

MEMO# 22772

August 5, 2008

IOSCO Issues Report on the Review of the Regulatory Issues Relating to Real Estate Funds

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TO: INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 10-08 RE: IOSCO ISSUES
REPORT ON THE REVIEW OF THE REGULATORY ISSUES RELATING TO REAL ESTATE FUNDS

The Technical Committee of the International Organization of Securities Commissions ("IOSCO") issued a report on the Review of the Regulatory Issues Relating to Real Estate Funds (the "Report"). [\[1\]](#) The Report is based on a questionnaire about real estate funds completed by members of the IOSCO Technical Committee Standing Committee on Investment Management ("SC5"). [\[2\]](#) The purpose of the questionnaire was to compare the regulation of real estate funds in different jurisdictions and identify common themes and problems, in order to determine whether this subject requires further attention of SC5.

SC5 determined that the topic of real estate funds is very important and decided to consider whether to undertake further work in this area in the medium-term. The Report found that:

- Overview: Most SC5 members regulate real estate funds and most jurisdictions make no principal difference between real estate funds and "normal" collective investment schemes, although in most cases additional rules apply to real estate funds. All jurisdictions require real estate funds to disclose their features in a prospectus and report about the past financial period at least once a year.
- Diversification and Borrowing: Portfolio diversification requirements and borrowing restrictions vary significantly.
- Valuation: Most jurisdictions require a valuation by independent experts at least once a year.
- Liquidity: Different regulations exist with regard to guaranteeing a certain minimum

of liquidity, lock-in periods and postponing of redemptions.

- Conflicts of Interest: In most jurisdictions management companies are required to follow a governance code, either established by law or by self-regulation by the local fund industry. Most jurisdictions recognize the conflicts of interest that arise when the management company is permitted to sell its property to the fund and have specific rules to address this.
- Problems: Although some jurisdictions identified valuation issues and conflicts of interest as possible problems, most SC5 members did not experience actual problems in their own jurisdictions.

If you have any questions about the Report, please contact me at 202-326-5837 or emykolenko@ici.org.

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endnotes

[1] Review of the Regulatory Issues Relating to Real Estate Funds, Report of the Technical Committee of IOSCO (June 2008), available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD275.pdf>. The Report contains a country-by-country summary of responses to a questionnaire about real estate funds.

[2] The scope of the questionnaire is limited to collective investment schemes that directly invest in real property. The US Securities and Exchange Commission ("SEC") in its response explained that an entity that invests solely and directly in real estate, or is primarily in the business of investing directly in real estate, would not be deemed to be a collective investment scheme ("CIS"). The SEC further explained that there are other entities, commonly referred to as real estate investment trusts ("REITs"), that take investor money to purchase, and directly hold and manage, real property. The SEC's responses to the questionnaire primarily focus on REITs.

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