

MEMO# 28509

November 4, 2014

IOSCO Consultation on Principles Regarding the Custody of Collective Investment Scheme Assets

[28509]

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TO: ICI GLOBAL REGULATED FUNDS COMMITTEE No. 10-14
INTERNATIONAL COMMITTEE No. 37-14
INTERNATIONAL INVESTING SUBCOMMITTEE No. 5-14 RE: IOSCO CONSULTATION ON PRINCIPLES REGARDING THE CUSTODY OF COLLECTIVE INVESTMENT SCHEME ASSETS

In October 2014 the International Organization of Securities Commissions (IOSCO) issued a consultation with proposed principles against which the industry and regulators can assess the quality of regulation and industry practices concerning the custody of collective investment scheme (CIS) assets. [\[1\]](#) Comments are due by December 10, 2014. We intend to submit a comment letter.

The safekeeping of CIS assets was last examined by IOSCO Committee on Investment Management (SC5) in 1996 when it issued a discussion paper, Guidance on Custody Arrangements for Collective Investment Schemes. Recognizing the many developments with respect to CIS custody since the Guidance, IOSCO now seeks to further develop principles in this area. The draft principles are intended to reflect a level of commonality currently acknowledged by regulators and industry.

The consultation discusses the role and responsibilities of custodians and the key risks around the custody of client assets. It then sets out principles relating to the custody of CIS assets, followed by principles relating to the appointment and ongoing engagement of custodians. In drafting the consultation, SC5 relied on existing IOSCO principles, [\[2\]](#) previous IOSCO papers on this issue, and responses from a recent survey of SC5 members (in which 28 members participated).

The nine principles that are proposed are the following:

1. The regulatory regime should make appropriate provisions for the custodial arrangements of the CIS.
2. CIS assets should be segregated from (i) the assets of the responsible entity, its related entities and other schemes, (ii) the assets of the custodian/sub-custodian

throughout the custody chain, and (iii) the assets of other clients of the custodian throughout the custody chain (unless CIS assets are held in a permissible omnibus account).

3. CIS assets should be entrusted to a third party custodian. In limited circumstances where the regulatory regime permits self-custody of CIS assets, additional safeguards should be put in place to ensure proper segregation and protection of CIS assets.
4. The custodian should be functionally independent from the responsible entity.
5. The responsible entity should seek to ensure that the custody arrangements in place are disclosed appropriately to investors in the CIS offering documents or otherwise made transparent to investors.
6. The responsible entity should use appropriate care, skill and diligence when appointing a custodian to safekeep CIS assets.
7. The responsible entity should at a minimum, consider a custodian's legal/regulatory status, financial resources and organizational capabilities during the due diligence process.
8. The responsible entity should formally document its relationship with the custodian and the agreement should seek to include provisions about the scope of the custodian's responsibility and liability.
9. Custody arrangements should be monitored on an ongoing basis for compliance with the terms of the custody agreement.

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endnotes

[1] The consultation is available at
<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD454.pdf>.

[2] IOSCO's Objectives and Principles of Securities Regulation (June 2010), is available at
<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD323.pdf>.

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