



Luxembourg, 15 February 2010

Public comment on IOSCO's Principles on Point of Sale Disclosure

Introduction

1. ALFI represents the Luxembourg investment management and fund industry. It counts among its membership asset management groups from various horizons and a large variety of service providers. According to the latest CSSF figures, on 30 November 2010, total net assets of undertakings for collective investment were EUR 1.789 billion.
2. There are 3,473 undertakings for collective investment in Luxembourg, of which 2,097 are multiple compartment structures containing 10,875 compartments. With the 1,376 single-compartment UCIs, there are 12,251 active compartments in Luxembourg.
3. We thank IOSCO for the opportunity to participate in this consultation on principles on point of sale ("POS") disclosure. We welcome IOSCO's interest in this matter and we share IOSCO's desire for clear and accurate disclosure of information to retail investors in a form that helps them to understand a fund and to compare it to other funds that might be available to them. We thought that IOSCO's paper was very well written and we generally agreed with it.
4. We have included in our response references to relevant pages and paragraph numbers in IOSCO's paper.

General points

5. We note IOSCO's statement that there is a challenge to identify "truly comparable products [to CIS] that are as popular with the retail investor" (page 2, penultimate paragraph). The insurance industry and the banking industry (the latter through certificates) compete with CIS for the same assets. The fact that the legal form of the products is different does not in our opinion diminish the reality of the competition. We therefore recommend that IOSCO encourages its members to do more work to make all investment products comparable, at least on fundamental elements required by investors such as returns, risk and cost (as highlighted by your research) in order to ensure a fair level playing field. We are concerned that the imbalance in regulation between CIS and competing products puts CIS at a material disadvantage.
6. We think that it is understandable that current regulatory discussion refers to the recent financial crisis (page 1, third paragraph) but we think that the reference should be used cautiously in the context of POS information. What can be foreseen and disclosed at the point *and time* of sale might be very different to what exists during a crisis. In our opinion, none but the most defensive POS documents would have accurately described the risks of 2008 except in the most general "boilerplate" manner, and regulators rightly do not want POS materials to use boilerplate language. We see an unavoidable dichotomy here: POS material cannot be brief (typically 2 sides of paper) *and* comprehensive, and it cannot resolve the information asymmetry that IOSCO described (page 4); it can only provide a good précis of a fund. We

believe that as a prerequisite to shorter and comparable information, more work has to be done on defining common terminology, product and risk segmentation, calculation methods and ways to determine what is "key" information.

7. Mandatory POS material can make information more accessible to retail investors who are not inclined to research a product fully and aid comparison with other products that are subject to the same mandatory POS regime. We support those aims but we think that it is important to recognise the limited utility of POS such as the European Key Investor Document ("KID") in solving information asymmetry problems. With the possible exception of information such as the synthetic risk indicator, information that will be published in the KID is already available at the point of sale in the prospectus, the application form and often in marketing material. Such mandatory POS material therefore cannot improve the quantity of information available. Nor can it improve the quality of information if the prospectus is well written (which it should be given that it is subject to the approval of IOSCO's members). We are concerned that the present regulatory emphasis on accessibility and brevity and the commonplace assumption in Europe that sales may safely be made on the basis of the KID alone creates a risk that the main prospectus will be deprecated. We believe that the prospectus is an important document, which cannot be satisfactorily replaced by a single POS document such as the KID, and we believe that the regulatory pressure upon the product producer in Europe to produce and be liable for a singular document will not uphold investors' interests in the long term.

8. Luxembourg is the world's premier domicile for cross-border investment funds and Luxembourg-domiciled UCITS are sold in many markets beyond Europe, notably in Asia, Latin America and the Middle East. We value our good relations with regulators and financial institutions in these markets and we regard our business with them as an exemplar of co-operation and cross-border trade. We hope that the introduction of the European KID will provide us with the opportunity to extend our co-operation and deliver the KID to local investors with minimal adaptation beyond translation into the local language. We invite IOSCO to encourage its members to facilitate the cross-border use of POS material in this way.

9. In our opinion, IOSCO has rightly avoided saying that POS information should be delivered in a single document and it has recognised that product producer and intermediary have separate POS disclosure obligations (pages 24 and 25), for which they are separately responsible. For example, we think that the following information cannot satisfactorily be provided by the product producer and is for the intermediary to provide:

- a. Investor tax advice (or a notice that the investor should seek specialised advice).
- b. Conflicts of interest at the point of sale (e.g., sales commission or other vested interest).

We might however suggest that the product producer be required to include clear language in its POS material drawing the investors' attention to these matters and inviting them to ask their intermediaries about them.

10. We think that, if proof of delivery of POS is required, it should be the responsibility of the intermediary/distributor that made the sale (page 25, Principle 2, first bullet point). It is not feasible to require the product provider or central transfer agent to keep this proof. Requiring the distributor to keep the proof is also compatible with MiFID.

11. We agree with IOSCO's view that scalar (synthetic) risk indicators have limitations (page 24, third bullet point).

12. We believe that most of the information described by IOSCO as "additional information" (page 24, eighth bullet point) can only practicably be included by a "layered" approach.

Points of uncertain understanding and requests for clarification

13. We think that there are several points in the paper where it would help the reader if IOSCO clarified its advice:

a. We were uncertain what IOSCO meant when it said that an intermediary should "obtain additional product information independently rather than relying solely on the contents of the prospectus" (page 18, third bullet point). Does this mean the collection of performance history from a market data vendor? Does it refer to the audited reports and accounts? Does it imply an obligation on the intermediary to perform due diligence to ensure that the investment product is bona fide? We think that it is important that the intermediary should be obliged to ensure that any such information provided to the investor is consistent with the product's prospectus and is used in a way that does not misrepresent the product (e.g., with respect to benchmarks that are declared in the prospectus).

b. We understood the English but not the idea when IOSCO said, "regulators may want to consider whether an investor is in a position to make an informed decision about whether to invest before the point of sale" (page 25, Principle 2, third bullet point). Is this a continuation of IOSCO's earlier point about ensuring the delivery of POS material prior to investment (and evidence of delivery) or does IOSCO mean that regulators should consider measures to ensure that the intermediary has determined the product's suitability to meet the investor's need and whether the investor is capable of understanding the intermediary's advice?

c. We are uncertain what IOSCO meant when it said that product producers should take into account "whether the investment is recommended by the intermediary" (page 26, Principle 3, first bullet point). Is that meant to be a reference to whether the relationship is discretionary management or execution only? If it is an execution-only relationship, does IOSCO mean that the POS material must still be delivered to the client or that the intermediary is released from the obligation to do so? On the other hand, if IOSCO is referring to a discretionary mandate, then surely the intermediary would be released from the obligation to deliver POS material to its client unless the investment was outside of the terms of that mandate?