

MEMO# 23987

November 25, 2009

IOSCO Consultation Report on Principles on Point of Sale Disclosure

[23987]

November 25, 2009

TO: INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 18-09 RE: IOSCO
CONSULTATION REPORT ON PRINCIPLES ON POINT OF SALE DISCLOSURE

The International Organization of Securities Commissions (“IOSCO”) Technical Committee recently published a consultation report on Principles on Point of Sale Disclosure (the “Report”). [\[1\]](#) The Report proposes a set of principles designed to assist markets and market authorities when considering point of sale (“POS”) disclosure requirements for collective investment schemes (“CIS”). [\[2\]](#) The Report reviews findings from various research studies on effective CIS disclosure and investor preferences, discusses the components of effective disclosure, highlights special challenges for regulators, and describes existing disclosure requirements and modes of delivery in IOSCO member countries and the disclosure requirements being proposed in IOSCO member countries.

The Report identifies the following proposed principles concerning the availability or delivery of key information regarding CIS prior to the POS:

- Principle 1: Key information should include disclosures that inform the investor of the fundamental benefits, risks, terms and costs of the product and the remuneration and conflicts associated with the intermediary through which the product is sold.
- Principle 2: Key information should be delivered, or made available, for free, to an investor before the point of sale, so that the investor has the opportunity to consider the information and make an informed decision about whether to invest.
- Principle 3: Key information should be delivered or made available in a manner that is appropriate for the target investor.
- Principle 4: Disclosure of key information should be in plain language and in a simple,

accessible and comparable format to facilitate a meaningful comparison of information disclosed for competing products.

- Principle 5: Key information should be clear, accurate and not misleading to the target investor. Disclosures should be updated on a regular basis.
- Principle 6: In deciding what key information disclosure to impose on intermediaries and product producers, regulators should consider who has control over the information that is to be disclosed.

The Report also identifies and analyzes key issues raised by POS disclosure, including:

- whether regulatory disclosures are in fact effective in addressing information asymmetries that exist between investors, producers and sellers;
- what constitutes key information;
- how information should be delivered and whether a layered approach should be used;
- what exactly should be understood as delivery;
- at what point in time the information should be delivered; and
- the format of disclosures.

The Report recognizes that there are tensions between product disclosure and intermediary disclosure, and identifies the following issues related to these tensions:

- how to disclose the nature (including its scope, quality and duration) and costs (including how these are taken) of the service offered by the intermediary;
- how to manage conflicts of interest faced by the intermediary, the role of disclosure and the role of other regulatory tools;
- a possible split in responsibility between the product producer and the intermediary for disclosure requirements related to transactions;
- accuracy of the information if the entity required to deliver the information does not have access to the most up-to-date information; and
- whether disclosure is an effective tool for managing these issues.

In addition, the Report states that regulators need to consider at least the following three questions regarding the consistency of CIS and other product disclosure requirements:

- To what degree do CIS POS disclosure requirements differ from POS disclosure requirements for other financial products sold to the retail public?
- Do similar disclosure requirements exist for substantially similar products?
- To what degree do CIS and similar products raise issues and concerns unique to those products compared to other financial products?

The Report concludes with three additional points, based on the examination of possible disclosure of key information:

- No matter what disclosures are mandated, they will not have the intended effect if the investor either does not read and/or understand the information provided. Regulators should therefore consider measures to help improve retail investor education in order

to enhance their financial literacy and ability to read investment documentation and make informed investment decisions.

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

Comments to the Report may be submitted until February 15, 2010. The ICI is reviewing the Report and expects to submit comments.

Eva M. Mykolenko
Assistant Counsel - International Affairs

endnotes

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

[2] Although the mandate of the Joint Project Specification on Point of Sale Disclosure to Retail Investors, approved by the Technical Committee in 2007, relates to both CIS and similar products, the Report is focused on CIS. The Report states that the question of similar products may be considered at a later stage.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.