

MEMO# 27363

July 9, 2013

IOSCO Final Report on Principles for the Regulation of Exchange Traded Funds

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TO: ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 30-13
ETF ADVISORY COMMITTEE No. 31-13
ICI GLOBAL EXCHANGE TRADED FUNDS COMMITTEE No. 8-13 RE: IOSCO FINAL REPORT ON PRINCIPLES FOR THE REGULATION OF EXCHANGE TRADED FUNDS

In March 2012, the International Organization of Securities Commissions (“IOSCO”) issued a consultation report entitled Principles for the Regulation of Exchange Traded Funds. [\[1\]](#) Following a public comment period, IOSCO has issued a final report bearing the same title (the “Report”). [\[2\]](#)

The Report offers nine investor-protection principles or guidelines on ETFs to guide regulators and markets. [\[3\]](#) The principles are intended to be adaptable to different regulatory frameworks. The Report states that other work done by IOSCO with respect to CIS regulation is also applicable to ETFs. Therefore, the Report chiefly identifies principles that distinguish ETFs from other CIS, reviews existing IOSCO principles for CIS, and adapts those principles to the specificities of an ETF structure where relevant.

The principles are as follows:

Principle 1: Regulators should encourage disclosure that helps investors to clearly differentiate ETFs from other ETPs.

Principle 2: Regulators should seek to ensure a clear differentiation between ETFs and other CIS, as well as appropriate disclosure for index-based and non index-based ETFs.

Principle 3: Regulators should require appropriate disclosure with respect to the manner in which an index-based ETF will track the index it references.

Principle 4: Regulators should consider imposing requirements regarding the transparency of an ETF’s portfolio and/or other appropriate measures in order to provide adequate information concerning:

- i) any index referenced and its composition; and

ii) the operation of performance tracking.

Principle 5: Regulators should encourage the disclosure of fees and expenses for investing in ETFs in a way that allows investors to make informed decisions about whether they wish to invest in an ETF and thereby accept a particular level of costs.

Principle 6: Regulators should encourage disclosure requirements that would enhance the transparency of information available with respect to the material lending and borrowing of securities (e.g., on related costs).

Principle 7: Regulators should encourage all ETFs, in particular those that use or intend to use more complex investment strategies to assess the accuracy and completeness of their disclosure, including whether the disclosure is presented in an understandable manner and whether it addresses the nature of risks associated with the ETFs' strategies.

Principle 8: Regulators should assess whether the securities laws and applicable rules of securities exchanges within their jurisdiction appropriately address potential conflicts of interests raised by ETFs.

Principle 9: Regulators should consider imposing requirements to ensure that ETFs appropriately address risks raised by counterparty exposure and collateral management.

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endnotes

[1] IOSCO CRO5/12, Principles for the Regulation of Exchange Traded Funds, Consultation Report, March 2012, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD376.pdf>.

[2] IOSCO FR06, Principles for the Regulation of Exchange Traded Funds, Final Report, June 2013, available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD414.pdf>.

[3] IOSCO states that the term "ETF" refers only to ETFs organized as collective investment schemes ("CIS") and, for the United States, only ETFs regulated under the ICA. Report at 5 and footnote 5.