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FINANCIAL SECTOR ASSESSMENT PROGRAM

REPUBLIC OF INDONESIA

**IMPLEMENTATION OF THE IOSCO OBJECTIVES AND
PRINCIPLES OF SECURITIES REGULATION**

DETAILED ASSESSMENT OF OBSERVANCE

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I. SUMMARY, KEY FINDINGS, AND RECOMMENDATIONS

Introduction

1. **The law and related implementing regulations that constitute the regulatory framework affecting the capital markets in Indonesia are largely consistent with the IOSCO Objectives and Principles of Securities Regulation.** Nevertheless this assessment finds that legislative reforms and other actions that are in the process of being implemented to clarify and expand the security regulator's authority and to cure certain self-acknowledged gaps should be accelerated. Further, the assessment concludes that attention must be paid to assure that implementation of the regulatory framework results in a system that (1) reliably detects, deters, and sanctions securities violations and (2) reliably identifies and prevents or mitigates prudential concerns. This may require legal reforms beyond those necessary to reform the specific capital markets law, as discussed more extensively by the separate legal assessor. How significant such further reform will be to enforcement effectiveness will depend in part on the manner in which regulatory enforcement powers and authorities are augmented and enhanced under the capital markets law revision. Capital markets operations are heavily dependent on legal certainty, and in particular reliable application of contract, company, insolvency, and other legal protections.

2. **The Capital Markets and Financial Institutions Supervisory Agency (BAPEPAM-LK), with government support, has taken impressive steps to increase the transparency of regulation and to institute a comprehensive operational program that meets international norms and Indonesia's understanding of best practices.** BAPEPAM-LK is also making an earnest effort to meet the challenges to effective securities regulation presented by the size and scale of Indonesian capital markets, a dispersed population, and the speed of market development. Effective enforcement of the evolving regulatory framework is critical to regulatory credibility and, as such, is identified by the industry itself as important to market confidence and development. Legal uncertainty as to the timeliness and consistency of judicial support for capital markets regulations in private litigation or securities enforcement or intervention actions can reduce the effectiveness of important investor and systemic protections intended to be accorded by relevant law.

3. **This securities sector assessment of Indonesia coincides with Indonesia's taking a seat on the G-20.** It evaluates the substantial strengthening of the regulatory system for securities and other financial instruments undertaken by the relevant Indonesian authorities and the government since 1997 and recognizes the commitment of Indonesia to best practice. This assessment is part of a broader assessment of the Indonesian financial system that also evaluates other critical sectors.

4. Andrea M. Corcoran[s] conducted this securities assessment, which included two on-site visits.

Information and methodology used for assessment

5. **This assessment was conducted using the Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation of 2003, reissued in 2008, the related e-methodology, and the reports, explanatory notes, instructions and guidance cited therein.** Principle 30 is separately assessed under the Committee on Payment and Settlement Systems/IOSCO Recommendations for Securities Settlement Systems by another assessor. The IOSCO Principles were amended and augmented in June 2010. This assessment does not address these recent changes.

6. **This assessment is based on a comprehensive self-assessment by BAPEPAM-LK** using the aforementioned methodology; review of relevant legislation, regulations, and guidance; statistical and other descriptive information on the financial market; the rules pertinent to the securities exchange, the clearing and settlement system, and commodities transactions; relevant websites; media reports; annual reports; information obtained on the broader system as part of the assessment team; and multiple meetings with BAPEPAM-LK staff, the Commodity Futures Trading Regulatory Authority (BAPPEBTI), brokers, fund managers, issuers, end-users that are not themselves issuers, banks, state-owned enterprises, accountants and accounting associations, lawyers, the Indonesian Stock Exchange (IDX), the Jakarta Futures Exchange (JFX), trade (broker) associations, the on-site representatives of the IMF and World Bank, and informal information provided by certain parties providing technical assistance on various matters. BAPPEBTI did not provide a separate self-assessment under its authorizing legislation. Subsequent to the on-site review, on March 31, 2010, a new electronic derivatives market (licensed in 2009), known as the Indonesia Commodity and Derivatives Exchange (ICDX), was launched. The ICDX has a vertically integrated clearing facility. Oversight of the ICDX and related clearing was not comprehended in this review.

7. **BAPEPAM-LK coordinated all meetings, provided logistical support for, and transport to, meetings with regulated entities and end-users (but did not attend or monitor these), assured timely assistance on questions, provided soft-copies of well-indexed versions of the relevant laws, regulations, and guidance in English, assisted in the identification and use of market data, corrected misperceptions, promptly commented on drafts, and otherwise effectively assisted the conduct of the assessment process.** By their nature securities assessments in complex countries and markets are unduly compressed. The ability to understand fully all the nuances of a complex regulatory environment is inherently constrained by the limited length of the related missions

Institutional and market structure—overview¹

8. **The Indonesia financial regulatory/supervisory system is a partially integrated system.** Bank supervision and monetary policy are under the charge of the Bank of Indonesia (BI). Non-bank financial institutions, securities, and listed commodity derivatives are separately regulated. The Capital Markets and Financial Institutions Supervisory Agency

¹More detailed information is in the detailed assessment.

(CMFISA, also known as BABEPAM-LK, hereinafter referred to as BAPEPAM-LK) was formed under the Ministry of Finance by the merger in 2006 of the former securities commission and the Directorate General of Financial Institutions. BAPEPAM-LK is responsible for supervision of the capital markets, including issuers, intermediaries, mutual funds, exchanges, securities depositories and clearing houses and for non-bank financial institutions, such as multi-finance companies, insurance and pension funds. Listed-derivatives on commodities defined by statute as “the object of trade which become the subject of Futures Contracts being traded in the [futures] exchange,” are regulated by the Commodity Futures Trading Regulatory Authority (COFTRA or BAPPEBTI) (Law No.32/1997), which oversees both JFX and ICDX. This assessment relates only to the capital markets and capital markets institutions.

9. **BAPEPAM-LK implements Indonesia’s core securities legislation, the Capital Markets Law (CML), No 8/1995 effective in 1996.** The CML replaces Presidential Decree No. 53/1990 and MOF Decree number 1548/KMK.013/1990, and substantially strengthens the pre-existing legal framework. At the time of its adoption, the CML was a response to rapid development of the economy of Indonesia and increasing globalization. The Indonesian Central Bank also was modernized fairly contemporaneously in 1999 (Law No. 23/1999). The regulatory framework operates within a civil law legal system, but permits more interpretive scope for the securities regulator created thereby than is typical of most civil law systems. As in many civil law countries, in Indonesia, the Minister of Finance is accorded a role with respect to the issuance of government regulations and the eponymous ministerial decrees, whereas BAPEPAM-LK is responsible for its own rules. Indonesian Company Law was modernized in 1995 and bankruptcy law was modernized in 1998. The Company Law was further amended to take account of changes in international practice in 2007. Relevant BAPEPAM-LK rules can be found in English at http://www.bapepam.go.id/pasar_modal/regulasi_pm/peraturan_pm/indexEng.htm, subject to updating.

10. **Although the CML does not explicitly define securities exchanges as “self-regulatory organizations,” such exchanges as well as the related clearing and depository organizations (KPEI and KSEI) have self-regulatory powers and are required, as a matter of law, to supervise their members and enforce their own rules.²** Futures exchange(s) also are required by law to take necessary actions to avoid price manipulation. Two securities exchanges (the Jakarta Stock Exchange (JSX) and the Surabaya Stock Exchange (SSX)) were consolidated into the Indonesian Stock Exchange (IDX), with headquarters in Jakarta, in 2007. The Jakarta Futures Exchange (JFX) established in 1999 after the adoption of relevant enabling legislation, began operating on December 15, 2000, and launched a spot market in 2010. The Indonesia Commodity and Derivatives Exchange (ICDX) was established in mid-2009 and launched in 2010. In December 2009, remote membership of the futures markets was permitted. Corporate and retail government bonds, as well as equities, are traded on the IDX either by outright continuous auction or on the negotiated board, known together as the centralized trading platform (CTP) as well as over-

² See CML note 40 and related provisions. See also CML Article 7 (2) and Article 9.

the-counter. The over-the-counter (OTC) equity market is unregulated, but may be settled in the Indonesia Central Securities Depository (KSEI) system. All bond transactions, even OTC, are to be reported to CTP in accordance with BAPEPAM-LK rules³. The futures exchanges trade gold and palm oil, and aim to provide an indigenous price for other export commodities. The CML also recognizes capital markets' supporting institutions, such as (1) custodians (including bank custodians), the mutual fund custodial activities of which are supervised by BAPEPAM-LK, and (2) supporting professionals (e.g., accountants and lawyers) that are required to have special qualifications to provide professional support to capital market participants and institutions.

11. **Currently the CML is in the process of amendment.** The amendments to the CML are intended to reflect the evolution of the markets since 1996 and to keep pace with international norms respecting securities enforcement, international cooperation to combat cross-border securities fraud, coverage of all relevant financial activity, and the powers and independence of the securities regulator. Necessary changes to improve the capacity for international cooperation and to address needed internal reforms to render the enforcement of securities laws more efficient and effective, should be implemented on an accelerated schedule and should not be held hostage to broader institutional changes. Substantive changes that do not implicate revision of the scope of existing institutions, in particular, should go forward with expedition.

12. **Indonesia has a very open market.** For example, non-domestic investors can own up to 100% of listed companies, including securities companies. Up to 85% foreign ownership is permitted for unlisted securities companies if owned by a foreign financial company and up to 99% if owned by a foreign securities company. The ownership of shares of banks by foreign investors and/or foreign institutions through direct placement or through the IDX is allowed for up to 99% of total outstanding shares. MOF Decree No 179/KMK.010/2003. Similar limits adopted in 2009 apply to owners of futures brokerages. There are no restrictions on the sale of foreign products to Indonesian nationals from within Indonesia as well as from remote locations. As of 30 November 2009, as much as 67.51% of the value of shares held in the Central Securities Depository (KSEI) was held by foreign investors and in 2009 approximately 25% of trading value was of foreign origin while in contrast approximately 9.30% of trading volume was of foreign origin. These factors add both depth and complexity to the Indonesian market and underscore the importance of the capacity of the securities regulator to give and receive cross-border enforcement assistance and to have effective liquidity management arrangements

13. **Indonesian markets weathered the recent crisis relatively well.** Stock market capitalization at the end of 2008 stood at Rp 1,076.49 trillion 48.76% lower than year end 2007. As of year-end 2009, equity capitalization was approximately 36% of 2009 GDP. Overall market trading had been halted, due to the precipitous decline in October 2008, from the 8th to the 10th to protect market integrity. Although such market interventions can discourage participation, the markets, made an early recovery in 2009. Equity market

³ Rule X.M.3

capitalization at year-end 2009 was 2,019.38 trillion rupiahs (about 215 billion \$US).. During 2008 market capitalization for government securities (SBN) increased 10.04% to Rp 525. 69 trillion. Additionally, average daily transaction values for equities increased 3.90% to Rp 4.44 trillion and average daily turnover increased by 15.96% to 55,905 trades in 2008, further increasing to 87,040 per day in 2009. At end 2009, IDX (a merger of the Surabaya and Jakarta stock exchanges) that is a not-for-profit, mutual entity, had 118 active members. The market also reported 110 participants with bond market reporting obligations, which were not necessarily members, including 59 securities companies, 35 banks and 16 custodian banks. All access to the trading platform, however, must be through a Member firm that is also a clearing member. There were 17 equity IPOs in 2008 and 13 in 2009. As of year-end 2009, IDX statistics listed 398 active companies, 78 government bonds, 223 bond offerings (from 86 corporate issuers) and 41 warrants. There were also some listed rights offerings and two ETFs traded. Six securities that trade on IDX are cross listed⁴. The IDX publishes multiple indexes including the LQ 45, an index of the most liquid stocks, and several sectoral indexes. As of April 2010, the IDX operates twelve regional information centers known as PIMPs and 67 exchange corners within universities, which disseminate price and other information broadly within Indonesia. Currently, mutual funds are the fastest growing part of the market. As of March 2010, there were 620 contractual mutual funds (or collective investment schemes (CIS)), including 268 structured funds, representing an aggregate NAV of Rp_119.76 trillion. BAPEPAM-LK has also registered 72 private equity funds, representing an aggregate NAV of Rp 21.3 trillion. Institutional investors in bonds include state-owned banks, regional banks, mutual funds, insurance companies, and securities companies; while listed equities and corporate bonds are held by other financial institutions and corporates as well. The commodity markets currently offer 22 futures contracts but have very little volume and open interest. The ICDX, a new electronic platform offered by Patsystems, launched in 2010 and the JFX expanded spot market operations taking advantage of the new Warehouse legislation introduced in 2006. Equity-based derivatives are tradable at the IDX.

Preconditions for effective securities regulation

14. The preconditions for effective securities regulation listed as essential by IOSCO appear to be broadly satisfied in Indonesia, including that there should be no unnecessary barriers to entry and exit from Indonesian markets and products. This overall conclusion is subject to the caveat that to the extent judicial enforcement is necessary to effect agency action or private rights, efforts are needed to promote further certainty that the relevant capital markets law will be timely applied as intended. The CML explicitly recognizes that capital markets have a “strategic role in national development as a source of funding for business and as a vehicle for public investment.” The CML further acknowledges that such development is dependent upon a “sound legal foundation” and protection of the investing public. Many improvements have been made since 1997 and others are in process. More study is warranted, however, of the extent to which, in practice,

⁴ Sydney, London, Luxembourg, New York, and Singapore. IDX statistics can be found at www.bei.co.id. Some of the statistics found elsewhere on the website, or in the English version of the Annual Report, however, do not appear to be totally consistent.

proper regulatory conduct and enforcement of the securities laws and related contracts—that is, the overall regulatory framework—is equitably and reliably supported by the judicial system. While the regulatory framework is comprehensive, certainty related to the application of sanctions for violations of the capital markets law could be strengthened by extending the concept of a specialist expert prosecutorial corps or fraud squad under the Department of Justice to matters (insider trading for example) other than corruption. Additionally, the comprehensive accounting reform that is underway is important to the integrity of financial reporting and to market expansion and should be progressed swiftly. Similarly, bankruptcy reform, a matter of global interest following the 2007-8 crisis, is desirable. There appears to be a customer product preference for depositor-like protections for invested principal (such as the so-called “capital protected” funds). This preference could cause investor confusion about the nature of certain investment products, especially in that products may be distributed through the banking network. These consumer expectations should be weighed by policy makers in assuring that the existing comprehensive disclosure regime is sufficient in such cases to assure there is no confusion as to the risks of particular products.

Main Findings

15. The main findings are as follows:

(i) **Principles 1-5**, Principles relating to the Regulator: The regulatory framework and regulatory powers and requirements pertaining to the securities regulator are highly transparent. Such powers are also generally comprehensive, with the exception of the need for reinforcement and expansion of administrative enforcement and international cooperative powers, that are in process, assurance that the scope of regulatory coverage remains complete as the market evolves, and the legal reform issues mentioned above. BAPEPAM-LK has an educated, committed, creative and enthusiastic staff. Concerted effort has been made to assure different voices from the marketplace are represented in policy making through a broad consultative process and that equitable administrative procedures are in place. Cooperation among the authorities, however, certain elements of which have been recently formalized should be kept under close review. IOSCO requires explicit arrangements for supervisory cooperation where two supervisors/regulators have responsibility for the same entities. BAPEPAM-LK is enjoined to cooperate with the Central Bank and has specific powers relative to authorizing banks that act as custodians for mutual funds and sell securities products. There also is a financial stability memorandum between the Central Bank and the Ministry of Finance. While as of April 30, 2010, BAPEPAM-LK and BI concluded a formal information sharing memorandum of understanding, practical experience with sharing at the operational level should be documented and permitted to evolve with experience, particularly with the new global emphasis on monitoring for potential systemic risks. Required government pre-approval of reallocation of already committed budget resources could potentially compromise regulatory independence and efficiency and should be avoided. BAPEPAM-LK indicates it does not provide case-by-case exemptions. BAPEPAM-LK should be certain that the regulated industry is informed of its policy in this regard. Further, if over time exemptions or other derogations from the rules (such as late filings) are in practice commonly permitted, these effective extensions should be documented, as is other guidance, and made generally accessible to the public.

(ii) **Principles 6-7**, Principles relating to self-regulation: The CML provides ample authority consistent with the Principles for BAPEPAM-LK to oversee the self-regulatory (rule/contract enforcement) activities of the IDX, KSEI and KPEI. BAPEPAM-LK can access the information necessary to do so and maintains its own surveillance programs. Nonetheless, the level of BAPEPAM-LKs oversight activity should be increased proportionate to the growth of the exchange(s) and any other permitted trading venues, and the level of activity and international participation thereon. BAPEPAM-LK should also assure that indirect (marketing agents) as well as direct market securities companies are subject to appropriate oversight and augment existing activities to confirm the effectiveness of IDX oversight of Member conduct especially as to the allocation of customer trades and the handling of customer funds. This should be accomplished, through its own and IDX's on-site inspection activities, as well as through new measures, including provision for a unique customer identifier and on-line access by customers to the status of their accounts at the KSEI. Over time, these improvements should increase assurance of the proper handling of customer interests and oversight of marketing.

(iii) **Principles 8-10**, Principles relating to enforcement of securities regulation: BAPEPAM-LK has the powers and authority to conduct inspections, investigations, surveillance, and enforcement and has made proactive use of the administrative powers it has to deter misconduct. BAPEPAM-LK also has the authority to obtain the books and records, including banking records of any person, as necessary to address proper enforcement of securities laws, particularly those relating to conduct and market abuse, provided an investigation has been opened and subject to the requirement of a Ministerial request if the financial status of such person is at issue. However, full implementation of these powers requires (1) additional commitment to detecting and punishing substantive violations (2) actions to promote further confidence that criminal violations will be expeditiously prosecuted to fruition, and (3) the grant of requested expanded authority to address violations by expanding administrative enforcement powers, including fining and other sanctioning powers to non-licensees. Current amendments would expand existing provisions that address violations by expanding BAPEPAM-LK's administrative enforcement powers, including fining and other sanctioning powers, to reach all parties, and not just registrants. Further refinements to access to banking records, permitting a more direct route to records for securities law violations generally, also would facilitate BAPEPAM-LK's becoming a full signatory of the IOSCO multilateral MOU on information sharing. Added resources to educate prosecutors concerning financial crimes and additional authority to participate in criminal proceedings using the investigative record developed by BAPEPAM-LK investigators would provide additional clout to the overall capacity to enforce the laws against insider trading and market abuses within Indonesia.

(iv) **Principles 11-13**, Principles for cooperation in regulation: Pending legal changes necessary to permit BAPEPAM-LK's full commitment to international enforcement cooperation should be made a priority. Domestic arrangements to assure practical cooperation between the Bank of Indonesia and BAPEPAM-LK in the oversight of the bank distribution network for securities and other matters were concluded in April 2010 and should be kept under review. Further procedures for BAPEPAM-LK to obtain bank records in connection with securities violations should be clarified to assure that if access is not direct such records can be obtained with sufficient expedition. Clarification of the authority

of BAPEPAM-LK to assist a foreign securities regulator without the need for a corresponding violation of Indonesian law would progress its ability to join the IOSCO Multilateral MOU.

(v) **Principles 14-16**, Principles for Issuers: Initial and ongoing disclosure regimes are in place, minority shareholder protections are in place and being enhanced, and a massive, orchestrated project to promptly transition toward international accounting standards (IFRS) is well underway. Enforcement of existing requirements should be a focus. Additionally, though prospectus disclosure generally meets relevant standards, accounting disclosures are still subject to improvement. BAPEPAM-LK has confirmed that second tier listings on the IDX, which are subject to lesser listing requirements than first tier offerings, are now in fact clearly identified as such on the trading platform to avoid relevant prospectus disclosure being discounted.

(vi) **Principles 17-20**, Principles for collective investment schemes: Provisions are in place to address the sale and structure of collective investment vehicles. All relevant entities: the fund operator, the product, the sales agent, the custodian and the adviser are within the regulatory umbrella. Nonetheless there is a class of retail offerings (so-called discretionary funds) the regulatory status of which has only recently been clarified. As of April, 2010, BAPEPAM-LK provided Guidance on Individually Managed Securities Portfolios for the Interest of Investors, which made explicit that “discretionary funds” are not pools but individually managed accounts that should be accounted for as such. The application of such guidance, which, eliminated the ability to vend such services outside the regulatory regime, provided for the protection of related customer assets, and restricted riskier offers to certain qualified investors, should be kept under review. The pending project to improve the means of pricing illiquid debt held in mutual funds should be accelerated to assure proper pricing of funds based on debt instruments. Further clarification of the legal status of funds would also be useful.

(vii) **Principles 21-24**, Principles for market intermediaries: Provisions are in place to license market intermediaries, which include a due diligence review at the outset, internal controls requirements, and risk-based provisions for on-going monitoring, which depend heavily for their execution on reliance on the exchange (IDX). Capital rules are applied as limits on market exposure and credit risk but should be regularly tested against actual market developments to assure sufficient liquidity protections against unusual market moves. Customer funds protections for beneficial holders require enhancement to assure compliance by intermediaries and oversight of such compliance by both the IDX and BAPEPAM-LK. Measures have been implemented to assure a single identifier for transactions (though there may be some issues as to how this is implemented) and to permit customers to view trading activity in their account on line to assure proper treatment of trades. Nonetheless, continued oversight by the regulator of handling of customer funds is essential. Only BAPEPAM-LK can place an intermediary in bankruptcy, but once an administrator is appointed, provisions to protect the market from intermediary bankruptcies should be clarified. Oversight of onsite inspections and ongoing monitoring should be intensified and pending reforms on resolution authority and documentation of contingency plans should be pursued.

(viii) **Principles 25-29**, Principles for the Secondary Market. Sophisticated provisions are in place for the oversight of the secondary market and market participants. No non-exchange platforms currently exist. BAPEPAM-LK should be certain that existing provisions will cover all markets that are accessible by retail participants and continue to augment its oversight arrangements. Further more effort should be dedicated to timely enforcement against market abuses and assuring that measures to address potential defaults are documented and fully adequate.

(ix) **Principle 30** is rated separately under the relevant CPSS/IOSCO standards by a different assessor.

16. **Table 1 contains a principle-by-principle summary of assessment results:**

Table 1A. Summary Implementation of the IOSCO Principles—ROSCs

Principle	Findings
Principle 1. The responsibilities of the regulator should be clearly and objectively stated	The legal and regulatory framework is highly transparent and the roles of the regulators and supervisors are clearly defined. BAPEPAM-LK and the Bank of Indonesia have accountability in some instances for the same entities, and have recently executed a practical information sharing protocol. The operation of this protocol should be kept under review as experience with heightened information sharing and cooperation is made operational. To the extent that there is significant over-the-counter securities trading or new platforms develop, attention should be paid to assuring existing regulatory arrangements are sufficient to prevent regulatory gaps.
Principle 2. The regulator should be operationally independent and accountable in the exercise of its functions and powers	Legislation in the process of becoming effective that reinforces regulatory independence should be promptly implemented. Such legislation will change the budget process and provide for terms of office. The existing provision for preclearance by the Ministry for reallocation of previously allocated funds should be eliminated in that budgetary allocations are subject to audit <i>ex post</i> as part of the budget process.
Principle 3. The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers	Administrative enforcement powers to fine third parties and cooperative powers should be clarified and enhanced. Although BAPEPAM-LK reports no difficulty in recruiting and maintaining staff, assurance that BAPEPAM-LK has adequate technical skills should be kept continuously under review and development of defined career paths should be encouraged. Efforts to promote investor /industry awareness of BAPEPAM-LK's technical capabilities and resources should continue to be augmented.
Principle 4. The regulator should adopt clear and consistent regulatory processes	Clear processes are in place; enhanced attention should be paid to the extent to which such processes are supported by the judicial system. Measures to heighten the awareness of prosecutors to the need for effective prosecution of financial crime should be pursued. All regulatory interpretations including permissions or exceptions, if any, should be made public.
Principle 5. The staff of the regulator should observe the highest professional standards	Appropriate codes of conduct are being enhanced and monitoring of performance occurs.

Principle	Findings
Principle 6 The regulatory regime should make appropriate use of self-regulatory organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence and to the extent appropriate to the size and complexity of the markets	Appropriate use of self-regulatory functions is encompassed by the CML. See Principle 7.
Principle 7. SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities	Oversight of exchange programs, especially those of Members (and member supervision of non-member sales agents) should be intensified, documented and reported.
Principle 8. The regulator should have comprehensive inspection, investigation and surveillance powers	Comprehensive powers are in place; on-site inspections of market intermediaries that are exchange members are handled largely by the exchange, subject to review by the BAPEPAM-LK.
Principle 9. The regulator should have comprehensive enforcement powers	The regulator has extensive administrative enforcement and intervention powers, which its staff has used proactively. Nonetheless, administrative fining powers should be augmented and expanded. Additionally it should be clarified that all BAPEPAM-LK's administrative sanctioning powers are explicitly applicable to non-licensees. Also, as certain violations must be pursued through the criminal justice system, which currently has no specially trained financial prosecution team and must attend to other priorities, efforts should be undertaken to provide a special prosecutors corps or to expand the capacity of BAPEPAM-LK to participate directly in criminal cases.
Principle 10. The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.	Though the overall enforcement program has been enhanced, enforcement is not perceived by the public to be as effective as desirable for regulatory credibility. BAPEPAM-LK has taken recent steps to bring actions which deprive malfeasors of the fruits of their misconduct and to bar persons from practice and to revoke licenses. Nonetheless improvements can be made. Substantive violations can take a long time to pursue, may not be enforced judicially, and certain sanctions may continue to be viewed as mere business expenses. Efforts should be made to assure that the regulated community is sufficiently aware of all enforcement efforts.

Principle	Findings
Principle 11 The regulator should have the authority to share both public and non-public information with domestic and foreign counterparts	The regulator has appropriate information sharing authority, though in the case of banking records additional procedures are required and could potentially unduly delay, or otherwise adversely affect the use, of such information. See also Principle 13. There are, however, no blocking provisions.
Principle 12. Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts	The regulator has several bi-lateral information sharing arrangements with regulators, particularly in the South Asia region, and has entered into Part B of the IOSCO MMOU committing to undertake the changes to become a full signatory.
Principle 13. The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers	While the regulator has the capacity to provide enforcement assistance to foreign regulators, it may have to commence its own investigation; the regulator should progress legislation to permit it to become a full member of IOSCO MMOU.
Principle 14. There should be full, timely and accurate disclosure of financial results and other information that is material to investors' decisions	In general the disclosures for issuers and public companies meet international standards subject to accounting improvements; the recent addition of proper identification of second tier listings on the exchange platform should assure that such listings do not compromise prospectus disclosure with respect to listed companies.
Principle 15. Holders of securities in a company should be treated in a fair and equitable manner	Company law has recently been improved and enforcement of shareholder rights strengthened; but interconnections among shareholders and large shareholdings may still require more effective disclosure.
Principle 16. Accounting and auditing standards should be of a high and internationally acceptable quality	Indonesia is rapidly moving toward implementing IFRS, to be complete by 2012. This process, together with provision for enhanced accounting and audit oversight, should be accelerated to assure appropriate reporting of financial information.
Principle 17. The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme	Effective standards are in place with respect to licensed Investment Managers, portfolio advisors, custodians, sales personnel and funds; issues with the confusion as to whether discretionary funds were collective investments and as to the applicable regulatory requirements have been addressed by recent rulemaking. These changes should be kept under review.

Principle	Findings
<p>Principle 18. The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets</p>	<p>Statutory provisions addressing the form of collective investment contracts, make the participation unit in a contractual fund a security, subject to a custodial and management contract. This contractual structure, and related accounting, is not atypical of civil law jurisdictions where the objective is to insulate the interest of the customer from claims on the manager and the concept of trust is not well-developed. This structure while meeting the spirit of the principle should be clearly disclosed. Further to the extent the judiciary does not actively enforce financial contracts, the effectiveness of this structure should be kept under review.</p>
<p>Principle 19. Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme</p>	<p>The requirements for disclosure are comprehensive and fulfill the list provided by IOSCO. Care must be taken that customers understand that capital protected funds are not principal-guaranteed funds.</p>
<p>Principle 20. Regulation should ensure that there is a proper and disclosed basis for assets valuation and the pricing and the redemption of units in a collective investment scheme</p>	<p>There is provision for calculation of a daily NAV, and obligations on the Investment Manager and the custodian for the integrity of pricing and for documentation of prices not made in the market. The system, however, for debt pricing, which is in the process of being reformed, can be manipulated. In that the majority of retail funds are currently invested in debt, pricing reform should be expedited..</p>
<p>Principle 21. Regulation should provide for minimum entry standards for market intermediaries</p>	<p>The licensing requirements for market intermediaries appear to be comprehensive; apply to investment advisors as well as broker dealers, and are enforced through an initial due diligence exercise. Oversight is conducted by the exchange for member firms. More documentation should be made available, however, as to ongoing monitoring of intermediaries in general. See Principle 7.</p>
<p>Principle 22. There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake</p>	<p>Capital requirements contain a leverage limiter and haircuts on assets; adequacy of coverage in light of market events and liquidity needs should be kept under rigorous review.</p>

Principle	Findings
<p>Principle 23. Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters</p>	<p>Good provisions for internal controls and for conduct of business are in place. However, there are concerns as to how customer positions are handled in practice. BAPEPAM-LK has sought to address these concerns by the recent creation of a unique identifier to assure transactions are properly credited to customer accounts. The effectiveness of this reform to assure appropriate treatment of nominee accounts should be evaluated on an ongoing basis. , Also BAPEPAM-LK should be alert that remote branches can breed risks, and assure appropriate coverage of branch supervision is included in its risk-based oversight.</p>
<p>Principle 24. There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk</p>	<p>Procedures are in place to limit exposures that are unsupported by capital and to limit leverage. Nonetheless, a documented plan for handling intermediary defaults to the exchange or clearing or settlement systems is desirable. Adoption of pending resolution reforms is also recommended. See also Principle 28.</p>
<p>Principle 25. The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight</p>	<p>The provisions for authorizing exchanges/self-regulatory organizations are comprehensive and the requirement for the exchange to have appropriate rules and to enforce them is in place. If over-the-counter equity trading is not bilateral the BAPEPAM-LK may need to assure that trading facilities are clearly designated as exchanges or otherwise covered.</p>
<p>Principle 26. There should be ongoing regulatory supervision of exchanges and trading systems, which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants</p>	<p>There are provisions for the oversight of the exchange, including periodic reporting, rule enforcement reviews or inspections, the reporting of sanctions, the requirement for specified follow-up procedures in the case of member capital deficiencies, and the capacity to request raw data to complement BAPEPAM-LK's monitoring activities. But see Principle 7.</p>
<p>Principle 27. Regulation should promote transparency of trading</p>	<p>Trading on the exchange is transparent. But see Principle 20 regarding the pricing of debt traded OTC.</p>
<p>Principle 28. Regulation should be designed to detect and deter manipulation and other unfair trading practices</p>	<p>BAPEPAM-LK has the power to commence investigations and the exchange has state of the art tools to detect manipulation and other abuses, which recent actions by BAPEPAM-LK concerning sub-accounts has materially enhanced. The prosecution of exchange actions to an effective and consistent conclusion however is lengthy and highly uncertain.</p>

Principle	Findings
<p>Principle 29. Regulation should aim to ensure the proper management of large exposures, default risk and market disruption</p>	<p>The taking of positions is disciplined by an exposure limit set by reference to net adjusted working capital, fails to deliver securities are severely punished, so infrequently occur, and there is a waterfall of resources to fund defaults. Nonetheless the contingency arrangements between the BAPEPAM-LK and the IDX, KPEI and KSEI should be documented. Delisting procedures might also be reviewed.</p>
<p>Principle 30. Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective and efficient and that they reduce systemic risk</p>	<p>Separately assessed under the CPSS/IOSCO Securities Settlement Recommendations by a separate assessor.</p>

Table 1B. Summary Implementation of the IOSCO Principles—Detailed Assessments

Principle	Grading	Findings
Principle 1. The responsibilities of the regulator should be clearly and objectively stated	Broadly Implemented	The legal and regulatory framework is highly transparent and the roles of the regulators and supervisors are clearly defined. BAPEPAM-LK and the Bank of Indonesia have accountability in some instances for the same entities, and have recently executed a practical information sharing protocol. The operation of this protocol should be kept under review as experience with heightened information sharing and cooperation is made operational. To the extent that there is significant over-the-counter securities trading or new platforms develop, attention should be paid to assuring existing regulatory arrangements are sufficient to prevent regulatory gaps.
Principle 2. The regulator should be operationally independent and accountable in the exercise of its functions and powers	Partly Implemented	Legislation in the process of becoming effective that reinforces regulatory independence should be promptly implemented. Such legislation will change the budget process and provide for terms of office. The existing provision for preclearance by the Ministry for reallocation of previously allocated funds should be eliminated in that budgetary allocations are subject to audit ex post as part of the budget process.
Principle 3. The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers	Broadly Implemented	Administrative enforcement powers to fine third parties and cooperative powers should be clarified and enhanced. Although BAPEPAM-LK reports no difficulty in recruiting and maintaining staff, assurance that BAPEPAM-LK has adequate technical skills should be kept continuously under review and development of defined career paths should be encouraged. Efforts to promote investor /industry awareness of BAPEPAM-LK's technical capabilities and resources should continue to be augmented.

Principle	Grading	Findings
Principle 4. The regulator should adopt clear and consistent regulatory processes	Fully Implemented	Clear processes are in place; enhanced attention should be paid to the extent to which such processes are supported by the judicial system. Measures to heighten the awareness of prosecutors to the need for effective prosecution of financial crime should be pursued. All regulatory interpretations, including permissions or exceptions, if any, should be made public.
Principle 5. The staff of the regulator should observe the highest professional standards	Fully Implemented	Appropriate codes of conduct are being enhanced and monitoring of performance occurs.
Principle 6 The regulatory regime should make appropriate use of self-regulatory organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence and to the extent appropriate to the size and complexity of the markets	Not Rated	Appropriate use of self-regulatory functions is encompassed by the CML. See Principle 7.
Principle 7. SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities	Partly Implemented	Oversight of exchange programs, especially those of Members (and Member supervision of non-member sales agents) should be intensified, documented and reported.
Principle 8. The regulator should have comprehensive inspection, investigation and surveillance powers	Fully Implemented	Comprehensive powers are in place; on-site inspections of market intermediaries that are exchange members are handled largely by the exchange, subject to review by the BAPEPAM-LK.
Principle 9. The regulator should have comprehensive enforcement powers	Broadly Implemented	The regulator has extensive administrative enforcement and intervention powers, which its staff has used proactively. Nonetheless, administrative fining power should be augmented and expanded. Additionally, it should be clarified that all BAPEPAM-LK's administrative sanctioning powers are explicitly applicable to non-licensees. Also, as certain violations must be pursued through the criminal justice system which has no specially trained financial prosecution team and must attend to other priorities, efforts should be undertaken to provide a special prosecutors' corps or to expand the capacity of BAPEPAM-LK to participate directly in criminal cases.

Principle	Grading	Findings
Principle 10. The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.	Partly Implemented	BAPEPAM-LK has taken recent steps to bring actions which deprive malfeasors of the fruits of their misconduct and to bar persons from practice and to revoke licenses. Nonetheless improvements can be made. Substantive violations can take a long time to pursue, may not be enforced judicially, and certain sanctions may continue to be viewed as mere business expenses. Efforts should be made to assure that the regulated community is sufficiently aware of all enforcement efforts.
Principle 11. The regulator should have the authority to share both public and non-public information with domestic and foreign counterparts	Fully Implemented	The regulator has appropriate information sharing authority, though in the case of banking records additional procedures are required and could potentially unduly delay, or otherwise adversely affect the use, of such information. There, however, are no blocking provisions. See also Principle 13.
Principle 12. Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts	Fully Implemented	The regulator has several bi-lateral information sharing arrangements with regulators, particularly in the South Asia region, and has entered into Part B of the IOSCO MMOU committing to make changes to become a full signatory.
Principle 13. The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers	Broadly Implemented	While the regulator has the capacity to provide enforcement assistance to foreign regulators, it may have to commence its own investigation; the regulator should progress legislation to permit it to become a full member of the IOSCO MMOU. Nonetheless, it has shared information to support cross border enforcement efforts.
Principle 14. There should be full, timely and accurate disclosure of financial results and other information that is material to investors' decisions	Broadly Implemented	In general the disclosures for issuers and public companies meet international standards subject to accounting improvements; the recent addition of proper identification of second tier listings on the exchange platform should assure that such listings do not compromise prospectus disclosure with respect to listed companies. t
Principle 15. Holders of securities in a company should be treated in a fair and equitable manner	Broadly Implemented	Company law has recently been improved and enforcement of shareholder rights strengthened; but interconnections among shareholders and large shareholdings may still require more effective disclosure.

Principle	Grading	Findings
Principle 16. Accounting and auditing standards should be of a high and internationally acceptable quality	Partly Implemented	Indonesia is rapidly moving toward implementing IFRS, to be complete by 2012. This process together with provision for enhanced accounting and auditing oversight should be accelerated to assure appropriate reporting of financial information.
Principle 17. The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme	Broadly Implemented	Effective standards are in place with respect to licensed Investment Managers, portfolio advisors, custodians, sales personnel and funds; issues with the confusion as to whether discretionary funds were collective investments and as to the applicable regulatory requirements have been addressed by recent rulemaking. These changes should be kept under review.
Principle 18. The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets	Broadly Implemented	Statutory provisions addressing the form of collective investment contracts, make the participation unit in a contractual fund a security, subject to a custodial and management contract. This contractual structure, and related accounting, is not atypical of civil law jurisdictions where the objective is to insulate the interest of the customer from claims on the manager and the concept of trust is not well-developed. This structure, while meeting the spirit of the principle, should be clearly disclosed. Further, to the extent the judiciary does not actively enforce financial contracts, the effectiveness of this structure should be kept under review.
Principle 19. Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme	Broadly Implemented	The requirements for disclosure are comprehensive and fulfill the list provided by IOSCO. Care must be taken that customers are properly aware that capital-protected funds are not principal- guaranteed funds.
Principle 20. Regulation should ensure that there is a proper and disclosed basis for assets valuation and the pricing and the redemption of units in a collective investment scheme	Partly Implemented	There is provision for calculation of a daily NAV, and obligations on the Investment Manager and the custodian for the integrity of pricing and for documentation of prices/valuations not made in the market. The system, however, for debt pricing, which is in the process of being reformed, can be manipulated. In that the majority of retail funds are currently invested in debt, pricing reform should be expedited.

Principle	Grading	Findings
Principle 21. Regulation should provide for minimum entry standards for market intermediaries	Fully Implemented	The licensing requirements for market intermediaries appear to be comprehensive; apply to investment advisors as well as broker dealers, and are enforced through an initial due diligence exercise. Oversight is conducted by the exchange for member firms. More documentation should be made available, however, as to ongoing monitoring of intermediaries in general. See Principle 7.
Principle 22. There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake	Broadly Implemented	Capital requirements contain a leverage limiter and haircuts on assets; adequacy of coverage in light of market events and liquidity needs should be kept under rigorous review.
Principle 23. Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters	Broadly Implemented	Good provisions for internal controls and for conduct of business are in place. However, there are concerns as to how customer positions are handled in practice. BAPEPAM-LK has sought to address these concerns by the recent creation of a unique identifier to assure transactions are properly credited to customer accounts. The effectiveness of this reform to assure appropriate treatment of nominee accounts should be evaluated on an ongoing basis. Also BAPEPAM-LK should be alert that remote branches can breed risks and assure appropriate coverage of branch supervision is included in its risk-based oversight.
Principle 24. There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk	Broadly Implemented	Procedures are in place to limit exposures that are unsupported by capital and to limit leverage. Nonetheless, a documented plan for handling intermediary defaults to the exchange or to the clearing or settlement systems is desirable. Adoption of pending resolution authority is also recommended.. See also Principle 28.
Principle 25. The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight	Fully Implemented	The provisions for authorizing exchanges/self-regulatory organizations are comprehensive and the requirement for the exchange to have appropriate rules and to enforce them is in place. If over-the-counter equity trading is not bilateral, the BAPEPAM-LK may need to assure that trading facilities are clearly designated as exchanges or otherwise covered.

Principle	Grading	Findings
Principle 26. There should be ongoing regulatory supervision of exchanges and trading systems, which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants	Fully Implemented	There are provisions for the oversight of the exchange, including periodic reporting, rule enforcement reviews or inspections, the reporting of sanctions, the requirement of specified procedures to follow up on member capital deficiencies, and the capacity to request raw data to complement BAPEPAM-LK monitoring activities. But see Principle 7.
Principle 27. Regulation should promote transparency of trading	Fully Implemented	Trading on the exchange is transparent. But see Principle 20 regarding the pricing of debt traded OTC.
Principle 28. Regulation should be designed to detect and deter manipulation and other unfair trading practices	Broadly Implemented	BAPEPAM-LK has the power to commence investigations and the exchange has state of the art tools to detect manipulation and other abuses, which recent actions by BAPEPAM-LK with respect to sub-accounts has materially enhanced. The prosecution of exchange cases to an effective and consistent conclusion however is lengthy and highly uncertain.
Principle 29. Regulation should aim to ensure the proper management of large exposures, default risk and market disruption	Broadly Implemented	The taking of positions is disciplined by an exposure limit set by reference to net adjusted working capital, fails to deliver securities are severely punished, so infrequently occur, and there is a waterfall of resources to fund defaults. Nonetheless the contingency arrangements between the BAPEPAM-LK and the IDX, KSEI, KPEI should be documented. Delisting procedures should also be reviewed.
Principle 30. Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective and efficient and that they reduce systemic risk	Not Rated	Separately assessed under the CPSS/IOSCO Securities Settlement Recommendations by a separate assessor.
<i>Aggregate:</i> Fully implemented (FI) – 10, broadly implemented (BI) – 13 , partly implemented (PI) – 5, not implemented (NI) – 0, not applicable (N/A) – 2. To be determined		

II. RECOMMENDED ACTION PLAN AND AUTHORITIES' RESPONSE

A. Recommended action plan

Table 2. Recommended Action Plan to Improve Implementation of the IOSCO Principles

Principle	Recommended Action
Principles 2, 10, 15, 18, 24 and 28; see also Principles 8 and 13	Implementation of legislative changes to the Capital Markets Law, and other laws as necessary, intended to update and enhance the authority and power of BAPEPAM-LK and otherwise support the regulatory framework, should be pursued aggressively. These include: (i) proper immunity from civil damages, (ii) limitation of ministerial budget allocation review to <i>ex post audit</i> after initial budget approval (iii) expanded ability to require governance enhancements, (iv) ability to proceed judicially under civil law or administratively against third parties to sanction securities violations, (v) continued confirmation that contractual fund interests are enforced as a matter of law, (vi) ability to meet international norms for enforcement cooperation and (vii) modernized resolution authority and insolvency law. Enhancement of steps to assure investor awareness of the overall regulatory program should be continued and expanded.
Principles 4, 14, 16, 18 and 20	Enhancements related to fairness and reliability of transactions related to transparency and pricing should be pursued. These include: (1) Public clarification that exemptions are not accorded or the publication of such exemptions if any. (2) Continued accounting improvement and review of identification of second tier listings on IDX. (3) Augmented disclosure to assure that the risks of capital protected funds are clearly disclosed understood not to be principal guarantees. (4) Review and modification of the corporate debt pricing methodology to assure that prices used for mutual funds are not unduly susceptible to manipulation or liquidity risk.
Principles 18, 23 and 26	Augmentation of oversight regimes to confirm, that the unique customer ID as adopted and implemented enhances customer fund and trading protections as intended, that maintenance of the segregation of customer from firm accounts is sufficiently rigorous, and that sales of non-Member agents are appropriately overseen.
Principles 7, 10, and 28	Continuation of efforts to assure that the public has due regard for the effectiveness of surveillance and enforcement programs. Augmentation of legal powers to conduct administrative enforcement proceedings, in particular fining powers. Enhancement of the documentation and conduct of on-going monitoring and coverage, particularly with respect to the oversight of customer trades and funds. Extension and continuation of, pro-active initiatives to assure that securities violations are punished in a prompt, meaningful way.
Principles 22, 24, and 28	Continuing monitoring and documentation of contingency arrangements to address firm defaults and assurance that capital requirements provide a sufficient liquidity cushion to withstand a significant standard deviation price move in various markets.

Principle	Recommended Action
Principles 1, 12, and 13	Review of the operation, in practice of the new information sharing arrangement between BAPEPAM-LK and BI to assure the appropriate interchange of information and cooperation among entities with responsibility for the same licensed firm..

B. Authorities' response to the assessment

17. **We would like to take this opportunity to thank the IMF and the World Bank for the continued support to assist Indonesia in reforming and transforming our domestic capital markets.** We consider the FSAP exercise as an important reference in undertaking our reform activities towards a more resilient and efficient capital market supported by a robust regulatory framework in line with the international best practice and standards.

18. **Indonesia as an emerging market member of G20, views the assessment and its recommendations very seriously, as this would have significant impact on the outcome of the G20 peer group evaluation on the adherence to Global Standards as envisaged under the FSB framework released in April.** We believe that the current assessment provides only a fraction of the on-going reforms Indonesia is taking and we shall continuously undertake factual updates to the World Bank and IMF to facilitate greater awareness on the actual level of Indonesia's International Standards compliance.

19. **There are numerous ongoing legal and regulatory reform efforts which may not have been captured in the report as of April 2010, among others:**

- a. Substantial efforts are being put in-place to improve the overall investor protection in our markets; these include the implementation of Single Investor ID for Fund and securities for all investors (inclusive of CIS Investors), which would provide a real time monitoring of end-investor activity and potential misuse by market intermediaries.
- b. The revised Capital Market Law will also include the ability of regulators to appoint statutory managers to takeover institutions (SRO's, market intermediaries and NBFI's) to ensure that the public interest is protected. Investor protection fund will also be introduced to provide coverage in the event of a market participant failure. Efforts are being put in-place to improve the overall dispute resolution to ensure that each market participant has in-place the necessary procedure to ensure that customer disputes are managed effectively.
- c. The recently submitted OJK (Financial Service Authority) Bill, will provide a complete independence of the Capital Market Regulator (Bapepam-LK) from the Ministry of Finance. OJK will have the ability to draw upon the best resources from the market to complement our resources. A comprehensive "legal protection" will be provided on top of the current provisions under the Criminal Code (Art 50/51) to protect our resources in discharging their duty in a "bona-fide" manner.

20. **Massive efforts are also on the way to prepare Indonesia’s greater regional integration activities with our respective ASEAN neighbors; this includes preparing the regulatory environment to handle the myriad of cross border activities via the Mutual Recognition or Substituted Compliance of our regional peers.** The operating environment and landscape in the next 5 years will be starkly different than what we are currently accustomed to. To achieve this, efforts are on the way to reform the supporting regulatory, supervisory and enforcement powers and tools to facilitate greater pre-emptive monitoring capabilities over market and institutions under our watch. Among the many on-going reforms include the comprehensive build-up of a consolidated information warehouse to link all related information concerning markets, products, issuers and the activity (on/off exchange) and relationships of all economic agents domestically and regionally. This technology oriented approach will become the foundation on how we enhance our surveillance and monitoring capacity to detect capital market violations, emerging prudential risk on our institutions and the buildup of systemic risk in our markets.

21. **The Indonesian capital market regulator in general feels that the amount of resources and the time allocated for the recently completed IOSCO assessment by the IMF and World Bank is insufficient for the assessor to gauge the level of comprehensiveness of the current regulatory systems, its supporting tools and processes, and the on-going reforms efforts being executed.** The time and resources constraints reduced the ability to execute a detail fact finding mission in reaching a more comprehensive understanding on the philosophy behind the Indonesian legal and regulatory framework.

22. **In addition, we disagree with the partially implemented ratings assigned for the following principles:**

- a. **For Principle 2:** The assessment indicates that Bapepam LK lacks the necessary legal protection and is open to intervention for its operational funding. In reality every civil servant executing its function in a bona fide manner is protected via the Article 50 & 51 Penal Code which provides a comprehensive legal protection. On top of this current provision, Indonesia legal system would treat any suit against a Civil Officer/Government Body via the Administrative Court (PTUN). Administrative court evaluates all cases regarding the potential dispute on any decision/act/action made by Government Officer/Body whether it was discharged in a bona-fide manner and on whether the standard procedures were duly complied with no potential conflict of interest that could have affected the decision making process. The Criminal/Commercial Court decision **must be based** upon the decision made by the Final Decision of the Administrative Court (Lower, High and Supreme Courts of PTUN). On the matter of possible “intervention”, there is no power in Indonesia that can stop Bapepam-LK from conducting its function as per Capital Market Law. No one is above that Law, neither the Executive nor the Parliament can interfere in our activities. With regards to the budget allocated to Bapepam-LK; under our Capital Market Law Article 5 (m) elucidation, it is clearly stated **“In view of the scope of its duties and the anticipated expansion in its workload, Bapepam must be allocated with an adequate appropriation in the State Income and Expenditure Budget**

(APBN) so that its responsibilities may be properly met”. In the event of an emergency the Government can provide an additional disbursement beyond its budget without having to go to Parliament first, this disbursement can then be reported in the Budget Realization report for the approval by the Parliament as per our Government Finance Law No 17 Article 27. The Government of Indonesia is mandated to ensure that all of its organs functions effectively and funded accordingly, the reallocation of previously allocated budget only happens by request of the Regulator and not from external parties and **when such an event happens it must be approve administratively no later than 5 days as per Minister of Finance Regulation No 69, Article 11(3) should the requesting entity submits its request together with the necessary documents.**

- b. **For Principle 7:** The assessment implies that Bapepam-LK does not have the necessary infrastructure to monitor the respective SRO’s and the jurisdiction of the SRO responsibility. The view taken shows the lack of understanding of the supporting process and procedures as well as the market structure in Indonesia with regards to regulated markets supervised by the SRO’s, the observation lacks any depth and effort in undertaking a proper due diligence of the respective standard operating procedures for oversight, surveillance and monitoring of Bapepam-LK to the respective SRO’s. The assessment also implies that the resources of the SRO’s are not bound by any standards of confidentiality of information in dispensing their duties. In reality the supporting Laws such as the Criminal Code binds all resources of the SRO’s in protecting the Confidentiality of Information in executing their function.
- c. **For Principle 10:** The broad brush assessment on our enforcement capabilities and the results of our action does not take into account the comprehensiveness of our enforcement powers, its efforts and the success of our enforcement cases and the impact it had made to general public. Instead the assessment focuses on the lack weaknesses of the Indonesian Judiciary system which is beyond the power of Bapepam-LK.
- d. **For Principle 16:** The assessment asserts that there is a major gap between our domestic accounting standards and the IFRS, and our regulatory infrastructure lacks the supporting procedures to monitor violations in misrepresentation of financial statement. In reality the actual gap between the standards is not significant and Indonesia is moving towards full convergence to the IFRS by 2012. Bapepam-LK also has a comprehensive oversight programs on all listed issuer and financial markets agents, for instance all financial reports of issuers Semi Annual and Annual (Audited) goes through a comprehensive analysis by our Corporate Finance Bureau. Each financial statement of issuers is rigorously validated against the Indonesian financial accounting standards and the Regulatory Check List of VIII.G.7 (Rule regarding Guidance for the Presentation of Financial Statements). The process will filter out financial statement which does not comply with the accounting standards and VIII.G.7, during the analysis each report is also analyzed from substance perspective, material transactions and

account relationships to identify any risk embedded or for potential misrepresentation of the financial statements.

III. DETAILED ASSESSMENT

23. **The purpose of the assessment is primarily to ascertain whether the legal and regulatory securities markets requirements of the country and the operations of the securities regulatory authorities in implementing and enforcing these requirements in practice meet the standards set out in the IOSCO Principles.** The assessment is to be a means of identifying potential gaps, inconsistencies, weaknesses and areas where further powers and/or better implementation of the existing framework may be necessary and used as a basis for establishing priorities for improvements to the current regulatory scheme.

Table 3. Detailed Assessment of Implementation of the IOSCO Principles

Principles Relating to the Regulator	
Principle 1.	The responsibilities of the regulator should be clear and objectively stated.
Description	<p>The Capital Markets and Financial Institutions Supervisory Agency (CMFISA, also known as BABEPAM-LK, hereinafter referred to as BAPEPAM)-LK, formed in 2006 by the merger of the former securities commission and the Directorate General of Financial Institutions, under the Ministry of Finance, is responsible for supervision of (1) the capital markets, including issuers, intermediaries, mutual funds, exchanges, securities depositories and clearing houses and (2) non-bank financial institutions, such as multi-finance companies, insurance and pension funds. BAPEPAM-LK implements the core securities legislation, the Capital Markets Law (CML), No 8/1995 effective in 1996, which replaces Presidential Decree No., 53/1990 and MOF Decree No. 1448/KMK.013/1990 substantially strengthening the pre-existing framework. At the time of its adoption, the CML was a response to rapid development of the economy of Indonesia and increasing globalization.</p> <p>The CML explicitly recognizes that capital markets play a “strategic role in national development as a source of funding for business and as a vehicle for public investment,” and that such development is further dependent upon a “sound legal foundation,” and protection of the investing public. National development is defined to include the “pursuit of continuous improvement in the prosperity and well-being of Indonesian citizens,” economic growth and societal stability, and “more equitable wealth distribution,” through financing of large and small businesses and investment in small and medium enterprises.</p> <p>The CML clearly defines, and transparently sets out, the BAPEPAM-LK’s responsibilities and powers.</p> <p>In general, BAPEPAM is charged with day-to-day supervision of the capital markets to ensure that they are fair, efficient and orderly and that the interests of investors and the public are adequately protected. Specifically, 16 sections of CML Article 5 set out the enumerated powers and authorities of BAPEPAM-LK, including, among others: (i) granting business licenses to exchanges, depositories, clearing guarantee institutions and financial intermediaries; (ii) granting individual licenses to representatives; (iii) granting approvals to bank custodians; (iv) registering capital market supporting professionals (such as, accountants and attorneys); (v) establishing qualifications, nominating procedures, and procedures for suspending directors and commissioners of licensed market institutions (such as exchanges); (vi) establishing conditions for public offerings (such as how securities registration becomes effective); (vii) conducting inspections and investigations of public companies, persons required to hold firm, individual or professional licenses, and of any person with respect to suspected violations of the law and regulations; (viii) intervening in the market to suspend a listing or to suspend trading in the event of emergency; (ix) intervening to take steps to avert loss to the public due to violations of the CML; (x) defining additional instruments as securities; and (xi) providing technical interpretations of the law and implementing regulations. More generically, BAPEPAM-LK has the authority to “do any other [non-enumerated] act required by” the CML (CML Article 5 q. and</p>

	<p>n. 33) and to take “steps necessary to avert loss to the public arising from violation of Capital Market regulations.”(CML Article 5n.)</p> <p>BAPEPAM-LK’s substantial powers and authorities are enforceable through administrative procedures and, in the case of certain listing and governance requirements, pursuant to amendments to the 1995 Company law adopted in 2007 (Company Law 40/2007). The power to punish certain securities violations that are deemed criminal, to seize evidence, and otherwise to determine proper application of the securities laws and regulations often must, however, occur through the courts. In this regard, some commenters note that the reliability and consistency of judicial application of the Capital Markets Law is not always assured. Additionally, unlike the specially licensed lawyers and accountants, there is no specially trained, commercially-oriented judiciary nor designated courts or prosecution corps that is particularly experienced in the handling of securities law cases [see also discussion under Principle 10.]</p> <p>BAPEPAM-LK indicates that while it has more capacity to interpret the law than is typical of civil law jurisdictions, it does not in practice provide case-by-case exemptions or relief. Where it does issue general guidance, such issuance is subject to transparent procedures and made public pursuant to a regulation that governs the issuance of rules and related interpretations.[Law No. 10/2004 Establishment of Regulation; BAPEPAM-LK Rules II.E.1] . Rules are public and posted on BAPEPAM’-LKs website in both Bahasa and English [see URL listed above]. BAPEPAM-LK states that should BAPEPAM-LK determine to provide individual guidance, it must apply its policies consistently treating similar fact situations similarly and that information on how such decisions are handled is available on request.</p> <p>BAPPEBTI (or COFTRA, the Commodity Futures Trading Regulatory Agency), organized under the Ministry of Industry and Trade, regulates the commodity futures markets. The Jakarta Futures Exchange (JFX) and its related clearing institution were licensed in 1999 and began operations in 2000, pursuant to enabling legislation, enacted in 1997, Law 32/1997, as augmented by a law on warehouse receipts, Law 9/2006. BAPPEBTI has the authority to license additional commodity markets, under which a new electronic market for the trading of palm oil, gold, and cocoa was licensed in 2009 (and launched in 2010) , using a platform provided by PATSystems. BAPPEBTI also expects further automation, and correspondingly further dissemination of pricing in the spot market to occur and JFX has taken steps in 2010 in this direction. Currently, there are 22 commodity products authorized for trading, but there is very little open interest on the futures markets. Apparently, ninety nine per cent of all derivatives in commodities (broadly defined to include foreign exchange, which constitutes the bulk thereof) trading occurs over-the-counter, and the future prospects of any new market remain speculative. BAPPEBTI claims some authority to address financial futures, such as futures on foreign exchange, but Article 1, 5 of the CML covers “futures contracts related to securities,” and “all derivatives” (further defined as rights relative to debt or equity including options and warrants) and equity indexes (traded on IDX) are regulated by BAPEPAM-LK. There are no operational arrangements or information sharing understandings between the BAPPEBTI and BAPEPAM-LK, which currently have no common products, though they have participated on a joint task force with the Indonesian Financial Transaction Reports and Analysis Center (INTRAC) on combating abuses by investment funds and such cooperative arrangements and communication are desirable.</p> <p>The sale of securities, including collective investments, is largely dependent on distribution through the banking network, particularly the dispersed network of branches across the many islands of Indonesia. Similarly, the custodianship of securities assets and related investor funds is generally within bank custodians; unaffiliated bank custodians <i>must</i> be used by mutual fund Investment Managers. Since 2002, many improvements have been made to the requirements relative to the sale of securities products through the banking network intended to prevent potential abuses and to assure sales personnel and custodians are properly licensed by BAPEPAM-LK. Additionally, Article 112 of the CML requires BAPEPAM-LK and the Bank of Indonesia (BI) to “consult and coordinate their respective functions of overseeing Custodians, Trust-Agents (relative to certain products), and <i>other matters</i> regarding Capital Market operations of commercial banks... [emphasis added].” In fact, applicable rules require a bank to submit a recommendation from the Central Bank which states that the bank is capable of engaging in business as a custodian bank or trust agent to BAPEPAM-LK,</p>
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	<p>before BAPEPAM-LK may consider such an application. BAPEPAM-LK confirms this recommendation with the Central Bank before granting the application. BAPEPAM-LK states that this close relationship and coordination in practice is part of each authority's ongoing supervision and oversight over banks engaged in Capital Market activities. There also are arrangements between the Ministry of Finance, Central Bank and Indonesia Deposit Insurance Corporation to establish the Financial Sector Stability Committee (KSSK), (SKB Number 299/KMK.010/2007; 9/27/KEP.GBI/2007 and 015/DK-LPS/VI/2007 of June 2007) to strengthen cooperation at a high level.</p> <p>Despite the CML mandate that BAPEPAM cooperate with BI, there is no corresponding injunction on BI under the Banking law. Prior to April 30, 2010, , sharing of data between BI and BAPEPAM, was not pursuant to any explicit operational protocol. In April, such a protocol was executed, and its operation and cooperation thereunder in practice will be documented and kept under review. In that the reputational risks related to miss-selling or to the mishandling of customer assets held by bank custodians can affect both authorities, and the financial system, effective information sharing arrangements are relevant to maintaining confidence in the integrity of the financial system.</p> <p>More broadly, a <i>Task Force for Handling Alleged Acts Against the Law Related to the Global Financial Crisis 2008</i> was formally established through Minister of Finance Decision Number Kep-353/KMK.010/2008 dated November 28th, 2008. The Task Force is comprised of representatives from BAPEPAM-LK, the MOF, BI, the Indonesian National Police, the Attorney General of the Republic of Indonesia, and the Indonesian Financial Transaction Reports and Analysis Centre (PPATK).</p> <p>Legislation that would amend the CML to clarify further the role of the BAPEPAM-LK and enhance its enforcement authority, specifically by providing augmented civil sanctions and injunctive power and power over non-licensed entities, is process . Proposed enhancements include: expanded authority to require independent directors of public companies, authorities relative to large shareholdings, provision of legal status for the guarantee fund to ensure completion of exchange transactions, ability to use electronic data in evidence, additional resolution authority with respect to potentially defaulting securities companies, including those doing business for an investment manager that is declared bankrupt or dissolved, and strengthened protection of the officials and employees of BAPEPAM from liability for <i>bona fide</i> discharge of their official functions and authorities, et cetera. As further discussed in Principle 3, adoption of these enhancements and their implementation should be expedited.</p>
Assessment	Broadly Implemented.
Comments	<p>Arrangements for practical coordination between BI and BAPEPAM-LK were concluded in writing by formal Memorandum of Understanding on April 30, 2010. [See Key Question 3.] With such an MOU in place this Principle, after some operational experience, could be Fully Implemented. Should BAPEPAM-LK and BAPPEBTI oversee common products/and/or institutions, more formal arrangements between them with regard to such products may be desirable as well. Additionally the scope of the authority of BAPEPAM-LK to address OTC trading in securities, or new trading platforms, should be clarified. BAPEPAM_LK should make certain that its policy not to issue case-by-case exemptions, and the availability of information on informal guidance, is made known to the general public.</p>
Principle 2.	The regulator should be operationally independent and accountable in the exercise of its functions and powers.
Description	<p>Assessment of the delicate balance between independence and accountability of any regulatory authority is always difficult. The ability of regulatory authorities to act in a manner that is free from political or commercial interference and yet is sufficiently accountable under the law, and fair and consistent <i>vis a vis</i> the public, is dependent both upon the legal and regulatory framework for securities regulation and how the allocation of responsibilities between the relevant ministry and the</p>

regulatory authorities is exercised in practice. Article 3 of the CML explicitly provides that BAPEPAM-LK “shall provide ... day to day supervision of the Capital Market,” and Article 2 of that Act describes the role of the Ministry of Finance, to which BAPEPAM-LK reports, as the determination of “general policy.” “General policy,” in turn, is defined as “policy directly or indirectly related to fiscal and monetary policy and macro-economics.” The BAPEPAM-LK itself is charged with the licensing process and execution of its other powers and authorities as laid out in the CML without ministerial intervention or sign off. In this regard, BAPEPAM-LK regulations, and forms, set forth explicit licensing procedures, which include questions for individuals relative to “fitness and properness,” similar to those recently cumulated by IOSCO and which include information on a business plan and operational capacity for entities. See eg., Government Regulation 45/1995 as amended by Regulation No. 12/2004.

As in many civil law countries, the Minister of Finance is accorded a role with respect to issuance of government regulations and the eponymous ministerial decrees, whereas BAPEPAM-LK is responsible for its own rules. For example, rules related to day-to-day operations are entirely within the province of the BAPEPAM-LK, but “government regulations,” such as the framework for the formal investigative procedure delegated to BAPEPAM-LK, must be adopted at the ministerial level and are passed to the Minister by BAPEPAM-LK in proposed draft form. Regulations made by the BAPEPAM-LK, itself, are subject, via an Administrative Court process, to Supreme Court review for failure to follow procedures, conflicts, or other deficiencies or as to substantive outcome. BAPEPAM-LK is required to give written reasons for its material decisions relative to licensing and when exercising its administrative authority to sanction individuals. Charged individuals or firms who are subject to sanction, under Rule Number II.H.11 may be permitted to present information to BAPEPAM-LK in explanation and mitigation. Adversely affected persons also may seek review in the Administrative and Constitutional Court (Law 5/1986 as amended by Law 9/2004 and Law 14/1985 as amended by Law 5/2004).

The BAPEPAM-LK operates under a Chairman with a Secretariat composed of 12 bureaus. The procedures for appointing the Chairman, who is proposed by the Minister of Finance, and who serves at the pleasure of the President, are laid down in Government Regulation 13/2002, which sets forth general procedures for appointing a civil servant to chair a governmental institution. Legislation submitted to Parliament includes more specific criteria, including terms of office and criteria for appointment and removal intended to strengthen further the independence of the regulator and relief from civil (as well as criminal) liability for loss notwithstanding bona fide performance of regulatory functions.]

BAPEPAM-LK is generally transparent. It conducts open consultations and it permits access to the consultation process both (1) through specially formed stakeholder organizations, such as the Mutual Fund Dealers Association, of which there are currently 20 , and (2) directly, using a web-based comment process. BAPEPAM-LK must also report on its performance to the President through the Minister of Finance and must produce an Annual Report, which includes information on promotion of compliance and implementation of its regulations. BAPEPAM-LK proposes its budget to the Minister of Finance. By law the budget must be sufficient to meet BAPEPAM-LK’s responsibilities. CML 5m. Once approved the reallocation of funds within the budget, however, is subject to pre-review by the Directorate General of Treasury. BAPEPAM-LK’s receipt and use of resources is also subject to public audit (Law 15/2006) and to review by the Internal auditor of the Minister of Finance *ex-post*. BAPEPAM-LK states that although budget reallocation is subject to Treasury pre-approval, such reallocations are rare, must be made within five days, and pre-approval is merely an administrative procedure to set up an accounting category. They indicate that no such reallocation proposal has been revised or refused by Treasury. BAPEPAM-LK staff, including the Chairman, are civil servants and are subject to general rules respecting Civil Servants, which requires them to serve the purposes of the State, as opposed to any political party. These civil service requirements also enjoin BAPEPAM-LK staff and officials to act professionally, comply with the constitution and existing laws and regulations, avoid conflicts of interest, protect confidentiality of information obtained in the course of their duties,

	<p>and to “provide good service proportionally and be neutral ([that is] “not dispense special favor or privileges”) to any Person that [has a stake in] the Capital Market and BAPEPAM-LK.” (See BAPEPAM-LK Code of Ethics and Law 31/1999 as amended by Law 20/2001 respecting Eradicating Criminal Acts of Corruption, Article 101 of CML).</p> <p>As Civil Servants, BAPEPAM-LK staff, and BAPEPAM-LK delegees, are protected from criminal sanctions for acting to carry out Laws and Implementing regulations or from carrying out official duties delegated by an authorized person (Articles 50 and 51 of Criminal Code). Protection from civil liability for good faith performance of regulatory functions, however, is not currently accorded, but such protection consistent with international norms is before Parliament. BAPEPAM-LK indicates that “good faith” for these purposes is defined as any act that is:</p> <ul style="list-style-type: none"> • in accordance with the law, regulation, moral, social proprietary value, or religion, and without any negative intention or self interest of the person conducting the action, or his/her family and/or any other action indicating corruption, collusion and nepotism; • based upon in-depth analysis and potential positive impact; • covered by a preventive action plan if the action taken is not the right action; and • supported by a monitoring system.
Assessment	Partly Implemented
Comments	<p>The regulator should have broader protection from civil liability in damages for the good faith performance of its official functions. [Key Question 4.] Ideally also, the relevant law would provide for explicit terms of office and criteria for removal of the Chair of BAPEPAM-LK. Both reforms may be addressed when substantive changes to the law that have been adopted are implemented. [Key Question 5] BAPEPAM-LK indicates that Treasury must know of budget reallocations for administrative accounting purposes and that it would be unprecedented for Treasury to disapprove a reallocation of an approved budget. BAPEPAM-LK also advises that Treasury can act expeditiously with the BAPEPAM-LK in an emergent or enforcement situation. Even so, the requirement of Treasury preapproval of budget reallocations could potentially be used to interfere with regulatory independence by affecting BAPEPAM’s requested deployment of its previously approved budget to priorities that emerge within a budget cycle. This requirement should be removed altogether, qualified as to purpose, or the ministerial nature more explicitly clarified.. BAPEPAM-LK could consider adding specific disqualifications for licensees. Finally, a Ministerial request is required for banking records relative to an investigation related to financial status. Ideally more direct means of obtaining bank records would be available for BAPEPAM-LK. See discussion at Principle 9.</p>
Principle 3.	The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.
Description	<p>Generally the powers and authorities of BAPEPAM-LK granted within the regulatory framework of the CML are largely consistent with the required powers and authorities of regulators as stated by IOSCO. The CML also provides some flexibility to BAPEPAM-LK to interpret such powers and authorities in ways that go beyond the specifically enumerated provisions contained therein (see e.g., the open-ended general authority granted by CML Articles 5 n and q). BAPEPAM-LK has in practice used the authority in “n” proactively to require third parties to disgorge profits as part of a “formal investigative” action commenced under CML Article 100. Such disgorgement could potentially return funds to customers in an amount that exceeds the statutory amount permitted for civil sanctions. Disgorgement of ill-gotten gains may in fact be a stronger deterrent than mere pecuniary sanctions. Nonetheless, although BAPEPAM-LK has used the expansive provisions of the CML proactively, amendment of the CML to provide BAPEPAM-LK administrative authority to fine third parties, to augment its fining authorities generally, and to assure it has adequate access to records, capability to cooperate with global regulators, and effective civil as well as criminal enforcement powers should be adopted as soon as possible. Such substantive reforms, many of which are in process, (see Principle 1) would :</p> <p>(1) enhance the effectiveness of the regulator’s existing powers and its overall credibility within the</p>

	<p>domestic and international regulated community, (2) clarify authority for the use of creative, equitable remedies, such as disgorgement, and (3) increase the stature of Indonesia as a major market among actual and potential market participants.</p> <p>With regard to resources. BAPEPAM-LK has operated with a surplus of budget over expenses during each of the last five years. Currently BAPEPAM-LK has staff of 800, with 200 more in the process of being hired. Of the total, BAPEPAM-LK reports that approximately 500 are dedicated to capital markets oversight. BAPEPAM-LK believes that with the recent enhancement of salaries, BAPEPAM-LK staff are better compensated than are comparably employed personnel in the private sector. A performance pay system which has been in process since 2007 is expected potentially to further improve compensation. Senior staff must meet specific educational qualifications. In fact, many senior staff have advanced degrees in areas like accounting and finance from distinguished institutions both within and outside Indonesia. BAPEPAM-LK supports continuing education and participates in many internationally-regarded training programs, including programs presented both within and outside the region. Nonetheless, there is the capacity to move staff within the Ministry of Finance (subject to the agreement of the Chairman of BAPEPAM-LK) and this could have the potential while providing promotional opportunities, to in some cases adversely affect the maintenance of highly technical skills, many of which are not readily transferable. BAPEPAM-LK, however, indicates that this has not been the case in practice.</p> <p>BAPEPAM-LK prepares its own budget for inclusion in the overall appropriation of the State Income and Expenditure Budget (APBN). By law the awarded budget must be sufficient for the proper performance of BAPEPAM-LK's regulatory responsibilities and should support meeting pre-specified performance targets identified by the BAPEPAM itself. (Law 17/2003) and CML 5(m). In this regard, the enhancement of the IT capacities of the regulator should also be supported to assure that these are adequate to the growth of the market.</p> <p>By Ministerial Decree 06/PMK.02/2009, BAPEPAM-LK can reallocate its budget, though such reallocations are subject to pre-approval of the Directorate General of Treasury [See discussion under Principle 2.] .</p>
Assessment	Broadly Implemented
Comments	<p>The enforcement powers of the regulator should be explicitly augmented in the Capital Markets Law [See also, discussion under Principles 9 and 13.] The development of formal, internal career paths within the BAPEPAM-LK that are explicitly honored by the Ministry would buttress the independence of the regulator. The capacity and technical expertise of BAPEPAM-LK personnel should be better communicated to the industry and the general public. See also Principle 2.</p>
Principle 4.	
Description	<p>The regulator should adopt clear and consistent regulatory processes.</p> <p>All rules and regulations of the regulator are available to the public and are published on the BAPEPAM-LK website. [For English site, see paragraph 9 above.] The regulator has the ability to adopt its own rules of operation and has done so and made these public. In particular it has a Rule Making Procedure (Rule II.3.1) and specific Operating Procedures (Kep-71/BL2007). These procedures are explicitly intended to provide for consistent treatment of similar situations. Additionally, there is a published procedure for how to consider sanctions, and in particular, what factors should be considered as mitigating or escalating factors when sanctioning noncompliance (BAPEPAM-LK Rule II. H. 9; see also XIV B.1 on nonpayment of penalties.)</p> <p>The regulator also has a comprehensive web-based, and direct stakeholder, public exposition process for consultation on policy proposals and other proposed rules and actions. BAPEPAM-LK publishes rules for comment on its web-site and sends them by letter to all affected stakeholders, for which specific stakeholder organizations exist and all self-regulatory organizations (that is the exchanges and clearing, settlement and depository institutions) as well. Each proposed rule is published with an explanation, which outlines the reasons for the proposed action. The consultation process permits</p>

	<p>appropriate consideration of costs and benefits. On various occasions proposed rules have been redesigned based on the consultation process, when BAPEPAM-LK believes changes are warranted, most recently in respect to margin policies.</p> <p>BAPEPAM-LK encouraged the formation of stakeholder organizations representing various stakeholder constituencies (such as, securities companies and mutual fund operators, among others) to assure that there would be forums that would have both <i>an obligation, and the capacity</i>, to provide comment on rulemaking initiatives. In addition to permitting comment on proposed rules through such organizations, BAPEPAM-LK also entertains the receipt of individual comments (“two routes”). BAPEPAM-LK holds meetings with stakeholder organizations that it describes as “hearings” to discuss its proposals in more detail and to engage in question and answer sessions with such stakeholders and the affected public. For example, in the case of planned changes to accounting standards, to become effective in 2012, BAPEPAM-LK will work with a task force or committee that includes several interested constituencies, including the market professionals and users that must apply the standards and the Indonesian Institute of Public Accountants to which public accounting professionals must belong.</p> <p>The Committee of Administrative Sanctions typically is composed of heads of Bureaus including legal, accounting, IT and research, the Secretary of BAPEPAM-LK and representatives of one or more of technical bureaus. All of BAPEPAM-LK’s material actions are subject to judicial review (see Principle 2), and the regulator is required to provide reasons for its actions (though it does not currently publish comments on rulemakings or explain how and why it disposes of comments received in the consultation process). Administrative fines are paid to the State.</p> <p>BAPEPAM-LK conducts various investor education and outreach programs. For example, it conducted a number of efforts with respect to heightening public awareness about (i) potential misconduct by investment funds and (ii) anti-money-laundering. In the latter case, BAPEPAM-LK engaged in a multiple-campus outreach program, presented infomercials on television, and developed e-learning modules in cooperation with INTRAC (PPATK). In the former case, it constituted a task force with members of the Ministry of Finance, the BI, INTRAC, the Directorate of Internal Commerce and BAPPEBTI, and developed advertisements, brochures, seminars, and other “socialization” programs relating to the identification of improper investment activities.</p>
Assessment	Fully Implemented
Comments	<p>While BAPEPAM-LK is very transparent, even more visibility of regulatory programs and additional educational efforts would be useful.</p> <p>The public perception that the BAPEPAM-LK enforces its rules in a fair and consistent manner would be reinforced by the publication of its practices with respect to not offering case-by-case exemptions and by the adoption of a process for explaining the treatment of comments received during the consultation process when a final rule or regulation is published. BAPEPAM-LK does explain the purposes of proposed rules however, and indicates that it intends to publish stakeholder feedback related to the substance of rules. Stakeholders would also like to see more use of advisory committees in the rule development process. However, culturally, in some rapidly evolving markets, it is not practicable to provide much leeway for input upfront, in that needed reforms can be postponed indefinitely through the consultative process. The issues pertaining to the legal system cited in Principle 1 may cloud how effective judicial review is in supporting the reliable enforcement of the fair and equitable procedures that are critical to growing markets.</p>
Principle 5.	The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality.
Description	BAPEPAM-LK employees are subject to the duties and responsibilities of Civil Servants under the general law for Civil Servants. They also are subject to a comprehensive internal Code of Conduct (BAPEPAM-LK Ethics Code adopted by the MOF) that addresses confidentiality, prevention or mitigation of conflicts of interest and prohibitions from holding securities other than securities that would accrue to their ownership by operation of law. Among other things, the Ethics Code requires

	<p>respect for the religion, faith, culture and tradition of others, and does not permit any outside employment that would cause an abuse of authority, information or the BAPEPAM-LK facility. Violations are subject to moral sanction or disciplinary penalty via procedures contained in Civil Service Law 30/1980. BAPEPAM-LK staff, then, is subject to confidentiality requirements both by virtue their own Code/regulation and by law. For example, Article 101(7) of the CML indicates that persons involved in investigations (including delegees of BAPEPAM-LK) may not use or disclose information except as necessary to achieve BAPEPAM-LK policies or otherwise as required by law. The general civil service law also imposes confidentiality/secretcy requirements. Although permitted to publish investigative reports (see CML Article 5i), BAPEPAM-LK indicates that in view of their system's presumption of innocence, they would only publish investigative reports if necessary to inform the public by example about how it perceives that its regulations should be implemented in practice (CML n. 26).</p> <p>BAPEPAM-LK has an Internal Compliance Bureau and there is a general Inspectorate General within the Department of Finance. Each is charged with investigating and resolving ethics and other abuses. The Compliance Bureau is relatively new and is currently in the process of developing its operational policies and procedures.</p> <p>Based upon the Civil Servant Act and its implementing regulation, the oversight of Civil Servants' compliance with any Civil Servant regulation and with related ethics codes is performed in the first instance by each Civil Servant supervisor, Human Resources, and the Inspectorate General for each institution. The Human Resources Division in response to recommendations based on supervisory monitoring and/or Internal Compliance Bureau oversight have imposed sanctions against several employees of BAPEPAM-LK for ethics code violations. Monitoring and oversight practices are also being enhanced.</p>
Assessment	Fully Implemented
Principles of Self-Regulation	
Principle 6.	The regulatory regime should make appropriate use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, and to the extent appropriate to the size and complexity of the markets.
Description	The CML, imposes self-regulatory functions on certain regulated entities. Specifically, these are: The Indonesia Stock Exchange (IDX); the Central Securities Depository (KSEI); and the Clearing Guarantee Institution and Central Counterparty (KPEI). The Inter-dealer Market Association for Government Securities (HIMDASUN) acts as an "Organizer of Government Debt Securities, based on Rule III.D.1, but is not classed as a self-regulator. The IDX has the authority to develop membership criteria for different classes of members (e.g., those engaged in options, margin transactions and short selling); the other entities' member eligibility is governed by applicable law. Each of the organizations cited above has the authority to establish and enforce certain rules. For example, the IDX may establish listing and trading rules and the clearing and depository organizations require adherence to settlement timing requirements, agreements relative to the registry of securities, and other requirements relative to the transfer of securities. Each organization has the capacity to take action to sanction its members for violation of its rules and procedures and to close accounts or to suspend trading activities. IDX is explicitly charged by the CML with maintaining an "independent" inspection unit that is responsible for periodic and surprise inspections of the Exchange and its members to ensure that they comply with the CML, its implementing regulations and IDX rules. (CML Article 12, 1 and n. 46). IDX also operates an electronic financial reporting/filing system IDXnet; as of 2008 a majority of listed companies used this technology to file required periodic reports.
Assessment	The use of self-regulatory organizations as described is appropriate. No rating required: refer to Principle 7.
Principle 7.	SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.
Description	The CML comprehensively addresses the oversight of SROs at inception, when initially licensed, and

on an ongoing basis. The law specifically acknowledges that as capital markets are a source of business financing and an investment vehicle for investors, related activities must be supervised to assure that the markets are orderly, efficient and transparent.

Article 9 of the CML makes clear that a securities exchange, in this case the IDX (which is a not for profit mutual institution formed from a merger of the Jakarta and the Surabaya exchanges), and its directors and commissioners must be licensed by BAPEPAM-LK (Article 5). The criteria for a license and the qualifications for the board and commissioners are set forth by government regulation (45/1955) and by rules (Rule III B6, 7). Among other things, the IDX must provide a three year operational plan. To prevent conflicts of interest, Exchange directors or commissioners are not permitted to hold positions in other companies or institutions and by government regulation and, BAPEPAM-LK rules, are restricted from holding or transacting in shares of listed issuers until six months after their term of office expires.

Each of the IDX and its related depository (KSEI) and clearing functions (KPEI), have self-regulatory powers. A licensed exchange must exercise those powers pursuant to affirmative responsibilities to issue rules that “bind” exchange members, issuers of listed securities, and exchange contractors, such as the Central Security Depository (KSEI), the Clearing Guarantee Institution (KPEI) and Custodian Banks (See CML Articles 9 and 16). These rules must require Exchange Members to act with a “high level of integrity and professionalism.” CML Articles 11, 16 and 17 respectively require that the rules of the Exchange and clearing and settlement institutions must be approved by BAPEPAM-LK to become effective. KSEI and the KPEI rules must be observed by all service users (which, notably, would include indirect users, such as customers of Member firms). All transactions on the exchange’s electronic platform (even those handled for non-members) must be input by members who also are members of KPEI. Exchange members are responsible for every transaction (even errors) they make through the platform.

CML Article 7 states that securities exchanges must oversee trading to assure that it is orderly, fair and efficient based on clear rules that are followed consistently. Implementing rules adopted by BAPEPAM-LK also require exchanges and clearing and registry facilities to have specific rules and rule-making procedures (See rule III. A, B and C). Pursuant to these rules, the Exchange can determine how securities will be transferred in accordance with best practices and set fees and charges.

Article 8 limits the members of the Exchange to securities companies that are registered as broker dealers, which also must be licensed by BAPEPAM-LK, and requires that the majority of KPEI shares be held by the Exchange. As of the end of calendar 2009, IDX had 118 active Members. Three Members were suspended in 2008. Participants in the bond transaction reporting mechanism, which need not be exchange Members, included 59 securities companies, 35 banks and 16 custodian banks. Equity market capitalization, as of end 2009, as a percentage of GDP was approximately 36% of 2009 GDP. The majority of equity holdings are by foreign participants and the majority of corporate bonds by domestic participants. Trading activity is relatively broadly dispersed. In 2008, for example, three market participants, each, accounted for more than 5% of the value of equities bought and sold, and of the remaining participants, only about 20 accounted for as much as 1% of the value of equities traded.

CML Article 10 explicitly enjoins an exchange from unfair competition; this includes not interfering with over-the-counter trading except of listed securities. However, only 6 public companies are unlisted.

CML Article 12 requires the Exchange to maintain an inspection function (i.e., on-site inspection of Exchange Members among other things) that is directly accountable to the Board of IDX and to BAPEPAM-LK. Inspections must be conducted to determine compliance with exchange rules and to detect securities law violations or other matters that could materially affect any such Member. The Exchange inspection unit is intended to supervise Exchange Members and management, continuously *so as to ensure compliance with the CML and its implementing regulations, as well as with IDX rules*. BAPEPAM-LK receives the results of Exchange Member inspections if they are material to the financial condition of the Member and reports of sanctions and of special conditions

	<p>relating to Exchange Members (Rule X A1). Oversight of IDX's program by BAPEPAM-LK is stated to be risk-based.</p> <p>The IDX implemented an Unusual Market Activity (UMA) Report in early 2008, during the volatile market reaction to the credit crisis, and publishes UMA announcements on its website to all market players. In 2008 it issued 211 confirmation requests relative to unusual activity to 161 issuers, published 65 UMA notices on 60 stocks, and issued 40 suspensions of 39 stocks. The IDX also investigated 33 market abuse cases in that year.</p> <p>BAPEPAM-LK requires daily, monthly, semi-annual and annual SRO reports and has a specific technical unit dedicated to reviewing these (Rule X A 1). Additionally, the BAPEPAM-LK has the authority to require an exchange or other SRO to change its rules if contrary to capital market regulations, to suspend a listing, and to suspend trading in the event of an emergency, including a breakdown of the securities and settlement system, or "a sudden significant drop in prices. BAPEPAM-LK also has broad general authority under CML Article 5 (n) (see also note 31) to take steps necessary to avert loss to the public arising from violation of capital market regulations. And, BAPEPAM-LK can review and sustain or reverse disciplinary actions of the exchange, KSEI or KPEI. Similar oversight provisions apply to HIMDASUN (Rules III D. 1). In certain situations, the CML also gives BAPEPAM-LK the authority to suspend the directors and commissioners of securities exchanges, clearing institutions and settlement depositories and to appoint interim management pending the election of new commissioners or directors. (CML Article 5 c).</p> <p>BAPEPAM-LK has the authority to oversee and inspect the IDX and other SROs as with any licensee, and to review the annual budget and profit utilization plan (Article 7 (3) and Article 85). The BAPEPAM-LK has conducted routine inspections of the exchange and has followed up with it upon issues of concern and after occasional system failures. Relevant</p> <p>BAPEPAM-LK technical staff also hold a routine monthly meeting with the exchange to review regulatory and other pertinent issues. BAPEPAM-LK does conduct inspections and issue internal reports on the exchange and other SROs from time to time and makes recommendations both to the market and for itself. In this regard, BAPEPAM-LK has a flow chart of its processes, a project management structure to follow up on its oversight, and an audit check list, which apparently the exchange is to apply to its Members. The most recent of such oversight inspections was conducted in 2009 and one is ongoing, which highlight flaws in SRO oversight of various systems with respect to the opening of accounts and transfer of securities at KSEI, and failure to complete all member inspections or to follow consistent sanctioning procedures at IDX. __ BAPEPAM-LK also may conduct limited reviews. It has, for example, reviewed certain aspects of the IDX platform's business process, and of the allotment rules relative to new listings. IDX also reviews its rules in operation. During 2010 IDX reviewed the implementation of new margin rules. Additionally IDX will perform an annual audit of margin activities. BAPEPAM-LK meets regularly with IDX to develop an inspection plan and to review IDX review results.. While in practice, BAPEPAM-LK has conducted reviews of the IDX and other SROs, the existing documentation for its oversight program does not demonstrate how BAPEPAM-LK conducts a program directed to testing the sufficiency of IDX (and KSEI and KPEI) surveillance and inspection programs and to the operation of a fair and efficient market which are the conditions of licensing.</p> <p>Exchange staff, by contractual agreements (and criminal law, per BAPEPAM-LK, in that they perform certain functions, such as inspections, under the CML on which BAPEPAM-LK relies), are required to keep confidential information as would the regulator.</p>
Assessment	Partly Implemented.
Comments	<p>The framework for oversight of self-regulatory organizations demonstrates an understanding of the IOSCO standards and faithful adherence to these in setting forth a framework for oversight. BAPEPAM-LK has the power to conduct, and in fact engages in, regular and extraordinary oversight activities. . To the extent that BAPEPAM is relying on IDX to perform on-site inspections of licensed intermediaries, BAPEPAM SRO reviews should assure oversight of IDX's coverage of</p>

	intermediary compliance and adequate performance of IDX’s inspection function, including provisions relative to supervision of the sales activities and non-handling of funds required of non-member agents. Because the exchange is the front-line overseer of trading activity using state-of-the-art software, the Securities Markets Automated Research Trading and Surveillance System(SMARTS), there should be a clearly documented program of day-to-day oversight of the exchange against CML violations by BAPEPAM-LK, for example the proper allocation of trades in nominee accounts and avoidance of fictitious or wash trades. In their view, BAPEPAM-LK should more aggressively review exchange IT and SMARTS parameters and BAPEPAM-LK operational procedures for reviewing exceptions should be more comprehensively documented. Some stakeholders also appear to believe that insider trading and other insider abuses are insufficiently deterred by the current legal framework. [Key Question 1 i] [See also Principles 25, 26 and 27] There are some revisions in train to further address the potential for, and expand the definition of, insider trading activities and which have reduced the potential for use of dormant accounts to manipulate the market. BAPEPAM-LK provided its reports on the 2008 report on IDX, the 2009 report on KSEI, and the 2010 review of KPEI is ongoing..
Principles for the Enforcement of Securities Regulation	
Principle 8.	The regulator should have comprehensive inspection, investigation and surveillance powers.
Description	<p>BAPEPAM-LK has the authority to inspect or investigate any Person (natural person, company, partnership, association or organized group) for suspected violations of the CML or its implementing regulations (Article 5 (e)) or to conduct routine or periodic inspections of any licensee, registrant or approved person including public companies and securities exchanges (Article 5 (g)) without notice or judicial action. The term “inspection” includes the ability to (1)examine (i) licensee’s business premises and (ii) licensee’s records, including accounts, books, documents and working papers, whether recorded manually, mechanically, electronically or by other means, and (2) to require the persons so subject to submit certain reports. Under CML Articles 36 and 37, licensed securities companies and advisors are required to keep proper records of their financial condition, orders and transactions, to register clients’ securities in accounts separate from those of the company, and to know their customer (that is, the customer’s identity and financial capacity).</p> <p>More specifically, by virtue of BAPEPAM-LK rules (V.D.3) , securities companies specifically must maintain supporting documentation and records in accordance with financial accounting standards and BAPEPAM-LK rules including: evidence of check payments and cancelled checks; confirmations of transactions, debit and credit memos for securities accounts, evidence of all transactions recorded on securities ledgers, daily cash debits and credits, bank reconciliations, monthly balances between the general ledger and the balance sheet and daily balancing of the general ledger and the securities ledger⁵. All such records must be maintained for at least five years. Additionally under Rule VD 10 a securities company, investment fund manager, and custodian bank must administer documents concerning client acceptance and identification that (1) permit tracing funds and securities in and out of brokerage and bank accounts related to securities transactions and (2) minimize potential money-laundering. These AML provisions include, in particular, procedures to obtain documents such as background documents or checks to identify the client (beneficial owner) and the purpose and objective of opening the account. In this regard BAPEPAM –LK and IDX do not appear to allow omnibus accounts for non-members—customer accounts are held at members. BAPEPAM-LK rules under the X series provide document maintenance requirements for each of the IDX, KPEI, KSEI, investment advisors, commercial banks as custodians, securities administration agencies, issuers, and trust agents.</p>

⁵ Some stakeholders thought that the regulations should be updated to take appropriate account of the extent to which there is the capacity to maintain records electronically.

	<p>Under Article 12 of the CML a securities exchange is required to conduct inspection and surveillance activities in the first instance and to report anomalies to the BAPEPAM-LK and its own Board. All inspection reports and related documents are available to the BAPEPAM as part of its own inspection activities or on request. BAPEPAM-LK may receive reports from the IDX surveillance system known as SMARTS (see Principle 7). It also may conduct its own oversight and surveillance activities using Real Time Information (RTI), Stock Watch, Daily Watching (for bond market surveillance), issuer and news data bases and other tools (See Principles 7, 10, 25 and 26). A proposal to obtain Bloomberg’s service is in the process of implementation.</p> <p>If inspections are outsourced by agreement to third parties, BAPEPAM-LK advises that any such agreement would make all the results of such inspection available to it, and would require the third party to submit to appropriate disclosure and confidentiality requirements no less stringent than those applied to BAPEPAM-LK.</p>
Assessment	Fully implemented.
Comments	<p>BAPEPAM-LK has comprehensive access without notice or judicial action to licensee records and the authority to “inspect or investigate” any person. BAPEPAM-LK also can require the exchange to enforce its own rules and retains full authority to inquire into matters affecting investors or the market. BAPEPAM-LK has requested broader legislative authority to obtain phone, email, computer and other electronic records directly from the communication or information system provider. As to the overall effectiveness of AML procedures, IOSCO defers to reviews conducted in accordance with the Financial Action Task Force recommendations and methodology.</p>
Principle 9.	The regulator should have comprehensive enforcement powers.
Description	<p>BAPEPAM-LK has the power to undertake investigations and to bring administrative sanction proceedings, including monetary sanctions proceedings and to seek revocations of licenses and authorizations, against its licensees, registrants and approved persons and public companies (CML Article 102). BAPEPAM-LK also may refer its investigations of any person, or of complaints, for criminal violations of the laws and regulations relating to securities activities, including failure to obtain a license for securities activities, to the Attorney General for prosecution (CML Articles 5 and 101) See also Government Regulation 46/1995. BAPEPAM-LK can also proceed against third parties by formal investigation, and seek restitution or disgorgement under CML Article 5n and 100, and has proactively done so. As described below it has other powers to intervene. It can also take steps to initiate a criminal proceeding against any person for obstruction of an investigation or failure to cooperate.</p> <p>An investigation may proceed based on reports, a complaint, an inspection or unfulfilled obligations. Additional procedures are necessary if the results of an administrative investigation are to be used in a criminal proceeding. Criminal investigators on the staff at BAPEPAM-LK are civil servants that are specifically appointed by the Minister of Justice. The Chairman of BAPEPAM-LK is empowered to initiate criminal investigations and must also act to close such investigations. Other investigations may initially be conducted at a technical level and if activity is uncovered that must be addressed by an enforcement action, the matter must proceed to the Enforcement Bureau. All inspection or investigation proceedings of whatever type are logged by BAPEPAM-LK staff in a data base maintained on a local area network.</p> <p>Administrative sanctions include: written admonitions, fines, restrictions on business activity, suspensions of business activity, revocations of licenses, and cancellations of other registrations or approvals (CML Article 102). Fines are limited by law and the maximum fine for market abuses, which are criminal offenses, is 15 billion rupiah, without an indication if such fines can be imposed cumulatively for each violation.</p> <p>BAPEPAM-LK also has the authority to suspend listings (Article 5 (j)) and advertisements (Article 5 (f)) and to suspend trading of a security (Article 5 (j)) or of the market (Article 5 (k)) and to take other action “necessary to avert loss to the public arising from violation of the Capital Market regulations” (CML Article 5 (n)). BAPEPAM-LK has the power to order the cessation of specific activities by its</p>

	<p>licensees that constitute violations of the law, and may stipulate conditions and consent to a settlement (and has done so) regarding losses resulting from violations by contractual arrangement with the violator (see CML note 215). Private parties may also sue for compensation (Article 111).</p> <p>BAPEPAM-LK has developed procedures for conducting investigations that are both generic and geared to particular offenses such as insider trading and market abuse. It also has procedures for commencing an investigation, determining whether to escalate the investigation to a criminal proceeding and preparing investigation reports (Rule II H series). BAPEPAM-LK has also developed rules relative to the aggravation and mitigation of violations and the imposition of sanctions, that is, guidance on the assessment of penalties and other matters relative to investigative and sanctioning procedures to promote fairness and consistency (See, e.g, II.H 9).</p> <p>In the course of an investigation, BAPEPAM-LK has the power to obtain data, information and other evidence. For example, it may (1) inspect and make copies of records, books, and or other documents owned by persons suspected of engaging in or having been involved in violation of the law, including records, books and documents owned by their counterparties or other persons; (2) request information or corroborating statements; (3) request from the Minister of Finance (MOF) access to banking records to determine the financial status of the account holder; and (4) otherwise seek bank records through the auspices of BI to trace transactions to funds to determine whether a market abuse has occurred without seeking the concurrence of the MOF. [CML Article 101 (4) note 221 suggests that the approval of the Minister is not needed for example merely to obtain the name of the account holder for movements of funds, if the investigation is related to for example manipulation or fraud, as opposed to determine the financial status of the suspect.] In criminal cases, BAPEPAM-LK may summon information and evidence, inspect locations other than business premises, and may block/freeze bank accounts and other financial assets. The BAPEPAM-LK may also cooperate with the Bank of Indonesia, INTRAC and the Ministry of Finance, and with the police and the Director General of Immigration in undertaking such investigations. BAPEPAM-LK reports that requests for bank records or other cooperation are never refused by BI and MOF with respect to matters that are classified as criminal violations under the CML.</p> <p>Additionally, any person who, with intent to deceive or cause loss to another, “loses, destroys, erases, obscures, hides, or falsifies” records of a person that is licensed, approved or registered , or who obstructs an investigation under Article 100, is subject to criminal penalties (Articles 107 and 109).</p> <p>BAPEPAM-LK has requested augmented enforcement authority although it has used its existing authority proactively and provides additional information or assistance to criminal authorities where violations must be pursued through the criminal process. Industry and customer stakeholders, however, question whether the powers of BAPEPAM-LK to impose sanctions, or to seek them through the criminal authorities, are sufficient, to be considered fully “proportionate, dissuasive and effective.” [See n. 73 to Assessment Methodology and Explanatory Note.]</p>
Assessment	Broadly Implemented; see also Principle 10.
Comments	BAPEPAM-LK has requested broader authority to obtain bank account data directly, as they believe was intended when the banking law was changed in 1999 and to seek civil judicial and/or administrative fines against third parties. It also has requested augmented sanctions more generally and such powers are expected to be granted. As stated above, a precondition of the effectiveness of enforcement mechanisms is the reliability of the legal system and administrative processes pursuant to which enforcement actions are initiated and pursued. [See Key Issue 1]
Principle 10.	The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.
Description	BAPEPAM-LK has various programs to conduct inspections and investigations to detect and deter violations under the CML: these include 101 formal investigations (the bulk), 101 criminal, and 102 administrative including bans, suspensions and revocations of licenses, the majority of the investigations conducted by BAPEPAM-LK are under the formal rubric In the case of securities

exchange members, BAPEPAM-LK largely relies on the stock exchange, IDX, that represents that it visits 90+% of its members (using inspection teams, of which it has 11) once a year. The BAPEPAM-LK itself has only a few technicians dedicated to such inspections, but it reviews the IDX program as part of its oversight of IDX and it may conduct inspections/investigations as the result of a desk review of periodic reports using a risk-based approach. BAPEPAM-LK oversees non-member securities companies, which basically are marketing agents, or introducing brokers, which do not enter trades directly or hold funds (See BAPEPAM-LK Rule V.D.9), through compliance audits, reporting requirements, contractual requirements limiting their activities among other things, and fitness. BAPEPAM-LK also directly performs periodic oversight of other non-broker dealer professionals, such as Investment Managers, through the compliance division of the Investment Management Bureau. In this regard, BAPEPAM-LK has requested additional authority over persons who indirectly affect the market.

In 2008, the BAPEPAM-LK introduced a new complaint management system. Of 282 complaints received by BAPEPAM-LK overall, 106 related to the Capital Market. Twenty-five of these were related to securities companies. Eight of these were addressed without investigation and 17 remain in process. The other complaints related primarily to investment funds and discretionary funds, which are the fastest growing financial products in Indonesia. In the case of exchange transactions, the front-line regulator is the exchange. The exchange uses the SMARTS (Securities Market Automated Research, Tracking and Surveillance) system, which is considered state-of-the-art. While Article 12 of the CML requires the exchange to report matters to the BAPEPAM-LK, very few matters are so reported. Also, although BAPEPAM-LK can ask for SMART's data, and such data would complement its own surveillance, the BAPEPAM-LK does not have direct access to such a system, and/or its own capacity to program, manipulate, or otherwise define the parameters of the IDX's system. (See also Principles 7 and 8). BAPEPAM-LK does meet routinely with IDX staff and is in the process of further refining and documenting its oversight program. BAPEPAM-LK has stepped up its enforcement program since 2005 and is making more use of the capacity to issue administrative suspensions and bans.

In 2008, 22 licenses of securities companies were revoked and 1.3 million dollars in administrative fines were assessed; in 2009, 7 such revocations were imposed. 32 cases of potential market manipulation were detected, 22 of which remain under investigation. Of 15 cases referred criminally, 11 remain in process and three have been closed. 121 formal investigations were commenced in 2009 involving 57 issuers, 45 transactions or institutions, and 19 investment managers. At year-end, 99 remained under investigation, 5 had been closed and 17 had resulted in an administrative sanction. The large bulk of all administrative sanctions are for late filings of financial reports, in many cases up to 200 admonitory letters. Such late filing can in some circumstances mask the inability to maintain current books and records, an important internal and prudential control. BAPEPAM-LK indicates that it actively reviews such filings for breaches of law and that in some cases late filings should prompt surprise on-site inspections. BAPEPAM-LK states that among other things it reviews the integrity of financial filings for compliance with Indonesian accounting standards.

BAPEPAM-LK has developed special instructions/guidance for the investigation of market manipulation, false prices, insider trading, and false financial reports, which are express violations of the CML (Articles 90 to 98). These instructions (II.H 5, 6 & 7) are comprehensive and follow procedures that are common to financial regulators subject to the particularities of the necessary proofs required by the elements of the violation under Indonesian law. BAPEPAM-LK commenced 8 insider trading cases between 2007 and 2009, two of which resulted in the imposition of administrative sanctions, one of which was closed for lack of evidence, and the remainder of which remain in process.

BAPEPAM-LK requires securities companies (brokers) to have a working unit under a director level officer which is responsible for following and satisfying amendments to the rules under the CML (Rule, dated September 28, 2007, V.A.1 (4) b. 22). BAPEPAM-LK also places compliance obligations on public companies and licensed entities. For example, BAPEPAM-LK requires public companies to have a corporate secretary that makes recommendations to the Board on compliance

	with the CML and an audit committee to provide advice on the CML and other laws affecting company activities and to review audit implementation by the internal auditor (Rule dated November 28, 2008 concerning formation of this unit). BAPEPAM-LK requires that all securities companies are responsible for the activities of their representatives (Rule V D 1). Additionally, Rule V.D.3 on Internal Control and Bookkeeping requires that security companies separate functions in four separate divisions: the custodian (receiving and delivering securities); accounting (maintaining books and records); trading and order handling (processing orders for clients and itself); and marketing (opening accounts and accepting orders for buying and selling securities for clients).
Assessment	Partly Implemented.
Comments	<p>BAPEPAM-LK has made pro-active use of the strong administrative deterrent powers that it has (barring from practice, license revocation, disgorgement, restitution) in “message cases,” and the IDX appears to conduct an active investigatory program. Nonetheless, many investigations are pending, and those for trading abuses whether by BAPEPAM-LK or the IDX may not be prosecuted to conclusion. Further, although BAPEPAM-LK is awaiting enhancement of administrative powers against third parties, in the meantime, the effectiveness and credibility of BAPEPAM-LK enforcement efforts could be compromised because its administrative powers do not explicitly extend fining authority to all parties, and the fact that many matters, though investigated by BAPEPAM experts, must be prosecuted within the criminal justice system as general crimes. While BAPEPAM-LK may assess an administrative remedy where there also is a criminal violation, and has worked actively with the Department of Justice and the Attorney General to improve/expedite the prosecution of capital markets violations, confirmation of the extent of BAPEPAM-LK’s capacity to proceed administratively would confirm that the means by which it has exercised its powers is contemplated.. The recruitment of a special financial crimes force also should be considered, and indeed since November 2008, there has been a task force involving the MOF, the Attorney General, INTRAC and BAPEPAM-LK and BI related to addressing issues of malfeasance related to the financial crisis. The general judicial system (1) can prove slow; (2) is premised on civil law concepts that do not allow scope for interpretation of inventive or evolving market misconduct; (3) can reach inconsistent conclusions with respect to the same conduct for lack of binding precedent; (4) is committed to other priorities, such as the punishment of violent crimes against the person; and (5) can be unreliable in assessing sanctions for financial crimes or misconduct. BAPEPAM-LK, and others in the regulated community such as lawyers, believe that further confirmation of the broad administrative authority of BAPEPAM –LK and/or a special capital market crimes unit within the Office of the Attorney General and Department of Justice potentially could ameliorate many of these problems. Many stakeholders, while applauding the efforts of BAPEPAM-LK generally, claim that historically there has been a lack of respect for capital markets law. Others suggest that the fines imposed might to be too low and therefore regarded merely as a cost of doing business. Markets prosper based on certainty as to the rules of the game and confidence in the fair and even-handed application of the rules and this perception can be compromised if they are not enforced in private cases.</p> <p>The rule of law requires a reliable legal enforcement mechanism. While many of the recent changes in the rules and practices of BAPEPAM-LK are intended to prevent mishandling of customer business to the profit of the firm business, and to interdict opportunities for manipulation, nonetheless a vigilant oversight program that can be expected to reliably enforce the rules, backed by a consistent judicial system, requires constant vigilance.. Such a system should also deliver consistent results in private litigation about financial protections as such protections are important to capital market development more generally..</p> <p>BAPEPAM-LK indicates that in fact fines have been imposed that exceed the amounts contained in Article 102 of Government Regulation No. 45/1995. It cites PT AGIS where a fine of Rp 5 Billion (US\$ 527,000) was assessed against Directors and Rp 2 Billion (US\$211,000.) against directors of subsidiaries for a misleading statement. And PTPGN where a fine of RP 2.8 Billion (US\$295,600) was assessed against 9 insiders for insider trading. BAPEPAM-LK has used its authority under Article 5n and Article 100 very aggressively to require disgorgement and restitution in amounts that</p>

	<p>exceed the regulatory limit for fines, most recently with respect to Nikko Securities. It is clear that enforcement efforts have been materially strengthened recently. Nonetheless, the impression among the regulated community persists that those efforts are not as strong, sufficient or as swift as desirable to promote a culture of compliance. And BAPEPAM-LK, the Attorney General's office, and members of the private bar all commented on uncertainty as to the application by the judicial system which ultimately enforces the law.</p> <p>[See, also information on the program relative to mutual funds under Principle 17 et seq.]</p>
Principles for Cooperation in Regulation	
Principle 11.	The regulator should have authority to share both public and non-public information with domestic and foreign counterparts.
Description	<p>BAPEPAM-LK can share information (public and non-public) from its own files or available to it through inspection without recourse to other external process (Principle 11), without request to, or approval by, other internal Indonesian authorities. Such information may be provided to domestic authorities with securities enforcement obligations, if there is a bilateral MOU in place or BAPEPAM is required to do so by law (see, for example, CML Article 112 with respect to cooperation with BI). BAPEPAM-LK can also share such information, through appropriate gateways (to another competent authority to achieve BAPEPAM-LK's purposes, see e.g., CML Articles 100 (4) and 101 (7)), to international authorities with securities enforcement obligations, provided BAPEPAM-LK has entered an MOU with such authorities or there is a law (Mutual Legal Assistance Treaty) requiring such sharing. Information on matters under investigation, licensing determinations, surveillance, market conditions and events, client identification, regulated entities, and listed and public companies, would be freely shareable <i>even absent an MOU</i> to the extent the information is public. CML Article 89 states that all information that must be submitted to BAPEPAM-LK by virtue of the CML and its implementing regulations shall be available to the public. The related note (102) saves from this requirement, for example, proprietary information on a new product included in request for a registration of a company. In the case of investigations and inspections, BAPEPAM-LK has the specific authority to publish findings in the public interest, and could find there to be a public interest in certain matters where cross border misconduct is in issue. See CML Articles 5i and g and e.</p> <p>For example, however, the following information is non-public: (i) matters that are under investigation, unless BAPEPAM-LK determines to publish its findings in the interest of market integrity and the public interest; (ii) certain information within the files related to public companies, such as accountants' reports of potential violations, and proprietary information related to the accuracy of disclosures; and (iii) certain bank records as to an individual's financial status previously received through agreement from the Ministry of Finance (which are subject to specific data protection/privacy requirements). There is no general blocking statute, however, that prohibits sharing non-public information in its possession; such sharing is within the discretion of BAPEPAM-LK as follows.</p> <p>BAPEPAM-LK can provide non-public information to domestic or foreign authorities (i) in order to safeguard market integrity and to promote compliance with CML or its implementing regulations; (ii) in the interest of fulfilling its responsibilities to protect the interests of the public and investors and to facilitate the development of the capital market; and/or (iii) to achieve BAPEPAM-LK's purposes, which could include proper supervision of cross border transactions. There are no prohibitions under Indonesian law to sharing otherwise sharable information on an unsolicited basis, particularly investigations determined to be made public where another authority might have an interest in information on activities within Indonesia that suggest misconduct by its own licensees..</p> <p>BAPEPAM-LK in fact has provided non-public information to both international and domestic authorities. For example, BAPEPAM-LK has shared information on securities accounts with the BI. It also has provided a formal interim investigation report containing information on bank records to the Audit Board of Indonesia, and a similar report to the Corruption Eradication Commission within Indonesia.</p>

Assessment	Fully Implemented.
Comments	BAPEPAM-LK has broad authority to share information within its files. Because of the scope of BAPEPAM-LK's authority to share non-public records within its files (Principle 11) as opposed to records it must obtain through external recourse (Principle 13), or through other entities, the rating is as stated. The terms of the Mutual Legal Assistance Treaties that exist for the exchange of criminal information do, however, include savings clauses which limit the obligation to share information for criminal purposes where there is a lack of dual criminality, extradition issues or capital penalties are at stake, or where the persons for which the information is sought are subject to final sanctions for the same conduct in Indonesia. [See Methodology Explanatory Note.] These types of exceptions may be treated as public or national interests in other jurisdictions that restrict the onward sharing or use of shared information by requesting authorities. The Principles recognize that the regulator can legitimately impose conditions when it shares non-public information both as to confidentiality and as to use. [But see, Principle 13]
Principle 12.	Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts.
Description	BAPEPAM-LK has MOUs with the following domestic authorities: Directorate General of Taxation of Ministry of Finance; the Commission for the Supervision of Business Competition; the State Police Department of the Republic of Indonesia; the Attorney General; the Corruption Eradication Commission; and the Indonesian Financial Transaction Reports and Analysis Center (INTRAC) and, importantly, as of April 30, 2010, Bank of Indonesia. Additionally BAPEPAM/ participates on a Joint Task Force of the State Police Department and the BAPPEBTI or Commodity Futures Trading Regulatory Agency concerning criminal offenses in the Investment Management area. BAPEPAM-LK also has written information sharing arrangements with the US Securities and Exchange Commission and most countries within the Asian/Pacific region, including, the Australia Securities Investment Commission (ASIC), the Hong Kong Securities and Futures Commission (HKFSC), the Securities Exchange Commission of Sri Lanka, the Thailand SEC, the Securities Exchange Commission of the Philippines, the Securities Commission of Malaysia, the China Securities Regulatory Commission (CSRC), the Securities Commission of New Zealand, and the Securities and Exchange Board of India (SEBI). BAPEPAM-LK can share licensing information and does cooperate to combat cross-border fraud and misconduct as set forth in its bi-lateral arrangements. In every case BAPEPAM-LK takes appropriate steps to protect the confidentiality of any information that is shared.
Assessment	Fully Implemented.
Comments	Perhaps in view of the substantial cross border business between Indonesia and Singapore, an information sharing arrangement should be sought with Singapore as well.
Principle 13.	The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.
Description	BAPEPAM-LK can obtain information at the request of a foreign securities regulator that is not in BAPEPAM-LK's files under certain circumstances. However, BAPEPAM-LK is only an Annex B signatory to the IOSCO Multilateral Memorandum of Understanding. While BAPEPAM-LK has authority to obtain bank records under the CML, it is not mentioned in the Banking Law as a party permitted to obtain bank records directly, so records must be obtained through BI. Further if bank records are sought to determine financial status, BAPEPAM-LK must proceed through a request to the Ministry of Finance. (Provided the banking records are obtainable in a timely fashion it is not a requirement currently under the IOSCO Principles that banking records be obtainable directly. Many jurisdictions have additional procedures especially for personal banking records). BAPEPAM-LK, however, can only share the banking records and other non-public information not within its own files or the files of its licensees, when it has commenced a criminal investigation under its own laws. This means that BAPEPAM-LK cannot provide non-public records that are not within its files unless the

	<p>matter for which enforcement assistance is requested is a violation of Indonesian securities law and under its jurisdiction. IOSCO's Multilateral MOU verification team has found, then, that BAPEPAM-LK does not yet have the legislative power to cooperate sufficiently in providing information to foreign authorities to become a full signatory to the IOSCO MMOU. In this regard, BAPEPAM-LK has sought broad statutory authority to provide cooperative assistance to an investigation conducted by the competent capital markets authority of another jurisdiction, subject to a mutual cooperation agreement, by amendment to the CML which is currently in process.</p> <p>In the interim, it is possible for BAPEPAM-LK to seek to provide mutual criminal assistance through the appropriate authorities under a Mutual Legal Assistance Treaty (Law 1/20006 Mutual Legal Assistance in Criminal Matters). Information can also be shared on the basis of comity and reciprocity with the assistance of the Minister of Law and Human Rights. MLAT assistance would be provided in accordance with criminal procedures, any relevant bilateral agreement and relevant international conventions. Indonesia by Law No. 15/2008 ratified a Treaty on Mutual Legal Assistance that was concluded in 2004 among Brunei, Darussalam, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore and Vietnam.</p> <p>BAPEPAM-LK itself, however, notes that such assistance is unlikely to be as timely as assistance that could be provided through its own auspices, assuming the requisite authority.</p> <p>In the absence of a treaty, non-public information can be shared for foreign enforcement purposes under an MOU with an appropriate use restriction such that production is for the purpose of investigation only, or otherwise if BAPEPAM-LK deems it necessary to safeguard market integrity, to promote compliance with CML and in the interest of fulfilling its responsibilities to protect investors and the public or to foster development of the capital market. Information and data to reconstruct transactions and with respect to regulated entities is available to BAPEPAM-LK (Principles 8 and 9) and also can be shared as aforesaid. Effective and timely assistance may provided, subject to the above conditions, even as to taking (or assisting the taking) of a witness statement or testimony under oath, with respect to regulatory processes, insider dealing, market manipulation, misrepresentation, fraud, handling of orders and customer funds, the registration, issuance, offer and sale of securities and derivatives, intermediaries, markets and clearing and settlement entities,</p> <p>BAPEPAM-LK can also assist to the extent permitted above to support cessation of activities or an injunction. (Currently BAPEPAM-LK does not itself have the power to seek a civil injunction in court, or to seek cease and desist orders for non-regulated entities. Amendments to CML may resolve this issue.) BAPEPAM-LK can also provide information on the structure, capital, exposures, shareholder relationships, and management of conglomerates provided that such information is directly related to regulated entities subject to their supervision and subject to appropriate confidentiality and other use restrictions.</p> <p>BAPEPAM-LK may obtain additional records including banking records and the name of the account holder that is not a licensee, upon request to the Minister of Finance upon commencement of an investigation. (Article 101 (4)/, CML). As a practical and legal matter, such investigations would pertain to suspected violations of Indonesian law. <i>Importantly, BAPEPAM-LK however, can block funds and securities within its licensed securities depository. See CML Article 59 (3). For this type of action no formal investigation need be commenced. The ability to provide such assistance is a very powerful deterrent to cross-border misconduct.</i></p> <p>BAPEPAM-LK has in fact provided assistance to foreign authorities with respect to information not in its own files or obtainable by inspection. For example, it assisted the Hong Kong Securities and Futures Commission (HKSF) in compelling a non-licensed person's statement for use by the HKSF and it obtained information on the legality of a company for the Securities Commission of Malaysia where the requested information was within the jurisdiction of the Ministry of Justice and the BAPEPAM-LK had to request assistance from that Ministry.</p>
Assessment	Broadly Implemented
Comments	As a growing major market with proportionately large non-domestic participation, Indonesia should take steps to make legislative changes or other changes necessary to permit BAPEPAM-LK to become

	<p>a direct signatory to the IOSCO MMOU Part A and to expeditiously obtain and share bank records to permit the prompt investigation, prosecution, and sanction of cross border financial misconduct. In addition to being important to demonstrate that Indonesia is a member in good standing of the international securities regulatory community, the ability to engage in cross border cooperation to combat malfeasance in the capital markets and fraud is especially important to effective oversight where a jurisdiction is as open to cross border business as is Indonesia. An Amendment to the CML is in progress and will resolve the issues currently preventing BAPEPAM-LK from becoming a signatory to Part A of IOSCO's MMOU. It should be progressed expeditiously. According to the IOSCO e-methodology FAQs, sharing through an MLAT is not sufficient for a fully implemented rating of this Principle.</p>
Principles for Issuers	
Principle 14.	There should be full, accurate and timely disclosure of financial results and other information that is material to investors' decisions.
Description	<p>BAPEPAM-LK has both general and specific disclosure requirements that apply to public offers "Public offers" are defined as offers proposed to more than 100 persons or accepted by more than 50 (CML Article 15(1)). IOSCO does not take a position on what should be treated as a public offer.</p> <p>The specific elements of prospectus disclosure that are subject to review are contained in rules relating to public offerings, including: No. IX.C.1 (re: form and content of a Registration statement); No. IX.C.2 (re: form and content of a prospectus); No. VIII. G.7 (re: presentation of financial statements) and Circular Letter No. SE-02/PM/2002 and No. SE-02/BL/2008, which provides guidance templates on financial statements for issuers and public companies that are specific to 16 different industries. Disclosure also is differentiated for other different categories of offerings. For example, particular disclosures are required for municipal bond offerings and for Sharia offerings, by rules adopted in 2007 and 2006, respectively. (See also, rules for small and medium enterprises that date from 1996) For listed companies, the disclosure requirements of BAPEPAM-LK are augmented by the requirements for listing on the exchange. These requirements include, in the case of a listing for the main board (or first tier), three years of audited financial statements, information on business performance, and the use of proceeds, and a legal opinion by an approved BAPEPAM-LK counsel, among other things. They also include a schedule of ownership by shareholders, <i>curriculum vitae</i> or resumes for board members and commissioners, and a history of the business. Additionally, listed companies must assure that the lesser of a fixed value (100 million rupiah) or 35% of paid in capital not be held by controlling shareholders and meet various governance requirements, including that 30% of its Commissioners are <i>independent</i>. "Independence" is defined under Rule No. IX.I.5, relating to Guidelines on Establishment of an Audit Committee (20)4 as: a commissioner that "(i) comes from outside the company, (ii) does not have direct or indirect ownership in the company; (iii) does not have an affiliated relationship with the company, a commissioner, director or main shareholder of the company; and (iv) does not have a direct or indirect business relationship with the company related to the company's main business." .In this regard, Indonesian company law contemplates two Boards, a supervisory board and an executive board.</p> <p>The objectives of the generic disclosure requirements are stated in the negative: "A prospectus shall not contain false statements... and shall not omit material information that would be necessary for the Prospectus not to be misleading." (CML Article 78). The definition of the term "material" is very broad: that is, "any important and relevant fact concerning events, incidents or data that may affect the price of a security on an exchange or that may influence the decisions of investors, prospective investors, or others that have an interest in such information." (CML Article 1 (8)). This would include information on acquisitions, corporate actions, the making or loss of an important contract, a change in fiscal year, a change in control, or the development of a new product. Material changes must be made public within two working days of their occurrence (Rule X.K.1). Insiders may not trade on non-public information prior to the dissemination of that information. (CML Article 95). Insiders are defined in n.206 to CML Article 95 to include a commissioner, director, employee or substantial</p>

	<p>shareholder of an Issuer or a Public Company or a person who has access because of position, profession or business relationship with the Issuer or Public company to inside information.</p> <p>The registration process has a 45-day approval period for equity securities, which is tolled if the submission is not complete. The BAPEPAM-LK and various stakeholders indicate that while they think the time to setting an effective date is too lengthy, the approval period is rarely extended for a full additional 45 days.</p> <p>Purchasers in the primary market must certify on the order/subscription form that they received and had an opportunity to read the Prospectus (CML Article 71). Offerors are prevented from stating that BAPEPAM-LK has approved the prospectus or researched its merit (CML Article 78 (2)). BAPEPAM-LK applies the disclosure principle and only considers “completeness, adequacy, objectivity, comprehensiveness and clarity,” and not merit, in its review process. (CML Article 75)., Advertising outside the prospectus cannot contain false information (CML Article 78 and Rule IX A 9). Legislation requires that the preparers, the directors and officers, and underwriters, and others responsible are accountable for the veracity of the disclosures made. (CML Article 80) This point is underscored in IDX informational materials as well.</p> <p>With respect to financial information, an annual audited and a semi-annual report of financial condition is required. The annual audited financial statements are due 3 months after the end of the financial year. An Annual Report must be filed four months after the end of the financial year. In the case of a dual listing in another country, the latest date is the date permitted by the foreign regulator where the company is also listed. (Rule X.K.2, X.K.6, and X.K.7.)The contents, including management discussion and analysis are mandated. In the case of a dual listing, all information submitted to the foreign regulator and all information required by the Indonesian Capital Market is required by relevant rules. . The semi-annual report is due on the last day of the first month after the end of the period if unaudited; 60 days thereafter if accompanied by an Auditor Report on limited review and on the last day of the third month after the reporting period if accompanied by a full Audit Report. Periodic information must be published in two Indonesian language newspapers (Rule X.K.2), one of which has a nation-wide circulation and one of which is in the domicile of the Issuer. In the case of public companies defined as small and medium enterprises, the balance sheet and a profit and loss statement must be published in at least one Indonesian language newspaper. Information is considered stale after 180 days.</p> <p>The IDX requires quarterly financial reporting for listed companies, more than one-half of which report electronically (See Principle 7). The Development and the Main Board have differential listing and regulatory disclosure requirements. IDX recently required the different tiers to be reflected on the trading platform by the use of Code “1” for the main board and Code “2” for the development board opposite the names of the securities. The stock exchange, in order to assure orderly trading, to enable the spreading of information more widely and to assure fair and equivalent access to the market, may suspend trading of a security throughout the market or for a certain market. This is not considered a sanction against the listed company. (IDX rule I-E). In comparison to the treatment of disclosure for the cash market in securities, derivatives contract terms are drafted as rules that must be approved. For such approval, the exchange must demonstrate interest of a specific number of Exchange Members, must demonstrate a daily average price volatility of a specific range for the last year, and meet certain other requirements, including an application by the exchange with a statement of purpose. As such, derivatives contracts in contrast to cash equities must be explicitly approved (as opposed to <i>visaed</i>) by the BAPEPAM-LK. With respect to equity derivatives, or options, the exchange has not yet posted applicable rules in English, but presumably makes the terms and conditions of options available to its investors</p> <p>The CML contains provisions for enforcement of these disclosure and continuing disclosure requirements as well as requiring accountability by the preparers.</p>
Assessment	Broadly Implemented
Comments	The treatment of small and medium enterprises on the IDX platform initially raised questions as to the

	<p>overall effectiveness of the disclosure regime as a means of identifying risk factors to investors. This was remedied recently by identifying non-main Board offerings on the trading platform itself. Exchange rules and terms of contracts also should be readily available. In addition to moving to continuous disclosure regimes (two days delay for the “immediate” provision of information recognized in the Explanatory Note may no longer be considered best practice), most regulators are now looking at a means to better describe key risk factors and to highlight particular risks of various offers in order to make disclosure more targeted, more user friendly and in turn more valuable to the investor. BAPEPAM-LK rules specifically describe in detail the information to be disclosed in a prospectus. These disclosures are consistent with IOSCO Principle 14. Review is for the consistency, and clarity of disclosure prescribed by BABEPAM-LK rules. In this regard, BAPEPAM-LK staff acknowledges that even non-merit based review requires more comprehensive reviews for riskier offerings. There remain accounting issues, though Indonesia follows standards which reflect in most cases either US GAAP or IFRS.</p> <p>See also Principle 15 with respect to disclosure of large shareholdings, shareholder transactions, and changes in control. [The Preamble to the section on Issuers in the IOSCO Methodology suggests however that a fully implemented rating cannot be given for this Principle if the accounting standards used for reporting are not themselves of uniformly high and internationally acceptable quality. See also Principle 16]</p>
<p>Principle 15. Holders of securities in a company should be treated in a fair and equitable manner.</p>	
<p>Description</p>	<p>The Capital Markets Law and Indonesian company law establish a framework intended to protect the rights of shareholders and minority shareholders and to assure their equitable treatment. This framework includes provisions such as pre-emptive rights in the event of new issues of capital; one shareholder/one vote on directors and corporate actions affecting the conditions of shareholders’ securities; prompt notices of changes in control and other material changes, and tender offer/takeover protections. Additionally, in the case of certain material transactions a shareholder vote is required (Rule IX.E.1) and in certain cases involving a conflict of interests, the dissenting independent shareholders may be entitled to a vote of the disinterested shareholders (See, e.g, IX.E.1). As of June 30, 2008, a tender offer must be extended to all shareholders for no less than 30 and no more than 90 days, when the control of 50% of a public company would be altered either through action of a natural person, company, legal entity, partnership, association or any organized group. Announcement must be made to the public and to BAPEPAM-LK no later than two business days after such a change in control of an open company occurs. And, such new controller must tender for the remaining shares subject only to certain specified exceptions, such as change in control resulting from marriage or inheritance, exercising a state duty, or acquisition over time of no more than 10% of outstanding shares with voting rights in a 12 month period. Protections as to the tender price are also stated specifically by law. If a more than 80% interest is acquired in an “open company takeover” then the new controller must take steps to assure that the minimum public float or paid-in capital is no less than 20% and the number of shareholders at least 300 within no more than two years (Rule IX.H.1). The requisite percentages may be achieved through the issuance of corporate rights and how this practice operates should be kept under review. All of the foregoing protections are either provided by the Capital Markets Law 8/1995, the Company Law 40/2007, or related rules (the IX series). These provisions protect shareholders that disagree with a merger or sale of assets or repurchase of securities that affects 50% or more of the net assets of the company (See, Company Law Article 62).</p> <p>Where matters must be addressed by shareholder meeting, the law requires 14 days after the announcement before issuance of the invitation and 14 days after issuance of the invitation before holding of the meeting.</p> <p>Securities (or entitlements) also must be transferred as provided by law. The Central Securities Depository (KSEI) maintains the registry for dematerialized securities and will handle corporate actions with respect to securities held in the registry. There is a current project of law in process to apply a unique account identifier for each beneficial holder of securities held in Member sub-accounts</p>

at the securities registry. Previously beneficial owners were unknown at the depository. To the extent that, the accounting for proprietary and customer trades of a member is kept on the books of the intermediary, attribution to customers of particular securities cannot readily be reviewed by third parties charged with oversight or monitored directly in real time by customers. The identifier project (which is now operative) was impelled by industry concern that the proper handling/attribution of transactions to customer accounts by Security Company intermediaries, could not be robustly monitored and evidence of related malfeasance. This identifier initiative, which was actively favored by the Securities Company stakeholder association among others, has not yet been used by a significant portion of customers to monitor their accounts. Ideally with additional experience, means for BAPEPAM-LK to itself review the proper treatment of customers will be substantially augmented. With respect to dividends and other corporate rights, the securities administrative bureau or registrar (KSEI or BAE) must submit to the issuer a list of shares held as of the record date by each account owner of the affected security at least one day before the date that is the basis for determining each shareholder's right to receive dividends or rights. Bonus shares must be proportional to ownership interests. (Rule IX.D.5) In certain cases interim dividends are permitted, but these must be recalled if the annual profits do not support their payment. Directors of a public company should have appropriate incentives to permit only those dividends likely to be justified by year-end financial results, since they must repay any uncollected recall amount to the company. Nonetheless, once dividends are distributed there might be issues with restoring unreturned dividends should the Directors not have the wherewithal to do so.

A public company is generally accountable for violations of the law under the securities laws, which apply to any Person; the company's directors and senior management also are accountable for disclosure. Company Law Article 97 states that the Board of Directors (executive board) is responsible for Company management, even to the extent of negligence. Under Company Law Article 114, the Board of Commissioners (supervisory board) also is responsible for supervision of the company even for negligence. The Boards also are accountable for bankruptcy assets that are insufficient to pay liabilities. The Company is required to report to the BAPEPAM-LK immediately but not later than two working days after it fails or knows of a petition for declaration of its insolvency.

With respect to mergers and acquisitions, takeovers, and other matters that require shareholder action, the law requires disclosure of specific information about the proposal, including (i) the results of an evaluation by an independent person regarding, in the case of merger or consolidation, share value, (ii) the composition of the directors and commissioners of the new company, and (iii) methods for determining the rights of shareholders who do not agree. In the case of a tender offer, a statement is required concerning (i) the objectives and plans for the target company after its completion, (ii) the wherewithal of the person making the tender offer to permit a full acceptance, and (iii) the names and addresses of any persons who will receive compensation from the offeror in connection with solicitations and recommendations. These requirements and other information are intended to assure that the offer is fair and not misleading.

Large shareholdings are required to be disclosed to BAPEPAM-LK in IDX- required listing particulars and by CML Article 87 (2) by any "Person" when they cross five percent or more. Such disclosures must also be made in the Annual Report (Rule XK 6) in notes to the Financial statements at least (Rule VIII.G.7). Transactions (changes in ownership) by large shareholders (holders of 5% of paid in capital) and each director or commissioner in shares of the company must also be made to BAPEPAM-LK and available to the public within 10 days. (Rule X.M. 1). In addition, based on Rule X.C.1, KSEI must report transactions (changes in ownership) by large shareholders (holders of 5% of paid in capital) to BAPEPAM-LK [no later than one working day] after book entry in the securities account." There also are requirements that related party transactions must be disclosed within two days, though some transactions are exempted by rule. (Rule IX E 1). While cross-share holdings are prohibited by listing rules and restricted by Article 36 of the CLM, some stakeholders still express concern that there is insufficient disclosure of structures that permit coordinated holdings (e.g., through joint accounts). Article 87 (2), however, applies to every Person. Article 1 (23) and Rule IX

	H 1 define Person as “a natural person, a Company, a partnership, an association, or an <i>organized group</i> .” BAPPEAM-LK states that read together these provisions should make disclosure of large shareholdings mandatory for persons acting in concert.
Assessment	Broadly Implemented
Comments	The timeliness of large holding disclosure is within the limits, and consistent with the manner permitted, as set forth in the Explanatory Note to the IOSCO Assessment Methodology. In general, applicable Company Law protections appear to provide more protection to minority shareholders, if followed, than in many jurisdictions, although some jurisdictions might make a tender mandatory at a lower level of ownership and control. Some jurisdictions give more flexibility for boards to act in good faith (using a gross fault/gross negligence standard) or with business judgment and do not impose personal liability for financial failure. Ideally any bankruptcy would be reported immediately not after some days. The enforcement of the requirements with respect to cross holdings and disclosure of large shareholdings held in concert should be kept actively under review, as should the reliability of legal support for enforcement efforts. Further, continued work toward more accessible information on non-listed public companies ownership and control should be actively pursued. Further authority for BAPPEAM-LK to require the disclosure of beneficial ownership is included in proposed legislative amendments. Reference should also be made to the assessment in accordance with the OECD Code of Governance Principles, performed by a separate assessor.
Principle 16.	Accounting and auditing standards should be of a high and internationally acceptable quality.
Description	<p>Based on Rule X.K.6, Indonesia requires that all issuers and public companies prepare an Annual Report, including financial reports (a balance sheet or statement of financial position, statement of operations and cash flow, and statement of changes in ownership and periodic financial reports under Rule X.K..2. The financial statements must be prepared in accordance with accounting standards issued by the Indonesian Institute of Public Accountants (IIPA) and accounting rules issued by BAPPEAM-LK and audited by auditors registered by BAPPEAM-LK. BAPPEAM-LK (and IDX) have the legal authority to augment these reporting requirements with respect to listed companies and regulated entities operating in the Capital Markets (CML Article 69). Accountants are required to report, in confidence to BAPPEAM-LK, any violation of the law and implementing regulations, or any other matter that might affect the financial viability of a regulated entity or an issuer (CML Article 68). Replacement of an accountant who audits the company is information that must be made public immediately (Rule X.K. 1)</p> <p>BAPPEAM-LK registers/approves accountants that engage in accounting for public companies and regulated entities before they provide services to the Capital Markets (CML Article 64). Additionally, BAPPEAM-LK requires that such accountants undertake specialized capital markets training. Hence, capital markets accountants are certified public accountants, licensed as such by the Ministry of Finance, accountable to the code of ethics (CML Article 66) and standards set by the standards Board of the Institute, subject to additional capital markets training and continuing education requirements, and registered with the BAPPEAM-LK. As of April, 2010 there were 358 accountants who met all of these criteria. These accountants are subject to sanction by the Institute (which is without recourse to appeal anywhere) and to administrative sanction by the BAPPEAM-LK as well (CML Article 102).</p> <p>Additionally the Ministry by MOF Decree 17PMK 01/2008 requires audit partners to rotate every three years, and firms every six (see also Rule VIII A2).</p> <p>Indonesia’s approach to accounting standards is currently undergoing active transition.. Prior to 2003 Indonesia had adopted most of the standards set by the International Accounting Standards Board. As of March 31, 2010, the status of Indonesian convergence with IFRS was as follows: 21 PSAK (Indonesian Accounting Standards) are fully comparable with IFRS, 5 are substantially comparable, 8 are non-comparable, and 4 have yet to be adopted. . A major initiative is underway to adopt all IFRS standards by 2011 with a final effective/compliance date of 2012. Indonesia also has 8 Sharia-based PSAK and 14 interpretations (ISAK). Auditing standards (SPAP) are currently those adopted in the</p>

	<p>US to assess GAAP-based financial reporting, but these are no longer suitable due to Indonesia's move to IFRS. In consequence, international auditing standards are expected to be adopted in 2011. Indonesia has a strong commitment to complete its IFRS and ISA convergence program because this will improve the quality of Indonesian accounting and auditing practices and correspondingly the quality of financial disclosure by public companies and investments..</p> <p>BAPEPAM-LK has a commitment to support the IFRS convergence program and also the authority to enforce implementation of the standards as set forth in CML Article 69(1). The IFRS are evolving in light of recent events in the financial community, such that some additional amendments may be required to PSAKs adopted based on earlier versions. BAPEPAM-LK has played a large, and an important, role with respect to the conversion to IFRS and is facilitating the overall transparency of the process by organizing and working with a task force of professionals including accountants, practitioners, academics, and various government agencies, to spearhead the consultation process and the socialization process related to the expected changes.</p> <p>Additionally, while accountants are largely self-regulated today, the BAPEPAM-LK has been working with Australian consultants to develop an oversight regime modeled on that used in Australia. The law requires "independence" of the auditor from management (CML Article 67) and Rule VIII, A. 2 (August, 2008) outlines how BAPEPAM-LK interprets independence with respect to performance of other audit activities, with a view to protecting the integrity of the audit engagement. Indonesia's Code of Good Corporate Governance, also requires that the Board of Commissioners (supervisory board) consider the opinion of the audit committee on the choice of an external auditor. Fundamental errors in financial statements must be corrected by issuing a restatement (PSAK 25 and Rule VIII.G.7) and Company Law 40/2007 requires that the management be accountable for the accuracy of financial reporting. The Indonesian Institute of Public Accountants, action plan is published at: www.ifac.org/complianceassessment. Among other things the accounting industry has put into place a Quality Review Program. For example the Indonesian Institute of Public Accountants has issued: (1) a new Code of Ethics for Public Accountants (in 2008), which is expected to be effective for implementation as of January 1, 2011; and (2) an exposure draft of the new Quality Control Standards (in 2009) expected to be effective in mid- 2012.</p>
Assessment	Partly Implemented
Comments	<p>Overall there is broad acknowledgment that massive efforts have been undertaken by BAPEPAM-LK to spearhead the move to improve capital markets accounting and auditing practices and that strong efforts should be continued to improve accounting and auditing standards and practice, to make all rules available in both English and Indonesian, and to assure adequate standards and performance oversight through a mechanism housed in BAPEPAM-LK. Adequate oversight of standard setting by the regulator or another independent body in the public interest continues to be of critical importance and should be aggressively pursued. Reference should also be made to other sector assessments that relate to accounting and that were conducted by other assessors.</p>
Principles for Collective Investment Schemes	
Principle 17.	The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme.
Description	<p>Indonesian requirements with respect to collective investments apply to all of the following: the fund/product, the fund manager (Investment Manager), the Investment Advisor, if different, the selling agent or representative, professionals such as accountants and lawyers who serve the fund, and the custodian which cannot be affiliated with the Investment Manager and must be a bank custodian not a securities company custodian. If the fund is an ETF, only two of which are trading as of this assessment, it also must fulfill listing rules. Five BAPEPAM-LK divisions are involved in operational oversight of collective investment vehicles: licensing and fitness, review of product registration and</p>

periodic financial reporting; compliance, inspections, and complaints, product development, and policy development and education. Complex flow charts detail the process within the BAPEPAM-LK of various review procedures.[As of October 2009, aggregate net assets held in mutual funds totaled 107.75 trillion rupiah held by approximately 350,000 holders; as of February 2010, aggregate net assets rose to 123 trillion rupiah. Funds are permitted to hold 15% of NAV in offshore securities; structured funds may hold up to 30% of NAV.] The Capital Markets Master Plan for 2010 to 2014 anticipates further development of CIS products.

There are two types of collective investments in Indonesia: (i) an investment fund organized as a company (CIS) and (ii) an investment fund organized under a collective investment contract (CIC). Public confusion as to whether so-called “discretionary funds” (or a portfolio) managed by a third party, were another form of collective investment vehicle or in fact individually managed customer accounts, was remediated by the adoption this year of Rule V.G.6. An investment fund that is a company must be licensed by BAPEPAM-LK. A securities company that is an Investment Manager (that is not an insurance company, pension fund or bank engaging in its “own lawful” activities) (CML Article 1 (11)) also requires a license. Persons that conduct activities as Underwriters, Broker-Dealers, or Investment Managers only with respect to credit securities that have a maturity of less than one year, or certificates of deposit, insurance policies, securities issued or guaranteed by the Indonesian Government or other securities determined by BAPEPAM-LK not required to be licensed need not be licensed. (CML Article 30 (3)) Shares of an investment fund company and participation units of a collective investment contract are each regarded as “securities” by the CML .Article 1(5) and must be registered with BAPEPAM-LK and offered publicly under a prospectus (CML Article 1 (27)). (See also Rule No. IX.C.5.) The assets of an Investment Fund, of either type, must be held by a Custodian Bank, which cannot be affiliated with the Investment Manager, though it could be affiliated with the sales agent. Portfolios of both investment funds established by contract (CICs) and those organized as companies (CIS) must be professionally managed by a licensed Investment Manager pursuant to a contract which must meet certain requirements. In the case of an investment fund company, the management responsibility is shared with a Board (CML Article. 21 (2)). In the case of an investment fund that is a collective investment contract (CIC) (in an open ended fund) parties to the contract are the Investment Manager and the Custodian (CML Article.21 (3); Article 26). Any Person who provides securities advice for a fee must be an investment advisor (CML 34 and n. 104).

Representatives as well as firms must be licensed (CML Article 32). “Representatives,” are individuals who “act for” the firm. For example, an Investment Manager’s Representative acts for the Securities Company with respect to its Securities Portfolio management business. “Acting for” could include sales and marketing as well as advisory activities (CML Article 32 n. 100). Licensing criteria include a fit and proper test, that is, proficiency, no misconduct, no history of commission of a “shameful” or criminal act, good morals, and legal competence. (Govt. Reg. No. 45/1995). There are capital requirements for both types of interests:, a corporate fund must state its paid-in capital and submit an operational plan (Rule IV A 1 for an investment company and V. A. 1 for a securities company that is an Investment Manager). A Circular Letter sets out the necessary risk management and controls required to be licensed as a CIS or a securities company. All Indonesian funds are domestic and it does not appear that delegations are permitted.

Unlicensed activity is subject to criminal sanctions (CML Article 103). There are also administrative sanctions. Certain relationships are expressly prohibited. For example, as set forth above, an investment manager cannot keep money at an affiliated bank. If transactions are concluded through affiliated entities, such as affiliated Securities Companies, fees cannot be higher than those available in the market generally. (CML Article 41)

The Investment Manager (whether for a company or a contractual fund) must meet specific requirements to protect the fund (Rule IV B 1). Although there is not a specific rule on best execution, there are explicit rules against trading ahead by any Securities Company. Additionally there are provisions relating to customer/participant suitability and to Investment Managers not accepting any

	<p>direct or indirect compensation that might influence that Investment Manager to buy or sell securities for a collective investment vehicle.(CML 42)</p> <p>CML Article 27 explicitly requires that an Investment Manager must act in good faith and administer all funds under management in the interests of the fund, creating a type of fiduciary obligation. The advisor code of conduct indicates that advisors must give priority to protecting the interests of their clients. (CML 35 and n. 106)</p> <p>Rule IV. B. 1 provides BAPEPAM-LK authority to suspend CIS activities, to freeze CIS assets and to name another operator to operate a CIS or to liquidate it pursuant to custodial records of shareholder interests.</p> <p>The cycle for the ongoing monitoring of investment funds is not clear from the documents, but there is a written audit program intended for use by the Technical team at BAPEPAM-LK in conducting a compliance audit of investment funds (Rule II F 14) and a rule that makes clear that an inspection can be performed at anytime. BAPEPAM-LK reports that in 2009 it visited all head offices of banks that sell mutual funds, and branch offices in ten major cities on a random basis. It further reports that it conducted 111 comprehensive on-site visits in 2009 and that it undertakes desk reviews of all fund reports and financial statements. Last year it revoked 10 licenses.</p> <p>Off-site review of CIS products involves analysis of data gathered by BAPEPAM-LK's e-monitoring system. The data include: (i) profiles of investment managers and investment funds;(ii)statistics report on daily NAV, NAV composition, and detailed portfolio holdings that include price details for bond held ; (iii) monitoring data on investment management and investment funds; (iv) early warning system that includes analysis on investment management reports, custodian bank reports and records on violation by investment managers; (v) risk-based supervision data; and other data gathered from central custodian with regards to transaction and investment holdings by that exceeds 5% threshold</p> <p>This review can prompt follow-up action or an onsite visit. Last year for example, there were inspection visits to 17 investment manager (out of 93 total), 67 investment funds (out of 671 total), and 27 (of 27 total) selling agents. Those inspection visits were conducted on random basis spread out to big, medium, and small size investment managers. The visits covered all operational aspects, such as organizational structure, portfolio management, compliance arrangement, selling practices, record keeping, securities valuation, etc.</p> <p>BAPEPAM-LK also indicates that it follows up on all complaints and that it recently performed a review related to a report to it of a potential violation by a custodian bank. BAPEPAM-LK reports that typically such a review would specifically address any related party transactions, such as sales through an affiliate of the investment manager.</p>
Assessment	Broadly Implemented.
Comments	<p>Mutual funds have been the largest growing product in the investment community in Indonesia. Despite a comprehensive framework for the regulatory oversight of funds, there is a previous history of customer losses and failures related to mutual fund offerings. At the time of the on-site assessment, the ambiguous category of discretionary “funds” appeared to be an additional type of unregulated collective investment. The offer of such funds . was neither restricted to private placements, limited to eligible counter-parties, nor required to be labeled as unregulated. BAPEPAM-LK advises that it has adopted new Rules V.A 3 and V.G.6 to regulate Investment Managers that manage securities portfolios for clients (discretionary funds) and that these rules make clear that discretionary funds are not pools but individual managed accounts that must be accounted for, and managed, on a customer-by-customer basis. BAPEPAM-LK indicates that it also is encouraging, in appropriate cases, that Investment Managers offer management of riskier funds through Private Equity Funds (Rule No. IV. C 5), which are funds privately placed to fewer than 50 persons that are Professional Investors. Unit sizes in such funds must be equivalent to \$US 500,000 or 5 billion Rupiah. Such unit size requirements in effect limit who can be an investor. Funds meeting such criteria are accordingly relieved of certain rules relative to collective investments more generally, IOSCO Principles only comprehensively address public offers, but invites the assessor to assess the consequences from the</p>

	<p>perspective of investor protection of all offers. The effect of the recent changes to improve the understanding of various types of services and products available to investors and to distinguish collective investments from managed funds should be weighed after some further experience. There also remains a significant question about the extent to which o foreign parties can offer offshore products directly to Indonesian investors, without being licensed in Indonesia.</p>
Principle 18.	The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.
Description	<p>BAPEPAM-LK permits two types of regulated investment funds: (i) a corporate fund (in the form of a limited liability company licensed by BAPEPAM-LK) (CIS) and (ii) a collective investment contract (CIC) (CML Article 18). The vast majority of Collective Investments are in the form of contractual funds or CIC. BAPEPAM-LK reports that as of April 2010, there were 91 Investment Management (fund) Companies, 621 investment funds which are all in the form of Collective Investment Contracts, and 75 private equity funds.. A corporate fund issues shares as evidence of ownership interests to participants. The Capital Markets Law creates a legal interest, or contract right, in collective investment contract (CIC) participants, that is designated a “unit of participation.” Under the Capital Markets Law, Article 1 (5), such participation units are explicitly defined as “securities.” CML Article 1 (29) states that “A Participation Unit is the method of measuring a Person’s ownership interest in a collective investment portfolio.”</p> <p>The CIC, which effectively involves a contract among the investor, the Investment Manager and the Custodian, is intended by statute to create a bankruptcy remote interest. The rights and obligations of the Manager and the Custodian and the investor are contained in the CML and related rules and in the contract terms. Securities Companies (brokers) must follow BAPEPAM-LK procedures when receiving securities and must segregate client and CIC assets from those of the Securities Company (CML Article 37). CML Article 44 states that securities in safekeeping or posted to a securities account with a custodian are not part of the Custodian’s assets. Rule IV. B.2 provides that the CIC contract must require CIC assets also to be separate from those of the Investment Manager and the Custodian Bank.</p> <p>Each collective investment fund must be separately accounted for as a separate client (or subaccount) when held at the Custodian or at any Securities Depository (CML Article 56). CIS are not permitted to borrow or lend money or to acquire other funds. (CML Article 24) The CML empowers the BAPEPAM-LK to add other limits. The elucidations in the CML anticipate that these limits would relate to diversification, limits on investment in foreign securities, and limits on types of securities (see note 81) as specified, for example, in Rule IV B. (1).</p> <p>BABPEPAM-LK indicates that an investor in CIC receives a confirmation letter as evidence of ownership when the Custodian receives good funds and the contract terms (including terms on prohibited transactions and the starting unit size) (Rule IV B.2 of 2008). Rule IV B. 2 (5) provides that the investor has the right to obtain proof of ownership and to get statements periodically. The Custodian is responsible to see that participation units are only issued over good funds (See Rule IV.B.2 (4)(j)). Financial reports from the Investment Manager are due at least annually, Rule VIII G 8 (adopted in 2004) requires the custodian to confirm interests monthly to unit holders, and NAV is published daily/or in some cases weekly through the media).</p> <p>8 a (5) of Rule IV.B.1 states that the Investment Manager must keep and maintain all important books and records and notes related to financial statements and Investment Fund management as required by BAPEPAM-LK and keep separate those record accounts and notes from the Investment Manager’s record accounts, those of the Securities Company and/ or from other Investment Managers.</p> <p>The custodian has independent responsibility under the rules to account for the value of participation units or shares on a fund- by- fund basis and must provide a monthly “return on investment” report to unit holders (see above). The collective investment fund custodian is a party to the investment contract for contractual funds, which includes the investment policies among other things (CML Article 26).</p>

	<p>CML Article 20 requires the Investment Manager to repurchase Participation Units of holders who wish to sell their units. The law provides that NAV “shall be the basis for evaluating shares of an open-end corporate fund or participation units;” redemptions should ordinarily be at a price of NAV/share or unit less agreed costs and the price shall be based on NAV on the same day if the request for redemption is received by one pm in Jakarta, though settlement may take up to seven days. Notice of material changes that could change the value of participation units or funds must be submitted to BAPEPAM-LK and announced in one Indonesian language newspaper that has national circulation 15 days before the changes go into effect. Under certain circumstances funds must be liquidated. For example if the overall assets fall below 2.5 million dollars or the original subscription fails to reach 2.5 million dollars. It is not explicit how potential subscribers’ funds should be held for a contractual fund pending its reaching the legal size, but there should be a type of escrow arrangement with the custodian.</p> <p>Rule IV B (1) states funds for the purchase of units or shares must be deposited by the end of the day. (One question is can funds be received in the name of the Investment Manager, and if not, in what name would they be received, as the contract is not itself an entity, and the interest of the participant holder is to an undifferentiated pool of assets.)</p>
Assessment	Broadly Implemented.
Comments	<p>The majority of collective investments in Indonesia are in the form of contractual funds. .A participation unit in a contractual fund or CIC does not have a legal form, such as a partnership interest or a trust participation as is the case in most jurisdictions where funds take forms other than that of limited liability companies. These legal structures define the interest and rights of the holder as a matter of law. Nonetheless, the Capital Markets Law is intended to create a bundle of property rights in CIC protected by a custodian that are binding upon third parties such as creditors of the Investment Manager or the Custodian. The CML defines contractual units of participation as “securities,” that are unique property interests cognizable by law, subject to specific statutory terms and conditions and obligations,, and bankruptcy remote BAPEPAM-LK indicates that confirmation of the receipt of funds invested in a particular CIC would be proof of a property right under Indonesian Civil Law. .Each participant’s units of participation in a particular fund are identified as such and as belonging to the unit holder and registered under the name of the Custodian Bank, which maintains the underlying registry. IOSCO’s Assessment Methodology recognizes the existence of contractual funds and civil law countries that typically do not have trust law frequently use the contractual fund form.</p> <p>A Broadly Implemented for regulated funds is achievable, if the necessary contractual agreement defines a unique property interest and creates legally enforceable rights in a specifically identifiable pool of property. BAPEPAM-LK has clarified that CIC accounting must distinguish funds from each other and identify each participant’s relative interest in the respective funds it owns held at the Custodian.. Understanding of the various protections accorded each individual CIC participant’s right in pooled funds against third party creditors and other claimants would be improved if the explanation of the various rights and obligations were clearer. That being said, it is evident that the intent of the CML is to create a unique property interest in units of participation in a specifically identifiable pool of funds, which is separate from the Investment Manager and the Custodian. The legal treatment of these rights and their effectuation in practice should be kept under review in light of comments on the legal system in general.</p>
Principle 19.	Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor’s interest in the scheme.
Description	Registration statements and prospectuses are required for the public offer of securities. Participation units are explicitly defined as securities (Article 1 (5)). The various rules of BAPEPAM-LK indicate that a Prospectus is required for an investment fund of either type, that is whether it is a Company or a Collective Investment Contract. Rule IX. C. 5 relates to registration statements for the public

	<p>investment fund in the form of a CIC; Rule No IX. C. 4 relates to a limited liability company; Rule IX. C. 15 relates to Real Estate Investment Trusts; and Rule No. IX C. (relates to structured funds or asset backed securities.)</p> <p>Rule IX C 6 sets out the contents of such a Prospectus/Disclosure Statement for company CIS and CIC; Rule IX, C 16 and IX, C.10 set out additional information for prospectus disclosure for REITS and Structured funds. In general fund prospectuses address: (i) the date of the offering,(ii) information on the type of fund (the contents of the investment contract for a contractual fund are also prescribed), (iii) the rights of investors, (iv) investment policies, (v) risk factors,(vi) financial information, (vi) information on the investment manager, distributing parties, and the custodian, (vii) expenses, and (viii) a disclaimer stating that the BAPEPAM-LK has not merit-approved the offering. BAPEPAM-LK has broad authority, as part of its general powers (CML Article 5) to take steps “to avert loss,” and apparently could require the suspension or withdrawal of an offering based on false information using those authorities. If the subscription amounts do not exceed 2.5 million within a specified time frame, the offering also would be deemed withdrawn and the subscriptions would be returned.</p> <p>Offering documents must be updated when they become stale, and specific changes in investment policies in an investment contract must be notified to BAPEPAM-LK 15 days before they occur and also must be published in a national Indonesian language newspaper.</p> <p>Accounts are required to be prepared using the prevailing accounting standards for Indonesia; in general though for funds that are portfolios of equity or debt the primary information relied on is NAV and statements related to return on investment. The annual financial statement of a fund must be audited by an accountant registered with BAPEPAM-LK and must be submitted to BAPEPAM-LK no later than the end of the third month after the end of the fiscal year (Rule IV B. 1). Daily reports are made of NAV and these are published electronically and in the mass media. Monthly reports containing various types of operating information and ratios, including number of redemptions must be reported to BABEPAM-LK (Rule No. XD 1) in electronic format. A daily report including a statement of assets and liabilities, investment operations, and return on investment also must be filed electronically and net asset value must be announced in the media daily. (No. IV C.3.)</p>
Assessment	Broadly Implemented.
Comments	<p>Even though the disclosure requirements are complete, disclosures with respect to Collective Investment Contracts may require augmenting in particular cases to avoid investor confusion. Customer education with respect to funds is very important. For example, CIC are apparently often structured, such as, so-called “capital protected” funds. These funds typically hold debt. If the units are redeemed before maturity, they must be redeemed at the then market price, which could be less than face/principal value. . Additionally participation units, are subject to default on the underlying bond and to a different valuation than face value if the offering Custodian or Investment Manager defaults before maturity. Therefore, the capital is only protected if there is no default and the bond is held to maturity or the price at the time of liquidation equals or exceeds face value. In that guarantees of principal explicitly are not permitted, efforts should be continued to assure that these “protected” products are not misunderstood.. In this respect, the lack of customer complaints, is not dispositive, as is the case in many investments that seem secure. Even with disclosure, the name of these funds may potentially be misleading. See also Principle 20.</p>
Principle 20.	<p>Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.</p>
Description	<p>BAPEPAM requires that Investment Managers determine and publish a fair market value/NAV every exchange trading day (CML Article 22) for open-ended funds, whether companies or collective investment contracts (CIC). BAPEPAM rules related to the calculation of NAV, in particular Rule IV C 2, prescribe which reference price to use for securities (an exchange price if available) and principles for valuing illiquid, non-rupiah-denominated and “bankrupt” securities.). Rule X.D.I includes spread sheet reporting forms for use by Investment Managers in reporting fund assets</p>

	<p>generally and NAV specifically as well as other ratios, monthly. NAV is reported to BAPEPAM and for publication every day at 10 am. At 4 pm every day Investment Managers report quotations, that is a bid and offer, for corporate bonds to BAPEPAM, through a calculation facility managed by KSEI, which uses these figures, and real prices obtained in the market, in determining a bond price to be used in calculating NAV. This strategy is intended to address the fact that the prevalent practice is to buy and hold such bonds to maturity (or to trade them over-the-counter) meaning that often there is no actual transacted/or current mark-to-market price that reflects all, or even the majority of transactions. The quotations entered by investment managers are “indicative” bids and offers from portfolio managers not persons making a market in the bonds, such as dealers; this means that there is no requirement that the investment manager be required to conclude/ or in fact have concluded actual transactions at the indicative prices. In consequence, a liquidity event could be exacerbated by the selection of non-market based prices to calculate NAV which is a price at which the fund could not liquidated. The calculation algorithm apparently discards certain prices that are outside a specified limit or range, but the treatment of potential outlier prices is not transparent.</p> <p>Custodians are also required to compute NAVs and to report daily the return on investment/share over the last 30 days for the year (Rule IV C 3). These valuations must be provided for units/shares in open-ended portfolios every exchange trading day. These valuations must (i) follow BAPEPAM rules, (ii) use standard procedures where no market price is available, (iii) use a valuation methodology consistently and (iv) document the valuations in records maintained for five years. All of these requirements are valid protections of the process. The financial reporting for funds generally must follow accounting principles in effect in Indonesia, and Investment Managers must submit audited returns at the end of the calendar year for Collective Investment Contracts, and as specified for corporate funds. (Rule IV B 2). The accounting standards in effect are the standards applicable to such reports. An Investment Manager must keep fund assets at a custodian bank that is not affiliated with the manager (CML Article 25). An Investment Manager also must in “good faith” carry out his duties in the “sole interest of the investment fund.” (CML Article 27). Thus Indonesian law imposes a type of trust or fiduciary-like duty on the Investment Manager. Similar provisions apply to the custodian.</p> <p>Redemptions and instructions must be confirmed (at a price) on the next day, but may be settled within 7 days to give the Investment Manager time to sell sufficient shares to finance redemption. This settlement time frame acknowledges that the market is not particularly liquid or that the demand for redemptions in some circumstances could be high. For CIC, it is explicit that the original offer price is 1000 rupiahs or \$1 or one euro per share; and that on redemption that the redemption price is the NAV on the same day if the request is received before one PM Indonesian (western) time, and on the following day if received later.</p> <p>If a fund is required to be liquidated, Rule IV B 1 makes clear that the liquidation price/share must be proportional. Limitations on redemptions for open-ended funds are by statute and are intended to accommodate extraordinary circumstances, such as the halt in trading in a security or the closure of the exchange itself.</p> <p>For illiquid securities with no published/traded price, the Investment Manager in determining fair value must (i) have standard operating procedures, (ii) use an accountable valuation and implement this valuation consistently, (iii) make a record of the procedures for valuation that include among other things the factors or facts considered, and (iii) maintain the records of the calculation for a period of at least five years.</p> <p>In every case, the BAPEPAM can exercise its powers in appropriate cases to intervene under the broad authority contained in the law (CML Article 5 (n)). BAPEPAM does not have specific power to withhold redemptions. BAPEPAM can, under Government Regulation 45/1995 Article 28 and 29 respectively revoke the license of a corporate investment fund or dissolve a contractual investment fund.</p>
Assessment	Partly Implemented.
Comments	Although BAPEPAM-LK generally has developed a process intended to maintain the integrity of the pricing of illiquid securities, the pricing methodology for illiquid corporate bonds that are included in

	<p>investment funds is potentially susceptible to manipulation and to the exacerbation of a liquidity drain. This is because the formula is based on (i) quotations that are not in themselves transparent, (ii) uses indicative bids and offers that are not real prices at which persons are willing to transact and (iii) does not include certain transactions that may not be reported. The methodology could also potentially permit price collusion. These aspects, as well as the discretion of individual CIS operators permitted by guidance, raise the question of whether this pricing methodology can be considered fair and reliable [Key Question 6]. There also does not appear to be a prescribed process or principle for correcting pricing errors [Key Question 8] The rationale for an explicit/transparent procedure for price corrections is that post trading price corrections could negatively affect investors or disadvantage some to the preference of others. BAPEPAM-LK believes that the obligation of the Investment Manager is to calculate the fair market value of securities and that that of the Custodian Bank is to calculate NAV. BAPEPAM-LK believes that a price correction procedure is not necessary because the Custodian calculates NAV and is responsible for losses caused by its mistakes and that BAPEPAM-LK can and does investigate price irregularities. Nonetheless, price corrections can occur in electronic markets, the bond pricing algorithm above could produce aberrant prices, and there can be issues related to fair market valuations in illiquid markets. BAPEPAM-LK is in the process of implementing a proposal to improve the bond pricing methodology and to set up an independent bond pricing mechanism outside of the KSEI. Efforts should be undertaken to implement such improvements with expedition. BAPEPAM-LK should also consider what principles of fairness and equity and timing should affect the resolution of “valuation” errors. Stakeholders complained about the current methodology and there is a possibility that, in practice, the methodology might be an externality that can adversely impact overall price volatility and transmit risk to other sectors.</p>
Principles for Market Intermediaries	
Principle 21.	Regulation should provide for minimum entry standards for market intermediaries.
Description	<p>Licenses are required for all securities intermediaries (including investment advisers, for which a special license is required if they hold funds—as in case of pension fund; in general an advisor is prohibited from holding funds (Rule V. H. 1)) and their representatives by Government Regulation 45/1995 and the relevant provisions of the Capital Markets Law. Information on who is a licensed intermediary and for what purposes they are licensed is available on the BAPEPAM-LK website. The Government Regulation sets out criteria for licensing. These are typical fitness criteria for the principals, and capital requirements (see discussion at Principle 22 below) for the regulated entity, which are further explicated by rules and guidance. A due diligence review is performed on the company, company management and the governing Board of Directors and Commissioners as part of the licensing process. Among other things, the company must have written operational policies and procedures (SOP), internal controls, ascribe to a code of conduct and follow know your customer rules. All of the requirements are publicly available.</p> <p>Failure to meet the requirements for licensing on an ongoing basis can lead to license, revocation or other administrative sanctions, such as a restriction of activities. Some restrictions are automatic, such as in the case of the failure to meet capital requirements, which are required to be met on a continuous basis.</p> <p>All securities companies are required to have a program to supervise their representatives with respect to the handling of orders and accounts, correspondence, and sales activities (Rule V D 1). Certain cross-holdings are prohibited and representations must be made that they do not exist. Changes in the control and business of the securities company must be reported to the BAPEPAM-LK as must its periodic financial reports and accounts.</p> <p>BAPEPAM-LK performs desk audits of financial information, but largely relies on the IDX for the performance of on-site audits of Securities Companies that are Exchange Members pursuant to IDX’s affirmative self-regulatory responsibilities under the Capital Markets Law, subject to BAPEPAM-LK oversight. BAPEPAM-LK reviews non-member firms and introducing firms, which must use a Member firm to hold funds and enter executions into the trading platform. New personnel are in the process of being hired to augment these inspection functions. IDX performs both on-site and off-site</p>

	reviews of its members in accordance with Regulations on Membership reviewed and approved by BAPEPAM-LK and reports results of inspections and sanctions to BAPEPAM-LK. Additionally, BAPEPAM-LK can conduct random onsite inspections and does do some, partly as a test of IDX efficiency and competency.
Assessment	Fully Implemented.
	<p>But see Key Question 7 and compare with Principle 7. BAPEPAM-LK indicates that it reviews and analyzes inspection reports of IDX to determine whether it is necessary for BAPEPAM-LK to conduct a further inspection of IDX members and that such reports are used in establishing an overall risk-based, rating, oversight and monitoring program for BAPEPAM-LK-licensed intermediaries. BAPEPAM-LK and IDX hold periodic coordination meetings to discuss surveillance and compliance and may conduct joint inspections or audits in significant cases.</p> <p>While the elements of an effective ongoing monitoring and inspection program are in place, more information should be available on how the program is executed in practice and about the actual extent of the routine monitoring activities that are conducted by BAPEPAM-LK itself with respect to both Exchange Member and non-exchange member Security Companies. These matters are discussed under Principle 7.</p>
Principle 22.	There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.
Description	<p>BAPEPAM has an initial and continuing Net Adjusted Working Capital requirement (NAWC) for securities firms that is 25 billion rupiah (or approximately 2.5 million \$US) for underwriters, 25 billion or (\$US2.5 million for broker dealers), and 200 million or \$US20,000 for investment advisers after subtracting liabilities from current assets and taking into consideration “haircuts”/reductions on how assets are counted for this purpose. In accordance with form V.D. 5-4 attached to Rule No. V.D.5, Central Bank certificates and government debt is haircut 10%, money market instruments are haircut 20%, listed equities are haircut at 10%, listed debt and mutual fund shares are haircut at 30%, and foreign securities are haircut at 90%. NAWC requirements also limit leverage. The maximum amount of liabilities is 25 times working capital; if total liabilities exceed 25 times working capital, the excess is subtracted. Minimum working capital is 4% of total liabilities. NAWC is a liquid capital calculation, but other than the aforesaid haircuts, it is not specified as to what extent the assets counted to meet the requirement are required to be liquid. Additionally the haircuts do not appear to directly reflect liquidity or other risks.</p> <p>In addition to the annual reports required of securities companies, Broker dealers must report their capital to BAPEPAM-LK, if members to IDX, and if members to KPEI every day—marked to market, and also file prescribed monthly reports in digital format, with BAPEPAM-LK, within five days after each month end. If broker/dealers’ NAWC falls below the minimum amount, they are required immediately to cease taking new positions, to trade for liquidation only, and to submit a plan to BAPEPAM-LK on how they intend to restore capital compliance. IDX as the self-regulatory authority responsible for exchange member capital compliance in the first instance pursuant to affirmative obligations imposed by the Capital Markets Law must immediately perform an onsite inspection of a firm that falls below the minimum capital level and report immediately to BAPEPAM-LK technical staff on the results, in particular, the state of internal controls and currency of books and records of the affected firm. IDX has added qualifications for trading options and margin trading and has undertaken to review how margin rules operate in practice. IDX and KPEI may also conduct additional oversight activities based on the Automated Risk Management System (ARMS) discussed further in Principle 28.</p> <p>Auditors of securities companies are required to audit 25 days <i>taken at random</i> to determine whether the calculations used for the NAWC computation are accurate. This is a significant risk control measure and might be emulated by other jurisdictions. Securities companies are required by rule to take continuing education on matters related to managing the risks of a securities business. Over-the-</p>

	counter transactions are included in the NAWC. The receivables and payables from such transactions must be recorded on balance sheet and hence impact the working capital calculation. Required internal controls are explicitly set out in Rule V.D.3, in particular the requirement for separation of certain functions and frequency of reconciliations.
Assessment	Broadly Implemented.
Comments	IOSCO does not require a specific approach to capital but rather requires that capital appropriately address the various risks expected to be undertaken by intermediaries, including: credit, market, liquidity, operational, legal and reputational risks and permit the wind down of a securities company without loss to customers from the wind down and without disrupting the orderly functioning of the financial markets. The NAWC computation (excess capital) used by BAPEPAM-LK would not escalate necessarily based on exposures and may not address liquidity risk in the event of a major market move or specific risk inherent to different issues traded, but does appear to include all transactions. Instead, NAWC in effect is used as a means to set position or trading limits for Exchange Member Security Companies that are intended to be risk-based and that would in fact limit risk in a manner similar to futures initial margin that is monitored on a daily basis. This process is much more robust than processes that rely solely on paid-in capital and addresses market risk (with a one day time horizon) and related credit risk. In the last five years, for example, of the 53 firms that have had their licenses revoked or have returned them (though the statistics do not indicate which of these actions was based on liquidation), only one was an Exchange Member firm. Both IDX and KPEI review the status of member funds in the event of a major market move by marking member “own funds” to market and determining whether to demand additional collateral. Nonetheless, the measure of NAWC may not address certain other risks related to how financing is provided and the overall process may put substantial pressure on liquidity. (See Principle 24). KPEI is currently in the process of studying in more detail, how effective this trading limit measure of controlling risk is in practice, including studying net continuous settlement, different approaches to netting and other issues. The sufficiency of capital cushion should be continuously under review to assure that it is sufficient in prevailing market circumstances to insulate security companies from reasonably expected, but large market movements and sufficiently addresses constrictions of liquidity. Similarly the haircuts established should also be kept under review to determine how well they reflect market experience and to determine whether they could be more nuanced based on actual experience. As seen elsewhere in the global financial community, attention to oversight of the accounting and auditing profession may also promote financial integrity. In this regard, see the special education and approvals required for the accounting and legal professionals that serve the capital markets and audit security companies. The structure of the security company may also affect how effective NAWC requirements can be. The licensing and ongoing regulated intermediary oversight process takes into consideration the structure of the regulated entity’s organization and how that structure is intended to meet regulatory requirements (Rule V A 1).
Principle 23.	Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters.
Description	BAPEPAM-LK has rules that apply to the conduct of business and prudential oversight of its licensed intermediaries. Rules V.E. 1 (broker dealer code of conduct) and V.D.3 (internal controls) respectively relate to: <ol style="list-style-type: none"> (1) treating customers fairly, including assuring proper authorization of trading activities, proper handling of accounts, transactions and funds (including recordkeeping critical to the integrity of an audit trail), customer first requirements, and “suitability/know your client’s financial condition and investment objectives,” and (2) maintaining adequate internal controls, separation of functions, segregation of client money, supervision, and internal audit. Securities companies, and other intermediaries, such as investment managers and their representatives

	<p>also have anti-AML know your customer, client ID requirements (See VD 10). Organizationally, securities companies must have a special AML compliance function, supervised by the Board, and anti-AML and terrorist financing training. That function and training should induce the securities company and its representatives and other employees to have regard to relevant customer identification (including politically exposed persons) procedures, monitoring for suspicious activities and suspicious transaction reporting requirements. Between April 2005 and September 2009, the Securities Transactions and Market Institutions Bureau of BAPEPAM-LK received 68 letters from the Indonesian Financial Transaction Reports and Analysis Center (INTRAC). These letters include an AML compliance report and plan. Specified BAPEPAM-LK staff in the compliance division review these reports and follow up. INTRAC also has commented on the draft revision of the know-your-customer principle, in rule V.D.10, which was issued in mid-December 2009. Some stakeholders have protested the new face-to-face AML know your customer requirement.</p> <p>BAPEPAM-LK also attends coordination meetings to discuss anti-money-laundering activities with INTRAC and other authorities.</p> <p>The licensing and ongoing regulated intermediary oversight process takes into consideration the structure of the regulated entity's organization and how that structure is intended to meet regulatory requirements (Rule V A 1).</p> <p>The Capital Markets Law itself contains a code of conduct intended to promote fair treatment of customers. This code prohibits (i) securities companies and investment advisors from pressuring clients to act contrary to their interests, (ii) disclosing private data, (iii) concealing material information or making misrepresentations about the intermediary's business capacity or financial condition, (iv) recommending purchases or sales without revealing potential conflicts, such as their own interests, et cetera (CML Article 35). Other rules require maintenance of a complaint log with information on the disposition of complaints required to be signed periodically by a relevant supervisor to evidence periodic supervisory review. Rules also specify the types of records that can be used in connection with a dispute as to accounts held in custody, including records of conversations (V.D 3 and V1 A 3). Verification/reconciliation of client accounts is to be conducted frequently to prevent irregularities and abuses (VD 1).</p> <p>The Rules require that a securities company which operates out of multiple locations notify BAPEPAM-LK of its branches and changes in them, that the head office supervise branch office activity and that the handling of all funds and securities be through the custodian division and be reported to the head office on the same day received (Rule V D 8). IDX and BAPEPAM-LK also address branch office oversight through their general risk-based approach. On-site visits to branches should be based on the number of complaints, number of investors' accounts, and trading value handled through the branch. Most branches are located in the bigger cities, with Jakarta having the most, Surabaya the second and so forth.</p> <p>In general then, Securities Companies and Investment Advisers are required to have oversight programs for their representatives and accounts and to know the background, identity, financial situation and investment objectives of their clients and for whose behalf such clients are acting. Intermediaries also must prepare and maintain proper records of their financial condition, orders, and transactions, and assure the segregation of customer funds. Recent issues related to the accurate maintenance of holdings in subaccounts by Securities Companies that are members of the Central Securities Depository (KSEI) and the Clearing Guarantee Institution (KPEI) have prompted BAPEPAM-LK's move, with industry support, to require the imposition of a unique account identifier to be used by each market participant recorded on each trade and in depository sub-accounts.</p>
Assessment	Broadly Implemented.
Comments	<p>The framework as described should lead to robust oversight, but the new provisions with respect to management of customer property, suggest that the oversight of customer securities and funds may have been insufficient in the past. With the introduction of new procedures for customer identification, and some experience with its operation, the rating could become "Fully Implemented". Additionally the oversight of branches in a jurisdiction as dispersed as Indonesia can prove challenging. In</p>

	consequence, the articulation and continuing review of risk factors and risk-based methodologies to deal appropriately with branch office supervision and oversight is important. BAPEPAM-LK receives appropriate reports, maintains good records and seems to be prepared to address branch office risk, having conducted reviews of branch sales in the major regions. Nonetheless this is an area to keep under close review to assure that supervision and monitoring procedures are adequate.
Principle 24.	There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.
Description	<p>The Indonesian securities law has various provisions in place that are intended to mitigate the potential effect of financial disruption at a Securities Company. For example, the CML requires the segregation of customer funds to insulate such funds from being potentially available to general creditors of the securities firm (CML Article 37). BAPEPAM-LK has substantial powers to address failures. For example, it can (i) take various specific actions to restrict activity if a securities firm fails to meet the Net Adjusted Working Capital requirement (NAWC) (Rule V.D. 5), (ii) restrict movement of securities except to another securities customer at the central depository if it is going to revoke a license (Rule VA1), and (iii) in the context of “investigating” a firm with financial difficulties can direct it to “do or not do” specified things (CML Article 200 (2) (b)).</p> <p>BAPEPAM-LK has broad general authority to take action to prevent losses, including how to address the inability of the clearing organization to be able to promptly settle transactions. (see CML Article 5n and n. 31).</p> <p>BAPEPAM-LK also is the only authority that can apply for bankruptcy of a regulated intermediary (Law 37/2004) (though appointment of a receiver or administrator is in the hands of commercial court judges), and Securities Companies are required to maintain insurance against risk of financial loss in the event of bankruptcy (Rule VI A3). Additionally, the guarantee fund at the Clearing Guarantee Institution (KPEI) can be applied to mitigate the effect of a default on the counterparties to a failing firm, thus protecting the market. BAPEPAM-LK recently explored moving to some type of investor compensation fund (See Principle 29), having conducted a study in 2007. Separately, the KPEI has a risk management system that enables KPEI to engage in informed monitoring of its members. It uses an Automated Risk Management System (ARMS). ARMS monitors compliance with daily NAWC reporting. The system also reviews trends using financial ratios based on historical transactions and settlement activities. The data surveilled includes: netting data, account balance data, and collateral data. The ARMS system also integrates financial reporting information, such as profit and loss and cash flows with such daily NAWC and trend information. This system should enable KPEI to have both a current, and a trend-based view, of each Clearing Member individually and in relation to the overall market, thereby permitting information-based risk rating and risk tolerance assignments by Member and real-time capacity to detect financial deteriorations, at least in KPEI Member firms, that clear and take accountability for errors related to trading. The Executive Information System, which is provided to Exchange Members, has direct interaction with the ARMS database and apparently can be used to support Member and IDX decision-making on a real time inquiry basis.</p>
Assessment	Broadly Implemented.
Comments	BAPEPAM-LK, through KPEI, has robust risk management information systems relative to clearing member firms. IDX, and BAPEPAM-LK, have means to suspend Security Company Members from taking new positions when firm capital falls below specified levels. The Capital Markets Law provides ample authority for the BAPEPAM-LK to address market disruptions. BAPEPAM-LK, however, does not appear to have an explicitly documented contingency plan [Key Question 1] to address a firm failure, including a documented combination of means to prevent contagion. And, see Principles 22 and 29, there is a question as to the overall sufficiency of the exchange guarantee fund. BAPEPAM-LK indicates that it is in the process of drafting a business contingency plan in conjunction with the SROs. BAPEPAM-LK is the only party that can place securities companies/market intermediaries into bankruptcy. Nonetheless, BAPEPAM-LK has requested enhanced resolution authority and should continue to pursue such authority, noted as of particular

	importance globally following the 2008 credit crisis and the resultant increased concerns about contagion and systemic risk generally.
Principles for the Secondary Market	
Principle 25.	The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.
Description	<p>Indonesia currently has one securities exchange, IDX, the Jakarta (a market privatized in 1992) and the Surabaya (that had developed bond and securities derivative markets) exchanges having been consolidated at the end of 2007. IDX is a mutual, not-for-profit exchange; it is prohibited by law from paying dividends and all of its members must be licensed securities companies. There are currently 118 active members. IDX owns 100% of KPEI (clearing subsidiary) and 67% of PHEI (securities data processing). IDX and KPEI owns 35% (26.5 and 8.5 respectively) of KSEI (securities settlement and registry). IDX trades equities, corporate and government debt, and securities derivatives, such as stock options and indexes. The overall market capitalization of the IDX, including equities, corporate and government debt as of March 2010 is approximately 51% of 2009 GDP (of which about 40% is equities). The exchange is totally electronic and uses the JATS (Jakarta Automated Trading System), which is a time, price priority system. IDX dematerialized its securities in 2001 and has permitted remote trading since 2002. Access to the trading platform must be through an Exchange Member who is also a Member of the clearing organization or KPEI, who is responsible for all trades entered on the exchange, including error trades or invalid access, except those engendered by supporting software of IDX. 2009 data reflect approximately 345,000 mutual fund holders and about 150,000 equity and debt accounts. and average daily turnover is between 55,905 in 2008 reducing to approximately 47, through end 2009, More than 67% of equity ownership is foreign; the majority of bond ownership (96% corporate, 82% government) is local. Trading on IDX is dispersed with only three firms accounting for more than five percent of total. Margin trading was expanded recently and the exchange has plans to expand. Over-the-counter trading occurs but there is no other organized equity platform.</p> <p>Indonesian law requires that an exchange be authorized and subject to ongoing oversight. The IDX is authorized pursuant to CML Article 6 and related BAPEPAM-LK rules, and has affirmative self-regulatory obligations (see also Principle 7) (CML Article 7 and 12) to assure trading is fair, orderly and efficient. Both the exchange and the BAPEPAM-LK can impose trading halts or order the restriction of trading activities.</p> <p>The IDX is explicitly required by law (CML Article 12) to have an inspection unit, to conduct continuous monitoring and surveillance, and to adopt rules related to membership, fungibility of securities, clearing and settlement and related matters, such as rules related to new types of operations and coordination of the clearing and settlement function with the Clearing Guarantee Institution (KPEI), all of which rules must be submitted for BAPEPAM-LK approval. The terms and conditions of derivative products must be specifically approved by BAPEPAM-LK and must meet certain merit conditions (See Principle 14).</p> <p>The exchange must prepare an annual report and budget, including a revenue utilization plan and must observe BAPEPAM-LK stipulations regarding, without limitation: improvement of trading systems and facilities, guidance and supervision of members, efficient systems for listing, improvement of information systems, training and other matters. BAPEPAM-LK reports that such stipulations could include referral of a case due to rumor or observation of aberrational trading or to change the parameters used in the SMARTS surveillance system.</p> <p>The BAPEPAM-LK holds monthly meetings with the exchange, gets daily transaction reports, can get pre- and post-trade price and transaction information at any time, and can ask for raw data from the SMARTS system, and otherwise. The BAPEPAM-LK also uses its own stock watch technology to oversee the market. The BAPEPAM-LK, itself, conducts reviews of the exchange and may from time to time inspect exchange member securities companies, although the exchange is the front line regulator for its members, and has an inspection team charged with on-site inspections of the 118 active members of the exchange. IDX and the BAPEPAM-LK agree that the IDX visits 90% of all</p>

	<p>Member firms per year using a risk-based model. Non-members and sales agents or introducing firms must transact through Members and are reviewed as part of Member supervision [Reconfirm]</p> <p>In addition to rules related to the governance of the exchange being fit and proper, pursuant to BAPEPAM-LK rules, the IDX must have paid-in capital of \$750,000 and also the guarantee fund must collect .01% of value per equity trade that cannot be withdrawn. The Guarantee Fund is now a little over \$100,000,000.00, although the BAPEPAM-LK reports that a consultant finds that this level remains too low for the level of trading activity, the fact that short selling and margin trading is conducted, and related capital requirements.</p> <p>The IDX qualifies those firms which are permitted to engage in margin trading and short selling and also reviews member firms IT connections and back-office arrangements as part of its member review program. BAPEPAM-LK Rule VD 6, concerning the financing of transactions, requires the exchange to examine Member security company's operational and risk management systems, and to conduct regular audits of these systems at least once a year.</p> <p>Securities settlement fails are heavily punished and thus are infrequent. For example the penalty for a failure to deliver on the settlement date (T+3) is to purchase the stock at 125% of the highest price observed over the past three trading days. All members are assigned an electronic trading limit based on the reporting of their Net Adjusted Working Capital (and available collateral) at the beginning of each trading day.</p> <p>The BAPEPAM-LK reviews the IDX rules and requires rules related to the correction of errors and the timing of settlement. In this regard, BAPEPAM-LK has approved auto-halt requirements ranging from market moves of 35% for the smallest value stocks (under 200 rupiah per share) to moves of 20% for equities valued at 5000 rupiah per share (by January 2009 pronouncement), and the electronic audit trail (including cancelled as well as concluded orders) is available to the BAPEPAM-LK as well as the IDX for surveillance purposes. BAPEPAM-LK has requested in the past that IDX update the capacity of its systems.</p> <p>BAPEPAM-LK has the authority to assess the functionality of the trading platform, and requires a fair trading module with provision that customers take priority. To assure that appropriate expertise is used in assessing the algorithm, BAPEPAM-LK directs the IDX to use an independent auditor to confirm that the trading system is fair, orderly and efficient, and to conduct an inspection before launching a new system or system changes. Specifically, for example, BAPEPAM-LK required IDX to have an assessment of the reliability upon implementation of the new upgraded JATS- NEXT G trading system., The IDX reports that its strategic goals are to expand by attracting further listings from State Owned Enterprises and Natural Resource Companies, and by extending access arrangements to permit access by Internet, PDA and phone, and to offer direct access, with appropriate financial backing by a clearing member, to high frequency, algorithmic traders. IDX's new Chair would like to see the number of investors expand to 2.5 million and indicated IDX management might suggest that dormant companies issue more stock. Development (tier 2) IDX listings need only have \$50,000 in paid-in capital. The IDX notes that although the exchange platform is new, and can adequately handle two times current volume, that its capacity is not adapted to currently evolving (algorithmic) trading methodologies and will be insufficient if its future expansion plans are realized.</p> <p>Custodians, such as the Central Depository, must observe confidentiality of customer information, but it does not appear that that requirement is imposed by law directly on the exchange management, directors and members [See Principle 7].</p> <p>There are rules that prevent the exchange from restricting Issuers or Securities Administration Agencies from registering securities from over-the-counter transactions or requiring that the transfer of securities occur on exchange. The securities exchange can however, prohibit members from trading listed securities outside the exchange facility except when transferred by operation of law. (Rule III.A.10)</p>
Assessment	Fully Implemented [but see Principle 7 and Principle 3 regarding the power to deal with alternative trading systems, and as necessary over-the-counter trading]

Comments	<p>While the BAPEPAM-LK does oversee the exchange; it appears desirable that it deploy more resources to that end. Standard Operating Procedures (SOP) for Stock Exchange Inspections are documented as are SOP for each Division of BAPEPAM-LK. Additional documentation of the execution of BAPEPAM-LK oversight activities would be useful in confirming the extent of actual oversight. Market structure is a current issue before the global market community. BAPEPAM-LK should take account of the ongoing debate on the supervision and risk management of direct market access mechanisms and other developments related to electronic trading and products. Expansion plans should be subject to appropriate review and BAPEPAM-LK should assure that the exchange and related registry and clearing functions can handle market evolutions and increases in capacity and that oversight activities keep pace with planned changes and expansions. If the futures exchange and IDX should trade common products, appropriate information sharing arrangements should be in place. Stakeholders would like BAPEPAM-LK to consider in what ways electronic trading should alter oversight and regulatory requirements and assure that the law supports the use of electronic evidence and is efficient and practicable.</p>
Principle 26.	<p>There should be ongoing regulatory supervision of exchanges and trading systems, which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.</p>
Description	<p>The IDX and BAPEPAM-LK do have mechanisms for the continuous oversight of the integrity of trading and market participants, including the approval of all exchange rules and amendments, and the ability to suspend or restrict trading activities of the market and its individual members. The surveillance system IDX uses, known as SMARTS, is regarded as state-of-the-art.</p> <p>IDX staff also considers emerging issues proactively and engages in research and study of various market issues. For example, IDX's 2008 Annual Report indicates that IDX conducted 15 special, wide-ranging studies during the year including, (i) the study of the existing circuit breaker (auto halt) system, (ii) a comparative study on criteria for margin, (iii) a comparative study on transaction fees, (iv) an evaluation of warrant price movements, (v) a comparative study on listing rules for SMEs, and (vi) a retail investor survey among others.</p> <p>In connection with its SRO functions, the membership disciplinary committee convened 11 meetings in 2008 and issued several warning letters as well as sanctions. IDX in 2008 submitted multiple rules to BAPEPAM-LK as part of the harmonization project essential to the integration of the Jakarta and the Surabaya markets. The IDX states that "Compliance with [the Capital Market rules] is an integral component that is required for creating a trusted, dynamic, and sustainable Exchange."</p> <p>During 2008, the IDX also formed a risk management team that developed a program to serve as risk management guidance on control processes, and developed an enterprise risk profile. IDX also received a certification by ISO, which is effectively an internal control audit and quality rating.</p> <p>BAPEPAM-LK carried out a comprehensive review of listing, trading, clearing, settlement, surveillance and market monitoring activity of SROs (IDX, KPEI and KSEI) between 2007 and 2008 and made recommendations to the SROs as well as some suggestions relative to its own program. BAPEPAM-LK has the authority to remove exchange officials and to suspend the exchange license if necessary to secure compliance with the law and BAPEPAM-LK rules. In this regard BAPEPAM-LK reviews and approves changes to IDX rules, including the interpretations of those rules.</p> <p>Although ideally BAPEPAM-LK would have access in real time to exactly the same information as the IDX, BAPEPAM-LK indicates that it has the ability to obtain needed data promptly from the IDX systems as necessary and can use that data in its own systems and to complement its own surveillance activities.</p>
Assessment	Fully Implemented
Comments	<p>See however Principle 7 on intensified oversight and monitoring. Additionally, while a trading suspension (as occurred in October 2008) to restore orderly trading may be necessary under emergent circumstances, BAPEPAM-LK and IDX should explore whether circuit breakers or automatic suspensions to permit the accrual of demand or orderly continuation of trading that would be</p>

	implemented based on a prophylactic set change in prices is preferable to ad hoc closures from both a stability and a market development point of view. [See Principle 29]
Principle 27.	Regulation should promote transparency of trading.
Description	<p>The on-exchange trades are recorded in the electronic platform in real time. However the over-the-counter trades in bonds and other securities do not need to be reported for 30 minutes (Rule No. X.M.3) and some may not get reported at all, though late submission attracts an administrative fine, which are in fact assessed. Over ninety per cent of bond trading occurs over-the-counter. The Jakarta Automated Trading System-Next Generation (JATS-Next-G) provides real time information both pre-trade and post trade to IDX Members. The Exchange also files a daily transaction report on trading with -</p> <p>BAPEPAM-LK, which is available to the public on its website . Listed company announcements are also displayed in real time on the trading system.</p> <p>Venders make real time information available to the public. Also the IDX displays real time price and volume information on the Stock exchange price board. At the end of the transaction day IDX also provides daily trading information and statistics to its participants.</p> <p>There is no provision for derogation from transparency of on exchange post trade information. However, it is the case that the BAPEPAM-LK and IDX can halt trading in a stock for disorderly trading conditions or prior to an announcement.</p>
Assessment	Fully Implemented.
Comments	[IOSCO has not taken a position on the norm for inter-dealer bond price transparency]
Principle 28.	Regulation should be designed to detect and deter manipulation and other unfair trading practices.
Description	<p>Market or price manipulation, dissemination of information or a statement that is false or misleading and that affects the price of a security, insider trading, and front running are all prohibited(see CML Articles 90 to 98 and 38 respectively) by the Capital Markets Law. There is also a general prohibition on fraud or destruction of records. All of the foregoing violations are criminal offenses. The Exchange surveillance systems may detect this type of activity but under the current system, such activity would be reported to the BAPEPAM-LK for further investigation by specially appointed BAPEPAM-LK staff charged with criminal investigative powers by the Ministry of Justice. If cases were to be pursued for these violations, they would need to be prosecuted by the Attorney General, and thus would be referred to the criminal authorities for prosecution. While BAPEPAM-LK will work with the Attorney General during the course of a prosecution and can frame the case, the prosecutors have control of the process and have to fit the prosecution of these cases within their overall schedule. [See discussion in Principles 3 and 9]. Matters that do not comply with exchange rules but are not criminal violations may be sanctioned by the exchange subject to appeal to the BAPEPAM-LK. IDX reported that it conducted 33 investigations in 2008, though it only assessed a very few sanctions.</p> <p>BAPEPAM-LK itself has comprehensive guidance on the detection and prosecution of market abuse violations. BAPEPAM-LK would prefer expanded civil/administrative authority to deal with these types of violations and has requested such authority, which is in the process of being expanded. .</p>
Assessment	Broadly Implemented.
Comments	The framework is in place, but few cases have been prosecuted to conclusion and stakeholders themselves report that they do not believe that the rules are actively enforced. See also Principle 10 for a more extensive discussion of this problem.
Principle 29.	Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.
Description	The majority of trading on the IDX originates from outside of Jakarta. The prices in the Exchange have experienced substantial volatility falling from 60 to 80% at the end of 2008 and then recovering substantially ahead of any global recovery. For these reasons, the capacity of clearing firms and related guarantee arrangements to cover trading risks may be particularly critical. The Clearing Guarantee Institution (KPEI) monitors the financial capacity of the clearing members and determines

	<p>whether to approve or disapprove trades. In this regard, KPEI has a stand-by letter of credit from Bank Mandiri that is secured by time deposits to assist in the settlement of transactions. In addition, KPEI also has an intra-day funding facility to make possible net continuous settlement from Bank Permata and Bank CIMB Niaga.</p> <p>KPEI has the authority to restrict a clearing member to trading for liquidation only at any time. KPEI also has the authority to get any information regarding the financial capacity and the guarantee account of every clearing member, without any approval from the IDX. (Rule III.B.6) This information must also be accessible to BAPEPAM-LK in the execution of its regulatory functions. (CML Article 47 (1)(e)). BAPEPAM-Lk is the only authority that can ask the court to take an insolvency action against a Securities Company. The Settlement Guarantee is to be distributed in accordance with BAPEPAM-LK Rule III.B.6, which specifies a “waterfall” or order of satisfaction of defaulted claims, as follows: (i) funds/margin/collateral of clearing member who fails to settle, (ii) guarantee reserve or bank credit; (iii) fund raised by selling securities in the guarantee account of the defaulted member, after settlement of the default; (iv) guarantee fund, originated from other credit network members, with 20% equally divided and 80% proportionally divided based on clearing value for the last six months. Thereafter any shortfall which remains within 30 days would be further divided, provided that the KPEI initiates legal action against the nonpaying member. The implementation of the waterfall then is not automatic and it is possible that the process may prolong the time necessary to draw on the designated funds.</p> <p>While the IDX system is a pay-as-you-go system, and daily capital compliance is required for Members to continue trading, it is important that the amount held with respect to foreign based trading be adequate to the risks being overseen by, and for which the Members are responsible in the end.</p> <p>While a large portion of Indonesian financial business is bank-driven, the participation by banks in investment transactions is limited to participation as the custodian or as an investor. Banks can not directly trade on the stock exchange trading platform but must go through a broker, subject to full supervision by BAPEPAM-LK. Where commercial banks have a securities subsidiary, such subsidiary is regulated by BAPEPAM-LK and required to comply with capital market regulatory requirements which include risk management and regulatory capital. Therefore, the financial status of these institutions must be reported periodically and on incidental basis to BAPEPAM-LK.</p> <p>There also is provision for the Bank of Indonesia, who supervises the bank market participants, to consult with the BAPEPAM-LK with respect to a financial problem within KPEI or with respect to a bank that also engages in investment transactions and BI and BAPEPAM-LK have just recently concluded a practical operational protocol for expanded information sharing.</p>
Assessment	Broadly Implemented.
Comments	<p>Substantial questions have been raised by experts about the sufficiency of the guarantee fund depending on the level of trading activity and the amount of volatility (See Principle 24). The fact that most market participants are foreign-based could also complicate the recovery of funds and effective risk management. In some cases, the access to funds intended to redress a default may require too many preconditions for prompt access. This would exacerbate any calculated guarantee fund insufficiency. Ideally, in addition to</p> <p>BAPEPAM-LK rules, there would be insolvency law binding third party creditors that supports the proposed distribution of a guarantee fund in a default situation. The BAPEPAM-LK has requested additional resolution authority in connection with the pending legislation and this reform should continue to be made a priority.</p> <p>Finally as discussed above it would be useful to have a prophylactic circuit breaker regime for pausing trading rather than emergency closings to address disruptions. [See Principle 26]</p>
Principle 30.	Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.

Description	Defer to the assessors of CPSS/IOSCO Securities Settlement Recommendations.
Assessment	No rating required. [But see separate assessment-.]
Comments	BABEPAM-LK has regulatory responsibility for the securities settlement institutions, including the securities exchange (IDX), the Central Securities Depository (KSEI) and the Clearing Guarantee Institution (KPEI) (See, e.g., CML Article 5 a. (1)) and approves their rules and procedures. More than 50% of the paid-in capital of KPEI will be held by the Securities Exchange. Clearing shareholders may also include securities companies, securities administration agencies, custodian banks, or others approved by BAPEPAM-LK. (CML Article 15). KSEI and KPEI are required to make rules, including service charges, which bind all service users. As non-profit institutions, fees must be compatible with operating and development costs and interests of users and are approved by the BAPEPAM-LK (CML Articles 16 and 17). See also Principle 7 and Principles 24 and 29.