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International Organization of Securities Commissions
Organisation internationale des commissions de valeurs
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IOSCO consults on principles to mitigate private equity conflicts of interest

The International Organization of Securities Commissions' (IOSCO) Technical Committee has published a [Consultation Report on *Private Equity Conflicts of Interest*](#). The Report proposes a number of Principles for the effective mitigation of the potential conflicts of interest encountered in private equity firms, and the risks these conflicts pose to fund investors or the efficient functioning of the market.

The report examines the material conflict of interest risks encountered at each stage of the life cycle of a typical private equity fund, managed by a multi-fund, multi-strategy firm, and sets out the potential and common methods for mitigating these potential conflicts of interest alongside each risk. Mitigation typically takes the form of appropriate alignment of interest through incentive structures, disclosure and legal agreements. This issue was originally identified as an emerging risk from the private equity industry in a report published by IOSCO in June 2008.

Kathleen Casey, Chairman of the Technical Committee, said:

“IOSCO, as part of its mission, focuses its work on addressing risks to investor protection and the fair and efficient functioning of financial markets. Like other segments of the financial services industry, the manner in which private equity firms are structured has the potential to create conflicts of interest for their fund managers which, if not adequately addressed, have the potential to disadvantage investors.

“These principles provide industry and regulators with principles by which to assess the quality of controls aimed at managing these potential conflicts, and are intended to be readily applicable

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to all private equity firms regardless of where they are organised or operating, their chosen investment strategy, fund structure or other investment business activities.

“The development of these principles demonstrates our commitment to ensuring that investors of all types receive adequate protection and markets remain fair, efficient and transparent.”

Proposed Principles for the mitigation of Conflicts of Interests

These principles were developed using a multi-fund, multi-strategy private equity firm as a reference point. They are designed to be applied to all types of private equity firms allowing for firms different size, structure and operations.

The management of each private equity firm, and their investors, should take into consideration the nature of the firm in question when seeking to apply the principles.

- 1. A private equity firm should seek to manage conflicts of interest in a way that is in the best interests of its fund(s), and therefore the overall best interests of fund investors.**
- 2. A private equity firm should establish and implement written policies and procedures to identify, monitor and appropriately mitigate conflicts of interest throughout the scope of business that the firm conducts.**
- 3. A private equity firm should make the policies and procedures available to all fund investors both at inception of their relationship with the firm, and on an ongoing basis.**
- 4. A private equity firm should review the policies and procedures, and their application, on a regular basis, or as a result of business developments, to ensure their continued appropriateness.**

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5. **A private equity firm should favour mitigation techniques which provide the most effective mitigation and greatest level of clarity to investors.**

6. **A private equity firm should establish and implement a clearly documented and defined process which facilitates investor consultation regarding matters relating to conflicts of interest.**

7. **A private equity firm should disclose the substance of opinion given through the investor consultation process and any related actions taken to all affected fund investors in a timely manner (save where to do so would breach any other legal or regulatory requirement or duties of confidentiality).**

8. **A private equity firm should ensure that all disclosure provided to investors is clear, complete, fair and not misleading.**

The report was produced by a working group, chaired by Dan Waters of the UK Financial Services Authority, established by the Technical Committee Standing Committee on Investment Management and composed of representatives of the global supervisory community and private equity industry experts.

The consultation period closes on 1 February 2010.

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NOTES FOR EDITORS

1. [Private Equity Conflicts of Interest – Consultation Report](#), Report of the Technical Committee of IOSCO is available on the [website](#).
2. [Report on Private Equity - Final Report, Report of the Technical Committee of IOSCO](#) was published in June 2008.
3. IOSCO is recognized as the leading international policy forum for securities regulators. The organization's membership regulates more than 95% of the world's securities markets in over 100 jurisdictions and its membership is steadily growing.
4. The [Technical Committee](#), a specialised working group established by IOSCO's Executive Committee, is made up of 18 agencies that regulate some of the world's larger, more developed and internationalized markets. Its objective is to review major regulatory issues related to international securities and futures transactions and to coordinate practical responses to these concerns. Ms. Kathleen Casey, Commissioner of the United States Securities and Exchange Commission is the Chairman of the Technical Committee. The members of the Technical Committee are the securities regulatory authorities of Australia, Brazil, China, France, Germany, Hong Kong, India, Italy, Japan, Mexico, the Netherlands, Ontario, Quebec, Spain, Switzerland, United Kingdom and the United States.
5. IOSCO aims through its permanent structures:
 - to cooperate together to promote high standards of regulation in order to maintain just, efficient and sound markets;
 - to exchange information on their respective experiences in order to promote the development of domestic markets;
 - to unite their efforts to establish standards and an effective surveillance of international securities transactions;
 - to provide mutual assistance to promote the integrity of the markets by a rigorous application of the standards and by effective enforcement against offenses.

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