

THE JOINT FORUM

BASEL COMMITTEE ON BANKING SUPERVISION
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS
INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS
C/O BANK FOR INTERNATIONAL SETTLEMENTS
CH-4002 BASEL, SWITZERLAND

Point of Sale disclosure in the insurance, banking and securities sectors

Consultative document

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I. Executive summary

Background

The mandate for this work related to point of sale disclosure in the insurance, banking and securities sectors was prompted by the Joint Forum's January 2010 *Review of the Differentiated Nature and Scope of Financial Regulation*. That report highlighted the fact that supervisory and regulatory standards for similar activities in different sectors, while at times appropriate, could pose risks to financial stability and create regulatory arbitrage opportunities. In particular, the report recommended that the Basel Committee on Banking Supervision ("BCBS"), the International Organization of Securities Commissions ("IOSCO"), and the International Association of Insurance Supervisors ("IAIS") "work together to develop cross-sectoral standards where appropriate so that similar rules and standards are applied to similar activities". The issue of different cross-sectoral approaches to regulation was later raised by IOSCO in its February 2011 report *Principles on Point of Sale Disclosure ("IOSCO Report")*.¹ That report set out high level principles for disclosure of key information with specific relevance to collective investment schemes ("CIS").² It further touched on the impact of different cross-sectoral approaches to Point of Sale ("POS") disclosure and encouraged 'further work by appropriate bodies on POS disclosure regarding products similar to CIS'.

In this context, the parent committees of the Joint Forum (the BCBS, IAIS, and IOSCO) mandated the Joint Forum to identify and assess differences and gaps in regulatory approaches to POS disclosure in relation to investment or savings products in the insurance, banking and securities sectors.³ The mandate requested that the group identify whether regulatory approaches to POS disclosure need to be further aligned across sectors, keeping in mind that differences in regulatory approaches can arise from legitimate differences in sectoral regulatory objectives as well as from differences in product features.

Methodology

The Joint Forum selected a sample of products in each of the insurance, banking and securities sectors that in the opinion of the Joint Forum and broadly confirmed by roundtable participants, compete with CIS for consumer⁴ savings or investments: structured notes, structured deposits, unit-linked life

¹ See www.iosco.org/library/pubdocs/pdf/IOSCOPD343.pdf.

² For purposes of this report, the Joint Forum adopted the same definition of CIS that was used in the IOSCO Report. The IOSCO Report refers to a definition of CIS in IOSCO's 2003 *Objectives and Principles of Securities Regulation* according to which CIS include authorised open ended funds that will redeem their units or shares whether on a continuous basis or periodically. It also includes closed end funds whose shares or units are traded in securities markets. It further includes unit investment trusts, contractual models and the European UCITS model. See Section III.1 of this report for a further discussion of CIS characteristics.

³ The mandate highlights that "*disclosure standards and requirements – particularly those at the point of sale – are important regulatory tools in promoting consumer protection by enhancing transparency in financial products/markets. Robust disclosure regimes which provide information in a form consumers (ie deposit holders, policy holders, investors) can use practically – focused on clear, unbiased communication of key information – serve to reduce the information asymmetries which exist between product issuers and consumers, empowering the latter to make better-informed decisions about their investments. They also foster greater comparability (especially given an increasing number of products being distributed on an international basis), making it easier for consumers to choose between different products irrespective of their domicile. In particular when products are very similar, inconsistent sectoral approaches to disclosure can pose risks to these regulatory objectives, including consumer protection.*"

For purposes of this report, see page 6 for a definition of "POS disclosure document."

⁴ The Joint Forum did not use any particular definition of "consumer" for purposes of this effort, but notes that in many jurisdictions the term broadly encompasses individuals and, in some cases, small or medium sized business consumers.

insurance, variable annuities and indexed annuities.⁵ This sample is not exhaustive and other products may also compete with CIS. The Joint Forum then identified differences in POS disclosure regimes across jurisdictions and among the sample products, considered the impact of those differences, and formulated recommendations for further action by IAIS, IOSCO and BCBS (“Parent Committees”).

The elements of information which comprise POS disclosure (eg key product features, costs, risks), format requirements (eg document length, font size), and the sharing of responsibilities among producers⁶ and distributors including primary responsibility for the information’s accuracy were analysed. Comprehensive disclosure documents required by law were considered: prospectus or general terms and conditions, as well as more abbreviated disclosure documents, such as a prospectus summary, encadré or a key investment information document. The regulatory obligations often associated with POS disclosure, such as filing and pre-approval obligations, plain language requirements, and liability imposed for material misstatements and omissions were also considered. Finally, jurisdictional disclosure requirements were analysed and compared via a mapping exercise,⁷ two roundtables (one in Europe and one in North America)⁸ attended by both industry and consumer representatives were held, and additional information was garnered through the contributions of Joint Forum members.

Significant differences identified

The Joint Forum identified key sectoral and inter-jurisdictional differences in POS disclosure requirements:

- The format of *POS disclosure documents* does not always facilitate comparison across products.
- The content of *POS disclosure documents* varies across products.
- Securities regulations in many jurisdictions are more likely to mandate or establish disclosure requirements for products in the sample. In some cases, this may require the submission to the regulator of disclosure material prior to sale to a consumer, while prior authorisation in the insurance and banking sectors is forbidden in some jurisdictions.
- In several jurisdictions, structured deposits have been identified as having less prescriptive POS disclosure requirements than those imposed on structured products that are subject to securities regulation.
- The Joint Forum did not identify a jurisdiction or sector with absolutely no POS disclosure requirements. However, regulatory approaches vary to a great extent – being either more or less explicit with respect to disclosure requirements. In some instances, disclosure requirements are imposed only in general consumer protection laws.

Where net worth or other asset-based thresholds associated with “institutional” or “professional” investors exist, those jurisdictions may interpret the term “consumer” as excluding such investors. The term ‘consumer’ is used as an overarching term to include different terms used to refer to the retail population who buys or may buy products covered in the sample, including retail investors, retail customers and clients, retail policyholders, and retail account holders.

⁵ It should be noted that some countries have one regulator for all sectors and others have separate regulators.

⁶ The term “producer” is used in this report as an umbrella term to describe an entity that issues the product that is the subject of the POS disclosure, including issuers and insurance underwriters.

⁷ The mapping exercise informed the Joint Forum’s work by providing a selected overview of disclosure requirements imposed by jurisdictions responding to the survey, including both disclosure requirements specific to POS and disclosure requirements more generally. The participating jurisdictions’ responses are summarised later in this report, with a focus on those practices that the Joint Forum found most relevant to its analysis.

⁸ Two hearings/roundtables were organised in Paris and Toronto; the former to obtain the views primarily of European representatives and the latter to obtain the views primarily of North America and Asian representatives.

Certain market participants and consumer representatives who participated in the roundtables believe that certain objectives of *POS disclosure documents* should include the following: (i) key information about a product presented in a concise written manner including its risks and benefits or other features, (ii) plain language, and (iii) the same type of information to facilitate product comparisons by consumers. The Joint Forum however heard diverging views from certain other roundtable participants as to the necessary degree of sectoral harmonisation and in relation to the level of regulatory prescription that is advisable in order to encourage useful disclosure.⁹

Determining whether a specific model of regulation achieves its intended results, either from a consumer protection or prudential perspective is both a considerable challenge and outside the scope of the Joint Forum's mandate for this report. The Joint Forum has therefore focused its recommendations largely on the significant differences and objectives, which were identified above. What is important is the outcome, not necessarily the method by which the outcome is achieved.

Recommendations

The Joint Forum has identified a number of key recommendations for use mainly by policymakers and supervisors, which are intended to assist them in considering, developing or modifying POS disclosure regulations.¹⁰ The Parent Committees may also wish to consider whether some of the recommendations may be relevant to their work as standard setters. Although the recommendations focus on POS disclosure, it is important to note that a strong consumer protection regime consists of many elements.

Recommendation 1: Jurisdictions should consider implementing a concise written or electronic POS disclosure document for the product sample identified in this report, taking into account the jurisdiction's regulatory regime.

Recommendation 2: The POS disclosure document should be provided¹¹ to consumers free of charge, before the time of purchase.

Recommendation 3: A jurisdiction considering POS disclosure should consider requiring that a POS disclosure document disclose key characteristics including costs, risks and financial benefits or other features of a given product and any underlying or referenced assets, investments or indices, irrespective of the financial sector from which the products are derived.

Recommendation 4: The POS disclosure document should be clear, fair, not misleading and written in a plain language designed to be understandable by the consumer.

Recommendation 5: The POS disclosures should include the same type of information to facilitate comparison of competing products.

Recommendation 6: The POS disclosure document should be concise, set out key information about a product and may include, as appropriate, links or refer to other information.¹² It should make clear that it does not provide exhaustive information.

⁹ In some cases, it was argued that the presence of core regulatory requirements could foster an outcome similar to one that could be achieved through harmonised and explicit POS disclosure requirements across sectors. Other participants argued that high level consumer protection principles may be equally effective when they are a part of general consumer regulations (eg those requiring the use of plain language disclosure) rather than sectoral ones.

¹⁰ The recommendations are intended to assist regulators who are considering developing or modifying POS disclosure requirements.

¹¹ For the purposes of this report, the term "provided" includes making the POS disclosure document available on paper, or through an Internet website, or a regulator's electronic filing database, or through other means. Such other means may include oral disclosure under appropriate circumstances if so allowed by the local regulatory framework, provided that appropriate documentation of any oral disclosure is made for example as part of a financial institution's recordkeeping obligations and that the consumer is made aware of the availability of any written or electronic POS disclosure document.

Recommendation 7: Allocation of responsibility for preparing, making available and/or delivering the POS disclosure document should be clearly established, and the POS disclosure document should identify which entity is responsible for its content.

Recommendation 8: A jurisdiction considering POS disclosure should consider how to use its capabilities and powers to implement these POS recommendations, taking into account the jurisdiction's regulatory regime.

Implementation: There are numerous ways to implement a POS disclosure regime. The above recommendations have been developed with the goal of enhancing consumer protection by providing guidance to regulators/supervisors and Parent Committees that are considering developing or reviewing their POS disclosure requirements. These recommendations are intended to allow for a wide range of application and adaptation in different jurisdictions.

II Introduction

II.1 Reasons for action

Consumer protection

A continuing desire by the Joint Forum to consider the state of the market for retail investment products and of potential gaps in consumer protection leads to an examination of POS disclosure regimes. A wide range of products sold to consumers are often subject to different product disclosure requirements. From a consumer protection perspective, some products, such as CIS products, generally are more highly regulated while others are less so. The degree of regulation may vary as a function of the product's legal structure and of its specificities, and may diverge not only across Joint Forum member jurisdictions, but also across the range of product types within many jurisdictions.¹³ Although most products considered by the Joint Forum that are offered to consumers are covered by some basic disclosure regulation, the differences in requirements may contribute to the inability of consumers to properly compare products when deciding which product to purchase. Potential gaps in regulation also may create opportunities for regulatory arbitrage.

Traditional product producers also compete with market participants that are less regulated or in some instances not regulated at all in some jurisdictions. These unregulated participants and/or products may at times emerge on the market without having to conform to the same level of regulatory requirements, thereby heightening the risk of misselling and consumer confusion.

¹² This information may include information contained in a more comprehensive document of which the "POS disclosure document" is a part. See definition of "POS disclosure document" on page 6.

¹³ For example, in Europe, there are four sectoral EU directives: (i) a directive for retail collective investment funds (the UCITS Directive)(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 ; OJ L 302: 32.), (ii) a directive on prospectuses for securities issuances (the Prospectus Directive)(Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading (as amended); OJ L 345: 64.), (iii) a directive on insurance mediation (the Insurance Mediation Directive)(Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation; OJ L 009: 3. The Insurance Mediation Directive (IMD) is currently undergoing a review, intended to enlarge its scope to include sales of insurance products.), and (iv) a directive for the marketing of financial products and business conduct of intermediaries (the MiFID Directive) (Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments; OJ L 145: 1. The directive is currently undergoing review.). Most of the products mentioned in the report are covered by one of these directives. However, the requirements of these directives are not harmonised in terms of product disclosure and business conduct.

The Joint Forum wishes to stress that POS disclosure is not a cure-all in the area of consumer protection.¹⁴ Even if armed with clear and relevant POS disclosure, consumers may nevertheless encounter misleading or high-pressure sales tactics aimed at inducing inappropriate transactions. The availability of clear and accurate disclosure should not relieve financial services salespersons of their other sales practice obligations, or result in a “caveat emptor” oversight standard in which the appropriateness or suitability of a salesperson’s recommendation is rendered less important or relevant. Instead, the Joint Forum notes that good POS disclosure is only one possible aspect of a strong consumer protection regime.¹⁵

Prior reports

In addition to the potential consumer protection gaps discussed above, the Joint Forum’s mandate to undertake this project emanated from questions and concerns identified in several prior reports.

First, the Joint Forum’s January 2010 Review of the Differentiated Nature and Scope of Financial Regulation highlighted that different supervisory and regulatory standards set by sectors for similar activities, while at times appropriate, could pose risks to financial stability and create regulatory arbitrage opportunities. In particular, the report recommended that the BCBS, IOSCO and the IAIS “work together to develop common cross-sectoral standards where appropriate so that similar rules and standards are applied to similar activities”.

Second, the issue of different cross-sectoral approaches to regulation was raised subsequently by IOSCO in its February 2011 report.. That report has set out six high level principles for disclosure of key information for retail consumers with specific relevance to CIS. It further touched on the impact of different cross-sectoral approaches to POS disclosure. It has noted specific industry concern that enhanced POS disclosure requirements for CIS products may place those products at a competitive disadvantage relative to other financial products that are subject to less stringent requirements. IOSCO encouraged “further work by appropriate bodies on POS disclosure regarding products similar to CIS”. It has also encouraged supervisors to review conditions within their jurisdiction and, where possible, consider the adoption of the six principles to products similar to CIS (refer to Annex 1).

Sectoral principles on POS disclosure

Several financial products are covered by international regulatory principles recommending sound practices regarding information disclosures provided to consumers. These principles are the IOSCO CIS Principles (Principle 4), the IAIS Core Principles (especially ICP 19.5¹⁶) and the G20 High Level Principles on Financial Consumer Protection (Principle 4). Moreover, there are also international principles being considered relating to the delivery of the information to the consumer including the timing of disclosure. These principles are the IOSCO CIS Principles (Principles 2 and 3), the IAIS Core Principles (in particular ICP 19.5 and its related guidance).

The Joint Forum’s efforts were also guided by certain basic considerations regarding the nature and effect of POS disclosure as explicitly set forth in its mandate for this work:

“Disclosure standards and requirements – particularly those at the point of sale – are important regulatory tools in promoting consumer protection by enhancing transparency in financial products/markets. Robust disclosure regimes which provide information in a form consumers (ie, deposit holders, policy holders, investors) can use practically – focussed on clear, unbiased communication of key

¹⁴ Effective POS disclosure requirements should be supplemented by adequate disclosure obligations at the other relevant stages of the product life cycle and strong requirements on advice, and more generally on relationships between producers, distributors and consumers.

¹⁵ The Joint Forum does not delve into the suitability requirements underlying investment product sales and adequate advice.

¹⁶ See www.iaisweb.org/index.cfm?pageID=689&icpAction=listIcps&icp_id=20.

information – serve to reduce the information asymmetries which exist between product issuers and consumers, empowering the latter to make better-informed decisions about their investments. They also foster greater comparability (especially given an increasing number of products being distributed on an international basis), making it easier for consumers to choose between different products irrespective of their domicile. In particular when products are very similar, inconsistent sectoral approaches to disclosure can pose risks to these regulatory objectives, including consumer protection”

While the Joint Forum’s mandate included identifying whether regulatory approaches to POS disclosure need to be further aligned across sectors, the Joint Forum recognises that there will still be differences among applicable regulators, and that differences in regulatory approaches can arise from differences in sectoral regulatory objectives and differences in product features and terminology.

The term “*POS disclosure document*”, when used in this report, refers to a summary disclosure of the main or “key” information relating to the product, whether prepared separately or as part of a more comprehensive disclosure document. Thus, broadly speaking, the term “POS disclosure” as used in this report refers to disclosure of key information to consumers relating to products and their distribution both prior to or at the point of sale.

Additional considerations

Additional considerations were based on the experience of Joint Forum members who expected variations in POS disclosure regimes for participating jurisdictions. In part, this expectation was based on the awareness of the breadth of supervisory systems and practices in participating jurisdictions. For instance, because product regulation often follows a sectoral approach (for example, with securities supervisors responsible for CIS and securities, banking supervisors overseeing structured deposits and insurance supervisors overseeing unit-linked life insurance products), a certain difference in approach seems inevitable without explicit efforts at coordinating between sectoral supervisors. Even for jurisdictions following a “twin-peaks” approach, in which prudential oversight is housed in one regulator, although consumer protection is the explicit responsibility of another supervisor, differences between product disclosure regulations can occur, in some cases, because of product specificities. Also, historical supervisory approaches or the reliance on other documents widely used in the sector can engender different regulatory outcomes.

II.2 Methodology

Mapping exercise

The Joint Forum conducted a mapping exercise engaging members of the Joint Forum, members of the IOSCO Standing Committee on Investment Management and members of the IAIS Market Conduct Subcommittee.

In total, 16 regulators responded to the questionnaire (refer to Annex 2 for details). The Joint Forum received eight responses from banking regulators, 10 from insurance regulators and eight from securities regulators.¹⁷

The objective of the mapping exercise was to solicit input regarding the sample of products identified, and to answer a broad range of questions regarding their regulation. However as the mandate focuses on products that compete with CIS for consumer savings, the mapping exercise primarily addressed disclosures associated with products rather than those associated with distributors, such as conflicts of interest or compensation schemes.

¹⁷ Certain countries have one regulator for all sectors and others have separate regulators. Please note that answers from integrated authorities are counted separately for each sector.

The mapping questionnaire dealt with three topics:

- The scope of the Joint Forum's inquiry;
- The regulatory product disclosure document; and
- The marketing materials.

Roundtables

In addition to the mapping exercise, two hearings/roundtables were organised in Paris and Toronto; the former to obtain the views primarily of European representatives and the latter to obtain the views primarily of North American and Asian representatives.

Thirty-five representatives of industry (including the insurance, banking and securities industries and their counsel) and five consumer representatives (including associations and university professors) participated in the roundtables.

One of the main considerations of the Joint Forum in the organisation of the roundtables was to ensure adequate participation of consumer representatives. Due to their sometimes limited financial resources, consumer representatives may not always have the same level of visibility as industry representatives. Nevertheless, as noted above, five consumer representatives were able to attend the roundtables. To ensure that their participation was as valuable as possible, during the roundtable the Working Group particularly encouraged their full participation and directly solicited their response to opinions expressed by industry representatives.

III. Scope

As discussed in Section II, the Joint Forum focused its efforts on differences in POS disclosure regimes for a sample of retail products competing with CIS for consumer savings. All products sold with the objective of attracting consumer savings could have been in the scope of this initiative. However, a manageable list of competing products needed to be created for purposes of the mapping exercise. Accordingly, one of the first steps was to identify, in participating member jurisdictions, a sample of competing products. In identifying the sample, one of the difficulties faced by members was that product terminology and structure differs from one jurisdiction to another. For example, the characteristics and terminology associated with some insurance products varied considerably from jurisdiction to jurisdiction. As a result, the Joint Forum had to choose simplified definitions for purposes of the sample that are not common to all member jurisdictions. These definitions are for purposes of this report only and do not override any national or international product definitions.

III.1 Characteristics of CIS

CIS are a form of collective investment vehicle that raises money from consumers to invest it following a specific formalised and disclosed investment strategy. In order to create the sample of products competing with CIS and to conduct its analysis, the Joint Forum started by identifying the main characteristics of CIS that would be found in these competing products.

The Joint Forum considered the most common characteristics of CIS offered to consumers in member jurisdictions. Consumer assets are pooled by the CIS and invested in other securities or assets. For example, in most cases CIS expose consumers to the possibility of a variable return. The return often depends on the performance of other securities or assets, such as a stock market index, or a basket of securities or other assets. Furthermore, CIS are nearly always "packaged" or "manufactured" products, in that consumers never hold the underlying assets of the CIS (eg stocks, bonds) directly, as they might do with common shares. The packaging of CIS can include methods such as "wrapping" or bundling

together a number of CIS's or other assets to create different degrees of exposure, product features and cost structures. Sometimes the product holding the underlying assets is also referred to as the "wrapper". Finally, even though some CIS provide a degree of capital protection, for purposes of this report the Joint Forum considered that unlike pure insurance risk products where there is no investment aspect a key objective of a CIS is its investment return.

III.2 Sample of products which compete with CIS

In line with the mandate, the Joint Forum concentrated on products from the banking, securities and insurance sectors, and focused on the products that both broadly share the characteristics identified above and that are, in the Joint Forum's opinion, most commonly offered as an alternative to, or in competition with, CIS.

There are many products that may serve as alternatives to CIS for consumer savings, which have not been included in the sample. For example, a consumer seeking exposure to the bond market may be offered the direct purchase of "plain vanilla" corporate bonds rather than a CIS. However, as plain vanilla corporate bonds are not "packaged," but are instead held directly, they were excluded from the sample. Similarly, a risk-averse consumer may be offered a fixed term deposit (which may be covered by a national deposit insurance scheme) or a non-insured CIS money-market fund. However, as the primary characteristic of a fixed term deposit is its stable return and guaranteed return, where applicable, rather than market exposure, these were also excluded from the sample. Finally, although the Joint Forum considered products with the main objective of insuring consumers against a particular event (eg term life, death, illness or disability insurance), these were excluded because the focus is on the product's risk insurance component and/or the return is generally not linked to market results.

Many roundtable participants, Joint Forum members and mapping exercise respondents, identified products or asset classes that shared one or more characteristics with CIS and that were either offered as an alternative through financial services firms, or as a physical asset (eg gold coins advertised as an investment) and competed with CIS for consumer savings. Nevertheless, the broadly consistent reaction from both industry participants and consumer representatives was that the products identified in the sample were an appropriate cross-sectoral selection of retail products most often competing with CIS for consumer savings. Roundtable participants also emphasised the importance of avoiding an uneven playing field between highly regulated products and less regulated products.

The chosen sample is not a suggestion that other products do not compete with CIS or share some of their characteristics. It simply reflects the constraints of the Joint Forum's mandate and the practical considerations of how best to fulfil that mandate. However, as discussed in more detail below, many of this report's recommendations could be applicable to products beyond those in the sample. That is, although this report makes no recommendations beyond the scope of the sample products, supervisors could decide to apply some or all of the report's recommendations to products beyond the sample to the extent that their application would be appropriate or beneficial.

Finally, while this report makes no such recommendation, the Joint Forum notes that all the consumer representatives and some industry representatives recommended basic written disclosure requirements for non-packaged products which, although they are not included in the sample, may compete with CIS for consumer savings. For example, required information on such products could include the specific characteristics of such products, including costs, implied guarantees, financial benefits, liquidity and related risks, interest rates and redemption rights.

III.3 Definition of the products in the sample

In light of the above considerations, the following products were selected for the sample. As noted above, defining these products is sometimes challenging because product terminologies and definitions

vary across jurisdictions. Accordingly, the definitions below are for the purposes of this report only and do not override any national or other international product definitions.

- **Insurance contract with a strong investment component** refers to any insurance product¹⁸ that includes an investment component that is expected to provide a variable rate of return and where the consumer does not hold the underlying investments or assets directly. These include the products which follow.
 - **Unit-linked and index-linked insurance contracts** are insurance contracts where benefits are wholly or partly determined by reference to the value of, or the income from, property or assets of any description (whether or not specified in the contract) or by reference to fluctuations in, or in an index of, the value of property or assets of any description (whether or not specified).
 - **Fixed index annuities** are insurance contracts, where the investor purchases an insured contract where the credited interest rate is tied to the growth of a major stock market index.
 - **Variable annuities (VAs)** are unit-linked insurance contracts with investment guarantees, which allow the policyholder to benefit from the upside of when the unit increases in value but be partially or totally protected when the unit loses value. Guarantees entailed in VAs can vary considerably and imply an increase of risks for insurers relative to pure (non-guaranteed) unit-linked products. The existence of various forms of guarantees might be helpful in classifying unit-linked products as VAs.¹⁹
- **Certificates/Structured notes** are debt obligations of the issuer usually an investment bank, in which payments are based on the performance of various asset classes such as single security, baskets of securities, commodities, currencies or indices, etc.
- **Structured deposits or variable rate certificates of deposit or market linked certificates of deposit** are deposits with interest rates derived from or based on a single security, a basket of securities, an index, a commodity, debt insurance and/or a foreign currency. In simpler terms, a structured deposit is essentially a contract between the investor and the issuer, usually a bank, which promises to repay capital at a certain time plus interest based on a formula. Most of the time, only banks are permitted to issue deposits.

The table below presents the generalised key characteristics, combinations of which can typically be found in each of the sample products.

¹⁸ The term "product" is used throughout the report to facilitate the reading of the report, in spite of the fact that in insurance, the technical term generally used is insurance contract and not "insurance product".

¹⁹ The guaranteed level is generally determined by the following methods: i) return of premiums: the sum of the paid premiums (gross or net of loadings); ii) roll-up: the sum of the paid premiums (usually net of loadings) at a pre-defined interest rate; iii) ratchet: the highest value of the underlying funds in sets of a pre-defined timeframes within the insurance period; or iv) any combination of the above or other methods of determining the guarantee level.

Sample products and their characteristics

Table 1

Key Characteristics	Variable return	Reference assets or underlying investments	Key objective is investment returns, rather than pure protection against a specific event
Insurance contract with a strong investment component	P	P	P
Certificates and Structured Notes	P	P	P
Structured Deposits, Variable Rate Certificates of Deposit, and Market Linked Certificates of Deposit	P	P	P

IV. Regulatory Overview and Analysis

The mapping exercise and the roundtables provided a significant amount of information that has been categorised into four parts for analysis:

- whether or not *POS disclosure documents* are required in general,
- the format and language of *POS disclosure documents*,
- the content of *POS disclosure documents*,
- and whether or not prior approval is required for the documents by the supervisory authority and whose responsibility it is to provide *POS disclosure documents* to consumers.

In each case, the Joint Forum focused on cross-sectoral differences rather than differences between jurisdictions. Information was also collected on regulatory considerations and discussions that have not yet been put into law but are currently being discussed (for details on these initiatives please refer to Annex 3).

Summary of responses of the mapping exercise

As mentioned in the section above on methodology, 16 regulators responded to the mapping questionnaire²⁰ (15 of which are Joint Forum members). The results are not considered as an exhaustive study. However, in spite of this limited sample, many differences in POS disclosure across products whatever the jurisdictions can be observed. Discussions of the questions asked and the participants' responses are presented in more detail further below however in summary the mapping exercise revealed a variety of regulatory approaches:

- In Australia, the regulatory framework requires that retail consumers be given a 'clear, concise and effective' product disclosure statement for all financial products, regardless of sector.
- In Europe, UCITS directive, Prospectus Directive, MiFID Directive, Insurance Mediation Directive and Solvency II require the producer or the distributor to disclose information to consumers. All these directives have a sectoral approach so they use their own vocabulary and terminology. For structured deposits, at this stage, no specific European legislation requires the producer or

²⁰ Regulators which responded included ASIC (Australia); FSMA (Belgium); ACP and AMF (France); BaFin (Germany); Consob (Italy); JFSA (Japan); AMF (Quebec); FINMA (Switzerland); FDIC, OCC, Federal Reserve, NAIC, SEC (United States);– EFSA (Egypt); and FSB (South Africa). Refer to Annex 2 for more detail. As explained in the methodology section, the Joint Forum received eight responses for the Banking sector, 10 for the Insurance sector and eight for the Securities sector.

the distributor to disclose information. In certain European jurisdictions, general consumer regulation is also applied to structured deposits.

- In Japan, as a means of protecting consumers, the same level of investor protection is applied to products and transactions with the same economic characteristics. The Japanese regulation obligates the delivery of documents in a written format before finalising a contract.
- Québec's insurance and deposit-taking institutions regimes have requirements to deliver key information at point of sale. It takes the form of a disclosure document (named the "information folder") describing the product and includes a summary information document (named "Fund Facts") for insurance, and a synopsis to be delivered both orally and in writing by deposit-taking institutions.
- In the United States, sectoral regulation, depending on the type of offering and product, mandates the disclosure of certain minimum information with details of the disclosure differing for each sector.
- In South Africa, different levels of minimum disclosure requirements apply to product producers in different sectors, while distributors (advisers and intermediaries) are required to comply with detailed, prescribed disclosure obligations regardless of the type of product they recommend. These disclosure obligations are particularly rigorous for any product with an investment component.

Summary of responses from consumers expressed at the roundtables

During the roundtables, most consumer representatives favoured the use of a short document with common content that focuses only on key information, in language a consumer can understand. Consumer representatives also consistently expressed the view that disclosure made at the POS should permit consumers to more easily compare similar product offerings. Several consumer representatives questioned whether consumers would even contemplate comparing products if the disclosures appeared and/or were named differently.

These representatives suggested that the ability for consumers to compare basic information for products across sectors could be particularly useful where banks, insurance companies, or other financial services providers offer products with different disclosure requirements, such as unit-linked insurance, CIS, structured notes or structured deposits. Accordingly, for products that are not yet subject to POS disclosure requirements it could be helpful to introduce at least broad regulatory disclosure recommendations that foster comparability of basic information.

They also suggested that regulation could be more effective in terms of consumer protection if the industry was subject to consistent rules for product disclosure for all products offered to consumers. They noted that this could help reduce an additional source of complexity for consumers and could be less costly for the industry.

In addition, all consumer representatives expressed a need for a short document or a short summary document with common content, which enables consumers to compare products without unnecessary, unclear, or too difficult to understand information.

While the roundtable participants generally agreed with the sample of products identified by the Working Group as competing with CIS, they also emphasised that it is important to avoid an uneven playing field between highly regulated products and less regulated products.

IV.1 Current POS disclosure document requirements

One of the main goals of the mapping exercise was to identify for the sample of products whether or not there is a regulatory obligation for some form of written disclosure document to be provided to persons purchasing or considering the purchase of a product. This disclosure could be either a comprehensive

regulatory document such as a prospectus that describes the product, or an abbreviated summary information document (with key information for consumers, summary of the prospectus, etc).

Findings

Mapping of requirements for a POS disclosure document ²¹				Table 2
<i>The text lines in the first column of the table summarise statements provided by regulators in response to the mapping exercise and through subsequent input from members of the Joint Forum. The set of checkmarks reflects the percentage of regulators in a given sector for which the statement currently applies (P = 5% - 20%; PP = 21% - 40%; PPP = 41% - 60%; PPPP = 61% - 80%; P P P P P = 81% - 100%).</i>				
	Sample banking products (8 responses)	Sample insurance products (10 responses)	Sample securities products (8 responses)	
No requirements	PP			
General requirements in consumer law	PP			
Specifics requirements	PPPP	PPPPP	PPPP	

Even though there is no common *POS disclosure document* required for all sectors, there seems to be a relatively broad requirement in the surveyed jurisdictions that some basic level of information for all sample products is disclosed to consumers. The mapping exercise revealed no product in the sample, for which no disclosure was required across all participating jurisdictions at all.

However, it may not always be required that such disclosures be in writing or documented. In addition, the disclosure requirement is sometimes contained in sectoral regulation (ie required by banking, insurance or securities supervisors) and sometimes mandated by broader consumer regulation requirements covering all goods and services.

In many jurisdictions a *POS disclosure document* is provided or is available to the consumer before or at the time of the purchase of a product. In many cases, the document is provided or is available in an electronic manner (internet or email) and a paper copy is sent or provided to the consumer on request. In some countries the POS disclosure document is provided in written, hard copy format and/or electronically on request of the consumer.

Consumer representatives pointed out at the roundtables that when a disclosure document is required, the name of the document currently varies depending on the nature of the product and the jurisdiction or sector requiring the disclosure. While each jurisdiction may have different names, names used include a summary of the prospectus, a key information document, an information folder, or a notice for insurance products.

The results of the mapping exercise, the roundtables and discussions among the Joint Forum's members, revealed that it is important for regulators to consider, whenever appropriate, POS disclosure requirements and that it is generally helpful for consumers to receive a concise *POS disclosure document* that provides key information relating to the product, whether separate or as part of a more comprehensive disclosure document.

²¹ The charts included in this report represent the Joint Forum's interpretation and consolidation of the responses to the mapping exercise. In compiling these charts, the Joint Forum necessarily made generalisations as to the requirements in various jurisdictions. Accordingly, specific disclosure laws, regulations or practices may differ from those described in the charts. In particular, the Joint Forum notes that the mapping exercise questionnaire asked broad questions regarding disclosure requirements generally without limiting them to the definition of POS disclosure used in this report. The Joint Forum produced a first set of tables on POS disclosure from the answers provided with respect to the broader questionnaire. Participating jurisdictions were then given the opportunity to comment and correct their answers in the tables. The final version of the tables was developed by taking into account comments and corrections received. Where a regulator oversees more than one of the products in the sample, a positive response for a given requirement may reflect that the requirement applies to *at least* one such product, but not necessarily to all such products and may only apply to registered offerings.

IV.2 Format and language requirements

Findings

In relation to pre-contractual information, relevant international core principles for CIS and insurance products already exist. IOSCO principle 4 and IAIS Insurance Core Principle 19.5.4 to 19.5.7 are applicable to format and language requirements of the information disclosure document for CIS and insurance products.²²

With respect to the mapping exercise, requirements of supervisors concerning the format and language to be used in *POS disclosure documents* at the point of sale are summarised in the table below.

Mapping of format and language requirements

Table 3

The text lines in the first column of the table are statements provided by regulators in response to the mapping exercise and subsequent input from members of the Joint Forum. The set of checkmarks reflects the percentage of regulators in a given sector for which the statement currently applies (P = 5% - 20%; PP = 21% - 40%; PPP = 41% - 60%; PPPP = 61% - 80%; PPPPP = 81% - 100%).

POS disclosure document ²³	Sample banking products (8 responses)	Sample insurance products (10 responses)	Sample securities products (8 responses)
	Format		
Narrative summary	P	P	
Use a given font size	PP	PP	PP
Shall be presented in a format that assists readability and comprehension	PPP	PPP	PPP
Does not exceed a specified number of pages or short as possible	P	PP	PPP
Logically ordered or model forms	PP	PP	PP
	Language		
Use of a simple or plain language / avoid technical language and jargon	PPPP	PPPP	PPP
Disclosure should be fair, clear and not misleading	PPPP	PPPP	PPPPP

Analysis

In summary, the responses received indicate the following:

- The banking sector has limited requirements regarding the visual format (font, length) of the *POS disclosure document*, but more requirements around the qualitative format (fair, clear and not misleading, etc)
- In the insurance sector, format and language requirements are generally covered by specific requirements related to the use of simple language, or by requiring that disclosure should be fair, clear and not misleading, and aimed at making the document more readable.
- Many securities regulators participating in the mapping exercise provided examples of specific requirements related to the format and language of required disclosure documents.

²² www.iaisweb.org/index.cfm?pageID=689&icpAction=listIcps&icp_id=20.
www.iosco.org/library/pubdocs/pdf/IOSCOPD343.pdf

²³ See footnote 21 and definition of POS disclosure document on page 6.

In many jurisdictions, information disclosures made by producers or distributors also need to comply with general consumer protection principles, whatever the product's characteristics or legal form, which may make some of these requirements applicable to banking products. For example, consumer protection principles often require that disclosure must be understandable - this generally means that the language used must be simple, clear and not misleading. Further, simplicity and clarity can be achieved for instance through the use of communication tools such as diagrams, charts and illustrations. Several consumer representatives made this point during the roundtables.

Requiring that the information disclosure document be fair, clear and not misleading can be considered the first step in informing consumers, with a goal of preventing or mitigating the risk of inappropriate sales. Some countries have provided further direction to the industry specifying in greater detail what it means to be "clear" and "not misleading".

Some regulators also require that a *POS disclosure document* does not exceed a specified number of pages and that a given minimum font size be used. Jurisdictions that adopted this approach noted that the objective is to help make the document more readable and help the consumer more readily identify essential information. They noted that requiring that key information be adequately highlighted could prevent essential information from getting lost in a longer document. In contrast certain disclosures may occur in multiple phases or in footnotes. Of course, some flexibility with regard to the number of pages can be helpful or necessary in order to take into account the different product characteristics. For instance, it might be difficult to describe the relevant characteristics of some products in one or two pages while still aiming to convey all essential aspects of the product.

Similarly, disclosure can be required in layers with a concise document containing significant information to be accompanied by, part of, or available in conjunction with a longer document with more detailed information. This approach can help focus consumer attention on information considered most important with further detail available for those who are interested in it.

The concept of a disclosure framework, should also address the challenges that varying product disclosures across sectors can create. As noted above, consumer advocates suggested that varying disclosures frameworks might make it difficult for consumers to compare products across sectors or even to realise that such products may be comparable.

The Joint Forum did not identify common explanations for varying formats in *POS disclosure documents* across sectors but recognises that flexibility in format and framework can be important to permit disclosure customised to a product. However, with respect to competing products more generally, differences among regulatory schemes and products and varying terminology can contribute to the difficulty of creating a common framework for POS disclosures across sectors.

IV.3 Content of the POS Disclosure Document

Findings

There are international principles regarding the provision of information to consumers. These principles are in the IOSCO CIS Principles (Principles 1 and 5) and the IAIS Core Principles (especially ICPs 19.5.9 to 19.5.16).²⁴

With respect to the mapping exercise, responses in terms of sectoral regulation concerning the content of the POS disclosure produce a diverse picture. This is summarised in the table and paragraphs below.²⁵

²⁴ See www.iaisweb.org/index.cfm?pageID=689&icpAction=listIcps&icp_id=20.
See www.iosco.org/library/pubdocs/pdf/IOSCOPD343.pdf

²⁵ See footnote 21.

Mapping of content requirements

Table 4

The text lines in the first column of the table are statements provided by regulators in response to the mapping exercise and subsequent input from members of the Joint Forum. The set of checkmarks reflects the percentage of regulators in a given sector for which the statement currently applies (P = 5% - 20%; PP = 21% - 40%; PPP = 41% - 60%; PPPP = 61% - 80%; P P P P P = 81% - 100%).

Content of POS disclosure document	Sample banking products (8 responses)	Sample insurance products (10 responses)	Sample securities products (8 responses)
No requirements	P		
General information about the product*			
Redemption or withdrawal aspects	PPP	PPP	PP
General information on the product	PPPP	PPPP	PPPP
Information on the producer/ guarantor	PPPP	PPP	PPPP
Information on the underlying investments or reference asset	PP	PP	PPPP
Complaints handling process / Alternative dispute resolution	PP	PP	P
Rights and liabilities	PP	PPP	PPP
Practical information	PP	PP	PP
Specifics requirements			
The main characteristics	PPPP	PPPP	PPPP
Objectives and policy	PP	PPP	PPP
Risk	PPPP	PPP	PPPP
Rewards, past performance or scenarios	PPP	PPPP	PPP
Costs and conflict of interest	PPP	PPPP	PPPP
Guarantee	PPP	PPP	PP

* Some of this information is not related to a specific product and may be provided to consumers in a document other than a POS disclosure document.

With regard to the banking sector (eight responses received), 12.5% of banking supervisors that responded stated that there was no comparable disclosure requirement in that sector when compared to most existing CIS disclosure regimes; 75% stated that there was only disclosure on the main characteristics of the product and 25% reported that it had a common approach to all products irrespective of the sectors.

In the insurance sector (10 responses received), 80% of the regulators have specific requirements with respect to the content of the *POS disclosure document* relating to the contract as well as to the underlying funds.

In the securities sector (eight responses received), 75% of the regulators have specific requirements with respect to the content of the POS disclosure.

Analysis

While there are some broad commonalities in the securities and insurance sectors, banking supervisors tend to impose different requirements. There may be specificities in the insurance sector because of the two levels of information disclosure that are provided for insurance products: at the wrapper level on the one hand, and at the underlying investment level on the other.

²⁶ See definition of POS disclosure document on page 6.

Where insurance wrappers enable consumers to choose and mix and match a number of underlying investment choices, including but not limited to combinations of CIS portfolios, it may be difficult to include both levels of disclosure in a single *POS disclosure document*. Where, for example, a consumer can choose between investing directly in a variety of CIS, or doing so through an insurance wrapper, comparability may sometimes be enhanced if the documents are separated, but provided at the same time. A regulator may consider whether or not it is acceptable to provide POS disclosure documents for the wrapper and the underlying investment choices as separate documents in circumstances where, in producing a POS disclosure document for the insurance wrapper, the insurer is not aware of which of the underlying assets available for selection the consumer will choose. When a regulator determines that separate documents may be used, it may be appropriate to require that the wrapper document contain an appropriate cross-reference to the relevant key information documents for the underlying investment choices and/or limited information about the underlying investment choices. Regardless of whether separate documents are used for a wrapper and underlying investment choices, or whether a combined document is used, the approach selected should not obscure important information, for instance, information on total costs. Disclosure requirements regarding structured deposits seem to vary more among jurisdictions, ranging from relatively few specific disclosure requirements to very substantive disclosure regimes in individual jurisdictions.

Regarding the content of disclosure requirements, it is difficult, based on the results of the survey and roundtables, to isolate one or two specific drivers behind the different disclosure regimes. Disclosure differs across jurisdictions and sectors due to various factors, some of which are beyond the scope of this report. The differences may be broadly attributed to different sectoral regulatory approaches and also, to a certain degree, disclosure obligations triggered by product specificities.

From the information available from the mapping exercise, it is likewise not possible to conclude with certainty that any one sectoral disclosure regime results in a better informed consumer. However, in light of the identified goal of fostering information comparability, regulators should consider whether there are ways they may seek to work with regulators in other sectors in their jurisdiction to harmonise, as appropriate, POS disclosure across sample products, keeping in mind that product specificities must be taken into account.

IV.4 Regulator review and producers' and distributors' responsibility

Findings

Finally, the Joint Forum examined whether a disclosure document is required to be approved or submitted to authorities before distribution of a product and whether the producer or the distributor is responsible for providing the *POS disclosure document* to the consumer.

With regard to the submission of the *POS disclosure document* to the authority, the results of the mapping exercise and subsequent input from members of the Working Group are summarised in the tables and paragraphs which follow.

Mapping of approval requirements	Table 5		
<i>The text lines in the first column of the table are statements provided by regulators in response to the mapping exercise and subsequent input from members of the Joint Forum. The set of checkmarks reflects the percentage of regulators in a given sector for which the statement currently applies (P = 5% - 20%; PP = 21% - 40%; PPP = 41% - 60%; PPPP = 61% - 80%; PPPPP = 81% - 100%).</i>			
POS disclosure document ²⁷ submission/approval	Sample banking products (8 responses)	Sample Insurance Products (10 responses)	Sample Securities Products (8 responses)

²⁷ See footnote 21 and definition of POS disclosure document on page 6

No requirements	PPPP	PPP	
Prior approval of documents	P	PP	PPPP
Submission to the supervisor	P	P	P

62.5% of the supervisors which responded for banking products, and 60% of the supervisors which answered for insurance products said there was no requirement to submit the POS document to the regulator prior to distribution. In contrast, in the securities sector, 75% of the supervisors require either the document to be registered or approved with them prior to the distribution of securities or be submitted to them although not necessarily prior to distribution. Responses received also noted that while the product is being offered, supervisors have the power to require modifications of the *POS disclosure document* irrespective of whether it has been submitted prior to product launch.

With regard to the responsibility to provide the document to the consumer the mapping exercise and subsequent responses led to the results in the following table.²⁸

Mapping of responsibility

Table 6

The text lines in the first column of the table are statements provided by regulators in response to the mapping exercise and subsequent input from members of the Joint Forum. The set of checkmarks reflects the percentage of regulators in a given sector for which the statement currently applies (P = 5% - 20%; PP = 21% - 40%; PPP = 41% - 60%; PPPP = 61% - 80%; PPPPP = 81% - 100%).

Regarding the responsibility for producing or providing the document, the results of the mapping exercise show that whatever the product and the distribution organisation, respective legal frameworks generally identify which entities have responsibility to produce the applicable *POS disclosure document* and who has responsibility to provide it to consumers. Typically in the securities and insurance sectors the responsibility for producing the POS disclosure document is determined by the applicable legal framework, which in most cases covers the producer's and distributor's responsibilities.

Responsibility for producing or providing the POS disclosure document/information	Sample Banking Products (8 responses)	Sample Insurance Products (10 responses)	Sample Securities Products (8 responses)
No responsibility	P		
No clear responsibility	P	P	P
Clear responsibility	PPPP	PPPP	PPPP
Distributor			
Responsible for producing POS disclosures document	P	P	P
Responsible for making available or providing POS disclosures document before the subscription	PP	PP	PPPP
Producer			
Responsible for providing or making available POS disclosures document before the purchase	PPP	PPP	PP
Responsible for producing POS disclosures document	PP	PP	PPPP

Analysis

Regarding prior approval requirements, the mapping exercise revealed significant differences between sectors. For example, most of the insurance and banking supervisors do not require the submission of *POS disclosure documents* to the applicable authorities, whereas, in the securities sector, in most cases the legal framework covers whether and when a *POS disclosure document* must be submitted or filed

²⁸ See footnote 21.

prior to distribution of the product. In some instances, the systematic submission of a *POS disclosure document* is not allowed. For example, in the European Union the submission, prior to marketing or distribution, of the *POS disclosure document* to the supervisor for insurance and banking products²⁹ is not allowed so as to not to diminish the responsibility of the producer.

As to the outcome resulting from these differences, it could be argued that regulatory pre-approval is unnecessary where ex-post sanctions suffice. Indeed, it could be argued that the producer would be eager to avoid ex-post modification of a disclosure document as this can be costly financially and have negative consequences in terms of reputational risk. On the other hand, once a misleading document is distributed to consumers, it may be difficult to ensure that corrected information is considered by the consumer and in any case this could be too late. If the deterring effect of potential costs and reputational risks for the producer and distributor is not great enough, harm to consumers might still occur.

The Joint Forum did not identify a clear reason to favour one approach or the other.

As to the sharing of responsibilities between the producer and the distributor, the respective legal frameworks generally identify which entities have responsibility for producing the applicable *POS disclosure documents* and who has to provide it or make it available to potential purchasers. However, as varying distribution channels may be different, this appears to be an acceptable justification for not having the same requirements in terms of responsibility for preparing and delivering the *POS disclosure document*.

V. Policy recommendations

The following policy recommendations are intended to assist regulators and are put forward to be considered by them whenever they develop or revise POS disclosure requirements. Additionally, the IOSCO, the IAIS and the BCBS may wish to consider whether some of these recommendations may be relevant to their respective work.

Recommendations have been derived from the mapping exercise, comments made by participants in the roundtables, and the experiences of the participating supervisors. The Joint Forum recognises that sectoral or product differences may justify different regulatory approaches with regard to disclosure (especially when product characteristics are different), and that supervisors must typically also consider costs and benefits associated with new regulations. However supervisors could consider efforts toward harmonisation.

There are numerous ways of implementing a POS disclosure regime. The recommendations have been developed with the goal of enhancing consumer protection by providing guidance to regulators/supervisors that are considering developing or reviewing their POS disclosure requirements and are intended to allow for a wide range of application and adaptation in different jurisdictions.

Nonetheless, in light of the support voiced by many members of the Joint Forum, consumer advocates and many in industry for disclosure documents including the same type of information for competing products, the Joint Forum recommends that regulators considering the recommendations outlined below consider the effects of sectoral differences within their jurisdiction.

Lastly, the Joint Forum identified other disclosure practices related to POS disclosure (see Annex 4).

²⁹ See consolidated life insurance directive (2002/83/EC) article 6(5).

For the purposes of this report, the term “product” covers, irrespective of the financial sector it is derived from, the legal form of a product and the related underlying investments.

Recommendation 1: Jurisdictions should consider implementing a concise written or electronic POS disclosure document, for the product sample identified in this report, taking into account the jurisdiction’s regulatory regime.

Recommendation 2: The POS disclosure document should be provided³⁰ to consumers free of charge, before the time of purchase.

Recommendation 3: A jurisdiction considering POS disclosure should consider requiring that a POS disclosure document disclose key characteristics including costs, risks and financial benefits or other features of a given product and any underlying or referenced assets, investments or indices, irrespective of the financial sector from which the products are derived.

Before buying or investing in a product, consumers should have key information regarding the product at their disposal. This information should be provided at a time when the consumer has the opportunity to consider the information and make an informed decision about whether or not to buy or invest.

Disclosure should be provided in a manner that allows all consumers to have access to the information. Information contained in a *POS disclosure document* can be provided to consumers in an ad-hoc document or manner but can also be at the beginning of a more comprehensive disclosure document. To assist consumers’ understanding, the disclosure of key information could be given in writing or electronic format.

To foster understanding by consumers of the respective risks and financial benefits of the products they consider purchasing, regulators should consider requiring a document with key information facilitating an informed decision, whatever the legal form of the product.

Similarly, disclosure should also make clear the initial and on-going fees associated with the product.

The *POS disclosure document* should contain the most relevant information that could be used by consumers to make an informed decision; it can be prepared separately or as part of a more comprehensive disclosure document.

Consequently, depending on the jurisdiction’s legal framework, the required information could take into account the product’s overall complexity.

As noted above, much work has been done as to the elements of information that would likely be appropriate in a *POS disclosure document*. While the Joint Forum’s focus in commencing this project was on issues raised by the existence or lack of cross-sectoral harmonisation for products competing with CIS, rather than the elements of what an ideal POS disclosure might look like, the Joint Forum notes that certain basic elements of information may be appropriate for a *POS disclosure document* in any sector and that information disclosed should be focused on information that is pertinent to the key decision-making criteria.

³⁰ For the purposes of this report, the term “provided” includes making the *POS disclosure document* available on paper, or through an Internet website, or a regulator’s electronic filing database, or through other means. Such other means may include oral disclosure under appropriate circumstances if so allowed by the local regulatory framework, provided that appropriate documentation of any oral disclosure is made for example as part of a financial institution’s recordkeeping obligations and that the consumer is made aware of the availability of any written or electronic *POS disclosure document*.

Regulators may also wish to refer to the principles already established internationally such as OECD, IOSCO and IAIS principles. For example, the G20 High Level Principles on Financial Consumer Protection noted very broadly that consumers should be informed of the fundamental benefits, risks and terms of a product.³¹ In particular,

1. According to IOSCO's Principles of POS disclosure, disclosure should include a number of elements, such as:
 - the name and type of the product,
 - the product's objective or strategy,
 - fees and costs,
 - the nature of any guarantees offered including restrictions on those guarantees,
 - rights of cancellation or withdrawal including limitations on those rights, and
 - contact information.
2. According to IAIS's Principles of POS disclosure, disclosure on policy terms and conditions should include:
 - information on the product's key features (including among other things the level of premium, the type and level of charges, a description of the risk insured and of risks excluded, clear information on significant or unusual exclusions or limitations);
 - information on the consumer's rights and obligations (including amongst other things general provisions, the consumer's obligation to disclose material facts and other obligations during and at the end of the product's life, the consumer's right to cancel, claim benefits and complain).

Product specificities will generally dictate what information should be disclosed. For example, with regard to insurance products in particular, appropriate reference should be made both to the relevant features of the product and to its underlying investments, especially regarding costs and risks.

Recommendation 4: The POS disclosure document should be clear, fair, not misleading and written in a plain language designed to be understandable by the consumer.

To assist consumers to more readily understand the characteristics of a product, the information provided with retail products should be easy to read and presented in plain language.

Any disclosure should not emphasise potential benefits of a product without also giving a fair and prominent description of any relevant risks. Disclosure should not obfuscate important items, including warnings, or seek to diminish their importance. Supervisors could consider the use of research, such as consumer testing, in evaluating *POS disclosure documents* in order to foster their understandability.

Joint Forum noted that marketing materials are typically designed to be visually attractive to consumers; it is advisable that this material clearly distinguishes itself from required disclosure documents, such as through a reference that a product may not be sold other than in conjunction with required *POS disclosures documents*.

Recommendation 5: The POS disclosures should include the same type of information to facilitate comparison of competing products.

³¹ See Annex 3.

As mentioned in the regulatory overview, although most products/contracts included in the sample have to comply with applicable disclosures requirements, the rules vary both among sectors and respective jurisdictions. Consequently this creates a complex situation for consumers and could give rise to disclosure issues for the industry when they offer products from different sectors. The *POS disclosure document* should contain the same type of information in order to facilitate consumers' comparison of a range of comparable products with the goal of enhancing the ability of consumers to find key information for all competing products.³²

Recommendation 6: The POS disclosure document should be concise, set out key information about a product and may include, as appropriate, links or refer to other information³³. It should make clear that it does not provide exhaustive information.

This report does not address all disclosure requirements. Based on supervisors' experiences and the discussion at the roundtables, consumers may be more likely to read and understand key information presented in a concise manner.

Consequently, with regard to the perceived usefulness for consumers with respect to receiving some disclosure including the same types of information for the sample products, there was agreement among many jurisdictions, consumer advocates and industry members regarding the benefits of key items of information. This may be accomplished through a "key information document" or "summary prospectus" document that contains items of information thought, by the supervisor, to be most relevant to the consumer, or through the use of summaries or other devices that are part of a more comprehensive document.

The recommendation to consider the use of summary documents or other information should not be interpreted as a suggestion that other mandatory regulatory disclosure is not useful to a consumer's decision. The Joint Forum believes that the availability of more detailed information should be clearly communicated whenever a summary document is used, so that consumers are aware of its existence.

Where layering or separation of information is used, it is important to ensure that this does not obscure key messages, for instance the total costs of a product.

Recommendation 7: Allocation of responsibility for preparing, making available and/or delivering the POS disclosure document should be clearly established, and the POS disclosure document should identify which entity is responsible for its content.

Control over the information is an important factor to consider in determining who should make the disclosure. Regulators should clearly establish in their regulations who has responsibility for preparing and providing the *POS disclosure document* and its relevant content. In general, the respective legal frameworks generally identify which entities have responsibility for producing the applicable *POS disclosure document* and who must provide it to consumers. In many jurisdictions, the producer is responsible for producing and disclosing information relating to the product and the distributor for providing the document to consumer and also for disclosing information relating to intermediary

³² With regard to standardised pre-contractual disclosure practices (eg forms) dealt with in Principle 4 of the G 20 High-Level Principles on Financial Consumer Protection see Annex 3.

³³ This information may include information contained in a more comprehensive document of which the POS document is a part. See terminology definition on page 6.

services to the consumer.³⁴ In setting forth responsibilities, regulators likely will need to consider several factors in implementing this principle:

- If the distributor alters product information in its own document, it may have, in some jurisdictions, additional responsibility for that information.
- While a producer may generally be responsible for the content of the disclosure, the distributor is responsible in many jurisdictions for explaining the features of the product to a customer.
- The producer may not be able to clearly specify certain information at the point at which the product is produced. Depending on the product's features and the distribution channel, this could be the case for product charges and distribution charges. The distributor will need to consider how to provide disclosure about all charges, whether the actual product charges or the intermediation charges, in order to give the consumer full disclosure of charges.

Regulators should clearly establish who has the responsibility for delivering or making available the *POS disclosure document*.

Recommendation 8: A jurisdiction considering POS disclosure should consider how to use its capabilities and powers to implement these POS recommendations, taking into account the jurisdiction's regulatory regime.

Jurisdictions could take a variety of steps in considering whether and how to implement a POS disclosure regime. The examples listed below are not exclusive and could be complementary or alternative options. For example:

- Where relevant and authorised, supervisors could review, before they are published, *POS disclosure documents* to verify that recommendations are complied with, or require changes if the document does not comply with the above-mentioned recommendations.
- Supervisors could review, where appropriate, *POS disclosure documents* after they are published (eg based on control samples) and require corrections or withdrawal of the POS disclosure document or impose sanctions as necessary.
- Supervisors could consider, in extreme cases, and where permitted by the regulatory regime, significant sanctions, such as requiring withdrawal of the product.
- Supervisors could also consider providing explicit guidance to the industry regarding the content of *POS disclosure documents*, or alternatively supervisors could provide flexibility to industry with general guidelines as appropriate.

³⁴ The latter will also comprise questions of suitability. Nevertheless, as mentioned above, the Working Group does not delve into the suitability requirements underlying investment product sales and adequate advice.

Annex 1

CIS disclosure regimes across jurisdictions

The IOSCO Report first includes an overview of regimes in place in IOSCO jurisdictions. It noted that most jurisdictions have placed specific disclosure requirements on producers of CIS, and many also require that simplified information suited to the needs of the retail investor be provided. The IOSCO Report found that jurisdictions vary on what they require in terms of content, but generally, information that would be material to the retail investor's investment decision must be provided.

The report listed the following information as being typically required:

- investment objectives or goals,
- main investment strategies,
- key risks,
- fees and expenses,
- identification of the investment adviser, sub-adviser(s) and portfolio manager(s),
- the policy for the purchase and redemption of shares and distributions,
- tax information,
- other services that are available from the CIS (eg exchange privileges or automated information services),
- conflicts of interest, and
- contact information.

In addition to describing the current CIS disclosure regime, the IOSCO Report sets out six high level principles to provide guidance for markets and market authorities. These principles are:

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.
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.
3. Key information should be delivered or made available in a manner that is appropriate for the target investor.
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.
5. Key information disclosures should be clear, accurate and not misleading to the target investor. Disclosures should be updated on a regular basis.
6. In deciding what key information disclosure to impose on intermediaries and product producers, supervisors should consider who has control over the information that is to be disclosed.

Annex 2

List of supervisors that provided responses to the mapping exercise

Sixteen supervisors responded to the questionnaire (together representing 87.5% of the Joint Forum members who have contributed to the work). The Joint Forum received 8 responses from Banking supervisors, 10 from Insurance supervisors and 8 from Securities supervisors:³⁵

- Australia: Australian Securities and Investments Commission (ASIC);
- Belgium: Financial Services and Markets Authority (FSMA);
- France: Autorité de Contrôle Prudentiel (ACP) and Autorité des marchés financiers (AMF)
- Germany: Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin);
- Italy: Commissione Nazionale per le Società e la Borsa (Consob);
- Japan: Japan Financial Services Agency (JFSA);
- Quebec : Autorité des marchés financiers (AMF);
- South Africa: Financial Services Board (FSB).
- Switzerland: Swiss Financial Market Supervisory Authority (FINMA);
- United States: Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), Federal Reserve, National Association of Insurance Commissioners (NAIC), Securities and Exchange Commission (SEC).

In addition, 1 (non JFRAC members) that are members of the IAIS Market Conduct Subcommittee also responded:

- Egypt: Egyptian Financial Supervisory Authority (EFSA).

³⁵ It should be noted that some countries have one supervisor for all products in the sample, and others have multiple supervisors.

Annex 3

Selected recent and upcoming national or international initiatives on consumer protection

Several recent and upcoming initiatives relate to POS disclosure issues were brought to the attention of the Joint Forum and are briefly summarised below.

Selected recent or upcoming national initiatives on consumer protection

Italian initiative

In 2005, new provisions were introduced 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 2009 Consob provided guidance to intermediaries on how to comply with Italian rules in relation to the distribution of financial products (including banking and insurance financial products), which do not have an active secondary market. The aim is to ensure that intermediaries implement adequate processes and measures to prevent mis-selling and foster comparability across financial products.³⁶

The United States

The SEC adopted a summary prospectus for mutual funds in January 2009.³⁷ The NAIC adopted “Best Practices and Guidelines for Consumer Disclosures” on December 2 2012.

Switzerland: FINMA³⁸ proposals on package of measures to strengthen client protection

To reduce the asymmetrical power relationship between financial services providers and clients and strengthen the market, FINMA proposed introducing a package of mutually complementary regulatory measures on 24 February 2012. At the core of the proposed package of measures are standardised, cross-sector rules of business for banks, insurers and portfolio managers with which they must comply in their contact with clients. The focus here is on the obligation to inform all clients about the content of a service and the characteristics of financial products, and to warn them about the risks involved. Clients shall be clearly informed about all the costs associated with a service or the purchase of a product.

FINMA favors financial services providers furnishing clients with complete and readily understandable product documentation. In particular, providers of standardised financial products such as shares, bonds and structured products should be obliged to draw up a prospectus. This document must contain all the key details of the product and the provider and ensure transparency concerning the risks associated with buying the product. To ensure that retail clients are better able to understand compound financial products such as structured products and unit-linked life insurance plans, and are informed about the direct and indirect costs these products entail, FINMA is also calling for brief,

³⁶ See Consob Communication no. 9019104 of 2 March 2009.

³⁷ SEC Rel. No. 33-8998 (Jan. 13, 2009) [74 FR 4546 (Jan. 26, 2009)].

³⁸ See www.finma.ch/e/aktuell/pages/mm-vertriebsbericht-20120224.aspx

roughly two to three-page product descriptions along the lines of the simplified prospectuses produced for securities funds.

Furthermore, the **Federal Department of Finance** published, on 18 February 2013, the hearing report of the Steering Group for the Federal Financial Services Act. This shows the possible key thrusts of the planned regulatory project. The project covers not only the improvement of consumer protection, but also the amendment and harmonisation of the applicable regulations under financial market legislation.³⁹

South Africa

The Financial Services Board confirmed its intention to roll out a “Treating Customer Fairly” (TCF) regulatory framework in 2011. One of the principles of the TCF framework is that consumers of financial products must be provided with clear information and kept appropriately informed before, during and after point of sale. As part of the TCF implementation, the Financial Services Board and the National Treasury are developing requirements for product producers to develop “Key Information Documents”, which must comply with a broadly standardised template, in respect of all retail financial products. Provision of these documents before or at point of sale will be compulsory.

Mexico

In 2010, the National Banking and Securities Commission (CNBV) amended the rules applicable to CIS in order to substitute the former simplified prospectus, similar to the document provided in the UCITS III directive, with a document including the information prescribed in the Key Investor Information Document established in the European Directive 2009/65/UE (UCITS IV Directive), in order to use it as a valid selling document for each of the share classes of a fund.

Moreover, on November 2012 the CNBV published (and on April 2013 amended), the new applicable framework for advisory and non-advisory financial services. It is applicable to banks and brokerage firms (insurance products and pension funds are not under CNBV’s scope of competence) and will enter into full effect by June 2014, with some key requirements becoming mandatory as of October 2013. This new regulation on investment services sets standards for advisory (investment advice and asset management) and non-advisory services (execution only and general recommendations/securities offering). It also establishes particular obligations according to the services that financial entities provide, the kind of customer and the type of products that are being offered or recommended. One of the most relevant issues of this regulation is information disclosure to investors. This rule provides for investors to have full access to all material information about the products and investments (securities and derivatives) subject of the advice in order to evaluate the features, risks, costs and benefits.

Finally, on May 2013, Mexico’s government presented an initiative to Congress in order to reform different financial laws, in particular the Securities Market Law and Mutual Fund Law in order to also regulate independent investment advisors, as well as CIS operators and distributors to hold to the same standards described above, regarding suitability for advisory services, protection of customers for non-advisory services, management of conflicts of interest, material information disclosure, and compliance obligations.

³⁹ See www.efd.admin.ch/dokumentation/zahlen/00578/02686/index.html?lang=en

Selected recent or upcoming international initiatives on consumer protection

G20 High-Level principles on financial consumer protection

The high-level principles were developed as a response to the G20 Finance Ministers and Central Bank Governors call in February 2011 for the OECD, the FSB and other relevant international organisations to develop common principles on consumer protection in the field of financial services by their 14-15 October 2011 meeting. OECD High level principles were established, including on disclosure and transparency. These principles relating to disclosure and transparency (Principle 4) are as follows:

“Financial services providers and authorised agents should provide consumers with key information that informs the consumer of the fundamental benefits, risks and terms of the product. They should also provide information on conflicts of interest associated with the authorised agent through which the product is sold.

In particular, information should be provided on material aspects of the financial product. Appropriate information should be provided at all stages of the relationship with the customer. All financial promotional material should be accurate, honest, understandable and not misleading. Standardised pre-contractual disclosure practices (eg forms) should be adopted where applicable and possible to allow comparisons between products and services of the same nature. Specific disclosure mechanisms, including possible warnings, should be developed to provide information commensurate with complex and risky products and services. Where possible consumer research should be conducted to help determine and improve the effectiveness of disclosure requirements.

The provision of advice should be as objective as possible and should in general be based on the consumer's profile considering the complexity of the product, the risks associated with it as well as the customer's financial objectives, knowledge, capabilities and experience.

Consumers should be made aware of the importance of providing financial services providers with relevant, accurate and available information.”

IOSCO Reports on suitability and retail structured products

Further to its report on Point of sale disclosure on CIS published in 2011, IOSCO has been working on two areas of consumer protection, which relate to suitability and retail structured products.

Suitability :

On 21 January 2013, IOSCO published a report entitled *Suitability Requirements with respect to the Distribution of Complex Financial Products*, which sets out key principles on customer protections, including suitability and related disclosure obligations, in relation to the distribution by intermediaries of complex financial products to retail and non-retail customers.

Retail structured products:

In February 2012, IOSCO decided to start work in order to analyse trends and developments in the retail structured product market and related regulatory issues encountered by, and responses from, IOSCO members, as well as to develop guidance, if appropriate, on regulatory responses. The work conducted covers the 'value-chain' of the retail structured product market, from issuance to distribution to investment.

European initiative on retail investment products

The European Commission has made a proposal on 3 July 2012 for a regulation establishing a common “Key Information Document” (KID) for retail investment products, irrespective of the legal form these take. When such products are sold in the EU a KID needs to be prepared and provided before the sale can happen. The proposed document is to be short and use plain language. The aim is to ensure key

information is clearly comparable for all products – covering, for example the characteristics of the product and how it works, and the product risks and costs. The proposal reflects the request of the European Council for a horizontal approach that would apply to products from all sectors.⁴⁰

⁴⁰ This proposal is in legislative discussion at the European level. See http://ec.europa.eu/internal_market/finservices-retail/investment_products_en.htm

Annex 4

Disclosure practices related to the content of the POS disclosure document

Certain disclosure practices related to the content of POS disclosure were identified by the Joint Forum as examples of disclosures that may be relevant to the products being sold.

During the course of the project, the Joint Forum also identified certain practices required by some jurisdictions that may be useful to supervisors and others considering POS disclosure. Some of these are observations of consumer advocates or industry members participating in the roundtables. Others reflect the experience of Joint Forum members who have oversight of the sample products. While the Joint Forum does not make recommendations regarding the necessity, sufficiency or the utility of the practices for any particular product's disclosures, the information provided below may be useful to readers of the report.

The Joint Forum has identified the following practises regarding the content of the *POS disclosure document* that may be considered by supervisors when implementing a POS disclosure regime. This key information may be disclosed at the level of underlying instruments and/or at the level of the wrapper, where relevant.

The content of the *POS disclosure document* could take into account, where appropriate, the following information on:

Target consumers/typical investor profile

In some jurisdictions that have answered to the mapping exercise, a warning on consumers targeted is required to be disclosed.

Product type

In some jurisdictions that have answered to the mapping exercise, the legal form of the wrapper is required to be disclosed to consumers. This may be helpful to consumers for distinguishing the legal framework attached to the product.

Manufacturer and counterparty names

In some jurisdictions that have answered to the mapping exercise, if the distributor is also the manufacturer of the product or assumes guaranteeing functions, disclosure of this fact is required.

Liquidity and related risk

In some jurisdictions that have answered to the mapping exercise, the liquidity of the product, related risks and penalties, fees and other consequences in case of early redemption are required to be disclosed.

This information could help consumers to analyse how the product can meet their expectations such as their time frame.

Product objectives

In most jurisdictions that have answered to the mapping exercise, information about the way to achieve the objectives of the product such as the guarantees and the investment policy and also their consequences is required to be disclosed. A clear description of the objectives of the product, any guarantees and a summary of the investment strategy could be provided, showing, where relevant, how the performance of the product depends on the underlying investment assumptions and what the implied risks are. In particular for life insurance contracts, the main categories of underlying investments or eligible assets that are available are required to be disclosed in some jurisdictions that have answered to the mapping exercise.

Product risk and reward profile

In most jurisdictions that have answered to the mapping exercise, a description of the product risk-reward profile is usually disclosed. A range of risks-rewards could be identified and determined as to facilitate the comparison of risky products. However, a narrative description of the relative risk-reward profile maybe provided, including consequences of it materialising. In the case of insurance contracts, where applicable, this section could state that the risk-profile of the contract depends upon the choice of the underlying investments and can be modified during the term of the contract.

Guarantees

In some jurisdictions that have answered to the mapping exercise, as guarantees could be an important element for some products such as insurance contracts and structured deposits, these features are required to be disclosed .

Cancellation rights

Some products offer a cooling off right. Consequently, this information is disclosed, in some jurisdictions that have answered to the mapping. This information could enable consumers to be informed on how to use this right.

Fees and expenses

In most jurisdictions that have answered to the mapping exercise, loading fees and all other expenses charged, including structuring fees, are required to be disclosed. These fees could be important for consumers to evaluate the impact on product returns due to the reduction of invested capital or performance.