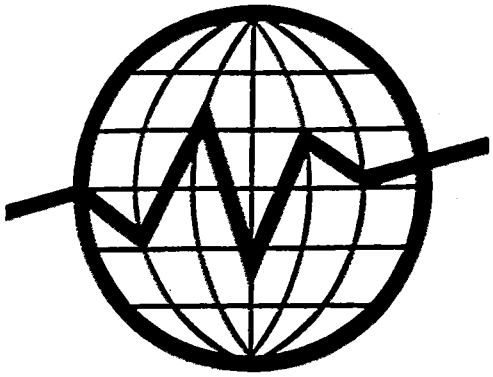
DISCUSSION PAPER ON INTERNATIONAL COOPERATION IN RELATION TO CROSS-BORDER ACTIVITY OF COLLECTIVE INVESTMENT SCHEMES



Technical Committee
of the
International Organization of Securities Commissions

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This discussion paper was prepared by the Technical Committee Working Group on Investment Management ("Working Group No. 5)". It was approved by the Technical Committee during its June 4, 1996 Edinburgh meeting.

BACKGROUND

The Mandate of Working Group Number 5 is to identify:

(a) *equivalence in the regulatory framework for collective investment schemes, for the purpose of eliminating barriers to cross-border distribution; and*

(b) *enhancement of regulatory cooperation in relation to collective investment schemes and their operators.*

The Working Group responded to the first part of its Mandate by developing the Core Principles for the Regulation of Collective Investment Schemes ("the Principles") which provide a guide to regulation for all jurisdictions, and in the longer term, may encourage harmonization of regulation. The Group has also prepared a detailed comparative analysis of the regulatory approaches of members of the Working Group in each jurisdiction.[1]

To address the goals of "eliminating barriers to cross-border distribution" and "enhancement of regulatory cooperation", (as set out in the Mandate), the Group initially sought to develop some guiding principles for mutual recognition and information exchange. It was thought that if cross-border harmonization of the laws governing collective investment schemes ("CIS") could be achieved, the existing differences in regulatory regimes would diminish.

However, because of differences in regulatory regimes and in the objectives of members, for practical reasons the Working Group did not pursue regulatory cooperation through the development of a common set of principles that would bind all jurisdictions. Instead, the Working Group agreed to develop a Discussion Paper to identify the nature and extent of cross-border activity and regulatory cooperation, and consider strategies for their facilitation.

Based on the discussions and opinions put forward in this Paper, it is open to the Technical Committee to determine how the issues relating to cross-border distribution of CIS and regulatory cooperation could be progressed further, and to assist in determining how the Group can best fulfil the second part of its Mandate.

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1 The International Comparative Table, published together with the Principles, at the IOSCO Annual Conference, Paris, July 1995.

GLOSSARY OF TERMS

In the Discussion Paper the following terms are used with the following meanings:

the Working Group	IOSCO Working Group Number 5 on Investment Management.
CIS	An open end Collective Investment Scheme.
the Principles	The IOSCO Principles for the Regulation of Collective Investment Schemes, published at the IOSCO Annual Conference, Paris, July 1995.
operator (of CIS)	The legal entity that has overall responsibility for the management and performance of functions of the CIS.
regulatory authority	Regulatory authority or supervisor of CIS, or a combination of authorities, that derive power from a single statutory or government authority.
home jurisdiction	Jurisdiction where the CIS is based.
foreign jurisdiction	Jurisdiction where the CIS is being marketed or sold, outside the home jurisdiction.
foreign CIS	A CIS which is being marketed or sold outside its home jurisdiction into another jurisdiction.
home regulatory authority	The regulatory authority of the home jurisdiction of the CIS.
foreign regulatory authority	The regulatory authority of the jurisdiction where the operator intends marketing the CIS, outside the home jurisdiction.

1. WHAT IS INTERNATIONAL REGULATORY COOPERATION AND WHY IS IT IMPORTANT?

"Cooperation" in the context of this Paper refers to the ability of regulatory authorities to exchange relevant information about CIS and operators of CIS, which may enhance the ability of funds to market units in foreign jurisdictions, and the ability of fund managers to advise CIS in jurisdictions outside their home jurisdiction, where consistent with applicable law.

International cooperation has become increasingly important for regulatory authorities as cross-border fund sales and the range of products offered by fund managers are growing and have become a significant feature of the investment fund industry. It is also recognized that over the past two decades or so, investors have become increasingly interested in global investing and there has been a considerable growth world wide in CIS as a preferred investment medium.

The ability of fund managers to market CIS across borders, and the ability of regulatory authorities to obtain information about these CIS, may be linked to some extent - in that in certain jurisdictions the more access to information that a regulatory authority has in relation to foreign CIS the more likely it will permit foreign CIS to have access to its market. This in turn may facilitate cross-border CIS sales. However, in some jurisdictions, including the US, the ability of a foreign CIS to market its units is limited by statute, and does not necessarily depend on the amount of information about the CIS that is available to the foreign regulatory authority.

The enhancement of regulatory cooperation therefore has a dual purpose in facilitating cross-border activity in the marketing of CIS globally and in increasing confidence in the effectiveness of regulation.

To date, a uniform and consistent approach to the global regulation of CIS has not been pursued by regulatory authorities. It is therefore important in this climate for regulators to develop strategies to deal with this increased global activity in order to improve their collective oversight of the markets. If regulatory authorities chose to ignore the current trend of increasing cross-border activity, they run the risk of failing to effectively regulate their markets and decreasing investor protection. Alternatively, if regulators accept that globalization is a permanent feature of the managed funds industry, they should consider ways of improving their oversight of the markets. The incentive for pursuing this approach is that a co-coordinated harmonized approach to international regulatory cooperation should promote and strengthen the securities markets globally, increase investor confidence, attract investment, as well as assist the mutual flow of business.

2. SCOPE OF THIS PAPER:

In continuation of its Mandate, the Working Group is now considering the means by which IOSCO can achieve *"enhancement of regulatory cooperation in relation to collective investment schemes and their operators"*.

This Discussion Paper examines current issues in relation to cross-border marketing of CIS and canvasses strategies for enhancing cooperation between jurisdictions. The Paper does not seek to achieve a particular outcome or a set of principles which would be binding on members, but rather to propose possible options and a means of moving towards the ultimate objective of removing impediments to cross-border distribution of CIS.

It is important to note that in terms of regulatory cooperation in relation to CIS, this Paper seeks to address this issue primarily in the context of compliance or routine surveillance of CIS. That is, in the pre-enforcement stage. The Working Group acknowledges that the role and the work carried out by IOSCO Technical Committee Working Group Number 4 is primary in the area of enforcement and cooperation between regulatory authorities for enforcement purposes.

The Paper discusses:

the various types of cross-border activity, in particular direct marketing of foreign CIS and the use of foreign advisers and custodians by domestic CIS;

the extent to which cross-border activity (in its various forms) already occurs;

current issues which are seen as restricting cross-border activity (such as regulatory or legal issues);

the ways in which regulatory authorities currently cooperate in relation to information exchange (Memoranda of Understanding, domestic legislation which facilitates regulatory cooperation, etc); and

options or strategies for improving cooperation to ensure effective supervision of CIS and regulation of global markets.

The Working Group has developed two draft agreements which assist in overcoming the regulatory and legal differences in many jurisdictions and should thereby facilitate cooperation amongst regulatory authorities.

1. A draft Mutual Recognition Agreement which is based on recognition and acceptance of the Principles. The agreement would apply to those CIS that come within the Principles and that meet any additional conditions relating to distribution. The agreement also encompasses mechanisms whereby information relating to CIS and their operators can be readily exchanged amongst regulatory authorities; and

2. A draft Declaration on Cooperation and Supervision of Cross Border Investment Management Activity. This Declaration provides a practical means by which regulatory authorities can cooperate in relation to surveillance activities and exchanging information.

The Working Group is of the view that whilst regulatory authorities are not obliged to enter into either type of agreement, the advantages of making use of them are that they provide regulatory authorities with a proforma agreement and a means for achieving a more consistent approach to the regulation of CIS. In particular:

(a) Regulatory authorities are not obliged to chose one form of agreement or cooperation arrangement over another. They are able to decide what arrangements would best suit their particular needs taking into account their legal and regulatory regimes. They may incorporate parts from both model agreements into one agreement;

(b) The agreements are not prescriptive. They can be used as a starting point (i.e. as a proforma) or as tools for negotiating an agreement which could cover other issues or circumstances. They could also refer to, or incorporate, details of other arrangements (formal or informal) in relation to cooperation which are already in place between regulatory authorities (for example, a Memorandum of Understanding);

(c) The agreements are not intended to be mutually exclusive. That is, if a regulatory authority signs a Mutual Recognition Agreement with another regulator, this will not prelude it from entering into a Declaration on Cooperation with a third regulatory authority, or vice versa; and

(d) Both agreements can be used bilaterally or multilaterally. Although they may be used initially on a bilateral basis, it is hoped that in time, they may form the basis of a multilateral co-operative arrangement, as this will lead to a more uniform or consistent approach in regulation and improve regulators' global oversight of the markets.

In this context, it can be seen that this approach, may overcome some of the differences in regulatory and legal regimes.

The Working Group is therefore of the view that these two model agreements provide a means of moving forward in facilitating regulatory cooperation in relation to CIS and

their operators, and thereby address the second part of the Group's Mandate. In time, it is hoped that this may lead to increased harmonization in regulation.

3. CROSS-BORDER ACTIVITY:

The main ways in which the cross-border marketing of CIS occurs is by direct marketing of foreign funds and the use of foreign advisers, fund managers or custodians by CIS. A number of alternative fund structures have also been developed by fund managers over recent years to overcome some of the more onerous legal, regulatory and other restrictions which have been imposed on operators that wish to market CIS outside their home jurisdictions.

In addition, there are some multilateral agreements which have facilitated cross border activity, such as the UCITS Directive, which applies to certain schemes in countries that are members of the European Union ("EU").[2] Where there is no such multilateral agreement in place, and where there are restrictions that prevent CIS being marketed into foreign jurisdictions, CIS operators may face a number of obstacles.

(1) TYPES OF CROSS-BORDER ACTIVITY:

Current cross-border activities include:

(a) Marketing of Foreign Funds:

The most straightforward way to market CIS in a jurisdiction outside the home jurisdiction is to be able to directly market the CIS to investors in a foreign country. Most jurisdictions, at least, ensure that a foreign regulatory regime will provide the same or similar investor protection mechanisms as those provided by its own regulatory regime. In addition, the marketing or sale of CIS units is generally subject to various regulatory and legal conditions or restrictions. For example, some jurisdictions may require the marketing of foreign CIS to comply with specific listing requirements.

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2 Directive on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities; Council Directive No 85/611/EEC of December 20, 1985, as amended by Council Directive No. 88/220/EEC of March 22, 1988. The Directive covers only open ended CIS which promote the sale of their units to the public in the EU.

(b) Foreign Advisers or Foreign Fund Managers:

There is an increasing demand by the providers of advisory services and their clients for services to be offered and provided across national borders. Cross-border activity may occur where a domestic CIS manager delegates certain of its functions and duties, or seeks assistance from a third party, such as an adviser or fund manager in a foreign jurisdiction. An organization wishing to offer or provide services in another jurisdiction outside the home jurisdiction could do so by way of establishing a subsidiary or by providing services without any physical presence in the foreign jurisdiction. The choice may depend on many factors including the relationship between the home and the foreign regulatory authorities, and legal restrictions on managers in a foreign jurisdiction imposed by a regulatory authority.

Cooperation is important in this context as a home regulatory authority may be able to provide assistance to the foreign regulator in assessing the suitability of the adviser and its arrangements with the domestic CIS manager and the degree of compliance with the law of the home regulatory authority.

(c) Other Types of Cross-Border Activity:

There are also a number of other ways in which cross-border activity can occur, which do not necessarily require substantial regulatory involvement by the home or foreign regulatory authority in terms of additional costs and resources.

Some CIS operate cross borders by establishing structures whereby the CIS can invest a percentage or all of its assets in a foreign CIS, or in a selection of foreign CIS, without actually restructuring itself as a domestic fund in the foreign jurisdiction. The structure of these funds assist CIS operators in overcoming some difficulties that for taxation, cultural and bureaucratic reasons, investors may tend to prefer investing in local CIS, rather than investing directly in foreign CIS. In this sense, they are often considered as marketing tools to promote investment in foreign CIS.

(2) EXTENT OF CROSS-BORDER ACTIVITY:

The Working Group has collated certain statistical information in relation to cross-border activity of CIS, which is in the Appendix to this Discussion Paper. The statistics were provided in response to the following four questions:

> How many regulated foreign CIS are authorized in your jurisdiction?
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> How many registered CIS in your jurisdiction are advised or sub-advised or managed under delegation by foreign investment advisers?
>
> How many CIS sell units outside your jurisdiction?

Are there any other statistics available in your jurisdiction which illustrate cross-border activity?

(a) **Direct Marketing of Foreign Funds:**

It is apparent that the current degree of cross-border activity varies considerably from jurisdiction to jurisdiction. For example, in Hong Kong and Switzerland, foreign CIS outnumber domestic CIS. Hong Kong may, subject to local offering requirements, accept any foreign CIS that it considers offers substantially equivalent investor protection to that available in Hong Kong. By comparison, Canada, the US and Mexico have virtually no foreign CIS at all. In the case of the US, only 19 foreign funds, mainly from Canada, have been authorized in the US, the last being in 1973. In 1994, Australia liberalized its policy on foreign CIS, but at present, there are only a few foreign CIS being marketed in Australia.

Over recent years the EU member countries have had an increasing amount of cross-border activity since the introduction of the UCITS Directive on CIS which seeks to harmonize the structure of certain CIS (UCITS) throughout EU member states and to remove barriers to the free movement of capital among them. It is fairly straightforward from an administrative point of view, for a UCITS to then sell its shares or units throughout the EU. It is generally only subject to compliance with certain conditions, mainly in relation to notification and observance of the marketing and advertising rules of other member states. This has been a major factor in the rapid development in countries such as Luxembourg. There is much less cross-border activity for non-UCITS schemes in these member countries.

(b) **Use of Foreign Advisers, Managers or Custodians:**

The extent to which foreign advisers or managers provide assistance to domestic CIS varies widely, although much depends on how one defines "management" or "advice". In many countries, such as Australia, Switzerland and EU countries, the management company must be a domestic entity under the control of the home regulatory authority. However, a CIS may also use external investment advisers or delegate investment responsibility, provided that the ultimate liability of the management company is not affected or that primary regulation of the home regulatory authority is not diminished. Subject to this, the extent of involvement of the regulatory authority in the appointment of external advisers varies from the need for prior approval (France and Italy), to none, apart from disclosure (Australia, Germany, Luxembourg, Netherlands).

France requires a proper delegation contract, information on fitness and properness, and a commitment by the management company to pay for an external audit on the foreign CIS manager (who has delegation) at the request of the COB.

Luxembourg requires details of foreign service providers although its policy is not to interfere in the choice of external advisers as the manager takes the ultimate

responsibility for this choice and should therefore assess the adviser's fitness and properness.

The Netherlands has jurisdiction over the management company but none over external advisers.

In Sweden, the use of external investment advisers is not permitted except where they provide certain analysis or administrative services and the management company is responsible for investment decisions.

The use of foreign CIS managers is not restricted in the UK, Hong Kong or Japan, although in Hong Kong it is subject to prior regulatory approval. Switzerland requires that whilst the use of foreign advisers must be disclosed in the prospectus, no formal authorization is required. The regulator may interfere with the nomination of an adviser or may at a later stage request its removal.

Canada (Ontario) and the US both require foreign CIS managers to be registered if they are advising domestic entities, although Ontario permits certain exemptions for international advisers and the US has a relatively simple registration process for foreign advisers.

There are a number of multi-national arrangements covering cross-border provision of advisory services. These include the second European Banking Directive which recognizes and facilitates cross-border advisory services among EU members, and the Investment Services Directive (ISD) (effective January 1996) where advisory activities are considered ancillary services under the Directive.

(3) IMPEDIMENTS TO CROSS-BORDER MARKETING OF CIS:

Although there is a significant amount of cross-border marketing of CIS, the Working Group has identified a number of impediments which at present discourage or create obstacles to cross-border activity. An effective and profitable CIS will therefore require extensive attention to the regulatory and legal issues governing cross-border transactions.

Whilst securities regulators do not deal directly with taxation issues,[3] domestic taxation laws can generally affect cross-border marketing of funds. Although taxation issues can be complex and the tax laws are often subject to frequent amendment, they may be an important consideration for a foreign manager as to the practical ability for a fund to be marketed in another jurisdiction.

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3 The Working Group therefore does not propose to consider taxation issues in any detail, in particular as they also involve political considerations.

(a) Regulatory and Legal Issues:

(i) Recognition or Authorization of CIS:

Whilst regulatory authorities in most countries have the power to recognize foreign CIS, almost all jurisdictions have legislation which, at the very least, prohibits marketing of foreign CIS unless there is a comparable level of investor protection in the foreign regulatory regime. Other jurisdictions have restrictive laws in relation to foreign CIS which make it virtually impossible from a practical perspective to register or approve a foreign CIS.

For example, in Spain, no non-EU country has yet satisfied the regulatory authority that it has comparable investor protection.

US requirements provide that a foreign CIS can be registered only if the SEC can enforce its regulatory requirements against it and that authorization is consistent with public interest and the protection of investors. As a practical matter, this means that the SEC looks to the organization, structure and operations of the foreign CIS to determine if it complies with the Investment Company Act, and if it would be feasible for the SEC to take enforcement action against the foreign CIS for any failure to comply with the Act. Because foreign regulatory systems differ from the requirements of the Investment Company Act, to date most foreign CIS have been unwilling or unable to restructure themselves to conform with the Investment Company Act. In addition, any issuer offering its shares in the US would be required to comply with the securities laws of the various states in which offers or sales are made as well as with the federal securities laws.

(ii) Investigations of CIS by Foreign Regulatory Authorities:

With respect to the ability of foreign regulatory authorities to enter the US to conduct an investigation, there are no legal barriers, apart from notice to the US Justice Department. Jurisdictions such as Canada (Ontario), France, Germany, Italy, Japan, Luxembourg, Mexico, Spain, Sweden and Switzerland all have legal barriers to foreign regulatory authorities entering their jurisdiction and conducting investigations. However, some of these jurisdictions permit a foreign regulator to be present at the investigation. In many countries, such as Hong Kong, where although there are no legal impediments to a foreign regulatory authority conducting investigations, the foreign regulatory authority should seek the prior permission of the SFC. In the Netherlands, a foreign regulator is permitted to participate in an investigation conducted by the Dutch regulator on behalf of that foreign regulator. In Australia, formal enquiries by foreign regulators may only be conducted through mutual assistance legislation.

In some jurisdictions there may also be a requirement that an investigation in the foreign jurisdiction can only be done with the consent of the CIS manager or

relevant person being investigated in that foreign jurisdiction. In Canada (Ontario), a foreign regulatory authority can enter Ontario and conduct an investigation only with the cooperation of the Ontario resident who possesses the relevant information. If that person refuses to provide information voluntarily, the foreign regulatory authority will be unable to investigate unless it enlists the assistance of the OSC.

(iii) Surveillance or Routine Inspections of CIS by Foreign Regulatory Authorities:

In some jurisdictions surveillance by a foreign regulatory authority will only be permitted if it is done in conjunction with the home regulatory authority. The UK will permit a joint inspection where the foreign regulatory authority has a clearly identifiable interest.

In other jurisdictions, surveillance by a foreign regulatory authority does not require permission from the home regulatory authority. For instance, the US does not require a foreign regulatory authority to obtain permission from the SEC to conduct a surveillance of a regulated entity. The foreign regulatory authority is required to provide notice of the surveillance to the US Justice Department, which then notifies the US State Department.

(iv) Sovereignty Issues:

The issues described above in relation to the ability of a foreign regulatory authority to conduct an investigation or surveillance of a CIS in a home jurisdiction, with or without the presence of the home regulator, are also linked to sovereignty issues. Regulatory authorities are faced with balancing sovereignty concerns against the need to develop reciprocal mechanisms to facilitate cross border activity and the ability to conduct adequate oversight.

Sovereignty issues may, for example, arise in circumstances where foreign regulatory authorities may wish to conduct an inspection or surveillance of a CIS where they are interested in looking at specific issues which may not be of interest, or considered to be inappropriate, by the home regulatory authority. In some jurisdictions, this problem is partly overcome by the home regulatory authority allowing the foreign regulatory authority to inspect the CIS, provided the home regulatory authority is also present, or by allowing the foreign regulatory authority to view relevant documents at the home regulatory authority's premises.

(v) Ability to Exchange Information:

Domestic confidentiality laws can be important legal and regulatory issues as regulatory authorities are often prohibited from releasing confidential information (except in certain circumstances usually set out in domestic

legislation), in relation to providing relevant information on a CIS fund manager or adviser. For example, in Australia, there are domestic laws (and case law) which prohibit the release of confidential information unless specific conditions are satisfied.[4]

(b) Other Factors Which can Affect Cross-Border Activity:

(i) Resources:

One issue that regulatory authorities should resolve is how to regulate effectively with limited resources. Taking a proactive approach to developing regulatory mechanisms for improving cross-border oversight ultimately should facilitate efficient management of available resources.

Most regulatory authorities have implemented some information exchange processes with other regulatory authorities in order to promote cooperation and efficiency. This also applies to jurisdictions, such as Australia and the UK, which offer mutual assistance in investigative activity and the collection of evidence on behalf of a foreign jurisdiction.

(ii) Recovery of Losses:

A consideration for many investors in deciding whether to invest in a foreign fund is the ability, or lack thereof, to recover any monies for losses incurred by those funds. Whilst this is an issue which primarily relates to investor protection, it may be of concern to CIS operators who wish to market CIS outside their home jurisdiction.

(iii) Cultural Issues:

Another issue which may be an impediment to marketing CIS across borders, are the cultural barriers which could detract from a foreign CIS' attractiveness to domestic investors. That is, investors in one jurisdiction may not necessarily be comfortable with an investment vehicle that is incorporated under a foreign law and with a structure that may be unfamiliar to them.

(4) CONCLUSION:

It is evident that investment in foreign markets has increased in the past decade, although no regulated country will permit direct marketing of CIS without imposing minimal restrictions and conditions relating to protection of domestic consumer standards.

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[4] E.g. the release must enable or assist a government or an agency of a foreign country to perform a function or exercise a power conferred by a law in force in that foreign country (s. 127 (4) (c) of the ASC Law).

Regulatory authorities have in the past largely regulated such activity by establishing and enforcing a legislative regime which, by its nature, inhibits such activity, or alternatively, promotes the attractiveness of investment in domestic funds in preference to foreign funds.

4. INFORMATION BASED COOPERATION ARRANGEMENTS:

In an endeavour to effectively regulate cross-border marketing of CIS, regulatory authorities have traditionally adopted a number of ways to improve their oversight of the markets. These methods generally involve mechanisms for exchanging information and cooperation with other regulators. The approach that regulatory authorities have adopted to deal with cross border activity has been to develop agreements with other regulators, such as memoranda of understanding or mutual assistance agreements.

(1) MEMORANDA OF UNDERSTANDING:

The increasing globalization of the world's securities and futures markets has caused many jurisdictions to enter into treaties and bilateral agreements (such as MOUs) with other jurisdictions in order to protect their domestic markets from fraud and illicit conduct emanating from another country. MOUs are not enforceable agreements, but are statements of intent by the relevant parties. These agreements mainly focus on the ability of jurisdictions to exchange information and establish processes and procedures for doing so often in order to obtain evidence for the purposes of civil or criminal proceedings. Almost all the regulatory authorities represented on the Working Group have entered into MOUs with other jurisdictions.

(2) MUTUAL ASSISTANCE AGREEMENTS:

Some jurisdictions have domestic legislation which will assist a foreign regulatory authority in obtaining information or evidence, or to examine a particular person who may be in breach of its legislation subject to certain conditions. This assists in overcoming a situation where a foreign regulatory authority does not have the power or authority in another jurisdiction to inspect relevant books, records, obtain evidence, or subpoena a person to attend a hearing.

Australia has introduced such domestic legislation (the Mutual Assistance in Business Regulation Act 1992) which provides that in certain circumstances, a foreign regulatory authority is able to seek the ASC's assistance by requesting that the ASC exercise its compulsory powers in obtaining documentation or evidence or requesting that a person

attend a hearing before the ASC on behalf of the foreign regulatory authority. Other countries such as the US, UK and Hong Kong have similar legislation.

(3) INFORMAL ARRANGEMENTS FOR COOPERATION AND SHARING INFORMATION:

It is not uncommon for regulatory authorities to enter into ad hoc or informal arrangements for obtaining information or requesting assistance from other regulatory authorities, in addition to negotiating more formal agreements such as MOUs. However, informal arrangements may be largely dependent on a system of "personal contacts" in other regulatory organizations and may not be reliable or available for use by the organization as a whole. In addition, informal arrangements may not assist a regulator in obtaining confidential information from a jurisdiction where its domestic legislation prohibits the release of such information unless certain conditions or procedures are satisfied. Many regulatory authorities therefore consider it preferable to establish more formal agreements with other regulatory authorities, in addition to any informal arrangements it may have.

(4) CONCLUSION

MOUs and the laws and protocols governing requests and procedures in relation to investigations and obtaining evidence abroad are extremely important for effectively regulating international securities trading.

They generally include provisions relating to the processes for information exchange, regulatory cooperation and unsolicited assistance.

As previously noted, the Working Group recognizes the work of Working Group Number 4 as being primary in the area of enforcement and in the negotiation of MOU's, and it does not wish to cause any overlap in the work undertaken by the two Groups. However, the Working Group is interested in looking at issues specifically relating to information sharing in relation to the regulation of CIS which do not necessarily involve enforcement proceedings. In this respect, the Working Group is considering strategies to facilitate regulatory cooperation, as a supplement to present and future MOU agreements, in an endeavour to effectively regulate global CIS activity. Two such strategies are outlined in the following chapters.

5. MUTUAL RECOGNITION AGREEMENTS BY REGULATORY AUTHORITIES:

INTRODUCTION:

The previous chapters in this Paper outlined the types of cross-border activity of CIS and the extent to which such activity currently occurs, given legal, regulatory and other restrictions. The purpose of this chapter is to identify a strategy for active facilitation of cross-border marketing of CIS whilst ensuring that there are adequate regulatory safeguards to protect investors as well as local markets.

The level of cross-border activity indicates that it may be possible for CIS to be directly marketed into foreign jurisdictions. The adoption by IOSCO of the Principles (and its publication) provides a strong foundation for CIS promoters and regulatory authorities to pursue further multilateral and bilateral arrangements in relation to mutual recognition of CIS. Nevertheless, it would be desirable for such arrangements to be based on a consistent approach which, in time, would contribute to regulatory harmonization and multilateral arrangements.

It is suggested that a more co-coordinated approach to facilitating cross-border activity would be to use the Principles as the basis for a standardized approach by regulatory authorities. A framework for an agreement for the recognition of foreign CIS and foreign advisers has been drafted by the Working Group, which would apply to CIS that comply with the Principles and that meet any additional conditions relating to distribution. The draft agreement also encompasses mechanisms whereby information relating to CIS and their operators can be readily exchanged amongst regulatory authorities.

In the situation where several regulatory agencies exercise regulatory powers within a single jurisdiction, it may be appropriate for all such agencies to nominate one agency to deal with a regulator from another jurisdiction. Alternatively, all the agencies could become parties to the agreement.

This draft agreement is based on the assumption that effective and efficient information exchange mechanisms amongst regulatory authorities will facilitate cross-border activity whilst also accommodating the differences in regulatory regimes.

The advantage in adopting this strategy is that it will assist regulatory authorities in obtaining information about a CIS, its operators and advisers, prior and during the marketing or distribution of a CIS in a foreign jurisdiction.

Whilst this agreement may initially be adopted as an appropriate framework for a bilateral arrangement for cooperation and information exchange, over time it is likely to evolve into a multilateral approach by regulatory authorities.

The terms in the draft Agreement are defined in the Glossary of Terms of the Discussion Paper, and may be incorporated in the Agreement.

MUTUAL RECOGNITION AGREEMENT

1. OBJECT OF THE AGREEMENT BETWEEN REGULATORY AUTHORITIES ("THE PARTIES"):

1.1 Distribution of a Foreign Collective Investment Scheme ("CIS"):

1.1.1 The object of this Agreement is to permit cross-border marketing of CIS in accordance with a simplified administrative procedure, coupled with arrangements for communication of information and cooperation between regulatory authorities, with a view to ensuring proper supervision of the CIS marketed under this procedure and in maintaining investor confidence.

1.1.2 It would be the responsibility of the parties to specify the scope of the Agreement, together with the minimum standards permitted for operation of the CIS and any additional conditions relating to distribution, but it is intended that it should apply to those CIS that meet the IOSCO Principles.

1.1.3 This Agreement may be initially a "bilateral" agreement, but could also be extended to include other regulatory authorities, thus becoming multilateral.

1.2 Provision of Services by a Foreign Entity to a Domestic CIS:

The Agreement could also cover:

1.2.1 Delegation of management or custodian activity by a domestic CIS in favour of an entity coming under the authority of a foreign regulatory authority who is party to the Agreement.

1.2.2 Delegation by a CIS marketed in a foreign jurisdiction of certain responsibilities to an entity coming under the supervision of an authority in that foreign jurisdiction who may not be a party to the

Agreement. In certain circumstances it may be appropriate for the foreign regulatory authority to also become a party to the Agreement.

2. HOW THE AGREEMENT WOULD OPERATE:

2.1 Where CIS Units are Distributed to the General Public:

2.1.1 The Agreement should include procedures for the exchange of information between the home regulatory authority and the foreign regulatory authority. A certificate of registration or authorization status of the CIS should be issued by the home regulatory authority and taken into account by the foreign regulatory authority in permitting the CIS to distribute its products to the public in the foreign jurisdiction.

2.1.2 The Agreement should also include:

- procedures for the exchange of confidential information;
- the types of information that the parties consider must be treated confidentially under their respective laws;
- the measures that the parties will take to maintain confidentiality of that information;
- the manner or circumstances in which that information can be used by the parties; and
- procedures for the exchange of public information.

2.1.3 The Agreement should state that any CIS must have a local licensed representative[5] who would be responsible for:

financial services to the investor (including subscriptions, redemptions and payment of dividends);

information circulated to investors; and

liaison with the management company and timely correspondence with the foreign regulatory authority.

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5 The local representative must be registered with the relevant regulatory authority in the foreign jurisdiction.

2.2 Where CIS Units are Purchased by Professional Investors:

Where CIS are purchased by professional investors or fund managers, the provisions of this Agreement concerning the requirements for information and cooperation may be less strict. In terms of procedure, investment in CIS may be unrestricted provided they were approved by the home regulatory authority in accordance with the provisions in the IOSCO Principles.

2.3 Cross-Border Delegation of Management Services:

2.3.1 Where the Agreement includes provision of services by a foreign entity to a domestic CIS, the foreign regulatory authority of the foreign entity should:

advise the home regulatory authority of the CIS of any decision made with regard to the foreign entity (including decisions relating to investigations or administrative or criminal sanctions);

provide, if so requested by the home regulatory authority of the CIS, any information necessary for supervision of the CIS by the latter, when such information comes under its direct jurisdiction; and

use its best efforts to provide information relating to the foreign entity, where it does not come under its direct jurisdiction.

2.3.2 Where the services are provided in a foreign jurisdiction not a party to the Agreement:

the guiding principle should be that the CIS shall remain responsible for the normal operation of the activity delegated to a foreign entity. The CIS must therefore possess any information which would satisfy a request from the home regulatory authority, or from the foreign regulatory authority in the country of distribution; and

the home regulatory authority of the CIS shall use its best efforts to provide any information relating to an entity, operating under delegation, whether it is situated in the same jurisdiction, while at the same time coming under a different regulatory authority, or whether it is situated in another jurisdiction and therefore coming under a third authority who is not a party to the Agreement.

3. COOPERATION WITH REGARD TO EXCHANGE OF INFORMATION:

As a general rule, the CIS itself, should be responsible for providing any information requested by the foreign regulatory authority. The Agreement should establish the role of the CIS as well as set out the mutual responsibilities of the parties to the Agreement.

The Agreement should also outline the appropriate route for communicating information between the parties. The Agreement may also provide for regular review of the provisions of the Agreement to ensure that they continue to meet the parties needs.

3.1 Information to be Provided by the CIS:

3.1.1 Initial Information

The CIS would be expected to notify its home regulatory authority as to the countries in which it distributes its products and provide to the foreign regulatory authority, prior to its introduction into that jurisdiction, material comprising:

the certificate of registration or authorization status from its home regulatory authority;

the prospectus of the CIS drawn up in the language as required by the foreign regulatory authority and containing such information as required by that authority;

a commitment, in the form required by the foreign regulatory authority, to comply with the regulations of the foreign regulatory authority regarding the marketing of units and the information to be provided to investors;

the identity of the local licensed representative (responsible for financial services) who would provide information relating to the CIS to foreign investors; and

any other information that may be required by the foreign regulatory authority from CIS based in its own jurisdiction.

3.1.2 Subsequent Information

The CIS should also provide to the foreign regulatory authority:

any statutory periodical information or other reports drawn up in the language as required by the foreign regulatory authority;

any information relating to material changes affecting the operation of the CIS;

any information which may have financial consequences for investors in the foreign jurisdiction;

any information or literature to be distributed to investors in the foreign jurisdiction;

any information that the foreign regulatory authority deems necessary for its proper information and for the protection of the interests of investors; and

any suspension of dealing must be immediately notified to the foreign regulatory authority.

*3.2 **Mutual Responsibilities of the Parties:***

While supervision of the CIS should be essentially the responsibility of the home regulatory authority, the foreign regulatory authority should be responsible for supervision of the conditions of marketing of the CIS in the foreign jurisdiction.

3.2.1 Responsibility of the Home Regulatory Authority

Prior to a CIS being distributed in a foreign jurisdiction, the home regulatory authority should issue a certificate of registration to the CIS and confirm such status directly to the foreign regulatory authority upon request.

It should also:

as soon as possible inform the foreign regulatory authority of any decision made with regard to the CIS or entities coming under its direct authority (including decisions relating to investigations or administrative or criminal sanctions), where such a decision may impact upon the operation of the CIS or the interests of investors in the foreign jurisdiction;

promptly respond to requests for information from the foreign regulatory authority; and

immediately notify the foreign regulatory authority of any suspension in dealing.

3.2.2 Responsibility of the Foreign Regulatory Authority

The Foreign Regulatory Authority:

should authorize the CIS for distribution on the basis of information provided in 3.1.1 above, while restricting supervision to the quality of the local licensed representative and distribution activities;

may also be responsible for the supervision of the management company and depositary, should they be placed under its authority whilst operating under delegation; and

should inform the home regulatory authority of any decision made relating to the CIS, or any facts likely to facilitate supervision of the CIS by the home regulatory authority, including suspension of subscriptions and redemptions in the foreign jurisdiction or failure to observe the relevant rules in the foreign jurisdiction.

3.3 Terms of the Cooperation Agreement:

The Agreement should at least comprise of:

a commitment by the parties to perform the responsibilities set out in 3.2.1 and 3.2.2 above; and

specific procedures for the exchange of information concerning the CIS and its entities at the request of either authority.

6. DECLARATION ON COOPERATION AND SUPERVISION OF CROSS-BORDER INVESTMENT MANAGEMENT ACTIVITY:

In the past several years, as domestic investment in foreign markets through CIS has increased, regulatory authorities have faced greater challenges to conducting effective oversight with limited resources. Consequently, they have sought to develop ways of enhancing their compliance programs with regard to investment advisers and CIS that provide services to domestic investors from abroad. Regulatory authorities have assisted

each other on an ad hoc basis, primarily through exchanging information and providing access to regulated entities located in their jurisdictions. To address this growing demand for an available avenue to obtain information about relevant cross-border activity, the Working Group has prepared a model Declaration on Cooperation and Supervision of Cross-Border Investment Management Activity (the "Declaration"). The Declaration, which is set out in this Chapter, provides a framework to make such information and access available on a regular basis.

The format for the Declaration is that of a model to be used as a starting point for negotiation. The model provides for a broad range of regulatory cooperation and assistance in the investment management context, primarily through making information available to the foreign regulatory authority. By obtaining a ready source of access to information, regulatory authorities will be in a better position to carry out their oversight functions. In addition, by agreeing to assist each other in conducting on site inspections, the regulatory authorities can facilitate the cross-border business of investment advisers and CIS in their jurisdictions to the extent permitted under their laws. In this way, the Declaration takes an approach consistent with that taken by many IOSCO members in the enforcement context through Memoranda of Understanding (MOUs) or other bilateral arrangements for sharing information. Indeed, it may be useful to incorporate by reference into the Declaration certain provisions from such MOUs, particularly those relating to confidentiality and permissible uses of information.

By tailoring the model to their individual needs, IOSCO members can maximize their oversight capabilities within the parameters of their respective legal regimes and thereby increase protection for domestic investors. Depending on the applicable statutory and regulatory requirements, the exchange of information could facilitate the following regulatory functions:

> Obtaining information to assist in determining whether a foreign-based investment management person is eligible to do business in a member's jurisdiction;
>
> Gaining an additional tool for ascertaining, through exchanging inspection reports and by conducting joint inspections, if an investment management person located abroad is operating in compliance with applicable domestic requirements; and
>
> Obtaining an additional source of information to assist in making a determination whether a foreign-based CIS should be permitted to market its units within a member's borders.

SECTION BY SECTION ANALYSIS:

(1) Introductory Paragraphs

The introductory paragraphs set the context for the Declaration. They note the extraordinary growth of cross-border investment management activity that has occurred and clarify that the purpose of the Declaration is to establish a framework for obtaining information and cooperation in order to oversee investment advisers and CIS that are active in more than one regulator's jurisdiction.

(2) Definitions

The Definitions section sets the framework for the Declaration. The Declaration includes a definition of (i) investment advisers and CIS that are registered with one of the Regulatory Authorities; and (ii) investment advisers and CIS that are registered in both jurisdictions, or "Dual Registrants".

The Declaration is drafted to provide for exchange of information and assistance relating to both investment advisers and CIS. These definitions can, however, be modified to be more or less inclusive, depending on the needs of the signatories. For example, in those jurisdictions where investment advisers are not required to be registered, the definition of "investment management person" could also include investment advisers "subject to supervision". Similarly, the provisions of the Declaration could be applied more narrowly to Dual Registrants only.

(3) Scope of Supervisory Cooperation

Individuals and institutions frequently invest in foreign markets by investing in domestic CIS which themselves invest in foreign markets, or by purchasing foreign-based funds. IOSCO members recognize the need to address the increasing cross-border activity in CIS and related services and, from experience, know that the exchange of information and other means for cooperation are critical components for the effective oversight of an expanding cross-border market. The Declaration is designed as a framework for providing the maximum amount of assistance that is permissible under the signatories' respective laws and regulations.

The scope of the Declaration is therefore stated broadly. In this section, the signatories declare their intention to provide to each other the fullest possible cooperation and assistance in supervising and enforcing the statutory and regulatory requirements of their respective jurisdictions. Assistance is to be given principally through the exchange of information and, where permissible, access to on-site inspections. Paragraph 4 clarifies that the Declaration itself does not change in any way the existing scope of the signatory's respective regulatory authority.

(4) Exchange of Information

These are the core provisions of the Declaration. By establishing a regular route for obtaining information that is not available from a Dual Registrant, the Declaration will enable the signatories to better supervise their markets. For example, paragraph 9 provides for a routine exchange of inspection reports relating to Dual Registrants. Inspection reports and other information about registrants could also be provided in response to a regulatory authority's request under paragraph 10 or on an ad hoc basis pursuant to paragraph 13 on unsolicited assistance. These reports could furnish the signatories with an additional source of information about their respective registrants without requiring an on-site inspection.

This section of the Declaration allows authorities to identify the scope of information that will be exchanged in accordance with their respective statutory and regulatory regimes. The regulatory authorities can specify that subject to statutory requirements and obligations, and any other agreements between the Authorities (such as MOU's), they will assist each other in obtaining the information set forth in paragraphs 10 and 11, which includes, among other things, information on investment management persons, the books and records of investment management persons, and inspection reports. The Agreement should also refer to the permitted uses of the information to be provided and its detail.

The Declaration thus provides a vehicle for the regular exchange of information on routine matters, such as information relating to the qualifications of investment management persons. It also provides a channel which may function as an early warning system, pursuant to which the authorities would notify each other if they obtained information suggesting that an investment adviser or a CIS were in violation of the laws or regulations of the foreign supervisory authority.

Paragraph 11 of the Declaration is addressed to authorities in those jurisdictions which permit the domestic marketing of foreign CIS. In such cases, the particular information that would be pertinent should be specified by the signatories.

(5) Inspections[6]

Inspections are an important means of determining whether regulated entities are properly maintaining required books and records and whether their operations are in compliance with the applicable statutory and regulatory requirements. These inspections are ideally conducted at the site where the books and records are maintained. Therefore, on-site inspections can become more difficult when the entity that possesses those documents is located overseas. While it is possible to require investment advisers and

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6 The term "inspection" is used to refer to a routine surveillance of a CIS by a regulatory authority, and may not necessarily result in enforcement proceedings or a finding that there has been a breach of any laws.

CIS to send their books and records to the relevant regulatory authority for inspection, on-site reviews may be more meaningful because the regulated entity's procedures can be examined in the normal course of its day-to-day operations. Further, on-site reviews generally cause less disruption and expense to the entity being inspected. The Declaration thus is drafted to provide for assistance in conducting on-site inspections of "investment management persons" (i.e., advisers or CIS) located in the jurisdiction of the other authority.

Furthermore, by entering into a cooperative regulatory arrangement that includes express provisions for on-site inspections that are consistent with domestic laws and regulations, authorities can effectively deal with issues relating to conducting an inspection in a foreign country. Similarly, in the enforcement context, the Principles for Memoranda of Understanding, issued by IOSCO in 1991, recommend, to the extent permitted by the laws and policies of a requested authority, direct participation by a requesting authority in the execution of a request for assistance. Indeed, the provisions of this section can be tailored to take into account particular statutory and regulatory limitations faced by the signatories, including sovereignty-based restrictions. For example, the authorities can agree that assistance in conducting on-site inspections can be provided based upon prior consent and in regard to inspections of Dual Registrants only. Another alternative is to provide that the foreign regulatory authority will serve as technical adviser to the host authority conducting the inspection.

(6) Confidentiality and Use of Information

Supervisory authorities should provide in the Declaration for the confidential treatment of information provided, to the extent permitted by the laws of their respective jurisdictions. To the extent that the relevant authorities have already negotiated for the confidentiality of information obtained pursuant to an MOU or other bilateral enforcement understanding, such provisions could be made applicable to information obtained under this Declaration.

Authorities should also provide for maximum flexibility in using the information obtained under the Declaration. Without a comprehensive use section, an authority that obtains information could find itself prevented from taking action against a regulated entity that was in violation of the applicable laws or rules. Thus, information obtained from another authority in the context of regulatory cooperation should be available for use in an enforcement context. As drafted, the Declaration allows for the full range of possible uses of information.

(7) Applicability of an MOU

The Declaration provides for cooperation and assistance to maximize the ability of regulatory authorities to carry out their supervisory mandates. It is not intended to supersede any existing Memorandum of Understanding or other bilateral arrangement that the signatories may have on the cooperation and the exchange of information in the enforcement context. Indeed, many MOUs expressly provide for cooperation and

assistance in conducting inspections of investment management persons. The Declaration can complement such MOUs by providing greater detail on how to implement such provisions.

The provisions in an MOU or other such understanding can be incorporated by reference into the Declaration and serve to simplify it. For example, information provided under the Declaration could be made subject to the confidentiality provisions already negotiated by the parties in the enforcement context. Similarly, provisions concerning the use of information provided under an MOU could also be made applicable to information provided under the Declaration.

DECLARATION ON COOPERATION AND SUPERVISION OF CROSS-BORDER INVESTMENT MANAGEMENT ACTIVITY

The _____, **and the** _____,

Sharing the goal of promoting investor protection;

Observing the growth of global securities markets and cross-border financial activity, including, in particular, the dramatic increase in cross-border investment management activity and the continuous development and innovation in financial products and activities in the investment management industry; and

Considering the importance of ensuring compliance with and the enforcement of the applicable laws and regulations of _____ and _____ through enhancement of market oversight;

Desiring to establish the fullest mutual assistance in order to facilitate the performance of their respective duties;

Hereby make the following Declaration:

DEFINITIONS

[The following definitions can be tailored by the Authorities as appropriate for their respective legal regimes, with a view toward providing a foundation for the provision of assistance in as broad a range of situations as possible, including in particular, with regard to both CIS and investment advisers.]

1. For the purposes of this Declaration:

   (a) "Associated Persons" means persons and entities affiliated or associated with, or doing business relating to the investment management activities of, Investment Management Persons and subject to the supervision of the Authorities;

(b) "Authority" means the _____, or the _____;

(c) "Books and Records" means documents, books and records of, and other information about, Investment Management Persons;

(d) "Dual Registrants" means Investment Management Persons that are authorized by or registered with both Authorities;

(e) "Home Country Authority" means the Authority requesting information from or conducting an inspection in the jurisdiction of the Host Authority;

(f) "Host Authority" means the Authority in whose jurisdiction an Investment Management Person is located;

(g) "Inspection Report" means a report, prepared by an Authority, summarizing the results of an inspection of an Investment Management Person;

(h) "Investment Management Person" means investment advisers, CIS managers, CIS administrators, CIS trustees, and CIS, subject to the respective laws and regulatory requirements of _____ or of _____, and their Associated Persons;

(i) "On-Site Inspection" means any routine or for-cause inspection at the premises of the Investment Management Person, of the Books and Records and premises of the Investment Management Person.

SCOPE OF SUPERVISORY COOPERATION

2. The Authorities intend to provide to each other the fullest possible cooperation in assisting in the implementation of their respective laws and regulatory requirements governing Investment Management Persons. It is anticipated that such cooperation will include assistance in the oversight of Investment Management Persons located in the jurisdiction of a Host Authority and subject to the regulatory oversight of the other Authority.

3. Assistance under this Declaration may include:

(a) exchanging information concerning Investment Management Persons, including assistance in obtaining information from the officers and directors, and other personnel subject to the supervision of the Host Authority, of Investment Management Persons; and

(b) conducting On-Site Inspections of Investment Management Persons.

4. The Authorities intend to keep each other advised of significant changes in the laws and regulatory requirements relevant to their cooperation under this Declaration.

5. This Declaration is a statement of the intent of the Authorities and does not create any binding international obligations. Nothing in this Declaration limits, expands or affects the respective jurisdictions of the Authorities.

6. To facilitate cooperation under this Declaration, the Authorities hereby designate contact persons as set forth in Attachment A.

EXCHANGE OF INFORMATION

[Authorities should identify, with as much specificity as possible, the topics on which information may be exchanged. Following is a sample set of items, that can be expanded or modified as appropriate depending on the Authorities' respective needs and legal requirements. For example, the Authorities may decide to exchange information only in response to a specific request, rather than on a routine basis.]

7. The Authorities intend to provide each other and update on a regular basis a list identifying the names of Dual Registrants.

8. Each Authority intends to notify the other of the commencement of an inspection of a Dual Registrant identified on the list referred to in Paragraph 7 above.

9. The Authorities intend to provide to each other, on a routine basis and without advance request, copies of Inspection Reports of Dual Registrants.

10. Each Authority intends to provide the other, upon request and consistent with the laws and regulatory requirements which govern it, assistance in obtaining access to public and non-public Books and Records relating to Investment Management Persons. Such assistance may include, without limitation:

    (a) providing information relating to the qualifications of Investment Management Persons;

    (b) cooperation and consultation in reviewing, interpreting and analyzing such Books and Records and Inspection Reports; and

    (c) providing information from the officers and directors, and other personnel subject to the supervision of the Host Authority, of Investment Management Persons.

11. [Authorities in jurisdiction in which the domestic marketing of foreign collective investment schemes is authorized should specify the information

to be exchanged in this respect. Following are possible topics on which information could be exchanged, among others.]

(a) compliance with the laws of the Home Country Authority;

(b) the current status of disclosure documents;

(c) imposition by competent authorities of any business restriction due to the Investment Management Person being in, or approaching, financial or operational difficulties;

(d) notification of a change of auditors, any intention of the auditors to qualify their report or any other adverse opinion contained in the auditors report;

(e) any failure of an Investment Management Person that may have a material effect on the protection of investors.

12. Each Authority intends, upon request and consistent with the laws and regulatory requirements which govern it, to provide other information located in its jurisdiction that may be relevant to the other Authority's inspection of Investment Management Persons.

UNSOLICITED ASSISTANCE

13. If either Authority obtains information that it recognizes as clearly giving rise to a suspicion of a breach of any legal rule or requirement of the other Authority, then it will, to the extent permitted by law, offer to provide such information to such Authority for the purposes and under the conditions provided in the Declaration.

INSPECTIONS

[In recognition of the differences among legal and regulatory systems, the model includes three possible alternatives for conducting inspections of registrants located in the Host Authority's jurisdiction:

Paragraph 14-Alt. 1 contemplates that the Home Country Authority will conduct On-Site Inspections of registrants located in the Host Authority's jurisdiction.

Paragraph 14-Alt. 2 contemplates joint On-Site Inspections conducted by both the Host Authority and the Home Authority.

To the extent that the laws of the signatory countries do not permit a foreign authority to conduct an On-Site Inspection, Paragraph 14-Alt. 3 contemplates an On-Site Inspection conducted by the Host Country at the request of a Home

Country Authority with a clearly identifiable interest. In such case, the Home Country Authority may serve as an adviser to the Host Authority conducting the On-site Inspection.

The three alternatives are given as examples reflecting limitations imposed on inspections by different legal structures.

By entering into the Declaration, signatories can address directly issues relating to such On-Site Inspections, and can tailor these provisions as appropriate in accordance with the laws and policies of their respective jurisdictions.]

14-Alt. 1 Each Authority intends to conduct On-Site Inspections of Investment Management Persons located in the jurisdiction of the other Authority, using the following procedures for an On-Site Inspection: The Home Country Authority will notify the Host Authority of its intent to perform an On-site Inspection in the jurisdiction of the Host Authority by providing a copy of the notice or request for Books and Records that it issues to the Investment Management Person prior to the time that such notice or request is issued. In routine inspection, the Home Country Authority will provide notice to the Host Authority one week prior to the Home Country Authority's notification of the Investment Management Person. In routine inspections, two weeks prior notice will be given to the Investment Management Person of the On-Site Inspection. In other cases, the Authorities may agree to vary these notice periods.

14-Alt. 2 In its discretion, the Host Authority may accompany the Home Country Authority during the On-Site Inspection and, to the extent permitted by law, assist in all aspects of the On-Site Inspection. Such assistance may include, without limitation:

(a) obtaining access to the premises and facilities of Investment Management Persons;

(b) compiling, reviewing, interpreting and analyzing Books and Records;

(c) interpreting and explaining the internal controls and other procedures of the Investment Management Person; and

(d) obtaining such other information as may be relevant to the On-Site Inspection.

14-Alt. 3 At the request of the Home Country Authority, the Host Authority may perform an On-Site Inspection of an Investment Management Person located in its jurisdiction where a Home Country Authority has a clearly

identifiable interest. In its discretion, and to the extent permitted by law, the Host Authority may request the Home Country Authority to accompany it during the On-Site Inspection and to assist it in preparing, conducting and evaluating the results of the On-Site Inspection.

CONFIDENTIALITY AND USE OF INFORMATION

15. If not covered by an existing Memorandum of Understanding (MOU), Authorities should provide for confidential treatment of information provided under the Declaration to the extent permitted by domestic law, while stating any additional requirements and specifying the full range of possible uses. Following is sample language:

> " To the extent permitted by law, the Authorities will keep confidential information received under this Declaration; provided, however, that the Authorities may use the information in connection with ensuring compliance with or enforcement of the laws and regulations of its jurisdiction, including conducting civil or administrative enforcement proceeding; assisting in a self-regulatory enforcement proceeding or a criminal prosecution, or conducting any investigation related thereto."

The Declaration could also outline procedures for the exchange of unsolicited information in prescribed circumstances where that information would be of assistance to the other party.

APPLICABILITY OF MOU [as relevant]

16. This Declaration is being made within the framework of the Memorandum of Understanding, dated ___/___/___, and nothing contained herein modifies or amends the MOU.

17. Materials and information provided hereunder are to be kept confidential and governed by the provisions of Part __ of the MOU.

CONSULTATIONS

18. The Authorities intend to engage in regular consultations regarding investment management activity in their markets, and to review this Declaration periodically for the purpose of assessing its operation.

TERMINATION

19. If not covered by an existing MOU, Authorities should provide for a termination clause. Following is sample language:

This Declaration will continue in effect until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to terminate the Declaration. If either Authority gives such notice, this Declaration will continue to have effect with respect to all requests for assistance that were made before the effective date of notification until the requesting Authority terminates the matter for which assistance was requested.

SIGNED THIS _____ DAY OF _____ 199[ ]

.....

.....

.....

ATTACHMENT A

The designates as its contact person:

.....

Fax:

Tel:

The designates as its contact person:

.....

Fax:

Tel:

APPENDIX

STATISTICAL INFORMATION ON CROSS-BORDER ACTIVITY OF CIS

SUMMARY OF STATISTICAL INFORMATION

Question 1 **How Many Regulated Foreign CIS are Authorized or Registered in your Jurisdiction?**

Australia	Canada	France	Germany	Hong Kong	Italy	Japan	Luxembourg	Mexico	Netherlands	Spain	Sweden	Switzerland	United Kingdom	USA
170 (est)	nil	201	548	691	81	182	125 4 (non-UCITS) 121 (UCITS)	8	100 30 (non-UCITS) 70 (UCITS)	70	123	810	262	19

Question 2 **How Many Registered CIS are Advised or Sub-Advised or Managed Under Delegation by Foreign Investment Advisers?**

Australia	Canada	France	Germany	Hong Kong	Italy	Japan	Luxembourg	Mexico	Netherlands	Spain	Sweden	Switzerland	United Kingdom	USA
n/a	n/a	36	n/a	n/a	n/a	n/a	n/a	2	50 (est)	11	n/a	n/a	90-100 (est)	109

Question 3 **How Many CIS Sell Units Outside your Jurisdiction?**

Australia	Canada	France	Germany	Hong Kong	Italy	Japan	Luxembourg	Mexico	Netherlands	Spain	Sweden	Switzerland	United Kingdom	USA
n/a	362 (est)	92	253	n/a	n/a	n/a	813 51 (non-UCITS) 762 (UCITS)	81	80 (est)	10	33	n/a	180 (est)	n/a

Question 4 **Are There Any Other Statistics Available in your Jurisdiction Which Illustrate Cross-Border Activity? (Refer page 5)**

n/a Not available.

(est) Estimated.

UCITS Undertakings for Collective Investments in Transferable Securities.

QUESTION 1 - HOW MANY REGULATED FOREIGN CIS ARE AUTHORIZED OR REGISTERED IN YOUR JURISDICTION?

Australia	Canada	France	Germany	Hong Kong	Italy	Japan	Luxembourg	Mexico	Netherlands	Spain	Sweden	Switzerland	United Kingdom	USA
170 (est)	nil	201	548	691	81	182	125 4 (non-UCITS) 121 (UCITS)	8	100 30 (non-UCITS) 70 (UCITS)	70	123	810	262	19

COMMENTARY:

CANADA: Other than foreign CIS selling securities in Ontario on a private placement / exempt basis, there are no foreign CIS that have qualified their securities for sale within Ontario (or any other jurisdiction in Canada). Some, primarily US, fund sponsors have "cloned" their home jurisdictions funds and qualified these for sale in Ontario and other Canadian jurisdictions. These clone funds are separate legal entities established under the laws of Ontario and comply fully with Ontario securities legislation and rules.

FRANCE: 201; this number does not take into account the sub funds of umbrella funds which are considered as single entities.

GERMANY: As at 30.06.95, 54 CIS are authorized to publicly market and sell their investment fund shares in Germany. The number of authorized funds including all sub-funds of umbrella funds is 1 398. For detailed breakdown, refer to Table 1 page 6.

HONG KONG: 691; as at 31.03.95.

ITALY: 81; a list of the 81 foreign CIS authorized to market their units in Italy, under the provision of EC Directive 85/611, can be made available on request.

LUXEMBOURG: 125; comprising of 4 non-UCITS and 121 (UCITS) as at 30.06.95. For detailed breakdown and comparisons refer to Table 2 page 7.

MEXICO: 8; although eight foreign CIS have been authorized to date, none have commenced operation. The authorization process, for both foreign CIS and their operators, requires the CIS to be constituted as Mexican companies, according to Mexican Law.

NETHERLANDS: 100; comprising 30 non-UCITS and 70 (UCITS). The Nederlandsche Bank, as delegated supervisor with regard to the Act on the Supervision of Investment Institutions (the Act), has authorized 30 foreign CIS (non-UCITS) of which 17 are situated on the Dutch Antilles, 5 in Luxembourg, 3 in the United States of America, 4 in Guernsey and 1 on the Cayman Islands. 70 foreign-based UCITS have been notified.

SPAIN: 70 as at 31.12.94; for detailed breakdown and comparisons refer to Table 4 page 9.

SWITZERLAND: 810 as at 31.08.95.

USA: 19; under Section 7 (d) of the Investment Company Act of 1940 ("ICA"), foreign CIS may not make a public offering of its shares in the US unless the SEC issues an order permitting the CIS to register under the ICA. In order to issue an order under Section 7 (d), the SEC is required to find that "it is both legally and practically feasible to enforce the provisions of the ICA against such company." As a practical matter, this means that the SEC looks to the organization, structure and operations of the foreign CIS to determine if they comply with the ICA, and whether it would be feasible for the SEC to take enforcement action against the foreign CIS for any failure to comply with the Act. Nineteen foreign CIS have sought Section 7 (d) orders and have registered with the SEC under Section 7 (d) since 1954. The last Section 7 (d) order was granted in 1973 and there are currently four active CIS registered pursuant to Section 7 (d).

QUESTION 2 - HOW MANY REGISTERED CIS ARE ADVISED OR SUB-ADVISED OR MANAGED UNDER DELEGATION BY FOREIGN INVESTMENT ADVISERS?

Australia	Canada	France	Germany	Hong Kong	Italy	Japan	Luxembourg	Mexico	Netherlands	Spain	Sweden	Switzerland	United Kingdom	USA
n/a	n/a	36	n/a	n/a	n/a	n/a	n/a	2	50 (est)	11	n/a	n/a	90-100 (est)	109

COMMENTARY:

CANADA: There are 98 advisers who are registered with the OSC as "international advisers", which is a category, of adviser registration for advisers based outside Canada. International advisers can only give investment advice to certain prescribed clients, including CIS that distribute their securities in Ontario, provided that the managers of the CIS are registered in some capacity with the OSC and the managers are a party to the contract between the CIS and the international adviser. Internationally, advisers are not required to be registered in order to advise a Canadian CIS.

GERMANY: German CIS can only be managed by the issuing CIS-company. There are no "advisers" in the sense of "external management". The CIS can only enter into certain consulting agreements (e.g. for special markets). However, this does not apply to foreign authorized CIS which therefore may have advisers, sub-advisers or external managers (if allowed by their domestic legislation). Due to the fact that these "advised" CIS structures are not common in Germany, no corresponding statistical data is available on CIS using foreign advisers.

HONG KONG: N/A; there are 187 foreign investment advisers that manage / advise authorized CIS as at 31.03.95. No data readily available on the number of funds involved.

ITALY: N/A; most investment managers, authorized in Italy, use foreign advisers when they invest their assets in foreign markets.

LUXEMBOURG: N/A; the information on the number of Luxembourg CIS advised or managed abroad is not readily available. It is however, a fact that a large majority (more than 90%) of Luxembourg CIS are advised or managed from outside of Luxembourg.

MEXICO: 2; foreign operators / managers of CIS can render their services in Mexico only through the establishment of authorized affiliates. Currently, 2 foreign operators have been authorized, though none of them have started operations. Mexican Law does not contemplate delegation of functions by operators / managers.

SWITZERLAND: N/A; delegation of management has only been permitted since January 1st, 1995 since the introduction of a new law on mutual funds. Currently, no statistics are available on advisory or sub-advisory services performed by foreign entities, since the disclosure requirement was introduced on January 1st, 1995.

UNITED KINGDOM: 90 - 100 (est). This is a difficult question to answer accurately as most UK CIS conduct their investment management activities within the UK. They may use information available from non-UK "advisers" but such arrangements may not necessarily be the subject of formal agreements, let alone providing for "delegation" as asked in the question. As at August 1st, 1995 there were 1 441 authorized CIS (in UK terminology "Securities Funds"). Within that total, it is estimated that no more than 90-100 are actually managed overseas, with regulatory responsibility to IMRO remaining in the UK.

USA: 109; the number of US CIS that are advised by foreign registered investment advisers has grown steadily in recent years. Currently, 69 registered foreign advisers advise or sub-advise a total of 109 registered US CIS. In 1988, there were approximately 14 CIS that had a registered foreign adviser as their primary investment adviser. By 1995, there were approximately 38 such CIS. This represents a 179% increase over a seven-year period. These 38 US CIS were advised by 29 different foreign advisers. As of March 1995, there were also 71 other US CIS which were sub-advised by a total of 57 foreign sub-advisers (15 of these sub-advisers also act as primary advisers to other CIS in the US). In addition, there has been growth in the number of US CIS advised by registered investment advisers owned by foreign parent companies. In 1988, there were 18 CIS advised by US advisers with foreign parents. By 1995, there were 37 CIS advised by US advisers with foreign parents. This represents a 106% increase over the seven-year period.

QUESTION 3 - HOW MANY CIS SELL UNITS OUTSIDE YOUR JURISDICTION?

Australia	Canada	France	Germany	Hong Kong	Italy	Japan	Luxembourg	Mexico	Netherlands	Spain	Sweden	Switzerland	United Kingdom	USA
n/a	362 (est)	92	253	n/a	n/a	n/a	813 51 (non-UCITS) 762 (UCITS)	81	80 (est)	10	33	n/a	180 (est)	n/a

COMMENTARY:

CANADA: As at August 31, 1995, out of a total of 920 CIS that were members of the Investment Funds Institute of Canada, 77 Canadian CIS invested primarily in US equities, 221 invested primarily in other international equities and 64 invested primarily in international fixed income and money market funds.

FRANCE: 92; CIS are permitted to sell their units or shares in other jurisdictions (member states of the European Union). It does not mean that they are actually distributed in foreign jurisdictions.

GERMANY: 253; as at June 30, 1995, 253 of the 535 domestic "OGAW-CIS" have at least once received an attestation by the competent authority to the effect that the CIS fulfils the conditions imposed by the Directive (according to article 46 of the OGAW Directive 85/611/EWG). This figure does not include the attestation's provided for Switzerland (although these attestation's also incorporate the notice on fulfilled OGAW features) because Switzerland is neither an EC Member State nor a contracting EEA state. No statistical data is available stating how many of these 253 CIS have sold their shares in other Member States of the European Communities or another contracting State of the Agreement on the European Economic Area.

ITALY: Only a few Italian CIS market their units abroad.

LUXEMBOURG: Of the 1 294 CIS authorized in Luxembourg as of June 30, 1995, 813 were selling their units abroad on the basis of an attestation of compliance delivered by the IML. A breakdown of the relevant figures according to UCITS and non-UCITS is:

	Number of CIS	Number of Attestation's
UCITS	762	1 857
non-UCITS	51	70
Total	**813**	**1 927**

Table 3 on page 8 includes the complete list of the countries (37 in total) to which the 1 927 attestations of compliance delivered by the IML were destined.

MEXICO: Distribution of Mexican CIS units in foreign markets can be indirectly detected through statistics on foreign investment in CIS. Accordingly, 81 mutual funds had some degree of foreign investment at the end of July 1995.

SPAIN: 10 CIS; 2 of which are Money Market Funds.

QUESTION 4 - ARE THERE ANY OTHER STATISTICS AVAILABLE IN YOUR JURISDICTION WHICH ILLUSTRATE CROSS-BORDER ACTIVITY?

COMMENTARY:

ITALY: A list of the authorized investment managers and their related funds and data concerning the total assets of Italian CIS can be made available on request.

LUXEMBOURG: By October 1995, 47 foreign CIS were listed on the Luxembourg Stock Exchange, of which 18 have their registered office in an EU member state. One of these EU CIS is registered with the IML and is thus authorized to solicit directly to the public in Luxembourg.

SPAIN: The Comisión Nacional del Mercado de Valores (CNMV) publishes "Quarterly Reports on Collective Investment Institutions", which include statistical data on the evaluation of Foreign CIS marketed in Spain, Refer to Tables 4, 5 and 6 on pages 9 and 10.

USA:

Growth in Open-End CIS Investing in Foreign Securities

During the last fifteen years, there has been dramatic growth in the number of US open-end CIS which invest primarily in foreign markets. In 1980, 19 open-end CIS invested primarily in foreign markets. By 1995, there were 609 open-end CIS in this category. During this same period, the assets of such open-end CIS rose from $2 billion to $208 billion. This represents a 3 105% increase in the number of open-end CIS and an increase of 10 300% in fund assets over the fifteen-year period.
(Sources: SEC Records; ICI Mutual Fund Fact Books (1985-1995); 1992 Morningstar Mutual Fund Source Book).

Growth in Closed-End CIS Investing in Foreign Securities

Likewise, during the last fifteen years, there has been dramatic growth in the number of US closed-end CIS which invest primarily in foreign markets. In 1980, only 2 closed-end CIS invested primarily in foreign markets. By 1995, there were 124 closed-end CIS in this category. During the same period, the assets of closed-end CIS investing in foreign markets rose from $0.2 billion to $27.6 billion. This represents a 6 100% increase in the number of closed-end CIS and an increase of 13 700% in fund assets over the fifteen-year period.
(Sources: SES Records; ICI Mutual Fund Fact Books (1985-1995), Lipper Closed-End Performance Analysis Service).

Growth in Foreign Advisers Registered in the US

During the last fifteen years, there has been strong growth in the number of foreign investment advisers (i.e. advisers with an address outside the US) that are registered with the SEC under the Investment Advisers Act of 1940. In 1980, approximately 23 foreign investment advisers were registered with the SEC. By July 1995, 376 foreign investment advisers were registered with the SEC. This represents an increase of 1 535% over the fifteen year period.
(Source: SEC Records).

Table 1
Germany - Breakdown of 548 Foreign Authorized Foreign Funds (Plus 850 Sub-Funds of Umbrella Funds) are as Follows:

482 CIS (plus 829 sub-funds) are in possession of a European Passport, and are UCITS according to EEC Directive No. 85/611/EWG.

66 CIS (plus 21 sub-funds) do not have a European Passport. The location of some of the registered offices of these 66 CIS is as follows:

Switzerland:	17
Bermuda:	1
Panama:	3
Canada:	9
USA:	10
European Member States	26

Presently, a large number of notices have been submitted in order to allow more foreign CIS to be marketed in Germany.

Most of the 482 European CIS/UCITS in possession of a European Passport have their registered office in Luxembourg where also many US companies have established a branch.

Table 2:
Luxembourg - Number of Foreign CIS Marketed in Luxembourg

UCITS	1991	1992	1993	1994	30.06.95
Germany	26	78	102	108	114
Belgium	0	2	4	5	5
France	0	0	1	1	2
Non-UCITS					
Germany	0	1	1	1	4
Total	**26**	**81**	**108**	**115**	**125**

Table 3:
Luxembourg - Number of Attestations for Selling Abroad Delivered to Luxembourg CIS (30.06.95)

Germany	462	Portugal	22	Sri Lanka	2
France	211	Sweden	22	Jordan	2
UK	169	Denmark	17	Pakistan	2
Switzerland	163	India	17	Turkey	2
Belgium	160	Iceland	11	Brazil	1
Austria	143	Finland	9	Guernsey	1
Spain	111	Norway	8	Kuwait	1
Italy	106	Colombia	6	Chile	1
Netherlands	94	Gibraltar	5	Indonesia	1
Korea	61	Taiwan	5	Singapore	1
Greece	36	Isle of Man	4	USA	1
Hong Kong	36	Jersey	3		
Ireland	29	Canada	2		
				Total	**1 927**

Table 4:
Spain - Foreign CIS Registered in Spain (Basic Data)

			Variation	
	31/12/94	31/12/93	Absolute	%
Total Assets (Marketed Volume)	106 038	45 921	60 117	130.9
Pta. Million				
Number of Investors	24 583	7 864	16 719	212.6
Number of Institutions	70	56	14	25
Funds	32	30	2	6.7
Companies	38	26	12	46.2
Country of Origin				
Luxembourg	61	48		
United Kingdom	6	6		
Belgium	1	1		
Ireland	1	1		
France	1	0		

Table 5:
Spain - Distribution of Foreign CIS Registered in the CNMV by Marketed Volume

Intervals	Number of Foreign CIS	% Over Total CIS	Total Assets (Marketed Volume)	% Over Total Investors
More than 5 000	4	5.71	55 271	52.12
2 001 - 5 000	9	12.86	27 455	25.89
901 - 2 000	13	18.57	16 930	15.97
401 - 900	5	7.14	3 454	3.26
201 - 400	6	8.57	1 754	1.65
101 - 200	6	8.57	725	0.68
51 - 100	1	1.43	96	0.09
21 - 50	9	12.86	302	0.28
0 - 20	17	24.29	51	0.05
TOTAL	70	100	106 038	100

Table 6:
Spain - Distribution of Foreign CIS Registered in the CNMV by Number of Investors

Intervals	Number of Foreign CIS	% Over Total CIS	Number of Investors	% Over Total Investors
More than 800	6	8.57	15 272	62.12
601 - 800	5	7.14	3 567	14.51
401 - 600	3	4.29	1 393	5.67
251 - 400	7	10	2 174	8.84
151 - 250	4	5.71	871	3.54
61 - 150	10	14.29	937	3.81
21 - 60	8	11.43	237	0.96
11 - 20	4	5.71	60	0.24
0 - 10	23	32.86	72	0.29
TOTAL	70	100	24 583	100