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Business Law Section
Committee on Securities Regulation

25 February 2005

Mr. Philippe Richard,
IOSCO Secretary General
Oquendo 12
28006 Madrid
SPAIN

E-mail address: mail@oicv.iosco.org

Re: Public Comment on IOSCO Consultation Policy and Procedures

Dear Mr. Richard:

The Committee on Securities Regulation (the "Committee") of the Business Law Section of the New York State Bar Association appreciates the opportunity to comment on the proposed Statement of Consultation Policy and on the proposed Statement of Consultation Procedures published in draft form by posting to the IOSCO website on or about 5 November 2004.

The Committee, which is composed of lawyers who are members of the New York Bar and a principal part of whose practice is in securities regulation, includes lawyers in private practice and lawyers in law departments of corporations and other business entities. The Committee is aware that lawyers were not included among the parties specifically identified to be consulted in connection with the proposed Statement of Consultation Policy, but believes that lawyers' views on issues subject to public consultation by IOSCO, including particularly the policy and procedures that are to govern IOSCO's public consultation, are in fact of substantial importance to IOSCO.

A draft of this letter was reviewed by certain members of the Committee, and the views expressed in this letter are generally consistent with those of the majority of members who reviewed and commented on the letter in draft form. The views set forth in this letter, however, are those of the Committee and do not necessarily reflect the views of the organizations with which its members are associated, the New York State Bar Association, or its Business Law Section.

Summary

Just as transparency in and by securities markets and securities market participants is a primary objective of securities regulators, so transparency in the regulators' process for declaring regulatory principles and for setting regulatory standards is a principal desideratum of the regulated markets and of all persons and entities participating in those markets. IOSCO's proposed Statement of Consultation Policy and its proposed Statement of Consultation Procedures are welcome steps toward such transparency. Our Committee applauds IOSCO's willingness to formalize and publicize its prospective actions in this regard, and by this letter submits suggestions directed at furthering IOSCO's efforts to this end.

IOSCO's Proposed Consultation Policy

The inclusion of a statement of IOSCO's "General Objectives" in adopting and effectuating a Consultation Policy is quite beneficial to members of the public to whom the Policy is addressed. That statement will, as it says, "contribute to...facilitating an early dialogue among standard setters" and, probably more important, it will also frame each succeeding "dialogue...between the private sector and standard setters". It is this latter dialogue from which "transparency regarding IOSCO activities and its work program" will emerge. May we therefore suggest that IOSCO consider an additional, final General Objective: "To encourage persons in both the public and private sectors to participate in IOSCO's public consultations."

IOSCO's determination to "maintain a flexible approach to public consultations" is easily understood, and the several factors to be considered in deciding whether to seek public consultation are themselves quite reasonable. Of overriding importance, however, is the proposed statement that, "[a]s a general matter, work projects that contemplate the issuance of international standards and principles...will include the conduct of a public consultation..." May we suggest, in order to breed confidence in the proposed Policy as it may apply to the issuance of international standards and principles, that the paragraph stating the "general matter" be given special emphasis (perhaps in type or in position).

IOSCO's Proposed Consultation Procedures

The particular procedures presently suggested will undoubtedly evolve over time as IOSCO gains experience with the public consultation process. Transparency is well served by the intention to post all comments received (as IOSCO has already done in respect of the Code of Conduct Fundamentals for Credit Rating Agencies) and to summarize the manner in which public comments have been addressed or the reasons why they have been omitted (as IOSCO's Technical Committee has in fact done in respect of the Principles on Outsourcing of Financial Services for Market Intermediaries). May we suggest, however, that transparency is normally disserved by anonymity, and that IOSCO should consider according anonymity only to commenters who specifically request such treatment and, perhaps, in that circumstance only if in IOSCO's judgment the public consultation process will not be discouraged by so doing.

We also suggest that IOSCO consider maintaining a listserve or similar device by which to advise persons, who have submitted their names and e-addresses for the purpose of receiving such advice, of the posting of Consultation Reports and final reports in the Public Documents area of the IOSCO Library on the IOSCO internet website.

Conclusion

Again, our Committee applauds IOSCO's willingness to formalize and publicize its prospective actions in regard to public consultation, and very much appreciates the opportunity to comment on this important development. We apologize for our inability to submit these comments prior to the date fixed in IOSCO's internet posting. We shall be pleased to meet with representatives of IOSCO to discuss these matters further.

Respectfully submitted,

NYSBA COMMITTEE ON SECURITIES REGULATION

By Michael J. Holliday.

MICHAEL J. HOLLIDAY, CHAIR OF THE COMMITTEE

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