Principles on Point of Sale Disclosure

Final Report

TECHNICAL COMMITTEE
OF THE
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS

FR01/11 FEBRUARY 2011

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Foreword

The International Organization of Securities Commissions' (IOSCO) Technical Committee's Standing Committee on the Regulation of Market Intermediaries (TCSC3) and the Standing Committee on Investment Management (TCSC5) (known collectively as the Joint Group) have jointly authored the *Principles on Point of Sale Disclosure* Final Report. The Report sets out principles that are designed to assist markets and market authorities when considering point of sale disclosure requirements.

Chapter 1 Introduction

This Report was produced by the Joint Group according to the *Joint Project Specification on Point of Sale Disclosure to Retail Investors,*[1] approved by the Technical Committee (TC) in February 2007.

Although TCSC3 and TCSC5 mandates relate to collective investment schemes (CIS) and *similar products*, this Report focuses only on CIS. The Joint Group carefully considered product scope at the outset and limited it to CIS. Similar products were considered by the group, but generally these included products unique to particular jurisdictions[2] or *wrapped* insurance products that may not be subject to the regulatory jurisdiction of securities regulators. Although we do not consider it appropriate to extend the scope of this paper, we do encourage regulators in the respective jurisdictions to consider how these principles could be adopted for similar products.[3]

This Report analyzes issues relating to requiring *key information* disclosures to retail investors relating to CIS[4] and their distribution prior to the *point of sale* (POS).[5] It also sets out principles in Chapter 7 to guide possible regulatory responses. The report does not examine issues relating to the suitability of CIS[6] and does not purport to describe or address *all* disclosure obligations of the intermediary (e.g., relating to general information on the intermediary's range of services, the safeguarding of client assets, client categorization or information that needs to be disclosed in the client agreement).

Transparency in the market place, particularly disclosure of information to investors, has always been a high priority and goal of regulators in seeking to ensure that markets run efficiently and with integrity. Enhancing POS disclosure, i.e., helping to ensure that investors are able to consider key information about CIS products before they invest, clearly can contribute to this goal. The recent crisis in the financial markets has highlighted the critical role that accurate, understandable and meaningful disclosure can play. This and other IOSCO projects can assist regulators in developing a path towards renewed investor trust in both the producers of financial products and the intermediaries that sell them.

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1 The term *retail investor* is not defined in most jurisdictions for regulatory purposes. However, in most jurisdictions, persons who do not fall within the definition of an *institutional* or *professional* investor (e.g., *individuals or entities that meet certain net worth or asset levels)* are generally treated as a retail investor. As used in this paper, therefore, the term 'retail investor' should be generally understood to have a meaning consistent with this broadly accepted approach.

2 For example, 529 plans in the U.S. and other unique U.S. products.

3 For example, Italy has extended the rules of fairness and transparency to the sale of financial products by both banks and insurance companies.

4 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." While a CIS is generally defined as including closed end funds, for purposes of this paper closed end funds will be excluded from the definition.

5 For purposes of this report, *point of sale* refers to the moment at which a customer requests that a product be purchased.

6 We note that the Joint Forum published in April 2008 its report on *Customer Suitability in the Retail Sale of Financial Products and Services*.

In developing this Report, the Joint Group first wrote an Issues Paper that examined the issues raised by POS disclosure, including:

- whether regulatory disclosures are in fact effective in addressing information asymmetries that exist between investors, producers and sellers;
- what constitutes key information;
- how information should be delivered and whether a *layered approach*[7] should be used;
- what exactly should be understood as delivery;
- at what point in time the information should be delivered;
- use of plain language rather than technical jargon; and
- the format of disclosures.

The Issues Paper was provided to various industry and investor associations on an informal basis in July 2008. It solicited comment on whether the appropriate issues had been identified. Those who commented generally agreed that the Joint Group had identified the key issues. A number of more specific comments have been taken into account in drafting this Report.

This report analyzes in significant detail the key issues raised in the Issues Paper. In addition, our examination of possible disclosure of key information has highlighted the following important points:

- No matter what disclosures are mandated, they will not have the intended effect (i.e., having retail investors engage in a deliberate and informed investment process) 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. For example, as explained in greater detail below, research indicates that retail investors exhibit a range of behaviours and biases in the decision-making process, including acting on emotion, rather than on facts. These behaviours should be understood and considered to the greatest degree possible when developing a regulatory approach; and

[7] See definition in Chapter 4.A.

- The principles set forth in Chapter 7 to this report may also be applicable to non-retail investors.

Finally, the Joint Group is aware that some members of the CIS industry are of the view that if CIS products are subjected to enhanced POS disclosure requirements, this might place them at a competitive disadvantage versus other financial products, which may not be subject to the same requirements. The merits of this argument are not analyzed in great detail in this Report (although it is discussed in Chapter 5.B.), partly because of the challenge in identifying truly comparable products that are as popular with the retail investor.

In addition, IOSCO would encourage further work by appropriate bodies on POS disclosure regarding products similar to CIS. Although the principles set out in Chapter 7 are developed with specific reference to CIS, pending future work by IOSCO, regulators in the respective jurisdictions are encouraged to review their local conditions and, to the extent possible, consider adopting the principles set out herein to products similar to CIS.

Chapter 2 Research: The Main Findings

A. The Need for Effective Disclosure for Retail Investors

Summary

Retail financial services may be characterized by *information asymmetries* – where the supplier of the product has more information about the product (and the terms under which it is sold) than the buyer. Such an information asymmetry can put retail investors at a disadvantage. Markets are generally more efficient when accurate information is available to both consumers and suppliers.

Retail investors should be able to base their investment decisions on solid information. Whether an investor is guided by an advisor's or market intermediary's recommendations, or is largely self-directed, the investor should have the necessary information to understand what he or she is buying, its cost and its risk/reward profile. The investor should also understand a market intermediary's associated conflicts of interest, i.e. an intermediary may promote the sale of a product because it is in its own financial interest to do so (rather than the investor's).

As indicated by the research described below, some retail investors who buy CIS may not clearly understand, for example, the layers of costs associated with purchasing those products, any guarantees being offered by the product, or the risks of investing in the product. In some jurisdictions, many retail investors may not clearly understand their dealer's (or adviser's) financial stake (and thus conflicts of interest) in selling those products, including so-called *revenue sharing* arrangements.

Traditionally, the CIS prospectus has been the investor's primary source of information about a fund. As described in Chapter 3, regulators have explored ways to make prospectus disclosure more meaningful for retail investors. One example is the creation of simplified prospectuses that seek to communicate key information in a meaningful way. However, issues remain.

Disclosures relating to distribution and intermediaries

Two areas of particular significance in relation to distribution and intermediaries are the disclosure of costs, and the handling of the potential for conflicts of interest:

- **Costs**: CIS investors may, directly or indirectly, incur distribution-related costs that can reduce their investment returns. The type and amount of those costs often vary among funds and among share classes issued by the same fund.

  For instance, some CIS' issue share classes that impose sales fees, or loads, on investors when they purchase the fund shares.[8] CIS' may also sell share classes with sales fees or loads that investors must pay when they redeem fund shares,[9] which may vary depending on how long the investor has held the shares. Some CIS' also use

[8] For example, *front-end* sales loads, *subscription fees* or *entry charges*.

their assets to pay distribution-related expenses, including compensation of intermediaries in connection with distributing fund shares. These charges, loads, or fees reduce the returns that investors earn, raising important disclosure issues relating to costs.

- **Conflicts of interest**: Intermediaries that sell CIS shares to retail investors may face various forms of conflicts of interest. These conflicts can give intermediaries and their personnel a greater financial incentive to sell particular funds or share classes in conflict with their duty to act in the interest of their client and to ensure compliance with applicable suitability or *appropriateness* standards when financial advice is given.[10]

  For example, a fund or its affiliates may pay an intermediary to provide the fund with more visibility and access to the intermediary's sales force, or otherwise influence the way that the intermediary and its associated persons market the fund (or a particular share class) to investors. Payment arrangements can take a wide range of forms, for instance as direct fees, whether upfront or throughout the life of an investment,[11] revenue sharing, or payments which are ostensibly compensatory for costs incurred by the intermediary which may not be directly related to a particular fund sale.

  Persons associated with intermediaries may also receive so-called *differential compensation* that could motivate personnel to promote the sale of some funds over others. These arrangements pose special disclosure and other regulatory issues. We note that other products might also raise the same issues related to differential compensation as CIS and nonetheless be subject to very different disclosure requirements even though also offered to retail investors (such as in the EU, a structured note or a life insurance contract).

- **Other material information**: There is other pre-sale information that investors may find useful for making informed investment decisions. Examples include any affiliation of the intermediary with product producers, whether the ranges of products available are limited to affiliated groups' products, the policies and procedures governing the giving of discounts/rebates/waivers to clients for making investments through the intermediary, and any ability to rescind a purchase order (*cooling-off period*) allowable for the products and dispute resolution procedures.

Disclosures relating to products

In relation to disclosures about products themselves, the asymmetry of information between the product producers and retail investor also raises significant challenges. As a result, most jurisdictions have placed specific disclosure requirements on product producers. In

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9 Which may variously be called *deferred* or *back-end sales loads*, *redemption fees* or *exit charges*.

10 The issue of market intermediary management of conflicts of interest has been extensively analysed in a Report issued by the TC on November 2007. The Report makes reference only to those conflicts arising in the context of a securities offering in which the intermediary is directly involved.

11 Please see also the TC Final Report on Elements of International Regulatory Standards on Fees and Expenses of Investment Funds of November 2004, where reference to distribution costs and arrangements is made.

particular, these requirements include disclosures regarding the objectives of a product, its risks, potential for investment returns and charges, and the nature of any guarantees being offered.

However, there is evidence from a number of jurisdictions that these disclosure requirements have not effectively mitigated the effects of the underlying asymmetry of information. For instance, in the European Union, the European Commission (EC) concluded, after extensive consultation, that the existing simplified prospectus has proved to be of a limited use to investors and a source of unnecessary cost for the industry. In the view of the EC, the simplified prospectus was not only too long and complex, but also did not allow for useful comparisons. Directive 2009/65/EC, therefore, replaces the obligation to offer a simplified prospectus with the delivery of *key investor information*, valid in all Member States.[12] The focus of new provisions, which enter into force on 1 July 2011, is on a shorter, more consumer-friendly document designed to be easier for investors to understand, with the aim of increasing the likelihood that the information will be of use.

Other jurisdictions also have work underway to improve product disclosure regimes, following similar evidence that the existing requirements are not effective. See discussion in Chapter 6.

B. Views on Effective Disclosure

As discussed in Chapter 3, some regulators have explored ways to encourage retail investors to read and use the information contained in prospectus disclosure (and, in some cases, separate intermediary-focused disclosures),[13] by making it more useful for investors. Ultimately, the regulatory aim is to improve the effectiveness of the disclosure as a way to empower retail investors.

It is generally accepted that to be effective, particularly for retail investors, disclosure must:

- relate to key characteristics;
- give investors the information at a time when it is relevant; and
- be in language investors can easily understand.

Timing and language are critical to ensuring that the disclosure is effective. The issue of timing is discussed in section IV D. The issue of language is discussed in Chapter 4.C.

However, other factors have been identified which can be important in determining the overall effectiveness of disclosures. These include the financial literacy of investors, or the extent to which they focus on disclosures required by regulations rather than on other sources of information.

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[12] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast).

[13] For example, menu of commission and status disclosure in the UK. More generally, in relation to intermediary focused disclosures, retail investors in Europe must be provided with information on conflicts of interests, costs and fees of services and inducements.

C. Research on Retail Investor Preferences

Much research has been done on what information retail investors want to have in order to make an investment decision. Appendix A draws together findings and issues from the research or surveys submitted by TCSC3 and TCSC5 members.

What information do retail investors want?

The research indicates that a key starting point for retail investors when looking at investment products is information about potential returns, risks and cost.

Retail investors seem to be asking the following questions:

- how much can I make (returns);
- how much can I lose (risk); and
- how much does it cost (fees)?

The research suggests that retail investors focus on information about investment returns or past performance in an attempt to answer the question "how much can I make?." They do not, however, focus only on returns. They also want to know about risks and guarantees in an effort to understand how much they might lose. Finally, they want to know about the costs. They are interested in the fees and expenses, although evidence is more mixed on the extent to which investors take costs into account.

Research is less clear on consumer preferences for information about intermediaries. Investors often do not recognise any particular information needs they might have in this area other than costs. Research indicates that retail investors may be confused about payments to the intermediary and those to a product producer.

In what format do retail investors want to receive the information?

The research contains a number of key messages regarding retail investors' preferences for the design and format of the information they wish to receive. They say that they prefer documents that are:

- short and concise;
- well presented and laid out;
- plainly and clearly worded;
- focused on the information they believe they need; and
- easy to understand with simple examples, tables and graphics to help illustrate concepts.

Design techniques may be used to improve the extent to which a disclosure document engages retail investors. Techniques such as the use of colour, bolding and white space can help make a document easier for a consumer to navigate and, therefore, understand.

The overall tone of a document also matters to retail investors. Statements about where investors could find more information have been viewed as enhancing the overall credibility of the information disclosed. Additionally, retail investors have said that they want information at a time that it is *useful* to their investment decision. This is discussed further in Chapter 4 section D.

Research summarised in the literature survey also touches on sources of information. Investors rely on a wide range of types of information when making investment decisions. In particular, they rely on the advice of others, who may be peers, professional advisors[14] or salespeople.

D. Research on Investor Behaviour

Research has also been done on how retail investors tend to behave when making an investment decision. See Appendix A for specific references.

Consumer behaviour research attempts to answer how consumers make their decisions.

Regardless of where they obtain the information, the research indicates that retail investors exhibit a range of behaviours and biases in the decision-making process. For instance, these might include the impact of:

- **Emotion** – Investors make decisions based on how they feel as opposed to what they know or think they know;

- **Overconfidence and overestimation of investment knowledge and abilities** – Retail investors may interpret past successes as due to their own expertise rather than market conditions;

- **Representativeness biases** – Investors are overly influenced by strong or poor recent past performance or false reference points; and

- **Inertia, procrastination and status quo biases** – Investors stick with a familiar, pre-existing or established position, for instance relating to the appropriateness of following a particular investment strategy.

Some research has suggested that one way to combat these biases might be to provide retail investors with product information in a form that is easy for them to digest, for instance in a summary form, as part of the sales process. This could make them aware of the potential benefits, risks and costs before they make their purchase decision. Other approaches might include improving the readability of existing disclosures.

[14] Advice provided by a professional advisor is, in most jurisdictions, legally defined and regulated.

In relation to disclosure about intermediaries, such as their status and remuneration, the function of *trust* can be particularly significant. Evidence suggests investors can be more inclined to discount these disclosures because they place their trust in their advisor.

Chapter 3 Existing Disclosure Requirements and Modes of Delivery in IOSCO Member Countries

As part of its development and review of the POS issues, the Joint Group requested that regulators complete a POS questionnaire (the Questionnaire). The responses to the Questionnaire revealed that most, but not all, jurisdictions have in place some type of point of sale disclosure requirements for CIS. Some require simplified information that is particularly designed for the needs of retail investors. The degree of prescription in disclosure requirements varied.

Requirements relating to disclosures about the services offered by intermediaries and their remuneration were more varied among countries – both in terms of the types of information required and the detail required.

Products and services covered

Disclosure requirements may apply to products and/or to the intermediary in relation to the service they offer. Requirements that apply to CIS products were the focus of most responses to the POS questionnaire. Jurisdictions generally applied similar requirements across all types of CIS products. Several jurisdictions have comparable requirements that apply to other investment products.

Some jurisdictions noted requirements for intermediary services, including investment advice, and intermediary remuneration relating to particular transactions in CIS and other financial instruments.[15]

A number of jurisdictions are examining options for new disclosure requirements. See discussion in Chapter 6.

Content and format of disclosure

Almost all jurisdictions require that information about financial products be disclosed to investors. Many jurisdictions require that simplified information particularly suited to the needs of the retail investor be provided.

For instance, European Union jurisdictions require that a simplified prospectus be offered in relation to UCITS. Canada also requires the offering of a simplified prospectus, while the United States SEC permits the offering of a simplified prospectus as long as certain requirements are met. Examples of other short documents required for CIS or similar products include the *Key Features Document* (required in the UK for many retail investment products, including non-UCITS CIS and life contracts), the *Financial Information Leaflet* (required for a range of investment products in the Netherlands), and the *Product Disclosure Statement* (Australia).

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[15] IOSCO Objectives and Principles of Securities Regulation, p. 37, provides a general recommendation that the intermediary: "*should make adequate disclosure to its customers, in a comprehensible and timely way, of information needed to make a balanced and informed investment decision. It may be necessary for regulation to ensure disclosure in a particular form where products carry a risk that may not be readily apparent to the ordinary investor. Recruitment and training should ensure that staff who provide investment advice understand the characteristics of the products they advise upon*."

Generally, information material to the retail investor's investment decision must be provided but jurisdictions differ as to the degree of prescription they use in clarifying what must be provided. Typically, required information includes:

- investment objectives or goals;
- main investment strategies (sometimes specifically whether the fund invests in derivatives);
- the key risks of investing in the CIS;
- fees and expenses;
- the investment adviser, sub-adviser(s) and portfolio manager(s);
- information regarding the policy of purchase and redemption of the CIS's shares; CIS distributions;
- tax information;
- other services that are available from the CIS (e.g., exchange privileges or automated information services);
- conflicts of interests; and
- contact information.

Many jurisdictions have no or limited requirements governing the format or presentation of the documents, although most jurisdictions require that the prospectus be written in "plain language". The majority of jurisdictions permit the incorporation of one prescribed document into another for delivery purposes.

Although many jurisdictions do not appear to have specific requirements regarding intermediaries, some require specific disclosures relating to the service and status of the intermediary or distributor, including detailed disclosures relating to costs and intermediary remuneration.

Recipients of the disclosure

In most jurisdictions retail clients are the intended recipients, although professional or institutional clients are given or offered the same disclosures as retail clients. However, some jurisdictions apply reduced requirements for non-retail clients.

Timing and mode of delivery

Most jurisdictions require the disclosure of information before a transaction is executed, although some allow delivery upon completion. While electronic media are generally permissible, the client's consent is often necessary before mandatory disclosures may be

provided solely in this form. The mode of the sale (e.g., internet or telephone) generally will determine the timing and mode of any required delivery.

Responsibility and liability for preparation and delivery

While requirements to prepare and make available or publish information are similar across jurisdictions, requirements to give the information to the consumer are more varied. In general, product producers are responsible for preparing and publishing the disclosure, and intermediaries (advisers) are responsible for delivering it (see also footnote 23).

In most jurisdictions product producers are not able to delegate their liability, although in some jurisdictions they may share it. While a product producer is generally responsible for the content of a prospectus, the intermediary is in most jurisdictions, responsible for explaining the features of the product to a client. In the European Union, the Markets in Financial Instruments Directive (MiFID)[16] requires that an intermediary falling within the scope of the directive be held responsible for any information it provides.

[16] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments and implementing directive and regulation.

Chapter 4 Components of Effective Disclosure

A. Introduction

As discussed in Chapter 2, regulatory disclosures are intended to protect investors by addressing the information asymmetries that exist between retail investors and those manufacturing or selling investment products. An important issue for regulators to consider is whether investors may not be properly using the information provided to them under current disclosure regimes because they have trouble finding and/or understanding the information they need. This information may, for example, be buried in long and complex documents, and investors may have difficulty comparing information about different products. Investors also may find it difficult to locate information about the intermediary and its remuneration and, if they find it, to understand its significance or how to use it.

By making disclosure more effective, regulators may be able to address these potential weaknesses. Some regulators have evidence to suggest that effective disclosure depends on factors such as providing:

- retail investors with key information about a CIS product;
- where relevant, the intermediary services being offered in relation to the distribution of that product;
- the information in an accessible and comparable format;
- the information at the right time – when retail investors are making their purchase decision; and/or
- the information in a *layered approach*. A layered approach refers to supplementing key summary information with additional and more detailed information either upon request or through additional supplementary material attached or linked to the summary information.

The issues may be different in different jurisdictions. As mentioned above, other significant factors may determine the effectiveness of disclosure requirements, such as the extent to which retail investors rely on the disclosures, the level of consumer financial capabilities, or the complexity of the investment product in identifying key information to be disclosed and in designing effective disclosure requirements. In addition, regulators should take into account whether the fund documents are primarily aimed at retail investors rather than professional investors.

B. Content

Based on the investor research summarised in Chapter 2 and the existing requirements among jurisdictions summarised in Chapter 3, the key content of the disclosures should include:

- objectives and investment strategies;

- risks (e.g., relating to the potential negative performance of the investment, or even broader risks and their variability, such as liquidity risks e.g. redemption restrictions, lock-up periods, gates, etc; counterparty risks when there is some capital protection or guarantee; operational risks; etc);

- past performance (which may be presented in a graphical or tabular manner, and may be standardised between CIS') or, where past performance is not available, potential return scenarios;

- costs (e.g., subscription or redemption fees, annual management charges (AMC), miscellaneous expenses or indeed composite measures such as the Reduction in Yield (RIY) or Total Expenses Ratio (TER));[17] and

- conflicts of interest which could include both conflicts arising within the fund manager, and those affecting the distributor or intermediary (this could include disclosure of the conflict itself and the mitigation strategy).

Retail investors have said that they want a short document that contains the information they want in a form they can understand. The use of simple examples, tables and graphics might help to achieve this objective. Information about costs, for example, can be difficult for investors to understand, and some jurisdictions have initiatives to improve disclosures in this area. This can give rise to issues, however, such as the appropriate form that information about charges should take. For example, should it be generic or should it illustrate, for instance in cash terms, the actual proposed contract?

Information about the service being offered by the intermediary, the handling of conflicts of interest, and remuneration, are all likely to be important. Information about costs, for example, can be difficult for investors to understand, and some jurisdictions have initiatives to improve disclosures in this area.

C. Language

Effective disclosure also means providing retail investors with information in language they can easily understand. All jurisdictions generally require that prospectuses be written in *plain language*.[18] Plain language can be described as communicating in a way that facilitates audience understanding - as being clear, succinct and comprehensible while avoiding unnecessary jargon and technical terms.

Writing using plain language requires an understanding of the intended audience. In order to gain a better understanding of the characteristics of the intended audience, the following characteristics can be helpful to analyse potential barriers to communication:

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[17] Fund management charges and costs are often disclosed as an AMC. In some jurisdictions additional measures of charges are also disclosed. TER is a proxy measure for the charges and expenses deducted from the fund each year. RIY is another proxy measure which shows the overall impact of charges on an illustrative growth rate.

[18] In the EU, the existing simplified prospectus must be written in such a way that it can be easily understood by the average investor. Similarly, the key investor information document is required to use a non-technical language.

- literacy;
- investment knowledge; and
- role of intermediaries in the sale of the product.

Low literacy levels can constitute a significant barrier to communication. Recent research indicates that, while literacy levels vary between countries, a significant proportion of adults have serious problems absorbing the information contained in printed materials, e.g., are only able to tackle simple reading tasks. In addition, financial disclosure documents will include a mixture of numerical and non-numerical information that may exacerbate barriers to communication.[19]

Research indicates that levels of investment knowledge and financial capability are generally very low. This reinforces not only the need for clear and simple disclosures, but also the importance of efforts to enhance investors' ability to understand financial information.

Finally, in many jurisdictions, retail investors rely heavily on the intermediary in making an investment decision, which might have an impact on how investors review or consider the information contained in disclosure documents. This may be addressed, in some jurisdictions, by having the document include unbiased, i.e., neutral prompts to "ask your adviser" for more information on particular points, particularly with regard to fees.

The investor research discussed in Chapter 2 makes it clear that investors are primarily interested in information on potential benefits (performance), risks and costs. Disclosure documents under the current regimes in many jurisdictions already provide this information, but not always in a form or using language that makes it easy for retail investors to understand. This suggests that in some jurisdictions regulators may wish to consider whether the information needs to be revised, for example, by simplifying existing disclosures or redesigning them, and putting them into a format that investors can more easily read and understand.

D. Timing

For the purposes of this report, we have considered the term *point of sale* as referring to the moment at which a customer requests that a product be purchased (see footnote 5). A survey of existing regimes reveals, however, that there is no uniform or clear definition of the phrase *point of sale* across jurisdictions, although we observe that, in its proposed POS disclosure regime, Canada has defined POS as the point in time when the investor gives instructions to the intermediary to purchase the investment product.

Many jurisdictions require that information be disclosed before a transaction is completed. In Japan, disclosure must be made before *trade execution*. The U.S. CFTC requires commodity pool operators to obtain a signed acknowledgement from a prospective fund participant that

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[19] See International Adult Literacy Survey, http://www.oecd.org/document/2/0,3343,en_2649_201185_2670850_1_1_1_1,00.html; also see National Institute for Literacy, http://www.nifl.gov/nifl/facts/IALS.html.

he or she has received a disclosure document before accepting any funds from the prospective participant for investment in the fund. In those European jurisdictions subject to MiFID, the focus is on ensuring investors receive information "in good time before" carrying on the relevant business, so that the information can inform their investment decision.[20]

Canada and the U.S. SEC do not currently require that information be provided until a transaction is completed, although there is no prohibition against providing it earlier.

Some other jurisdictions require that certain disclosures must be made available, but only on request. In some cases, flexibility is allowed. For instance, the Irish Consumer Protection Code requires that "information must be supplied according to the urgency of the situation and to allow the investor the time to absorb and react to the information" and that "the terms and conditions related to a service must be provided before entering a contract or before the cooling off period finishes where applicable".

Some jurisdictions are considering a *layered* disclosure approach. As described in Chapter 4 A., this is where key summary information is supplemented with additional and more detailed information either upon request or through additional supplementary material attached or linked to the summary information. In general, regulators should consider what information should be given prior to or at the point of sale, what can be signposted as available elsewhere or available upon request, and what information can be delayed until after the conclusion or execution of the investment transaction.

For example, recent amendments to the law in Australia enable layered disclosure where more detailed information can be "incorporated by reference" into the initial disclosure document that is provided to a retail investor before a product is purchased. The additional layered disclosure is available on request, and is to be provided prior to the purchase of the product. The Canadian proposal on point of sale disclosure adopts a similar approach by requiring that investors receive a 2-page document prior to or at the point of sale, with other disclosure documents available on request.

E. Types and Purposes of Consumer Testing Available

Regulators may wish to consider what, if any, testing, or other assessments, might be done to help establish how well investors understand the current disclosure and compare that to how well they understand and will react to any new/improved disclosure requirements.

There are two types of data that may be obtained through consumer testing. Quantitative data provides numbers and statistics about a particular subject and is obtained through online, telephone or in person surveys of large numbers of consumers (control studies). Qualitative data provides attitudinal information and is obtained through focus groups and protocol testing.

- **Control Studies** involve the collection of quantitative data from a statistically significant number of respondents;

[20] The UCITS and Prospectus Directives contain the same type of requirement ("in due time before").

- **Focus groups** are conducted with a small group of people (usually 8-12). They are valuable for gathering information about how people feel about a product, issue or document. Participants will advise if they like or dislike the item or matter being tested. However, focus groups alone may not be the most effective way to test the usability of a document, or to learn how well an individual really understands what is written; and

- **Protocol testing** involves a one-on-one interview with a reader and is generally used to test the readability of a document.

The SEC, Canada and the European securities regulators within CESR have tested their proposed forms for point of sale disclosure.

While evidence may indicate that consumers may prefer to receive information in a certain format about particular key elements of a product, it can be argued that consumers will benefit from improved disclosure only if consumer behaviour changes. Several regulators have used *behavioural mock sales testing* as a key element in assessing the benefits of introducing changes to disclosure requirements. This type of testing has generally included assessing changes in understanding when consumers are presented with the new documents along with simple tests of behaviour in response to the additional information.

Chapter 5 Special Challenges for Regulators

A. The Tensions between Product Disclosure and Intermediary Disclosure

The responses to the Questionnaire indicate that while most jurisdictions require disclosures relating to products, specific disclosures that relate to the services being offered by intermediaries are less common. Where such disclosures exist, the requirements are often less detailed.

In some cases it can be difficult to determine who is responsible for disclosure – the product producer or intermediary. For example, the total amount of charges paid by an investor may depend on the channel through which he or she purchases a product and the particular arrangements between the product producer and the intermediary. For instance, an intermediary may offer discounts or rebates on some of the fees. Generic disclosures by the product producer may need to be supplemented or personalised so the client can see the actual charges he or she is to pay. Personalised illustrations may also be useful.

Some jurisdictions require specific disclosures about intermediary services including disclosures of conflicts of interest or inducements, or policies for managing these conflicts, a variety of requirements relating to the disclosure of the remuneration of the intermediary, and how this relates to the payment of commission to them by product producer.

Some jurisdictions, such as European countries under MiFID,[21] have developed disclosure requirements that focus specifically on the intermediary and the services it offers. As noted in the summary of consumer research, the two underlying "market failures" that disclosure should address are:

- the potential for the intermediary to suffer from conflicts of interest (that is, a principal/agent issue, where the interest of the intermediary in its own affairs might conflict with that which it has as agent for its client); and

- the poor understanding of retail investors of the nature of the services being offered and the remuneration structures which support them (asymmetry of information).

Of particular concern are compensation arrangements between intermediaries and product producers that may influence the advice provided by the intermediary to a retail client. These arrangements may create a direct financial incentive to sell particular products because they offer higher compensation for the intermediary.

One further complication is that the structure of compensation payments may be difficult for an investor to understand, making it in turn difficult for the investor to grasp the value of the service being offered by the intermediary. Specifically, some research (see Appendix A) suggests that investors frequently do not understand that the return on their investment in CIS may be diminished by the compensation arrangement between the intermediary and the product producer. That is, investors do not understand that they indirectly pay the compensation. Some investors may even think that the distributor service is free.

[21] Some requirements predated MiFID. For instance, the UK had a pre-existing regime for such disclosures, and continues to maintain requirements for services not covered by MIFID.

Regardless of the distribution or compensation structures in place, the principles outlined in this report seek to ensure that investors are provided with clear information so that they are able to make an informed decision.

Key issues therefore include:

- 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 the role of other regulatory tools;

- a possible split in responsibility between the product producer and the intermediary for disclosure requirements relating to transactions – e.g. when buying shares in a CIS. For instance, if disclosure is required "in good time before" a particular transaction, where the intermediary may have responsibility for ensuring appropriate delivery, yet the product producer typically will be the only party capable of disclosing the details of their product;[22]it should, however, be noted that while a product producer would generally be responsible (liable) for the contents of a prospectus, the intermediary in some jurisdictions may need to obtain additional product information independently rather than solely rely on the contents of prospectus;

- accuracy of the information if the entity required to deliver the information does not have access to the most up-to-date information, for example, if CIS are required to deliver information about broker-dealer arrangements, or broker-dealers are required to deliver information about CIS costs; and

- whether disclosure is an effective tool for managing these issues.

B. Consistency of CIS and other Product Disclosure Requirements

As discussed above, many jurisdictions require the delivery of disclosures about CIS products to investors at or prior to the point of sale. Some commentators have argued that such requirements may put CIS products at a competitive disadvantage vis-à-vis other financial products (for which no such POS disclosure requirements exist).

For example, in response to the U.S. SEC proposed POS rules, some commentators expressed concern that the proposed rules could discourage intermediaries from selling CIS shares in favour of other investment products not subject to the same rules. This point has also been raised by respondents to the IOSCO TC consultation on its work programme[23]. In contrast,

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[22] While a product producer would generally be responsible (liable) for the content of a prospectus, the intermediary would in most jurisdictions play an important role in explaining the features of the product to a client. By doing this, the intermediary may in some jurisdictions become liable for the content.

[23][23] *Comments Received in Response to the Consultation Report on the IOSCO Technical Committee Work Program*, Report of the Technical Committee of IOSCO June 2007 available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD251.pdf.

others supported enhanced point of sale disclosure, particularly concerning revenue sharing and other compensation practices.

Regulators need to consider at least three questions:

1. to what degree do CIS POS disclosure requirements differ from POS disclosure requirements for other financial products sold to the retail public (e.g., primary offering registration statements);

2. do similar disclosure requirements exist for substantially similar products; and

3. to what degree do CIS raise issues and concerns unique to those products compared to other financial products?

Clearly, regulators will want to try to avoid to the greatest degree possible the imposition of more onerous disclosure requirements on specific products compared to competing CIS products that raise the *same* disclosure issues (e.g., distribution costs and conflicts of interests due to revenue sharing arrangements). The issue of the *level playing field* is arguably one that may lead some jurisdictions to consider legislative reform and/or rulemaking whenever disclosure requirements for CIS and similar non-CIS products differ.

Some regulators, such as the UK FSA, have put in place regulatory regimes that cut across many products with similar characteristics to CIS in an attempt to harmonise the core requirements. But the emergence of new forms of product and investment arbitrage has made this more difficult to achieve.

Since 1998, a single regulator in Australia has regulated disclosure for all financial products. In 2001, a single disclosure regime for all such products was adopted. This means that issuers that create CIS-like products are subject in Australia to the same disclosure rules as CIS. Thus, the issue of the level playing field is less likely to arise.

In Italy, Consob adopted a similar approach. In 2005, it introduced new rules extending the scope of application of rules of conduct and transparency, including prospectus requirements, to the subscription and placement of financial products issued by banks and insurance companies.

In addition, different issues may exist where different regulators regulate the product producer and the intermediary.

Responses to the questionnaire suggested particular issues for products or services sold within the EU, where different EC directives can govern different elements of the sales process, and different products. This can make developing a consistent approach difficult to achieve. The European Commission's current work program includes steps to address this issue at the directive level.[24]

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[24] See http://ec.europa.eu/internal_market/finservices-retail/investment_products_en.htm.

In assessing the costs and benefits of disclosure requirements, the potential for regulatory arbitrage needs to be considered.

C. Cost/Benefit Analysis of New Point of Sale Disclosure Requirements

Measuring the costs and benefits of changes in regulatory requirements is a complex exercise. In considering the potential costs and benefits of new rules, regulators need to consider the existing disclosure practices of intermediaries and product producers and establish the extent to which the new requirements might generate additional costs. The principles outlined do not in any way override these existing obligations.

Benefits

Measuring the benefits of disclosure is particularly challenging because they may be intangible or very difficult to measure with any precision (e.g., measuring the *value* of people making more informed investment decisions). A starting point is to track the channels through which the benefits may be expected to arise. Some possible benefits of enhanced point of sale disclosure rules include:

- less risk of retail investors buying inappropriate products or not fully benefitting from the services they pay for, or reduced risk of mis-selling;

- retail investors being in a better position to understand conflicts of interest of intermediaries and compare the costs of investing;

- the potential for downward pressure on prices due to greater transparency in areas such as charges or commissions. This may enhance the overall efficiency of the market and create benefits that spread beyond the direct recipients of the disclosure material; and

- comparability and ease of CIS point of sale disclosure may encourage investors to save.

Several jurisdictions have conducted research, such as the *behavioural mock sales testing* referred to in Chapter 4 section E above, to assess the effectiveness of new documents on consumer understanding, behaviour and outcomes.

Costs

The direct costs of new disclosure requirements usually fall into two main categories: costs of change in moving to a new approach; and on-going costs of maintaining that new system, which would have to be compared with the cost of existing systems.

Possible sources of costs include:

- legal and other compliance costs for preparing a document;

- information technology costs for re-programming and updating information delivery systems;

- compliance and other staff costs for overseeing and maintaining the information delivery systems; and

- external costs for printing and typesetting of the new disclosures.

Additional costs for intermediaries in particular could include generating and sending information to investors, calculating revenue sharing and maintaining and further updating information delivery systems.

Costs could be minimized to the extent that new point of sale information can be incorporated into current delivery systems. Or costs may not be impacted at all to the extent that firms already disclose this type of information at point of sale even though regulators do not yet require this.

Producers in jurisdictions that use a simplified risk disclosure statement may also face potential litigation risk if an investor believes that the simplified form failed to alert him/her of material risks, or was misleading because of its brevity, even if cross-reference is made to the more detailed prospectus. This is a particular concern in jurisdictions where private civil litigation is frequently and easily pursued.

Indirect costs (and benefits) resulting from new rules in this area include the possibility:

- that investors may choose other types of financial products that do not have, or do not appear to have, the costs and conflicts associated with CIS products (regulatory arbitrage);

- that funds restructure how they compensate sellers of their securities; and

- of duplicative disclosure by the CIS firm and by the intermediary.

Chapter 6 Disclosure Requirements being proposed in IOSCO Member Jurisdictions

A number of jurisdictions have described proposals for new disclosure requirements. Canada has proposed two new two-page documents for segregated and mutual funds: *Fund Facts* (FF) would provide key information that is in the simplified prospectus, but in a user-friendly and simplified manner, and prior to or at the point of sale; *Key Facts* (KF) would summarize key features of the insurance component of a segregated fund and would be offered in addition to the FF. As to format, the proposed new forms would need to be consistent with the following principles:

- avoid legal or financial jargon;
- use simple examples, tables and graphics to illustrate concepts;
- use bold headings and white space to make the document easier to read and navigate;
- writing should be at a reasonably modest educational level; and
- recognize the role of the adviser in the sales process.

In these jurisdictions, other disclosure documents such as a simplified prospectus would be available on demand.

In the United States, on July 21, 2010, President Obama signed the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act). Section 919 of the Dodd-Frank Act, entitled "Clarification of Commission [SEC] Authority to Require Investor Disclosures Before Purchase of Investment Products and Services," provides that "the Commission [SEC] may issue rules designating documents or information that shall be provided by a broker or dealer to a retail investor before the purchase of an investment product or service by the retail investor." The Dodd-Frank Act further provides that in "developing any rules…the Commission shall consider whether the rules will promote investor protection, efficiency, competition, and capital formation." Finally, the Dodd-Frank Act provides that any documents or information required to be provided to investors "shall be in summary format; and contain clear and concise information about (i) investment objectives, strategies, costs, and risks; and (ii) any compensation or other financial incentive received by a broker, dealer, or other intermediary in connection with the purchase of retail investment products." [25]

[25] In 2004 and 2005, the U.S. SEC proposed prescribed forms and model Internet disclosure that would provide investors with a wide range of product cost information, as well as information about intermediary compensation and conflicts of interest. See *Point of Sale Disclosure Requirements and Confirmation Requirements for Transactions in Mutual Funds, College Savings Plans, and Certain Other Securities, and Amendments to the Registration Form for Mutual Funds Reopening of Comment Period and Supplemental Request for Comment*, Securities Act Rel. No. 8544 (Feb. 28, 2005), available at http://www.sec.gov/rules/proposed/33-8544.htm and *Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds*, Securities Act Rel. No. 8358 (Jan. 29, 2004), available at http://www.sec.gov/rules/proposed/33-8358.htm.

In 2009, the U.S. SEC adopted rules allowing CIS the *option* of sending or giving investors a summary prospectus and providing the full prospectus online. The summary prospectus incorporates by reference the full prospectus (a *layered* disclosure approach).[26]

In Japan, the *Financial Instruments and Exchange Act* requires a "document before concluding a contract" that contains a statement that the company is a financial instruments firm; and the registration number; an outline of the contract and any fees; a warning concerning potential losses; and information concerning applicable taxes, cancellation rights (*cooling off* period), fund contact information, and the name of the self regulatory organization (SRO) of which the firm is a member.

In Germany a draft law is expected to be approved in a few months, which provides that where investment advice is provided to a customer,[27] an *information form* is to be made available to the customer promptly and prior to any sale for each financial instrument being recommended. The form must be "short and easy to understand."

In addition, Directive 2009/65/EC has introduced a *key investor information* (KII) document, which will ultimately replace the simplified prospectus by July 1st, 2011. The KII will need to include appropriate information about the essential characteristics of the UCITS concerned, so that investors are reasonably able to understand the nature and the risks of the investment product that is being offered to them.[28] The KII is to be short and concise and use a non-technical language. It needs to be fair, clear and not misleading and, therefore, consistent with the relevant parts of the prospectus. More specific rules on the format and content of KII are set out in the Commission Regulation no. 583/2010.[29]

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26 See *Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Investment Companies*, Inv. Co. Act Rel. No. 28584 (Jan. 13, 2009), available at: http://www.sec.gov/rules/final/2009/33-8998.pdf.

27 The requirement applies to *private clients* only, but applies to any type of financial instrument.

28 The required information includes: (a) identification of the UCITS, (b) a short description of its investment objectives and investment policy; (c) past-performance presentation or, where relevant, performance scenarios; (d) costs and associated charges; and (e) risk/reward profile of the investment.

29 Commission Regulation no. 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.

Chapter 7 Principles for Disclosure of *Key* Information in regard to CIS Prior to the Point of Sale

The Joint Group would like to emphasize that these principles have been developed to provide guidance for markets and market authorities. This does not mean, however, that a one-size-fits-all approach is being advocated.

The principles need to be of such a nature that they are adaptable to different regulatory frameworks. They should, for example, be relevant regardless of the level of prescription in the regulatory system, or the predominant distribution model.

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.***

Key information in product disclosure could include:[30]

- The name of investment and type of product;
- The investment objectives and strategy of product;
- Its risk and reward profile. Risk disclosures should include the material risks for the product. This may include performance risk/volatility, credit risk, liquidity risks and operational risks. In some jurisdictions, a scale may be considered appropriate to identify the overall risk measurement or classification of the product, rather than a list of specific product risks, and this may be accompanied by appropriate narrative explaining how to interpret the scale. This may assist with risk comparisons, although regulators and investors need to be aware of the inherent limitations in such measures.[31] Regulators might wish to include supporting information indicating minimum length of holding relative to short term volatility, what types of "targeted investors" the product is being marketed to and what commitment those investors need to make;
- Fees and costs, including information on any breakpoint discounts and/or expense reimbursements or fee waivers;
- The nature of any guarantees being offered, including any restrictions or conditions that the guarantees are based on;

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30 Key information will necessarily vary depending on the type of financial product being offered. For some complex financial products with a multitude of risks, the amount of key information that a regulator might mandate for immediate disclosure to the investor under a "layered approach" may be greater than for less complicated products.

31 For instance, in Europe, the "Risk and reward profile" section of the key investor information document shall contain a synthetic indicator, supplemented by: (a) a narrative explanation of the indicator and its main limitations; (b) a narrative explanation of risks which are materially relevant to the UCITS and which are not adequately captured by the synthetic indicator.

- Potential conflicts of interest inherent in the terms of the product. For example, these may include when:

    - Payments to the investor are dependent on certain criteria (e.g., product performance as measured against a benchmark); and/or
    - There are penalties for policyholders who cash in their investments early.

- Past performance. The information should be presented in a way that enables easy comparison between products. Past performance disclosures should include a warning that historical performance is not an indicator of future performance. Where no past performance is available, potential return scenarios should be provided[32];

- Additional information:

    - Information on portfolio managers and key service providers (e.g. trustee or custodian). This could include the identity of the portfolio managers and key service providers and their regulator, where applicable.
    - The arrangements for handling complaints about the product.
    - Information on any compensation that might be available if the firm cannot meet its liabilities in respect of the product.
    - Any rights to cancel or withdraw.
    - A summary of tax implications on premiums and benefits.

Key information in intermediary disclosure could include:

- The name of the intermediary, its services and its contact information;

- Fees, intermediary compensation and costs, including any charges and fees that reduce the returns that investors earn; and

- Potential conflicts of interest. For example, any conflict of interest that can give intermediaries and their personnel a financial incentive to sell particular funds or share classes in breach of their duty to act in the best interest of their client, as well as any non-monetary benefits provided to intermediaries.

Means for Implementation:

- Disclosure requirements should be flexible to accommodate different kinds of CIS and to allow producers and intermediaries to provide their own disclosure. Some jurisdictions may mandate separate intermediary focussed disclosure and product disclosure; and

[32] In Europe, Commission Regulation no. 583/2010 requires information about the past performance of the UCITS to be presented in the key investor information document. With regard to structured UCITS, such as capital protected and other comparable UCITS, the provision of prospective performance scenarios in place of past performance information is required.

- Should a jurisdiction choose a *layered approach* to disclosure, the disclosures made prior to the point of sale should specify where and how the investor can obtain additional information on the proposed investment.

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.***

Means for implementation:

- Regulators could require that appropriate proof exists to demonstrate that requirements for delivery or availability of key information have been met;

- Intermediaries and product producers could retain appropriate and sufficient documentation to prove that the requirements have been met. The product producer or the intermediary may wish to obtain a signed acknowledgement from the investor that he or she received, or had access to, the appropriate disclosure information; and

- Regulators may want to consider whether an investor is in a position to make an informed decision about whether to invest before the point of sale.

Principle 3 ***Key information should be delivered or made available in a manner that is appropriate for the target investor.***

Means for Implementation:

- In determining the required mode of delivery or availability of key information, intermediaries or product producers should take into account:

    - Individual investor characteristics and preference, e.g., access to the internet and email, or access to a fax machine. Intermediaries or product producers should consider requiring delivery by mail for those investors who do not have access to electronic and fax delivery; and
    - Whether the investment is recommended by the intermediary; and

- Regulators should require intermediaries or product producers to deliver to investors, upon request, key information in writing free of charge, irrespective of the means of delivery of the key information.

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 CIS products***

Means for Implementation:

- The intent of this principle is for the standard of disclosure to be sufficiently similar and written in *plain language* across disclosure documents, to enable investors to appreciate the difference between products. The principle does not

require comparisons with other products to be made within the disclosure documents themselves;

- *Plain language* disclosure should be used to convey information in a way that is likely to be understood by the target investor. The needs and abilities of the target investor should be considered to ensure that the content of the information is relevant**,** the organization of the information is logical and the language appropriate;

- The following plain language techniques may be considered to improve disclosure:

    - common everyday words,
    - when technical, legal and business terms are unavoidable, clear and concise explanations of them,
    - examples and illustrations (including the use of tables and charts) to explain abstract concepts.

- The use of characters of readable size for every item;

- The format should allow for comparison. In order to promote simplicity and comparability, regulators should consider prescribing certain aspects of the disclosure such as the length of the document when written material is used,[33] minimum items to be addressed as described above in Principle 3, their order and certain content related to certain sensitive items such as performance, risk and costs;

- Regulators should consider prescribing the order in which the items are presented. Establishing a logical and consistent structure will ensure the essential elements are given appropriate prominence and will help to facilitate comparisons between key information related to different CIS; and

- Regulators should consider the tension between allowing producers to include additional product specific information on the one hand, and the desire to promote simplicity and comparability on the other.

Principle 5 ***Key information disclosures should be clear, accurate and not misleading to the target investor. Disclosures should be updated on a regular basis.***

Means for Implementation:

- Information should not emphasize potential benefits of a CIS without also giving a fair and prominent description of any relevant risks. It should not obfuscate important items, including warnings, or seek to diminish their importance;

[33] For instance, in Europe, Commission Regulation no. 583/2010 prescribes that the key investor information document shall not exceed two pages (or, for structured UCITS, three pages) of A4-sized paper when printed.

- Where the information provides comparisons with other CIS or similar products, regulators should consider requiring that (1) the comparison be unbiased and objective; (2) the sources of the information used for the comparison are specified; and (3) the facts and assumptions used to make the comparison are included;

- If key information contains disclosures on past performance, regulators should consider imposing requirements designed to reduce the potentially misleading focus on past performance. If key information contains predictions for future performance, regulators should consider requirements to help ensure that this information is based on objective facts and is not misleading;

- Regulators should require the product producer or intermediary, as appropriate, to revise and update key information as often as reasonably necessary to reflect any material change in the information that could affect its accuracy. This could include, for example, updating changes to the investment strategy, an alteration in its risk profile, the adoption of a new charging structure, or a description of past performance. However, this principle should not be interpreted as suggesting that the product producer or intermediary should be required to deliver on a continuous basis (i.e., on a post-investment basis) updated POS disclosures to the investor. That determination will need to be made by each regulator taking into consideration the nature of any POS disclosure requirements that it may impose; and

- Regulators should consider requiring the producer or intermediary, as appropriate, to make available on its website an up-to-date version of the key information.

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.***

Means for Implementation

Who controls the information is an important factor to consider in determining who should make the disclosure. Thus, in general, responsibility for providing key product information will tend to rest primarily with the product producers; and disclosure of information relating to intermediary services will rest primarily with the intermediary. Nevertheless, regulators will need to consider several complicating factors in implementing this principle, particularly when seeking to avoid duplication of disclosure obligations:

- If the intermediary provides or alters product information, it may need, in some jurisdictions, to take additional responsibility for that information.[34] Sometimes this is prescribed in over-arching legislation (e.g., MFID in the EU);

- While a product producer may be generally responsible for the content of the disclosure[35], the intermediary is responsible in many jurisdictions for explaining the features of the product to a client; and

[34] This is important as some fund supermarkets do this to a degree.

- The product producer may not be able to specify clearly certain information at the point at which the product is produced. For instance, while the product producer should disclose the charges imposed directly by the product, the full range of charges associated with purchasing and owning the product will often vary according to the method of distribution. This means that the intermediary will often have to provide the actual product charges as well as the intermediary charge in order to give the client full disclosure of charges.

[35] A firm that provides access to online investment in a wide choice of funds (typically hundreds of funds) from different providers,