

**MEMO# 25060**

April 4, 2011

## **IOSCO Final Report - Principles on Point of Sale Disclosure**

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TO: INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 4-11 RE: IOSCO FINAL REPORT  
- PRINCIPLES ON POINT OF SALE DISCLOSURE

The International Organization of Securities Commissions (“IOSCO”) Technical Committee recently published their final report regarding Principles on Point of Sale Disclosure (the “Report”). [1] The Report analyzes issues associated with the disclosure of key information for collective investment schemes (“CIS”) [2] prior to the point of sale (“POS”) [3] and also sets forth principles designed to guide authorities when considering regulatory responses. [4] The Report reviews findings from various research studies on disclosure and also identifies components of effective disclosure and special challenges for regulators when considering POS requirements. The Report also includes a description of existing POS requirements in IOSCO member countries as well as current POS regulatory or legislative proposals.

The Report identifies the following proposed principles for the disclosure 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.

In the Report, IOSCO also considers issues raised by POS disclosure, including:

- whether disclosures are effective in addressing information asymmetries among 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 tensions between product disclosure and intermediary disclosure, and identifies the following issues:

- 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 other regulatory tools;
- a possible split in responsibility between the producer and the intermediary for disclosure 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 should consider the following three questions regarding disclosure requirements for CIS and other investment products:

- 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 Reports notes that regulators will want to avoid the imposition of more onerous disclosure requirements on specific products compared to CIS that raise the same disclosure issues (e.g., distribution costs, conflicts arising from revenue sharing). Accordingly, the Report concludes that concerns about a “level playing field” may lead some jurisdictions to consider legislative or regulatory reforms when disclosure requirements differ for similar but competing investment products.

Lastly, IOSCO highlights three additional points from its examination of POS disclosure:

- 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 Report’s principles may also be applicable to non-retail investors.

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**endnotes**

[1] Technical Committee, IOSCO, Principles on Point of Sale Disclosure: Final Report (February 2011), available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD343.pdf>.

[2] Section 11.2 of the IOSCO principles defines a CIS as including “authorized open ended funds that will redeem their units or shares, whether on a continuous basis or periodically... [including] closed end funds whose shares or units are traded in the securities market... [and] unit investment trusts, contractual models and the European UCITS (Undertakings for Collective Investment in Transferable Securities) model.” IOSCO states that although a CIS is generally defined as including closed end funds, for purposes of the Report closed end funds are excluded from the definition.

[3] For purposes of the Report, IOSCO states that the term “point of sale” refers to the moment at which a customer requests that a product be purchased.

[4] The scope of the Report does not include investment products similar to CIS; however, IOSCO encourages regulators to consider how the principles could be adopted for similar investment products.

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