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Mr Fabrice Demarigny
The Committee of European Securities Regulators
11-13 Avenue de Friedland
75008 Paris
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Response to CESR's Consultation Paper Ref: CESR/09-047:
'CP on technical issues relating to Key Information Document (KID) disclosures for UCITS'

Dear Sirs,

The Irish Association of Investment Managers is the representative organization for institutional investors in Ireland.

We are pleased to contribute to this consultation on the technical issues relating to KID disclosures.

Chapter 1: Risk and reward disclosure

Questions 1-4

Would the proposed calculation methodology lead to a categorisation of funds' potential risk and reward profiles which is clear, appropriate, comprehensive and easy to implement?

To what extent does it provide a comprehensive approach to risks, including liquidity risk, counterparty risk etc.?

Could implementation of the methodology and flanking measures lead to some funds being classified in a category significantly lower than the one in which they should belong?

Does the methodology allow appropriate discrimination between different funds across the universe of UCITS funds so that there is no excessive 'bunching' of funds in one or two categories?

A risk reward methodology which allows investors to compare alternative funds and to choose between alternatives based on a scale is desirable. IAIM believes that there is no indicator which can encompass all elements of risk and return. There is a risk that investors will make invalid assumptions about the robustness of the indicator. We strongly believe that any indicator must be augmented by narrative disclosure.

Any methodology implemented must be accompanied by detailed guidance to ensure consistency of application. We agree that the preferred indicator should be a volatility measure.

The methodology proposed will, we believe, be effective in cases where the funds price history has been affected by liquidity, counterparty and other risks. Clearly however, events of recent times, demonstrate that no methodology can adequately indicate all risks.

Consideration should be given to a more simple, qualitative, scale categorising risk in a range from 'low' to 'very high'.

Questions 5-6 What are the merits and limits of using a risk 'add-on' when a large part of a fund's return history is derived from a proxy? Can you suggest another option to tackle situations where the methodology may not be expected to cover all risks for this kind of fund?

IAIM questions the appropriateness of the use of risk 'add-on'. We see merit in determining the risk indicator and then alerting investors to the qualification which applies. There is a risk that divergent practices may emerge unless the KID is the sole responsibility of the home member state.

We support the use of narrative disclosure where the methodology cannot cover all significant risks for any fund type.

Questions 7-8 Does the methodology cover all UCITS types? More specifically, do you agree with the proposed approach of distinguishing between market funds, strategy funds, and structured funds (including guarantee funds) and the adaptation of the calculation methodology to each of these fund types? As regards the use of a 'risk add-on' and an exclamation mark (!) in situations as presented in the above section, what are the merits and limits of each solution? Can you suggest another option to tackle the described situations?

IAIM believes that the methodology will be appropriate for most types of UCITS. However suitability for some funds (structured funds, alternative investments etc) is questionable. In these cases a narrative approach would be more suitable for investors.

Questions 9-11 Are the proposed solutions (systematic classification into category 7, use of a 'risk add-on' or a modifier) to tackle situations of a potentially changing risk profile appropriate and commensurate? What are the merits and limits of each option? In particular, do you agree that category 7 should be the highest risk and reward category as well as the special category for certain funds e.g. those with severe event risk? Do you foresee any other situations where the methodology may not be expected to capture appropriately the risk profile of the fund? If so, what solution should be considered?

It would be misleading, in our view, to systematically classify a fund in the highest risk category because it lacks sufficient history to calculate a volatility indicator. Similarly using a risk add-on is also inappropriate.

Narrative explanations/footnotes are more appropriate for special circumstances.

<u>Questions 12-13</u> How easy would the methodology be for UCITS providers to implement and for regulators to supervise? Should any other issues be taken into account regarding the calculation methodology?

IAIM believes that the methodology will not be challenging to implement or supervise.

<u>Questions 14-19</u> Do you agree with the proposed scale and that the number of categories should be 7? How should the methodology define appropriate volatility 'buckets'? Do you agree that a non-linear scale might be needed to tackle issues of stability, granularity and fair distribution of funds along the scale? Would it be sufficient to prescribe numeric parameters to each 'bucket', or would additional definitions be necessary? Which form of non-linear scale would be the most appropriate? What would be the merits and drawbacks of such a scale? Do you agree that the categories should not carry any descriptions other than a number (and the '!' modifier if appropriate)? Do you agree that some funds belong in category 7 due to their special characteristics (see above explanations)? For funds which have a specificity in terms of risk, do you agree that the modifier should take the form of an exclamation mark (!)? Does the exclamation mark have an overall meaning which might be contrary to the above-mentioned purpose for the general public in some Member States? If so, is there any other type of warning presentation that would be more appropriate?

Generally we accept the proposal for a 7 point scale however there are arguments for fewer categories. Investors may also be better served by qualitative descriptions rather than numeric descriptors which could lead to investors making incorrect risk assessments e.g. category 4 is twice as risky as category 2.

IAIM believes that more research is needed before the range of volatility buckets is defined.

If a numeric scale is chosen then a modifier would require careful explanation.

We do not agree that some funds be designated category 7 merely because they cannot easily be accommodated by the methodology.

<u>Questions 20-22</u> Do you agree with the proposed list of disclaimers to be used in relation to the synthetic risk and reward indicator? Are any of the disclaimers not directly useful or helpful?

Can you suggest any other warnings that are missing from the proposal?

IAIM agrees with the list of disclosures however we believe that such a list will inevitably be reduced to 'small print' thus reducing the prospect of investors reading them.

Chapter 2: Past performance

Questions 23-28

Is the proposed framework of general requirements for the presentation of past performance with a bar chart sufficient and appropriate?

To what extent is there a risk of divergent practices in different countries so that comparability of UCITS across the EU would be hampered?

Should CESR recommend a more prescriptive approach in terms of bar chart presentation?

Is the methodology easy for UCITS providers to implement?

Are the proposed technical recommendations in terms of presentation helpful, workable and sufficient?

Should any other issues be taken into account regarding presentation of past performance?

The presentation of past performance must be guided by the needs of potential investors. We do not believe that bar charts alone are capable of presenting relevant data. Other options which could allow the presentation of returns and volatility should be considered.

IAIM favours the harmonization of practice across member states including detailed guidance on the implementation of the KID.

Questions 29-31

Is the proposed framework on past performance calculation sufficient and appropriate to allow comparability?

In particular, are the proposed technical recommendations concerning the inclusion of charges and fees, the display of currency, the selection of the NAV date and the treatment of income helpful, workable and sufficient?

Do any other issues need to be addressed to achieve a sufficient level of harmonisation?

The proposal framework on past performance is, broadly, sufficient and appropriate.

The proposal technical recommendations should, in particular, allow the KID be prepared on the basis of the NAV calculated on the last dealing day of each year rather than imposing a special NAV. We do not believe that the definition of a calendar year should be amended.

Questions 32-35

Regarding the display of past performance that occurred prior to a material change, do you think that both options (good practice 1 and good practice 2) should be allowed?

Or, for the sake of comparability should only one good practice be retained? If so, which one?

Is there a need for harmonised guidelines at a European level concerning the definition of material changes or do you think that it should be addressed by each Member State at a national level?

Do you see any other issues that should be taken into account as regards the presentation of past performances where there are materiality changes?

IAIM does not believe that both options should be allowed. We support Good Practice 1.

IAIM would welcome further guidance on the definition of 'materiality' in the interest of consistency.

Questions 36-37

Are the conditions identified by CESR under which inclusion of a benchmark alongside the fund performance could be allowed, sufficient and appropriate?

Should any other issues be taken into account regarding the inclusion of a benchmark alongside the fund performance?

Benchmark(s) should be required only when it is identified in the funds objectives and strategy. Other display should be at the manager's discretion providing it is not misleading.

Questions 38-40

Does the proposed recommendation rejecting the use of a benchmark as a proxy for non-existent performance data provide appropriate investor protection?

To what extent could the lack of inclusion of a benchmark for years in which the fund did not exist hamper the disclosure of the risk and reward profile of the fund?

Are there conditions under which such practice could be allowed without prejudicing investor protection?

We strongly support the rejection of the use of a benchmark as a performance proxy.

We believe that only actual performance data is relevant and can see no situation where the use of a benchmark enhances investor protection.

Questions 41-42

Has CESR correctly identified all the conditions under which a track record extension could be allowed?

Do you agree with CESR's approach that track record extension should be allowed when a fund changes its legal status in the same Member State? If this were to be addressed by each Member State at a national level, how great a risk is there of divergence and a lack of comparability? Should the approach be more prescriptive in this case?

(i) **Track record extensions should be permitted when a UCITS changes domicile and legal form in the same manner as is contemplated if there is no change in domicile.**

(ii) **We have not identified existing failures which might suggest the need for further regulation.**

(iii) **We agree with CESR's approach.**

(iv) There does not appear to be significant differences between the two options.

<u>Questions 43-44</u> Has CESR identified the right conditions under which track extension for fund mergers could be allowed? Should any other issues be taken into account regarding track extension for fund mergers?

We agree that CESR has identified the right conditions under which track record extensions for fund mergers should be allowed.

<u>Questions 45-46</u> Do you agree with the approach proposed by CESR as regards back-testing? Are you aware of any other merits that might support further consideration of this option?

IAIM agrees with CESR's assessment of the merits of back-testing. We believe that there are risks of misinterpretation associated with any methodology (not just back-testing).

<u>Questions 47-53</u> Do you agree that option B is capable of meeting the Directive requirement for performance scenarios? Regarding the graph or table presentation, what are the technical merits and limitations of each option? To what extent does each option provide the investor with the elements needed for an appropriate understanding of how the fund works? Is one option clearer and more comprehensible from the investor's perspective? Is there any technical feature which may be subject to misinterpretation by the investor? Is there a need for a more prescriptive approach to the number and type of scenarios that should be selected in order to ensure appropriate comparability of funds? Should any technical feature be supplemented? Is comparability with the possible risk-free asset return helpful? Is this approach easy for UCITS providers to implement? Should any other issues be taken into account regarding prospective scenarios?

Generally IAIM questions the value or appropriateness of prospective scenarios given the range of assumptions which may be used.

The issue of a more prescriptive approach (Question 50) presents significant challenges in the area of structured funds which have varied complex elements. We believe that much further work and consultation is needed and must have regard to the need for a "level playing field" for all structured investment products.

Questions 54-57
Are the methodological requirements which underpin probability tables sufficient, clear and appropriate? Would such an approach cover all types of fund for which neither past performance nor a proxy can be used? Is this approach easy for UCITS providers to implement? Should any other issues be taken into account as regards the use of probability tables?

IAIM believes that prospective scenarios based on probability tables involves the use of multiple assumptions and could mislead investors. We do not believe that Option C will cover all types of fund or be easy to implement.

Chapter 3: Charges

Questions 58-59
Do you think that a summary measure of charges would help investors to understand the overall cost of investment in a UCITS? Which presentation would be preferable: using a narrative with a percentage figure or a table of cash figures?

Summary disclosure presents challenges however we believe that Option B has merit provided it is not over complicated. We do not support disclosure on a cash basis.

Question 60
Do you agree that Option 1, using a single ex-post figure, is the best one?

We strongly support CESR's conclusion.

Question 61
Do you agree with the proposed methodology in Annex B for identifying which items should be included in the ongoing charges figure and for harmonising the calculation?

IAIM agrees with the proposed methodology in Annex B. In the matter of separate calculations for each share class we believe that CESR's view that the use of one share class as a representative for others is reasonable.

Questions 62-63
Do you agree with the proposals to: i) Show the ongoing fund charges figure excluding performance fees? ii) Explain performance fees through a narrative description? iii) Not show an actual figure for the amount previously charged? Do you agree with the proposal to signpost where more detailed information can be found?

IAIM agrees with CESR's proposals.

Question 64 Do you agree with the proposal to highlight the potential impact of portfolio transaction costs on returns through a warning in the charges section and, in certain circumstances, the strategy/ objectives or risk and reward sections of the KID?

We have concerns that such a narrative description might not be capable of consistent application. We note CESR's acknowledgement that investor understanding of such narrative disclosures is underdetermined.

Question s 65-66 Do you agree with the proposal to include a warning with regard to future charges? Are there any circumstances not covered by the proposals which could lead to investors being misled about potential increases in charges?

IAIM agrees with the proposal but notes that events could arise which could alter the assessment of fee structures.

Questions 67-68 Have all the relevant issues in estimating an ex-ante ongoing charges figure for a new fund been identified? Do you agree with the proposed manner of dealing with these issues?

We believe that the relevant issues have been identified and agree with the proposals to deal with them.

Questions 69-71 Do you agree with the proposal to replace an ex-post figure with an estimated ex-ante figure where there are any material changes in the charging structure? Do you agree with the proposed wording to explain the estimated figure? Can you suggest how materiality should be defined in the context of changes to the disclosed charges figure?

IAIM agrees with the proposal that material changes to the charging structure trigger a replacement of ex-post figures with an ex-ante estimate. Materiality should be determined in line with harmonised principles.

Frank O'Dwyer
Chief Executive
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