

To: GIPS Executive Committee
From: Intellectual Property Working Group
Date: 29 August 2006
Re: GIPS Standards Country Sponsor Agreement

The Intellectual Property Working Group of the GIPS Council (the “IPWG”) is pleased to present to the GIPS Executive Committee this exposure draft of the *GIPS Standards Country Sponsor Agreement* (the “CSA”). We do not seek to finalize the document at this time but instead, request guidance and input on the CSA’s current form and on certain points of debate. This memorandum highlights key sections of the CSA and provides explanations and arguments for various discussions held by the group.

As Chair of the IPWG, I must first commend the other members for their thoughtful consideration of the issues and diligent work on drafts. The group is a well-rounded representation of Country Sponsors and other interests. We have all benefited from hearing everyone’s various points of view.

Ownership and Licenses

Section 2 of the CSA contains the following key points summarized below. The group has carefully considered the specific wording of each of these points in the CSA and is in agreement on their current form (except as noted in the discussion below titled **Compensation for Translated Materials**).

1. CFA Institute grants to each Country Sponsor a royalty-free, non-exclusive and non-transferable license to use the GIPS name and GIPS logo (referred to as the “GIPS Brands”) in order to perform the various activities and responsibilities of a Country Sponsor. CFA Institute owns and protects GIPS Brands.
2. CFA Institute grants to each Country Sponsor a royalty-free, non-exclusive and non-transferable license to use, reprint and distribute the GIPS Standards and the supporting materials (referred to as the “GIPS Materials”) in order to perform the various activities and responsibilities of a Country Sponsor. CFA Institute owns and protects the GIPS Materials.
3. Country Sponsors shall own and protect their translations of the GIPS Materials (referred to as the “Translated Materials”). This includes any translations of guidance statements, Q&As, etc. Country Sponsors grant a license to the EC and CFA Institute to use and distribute the

Translated Materials. Other Country Sponsors must request permission (which must not be unreasonably withheld).

4. The subject of the sharing of the ownership of the GIPS Brands and the GIPS Materials will be reviewed and discussed further at a future time.

Termination

Section 3 of the CSA provides two avenues of termination. A Country Sponsor may terminate the Agreement and its participation by providing six months advance written notice to the EC. The GIPS EC may terminate the Agreement and a Country Sponsor's participation in accordance with GIPS EC governance processes and the *GIPS Adoption Guidelines and Process* document. This second point needs additional clarification and the group has opted to provide further detail on the roles and responsibilities of Country Sponsors as well as detail on how a Country Sponsor could be terminated in the *Adoption Guidelines*. We will be working on those points in our upcoming conference calls. Initial edited drafts of the *Adoption Guidelines* have already been circulated.

Assignment Upon Termination

Sections 3.a, b and c of the CSA provide for the consequences upon termination (either by the EC or the Country Sponsor). The Country Sponsor must discontinue its use of the GIPS Brands, GIPS Materials and Translated Materials. The Country Sponsor must not object to a new Country Sponsor's use of the GIPS Brands and GIPS Materials or the new Country Sponsor's translation of the GIPS Materials. These points are agreed to by the group.

The group has debated whether, upon termination, the Country Sponsor is required to assign to the new Country Sponsor its ownership of the Translated Materials. In its current form, the CSA states that a Country Sponsor is encouraged to assign the Translated Materials but is not required to do so.

Points in favor of encouraging assignment to the new Country Sponsor

- A. It is unfair to require the Country Sponsor to assign its Translated Materials and not be given the option of retaining ownership.
- B. There is no compensation or other recognition for having created the Translated Materials.
- C. The new Country Sponsor receives the benefit of the Translated Materials without expending financial or other resources.

Points in favor of requiring assignment to the new Country Sponsor

- A. It is realistic and reasonable for the new Country Sponsor to succeed in ownership so that

the same Translated Materials can consistently be used in the same country/region.

- B. It is unreasonable for the new Country Sponsor to translate the standards and materials all over again.
- C. There is no reason and value for the departing Country Sponsor to continue to own the property.

Compensation for Translated Materials

The group discussed extensively two instances in the Country Sponsor relationship where compensation or fees are an issue. The members feel that a high-level discussion and guidance is needed from the EC. The members' points of discussion are briefed below.

1. *Should the CSA explicitly state that a Country Sponsor must not charge fees or royalties to another Country Sponsor that wishes to use the Translated Materials?*

Section 2.c of the draft CSA currently states that all participating Country Sponsors must ask permission to use any Translated Materials which belong to another Country Sponsor. The CSA does not prohibit the Country Sponsor from charging a royalty or other fee to the Country Sponsor requesting permission.

Points in favor of allowing compensation (i.e., no explicit statement prohibiting it):

- A. This may arise in many various kinds of cases and the issue of compensation should be decided between the parties.
- B. Compensation should be decided between the two parties because the Translated Materials are created by the Country Sponsor with its own effort and resources, while the English version of the GIPS Standards and materials have been developed by a joint effort of all Country Sponsors and investment industries on a global and local basis.
- C. There could exist a free-rider problem wherein new Country Sponsors choose to adopt an existing Translation of GIPS rather than produce their own.
- D. If another Country Sponsor requests the Country Sponsor owning the TG to put its own logo on the TG, the TG-owning Sponsor may want to request a reasonable financial compensation for that use.
- E. Country Sponsors should not be uniformly obligated to grant permission without financial compensation, since the level of input of resources may vary from one Country Sponsor to another, and remaining economic value would depend on the length of period as the country sponsor. We may be able to imagine the concept of amortization/depreciation in accounting.

Points in favor of prohibiting compensation:

- A. The GIPS standards represent a good-faith effort to develop ethical standards on the part of numerous groups and individuals. The contributions are not limited to Country Sponsors who voluntarily chose to translate the Standards.
 - B. Permission to use another Country Sponsor's Translated Materials should be without a fee as a benefit to being "within the family."
 - C. Translation, like other activities of sponsors and supporters should be given freely for the purpose of developing and maintaining the standards.
2. *Should the CSA explicitly state that, upon termination, a departing Country Sponsor must not receive financial compensation from the new Country Sponsor?*

Section 3.b of the CSA states that upon termination, a Country Sponsor is encouraged to assign the Translated Materials to the new Country Sponsor in that region (please refer to the discussion in this memo titled **Assignment Upon Termination**). The CSA also states that any assignment must be made without financial compensation to the departing Country Sponsor. This prohibits a departing Country Sponsor (that either was terminated by the EC or is voluntarily leaving the organization) from charging a fee to the new Country Sponsor to own the Translated Materials.

Points in favor of allowing compensation:

- A. Whether the assignment is made with or without financial compensation should be decided between the two parties. The level of input of resources may vary from one Country Sponsor to another and they may want to receive a reasonable financial compensation in some cases.
- B. The Translated Materials are created by the Country Sponsor with its own effort and resources, while the English version of the GIPS Standards and materials have been developed by a joint effort of all Country Sponsors and investment industries on a global and local basis.

Points in favor of prohibiting compensation:

- A. A new country sponsor may not be able to afford a translation or the compensation requested by the departing Country Sponsor, thus creating a barrier to participation.
- B. The departing country sponsor may demand unreasonable compensation.

- C. It raises further questions as to why the translation is not treated the same as the English version in terms of ownership.
- D. Translation, like other activities of sponsors and supporters should be given freely for the purpose of developing and maintaining the standards and should not be stored up as gains that later require compensation if the relationship unwinds.
- E. Most Country Sponsors have not incurred substantial translation costs.
- F. If a Country Sponsor is terminated for cause, it should not be able to reap a financial benefit from the termination.
- G. Volunteers have never been compensated for their past work with the Standards; the same standard should apply to Country Sponsor translations.