

COMMENT LETTER

October 17, 2013

ICI and ICI Global Comment Letter on Joint Forum Consultative Document on Point of Sale Disclosure (pdf)

October 17, 2013 Via Electronic Mail (baselcommittee@bis.org) Secretariat of the Joint Forum (BCBS Secretariat) Bank for International Settlements CH-4002 Basel, Switzerland
Re: Consultative Document on Point of Sale Disclosure in the Insurance, Banking and Securities Sectors Dear Sirs/Mesdames: The Investment Company Institute¹ (“ICI”) and ICI Global² appreciate the opportunity to comment on the Joint Forum’s August 2013 consultative document, Point of Sale disclosure in the insurance, banking and securities sectors (the “Consultative Document”).³ The Consultative Document reports on work conducted in response to a mandate from the parent committees of the Joint Forum to identify and assess differences and gaps in regulatory approaches to point of sale (“POS”) disclosure in relation to investment or savings products in the insurance, banking and securities sectors. The mandate also requested that the Joint Forum identify “whether regulatory approaches to POS disclosure need to be further aligned across sectors, keeping in mind that differences in regulatory approaches can arise from legitimate differences in sectoral regulatory objectives as well as from differences in product features.”⁴ The Consultative Document makes policy recommendations intended primarily to assist policymakers and supervisors in considering, developing or modifying POS disclosure regulations.

1 The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$15.2 trillion and serve more than 90 million shareholders.

2 ICI Global is the global association of regulated funds publicly offered to investors in leading jurisdictions worldwide. ICI Global seeks to advance the common interests and promote public understanding of global investment funds, their managers, and investors. Members of ICI Global manage total assets in excess of US \$1 trillion.

3 The Consultative Document is available at <http://www.bis.org/publ/joint32.pdf>.

4 Consultative Document at 1. Secretariat of the Joint Forum (BCBS Secretariat) October 16, 2013 Page 2 ICI and ICI Global strongly support the concept of seeking to align regulatory approaches to POS disclosure across products and sectors. We have long been concerned about the potential detrimental effects of POS disclosure requirements that apply uniquely to one type of financial product (e.g., mutual funds or other collective investment vehicles (“CIS”)). In particular, we believe that applying such requirements only to certain retail investment products such as CIS would provide incomplete investor protection and could disserve investors by creating strong incentives

for financial intermediaries to recommend other investment products not subject to those requirements—even when those other products may not be the best fit for an investor.⁵ ICI and ICI Global are pleased, therefore, that the Consultative Document represents an effort to evaluate POS requirements not only for CIS but also for other products in the banking, insurance and securities sectors that compete with CIS.⁶ We are especially heartened by the Joint Forum’s achievement of agreement among international securities, banking, and insurance regulators/supervisors on a single set of recommendations to apply across products and sectors. With this in mind, ICI and ICI Global support the Joint Forum’s proposed policy recommendations for POS disclosure. The recommendations incorporate sound, basic disclosure principles that should be equally valid for most retail financial products. For example, we agree that POS disclosure should be concise (Recommendations 1 and 6), should include key information about a product (Recommendations 3 and 6), should be clear, fair, not misleading and written in plain language (Recommendation 4), and should be able to include, as appropriate, links or refer to other information (Recommendation 6). In addition, the recommendations provide a useful general framework with appropriate flexibility for different jurisdictions to tailor specific POS requirements as needed to make them workable and effective in particular circumstances.⁷ For example, Recommendation 1 makes clear that POS disclosure regulations could require that such disclosure be provided in either written (i.e., paper) or electronic form. Similarly, the Consultative Document explains with respect to Recommendation 28 ⁵ See, e.g., Letter from Susan M. Olson, Senior Counsel – International Affairs, to Mr. Mohamed Ben Saleem, Senior Policy Advisor, International Organization of Securities Commissions (IOSCO), dated February 9, 2010 (“2010 IOSCO Letter”), available at <http://www.ici.org/pdf/24134.pdf>. ⁶ ICI and ICI Global likewise are pleased that, consistent with ICI’s previous comments, the Consultative Document suggests that regulators consider conducting research such as consumer testing in evaluating POS disclosure documents. Consultative Document at 20. We reiterate our view that any investor research in this area should not be limited to CIS. ⁷ See, e.g., Consultation Document at 18 (stating that the recommendations “are intended to allow for a wide range of application and adaptation in different jurisdictions”). In addition, we appreciate the Joint Forum’s express recognition that supervisors typically must consider the costs and benefits of new regulation. See *id.* ⁸ Recommendation 2 states: “The POS disclosure document should be provided to consumers, free of charge, before the time of purchase.” Secretariat of the Joint Forum (BCBS Secretariat) October 16, 2013 Page 3 that “providing” POS disclosure includes making the POS disclosure document available on paper, or through an Internet website, or a regulator’s electronic filing database, or through other means (which could include oral disclosure under appropriate circumstances). In this way, the recommendations appear to take into account another long-standing ICI concern: they provide regulators with important leeway to craft requirements that will not interfere unduly with the sales process.⁹ In closing, ICI and ICI Global commend the Joint Forum for its thoughtful work on this project. We believe it provides useful guidance to regulators and supervisors that ultimately should benefit consumers of retail financial products. *****

Thank you for the opportunity to express our views on these important issues. If you have any questions about our comments, please contact the undersigned, or Susan Olson at 202-326-5815 or Eva Mykolenko at 202-326-5837. Sincerely, /s/ Karrie McMillan /s/ Dan Waters Karrie McMillan Dan Waters General Counsel Managing Director Investment Company Institute ICI Global 1-202-326-5815 44-203-009-3101 karrie.mcmillan@ici.org dan.waters@ici.org ⁹ See, e.g., 2010 IOSCO Letter, *supra* n. 5, at p. 5 (recommending that the IOSCO Technical Committee’s consultation report on POS disclosure principles include a principle stating that regulators should ensure that POS disclosure requirements are designed to minimize disruptions to the sales process, to the extent possible).

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