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# Annual Implementation Report on the Policy on the Protection of Whistleblowers and Witnesses Secretariat management response

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## **Summary**

This document presents the Secretariat management response to the Annual Implementation Report on the Policy on Protection of Whistleblowers and Witnesses of the Independent Integrity Unit.

## I. Introduction

1. The GCF's Independent Integrity Unit (IIU) prepared the Annual Implementation Report on the Policy on the Protection of Whistleblowers and Witnesses (IIU Report), to be presented to, and considered by, the GCF Board for information at its 27<sup>th</sup> Board meeting (B.27). The IIU Report covers the period January to December 2019. This Secretariat Management Response presents the compilation of inputs from various offices within the Secretariat as part of the IIU consultation exercise

2. The IIU Report was drafted by IIU as part of their mandate "to provide a brief report to the Board on experiences and lessons learned in the implementation of this Policy two years following its adoption".<sup>1</sup> The Policy on the Protection of Whistleblowers and Witnesses (the Policy), states that "The IIU shall report on an annual basis to the Board. Before doing so, the IIU shall communicate the report to the Executive Director for information, who shall have the possibility to provide comments for consideration by the IIU and the Board" (Section XIII, para. 71). The Secretariat offers this clarification to the IIU Report, which sets out this requirement by indicating that IIU is responsible to report annually on the implementation of the policy in consultation with the Executive Director (page 1, para. 3)

3. The Secretariat notes that the IIU Report, considering the strengths, improvements required and lessons learned related to the effectiveness of the Policy, is the first report of this nature in GCF. As such, the objective of the Secretariat's response is to provide insights as to the effectiveness of the implementation of the Policy, as well as pathways for the Secretariat to provide its support to the IIU as the implementers of the Policy.

4. The Secretariat's response has been reviewed by its Senior Management Team. It comprises of general and specific comments from the Secretariat to the IIU Report, noting that the IIU Report does not contain specific recommendations to be addressed.

5. The Secretariat's response to the IIU Report is provided as an addendum to the IIU Report. While the Secretariat's intention was to provide its response as provided for in the Policy as an annexure to the IIU Report in order to present a comprehensive information document to the Board, the Secretariat became aware of the final IIU Report on 17 October 2020 upon its endorsement by the EAC.

## II. General Comments

6. The Secretariat notes the importance of having comprehensive and effective whistleblower and witness safeguards against retaliation, especially considering instituting interim protective measures permitting the IIU to conduct its work expeditiously, as well as ensuring a safe and harmonious working environment in GCF. This has translated into, *inter-alia*, the Secretariat collaborating fully with the IIU in instances where interim protective measures for whistleblowers and witnesses were recommended by the IIU, during the reporting period, pending investigation.

7. The Secretariat values the insights and observations of the IIU, responsible for implementing the Policy, as well as the measures they have undertaken to communicate the Policy internally. The Secretariat welcomes, *inter-alia*, further focused, regular training and advocacy being undertaken by the IIU for Covered Individuals especially for GCF staff and personnel<sup>2</sup>, as well as IIU's advice and guidance in ensuring that GCF Counterparties have effective whistleblowing and witness protection policies and practices in place.

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<sup>1</sup> Decision of the GCF Board B.BM-2018/21

<sup>2</sup> The IIU Report states that one training session was delivered to the GCF Secretariat in February 2019 (page 9, para.50)

8. The IIU noted a number of advisory requests made to them in 2019 by GCF personnel. The Secretariat looks forward to the IIU preparing, and widely disseminating, the case-study based FAQs<sup>3</sup>, to support staff and other Covered Individuals in speaking out, through training, advocacy and other initiatives for Covered Individuals.
9. The Secretariat also looks forward to IIU increasing efforts to roll out the proposed multi-lingual 24/7 hotline service as soon as possible, in order to make reporting channels for Wrongdoing more accessible and available<sup>4</sup>.
10. The IIU Report does not set out the time frames for investigations into allegations of retaliation during the reporting period. The Secretariat acknowledges and appreciates the efforts of the IIU to complete investigations within reasonable time frames due to each case being based on its merits, and looks forward to the finalisation of its investigative standards that would speak to this issue. The Secretariat opines that in retaliation matters, it is feasible for time bars to be stipulated as they would impact any interim protective measures undertaken by the Executive Director and/or Head of the IEU or IRM, as applicable, seeing as such measures cannot be imposed indefinitely thereby resulting in risks to GCF and potential Subjects of investigation alike.
11. The IIU Report correctly notes that para. 62 of the Policy states *“the procedures and procedural rights of GCF Staff regarding the determination of disciplinary measures and any administrative review or appeal thereto shall be observed in accordance with the Human Resource Legal Framework”*; and, that none of its provisions are to be *“construed as a limitation or waiver of the privileges and immunities enjoyed by the GCF”*. Furthermore, the decision to limit or waive privileges or immunities rests with the Executive Director in accordance with the terms of legal agreements concluded between the GCF and relevant countries (para. 63). The IIU stated that the Secretariat did not provide any information regarding how these provisions were implemented in 2019. The Secretariat respectfully considers, as conveyed to the IIU, that the IIU Report was aimed at reporting on the implementation of the Policy, and not reporting on the implementation of the GCF Human Resource Legal Framework and/or the Administrative Guidelines on Human Resources, as the latter fall outside the scope of the IIU Report.
12. The Secretariat also wishes to note that the Policy restricts the definition of protected activities to reporting wrongdoing or cooperating with a Fund investigation. This excludes the protected activity of GCF staff and personnel availing themselves of the Fund’s grievance procedures, as stipulated in the AGHR, Section G(2.1)(h). Whilst this may be a substantive issue outside the scope of the IIU Report, the Secretariat believes this matter is important to highlight in view of the current review and improvement of GCF’s internal grievance mechanism.

### III. Conclusion

13. The IIU Report is useful in assessing the implementation of the Policy in 2019 for the Secretariat to consider and reflect on. The Secretariat stands ready to collaborate with the IIU in its implementation of the Policy moving forward such that Covered Individuals and Counterparties have the confidence to report misconduct without fear of retaliation.
14. The Secretariat acknowledges the need for better coordination between the IIU and the Secretariat as to the process to be followed when reports of this nature are to be presented to the Board. The Secretariat undertakes to liaise with the IIU in this respect in order to settle on the process to be adopted moving forward.

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<sup>3</sup> The IIU Report, page 5, para.24.

<sup>4</sup> The IIU Report, page 10, para.54

## Annex I: Secretariat management response – Specific Comments to the IIU Report

Section and page number
<b>Executive Summary, page b</b>
<p><i>(a) Overall, reporting activity by GCF Personnel on matters concerning GCF Personnel increased in 2019 from the previous year. This increase may be attributable to internal efforts to clarify and raise awareness of channels for reporting suspected Wrongdoing and of available protection and procedural safeguards for Whistleblowers and Witnesses, as well as to numerous training and capacity building exercises carried out during 2019. Reporting activity by Counterparties and third parties or external Whistleblowers was however minimal, suggesting that there may have been no incidences of suspected Wrongdoing, that Counterparties may be unclear about their reporting obligations, and/or that greater awareness of and access to available reporting channels and Whistleblower and Witness protection may be needed by GCF funded activity stakeholders and affected communities. Going forward, it will be important to strengthen Counterparties to have effective Whistleblower and Witness protection policies and practices and reporting mechanisms that are easily accessible and available in the local languages of concerned groups or communities in GCF funded activities.</i></p> <p>The Secretariat considers the reasons posited by IIU for both increased reporting by Covered Individuals and minimal reporting by Counterparties to be speculative and do not add value to assessing the implementation of the Policy. The Secretariat looks forward to receiving IIU's advice and guidance and stands ready to support IIU, as implementers of the Policy, in strengthening Counterparties to have effective respective protection policies, practices and reporting channels.</p> <p><i>(b) Going forward, Covered Individuals (GCF Personnel, Board-Appointed Officials, External Members of Groups and Panels, Board and Alternate Board Members and their Advisers ) will benefit by gaining more practical information on procedural matters such as how to establish or refute an allegation of retaliation and what type of interim protection or remedy may be feasible within the legal framework of GCF.</i></p> <p>The Secretariat notes that the Policy defines Covered Individuals as: Co-Chairs of the Board, Board members, alternate members, Advisers (each defined in the Rules of Procedure of the Board), Board-appointed Officials, External Members, and GCF Personnel. Further, the Secretariat stands ready to support the IIU, as implementers of the Policy, to provide the practical information to Covered Individuals as envisaged by the IIU.</p>
<b>Section I. Policy Overview, page 1</b>
<p><i>(a) Finally, the Policy requires that IIU report annually on the implementation of the Policy in consultation with the Executive Director for information, who shall have the possibility to provide comments for consideration by the IIU and the Board (Section XIII, para. 70). In line with this Policy obligation, this first annual report to the GCF Board concerns the implementation of the Policy pursuant for the period January to December 2019. (para. 3)</i></p>

The Secretariat would like to highlight that the Policy specifies: “The IIU shall report on an annual basis to the Board. Before doing so, the IIU shall communicate the report to the Executive Director for information, who shall have the possibility to provide comments for consideration by the IIU and the Board”; this is cited in Section XIII, para. 71 and not para. 70.

The Secretariat notes that the Policy took effect on 21 December 2018 and believes that any retaliation matters that fall outside the reporting period of the IIU Report should be stipulated, if applicable.

#### **Section II Policy Implementation and Responsibilities within GCF, pages 2-4**

*(a) The IIU is charged with ensuring and reporting annually on the Policy’s effective implementation. (para. 6)*

The IIU is responsible for implementing the Policy and not ensuring its effective implementation, which posits that the IIU has only an oversight function as regards implementation.

*(b) The EAC Chair is charged with receiving and handling reports of suspected Wrongdoing regarding a Co-Chair, Board Member, Alternate Board Member, Adviser, the Executive Director, the Head of the IIU, or their respective immediate family members (para. 23), or IIU Personnel (para. 22). (para. 7)*

“IIU Personnel” is not a defined term in the IIU Report nor in the Policy.

*(c) The IRM has now revised its retaliation SOP, which has been reviewed by the Office of General Counsel (OGC). The IRM plans to issue this SOP in mid-2020 and also plans to make a public version of this SOP available. (para. 13)*

It remains unclear to the Secretariat if the IRM’s SOP has been issued and/or made available publicly.

*(d) The Executive Director is responsible for implementing whistleblower and witness protection measures and any remedies as recommended by the IIU or the EAC. However, based on advice from the OGC regarding the practicability, proportionality, and compliance with international administrative law of the IIU’s recommendations, the Executive Director may propose alternative measures to the EAC for its consideration and decision. (para. 14)*

The IIU Report does not address the responsibilities of the Heads of IEU and IRM in connection with requests for whistleblower and witness protection, as per para. 51 of the Policy. Moreover, IIU’s formulation goes beyond para. 51 of the policy: – for example, there is no reference to OGC, per se, in the Policy, and the Executive Director (who the IIU is required to consult with before the recommendation is made) may take advice from other relevant persons, including the Head of HR, Director Division of Support Services (DSS) or the Ethics Senior Advisor.

*(e) The Secretariat is also responsible for ensuring that Counterparties have effective whistleblowing and witness protection policies and practices in place and that these and other relevant obligations set out in the Policy are provided for in the contractual agreements between the GCF and Counterparties (para. 16)*

The Secretariat notes that para. 70 of the Policy stipulates that: “The IIU shall be responsible for the implementation of this Policy. The IIU shall collaborate with the Secretariat to advise and ensure the effective implementation of the Policy including that Counterparties have effective whistleblowing and witness protection policies and practices in place and that these and other relevant obligations set out above are provided for in the contractual agreements between the GCF and Counterparties.” Hence, this responsibility is not solely that of the Secretariat, contrary to the formulation in the IIU Report.

### **Section III Reporting of Suspected Wrongdoing, pages 4-5**

*(a) Overall, compared to previous years, the reporting activity within the GCF almost doubled suggesting that there was clarity on reporting procedures, and there may be a growing awareness of reporting obligations and confidence in reporting procedures and whistleblower and witness protection owing to the adoption of the Policy. Moving forward, it may be useful to regularly gauge the views of Covered Individuals on these matters to ensure that policy implementation is effective from the user point of view. (para. 20)*

As indicated above, the Secretariat considers the reasons posited by IIU for increased reporting by Covered Individuals to be speculative and does not add value to assessing the implementation of the Policy. As implementers of the Policy, IIU’s advice and views would be welcome in determining the best method for gauging the views of Covered Individuals, especially when considering that this initiative was not undertaken by the IIU during the period in question.

*(b) As indicated above, reports from Counterparties and third parties were not as forthcoming as within the GCF itself. Assessing that one reason for this may be attributed to nascent awareness of reporting obligations, channels, and whistleblower protection, the IIU took steps to amplify its outreach work to increase that awareness by introducing an enhanced reporting system and case-handling platform. The envisaged system is intended to bring the Unit closer to persons reporting Wrongdoing through a collaborative platform. A 24/7 multilingual hotline system, web reporting support, and a mobile application will ease access to and from the IIU. These intake channels will allow for anonymous reporting and the system will provide a means by which any complainant can re-engage with the IIU in any manner they so wish and afford them the opportunity to confidentially track the status of their respective cases. As virtual technology options, they can enable continued engagement even when physical movement is curtailed. (para. 21)*

As indicated above, the Secretariat considers the reasons posited by the IIU for minimal reporting by Counterparties and third parties to be speculative and do not add value to assessing the implementation of the Policy. The Secretariat notes that IIU’s initiative, to increase awareness through the introduction of an enhanced reporting system and case-handling platform, is an envisaged one and is not yet in place. Whilst the Secretariat considers that such a system may have positive results, the IIU does not provide any details as to : (i) when this initiative will be completed and implemented; (ii) how it will address the realities on the ground where communities affected by GCF-funded projects live in rural areas, often without access to telecommunications technology such as mobile smart phones to utilise the application nor internet facilities. The Secretariat believes the IIU should also consider community-based reporting mechanisms, as well as tapping into networks that already exist, such as those linked to Protection from Sexual Exploitation and Abuse

(PSEA) largely overseen by the United Nations in various duty stations; and, (iii) what initiatives were in place, and utilized and/or optimized by the IIU, during the reporting period and their efficacy.

*(c) In addition, the GCF recognises the necessity of making sure that Accredited Entities and other key implementing partners have easily accessible and available whistleblowing channels especially for project-affected communities and project-related employees. The IIU has undertaken to facilitate that access by providing the contact information of those reporting channels on its website. Linking this to Accredited Entity and/or project information portals on the GCF website would also be helpful. These improvements will help the GCF in meeting the evolving complaints-handling needs catalysed by the accelerating expansion of disbursements and the implementation of projects. (para. 22)*

The Secretariat welcomes the IIU's initiatives in this regard and would appreciate the IIU indicating when this is to be finalised.

#### **Section IV Advisory Requests and Reports, page 5**

*(a) Over the course of 2019, the majority of advisory requests were made internally from GCF Personnel to the IIU. Such requests were split between procedural matters and Policy interpretation and application to specific cases. Common queries concerned what would qualify as "Wrongdoing" or as "reasonable belief" and what threshold of evidence would be needed for reporting suspicions of Wrongdoing. Recognising the value of the advisories, the IIU is preparing case study-based FAQs to support Staff and other Covered Individuals in speaking out.*

The Secretariat welcomes the IIU's initiative re the case study-based FAQs and would appreciate the IIU indicating the anticipated finalisation date and availability for GCF internal and external stakeholders.

*(b) In addition, the Office of Human Resources, the Staff Council, Ethics Senior Advisor, and the various Independent Units undertook to collaborate to develop a Staff Grievance Handbook to provide clarity on when and how to address a workplace question or issue, and which functions are available for staff members to support them. (para. 25)*

The Secretariat notes that this initiative, driven by the Office of Human Resources, commenced in 2020, outside the reporting period of the IIU Report.

#### **Section V Cooperation with Investigations, page 5**

*(a) Third parties were also requested to cooperate with IIU investigations. These engagements were generally effective. However, in one case where the Witness was a former GCF Staff Member, cooperation became difficult as the person had not retained relevant records which would have served as important evidence for the investigation. Eventually, the records could be obtained from other sources without having to access internal databases. (para. 28)*

The Secretariat notes that for the case cited, IIU suggests that the former staff member should have retained relevant records; the Secretariat is uncertain if this is in fact intended that: (i) even though staff may be obliged to return records and internal information from the GCF upon separating from GCF; and (ii) it was somehow obstructive of the former staff member in failing to do so. Further elaboration in this regard would prove helpful.

#### **Section VI Protections and Remedies for Whistleblowers and Witnesses, pages 6-7**

*(a) The IIU applies confidentiality rigorously. All information provided by Whistleblowers and Witnesses is treated in strict confidence. Any identifying information is redacted in IIU reports. (para. 31)*

The IIU Report speaks explicitly about confidentiality of investigators and redactions generally, but does not provide details of whether whistleblowers have sought confidentiality/anonymity nor whether these requests have been honoured. The Secretariat opines that it would be helpful for the Board to know whether witnesses/whistleblowers requested confidentiality, and that this may also support confidence in reporting in future. The Secretariat also notes that on 2 occasions when OGC received redacted reports filed by the IIU with the ED, the electronic redactions were of such a nature that they could be removed and, consequently, the anonymity removed. OGC immediately informed the IIU of the same in both cases.

*(b) The Secretariat also has taken steps to ensure the confidentiality of IIU investigation reports or other information which it receives for the purpose of implementing protective, corrective, or other measures or remedies. The information is accessible only by the Executive Director and a limited number of staff of the OGC. (para. 32)*

The Secretariat wishes to note that parties with a legitimate need to know, apart from the ED, may also have access to the information – this would include the Director DSS, who is responsible for initiating formal disciplinary procedures as per the AGHR, and other staff that the ED may authorize to have access as per para 9.3, Appendix 2 to Section G of the AGHR.

*(c) As introduced above, it is the Executive Director who is responsible for implementing the recommended measures. (para. 38)*

Paragraphs 51-54 of the Policy speak of the GCF implementing the measures, which is relevant given that the retaliation may be against persons not within the oversight of the Executive Director, such as staff and personnel of the Independent Units; hence, this responsibility is not solely that of the Executive Director.

*(d) In 2019, only GCF Personnel made requests for interim protection on three occasions; no other Covered Individuals or external persons made such requests. There was no request for a remedy to be provided. In two cases where requests were made, GCF Personnel alleged that, as a result of their reports of suspected Wrongdoing, they suffered retaliation inclusive of adverse job performance reviews, adverse personnel treatment/decisions, and wrongful charges of Misconduct and associated adverse personnel actions. (para. 39)*

The Secretariat notes the IIU Report does not elaborate on the third case where interim protective measures were requested.

*(e) The Executive Director implemented the recommendation by the IIU in one of those cases. In the other case, however, the Executive Director determined, following advice from the OGC, that the recommended protection measure was not feasible under the GCF legal framework and offered other interim measures. The OGC has explained that its feasibility assessment of the recommended measure examines its practicability, proportionality, and compliance with international administrative law. Beyond this, efforts to develop internal guidance regarding how these principles are applied in practice could serve to help Whistleblowers and Witnesses understand better the types of protections available as well as any constraints involved in securing them. (para. 40)*

The Secretariat notes that in the matter where other interim protective measures were offered by the Executive Director on the advice of the OGC, the IIU agreed to said measures. As implementers of the Policy, IIU's advice and views on developing the internal guidance proposed would be welcomed by the Secretariat.

#### **Section VIII Procedural Safeguards, pages 8-9**

*(a) The IIU respected these safeguards by assuring that Whistleblowers were informed of the status and outcome of their reports including whether there was a finding of suspected Wrongdoing and whether corrective measures were taken (para. 48). Covered Individuals who were informed were bound by the GCF Information Disclosure Policy to keep the information confidential. (para. 45)*

The Information Disclosure Policy is an institutional policy, not one directly applicable to individuals. Obligations of confidentiality are part of the broader Code of Conduct contained within the AGHR.

*(b) After deciding to launch an investigation into a report of suspected Wrongdoing, the IIU notified persons and entities who were implicated by the report accordingly within a reasonable time frame (para. 61). However, there was no time bar on how long this pre-notification period should be. In the view of the IIU Investigation team, the time it takes to review and assess a case before determining whether an investigation be undertaken depends on many factors and the complexity of a case. Going forward, the IIU is progressing its investigative standards and procedures in line with international best practice. (para. 46)*

While the Secretariat recognizes that the time needed will inevitably vary from case to case, no time bar being stipulated and applied by IIU in its work could prove problematic for various reasons, including: if interim protective measures are to be implemented, in general, it is not practical for these to be indefinite; creation of risks to GCF, both financially and human resource-wise, for administrative leave pending investigation, in particular; extended delays may impede the course of justice, especially cases where the subject is aware of the matter; and, the opportunity for perpetuation of an offence. Moreover, the Secretariat notes that benchmarking with other international organizations would prove helpful to IIU in this regard.

As regards the IIU's Investigative Standards, these are not finalized nor approved by the Board as yet. As such, in the absence of such standards, it would be important for IIU to clearly indicate what, during the reporting period as well as currently, is being applied in the context of investigations, and what the rights of subjects, witnesses and whistleblowers are in the context of an IIU investigation.

*(c) Following an investigation into allegations of Misconduct by GCF Staff, the IIU may recommend that disciplinary measures be imposed by the Executive Director. Regarding such instances, the Policy pronounces that "the procedures and procedural rights of GCF Staff regarding the determination of disciplinary measures and any administrative review or appeal thereto shall be observed in accordance with the Human Resource Legal Framework" (para. 62). Further, it is clarified in the Policy that none of its provisions are to be "construed as a limitation or waiver of the privileges and immunities enjoyed by the GCF". The decision to limit or waive privileges or immunities rests with the Executive Director in accordance with the terms of legal agreements concluded between the GCF and relevant countries (para. 63). Although consulted, the Secretariat has not provided any information regarding how these provisions were implemented in 2019 (para. 49)*

The Secretariat indicated to IIU, during consultation, that implementation of the AGHR is not within the scope of the IIU Report; otherwise, the IIU Report would become a report on any policy which is cross-referred in the Policy. The Secretariat notes that paragraph 62 of the Policy, in particular, reaffirms the rights of staff and the obligations of the GCF that are established within the GCF's HR Legal Framework. Accordingly, in the Secretariat's view, reporting in relation to such matters falls outside of scope of the reporting on the implementation of the Policy. Furthermore, we note that it is difficult to 'report' on how procedural rights, as set out in the HR Legal Framework, have been complied with, except to the extent they have not – and in order for this to be determined, any relevant dispute following the imposition of disciplinary measures would need to have reached a final non-appealable decision (i.e. at the Administrative Tribunal of the International Labour Organization).

### **Section IX Communication, Capacity Building and Cooperation, pages 9-10**

Paragraphs 50-52 of the IIU Report speaks of the training and advocacy initiatives that IIU undertook during the reporting period. The Secretariat notes that a single training was conducted for GCF internally by IIU in February 2019. Moreover, some of the other training initiatives IIU undertook, such as the joint effort with the WBG Independent Panel, was not focused specifically on whistleblower and witness protection, but on preventing SEAH in projects; similarly, the IIU's efforts on the fringes of COP 25 are not detailed for an understanding of how the Policy and or its components were conveyed to participants.

### **Section X Policy Administration, Monitoring, Reporting and Review page 10**

*(a) Responsible for the implementation of the Policy, the IIU worked in collaboration with the Secretariat to ensure the effective implementation of the Policy. In addition to the actions stated above, the IIU advised the Secretariat, the Accreditation Committee, and the EAC that the GCF Initial Fiduciary Principles and Standards be updated to reflect obligations in a number of integrity policies adopted by the Board in 2018 and 2019. Specific recommendations were made to further elaborate the standard regarding assurances that channels for reporting suspected Wrongdoing are effective, accessible, and available as far as possible in the local languages of concerned communities and the standard regarding the scope of whistleblower and witness protection. The advisory supported that Counterparties are obligated to have effective whistleblowing and witness protection policies and practices in place and that those obligations are provided for in the contractual agreements between the GCF and Counterparties. It also recommended that reporting frameworks include information on how complaints-handling mechanisms and whistleblowing systems are operated in the context of Funded Activities. (para. 57)*

The Secretariat notes that it is yet to receive IIU's advisory regarding the Fiduciary Principles and Standards, or the specific recommendations of the IIU mentioned in the IIU Report. The Secretariat, in consultation with the Accreditation Committee, is charged with updating the Fiduciary Standards and welcomes the IIU's formal recommendations to that effect for consideration.