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Secretariat of the Joint Forum (BCBS Secretariat)
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18 October 2013

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Dear Committee Members,

**Re: The Joint Forum Consultative Report: Point of Sale Disclosure in the Insurance, Banking, and Securities Sectors**

The International Banking Federation (IBFed) is the representative body for national and international banking federations from leading financial nations around the world. Its membership includes the American Bankers Association, the Australian Bankers' Association, the Canadian Bankers Association, the European Banking Federation, the Japanese Bankers' Association, the China Banking Association, the Indian Banks' Association, the Korean Federation of Banks, the Association of Russian Banks, and the Banking Association of South Africa. This worldwide reach enables the IBFed to function as the key international forum for considering legislative, regulatory, and other issues of interest to the banking industry and to our customers.

The IBFed appreciates the opportunity to comment on the consultative report (Report) published by the Joint Forum, which is comprised of the Basel Committee on Banking Supervision (BCBS), the International Organization of Securities Commissions (IOSCO), and the International Association of Insurance Supervisors (IAIS). The Report identifies and assesses purported differences and gaps in regulatory approaches to point of sale (POS) disclosure for investment and savings products across the banking, securities, and insurance sectors, and considers whether regulatory approaches to POS disclosure need to be further aligned on a "cross-sectoral basis" (i.e., across these three financial sectors). The Report proposes a number of recommendations, mainly to regulatory policymakers and supervisors, to assist them in considering, developing, and/or refining their POS disclosure regulations on a cross-sectoral basis.

In general, we agree with the Joint Forum that POS disclosures are a fundamental element of a strong consumer protection regime. Disclosure is a critical aspect of ensuring consumers have the information needed to make an informed investment decision. Disclosure is also a critical aspect of ensuring that financial institutions are able to provide information about their products and services to their customers. We further agree that POS disclosures can equip consumers to make informed decisions on investment and savings products, especially when comparing products across the financial sectors of banking, securities, and insurance.

Nevertheless, we are concerned about the Joint Forum's views on the scope and content of such disclosures when applied on a cross-sectoral basis, which at times appear to infer a "one-size-fits-all" approach. While IBFed shares the goal of clear, concise, and accurate disclosures for consumers, the form, presentation, and content of such disclosures for the banking, securities, and insurance savings and investment products, respectively, are often subject to the legal structure and regulatory requirements peculiar to these industries. Furthermore, the form, presentation, and content of disclosures may be driven by the particular role assumed by the product manufacturer or distributor within each such industry.[1] As a result, any attempt to fully "standardize" POS disclosures for banking, securities, and insurance products on a cross-sectoral basis may produce, ironically, disclosures that may be unclear, incongruous, and even misleading, to consumers.

Importantly, we believe that the principles for POS disclosure should recognize that the form, presentation, and content of disclosure need to be relevant to the particular product and the situation in which the consumer is offered the product. For example, simple financial products should not have the same disclosure requirements as more complex financial products or more complex advisory situations.

We believe further that informing consumers of the similarities and differences between and among banking, securities, and insurance securities savings and investment products must go along with consumer awareness and education efforts, an initiative that could be undertaken by each country's supervisors directly and in collaboration with industry and other stakeholders (such as educators and community organizations).[2] For example, regulatory authorities could provide general information on their websites identifying, describing, and comparing savings and investment products, which would enable consumers to decide for themselves the most appropriate product for their purposes. This would enable consumers then to proceed to those financial institutions providing that specific product.

Regardless, we believe that each jurisdiction should have the final authority and latitude to construct the disclosure regime consistent with its particular legal structure while preserving consumer protections.

Our comments are provided after each of the Joint Forum's eight policy recommendations on POS disclosure as follows:

***Recommendation 1****: Jurisdictions should consider implementing a concise written or electronic POS disclosure document, for the product sample identified in this report, taking into account the jurisdiction's regulatory regime.*

We agree that jurisdictions would benefit from implementing clear, concise, and accurate written or electronic POS disclosure requirements. We support such an approach where a sound balance is made among informing consumers, the appropriateness of the information provided, and the compliance burden and costs associated with producing it. Such

[1] The Joint Forum recognizes that "regulatory approaches can arise from legitimate differences in sectoral regulatory objectives as well as from differences in product features." Consultative Report at 1.
[2] See IBFed response under Recommendation 8 of this document.

disclosures would further the objective of equipping consumers with the information they need to reach an informed savings or investment decision. However, disclosures for certain sectoral products, such as banking products, may warrant disclosures that are distinct from other sectoral products, such as securities, investment, or insurance products, due to the legal structure and regulatory requirements under which the business of banking is governed. Therefore, there should be enough flexibility to adapt the contents of the document to distinct financial products.

For example, a consumer may want to invest funds in equities but cannot decide whether to invest through a bank variable rate, equity-indexed certificate of deposit or through a mutual fund. Different products will have different features, including product features and associated features, including guarantee arrangements or taxation arrangements. Many jurisdictions provide deposit insurance for consumers who are bank customers. Disclosures for the sale of a *bank variable rate certificate of deposit*, therefore, may include language stating that principal amount of such product is guaranteed or insured by the government insurance fund or agency.[3] On the other hand, the sale of *mutual fund shares* by a securities firm would not contain any such disclosures, as the principal amount is subject to loss and is not covered by a guarantee arrangement. Instead, as in the United States and Canada, for instance, such mutual fund investor would only be protected from *missing* funds, but not from the *loss* of funds resulting from an ordinary market downturn.[4] Although these two products share common investment features, providing a common, "standard" disclosure regarding the product's insurability (a fundamental consideration) would not be possible, thus diminishing the consumer's ability to meaningfully compare the two investment products.

We also believe that POS disclosure requirements should not be limited in relation to the format or delivery mode. Technology will continue to drive innovation in the offer of financial products and in the delivery of disclosures and materials to consumers. Consequently, the Joint Forum may want to modify the language of this recommendation to refer to written, electronic, and digital formats.

***Recommendation 2****: The POS disclosure document should be provided to consumers free of charge, before the time of purchase.*

We generally agree that a consumer should not be required to pay for a POS disclosure document before deciding whether or not to purchase a savings or investment product. However, we do not support principles for disclosure prescribing or controlling prices for the offer of financial products. In practice, applying a fee or charge for a POS disclosure document would not only serve to discourage the sale of such products but also would unnecessarily create disparities in information received between those consumers who choose to pay and those who do not. We recognize that there may certain limited circumstances where a fee or charge may be legitimate, but this should be based solely on a financial institution's decision concerning its cost recovery strategy.

Importantly, it must be recognized that there are costs associated with the creation, production, and distribution of documents and materials and that such administrative costs

[3] See U.S. Interagency Statement on Retail Sales of Nondeposit Investment Products (February 1994).
[4] The insurer in this case in the United States is the Securities Investor Protection Corporation (SPIC), which is separate and independent of the Federal Deposit Insurance Corporation (FDIC), which protects U.S. bank deposits. In Canada, the insurer providing investor protection for investment dealer bankruptcy is the Canadian Investor Protection Fund. The insurer of bank deposits is the Canadian Deposit Insurance Corporation (CDIC).

are typically passed on to consumers as part of the cost of doing business. Consumers should recognize that any such costs may be recouped should they decide to purchase the product (the price of which generally would already reflect the costs of providing disclosures).

Consequently, The Joint Forum may wish to modify the language of this recommendation to account for this situation. For instance, the Recommendation could be modified to read, "*The provision of the POS disclosure document to consumers should not be conditioned on the consumer's payment for the disclosure document,*" or "*Copies of the POS disclosure document should freely be made available to consumers prior to the purchase of any product.*"

***Recommendation 3****: A jurisdiction considering POS disclosure should consider requiring that a POS disclosure disclose key characteristics including costs, risks, and financial benefits or other features of a given product and any underlying or referenced assets, investments or indices, irrespective of the financial sector from which the products are derived.*

We agree that a POS disclosure document should include key characteristics of the savings or investment product. Many jurisdictions already have the requirement to summarize this information as part of prospectus disclosure.[5] We support disclosure documents which provide adequate and relevant information about the particular product to assist a consumer in making an investment decision.

We caution, however, that such POS disclosure requirements should not become overly prescriptive. Jurisdictions may have special or unique characteristics concerning the regulation of financial markets that may drive specific disclosure requirements, particularly as they apply to specific financial products. Consequently, they should be free to establish their own specific standards.[6] Additionally, we caution that POS disclosure requirements should not result in unnecessarily detailed or lengthy documents. Where information can be incorporated by reference to other sources, this should be encouraged (noting recommendation 6 below).

Importantly, we believe that the purpose of POS disclosure is to provide consumers with key information about the product. Additional consumer education or generic information should not need to be included as this will only lead to lengthy documents.

***Recommendation 4****: The POS disclosure document should be clear, fair, not misleading and written in a plain language designed to be understandable by the consumer.*

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[5] The U.S. Securities and Exchange Commission (SEC), for example, requires that a summary prospectus contain information on investment objectives, fees, investments, risks and performance, management, taxes, and compensation of financial intermediaries.[5] According to the SEC, these rules "help investors who are overwhelmed with choices among thousands of available funds described in lengthy and legalistic documents to access readily key information that is important to an informed investment decision." See 17 C.F.R. § 230.498(b)(2). A similar requirement exists in Canada to summarize information which would be most likely to influence the investor's decision to purchase the securities being distributed, including the information about the use of proceeds, risk factors, financial information, etc. See Form 41-101F1 – Information Required in a Prospectus, s. 3.1.

[6] We caution that local regulators do not add too detailed requirements to the high level principles set forth, which would otherwise risk confusing customers and result in a disclosure document with diminished commercial appeal.

We strongly agree that a POS disclosure document should be written in plain, understandable language and should be clear, fair, and not misleading. We also agree that this should include an explanation of savings/investment risks as well as the potential investment objectives and benefits.

The Joint Forum points out that marketing material should "clearly distinguish itself from required disclosure documents, such as through a reference that a product may not be sold other than in conjunction with required POS disclosure documents." A number of jurisdictions, however, may require that POS disclosure actually be contained *within* marketing materials in addition to a separate disclosure document, so that at no point is there separation between marketing and required disclosures.

For example, marketing materials for nondeposit investment products in the U.S. are required to contain disclosures that such products are not FDIC-insured, are not guaranteed, and may lose value. The SEC requires that certain marketing materials contain disclosures to make clear the risks of making an investment in securities. In Canada, advertisements for deposit type instruments that refer to features of these instruments (or the interest payable under them) must disclose: (a) the manner in which interest is to be accrued and any limitations with respect to the interest payable; and (b) if the instruments relate to deposits that are not eligible for deposit insurance coverage by the CDIC, the fact that they are not eligible. Experiences in jurisdictions within the European Union (EU) confirm that an effective disclosure document strikes the proper balance between the legal requirements and an appealing presentation that consumers would want to read. In Australia, the introduction of short form disclosure and key fact sheets means that consumers may receive separate disclosures and then bundled disclosure and marketing materials.

***Recommendation 5****: The POS disclosures should include the same type of information to facilitate comparison of competing products.*

We appreciate the Joint Forum's desire to have disclosure documents "contain the same type of information [across financial sectors] in order to facilitate consumers' comparison of a range of comparable products." Nevertheless, as stated above, we are concerned that this view does not sufficiently take account of the characteristics that differentiate a banking product from a securities or insurance product, a securities product from a banking or insurance product, or an insurance product from a banking or securities product. As the Joint Forum itself acknowledges, "differences between product disclosure regulations can occur, in some cases, because of product specificities."[7] Consequently, the Joint Forum should affirm these differences and eschew a "one-size-fits-all" approach to cross-sectoral POS disclosures.

For example, although some similar disclosures might be possible, it is unrealistic to assume that an equity-indexed bank certificate of deposit can be readily compared side-by-side with a fixed annuity product sold by an insurance company. Each of these products has a distinct investment purpose and objective – a side-by-side comparison may not be very meaningful in discerning the best investment for a consumer, who in this instance should be more focused on the *purpose* of the investment rather than its potential risks and returns. A primary reason why an insurance product can be difficult to compare alongside a banking product is that the objectives of obtaining an insurance product may be dramatically different from the objectives of a banking product. The question, "What do I want to accomplish with my

[7] Consultative Report at 6.

investment?" is a more germane starting point than "Which product provides the possibility of a greater return, with lower fees and expenses?" Imparting consumer financial education, rather than imposing an across-the-board, incongruous disclosure regime upon the banking industry, would provide the best approach for comparing cross-sectoral products.

We further believe that comparison information and other assessment of financial products is more appropriately located in other disclosures for consumers, such as in comparison tables of different deposit products offered by a bank located on their website or recommendations provided by financial advisers and intermediaries. In practice, maintaining accurate and meaningful comparisons in regulated POS disclosure documents would impose an unrealistic burden on financial institutions.

***Recommendation 6****: The POS disclosure document should be concise, set out key information about a product and may include as appropriate, links or refer to other information. It should make clear that it does not provide exhaustive information.*

We agree that the summary nature of a POS disclosure document means that it should be concise rather than lengthy and be generally limited to providing key summary information. We also agree and support the Joint Forum's position that, for documents available electronically or over the Internet, electronic links to other documents may be appropriate and useful for the consumer, particularly where electronic versions are continuously available and up-to-date. Similarly, documents available digitally could usefully incorporate information by reference to other sources. Finally, we agree that it be made clear to the consumer that the POS disclosure document is a summary intended for the consumer's benefit and does not purport to provide exhaustive, or even comprehensive, information on the savings or investment product. An effective POS disclosure document by its nature – being short, readable, and avoiding jargon – cannot purport to be exhaustive.

***Recommendation 7****: Allocation of responsibility for preparing, making available and/or delivering the POS disclosure document should be clearly established, and the POS disclosure document should identify which entity is responsible for its content.*

We agree that there should be a clear allocation of responsibility between a product manufacturer and a distributor for the preparation and distribution of the POS disclosure document to customers. Such documents typically state which party or parties are responsible for the content of the disclosures contained therein. It should be kept in mind, however, that responsibility for particular disclosures often are governed by written agreement between the parties, and that a disclosure made by a producer generally cannot be revised, altered, or (where required) omitted by the distributor. Jurisdictions should allow for product manufacturers and distributors to structure the disclosure document in a manner that is workable for both parties, consistent with the objectives to provide a clear, concise, and accurate POS disclosure document.

Additionally, we believe that there should be some flexibility regarding the timing of delivery of the disclosure (e.g., orders by phone call, where customer demands may be such that it is not realistic to postpone the execution of the order after the delivery of the disclosure document). In this case, a customer may be provided with oral disclosure over the phone, with a disclosure document being provided shortly thereafter. It should also be recognized that the POS disclosure document will not be necessarily all the information a consumer may receive from a product manufacturer or distributor. Many jurisdictions, including the EU, U.S., and Australia, for example, may also receive advice orally at the point of sale which is intended to complement or explain the POS disclosure document that is provided. Compliance processes, such as scripts, ensure that oral disclosures are managed within the POS disclosure framework.

***Recommendation 8****: A jurisdiction considering POS disclosure should consider how to use its capabilities and powers to implement these POS recommendations, taking into account the jurisdiction's regulatory regime.*

We agree that jurisdictions that wish to establish a POS disclosure framework should have in place the regulatory authority to ensure their implementation. In jurisdictions where POS disclosures are required, banking or financial services supervisors typically have the authority to review such disclosures before or after distribution (or have the ability to review them in the supervision or examination process), and where appropriate, take or recommend corrective action where disclosures are incomplete or insufficient.

We further believe that supervisors should consider ways in which they themselves can assist consumers in making informed decisions on savings and investment products. For example, many supervisors maintain their own website which may include descriptions and differences among various savings and investment products. A growing number of supervisors also are making available on their websites financial calculators and other online tools to assist consumers in their investment decision-making (e.g., the "Money Smart" website in Australia administered by the Australian Securities and Investments Commission (ASIC).

Supervisors, in collaboration with industry and other stakeholders, should consider the manner in which they can make consumers better aware that these educational materials and online tools are publicly available, free of charge. In this fashion, supervisors themselves can play a well-suited and active role in fostering financially educated and informed consumers, who can independently decide which type of product (banking, insurance, securities) is best-suited to their financial needs, and then proceed to compare that product among multiple providers.

Thank you for your consideration of these views concerning cross-sectoral POS disclosures. If you have any questions or wish to discuss, please contact any of the signatories below.

Yours sincerely,

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