

MEMO# 30193

September 1, 2016

IOSCO Consultation on Good Practices for the Termination of Investment Funds

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TO: INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 22-16 RE: IOSCO
CONSULTATION ON GOOD PRACTICES FOR THE TERMINATION OF INVESTMENT FUNDS

On August 18, 2106, the International Organization of Securities Commissions (IOSCO) published a consultation report, Good Practices for the Termination of Investment Funds (CR04/2016) (Report). [\[1\]](#) IOSCO is seeking feedback on proposed good practices on the voluntary termination process for collective investment schemes and other fund structures such as commodity, real estate and hedge funds (collectively, funds). The practices are intended for both open-end and closed-end funds and are not limited to retail funds.

The proposed good practices are set forth below. Twenty-nine questions are included in the Report. Comments are due October 17, 2016. We intend to submit comments. A member call will be scheduled in September.

Good Practice 1

Investors should be provided with information, at the time of investment, relating to the ability to terminate a fund as well as the processes for effecting such termination. In this regard, the fund documentation, dependent on the legal form of the fund, should:

- outline the general circumstances in which a fund can be terminated;
- set out the extent to which investor approval or consent is required to effect the termination;
- disclose that when a decision to terminate is made, the responsible entity [\[2\]](#) will prepare a termination plan - the key contents of which shall be communicated to investors; and
- provide a high level overview of the key items that will be covered in the termination plan.

Good Practice 2

Fund documentation should set out how the responsible entity will deal with investors who are not contactable at the time a responsible entity decides to terminate a fund.

Good Practice 3

The responsible entity's decision to terminate a fund should take due account of the best interests of investors in the fund.

Good Practice 4

Following a decision to terminate a fund, the responsible entity should issue a termination plan. This should set out the steps to be taken during the termination process and should take into account the best interests of investors. The termination plan should contain, depending on the legal form of the fund, information relating to at least the following key items:

- the rationale for terminating the fund;
- the extent to which investor approval is required to effect the termination, if at all, together with details of relevant processes;
- details on the estimated costs of the termination and whether investors will bear these;
- whether another entity will be appointed to effect the termination (e.g. a liquidator);
- the estimated duration of the termination process and how information will be communicated to investors throughout;
- the existence of alternative investment opportunities (including mergers, or transfers to other investment products), if any;
- investor dealing arrangements (including the necessity for suspension of subscriptions and redemptions) in the investment fund;
- an indication of the asset valuation method (including illiquid or hard to value assets) of the investment fund; and
- process for dealing with illiquid assets or addressing any windfall payments due to the fund and its investors after the fund is terminated.

Good Practice 5

The responsible entity should consider suspending investor subscriptions and redemptions during the termination process of an open-end fund with a view to protecting the interests of investors.

Good Practice 6

The termination plan should be approved by the responsible entity of the fund. In relevant circumstances, the custodian should also approve the termination plan.

Good Practice 7

The responsible entity should clearly communicate to investors the decision to merge a fund with another fund.

Good Practice 8

To the extent possible, the responsible entity should only offer investors the option to merge where the receiving fund has similar investment objectives, policies and risk profile to the terminating investment fund. [\[3\]](#)

Good Practice 9

The responsible entity should offer investors the right to redeem free of redemption or exit charges before the merger takes place. Investors should be informed of the available alternatives sufficiently in advance.

Good Practice 10

Where the decision to merge is for commercial reasons, the responsible entity should incur all costs. Where the responsible entity proposes not to incur these costs, this decision should be documented in the investor communication including a rationale for the decision.

Good Practice 11

The responsible entity should ensure that appropriate/adequate information about the termination process is communicated to all investors concurrently and in an appropriate and timely manner. Investors should be kept up to date as circumstances change.

Good Practice 12

The responsible entity should - during the termination process and in the context of valuing assets of the terminating fund

- ensure that fair valuation of the assets will apply; and
- seek to address conflicts of interest arising.

Good Practice 13

The responsible entity may offer professional investors in a terminating fund the ability to redeem in specie where the consent of the investor has been obtained, while ensuring the best interests of other investors in the fund are not jeopardised.

Good Practice 14

The responsible entity may use side pockets as part of the termination process where the ability to side pocket assets is provided for in the fund documentation.

Good Practice 15

In the context of a fund of finite duration, the responsible entity should, a reasonable period in advance of the fund's anticipated termination date, consider the procedures that will be required to achieve an orderly wind-up of the fund.

If you have questions or comments, please contact the undersigned or Susan Olson (+1-202-326-5813, susan.olson@iciglobal.org).

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endnotes

[1] The Report is available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD542.pdf>.

[2] The "responsible entity" is described as the entity/entities responsible for the overall

operation of the fund and in particular its compliance with the legal/regulatory framework in a jurisdiction. The identification of the responsible entity may vary among countries and types of funds. In some countries, the responsible entity could be the management company, the fund operator or the fund itself. In others, the management company may play a role in carrying out the principles but may be overseen by an independent body, e.g., board of directors.

[\[3\]](#) The notes indicate that some national laws may permit a merger with a fund that has different investment and risk strategies. Report at paragraph 55.

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