

**EFAMA'S RESPONSE TO CESR'S CONSULTATION PAPER
ON CONTENT AND FORM OF
KEY INVESTOR INFORMATION DISCLOSURES FOR UCITS**

EFAMA¹ is grateful for the opportunity to comment on this consultation paper and congratulates CESR for the high quality of the analysis. Our Association has been working on the simplified prospectus since 1994 and we proposed already in 2002 a simple model, showing that it is possible to give all key information to investors in two pages.

It is well known that the practical implementation of the simplified prospectus has led to excessively long and complicated documents, satisfying legal and regulatory requirements but not the needs of investors. We therefore greatly welcome the efforts by the European Commission and by CESR to return the simplified prospectus/Key Investor Information to its original role of essential pre-contractual document, providing investors with essential product information.

It is essential that the KII be a harmonized document, enabling comparison among funds for retail investors, as well as simplifying the notification procedure and reducing costs for the industry. In this regard, we wish to stress the importance of precluding goldplating at national level, and to this effect a clear mandate at Level 1 is necessary, to be implemented at Level 2 preferably by Regulation.

Questions for the CESR Consultation

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

In Austria, in 2004 the Verein für Konsumenteninformation (VKI) tested simplified prospectuses from 10 different asset management companies. The results have been already provided to CESR by our member Raiffeisen Capital Management as an annex to their reply.

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

EFAMA believes that CESR's proposals to a large extent would address the regulatory failures associated to the SP, namely: the lack of focus of its scope and the broad legal liability for asset managers, which have led to lengthy and technical texts,

¹ EFAMA is the representative association for the European investment management industry. Through its member associations from 20 EU Member States, Liechtenstein, Norway, Switzerland and Turkey, as well as its corporate members, EFAMA represented at end September 2007 over €16.5 trillion in assets under management, of which €8.2 trillion through over 46,000 investment funds. For more information, please visit www.efama.org.

as well as the lack of harmonized implementation due to the addition of items by national regulators, which hinders comparison between funds. It is important for CESR and for the European Commission to recognize that a careful balance must be struck between simplicity and completeness, but that misleading over-simplification must be avoided, in the interest of investors.

We do have, however, specific remarks on CESR's proposal (see our answers below).

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?

EFAMA broadly agrees with CESR's proposals in Chapter 3, particularly with the pragmatic approach to operator and distributor responsibilities and to KII for UCITS in wrappers.

EFAMA is of the opinion that the provision of information equivalent to the KII to investors in wrappers should be the subject of separate discussion in the context of the European Commission's Call for Evidence on substitute products, on the basis of the discussion on the KII for UCITS but subject to appropriate adaptations.

As we stated in our prior reply to CESR's Call for Evidence, it is essential that investors in funds through a wrapper have an accurate picture of the essential features (particularly risks, performance and costs) of their investment. If the wrapper around the fund does not modify any of those features, it might be appropriate to provide the KII to these investors. If, on the other hand, the wrapper modifies essential characteristics, providing the KII would be highly misleading to investors. This is particularly true if the wrapper causes additional costs or modifies the risks (for example through an insurance component). In this case, the provider of the wrapper should be solely responsible for providing complete product information to investors, on the basis of information on the UCITS given by the fund provider. The information by the fund provider in this case should not be subject to the approval/filing or strict format requirements for the KII, like other product information provided to institutional clients.

Furthermore, we have two remarks on the language used by CESR:

- 1) In Para. 3.13 CESR refers to "structured products", although in the footnote it refers to "structured funds". The reference to "structured products" in Para. 3.13 is correct, as various wrappers are being discussed. However, the footnote should also refer to "structured products", although some of the statements can also be applied to structured funds. It is important not to blur the line between the two (especially in the context of disclosure to investors), as structured products (such as notes and certificates) have a different legal structure from funds, and therefore carry additional risks. Furthermore, the disclosure rules are different and structured products are far less transparent (no KII requirement for structured products).
- 2) In Chapter 3 as well as elsewhere in the Consultation Paper CESR refers to the "delivery" in reference to the KII, whereas the UCITS Directive states that the SP must be "offered", and MiFID that appropriate information should be "provided". EFAMA believes that the possibility to "opt-out" should be left to investors, and physical delivery of the KII should not be mandated. Provision

of the KII (like the Simplified Prospectus) should continue, however, to fulfill MiFID's requirement to disclose information on UCITS.

4. Do respondents agree with the proposed purpose and scope of KII?

EFAMA agrees with CESR's recommendations on the purpose and scope of the KII, particularly with the fact that the KII should only contain product information, that it should not provide financial education or information for regulators, and that the liability should be limited.

We believe, however, that all investors should have the possibility to opt out of receiving the KII, and disagree with Para. 4.9 where CESR states that there should be an "obligation to deliver the KII to the investor".

CESR is silent regarding the frequency of updates to the KII, and the investment management industry is concerned that there could be variations in the frequency at Member State level. EFAMA therefore believes that there should not be any obligation to revise the KII more frequently than once a year.

5. Should non-retail investors be permitted to opt out of receiving KII?

Yes, when they are investing in the same fund as retail investors (see our answer to question 4). Furthermore, we strongly believe that the KII should not be produced at all for UCITS that in practice do not promote the sale of units to the public. The KII is clearly a document for retail investors, and is not suited to institutional investors. The latter will require additional information, and do not need simplified language. Institutional investors can refer to the full prospectus and can be provided information in other formats, so the preparation and the filing of a KII are not necessary, and would only increase costs.

6. Do you think that CESR's proposals on general presentation are appropriate?

EFAMA supports CESR's proposals, particularly regarding the limitation of the KII to two pages. Among the different items under discussion, we believe that the addition of the competent regulatory authority should be tested. It should be clarified whether under the name of the "management company" the name of the fund operator (UCITS management company) or of the appointed investment manager should be shown, as in some countries they differ. EFAMA believes that the name of the UCITS management company should be shown in any case. A few EFAMA members believe that also the depositary name should be included.

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?

CESR's should strike a balance between a prescriptive and a principle-based approach. Specifically, the items and the order of appearance in the KII should be prescribed in order to foster comparability, but over-prescriptiveness in relation to wording should be avoided. In any case, the addition of items at national level must be prohibited.

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

Option A should be favoured.

9. How should both options best be tested with consumers?

Some additional items could be tested as well on consumers, but EFAMA believes that CESR and the Commission can make a preliminary decision as to which items currently included in Option B could be helpful to investors. Among them, some of EFAMA's members believe that the name of the fund's competent authority should be included in testing.

If there are non-retail share classes, disclosure of their existence should not be required.

For umbrella funds, a statement regarding the existence of other compartments, and whether they are segregated (or not) would definitely be too difficult for the great majority of investors to understand, as a complicated legal explanation of the consequences would be required. Such issues should be left to the full prospectus or other sources of information.

In addition, we believe that an option should be tested with consumers excluding local information from the KII and referring investors to external sources (either a website or separate information material from the distributor). This information could also include items such as where to complain and cut-off time for orders (the latter might differ according to the distributor).

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

Yes (see our comments to Question 9).

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

Some of EFAMA's members believe that the name of the fund's competent authority should be tested, while others think it would be better to include the fund's domicile.

Regarding the tax regime of the fund in the Home Member State, EFAMA does not judge its inclusion in the KII to be necessary. An adequate discussion of taxation issues in the KII is not possible, and a link to a website or to the full prospectus is more appropriate.

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

The NAV currency could be helpful to investors, whereas the inclusion of the fund's ISIN number could be optional (at the choice of the fund's issuer).

13. Do you agree that distribution costs should not be systematically 'unbundled' within KII? Should there be flexibility to allow this where appropriate?

Distribution costs cannot be "unbundled" in the KII, in view of the many distribution channels and of the considerable differences in relative costs. Furthermore, under MiFID the responsibility to disclose such costs (as 'inducements') lies with the distributor, not with the product provider. Secondly, as MiFID implementation is not

harmonized and the way to disclose inducements (in particular, the disclosure in “summary form”) differs from Member State to Member State, it would not be possible to include it in the KII.

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?

Regarding local information (information on how to buy and sell), it is certainly not feasible to list all distributors, and other information (such as the cut-off time, where the NAV is available) can also change from Member State to Member State, or from distributor to distributor. The inclusion of such local information could negatively impact the fund passport, as UCITS certificates refer to the original prospectus in the home state, and local KIIs should be pure translations of the KII from the home state. Gaps between the home state and the host state should be avoided, as they might make the notification procedure more complex and time consuming.

EFAMA suggests that local information be excluded from the KII and that it either be provided separately by the local distributor, or that a reference to a website be included (it could be the fund issuer’s or the distributor’s website). This would greatly help avoid controversies in host Member States regarding the production and updating of the KII.

15. Should a ‘building block’ approach be permitted, whereby providers can produce different parts of the KII separately?

We do not favor a ‘building-block’ approach, as it would entail the loss of comparability, and also because the splitting the KII into different documents might create difficulties during the notification procedure (should information be included in marketing material, which is subject to host State control) and with regard to the limitation of legal liability.

However, signposting to further information must be allowed.

16. Do respondents agree with the proposed treatment of funds of funds?

EFAMA agrees that a fund of funds should be treated as a single fund, not as a wrapper, therefore there should not be a ‘look-through’ approach.

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?

Yes, to both questions, as long as the sub-funds are marketed to retail clients. EFAMA believes, however, that retail investors are normally interested only in a specific sub-fund, and the provision of a KII summarizing many sub-funds is not likely to encourage them to read it. In any case, the provision of a compendium for different (or all) sub-funds should not be mandatory for fund issuers.

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?

We disagree partially with CESR's starting assumption on classes of shares: if a share class is not for retail investors, it obviously should not be mentioned in the KII, which should be only for retail investors. Furthermore, if only one specific class is marketed in a specific Member State, mention of other classes should not be required either.

Combining several share classes in one KII might not be feasible, therefore the decision as to how many share classes are included in one KII should be left to the fund provider. We otherwise agree with CESR's approach in Para. 4.49 to 4.51. Should more than one share class be included in one KII, we doubt that the presentation of the highest-charging class would create a bias in its favor, but an alternative approach is possible by showing a range of charges (with signposting to further information).

19. Do you think that CESR's proposals on the presentation of the strategy and objectives of a fund is appropriate?

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

EFAMA broadly agrees with CESR's approach.

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?

EFAMA agrees with CESR's proposal of streamlining the current Commission Recommendation, but we disagree with the addition of some items (see our answers below).

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?

EFAMA agrees that the term 'guarantee' should not be used in the KII unless there is a legal guarantee, in which case the guarantor's identity should be given, as well as a description of the extent of the guarantee.

In case UCITS' objective is capital protection through financial techniques or to provide a certain level of return or constant NAV, a brief and simple explanation should be provided about the potential reduction in downside risk and/or in upside potential. Should a full explanation not be possible, signposting to further information should be used.

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 ?

Regarding the mention of a minimum investment period in the KII, there is a difference of opinion among EFAMA's members: some of them believe that it is appropriate, while others believe that it should not be included, as it really amounts more to consumer education than product information. In the second case, the reason is that such generalizations without regard to market conditions or the investor's needs and objectives might not be possible. Furthermore, in spite of warnings and disclaimers, it is possible that such information might mislead investors into thinking that holding the fund for the recommended minimum period would lead to a positive return.

In case of suitability/appropriateness tests by intermediaries, issues could arise if the investor's investment horizon does not match the fund's, even if – on the basis of the overall client profile – there could be good reasons for the distributor to recommend investing the fund.

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?

EFAMA disagrees with CESR regarding the inclusion of information on the type of investor or typical investor's profile. First of all, there is no definition of "sophisticated" vs. "non-sophisticated" investor. All UCITS are retail products, and the level of investor "sophistication" alone should not determine whether an investment is appropriate or not: suitability/appropriateness should be determined by the investor's overall financial profile, and investors without sufficient financial knowledge should be encouraged to seek professional advice.

Most importantly, under MiFID all UCITS are categorized as non-complex instruments. Introducing a separate and different categorization under UCITS would contradict the spirit of MiFID and create legal uncertainty.

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

Among EFAMA's members there are differences of opinion regarding the inclusion of a synthetic risk indicator in the KII.

Both the narrative approach and the synthetic risk indicator have advantages as well as limitations. Narrative can cover all the risks, but might be lengthy and difficult to understand for the average retail investor (if not drafted in an investor-friendly language), and lacks easy comparability because it cannot be standardized. A synthetic risk indicator is easier to grasp for the average retail investor and allows comparability for most funds, but does not adequately cover all risks related to a fund and might therefore be misleading.

A very small number of EFAMA members either do not favor the inclusion of an indicator at all and continue to propose the use of a narrative description of risks, or, on the contrary, favor the use of a synthetic risk indicator as they do not believe that narrative is a practical solution. Another EFAMA member favors the use of a risk indicator together with the fund category.

A considerable number of EFAMA members are of the opinion that a narrative description of the investment risks is more appropriate, since no synthetic risk indicator can either adequately express all risks related to a fund, or cover all types of funds. The goal should be to simplify, shorten and standardize the narrative as much as possible, in order to reduce the difficulties currently faced by investors.

However, should CESR and the Commission decide that a synthetic risk indicator should also be tested in parallel to the pure narrative, this group believes that a different approach should be tested, combining both elements (a synthetic risk indicator complemented by narrative).

Another substantial number of EFAMA members believes that the combined approach (including a synthetic risk indicator complemented by narrative) is the best solution to be tested on consumers.

Almost all EFAMA members are against testing CESR's option B (synthetic risk indicator with minimal accompanying explanatory text), as it would not adequately convey fund investment risks and would likely induce excessive reliance on the indicator.

The combined approach foresees the use of a synthetic indicator, complemented by two narrative parts:

- 1) An explanatory text describing what the risk indicator represents, and what it might not cover. For example, in the case of an ex-post risk indicator based on the past history of the fund, the text should warn that not all risks might be reflected in the indicator, which was calculated on the basis of the fund's performance over the past XX years. This explanatory text should not try to explain the underlying methodology to investors, as that is unlikely to be understood.
- 2) A brief narrative description of the main risks for the fund, and in particular a mention of the risks that are not covered by the synthetic risk indicator.

Almost all EFAMA members believe that the underlying methodology must be selected first, before the indicator is tested on consumers. The presentational approach, in other words, cannot be selected purely independently from the calculation methodology (as suggested by CESR in Para. 6.16), as the accompanying narrative must be tested at the same time. Only then it is possible to verify whether consumers actually understand the meaning of the risk indicator, and whether they are aware of its limitations.

EFAMA welcomes CESR's proposal to continue work with stakeholders to explore further issues related to methodology, in parallel to the consumer testing. We will continue our work on the KII mock-up and on risk indicator methodology in

particular, and we plan to present our results to CESR and to the European Commission before the beginning of testing early next year.

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

A numeric scale would probably be best, and it should be sufficiently wide to cover distinctions among funds. A scale that is too limited would concentrate too many funds in one risk category and therefore be less useful. Most EFAMA members believe that a scale from 1 to 7 would be adequate.

Color should not be used in the indicator, so as to allow the possibility to print the KII in black and white.

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

The methodology should be clearly defined, for all types of funds and also for new funds. Should the chosen methodology not be applicable, an alternative should be prescribed or else it should be clearly stated that no risk indicator should be provided.

The methodology should be defined by industry, and endorsed by CESR. In practice, EFAMA would propose setting up a joint Working Group composed of regulators and industry representatives, where the methodology could be discussed and agreed upon.

It is essential, however, that the methodology choice be binding for all regulators. Level 2 measures should be considered, to ensure the necessary certainty of harmonized implementation.

28. Are you aware of any specific existing calculation methodology that should be proposed?

As a calculation methodology for a risk indicator, most EFAMA members suggest using the volatility of past returns, on the basis of the fund's NAV. The advantage of using such an ex-post approach is that NAV calculation is already standardized, there would not be any need to agree on many parameters, and the calculation would not cause excessive costs even to small companies. Furthermore, this number is completely based on information already made public and can thus be verified externally. For new funds, the calculation could be based on the benchmark of the fund.

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

The suggested assessment criteria in Annex 5 (not Annex 4) seem sufficient.

30. How could the potential limitations of the quantitative calculation of a synthetic risk/reward indicator be further mitigated?

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?

As we stated in our reply to Question 25, Most EFAMA members believe that it would be misleading to replace entirely the narrative with one synthetic indicator representing only a part of all fund risks, simply due to investors' esthetic preference, or because it was deemed that the average investor would not understand anything beyond a color-coding or a simple scale. Such result would not be helpful to investors, might cause disappointments and damage confidence in the asset management industry, and would not represent good consumer protection.

A great effort should be made in simplifying the Key Investor Information for retail investors, but the integrity and completeness of the information should not be entirely sacrificed. It is very important to point out the limitations of the synthetic risk indicator to the prospective investor, so as to avoid excessive reliance on it.

Most indicators in use give an indication of the volatility of past returns (standard deviation) or of the likelihood of achieving a positive (or a negative) return (VaR). Important risks such as liquidity risk, credit risk, sector or country risk might -- depending on market phases -- not have been fully reflected in the fund's history.

CESR's current proposal of narrative accompanying the risk indicator in the "Risk and Reward Profile" section is inadequate. It includes information that is not relevant (e.g. the description of risk in Category 1 when the fund presented is in Category 5) while lacking a clear definition of the main fund risks and of the meaning of the risk indicator. A more appropriate sentence should be conceived describing to investors the link between risk and reward.

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

The following types of funds might not be captured by a standardized methodology as discussed in the answers to the previous questions, though possibly by individual quantitative measures. This is the case in particular for funds with a non-linear dependence on market prices e.g.

- "Formula funds" i.e. funds where the payout at a future date follows a fixed formula depending on market prices of the underlyings
- Funds with strongly non-linear strategies like for example discount strategies
- Protection funds

A standardized approach also does not work for funds where the risk is variable like for example

- Life cycle products
- In general funds with a large possible variation of their risk level, possibly due to a change in strategy. These might include absolute return products of that characteristic. Absolute return products with a rather constant risk level, however, can also be treated using a standardized risk indicator.

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?

For the types of funds mentioned in the answer to question 32 a standardized approach might be misleading and should not be used. Instead, these products should be labeled as carrying “non-standard” risk in a suitable way and different information should be given.

In all these non-standard cases, the majority of EFAMA members are of the opinion that there should be a prominent, additional reference to further sources of information (prospectus, websites, etc.), since any Key Investor Information document with limited space most likely cannot convey all risk relevant additional features comprehensively, but only describe the key features of a product.

- Formula funds: due to the large diversity and the deterministic nature of those products, we think that a brief description of the “formula mechanism” would be needed. Diagrams and description of possible different outcomes might be helpful for specific funds, but we doubt it would be possible to display them in a standardized KII format and within the space available. We would therefore suggest to refer investors to a website or a more detailed information source.
- Funds with strongly non-linear strategies: due to the large diversity of those products, we do not see a single quantity that characterizes the risk of all those funds equally well. Therefore we also recommend a brief narrative on the risk profile.
- Protected/guaranteed funds: a brief description of the current protection/guarantee and of its mechanism should be added prominently enough. For some such funds (e.g. those with revolving protection/guarantee or lock-in mechanisms), the standardized risk indicator might still be given in addition.
- Life cycle products: these funds do not necessarily have a particular, non-standard risk profile at a specific date, but their risk level typically varies over time and is strongly reduced towards the end of their individual horizon. Thus for those types of funds the investment horizon should be given, together with a comment stating that the risk level varies over time according to this horizon and potentially further information like e.g. a maximum equity allocation, if applicable.
- Funds with a large variation of their risk level: also for these funds, there is not a single measure characterizing their risk in general, so again a brief narrative should be added, mentioning in particular the criteria according to which the overall risk of the fund is set and – if applicable – giving an indication for the maximum possible risk.

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

Regarding the principles in Para. 6.9, EFAMA agrees with principles 1,2, 4 (mention of use of derivatives and/or leverage), 6 and 7.

We disagree with CESR’s suggestion in Principle 3 that the narrative disclosure should convey “...in qualitative terms and based on qualitative assessment, the likelihood of loss or gain and the size of these”. We agree that investors should be

informed about a possible loss of capital, but it is not feasible to be more specific regarding gains and losses than the general wording example in the mock-up.

Regarding Principle 5, we do not believe that the wording “...*should foster comparability between products, for instance including references to the risk profile of other fund types*”, as the KII should contain product information, not consumer education.

EFAMA is very well aware of the fact that no extensive explanation of many risks is possible in the limited space of the Key Investor Information, nor should the narrative reach the extreme levels sometimes found currently in some simplified prospectuses. In the future Key Investor Information a mention of the main risks with a brief description should suffice, with a reference to the full prospectus (or a website) for a full discussion of all risks. Should the language in the KII be too difficult for the average investor, at least he/she would be alerted to certain risks, and could ask an advisor for clarification.

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

EFAMA agrees with CESR that past performance should be included in the KII.

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

A broad majority of EFAMA members agrees with CESR’s approach. Since the FEFSI model, EFAMA has been in favor of presenting past performance as a 10-year bar chart. We also support leaving to the fund provider the option of showing also cumulative returns over set periods of time (i.e. 3, 5, 10 years)

Regarding the handling of charges, EFAMA does not believe that entry and exit fees should be included in the performance chart– only fees paid out of fund assets should be included, and the calculation should remain based on the NAV.

We disagree with CESR’s proposal to show past performance for new funds only when a minimum of one year of data is available (although that would bring UCITS in line with MiFID). It is better for fund investors to have all available information, and we do not see any benefit in depriving them of it, nor in substituting the performance of a new fund with the benchmark performance.

We agree with CESR’s statement in Para. 7.21 that the benchmark should be included only where the UCITS’ investment policy indicates that the fund is managed against a benchmark.

Regarding the proposal to use calendar year periods, we agree that it would improve comparability, but it must be ensured that if the fund uses a different fiscal year, audited figures will not be required for the presentation of figures on a calendar year basis in the KII.

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

No, entry and exit fees should not be included in the performance figures as they vary from distributor to distributor, and they could even vary from client to client, or depending on the size of the order. Furthermore, a holding period must be estimated. Performance figures would therefore be incorrect and misleading in the majority of cases. If necessary, a standardized notice explaining the impact of entry and exit fees could be added.

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

39. Should a ‘consolidated’ charges disclosure be included, and how should it be described?

EFAMA supports CESR’s option A and does not favor including “consolidated charges” in the KII.

Providing two different tables with fees is likely to confuse investors, particularly showing different figures for different investment periods. In any case, the “total cost” figures will not match the costs incurred by the investor, unless the investor’s holding period is exactly 1, 5 or 10 years, and as usual only maximum fees can be used. We believe that a simple warning to investors that entry fees will have a higher impact on their yearly costs if their holding period is shorter should be sufficient and less confusing. More accurate calculations of fees can only be provided by distributors, on the basis of the exact fees paid by the client and of the investor’s specific investment horizon. Alternatively, a link can be provided to a website where an investor could perform the calculations directly.

We agree that further work should be done on the harmonization of TER calculation.

40. Should options for the disclosure of charges in cash terms be explored further?

No, a presentation in percentage terms is sufficient, and if they are not clear further clarification should be sought from an advisor. Furthermore, should a cash cost calculation include an assumption of future return, it might be misunderstood by investors as a promise or a guarantee of performance.

41. Do you have any comments on how charges should be organised (e.g. between charges relating 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?

CESR’s option A is an adequate solution. Entry and exit fees vary according to the distributor and to the client, and can only be shown as maximum fees in the KII. We agree with CESR that the PTR should not be a necessary element of the KII.

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?

It seems appropriate to include a single figure for ongoing fund charges. The majority of EFAMA members believes that ex-post figures should be used in the KII.

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

The KII should be updated immediately in case of a material change to any charge, and a publication date should be shown on the KII. However, there should not be an obligation to provide the KII to existing investors after a material change, as it is a pre-contractual document.

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?

Most EFAMA members are not in favor of disclosing a PTR figure to investors or including transaction charges in the ongoing charges in the KII. From past experience with the PTR in the simplified prospectus, it is clear that it cannot be understood by investors. Calculation of transaction costs is very difficult in any case, as a clear cost is only available for equities, not for other categories of financial instruments. Furthermore, the impact of transaction costs is fully reflected in the fund's performance figures and is therefore transparent to investors.

45. Has CESR identified the best option for handling performance fees in the KII?

Yes. Performance fees should be described separately in the KII in a brief statement mentioning their terms, providing a reference to a full description in the full prospectus or a website.

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

EFAMA agrees, but the fact should be indicated in the KII, so that investors are aware the figure in the KII does not necessarily reflect the fees they might pay.

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

The KII should be harmonized and not differentiate between different distribution channels or wrappers. As we already stated in our reply to Question 3, disclosure for wrappers should be dealt with separately, and under the responsibility of the provider of the wrapper. Please also see our reply to Question 13 regarding the reasons why distribution costs cannot and should not be “unbundled” in the KII. EFAMA would like to reiterate that it is the responsibility of the distributor – not of the product provider – to disclose such charges to investors.

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?

CESR's proposal of a combined disclosure of charges for master and feeder appears sensible, assuming that the Commission proposal will allow investment by the feeder only in one master. Investors should be informed of the fact that the charges are disclosed in a combined way.

49. Do respondents have any comments on the proposals for consumer testing?

EFAMA considers consumer testing of the KII to be of vital importance. We also fully agree with CESR's statement in Para. 9.6 that testing must also "...objectively seek to establish whether the proposals can be understood by consumers and will be used by them". It is key in our opinion to test whether consumers understand the KII information correctly, particularly in reference to the synthetic risk indicator. Careful planning of the questions to be used in the testing is therefore necessary.

We hope CESR and the European Commission will consult further with stakeholders during the testing phase.

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

Significant one-off costs are likely to be incurred in the replacement of the SP with the KII. One of our members estimates such cost at between 5000 and 10000 Euros per fund or sub-fund. In France, the introduction of the current version of the simplified prospectus cost the French investment industry 40 million Euros. The costs will of course also depend on the details of the transitional provisions, and could be lower in case of a more gradual introduction.

51. Do respondents have any initial views on the on-going costs of KII, compared with those currently included in producing the SP?

The ongoing costs for the KII can only be lower than for the SP if there is a very high level of standardization and harmonization. More precise estimates can only be made when the details of the KII are known.

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

53. Is the gradual introduction of KII feasible?

A transitional period of 1 to 2 years will be necessary, and should be set after further consultation with industry, in order to minimize costs for the industry and for investors. It should take into account the possibility that the KII may not be implemented simultaneously in all member States.

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