a greater financial incentive to sell particular funds or share classes in conflict with their duty to act in the interest of their client and to ensure compliance with applicable suitability or *appropriateness* standards when financial advice is given.<sup>10</sup>

For example, a fund or its affiliates may pay an intermediary to provide the fund with more visibility and access to the intermediary's sales force, or otherwise influence the way that the intermediary and its associated persons market the fund (or a particular share class) to investors. Payment arrangements can take a wide range of forms, for instance as direct fees, whether upfront or throughout the life of an investment,<sup>11</sup> revenue sharing, or payments which are ostensibly compensatory for costs incurred by the intermediary which may not be directly related to a particular fund sale.

Persons associated with intermediaries may also receive so-called *differential compensation* that could motivate personnel to promote the sale of some funds over others. These arrangements pose special disclosure and other regulatory issues. We note that other products might also raise the same issues related to differential compensation as CIS and nonetheless be subject to very different disclosure requirements even though also offered to retail investors (such as in the EU, a structured note or a life insurance contract).

- **Other material information:** There is other pre-sale information that investors may find useful for making informed investment decisions. Examples include any affiliation of the intermediary with product producers, whether the ranges of products available are limited to affiliated groups' products, the policies and procedures governing the giving of discounts/rebates/waivers to clients for making investments through the intermediary, and any ability to rescind a purchase order (*cooling-off period*) allowable for the products and dispute resolution procedures.

## Disclosures relating to products

In relation to disclosures about products themselves, the asymmetry of information between the product producers and retail investor also raises significant challenges. As a result, most jurisdictions have placed specific disclosure requirements on product producers. In

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<sup>9</sup> Which may variously be called *deferred* or *back-end sales loads*, *redemption fees* or *exit charges*.

<sup>10</sup> The issue of market intermediary management of conflicts of interest has been extensively analysed in a Report issued by the TC on November 2007. The Report makes reference only to those conflicts arising in the context of a securities offering in which the intermediary is directly involved.

<sup>11</sup> Please see also the TC Final Report on Elements of International Regulatory Standards on Fees and Expenses of Investment Funds of November 2004, where reference to distribution costs and arrangements is made.

particular, these requirements include disclosures regarding the objectives of a product, its risks, potential for investment returns and charges, and the nature of any guarantees being offered.

However, there is evidence from a number of jurisdictions that these disclosure requirements have not effectively mitigated the effects of the underlying asymmetry of information. For instance, in the European Union, the European Commission (EC) concluded, after extensive consultation, that the existing simplified prospectus has proved to be of a limited use to investors and a source of unnecessary cost for the industry. In the view of the EC, the simplified prospectus was not only too long and complex, but also did not allow for useful comparisons. Directive 2009/65/EC, therefore, replaces the obligation to offer a simplified prospectus with the delivery of *key investor information*, valid in all Member States.<sup>12</sup> The focus of new provisions, which enter into force on 1 July 2011, is on a shorter, more consumer-friendly document designed to be easier for investors to understand, with the aim of increasing the likelihood that the information will be of use.

Other jurisdictions also have work underway to improve product disclosure regimes, following similar evidence that the existing requirements are not effective. See discussion in Chapter 6.

## **B. Views on Effective Disclosure**

As discussed in Chapter 3, some regulators have explored ways to encourage retail investors to read and use the information contained in prospectus disclosure (and, in some cases, separate intermediary-focused disclosures),<sup>13</sup> by making it more useful for investors. Ultimately, the regulatory aim is to improve the effectiveness of the disclosure as a way to empower retail investors.

It is generally accepted that to be effective, particularly for retail investors, disclosure must:

- relate to key characteristics;
- give investors the information at a time when it is relevant; and
- be in language investors can easily understand.

Timing and language are critical to ensuring that the disclosure is effective. The issue of timing is discussed in section IV D. The issue of language is discussed in Chapter 4.C.

However, other factors have been identified which can be important in determining the overall effectiveness of disclosures. These include the financial literacy of investors, or the extent to which they focus on disclosures required by regulations rather than on other sources of information.

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<sup>12</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast).

<sup>13</sup> For example, menu of commission and status disclosure in the UK. More generally, in relation to intermediary focused disclosures, retail investors in Europe must be provided with information on conflicts of interests, costs and fees of services and inducements.

## **C. Research on Retail Investor Preferences**

Much research has been done on what information retail investors want to have in order to make an investment decision. Appendix A draws together findings and issues from the research or surveys submitted by TCSC3 and TCSC5 members.

### **What information do retail investors want?**

The research indicates that a key starting point for retail investors when looking at investment products is information about potential returns, risks and cost.

Retail investors seem to be asking the following questions:

- how much can I make (returns);
- how much can I lose (risk); and
- how much does it cost (fees)?

The research suggests that retail investors focus on information about investment returns or past performance in an attempt to answer the question “how much can I make?.” They do not, however, focus only on returns. They also want to know about risks and guarantees in an effort to understand how much they might lose. Finally, they want to know about the costs. They are interested in the fees and expenses, although evidence is more mixed on the extent to which investors take costs into account.

Research is less clear on consumer preferences for information about intermediaries. Investors often do not recognise any particular information needs they might have in this area other than costs. Research indicates that retail investors may be confused about payments to the intermediary and those to a product producer.

### **In what format do retail investors want to receive the information?**

The research contains a number of key messages regarding retail investors’ preferences for the design and format of the information they wish to receive. They say that they prefer documents that are:

- short and concise;
- well presented and laid out;
- plainly and clearly worded;
- focused on the information they believe they need; and
- easy to understand with simple examples, tables and graphics to help illustrate concepts.

Design techniques may be used to improve the extent to which a disclosure document engages retail investors. Techniques such as the use of colour, bolding and white space can help make a document easier for a consumer to navigate and, therefore, understand.

The overall tone of a document also matters to retail investors. Statements about where investors could find more information have been viewed as enhancing the overall credibility of the information disclosed. Additionally, retail investors have said that they want information at a time that it is *useful* to their investment decision. This is discussed further in Chapter 4 section D.

Research summarised in the literature survey also touches on sources of information. Investors rely on a wide range of types of information when making investment decisions. In particular, they rely on the advice of others, who may be peers, professional advisors<sup>14</sup> or salespeople.

#### **D. Research on Investor Behaviour**

Research has also been done on how retail investors tend to behave when making an investment decision. See Appendix A for specific references.

Consumer behaviour research attempts to answer how consumers make their decisions.

Regardless of where they obtain the information, the research indicates that retail investors exhibit a range of behaviours and biases in the decision-making process. For instance, these might include the impact of:

- **Emotion** – Investors make decisions based on how they feel as opposed to what they know or think they know;
- **Overconfidence and overestimation of investment knowledge and abilities** – Retail investors may interpret past successes as due to their own expertise rather than market conditions;
- **Representativeness biases** – Investors are overly influenced by strong or poor recent past performance or false reference points; and
- **Inertia, procrastination and status quo biases** – Investors stick with a familiar, pre-existing or established position, for instance relating to the appropriateness of following a particular investment strategy.

Some research has suggested that one way to combat these biases might be to provide retail investors with product information in a form that is easy for them to digest, for instance in a summary form, as part of the sales process. This could make them aware of the potential benefits, risks and costs before they make their purchase decision. Other approaches might include improving the readability of existing disclosures.

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<sup>14</sup> Advice provided by a professional advisor is, in most jurisdictions, legally defined and regulated.

In relation to disclosure about intermediaries, such as their status and remuneration, the function of *trust* can be particularly significant. Evidence suggests investors can be more inclined to discount these disclosures because they place their trust in their advisor.

## **Chapter 3 Existing Disclosure Requirements and Modes of Delivery in IOSCO Member Countries**

As part of its development and review of the POS issues, the Joint Group requested that regulators complete a POS questionnaire (the Questionnaire). The responses to the Questionnaire revealed that most, but not all, jurisdictions have in place some type of point of sale disclosure requirements for CIS. Some require simplified information that is particularly designed for the needs of retail investors. The degree of prescription in disclosure requirements varied.

Requirements relating to disclosures about the services offered by intermediaries and their remuneration were more varied among countries – both in terms of the types of information required and the detail required.

### **Products and services covered**

Disclosure requirements may apply to products and/or to the intermediary in relation to the service they offer. Requirements that apply to CIS products were the focus of most responses to the POS questionnaire. Jurisdictions generally applied similar requirements across all types of CIS products. Several jurisdictions have comparable requirements that apply to other investment products.

Some jurisdictions noted requirements for intermediary services, including investment advice, and intermediary remuneration relating to particular transactions in CIS and other financial instruments.<sup>15</sup>

A number of jurisdictions are examining options for new disclosure requirements. See discussion in Chapter 6.

### **Content and format of disclosure**

Almost all jurisdictions require that information about financial products be disclosed to investors. Many jurisdictions require that simplified information particularly suited to the needs of the retail investor be provided.

For instance, European Union jurisdictions require that a simplified prospectus be offered in relation to UCITS. Canada also requires the offering of a simplified prospectus, while the United States SEC permits the offering of a simplified prospectus as long as certain requirements are met. Examples of other short documents required for CIS or similar products include the *Key Features Document* (required in the UK for many retail investment products, including non-UCITS CIS and life contracts), the *Financial Information Leaflet* (required for a range of investment products in the Netherlands), and the *Product Disclosure Statement* (Australia).

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<sup>15</sup> IOSCO Objectives and Principles of Securities Regulation, p. 37, provides a general recommendation that the intermediary: “*should make adequate disclosure to its customers, in a comprehensible and timely way, of information needed to make a balanced and informed investment decision. It may be necessary for regulation to ensure disclosure in a particular form where products carry a risk that may not be readily apparent to the ordinary investor. Recruitment and training should ensure that staff who provide investment advice understand the characteristics of the products they advise upon.*”

Generally, information material to the retail investor's investment decision must be provided but jurisdictions differ as to the degree of prescription they use in clarifying what must be provided. Typically, required information includes:

- investment objectives or goals;
- main investment strategies (sometimes specifically whether the fund invests in derivatives);
- the key risks of investing in the CIS;
- fees and expenses;
- the investment adviser, sub-adviser(s) and portfolio manager(s);
- information regarding the policy of purchase and redemption of the CIS's shares; CIS distributions;
- tax information;
- other services that are available from the CIS (e.g., exchange privileges or automated information services);
- conflicts of interests; and
- contact information.

Many jurisdictions have no or limited requirements governing the format or presentation of the documents, although most jurisdictions require that the prospectus be written in "plain language". The majority of jurisdictions permit the incorporation of one prescribed document into another for delivery purposes.

Although many jurisdictions do not appear to have specific requirements regarding intermediaries, some require specific disclosures relating to the service and status of the intermediary or distributor, including detailed disclosures relating to costs and intermediary remuneration.

### **Recipients of the disclosure**

In most jurisdictions retail clients are the intended recipients, although professional or institutional clients are given or offered the same disclosures as retail clients. However, some jurisdictions apply reduced requirements for non-retail clients.

### **Timing and mode of delivery**

Most jurisdictions require the disclosure of information before a transaction is executed, although some allow delivery upon completion. While electronic media are generally permissible, the client's consent is often necessary before mandatory disclosures may be

provided solely in this form. The mode of the sale (e.g., internet or telephone) generally will determine the timing and mode of any required delivery.

### **Responsibility and liability for preparation and delivery**

While requirements to prepare and make available or publish information are similar across jurisdictions, requirements to give the information to the consumer are more varied. In general, product producers are responsible for preparing and publishing the disclosure, and intermediaries (advisers) are responsible for delivering it (see also footnote 23).

In most jurisdictions product producers are not able to delegate their liability, although in some jurisdictions they may share it. While a product producer is generally responsible for the content of a prospectus, the intermediary is in most jurisdictions, responsible for explaining the features of the product to a client. In the European Union, the Markets in Financial Instruments Directive (MiFID)<sup>16</sup> requires that an intermediary falling within the scope of the directive be held responsible for any information it provides.

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<sup>16</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments and implementing directive and regulation.

## Chapter 4 Components of Effective Disclosure

### A. Introduction

As discussed in Chapter 2, regulatory disclosures are intended to protect investors by addressing the information asymmetries that exist between retail investors and those manufacturing or selling investment products. An important issue for regulators to consider is whether investors may not be properly using the information provided to them under current disclosure regimes because they have trouble finding and/or understanding the information they need. This information may, for example, be buried in long and complex documents, and investors may have difficulty comparing information about different products. Investors also may find it difficult to locate information about the intermediary and its remuneration and, if they find it, to understand its significance or how to use it.

By making disclosure more effective, regulators may be able to address these potential weaknesses. Some regulators have evidence to suggest that effective disclosure depends on factors such as providing:

- retail investors with key information about a CIS product;
- where relevant, the intermediary services being offered in relation to the distribution of that product;
- the information in an accessible and comparable format;
- the information at the right time – when retail investors are making their purchase decision; and/or
- the information in a *layered approach*. A layered approach refers to supplementing key summary information with additional and more detailed information either upon request or through additional supplementary material attached or linked to the summary information.

The issues may be different in different jurisdictions. As mentioned above, other significant factors may determine the effectiveness of disclosure requirements, such as the extent to which retail investors rely on the disclosures, the level of consumer financial capabilities, or the complexity of the investment product in identifying key information to be disclosed and in designing effective disclosure requirements. In addition, regulators should take into account whether the fund documents are primarily aimed at retail investors rather than professional investors.

### B. Content

Based on the investor research summarised in Chapter 2 and the existing requirements among jurisdictions summarised in Chapter 3, the key content of the disclosures should include:

- objectives and investment strategies;

- risks (e.g., relating to the potential negative performance of the investment, or even broader risks and their variability, such as liquidity risks e.g. redemption restrictions, lock-up periods, gates, etc; counterparty risks when there is some capital protection or guarantee; operational risks; etc);
- past performance (which may be presented in a graphical or tabular manner, and may be standardised between CIS') or, where past performance is not available, potential return scenarios;
- costs (e.g., subscription or redemption fees, annual management charges (AMC), miscellaneous expenses or indeed composite measures such as the Reduction in Yield (RIY) or Total Expenses Ratio (TER));<sup>17</sup> and
- conflicts of interest which could include both conflicts arising within the fund manager, and those affecting the distributor or intermediary (this could include disclosure of the conflict itself and the mitigation strategy).

Retail investors have said that they want a short document that contains the information they want in a form they can understand. The use of simple examples, tables and graphics might help to achieve this objective. Information about costs, for example, can be difficult for investors to understand, and some jurisdictions have initiatives to improve disclosures in this area. This can give rise to issues, however, such as the appropriate form that information about charges should take. For example, should it be generic or should it illustrate, for instance in cash terms, the actual proposed contract?

Information about the service being offered by the intermediary, the handling of conflicts of interest, and remuneration, are all likely to be important. Information about costs, for example, can be difficult for investors to understand, and some jurisdictions have initiatives to improve disclosures in this area.

### C. Language

Effective disclosure also means providing retail investors with information in language they can easily understand. All jurisdictions generally require that prospectuses be written in *plain language*.<sup>18</sup> Plain language can be described as communicating in a way that facilitates audience understanding - as being clear, succinct and comprehensible while avoiding unnecessary jargon and technical terms.

Writing using plain language requires an understanding of the intended audience. In order to gain a better understanding of the characteristics of the intended audience, the following characteristics can be helpful to analyse potential barriers to communication:

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<sup>17</sup> Fund management charges and costs are often disclosed as an AMC. In some jurisdictions additional measures of charges are also disclosed. TER is a proxy measure for the charges and expenses deducted from the fund each year. RIY is another proxy measure which shows the overall impact of charges on an illustrative growth rate.

<sup>18</sup> In the EU, the existing simplified prospectus must be written in such a way that it can be easily understood by the average investor. Similarly, the key investor information document is required to use a non-technical language.

- literacy;
- investment knowledge; and
- role of intermediaries in the sale of the product.

Low literacy levels can constitute a significant barrier to communication. Recent research indicates that, while literacy levels vary between countries, a significant proportion of adults have serious problems absorbing the information contained in printed materials, e.g., are only able to tackle simple reading tasks. In addition, financial disclosure documents will include a mixture of numerical and non-numerical information that may exacerbate barriers to communication.<sup>19</sup>

Research indicates that levels of investment knowledge and financial capability are generally very low. This reinforces not only the need for clear and simple disclosures, but also the importance of efforts to enhance investors' ability to understand financial information.

Finally, in many jurisdictions, retail investors rely heavily on the intermediary in making an investment decision, which might have an impact on how investors review or consider the information contained in disclosure documents. This may be addressed, in some jurisdictions, by having the document include unbiased, i.e., neutral prompts to "ask your adviser" for more information on particular points, particularly with regard to fees.

The investor research discussed in Chapter 2 makes it clear that investors are primarily interested in information on potential benefits (performance), risks and costs. Disclosure documents under the current regimes in many jurisdictions already provide this information, but not always in a form or using language that makes it easy for retail investors to understand. This suggests that in some jurisdictions regulators may wish to consider whether the information needs to be revised, for example, by simplifying existing disclosures or redesigning them, and putting them into a format that investors can more easily read and understand.

#### **D. Timing**

For the purposes of this report, we have considered the term *point of sale* as referring to the moment at which a customer requests that a product be purchased (see footnote 5). A survey of existing regimes reveals, however, that there is no uniform or clear definition of the phrase *point of sale* across jurisdictions, although we observe that, in its proposed POS disclosure regime, Canada has defined POS as the point in time when the investor gives instructions to the intermediary to purchase the investment product.

Many jurisdictions require that information be disclosed before a transaction is completed. In Japan, disclosure must be made before *trade execution*. The U.S. CFTC requires commodity pool operators to obtain a signed acknowledgement from a prospective fund participant that

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<sup>19</sup> See International Adult Literacy Survey, [http://www.oecd.org/document/2/0,3343,en\\_2649\\_201185\\_2670850\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/2/0,3343,en_2649_201185_2670850_1_1_1_1,00.html); also see National Institute for Literacy, <http://www.nifl.gov/nifl/facts/IALS.html>.

he or she has received a disclosure document before accepting any funds from the prospective participant for investment in the fund. In those European jurisdictions subject to MiFID, the focus is on ensuring investors receive information “in good time before” carrying on the relevant business, so that the information can inform their investment decision.<sup>20</sup>

Canada and the U.S. SEC do not currently require that information be provided until a transaction is completed, although there is no prohibition against providing it earlier.

Some other jurisdictions require that certain disclosures must be made available, but only on request. In some cases, flexibility is allowed. For instance, the Irish Consumer Protection Code requires that “information must be supplied according to the urgency of the situation and to allow the investor the time to absorb and react to the information” and that “the terms and conditions related to a service must be provided before entering a contract or before the cooling off period finishes where applicable”.

Some jurisdictions are considering a *layered* disclosure approach. As described in Chapter 4 A., this is where key summary information is supplemented with additional and more detailed information either upon request or through additional supplementary material attached or linked to the summary information. In general, regulators should consider what information should be given prior to or at the point of sale, what can be signposted as available elsewhere or available upon request, and what information can be delayed until after the conclusion or execution of the investment transaction.

For example, recent amendments to the law in Australia enable layered disclosure where more detailed information can be “incorporated by reference” into the initial disclosure document that is provided to a retail investor before a product is purchased. The additional layered disclosure is available on request, and is to be provided prior to the purchase of the product. The Canadian proposal on point of sale disclosure adopts a similar approach by requiring that investors receive a 2-page document prior to or at the point of sale, with other disclosure documents available on request.

## **E. Types and Purposes of Consumer Testing Available**

Regulators may wish to consider what, if any, testing, or other assessments, might be done to help establish how well investors understand the current disclosure and compare that to how well they understand and will react to any new/improved disclosure requirements.

There are two types of data that may be obtained through consumer testing. Quantitative data provides numbers and statistics about a particular subject and is obtained through online, telephone or in person surveys of large numbers of consumers (control studies). Qualitative data provides attitudinal information and is obtained through focus groups and protocol testing.

- **Control Studies** involve the collection of quantitative data from a statistically significant number of respondents;

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<sup>20</sup> The UCITS and Prospectus Directives contain the same type of requirement (“in due time before”).

- **Focus groups** are conducted with a small group of people (usually 8-12). They are valuable for gathering information about how people feel about a product, issue or document. Participants will advise if they like or dislike the item or matter being tested. However, focus groups alone may not be the most effective way to test the usability of a document, or to learn how well an individual really understands what is written; and
- **Protocol testing** involves a one-on-one interview with a reader and is generally used to test the readability of a document.

The SEC, Canada and the European securities regulators within CESR have tested their proposed forms for point of sale disclosure.

While evidence may indicate that consumers may prefer to receive information in a certain format about particular key elements of a product, it can be argued that consumers will benefit from improved disclosure only if consumer behaviour changes. Several regulators have used *behavioural mock sales testing* as a key element in assessing the benefits of introducing changes to disclosure requirements. This type of testing has generally included assessing changes in understanding when consumers are presented with the new documents along with simple tests of behaviour in response to the additional information.

## Chapter 5 Special Challenges for Regulators

### A. The Tensions between Product Disclosure and Intermediary Disclosure

The responses to the Questionnaire indicate that while most jurisdictions require disclosures relating to products, specific disclosures that relate to the services being offered by intermediaries are less common. Where such disclosures exist, the requirements are often less detailed.

In some cases it can be difficult to determine who is responsible for disclosure – the product producer or intermediary. For example, the total amount of charges paid by an investor may depend on the channel through which he or she purchases a product and the particular arrangements between the product producer and the intermediary. For instance, an intermediary may offer discounts or rebates on some of the fees. Generic disclosures by the product producer may need to be supplemented or personalised so the client can see the actual charges he or she is to pay. Personalised illustrations may also be useful.

Some jurisdictions require specific disclosures about intermediary services including disclosures of conflicts of interest or inducements, or policies for managing these conflicts, a variety of requirements relating to the disclosure of the remuneration of the intermediary, and how this relates to the payment of commission to them by product producer.

Some jurisdictions, such as European countries under MiFID,<sup>21</sup> have developed disclosure requirements that focus specifically on the intermediary and the services it offers. As noted in the summary of consumer research, the two underlying “market failures” that disclosure should address are:

- the potential for the intermediary to suffer from conflicts of interest (that is, a principal/agent issue, where the interest of the intermediary in its own affairs might conflict with that which it has as agent for its client); and
- the poor understanding of retail investors of the nature of the services being offered and the remuneration structures which support them (asymmetry of information).

Of particular concern are compensation arrangements between intermediaries and product producers that may influence the advice provided by the intermediary to a retail client. These arrangements may create a direct financial incentive to sell particular products because they offer higher compensation for the intermediary.

One further complication is that the structure of compensation payments may be difficult for an investor to understand, making it in turn difficult for the investor to grasp the value of the service being offered by the intermediary. Specifically, some research (see Appendix A) suggests that investors frequently do not understand that the return on their investment in CIS may be diminished by the compensation arrangement between the intermediary and the product producer. That is, investors do not understand that they indirectly pay the compensation. Some investors may even think that the distributor service is free.

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<sup>21</sup> Some requirements predated MiFID. For instance, the UK had a pre-existing regime for such disclosures, and continues to maintain requirements for services not covered by MiFID.

Regardless of the distribution or compensation structures in place, the principles outlined in this report seek to ensure that investors are provided with clear information so that they are able to make an informed decision.

Key issues therefore include:

- how to disclose the nature (including its scope, quality and duration) and costs (including how these are taken) of the service offered by the intermediary;
- how to manage conflicts of interest faced by the intermediary, the role of disclosure and the role of other regulatory tools;
- a possible split in responsibility between the product producer and the intermediary for disclosure requirements relating to transactions – e.g. when buying shares in a CIS. For instance, if disclosure is required “in good time before” a particular transaction, where the intermediary may have responsibility for ensuring appropriate delivery, yet the product producer typically will be the only party capable of disclosing the details of their product;<sup>22</sup> it should, however, be noted that while a product producer would generally be responsible (liable) for the contents of a prospectus, the intermediary in some jurisdictions may need to obtain additional product information independently rather than solely rely on the contents of prospectus;
- accuracy of the information if the entity required to deliver the information does not have access to the most up-to-date information, for example, if CIS are required to deliver information about broker-dealer arrangements, or broker-dealers are required to deliver information about CIS costs; and
- whether disclosure is an effective tool for managing these issues.

## **B. Consistency of CIS and other Product Disclosure Requirements**

As discussed above, many jurisdictions require the delivery of disclosures about CIS products to investors at or prior to the point of sale. Some commentators have argued that such requirements may put CIS products at a competitive disadvantage vis-à-vis other financial products (for which no such POS disclosure requirements exist).

For example, in response to the U.S. SEC proposed POS rules, some commentators expressed concern that the proposed rules could discourage intermediaries from selling CIS shares in favour of other investment products not subject to the same rules. This point has also been raised by respondents to the IOSCO TC consultation on its work programme<sup>23</sup>. In contrast,

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<sup>22</sup> While a product producer would generally be responsible (liable) for the content of a prospectus, the intermediary would in most jurisdictions play an important role in explaining the features of the product to a client. By doing this, the intermediary may in some jurisdictions become liable for the content.

<sup>23</sup> *Comments Received in Response to the Consultation Report on the IOSCO Technical Committee Work Program*, Report of the Technical Committee of IOSCO June 2007 available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD251.pdf>.

others supported enhanced point of sale disclosure, particularly concerning revenue sharing and other compensation practices.

Regulators need to consider at least three questions:

1. to what degree do CIS POS disclosure requirements differ from POS disclosure requirements for other financial products sold to the retail public (e.g., primary offering registration statements);
2. do similar disclosure requirements exist for substantially similar products; and
3. to what degree do CIS raise issues and concerns unique to those products compared to other financial products?

Clearly, regulators will want to try to avoid to the greatest degree possible the imposition of more onerous disclosure requirements on specific products compared to competing CIS products that raise the *same* disclosure issues (e.g., distribution costs and conflicts of interests due to revenue sharing arrangements). The issue of the *level playing field* is arguably one that may lead some jurisdictions to consider legislative reform and/or rulemaking whenever disclosure requirements for CIS and similar non-CIS products differ.

Some regulators, such as the UK FSA, have put in place regulatory regimes that cut across many products with similar characteristics to CIS in an attempt to harmonise the core requirements. But the emergence of new forms of product and investment arbitrage has made this more difficult to achieve.

Since 1998, a single regulator in Australia has regulated disclosure for all financial products. In 2001, a single disclosure regime for all such products was adopted. This means that issuers that create CIS-like products are subject in Australia to the same disclosure rules as CIS. Thus, the issue of the level playing field is less likely to arise.

In Italy, Consob adopted a similar approach. In 2005, it introduced new rules extending the scope of application of rules of conduct and transparency, including prospectus requirements, to the subscription and placement of financial products issued by banks and insurance companies.

In addition, different issues may exist where different regulators regulate the product producer and the intermediary.

Responses to the questionnaire suggested particular issues for products or services sold within the EU, where different EC directives can govern different elements of the sales process, and different products. This can make developing a consistent approach difficult to achieve. The European Commission's current work program includes steps to address this issue at the directive level.<sup>24</sup>

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<sup>24</sup> See [http://ec.europa.eu/internal\\_market/finservices-retail/investment\\_products\\_en.htm](http://ec.europa.eu/internal_market/finservices-retail/investment_products_en.htm).

In assessing the costs and benefits of disclosure requirements, the potential for regulatory arbitrage needs to be considered.

### **C. Cost/Benefit Analysis of New Point of Sale Disclosure Requirements**

Measuring the costs and benefits of changes in regulatory requirements is a complex exercise. In considering the potential costs and benefits of new rules, regulators need to consider the existing disclosure practices of intermediaries and product producers and establish the extent to which the new requirements might generate additional costs. The principles outlined do not in any way override these existing obligations.

#### **Benefits**

Measuring the benefits of disclosure is particularly challenging because they may be intangible or very difficult to measure with any precision (e.g., measuring the *value* of people making more informed investment decisions). A starting point is to track the channels through which the benefits may be expected to arise. Some possible benefits of enhanced point of sale disclosure rules include:

- less risk of retail investors buying inappropriate products or not fully benefitting from the services they pay for, or reduced risk of mis-selling;
- retail investors being in a better position to understand conflicts of interest of intermediaries and compare the costs of investing;
- the potential for downward pressure on prices due to greater transparency in areas such as charges or commissions. This may enhance the overall efficiency of the market and create benefits that spread beyond the direct recipients of the disclosure material; and
- comparability and ease of CIS point of sale disclosure may encourage investors to save.

Several jurisdictions have conducted research, such as the *behavioural mock sales testing* referred to in Chapter 4 section E above, to assess the effectiveness of new documents on consumer understanding, behaviour and outcomes.

#### **Costs**

The direct costs of new disclosure requirements usually fall into two main categories: costs of change in moving to a new approach; and on-going costs of maintaining that new system, which would have to be compared with the cost of existing systems.

Possible sources of costs include:

- legal and other compliance costs for preparing a document;
- information technology costs for re-programming and updating information delivery systems;

- compliance and other staff costs for overseeing and maintaining the information delivery systems; and
- external costs for printing and typesetting of the new disclosures.

Additional costs for intermediaries in particular could include generating and sending information to investors, calculating revenue sharing and maintaining and further updating information delivery systems.

Costs could be minimized to the extent that new point of sale information can be incorporated into current delivery systems. Or costs may not be impacted at all to the extent that firms already disclose this type of information at point of sale even though regulators do not yet require this.

Producers in jurisdictions that use a simplified risk disclosure statement may also face potential litigation risk if an investor believes that the simplified form failed to alert him/her of material risks, or was misleading because of its brevity, even if cross-reference is made to the more detailed prospectus. This is a particular concern in jurisdictions where private civil litigation is frequently and easily pursued.

Indirect costs (and benefits) resulting from new rules in this area include the possibility:

- that investors may choose other types of financial products that do not have, or do not appear to have, the costs and conflicts associated with CIS products (regulatory arbitrage);
- that funds restructure how they compensate sellers of their securities; and
- of duplicative disclosure by the CIS firm and by the intermediary.

## Chapter 6 Disclosure Requirements being proposed in IOSCO Member Jurisdictions

A number of jurisdictions have described proposals for new disclosure requirements. Canada has proposed two new two-page documents for segregated and mutual funds: *Fund Facts* (FF) would provide key information that is in the simplified prospectus, but in a user-friendly and simplified manner, and prior to or at the point of sale; *Key Facts* (KF) would summarize key features of the insurance component of a segregated fund and would be offered in addition to the FF. As to format, the proposed new forms would need to be consistent with the following principles:

- avoid legal or financial jargon;
- use simple examples, tables and graphics to illustrate concepts;
- use bold headings and white space to make the document easier to read and navigate;
- writing should be at a reasonably modest educational level; and
- recognize the role of the adviser in the sales process.

In these jurisdictions, other disclosure documents such as a simplified prospectus would be available on demand.

In the United States, on July 21, 2010, President Obama signed the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act). Section 919 of the Dodd-Frank Act, entitled “Clarification of Commission [SEC] Authority to Require Investor Disclosures Before Purchase of Investment Products and Services,” provides that “the Commission [SEC] may issue rules designating documents or information that shall be provided by a broker or dealer to a retail investor before the purchase of an investment product or service by the retail investor.” The Dodd-Frank Act further provides that in “developing any rules...the Commission shall consider whether the rules will promote investor protection, efficiency, competition, and capital formation.” Finally, the Dodd-Frank Act provides that any documents or information required to be provided to investors “shall be in summary format; and contain clear and concise information about (i) investment objectives, strategies, costs, and risks; and (ii) any compensation or other financial incentive received by a broker, dealer, or other intermediary in connection with the purchase of retail investment products.”<sup>25</sup>

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<sup>25</sup> In 2004 and 2005, the U.S. SEC proposed prescribed forms and model Internet disclosure that would provide investors with a wide range of product cost information, as well as information about intermediary compensation and conflicts of interest. See *Point of Sale Disclosure Requirements and Confirmation Requirements for Transactions in Mutual Funds, College Savings Plans, and Certain Other Securities, and Amendments to the Registration Form for Mutual Funds Reopening of Comment Period and Supplemental Request for Comment*, Securities Act Rel. No. 8544 (Feb. 28, 2005), available at <http://www.sec.gov/rules/proposed/33-8544.htm> and *Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds*, Securities Act Rel. No. 8358 (Jan. 29, 2004), available at <http://www.sec.gov/rules/proposed/33-8358.htm>.

In 2009, the U.S. SEC adopted rules allowing CIS the *option* of sending or giving investors a summary prospectus and providing the full prospectus online. The summary prospectus incorporates by reference the full prospectus (a *layered* disclosure approach).<sup>26</sup>

In Japan, the *Financial Instruments and Exchange Act* requires a “document before concluding a contract” that contains a statement that the company is a financial instruments firm; and the registration number; an outline of the contract and any fees; a warning concerning potential losses; and information concerning applicable taxes, cancellation rights (*cooling off* period), fund contact information, and the name of the self regulatory organization (SRO) of which the firm is a member.

In Germany a draft law is expected to be approved in a few months, which provides that where investment advice is provided to a customer,<sup>27</sup> an *information form* is to be made available to the customer promptly and prior to any sale for each financial instrument being recommended. The form must be “short and easy to understand.”

In addition, Directive 2009/65/EC has introduced a *key investor information* (KII) document, which will ultimately replace the simplified prospectus by July 1st, 2011. The KII will need to include appropriate information about the essential characteristics of the UCITS concerned, so that investors are reasonably able to understand the nature and the risks of the investment product that is being offered to them.<sup>28</sup> The KII is to be short and concise and use a non-technical language. It needs to be fair, clear and not misleading and, therefore, consistent with the relevant parts of the prospectus. More specific rules on the format and content of KII are set out in the Commission Regulation no. 583/2010.<sup>29</sup>

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<sup>26</sup> See *Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Investment Companies*, Inv. Co. Act Rel. No. 28584 (Jan. 13, 2009), available at: <http://www.sec.gov/rules/final/2009/33-8998.pdf>.

<sup>27</sup> The requirement applies to *private clients* only, but applies to any type of financial instrument.

<sup>28</sup> The required information includes: (a) identification of the UCITS, (b) a short description of its investment objectives and investment policy; (c) past-performance presentation or, where relevant, performance scenarios; (d) costs and associated charges; and (e) risk/reward profile of the investment.

<sup>29</sup> Commission Regulation no. 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.

## **Chapter 7 Principles for Disclosure of Key Information in regard to CIS Prior to the Point of Sale**

The Joint Group would like to emphasize that these principles have been developed to provide guidance for markets and market authorities. This does not mean, however, that a one-size-fits-all approach is being advocated.

The principles need to be of such a nature that they are adaptable to different regulatory frameworks. They should, for example, be relevant regardless of the level of prescription in the regulatory system, or the predominant distribution model.

**Principle 1** *Key information should include disclosures that inform the investor of the fundamental benefits, risks, terms and costs of the product and the remuneration and conflicts associated with the intermediary through which the product is sold.*

**Key information in product disclosure could include:**<sup>30</sup>

- The name of investment and type of product;
- The investment objectives and strategy of product;
- Its risk and reward profile. Risk disclosures should include the material risks for the product. This may include performance risk/volatility, credit risk, liquidity risks and operational risks. In some jurisdictions, a scale may be considered appropriate to identify the overall risk measurement or classification of the product, rather than a list of specific product risks, and this may be accompanied by appropriate narrative explaining how to interpret the scale. This may assist with risk comparisons, although regulators and investors need to be aware of the inherent limitations in such measures.<sup>31</sup> Regulators might wish to include supporting information indicating minimum length of holding relative to short term volatility, what types of “targeted investors” the product is being marketed to and what commitment those investors need to make;
- Fees and costs, including information on any breakpoint discounts and/or expense reimbursements or fee waivers;
- The nature of any guarantees being offered, including any restrictions or conditions that the guarantees are based on;

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<sup>30</sup> Key information will necessarily vary depending on the type of financial product being offered. For some complex financial products with a multitude of risks, the amount of key information that a regulator might mandate for immediate disclosure to the investor under a “layered approach” may be greater than for less complicated products.

<sup>31</sup> For instance, in Europe, the “Risk and reward profile” section of the key investor information document shall contain a synthetic indicator, supplemented by: (a) a narrative explanation of the indicator and its main limitations; (b) a narrative explanation of risks which are materially relevant to the UCITS and which are not adequately captured by the synthetic indicator.

- Potential conflicts of interest inherent in the terms of the product. For example, these may include when:
  - Payments to the investor are dependent on certain criteria (e.g., product performance as measured against a benchmark); and/or
  - There are penalties for policyholders who cash in their investments early.
- Past performance. The information should be presented in a way that enables easy comparison between products. Past performance disclosures should include a warning that historical performance is not an indicator of future performance. Where no past performance is available, potential return scenarios should be provided<sup>32</sup>;
- Additional information:
  - Information on portfolio managers and key service providers (e.g. trustee or custodian). This could include the identity of the portfolio managers and key service providers and their regulator, where applicable.
  - The arrangements for handling complaints about the product.
  - Information on any compensation that might be available if the firm cannot meet its liabilities in respect of the product.
  - Any rights to cancel or withdraw.
  - A summary of tax implications on premiums and benefits.

**Key information in intermediary disclosure could include:**

- The name of the intermediary, its services and its contact information;
- Fees, intermediary compensation and costs, including any charges and fees that reduce the returns that investors earn; and
- Potential conflicts of interest. For example, any conflict of interest that can give intermediaries and their personnel a financial incentive to sell particular funds or share classes in breach of their duty to act in the best interest of their client, as well as any non-monetary benefits provided to intermediaries.

**Means for Implementation:**

- Disclosure requirements should be flexible to accommodate different kinds of CIS and to allow producers and intermediaries to provide their own disclosure. Some jurisdictions may mandate separate intermediary focussed disclosure and product disclosure; and

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<sup>32</sup> In Europe, Commission Regulation no. 583/2010 requires information about the past performance of the UCITS to be presented in the key investor information document. With regard to structured UCITS, such as capital protected and other comparable UCITS, the provision of prospective performance scenarios in place of past performance information is required.

- Should a jurisdiction choose a *layered approach* to disclosure, the disclosures made prior to the point of sale should specify where and how the investor can obtain additional information on the proposed investment.

**Principle 2** *Key information should be delivered, or made available, for free, to an investor before the point of sale, so that the investor has the opportunity to consider the information and make an informed decision about whether to invest.*

**Means for implementation:**

- Regulators could require that appropriate proof exists to demonstrate that requirements for delivery or availability of key information have been met;
- Intermediaries and product producers could retain appropriate and sufficient documentation to prove that the requirements have been met. The product producer or the intermediary may wish to obtain a signed acknowledgement from the investor that he or she received, or had access to, the appropriate disclosure information; and
- Regulators may want to consider whether an investor is in a position to make an informed decision about whether to invest before the point of sale.

**Principle 3** *Key information should be delivered or made available in a manner that is appropriate for the target investor.*

**Means for Implementation:**

- In determining the required mode of delivery or availability of key information, intermediaries or product producers should take into account:
  - Individual investor characteristics and preference, e.g., access to the internet and email, or access to a fax machine. Intermediaries or product producers should consider requiring delivery by mail for those investors who do not have access to electronic and fax delivery; and
  - Whether the investment is recommended by the intermediary; and
- Regulators should require intermediaries or product producers to deliver to investors, upon request, key information in writing free of charge, irrespective of the means of delivery of the key information.

**Principle 4** *Disclosure of key information should be in plain language and in a simple, accessible and comparable format to facilitate a meaningful comparison of information disclosed for competing CIS products*

**Means for Implementation:**

- The intent of this principle is for the standard of disclosure to be sufficiently similar and written in *plain language* across disclosure documents, to enable investors to appreciate the difference between products. The principle does not

require comparisons with other products to be made within the disclosure documents themselves;

- *Plain language* disclosure should be used to convey information in a way that is likely to be understood by the target investor. The needs and abilities of the target investor should be considered to ensure that the content of the information is relevant, the organization of the information is logical and the language appropriate;
- The following plain language techniques may be considered to improve disclosure:
  - common everyday words,
  - when technical, legal and business terms are unavoidable, clear and concise explanations of them,
  - examples and illustrations (including the use of tables and charts) to explain abstract concepts.
- The use of characters of readable size for every item;
- The format should allow for comparison. In order to promote simplicity and comparability, regulators should consider prescribing certain aspects of the disclosure such as the length of the document when written material is used,<sup>33</sup> minimum items to be addressed as described above in Principle 3, their order and certain content related to certain sensitive items such as performance, risk and costs;
- Regulators should consider prescribing the order in which the items are presented. Establishing a logical and consistent structure will ensure the essential elements are given appropriate prominence and will help to facilitate comparisons between key information related to different CIS; and
- Regulators should consider the tension between allowing producers to include additional product specific information on the one hand, and the desire to promote simplicity and comparability on the other.

**Principle 5** *Key information disclosures should be clear, accurate and not misleading to the target investor. Disclosures should be updated on a regular basis.*

#### **Means for Implementation:**

- Information should not emphasize potential benefits of a CIS without also giving a fair and prominent description of any relevant risks. It should not obfuscate important items, including warnings, or seek to diminish their importance;

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<sup>33</sup> For instance, in Europe, Commission Regulation no. 583/2010 prescribes that the key investor information document shall not exceed two pages (or, for structured UCITS, three pages) of A4-sized paper when printed.

- Where the information provides comparisons with other CIS or similar products, regulators should consider requiring that (1) the comparison be unbiased and objective; (2) the sources of the information used for the comparison are specified; and (3) the facts and assumptions used to make the comparison are included;
- If key information contains disclosures on past performance, regulators should consider imposing requirements designed to reduce the potentially misleading focus on past performance. If key information contains predictions for future performance, regulators should consider requirements to help ensure that this information is based on objective facts and is not misleading;
- Regulators should require the product producer or intermediary, as appropriate, to revise and update key information as often as reasonably necessary to reflect any material change in the information that could affect its accuracy. This could include, for example, updating changes to the investment strategy, an alteration in its risk profile, the adoption of a new charging structure, or a description of past performance. However, this principle should not be interpreted as suggesting that the product producer or intermediary should be required to deliver on a continuous basis (i.e., on a post-investment basis) updated POS disclosures to the investor. That determination will need to be made by each regulator taking into consideration the nature of any POS disclosure requirements that it may impose; and
- Regulators should consider requiring the producer or intermediary, as appropriate, to make available on its website an up-to-date version of the key information.

**Principle 6** *In deciding what key information disclosure to impose on intermediaries and product producers, regulators should consider who has control over the information that is to be disclosed.*

### **Means for Implementation**

Who controls the information is an important factor to consider in determining who should make the disclosure. Thus, in general, responsibility for providing key product information will tend to rest primarily with the product producers; and disclosure of information relating to intermediary services will rest primarily with the intermediary. Nevertheless, regulators will need to consider several complicating factors in implementing this principle, particularly when seeking to avoid duplication of disclosure obligations:

- If the intermediary provides or alters product information, it may need, in some jurisdictions, to take additional responsibility for that information.<sup>34</sup> Sometimes this is prescribed in over-arching legislation (e.g., MFID in the EU);
- While a product producer may be generally responsible for the content of the disclosure<sup>35</sup>, the intermediary is responsible in many jurisdictions for explaining the features of the product to a client; and

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<sup>34</sup> This is important as some fund supermarkets do this to a degree.

- The product producer may not be able to specify clearly certain information at the point at which the product is produced. For instance, while the product producer should disclose the charges imposed directly by the product, the full range of charges associated with purchasing and owning the product will often vary according to the method of distribution. This means that the intermediary will often have to provide the actual product charges as well as the intermediary charge in order to give the client full disclosure of charges.

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<sup>35</sup> A firm that provides access to online investment in a wide choice of funds (typically hundreds of funds) from different providers,



# Appendix 1

## Feedback Statement

### A. Introduction

The International Organization of Securities Commissions (IOSCO) Technical Committee (TC) established the Joint Group to develop a set of principles to help improve product disclosure at the point of sale (POS) for collective investment schemes (CIS). The Joint Group's membership consisted of the Technical Committee's:

- Standing Committee on the Regulation of Market Intermediaries (TCSC3); and
- Standing Committee on Investment Management (TCSC5).

In November 2009, the Joint Group published a Consultation Report *Principles on Point of Sale Disclosure*<sup>1</sup>. The report outlined six principles designed to assist markets and market authorities when considering point of sale disclosure requirements.

A total of 22 responses were received during the consultation period. Comments were received from securities regulators, national and international associations that represent firms in the investment fund industry, investment product providers and other interested parties.

This Feedback Statement summarizes the comments received and provides the Joint Group's responses to the issues raised.

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<sup>1</sup> *Principles on Point of Sale Disclosure*, Consultation Report of the Technical Committee of IOSCO, November 2009, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD310.pdf>

## B. Overview of responses

Overall, there was widespread positive feedback for the six POS disclosure principles, with many respondents welcoming the approach taken and their flexibility. For example, the following comments were received:

*“...wholly supports the objectives of IOSCO in providing a set of principles to be applicable on a global basis to POS disclosure in respect of CIS”<sup>2</sup>*

*“The six proposed principles... set out constructive guiding principles for disclosure of key information in regards to CIS prior to the point of sale”<sup>3</sup>*

*“We support all the principles suggested by the committee... providing clients with easily digested information will assist them greatly in making well informed investment decisions.”<sup>4</sup>*

However, some concerns about the application of the principles were raised. In particular, the range of products to which the principles should be applied, and the way in which the principles would be implemented in different national jurisdictions. We address these wider concerns below, before considering the specific comments provided on each of the principles.

### Scope of the consultation

#### Consistency across products

Several respondents commented on the focus on CIS products. Most, but not all, of these respondents were concerned that additional regulation would have a negative effect on CIS, such as:

- a) CIS would be at a material disadvantage to other products whose disclosure material was not required to meet the principles<sup>5</sup>;
- b) the inconsistency between products would create incentives for advisors to recommend other products not subject to the principles<sup>6</sup>;
- c) limiting the principles to CIS would not serve investors as it would result in incomplete protection<sup>7</sup>; and
- d) Investors might believe that certain risks only applied in relation to CIS, because

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<sup>2</sup> The Joint Associations Committee on Structured Products (JAC)

<sup>3</sup> Aberdeen Asset Management PLC Singapore

<sup>4</sup> SingCapital Pte Ltd

<sup>5</sup> Association of the Luxembourg Fund Industry (ALFI) and Securitization Forum of Japan

<sup>6</sup> European Fund and Asset Management Association (EFAMA), Investment Company Institute (ICI) and a joint response from National Investment Management Associations

<sup>7</sup> ICI

they were not disclosed in other products' literature<sup>8</sup>.

One respondent argued that any framework should reflect the two distinct structural types of product: CIS (variable return investments) and contractual packaged retail investment products (defined return investments including deposits, structured bonds, warrants and certificates, annuities and some life insurance policies).<sup>9</sup> Another commenter urged IOSCO to seek "a level playing field", by encouraging its sister organizations (BCBS and IAIS) to adopt the same principles of product disclosure to other investment products sold to retail investors.<sup>10</sup>

The following statements are reflective of the types of comments received on this point:

*"As the objective of the point of sale disclosures is to assist retail investors, not extending the discussion to all retail investment products raises key concerns of investor protection"*<sup>11</sup>

*"The fact that the legal form of the products is different does not in our opinion diminish the reality of the competition."*<sup>12</sup>

*"Consistency in the disclosure requirements of both CIS and other types of financial products is a key factor when considering the stable execution of the POS Disclosure regime."*<sup>13</sup>

## **Our response to the comments**

We have outlined a set of high-level principles to support markets and market authorities to improve the quality of disclosure that customers receive. The principles set out a baseline expectation that consumers have enough information to be able to make an informed decision.

We understand the representations made during the consultation about the problems of lower levels of transparency and clarity in disclosure requirements for competing products to CIS. However, the Joint Group carefully considered product scope at the outset of this project and it was deemed appropriate to limit the Joint Group's remit to CIS products because a clear definition of CIS<sup>14</sup> was able to be agreed amongst

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<sup>8</sup> National Investment Management Associations, EFAMA

<sup>9</sup> JAC

<sup>10</sup> Schroder Investment Management Ltd

<sup>11</sup> National Investment Management Associations

<sup>12</sup> ALFI

<sup>13</sup> Securitization Forum of Japan

<sup>14</sup> Section 11.2 of the IOSCO principles defines a CIS as including "authorized open ended funds that will redeem their units or shares, whether on a continuous basis or periodically... [including] closed end funds whose shares or units are traded in the securities market... [and] unit investment trusts, contractual models and the European UCITS (Undertakings for Collective Investment in Transferable Securities) model." While a CIS is generally defined as including closed end funds, for the purposes of this paper closed end funds were excluded from the definition.

members, and because of the unique characteristics of CIS and their status as a favorite investment vehicle for the retail sector.

Similar products were considered, but generally these included products unique to a particular jurisdiction<sup>15</sup> or “wrapped” insurance products that may not be subject to the regulatory jurisdiction of securities regulators. We therefore do not believe it would be appropriate to extend the scope of this paper.

Nonetheless, the application of the principles to other products may widen over time. Indeed, we agree that clear and timely disclosure of key product features is important for all investment products and we encourage regulators to review their local conditions and, to the extent possible, consider adopting the principles to products similar to CIS.<sup>16</sup> This very point was made in the consultation paper.<sup>17</sup>

### **Consistency across jurisdictions**

The degree of prescription in disclosure requirements varies across jurisdictions. Most jurisdictions require, however, that information about financial products be disclosed to investors.

Two respondents suggested that regulators should aim to develop a consistent model across different jurisdictions;<sup>18</sup> and some concern was expressed regarding the potential for inconsistent adoption of the principles in different regulatory frameworks.

*“We would urge IOSCO ... to provide further clarity around the roles and responsibilities of different parties within the distribution chain... examples of the disclosures required and illustrations of how the IOSCO Principles are intended to operate in practice in order to ensure that: (A) regulators do not interpret the IOSCO Principles differently across the EU and the world...”<sup>19</sup>*

Other respondents were concerned that it was not clearly explained in the paper how difficult it would be to adopt a single set of principles across international borders.

*“where we find the paper falls short, however, is in its lack of focus on the institutional and historical differences that lead to different disclosure regimes... These differences lead to the observed different regulatory treatments across jurisdictions, and show why a “one-size-fits-all” approach for all markets may not be a desired outcome.”<sup>20</sup>*

### **Our response to the comments**

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<sup>15</sup> For example 529 plans in the U.S. and other unique U.S. products.

<sup>16</sup> For example, Italy has extended the rules of fairness and transparency to the sale of financial products by both banks and insurance companies.

<sup>17</sup> <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD310.pdf>, p.2.

<sup>18</sup> ALFI and Confidential response

<sup>19</sup> JAC

<sup>20</sup> Investment Funds Institute of Canada (IFIC)

The Joint Group would like to emphasize that the principles have been developed to provide guidance for markets and market authorities. This does not mean, however, that a one-size-fits-all approach is being advocated.

The principles need to be of such a nature that they are adaptable to different regulatory frameworks. They should, for example, be relevant regardless of the level of prescription in the regulatory system, or the predominant distribution model. For this reason, it is not feasible or appropriate for us to provide additional guidance on how the principles should operate within a particular regulatory framework.

### **Consumer research and cost of compliance**

Several respondents wanted to ensure that any changes to disclosure regimes be thoroughly tested before they were implemented.<sup>21</sup> They highlighted, in particular, the costs of disclosure and the impact of this on product cost and/or investment performance.<sup>22</sup> Comments made included, for example:

*“Cost/benefit analysis is essential for introducing successful POS Disclosure. We strongly believe that...POS disclosure should be associated with a cost reduction effect for financing cost on the CIS producer’s part.”*<sup>23</sup>

*“The Report should include a principle stating that regulators should ensure that POS disclosure requirements are designed to minimize disruptions to the sales process to the extent possible”*<sup>24</sup>

*“Investors should realize that expenses arising from mandatory disclosure requirements and measures to enhance product knowledge will inherently reduce investment returns.”*<sup>25</sup>

*“It is essential that regulators conduct comprehensive quantitative research on the impacts of new standards and regulations before implementing them in the marketplace”.*<sup>26</sup>

One respondent recommended that the final report include product arbitrage as a major consideration in the assessment of costs and benefits;<sup>27</sup> and another suggested that POS requirements should not be imposed absent investor research and that such research should focus on all retail investment products.<sup>28</sup>

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<sup>21</sup> For example ICI and JAC

<sup>22</sup> The Association of Banks in Singapore (ABS), confidential response, and The Society of Remisiers Singapore.

<sup>23</sup> Securitization Forum of Japan

<sup>24</sup> ICI

<sup>25</sup> The Society of Remisiers Singapore

<sup>26</sup> IFIC

<sup>27</sup> IFIC

<sup>28</sup> ICI

Not all responses regarding costs were negative. One respondent noted that the method of delivery and content may present an opportunity to gain some efficiency in the manner with which they update and inform customers.<sup>29</sup> It was also suggested that different methods of delivery or production could help to reduce costs for producers.

### **Our response to the comments**

An entire section of the consultation paper is dedicated to highlighting the importance of a cost/benefit analysis (see Chapter V, Section C). As stated in the consultation paper, measuring the costs and benefits of changes in regulatory requirements is a complex exercise. We agree with the comments supporting due consideration of the cost/benefit of new regulatory requirements and we reiterate our message in the consultation paper that:

*“In general, new POS disclosure requirements should not be imposed without the benefit of consumer testing or assessment to help determine the likely effectiveness of new disclosure requirements.”<sup>30</sup>*

The existence of the principles does not, in any way, supersede regulators’ existing obligations to ensure that they consider the cost/benefit implications of new regulatory requirements. National regulators will need to establish the most appropriate way for giving effect to the principles within their own regulatory structures.

We do not believe, therefore, that the comments necessitate a modification of the principles.

### **Financial Literacy and Consumer Education**

The Joint Group commented on the importance of financial literacy and consumer education in the consultation paper. Several respondents supported efforts by regulators to improve financial literacy and education, suggesting that this should be an area of priority for IOSCO and other regulatory bodies.<sup>31</sup>

### **Our response to the comments**

Disclosure information needs to be understood to be effective, however research in many countries demonstrates that financial literacy is low.

By improving the clarity of disclosure material, and using plain language, firms are providing the best opportunity for retail investors to be able to make informed decisions.

Although education for investors is outside the scope of this report, the Joint Group

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<sup>29</sup> Vault Solutions Inc.

<sup>30</sup> IOSCO consultation report November 2009, p2.

<sup>31</sup> Association Francaise De La Gestion (AFG), EFAMA, Investment Management Association UK (IMA), National Investment Management Associations, Panamanian National Securities Commission, SingCapital Pte Ltd, Financial Services Board South Africa.

supports efforts to improve financial literacy and recognizes that this contributes to the overall understanding of investment products.

Some respondents provided examples of approaches to explaining key product features that they felt were effective for consumers (such as the use of tables and charts) and we have updated the report to include these ideas.

### **Provider / distributor roles**

Three respondents highlighted the importance of taking account of different distribution models when developing disclosure documents.<sup>32</sup> They suggest that there are few common features between different distribution models and that the prevalent distribution model in one country can be considerably different than that in another.

Some respondents provided useful commentary on the types of information that different parts of the distribution chain could play, for example:

*“We think that the following information cannot satisfactorily be provided by the product producer and is for the intermediary to provide: a. Investor tax advice (or a notice that the investor should seek specialized advice). b. Conflicts of interest at the point of sale (e.g. sales commission or other vested interest).”<sup>33</sup>*

*“Further guidance would be helpful to clarify that, whilst the product provider can provide the information on the product itself, it is the intermediary which would provide and communicate any tailored disclosure to a specific investor.”<sup>34</sup>*

In distinguishing the types of disclosures that should be made by the different players, commenters suggested that:

- producers should be responsible for: key information disclosures (as they have full knowledge of their products);<sup>35</sup> details about the various risks affecting the product, performance, cost, liquidity, exit-options, legality and operability during different market/economic situations;<sup>36</sup> and the clarity, accuracy and consistency of the information contained in disclosure documents;<sup>37</sup> whereas
- intermediaries should be responsible for: potential conflicts of interest,<sup>38</sup> ranges of fee rebates (rather than specific quantum),<sup>39</sup> sales and services pertaining to intermediaries, including receipt/understanding of the product documents

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<sup>32</sup> AFG, EFAMA and National Investment Management Associations

<sup>33</sup> ALFI

<sup>34</sup> JAC

<sup>35</sup> Ipac Financial Planning Singapore

<sup>36</sup> ABS

<sup>37</sup> Morocco.

<sup>38</sup> Ipac Financial Planning Singapore

<sup>39</sup> Schroder Investment Management Ltd

(prospectus, factsheet, brochure where applicable), distinction of investments from conventional bank products (deposits, etc), fee/cost relating to sale/holding of investments, transaction related constraints (if any) and clients' right to cancel/cool-off period;<sup>40</sup> transmission and dissemination of the information, clarifying and explaining to underwriters the characteristics of products marketed, the risks and costs involved and the role of stakeholders in the functioning of the mutual fund, for submitting the tax regime applicable under the legal regime of the mutual funds and the particular circumstances of the investor,<sup>41</sup> and other disclosure tailored to a specific investor.<sup>42</sup>

Three respondents discussed the concept of a “layered approach” to data provision<sup>43</sup>, i.e. that information is provided at different times according to the needs of the customer and the distribution approach in use. One of these respondents<sup>44</sup> argued that a layered approach would not result in consistent treatment of all investors.

### **Our response to the comments**

While we acknowledge that distribution models will vary, the key point to convey is that regardless of the distribution method, the consumer should be no worse off in terms of the information they receive.

Because distribution arrangements will be based on the commercial decisions of firms, it is difficult to provide further guidance on this issue, particularly guidance that is relevant across national jurisdictions.

We will make clear in the final paper that although the principles are flexible enough to accommodate different distribution models, the underlying intent is that regardless of who provides the information, the information meets the intent to provide and/or make available to investors sufficient information about the key product features before the point of sale to enable them to make an informed investment decision.

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<sup>40</sup> ABS

<sup>41</sup> Morocco.

<sup>42</sup> JAC.

<sup>43</sup> EFAMA and two other respondents who provided their responses on a confidential basis.

<sup>44</sup> This respondent provided its response on a confidential basis.

## C. Feedback on the application of the principles

This section summarizes the comments received directly about the principles. The principles have been developed to help overcome market asymmetries and to enable retail investors to make informed decisions based on accurate information.

**Principle 1: *Key information should include disclosures that inform the investor of the fundamental benefits, risks, terms and costs of the product and the remuneration and conflicts associated with the intermediary through which the product is sold***

Two respondents supported IOSCO's flexible approach to intermediary disclosure which allows separate intermediary focused disclosure as well as product disclosure.<sup>45</sup> Some respondents asked for further clarity around the term "key" whilst others provided additional thoughts as to what constituted "key" information.<sup>46</sup> The vast majority of the comments were concerned with these issues, rather than the principle itself.

Two respondents expressed concerns about over-reliance on a synthetic risk/reward indicator without any accompanying narrative.<sup>47</sup> These respondents argued that it was difficult to design and implement a uniform risk rating system that allows fair comparison across different products.<sup>48</sup>

One respondent stated that it would not be possible to list all the risks of the product and still achieve a succinct disclosure document. They also felt that only risks that are specific to the product should be included, not general risks:

*"We are of the view that only risks that are specific to the product should be included and potential investors should refer to the prospectus for other generic investment and investment-related risks."*<sup>49</sup>

Three respondents pointed out the difficulty in calculating certain fees, expenses, non-monetary compensation and/or breakeven points, due to the variables involved or the confidential nature of the information. However, another respondent felt that fees for CIS products were already clearly disclosed.<sup>50</sup>

### **Our response to the comments**

We do not consider it necessary to amend principle 1. The principle requires that fundamental product information be provided, without which a consumer would not be able to make an informed decision.

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<sup>45</sup> EFAMA and Schroder Investment Management Ltd

<sup>46</sup> Panamanian National Securities Commission and International Banking Federation (IBFed)

<sup>47</sup> Confidential response and IBFed

<sup>48</sup> Confidential response and IBFed

<sup>49</sup> Schroder Investment Management Ltd

<sup>50</sup> ABS

As noted in the consultation paper, key information will necessarily vary depending on the type of financial product being offered. The examples provided have been taken from existing requirements in some jurisdictions.

For some complex financial products with a multitude of risks, the amount of key information that a regulator might mandate for immediate disclosure to the investor under a “layered approach” may be greater than for less complicated products. This position is supported by the following response:

*“Point of sale disclosure documents should allow product producers the opportunity for disclosure to be tailored to their different product offerings.”<sup>51</sup>*

Firms and market authorities should consider the list a guide to the type of information that is likely to be important to a consumer, but where other items exist these should be included where relevant.

Given the responses received regarding, in particular, the use of past performance data and risk reward indicators, we would suggest that market authorities consider these issues carefully when introducing new requirements in these areas.

**Principle 2: *Key information should be delivered, or made available, for free, to an investor before the point of sale, so that the investor has the opportunity to consider the information and make an informed decision about whether to invest.***

Respondents were concerned with who it was that provided the information and also with the distinction between “delivered” and “made available”. We have addressed the role of providers and distributors above in the section entitled Provider/distributor roles.

Three respondents addressed the definition of delivery.<sup>52</sup> One of the respondents supported the inclusion of the concept “making the documents available” arguing that a more restrictive definition would create the potential for product arbitrage. Others argued that the IOSCO principles on distribution should be reduced to those that are fundamental in order not to prejudice any of the current distribution models.<sup>53</sup>

One commenter argues that any POS disclosure requirement should not impede an investor’s ability to conduct transactions and should not impose inappropriate costs and burdens on intermediaries.

*“members believe that IOSCO principles on distribution should recognize that regulators should ensure that disclosure requirements are designed to minimize disruptions to the sales process.”<sup>54</sup>*

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<sup>51</sup> IBFed

<sup>52</sup> IBFed, IFIC and Panamanian National Securities Commission

<sup>53</sup> AFG

<sup>54</sup> EFAMA

## **Our response to the comments**

The comments do not warrant a modification of the principle. We believe that in its current format it is sufficiently flexible to accommodate the concerns raised in the consultation about the definition of delivery.

Using “deliver”, or “make available” acknowledges the different approaches being used in different regimes and recognizes that different sales methods lend themselves more readily to physically handing over a document. This way, flexibility is retained.

The process by which the investor receives the information should not become cumbersome. The point of the principles is not to interrupt the sales process, but to ensure a consumer has adequate information to make an informed decision.

### ***Principle 3: Key information should be delivered or made available in a manner that is appropriate for the target investor.***

Much of the commentary was focused on the distinction between physical and electronic copies of documents. One respondent felt that regulators should take a pragmatic view with regard to the format of information so that it allows for flexibility in the way that investment firms meet their customers’ information requirements<sup>55</sup>. Another stated that it was uncertain what IOSCO meant when it said that product producers should take into account “whether the investment is recommended by the intermediary”<sup>56</sup> (page 26, Principle 3, first bullet point).

Some of the points that are relevant to this principle have already been discussed above in relation to principle 2, in particular the definition of “delivery” or “made available”.

## **Our response to the comments**

We do not intend to revise principle 3. Principle 3 provides flexibility for adaptation in different jurisdictions. We agree with the suggestion made by one commenter that regulators should take a pragmatic approach to considering what format of information is appropriate. In response to the other comment noted above, we believe it worth clarifying that where a product is recommended by an intermediary, it is appropriate for the intermediary to consider delivering (rather than simply making available) the key information to the investor prior to the point of sale, even if it is not *required* to do so by the regulator.

### ***Principle 4: Disclosure of key information should be in plain language and in a simple, accessible and comparable format to facilitate a meaningful comparison of information disclosed for competing products.***

Several commenters point out inherent risks and limitations associated with “accessible” disclosure, arguing that:

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<sup>55</sup> IBFed

<sup>56</sup> ALFI

- the document could become lengthy if product producers are required to explain in layman’s terms investment concepts and approach, and if a product is complicated;<sup>57</sup>
- undertaking comparisons with other products presents challenges, as differences among products would make it difficult to ensure an unbiased and objective representation;<sup>58</sup>
- the use of plain language in the disclosed information should not be aimed primarily at facilitating a meaningful comparison among competing products, but rather at facilitating a full understanding of the given product;<sup>59</sup>
- page limits are arbitrary, and such limits should not undermine the usefulness of the disclosure;<sup>60</sup>
- a generic product disclosure document cannot take into consideration the “needs and abilities of the target investors”;<sup>61</sup>
- as a prerequisite to shorter and comparable information, more work has to be done on defining common terminology, product and risk segmentation, calculation methods and ways to determine what is “key” information;<sup>62</sup> and
- the document may be less relevant at the point-of-sale when an intermediary is selling, because the intermediary would already have carried out its suitability test and is ready to recommend the product.<sup>63</sup>

One respondent argued that this principle largely duplicated principles 2 and 3.<sup>64</sup>

### **Our response to the comments**

We think it is worth clarifying in the final report that the principle would not require firms to make comparisons with other products within their disclosure documents, but that the principles are designed to ensure that the standard of disclosures is sufficiently similar to enable consumers to make comparisons between relevant competing products.

Whereas principle 2 is about the timeliness of disclosure and principle 3 is about the physical format of the document (e.g. hard copy, electronic), principle 4 is focused on ensuring the content is written in a way that is easily understood. Therefore we do not believe that it duplicates the previous two principles.

**Principle 5: *Key information disclosures should be clear, accurate and not misleading to the target investor. Disclosures should be updated on a regular basis.***

Two respondents offered suggestions as to the appropriate intervals for updating disclosures:

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<sup>57</sup> Schroder Investment Management Ltd

<sup>58</sup> Confidential response

<sup>59</sup> IBFed

<sup>60</sup> IBFed

<sup>61</sup> Schroder Investment Management Ltd

<sup>62</sup> ALFI

<sup>63</sup> Schroder Investment Management Ltd

<sup>64</sup> Financial Services Board South Africa

- One commentator argues that the key information document should follow the updating/deadline requirements of the prospectus as long as the date of the information is clearly stated on the document, and that updating more frequently than on a yearly basis (absent material changes of the fund), would have significant impact on the product producers' resources;<sup>65</sup> and
- The other commenter suggests that POS disclosures be updated on a half-yearly basis for non-material changes and that regulators should provide guidelines on "material" disclosures and the timeline to inform investors.<sup>66</sup>

However, one respondent thought the requirement to be onerous:

*"The requirement for the product producer or intermediary to provide regular updates on the key information is onerous."*<sup>67</sup>

### **Our response to the comments**

Based on the comments received, we see no reason to amend the statement underneath principle 5 that:

*"Regulators should require the product producer or intermediary, as appropriate, to revise and update key information as often as reasonably necessary to reflect any material change in the information that could affect its accuracy."*<sup>68</sup>

The statement provides both the product producer and the intermediary broad flexibility to determine what is "reasonably necessary". This is not an onerous burden. Moreover, without such a requirement, product producers and intermediaries could deliver or make available information once, and then never update it again, even where there are changes that would be material to an investment decision. Such a result would greatly diminish the integrity of the CIS market.

**Principle 6:** *In deciding what key information disclosure to impose on intermediaries and product producers, regulators should consider who has control over the information that is to be disclosed.*

Many of the comments received in this section have previously been addressed in the Provider/distributor roles section. One commenter argues that IOSCO should provide greater clarity around the roles and responsibilities of product providers and intermediaries to encourage better consistency in application.<sup>69</sup>

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<sup>65</sup> Schroder Investment Management Ltd. Further, the commenter argues that the cost involved in updating and reprinting the document regularly would be very high, and would lead to wasted resources (discarding unused documents).

<sup>66</sup> IPAC

<sup>67</sup> Confidential response

<sup>68</sup> <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD310.pdf>, p27

<sup>69</sup> JAC.

## **Our response to the comments**

We do not consider it necessary to amend the principle. The consultative paper already provides clarity when it indicates that duplication of disclosure obligations should be avoided and that:

- (1) if the intermediary provides or alters product information, it may need to take additional responsibility for that information;
- (2) while a product producer may be generally responsible for the content of the disclosure, the intermediary is responsible in many jurisdictions for explaining the features of the product to a client; and
- (3) The product producer may not be able to specify clearly certain information at the point at which the product is produced. This means that the intermediary will often have to provide the actual product charges as well as the intermediary charge in order to give the client full disclosure of charges.



## Appendix 2

### Literature Survey in regards CIS Disclosures at the Point of Sale

#### Literature/research submitted

This note draws together findings and issues from the research or surveys submitted by members of TCSC3 and TCSC5.

In particular, this note draws on:

- The report submitted by AMF, *Investigation of investment information and management processes and analysis of disclosure documents for retail investors* (TNS Sofres, November 2006) (AMF Study);
- The market research report submitted by ASIC, *Developing health warnings about investment risks in prospectuses* (TNS Sofres, February 2002) (ASIC Study);
- The consumer research series submitted by the UK FSA<sup>1</sup>;
- Consumer testing done on behalf of the US Securities and Exchange Commission<sup>2</sup>;
- A research study (Canadian Study) commissioned by the Task Force to Modernize Securities Legislation in Canada, entitled *How are Investment Decisions Made*<sup>3</sup>;
- Hong Kong SFC *Survey on Engagement of Investment Advisers* (Sept. 2006 ) (SFC Study);
- An Investment Company Institute (ICI) research report on *Understanding Investor Preferences for Mutual Fund Information* (2006) (ICI Study); and
- Report prepared for the Investment Funds Institute of Canada (IFIC) by Pollara, Inc.,

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<sup>1</sup> Consumer Research series; studies consulted are cited individually below.

<sup>2</sup> The Commission retained Siegel & Gale, LLC and Gelb Consulting Group, Inc. (S&G) to help develop and test model disclosure forms that would effectively convey information to investors. See Siegel & Gale, LLC/Gelb Consulting Group, Inc., *Results of In-Depth Investor Interviews Regarding Proposed Mutual Fund Sales Fee and Conflict of Interest Disclosure Forms: Report to the Securities and Exchange Commission*, (November 4, 2004) and *Supplemental Report to the Securities and Exchange Commission* (November 29, 2004) [together, SG1]. The report is available at <http://www.sec.gov/rules/proposed/s70604/rep110404.pdf> and the supplemental report is available at <http://www.sec.gov/rules/proposed/s70604/suprep010705.pdf>. We also received additional information through continued testing of potential disclosure forms, as well as consumer testing of oral disclosures. See Siegel & Gale, LLC/Gelb Consulting Group, Inc., *Results of Investor Interviews to Test and Refine Point of Sale Disclosure Forms* (May 31, 2005) [SG2] (available at <http://www.sec.gov/rules/proposed/s70604/siegel1053105.pdf>) and *Results of Investor Interviews to Test Oral Point of Sale Disclosure* (June 1, 2005) (available at <http://www.sec.gov/rules/proposed/s70604/supprpt060105.pdf>) [SG3]. See also Low & Associates, Inc., *Results of Focus Groups with Individual Investors to Test Proposed Rules 15c2-2 and 15c2-3*, (April 2004) [Low].

<sup>3</sup> Richard Deaves, Catherine Dine, William Horton (May 24, 2006).

entitled *Canadian Investors' Perceptions of Mutual Funds and the Mutual Fund Industry* (2006) (IFIC Report).

## 1. Key Findings and Common Themes

The key findings in the research group together around common themes, which we have used to organise the findings in this summary. Some key points (which are outlined in more detail below) include:

- *What do consumers want?* Investment returns are a key focus for many consumers, along with information about risks, costs (including fund fees and expenses), and intermediary conflicts of interest;
- *What ways of presenting information do consumers prefer?* Generally, consumers prefer short, well-laid out and plainly worded documents, without ‘legalese’ or marketing material. Although open to electronic disclosure, most investors appear to continue to prefer to obtain fund information in paper form (particularly mutual fund investors) or from a professional financial adviser, rather than online, prior to purchasing. Oral disclosure can also be an important means of providing investors with information that is integrated into the sales process;
- *How do consumers make decisions?* Consumers can rely on a range of information sources other than official disclosure documents when making investment decisions, including a significant reliance on the advice of others, including salespersons. However, other factors play an important role including emotion (e.g., intuition), personality (e.g., overconfidence),<sup>4</sup> and “representativeness” (i.e., a tendency to be inappropriately influenced by past performance);
- *What are the limitations or biases with consumer decision-making?* Consumers can exhibit a range of biases when making decisions, such as wrongly discounting information, or overly relying on poorly understood or misunderstood disclosures; and
- *What are the implications for consumer behaviour?* Consumers do not necessarily alter their behaviour or understanding, even where exposed to better disclosure documents.

Research needs to be placed in a context that the baseline for financial capability can be rather low. For example, according to a research project conducted recently by the UK FSA,<sup>5</sup> many consumers have a poor understanding of financial services and products, including an understanding of remuneration arrangements, or the nature of different asset classes and fund types and their associated risks.<sup>6</sup> The low levels of consumer understanding stand as a key

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<sup>4</sup> For example, the IFIC Report (p. 17) found that almost all of the surveyed Canadian investors in mutual funds say that they felt comfortable that they had the right information to make an informed decision about investing in mutual funds.

<sup>5</sup> See <http://www.fsa.gov.uk/pubs/consumer-research/crpr47.pdf>.

<sup>6</sup> Studies suggest that when terms or concepts may be unfamiliar to investors, it may be necessary to include additional explanatory text in disclosure documents [SG1 p. 6].

driver of much of the research, including the AMF, ASIC, Canadian and UK FSA research submitted.

A further general point is that some of the research submitted focuses on “unpacking” the preferences of investors using qualitative techniques followed, in some cases, by additional quantitative research to provide some statistically relevant support. In general terms, qualitative research techniques are particularly suited to exploring preferences. The conclusions can contribute to the fine-tuning of disclosure documents. However, the methodological limitations of such research can make it difficult to generalise findings, or to make assumptions as to the likely impact of particular documents on consumer behaviour. We return to this issue under Section V below.

## **2. What do consumers want to know when purchasing investment products**

Given this limitation, evidence nonetheless suggests that a key starting point for consumers when looking at investment products is information about benefits, risks, costs (including fund expenses and fees as well as sales-related costs), historical performance, and conflicts of interest. Investors seem to be asking the following: What might he/she get back from an investment? What could impact on the investment? What conflicts may be influencing an intermediary’s recommendation? And, how much of the investment could be lost to charges and commissions?

The AMF noted that consumers most want to receive a description of the features of the product providing information about risk, expected return/loss and fees and that they are less interested in many other details, such as the description of typical profile or even the track record of the fund. Research by the UK FSA has also shown that consumers focus on information about investment returns or performance more generally.<sup>7</sup>

Consumers do not, however, only focus on benefits. They also want to know about risks and guarantees, and any limits on guarantees.<sup>8</sup> Investors typically, regardless of their level of sophistication, wish to understand the extent to which they can rely on an investment.<sup>9</sup> For example, the investors surveyed in the SFC Study indicated that the three most important things they *should know* before investing are (1) capital risk; (2) expected return and calculation method; and (3) historical performance.<sup>10</sup>

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<sup>7</sup> [AMF Study], p. 41; FSA: *Informed decisions? How consumers use Key Features: a synthesis of research on the use of product information at the point of sale* CR5 (November 2000), p. 16 (‘What consumers want’) [FSA: Informed Decisions].

<sup>8</sup> Even though UK FSA evidence regarding financial capabilities suggests a low level of understanding of the nature of different asset classes and their performance characteristics. See [FSA: Informed Decisions]; FSA: *The development of more effective product disclosure* CR18, (March 2003) [FSA: More Effective Disclosure]; FSA: *Investment Disclosure Research*, CR55, (November 2006) [FSA: Investment Disclosure Research]. See also <http://www.fsa.gov.uk/pubs/consumer-research/crpr47.pdf>

<sup>9</sup> Low capabilities of course can have the effect of reducing consumers’ ability to grasp the limits of guarantees; evidence from the UK FSA suggests many investors take products contained in a particular life policy tax wrapper in the UK to be guaranteed even when they are clearly stated to not be so. See [FSA: Investment Disclosure Research], p.3.

<sup>10</sup> Page 3.

In addition, investors also have expressed an interest in product costs.<sup>11</sup> For example, the ICI Study found that investors are most interested in a fund's fees and expenses and its historical performance.<sup>12</sup> The significance of product costs is particularly illustrated by the fact that salespersons pay special attention to costs. ASIC notes that "when presented with a series of prospectuses for examination in the group discussion, most advisers opened straight to the fees and charges."<sup>13</sup>

Personalized information (e.g., a fee estimate specific to their purchase amount), may be a particularly helpful way to communicate cost information.<sup>14</sup>

ASIC, AMF, Canadian and UK FSA research all suggested questions of trust can be a key factor in consumer behaviour, in relation to which (as we will see later) consumers often focus on intuition. UK FSA research suggests that by comparison, cost and remuneration information can seem of secondary importance to the investor.<sup>15</sup> While some evidence suggests that the investor may be primarily seeking reassurance in regards the trust they are already potentially extending to the advisor, and so may discount disclosure evidence which is contrary to this,<sup>16</sup> other studies indicate that investors are likely largely unaware of the incentives their market intermediary may receive for recommending one fund over another and find such information useful.<sup>17</sup>

The timing of the disclosure can be key to its effect. Investors want information at a time that is useful to their investment decision.<sup>18</sup>

### **3. What designs and formats are effective in achieving consumer engagement**

Qualitative research techniques are also particularly suited to teasing out the elements of the design of disclosure information that are particularly effective from the perspective of the consumer.

Key messages repeated throughout the literature are that consumers prefer documents which

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<sup>11</sup> See [AMF Study], p. 40; [FSA: Informed Decisions], p.16; [Low] p. 3.; [SG1] p. 6. Of note, many investors prefer "complete" disclosure of fees paid rather than disclosure only of some fees (e.g., sales or other fees paid to their intermediary). [SG1], p. 7. This suggests that if only some fees are set forth, disclosure should emphasize that other fees will be charged, and if possible state the potential amount (e.g. "up to \$100 per year"). [SG1], p. 7; [SG2], p. 5.

<sup>12</sup> Page 1-2.

<sup>13</sup> The ASIC Study.

<sup>14</sup> See [SG1], p. 4.

<sup>15</sup> FSA: unpublished research, *Depolarisation Disclosure, Qualitative Research*, BMRB, 2006. [FSA: Depolarisation Disclosure]. FSA: *Polarisation: Consumer Research*, (January, 2002), p. 31 [FSA: Polarisation]

<sup>16</sup> [FSA: Polarisation]. Other factors that have been emphasised by investors in UK FSA research [FSA: Depolarisation Disclosure] include: information on the range of products, information about the advisor and their status (e.g. their 'independence').

<sup>17</sup> [Low].

<sup>18</sup> [Low], p. 3

are:

- short;
- well presented and laid out;
- plainly and clearly worded;
- focused on the information they believe they need; and<sup>19</sup>
- the ICI Study noted that mutual fund shareholders look for concise investment information and, where possible, graphic presentations.<sup>20</sup>

Design techniques may be used to improve the extent to which a document engages consumers. However, making a document engaging is only part of the larger picture: other points to consider include the relative prioritisation of different messages within a document,<sup>21</sup> and the extent to which a document is able to create a particular impression (e.g., that it is neutral or trustworthy, or that it ranks or prioritises key messages in the appropriate way).

Detailed design factors include:

- the use of colour and visual cues to enliven documents and call investors' attention to particular pieces of information;
- the effective use of space to make documents easier to follow and less overwhelming; and
- the deployment of well-paced and logically sequences of information.<sup>22</sup>

Readability can be seen as a function of all of these elements of layout. The prioritisation of information and use of focus within a document can also help impart key messages unambiguously.<sup>23</sup>

The overall 'tone' of a document also matters. For instance, AMF and S&G note a consumer preference for documents that are honest and accessible.<sup>24</sup> (This preference is tempered

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<sup>19</sup> For instance, ASIC noted that "in judging the merit of a prospectus, investors look for clarity – the prospectus had to be simple to read." One way to accomplish this may be to provide disclosure in a "layered" manner, where brief disclosure is provided initially with more detailed information available either upon request or accessible on the Internet.

<sup>20</sup> Page 2.

<sup>21</sup> See, e.g., [SG3 Summary]; [SG2], p. 2 (the order of information presented can aid or hinder comprehension; for example, investors were better able to recall certain information when it was made at the beginning of a conversation).

<sup>22</sup> [SG1], pp. 2-4.

<sup>23</sup> [AMF Study], p.41. Of note, some studies suggest that investors find "yes/no" questions easy to comprehend, and the information useful even when "no" was the appropriate answer.

<sup>24</sup> [AMF Study], p. 35-36.

however by a desire that the documents are not off-putting and that their accessibility does not lead them to become untrustworthy.) Statements regarding where investors could find more information have been viewed as enhancing the overall credibility of the information disclosed, even when the investor indicated little likelihood of accessing the additional information.<sup>25</sup> The research notes that consumers find neutral documents reassuring, and feel that they offer a degree or element of ‘explanation’. The researchers concluded that “the main challenge is to strike a balance between the need to be accessible and non-technical and the need to be trustworthy”.<sup>26</sup> Readers were hostile to anything which came across as advertising, and preferred documents which felt official.<sup>27</sup>

UK FSA and US SEC research also amplifies and supports these points, including the preference for clear and straightforward presentation, the use of plain language, and a preference for short documents.<sup>28</sup> This is supported by the Canadian Study as well.<sup>29</sup>

The UK FSA research has also drawn out the extent to which consumers often are more comfortable with presentational techniques with which they are familiar, such as the use of tabular question and answer sections. For instance, when examining different ways of presenting information about projected returns on long term investments in funds, the UK FSA found that many respondents tended to be more confused by, or take the wrong message from, unfamiliar presentational techniques (showing richer and more sophisticated information using putatively easier to understand grasp graphical techniques) when compared with the use of familiar tabular presentational styles.<sup>30</sup> This is confirmed by the Canadian Study.<sup>31</sup>

A further point worth drawing out is that research suggests that different ways of showing similar information can create different degrees of reliance or focus on the information amongst consumers. For instance, UK FSA research into the presentation of past performance information suggests presentation can impact on a users’ emotional response to and reliance on information (for instance, through the use of figures showing cumulative cash gains or losses).<sup>32</sup>

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<sup>25</sup> [\[SG1\], p. 8](#)

<sup>26</sup> [AMF Study], p. 46,

<sup>27</sup> Many investors in one study interpreted their signature on a form negatively, and believed their signature established a contractual agreement to the fees stated on the form. [SG2], p. 3.

<sup>28</sup> These points recur across UK FSA research; see, in particular, [FSA: Informed Decisions], [FSA: More Effective Disclosure] and FSA: *KeyFacts Quick Guide - research findings* CR41, (July 2005) [FSA: KeyFacts Quick Guide].

<sup>29</sup> The Canadian Study noted that “[w]hen information overload occurs, there is a tendency for retail investors to simply tune out and not try to process the information at all”. Page 263.

<sup>30</sup> UK FSA unpublished research by Synovate, *Projections research: Reviewing projections Key Facts documents* 2005 [FSA: Synovate]. Importantly, the effectiveness of different presentational techniques can be significantly segmented in demographic terms, with respondents having divergent needs. For instance, respondents can split into those who respond well to text and figures, and those who prefer graphical presentations.

<sup>31</sup> The Canadian Study refers to this as *familiarity bias* (which in turn is related to the *status quo bias*). This is the degree of comfort that people have in the familiar. This leads to placing a greater value on what is known. Page 254.

<sup>32</sup> FSA: *Standardisation of past performance*, CR21, (May 2003) [FSA: Standardisation of Past Performance].

Putting these points another way, it is clear consumers respond to devices which place information in a context with which they are familiar or which imparts impressions of trustworthiness or reliability. For instance, a common theme explored in the ASIC, AMF and UK FSA research, is the perceptions respondents have of the regulator along with the regulator's role in relation to disclosure information.

Key tensions concern the extent to which information provided is seen as 'legalese' (consumers often express frustration in the face of 'small print'), or as something that can be relied on and which has some form of 'independence'.<sup>33</sup> These points relate to wider points in regards 'branding,' which we return to below.

One study indicated that information disclosed orally can be useful and easy to understand.<sup>34</sup> Investors commented that such disclosure could facilitate discussions with their salesperson. Nonetheless, investors who received oral disclosure still expressed a preference for access to additional information in digital or printed form. This particular study also indicates that the order of the information presented can aid or hinder comprehension (for example, investors were better able to recall information about conflicts of interest when the disclosure was made at the beginning of the conversation).

More generally with regard to format, the Canadian Study observed that investors still generally access disclosure information in paper form, and that mutual fund investors had lower levels of electronic information usage and comfort levels.<sup>35</sup> Notwithstanding the tremendous growth in the use of the Internet, the ICI Study found that only 30% of recent fund investors prefer to obtain mutual fund information online rather than by mail or in-person from professional advisors.<sup>36</sup>

#### **4. What factors do consumers use in decision making**

While messages about consumer preferences and the information they believe they should be receiving appear relatively consistent and clear, understanding the actual information consumers' use when decision-making can be more complicated.

In thinking about this, we need to also take into account the wider context impacting on particular investment decisions, such as the consumer's reliance on the advice of others, whether or not they are buying directly, or their use of other sources of information (such as promotional material, press coverage, information available through their employer, or 'word-of-mouth').<sup>37</sup> As ASIC research suggested, these other factors can have a significant effect on investor' actual reliance on documents: "Investors' use of prospectuses appeared casual at best, with no real consensus on the worth of a prospectus document as a stand-alone

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<sup>33</sup> See [ASIC Study], p. 21; [AMF Study], pp. 35-46; more generally, [FSA: Informed Decisions]; [FSA: More Effective Disclosure]; [FSA: KeyFacts Quick Guide]; see also [SG1], p. 5 (direct and colloquial language was found to be effective while jargon, and legal terms were not).

<sup>34</sup> [SG3 Summary], [SG2] p. 2.

<sup>35</sup> Page 286.

<sup>36</sup> Page 33.

<sup>37</sup> See for a wide ranging discussion of the information that investors use, FSA: *Better informed consumers*, CR1, April 2000, and [FSA: Informed Decisions].

source”.<sup>38</sup> Indeed, the Canadian Study found that for investors, including mutual fund investors, the prospectus is one of the least used sources of information.<sup>39</sup> The ICI Study went further and stated that “most shareholders do not consult fund prospectuses or annual reports.”<sup>40</sup> It is true that 63% of the investors surveyed as part of the SFC Study “looked at the product’s offering documents or fact sheets,”<sup>41</sup> but this does not necessarily mean that they reviewed prospectuses in a meaningful way.

The Canadian Study also found that, with regard to mutual fund transactions, the key driver in decision making is the financial advisor recommendation, followed by past performance.<sup>42</sup> This is consistent with the SFC Study, which found that 72% of the surveyed investors relied on their investment adviser’s verbal recommendations or financial plans in making their investment decisions,<sup>43</sup> and with the ICI Study (“shareholders usually turn to professional financial advisers for information before purchasing shares”).<sup>44</sup>

The key information investors seek that we noted above – information about historical performance, risk, and cost (particularly in the mutual fund context) – remains important, but investors may find apparent answers to their questions by a variety of means. The ASIC research noted that “typically, after investigating a prospectus, the investor would take their decision back to the adviser to attempt to gauge the adviser’s recommendation”.<sup>45</sup> This reliance on others is particularly the case where the investor rates themselves as poorly equipped to make investment decisions.

Nonetheless, even for investors who indicated a heavy reliance on their salesperson’s recommendations, and commented they would be likely to continue to depend on those recommendations, information regarding costs and conflicts of interest was considered useful as an educational tool and viewed as a prompt for them to ask their salesperson for more information.<sup>46</sup>

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<sup>38</sup> [ASIC study], p. 19. ]. Even where investors appear to use disclosure documents, evidence suggests that they may particularly focus on messages regarding the risk–reward balance of the particular investment. However, the focus can be significantly segmented demographically. Some more sophisticated investors may focus more directly on price measures, for instance as a key determinant of investment outcomes once portfolio diversification has been addressed. See [FSA: Informed decisions]. [FSA: Synovate] examined respondents’ use of projection information according to the ‘sophistication’ of the respondent, and saw significant differences. [ASIC Study] distinguished throughout between ‘direct’ and ‘indirect’ investors. Also see FSA: UCITS: charges disclosure – presenting product charges to customers, CR34, (April 2005).

<sup>39</sup> Page 286-7.

<sup>40</sup> Page 2.

<sup>41</sup> Page 17.

<sup>42</sup> Page 288. The IFIC Report (p. 18-19) likewise found that the following were the top three factors that surveyed mutual fund investors considered most seriously before they last invested in mutual funds: the advisors’ opinion; the risks associated with investing in the fund; and the fund’s past performance compared to other funds in its category.

<sup>43</sup> Page 17.

<sup>44</sup> Page 9.

<sup>45</sup> [ASIC Study], p. 20.

<sup>46</sup> [SG1], p. 2.

The mechanisms that sustain or undermine the investor's trust in the person who is advising them then become significant, which we will discuss in the next section.

Other elements also come to the fore in decision-making where the investor feels they lack understanding. For instance, consumers can turn to intuition: AMF, ASIC, the Canadian Study and UK FSA all highlight perceptions by some consumers that their 'gut-feeling' about an investment is the key factor they rely on.<sup>47</sup>

The evidence also suggests that one particularly important factor is brand-identity and familiarity, which can be used by consumers as proxies for the reliability and trustworthiness of an investment proposition.

For instance, UK FSA evidence notes that consumers use their experience of brand in non-investment areas and apply it when making investment decisions – and this brings with it well known effects such as the impact of brand-loyalty.<sup>48</sup> ASIC note that consumers often assume that general firm behaviour around brands can be assumed to apply to investment firms – for instance, that the value of a brand to firms means they will generally not take actions likely to damage the brand.<sup>49</sup>

## **5. What are the limitations of consumer decision making/biases**

In considering the limitations of consumer decision-making, the low levels of financial capability are a key theme, as discussed above. Low basic understanding lays a key part of the basis for consumers to misunderstanding key messages or disregard important information.<sup>50</sup>

Other kinds of bias or limitation also can be found. The framing and positioning of information can be very important in terms of the messages consumers of the information take away. For instance, we have already touched on evidence that information will strike consumers differently depending on whether it is contained within marketing documents or standalone, or how the information is introduced or positioned, e.g., through a regulatory message, other branding, or by an intermediary/ other third party.

Consumers can exhibit biases where they are interpreting and assessing information: for instance, UK FSA research and the Canadian Study suggest that consumers can be overly optimistic about future returns;<sup>51</sup> AMF and ASIC research both also note the extent to which consumers can overly find some information off-putting, as they may exhibit a (patchy) aversion to risk which concentrates on certain elements of risk (e.g. risk to capital) at the

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<sup>47</sup> [AMF Study], p. 37; [ASIC: TNS Sofres], p. 19; [FSA: Depolarisation Disclosure]; [Canadian Study], p. 278 (24% of respondents indicated that "gut feeling or intuition" was important to them).

<sup>48</sup> See for instance [FSA: Informed Decisions], p. 20.

<sup>49</sup> [ASIC Study], p. 19.

<sup>50</sup> Some information was deemed useful only when accompanied by information that could allow the information to be put into context.

<sup>51</sup> Indeed, the Canadian Study suggests that investors inappropriately rely on past fund performance. Page 279.

expense of others (e.g. inflation).<sup>52</sup>

Although work in this area is only now being fully developed, other early indications for the UK FSA include the capacity of some information to become ‘false focal points’ which is readily misinterpreted by consumers.<sup>53</sup> This can be particularly acute where low levels of financial capability are common. The false focal points typically cluster around the information about benefits, risks and costs that the investor is most seeking. The desire for answers can itself drive the misreading, as consumers seek to fit information into their existing understandings.<sup>54</sup>

For instance, research into the use of information about future benefits by investors has shown there to be number of common problems.<sup>55</sup> These can be characterised as errors in understanding the limitations of information being provided; thus, despite textual messages, consumers can focus on the figures they are most seeking, and disregard the caveats to these. Though figures might be presented relatively clearly as only suggestive, and in no way guaranteed, respondents will overly rely on them.

These tendencies to misunderstand or misinterpret can therefore make it difficult to provide simple messages which include key information the investor is seeking in ways which are not going to be misleading. The UK FSA research into past performance data and work on the presentation of risk offers a case in point in regards this sort of issue.<sup>56</sup>

In relation to advice, the relationship between the investor and the advisor raises the interesting question of the role of trust. Trust is used by consumers where they need to rely on others. In these cases, consumers will typically rely on a full range of social tools for assessing the situation: they may summarise the conclusions of this process in terms of a ‘gut-feeling’ they have in regards the other person. Obviously, for advisors able to create the right social environment and impression, this can offer a significant opportunity to create a bond with the investor to promote increased sales. As ASIC noted ‘on the whole, in front of the client, the prospectus was used simply as a sales tool.’ For the client however,

“there was a tacit statement of trust in the adviser’s recommendations. The legitimacy of the advice given was generated through an assumption that the adviser spends considerably more time investigating the strength of various investments than the individual investor would be able to do.”<sup>57</sup>

This brings to the fore necessary limitations in the capacity of consumers to properly adjudge the credibility or reliability of expertise in regards the advisor. The consumer understands that they cannot unaided make a decision; however, they may not have a ready way to

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<sup>52</sup> For a summary, see FSA: *Informing Consumers: a review of product information at the point of sale*, Discussion Paper (Nov 2000), Annex B, p. 3 (for the fuller report see [FSA: Informed Decisions]).

<sup>53</sup> See [FSA: Standardisation of Past Performance] and [FSA: Synovate].

<sup>54</sup> [Canadian Study], page 254.

<sup>55</sup> [FSA: Synovate], and [FSA: Informed Decision], pp. 15-19.

<sup>56</sup> [FSA: Standardisation of Past Performance] and FSA: *Consumer understanding of financial risk* CR 33, (November 2004).

<sup>57</sup> [ASIC Study], p. 17.

evaluate their relationship with their advisor and the appropriate degree of reliance on that advisor. Low financial capabilities can amplify the problems here, as consumers only poorly understand the conflicts of interest which may impact on their advisor. The psychology and sociology of trust is certainly more complicated than can be analysed here.<sup>58</sup>

1. On questions of trust, AMF research indicated that more than two thirds of retail investors questioned said it was important or vital to have access to an official approved document before investing. However, the AMF research also raised some concerns regarding the role of the regulator. One half of the respondents thought the regulators role entailed ensuring that the investment is financially advantageous for the investor, especially when a prospectus is approved by the Securities regulator.
2. The SFC Study did look into the issue of investor evaluation of their investment advisors.<sup>59</sup> 88% of the surveyed investors were satisfied with their investment advisor services. Investors were least satisfied with their investment advisor's fees and charges.<sup>60</sup>

## **6. How does the format and content of information have an impact on actual consumer behaviour and outcomes?**

The research outlined in the above overview focussed on exploring consumer preferences, using techniques such as focus groups and other interview based surveys. It did not explore issues such as:

- How far changes in either the format or content of information change consumer's actual understanding of products or their purchasing behaviour; and
- How the disclosures work in a real world environment where many other influences may be at work.

Research within this area has, understandably, been limited, a reflection of methodological, legal and practical difficulties. The UK FSA has, as part of its cost benefit work surrounding the development of a new disclosure regime in 2005-2006 (refs inset), explored techniques to test the effectiveness of proposed changes to the disclosure regime for investment products.<sup>61</sup> Prior to introducing the regime, it wished to test whether the new approach yielded materially different consumer (outcomes and) understanding. The results were quite stark:

- Although consumers confirmed their preference for the new material, it did not materially increase their understanding of the product or its risk; and
- Even without rule changes, firms could achieve a lot by presenting the material more clearly.

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<sup>58</sup> [FSA: Depolarisation Disclosure]; [FSA: Polarisation].

<sup>59</sup> Page 20.

<sup>60</sup> Page 21.

<sup>61</sup> The FSA developed a "Quick Guide" for investment products to replace its Key Features regime, on the basis of focus group research.

The work did not identify why there was this apparent mismatch of preferences and understanding, although limitations in financial capability (mentioned above) were clearly a significant contributor. It also has limitations as a measure of real behavioural change since it was not conducted in the environment of a "real sale", where many other influences are likely to impact on both consumer and advisor behaviour. The UK FSA is attempting to trial live testing for oral disclosures and investment product intermediary disclosure later this year, but the methodology is still being developed.

## **Conclusions**

The research suggests the following key themes:

- Consumers do not understand many key messages about charges, remuneration, conflicts of interest, and fund risks and features based on current disclosure regimes, and will commonly simply follow the advice of others.
- Investors would like the format and content of disclosures to be carefully designed to promote accessibility and readability.
- When designing an appropriate point of sale disclosure, regulators may need to:
  - a) Consider investor frames of reference, biases and emotions in order to enhance the likelihood of accurate investor comprehension of material facts;
  - b) Take into account the overall impact of information and the different contexts in which it may be used; and
  - c) Consider how different forms of point of sale disclosure (e.g., documents or oral disclosure) may generate a meaningful and positive behavioural change.

## **Appendix 3**

### **Public Comments Received by the Technical Committee on the *Consultation Report – Principles for Point of Sale Disclosure***

#### **List of Respondents**

Aberdeen Asset Management (Singapore)

Association Française de la Gestion (AFG)

Association of Banks in Singapore (ABS)

Association of the Luxembourg Fund Industry (ALFI)

Aviva Investors

Brazilian Financial and Capital Markets Association (ANIMBA)

Conseil déontologique des valeurs mobilières, Morocco (CDVM)

European Fund and Asset Management Association (EFAMA)

Financial Services Board, South Africa (FSB)

International Banking Federation (IBFed)

Investment Company Institute (ICI)

Investment Funds Institute of Canada (IFIC)

International Investment Funds Association (IIFA)

Investment Management Association (IMA)

IPAC Financial Planning

JP Morgan Asset Management (Singapore)

Panamanian National Securities Commissions (CONAVAL)

Securitization Forum of Japan

Schroders Investment Management Limited

SingCapital

Society of Remisiers

Vault Solutions Inc.

Dear Sir/Mdm

We are the Singapore office of the Aberdeen Asset Management PLC.

We would like to provide our comments in response to our regulator's (the Monetary Authority of Singapore) call to participate in the feedback consultation on the Principles on Point of Sale Disclosure for collective investment schemes ["CIS"].

We agreed that the 6 proposed principles drawn up in the consultation report set out constructive guiding principles for disclosure of 'key' information in regards to CIS prior to the point of sale. We wish to comment that the suggestion on a summary of tax implications on premiums and benefits as additional information in product disclosure under Principle 1 should fall under the purview of a tax adviser instead. Product producer or intermediaries may not have the expertise on tax issues. It is advisable for the investor to consult his own tax adviser.

Thank you.

Best Regards,

Lisa Leong  
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SJ – n° 2662/Div.

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

15 January, 2010

Re: ASSOCIATION FRANCAISE DE LA GESTION (AFG)'s comments on IOSCO  
Consultation Report regarding Principles on Point of Sale Disclosure

Dear Mr Ben Salem:

The ASSOCIATION FRANCAISE DE LA GESTION FINANCIERE (AFG) – French Asset Management Association<sup>1</sup> would like to thank the International Organization of Securities

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<sup>1</sup> The Association Française de la Gestion financière (AFG) represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. Our members include 409 management companies and 660 investment companies. They are entrepreneurial or belong to French or foreign banking or insurance groups.

AFG members are managing more than 2600 billion euros in the field of investment management. In terms of financial management location, it makes the French industry the leader in Europe for collective investments (with more than 1300 billion euros managed by French companies, i.e. 23% of all EU investment funds assets under management, wherever the funds are domiciled in the EU) and the second at worldwide level. In terms of fund domiciliation, French funds are second in Europe and third at worldwide level. Regarding product interests, our association represents – besides UCITS – the 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 providing AFG with the opportunity to submit comments on the Consultation Report regarding '*Principles on Point of Sale Disclosure*', issued last November.

In parallel to the EFAMA response and to the joint letter of IIFA's members – to which we actively contributed - we would like to express the following comments:

1. We applaud the IOSCO Technical Committee for having approved the *Joint Project Specification on Point of Sale Disclosure to Retail Investors* in February 2007. In particular, we support the fact that both SC5 (in charge of Investment Management) and SC3 (in charge of Market Intermediaries) are working together on this topic. We also support that both product and distribution issues on the point of sale topic should be considered together since they can not be separated. Both product and distribution issues must take into account, and offer regulation that works within, all modes of product distribution.
2. Investment funds are already the most regulated retail investment products and we think that in order to ensure a better level playing field across the whole range of retail investment products, any principle regarding point of sale disclosure should apply at the onset to this whole range of products. Therefore, we are extremely surprised that the current Report submitted to *public consultation only focuses on Collective Investment Schemes (CIS)*. IOSCO mentions that '*the question of similar products may be considered at a later stage*'. We urge IOSCO to commit to widen its work to these similar products as soon as possible. When a retail investor is offered a product he should be informed on the same basis and in the same way whichever the retail investment product is, since from the investor's perspective the difference between the different types of products is not significant at first glance. As well there is no reason why similar information should not be available to an investor on all product types being offered, to permit a more informed, appropriate product choice to be made. Indeed, the vast majority of principles expressed by IOSCO in this Report could be applicable to this whole range of products and should not only target CIS.
3. While we generally support the IOSCO Principles expressed in this Report, we think that the Report may not sufficiently take into account the different distribution models which exist currently in the world. In some countries, distribution is mainly done through independent financial advisors while in other jurisdictions banking or insurance sales points are the primary or preferred channels. There are few common features between those different distribution models. Therefore the IOSCO principles on distribution should be reduced to those that are fundamental in order not to cause prejudice to any of the current distribution models.
4. We fully support IOSCO statements regarding financial education. Re-launching the work of IOSCO on this issue is crucial to enable retail investors to choose the right products or the level of service they desire. Instead of regulating more and more product manufacturers (and distributors), the main effort by IOSCO and other regulatory bodies at international, regional and local levels should be to improve investor education: although the information delivered may be right, if it is not understood because of the limits of investor financial education, no improvement will be achieved in practice. As you know, too much information kills

information: what is crucial is to deliver the right information, and for the investor to be able to understand not only this information but also all the elements surrounding this information, to make sure that it responds to his/her needs.

5. The notion of consumer testing, stressed by IOSCO, is of course laudable in principle but may lead to dangerous conclusions if it is not done appropriately and objectively. For instance, within the EU, the idea of a Synthetic Risk Reward Indicator in the UCITS simplified prospectus (“KID”) was presented to consumers through testing. Of course this notion on its face was appealing for consumers! But at the time this idea was submitted, European institutions had not yet set up any relevant and non-misleading methodology for such an indicator. Now that European investors have approved the idea, the principle of a synthetic indicator, even imperfect, is unfortunately to be applied – even though European institutions are still unable to provide for an appropriate methodology... The lesson is that consumer testing must be carried out in a careful and sensible way and that regulators should work in cooperation with the industry prior to such testing. Only this will ensure that investors benefit from the best measures applied afterwards.

Once again, we would like to thank you for the opportunity to allow for the investment funds industry to be heard.

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\*

We thank you in advance for your attention to 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](mailto:p.bollon@afg.asso.fr)) or Stéphane Janin, Head of International Affairs Division, at +33 1 44 94 94 04 (e-mail: [s.janin@afg.asso.fr](mailto:s.janin@afg.asso.fr)).

Sincerely,

Pierre BOLLON

## **ABS Feedback on Principles on Point of Sale**

### **Chapter I**

#### **1. Enhanced POS disclosures for CIS products**

- a. CIS product sales are mandatorily associated with comprehensive prospectus which are given to clients. Disclosures regarding sale are part of the sales documents specific to the Bank. Need to understand what potential new POS disclosures are being referred to.
- b. Agree with the point that any amount of disclosures do not help unless investors also read, comprehend, which is also linked to the financial literacy of the investors. While at specific product level – features & risks are explained and client seem to comprehend the product & acknowledge the risks. However, when the product underperforms or turns sour due to market conditions, it is often noted that investors highlight the lack of understanding post-facto. So, any efforts in this directions need to better clients' understanding & affirming the same pre-sale.
- c. Similar points being discussed in Chapters III, IV & V as well & same applies.

### **Chapter II**

#### **2. Need for effective disclosures / Fee arrangement / conflict of interest**

- a. Upfront Fees for CIS product sales are disclosed in sales documentations clearly at present, while prospectus/brochure would typically disclose the maximum upfront sales charge/commission chargeable by the distributor. Management Fee as well as total expense (measured as TER) is also disclosed in Prospectus. Distributor Trailer Fees paid to distributors from the Management Fee is not a standard across various distributors but they are still displayed at the branches as standard displays in the client areas, but, however, since this fee-sharing is within the Management Fee it is already part of the product disclosures in Prospectus/Brochure. There may be some slightly complex variety of CIS products (B-Shares, for example), which may have some layered fees (12-b1 as well as backend CDSC upon redemption), which clients need to comprehend over & above the standard upfront sales charge & Management

Fee/Fund TER. Besides, Hedge Funds may levy performance fee by the underlying managers beyond a watermark threshold of performance & in case of Fund of Funds, the fee layering comes into play, which information will be disclosed in the offering circular of the products. Similar points being discussed in Chapters V as well & same applies.

- b. But it is a good suggestion to have a prospectus summary (say, part of the Product Highlight Sheet) to disclose all key information, including but not limited to the fee information, and not relieve the responsibility of the clients to read the prospectus in its entirety. Similar points being discussed in Chapter VI as well & same applies.
- c. Consumer-friendly Prospectus simplification (with respect to content relevance, language, timeliness) is always welcome & useful for investors to understand the product & risks better prior to investments. Care to be taken not to oversimplify thus opening up further risks of non-disclosure or lack of details for investors to consider at POS.
- d. More illustrative documents with the use of colour, tabulation, charts & other graphic content facilitate understanding more effectively. A suggestion is for producers to have more illustrative (better even if animated, flash & more interactive, live content) product information on the websites on the nature & risks of the product.

## **Chapter V**

### **3. Producer disclosure versus Intermediary disclosure**

- a. Producer disclosure is expected to cover details about the various risks affecting the product, performance, cost, liquidity, exit-options, legality & operationability during different market/economic situations. Intermediary disclosures currently cover sales & services pertaining to intermediaries, including receipt/understanding of the product documents (prospectus, factsheet, brochure where applicable), distinction of investments from conventional bank products (deposits, etc), fee/cost relating to sale/holding of investments, transactionary constraints (if any), clients' right to cancel/cool-off period, etc.

- b. Suggestion for regulators to assess/research what specific information disclosure has been the point of contention among investors with respect to any perceived asymmetry in the information among market participants & then have proposal in increasing disclosures of CIS products vis a vis other financial products.
- c. Depending on the nature, quantum & delivery means of the additional POS disclosures, the cost impact may often factor into the pricing of the product at both producer & intermediary. On the other hand, benefits of any new disclosure is limited to the extent client acknowledges the comprehension of the same at POS, especially when investments have gone lower during down market conditions. So, balanced approach in weighing the two perspectives is useful & partially useful to channel the same efforts towards improving the investor knowledge & know-how by both producers & intermediaries.

## Chapter VI

### 4. Disclosure of key information & delivery

- a. Proof of delivery is mainly through explicit acknowledgement by clients for receipt & comprehension of the appropriate documents, Prospectus, PHS in future/key-info, etc), which is in effect currently. Any other form of proof should be evaluated for practicability from both client & intermediary perspectives.
- b. What constitutes conflict of interest as outlined here (inclination for intermediary to sell one product provider's products versus others) needs to be elaborated. Generally, product strategy takes into account a number of factors, including but not limited to, the current & prospective economic / market, products & fund managers of products well-positioned for such conditions, track record of the product / manager, specific risks involved & other specific product features with respect to the market conditions. Thus a particular manager with good track record & continuous demonstration of quality products & product suite well positioned for market conditions should not be misinterpreted for conflict of interest.



Luxembourg, 15 February 2010

## Public comment on IOSCO's Principles on Point of Sale Disclosure

### Introduction

1. ALFI represents the Luxembourg investment management and fund industry. It counts among its membership asset management groups from various horizons and a large variety of service providers. According to the latest CSSF figures, on 30 November 2010, total net assets of undertakings for collective investment were EUR 1.789 billion.
2. There are 3,473 undertakings for collective investment in Luxembourg, of which 2,097 are multiple compartment structures containing 10,875 compartments. With the 1,376 single-compartment UCIs, there are 12,251 active compartments in Luxembourg.
3. We thank IOSCO for the opportunity to participate in this consultation on principles on point of sale ("POS") disclosure. We welcome IOSCO's interest in this matter and we share IOSCO's desire for clear and accurate disclosure of information to retail investors in a form that helps them to understand a fund and to compare it to other funds that might be available to them. We thought that IOSCO's paper was very well written and we generally agreed with it.
4. We have included in our response references to relevant pages and paragraph numbers in IOSCO's paper.

### General points

5. We note IOSCO's statement that there is a challenge to identify "truly comparable products [to CIS] that are as popular with the retail investor" (page 2, penultimate paragraph). The insurance industry and the banking industry (the latter through certificates) compete with CIS for the same assets. The fact that the legal form of the products is different does not in our opinion diminish the reality of the competition. We therefore recommend that IOSCO encourages its members to do more work to make all investment products comparable, at least on fundamental elements required by investors such as returns, risk and cost (as highlighted by your research) in order to ensure a fair level playing field. We are concerned that the imbalance in regulation between CIS and competing products puts CIS at a material disadvantage.
6. We think that it is understandable that current regulatory discussion refers to the recent financial crisis (page 1, third paragraph) but we think that the reference should be used cautiously in the context of POS information. What can be foreseen and disclosed at the point *and time* of sale might be very different to what exists during a crisis. In our opinion, none but the most defensive POS documents would have accurately described the risks of 2008 except in the most general "boilerplate" manner, and regulators rightly do not want POS materials to use boilerplate language. We see an unavoidable dichotomy here: POS material cannot be brief (typically 2 sides of paper) *and* comprehensive, and it cannot resolve the information asymmetry that IOSCO described (page 4); it can only provide a good précis of a fund. We

believe that as a prerequisite to shorter and comparable information, more work has to be done on defining common terminology, product and risk segmentation, calculation methods and ways to determine what is "key" information.

7. Mandatory POS material can make information more accessible to retail investors who are not inclined to research a product fully and aid comparison with other products that are subject to the same mandatory POS regime. We support those aims but we think that it is important to recognise the limited utility of POS such as the European Key Investor Document ("KID") in solving information asymmetry problems. With the possible exception of information such as the synthetic risk indicator, information that will be published in the KID is already available at the point of sale in the prospectus, the application form and often in marketing material. Such mandatory POS material therefore cannot improve the quantity of information available. Nor can it improve the quality of information if the prospectus is well written (which it should be given that it is subject to the approval of IOSCO's members). We are concerned that the present regulatory emphasis on accessibility and brevity and the commonplace assumption in Europe that sales may safely be made on the basis of the KID alone creates a risk that the main prospectus will be deprecated. We believe that the prospectus is an important document, which cannot be satisfactorily replaced by a single POS document such as the KID, and we believe that the regulatory pressure upon the product producer in Europe to produce and be liable for a singular document will not uphold investors' interests in the long term.

8. Luxembourg is the world's premier domicile for cross-border investment funds and Luxembourg-domiciled UCITS are sold in many markets beyond Europe, notably in Asia, Latin America and the Middle East. We value our good relations with regulators and financial institutions in these markets and we regard our business with them as an exemplar of co-operation and cross-border trade. We hope that the introduction of the European KID will provide us with the opportunity to extend our co-operation and deliver the KID to local investors with minimal adaptation beyond translation into the local language. We invite IOSCO to encourage its members to facilitate the cross-border use of POS material in this way.

9. In our opinion, IOSCO has rightly avoided saying that POS information should be delivered in a single document and it has recognised that product producer and intermediary have separate POS disclosure obligations (pages 24 and 25), for which they are separately responsible. For example, we think that the following information cannot satisfactorily be provided by the product producer and is for the intermediary to provide:

- a. Investor tax advice (or a notice that the investor should seek specialised advice).
- b. Conflicts of interest at the point of sale (e.g., sales commission or other vested interest).

We might however suggest that the product producer be required to include clear language in its POS material drawing the investors' attention to these matters and inviting them to ask their intermediaries about them.

10. We think that, if proof of delivery of POS is required, it should be the responsibility of the intermediary/distributor that made the sale (page 25, Principle 2, first bullet point). It is not feasible to require the product provider or central transfer agent to keep this proof. Requiring the distributor to keep the proof is also compatible with MiFID.

11. We agree with IOSCO's view that scalar (synthetic) risk indicators have limitations (page 24, third bullet point).

12. We believe that most of the information described by IOSCO as "additional information" (page 24, eighth bullet point) can only practicably be included by a "layered" approach.

### **Points of uncertain understanding and requests for clarification**

13. We think that there are several points in the paper where it would help the reader if IOSCO clarified its advice:

a. We were uncertain what IOSCO meant when it said that an intermediary should "obtain additional product information independently rather than relying solely on the contents of the prospectus" (page 18, third bullet point). Does this mean the collection of performance history from a market data vendor? Does it refer to the audited reports and accounts? Does it imply an obligation on the intermediary to perform due diligence to ensure that the investment product is bona fide? We think that it is important that the intermediary should be obliged to ensure that any such information provided to the investor is consistent with the product's prospectus and is used in a way that does not misrepresent the product (e.g., with respect to benchmarks that are declared in the prospectus).

b. We understood the English but not the idea when IOSCO said, "regulators may want to consider whether an investor is in a position to make an informed decision about whether to invest before the point of sale" (page 25, Principle 2, third bullet point). Is this a continuation of IOSCO's earlier point about ensuring the delivery of POS material prior to investment (and evidence of delivery) or does IOSCO mean that regulators should consider measures to ensure that the intermediary has determined the product's suitability to meet the investor's need and whether the investor is capable of understanding the intermediary's advice?

c. We are uncertain what IOSCO meant when it said that product producers should take into account "whether the investment is recommended by the intermediary" (page 26, Principle 3, first bullet point). Is that meant to be a reference to whether the relationship is discretionary management or execution only? If it is an execution-only relationship, does IOSCO mean that the POS material must still be delivered to the client or that the intermediary is released from the obligation to do so? On the other hand, if IOSCO is referring to a discretionary mandate, then surely the intermediary would be released from the obligation to deliver POS material to its client unless the investment was outside of the terms of that mandate?



12 February 2010

Mr Mohamed Ben Salem  
Senior Policy Advisor  
IOSCO General Secretariat  
C / Oquendo 12  
28006 Madrid  
Spain

Dear Mr Salem

**Aviva Investors' Response to IOSCO's Public Comment on Principles on Point of Sale Disclosure**

Aviva plc is the world's fifth-largest<sup>1</sup> insurance group, the largest insurance services provider in the UK and is one of the leading providers of life and pension products in Europe and is actively growing its long-term savings businesses in Asia Pacific and the USA. Aviva's main business activities are long-term savings, fund management and general insurance.

Aviva Investors is the global asset management business of Aviva plc, managing assets in excess of £222 billion<sup>2</sup> across a range of funds and asset classes. The business operates under a single brand with 1,430 employees in 20 locations across North America, United Kingdom, Continental Europe, and Asia Pacific.

We welcome moves to improve clarity and consistency in disclosures for retail investors, subject to due cost benefit analysis. We consider it important that retail investors are given consistent and appropriate information in order to compare products and help them ensure they are investing in the best product for their circumstances. We note IOSCO's report proposes principles only in regard to collective investment schemes (CIS). These are only one type of product that retail investors may use to achieve their intended investment outcome and therefore, we support wider consideration taking into account all substitutable products, such as that being undertaken by the European Commission on Packaged Retail Investment Products.

The existing inconsistencies in disclosure across the retail market act as a barrier to the effective comparison of the characteristics of different product types and hence, to the quality of investor decision-making. However, it should be noted that increased transparency does not necessarily mean more information; the focus must be placed on content of the disclosure, rather than its quantity. Moreover, consideration needs to be given to the cost of the disclosure as there is potential for this to impact the cost of the product for the retail investor.

We recognise that there will be limitations to any approach to disclosure of key information in regard to CIS since retail investors are not homogenous. No solution can work well for every investor. Nonetheless, we believe that it is worthwhile working towards improving the effectiveness of such disclosures. Therefore, we are supportive of the principles proposed in this paper which we consider to be reasonable. It is our policy to support harmonisation of regulatory standards wherever possible in order to avoid competitive disadvantage and increased costs and therefore, we welcome IOSCO's initiative to propose these principles noting that consideration should be given to non-CIS products.

<sup>1</sup> Based on gross worldwide premiums for the year ended 31 December 2008

<sup>2</sup> As at 30 June 2009

We are generally supportive of the layered disclosure approach for retail investors. This approach can enable key summary information to be presented in a succinct and accessible manner, at an early stage in the sales process. When this is supplemented with additional, more detailed, information, it can help to ensure that retail investors have access to all the information needed to make an informed decision in a more easily digestible way than is the case presently in many jurisdictions. In addition, it has the benefit of avoiding the potential conflict that exists with a one stage disclosure regime, between providing all the required information for a retail investor to make an informed decision and ensuring the disclosure is understandable and usable. The cost/benefits of a layered approach are likely to be a key consideration for any regulator introducing that approach.

Please note that we ask for our submission to remain private and therefore, not be made available for public inspection.

Yours sincerely

A handwritten signature in dark ink, reading "Mark J. Buckley". The signature is written in a cursive style with a large, sweeping initial "M".

Mark Buckley  
Global Client Services Director

Dear Sirs.,

On behalf of ANBIMA (resulted from the merger of ANBID and ANDIMA in Brazil), we would like to register that the Consultation Report was analyzed by the associations' market participants and we agree with the principles proposed. In fact, all the principles proposed are in place in the Brazilian regulation, both governmental and voluntary, being most of the means of implementation suggested already in use in our market.

Kind regards,

► **Sergio Mello**

**ANBIMA - Associação Brasileira das Entidades  
dos Mercados Financeiro e de Capitais**

Fone: (55 11) 3471-4227 – Fax: (55 11) 3471-4230

[www.anbima.com.br](http://www.anbima.com.br)

Rabat, le 13 février 2010

**Principle 1 :**

*Key information should include disclosures that inform the investor of the fundamental benefits, risks, terms and costs of the product and the remuneration and conflicts associated with the intermediary through which the product is sold.*

**Commentary :**

The Moroccan regulation has established the information to be provided to investors at the time of subscribing to the mutual fund.

The information listed in Principle 1 are taken into account in the documents submitted by the the institution responsible for the sales of the mutual fund to subscribers when entering into a relationship with them. These documents provide information on the characteristics of the mutual fund (investment policy, benchmark, ...), operation (costs, allocation of profits, ...), its stakeholders (executives, capital, earnings, ...), the portfolio composition and the evolution of its activity. The objective is to give the subscriber all the elements necessary to evaluate the product and to assess the risk associated with it.

The information generated are included in the disclosure documents (management regulations or statutes, briefing and prospectus) and the activity reports of the mutual fund provided to subscribers prior to subscription.

The contents of this information differs depending on the product. Thus, more the risk is important more the information is developed: if the operations performed by a mutual fund generate conflicts of interest. The mutual fund shall also specify in the disclosure documents, the principles and rules established in order to protect the interests of subscribers.

It should be noted that the rules governing mutual fund are updated whenever necessary to incorporate new requirements for disclosure to investors, especially when creating new products.

**Principle 2 :**

*Key information should be delivered, or made available, for free, to an investor before the point of sale, so that the investor has the opportunity to consider the information and make an informed decision about whether to invest.*

**Commentaire :**

The Moroccan regulation has established that the institution responsible for the sales of the mutual fund provides to subscribers the backgrounders on the product. The regulation set the documents to be made available at the time of purchase (the disclosure documents and the latest periodicals of the mutual fund) indicating those to be delivered free of charge (the prospectus).

Moreover, to ensure that the subscriber has received the necessary information, subscribing to the mutual fund must be materialized by the signing of a subscription form in which the client declares having received the prospectus. A model for the subscription is provided by the regulator.

### **Principle 3 :**

*Key information should be delivered or made available in a manner that is appropriate for the target investor.*

#### **Commentary:**

In terms of modalities of communication of information necessary for the investor, the Moroccan regulation requires accuracy in the disclosure documents of the mutual funds related to the institution responsible for the sales, its managers and its address. Those responsible for marketing and coordinated are contained in the prospectus of the mutual fund discount when subscribing.

In addition, the media used must clearly state that the briefing is held available to the public for consultation in all institutions responsible for collecting subscriptions.

Moreover, the advertising media used for communication on the product have to be approved by the financial authority prior to their release.

### **Principle 4 :**

*Disclosure of key information should be in plain language and in a simple, accessible and comparable format to facilitate a meaningful comparison of information disclosed for competing products.*

#### **Commentary :**

The Control made by the financial authority concerns also the quality of information contained in disclosure documents of the mutual funds. It must be clear and understandable for all subscriber.

As a result, the Moroccan regulation has adopted the approach of standardization of information by developing a model type of the different documents and information in order to:

- Fix and organize information to be communicated to subscribers;
- Standardize the information given.

This approach aims to facilitate the exploitation of information by different categories of subscribers and the comparison of the different products offered.

**Principle 5 :**

***Key information disclosures should be clear, accurate and not misleading to the target investor. Disclosures should be updated on a regular basis.***

**Commentary:**

The Moroccan regulation provides that the information contained in the prospectus is written in a plain style, without mitigating the negative aspects or accentuate the positive aspect.

The funds administrator must update the disclosure documents when changes affect the information, including those related to product characteristics and its stakeholders. This update is subject to validation by the financial authority and must be published before its entry into force.

**Principle 6 :**

***In deciding what key information disclosure to impose on intermediaries and product producers, regulators should consider who has control over the information that is to be disclosed.***

**Commentary:**

The control of information is the responsibility of both the funds administrator, who prepare the background papers for subscribers and the institution responsible for the sales.

Indeed, the requirements of clarity, accuracy and consistency of the information contained in disclosure documents lies with the funds administrator that creates the product. The requirements of compliance of transmission and dissemination of this information lies with the promoter. The latter is responsible for clarifying and explaining to underwriters characteristics of products marketed, the risks and costs involved and the role of stakeholders in the functioning of the mutual fund and in accordance with what is stated in the documents information from the mutual funds. The marketer is also responsible for submitting the tax regime applicable under the legal regime of the mutual funds and the particular circumstances of the investor.

Thus, the Moroccan regulation provides for the formalization of the relationship between the establishment and management of the institution in charge of marketing. This formalization is materialized through the establishment of a contract that defines the duties and obligations of each party. This contract is approved by the Securities Commission before its implementation.

International Organization of Securities Commissions (IOSCO)  
To the attention of  
Mr Mohamed Ben Saleem  
Senior Policy Advisor  
Calle Oquendo 12  
28006 Madrid  
Spain

Brussels, 12 February 2010  
Ref. 10-1090

## **PUBLIC COMMENT ON PRINCIPLES ON POINT OF SALE DISCLOSURE**

Dear Mr Ben Saleem,

EFAMA<sup>1</sup> welcomes **IOSCO's Consultation Report on Principles on Point of Sale Disclosure** of November 2009 (the "Report"). We are grateful for the opportunity to submit comments on this consultation report.

EFAMA members congratulate the IOSCO Technical Committee for having approved the "Joint Project Specification on Point of Sale Disclosure to Retail Investors" in February 2007. They particularly supported that both SC5 (in charge of Investment Management) and SC3 (in charge of Market Intermediaries) were working together on this topic. They also welcomed that both product and distribution issues on the point of sale topic should be considered together. Equally, point of sale disclosure principles must take into account, and offer regulation that works within all modes of product distribution.

We allow ourselves to first briefly remind you of the regulatory framework for point of sale disclosure for CIS in Europe and then outline the comments of our members regarding the Report.

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<sup>1</sup> EFAMA is the representative association for the European investment management industry. It represents through its 26 member associations and over 40 corporate members approximately EUR 12 trillion in assets under management of which EUR 6.8 trillion was managed by approximately 53,000 funds at the end of September 2009. Just under 37,000 of these funds were UCITS (Undertakings for Collective Investments in Transferable Securities) funds. For more information about EFAMA, please visit [www.efama.org](http://www.efama.org).

## **I. Regulatory framework in Europe**

In Europe, retail CIS are already some of the most regulated products for point of sale disclosure. A large majority of European funds (at the end of September 2009, just under 37,000 of the 53,000 European funds) are incorporated as UCITS funds.

The UCITS and MiFID Directives (Directive 85/611/ECC as subsequently amended, Directive 2009/65/EC and Directive 2004/39/EC) are applicable to the distribution of these UCITS funds to retail investors. The UCITS III Directive (Directive 85/611/ECC as subsequently amended) provides among others that a Simplified Prospectus is to be provided to retail investors before purchase or subscription of a UCITS. The UCITS IV Directive (Directive 2009/65/EC) will bring the replacement of the Simplified Prospectus by the Key Information Document (KID). Furthermore, it should be pointed out that for most CIS, whether incorporated as UCITS or non-UCITS, at the point of sale the prospectus, the application form, marketing material and financial reports are available to investors.

The European Commission has recently published an update on its ongoing work on Packaged Retail Investment Products (PRIPs). The European Commission proposes harmonisation of the pre-contractual disclosure for key information documents and selling practices for retail investment products which are substitutes to CIS. The Commission's objectives are to ensure investor protection standards by creating a level playing field between different types of retail investment products. The benchmarks defined by the Commission are twofold: On the one hand, for pre-contractual disclosures the Commission aims for the application of a KID as developed for UCITS to all PRIPs. On the other hand, for selling rules the Commission wishes to achieve investor protection through the application of the conduct of business and conflicts of interest requirements laid down in MiFID to all PRIPs. The determination of products to be included is approached through a definition based on criteria as to the economic functioning of the product.

Furthermore, at a European Member States level, many initiatives have taken place or are taking place regarding the application of a level playing field among a wide range of investment products, in order for retail investors to be treated in a similar way whichever these products are. In France, for example, the so-called "Delmas-Marsalet Report" regarding the distribution of financial products highly contributed to this debate. The UK is currently also addressing the subject of distribution to retail investors. The UK has had a comprehensive disclosure regime for the majority of retail investment products, including CIS, for over 20 years. The UK regulator is also currently conducting a retail distribution review, which proposes a widening of the scope of retail investment products to which the disclosure regime will apply. This is expected to take effect from the end of 2011.

## II. Comments on IOSCO Consultation on Point of Sale Disclosure

### 1. *Extension of Recommendations to other Products*

The ongoing works at European level (please see above) seek retail investor protection not only in case of investment in CIS but in all substitutable retail investment products and independently of the sales channel. It is therefore disappointing that the IOSCO Consultation Report confines itself only to CIS. There is a statement in the Report that “the question of similar products may be considered at a later stage”. It is unclear why the principles proposed by IOSCO for disclosure of key information should not apply to the whole range of retail investment products.

Not extending the discussion on point of sale disclosure to all retail investment products will make the achievement of the objective of investor protection highly unlikely. CIS are already highly regulated and transparent retail investment products in particular compared to substitute products. If substitute investment products are subject to less stringent disclosure requirements, especially in the area of risks and costs, prospective investors may mistakenly believe that certain risks exist only in the area of CIS. Requirements applicable to CIS only could also create strong incentives for brokers and other intermediaries to recommend other investment products not subject to the same requirements, even when those products do not offer the same level of regulatory protection and other benefits to investors. In order to enable the consumer to make fair comparison of all substitute investment products at point of sale, IOSCO should widen the scope of its work to include all substitute investment products and thereby create a level playing field.

EFAMA members therefore strongly advise to opt for an all-encompassing approach for point of sale disclosure in order to avoid asymmetries in investor information. Only by requiring similar information for all retail investment products, independently of their legal form or distribution channel, IOSCO will put investors in a position to make a fully informed, appropriate product choice.

EFAMA members understand that there is a challenge to identify truly comparable products to CIS but nevertheless think that in order to achieve effective investor protection it is crucial that the IOSCO Principles proposed by the Report be applied to all substitute investment products.

### 2. *Different distribution models*

EFAMA members pointed out that many different distribution models currently exist worldwide. Distribution may be carried out through independent financial advisors, platforms or banking or insurance sales points. There are few common features between those different distribution models. EFAMA members believe that IOSCO principles on distribution should recognize that regulators should ensure that disclosure requirements are designed to minimize disruptions to the sales process.

*3. Documentation to be provided*

EFAMA members welcome the fact that IOSCO does not recommend that point of sale information should be delivered in a single document. It is important to recognise that product producer and intermediary have separate point of sale disclosure obligations for which they are separately responsible. The product producer, for example, being usually not in direct contact with the relevant investor, is not in a position to satisfactorily provide information on investor tax advice, commission and fees of distributors or sub-distributors, costs added to a product wrapper or conflicts of interest at the point of sale.

*4. Proof of delivery of Information*

EFAMA members pointed out that the product producer or a central transfer agent cannot be held responsible to provide proof of delivery of information at the point of sale. If proof of delivery of such documentation at the point of sale is required, it should be the responsibility of the intermediary/distributor that made the sale.

*5. Retail Investor Education*

It is welcomed that the IOSCO Report also addresses the issue of lack of retail investor education regarding financial products. EFAMA members agree that however disclosures are mandated, they will not have the intended effect if the investor does not either read or understand the information provided. Members appreciated the call to regulators “to consider measures to help improve retail investor education in order to enhance financial literacy and ability to read investment documentation and make informed decisions”.

EFAMA members also underline that in addition thereto, the investors will need enhanced ability to understand the product described in the investor documentation. Successive regulations have tried to simplify product disclosure to retail investors. But it has long been the case that, whilst retail investors might find the documents easier to read, they have lacked the financial education to understand the product itself.

*6. Consumer testing*

The notion of consumer testing or investor research, stressed by IOSCO, is very important. However, EFAMA members pointed out that any such testing or research must be well-designed and properly implemented in order to provide accurate and informative results.

*7. Requests for clarification*

Several points in the paper seemed unclear to our members and they were asking for clarification by IOSCO:

The recommendation stating that an intermediary should "obtain additional product information independently rather than relying solely on the contents of the prospectus" (page 18, third bullet point) remains vague and creates uncertainty over the obligations for the intermediary (in particular regarding the type of information concerned, its sources and the due diligence to be employed by the intermediary). Members voiced concerns regarding a potential inconsistency between such additional information and the product information included in the prospectus.

One of our members asked for clarification of the Principle 2 (page 25, third bullet point) that "regulators may want to consider whether an investor is in a position to make an informed decision about whether to invest before the point of sale". It wishes confirmation whether this is a continuation of IOSCO's earlier point about ensuring the delivery of point of sale material prior to investment and evidence of delivery.

We remain at your entire disposal should you wish to discuss any of the above comments or require any further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter De Proft', with a large, sweeping flourish extending to the right.

Peter De Proft  
Director General

**IOSCO consults on point of sale disclosure for Collective Investment Schemes –  
ASISA comments**

**Principle 1**

***Key information should include disclosures that inform the investor of the fundamental benefits, risks, terms and costs of the product and the remuneration and conflicts associated with the intermediary through which the product is sold.***

This is required to be disclosed on application forms and in fund fact sheets. In addition, FAIS requires disclosure of intermediary fees and CIS disclose the value on client statements. Refer to attached COLLECTIVE INVESTMENT SCHEMES CONTROL ACT 45 OF 2002 section 3(a) of CISCA.

**Principle 2**

***Key information should be delivered, or made available, for free, to an investor before the point of sale, so that the investor has the opportunity to consider the information and make an informed decision about whether to invest.***

This is required to be disclosed on application forms and in fund fact sheets. Refer to attached COLLECTIVE INVESTMENT SCHEMES CONTROL ACT 45 OF 2002 section 3(b) CISCA.

**Principle 3**

***Key information should be delivered or made available in a manner that is appropriate for the target investor.***

The code of advertising requires the use of plain language. Refer to attached COLLECTIVE INVESTMENT SCHEMES CONTROL ACT 45 OF 2002 section 3(b) of CISCA.

**Principle 4**

***Disclosure of key information should be in plain language and in a simple, accessible and comparable format to facilitate a meaningful comparison of information disclosed for competing products.***

This Principle is very much duplication of Principles 2 and 3 however this is Covered by section 3(b) of CISCA. I.e. The code of advertising requires the use of plain language.

**Principle 5**

***Key information disclosures should be clear, accurate and not misleading to the target investor. Disclosures should be updated on a regular basis.***

This is covered by COLLECTIVE INVESTMENT SCHEMES CONTROL ACT 45 OF 2002 section 3 of CISCA. Principle 5 sounds like a duplication of Principle 4 nonetheless.

## **Principle 6**

***In deciding what key information disclosure to impose on intermediaries and product producers, regulators should consider who has control over the information that is to be disclosed.***

Where CIS are sold directly to the investor by the manager the disclosures are made by the manager. However, where the CIS is sold through a LSIP platform the LSIP has to disclose the information required plus any additional advisor or platform administration charges.

In addition, the Report's examination of possible disclosure of key information has highlighted the following important points:

- No matter what disclosures are mandated, they will not have the intended effect if the investor either does not read and/or understand the information provided. Regulators should therefore consider measures to help improve retail investor education in order to enhance their financial literacy and ability to read investment documentation and make informed investment decisions;

Although this is covered by section 4(4)(f), ASISA has an investor education strategy by making material available through the press. Additional education material is available on the ASISA website. [www.asisa.co.za](http://www.asisa.co.za)

- In general, new POS disclosure requirements should not be imposed without the benefit of consumer testing or assessment to help determine the likely effectiveness of new disclosure requirements; and
- The principles set forth in this report may also be applicable to non-retail investors.

Mr Greg Tanzer  
Secretary General  
IOSCO  
Calle Oquendo 12  
28006 Madrid  
Spain

15<sup>th</sup> February 2010

Email: [posdisclosure@iosco.org](mailto:posdisclosure@iosco.org)

Dear Mr Tanzer,

**Principles on Point of Sale Disclosure: consultation report**

**General remarks**

1. The International Banking Federation (IBFed) welcomes IOSCO's public consultation on Principles on Point of Sale disclosure and it is very appreciative of the work conducted by IOSCO's Joint Group (i.e. TCSC3 and TCSC5) on this issue.
2. The IBFed is broadly supportive of the draft IOSCO principles put up for consultation. They are: (i) mindful of the need to ensure that disclosures for retail investors are effective; (ii) consistent with the existing disclosure requirements and modes of delivery in IOSCO jurisdictions; and (iii) cognisant of the special challenges faced by regulators.
3. The IBFed believes that regulators should be mindful of the importance of ensuring that point of sale disclosure is:
  - *Short and concise:* Information should be presented in a clear, succinct and concise manner. Disclosure documents should be produced in a way that permits its use on a stand-alone basis. Cross reference to additional, credible information resources may be included insofar as the quality and usefulness of the disclosure documents for consumers is not diminished.
  - *Product specific:* Point of sale disclosure documents should contain key information relevant to the product or investment, including features, benefits, risks,

performance/returns, fees and expenses<sup>1</sup>. Generic information or features that apply to all products of a class should not be required to be included.

- *Flexible*: Point of sale disclosure documents should allow product producers the opportunity for disclosure to be tailored to their different product offerings. Intermediaries should also be allowed to provide their own disclosures. Principles for disclosure should be mindful not to inadvertently establish practices that undermine innovation in products and delivery channels. That said, the IBFed is supportive of certain content and presentation-related standardisation of disclosures by product class (e.g. for collective investment schemes) as this can be helpful to allow consumers to compare similar products and investments.
4. In the view of the IBFed, these principles can be applied not just to disclosures on collective investment schemes but also to disclosures on other products that are specifically marketed or designed for retail investors.

### Specific remarks

5. On **Principle 1**, under ‘risk and reward profile’, the IBFed notes that those regulators considering the introduction of a scale to identify the overall risk measurement of the product (i.e. considering using a synthetic indicator expressing by the use of a single number of category the riskiness of an investment fund) should, in addition, permit the introduction of a supplementary short narrative description if the producer or distributor considers that such narrative is essential to investors’ understanding of the meaning and the limitations of the indicator used in that particular product.
6. The IBFed does not support the use of visual models, such as a risk measurement of a product using a ‘traffic light’ approach. This approach, inappropriately based on the assumption that all investors are equal, does not provide an accurate representation of the particulars of a product or investment, such as the service levels, but rather it may invoke an emotional and subjective impression, which ultimately may be misleading.
7. In connection to intermediary disclosures, the IBFed notes that IOSCO recommends that the particular arrangements between the product producer and any given intermediary (e.g. possible conflicts of interest, costs, etc.) should be disclosed. IOSCO however, takes no position on whether these disclosures should be part of a single document or be contained in different documents. The IBFed believes that intermediaries should be allowed to provide their own disclosures.
8. The IBFed believes that **Principle 2** should draw a clearer distinction between the obligation to ‘deliver’ and the obligation to ‘make available’ the disclosed information. Delivery means that the distributor has to actively ensure the investor has received the document in the context of an actual advice situation (i.e. delivery → receipt). On the contrary, ‘making available’ means that the documents do not necessarily have to be actively provided, for example in the case of distribution through internet. As a consequence of this distinction, the IBFed believes that the product producer or the intermediary should *not* be requested to retain ‘appropriate and sufficient’ documentation to prove that the investor has had access to the disclosure information. It is important for

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<sup>1</sup> The IBFed notes that the full range of fees and expenses will often vary according to the method of distribution e.g., direct or through intermediaries.

disclosure principles to support leveraging online disclosure and innovation in other electronic delivery channels. In any event, the IBFed notes that IOSCO has refrained from providing practical guidance regarding what can be considered ‘appropriate and sufficient’ documentation.

9. With regard to the manner in which key information should be delivered or made available (**Principle 3**), IBFed members very much favour electronic media. The IBFed would still support delivery of key information in writing and free of charge upon an investor’s request provided that request is *also* made in writing (i.e. by non-electronic means). IBFed also believes that reasonable timeframes for information being freely and readily available should be considered. Information otherwise should be retained commensurate with statutory record keeping requirements.
10. However, IBFed believes that where products are fully online or electronic only, there should not be an obligation to provide consumers with access to paper-based disclosures. Consumers that have chosen to take up an offer for a fully online or electronic only product should be taken as having provided consent to receiving disclosures via electronic media. While banks and their customers should have flexibility in the methods and mechanisms used to receive disclosures and notifications, regulators should take a pragmatic view which facilitates innovation in products and delivery channels.
11. As regard **Principle 4**, the IBFed would like to highlight that the use of plain language in the disclosed information should not have as a primary aim the facilitation of meaningful comparison with competing products but rather the full understanding of that product. In addition, the IBFed considers that regulators should discourage lengthy disclosure documents when written material is used. Short disclosures are crucial to inviting an understanding of the product. Maximum page lengths are inevitably arbitrary. Care must be taken so that this limitation does not undermine the usefulness of the disclosed information.
12. In connection to **Principle 5**, IBFed is supportive of IOSCO’s pragmatic view about product issuers’ being required to revise and update key information and the recommendation to make this up-to-date information available on their website. Notably, the IBFed is supportive of IOSCO’s position *not* to recommend that the product producer or the intermediary deliver updated disclosures to the investor on a continuous basis. Additional information may be provided in a supplementary manner or via the Internet.
13. Lastly, the IBFed concurs with the view of IOSCO that the split of responsibility between product producers and intermediaries for disclosing key information must take into account what party has control over the information that is to be disclosed (**Principle 6**). In that regard, the IBFed supports IOSCO’s sensible stance not to be prescriptive as the role and tasks of intermediaries among IOSCO jurisdictions varies.

## Conclusion

14. The IBFed is broadly supportive of the draft IOSCO principles on point of sale disclosure. The IBFed notes, nonetheless, that certain aspects of the Principles could be further refined to iron out some issues that may complicate the practical application of the

principles by product issuers across jurisdictions as well as enforcement of these principles by regulators. It is important that the disclosure principles adopt a high-level approach so that unnecessary regulatory burdens and compliance costs for product producers and/or intermediaries are minimised.

Yours sincerely,

Handwritten signature of Sally Scutt in black ink.

Sally Scutt  
Managing Director  
IBFed

Handwritten signature of Pierre de Lauzun in black ink.

Pierre de Lauzun  
Chairman  
IBFed Financial Markets Working Group



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February 9, 2010

Via Electronic Mail (posdisclosure@iosco.org)

Mr. Mohamed Ben Saleem

Senior Policy Advisor

International Organization of Securities Commissions (IOSCO)

Calle Oquendo 12

28006 Madrid

Spain

*Re: Public Comment on Principles on Point of Sale Disclosure*

Dear Mr. Ben Saleem:

The Investment Company Institute<sup>1</sup> (“Institute”) welcomes the opportunity to comment on the IOSCO Technical Committee’s consultation report, Principles on Point of Sale Disclosure, which proposes a set of principles for disclosure of key information relating to collective investment vehicles (“CIS”) designed to assist markets and market authorities when considering point of sale disclosure (the “Report”).<sup>2</sup> The Report analyzes issues related to the availability of key CIS information prior to the point of sale (“POS”), defined generally as the moment at which a request to purchase is made by an investor,<sup>3</sup> and sets forth six principles to guide regulators. The Report is not intended to address issues related to suitability or all disclosure obligations of an intermediary.

The Institute has the following comments on the Report:

- We strongly object to principles for disclosure of key information that are limited to CIS; instead, they should be applicable to all investment products offered to retail investors. Investors need clearly disclosed, key information about the range of investment products that may be offered by an intermediary.

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<sup>1</sup> 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 \$11.82 trillion and serve almost 90 million shareholders.

<sup>2</sup> The Report is available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD310.pdf>.

<sup>3</sup> Report, page 1 and note 3.

- We strongly support the Report's conclusion that POS requirements should not be imposed absent investor research; we believe, however, that such research must focus on all retail investment products and not solely CIS. Accordingly, the Report should recommend that regulators undertake POS research for all retail investment products prior to the development of any new POS requirements.
- The Report should include a principle stating that regulators should ensure that POS disclosure requirements are designed to minimize disruptions to the sales process to the extent possible.

We describe our views in more detail below.

### The Report's Principles Should Not Be Limited to CIS

The Institute supports the availability of clearly disclosed, key information to inform investors and has conducted extensive research on investor information preferences. We firmly believe, however, that limiting disclosure requirements to CIS provides incomplete investor protection and may in practice disserve investors. Applying different requirements to only certain retail investment products, such as CIS, could create strong incentives for financial intermediaries to recommend other investment products not subject to those requirements – even when those products may not be the best fit for an investor.<sup>4</sup> The policy goals underlying the Report's principles – assuring that investors understand their investment and the intermediary's remuneration – are no less valid for other types of investments. If investors would benefit from receiving certain information at a specific time in the sales process, providing that information should be required for all retail investment products, not just CIS.

The Report highlights the importance of making key CIS information available to investors before the point of sale. As stated above, we do not see a basis for solely applying the principles for disclosure of key information to CIS because clearly disclosed, key information regarding an investment should be available to investors for all retail investment products. We note that, in the United States, disclosure rules have recently been amended to further simplify and refine the summary section of the mutual fund prospectus and to provide funds with the option to deliver a summary prospectus in lieu of the full prospectus.<sup>5</sup> The EU and Canada are

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<sup>4</sup> Regulators and consumer advocates in the U.S. have also expressed concerns about this result. *See, e.g.*, Remarks by Robert Glauber, Chairman, NASD, at the Investment Company Institute's 2006 General Membership Meeting (May 18, 2006), available at <http://www.finra.org/PressRoom/SpeechesTestimony/RobertR.Glauber/p016642> (stating that “[a]n investor should be sold a security because it's right for him or her, not because it's easier to sell than something else”); and Remarks by Barbara Roper, Director of Investor Protection, Consumer Federation of America, at the Securities and Exchange Commission 12b-1 Roundtable, Unofficial Transcript, p. 196, available at <http://www.sec.gov/news/openmeetings/2007/12b1transcript-061907.pdf> (stating that, by considering certain fee disclosures as “a mutual fund issue, instead of a broker compensation issue, sort of more holistically, you run the risk that you make mutual funds less attractive to sell. And I think that would be a very bad thing.”).

<sup>5</sup> *See* Enhanced Disclosure and New Delivery Option for Registered Open-End Management Investment Companies, SEC Release No. 33-8998 (Jan. 13, 2009), available at <http://www.sec.gov/rules/final/2009/33-8998.pdf>.

also in the process of adopting regulations requiring disclosure of simplified, key information for CIS. We believe that these concise disclosure documents may serve as a good model when developing product-specific aspects of simplified disclosure for other retail investment products.

### The Report Should Recommend POS Research for All Retail Investment Products

We are pleased that the Report recommends the use of investor research in the development of any new point of sale requirements. We strongly support the use of research in helping to develop and inform efforts to improve disclosure. Indeed, extensive research formed the basis for the 2009 revisions to the prospectus rules for U.S. mutual funds.<sup>6</sup> Similar efforts to conduct investor research and simplify disclosure have occurred in other jurisdictions, such as the European Union and Canada.<sup>7</sup> Particularly in the context of POS, it is imperative that regulators understand both the information needs of investors as well as the sources from which investors obtain that information before seeking to modify requirements for the content or the delivery of disclosure. It is equally important for regulators to study the ways in which retail investment products are sold to investors.<sup>8</sup>

Investor research regarding these matters must not be limited to CIS. Investors are confronted with an expanding array of investment options, some of which are quite complex. Many share key characteristics, but the differences can be significant. An examination of product information and distribution in the context of all retail investment products will help

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<sup>6</sup> See, e.g., Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, SEC RELEASE NOS. 33-8861 AND IC-28064 (JULY 31, 2008), AVAILABLE AT [HTTP://WWW.SEC.GOV/RULES/PROPOSED/2008/33-8949.PDF](http://www.sec.gov/rules/proposed/2008/33-8949.pdf); Final Report: Focus Groups on a Summary Mutual Fund Prospectus, Prepared for the Securities and Exchange Commission, May 2008; Transcripts: Focus Groups on a Summary Mutual Fund Prospectus, Prepared for the Securities and Exchange Commission, May 2008; Mandatory Disclosure Documents Telephone Survey, Submitted to the Securities and Exchange Commission, July 30, 2008; Investment Company Institute, Investor Views on the U.S. Securities and Exchange Commission's Proposed Summary Prospectus (March 14, 2008), available at [http://www.ici.org/pdf/ppr\\_08\\_summary\\_prospectus.pdf](http://www.ici.org/pdf/ppr_08_summary_prospectus.pdf); Barbara Roper and Stephen Brobeck, Consumer Federation of America, Mutual Fund Purchase Practices (June 2006), available at [http://www.consumerfed.org/pdfs/mutual\\_fund\\_survey\\_report.pdf](http://www.consumerfed.org/pdfs/mutual_fund_survey_report.pdf); Investment Company Institute, Understanding Investor Preferences for Mutual Fund Information (August 2006), available at [http://www.ici.org/stats/res/1rpt\\_06\\_inv\\_prefs\\_full.pdf](http://www.ici.org/stats/res/1rpt_06_inv_prefs_full.pdf); Investment Company Institute, Ownership of Mutual Funds and Use of the Internet, 2006, Research Fundamentals, Vol. 15, No. 6, October 2006, available at <http://www.ici.org/pdf/fm-v15n6.pdf>; Investment Company Institute, Understanding Shareholders' Use of Information and Advisers (April 1997), available at [http://www.ici.org/stats/res/arc-dis/rpt\\_undstnd\\_share.pdf](http://www.ici.org/stats/res/arc-dis/rpt_undstnd_share.pdf).

<sup>7</sup> See, e.g., Report, Annex A – Research Summary; UCITS Disclosure Testing Research Report, IFF Research and YouGov (prepared for the European Commission) (June 2009), available at [http://ec.europa.eu/internal\\_market/investment/docs/other\\_docs/research\\_report\\_en.pdf](http://ec.europa.eu/internal_market/investment/docs/other_docs/research_report_en.pdf).

<sup>8</sup> We stress that cost-benefit analysis is also an important component of this work, as acknowledged in the Report. See, e.g., Investment Company Institute, Cost-Benefit Analysis of the Summary Prospectus Proposal (Feb. 28, 2008), available at [http://www.ici.org/pdf/rpt\\_08\\_cost\\_benefit\\_analysis.pdf](http://www.ici.org/pdf/rpt_08_cost_benefit_analysis.pdf).

regulators develop rules to ensure that investors receive both appropriate investment recommendations as well as clearly disclosed, key investment product information.<sup>9</sup>

A recent bill passed by the United States House of Representatives includes provisions setting forth a sound framework for approaching an examination of retail investment products and the provision of documents or information to retail investors prior to the purchase of investment products or services.<sup>10</sup> The bill would require the U.S. Securities and Exchange Commission (the “SEC”) to publish a study that examines:

- the nature of a “retail customer;”
- the range of products and services sold or provided to retail customers and the sellers or providers of such products or services within the SEC’s jurisdiction;
- how such products and services are sold or provided to retail investors, the fees charged for such products and services, and the conflicts of interest that may arise during the sales process or the provision of services;
- information that retail customers should receive prior to purchasing each product or service and the appropriate person or entity to provide such information; and
- ways to ensure that, where possible, reasonably similar products and services are subject to similar regulatory treatment, including with respect to information that must be provided to retail customers prior to purchase of such products and services and how such information is provided.

In addition, before promulgating any rules to require a person or entity to provide designated information to retail customers prior to the purchase of investment products or services, the SEC must take into account the study findings and the need for such documents to be consistent and comparable across products or services. Further, any such rules must reduce, to the extent possible, disruptions to the purchase process such as by permitting required disclosures to be made via the Internet. We support this type of research and believe it will help ensure that any new disclosure requirements best serve to protect investors.

#### Include a Principle Regarding Minimizing Disruptions to the Sales Process

The Report should, in our view, include a principle stating that regulators should ensure that POS disclosure requirements are designed to minimize disruptions to the sales process. As stated above, the recent bill passed by the U.S. House of Representatives would require the SEC’s rules to be cognizant of potential disruptions to the purchase process, a requirement that we support.

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<sup>9</sup> See Letter from Elizabeth Krentzman, General Counsel, Investment Company Institute, to Mr. Jonathan Katz, Secretary, U.S. Securities and Exchange Commission, dated Apr. 4, 2005, [http://www.ici.org/statements/cmltr/2005/05\\_sec\\_pos\\_com.html#TopOfPage](http://www.ici.org/statements/cmltr/2005/05_sec_pos_com.html#TopOfPage), commenting on the Securities and Exchange Commission’s proposed confirmation and point of sale disclosure rules.

<sup>10</sup> See Wall Street Reform and Consumer Protection Act of 2009, H.R. 4173, Section 7104, available at [http://financialservices.house.gov/Key\\_Issues/Financial\\_Regulatory\\_Reform/FinancialRegulatoryReform/hr4173eh.pdf](http://financialservices.house.gov/Key_Issues/Financial_Regulatory_Reform/FinancialRegulatoryReform/hr4173eh.pdf).

Mr. Mohamed Ben Saleem

February 9, 2010

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In many jurisdictions sales of retail investment products occur through various means, including by telephone or over the Internet, rather than through face-to-face meetings. Requiring the physical transfer of a document would make it substantially more difficult for an investor to accomplish a purchase and could create strong incentives for intermediaries to recommend other products not subject to such a requirement. Any POS disclosure requirement should provide investors with timely and convenient access to the required information without impeding investors' ability to conduct transactions and without imposing inappropriate costs and burdens on intermediaries.

\* \* \* \* \*

In conclusion, the Institute supports efforts to improve disclosure for investors and particularly research efforts that help the market and regulators better understand investors' information needs for all investment products, as well as how they receive or could receive such information. As described above, we believe solely focusing on CIS is inappropriate and incomplete and does not best serve investors. If a regulator considers it beneficial for investors to receive certain information at a specific point in the transaction process, we believe that investors should receive the benefit of having that same type of information for all retail investment products.

We appreciate the opportunity to express our views and invite you to contact me at 202-326-5813 or Eva Mykolenko at 202-326-5837 if you have any questions about our comments.

Sincerely,

/s/ Susan M. Olson

Susan M. Olson  
Senior Counsel – International Affairs



THE INVESTMENT FUNDS INSTITUTE OF CANADA  
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA

**BY EMAIL: [posdisclosure@iosco.org](mailto:posdisclosure@iosco.org)**

February 12, 2010

Mohamed Ben Saleem  
Senior Policy Advisor  
International Organization of Securities Commissions (IOSCO)  
Calle Oquendo 12  
28006 Madrid Spain

**Dear Sirs/Mesdames:**

**Re: Public Comment on Principles on Point of Sale Disclosure**

We are writing to provide the comments of Members of the Investment Funds Institute of Canada (“IFIC”) with respect to the *Consultation Report on Principles on Point of Sale Disclosure* (the “Paper”) produced by IOSCO’s Technical Committee’s Standing Committee on the Regulation of Market Intermediaries (TCSC3) and its Standing Committee on Investment Management (TCSC5) group in November 2009.

IFIC is the national association of the Canadian investment funds industry. Our membership comprises mutual fund management companies, retail distributors and affiliates from the legal, accounting and other professions from across Canada.

We are pleased to be able to provide a view from Canadian investment funds managers and dealers on the important issues raised in the IOSCO Paper.

#### **GENERAL COMMENTS**

We recognize the importance of developing principles surrounding effective disclosure to investors for all investment products. We fully support measures that allow for investors to receive more meaningful disclosure for all investment products.

We support IOSCO’s definition of delivery of disclosure documents to include the possibility of “making them available”. In Canada, in the recently published *CSA Notice and Request for Comment – Implementation of Point of Sale Disclosure for Mutual Funds* (the “Proposal”) regulators have not accepted “availability” as constituting delivery. They have adopted a more restrictive definition of delivery, requiring the dealer to deliver or send to the purchaser the relevant disclosures and to bring these documents to the attention of the purchaser before transacting. The industry has advised the Canadian regulators of significant technological, operational and compliance costs that would result from the changes to sales processes implied by these delivery requirements. These additional requirements do not apply to other products which compete directly with mutual funds and segregated funds. The Proposal would create the potential for product/securities arbitrage, ultimately undermining the mutual fund product to the advantage of other products traded in real time on exchanges and over the counter – principally stocks, bonds and exchange traded funds (ETFs). The international standard for delivery

proposed by IOSCO, in our view, poses fewer problems of product arbitrage than the present Canadian Proposal.

It is our view that the Paper provides a very good summary of disclosure issues commonly encountered internationally. Where we find the Paper falls short, however, is in its lack of focus on the institutional and historical differences that lead to different disclosure regimes such as diversity of distribution channels, diversity of financial institutions, investor preferences, and comfort with the use of new technology. These differences lead to the observed different regulatory treatments across jurisdictions, and show why a “one-size-fits-all” approach for all markets may not be a desired outcome.

Before moving in the direction of international standards of regulation, as identified in the Paper, countries should be cautioned that they should proceed only on evidence that the benefits of such action will outweigh the costs, and that any potential unintended consequences of such action are fully understood. It is essential that regulators conduct comprehensive quantitative research on the impacts of new standards and regulations before implementing them in the marketplace. Regulators should be cautioned against regulatory actions that would advantage one product or distribution channel over another.

We do not believe that the costs of regulatory change, and in particular the highlighted differences in regulatory regimes between Canada and other countries such as Canadians’ widespread use of financial advisors, use of the Internet, preference for sales over the phone, and the considerable body of research available on Canadian investors, are adequately described in this Paper. We are pleased to provide specific examples below.

## **SPECIFIC COMMENTS**

The Paper studies various methods of point of sale disclosure in various international jurisdictions. However, there is no discussion or evidence of regulatory failure to suggest the preference of one regulatory approach over another. Specifically, the Paper does not identify what regulatory issues, or harm to investors, arise in jurisdictions where disclosure regimes do not require pre-sale delivery of disclosure documents for mutual funds.

None of the studies summarized in Annex A of the Paper supports the view that investors would prefer a regulatory regime requiring the presentation of written disclosures to a client before a transaction is allowed to proceed over a regime allowing for client choice. The Canadian Proposal, which is referred to in the Paper, also has no underlying research in support of mandatory pre-sale delivery. The Canadian regulators have instead relied extensively on qualitative focus group testing of the actual document as justification of the fundamental changes to the sales process that this regulation will bring about. As noted in the IOSCO Paper, “the methodological limitations of such research can make it difficult to generalize findings, or to make assumptions on the likely impact of particular documents on consumer behavior.” In contrast, there is ample third party evidence from the Canadian market which supports the view that investors would prefer a regime with choice over one with mandatory pre-sale requirements.<sup>1 2</sup>

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<sup>1</sup> IFIC Mutual Fund Investors in Canada: Fourth Annual Landscape Study (“IFIC Study”); <https://www.ific.ca/workarea/DownloadAsset.aspx?ID=3704> at p. 14

<sup>2</sup> Mutual Fund Point of Sale Poll, Environics Research Group, 2007

The Paper unfairly places advisors in a negative light. Research from Canada shows that the majority of mutual fund investors uses an advisor and are satisfied with the service they receive. For example, research conducted by independent polling company Pollara on behalf of IFIC (the “IFIC Study”) shows that investors are pleased to work with their advisors to determine what investments best meet their needs.<sup>3</sup> We note that the Paper lacks reference to research on how investors actually use the information they are provided with respect to investments. The IFIC study shows that investors currently feel they have the right information to make investment decisions at very high levels of satisfaction.<sup>4</sup>

The Paper mentions the IFIC Study finding that almost all surveyed Canadian investors in mutual funds say that they felt comfortable that they had the right information to make an informed decision about investing in mutual funds. This finding is referred to, however, as an example of consumers being overconfident and making bad investment decisions. This is not the interpretation that most readers would have of this result. In fact, it shows that consumers, most often with the help of their advisors, are getting the right amount of information to make investment decisions, and that after the fact when they are asked about it speak highly of their experience. This finding has been observed in a market without mandatory pre-sale disclosures.

In Section III, Point 24 of Annex A the authors refer to the Canadian Study finding that mutual fund investors in Canada have lower levels of electronic information usage and comfort levels. We are concerned with the usage of data from 2006 to argue against electronic access to documents when there have been year over year increases in adoption rates of the Internet. Recent figures on Internet usage show an 84% penetration rate for Canada<sup>5</sup>, among the highest in the world, and penetration rates that are the highest in the world for those above the age of 60.<sup>6</sup>

In Section V of Annex A the Paper discusses limitations of consumer decision making. These are well known and documented biases which affect the financial decision making of many individuals. What is left unsaid in this analysis, however, is that these limitations of consumer decision making are precisely the reasons why many investors choose to invest with the counsel of a professional advisor. The section, however, appears to question how much an individual should trust the recommendations of an advisor, and to suggest that additional written disclosure is an alternative to advice. The Canadian research points very conclusively to the high degree of reliance that investors place on advice and the high levels of satisfaction they derive from it.<sup>7</sup>

The Cost/Benefit section of the Paper refers to direct costs, both on-going and initial, of moving to a new regime, and indirect costs (and benefits) of readier access to information about costs and conflicts, possible impacts on the way funds compensate sellers, and costs and benefits of duplicative disclosure. This, we believe, is an incomplete analysis of the costs of introducing new regulation in this area. We recommend that the IOSCO Paper include product arbitrage as a major consideration in the assessment of costs and benefits of implementing regulation in this area. This aspect of cost does not appear to have been fully considered in the development of the Canadian proposal.

The Paper does not address the potential for behavioral change in its cost/benefit analysis. Any change to an established rule or regulation creates the potential for behavioral change of market

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<sup>3</sup> IFIC Study at p. 4 and 11

<sup>4</sup> IFIC Study at p. 11

<sup>5</sup> <http://www.internetworldstats.com/am/ca.htm>

<sup>6</sup> <http://www.newswire.ca/en/releases/archive/September2008/24/c7832.html?view=print>

<sup>7</sup> IFIC Study at p. 11

participants. Investors should not be persuaded to seek other investment choices due to the increased costs faced by mutual funds and segregated funds that are not borne by other investment products.

In addition to the potential for product arbitrage and behavioral change having negative impacts for investors, regulators should also consider the impact of proposed regulations on the competitive landscape. We have advised the Canadian securities regulators that their Proposal raises a number of concerns with respect to its differential impact on different business models that exist within the industry. This should be a concern to regulators because investors will have reduced choices available to them. For example, because of additional costs of compliance, which may be considerably higher for certain distribution models than others, the impact of the Proposal will fall unevenly on distribution channels – causing distributors of third party funds to stay within one or two fund families rather than provide the existing wider shelves of third party product while still maintaining their regulatory obligations. The resulting narrowing of shelves will increase the competition for shelf space and will favour fund companies with integrated distribution capabilities over those who rely exclusively on third party distribution. These differential business impacts limit investor choice – an impact also not considered in the Paper.

We believe that the unintended consequences of product arbitrage, behavioral change and reduced investor choice of regulatory changes in this area can be significant. We believe that these costs have not yet been fully considered in the development of the proposed Canadian regulation. This is an element of the Canadian Proposal which we feel has not been adequately reflected in the Paper's references to Canada, or in its proposed disclosure principles. Guidance from IOSCO to its constituent regulators on the need to be mindful of unintended consequences such as these would provide a valuable contribution to the policy debate on this issue.

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Thank you for providing us with an opportunity to comment. If you have any questions regarding this submission, please contact me directly by phone at 416-309-2300 or by email at [jdelaurentiis@ific.ca](mailto:jdelaurentiis@ific.ca) or Jon Cockerline, Director, Policy – Dealer Issues by phone at 416-309-2327 or by email at [jcockerline@ific.ca](mailto:jcockerline@ific.ca).

Yours truly,

***The Investment Funds Institute of Canada***



By: Joanne De Laurentiis  
President & Chief Executive Officer



Sent via email: [posdisclosure@iosco.org](mailto:posdisclosure@iosco.org)

February 15, 2010

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

Dear Mr. Ben Salem,

We thank the International Organization of Securities Commissions (IOSCO) for providing the opportunity to submit comments on the Consultation Report regarding '*Principles on Point of Sale Disclosure*', issued last November.

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

1. We applaud the IOSCO Technical Committee for having approved the *Joint Project Specification on Point of Sale Disclosure to Retail Investors* in February 2007. In particular, we support the fact that both SC5 (in charge of Investment Management) and SC3 (in charge of Market Intermediaries) are working together on this topic. We also support considering together both product and distribution issues on the point of sale topic. Equally, point of sale disclosure principles must take into account, and offer regulation that works within, all modes of product distribution.

2. We believe that it is important to note that in some countries, distribution is mainly done through independent financial advisors while in other jurisdictions banking or insurance sales points are the primary or preferred channels. There are few common features between those different distribution models. We therefore encourage IOSCO to recognize in the principles that regulators should ensure that disclosure requirements are designed to minimize disruptions to the sales process.
3. We disagree with the IOSCO Technical Committee's decision not to extend the discussion on point of sale disclosure to retail investment products other than Collective Investment Schemes (CIS). As the objective of the point of sale disclosures is to assist retail investors, not extending the discussion to all retail investment products raises key concerns of investor protection. If "substitute" investment products are subject to less stringent disclosure requirements, especially in the area of risks and costs, prospective investors may mistakenly believe that certain risks exist only in the area of CIS. In fact retail investment funds are already highly regulated and transparent retail investment products and any principles regarding point of sale disclosure should apply consistently to a whole range of products. Also, requirements applicable to CIS only could create strong incentives for brokers and other intermediaries to recommend other investment products not subject to the same requirements, even when those products do not offer the same level of regulatory protection and other benefits to investors.

We therefore strongly urge IOSCO to develop an all-encompassing approach for point of sale disclosure in order to avoid asymmetries in investor information and to better position investors to make fully informed, appropriate product choices by requiring similar information for all retail investment products. Indeed, the vast majority of the principles expressed by IOSCO in this Report could be applicable to this whole range of products and should not target only CIS. In this regard, some investment fund associations have had disappointing experiences with regulators implementing point of sale disclosure changes that were intended (as in the Joint Project Specification) to be applied to all retail products, but which ultimately were applied solely to CIS to date.

4. We fully support IOSCO statements regarding financial education. Re-launching the work of IOSCO on this issue is important for helping investors understand investment products and enabling them to better identify appropriate products or the desired level of service for their goals. We support efforts by IOSCO and other regulatory bodies at international, regional and local levels to improve investor education.
5. We fully support consumer testing and investor research, as stressed by IOSCO. However, any such testing or research must be well-designed and properly implemented in order to provide accurate and informative results. To be meaningful, it should also only be carried out once underlying calculation methodologies for any elements of the key information have been fully developed.

We also refer you to the individual investment fund association letters submitted to IOSCO which may provide more detail on association experiences or additional comments. Once again, we thank you for the opportunity to be heard.

We invite you to contact any of the undersigned if you wish to discuss our comments or if we can be of further assistance. For your convenience, you may direct any inquiries care of Ralf Hensel at [rhensel@ific.ca](mailto:rhensel@ific.ca).

Yours very truly,

Asociación de Administradoras de Fondos Mutuos de Chile (AAFM)  
Association for Savings & Investment S.A. (ASISA)  
Association Française de la Gestion financière (AFG)  
Association of the Luxembourg Fund Industry (ALFI)  
BVI Bundesverband Investment und Asset Management e.V. (BVI)  
European Fund and Asset Management Association (EFAMA)  
Hong Kong Investment Funds Association (HKIFA)  
Investment Company Institute (ICI)  
Investment Management Association (IMA)  
Irish Funds Industry Association (IFIA)  
Securities Association of China (SAC)  
Swedish Investment Funds Association (SIFA)  
Swiss Funds Association (SFA)  
The Investment Funds Institute of Canada (IFIC)  
The Investment Trusts Association, Japan (JITA)  
Vereinigung Österreichischer Investmentgesellschaften (VÖIG)

12 February 2010

Mohamed Ben Saleem  
Senior Policy Advisor  
International Organization of Securities Commissions (IOSCO)  
Calle Oquendo 12  
28006 Madrid  
Spain

Dear Mr Saleem,

**IOSCO Consultation Report:  
Principles on Point of Sale Disclosure**

The IMA welcomes the opportunity to submit comments on this consultation report representing, as it does, the UK-based investment management industry. Our members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of over £3 trillion of funds, including authorised investment funds, institutional funds, private client accounts and a wide range of pooled investment vehicles. In particular, our Members represent 99% of funds under management in UK-authorised investment funds (i.e. authorised unit trusts and open-ended investment companies).

It is in their capacity as managers of regulated retail investment funds that our members have a particular interest in IOSCO's work on point of sale disclosure. IMA supports the response from the International Investment Funds Association, but has some additional points to make from UK experience.

The UK has had a comprehensive disclosure regime for the majority of retail investment products, including CIS, for over 20 years. The UK regulator is also currently conducting a retail distribution review, which proposes a widening of the scope of retail investment products to which the disclosure regime will apply. This is expected to take effect from the end of 2011.

UK CIS that can be marketed to retail investors are also subject to European legislation (the so-called UCITS III Directive), which requires, *inter alia*, that a "Simplified Prospectus" is given to the retail investor before purchase. Indeed, the UCITS IV Directive, which is due come into force in 2011, proposes a Key Information Document ("KID") to replace the SP at point of sale.

IOSCO will also be aware of the work being carried out by the European Commission on "Packaged Retail Investment Products", which proposes harmonisation of key information documents for competing, substitutable, retail investment products.

So, you will see that in the UK and Europe, retail CIS are already some of the most regulated products for point of sale disclosure and there is much work going on to develop further such disclosure documentation.

It is therefore disappointing that the Consultation Report confines itself only to CIS. There is a statement in the report that "the question of similar products may be considered at a later stage". It is our view that to level the playing field between competing products and to enable the consumer to make fair comparison of those products at point of sale, IOSCO should widen the scope of its work to include all similar, and broadly substitutable, retail investment products as soon as possible. Indeed, the principles proposed by IOSCO for disclosure of key information could apply to the whole range of retail investment products. We therefore urge IOSCO to commit to reviewing this course of action.

We broadly welcome the IOSCO Principles for Disclosure of Key Information proposed in this report but, as outlined above, we are of the view that they should be applied to all retail investment products however they are distributed to the retail customer.

The report goes on to highlight an important point that, however disclosures are mandated, they will not have the intended effect if the investor does not either read or understand the information provided. The report goes on to call upon regulators "to consider measures to help improve retail investor education in order to enhance financial literacy and ability to read investment documentation and make informed decisions".

We fully support this statement. However, we would add to it the ability to understand the investor documentation. Successive regulations have simplified product disclosure to consumers. But it has long been the case that, whilst consumers might find the document easier to read, they have lacked the financial education to understand the information disclosed to them. Policies of making such disclosure simpler and easier to read has not yet overcome the consumers' lack of ability to understand the product, or investment more generally.

We would welcome the opportunity to discuss the comments and recommendations contained in this response with you at any time.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andy Maysey', with a long horizontal flourish extending to the right.

Andy Maysey  
Senior Adviser – Retail Distribution

***IOSCO Consultation Paper***

Submission deadline: 15 February 2010

Issue month: December 2009

Submitted by: ipac financial planning Singapore private limited ("ipac SG"), Singapore

Contact person: Sharon Chan, Head of Compliance, Tel: +852 2285 2656, Email:

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**Consultation Report on Principles on Point of Sale Disclosure for CIS**

*Principle 1: Key information should includes disclosures that inform the investor of the fundamental benefits, risks, terms and costs of the product and the remuneration and conflicts associated with the intermediary through which the product is sold.*

ipac SG:- We agree. The key information should include warnings for investors to always seek professional advice for suitability of the product.

*Principle 2: Key information should be delivered, or made available, for free, to an investor before the point of sale, so that the investor has the opportunity to consider the information and make an informed decision about whether to invest.*

ipac SG:- We agree.

*Principle 3: Key information should be delivered or made available in a manner that is appropriate for target investor.*

ipac SG:- We agree.

*Principle 4: Disclosure of key information should be in plain language and in a simple, accessible and comparable format to facilitate a meaningful comparison of information disclosed for competing products.*

ipac SG:- We agree.

*Principle 5: Key information disclosures should be clear, accurate and not misleading to the target investor. Disclosures should be updated on a regular basis.*

ipac SG:- We agree. POS disclosures update can be updated on half yearly basis for non-material changes. Regulators should provide guidelines on "material" disclosures and also the timeline to inform investors.

*Principle 6: In deciding what key information disclosure to impose on intermediaries and product producers, regulators should consider who has control over the information that is to be disclosed.*

ipac SG:- We feel it should be product producers as they have full knowledge of their products. Intermediaries can add on further disclosures like potential conflict of interest.

Overall ipac SG comments:-

Simplified product disclosure document is required but the key point in protecting investors is to provide appropriate investment recommendations by the intermediaries. A documented recommendations and rational should be provided to clients by the intermediary. A fee-based financial planning model should be promoted to reduce the conflict of interest by selling high profit margin products.

A standard product disclosure document format should be set up for industry players. The product disclosure document should be given to the clients prior to or at the point of sale. Customer testing for the product disclosure document format should be conducted before rolling it out to the industry.

Dear Sir / Madam,

We support the proposal about Key Information Disclosure and that the document should be user-friendly, short, concise and succinct. We also believe the Key Information Document (KID) does not need to be attached physically with the Offering Document but at the point of sale, distributors should be required to provide the KID to investors. They should also be reminded that the KID should be read in conjunction with the Offering Document which is readily available on the website or in hard copy. Investors should be asked to confirm they have read through the KID and understand all details and the arrangement of Offering Document and that they do not make their investment decisions based on the KID alone.

We are also of the view that the KID to be adopted in Europe, should be deemed as acceptable for local KID purposes if the relevant Europe funds are authorized by the local regulator to be distributed to the retail public. This will improve the efficiency of funds industry as in many jurisdictions, especially the Asian jurisdictions, most offshore funds authorized by the local regulators are UCITS products. Most of the Asian regulators have working relationships with the Europe regulators. We therefore urge that the regulators should aim to develop a consistent model across different jurisdictions.

In respect of the disclosure of information on intermediary such as fees, intermediary compensation, costs and potential conflicts of interest, we support the principle but believe the requirements in different jurisdictions should be flexible to accommodate different kinds of products, distribution model as well as commercial arrangements. Disclosing monetary transaction based commission earned is workable in most cases. The initial charge is already being disclosed in either the receipt issued or the contract note in certain jurisdictions. However, disclosure of trailer fee is not possible as the distributors do not know the magnitude at the point of sale. Disclosing non-monetary benefits for intra group distribution is also impractical as they are purely internal arrangements. There are also many variables in the remuneration which make the information non-comparable across different companies and products.

As explained above, there are many practical issues to resolve in order to provide meaningful information to the investors. Further, too much disclosure of monetary and non-monetary benefits may overwhelm the investors with data and unable to distinguish the relevant information pertinent for their investment decision.

It is also not practical to issue the proposed sales disclosure document (or verbal disclosure) before every transaction on specific commission information. We suggest that generic disclosure in relation to transaction based monetary benefits at the account opening stage should suffice. We also suggest flexibilities should be allowed for disclosures to be made in the account opening document and if client request further disclosures, percentage bands or ceiling of specific commission should be disclosed.

Regards

**Christina Chua, CPA**  
Vice President  
Chief Operating Officer  
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Mr. Cliffe,

Please find as follows the contribution of the Panamanian National Securities Commission with regards to the POS Disclosure for CIS.

- ? **Whether regulatory disclosures are in fact effective in addressing information asymmetries that exist between investors, producers and sellers;**

The pertinent regulatory disclosures are contained in Agreement 5-2004 of July 23<sup>rd</sup>, 2004. Such rules mandate that prospectuses must include all information related to investment policies, the risk of the investment administrator and of the investment company. The prospectus must contain all information that would allow the investor to formulate a good judgment about the investment.

It is a requirement that the prospectus describes all fees investors must pay before buying a share or shares, as well as information relating to the funds organizational structure (affiliated companies) and professional background of directors and principal executives.

Prior acquiring shares a prospectus must be given to a potential buyer by the investment advisor or the investment company.

- **What constitutes key information;**

Key information constitutes the following:

- Individuals such as directives and their professional background
- Main executives
- Investment risks
- Organizational structure of the fund (affiliated companies)
- Redemption policies
- NAV Calculation Procedure
- Fees paid by investors
- Investment policies

- **How information should be delivered and whether a *layered approach* should be used;**

Information is delivered through the prospectus.

- **What exactly should be understood as delivery;**

Delivery should be understood as having a good knowledge of the principal characteristics of the investment. The investor has to review the prospectus.

- **At what point in time the information should be delivered;**

The information should be delivered to the investor prior making an investment decision. There is no charge involved with obtaining the information. The investment company or investment administrator must provide the investor with key information about the product. On the other hand, the potential investor can obtain the same information at the National Securities Commission of Panama.

- **Use of plain language rather than technical jargon; and**

The Agreement that regulates investment companies obligates the use of plain language rather than technical jargon.

- **The format of disclosures.**

Through the prospectus

The Proposed Principles For Disclosure of Key Information in regard to CIS Prior to the Point Of Sale are as follows:

#### **Principle 1**

*Key information should include disclosures that inform the investor of the fundamental benefits, risks, terms and costs of the product and the remuneration and conflicts associated with the intermediary through which the product is sold.*

#### **Principle 2**

*Key information should be delivered, or made available, for free, to an investor before the point of sale, so that the investor has the opportunity to consider the information and make an informed decision about whether to invest.*

#### **Principle 3**

*Key information should be delivered or made available in a manner that is appropriate for the target investor.*

#### **Principle 4**

***Disclosure of key information should be in plain language and in a simple, accessible and comparable format to facilitate a meaningful comparison of information disclosed for competing products.***

#### **Principle 5**

***Key information disclosures should be clear, accurate and not misleading to the target investor. Disclosures should be updated on a regular basis.***

#### **Principle 6**

***In deciding what key information disclosure to impose on intermediaries and product producers, regulators should consider who has control over the information that is to be disclosed.***

In addition, the Report's examination of possible disclosure of key information has highlighted the following important points:

- No matter what disclosures are mandated, they will not have the intended effect if the investor either does not read and/or understand the information provided. Regulators should therefore consider measures to help improve retail investor education in order to enhance their financial literacy and ability to read investment documentation and make informed investment decisions;

If the investor does not understand the information provided by the prospectus, the National Securities Commission recommends the use of investment advisors. The investment advisors must be registered at the National Securities Commission of Panama.

- In general, new POS disclosure requirements should not be imposed without the benefit of consumer testing or assessment to help determine the likely effectiveness of new disclosure requirements; and

The National Securities Commission of Panama sends new requirements to users of the national securities market for review in order to know their point of view before these norms are established.

- The principles set forth in this report may also be applicable to non-retail investors.

The principles are applicable to non-retail investors in Panama.

**Elizabeth De Puy de Iovane**

Directora Nacional Pensiones y Sociedades de Inversión

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**Public Comment on Principles on Point of Sale Disclosure**

**Securitization Forum of Japan**

I. Introduction

- A. The Securitization industry in Japan welcomes this IOSCO initiative and appreciates the opportunity being provided for comment in the consultation process as to Principles on Point of Sale Disclosure (“POS Disclosure”).
- B. We basically agree with the findings and the opinions stated in the IOSCO Consultation Report on Principles on Point of Sale Disclosure (“Report”). Therefore, we would like to highlight some additional supporting comments on the Report from the viewpoint of the characteristics of the market and its participants’ trading practices in Japan’s securitization market, mainly focusing on the adaptability of the desired and practical POS Disclosure regime in the Japanese market.

II. Comments on Chapter II. C (pp. 7-8)

- A. As the Report points out, design techniques of the information that retail investors wish to receive is important. We believe that more tables and graphics will help investors to better understand the information although we recognize that there may be a counter opinion stating that mere tables and graphics do not deliver investment product information with complete legal accuracy and that such demerit should be carefully avoided. We still believe, however, that the tables and graphics would be more valuable where they facilitate the retail investors understanding of the outline or key characteristics of the product in a short time, probably contributing to investor base expansion. This merit would soon outweigh the demerit. Therefore, it is desirable that this disclosing practice be widely accepted in the market with regulators supporting it effectively.
- B. In addition, we should pay attention to the comparability of the information among other types of financial products, just like the issue discussed in chapter IV. In the Report, it would be convenient to have a guideline which sets forth the minimum standard format for tables and graphics; in this way, retail investors could identify and analyze the risk of different products by comparing respective tables and graphics which are mostly the same concerning important parts.

III. Comments on Chapter III (pp. 9-10)

- A. When considering the disclosure format, it would be meaningful to consider the availability of raw data behind the disclosed information. In general, it would be preferable for investors to electronically access the raw data when they analyze the product, in particular, when they gauge creditworthiness through their internal credit model with their version of stress scenarios. So, if conditions permitted, it would be desirable that raw data and other related data such as past performance on which prospectuses were based be distributed via spreadsheets so that investors could easily download the data and quickly use it in their credit analysis as necessary. As such, in the course of setting forth the POS Disclosure regime, some sort of standardized IT system that enables such download and easy periodic update should be discussed broadly in the market, as appropriate.

IV. Comments on Chapter IV (p. 12)

- A. As the Report points out, it is important for effective disclosure to eliminate difficulty when comparing information among different types of financial products. If we do not have any industry standards or market prescriptions for disclosure, each prospectus and other information materials for different products would have a different format for the same content, making it difficult for investors to compare.
- B. Chapter organization is also essential for better comparability. Admittedly, the detailed contents of financial product information vary according to their individual characteristics or the degree of complexity. But we hope it would be desirable that information delivered via prospectus is organized in a standardized way. We believe that standard titling of chapters/sections and items as well as their order in the prospectus would be an integral part of an effective POS Disclosure regime. Only if the regime has such standardization would retail investors wisely compare different types of financial products in a short time.
- C. In this context, however, we should also consider achieving a good balance between effective standardization mentioned above and necessary flexibility which is pointed out in the Report (p. 25) regarding the disclosure requirement. Continuous conversation among market participants such as originators, product producers, investors, and regulators would be required regarding this issue.

V. Comments on Chapter V. (pp. 18-21)

- A. As item B. in chapter V. points out, consistency in the disclosure requirements of both CIS and other types of financial products is a key factor when considering the stable execution of the POS Disclosure regime. In this regard, we should avoid any competitive disadvantage on the part of CIS resulting from applying strict POS Disclosure only to CIS. One possible solution is that we should apply POS Disclosure to all other types of financial products, as appropriate, which are characteristically similar to CIS. But for this application to be acceptable, POS Disclosure should be judiciously sophisticated in terms of design technique, data availability, and delivery system so that investors could benefit from the regime's effectiveness when making any investment decision.
- B. Cost/benefit analysis is essential for introducing successful POS Disclosure. We strongly believe that, just as mentioned in the Report (p. 20), POS Disclosure should be associated with cost reduction effect for financing cost on the CIS producer's part. Under POS Disclosure, CIS producers fairly expect that, thanks to the disclosure, they could raise money at a lower cost than they can now. As such, they expect reasonable "downward pressure on prices" of CIS under the disclosure. Unless a clear and reasonable effect in terms of financing costs is observed, CIS producers would feel that such a regime is rather costly and ineffective in addressing information asymmetries.
- C. As is the case in other jurisdictions, it may be difficult in Japan to exercise cost/benefit analysis of POS Disclosure. The reason is that the degree of benefit would vary depending upon the degree of retail investor sophistication. The POS Disclosure regime would need constant improvement according to investors' proficiency in reading and understanding of the information, as well as handling the related data provided under the regime.

VI. Concluding Remarks

- A. With regard to POS Disclosure, as the Report adequately mentions, rule-making based on (i) the individual features of the CIS, (ii) its competitive environment with other products, and (iii) the usability of information for investors is essential. We should continue to examine cost-effective as well as user-friendly measures for implementing POS Disclosure.
- B. Without such due process of introducing a POS Disclosure regime, we are afraid that CIS producers would steer clear of CIS to avoid any excessive burden for the disclosure requirements, and investors would only make poor investment decisions due to an ineffective and disorganized regime with varying disclosure styles among different products. Consequently, both of them would leave current information asymmetries unchanged and lead to further market stagnation.

End of document.

By e mail  
International Organization of Securities Commissions (IOSCO)  
Calle Oquendo 12  
28006 Madrid  
**Spain**

12 February 2010

Dear Sirs

**Proposed Principles on Point of Sale Disclosure**

Schroders is an independent asset management house. We are a global provider of investment services with US\$222 billion under management operating from 32 offices in 25 countries<sup>1</sup>. We provide a wide variety of services from private banking, venture capital and bespoke investment solutions, to hedge funds, hedge funds of funds, property funds, UCITS and other nationally regulated collective investment schemes and investment trusts. We welcome the opportunity to respond to the Consultation Report on Principles of Point of Sale Disclosure.

As a member of EFAMA, we support their response to you and urge IOSCO to seek a level playing field, by encouraging its sister organisations (BCBS and IAIS) to adopt the same principles of product disclosure and liabilities imposed on the product providers and/intermediaries for CIS to other investment products sold to retail investors.

We have the following comments on the proposed principles:

***PRINCIPLE 1 – Key information should include disclosures that inform the investor of the fundamental benefits, risks, terms and costs of the product and the remuneration and conflicts associated with the intermediary through which the product is sold.***

***Key information in product disclosure could include:***

**Risk and Reward Profile**

To achieve the objective to having a disclosure document that is short, concise and easy to read, it is not possible to list all the risks of the product. We are of the view that only risks that are specific to the product should be included and potential investors should refer to the prospectus for other generic investment and investment-related risks. So we support the fact that the Principle refers to “material risks” if that is what the term is referring to.

**Past Performance**

Currently, some regulators do not allow for simulated returns on the basis that depending on how the scenarios are being presented there is a potential risk that investors may feel that they might have been misled if expectations are not met, despite disclaimer that these are just simulations. There is also the danger that intermediaries may focus on the expected returned to promote the fund as it would be much

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<sup>1</sup> Figures as at 30 September 2009

easier to sell a fund perceived to be giving higher returns than highlighting other merits like diversification, risk tolerance etc. which are not quantifiable.

So we would suggest the wording of the Principle be slightly amended to state:

“Past Performance. Where past performance is permitted or required to be shown, the information.....”

#### Additional Information

The information on compensation that is available to investors should be more appropriately address in the prospectus. While this is useful information, it should not be key information that affects the decision of investors to invest.

The summary of tax implications on premiums and benefits should be addressed by professional tax consultants and should not form part of the Key Information document which product providers/intermediaries are legally liable for. So we support a general statement that taxation may vary depending on the investor’s domicile and personal circumstances and relevant advice needs to be sought.

#### ***Key information in intermediary disclosure could include:***

Schroders, like many CIS providers, has moved to an intermediated distribution model, meaning that we generally do not sell to investors directly. So, the key information relating to the intermediary should be prepared by the intermediary and not be part of the product disclosure by the product provider. The reason is that different intermediaries are compensated differently and intermediaries would be in a better position to determine if there are any potential conflicts of interest when promoting certain funds over others. Having them disclosed separately either in document form or otherwise will also make it easy to identify the responsibilities and liabilities of product providers vs. intermediaries.

We support IOSCO’s flexible approach to implementation in this area which allows separate intermediary focussed disclosure as well as product disclosure.

***PRINCIPLE 2 – Key information should be delivered, or made available, for free, to an investor before the point of sale, so that the investor has the opportunity to consider the information and make an informed decision about whether to invest.***

We are of the view that this proposal is most appropriately addressed by intermediaries in their fact-finding and “Know Your Customer” phase of the sale and should be the responsibility of the intermediaries. So any delivery obligations of product specific material that is distributed through intermediaries should be ensured by delivery of the relevant document to the intermediary who would then be responsible for delivery to the end investor.

***PRINCIPLE 3 – Key information should be delivered or made available in a manner that is appropriate for the target investor.***

No comments.

***PRINCIPLE 4 – Disclosure of key information should be in plain language and in a simple, accessible and comparable format to facilitate a meaningful comparison of information disclosed for competing products.***

While there may be attempts to replace words and diagrams and charts, there is the issue of the length of the document. The question is whether we should have a concise document or one which is easy for investors to understand and could be 10 pages long (required if product producers are required to explain in layman's terms investment concepts and approach). This problem could be further compounded if the product is more complicated than a plain vanilla equity or fixed income product.

The purpose of the key information document is to ensure that all pertinent information of the product is listed down for potential investors to consider. However, given that client profiles, investment objectives and appetites differ, it is not possible for a generic product disclosure document to take into consideration the "needs and abilities of the target investors". This should be dealt with separately by the intermediaries as part of the fact finding and selling process.

Regulators need to be aware of the limitations of such a document. If, for example, a product provider sells directly by way of a direct offer advertisement, it would seem reasonable to assume the key information provided would meet any advertising disclosure requirements (i.e. be fair, clear and not misleading). But when a fund is sold via an intermediary, the document will generally be provided late in the process after the adviser has carried out suitable test and is ready to recommend the product. In such cases, the document may be less relevant.

Furthermore, to give financial institutions confidence to give short, concise and easy to read summaries for the investor, it is important that the disclosure document be considered a separate document from a product prospectus (as it can never replace the product prospectus), and the product provider should not be subjected to legal or regulatory sanctions with regard to the content of the key investor information unless the information provided is misleading or inconsistent with the full prospectus.

***PRINCIPLE 5 – Key information disclosures should be clear, accurate and not misleading to the target investor. Disclosures should be updated on a regular basis.***

Updates suggested for past performance. Currently, in terms of marketing materials, the local standards set by some of our regulators stipulated that the information for marketing materials should not be more than 3 months. However, the requirement for the prospectus is 1 year and the prospectus is required to be re-filed on a yearly basis. For the Key Information Document, which is intended to supplement information in the prospectus, we are of the view that they should follow the requirement of the prospectus as long as the date of the information is clearly stated on the document. To update the document more frequently than on a yearly basis (in the absence of material changes of the fund), will have significant impact on the product producers' resources. In addition, the cost (not limited to monetary) involved in updating and reprinting the document regularly is very high. There is also a need to discard unused documents, which may be a waste of resources.

***PRINCIPLE 6 – In deciding what key information disclosure to impose on intermediaries and product producers, regulators should consider who has control over the information that is to be disclosed.***

We would agree. As per our response to Principle 1, we are of the view that the information to be disclosed by product providers should be separated from intermediary disclosures. In this way, it will be clearer in terms of responsibilities and liabilities and neither party would be able to make changes to the document produced by each other which could materially alter the key information disclosed. Another consideration is the extent of the charges that should be disclosed, as the trailer rebates given by the product providers to the intermediaries are based on negotiations and will be commercially sensitive. One

suggestion would be for the disclosure by the intermediary to be provided by way of a range of fee rebates rather than the specific quantum.

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Attention: International Organization of Securities Commissions (IOSCO)

We support all the principles suggested by the committee. We believe providing clients with easily digested information will assist them greatly in making well informed investment decisions.

The measures suggested by the technical committee of the International Organization of Securities Commission are positive moves. We have no doubt that these measures will provide clients with clearer and easier read on the mechanics of investment instrument they are investing in.

Our firm would have no problems in the implementations.

### **Financial Literacy**

We would like to add that on a macro level, 'Financial Literacy' of the public should be raised. Such financial education should be championed by the government on a national level. For example, Monetary Authority of Singapore has an educational arm, MoneySense, which conduct national financial education programs.

All stakeholders such as banks, insurance companies, fund managers, financial advisers, etc should also do their part in such financial education programs.

Financial education should start early and be introduced in the schools as a non-examinable additional subject. Start the education process to the public early and the level of financial literacy will increase over time.

Best Regards,

**Alfred Chia C K** BSc, CFP<sup>CM</sup>, FChFP  
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We are referred by the Monetary Authority of Singapore to offer our comments on the International Organisation of Securities Commission's consultation report, "Principles on Point of Sale Disclosure" .

We have examined the document and reckoned that the six principles relating to product disclosure requirement presented in the document are key ingredients to protect investors from ill-suited financial products. Product description in simple language will facilitate better understanding on the benefits, risks and other terms. Doing away misleading terms, which give false perception of the product and risk knowledge, is an essential safeguard .

However, mandatory disclosure requirement may not be enough to achieve the optimum objective. This is largely due to a wide diversity of investor background, experience and other factors. Investors are unlikely to have the same level of understanding on the knowledge for even the similar product. Perhaps, additional efforts at the point of sale may be considered to further assist investors in making better investment decisions and we suggest the following two measures.

1. The offering of gifts, in whatever form, at the point of sale should be prohibited in order not to distract investors' attention and focus from the product specification and related risks.

2. An independent third party be commissioned to give its views and explanations in simple language the benefits, risk and other relevant facts of the product, whenever it is being launched.

Finally, investors should realise that expenses arising from mandatory disclosure requirement and measures to enhance product knowledge will inherently reduce investment returns. The trade-off is inevitable and necessary to help and protect investors from ill-suited financial products.

We hope you will find the above comments useful and relevant.

Regards,

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February 16, 2010

International Organization of Securities Commissions (IOSCO)  
Calle Oquendo 12  
28006 Madrid  
ESPAÑA

Dear Sir/Madame:

**Re: IOSCO Technical Committee's consultation report on 'Principles on Point of Sale Disclosure'**

We are pleased to provide VAULT Solutions' comments regarding IOSCO's consultation report on 'Principles on Point of Sale Disclosure'.

VAULT Solutions is a dynamic technology firm focused on creating and servicing customer facing technology solutions for the financial services industry. For the past ten years our team has worked with the mutual fund industry in Canada, creating outstanding online user experiences for dealers, manufacturers and investors alike. As active participants in the construction of point of sale (POS) solutions for the investment industry we have carefully followed the evolution of this Canadian Rule from its inception and continue to refine our POS solution to meet the needs of both manufacturers and dealers within the proposed Rule as it has been drafted and commented on.

Recognizing that the concerns raised by Canadian regulators are symptomatic of international concerns regarding capital markets transparency and disclosure of information to retail investors, we submit our comments for your information.

As neither an investment dealer nor manufacturer, we are in a somewhat objective position to comment on regulators' request for comment on issues concerning appropriate levels of disclosure, frequency of update or particular filing compliance; however, as it relates to potential implementation and operational approaches to POS we have the following comments:

In our discussions with affected parties, no one disputes the benefits of the proposed fund facts document in Canada as a plain, 2-page disclosure document that will help improve financial literacy amongst investors. Few investment

professionals around the world would dispute the benefits to both retail investors and financial advisors alike, in improving financial literacy amongst investors. While debate exists concerning the amount of information, the treatment of fund series/classes in the document and the challenges associated with document delivery, most stakeholders agree that an abbreviated, plain language (e.g. language understood at a grade 6 level education is the Canadian regulators' proposal) document is sound. We agree that a short, plain and common template will address many of regulators' objectives.

Some stakeholders question the nature or even existence of the "problem" the regulators seek to address, given the positive customer satisfaction scores cited in Canadian and international research within the advice-oriented wealth management industry. While investors may not articulately express a need for greater involvement or understanding of their investment choices, we believe that due to the importance and magnitude of the investment decision relative to other purchases for most retail investors, that they should be given the opportunity to understand their choices at or prior to the point of sale. Delivery of the fund facts after the trade, made accessible to investors without express attention drawn to the document by advisors, or otherwise deferred by advisor or investor choices, only dilute the principles and objectives tabled by regulators in Canada and abroad.

Concerns have been raised about the cost of implementing a POS Rule such as that tabled in the Canadian Securities Administrators' June 19, 2009 draft Rule entitled 'Implementation of Point of Sale Disclosure for Mutual Funds'. In order to better understand the cost burden of the Rule, an allocation of the respective cost areas is required. Costs associated with implementing the POS solution can be largely broken down into the *document production* (i.e. creation, update, filing, and management of fund facts) and the *document delivery* (i.e. eligibility workflow, receipting, and dealer compliance).

***Document Production:*** It is our observation that in Canada and elsewhere, the fund facts production may represent an opportunity for manufacturers to gain some efficiency in the manner with which they update and inform customers through the replacement of the simplified prospectus and potentially more automated production and authorization protocols towards producing and filing fund facts documents for investors. Moreover, orienting the manufacturers towards digital production as a more expeditious means of delivery may reduce print, distribution and environmental costs over the longer term. Regulators might consider waiving the simplified prospectus requirement with trade confirmations for an organization that complies early with the fund facts POS requirement. Whereas the Canadian industry is seeking ways to offset the perceived

implementation costs of fund facts, this would in large part improve the business case for fund facts production.

***Document Delivery:*** In terms of fund facts delivery, a series of options exist in determining the level of business logic a dealer is obliged to embrace within its internal systems as well as the number of permutations of delivery required to satisfy any proposed Rule. In the final analysis, refinement and consensus of what will constitute compliance in regards to delivery is required to properly establish the cost associated with implementation. It is not clear what, if any, efficiencies may be surfaced in this regard; however, costs could be contained through outsourcing of the delivery obligation outside existing dealer systems and the minimization of integration into back office protocols for the purposes of compliance.

We are confident that with continued consultation and a graduated implementation process, any POS Rule can provide efficiencies to the manufacturers and dealers in facilitating clear and concise communication to investors while improving the level of disclosure to investors for both mutual funds and in the future, other forms of investment products available to the public through professional advisors.

While this additional delivery obligation falls to the professional advisors to facilitate, it is our contention that both manufacturers and dealers alike must collaborate effectively to ensure an efficient production, fulfillment and compliance outcome for any POS Rule to be achieved. VAULT Solutions looks forward to being an active facilitator of this collaboration using its deep industry experience and willingness to establish new business frameworks that benefit manufacturers, dealers and investors alike.

Sincerely,

A handwritten signature in black ink, appearing to read "ABoright". The signature is stylized and written in a cursive-like font.

VAULT Solutions Inc.

By: Anthony Boright, President