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February 9, 2010

Via Electronic Mail ([posdisclosure@iosco.org](mailto:posdisclosure@iosco.org))

Mr. Mohamed Ben Saleem

Senior Policy Advisor

International Organization of Securities Commissions (IOSCO)

Calle Oquendo 12

28006 Madrid

Spain

*Re: Public Comment on Principles on Point of Sale Disclosure*

Dear Mr. Ben Saleem:

The Investment Company Institute<sup>1</sup> (“Institute”) welcomes the opportunity to comment on the IOSCO Technical Committee’s consultation report, Principles on Point of Sale Disclosure, which proposes a set of principles for disclosure of key information relating to collective investment vehicles (“CIS”) designed to assist markets and market authorities when considering point of sale disclosure (the “Report”).<sup>2</sup> The Report analyzes issues related to the availability of key CIS information prior to the point of sale (“POS”), defined generally as the moment at which a request to purchase is made by an investor,<sup>3</sup> and sets forth six principles to guide regulators. The Report is not intended to address issues related to suitability or all disclosure obligations of an intermediary.

The Institute has the following comments on the Report:

- We strongly object to principles for disclosure of key information that are limited to CIS; instead, they should be applicable to all investment products offered to retail

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<sup>1</sup> The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$11.82 trillion and serve almost 90 million shareholders.

<sup>2</sup> The Report is available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD310.pdf>.

<sup>3</sup> Report, page 1 and note 3.

investors. Investors need clearly disclosed, key information about the range of investment products that may be offered by an intermediary.

- We strongly support the Report's conclusion that POS requirements should not be imposed absent investor research; we believe, however, that such research must focus on all retail investment products and not solely CIS. Accordingly, the Report should recommend that regulators undertake POS research for all retail investment products prior to the development of any new POS requirements.
- 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.

We describe our views in more detail below.

#### The Report's Principles Should Not Be Limited to CIS

The Institute supports the availability of clearly disclosed, key information to inform investors and has conducted extensive research on investor information preferences. We firmly believe, however, that limiting disclosure requirements to CIS provides incomplete investor protection and may in practice disserve investors. Applying different requirements to only certain retail investment products, such as CIS, could create strong incentives for financial intermediaries to recommend other investment products not subject to those requirements – even when those products may not be the best fit for an investor.<sup>4</sup> The policy goals underlying the Report's principles – assuring that investors understand their investment and the intermediary's remuneration – are no less valid for other types of investments. If investors would benefit from receiving certain information at a specific time in the sales process, providing that information should be required for all retail investment products, not just CIS.

The Report highlights the importance of making key CIS information available to investors before the point of sale. As stated above, we do not see a basis for solely applying the principles for disclosure of key information to CIS because clearly disclosed, key information regarding an investment should be available to investors for all retail investment products. We note that, in the United States,

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<sup>4</sup> Regulators and consumer advocates in the U.S. have also expressed concerns about this result. *See, e.g.*, Remarks by Robert Glauber, Chairman, NASD, at the Investment Company Institute's 2006 General Membership Meeting (May 18, 2006), available at <http://www.finra.org/PressRoom/SpeechesTestimony/RobertR.Glauber/p016642> (stating that “[a]n investor should be sold a security because it’s right for him or her, not because it’s easier to sell than something else”); and Remarks by Barbara Roper, Director of Investor Protection, Consumer Federation of America, at the Securities and Exchange Commission 12b-1 Roundtable, Unofficial Transcript, p. 196, available at <http://www.sec.gov/news/openmeetings/2007/12b1transcript-061907.pdf> (stating that, by considering certain fee disclosures as “a mutual fund issue, instead of a broker compensation issue, sort of more holistically, you run the risk that you make mutual funds less attractive to sell. And I think that would be a very bad thing.”).

disclosure rules have recently been amended to further simplify and refine the summary section of the mutual fund prospectus and to provide funds with the option to deliver a summary prospectus in lieu of the full prospectus.<sup>5</sup> The EU and Canada are also in the process of adopting regulations requiring disclosure of simplified, key information for CIS. We believe that these concise disclosure documents may serve as a good model when developing product-specific aspects of simplified disclosure for other retail investment products.

### The Report Should Recommend POS Research for All Retail Investment Products

We are pleased that the Report recommends the use of investor research in the development of any new point of sale requirements. We strongly support the use of research in helping to develop and inform efforts to improve disclosure. Indeed, extensive research formed the basis for the 2009 revisions to the prospectus rules for U.S. mutual funds.<sup>6</sup> Similar efforts to conduct investor research and simplify disclosure have occurred in other jurisdictions, such as the European Union and Canada.<sup>7</sup> Particularly in the context of POS, it is imperative that regulators understand both the information needs of investors as well as the sources from which investors obtain that information before seeking to modify requirements for the content or the delivery of disclosure. It is equally important for regulators to study the ways in which retail investment products are sold to investors.<sup>8</sup>

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<sup>5</sup> See Enhanced Disclosure and New Delivery Option for Registered Open-End Management Investment Companies, SEC Release No. 33-8998 (Jan. 13, 2009), available at <http://www.sec.gov/rules/final/2009/33-8998.pdf>.

<sup>6</sup> See, e.g., Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, SEC Release Nos. 33-8861 and IC-28064 (July 31, 2008), available at <http://www.sec.gov/rules/proposed/2008/33-8949.pdf>; Final Report: Focus Groups on a Summary Mutual Fund Prospectus, Prepared for the Securities and Exchange Commission, May 2008; Transcripts: Focus Groups on a Summary Mutual Fund Prospectus, Prepared for the Securities and Exchange Commission, May 2008; Mandatory Disclosure Documents Telephone Survey, Submitted to the Securities and Exchange Commission, July 30, 2008; Investment Company Institute, Investor Views on the U.S. Securities and Exchange Commission's Proposed Summary Prospectus (March 14, 2008), available at [http://www.ici.org/pdf/ppr\\_08\\_summary\\_prospectus.pdf](http://www.ici.org/pdf/ppr_08_summary_prospectus.pdf); Barbara Roper and Stephen Brobeck, Consumer Federation of America, Mutual Fund Purchase Practices (June 2006), available at [http://www.consumerfed.org/pdfs/mutual\\_fund\\_survey\\_report.pdf](http://www.consumerfed.org/pdfs/mutual_fund_survey_report.pdf); Investment Company Institute, Understanding Investor Preferences for Mutual Fund Information (August 2006), available at [http://www.ici.org/stats/res/1rpt\\_06\\_inv\\_prefs\\_full.pdf](http://www.ici.org/stats/res/1rpt_06_inv_prefs_full.pdf); Investment Company Institute, Ownership of Mutual Funds and Use of the Internet, 2006, Research Fundamentals, Vol. 15, No. 6, October 2006, available at <http://www.ici.org/pdf/fm-v15n6.pdf>; Investment Company Institute, Understanding Shareholders' Use of Information and Advisers (April 1997), available at [http://www.ici.org/stats/res/arc-dis/rpt\\_undstnd\\_share.pdf](http://www.ici.org/stats/res/arc-dis/rpt_undstnd_share.pdf).

<sup>7</sup> See, e.g., Report, Annex A – Research Summary; UCITS Disclosure Testing Research Report, IFF Research and YouGov (prepared for the European Commission) (June 2009), available at [http://ec.europa.eu/internal\\_market/investment/docs/other\\_docs/research\\_report\\_en.pdf](http://ec.europa.eu/internal_market/investment/docs/other_docs/research_report_en.pdf).

<sup>8</sup> We stress that cost-benefit analysis is also an important component of this work, as acknowledged in the Report. See, e.g., Investment Company Institute, Cost-Benefit Analysis of the Summary Prospectus Proposal (Feb. 28, 2008), available at [http://www.ici.org/pdf/rpt\\_08\\_cost\\_benefit\\_analysis.pdf](http://www.ici.org/pdf/rpt_08_cost_benefit_analysis.pdf).

Investor research regarding these matters must not be limited to CIS. Investors are confronted with an expanding array of investment options, some of which are quite complex. Many share key characteristics, but the differences can be significant. An examination of product information and distribution in the context of all retail investment products will help regulators develop rules to ensure that investors receive both appropriate investment recommendations as well as clearly disclosed, key investment product information.<sup>9</sup>

A recent bill passed by the United States House of Representatives includes provisions setting forth a sound framework for approaching an examination of retail investment products and the provision of documents or information to retail investors prior to the purchase of investment products or services.<sup>10</sup> The bill would require the U.S. Securities and Exchange Commission (the “SEC”) to publish a study that examines:

- the nature of a “retail customer;”
- the range of products and services sold or provided to retail customers and the sellers or providers of such products or services within the SEC’s jurisdiction;
- how such products and services are sold or provided to retail investors, the fees charged for such products and services, and the conflicts of interest that may arise during the sales process or the provision of services;
- information that retail customers should receive prior to purchasing each product or service and the appropriate person or entity to provide such information; and
- ways to ensure that, where possible, reasonably similar products and services are subject to similar regulatory treatment, including with respect to information that must be provided to retail customers prior to purchase of such products and services and how such information is provided.

In addition, before promulgating any rules to require a person or entity to provide designated information to retail customers prior to the purchase of investment products or services, the SEC must take into account the study findings and the need for such documents to be consistent and comparable across products or services. Further, any such rules must reduce, to the extent possible, disruptions to the purchase process such as by permitting required disclosures to be made via the Internet. We

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<sup>9</sup> See Letter from Elizabeth Krentzman, General Counsel, Investment Company Institute, to Mr. Jonathan Katz, Secretary, U.S. Securities and Exchange Commission, dated Apr. 4, 2005, [http://www.ici.org/statements/cmltr/2005/05\\_sec\\_pos\\_com.html#TopOfPage](http://www.ici.org/statements/cmltr/2005/05_sec_pos_com.html#TopOfPage), commenting on the Securities and Exchange Commission’s proposed confirmation and point of sale disclosure rules.

<sup>10</sup> See Wall Street Reform and Consumer Protection Act of 2009, H.R. 4173, Section 7104, available at [http://financialservices.house.gov/Key\\_Issues/Financial\\_Regulatory\\_Reform/FinancialRegulatoryReform/hr4173eh.pdf](http://financialservices.house.gov/Key_Issues/Financial_Regulatory_Reform/FinancialRegulatoryReform/hr4173eh.pdf).

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support this type of research and believe it will help ensure that any new disclosure requirements best serve to protect investors.

Include a Principle Regarding Minimizing Disruptions to the Sales Process

The Report should, in our view, include a principle stating that regulators should ensure that POS disclosure requirements are designed to minimize disruptions to the sales process. As stated above, the recent bill passed by the U.S. House of Representatives would require the SEC's rules to be cognizant of potential disruptions to the purchase process, a requirement that we support.

In many jurisdictions sales of retail investment products occur through various means, including by telephone or over the Internet, rather than through face-to-face meetings. Requiring the physical transfer of a document would make it substantially more difficult for an investor to accomplish a purchase and could create strong incentives for intermediaries to recommend other products not subject to such a requirement. Any POS disclosure requirement should provide investors with timely and convenient access to the required information without impeding investors' ability to conduct transactions and without imposing inappropriate costs and burdens on intermediaries.

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In conclusion, the Institute supports efforts to improve disclosure for investors and particularly research efforts that help the market and regulators better understand investors' information needs for all investment products, as well as how they receive or could receive such information. As described above, we believe solely focusing on CIS is inappropriate and incomplete and does not best serve investors. If a regulator considers it beneficial for investors to receive certain information at a specific point in the transaction process, we believe that investors should receive the benefit of having that same type of information for all retail investment products.

We appreciate the opportunity to express our views and invite you to contact me at 202-326-5813 or Eva Mykolenko at 202-326-5837 if you have any questions about our comments.

Sincerely,

/s/ Susan M. Olson

Susan M. Olson  
Senior Counsel – International Affairs