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Mr. Fabrice Demarigny
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FRANCE

CESR Consultation Paper on content and form of Key Investor Information disclosures for UCITS (CESR/07-669)

Dear Mr. Demarigny,

BVI¹ is very grateful for the opportunity to present its views on future standards for content and form of Key Investor Information (KII) for UCITS as suggested by CESR.

General remarks

The general concept of KII is very encouraging. The Consultation Paper and, in particular, the radical mock-up presented in Annex 8 show clearly that CESR is determined to strip off the ballast of nonessential information which hampers the effectiveness of the simplified prospectus and to provide retail investors with an informational tool adapted to their needs.

In particular, we support the notion of focusing the KII concept on provision of necessary pre-contractual information which covers only essentials of the specific investment. Indeed, it is very important to make clear that investors should not expect from KII comprehensive disclosure of all relevant details nor general assistance in financial education. Moreover, we agree with CESR that the objective of KII should be to provide appropriate information

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¹ BVI Bundesverband Investment und Asset Management e.V. represents the interest of the German investment fund and asset management industry. Its 87 members manage currently assets of nearly EUR 1.75 trillion both in mutual funds and mandates. For more information, please visit www.bvi.de.

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in pre-contractual circumstances and not extend to further information needs arising after the conclusion of investment contract.

In order to achieve these goals, a clear regulation of legal liability attaching to KII is requisite. The unsolved issue of legal liability is a major impediment to the current regime and results in simplified prospectuses being filled with legalistic terms and detailed descriptions of investment features as fund providers are not willing to bear the risk of information gaps or inaccuracies.

Therefore, we are very pleased that CESR concurs with the restriction of liability to cases where the information provided by KII is misleading, inaccurate or inconsistent with the relevant parts of the prospectus as proposed by the EU-Commission in the Exposure Draft. Even though advice on this issue is not directly covered by the CESR mandate, its opinion on the subject at hand carries considerable authority and we would like to encourage CESR to state its views in a more explicit manner.

Specific comments

In light of the aforesaid, we would like to answer the questions for the CESR consultation as follows:

Question 1: *Are respondents aware of other research which is relevant to the market and regulatory failures associated with the SP?*

BVI is not aware of any further research materials relevant to the said issues.

Question 2: *Do respondents consider CESR's proposals would address the regulatory failures associated with the SP?*

Subject to our following remarks, we deem the KII concept developed by CESR capable of correcting regulatory failures associated with the simplified prospectus.

Question 3: *Do respondents think that CESR has accurately described the context in which KII is likely to be used, and has correctly identified outstanding issues?*

We think that the description provided by CESR is accurate when it comes to the division of responsibilities between management companies and distributors regarding provision of KII to investors.

Moreover, we agree with CESR that the interconnection of UCITS Directive and MiFID raises many open questions with regard to investor information which should be dealt with in the short term. In particular, the future KII should be considered the principal source of information on UCITS for all distribution channels and consequently, should be required to reach investors under a common format.

From the practical point of view, however, we are concerned that the UCITS-MiFID-interaction might be used to impose more rigorous requirements on provision and timing of investor information without exploring their feasibility in the retail mass distribution. Especially, the general supposition of a physical delivery of KII to retail investors does not take into account the reality at the point of sale (see our answer to Q5 below). Hence, we urge CESR to bear in mind that the legal framework for KII must not hamper the provision of distribution services and leave enough flexibility to handle investor information in different circumstances.

Lastly, we would like to stress that KII is not the right medium to provide information on repackaged UCITS bearing the characteristics of different saving products. As the provision of a product wrapper will hardly ever leave the essential investment features unchanged, investors should be supplied with specific information tools including details on both the product and its underlying investment. In this respect, the possible options are currently under discussion in the Call for Evidence on substitute products conducted by the EU-Commission. In the further development of that project, CESR's concept for KII might serve as a prototype for suitable investor information.

Question 4: *Do respondents agree with the proposed purpose and scope of KII?*

As explained in our preliminary remarks, we agree with CESR's proposal for purpose and scope of KII, but see a blatant need for a clear limitation of attaching legal liability.

Question 5: *Should non-retail investors be permitted to opt out of receiving KII?*

In our view, the possibility to opt out of receiving KII should remain open for all investors, retail and institutional alike. Indeed, distribution channels for UCITS are often confronted with the situation that investors explicitly do not wish to receive any kind of information material. This has been frequently reported in case of portfolio management services where clients expect the portfolio manager to take investment decisions on an autonomous basis and without burdening them with corresponding details. But also in other circumstances, investors should be free to choose whether or not they wish to obtain a KII exemplar at their disposal.



We would like to stress in this context that neither MiFID provisions nor the Exposure Draft for changes to the UCITS Directive require a physical delivery of investor information. In both cases, the obligation of distributors has been circumscribed by the term “provide” which, in our view, entails the possibility for investors to refuse receipt of the offered materials. Hence, we urge CESR not to interpret these rules in a manner extending the obligation of distributors beyond a proper offering of documents.

Question 6: *Do you think that CESR’s proposals on general presentation are appropriate?*

We deem CESR’s respective proposals appropriate, especially the suggestion to limit the length of KII to one sheet with front and back page.

Question 7: *Should CESR propose adopting a more prescriptive approach, for instance using detailed templates, or should it support a less prescriptive, more principles-based approach?*

As comparability of product information is a major goal of the KII concept, we consider it necessary to furnish fund providers with a concluding list of items which should be presented in a uniform order. Especially, contents of eligible data elements in the various sections of KII should be clearly defined and standardised at regulatory level in order to facilitate electronic delivery of KII.

However, due to divergent set-ups of UCITS, the regulation should not be over-prescriptive. In particular, we advice against provision of specific wordings or stipulation of space devoted to certain items. In any case, national regulators should have no power to call for additional information to be given via KII or other standardised materials beyond the range defined at EU level.

Question 8: *In relation to the proposals on content, should Option A (with fewer items) be favoured compared to Option B?*

Among BVI members, there is a clear preference for Option A displaying a minimal set of items. Assuming that the length of KII will be limited to two pages, it appears indispensable to focus investor information on key messages and to dispense with less relevant items.

Question 9: *How should both options best be tested with consumers?*

Our suggestion is to confront consumers with KII models composed in accordance with both options and to explore the respective preferences by means of interviews or standardised questionnaires. In case consumers show preference for the longer version of KII, it is important to determine in detail which additional items of information are deemed necessary or helpful.

In addition, we urge CESR to perform consumer tests also on the basis of fully standardised KII containing a reference to external sources for local information (cf. our reply to Q14 for further details).

Question 10: *Has CESR correctly struck the balance between reducing the information provided and ensuring investors receive the key messages they need?*

In our opinion, Option A represents a well balanced compromise between the need for enhanced comprehensibility and information requirements of investors. However, the respective items of information must be phrased in a sufficiently general manner to accommodate different fund structures. For example, the section on practical information should allow not only for exposure of subscription and redemption details, but in case of ETFs, also for description of secondary trading mechanisms.

Question 11: *Should the competent authority of the fund and the tax regime of the fund in its Home Member State be included?*

In our view, information on competent authority of the fund provides no added value for average retail investors. The tax regime applicable to the fund is certainly of importance; however, given the necessary limitation of space devoted to that item, we do not think that a proper illustration within KII would be feasible. Therefore, we propose to abstain from this requirement altogether and to provide a comprehensive explanation of relevant tax provisions in the full prospectus.

Question 12: *Do you think other items of information are necessary? If so, which ones in particular?*

We think that CESR proposal for Option A comprises essential investor information and hence, see no necessity to blow up KII by additional details.

Question 13: *Do you agree that distribution costs should not be systematically “unbundled” within KII? Should there be flexibility to allow this where appropriate?*

We fully concur with CESR that unbundling of distribution costs should not be performed within KII. Ongoing distribution costs (so-called retrocessions) vary considerably between distribution channels and do not fit into a standardised disclosure format. Besides, the responsibility for information on distribution costs has been clearly allocated by MiFID provisions with the respective intermediary and hence, must be observed at the point of sale. It is neither appropriate nor necessary to require additional disclosure in the context of product information.

Question 14: *Does the proposed approach to local information (a harmonized section for local information within KII that would be precisely delineated) achieve a correct balance between the need for local information and the smooth functioning of the passport? Is a more radical approach (e.g. signposting local information to a website) feasible and appropriate?*

BVI members have a clear preference for excluding local information from KII and signposting its whereabouts to a website. This solution allows for a consistent finalization of KII concept with a fully harmonised information document which would only require translation into local languages of host Member States. Moreover, it would help to avoid controversies about regulatory competence in terms of KII section dedicated to local information and in all likelihood, allow for a smoother functioning of UCITS passport.

In case CESR Members were not comfortable with exclusively internet-based presentation of local particularities, it might be envisaged to provide investors with separate information materials at the point of sale. In our view, the responsibility for furnishing this information should lie with the respective distributor due to its customer proximity and knowledge of local details.

Question 15: *Should a “building block” approach be permitted, whereby providers can produce different parts of the KII separately?*

Even though a “building block” approach would allow BVI members more flexibility in drafting information tailored to specific investor groups, we see more advantage in a standardised KII which should be presented as a single unit and in uniform format. Especially, we share the concerns that the splitting and recombining of KII contents might constitute a challenge to the envisaged limitation of corresponding legal liability. Furthermore, the use of building blocks might hamper the comparability of information and thus, run counter to the key premise of KII concept.



Question 16: *Do respondents agree with the proposed treatment of funds of funds?*

We agree with CESR's suggestions in this respect.

Question 17: *Should separate KII be produced for each sub-fund of an umbrella? Should providers be permitted to produce a compendium for all the sub-funds of an umbrella if they wish?*

CESR's proposal to produce separate KII for each sub-fund of an umbrella is in our opinion reasonable. As correctly observed by CESR, umbrella structure is basically a method of efficient fund set-up and may comprise sub-funds with different investment objectives, risk profiles and charges, let alone history of past performance. Consequently, investors are rather interested in information about a specific sub-fund and do not wish to be loaded with details pertaining to other funds within an umbrella.

UCITS operators or distributors should be free to prepare combined marketing materials displaying a summary of features of two or more funds within an umbrella in addition to the respective KII. However, provision of such supplementary materials must not be considered mandatory by regulators.

Question 18: *Do respondents agree with the proposals for treatment of unit / share classes? In particular, should providers be permitted to produce KII featuring a representative class?*

In principle, we consent to CESR's proposal to provide a combined KII for UCITS featuring different unit classes and to allow presentation based on a representative class. However, this approach might not prove feasible for each and every UCITS. In particular, funds providing concurrent alternatives e.g. in terms of fee structures, dealing currencies, hedging strategies and treatments of fund income will face serious difficulties if required to disclose all these elements in a two-page format. This would most likely result in an increased complexity of KII and hence, in loss of its comprehensibility to investors.

Therefore, we see the necessity to permit providing separate KII for different unit classes if a combined presentation renders the document unacceptably long or complex. In these terms, assessment of the relevant factors should be left to the management company.



Question 19: *Do you think that CESR's proposal on the presentation of the strategy and objectives of a fund is appropriate?*

Subject to our following remarks, we consider the general approach adopted by CESR with regard to presentation of the fund's objectives and strategy appropriate.

Question 20: *In particular, is it relevant to merge strategy and objectives into one generic item?*

As investment objectives and strategy are closely linked together, we have no objections against presenting these features within a common item. This should increase clarity and help to save space for other details of KII.

Question 21: *Is the streamlining of the current applicable Recommendation relevant for the purpose of focusing the description on key elements? Do you agree with the addition of new key items to mention within that section: guarantee, period of holding inappropriate if any, design also for retail non-sophisticated investors?*

Streamlining of the currently applicable Commission Recommendation appears to us a highly desirable exercise in order to focus the illustration on key elements for the investor decision-making process. In terms of new items, we agree in principle with the proposal on capital guarantee, but have significant reservations in other respects which are explained in detail in our response to Q23 and 24 below.

Question 22: *More specifically, do you agree that it should be required that in case the capital is not legally guaranteed, the term "guarantee" should not be used in the KII, and it should be briefly mentioned to investors how the protection is achieved? In case the capital is legally guaranteed, do you agree the guarantor should be mentioned? Do you agree that it is not necessary to mention explicitly that a fund is not capital guaranteed?*

On the first point, we agree that the term "guarantee" should not be used in cases of mere capital protection effectuated through financial techniques. Regarding the latter, a description which is both brief and simple will be very hard to achieve. Therefore, we do not recommend explaining capital protection mechanisms within the limited scope of KII. In any case, appropriate consumer testing should first be carried out in order to determine whether investors find the respective information intelligible and helpful.



In case of legal guarantees, we subscribe to CESR's view that identity of the guarantor should be disclosed to investors.

Lastly, we fully agree with CESR that guarantee-related information should not be included in KII for UCITS which do not offer capital guarantees. To this end, adjustment of the mock-up presented in Annex 8 is necessary, as the current proposal contains a reference to the lack of guarantee.

Question 23: *Do you agree that mentioning whether it would not be appropriate for the investor to invest into the UCITS if he anticipates the need to redeem within a defined time period to be stated is the appropriate way to deal with time horizon issues without leading to misunderstandings?*

In our opinion, neither a positive statement on minimum investment horizon nor its negative paraphrase provide added value for investors which might justify its inclusion in KII. Specification of an inadequate holding period is simply not feasible on general terms, without having regard to market condition or needs and objectives of individual investors. As an example, emerging market funds which are theoretically deemed long-term investments have generated extraordinary short-term returns during the last few years. Similar differences in the assessment of suitable period might be due to investment needs and portfolio structure of investors.

Therefore, specification of a suitable / unsuitable investment horizon is a remit for distributors or advisors familiar with investors' profiles and should not be required within the scope of product information. Indeed, UCITS management companies are under the obligation to redeem fund units on a daily basis regardless of the underlying holding period and thus, cannot be expected to cater to individual needs of investors. This applies also for execution-only services which do not provide for individually tailored advice. This kind of distribution channel is meant to suit the needs of investors with a certain level of financial education being able to take investment decisions without personal advice, let alone general indication of investment horizon.

Moreover, segregating funds into long-, middle- and short-term investments constitutes an issue for investor education and should not be addressed by means of KII.

Question 24: *Do you agree that giving management companies the opportunity to flag funds that have not been designed for non-sophisticated investors, with no legal consequences, would help in preventing missellings, especially in the case of „execution only“ subscriptions?*

We do not agree with this supposition. All UCITS are designed as retail products and according to MiFID, they are also non-complex instruments eligible for distribution by execution-only services. Therefore, investment in



UCITS is generally suitable for non-sophisticated investors and, if at all, a statement with an opposite effect might be considered for complex UCITS displaying unusual risks or innovative investment techniques.

However, we would rather refrain from this requirement altogether. Besides of the fact the term “non-sophisticated investor” lacks any kind of definition and might be divergently interpreted by UCITS operators leading to funds with similar investment profiles being flagged in different manner, marking down of funds as suitable or unsuitable investments cannot be deemed the duty of product providers. Once again, it all comes down to the question which party in the distribution chain shall be responsible for matching investment options with the individual needs of investors. In our opinion, it is the distributor/advisor in case of guided distribution or the educated client calling upon execution-only services. Both cases require a proper consideration of individual circumstances which cannot be accomplished by product providers.

Question 25: *Do you agree that the presentation of a synthetic indicator should be favourably tested with stakeholders and consumers?*

BVI acknowledges that in terms of comparability, a narrative approach for risk/reward presentation might appear less qualified to meet investors' expectations as compared to a synthetic indicator. It is therefore quite predictable that investors will favour such indicators over explanatory text. However, upon closer consideration it is obvious that no synthetic indicator can adequately capture all, or even most, risks relating to fund investments. Hence, we fear that the pseudo-comparability of synthetic indicators of different funds would in many cases be highly misleading and might cause more damage than advantage for investors.

BVI members are therefore convinced that a pure narrative approach to risk disclosure (Option A) is more appropriate and advise strongly against field-testing of synthetic indicators. The difficulties faced currently by investors with a verbal illustration of risks should be properly met by a simplified, shortened and standardized section on risks within the future KII. We are well aware of the fact that extensive explanation of risks cannot be attained in the limited space of KII. Hence, information should focus on brief description of the main risks combined with a reference to the full prospectus (or a website) for further details.

However, should a synthetic risk indicator be tested in parallel to the pure narrative approach, the relevant calculation methodology must in any case be selected first and before the indicator is tested on consumers. In other words, presentation of the indicator cannot be tested independently from the underlying methodology, as suggested by CESR in para. 6.16. The accompanying narrative must be tested concurrently in order to verify whether consumers understand the actual meaning of the indicator. Testing



just an icon or scale would be useless, as it would provide mere evidence for consumers' aesthetic preferences, not for their comprehension of risks.

Moreover, we must underline that any synthetic indicator should be accompanied by a brief narrative disclosure of the main risks for the fund.

Question 26: *What specific presentation (icon, wording, numeric scale...) should be favoured and on what basis?*

In case a synthetic indicator should be considered a viable solution, BVI members prefer a numeric scale from 1 to 5 as displayed in the mock-up on KII proposed by CESR.

Question 27: *How prescriptive should regulators be on the choice of methodology, given that it should take into account commonly shared risk management practices and suit investors' perception of risks?*

Notwithstanding our preference for the pure narrative approach, it appears essential in case of risk indicator to find a common calculation methodology which should be defined at European level and applicable to all types of funds.

The fund industry is best suited to tackle this issue due to its long lasting experience with risk management techniques. In this regard, the regulators' task should be limited to the establishment of general criteria as a foundation for calculation methodology. Moreover, regulatory involvement could be furnished by means of joint working groups, regular meetings or other forms of cooperation.

Question 28: *Are you aware of any specific existing calculation methodology that should be proposed?*

As pointed out in our answer to Q25, it is in our judgement virtually impossible to establish a synthetic indicator which exhaustively or just meaningfully indicates the risk/reward profile of a given UCITS. However, if CESR still were to propose a calculation methodology, we suggest applying the volatility of past returns based on the fund's NAV. Such an ex-post approach should be relatively easy to devise due to the existing standards on NAV calculation and hence, a limited number of undefined parameters. Moreover, calculation of the indicator would be performed on the basis of publicly available information and could be verified externally.

In any case, no synthetic indicator must be used as a stand-alone reference since it factually gives no information on the "quality" of a given UCITS:



substantial volatility may be a trait of equity funds, even though such funds represent in general the preferable asset class for long term investments as compared to low volatility bond or even money market funds.

Question 29: *Is the suggested assessment grid at Annex 4 for methodological and presentation issues appropriate and sufficient for identifying a relevant methodology?*

The suggested grid for assessment criteria in Annex 5 (not Annex 4) appears sufficient.

Question 30: *How should the potential limitations of the quantitative calculation of a synthetic risk / reward indicator be further mitigated?*

Question 31: *Do you agree that the possible limitations to a risk / reward indicator might be effectively communicated to consumers through textual warnings? Is the proposed wording appropriate?*

Most indicators in use illustrate investment risks on the basis of volatility of past returns (standard deviation) or of the likelihood to achieve positive / negative returns (value at risk approach). These methods rely on the performance history of the fund and, depending on market circumstances, may not detect all important risks such as liquidity risk, credit risk, sector or country risk in an adequate manner.

For this reason, we are convinced that any synthetic indicator must be supplemented by a narrative passage explaining both relevance and limitations of the chosen methodology. In particular, it is of utmost importance to alert prospective investors to possible insufficiencies of the indicator in order to avoid excessive reliance on it. In this respect, the wording proposed by CESR under para. 6.29 of the Consultation Paper is mostly appropriate, except for the second sentence ("Remember that...") which is a redundant statement on educational matters.

In terms of information on relevance of the risk indicator, we understand that CESR will come up with a proposal after stipulation of the applicable methodology. However, the general content of such information should be contemplated at an earlier stage. In our opinion, KII should not only indicate the meaning of the attributed risk level, but also provide for a concise description of major investment risks combined with a reference to full prospectus for more information.

Question 32: *Which funds or which risks might not be adequately captured by a quantitative methodology?*

Assuming the application of the calculation methodology discussed above, difficulties with risk coverage should be expected for funds with a non-linear dependence on market prices, especially those employing capital protection mechanisms. In addition, a standardised approach does not work for funds with a variable level of risk, e.g. life-cycle funds or certain absolute return products.

Question 33: *Could the display of scenarios or tables illustrating the behaviour of formula funds enhance the information disclosed for those funds? Do you think that such presentations should be limited to formula funds? Do you think that such presentations might have some misleading effects, might be manipulated or mistaken for a guarantee? How could these be addressed and reduced? Do you think that such disclosure should be made in a harmonised way? What could be possible ways of showing prospective scenarios?*

So-called formula funds are not commonly found in the German fund market and we do not have an explicit opinion on the treatment of such products. In terms of other funds displaying atypical risks as specified in our response to Q32 above, presentation of prospective scenarios simulating the fund's returns under different market conditions does not appear feasible. Instead, these types of funds should be clearly labelled as carrying non-standard risks and required to provide a brief narrative description of their respective risk profile.

Question 34: *On the narrative side, do you agree with the suggested high-level principles?*

We agree with CESR's suggestions for high-level principles, except for the requirement in Principle 3 to convey the size of likely loss or gain. While acknowledging that investors should be informed about contingent loss of capital, it is usually not possible to provide specific estimations of likely gains or losses going beyond the general wording example in Principle 3 ("strong gains", "heavy losses").

Question 35: *Is CESR correct to recommend that information about past performance be included in the KII?*

BVI is strongly in favour of including past performance data in KII for UCITS. This information is in high demand by investors and constitutes an important element of informed investment decisions. Moreover, history of past



performance should not be overvalued by investors if supplemented by a proper disclaimer on its limited reliability for future returns.

Question 36: *Has CESR identified the right areas and ways in which this information should be standardised?*

The approach adopted by CESR in terms of the standardised disclosure of past performance is generally reasonable. However, we do not subscribe to CESR's opinion as regards the proposed treatment of new funds. In our view, performance figures should be available for all UCITS and investors must not be deprived of this key factor for their investment decision. Consequently, investor protection measures should not be geared to deny information, but rather aim at providing investors with all essential details and helping to assign correct value to particular items. Hence, performance disclosure for funds with less than one year of data should be permissible, possibly subject to the requirement that a statement on its limited reliability be prominently displayed.

Moreover, a sole disclosure of the relevant benchmark in case of new funds, as proposed by CESR, makes definitely no sense and might even be highly misleading if the fund in question has been underperforming.

In this context, we would also like to point out that comparison of fund performance with a benchmark is only appropriate if the benchmark has been defined in public information materials of the respective fund.

Question 37: *Which charges should performance figures take into account? For instance, should figures include allowance for subscription and redemption fees?*

Past performance figures should be calculated on the basis of Net Average Value of fund assets less ongoing fund charges. We advise strongly against including allowance for subscription and redemption fees with regard to performance presentation. The impact of such fees cannot be properly estimated without making assumptions on the relevant holding period which will be definitely not valid for all investors. This is even more true, as the level of front-end fees may be subject to individual discounts and redemption fees apply normally only in certain circumstances. However, in order to alert potential clients to the effects of such fees, disclosure of past performance could be accompanied by a brief standardised notice explaining that performance might be diminished by possible one-off entry and exit charges incurred in specific case.

Question 38: *Has CESR identified the best overall options for including information about charges in the KII?*

There is unequivocal support among BVI members for the approach to charges disclosure proposed by CESR in Option A. Providing investors with a clear picture of charging structure by grouping charges into separate sections and displaying their major components appears adequate means in order to enhance investors' awareness of incurring cost items. It is neither feasible nor necessary to disclose specific amounts of charges in pre-contractual context. Thus, we deem the "summary measure of charges" suggested in Option B inappropriate, as explained in detail in our following reply.

Question 39: *Should a "consolidated" charges disclosure be included, and how should it be described?*

In our view, a combined figure aiming at representing the impact of all fund charges might have a rather misleading effect on investors. First of all, its calculation must be based on an assumed holding period and hence, cannot provide a representative value, but only an illustration of possible charges. Moreover, the inaccuracy of presentation will be mostly worsened by variable amounts of subscription and redemption fees. Also, even a combined disclosure is not likely to capture the effects of contingent charges, e.g. performance fees, in an adequate manner. Accordingly, a "summary measure of charges" might effectuate serious confusion if investors were induced to rely on this simple statement without taking proper notice of the particular terms of their investment.

Question 40: *Should options for the disclosure of charges in cash terms be explored further?*

BVI members do not consider disclosure of charges in cash terms a viable option. This approach conveys an even higher grade of inaccuracy, as it is built upon an assumed holding period as well as hypothetical rate of growth. In addition, we fear that some investors might mistake the according display for a promise of prospective returns. Hence, we request CESR not to discuss that option in its final recommendations for KII.

Question 41: *Do you have any comments on how charges should be organised (e.g. between charges relation to subscribing and redeeming units, ongoing fund charges and contingent charges), labelled (e.g. "initial charges", "exit charges", "ongoing charges") and the accompanying narrative messages regarding what they include or exclude? How much detail is necessary in a document like the KII?*

In general, the distinction between one-off fees, ongoing charges and contingent or additional costs appears reasonable. Concerning the particular components under those sections, specific mentioning of subscription and redemption fees is certainly necessary. In terms of ongoing charges, we would rather abstain from itemizing cost components and provide investors solely with a combined figure.

Furthermore, we welcome CESR's announcement to focus KII disclosure on essential cost details and to eliminate information which is immaterial for the average retail investor, e.g. disclosure of PTR. In order to enhance clarity and comprehensibility of KII to investors, we urge CESR to remain steady in pursuing that goal.

Question 42: *In relation to the handling of ex-post and ex-ante figures, is it appropriate to include only a single figure for ongoing fund charges in the KII, and if so, on what basis? Do stakeholders have any particular views as to the handling of such information?*

As stated above, presentation of a single figure for ongoing fund charges should suit retail investors' needs. The calculation of such summary figure should be conducted on ex-post basis (TER) in order to provide investors with a meaningful specification on actually deducted amounts. To ensure consistency in TER development, adjustment for substantial extraordinary costs might be allowed. We see no added value in supplementing TER disclosure by ex-ante statement on annual management charge being a theoretical term for investors.

Question 43: *How should situations where there is a material change in charging levels be addressed?*

In case of a material change in the charging level, UCITS operator should provide for a prompt update of KII in order to ensure accuracy of information. However, as KII is deemed a pre-contractual document, no update should be required for investors already holding shares in the fund. In this regard, explicit disclosure of the latest fee developments in the context of annual report must be considered sufficient.

Question 44: *Should portfolio transaction charges be included or excluded from the disclosure of ongoing fund charges? If they should be included, how should assets for which transaction charges are not readily available be handled?*

We object to the consideration to include portfolio transaction charges in the disclosure of ongoing fund costs. The main rationale behind this stance is the sheer impracticability of stipulating exact amounts of transaction costs in quote-driven markets. As this difficulty pertains to nearly all types of funds, except for equity-based UCITS, investors cannot be presented with reliable data on transaction charges. Moreover, the impact of transaction costs is adequately reflected by the past performance figures. Hence, we do not see the necessity to provide an additional narrative warning in this regard.

Question 45: *Has CESR identified the best option for handling performance fees in the KII?*

In our view, information on performance fees should be furnished on ex-post basis, but not as part of the ongoing fund charges in order to avoid excessive variations of TER which might be inexplicable for the average investor. Instead, the relevant figures should be displayed in a separate section on contingent or additional fees and supplemented by a simple explanation of applicable terms.

Question 46: *Do you agree that CESR should recommend that charges are disclosed on a maximum basis?*

In order to facilitate uniform and standardised KII, we agree that information on charges be provided on a maximum basis. However, there must be a clear indication that the disclosed figures are maximum limit of charges and that in certain circumstances, lower figures may apply. This is particularly important in case of variable subscription fees and unit classes with different charging structure. In addition, our members perceive the occasional need to specify maximum levels of charges according to distribution channels in order to provide investors with more precise information. Hence, fund providers should be granted this flexibility on optional basis.

Question 47: *Are there any options for providing more accurate information, in a way which consumers might understand, about charges under different distribution arrangements?*

See our response to Q46 above.

Question 48: *Do you agree that CESR should recommend that charges for a feeder fund and its master be combined into a single disclosure in the KII?*

In the most likely scenario of a straightforward master-feeder structure with feeder funds allowed to invest into only one master being implemented

under the UCITS Directive, a combined disclosure of charges appears reasonable. However, we would like to draw CESR's attention to the fact that this approach might face insurmountable difficulties if entity pooling in a broader sense were legitimate. Thus, when tabling respective suggestions, CESR should express reservation as to the final definition of master-feeder funds.

Question 49: *Do respondents have any comments on the proposals for consumer testing?*

Regarding the issue on consumer testing, we would like to endorse CESR's view expressed in para. 9.6 of the Consultation Paper that "the testing must not only seek to establish consumers' preferences in relation to the proposals, but also (...) whether the proposals can be understood by consumers and will be used by them". This premise is of particular relevance in terms of the new approach to risk disclosure. It appears obvious that the synthetic risk indicator must be first furnished with a calculation methodology and appropriate narrative explanation in order to produce meaningful results in consumer tests. Otherwise, it must be expected that the tests will reveal consumer preference for the simple and straightforward presentation of an indicator compared to verbal disclosure without actually establishing whether relevance and shortcomings of the chosen indicator have been adequately grasped by the clients.

Moreover, consumer tests should be conducted on a broad basis in order to generate representative results.

Question 50: *Do respondents have any initial views on the one-off costs of replacing the SP with KII?*

It is very difficult to make an authoritative estimation of costs for introducing KII at this early legislative stage. Obviously, the financial impact of KII will depend to a large extent on the details of transitional provisions. In particular, a prompt and general replacement of investor information for all UCITS will result in much higher costs than a gradual introduction of new standards, e.g. in case of necessary material updates.

Question 51: *Do respondents have any initial views on the ongoing costs of KII, compared with those currently included in producing the SP?*

We expect the ongoing costs of KII to be substantially lower compared to the situation today. The reduced content and higher standardisation of KII should generate considerable cost savings. These positive effects could be



further enhanced by allowing for EU-wide uniform KII with reference to external sources for local information.

Question 52: *What, if any, transitional arrangements should there be if the SP is replaced with KII?*

Question 53: *Is the gradual introduction of KII feasible?*

In our view, an appropriate transitional period for replacement of simplified prospectus with KII should be granted to UCITS operators in order to allow for a smooth and efficient adaptation of the new requirements. In these terms, co-existence of SP and KII should be acceptable between the entry into force of the amending rules and a pre-defined deadline not shorter than twelve months. This gradual approach would enable fund providers to coordinate KII introduction with the necessary update of information materials and hence, keep the respective costs at a minimum.

We hope that our comments provide some assistance for CESR's final efforts on shaping its recommendations for KII and remain at your disposal for any questions that may arise.

Yours sincerely

BVI Bundesverband Investment und Asset Management e.V.

A handwritten signature in blue ink, appearing to read 'Stefan Seip'.

Stefan Seip

A handwritten signature in black ink, appearing to read 'M. Kuper'.

Dr. Magdalena Kuper