Appendix III Public Comments Received by the Technical Committee on the C*onsultation Report – Suspension of Redemptions in Collective Investment Schemes*

Association Française de la Gestion Financière (AFG)

Christoph Barnard

BlackRock

Bundesverband Investment und Asset Management e.V. (BVI)

Depositary And Trustee Association (DATA)

Dubai Financial Services Authority (DFSA)

European Fund and Asset Management Association (EFAMA)

Financial Services Board (FSB)

Hedge fund standards Board (HFSB)

INVERCO - Spanish Association of Collective Investment Schemes and Pension Funds

Investment Management Association (IMA)

International Investment Funds Association (IIFA)

Investment Company Institute (ICI)

National Futures Association (NFA)

Zentraler Kreditausschuss (ZKA)

SJ – n° 2883/Div.

Mr. Mohamed Ben-Salem
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
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10th May, 2011

Re: ASSOCIATION FRANCAISE DE LA GESTION (AFG)'s comments on IOSCO Consultation Report regarding Principles on Suspensions of Redemptions in Collective Investment Schemes

Dear Mr. Ben-Salem:

The ASSOCIATION FRANCAISE DE LA GESTION FINANCIERE (AFG) – French Asset Management Association[1] – would like to thank the International Organization of Securities

[1] The Association Française de la Gestion financière (AFG) represents the France-based investment management industry, both for collective and discretionary individual portfolio management. Our members include 416 management companies as well as 558 investment companies and 56 affiliate members. These management companies are entrepreneurial or else belong to French or foreign banking and insurance groups.

AFG members manage more than 2,600 billion euros in the field of investment management. In terms of financial management location, that makes the French industry the leader for collective investments in Europe (with more than 1,300 billion euros managed by French companies, i.e. 20% of all EU investment fund assets under management, wherever the funds are domiciled in the EU) and number two internationally. In terms of fund domiciliation, French funds are number two in Europe and number three internationally. Regarding product interests, our association represents, besides UCITS, employee saving schemes, hedge funds/funds of hedge funds as well as a significant part of private equity funds and real estate funds. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA) and of the European Federation for Retirement Provision (EFRP). AFG is also an active member of the International Investment Funds Association (IIFA).

Commissions (IOSCO) for the opportunity to submit comments on the Consultation Report regarding 'Principles on Suspensions of Redemptions in Collective Investment Schemes,' issued last March.

We would like to offer the following comments regarding the IOSCO Report:

1. We approve and support the Principles proposed by IOSCO. Such Principles show the path for achieving a minimum regulatory convergence on this topic at the international level.

2. However, AFG would like for IOSCO and its members to resolve some drafting ambiguities. In particular, in some cases the Principles do not appear to be binding, as they use "should" rather than "shall." We think that if IOSCO wishes to help regulatory convergence, the Principles should be binding, while of course letting IOSCO's members apply them through appropriate provisions adapted to national contexts. In other cases, in our opinion, words like "generally" should be removed, for the same reason.

3. Regarding the general concepts mentioned in the Report, the wording "responsible entity" should be a bit more specific, although we acknowledge that it might be difficult to find a more precise definition at global level. IOSCO states that "responsible entities" are those responsible for the "overall operation" of the CIS. We think that the notion of "*overall operation*" is too vague. Instead, we suggest, for instance, "the entity responsible for the *financial management* of the CIS," complemented by a non-exhaustive list of such entities, including for instance, Management Companies and Investment Advisers.

4. Regarding Principle 2 on the *Management of liquidity risk*, and illustrating the remark made in point 2 above, AFG maintains that the use of "should" is not enough: it should be replaced by "shall" for the reason mentioned in point 2.

5. Regarding Principle 3 on *Reasons for the suspension*, we believe that this Principle should be reinforced by stating that such suspension is "*done exclusively*" in the best interest of shareholders. Conversely, and very importantly, the use of "*all*" shareholders is probably too absolute as it is very difficult to guarantee in practice that it is beneficial to all shareholders. For example, in some cases, the objective personal best interest of some shareholders might be to redeem and this would be prohibited by the suspension, which is in the interest of the vast majority of shareholders.

6. Regarding Principle 6 ('*During the Suspension*'), we think that the responsible entity should be prohibited from accepting new subscriptions. For instance, at which price/value would the new subscriptions be done if new subscriptions were allowed? The flexibility proposed by IOSCO ("*generally*") seems potentially dangerous.

7. Regarding Part F of the Report, the notion of letter c, "*Discount*," is ambiguous. If it is related to the cost of liquidity, maybe another word should be used, e.g. "Liquidity Cost impact on redemption price."

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We thank you in advance for your consideration of the views expressed above.

If you wish to discuss the contents of this letter with us, please contact myself at +33 1 44 94 94 14 (e-mail: p.bollon@afg.asso.fr) or Stéphane Janin, Director, Head of International Affairs Division, at +33 1 44 94 94 04 (e-mail: s.janin@afg.asso.fr).

Sincerely,

(signed)

Pierre BOLLON

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04 April 2011

- **Public comment on IOSCO's Consultation Report on Principles on Suspensions of Redemptions in Collective Investment Schemes**

Dear Mr. Ben-Salem.

Thank you for giving us the opportunity to comment on your Consultation Report "Principles on Suspensions of Redemptions in Collective Investment Schemes".

I welcome and support your main principles. The most important principles to uphold concern managing investors' reasonable expectations and maintaining the equity principle[1].

Managing investors' reasonable expectations

You mention in Chapter 2 that: "Investors in open-ended CIS expect to be able to redeem on a regular and continuous basis". I believe that this could in itself be a problem due to poor management of investors' expectations. The possibility that redemptions could be suspended in exceptional circumstances should be made clear (ex ante) in the CIS constitutional documents, prospectuses and other marketing materials, and also confirmed by the distributor at point of sale.[2] This is similar to your commentary in subsection B of Chapter 3.

As long as investors' reasonable expectations are managed, then it would be appropriate to amend your statement in Chapter 2 to "Investors in open-ended CIS expect to be able to redeem on a regular and continuous basis in normal market conditions", for example. Managing investors' expectations is key to many of the issues that you have raised, including confidence and reputation and market impact, which were also mentioned in Chapter 2.

[1] The equity principle states that unitholders not involved in a unit transaction should remain unaffected by that transaction.
[2] See www.mlc.com.au/.../unit_pricing_philosophy for an example of this: "We strike a unit price every day. However, we may suspend prices in order to ensure equity between investors if we don't believe we can accurately or reliably calculate a price for a particular day. An example would be when one or more of the major stock exchanges are closed."

Maintaining the equity principle

It is fundamental to the operational and financial integrity of CIS that their valuation, pricing and transactions (redemptions and subscriptions) comply with the equity principle.[3] For example, you mention in Chapter 2 of cases where "certain investors are informed before others of the intention to suspend and move to request the redemption of their units before the suspension becomes effective". This clearly create a two-tiered market, in which certain investors have access to information which allows them to trade unfairly. This is not dissimilar to front running, and the practice should be banned. This is a specific example, but it illustrates just why the equity principle should hold in practice.

The equity principle is similar to your Principle 3 in subsection C of Chapter 3. Maintaining the equity principle also obviates some of the other issues that you have raised, including the best interest of investors, gating mechanisms and side pockets, which were all mentioned in Chapter 3.

Yours sincerely

C.R. Barnard

Chris Barnard

[3] For example see Regulatory Guide 94: Unit pricing: Guide to good practice, Australian Securities & Investments Commission, August 2008.

BLACKROCK

30 May 2011

Mr Mohammed Ben-Salem
International Organization of Securities Commissions (IOSCO)
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RE: IOSCO Consultation Report on Principles on Suspensions of Redemptions in Collective Investment Schemes

Dear Mr. Ben-Salem:

BlackRock welcomes the opportunity to respond to IOSCO's Consultation Report on Suspensions of Redemptions in Collective Investment Schemes. The IOSCO Consultation Report addresses an important set of issues that have arisen following the 2008 financial crisis. We appreciate that there is, following the 2008 crisis, a policy impetus to standardise procedures surrounding the suspension of redemptions.

Redemption gates and other measures such as the use of side pockets may, in theory, be essential to protect investors in the event of unusual or unforeseeable market conditions. However, our experience has taught us that **end-investors were best served during the crisis by the investment manager having the flexibility** to adapt to the unique and dynamic challenges the market posed at that time. We also found that during such circumstances it is imperative above all to communicate as much as possible with all parties involved.

Therefore, **we believe that the application of a detailed regulatory framework in this area could, at times, conflict with the investment manager's fiduciary duties towards its investors and may result in adverse impacts and unintended consequences.** This would especially be the case, we believe, for funds investing in less liquid assets such as real estate. For example, a liquidity buffer would not be appropriate for illiquid asset classes. Where the asset class is inherently illiquid, a liquidity buffer might also encourage early redemptions if investors know they could take advantage of it.

Likewise, **in crisis situations being unable to suspend redemptions may well result in assets being realised at lower prices ("fire sale") than may be possible in a structured realisation process. This may, as a result, compromise the investment manager's ability to fulfil its fiduciary duty to clients.** This would especially be the case when the portfolio has enough liquid assets to fund current redemptions but would leave behind a more concentrated illiquid portfolio.

By way of context, it should also be noted that **for those funds that experienced liquidity issues during the crisis, it was just as likely a result of the failure of a service provider** (i.e. following the Lehman bankruptcy) **as it was illiquidity of the markets** that drove suspensions, gates and/or side pockets. We feel that the draft Principles do not adequately recognise this past reality, or the possibility of similar future liquidity events, as they continuously stress the "temporary nature" of suspensions.

In terms of the specific proposals dealing with the criteria / reasons for the suspension (Chapter 3C 3.a) **we are troubled by the reference to "poor management" in respect of operational or liquidity issues.** Ultimately, the investment manager cannot guarantee that protective measures will work in all cases so extreme caution should be exercised in respect of a competent authority concluding that a suspension was due to "poor management".

Finally, there are a number of instances where **"notice" to regulators** would seemingly be required by the Principles. This concept **would not work for funds advised by US-registered**

investment advisors, as the SEC is not set up to receive such notice or monitor illiquidity as proposed.
Provided the issues raised above are taken into consideration, with **appropriate consideration of the case of funds of illiquid assets, we could nevertheless support of much of the thinking and draft Principles set out in the Report**. In particular we strongly support IOSCO's recommendations in respect of *ex-ante* disclosure to investors (Chapter 3B) and implementation of the processes in advance of the decision to suspend (Chapter 3D 4.a) would, we believe, result in more robust processes.

In conclusion, the Principles set out a **reasonable theoretical framework** to address the issues identified following the recent financial crisis. However, as expressed above, we have concerns about the **possible unintended consequences on end-investors**, our clients, and the possibilities of **BlackRock fulfilling its fiduciary duty towards those clients,** arising from being required to apply the framework on an ongoing basis in relation to funds of inherently lower liquidity assets and/or in exceptional conditions of stressed liquidity.

If we can answer any questions or provide further information regarding this important topic, please do not hesitate to contact us.

Sincerely,

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About BlackRock

BlackRock is one of the world's leading asset management and risk management firms. We manage over €2.46 trillion on behalf of institutional and individual clients worldwide through a variety of equity, fixed income, cash management, alternative investment, real estate and advisory products. We do not enter into proprietary business nor do we act as principal. Our client base includes corporate, public, multi-employer pension plans, insurance companies, third-party and mutual funds, endowments, foundations, charities, corporations, official institutions, banks and individuals around the world. BlackRock represents the interests of its clients by acting in every case as fiduciary. It is from this perspective that we engage on all matters of public policy. As risk manager BlackRock has advised on a significant number of high profile and complex mandates following the 2008 financial crisis. As such BlackRock is

committed, and has made a strong contribution, to the restoration of financial stability worldwide.

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May 26th, 2011

Via e-mail to: CIS-suspensions@iosco.org

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SPAIN

IOSCO Consultation Report concerning Principles on Suspension of Redemptions in Collective Investment Schemes (CR01/11)

Dear Mr. Ben-Salem

BVI[1] gladly takes the opportunity to comment on the principles to govern suspension of redemptions in CIS proposed by the Technical Committee of IOSCO.

General observations

The right to redeem units is certainly a fundamental feature of open-ended investment funds and deserves further consideration in light of the latest financial crisis which has caused liquidity problems in some CIS. In this regard, we very much appreciate the overall approach suggested by IOSCO as a pragmatic way to deal with potential liquidity risks and valuation difficulties in open-ended funds.

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[1] BVI Bundesverband Investment und Asset Management e.V. represents the interests of the German investment fund and asset management industry. Its 85 members manage currently assets of some EUR 1.8 trillion both in mutual funds and mandates. For more information, please visit www.bvi.de.

However, we are concerned about some passages of the Consultation Report which suggest its direct application to CIS operators. Especially on page 5, IOSCO states the following:

> *" The principles are addressed to the entity/entities responsible for the overall operation of the CIS and in particular its compliance with the legal/regulatory framework in the respective jurisdiction and thus for the implementation of the principles (…). The delegation of activities may not be used to circumvent the principles, and there should be compliance with the principles whether activities are performed directly or through a third party."*

These statements imply a degree of direct effect of the forthcoming principles which is misleading to market participants. Hence, it should be clarified that the IOSCO principles are in the first place directed to regulators who should be expected to consider the continued appropriateness of the national requirements in light of the final IOSCO report. As regards the effect on the industry, the IOSCO principles can influence best practice standards, but they can never supersede binding legal rules existing at national level.

Comments on the proposed IOSCO principles

With regard to the proposed principles for suspension of redemptions, we would like to provide the following views:

1. Principle 2 on liquidity management (page 9)

IOSCO suggests that the CIS operator *"should establish, implement and maintain an appropriate liquidity management policy and process"*. In this context, we would like to point out that the UCITS Directive governing the most European retail funds does not require the establishment of a separate "liquidity management policy". Rather, management of liquidity risks is deemed part of the general risk management process and covered by a comprehensive policy identifying all risks relevant to a UCITS.[2] In order to account for such holistic approaches to risk management, CIS operators should thus be required to deal with liquidity risks of a CIS portfolio as part of their risk management arrangements.

[2] Cf. Article 38 para. 1 of Commission Directive 2010/43/EC (UCITS Implementing Directive).

2. **Principle 3 on exceptional circumstances justifying suspensions (page 10-11)**

   We share IOSCO's view that it is not practicable to establish an exhaustive list of exceptional circumstances which could justify suspension of redemptions. It is very important that any specification provided in this context is clearly flagged as explanatory and not meant to prejudice any decision of CIS operators taken upon real life events.

   With regard to liquidity issues as possible reason for suspension, it should be made clear that cases where a fund investing in illiquid assets such as real estate is unable to meet redemption requests in spite of proper liquidity management in accordance with regulatory requirements can also qualify as exceptional circumstances. In any event, suspension must not be deemed as arising from poor liquidity management if the CIS operator has observed all regulatory standards applicable in this regard.

3. **Principle 4 on operational capacity to suspend redemptions (page 11-12)**

   In terms of processes to be implemented in advance, IOSCO proposes that *"procedures should describe potential avenues that probably can avoid a suspension as well as objective criteria for reaching the decision to suspend"*. Given that exceptional circumstances are not capable of full specification, it appears hardly feasible to set out purely objective criteria to this effect. Instead, it appears sufficient to require CIS operators to retain adequate documentation of the decision-making process in accordance with principle 5 of the IOSCO consultation.

4. **Principle 6 on operations during the suspension (page 13)**

   This section requires that if subscriptions are permitted during the suspension period, *"any prospective subscriber should be informed about the suspension in a clear and comprehensive manner prior to the subscription, <u>and</u> given a chance to cancel the subscription order"*. In our view, if an investor has received clear and comprehensive information about the suspension and on this basis still decides to proceed, then the provision of cancellation rights should not be necessary.

5. Principle 7 on review of the suspension decision (page 14)

We suggest rephrasing the first sentence of the explanatory text to better fit with the overriding principle:

> *"The responsible entity should ~~formally~~ review the decision to suspend redemptions on **a regular** basis during the period of suspension."*

Moreover, the term "prolonged" in the first sentence of the last paragraph should be replaced by "longer" in order to avoid misapprehension to the effect that it should be forbidden to renew a decision to suspend. The result would be otherwise that CIS operators would attempt to set excessively long initial suspension periods in order to avoid redemption difficulties to continue at expiry. Such outcome would clearly not be in the interest of CIS investors.

With regard to examples of alternative measures to deal with illiquidity in certain jurisdictions discussed in section F, it is important to acknowledge that the gating mechanism described under letter a) may not only "address extreme amounts of redemptions", but can be installed as a general disciplining tool to discourage excessive redemption requests as some jurisdictions allow e.g. 10% gate per redemption date. In terms of possible discount on the redemption price pursuant to letter c), differentiation between dilution levies, redemption charges, holdbacks and swing pricing systems would be helpful in order to evaluate possible effects of such mechanisms on fund liquidity. The availability of redemptions in kind could also be mentioned as another means to alleviate liquidity pressure.

We hope that our remarks will assist IOSCO in refining its views on the regulatory principles for suspension of redemptions in CIS and remain at your disposal for further exchange of views.

Yours sincerely

BVI Bundesverband Investment und Asset Management e.V.

Marcus Mecklenburg Dr. Magdalena Kuper

Depositary
And
Trustee
Association

31 May 2011

Mohamed Ben-Salem
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Spain

Dear Mohamed,

Principles on Suspensions of Redemptions in Collective Investment Schemes

The Depositary and Trustee Association (DATA) represents all depositaries and trustees of UK based authorised unit trusts and open-ended investment companies. At the end of March 2011, the members of DATA were responsible for safeguarding £583.2 billion of funds under management.

DATA welcomes the opportunity to provide comments on the above consultation.

We support the response submitted by the Investment Management Association (IMA) and note that, in a number of areas, the principles are consistent with existing UK rules and with guidance which the IMA has produced for its membership on the subject of suspensions, in conjunction with DATA.

Yours sincerely

David Morrison
DATA Chairman

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30 May 2011

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By email: CIS-Suspensions@iosco.org

Re: Public Comment on Suspension of Redemptions in Collective Investment Schemes

The Dubai Financial Services Authority (DFSA) is pleased to provide comments on the IOSCO draft Principles on suspension of redemptions in open-ended Collective Investment Schemes (CIS). Our comments are arranged under general and technical comments.

General Comments

Whilst Chapter 2: "Risk of Suspension", alludes to systemic issues that can arise from suspension of redemptions in a CIS, it does not adequately deal with risks to systemic stability that may arise from such suspensions. We believe that this aspect is of significant regulatory importance and hence should be addressed expressly. Some of the discussion in the draft can be easily extended to cover this aspect. For example, the discussion on the impact on counterparties can be extended to cover systemic risks that may arise if a CIS, in which significant financial institutions have invested, were to suspend redemptions in unexpected circumstances.

While the Principles are directed at responsible entities (REs) of a CIS, in the body of the discussion, there are references to measures that should be adopted by the competent authority or the regulatory regime to ensure the effective usage of suspension of redemptions by REs. Examples include the actions that a regulatory authority could take or consider if the information provided to the regulator indicates that the suspension is due to poor management rather than external unpredictable events (see under Principle 5(a)) and the need to provide safeguards and other measures if the use of side pockets and gating mechanism are allowed to be used in jurisdictions (see the last paragraph in pg 15 and fourth paragraph of pg 17). These examples indicate that measures directed at the RE alone are insufficient to ensure effective use and proper conduct of suspension of redemptions; that regulatory measures are also needed to achieve this end. Therefore we suggest that regulatory measures which need to work in conjunction with measures addressed to RE's should be identified and dealt with discretely.

Dubai Financial Services Authority

There is also some ambiguity as to the effect intended to be achieved by the Principles, mainly stemming from the lack of consistency in the use of language. For example, some Principles contain "should" in reference to measures that should be adopted by REs (see Principles 1, 2, 4 and 5), which seem to be more mandatory than the use of the more permissive "may" which occurs in other Principles (see Principle 3). Such inconsistencies should be removed.

We also found some areas of the paper to be repetitive and a careful edit will be helpful.

Technical Comments

Principle 3 provides that suspension of redemptions can be justified only in exceptional circumstances provided such suspension is in the best interests of all Unitholders or if the suspension is required by law. If any jurisdiction requires suspension of redemptions under specified circumstances, compliance with the requirement would be mandatory. However, the applicable laws may also permit suspension of redemptions in specified circumstances, leaving some discretion for the REs in those jurisdictions to suspend redemptions provided the relevant criteria defined in the law are met. Therefore, Principle 3 should be expanded to cover where RE's are "permitted" to suspend redemptions under applicable laws in defined circumstances.

Principle 6 is ambiguous and seems to contain some inconsistency. It starts by stating that the RE should not generally accept subscriptions during a suspension of redemptions but goes on to provide that subscriptions "cannot" be accepted if a reliable, meaningful and robust valuation is not possible. Generally, suspension of redemptions occurs when assets cannot be liquidated to meet redemption requests, which is often the result of the illiquidity of the asset, which often accompanies the lack of a reliable, meaningful and robust mechanism to value those assets. Therefore, the Principle should simply provide that REs should not accept subscriptions during the suspension of redemptions. The discussion of the Principle could then focus on exceptional situations, if any, where the calculation of the unit price based on NAV could be achieved through objective and reliable means during a suspension and hence could support continuing subscriptions.

We are happy to provide any further clarifications if necessary. Please do not hesitate to contact the undersigned if further clarification or assistance is required.

Yours faithfully,

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efama

European Fund and Asset Management Association

EFAMA Reply to the
IOSCO Consultation Report on Principles on Suspensions of Redemptions
in Collective Investment Schemes

EFAMA is the representative association for the European investment management industry. It represents through its 27 member associations and 56 corporate members approximately EUR 14 trillion in assets under management, of which EUR 8 trillion was managed by approximately 53,000 funds at the end of 2010. Just under 36,000 of these funds were UCITS (Undertakings for Collective Investments in Transferable Securities) funds.

EFAMA welcomes the opportunity to comment on IOSCO's proposed Principles regarding Redemptions, a key feature of open-ended CIS which deserves consideration in view of the liquidity problems during the financial crisis.

General Comments

EFAMA members are concerned by the last paragraph of page 5, which states that "*The principles are intended to provide general standards by which a regulatory regime should approach and oversee suspension of redemptions. The principles are addressed to the entity/entities responsible for the overall operation of the CIS..... Delegation of activities may not be used to circumvent the principles, and there should be compliance with the principles...*". This implies a direct effect on market participants, and contradicts the previous paragraph on page 5, which indicates that "*the aim of the report is to outline principles against which both the industry and the regulators can assess the quality of regulation and industry practices....".*
Also IOSCO's paper "Examination of governance for CIS - Part II" (issued in February 2007) included a set of principles and made clear that they would need to be transposed in each jurisdiction (Page 5).

The language of the report should reflect the fact that IOSCO Principles offer practical guidance, but do not have a direct effect, and that it is a matter for the regulator in each jurisdiction to consider the report and, if appropriate, to take action. As regards market participants, IOSCO principles cannot supersede binding legal rules at national level.

EFAMA largely supports the IOSCO proposals, but wishes to offer the following detailed comments:

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Chapter 2 – Risk of Suspensions

EFAMA believes it would be helpful to balance the fundamental right to redeem (Page 6) with the recognition that the ability to suspend is a fundamental investor protection tool. Suspensions of redemptions are a vital tool that is used in exceptional circumstances by CIS managers, when it is in the collective interests of unit-holders to do so.

Chapter 2 – Principles

A. Management of liquidity risk

IOSCO states that "*the responsible entity should establish, implement and maintain an appropriate liquidity management policy and process*" (page 9). EFAMA points to the fact that the UCITS Directive governing the most European retail funds does not require the establishment of a separate "liquidity management policy". Rather, management of liquidity risks is part of the general risk management process and subject to a policy identifying all risks relevant to a UCITS . This holistic approach to risk management would require CIS operators to deal with the liquidity risk of a CIS as part of their risk management arrangements, rather than proposing a specific liquidity management policy.

B. Ex-ante disclosure to investors

EFAMA agrees that disclosure has to be provided to investors prior to investment. However, the report suggests that "*where national law does not define exceptional circumstances, it is recommended not to define in the CIS documentation the term 'exceptional circumstances'..... Instead, it is recommended to use examples of what might constitute exceptional circumstances".* We do not consider that the use of examples is the best way to inform potential investors, as an exhaustive list of exceptional circumstances would not be practicable, in view of varying real life circumstances. If a list is used, it should be clearly stated that it is only explanatory and not exhaustive, so as not to preclude any decision by CIS operators.

Some EFAMA members believe that cases where a fund investing in illiquid assets such as real estate is unable to meet redemption requests in spite of proper liquidity management in accordance with regulatory requirements should also qualify as "exceptional circumstances". In any event, suspension must not be deemed as arising from poor liquidity management if the CIS operator has observed all regulatory standards applicable in this regard.

C. Criteria/Reasons for suspension

We believe that the requirement that the suspension of redemptions be justified "*in the best interest of* ***all*** *unit-holders*" (page 10) is too absolute, as in practice it is very difficult to guarantee that it is beneficial to all shareholders. For example, the best interest of some shareholders might be to redeem while a suspension might be in the interest of the vast majority of shareholders.

It might be worthwhile adding to the list of exceptional circumstances (on page 10) other events such as natural disasters or catastrophes.

D. Decision to suspend

The report suggests on Page 11 that "*procedures should describe potential avenues that probably can avoid a suspension as well as objective criteria for reaching the decision to suspend"*. EFAMA members recommend that the content of any plans and processes be left to the relevant entity, and are skeptical that exceptional circumstances can be detailed in advance, therefore it should be sufficient to require CIS operators to retain adequate documentation on the decision-making process in accordance with principle 5 of the IOSCO consultation.

E. During the suspension

Principle 6 states that "*During the suspension of the redemptions, the responsible entity should generally not accept new subscriptions".* Some EFAMA members are of the opinion that the responsible entity should be prohibited entirely from accepting new subscriptions, as it is unclear at which price/value the new subscriptions would take place, if allowed.

Most EFAMA members agree with Principle 6, but suggest that the words "*before the order is accepted*" should be added at the end of this sentence. It is unnecessary to give prospective subscribers a chance to cancel the subscription order, as long as they have been comprehensively informed about the suspension and they decided to proceed nonetheless.

On page 14 the report suggests that during prolonged suspensions "*when considering the interests of **all** unitholders*" increasing consideration should be given towards investors who want to access their money. Once again, we wish to point out that in practice it is very difficult to reconcile the interests of all shareholders in widely held funds.

Regarding communications with unit-holders, the report (page 14) indicates that resumption of dealings should immediately be communicated to unit-holders. The guidance should indicate that this might be done by website or other durable means, but that individual communications to each unit-holder will not be required, as in the case of widely held funds they would be extremely burdensome and costly for the fund.

F. Examples of alternative measures to deal with illiquidity in certain jurisdictions

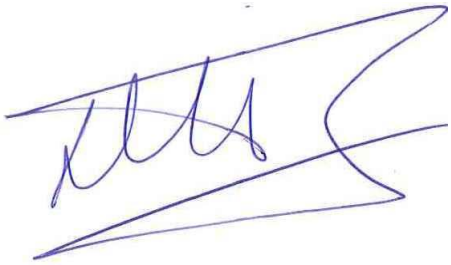
Firstly, the availability of redemptions in kind could also be mentioned as another way to alleviate liquidity pressure.

The gating mechanism described under letter a) may not only "address extreme amounts of redemptions", but could be installed as a general disciplining tool to discourage excessive redemption requests: some jurisdictions for example allow a 10% gate per redemption date.

At the end of section b) on side pockets, the report states that that "*a good management practice for the responsible entity would be not to charge any form of management fee or performance fee on side pockets*". We disagree if the suspension is not due to poor liquidity management/poor operational management. The suspension was carried out in the interests of unit-holders, and if side pockets are determined to be the best way to manage liquidity issues, then the manager should still be entitled to management or performance fees if appropriate. The selling of illiquid assets requires active management skills which deserve remuneration. It is important, however, that investors should be informed whether fees may (or may not) continue to be charged.

We hope our comments will be helpful and remain at your complete disposal should you have any questions.

Sincerely,



Peter De Proft
Director General

Brussels, 30 May 2011

[11-4045]

Thank you for the opportunity to comment on the IOSCO consultation report dated March 2011 regarding Principles on Suspension of Redemptions in Collective Investment Schemes.

We would like to express the following comments:

1. We support the Principles proposed. Such Principles show the path for getting a minimum regulatory convergence on this topic at worldwide level.

2. However, we wish IOSCO and its members to solve some drafting ambiguities. In particular, in some cases the Principles do not appear as binding, by using "should" and not "shall", while we think that if IOSCO wishes to help regulatory convergence the Principles should be binding – although letting of course IOSCO members to apply them through appropriate and adapted national provisions. In other cases, notions as "generally" should be removed, for the same reason.

3. Regarding the general notions used in the Report, the wording "responsible entity" should be a bit more specific - although we acknowledge that it might be difficult to find a more precise definition at global level. IOSCO means that "responsible entities" are those responsible for the overall operation of the CIS. We think that the notion of "overall operation" is too vague. Instead, we would suggest for instance "the entity responsible for the financial management of the CIS", complemented by a non-exhaustive list of such entities, including for instance Management Companies.

4. Regarding Principle 2 on the Management of liquidity risk, and illustrating the remark at point 2 above, the use of "should" is not enough: it should be replaced by "shall", for the reason mentioned in point 2.

5. Regarding Principle 3 on Criteria/Reasons for the suspension, we consider that this Principle should be reinforced, by stating that such suspension is "done exclusively" in the best interest of shareholders. But conversely, the use of "all" shareholders is probably too absolute as it is very difficult to guarantee in practice that it is beneficial to all shareholders (e.g. in some cases the objective personal best interest of some shareholders might be to redeem and they are blocked by the suspension – which is in the interest of the majority of shareholders).

6. Regarding Principle 6 ('During the Suspension'), we think that in all cases the responsible entity should not accept new subscriptions. For instance, on which price/value would the new subscriptions be done if some new subscriptions were allowed? This flexibility proposed by IOSCO ("generally") appears as potentially dangerous.

7. Regarding Principle 8 in the same Part (During the Suspension) at the end of the Principle a clarification should be done: "(…) communicated immediately to the Competent Authority, and to all unit-holders at the same time through any means – apart from individual information, too burdensome." It seems necessary first to clarify to whom it should be communicated, second to make sure that all unit-holders are

informed at the same time, and third that an appropriate means is used in order to reach all unit-holders at the same, without being an individual information - which would appear disproportionate and burdensome.

8. Regarding Part F, c) of the Report, the notion of letter “Discount” is ambiguous. If it is related to the cost of liquidity, maybe another notion should be used, e.g. “Liquidity Cost impact on redemption price”.

We trust that these comments are of assistance.

Kind regards

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Tel: (012) 428 8017
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'To promote and maintain a sound financial investment environment in South Africa'

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IOSCO Consultation Report CR01/11: Principles on Suspension of Redemptions in Collective Investment Schemes

1. Introduction

The Hedge Fund Standards Board (HFSB) was set up to act as custodian of the Hedge Fund Standards published by the Hedge Fund Working Group in 2008 and to promote conformity with them. It is also responsible for ensuring that they are updated and refined, as appropriate. Over 100 stakeholders, including hedge fund managers and investors have committed to the HFSB process. The HFSB expects its Hedge Fund Standards to be widely adopted and an increasing number of investors to use the Standards in their due diligence.

The Hedge Fund Standards Board (HFSB) is pleased to respond to the IOSCO Consultation on Principles on Suspension of Redemptions in Collective Investment Schemes (CIS).[1]

It is important to highlight that the HFSB has consulted in the past on similar issues in its Consultation Paper CP1/2009. [2] The findings from that consultation were incorporated in the Hedge Funds Standards in 2010.

2. General observations

The HFSB agrees with the overall assessment in Chapter 2 of the Consultation Report, and in particular with the risk of unfair treatment of investors. The report highlights the potential adverse impact on investor confidence and potential spillover effects that suspension of redemptions can have (p. 6).

- ***It is important to highlight that "<u>not suspending redemptions in instances where fair treatment of investors cannot be guaranteed any more" can be equally damaging</u>: In a distress scenario, non-redeeming investors may fear being left with the illiquid remainders of a portfolio ("bottom of the barrel risk"), while redeeming investors are paid off from the proceeds of the sale of the liquid portion of a portfolio. This situation creates a perverse incentive: All investors will want to "rush to the exit" by redeeming. This creates a classic prisoners' dilemma, with no incentive to hold back individual investors, who are behaving rationally in their own narrow self-interest.***

[1] http://www.iosco.org/library/pubdocs/pdf/IOSCOPD349.pdf
[2] HFSB Consultation section: http://www.hfsb.org/?page=11474

- ***Also, this not only creates runs on individual funds, but can also have "spillover" effects for other similar CIS in a similar manner as the Consultation Report describes spillover effects from suspending redemptions.***

In the context of the market impact assessment (p.6), the Consultation Report raises a sensitive issue: when significant redemptions affect an individual CIS and force it to liquidate its portfolio, this can lead to price decline in the relevant underlying market with further outflows in other CIS. The Consultation Report proposes that it may be appropriate for the responsible entity to consider suspending redemptions in certain limited circumstances, such as run on CIS assets.

This raises a very important question: should decisions about suspensions of redemptions be based on issues relating to fair treatment of investors in the relevant fund as well as "vicious circle scenarios" (i.e. redemptions causing a strong market correction/runs on funds)?

		Market wide perspective	
		"no market distress"	*"danger of vicious circle"*
Fund specific perspective	*"Fair treatment of investors can be ensured"*	(1) ⇨ No need to restrict redemptions	(2) ⇨ ??
	"Fair treatment of investors cannot be ensured"	(3) ⇨ Restrictions around redemptions justified	(4) ⇨ Restrictions around redemptions justified

Inclusion of "danger of vicious circle" into the criteria for justifying suspensions of redemptions requires further clarification:

1) Are distress situations realistic, where an individual fund is able to fairly treat his investors (e.g. by liquidating its assets), while at the same time cause distress to other investors (i.e. falling prices, etc)?

2) Are individual fund managers or the funds' governing bodies at all equipped to make judgements on "danger of vicious circles/disorderly markets" when making decisions about suspensions of redemptions in relation to their clients?

3) In a situation where investors could still be treated fairly (e.g. by liquidating the fund), while markets might be affected, does this mean fund managers or the respective fund boards should take action against the best interest of their investors?

4) What impact do such suspensions (on the basis of presumable "vicious circles") have on price formation in the market place?

5) This raises a broader question: is it at all necessary to introduce "vicious circles" as a concept for justifying suspensions?

HFSB recommendation:

The HFSB has stated in the past that where a fund is invested in liquid assets, redemptions should be honoured as long as fair treatment of investors can be ensured, but has not explicitly incorporated market wide assessments (i.e. "vicious circles") in the criteria for imposing restrictions around redemptions. The HFSB would recommend reviewing Chapter 2 to clarify that restrictions of suspensions are only justified when fair treatment of investors cannot be ensured.

3. Observations on the principles

The HFSB broadly agrees with the principles set out in the IOSCO Consultation Report. However, we would like to make the following observations.

- *The inclusion of "fire sale prices" as criteria for defining exceptional circumstances will need further assessment (i.e. what constitutes a "fire sale price"). This is in line with the assessment included in the General Observations of this consultation response in section 2.* ***(3.1)***
- *Conflicts of interests arising in the context of decisions about suspensions of redemptions need to be considered.* ***(3.2)***
- *The HFSB's work on liquidity risk management (in a hedge fund management context) might provide relevant insights for IOSCO on improving understanding and practices in this area.* ***(3.3)***

3.1 Definition of "fire sale" prices

The IOSCO Consultation report sets out an approach for the decision to suspend redemptions (Chapter 3, C: Criteria/reasons for the suspension, a) Exceptional circumstances).

Step one of this approach highlights two criteria to describe the characteristics of exceptional circumstances:

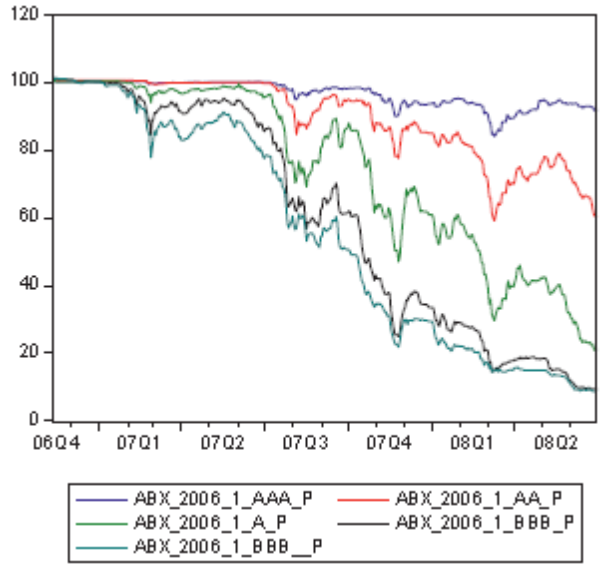
a) Fair and robust valuation of the asset is not possible

b) Asset can only be sold at fire sale prices (in order to meet redemption requests)

The HFSB believes that further clarification is required around the concept of "fire sale prices" and it might be useful to assess what impact "suspensions of redemptions" in such circumstances has on the price formation process.

As seen during past financial crises, strong market corrections can occur (and tend to happen more frequently than some standard models seem to predict) and in many instances, the price corrections are not temporary in nature, but sustainable and thereby justified in hindsight (i.e. when a bubble bursts), with prices ultimately settling at much lower levels. The ABX index, a widely followed index of valuations of US subprime mortgages, provides an example of this (see Illustration 1).

Illustration 1: Time series of ABX prices[3] (for H1/2006 vintage mortgages, for different rating classes)



Source: ECB, http://www.ecb.int/pub/pdf/scpwps/ecbwp1056.pdf p. 35.

Market-based systems usually provide a framework for price discovery, balancing of supply and demand and competition. If it is intended to encourage suspensions of redemptions during times of market price correction, where what is described as "fire price selling" is likely to be occurring, it is important to acknowledge that this affects the price discovery process in the market place and can also reduce liquidity: while the suspension can cushion the drop in market prices, it might also prevent investors from entering the market for fear of overpaying for the asset.

It is obviously very difficult to assess during the actual market correction whether a new price discovered in the market place represents a "fire sale" and potentially only a temporary correction or overreaction of the market, or whether it is reflective of a longer term adjustment of prices. **What should be avoided are the situations when restrictions around redemptions are enacted based on presumable "fire sale prices" even though price discovery is correct and investor redemption requests could actually be honoured.**

HFSB recommendation:

While the HFSB agrees with the first criterion (a) mentioned above, it believes that it is unclear how "fire sale prices" justifying suspensions of redemptions can be defined and distinguished from situations where justified corrections in market prices are underway, and where suspensions of redemptions would not only hurt investors in the fund (who cannot redeem), but will also slowdown the discovery of a new market price where buyers are willing to step in.

A feasible approach could be to restrict exceptional circumstances to criterion (a) [Fair and robust

[3] The ABX index family is based on credit default swaps (CDS) written on US home equity loan (HEL) MBS and track the price of credit insurance of such deals. The indices are traded on price rather than in spread terms (see Illustration 1)

valuation of the asset is not possible, e.g. because of lacking liquidity in the market place]. This could likely include certain "fire sale" scenarios, where fair and robust valuation of the asset is not possible, but not to generalise as all types of "fire sale" scenarios.

3.2 Conflicts of interest

The IOSCO paper refers to the "responsible entity" in charge of determining what is in the best interest of unit-holders when suspending redemptions. In some instances, this might be the fund governing body, in others it might be the managing entity.

From a governance perspective, the HFSB would like to point out potential conflicts of interests, and how they are properly managed / overseen.

Obvious examples of such a conflict are situations where a manager has an incentive to suspend redemptions in order to avoid loss of management fees as a result of redemptions.

Therefore, it might be helpful to identify potential mechanisms, such as independent boards (where investors delegate decision making authorities) vis à vis more rule-based mechanisms (e.g. where the manager is directly in charge of making such decisions).

Proper handling of such situations by the "responsible entity" is crucial in improving investor confidence in asset management and overall capital markets in situations of distress, and thus should not be underestimated.

The Hedge Fund Standards give a strong preference for independent governance models to manage such situations of distress.

3.3 Liquidity risk management

The HFSB agrees that it is important to consider the liquidity of the types of instruments and assets and their consistency with the overall liquidity profile of the open-ended CIS before and during any investment. In this context, the dynamic nature of the liquidity of assets and instruments should be taken into account. As seen during the crisis, liquidity can fluctuate significantly and highly correlate with other factors and events (margin calls, investor redemptions, cancellation of credit lines).

Therefore, the HFSB agrees that further guidelines do help clarify the tools and mechanisms that improve the overall approach to liquidity risk management and would like to highlight its own work in this area, which might be of relevance to IOSCO's efforts. **The Hedge Fund Standards contain a dedicated section covering "Liquidity Risk Management" (Standard 12) as part of the broader risk management framework, covering the liquidity risk management framework, stress testing, and the inter-linkage with other areas of risk management (i.e. market risk). Appendix A includes the relevant section on liquidity risk management.**

The HFSB would be happy to work more closely with IOSCO on issues relating to liquidity risk management and other areas where common principles for asset managers are required.

Appendix A

Liquidity risk management – Standards and Guidance [12]

- **A hedge fund manager should develop a liquidity management framework, the primary role of which is to limit the risk that the liquidity profile of the fund's investments does not align with the fund's obligations.**

  This could include forecasting the liquidity position of the fund and tracking liquidity measures (e.g. ratios such as "available cash/Value-at-Risk") which allow the hedge fund manager to assess the probable development of the fund's liquidity position relative to the portfolio's inherent risk.

  The nature of this framework would depend on the categories of assets and leverage profile of the hedge fund.

- **A hedge fund manager should regularly conduct stress testing and scenario analysis of the fund's liquidity position.**

  Potential stress events could include:

  – margin calls due to sudden severe market shocks (e.g. significant equity price falls);

  – reduction in liquidity in certain market segments relevant to the fund;

  – a sudden increase in collateral requirements for funding positions (thereby reducing assets available for sale to meet liquidity needs);

  – investor redemptions (as per the fund's redemption policies) (where relevant[34]); and

  – cancellation of credit lines (as per notice periods agreed between the fund and Counterparties, such as prime brokers).

  The stress testing/scenario analysis should also take account of the impact of market risk stresses on the liquidity position of the fund (see following market risk management standard).

  It has been widely found that in stress situations unexpected correlations can appear. Hedge funds have been faced with sudden liquidation challenges due in part or in whole to rapid market movements, for example in currencies, commodities or equities.

Source: Hedge Fund Standards, http://www.hfsb.org/?section=11502

INVERCO RESPONSE TO THE IOSCO CONSULTATION REPORT ON PRINCIPLES ON SUSPENSIONS OF REDEMPTIONS IN COLLECTIVE INVESTMENT SCHEMES

1.- INTRODUCTION

INVERCO (Spanish Association of Collective Investment Schemes and Pension Funds) represents more than six thousands collective investment schemes and more than 1,300 pension funds, with more than EUR 303 billion in assets under management.

INVERCO thanks IOSCO for its excellent work on investment manager's practices and welcomes IOSCO's commitment to work in close cooperation with the industry practitioners.

INVERCO strongly supports the proposed principles, which will become a helpful tool to allow both the industry practitioners and regulators an accurate assessment of the quality of regulation and industry practices concerning suspensions and redemptions in open-ended collective investment schemes. A fair treatment of this issue is crucial to avoid that certain isolated episodes may spillover their effects through the whole sector, which is one of the major risks that suspensions may entail.

The aforementioned principles fit perfectly the applicable legal framework for suspension of redemptions in Spain. Only a brief comment regarding principle 6, about circumstances under which suspension of redemptions should also give rise to suspension of subscriptions, should be made.

Although IOSCO principle 6 does not explicitly prohibit new subscriptions during the suspension period, in practice it is very unlikely that the requirements set forth to attend new subscriptions are met, in particular the provision according with such new subscriptions are only admissible whether "*a reliable, meaningful and robust valuation of the assets is possible";* situation which is highly improbable, considering the exceptional circumstances which lead to suspend redemptions.

Therefore principle 6 should be enunciated in more flexible terms, in order to allow certain subscriptions that may result in the benefit of those investors who need to redeem their units without detriment of those who decide to stay in the CIS until normal operations are resumed.

2.- COMMENTS

According to IOSCO principle 6, *"during the suspension of the redemptions, the responsible entity should generally not accept new subscriptions. Subscriptions cannot be accepted if a reliable, meaningful and robust valuation of the assets is not possible".*

This principle assumes that during the suspension of the redemptions, the responsible entity should not generally accept new subscriptions, which is adequate, as normally the same reasons that recommend the suspension of redemptions are likely to justify the need to avoid

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subscriptions (i.e. exceptional circumstances such as market failures, exchange closures and operational or liquidity issues).

Notwithstanding, although the first sentence of the principle is stated in flexible terms *("during the suspension of the redemptions, the responsible entity should generally not accept new subscriptions"*), the second sentence provides for a prohibition to accept new subscriptions ("*Subscriptions cannot be accepted…"*) in certain cases, in particular whether a reliable, meaningful and robust valuation of the assets is not possible.

Unfortunately, the reasons which trigger suspensions of redemptions will, in most cases, prevent a *"reliable, meaningful and robust valuation*", so when an exceptional circumstance leads to suspend the redemptions, the same exceptional circumstance will probably prevent the responsible entity from making a reliable, meaningful and robust valuation of the CIS assets, closing it to new subscriptions in application of IOSCO principle 6.

This is the case for entities applying U.S. GAAP or IFRS in their reporting obligations, where assets valuation is based on the *"fair value"* principle, which is defined as *"the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date"* and whose measurement is based on a hierarchy which categorises the inputs used in valuation techniques into three levels, giving the highest priority to (unadjusted) quoted prices in active markets for identical assets or liabilities and the lowest priority to unobservable inputs (IFRS 13 and FAS 157).

In the absence of active markets for certain instruments, the management must estimate its fair value, and it is not easy to ascertain whether such valuations would be deem to comply with the IOSCO standard.

As a conclusion, the current wording of IOSCO principle 6 would lead to a prohibition to admit new subscriptions when the redemption are suspended, prohibition which, in our opinion, will not always result in the best interest of the investors.

For example, in order to protect the investors and to avoid reputational risk the Fund promoter or its management company might be interested in subscribing the units of those investors who need liquidity, while certain investors could be interested in redeeming their units, although the net asset value applied to these subscriptions and redemptions were not completely based on an accurate valuation that, under the suspension of redemptions period, may not always be possible.

Arrangements as that mentioned in the previous paragraph would not be compliant with the current wording of IOSCO principle 6, therefore it would be welcomed a more flexible provision, that avoids an active marketing of the CIS during the suspension, but which does not prevent investors to redeem their units when they need it and there is an investor or entity willing to buy them. To his goal, it is proposed the following provision:

> *"During the period of suspension of redemptions, the collective investment scheme should no longer be actively marketed. Notwithstanding, new subscriptions might be accepted whether this is in the best interest of the unitholders"*

Madrid, 30th May 2011

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Investment Management Association

ima

Via post and email to: CIS-suspensions@iosco.org

20 May 2011

Mohamed Ben-Salem
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 MADRID
Spain

Dear Mohamed,

Principles on Suspensions of Redemptions in Collective Investment Schemes

The IMA represents the asset management industry operating in the UK. Our Members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of around £3.8 trillion of assets, which are invested on behalf of clients globally. These include authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. In particular, our Members represent 99% of funds under management in UK-authorised investment funds (i.e. unit trusts and open-ended investment companies, the vast majority of which are UCITS).

We welcome the opportunity to comment upon IOSCO's proposed principles. In a number of areas the principles are in line with existing UK rules and with guidance which we have produced for our membership on the subject of suspensions, in conjunction with UK depositaries

We attach our detailed comments and recommendations, which we would be happy to discuss with you at any time. As a general point, we observe that there seems to have been a creep in the language used in IOSCO documents, from statements clearly aimed at national regulators to statements written in the form of direct commands to firms. IMA has long-supported the work of IOSCO on CIS issues, and was an early contributor to this work, but we question on what basis IOSCO has the powers to issue direct instructions or guidance to firms. We therefore request that the language is reviewed and amended as appropriate.

Yours sincerely

Karen Bowie

Karen Bowie
Senior Adviser - Product Regulation

IOSCO Principles on Suspensions of Redemptions in Collective Investment Schemes

Consultation Report IMA's comments

Chapter 1 Introduction

Status of report

The report is written in a way that suggests direct application to CIS operators. For example, in the last paragraph on page 5 there is a statement that *"The principles are intended to provide general standards by which a regulatory regime should approach and oversee suspension of redemptions. The principles are addressed to the entity/entities responsible for the overall operation of the CIS..... Delegation of activities may not be used to circumvent the principles, and there should be compliance with the principles..."*. This implies a degree of direct effect, which IOSCO Principles do not have. It is also at odds with the previous paragraph on page 5, which indicates that *"the aim of the report is to outline principles against which both the industry and the regulators can assess the quality of regulation and industry practices...."*.

We recognise and appreciate the important role of IOSCO in proposing principles that provide general standards for how regulatory regimes should approach the suspension of redemptions. However in the light of the above point, we ask that the last paragraph on page 5 (and similar statements elsewhere in the report) be removed or modified. The language of the report should reflect the fact that it is a matter for the regulators in each jurisdiction to consider the report and whether it is appropriate to take any action (for example, changes in regulation) in the light thereof. This is particularly important given that the paper is aimed at all types of CIS, so covers unregulated open-ended CIS, for example as well as authorised funds.

We note that IOSCO's paper "Examination of governance for CIS - Part II" (issued in February 2007) includes a set of principles and makes clear that they would need to be transposed in each jurisdiction (Page 5).

The language in this report should similarly reflect the fact that the principles offer practical guidance. The word "could", rather than "should", would better reflect the fact that it is guidance.

Chapter 2

Ability to suspend being a valuable tool

We believe that more should be made of the fact that the ability of a CIS to suspend is a fundamental investor protection tool. The report talks of the right to redeem being a fundamental right (Page 6). It would be useful to balance this with a statement that the ability to suspend is a fundamental investor protection tool. Whilst, clearly, managers do not wish to have to suspend, it is a vital tool that is used in exceptional circumstances and when it is in the collective interests of unitholders to do so. It should be viewed as part of the investor protection toolkit.

Chapter 3

Management of liquidity risk

The first sentence (Page 8) refers to liquidity management being a way to avoid suspensions of redemptions. We suggest that this should be amended to read "to mitigate the risk of suspension owing to a lack of liquidity". This would make clear that the goal is to mitigate risk. Clearly, even with good liquidity management, it may not be possible in all circumstances to avoid suspension due to liquidity issues created by extreme market events.

At the top of page 9, there is a statement that *"the responsible entity should establish, implement and maintain an appropriate liquidity management policy and process"*. It is appreciated that the paper covers all open-ended CIS, not just UCITS, but we suggest that a better approach is to propose that a relevant entity should consider liquidity management as part of its risk management arrangements (rather than proposing a specific liquidity management policy). This approach would cater for regulatory systems in which risk management is dealt with as a whole rather than through requiring a number of separate policies dealing with different types of risk. For example, in the context of UCITS, there is no specific UCITS Directive requirement to establish a "liquidity management policy". Rather, there is a requirement in UCITS IV (Commission Directive 2010/43/EU, Art 38) to *"establish, implement and maintain....a risk management policy which identifies the risks the UCITS...are or may be subject to"*.

The section also says *"the responsible CIS entity should only invest in instruments/assets if this investment does not compromise the ability of the CIS to comply with its redemption obligations.."*. We consider that it would be better to say that the purchase of an investment or asset may be made only if its liquidity does not compromise the entity's redemption obligations. This makes clear that one can invest in an illiquid investment/asset if the portfolio, taken as a whole, is sufficiently liquid that the entity can meet its redemption obligations.

Ex ante disclosure to investors

This section (Page 9) indicates that *"where national law does not define exceptional circumstances, it is recommended not to define in the CIS documentation the term 'exceptional circumstances'..... Instead, it is recommended to use examples of what might constitute exceptional circumstances"*.

The UCITS Directive (Art 84) allows a fund to suspend, in accordance with national law, only in exceptional circumstances where the circumstances so require and where the suspension is justified having regard to the interests of unitholders. It is likely that many EU jurisdictions base their prospectus disclosure on this UCITS article. This means that the current disclosure is to the effect that suspensions may occur in exceptional circumstances when justified in the interests of unitholders. This disclosure should be considered sufficient. We do not agree with the proposed requirement for disclosure of examples. This would be a new requirement for UCITS and other CIS managers, would be a potentially costly exercise and would bring questionable, if any, real benefit to investors.

Criteria / reasons for suspending

It may also be worth adding the following to the list of exceptional circumstances:

"Other events

There may be other events such as natural disasters or catastrophes, which make it impossible to value, or dispose of and obtain payment for all or some of the CIS's property".

Alternatively, reference to natural disasters or catastrophes could be added to the list of unexpected events listed in the third paragraph in section 3a) on pg 10.

Decision to suspend

Implementation of processes in advance (page 11) - This section uses both "should" and "could". We recommend that the word "could" is used throughout. It should be left to the relevant entity to decide what it needs to put in place in advance. For example, in the case of a highly liquid UCITS, it may not be proportionate to put in place detailed plans/processes in advance. The content of any plans should be left to the relevant entity; hence, the use of the word 'could' to indicate that these are suggestions for consideration.

Page 11 also suggests that procedures describe *"objective criteria for reaching the decision to suspend"*. Given that it is expected that suspension will take place only in exceptional circumstances, it will be difficult to set out purely objective criteria in any detail on how to reach this decision in advance.

Documentation (page 12) – This section also refers to the defining of objective criteria for the resumption of normal operations. It may be useful for the guidance to provide some examples of these criteria. In reality the decision to resume normal operations is expected to require a number of subjective inputs too, such as a view on market liquidity.

Communication to the competent authorities and other relevant parties (page 13) – In the UK, because of the direct involvement of the depositary, our rules do not require notification of planned actions to the regulator. The rules require notification of the suspension, the reasons therefor and notification of the lifting of the suspension. It would be preferable if the paper simply referred to providing such information as the relevant competent authority may require. That would be broad enough to cover all eventualities.

The last paragraph of this section (Page 13) should be amended. We believe that this should not be a regulatory requirement. The key is to ensure that investors in the CIS are notified as are investors seeking to place deals. In the UK, rules are already in place for authorised funds to ensure that this is done.

Naturally, entities are likely to wish to notify intermediaries/distributors, but that should simply be a matter for an entity to consider as part of its communication strategy. In addition, it should be noted that in practice it would be difficult for *"immediate cessation of active distribution of the CIS"* to be achieved in any event given that there may be a number of layers of intermediation.

During a suspension

This section requires that if subscriptions are allowed, any potential subscriber should be informed in a clear and comprehensive manner prior to the subscription, and given the chance to cancel the subscription order (Page 13). We suggest that the words "before the order is accepted" is added at the end of this sentence to make clear that the matter under discussion is the cancellation of orders rather than the cancellation of contracts. In the latter case, if an investor has been given clear and comprehensive information prior to the subscription and still decides to proceed, then unless national law requires the provision of cancellation rights, it is not necessary to give such rights.

Page 14 indicates that in the case of potentially longer lasting suspensions, the responsible entity should consider alternatives unless all unitholders agree to maintain the suspension so as to avoid liquidation. This is unlikely to be achieved in widely-held funds. It would be helpful if the IOSCO guidance were to include a recommendation that regulators give consideration to the regulatory tools available in the event of a longer lasting suspension and to increasing the regulatory tools available to deal with such instances. This might, for example, include making available the ability to set up side pockets.

As regards communications with unitholders, this section (page 14) indicates that resumption of dealings should immediately be communicated to unitholders. The guidance should indicate that this might be done by website or other durable means. In the UK, for example, the notification to unitholders of the suspension must inform unitholders how to obtain information regarding the suspension. This includes being able to direct them to a website on which details regarding the suspension are published.

Side pockets

The final paragraph on page 17 states that *"a good management practice for the responsible entity would be not to charge any form of management fee or performance fee on side pockets"*. If the suspension is not due to poor liquidity management/poor operational management, this suggestion is not reasonable. Relevant entities will have suspended in the interests of unitholders. If it is then determined that side pockets are the best way to address the issue in the interests of unitholders, then the manager should still be entitled to management or performance fees if appropriate. The selling of illiquid assets requires active management skills. The important point is that investors should be informed that management or performance fees may (or may not) continue to be charged.

May 30, 2011

Via Electronic Mail (CIS-Suspensions@iosco.org)

Mr. Mohamed Ben-Salem
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid
Spain

Re: Public Comment on Suspensions of Redemptions in Collective Investment Schemes

Dear Mr. Ben-Salem:

The International Investment Funds Association (the "IIFA") welcomes the opportunity to comment on the consultation report on Principles on Suspensions of Redemptions in Collective Investment Schemes (the "Report") issued by the Technical Committee of the International Organization of Securities Commissions ("IOSCO"). The IIFA is comprised of 39 national and regional associations representing investment funds from around the world.[1] Recognizing the importance of the role of investment funds and of their responsibilities to investors, the mission of the IIFA is to promote the protection of investment fund investors, to facilitate the growth of the investment funds industry internationally, to act as a medium for the advancement of understanding of the investment fund business around the world, and to encourage adherence to high ethical standards by all participants in the industry.

The IIFA supports IOSCO's issuance of the principles in the Report, which provide general standards against which regulators and the industry can assess the quality of regulation and industry practices concerning the suspension of redemptions by open-ended collective investment schemes ("CIS").[2] In addition, the Report contains useful information about how various jurisdictions approach the suspension of redemptions by CIS and alternative measures to deal with illiquidity in certain jurisdictions, which may assist regulators in the evaluation of their respective jurisdiction's regulations and inform the industry's consideration of these issues. We are pleased that the Report recognizes that the principles

[1] As of the end of the third quarter 2010, these associations together represented assets under management of close to € 17 trillion or US $23 trillion.

[2] The Report recognizes that the principles reflect a level of common approach and that local conditions and circumstances may dictate the implementation of the principles in a particular jurisdiction.

provide only general standards, and that local conditions and circumstances may dictate the implementation of the principles in a particular jurisdiction. We agree with the tenor of the Report – that the suspension of redemptions is an extra-ordinary event.

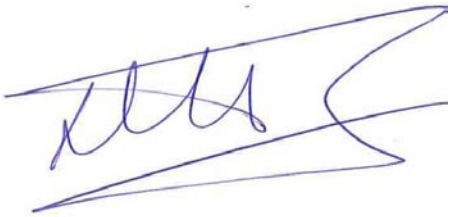
We concur with the conclusion of IOSCO's Technical Committee Standing Committee on Investment Management ("TCSC5") that the suspension of redemptions for open-ended CIS is an issue of global importance. The ability to redeem units on a regular and continuing basis is a key feature of open-ended CIS. This feature distinguishes open-ended CIS from many other investment products and other types of collective investment schemes, and is an integral part of a retail or institutional investor's decision to purchase units of an open-ended CIS.

Investors in open-ended CIS expect to be able to redeem their units. To the extent that open-ended CIS do not meet the expectations of investors and the market with respect to the rights of investors to redeem units, the confidence of investors in open-ended CIS may be severely undermined. Investor confidence is critical to the fund industry's ability to serve the needs of investors and, as noted in the Report, the loss of investor confidence may have a detrimental impact on other parts of the financial industry and the market. With the goal of maintaining and strengthening investor and market confidence in open-ended CIS, the Report's eight principles can serve as a basis for the establishment of sound regulatory practices regarding the suspension of redemptions.

* * * * *

We appreciate the opportunity to express our views. We also refer you to the letters submitted by the individual investment fund associations that are members of the IIFA, which may provide more detail on association experiences or additional comments. Please contact me at peter.deproft@efama.org, or IIFA's Secretary, Ralf Hensel (rhensel@iifa.ca) if you have any questions or require any clarification concerning our comments.

Very truly yours,



Peter DeProft
Chairman

PDP/rh

INVESTMENT COMPANY INSTITUTE

1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

May 27, 2011

Via Electronic Mail (CIC-Suspensions@iosco.org)

Mr. Mohamed Ben-Salem
International Organization of Securities Commissions (IOSCO)
Calle Oquendo 12
28006 Madrid
Spain

Re: Public Comment on Suspensions of Redemptions in Collective Investment Schemes

Dear Mr. Ben-Salem:

The Investment Company Institute[1] (the "Institute") welcomes the opportunity to comment on the IOSCO Technical Committee's consultation report, Principles on Suspensions of Redemptions in Collective Investment Schemes, which proposes principles against which both the industry and regulators can assess the quality of regulation and industry practices concerning suspensions of redemptions (the "Report").[2] Although the Institute supports the proposed principles, we believe that the principles and the accompanying text should be revised in certain places to make clear that the laws of some jurisdictions may prohibit the suspension of redemptions, or severely limit the circumstances under which the responsible entity may suspend redemptions, and therefore certain principles and text would not fully apply.

In the United States, the ability of an open-ended investment company registered under the Investment Company Act of 1940 (a "RIC") to suspend redemptions is extremely limited. Under the Investment Company Act, an open-ended RIC cannot suspend the right of redemption or postpone the date of payment more than seven days after the tender of the security, except: (1) during any period during which the New York Stock Exchange (the "NYSE") is closed (except for customary

week-end and holiday closings) or during which trading on the NYSE is restricted; (2) any period during which an emergency exists, as defined by the rules issued by the U.S. Securities

[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $13.1 trillion and serve over 90 million shareholders.

[2] The report is available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD349.pdf.

and Exchange Commission ("SEC"), as a result of which disposal by a fund of portfolio securities is not reasonably practicable or it is not reasonably practicable for the fund to determine fairly the value of its assets;[3] and (3) such other periods as the SEC may by order permit to protect a fund's investors.[4] In order to facilitate the orderly liquidation of a money market fund, a recently adopted SEC rule permits money market funds to suspend redemptions and postpone payment of redemption proceeds if: (1) the fund's board, including a majority of disinterested directors, determines that the deviation between the fund's amortized cost price per share and the market-based net asset value per share may result in material dilution or other unfair results; (2) the board, including a majority of disinterested directors, irrevocably has approved the liquidation of the fund; and (3) the fund, prior to suspending redemptions, notifies the SEC of its decision to liquidate and suspend redemptions.[5]

The approach under U.S. law allows for suspensions of redemptions in an extremely limited manner. Therefore, we feel that the Report should also address circumstances in which a responsible entity does not have the discretion to suspend redemptions or in which the national law specifies what may be done. If a responsible entity does not have the discretion to suspend redemptions, certain principles and accompanying text would not be fully applicable. For example, we believe that Principle 3 should be revised to read (new text in italics): "Suspension of redemptions by the responsible entity may be justified only in exceptional circumstances provided such suspension is in the best interest of all unitholders within the CIS or if the suspension is required *or permitted* by law." This change would address circumstances in which the regulatory authority permits rather than requires suspension. Further, we believe the text accompanying Principle 3 should recognize that, while the two step approach outlined in the Report may guide the steps that should be taken by a responsible entity when considering the suspension of redemptions, other steps or conditions may be specified by law.

We also recommend adding commentary to the text accompanying Principles 5 and 7 to acknowledge that a jurisdiction's specific legal requirements may shape or constrain the actions taken by the responsible entity.[6] For example, with respect to Principle 5, national law may dictate that certain documentation be provided and that certain information is communicated to the regulator and/or unitholders in connection with a suspension of redemptions.[7] Similarly, the

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[3] An example of such an exception would be an emergency that affects markets or funds, such as the assassination of President Kennedy in 1963, the blackouts that affected lower Manhattan in 1990, or earthquakes or other natural disasters. The SEC must declare an emergency to exist to trigger an exception.

[4] *See* Section 22(e) of the Investment Company Act of 1940.

[5] *See* Rule 22e-3 under the Investment Company Act of 1940.

[6] Principle 5 provides that "The decision by the responsible entity to suspend redemptions, in particular the reasons for the suspension and the planned actions should be appropriately: a) documented; b) communicated to competent authorities and other relevant parties; c) communicated to unitholders." Principle 7 provides that "The suspension should be regularly reviewed by the responsible entity. The responsible entity should take all necessary steps in order to resume normal operations as soon as possible having regard to the best interest of unitholders."

[7] In the case of U.S. money market funds, for example, Rule 22e-3 under the Investment Company Act specifies that, prior to suspending redemptions, the fund must notify the SEC of its decision to liquidate and suspend redemptions by electronic mail. We believe that the SEC's rule meets this Principle.

actions that a responsible entity should take to review the suspension of redemptions as described under Principle 7 would not apply in certain circumstances, such as if a jurisdiction has authorized the suspension of redemptions only for the period of time that the stock market is closed in response to an exceptional event. The provision specifying that the responsible entity should formally review the decision to suspend redemptions on an ongoing basis would not be fully applicable in these situations. [8]

* * * * *

We appreciate the opportunity to express our views and invite you to contact me (202-326-5813 or solson@ici.org) or Eva Mykolenko (202-326-5837 or emykolenko@ici.org) if you have any questions about our comments.

Sincerely,

/s/ Susan M. Olson

Susan M. Olson
Senior Counsel – International Affairs

[8] Because Rule 22e-3 under the Investment Company Act only may be used if a board of a money market fund has irrevocably determined to liquidate the fund, Principle 7 would also not apply in this situation.

NATIONAL FUTURES ASSOCIATION

May 27, 2011

Mr. Greg Tanzer
Secretary General
IOSCO
C/ Oquendo 12
28006 Madrid
Spain

Re: Public Comment on the Principles on Suspensions of Redemptions in Collective Investment Schemes Consultation Report

Dear Mr. Tanzer:

National Futures Association (NFA) appreciates the opportunity to comment on the IOSCO Technical Committee's Principles on Suspensions of Redemptions in Collective Investment Schemes (CISs) Consultation Report. NFA is a registered futures association under the U.S. Commodity Exchange Act (CEA) and an affiliate member of ISOCO. NFA is the industry-wide self-regulatory body for the U.S. futures industry and regulates the activities of close to 4,000 member firms and approximately 53,000 registered account executives who work for those firms.

One of NFA's responsibilities is to monitor the regulatory requirements for registered commodity pool operators (CPOs) and their non-exempt commodity pools. We work closely with the U.S. Commodity Futures Trading Commission (CFTC) to provide effective and efficient regulation that protects customers without imposing undue burdens on the futures industry. Over 1,200 CPOs are registered with the CFTC, and the vast majority are NFA Members.

As stated in the Introduction, the principles generally cover all CISs which offer a continuous redemption right. Chapter 2 further states that investors in open-ended CISs expect to be able to redeem on a regular and continuous basis. Additionally, the narrative accompanying proposed principle 7 refers to CISs as open-ended funds that offer redemption on a continuous basis. Therefore, it appears that the proposed principles outlined in this report would not apply to CISs that offer periodic redemption rights. NFA recommends in order to avoid any ambiguity in this area it may be helpful to clearly state that the principles do not apply to CISs with periodic redemption rights.

If you have any questions concerning this letter, please contact me at kwuertz@nfa.futures.org.

Respectfully submitted,

Karen K. Wuertz
Senior Vice President,
Strategic Planning & Communications

n:/International/IOSCO/Comment Ltr Redemptions in CIS)

Z E N T R A L E R K R E D I T A U S S C H U S S

MITGLIEDER: BUNDESVERBAND DER DEUTSCHEN VOLKSBANKEN UND RAIFFEISENBANKEN E.V. BERLIN · BUNDESVERBAND DEUTSCHER BANKEN E.V. BERLIN
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International Organization
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Email: CIS-Suspensions@iosco.org

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25 May 2011
AZ ZKA: 413-IOSCO
AZ BdB: U 13.5.3 - Aro/Mn/To

Principles on Suspensions of Redemptions in Collective Investment Schemes - Consultation Report
Comments of the Zentraler Kreditausschuss[1]

Dear Mr Ben-Salem,

Many thanks for the opportunity to comment on the above consultation report. Collective investment schemes allow small and large-scale investors to diversify their investments within a single product. Investments of this kind have proved highly profitable over recent decades and, owing to the internal stability achieved by the wide spread of assets, they offer the prospect of sound performance even in a difficult market environment. The schemes have proved especially valuable in countries where demographic trends mean citizens increasingly need to make private provision for old age.

[1] The Zentraler Kreditausschuss is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen und Giroverband (DSGV), for the savings banks financial group, and the Verband deutscher Pfandbriefbanken (VdP), for the mortgage banks. Collectively, they represent more than 2300 banks.

German banks share IOSCO's view that suspensions of redemptions in collective investment schemes can damage investor confidence. The financial crisis saw a rise in the number of suspensions, posing a significant challenge for regulators.

We would nevertheless point out that, in the past, suspensions of redemptions have occurred only in very extreme market situations (financial crisis in autumn 2008 or after the events of September 11, 2001).

What is more, the risk of suspension seems essentially to be confined to collective investment schemes with an inherent problem of maturity transformation (e.g. real-estate funds, since property cannot be sold at short notice).

It should also be borne in mind that suspending redemptions can, in some cases, actually be in the interests of investors since assets sold at fire sale prices would have an adverse effect on the fund's performance. We believe the important point is that investors are sufficiently well informed about the risk of suspension and, should a suspension occur, are adequately advised of when the fund is likely to be reopened.

The closure of a collective investment scheme can, moreover, be guarded against by specifying certain redemption periods or dates for large investors or certain client groups. This gives the fund management a degree of planning certainty. In Germany, by contrast, rules which do not differentiate between different categories of investor were recently introduced in the Act to Strengthen Investor Protection and Improve the Operation of Capital Markets (*Gesetz zur Stärkung des Anlegerschutzes und Verbesserung der Funktionsfähigkeit des Kapitalmarktes*).

Our above comments notwithstanding, we welcome the work undertaken by IOSCO and are happy to offer it our support.

Yours sincerely
on behalf of the Zentraler Kreditausschuss
Bundesverband deutscher Banken

Herbert Jütten

Patrick Arora