

MEMO# 28618

December 23, 2014

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

[28618]

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TO: ICI GLOBAL REGULATED FUNDS COMMITTEE No. 12-14
INTERNATIONAL COMMITTEE No. 43-14
INTERNATIONAL INVESTING SUBCOMMITTEE No. 6-14 RE: INSTITUTE LETTER - 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 report regarding collective investment schemes (“CIS”) and custody (“Consultative Report”). [\[1\]](#) The aim of the Consultative Report was to outline principles against which industry and regulators could assess the quality of regulation and industry practice. The Consultative Report also sought to build upon, and update, prior IOSCO work on the topic from 1996. Importantly, the Consultative Report recognized that IOSCO’s work had be informed by the fact that globally the rules and circumstances for CIS custody are diverse and that the regulatory status and responsibilities of entities that provide safekeeping are varied, e.g., “pure asset safekeeping” with no ancillary services, depositaries with additional oversight roles.

The following are the nine Principles in the Consultative Report:

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.

On December 10, 2014, ICI Global submitted a comment letter supporting the nine Principles. We did not recommend any changes to the Principles. We supported updating the commentary accompanying the Principles to reflect recent developments. We stated that such an approach was the best way for IOSCO to provide guidance and insight into regulatory and industry practice regarding CIS custody on a global basis.

Susan Olson
Chief Counsel

[Attachment](#)

endnotes

[1] Consultative Report, Principles Regarding the Custody of Collective Investment Schemes' Assets (October 2014), available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD454.pdf> ("Consultative Report"). See also [Memo](#) 28509, November 4, 2014 (describing the Consultative Report).