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COMMENT LETTER

May 27, 2011

ICI Letter on IOSCO Principles on Suspensions of Redemptions in CIS (pdf)

May 27, 2011 Via Electronic Mail (CIC-Suspensions@iosco.org) Mr. Mohamed Ben-Salem International Organization of Securities Commissions (IOSCO) Calle Oquendo 12 28006 Madrid Spain Re: Public Comment on Suspensions of Redemptions in Collective Investment Schemes Dear Mr. Ben-Salem: The Investment Company Institute1 (the "Institute") welcomes the opportunity to comment on the IOSCO Technical Committee's consultation report, Principles on Suspensions of Redemptions in Collective Investment Schemes, which proposes principles against which both the industry and regulators can assess the quality of regulation and industry practices concerning suspensions of redemptions (the "Report").2 Although the Institute supports the proposed principles, we believe that the principles and the accompanying text should be revised in certain places to make clear that the laws of some jurisdictions may prohibit the suspension of redemptions, or severely limit the circumstances under which the responsible entity may suspend redemptions, and therefore certain principles and text would not fully apply. In the United States, the ability of an open-ended investment company registered under the Investment Company Act of 1940 (a "RIC") to suspend redemptions is extremely limited. Under the Investment Company Act, an open-ended RIC cannot suspend the right of redemption or postpone the date of payment more than seven days after the tender of the security, except: (1) during any period during which the New York Stock Exchange (the "NYSE") is closed (except for customary

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 $13.1 trillion and serve over 90 million shareholders. 2 The report is available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD349.pdf. Mr. Mohamed Ben-Salem May 27, 2011 Page 2 of 3 week-end and holiday closings) or during which trading on the NYSE is restricted; (2) any period during which an emergency exists, as defined by the rules issued by the U.S. Securities and Exchange Commission ("SEC"), as a result of which disposal by a fund of portfolio securities is not reasonably practicable or it is not reasonably practicable for the fund to determine fairly the value of its assets;3 and (3) such other periods as the SEC may by order permit to protect a fund's investors.4 In order to facilitate the orderly liquidation of a money market fund, a recently adopted SEC rule permits money market funds to suspend redemptions and postpone payment of redemption proceeds if: (1) the fund's board, including a majority of disinterested directors, determines that the deviation between the fund's amortized cost price per share and the market-based net asset value per share may result in material dilution or other unfair results; (2) the board,

including a majority of disinterested directors, irrevocably has approved the liquidation of the fund; and (3) the fund, prior to suspending redemptions, notifies the SEC of its decision to liquidate and suspend redemptions.5 The approach under U.S. law allows for suspensions of redemptions in an extremely limited manner. Therefore, we feel that the Report should also address circumstances in which a responsible entity does not have the discretion to suspend redemptions or in which the national law specifies what may be done. If a responsible entity does not have the discretion to suspend redemptions, certain principles and accompanying text would not be fully applicable. For example, we believe that Principle 3 should be revised to read (new text in italics): "Suspension of redemptions by the responsible entity may be justified only in exceptional circumstances provided such suspension is in the best interest of all unitholders within the CIS or if the suspension is required or permitted by law." This change would address circumstances in which the regulatory authority permits rather than requires suspension. Further, we believe the text accompanying Principle 3 should recognize that, while the two step approach outlined in the Report may guide the steps that should be taken by a responsible entity when considering the suspension of redemptions, other steps or conditions may be specified by law. We also recommend adding commentary to the text accompanying Principles 5 and 7 to acknowledge that a jurisdiction's specific legal requirements may shape or constrain the actions taken by the responsible entity. 6 For example, with respect to Principle 5, national law may dictate that 3 An example of such an exception would be an emergency that affects markets or funds, such as the assassination of President Kennedy in 1963, the blackouts that affected lower Manhattan in 1990, or earthquakes or other natural disasters. The SEC must declare an emergency to exist to trigger an exception. 4 See Section 22(e) of the Investment Company Act of 1940. 5 See Rule 22e-3 under the Investment Company Act of 1940. 6 Principle 5 provides that "The decision by the responsible entity to suspend redemptions, in particular the reasons for the suspension and the planned actions should be appropriately: a) documented; b) communicated to competent authorities and other relevant parties; c) communicated to unitholders." Principle 7 provides that "The suspension should be regularly reviewed by the responsible entity. The responsible entity should take all necessary steps in order to resume normal operations as soon as possible having regard to the best interest of unitholders." Mr. Mohamed Ben-Salem May 27, 2011 Page 3 of 3 certain documentation be provided and that certain information is communicated to the regulator and/or unitholders in connection with a suspension of redemptions.7 Similarly, the actions that a responsible entity should take to review the suspension of redemptions as described under Principle 7 would not apply in certain circumstances, such as if a jurisdiction has authorized the suspension of redemptions only for the period of time that the stock market is closed in response to an exceptional event. The provision specifying that the responsible entity should formally review the decision to suspend redemptions on an ongoing basis would not be fully applicable in these situations. 8 * * * * * We appreciate the opportunity to express our views and invite you to contact me (202-326- 5813 or solson@ici.org) or Eva Mykolenko (202-326-5837 or emykolenko@ici.org) if you have any questions about our comments. Sincerely, /s/ Susan M. Olson Susan M. Olson Senior Counsel – International Affairs 7 In the case of U.S. money market funds, for example, Rule 22e-3 under the Investment Company Act specifies that, prior to suspending redemptions, the fund must notify the SEC of its decision to liquidate and suspend redemptions by electronic mail. We believe that the SEC's rule meets this Principle. 8 Because Rule 22e-3 under the Investment Company Act only may be used if a board of a money market fund has irrevocably determined to liquidate the fund, Principle 7 would also not apply in this situation.