国际证监会组织（IOSCO）《基金产品反洗钱指引》

国际证监会组织（International Organization of Securities Commissions，以下简称 IOSCO）成立于 1983 年（前身是成立于 1974 年的美洲证监会协会），总部位于西班牙马德里。IOSCO 是由各国各地区证券期货监管机构组成的专业组织，是主要的金融监管国际标准制定机构之一。截至 2019 年 12 月，共有 228 个会员，包括 129 个正式会员（ordinary member），32 个联系会员（associate member）和 67 个附属会员（affiliate member）。

中国证监会是 IOSCO 的正式会员。上海证券交易所、深圳证券交易所、中国金融期货交易所、中国证券登记结算有限责任公司、中国证券投资者保护基金有限责任公司、中国证券业协会、中国证券投资基金业协会是 IOSCO 的附属会员。

《基金产品反洗钱指引》（FINAL REPORT: ANTI-MONEY LAUNDERING GUIDANCE FOR COLLECTIVE INVESTMENT SCHEMES）于 2005 年 10 月发布。

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FINAL REPORT

ANTI-MONEY LAUNDERING GUIDANCE FOR COLLECTIVE INVESTMENT SCHEMES

TECHNICAL COMMITTEE
OF THE
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS

OCTOBER 2005

TABLE OF CONTENTS

I. BACKGROUND

IOSCO has adopted the principle that regulators should require securities (including derivatives) market intermediaries to have in place policies and procedures designed to minimize the risk of the use of an intermediary's business as a vehicle for money laundering.[1] IOSCO subsequently endorsed principles to address the application of the client due diligence process in the securities industry (CIBO),[2] and the Financial Action Task Force on Money Laundering (FATF) has issued 40 Recommendations on combating money laundering and the financing of terrorism.[3] Additional clarification has been sought by the IOSCO Technical Committee on how to apply these global standards to the operation of collective investment schemes (CIS) in particular. This guidance is required to address:

- The difference between "open-end" CIS and "exchange-listed" CIS;
- The distinctions between a CIS, its advisors and managers, and the intermediaries involved in distributing the CIS, with regard to their respective roles in verifying identities of unit-holders in a CIS;
- Potential low-risk situations; and
- The outsourcing to other entities, and reliance on other financial institutions (including affiliates), with regard to the performance of certain anti-money laundering procedures.

This guidance is intended to be consistent with, and to build upon, the IOSCO CIBO Principles and the FATF 40 Recommendations. It is not intended to supersede or conflict in any way with the IOSCO CIBO Principles or the FATF 40 Recommendations.

During its 31 January and 1 February 2005 meeting, the Technical Committee approved the public release for consultation of this report (Consultation Report) prepared by its Standing Committee on Investment Management (SC5). This Consultation Report has been revised and finalized after consideration of all the comments received from the international financial community as a result of the public consultation process (see Appendix).

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[1] IOSCO, *Objectives and Principles of Securities Regulation,* Principle 8.5, Money Laundering (February 2002).

[2] IOSCO, *Principles on Client Identification and Beneficial Ownership for the Securities Industry* at 2 (May 2004), http://www.iosco.org/library/index.cfm?whereami=pubdocs.

[3] Financial Action Task Force on Money Laundering, The Forty Recommendations (June 20, 2003), http://www1.oecd.org/fatf.

II. CIS INDUSTRY

A. Open-end CIS

Around the world, CIS come in many different forms. The predominant form of CIS in terms of both the number of investors and assets under management is what is known as an "open-end" CIS.[4] Open-end CIS publicly offer and redeem their shares or units to investors without the shares or units being listed and traded on a securities exchange.[5] Open-end CIS sell and redeem their shares or units in different ways – in many transactions directly from the CIS to investors, where the open-end CIS has direct dealings with the investor. In these instances, the CIS will establish the investor's account, process purchase and redemption requests, and send out monthly account statements, annual reports, and proxy voting materials for the investor. In most instances, however, the CIS shares or units are sold and redeemed through affiliated brokers or through third-party broker/dealers, investment advisors or other intermediaries.

B. Exchange-listed CIS

The other major form of CIS is known as an "exchange-listed" CIS. Exchange-listed CIS publicly offer their shares or units to the investing public primarily through trading on a securities exchange. Exchange-listed CIS, while frequently much smaller than open-end CIS, in the aggregate have significant assets under management and are growing rapidly.[6] The exchange-listed CIS generally do not

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[4] As of May 2005, there was approximately $8.1 trillion invested in approximately 8,000 U.S. open-end CIS which were held by over 95 million investors. *See* Investment Company Institute website, *ICI Statistics & Research,* http://www.ici.org/stats/index.html. As of December 31, 2003, there was over $600 billion in net assets invested in approximately 3,250 U.S. commodity pools. CFTC Backgrounder, *The CPO and Commodity Pool Industry* (March 2005), http://www.cftc.gov/files/opa/opactacpo.pdf. As of March 30, 2004, there was approximately 3.9 trillion euro invested in 41,000 EU UCITs CIS and 1 trillion euro invested in Australian (447), Japanese (306) and Canadian (290) CIS. *See* European Federation of Funds and Investment Companies (FEFSI), *International Statistical Release* (August 24, 2004), http://www.fefsi.org/unrestricted_area/Statistics/currstat/currstats.htm.

[5] In some jurisdictions, the CIS itself must be registered with the appropriate regulator, separate from the registration of the underlying securities that the CIS offers to investors.

[6] As of March 2005, there was approximately $490 billion invested in U.S. "exchange-listed" CIS. This breaks out into 625 closed end investment companies with approximately $260 billion invested, and 162 exchange traded funds (ETFs) with approximately $230 billion invested. See Investment Company Institute website, *ICI Statistics & Research,* http://www.ici.org/stats/index.html. ETFs in the United States are registered investment companies organized as open-end CIS or unit investment trusts (UITs). Unlike typical CIS, these ETFs sell or redeem their shares at net asset value only in large blocks (*e.g.* 50,000 shares) called creation units. In addition, national securities exchanges list ETF shares for trading which allows investors to buy and sell ETF shares at market prices throughout the day. Therefore, ETFs in the United States possess characteristics of traditional open-end CIS and UITs, which issue redeemable shares, and closed-end CIS, which generally issue shares that are traded at negotiated prices on a national exchange and are not redeemable. As of September 2004, there was approximately 1.1 trillion euro invested in EU "non- UCITs" CIS. Some of these CIS are "exchange-listed" CIS. *See* FEFSI, *Quarterly Statistical Release* (September 2004), http://www.fefsi.org/unrestricted_area/Statistics/currstat/currstats.htm.

sell or redeem their shares or units directly with investors. Rather, exchange-listed CIS list the company's shares on an exchange, register their securities with the appropriate regulator, and then engage in an initial public offering to investors through an underwriting syndicate of investment banks. After the initial public offering is completed, investors purchase or sell exchange-listed CIS shares or units through their brokers who execute these transactions on the securities exchange – not with the CIS itself.

There are fundamental differences between open-end CIS and exchange-listed CIS. Exchange-listed CIS do not operate in the same manner as open-end CIS. Exchange-listed CIS do not open accounts for investors, while open-end CIS often do. The shares or units of the exchange-listed CIS are not sold or redeemed directly with investors, but are issued in large blocks and distributed through broker/dealers and other market intermediaries to individual and corporate investors. Exchange-listed CIS do not have the same opportunity to engage in investor identification and verification prior to accepting an investment or permitting a redemption of shares or units, while open-end CIS do.[7] In this regard, exchange-listed CIS are just like any other public company that lists its shares on an exchange, and public companies – other than financial institutions – do not have specific anti-money laundering responsibilities. For these material reasons, the following guidance applies only to open-end CIS.[8]

C. Open-end CIS listed on exchanges

[7] To the extent an exchange-listed CIS makes a separate or related private placement of its securities, the CIBO Principles should be followed.

[8] In the United States, the anti-money laundering program rule and the customer identification program rule apply only to open-end CIS, *i.e.* mutual funds, 31 C.F.R. §§ 103.130(a) and 103.131(a)(5). Other jurisdictions, however, do impose certain anti-money laundering obligations on closed-end CIS, including exchange-listed CIS. In these circumstances, investment banks, broker/dealers or other market intermediaries also have anti-money laundering responsibilities with respect to the investors for whom they open accounts, including transactions in shares or units of exchange-listed CIS, and these intermediaries already are performing anti-money laundering functions for investors in exchange-listed and traded securities. Accordingly, in those jurisdictions that impose anti-money laundering obligations on exchange-listed CIS, the exchange-listed CIS may rely on such market intermediaries, consistent with CIBO Principle 5 and FATF Recommendation 9, as discussed more fully in section V(B) below.

In the European Union (EU), the anti-money laundering and customer identification rules apply to all types of CIS. *See also, Council Directive 2001/97/EC,* Article 3.9, cf. footnote 12 (December 4, 2001), amending EU, *Council Directive 91/308/EEC* (June 10, 1991), http://www.fee.be/european/directives.htm ("The institutions and persons subject to this directive shall not be subject to the identification requirements provided for in this article where the customer is a credit or financial institution covered by this directive or a credit or financial institution situated in a third country which imposes, in the opinion of the relevant member states, equivalent requirements to those laid down by this directive"). The 1991 EU Council Directive concentrated on combating the laundering of drug proceeds through the traditional financial sector. It was extended in 2001 to cover the proceeds of a much wider range of criminal activities and a number of non-financial activities and professions. For further information, the following website can be consulted : http://europa.eu.int/comm/internal_market/en/company/financialcrime/index.htm

An open-end CIS/exchange-listed CIS hybrid situation exists in some jurisdictions. Some jurisdictions permit an open-end CIS to also list its shares or units on an exchange for trading.[9] The primary reasons for these hybrid open-end CIS are to meet institutional investor requirements which are sometimes limited to investing in exchange listed shares and to permit investors to redeem their shares or units between the monthly and/or quarterly redemption periods. These hybrid open-end CIS permit investors to purchase or sell shares or units either: i) through buying or selling the shares or units on the exchange; or ii) directly with the CIS. The price of the shares or units of the hybrid open-end CIS are set by open market purchases and sales rather than by the net asset value (NAV) as determined by the CIS. These hybrid open-end CIS share attributes of both major forms of CIS mentioned above. These hybrid open-end CIS will be treated as open-end CIS to the extent transactions in their shares or units – either purchases or redemptions – occur off an exchange.

D. Legal, management, and distribution structures of open-end CIS

The legal structure of CIS varies considerably around the world. A CIS may be organized as a: i) company, with a board of directors who have overall responsibility for its operation, while management is delegated to a separate entity, unless the CIS has its own executive officers; ii) a limited partnership or other legal vehicle, with the general partner generally responsible for management; or iii) a trust or other contractual arrangement, with a trustee or custodian/depository with overall responsibility for its operation, except to the extent that the instrument creating the trust assigns responsibility for management to another entity. These legal structures for CIS management, however, may obscure some practical aspects of CIS organization. CIS generally are organized by professional financial intermediaries, *e.g.* banks, broker/dealers, insurance companies and investment advisors, which often place their employees in formal management positions within the CIS. The CIS typically then retains these financial intermediaries to provide investment advice and to conduct the day-to-day operations of the CIS.[10] Consequently, compliance with legal requirements relating to the operations of a CIS actually may be carried out in fact by these investment advisors, in line with contractual agreements or by regulation, who may also implement appropriate anti-money laundering procedures for the CIS.[11]

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[9] These hybrid open-end CIS exist in Europe, Australia, and the United States. *See* discussion of U.S. ETFs in fn. 6 above.

[10] Most jurisdictions require that the assets of a CIS be segregated from the assets of the professional financial intermediary that organizes the CIS and be held by an independent custodian or depository.

[11] In certain jurisdictions, the prevalent business model has management functions not at the CIS level itself, but higher up in the CIS complex. In the UK, for example, open-end CIS are required to be operated by authorised fund managers (AFMs) that are specifically authorised and regulated for that purpose. The AFM is responsible for ensuring that the operations of all CIS it manages are compliant with applicable anti-money laundering requirements. Further, the AFM usually deals as principal in the purchase and sale of CIS units with investors, with no involvement by the CIS. For the jurisdictions recognizing this business and regulatory model, the required procedures set forth in this guidance for CIS should be read as being required of the AFM.

Distribution channels for the sale and redemption of CIS interests or units also vary considerably. As noted above, CIS interests or units may be marketed directly by the CIS to investors or may be marketed indirectly through banks, broker/dealers, insurance companies or other financial intermediaries. Frequently, CIS shares or units are marketed by financial intermediaries that are affiliates in a financial group (proprietary funds) or by independent third parties. Lastly, the manner in which CIS purchase and redemption orders are processed and settled similarly varies. The CIS may process orders directly from its investors, or orders may be processed through a registrar, transfer agent, clearing house or some other third party. When CIS interests or units are marketed indirectly by other financial intermediaries, and when orders are processed through a registrar or transfer agent, the CIS may have no direct contact with the investor, but only with the financial intermediary, registrar or transfer agent.

E. CIS complexes and financial holding companies

The CIS industry has grown significantly in the last 30 years. Today, the CIS industry has tens of trillions of dollars/euros in assets under management in approximately 50,000 CIS with millions of investors. The CIS industry remains, however, quite diverse in terms of structure. The industry ranges from small CIS companies which organize and run 2-3 CIS holding $30 million in assets with under 10 employees, to large, multinational financial services holding companies with over 100 CIS holding billions in assets with hundreds of employees. Regardless of the size of the CIS complex, they normally have one or more investment adviser subsidiaries that provide investment advice to the CIS as well as marketing and distribution arrangements with unaffiliated financial intermediaries to distribute the shares or units of the CIS. In the larger CIS complexes, and in the large financial services groups with CIS divisions, it is common for there to be an affiliated broker/dealer.

Most CIS complexes establish policies and procedures – account opening documents, minimum investment size, redemption procedures, check-writing policies, etc. – that apply to all CIS in the complex. As discussed below, CIS complexes can adopt anti-money laundering programs that apply across all the CIS they sponsor, operate or advise (subject to any differences in anti-money laundering legislation[12] in the jurisdictions in which the complex operates).[13] Further, if a CIS complex is part of a larger financial services group, the CIS complex can choose to adopt the anti-money laundering program of the financial services group, as long as it meets the requirements set out below.

III. ANTI-MONEY LAUNDERING PROGRAMS

Each open-end CIS should develop and implement a written program reasonably designed to prevent it from being used for money laundering and terrorist

[12] Anti-money laundering legislation includes laws, directives, and regulations. Anti-money laundering legislation that effectively implements the FATF Recommendations would be considered "appropriate anti-money laundering legislation" as that term is used herein.

[13] For the UK, references to CIS in this guidance should be interpreted as referring to the AFM, with respect to all CIS that it manages.

financing.[14] This program should be approved in writing by the directors of a CIS company, authorized fund manager, general partner of a limited partnership, trustee of a unit trust or trustee/manager. It should include: i) the establishment of policies, procedures, and internal controls; ii) an ongoing employee training program; iii) an independent audit function to test the program for compliance; and iv) appropriate compliance management arrangements.[15] The type and extent of measures to be taken for each of these requirements should be tailored with respect to the risk or vulnerability to money laundering and terrorist financing and the size, location, and activities of the business.

A. Policies and Procedures

Written policies and procedures should set forth clearly the details of the program, including the responsibilities of the individuals and departments involved. Policies, procedures, and internal controls should be reasonably designed to detect activities indicative of money laundering and to assure compliance with anti-money laundering legislation. The open-end CIS should monitor the operation of its program and assess its effectiveness. Customer identification and verification procedures consistent with CIBO Principles, as well as procedures regarding the detection and reporting of suspicious activity, should be included as a part of the anti-money laundering program.

B. Employee Training

The training program for employees of the open-end CIS (and of its sub-contractors) should provide both a general awareness of overall anti-money laundering legislation and money laundering issues, as well as more job-specific guidance

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[14] CIS should adopt effective anti-money laundering programs for a number of compelling reasons, including (but not limited to) ensuring compliance with applicable anti-money laundering legislation, satisfying the potential requirements of other institutions subject to anti-money laundering requirements regarding the soundness of their customer due diligence procedures, and minimizing exposure to reputational and legal risks (*e.g.* risks associated with accepting an investment from a prohibited investor). *See also* The Joint Forum, *Initiatives by the BCBS, IAIA, and IOSCO to Combat Money Laundering and the Financing of Terrorism* at 9 (June 2003), http://www.iosco.org/library/index.cfm?CurrentPage=2&section=pubdocs&year=2003&rows=10 (appropriate internal controls include the adoption of a written internal policy regarding the prevention of the use of the firm for money laundering and the establishment of management controls to prevent the involvement of the firm in money laundering schemes); EU *Council Directive 2001/97/EC,* Article 11 (Member States shall ensure that financial institutions "establish adequate procedures of internal control and communication in order to forestall and prevent operations related to money laundering" and "take appropriate measures so that their . . . relevant employees [participate] in special training programmes to help them recognise operations which may be related to money laundering as well as to instruct them as to how to proceed in such cases"); in the United States, 31 U.S.C. §§ 5312(a)(2)(I) and 5318(h)(1) (statutory provisions requiring investment companies to establish anti-money laundering programs).

[15] The guidance regarding these four elements set forth in text is generally consistent with the U.S. anti-money laundering program rule applicable to open-end CIS, *i.e.* mutual funds ("US Mutual Fund AML Program Rule"), 31 C.F.R. § 103.130. *See* 67 Fed. Reg. 21117 at 21121 (April 29, 2002).

regarding particular employees' roles and functions in the anti-money laundering program. For employees whose duties bring them in contact with anti-money laundering legislation or possible money laundering activity, training should occur when the employee assumes those duties, with subsequent periodic updates and refreshers.

C. Independent Audit

The open-end CIS should conduct periodic independent testing of its program to assess compliance with and the effectiveness of the program, and to assure that the program is functioning as designed. Such testing may be accomplished either by a qualified outside party, or by employees of the open-end CIS or its sub-contractors so long as those same employees or sub-contractors are not involved in the operation or oversight of the program. A written assessment or report should be a part of the review, and any recommendations should be promptly implemented or submitted to the directors of a fund company, general partner of a limited partnership, or trustee of a unit trust for consideration.

D. Compliance Management

The open-end CIS should charge an individual (or group of individuals) with the responsibility for overseeing the anti-money laundering program. The person (or group of persons) should be knowledgeable regarding anti-money laundering legislation and money laundering issues and risks, and empowered with full responsibility and authority to develop and enforce appropriate policies and procedures throughout each CIS covered by the program. While performance of the compliance function can be sub-contracted, the person responsible for the supervision of the overall program should be an officer of the open-end CIS.

E. CIS Complexes and Anti-Money Laundering Programs

As discussed above, an open-end CIS often is part of a CIS complex and/or a large financial services group. CIS complexes may choose to establish an anti-money laundering program that applies to all CIS that they sponsor, operate or advise. Further, large financial services groups that have banks, broker/dealers or insurance companies as their core business may already have in place an anti-money laundering program that applies to all companies within the group. A CIS complex or division within a financial services group may utilize the group's anti-money laundering program, so long as every CIS is covered by an anti-money laundering program containing the four elements set forth above. Each CIS – through its board of directors, general partner or trustee - should have clear written documentation indicating that it has adopted an anti-money laundering program even if it is the CIS complex's program or the financial services group's program. Moreover, when it is permissible for a CIS to contractually delegate the implementation and operation of its anti-money laundering program, the CIS remains responsible for its program and therefore should obtain the written consent of the delegate ensuring the availability of information and records relating to the program and permitting regulatory inspections of the delegate for purposes of the program.[16]

[16] This is generally in line with the US Mutual Fund AML Program Rule. *See* 31 C.F.R. § 103.130, 67 Fed. Reg. 21117 at 21119 (April 29, 2002).

IV. CLIENT IDENTIFICATION AND VERIFICATION PROCEDURES

An open-end CIS may apply client verification procedures on a risk-sensitive basis. The open-end CIS should establish the bases for such risk determinations and should be able to justify its assessments to its regulator.[17]

A. Responsibility for client[18] identification and verification

The open-end CIS has a responsibility for verifying the identity of the investor, and the beneficial owner of the investor when it is apparent that an account is beneficially owned by a party other than the investor, and performing more general "know your customer" procedures following a risk-based approach.[19] As noted above, IOSCO articulated in May 2004 the CIBO Principles for client identification and beneficial ownership to address the Client Due Diligence (CDD) process for the securities industry – customer identification and verification, know your customer, and the keeping of related data.[20] The general "know your customer" procedures are described in detail in CIBO Principle 3, including obtaining information about the client's circumstances, such as financial background and business objectives, in order to develop a business and risk profile and to ensure that transactions being conducted are consistent with that profile (including, where necessary, the client's source of funds.) The directors of a CIS, authorized CIS manager, general partner of a limited partnership, or trustee of a unit trust should adopt a written policy describing in general terms the process that the open-end CIS will follow.[21]

It is not unusual for an open-end CIS to have no employees. The CIS - through its board of directors, general partner or trustee – normally will contract out most of the management functions of the CIS. It is expected that most open-end CIS - through their board of directors, general partner or trustee – will contract out the anti-money laundering function to an investment advisor or other service provider. *See* discussion of sub-contracting in Section V(A) below.

B. Verifying investor identity

Measures to identify and verify the identity of the investor, and the beneficial owner[22] of the investor when it is apparent that an account is beneficially owned by a party other than the investor, to the extent reasonable and practicable, may be

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[17] *See* CIBO Principles at 3 and 4.

[18] A prospective investor that wants to open a new account by purchasing shares or units.

[19] In some jurisdictions, applicable law will allocate this responsibility explicitly to the investment manager of the open-end CIS.

[20] *See* fn. 2 above, at 2.

[21] *See* fn. 19 above.

[22] CIBO Principle 2 defines a beneficial owner as "the natural person or persons who ultimately own, control [or influence] a client and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement." *See* CIBO Principles at 7 n.3; *see also* FATF 40 Recommendations at 12.

determined on a risk-sensitive basis depending on the type of investor, business relationship or transaction, (To address ICI/US) types of identifying information available, and the types of accounts opened by the CIS.[23] This applies to units sold or redeemed by the open-end CIS or through any market intermediary. The verification should provide a reasonable basis for the open-end CIS to believe that the true identity of the investor is adequately known. Where the risk that an open-end CIS will not know the true identity of an investor is higher (*e.g.*, accounts for politically exposed persons or entities with complex structures; accounts for nationals, residents, or entities from countries considered to be non-cooperative or inadequately regulated, etc.), an open-end CIS should apply more stringent client identification measures.[24] Investor identification and verification processes should be properly documented in each case, and such records should be kept for at least five years after the business relationship has ended.[25]

An open-end CIS may rely on documents as well as on non-documentary methods, or a combination of both, in order to identify investors and verify their identity.[26]

With respect to natural persons, reliable verification methods could include the following:

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[23] This is in line with FATF Recommendation 5 and CIBO Principle 1. The United States also has adopted a risk-based approach for verifying the identity of each customer to the extent reasonable and practicable in its customer identification program rule for mutual funds ("US Mutual Fund CIP Rule"), 31 C.F.R. § 103.131(b)(2). In addition, in the EU this is in line with *Council Directive 2001/97/EC* as article 3.11 addresses the situation where an investor is not physically present for identification purposes ("non-face to face" operations). This also is in line with the provisions of articles 6,7 2°1, 10, 10 b and 11 of the European Commission proposition aimed at updating and improving the EU money laundering Council Directive (30th June 2004). For further information, the following website can be consulted: http://europa.eu.int/comm/internal_market/en/company/financialcrime/index.htm

[24] *See* CIBO Principle 1. *See also* fn. 35 (concerning countries considered to be non-cooperative in anti-money laundering efforts) and fn. 26 (concerning blocked person lists and other sanctions), below. In the United States, rules that would require special due diligence for correspondent accounts for foreign financial institutions and private banking accounts for foreign persons have been proposed. *See Due Diligence Anti-Money Laundering Programs for Certain Foreign Accounts,* 67 Fed. Reg. 37736 (May 30, 2002).

[25] This is in line with CIBO Principles 1 and 4, EU Council Directive Articles 3 and 4, and generally in line with the US Mutual Fund CIP Rule, 31 C.F.R. §§ 103.131(b)(2) and 103.131(b)(3).

[26] An open-end CIS also should check investor names (and names of beneficial owners, if known) against blocked person lists maintained by the EU and the Office of Foreign Asset Control (OFAC) in the United States. In addition, some jurisdictions have imposed sanctions prohibiting financial institutions from maintaining accounts for or on behalf of certain foreign financial institutions. *See e.g.* United States imposition of special measures against Burma, and two Burmese financial institutions, designated as primary money laundering concerns, 69 Fed. Reg. 19093 and 19098 (April 12, 2004). In the United States, these are not required by the US Mutual Fund CIP Rule itself, but rather are separate legal requirements that many mutual funds fulfill in conjunction with performing their customer identification and verification procedures.

- An unexpired government-issued identification evidencing nationality or residence and bearing a photograph or other similar safeguards, such as a driver's license or passport;

- Independently verifying the investor's identity through the comparison of information provided by the investor with information from a consumer reporting agency, public database, or other source;

- Checking references with other financial institutions;

- Obtaining account statements; and

- Face-to-face meetings; interviews; statements; home visits; references from previous business relationships.

With respect to non-natural persons, reliable verification methods could include the following:

- Obtaining proof of incorporation or similar evidence of the legal status of the legal person or arrangement, as well as information concerning the investor's name, the names of trustees, legal form, address, directors, and documents evidencing the power of a person to bind the legal person or arrangement;

- Forming an understanding of the ownership and control structure; and

- Identifying the natural persons with a controlling interest and identifying the natural persons who comprise the management of the legal person or arrangement.[27]

With respect to another CIS, and/or a fund of funds, the open-end CIS need not verify the identity of the underlying beneficial owners of an investing CIS or fund of funds that:

- Is regulated or registered;

- Is based in a jurisdiction that the open-end CIS is satisfied has appropriate anti-money laundering legislation;

- Has in place an anti-money laundering program; and

- Is supervised for, and has measures in place to comply with, CDD requirements.[28]

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[27] This is consistent with CIBO Principle 1 and is similar to the US Mutual Fund CIP Rule, 31 C.F.R. § 103.131(b)(2)(ii). *See* 68 Fed. Reg. 25131 at 25148 (May 9, 2003).

[28] This is in line with CIBO Principle 2, which provides that where "the client or the owner of the controlling interest is a . . . regulated or registered investment vehicle, such as a collective investment scheme, mutual fund or commodity pool, that is subject to adequate regulatory disclosure requirements, it is not necessary to seek to identify and verify the identity of any shareholder, participant or unit holder of that entity." This also is in line with the general

C. Timing of identification and verification

The open-end CIS should identify the investor before or during the opening of an account or accepting an investment. The open-end CIS should verify identity as soon as possible, before or after the opening of an account or accepting an investment, for purposes of assuring that the risks are effectively managed. In this regard, it is essential not to interrupt the normal conduct of business.[29]

Where the investor's identity has yet to be verified, the open-end CIS will need to adopt risk management procedures with respect to the conditions under which an investor may utilize the account or investment prior to verification. These procedures should include a set of measures such as a limitation of the number, types and/or amount of transactions that can be performed, and the monitoring of large transactions being carried out of expected norms for that type of relationship. Where it is not possible after reasonable efforts to verify the identity of an investor, the open-end CIS should consider halting transactions or terminating its relationship[30] and also should consider making a suspicious activity report to the appropriate authorities in relation to the investor.[31] It may be appropriate for the open-end CIS to consult with its regulator and appropriate law enforcement agencies prior to halting transactions in a particular account or terminating its relationship with any investor.

D. Potential low risk situations

As noted above, the identity verification procedures of an open-end CIS may be risk-based depending on the type of investor, business relationship, or transaction. Where there are low risks, it may be appropriate for an open-end CIS to apply simplified verification procedures.[32] These procedures, of course, must still be

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provision of article 7 of the European Commission proposition regarding the update and improvement of the EU money laundering Directive (30th June 2004). For further information, the following website can be consulted: http://europa.eu.int/comm/internal_market/en/company/financialcrime/index.htm.

[29] *See* CIBO Principle 1. This also is in line with the general provision of article 7 of the European Commission proposition regarding the update and improvement of the EU money laundering Directive (30th June 2004). For further information, the following website can be consulted: http://europa.eu.int/comm/internal_market/en/company/financialcrime/index.htm.

[30] It may be necessary to make this clear within offering documents and on contract notes, etc.

[31] This is in line with CIBO Principles 1 and 6, as well as the US Mutual Fund CIP Rule, 31 C.F.R. §§ 103.131(b)(2)(ii)-(iii).

[32] *See* CIBO Principle 1 (". . . where information on the identity of the client is publicly available or where adequate checks and controls exist elsewhere in national systems, it is reasonable to permit [entities] to apply simplified or reduced measures when identifying and verifying the identity of the client"); *see also* FATF Recommendation 5 ("In certain circumstances, where there are low risks, countries may decide that financial institutions can apply reduced or simplified measures"). The US Mutual Fund CIP Rule requires risk-based procedures for verifying the identity of each customer, though it does not use the term "simplified verification procedures." 31 C.F.R. § 103.131(b)(2). *See* 68 Fed. Reg. 25131 at 25135 (May 9, 2003) (a mutual fund's customer identification program "must include risk-

sufficient for the CIS to achieve the goal of verification – establishing a reasonable belief that it knows the true identity of its investor.

1. Bunched orders through omnibus accounts from market intermediaries

One example of a potentially low-risk situation is where shares or units in an open-end CIS are held by a market intermediary. As noted above, it is common for open-end CIS to market their shares and units through broker/dealers, banks and other market intermediaries,[33] and for these market intermediaries to submit "bunched orders" through an omnibus account at the end of the trading day to an open-end CIS. These bunched orders are purchase and redemption orders representing all of the market intermediary's customer orders for a particular trading day, which in some instances can be for tens of millions of dollars and represent hundreds of customer transactions. (To address IMA/UK)In these situations, the open-end CIS maintains a business relationship with the market intermediary. The open-end CIS may have no/limited information regarding the individual customers for which the market intermediary is submitting the orders. When the open-end CIS has such information, it is used primarily by the market intermediary to facilitate both the allocation of the purchases and redemptions to customer accounts and the accounting and book keeping for those accounts.

Certain jurisdictions consider it low risk when a financial institution (*e.g.* a broker/dealer or bank), acting as an intermediary, submits bunched orders through an omnibus account to an open-end CIS where the financial institution:[34] i) is based in a jurisdiction that the CIS is satisfied has appropriate anti-money laundering legislation;[35] ii) has in place an anti-money laundering program; and iii) is

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based procedures for verifying the identity of each customer to the extent reasonable and practicable. . . . The procedures must be based on the mutual fund's assessment of the relevant risks . . .").

[33] In some jurisdictions, an open-end CIS is required by law to market its shares and units through banks and other market intermediaries.

[34] The business of safekeeping and administration of liquid securities, and otherwise administering funds on behalf of other persons, are considered "financial institutions" for these purposes.

[35] FATF has published, and periodically updates, a list of non-cooperative countries and territories (NCCT List) that have critical deficiencies in their anti-money laundering systems or have demonstrated unwillingness to cooperate in anti-money laundering efforts. The NCCT List can be accessed through FATF's website at http://www1.oecd.org/fatf/NCCT_en.htm. Authorities in some jurisdictions also publish guidance and warnings regarding transactions involving foreign jurisdictions that have not implemented anti-money laundering measures according to internationally recognized standards. In the United States, the Financial Crimes Enforcement Network (FinCEN) issues periodic Advisories to financial institutions, which can be accessed through FinCEN's website at http://www.fincen.gov/pub_main.html, and also can designate a country as a primary money laundering concern, *see e.g.* 67 Fed. Reg. 78859 (December 26, 2002) (Nauru). An open-end CIS is not prohibited from doing business with or accepting accounts from investors in a country so identified by FATF or its own jurisdiction, but should exercise increased due diligence in such circumstances. On the other hand, the fact that a particular country or jurisdiction is not included on the NCCT List, or the subject of any such warning or Advisory, does not mean that it is presumed to be low risk.

supervised for compliance, and has measures in place to comply, with those requirements. As financial institutions subject to their own anti-money laundering obligations under their respective jurisdiction's anti-money laundering legislation, these market intermediaries will already have in place an anti-money laundering program similar to the one that an open-end CIS is required to have. In certain jurisdictions and certain circumstances[36], the open-end CIS therefore may apply simplified verification procedures, an example of which might involve only verifying the market intermediary who holds the shares or units on behalf of the investors, and not on the underlying investors themselves.[37] In this situation, the market intermediary submitting the bunched order – not the underlying investors – could be considered the customer of the open-end CIS for these purposes.

2. CIS and fund of funds investing in open-end CIS

It is common for a CIS to invest in other CIS, including open-end CIS. CIS that specialize in investing in other CIS are known as "funds of funds" (FOFs). CIBO Principle 2 recognizes that this presents a low-risk situation when the investor is "a regulated or registered investment vehicle, such as a collective investment scheme, mutual fund or commodity pool . . ." In certain jurisdictions and in certain circumstances, it may be appropriate for an open-end CIS to apply simplified verification procedures to those investors that are themselves regulated or registered CIS: i) based in a jurisdiction that the open-end CIS is satisfied has appropriate anti-money laundering legislation; ii) has in place an anti-money laundering program; and iii) is supervised for, and has measures in place to comply with, CDD requirements. In this situation, the CIS and/or FOF (i.*e.* the investing CIS), not the underlying shareholders, should be considered the client of the open-end CIS for these purposes, and it is not necessary for the open-end CIS "to seek to identify and verify the identity of any shareholder, participant or unit holder of that entity."[38]

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[36] In the United States, where a broker/dealer or other financial intermediary purchases mutual fund shares on behalf of its customers through an omnibus account, the holder of the omnibus account (*i.e.* the intermediary) is considered to be the mutual fund's customer; while the mutual fund must identify and verify the intermediary, it need not verify the identities of the intermediary's customers. *See* 68 FR 25131 at 25135 (May 9, 2003); *see also Guidance from the Staffs of the Department of the Treasury and the U.S. Securities and Exchange Commission, Questions and Answers Regarding the Mutual Fund Customer Identification Program Rule (31 CFR 103.131),* Question 2, (August 11, 2003) (similar treatment for intermediaries that purchase mutual fund shares (To address ICI/US) on behalf of investors that are cleared and settled through an account with the National Securities Clearing Corporation's Fund/SERV system), http://www.sec.gov/divisions/investment/guidance/qamutualfund.htm. Under proposed rules, United States mutual funds would also be required to have special due diligence procedures when the intermediary is a foreign financial institution. *See Special Due Diligence For Certain Foreign Accounts (Interim Final Rule),* 67 Fed. Reg. 48348 (July 23, 2002).

[37] This is in line with CIBO Principle 1a regarding client identification and verification policies for an omnibus account established at a domestic financial institution (although CIBO Principle 1a also provides that an omnibus account for a foreign financial institution may present a potentially higher risk such that enhanced procedures should be applied).

[38] *See* CIBO Principle 2.

3. Investors introduced by group affiliates

For some jurisdictions, another potentially low risk-situation is when a new investor is introduced to the CIS by an affiliated bank or broker/dealer in the same financial services group. As noted above, it is expected that financial services groups will have in place anti-money laundering programs that apply to all financial institutions within the group. If the new investor has already undergone client identification and verification or more general "know your customer" procedures while opening an account with the affiliated bank or broker/dealer, the investor and account could be considered low risk. The CIS should of course confirm the investor's identification information with the affiliated bank or broker/dealer, as well as perform other basic due diligence requirements.[39] In this situation, the new investor introduced by the affiliate – not the affiliated bank or broker/dealer – is the investor of the open-end CIS.

4. Pension plans/superannuation schemes

In many jurisdictions, employer-sponsored pension plans/superannuation schemes offer several open-end CIS as investment options to plan participants. The pension plans/superannuation schemes are usually set up and sponsored by the employer – both government and private sector employers - and the employees are permitted to participate through a payroll deduction program. Typically, the employer selects the investment options – including the open-end CIS options. The employees are permitted to choose how their contributions are allocated among the available investment options – including the open-end CIS. Pension plans/superannuation schemes are viewed as long-term investments with very limited liquidity to the participants and, in most instances, have significant penalties for early withdrawal of funds.

For the reasons stated above, pension plans/superannuation schemes are not well suited to money laundering or terrorist financing purposes. While open-end CIS are financial institutions which are normally subject to CDD requirements, those which are offered as investment options as part of an employer's pension plan/superannuation scheme are not generally subject to CDD requirements.[40] (To address IMA/UK) In this situation, the CIS should conduct due diligence to establish that the employer and the pension plan/superannuation scheme are genuine, but need not treat participants in the plan/scheme as its investors for CDD purposes.

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[39] Under the US Mutual Fund CIP Rule, the CIS remains responsible for identifying and verifying the customer, although it may rely upon its affiliate for this procedure if certain conditions are met. *See* fns. 55 and 56 below.

[40] This is generally in line with the US Mutual Fund CIP Rule, 31 C.F.R. § 103.131(a)(1)(ii)(B). *See* 68 Fed. Reg. 25131 at 25134 (May 9, 2003) (accounts opened for purpose of participating in employee benefit plan established pursuant to the Employee Retirement Income Security Act of 1974 (ERISA) are excluded because "these accounts are less susceptible to use for the financing of terrorism and money laundering because . . . they are funded through payroll deductions . . ."). Australia takes a similar position in that CDD procedures need not be applied to the superannuation scheme or to the underlying investment options where those options are themselves CIS.

5. Insurance products

It is common in many jurisdictions for open-end CIS to be offered as investment options inside of an insurance policy offered and underwritten by an insurance company. For instance, in the United States there are single premium variable life insurance products and single premium variable annuity products. These products permit the policy or contract holder to choose how the premium (which is a single, large lump sum payment) will be allocated among a variety of open-end CIS. Typically, the amount of insurance coverage or periodic annuity payment, as well as the cash value of the policy or contract, is dependent in part on the investment performance of the open-end CIS that are selected. These insurance products offered and underwritten by insurance companies are viewed as being part insurance and part securities, with the insurance agents selling such products normally being licensed as both an insurance agent/broker and a securities broker.[41]

Insurance companies are financial institutions that could be subject to anti-money laundering legislation and are subject to supervision, examination and prudential oversight by a regulator. Where there is an underlying CIS that is a separate entity selling its shares to the insurance company separate account, this situation could be analogous to the omnibus account for the market intermediary discussed in subsection (1) above. The insurance agent selling the insurance policy or annuity contract could identify and verify the identity of the investor/client as part of the policy/contract underwriting process. If the insurance company meets the criteria identified in subsection (1), the open-end CIS could consider the insurance company offering the insurance product as its customer, not the individual or entity that is the policy or contract holder.

6. New investments in open-end CIS in same CIS complex

As noted above, it is common for CIS complexes to offer multiple open-end CIS that engage in different strategies and provide different services to investors. For instance, many large CIS complexes offer short and long-term bond funds, large and small capitalization equity funds, sector or regional funds, as well as internationally-focused funds. In addition, most large CIS complexes offer "money market" CIS with check writing privileges. It is common for an investor to have investments in more than one open-end CIS in a particular CIS complex.

In certain jurisdictions and in certain circumstances, simplified verification procedures could be appropriate where an open-end CIS receives an application from a new investor who is an investor in another open-end CIS within the same CIS complex, assuming this investor has already gone through CDD and anti-money laundering review in connection with opening the initial account with the other open-end CIS in the complex. This situation would be analogous to subsection (3) above involving investors from group affiliates. Of course, the open-end CIS should confirm the new investor identification and verification information, as well as confirm that there have been no other concerns, with the appropriate anti-money

[41] In Australia, a special license is required as authorization to sell these insurance products, which are treated as an independent product in their own right.

laundering compliance staff with respect to the investor's account in the other open-end CIS in the CIS complex.[42]

7. Public companies

Similarly, where the client or the beneficial owner of the controlling interest is a listed company that is subject to adequate regulatory disclosure requirements, or is a subsidiary of such a company, the risk is low and it is not necessary for the open-end CIS to identify and verify any shareholder, participant or unit holder of that company.[43]

8. Low-risk products

Another example exists in some (but not all) jurisdictions where the money laundering risk is considered to be low due to certain product features, *e.g.* where there are no cash withdrawals or initial or future payments to or from third parties, and repayment must be made to an account held in the name of the same investor at a financial institution located in a jurisdiction with an appropriate anti-money laundering regime. Specifically, the product features set out below are essential if the product is to be considered as sufficiently low-risk in this context:

- The risk is not considered to be low where initial or future payments can be received from third parties;
- Cash withdrawals must not be permitted;
- Redemption or withdrawal proceeds must not be permitted to be paid to a third party or to an account with a credit institution that cannot be confirmed as belonging to the client, other than to a personal representative named on the death of the client;
- The following repayment restrictions must apply:
  - Repayments made to another institution must be subject to confirmation from the receiving institution that the money is either to be repaid to the client or reinvested elsewhere in the client's name;
  - Repayments made by cheque must be sent either to the named client's last known address and crossed "account payee only," or to the client's bank with an instruction to credit the named client's account;
  - Repayments via telegraphic transfer should ensure that the stipulated account is in the name of the client; and

[42] Under the US Mutual Fund CIP Rule, "[a]lthough a customer of one mutual fund would not necessarily be considered an existing customer of other funds in the same fund complex, one fund may rely on another fund's performance of any [customer identification or verification] elements . . ." 68 Fed. Reg. 25131 at 25134 n.27 (May 9, 2003).

[43] This is in line with CIBO Principle 2.

- It should not be possible to change the characteristics of products or accounts at a future date to enable payments to be received from, or made to, third parties.[44]

Under the anti-money laundering legislation of some jurisdictions, in the case of low-risk products, confirmation that a payment drawn on an account with a credit institution in a jurisdiction that the CIS is satisfied has anti-money laundering legislation that effectively implements the FATF Recommendations,[45] and which is in the sole or joint name(s) of the client, may satisfy all of the initial requirements on an open-end CIS to verify identity. The need for other due diligence measures is unaffected.

If the CIS has grounds to believe that the identity of the client has not previously been verified by the credit institution on which the payment has been drawn, then this simplified verification method will not apply. If an open-end CIS has any reason to be cautious about the motives behind a particular transaction, or believes that the business is being structured to avoid the normal verification requirements, full measures should be taken as appropriate to verify the identity of the client. And in the event that the CIS should decide, at a later stage, to permit repayment to a third party, it must fully verify the identity of the client and, where appropriate on the basis of the assessment of higher risk, also verify the identity of the recipient of the funds prior to making the repayment.

V. PERFORMANCE OF CLIENT DUE DILIGENCE PROCEDURES BY OTHERS

A. Sub-contracting to others

Whether an open-end CIS may sub-contract its client due diligence (CDD) procedures will depend upon the jurisdiction.[46] When sub-contracting is allowed, a CIS may appoint, for example, another financial institution (*e.g.* an investment advisor) or a service provider such as:

- An administrator;

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[44] Dividends or interest (but not capital withdrawals or drawdown payments) arising from an investment, as well as fees and charges deducted from the investment, may be ignored for purposes of these restrictions.

[45] For example, the United Kingdom and Jersey permit this approach, while the United States does not.

[46] This possibility is provided by the general provision of article 12 of the European Commission proposition regarding the update and improvement of the EU money laundering Directive (30th June 2004). For further information, the following website can be consulted: http://europa.eu.int/comm/internal_market/en/company/financialcrime/index.htm. As noted below, overall responsibility and potential liability to the regulator cannot be delegated.

- A registrar;[47] or

- A distributor. [48]

The functions of each will be determined by contractual agreement specifically allocating duties.[49] Consistent with IOSCO principles on outsourcing,[50] an open-end CIS may sub-contract performance of verification of identity and more general "know your customer" procedures to any service provider. (To address CIBO) Because the sub-contractor stands in a principal-agent relationship with the CIS, the sub-contractor may be regulated or unregulated, affiliated or unaffiliated. But while performance of these functions might be delegated, overall responsibility and potential liability to the regulator cannot, and the CIS must initially determine whether the sub-contractor has adequate expertise and staff to perform these important functions. Thereafter, the CIS must monitor the sub-contractor's performance and assess its effectiveness to assure compliance with the anti-money laundering legislation to which the CIS is subject. The open-end CIS must be assured of having access to records held by a sub-contractor. Specifically, the open-end CIS must ensure that:

- Identity is verified and more general "know your customer" procedures are performed in line with the anti-money laundering legislation to which the CIS is subject;

- Law enforcement and regulatory authorities in the jurisdiction in which the CIS is established have access to evidence of identity and more general "know your customer" materials held overseas by any sub-contractor; and

- Suspicious activities and transactions are reported in the jurisdiction in which the CIS is established.[51]

In practice, performance of verification of identity and more general "know your customer" procedures might be contracted out to one or more sub-contractors. Where one or more sub-contractor is tasked with performance of verification of

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[47] The registrar function covers maintenance of the share register and sending out contract notes.

[48] The distributor function covers settlement of all investments transactions, creating and redeeming units, maintaining asset records, and income collection.

[49] Absent an affirmative contractual undertaking, however, an independent service provider to an open-end CIS (such as an administrator, registrar, distributor, or custodian) does not have an obligation to identify and verify the investors in the CIS.

[50] IOSCO, *Principles on Outsourcing of Financial Services for Market Intermediaries,* a Report of IOSCO SC3 on Market Intermediaries (February 2005), http://www.iosco.org/library/pubdocs/pdf/IOSCOPD187.pdf.

[51] This is in line with CIBO Principle 5. Mutual funds in the United States are encouraged to adopt procedures for voluntarily filing suspicious activity reports and a rule requiring mutual funds to file such reports has been proposed. *See* US Mutual Fund AML Program Rule, 67 Fed. Reg. 21117 at 21120 (April 29, 2002); *see also Amendment to the Bank Secrecy Act Regulations – Requirement that Mutual Funds Report Suspicious Transactions,* 68 Fed. Reg. 2816 (January 21, 2003).

identity and more general "know your customer" procedures, the open-end CIS must ensure that this does not detract from its responsibility to properly address money laundering risk.

B. Reliance upon another financial institution

In certain jurisdictions and in certain circumstances, it is permissible for an open-end CIS to rely on an authorized securities service provider (ASSP) to perform customer identification and verification procedures.[52] The open-end CIS may, when it determines it is reasonable, rely on ASSPs, which are other financial institutions such as intermediaries that introduce clients to the CIS, to verify identity, and perform more general "know your customer" procedures at account opening, regarding an investor. These ASSPs include, for example, broker/dealers, futures firms, introducing brokers and certain investment advisors, securities firms, commodity pool operators, etc.[53]

The criteria the CIS must satisfy in order to rely upon another financial institution is jurisdiction-specific and may include, by way of example, the following:

- Requiring the CIS to immediately obtain the necessary information concerning the CDD process and take adequate steps to satisfy itself that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the ASSP upon request without delay; and

- Requiring the CIS to satisfy itself that the ASSP is a regulated entity that: i) is based in a jurisdiction that the CIS is satisfied has appropriate anti-money laundering legislation; [54] ii) has in place an anti-money laundering program; and iii) is supervised for, and has measures in place to comply with, CDD requirements.

Where an open-end CIS is relying on an ASSP, it should establish that it has satisfied these criteria by, for example, including specific clauses clearly allocating duties in written contracts with ASSPs, and adopting internal controls to review and periodically test the implementation of the anti-money laundering program of an ASSP on which it is relying. All other anti-money laundering requirements and procedures remain applicable to the open-end CIS. In these circumstances, where the reliance is reasonable, the open-end CIS should not be held responsible for a failure of the ASSP to fulfill adequately the client identification and verification responsibility.

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[52] For example, Canada follows a similar approach, in that a mutual fund manager is not required to ascertain the identity of a person giving instructions regarding a mutual fund account if it has reasonable grounds to believe that the identity of the person giving instructions has been checked by a distributor in accordance with anti-money laundering legislation.

[53] *See* CIBO Principles at 2 n.1.

[54] *See* fn. 35 above. This is in line with FATF Recommendation 9.

As discussed above, open-end CIS often are organized and operated by, and marketed indirectly through distribution channels of, affiliated financial institutions within the same financial services group, including ASSPs. In certain jurisdictions and in certain circumstances, a CIS may rely on an affiliated ASSP to perform customer identification and verification functions and more general "know your customer" procedures subject to the same criteria set forth above.[55]

(To address CIBO) While the CIS relying upon the ASSP remains liable for customer identification and verification, this liability will be judged on a reasonableness (as opposed to absolute) standard.[56] If the basis for reliance is reasonable, and other jurisdiction-specific criteria permitting reliance are met, the CIS should not be sanctioned for failure of the relied-upon financial institution to fulfill adequately its responsibilities.[57]

[55] This is generally in line with the US Mutual Fund CIP Rule, 31 C.F.R. § 103.131. *See* 68 Fed. Reg. 25131 at 25141 n.121 (May 9, 2003).

[56] Under the US Mutual Fund CIP Rule, 31 C.F.R. § 103.131(b)(6), reasonableness is treated as one of the criteria for relying upon another financial institution to perform the required anti-money laundering customer identification and verification procedures. *See* 68 Fed. Reg. 25131 at 25148 (May 9, 2003) (the three requirements for reliance under US Mutual Fund CIP Rule are: i) such reliance is reasonable under the circumstances; ii) the other financial institution is required by U.S. anti-money laundering regulation to have an anti-money laundering program and is regulated by a federal regulatory agency; and iii) the other financial institution enters into a contract requiring it to certify annually to the mutual fund that it has implemented its anti-money laundering program and that it (or its agent) will perform the specific requirements of the mutual fund's customer identification program).

[57] This is generally in line with the US Mutual Fund CIP Rule, 31 C.F.R. § 103.131(b)(6), though other jurisdictions may not permit this approach. This is also in line with the general provision of article 15 of the European Commission proposition regarding the update and improvement of the EU money laundering Directive (30th June 2004). For further information, the following website can be consulted: http://europa.eu.int/comm/internal_market/en/company/financialcrime/index.htm.

APPENDIX

Feedback Statement on the Public Comments Received by the Technical Committee on the Consultation Report - Anti-Money Laundering Guidance for CIS

Subsequent to a public consultation process, the IOSCO Technical Committee ("TC") approved and publicly released the final report entitled *Anti-Money Laundering Guidance For Collective Investment Schemes* ("CIS AML Report" or "Report"). The Report sets forth a framework that provides industry-specific guidance to collective investment schemes ("CIS") on the procedures that they should implement to manage their anti-money laundering responsibility/accountability. The Report is intended to be consistent with, and builds upon, the anti-money laundering guidance established by the Financial Action Task Force on Money Laundering's *40 Recommendations* and IOSCO's *Principles on Client Identification and Beneficial Ownership for the Securities Industry* ("CIBO Report").

This feedback statement describes the background to the publication of the final CIS AML Report, discusses the comments received by IOSCO from the international financial community, and identifies changes that have been made as a result of these comments.

I. Background

The TC approved a Standing Committee on Investment Management ("SC5") project specification to prepare a report on the topic of anti-money laundering guidance for CIS. SC5's mandate authorized it to produce CIS-specific guidance consistent with the TC May 2004 Report entitled *Principles on Client Identification and Beneficial Ownership for the Securities Industry* CIBO Report), which had been developed by its Standing Committee on Enforcement and the Exchange of Information ("SC4").[58]

Following this TC decision, an SC5 drafting team prepared a consultation report on how global anti-money laundering standards should be applied to the operation of CIS. During its 31 January and 1 February 2005 meeting, the TC released for public comments the *Consultation Report - Anti-Money Laundering Guidance For Collective Investment Schemes*. SC5 subsequently proceeded to an analysis of the comments received as a result of this consultation process and prepared a draft final report that took into account those comments. During its 2 and 3 October 2005 meeting TC approved the present report.

[58] IOSCO, *Principles on client Identification and Beneficial Ownership for the Securities Industry* (May 2004), http://www.iosco.org/library/index.cfm?whereami=pubdocs.

II. Comments Received and Responsive Changes Made to the Report

Six organizations provided comments on the consultation report. SC5 proceeded to their analysis and closely liaised with SC4, which had a key role in the preparation of the CIBO Report, to ensure as much consistency as possible in that regard.

A Canadian association and a U.S. association both wrote in support of the Report. The above mentioned Canadian commenter provided an overview of the Canadian anti-money laundering ("AML") and counter-terrorist financing ("CFT") regime and how it is applied specifically to the CIS industry. This commenter expressed its belief that Canada's regime "is in line with the global standards set out in the consultation report as it was developed in accordance with the 40 Recommendations set out by the FATF." The U.S. commenter indicated that its AML recommendations for hedge funds and hedge fund managers mirror many of IOSCO's recommendations for CIS and "applaud[ed] the work [IOSCO has] done in the important area of anti-money laundering."

Another U.S. commenter indicated that IOSCO should take into consideration that the customer information available to a CIS regarding its customers may be different than that available to a bank or a securities firm regarding its customers. This commenter also requested that IOSCO recognize that, in the U.S., brokerage firms and other financial institutions can purchase mutual fund shares for their customers through the National Securities Clearing Corporation's Fund/SERV system. SC5 addressed the first concern by including "types of identifying information available" among the appropriate factors for a CIS to consider in establishing its risk sensitive customer verification procedures (see Section IV(B)). The second issue was addressed by noting in footnote 36 that the U.S. guidance regarding its mutual fund customer identification program rule specifically addresses purchases of mutual fund shares through the National Securities Clearing Corporation's Fund/SERV system.

Comments received from French and U.K. bodies were also supportive of the TC initiative but indicated that the CIS AML Report should be consistent with certain jurisdictions' regulatory models that reflect the structure of the industry in which management responsibility is often not at the CIS level but higher-up within the CIS group. In response, SC5 added footnotes that explained the related business structure (footnote 11) and recognized that certain jurisdictions' AML regimes for CIS have assigned responsibility for compliance to reflect management realities (footnote 13). The U.K. commenter also suggested that the Report clarify that, while pension plans/superannuation schemes are generally not subject to customer due diligence requirements, the CIS should have procedures to ensure that the employers and the schemes are genuine. In response, SC5 added clarifying language at the end of the discussion of these plans/schemes in Section IV(D)(4) of the Report.

The drafting of two sections of the CIS AML Report was improved, with the assistance of SC4, to ensure a greater level of consistency with the CIBO Report. In

one case some confusion had arisen between the concepts of outsourcing to a third-party and reliance upon another financial institution. To clarify the rationale behind this distinction, the Report makes clear that outsourcing (but not reliance) creates a principal-agent relationship (Section V(A). In another instance, SC5 clarified that a CIS relying upon another financial institution remains liable for the performance of customer identification and verification (Section V(B).