

# MEDIA RELEASE



International Organization of Securities Commissions  
Organisation internationale des commissions de valeurs  
Organização Internacional das Comissões de Valores  
Organización Internacional de Comisiones de Valores

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## **IOSCO Consults on Principles regarding the Custody of CIS Assets**

The International Organization of Securities Commissions (IOSCO) today published a consultation report on [\*Principles regarding the Custody of Collective Investment Schemes' Assets\*](#). The report is aimed at gathering the views of investment managers, custodians, institutional investors and other interested parties on the development of a set of principles for the custody of Collective Investment Schemes' (CIS) Assets.

Custodians play a key role in the safekeeping of CIS assets as recognised in IOSCO Principle n°25<sup>1</sup> which states that “*the regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets*”.

To prepare this consultation document, IOSCO built on previous IOSCO papers on the subject<sup>2</sup> and survey responses from twenty-seven jurisdictions. The survey sought information about the legal, regulatory and operational landscape for CIS asset safekeeping in each of those jurisdictions.

A number of market developments have occurred since publication in 1996 of the IOSCO paper on the *Guidance on Custody Arrangements for Collective Investment Schemes*, leading IOSCO to revisit its

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<sup>1</sup> Principles for Collective Investment Schemes in *IOSCO Objectives and Principles of Securities Regulation*, June 2010, page 10. Available at: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD323.pdf>

<sup>2</sup> IOSCO Discussion Paper on the "Guidance on Custody Arrangements for Collective Investment Schemes" published in 1996 and IOSCO's Final Report on “*Recommendations Regarding the Protection of Client Assets*”, Report of the IOSCO Board, January 2014, available at: <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD436.pdf>.

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published guidance. Events like the Lehman Brothers and MF Global insolvencies or the Madoff fraud have focused attention on CIS asset protection regimes.

CIS managers tend to invest more in complex instruments today than they did in the 1990s. The wider array of eligible investment instruments raises questions about the scope of the custodian's safekeeping role and duties. In addition, the growing and now widespread use of electronic book entry to register and track ownership changes in securities is transforming market practices and processes, creating new challenges and risks.

Since 1996, CIS have taken important steps to diversify and internationalise their portfolios. Growing foreign investments have increased the need for CIS to appoint sub-custodians in foreign jurisdictions. This trend may have implications, especially regarding the delegation of safe-keeping functions, as custody chains tend to be longer and more complex, involving many foreign jurisdictions.

Taking into account these recent market developments, the consultation paper explores the key risks associated with the custody function.

## **The Proposed Principles**

While acknowledging that the regulatory regimes for the safekeeping of CIS assets are diverse, and the responsibilities and regulatory status of the entities that provide safekeeping services are also varied, the report published today proposes nine principles divided into two sections aimed at identifying the core issues that should be kept under review by the regulatory framework. While the first section focuses on general aspects relating to the custody function, the second part of the report is dedicated to principles relating more specifically to the appointment and ongoing engagement of custodians.

Principle 1: The regulatory regime should make appropriate provisions for the custodial arrangements of the CIS.

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Principle 2: CIS assets should be segregated from:

- the assets of the responsible entity, its related entities and other schemes;
- the assets of the custodian / sub-custodian throughout the custody chain; and
- the assets of other clients of the custodian throughout the custody chain (unless CIS assets are held in a permissible omnibus account).

Principle 3: CIS assets should be entrusted to a third party custodian. In limited circumstances where the regulatory regime permits self-custody of CIS assets, additional safeguards should be put in place to ensure proper segregation and protection of CIS assets.

Principle 4: The custodian should be functionally independent from the responsible entity.

Principle 5: The responsible entity should seek to ensure that the custody arrangements in place are disclosed appropriately to investors in the CIS offering documents or otherwise made transparent to investors.

Principle 6: The responsible entity should use appropriate care, skill and diligence when appointing a custodian to safe keep CIS assets.

Principle 7: The responsible entity should, at a minimum, consider a custodian's legal / regulatory status, financial resources and organisational capabilities during the due diligence process.

Principle 8: The responsible entity should formally document its relationship with the custodian and the agreement should seek to include provisions about the scope of the custodian's responsibility and liability.

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Principle 9: Custody arrangements should be monitored on an ongoing basis for compliance with the terms of the custody agreement.

IOSCO welcomes the comments on this consultation report in order to be able to better inform the formulation of a final report with adopted principles.

**Comments should be submitted on or before Wednesday 10 December 2014.**

## NOTES TO THE EDITORS

1. IOSCO is the leading international policy forum for securities regulators and is recognized as the global standard setter for securities regulation. The organization's membership regulates more than 95% of the world's securities markets in more than 115 jurisdictions and it continues to expand.
2. The IOSCO Board is the governing and standard-setting body of the International Organization of Securities Commissions (IOSCO). The Board is made up of 34 securities regulators. Mr Greg Medcraft, chairman of the Australian Securities and Investments Commission, is the chair of the IOSCO Board. The members of the IOSCO Board are the securities regulatory authorities of Australia, Belgium, Brazil, China, Egypt, France, Germany, Greece, Hong Kong, India, Italy, Japan, Kenya, Korea, Malaysia, Mexico, the Netherlands, Nigeria, Ontario, Pakistan, Peru, Quebec, , Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Thailand, Trinidad and Tobago, Turkey, United Kingdom and the United States.
3. The Growth and Emerging Markets Committee is the largest Committee within IOSCO, representing 75 per cent of the IOSCO membership. Mr. Ranjit Ajit Singh, Chairman, Securities Commission, Malaysia, and Vice Chair of the IOSCO Board, is the Chair of the GEM. The Committee endeavors to promote the development and greater efficiency of emerging securities and futures markets by establishing principles and minimum standards, providing training programs and technical assistance for members and facilitating the exchange of information and transfer of technology and expertise.
4. IOSCO aims through its permanent structures:
  - to cooperate in developing, implementing and promoting adherence to internationally recognized and consistent standards of regulation, oversight and enforcement in order to protect investors, maintain fair, efficient and transparent markets, and seek to address systemic risks;

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- to enhance investor protection and promote investor confidence in the integrity of securities markets, through strengthened information exchange and cooperation in enforcement against misconduct and in supervision of markets and market intermediaries; and
- to exchange information at both global and regional levels on their respective experiences in order to assist the development of markets, strengthen market infrastructure and implement appropriate regulation.

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