Appendix 1

Feedback Statement

A. Introduction

The International Organization of Securities Commissions (IOSCO) Technical Committee (TC) established the Joint Group to develop a set of principles to help improve product disclosure at the point of sale (POS) for collective investment schemes (CIS). The Joint Group's membership consisted of the Technical Committee's:

- Standing Committee on the Regulation of Market Intermediaries (TCSC3); and
- Standing Committee on Investment Management (TCSC5).

In November 2009, the Joint Group published a Consultation Report *Principles on Point of Sale Disclosure*[1]. The report outlined six principles designed to assist markets and market authorities when considering point of sale disclosure requirements.

A total of 22 responses were received during the consultation period. Comments were received from securities regulators, national and international associations that represent firms in the investment fund industry, investment product providers and other interested parties.

This Feedback Statement summarizes the comments received and provides the Joint Group's responses to the issues raised.

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[1] *Principles on Point of Sale Disclosure*, Consultation Report of the Technical Committee of IOSCO, November 2009, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD310.pdf

B. Overview of responses

Overall, there was widespread positive feedback for the six POS disclosure principles, with many respondents welcoming the approach taken and their flexibility. For example, the following comments were received:

> *"…wholly supports the objectives of IOSCO in providing a set of principles to be applicable on a global basis to POS disclosure in respect of CIS"*[2]
>
> *"The six proposed principles… set out constructive guiding principles for disclosure of key information in regards to CIS prior to the point of sale"*[3]
>
> *"We support all the principles suggested by the committee… providing clients with easily digested information will assist them greatly in making well informed investment decisions."*[4]

However, some concerns about the application of the principles were raised. In particular, the range of products to which the principles should be applied, and the way in which the principles would be implemented in different national jurisdictions. We address these wider concerns below, before considering the specific comments provided on each of the principles.

Scope of the consultation

Consistency across products

Several respondents commented on the focus on CIS products. Most, but not all, of these respondents were concerned that additional regulation would have a negative effect on CIS, such as:

a) CIS would be at a material disadvantage to other products whose disclosure material was not required to meet the principles[5];

b) the inconsistency between products would create incentives for advisors to recommend other products not subject to the principles[6];

c) limiting the principles to CIS would not serve investors as it would result in incomplete protection[7]; and

d) Investors might believe that certain risks only applied in relation to CIS, because

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2 The Joint Associations Committee on Structured Products (JAC)

3 Aberdeen Asset Management PLC Singapore

4 SingCapital Pte Ltd

5 Association of the Luxembourg Fund Industry (ALFI)and Securitization Forum of Japan

6 European Fund and Asset Management Association (EFAMA), Investment Company Institute (ICI) and a joint response from National Investment Management Associations

7 ICI

they were not disclosed in other products' literature[8].

One respondent argued that any framework should reflect the two distinct structural types of product: CIS (variable return investments) and contractual packaged retail investment products (defined return investments including deposits, structured bonds, warrants and certificates, annuities and some life insurance policies).[9] Another commenter urged IOSCO to seek "a level playing field", by encouraging its sister organizations (BCBS and IAIS) to adopt the same principles of product disclosure to other investment products sold to retail investors.[10]

The following statements are reflective of the types of comments received on this point:

> *"As the objective of the point of sale disclosures is to assist retail investors, not extending the discussion to all retail investment products raises key concerns of investor protection"*[11]
>
> *"The fact that the legal form of the products is different does not in our opinion diminish the reality of the competition."*[12]
>
> *"Consistency in the disclosure requirements of both CIS and other types of financial products is a key factor when considering the stable execution of the POS Disclosure regime."*[13]

Our response to the comments

We have outlined a set of high-level principles to support markets and market authorities to improve the quality of disclosure that customers receive. The principles set out a baseline expectation that consumers have enough information to be able to make an informed decision.

We understand the representations made during the consultation about the problems of lower levels of transparency and clarity in disclosure requirements for competing products to CIS. However, the Joint Group carefully considered product scope at the outset of this project and it was deemed appropriate to limit the Joint Group's remit to CIS products because a clear definition of CIS[14] was able to be agreed amongst

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8 National Investment Management Associations, EFAMA

9 JAC

10 Schroder Investment Management Ltd

11 National Investment Management Associations

12 ALFI

13 Securitization Forum of Japan

14 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 the purposes of this paper closed end funds were excluded from the definition.

members, and because of the unique characteristics of CIS and their status as a favorite investment vehicle for the retail sector.

Similar products were considered, but generally these included products unique to a particular jurisdiction[15] or "wrapped" insurance products that may not be subject to the regulatory jurisdiction of securities regulators. We therefore do not believe it would be appropriate to extend the scope of this paper.

Nonetheless, the application of the principles to other products may widen over time. Indeed, we agree that clear and timely disclosure of key product features is important for all investment products and we encourage regulators to review their local conditions and, to the extent possible, consider adopting the principles to products similar to CIS.[16] This very point was made in the consultation paper.[17]

Consistency across jurisdictions

The degree of prescription in disclosure requirements varies across jurisdictions. Most jurisdictions require, however, that information about financial products be disclosed to investors.

Two respondents suggested that regulators should aim to develop a consistent model across different jurisdictions;[18] and some concern was expressed regarding the potential for inconsistent adoption of the principles in different regulatory frameworks.

> *"We would urge IOSCO … to provide further clarity around the roles and responsibilities of different parties within the distribution chain… examples of the disclosures required and illustrations of how the IOSCO Principles are intended to operate in practice in order to ensure that: (A) regulators do not interpret the IOSCO Principles differently across the EU and the world…"*[19]

Other respondents were concerned that it was not clearly explained in the paper how difficult it would be to adopt a single set of principles across international borders.

> *"where we find the paper falls short, however, is in its lack of focus on the institutional and historical differences that lead to different disclosure regimes…These differences lead to the observed different regulatory treatments across jurisdictions, and show why a "one-size-fits-all" approach for all markets may not be a desired outcome."*[20]

Our response to the comments

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

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

17 http://www.iosco.org/library/pubdocs/pdf/IOSCOPD310.pdf, p.2.

18 ALFI and Confidential response

19 JAC

20 Investment Funds Institute of Canada (IFIC)

The Joint Group would like to emphasize that the 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. For this reason, it is not feasible or appropriate for us to provide additional guidance on how the principles should operate within a particular regulatory framework.

Consumer research and cost of compliance

Several respondents wanted to ensure that any changes to disclosure regimes be thoroughly tested before they were implemented.[21] They highlighted, in particular, the costs of disclosure and the impact of this on product cost and/or investment performance.[22] Comments made included, for example:

> *"Cost/benefit analysis is essential for introducing successful POS Disclosure. We strongly believe that…POS disclosure should be associated with a cost reduction effect for financing cost on the CIS producer's part."*[23]
>
> *"The Report should 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"*[24]
>
> *"Investors should realize that expenses arising from mandatory disclosure requirements and measures to enhance product knowledge will inherently reduce investment returns."*[25]
>
> *"It is essential that regulators conduct comprehensive quantitative research on the impacts of new standards and regulations before implementing them in the marketplace".*[26]

One respondent recommended that the final report include product arbitrage as a major consideration in the assessment of costs and benefits;[27] and another suggested that POS requirements should not be imposed absent investor research and that such research should focus on all retail investment products.[28]

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21 For example ICI and JAC

22 The Association of Banks in Singapore (ABS), confidential response, and The Society of Remisiers Singapore.

23 Securitization Forum of Japan

24 ICI

25 The Society of Remisiers Singapore

26 IFIC

27 IFIC

28 ICI

Not all responses regarding costs were negative. One respondent noted that the method of delivery and content may present an opportunity to gain some efficiency in the manner with which they update and inform customers.[29] It was also suggested that different methods of delivery or production could help to reduce costs for producers.

Our response to the comments

An entire section of the consultation paper is dedicated to highlighting the importance of a cost/benefit analysis (see Chapter V, Section C). As stated in the consultation paper, measuring the costs and benefits of changes in regulatory requirements is a complex exercise. We agree with the comments supporting due consideration of the cost/benefit of new regulatory requirements and we reiterate our message in the consultation paper that:

> *"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."*[30]

The existence of the principles does not, in any way, supersede regulators' existing obligations to ensure that they consider the cost/benefit implications of new regulatory requirements. National regulators will need to establish the most appropriate way for giving effect to the principles within their own regulatory structures.

We do not believe, therefore, that the comments necessitate a modification of the principles.

Financial Literacy and Consumer Education

The Joint Group commented on the importance of financial literacy and consumer education in the consultation paper. Several respondents supported efforts by regulators to improve financial literacy and education, suggesting that this should an area of priority for IOSCO and other regulatory bodies.[31]

Our response to the comments

Disclosure information needs to be understood to be effective, however research in many countries demonstrates that financial literacy is low.

By improving the clarity of disclosure material, and using plain language, firms are providing the best opportunity for retail investors to be able to make informed decisions.

Although education for investors is outside the scope of this report, the Joint Group

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29 Vault Solutions Inc.

30 IOSCO consultation report November 2009, p2.

31 Association Francaise De La Gestion (AFG), EFAMA, Investment Management Assocation UK (IMA), National Investment Management Associations, Panamanian National Securities Commission, SingCapital Pte Ltd, Financial Services Board South Africa.

supports efforts to improve financial literacy and recognizes that this contributes to the overall understanding of investment products.

Some respondents provided examples of approaches to explaining key product features that they felt were effective for consumers (such as the use of tables and charts) and we have updated the report to include these ideas.

Provider / distributor roles

Three respondents highlighted the importance of taking account of different distribution models when developing disclosure documents.[32] They suggest that there are few common features between different distribution models and that the prevalent distribution model in one country can be considerably different than that in another.

Some respondents provided useful commentary on the types of information that different parts of the distribution chain could play, for example:

> *"We think that the following information cannot satisfactorily be provided by the product producer and is for the intermediary to provide: a. Investor tax advice (or a notice that the investor should seek specialized advice). b. Conflicts of interest at the point of sale (e.g. sales commission or other vested interest)."*[33]
>
> *"Further guidance would be helpful to clarify that, whilst the product provider can provide the information on the product itself, it is the intermediary which would provide and communicate any tailored disclosure to a specific investor."*[34]

In distinguishing the types of disclosures that should be made by the different players, commenters suggested that:

- producers should be responsible for: key information disclosures (as they have full knowledge of their products);[35] details about the various risks affecting the product, performance, cost, liquidity, exit-options, legality and operability during different market/economic situations;[36] and the clarity, accuracy and consistency of the information contained in disclosure documents;[37] whereas

- intermediaries should be responsible for: potential conflicts of interest,[38] ranges of fee rebates (rather than specific quantum),[39] sales and services pertaining to intermediaries, including receipt/understanding of the product documents

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32 AFG, EFAMA and National Investment Management Associations

33 ALFI

34 JAC

35 Ipac Financial Planning Singapore

36 ABS

37 Morocco.

38 Ipac Financial Planning Singapore

39 Schroder Investment Management Ltd

(prospectus, factsheet, brochure where applicable), distinction of investments from conventional bank products (deposits, etc), fee/cost relating to sale/holding of investments, transaction related constraints (if any) and clients' right to cancel/cool-off period;[40] transmission and dissemination of the information, clarifying and explaining to underwriters the characteristics of products marketed, the risks and costs involved and the role of stakeholders in the functioning of the mutual fund, for submitting the tax regime applicable under the legal regime of the mutual funds and the particular circumstances of the investor, [41] and other disclosure tailored to a specific investor.[42]

Three respondents discussed the concept of a "layered approach" to data provision[43], i.e. that information is provided at different times according to the needs of the customer and the distribution approach in use. One of these respondents[44] argued that a layered approach would not result in consistent treatment of all investors.

Our response to the comments

While we acknowledge that distribution models will vary, the key point to convey is that regardless of the distribution method, the consumer should be no worse off in terms of the information they receive.

Because distribution arrangements will be based on the commercial decisions of firms, it is difficult to provide further guidance on this issue, particularly guidance that is relevant across national jurisdictions.

We will make clear in the final paper that although the principles are flexible enough to accommodate different distribution models, the underlying intent is that regardless of who provides the information, the information meets the intent to provide and/or make available to investors sufficient information about the key product features before the point of sale to enable them to make an informed investment decision.

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40 ABS

41 Morocco.

42 JAC.

43 EFAMA and two other respondents who provided their responses on a confidential basis.

44 This respondent provided its response on a confidential basis.

C. Feedback on the application of the principles

This section summarizes the comments received directly about the principles. The principles have been developed to help overcome market asymmetries and to enable retail investors to make informed decisions based on accurate information.

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***

Two respondents supported IOSCO's flexible approach to intermediary disclosure which allows separate intermediary focused disclosure as well as product disclosure.[45] Some respondents asked for further clarity around the term "key" whilst others provided additional thoughts as to what constituted "key" information.[46] The vast majority of the comments were concerned with these issues, rather than the principle itself.

Two respondents expressed concerns about over-reliance on a synthetic risk/reward indicator without any accompanying narrative.[47] These respondents argued that it was difficult to design and implement a uniform risk rating system that allows fair comparison across different products.[48]

One respondent stated that it would not be possible to list all the risks of the product and still achieve a succinct disclosure document. They also felt that only risks that are specific to the product should be included, not general risks:

> *"We are of the view that only risks that are specific to the product should be included and potential investors should refer to the prospectus for other generic investment and investment-related risks."*[49]

Three respondents pointed out the difficulty in calculating certain fees, expenses, non-monetary compensation and/or breakeven points, due to the variables involved or the confidential nature of the information. However, another respondent felt that fees for CIS products were already clearly disclosed.[50]

Our response to the comments

We do not consider it necessary to amend principle 1. The principle requires that fundamental product information be provided, without which a consumer would not be able to make an informed decision.

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45 EFAMA and Schroder Investment Management Ltd

46 Panamanian National Securities Commission and International Banking Federation (IBFed)

47 Confidential response and IBfed

48 Confidential response and IBfed

49 Schroder Investment Management Ltd

50 ABS

As noted in the consultation paper, key information will necessarily vary depending on the type of financial product being offered. The examples provided have been taken from existing requirements in some jurisdictions.

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. This position is supported by the following response:

> "*Point of sale disclosure documents should allow product producers the opportunity for disclosure to be tailored to their different product offerings.*"[51]

Firms and market authorities should consider the list a guide to the type of information that is likely to be important to a consumer, but where other items exist these should be included where relevant.

Given the responses received regarding, in particular, the use of past performance data and risk reward indicators, we would suggest that market authorities consider these issues carefully when introducing new requirements in these areas.

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.***

Respondents were concerned with who it was that provided the information and also with the distinction between "delivered" and "made available". We have addressed the role of providers and distributors above in the section entitled Provider/distributor roles.

Three respondents addressed the definition of delivery.[52] One of the respondents supported the inclusion of the concept "making the documents available" arguing that a more restrictive definition would create the potential for product arbitrage. Others argued that the IOSCO principles on distribution should be reduced to those that are fundamental in order not to prejudice any of the current distribution models.[53]

One commenter argues that any POS disclosure requirement should not impede an investor's ability to conduct transactions and should not impose inappropriate costs and burdens on intermediaries.

> *"members believe that IOSCO principles on distribution should recognize that regulators should ensure that disclosure requirements are designed to minimize disruptions to the sales process."*[54]

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51 IBFed

52 IBFed, IFIC and Panamanian National Securities Commission

53 AFG

54 EFAMA

Our response to the comments

The comments do not warrant a modification of the principle. We believe that in its current format it is sufficiently flexible to accommodate the concerns raised in the consultation about the definition of delivery.

Using "deliver", or "make available" acknowledges the different approaches being used in different regimes and recognizes that different sales methods lend themselves more readily to physically handing over a document. This way, flexibility is retained.

The process by which the investor receives the information should not become cumbersome. The point of the principles is not to interrupt the sales process, but to ensure a consumer has adequate information to make an informed decision.

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

Much of the commentary was focused on the distinction between physical and electronic copies of documents. One respondent felt that regulators should take a pragmatic view with regard to the format of information so that it allows for flexibility in the way that investment firms meet their customers' information requirements[55]. Another stated that it was uncertain what IOSCO meant when it said that product producers should take into account "whether the investment is recommended by the intermediary"[56] (page 26, Principle 3, first bullet point).

Some of the points that are relevant to this principle have already been discussed above in relation to principle 2, in particular the definition of "delivery" or "made available".

Our response to the comments

We do not intend to revise principle 3. Principle 3 provides flexibility for adaptation in different jurisdictions. We agree with the suggestion made by one commenter that regulators should take a pragmatic approach to considering what format of information is appropriate. In response to the other comment noted above, we believe it worth clarifying that where a product is recommended by an intermediary, it is appropriate for the intermediary to consider delivering (rather than simply making available) the key information to the investor prior to the point of sale, even if it is not *required* to do so by the regulator.

Principle 4: ***Disclosure of key information should be in plain language and in a simple, accessible and comparable format to facilitate a meaningful comparison of information disclosed for competing products.***

Several commenters point out inherent risks and limitations associated with "accessible" disclosure, arguing that:

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55 IBFed

56 ALFI

- the document could become lengthy if product producers are required to explain in layman's terms investment concepts and approach, and if a product is complicated;[57]
- undertaking comparisons with other products presents challenges, as differences among products would make it difficult to ensure an unbiased and objective representation;[58]
- the use of plain language in the disclosed information should not be aimed primarily at facilitating a meaningful comparison among competing products, but rather at facilitating a full understanding of the given product;[59]
- page limits are arbitrary, and such limits should not undermine the usefulness of the disclosure;[60]
- a generic product disclosure document cannot take into consideration the "needs and abilities of the target investors";[61]
- as a prerequisite to shorter and comparable information, more work has to be done on defining common terminology, product and risk segmentation, calculation methods and ways to determine what is "key" information; [62] and
- the document may be less relevant at the point-of-sale when an intermediary is selling, because the intermediary would already have carried out its suitability test and is ready to recommend the product.[63]

One respondent argued that this principle largely duplicated principles 2 and 3.[64]

Our response to the comments

We think it is worth clarifying in the final report that the principle would not require firms to make comparisons with other products within their disclosure documents, but that the principles are designed to ensure that the standard of disclosures is sufficiently similar to enable consumers to make comparisons between relevant competing products.

Whereas principle 2 is about the timeliness of disclosure and principle 3 is about the physical format of the document (e.g. hard copy, electronic), principle 4 is focused on ensuring the content is written in a way that is easily understood. Therefore we do not believe that it duplicates the previous two principles.

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

Two respondents offered suggestions as to the appropriate intervals for updating disclosures:

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57 Schroder Investment Management Ltd

58 Confidential response

59 IBFed

60 IBFed

61 Schroder Investment Management Ltd

62 ALFI

63 Schroder Investment Management Ltd

64 Financial Services Board South Africa

- One commentator argues that the key information document should follow the updating/deadline requirements of the prospectus as long as the date of the information is clearly stated on the document, and that updating more frequently than on a yearly basis (absent material changes of the fund), would have significant impact on the product producers' resources;[65] and
- The other commenter suggests that POS disclosures be updated on a half-yearly basis for non-material changes and that regulators should provide guidelines on "material" disclosures and the timeline to inform investors.[66]

However, one respondent thought the requirement to be onerous:

> *"The requirement for the product producer or intermediary to provide regular updates on the key information is onerous."*[67]

Our response to the comments

Based on the comments received, we see no reason to amend the statement underneath principle 5 that:

> *"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."*[68]

The statement provides both the product producer and the intermediary broad flexibility to determine what is "reasonably necessary". This is not an onerous burden. Moreover, without such a requirement, product producers and intermediaries could deliver or make available information once, and then never update it again, even where there are changes that would be material to an investment decision. Such a result would greatly diminish the integrity of the CIS market.

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.***

Many of the comments received in this section have previously been addressed in the Provider/distributor roles section. One commenter argues that IOSCO should provide greater clarity around the roles and responsibilities of product providers and intermediaries to encourage better consistency in application.[69]

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65 Schroder Investment Management Ltd. Further, the commenter argues that the cost involved in updating and reprinting the document regularly would be very high, and would lead to wasted resources (discarding unused documents).

66 IPAC

67 Confidential response

68 http://www.iosco.org/library/pubdocs/pdf/IOSCOPD310.pdf, p27

69 JAC.

Our response to the comments

We do not consider it necessary to amend the principle. The consultative paper already provides clarity when it indicates that duplication of disclosure obligations should be avoided and that:

(1) if the intermediary provides or alters product information, it may need to take additional responsibility for that information;

(2) while a product producer may be generally responsible for the content of the disclosure, the intermediary is responsible in many jurisdictions for explaining the features of the product to a client; and

(3) The product producer may not be able to specify clearly certain information at the point at which the product is produced. 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.