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**CESR's technical advice at level 2 on the format and content of Key
Information Document disclosures for UCITS (CESR/09-552)**

**Addendum to CESR's consultation paper on the format and content of
Key Information Document disclosures for UCITS (CESR/09-716)**

Dear Mr. Comporti,

BVI¹ is grateful for the anew granted opportunity to submit remarks on the
current state of discussion as regards format and content of the Key
Information Document (KID) for UCITS investors.

General observations

Premises of the KID concept

We are fully supportive of the general concept of Key Investor Information as
laid down in level 1 provisions of the new UCITS Directive which is to
provide investors with short and simple information on the essential

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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 88 members manage
currently assets in excess of EUR 1.5 trillion both in mutual funds and mandates. BVI's
ID number in the EU register of interest representatives is 1575282143-01. For more
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characteristics of a UCITS. Such information shall be provided in a common format in order to allow for comparability between products².

Furthermore, we welcome CESR's commitment to foster comparability also in substantive terms which implies extensive harmonisation of legal and technical approaches to specific information items. However, the pursuit of comparability makes sense only insofar as the generated results are based on recognised systems and models, and involve the use of reliable data. Enforcing comparability between funds by accepting compromises as regards adequacy of information cannot be deemed a legitimate objective.

The current CESR proposals involve many assumptions and estimations to be made in specific situations about the particulars of the KID. This concerns in particular the calculation of ongoing charges in certain circumstances, disclosure of a summary measure of charges as well as the synthetic risk and reward classification of funds with short performance history. In these cases, we think that the fund managers' responsibility to provide investors with reliable information should be ultimately rated higher than the desire to present comparable, but rather meaningless figures.

Furthermore, we would like to note that the proposed limitation of the KID to typically two pages in length, which we fully support, will render space a very precious resource. We therefore strongly suggest confining the requirements on content to information which is essential to characterise the relevant UCITS. Generic information aiming at educating investors on fund investment in general must be avoided in these circumstances.

Introduction of a synthetic risk and reward indicator (SRRI)

In view of the abundance of drawbacks of the SRRI still remaining under the current approach, **BVI members have clear preference for presentation of risks and rewards in narrative terms.** We strongly urge CESR to reconsider the introduction of a synthetic measure for risks and rewards having regard to our arguments presented in reference to Section 5 below which can be summarised as follows:

- SRRI erroneously suggests objective measurement of risks and rewards
- SRRI is difficult to interpret for the average investor

² Cf. recital 59 and Art. 78 para. 5 of the UCITS Directive.



- Calculation methodology for SRRI does not warrant equal treatment of funds
- Changes to risk classification will confuse the average investor.

On the other hand, the idea of a purely narrative approach merits full support also in light of the general criteria for the suitability of SRRI developed by CESR (cf. page 29 of the consultation paper) which we will explain in detail in the subsequent part of our reply.

Implications for civil liability

Moreover, presentation of estimated data is likely to draw a distorted picture of the overall investment and hence, might be treated as misleading for liability reasons. As the level 1 UCITS Directive does not provide for limitation of liability in case of misleading information, we urge CESR to duly take into account possible implications of the suggested estimations and assumptions in respect of civil liability for the KID content. In case the respective proposals are upheld, the EU law should as a minimum provide for binding rules on calculation and disclosure of any estimated data, wherever possible by way of standard models of application. This pertains in particular to calculation of ongoing costs for newly launched funds and to the summary measure of charges currently under discussion.

Issues of level playing field

When determining the details of KID for UCITS, CESR should bear in mind that the KID concept is meant to apply in a mid to longer term also to other comparable retail investment products. In the Communication on Packaged Retail Investment Products recently adopted by the EU Commission, the KID model for UCITS is being declared a clear benchmark in terms of disclosure standard for other investment products available to retail investors such as unit-linked insurance contracts or structured securities³. **Thus, it is of utmost importance that the finally adopted technical standards relating e.g. to performance presentation or calculation of the risk and reward indicator be in their validity not limited to UCITS, but allow for broader application on a cross-sector basis.**

³ Cf. Communication from the Commission to the European Parliament and the Council on Packaged Retail Investment Products dated 30. April 2009 (COM (2009) 204 final), page 7 and 10.



Moreover, the transitional period to come with the KID requirements applying only to UCITS puts high pressure on the fund industry as regards its competitive position in relation to other product providers. Therefore, we would like to encourage CESR to voice the fund industry's expectations in terms of swift progress towards common standards for product-related disclosure in its final advice to the Commission.

Specific comments

As regards questions for consultation raised by CESR, we would like to provide the following remarks (please note that the elements of SRRI calculation methodology set out in the addendum to the consultation paper are dealt with in the context of Box 5B on page 10 to 12):

Section 1: Title of document, order of contents and headings

Q1: *Do you agree with the proposals in Box 1?*

Q2: *Should the information referred to in point 9 of the box be called 'Practical information'?*

Box 1, point 4:

We believe that the requirement to indicate the group to which a management company belongs is impractical given the reality of industry practice. For example, some large promoters operate at arm's length from their owners. They do not wish and they should not be obliged to imply a link between fund promoter and owner. At the other end of the spectrum, some funds employ independent management companies that are part of very small groups, which will be unknown to all but a few industry specialists. Naming such groups will mean nothing to the investor reading the KID.

In addition to our comment above, we agree that if a fund promoter wishes to state its association with its owner (e.g., "XYZ Promoter, a Group 123 company") then it should be permitted to do so.

We agree that the KID should carry the fund promoter's brand. However, brand identities are concerned with more than just a logo, and comprise also the use of font, layout and colour. We think that these are compatible with the KID's objectives and should be permitted.



Box 1, point 11:

We think that the KID should state an "as at" publication date, being 31 December of the relevant calendar year, and that fund promoters should otherwise be required to respect the KID publication deadlines.

Apart from that, BVI members agree with the general system of the key investor information proposed in Box 1 and have no objections against presenting the information referred to in point 9 as "practical information".

Section 2: Appearance, use of plain language and document length

Q1: *Do you agree with the proposals in Box 2?*

Q2: *In particular, do you agree that the maximum length of the document and the minimum acceptable point size for type should be prescribed at Level 2?*

Q3: *Are there any other rules that should be prescribed in relation to the appearance of the KID?*

Regulatory prescription of both the maximum length of the KID and the minimum acceptable point size might amount to a hindrance for provision of substantively comprehensive information. Especially in case of more complex products requiring longer explanations e.g. in terms of investment strategy or corresponding risks, compliance with these rigid rules might prove very difficult. Hence, it is even more important for the mandatory content of KID to be strictly confined to essential elements of a specific product. Information of fund investment in general, even if helpful to prospective investors, simply does not fit into a two-pages document and hence, must be ensured by different means.

Section 3: Publication with other documents

Q: *Do you agree with the proposals in Box 3?*

We share CESR's view that presentation of KID for different investment compartments in a single document might be helpful and would like this option being extended also to other circumstances. In our opinion,



combination of several KID might facilitate comparability for investors and should bear no detriments to the clarity of presentation if, for example, a table of content were inserted at the beginning of the document.

Section 4: Objectives and investment policy

Q1: *Do you agree with the proposals in Box 4?*

Q2: *In particular, do you agree that the information shown is comprehensive and provides enough detail to ensure comparability between KIDs?*

Q3: *Are there any other matters that should be addressed at Level 2?*

In relation to Box 4 (1a), we find it hard to see how the description of the objectives, policy and (by reference to the 4th paragraph of the explanatory test on page 19) the investment strategy will be anything but a verbatim copy of the respective passage in the sales prospectus, particularly when the proposed civil liability statement on page 50 is so onerous.

We also would like to reiterate our concern that the design constraints of the KID (length and minimum font size, plain language) are likely to be incompatible with the quantity of information to be disclosed to investors. We also note that the information prescribed by Box 4 is extended by other parts of CESR's paper, for example Box 6 (2(iii)) and Box 24A.

The requirement in (1b (iv)) to disclose whether the UCITS management "contemplates some reference to a benchmark" is imprecise and not appropriate. If a fund is managed in relation to a benchmark, this circumstance should be clearly identified in the applicable investment policy and hence, be part of the description required under (1a). Any further disclosure of other references to a benchmark, e. g. in internal investment strategies, appears disproportionate in view of the limited space of the KID.

We recommend dropping the requirement in (1c) on the general right of investors in terms of unit redemptions as it contradicts the purpose of KII to provide essential information on the features of a particular UCITS. KII should not aim to improve general investor education on financial matters, especially in view of the limited space of the KID being hardly sufficient for the adequate presentation of product details.

Concerning (1d), we would prefer a positive wording instead of the negative suggested by CESR. The recommended investment period is merely a guiding value, not a knock-out criterion. In this respect, CESR's proposal creates the impression of a risk warning. In any case, definition of a minimum holding period should not be made a mandatory element of KID.

Section 5: Risk and reward disclosure

Q1: *What are your views on the advantages and disadvantages of each option described above?*

Q2: *Do you agree that Option B (a synthetic risk and reward indicator accompanied by a narrative) should be recommended in CESR's final advice? Respondents are invited to take due account of the methodology set out in Annex 1, as supplemented by the addendum to be published by the end of July, when considering their view on this question.*

In view of the significant deficiencies of the synthetic risk and reward indicator (SRRI) still remaining under the current approach, **BVI members have strong preference for presentation of risks and rewards in narrative terms (Option A)**. Our arguments against mandatory disclosure of SRRI can be summarised as follows:

- *SRRI erroneously suggests objective measurement of risks and rewards*

According to CESR's proposal, the calculation of SRRI shall rely on historical volatility which has only limited significance for the assessment of prospective risks. In case of newly launched funds without sufficient history of data, such calculation shall be even based on simulations from representative model portfolio or benchmark development. As such new funds are generally in the focus of marketing activities and as a result, generate the better part of fund sales for UCITS managers, investors will in the most cases be presented with a notional SRRI figure the adequacy of which can be assessed only at a later point of time. This uncertainty which, by the way, shall not be highlighted towards investors, might create significant liability risks and cause irritations in case of subsequent changes to the risk and reward category.

- *SRRI is difficult to interpret for the average investor*

The proposed calculation methodology for SRRI does not provide for an extensive picture of risks relevant to a UCITS portfolio. Typically, historical volatility reflects the market risk within a specific time frame and touches upon other risks only to the extent they have materialised during the period under observation. This implied assumption about the suitability of representation of the underlying return distribution by a symmetric figure should be very difficult to grasp for the average retail investor. When presented with a clear-cut number within a scale, investors will tend to focus on this unambiguous part of information and disregard further explanatory statements in narrative terms. In this way, however, a false sense of simplicity might be conveyed to investors as the risk and reward profile of a UCITS can never be adequately pressed into a 1 to 6 scale.

- *Calculation methodology for SRRI does not warrant equal treatment of funds*

Besides our reservations against SRRI calculation for new funds, also the suggested treatment of so-called structured funds raises significant concerns. According to CESR's proposal specified in the addendum (Box 3 and 4), volatility of structured funds shall be established by way of reverse engineering from VaR figures. However, calculation of VaR can rely on different models and requires a number of assumptions for which no further specifications have been made. This lack of standardisation in terms of important calculation aspects should materially impair the comparability of SRRI among structured funds as well as in relation to other types of UCITS.

- *Changes to risk classification will trigger significant confusion*

Even though KID is meant to constitute pre-contractual information, any changes to risk and reward classification of a fund will need to be communicated to distributors who might under civil law be obliged to actively forward the information to already invested clients. This will in all likelihood cause significant irritations and require detailed explanations by the management company of the UCITS. Also, any change to the risk category must be expected to have pro-cyclic effects and to amplify negative market developments or herding behaviour on the part of

investors. Reclassifications of funds might be even regarded as alarm signals and hence, trigger capital flows to other products outside the UCITS framework.

Q3: *Do you agree with the proposals for presentation of risk and reward in Box 5A?*

Q4: *Are there any other issues that CESR should consider if it decides to recommend this approach to the disclosure of risk and reward?*

BVI member strongly support the narrative presentation of risks and rewards. In order to underpin our position, we would like to draw CESR's attention to the following:

The main criticism on the narrative approach has so far been the alleged lack of harmonisation in terms of description of risks which in turn would impair comparability between funds, reduce accountability of fund managers and impede controls by supervisory authorities. However, in view of BVI members, standardisation of narrative disclosure is feasible by ensuring common understanding of risk categories at EU level. Such harmonised catalogue of risks should be applied by the national supervisors in order to implement CESR Guidelines on Risk Management in the first place. In Germany BaFin is already contemplating certain specifications of risk categories in order to establish minimum requirements on risk management. This approach entails no details of mathematical application, but rather focuses on defining the general understanding of risks which shall be subject to the risk control activities of fund managers. Consequently, each management company would need to apply a proprietary scoring model for assessing the relevant risks.

The narrative presentation of risks in the KID context should be derived from the same system and hence, would be easily verifiable by the authorities and the auditors. Moreover, an EU-wide agreement on common risk categories would facilitate similar results in terms of risk appraisal and thus, foster comparability from the viewpoint of investors.

Lastly, we would like to point to the fact that under MiFID, the central aspect of Best Execution has also been defined without mathematical formulas by providing for a binding catalogue of general criteria. On that basis, each company has been obliged to set up internal systems in order to obtain best

execution results for the clients and until now, no negative aspects or violations of these legal requirements have been identified in the market.

As regards the specific requirements for narrative presentation of risks and rewards in Box 5A, we are of the opinion that UCITS should be bound to convey likelihood and potential magnitude of gains and losses as suggested in (1c) and (1d) only if a harmonised approach to the establishment of these qualitative aspects is ensured at EU-level in line with our above comments.

Q5: *Do you agree with the proposals for presentation of risk and reward in Box 5B? In particular, is the proposed methodology in Annex 1 capable of delivering the envisaged benefits of a synthetic indicator?*

Q6: *Does the methodology proposed by CESR work for all funds? If not, please provide concrete examples (Respondents are invited to take account of the methodology set out in Annex 1, as supplemented by the addendum to be published by the end of July, when considering their view on the questions above).*

Q7: *Are there any other issues that CESR should consider if it decides to recommend this approach to the disclosure of risk and reward?*

BVI members do not support introduction of a synthetic risk and reward indicator for the reasons specified in our reply to Q1 and Q2 above. However, should CESR insist on recommending SRRI as the preferable option for risk and reward presentation in its final advice to the Commission, we would like to make some alternative comments on the concept and presentation of SRRI as well as provide observations on the details of SRRI calculation displayed in the addendum to the consultation paper.

- *Concept of SRRI: Implications for the risk perception by investors*

The proposed approach might significantly distort competition between guarantee funds and other investment products not subject to the same requirements. Indeed, funds offering hard and unconditional guarantee on full return of the invested assets at a predetermined date are generally considered risk-free and therefore, are marketed in direct competition to saving accounts, fixed-term bank deposits or government bonds. All these products share common features in terms of capital guarantee, limited opportunities to benefit from positive market trends and some kind of pre-determination in terms of pay-off profile. Unfortunately, investor information for these products is subject to

divergent standards without any prospect of alignment even in light of the newly launched EU initiative on packaged retail investment products⁴. **For these reasons, any risk and reward classification of guarantee funds higher than 1 would bring about grave competitive disadvantages at distribution level and hence, is strictly not acceptable.** This result, however, is hardly realisable bearing in mind the proposed calculation methodology for structured funds with which we deal in more detail in our comments on the addendum below.

- *Presentation of SRRI: Accompanying narrative*

The provisions on the narrative supplementing the synthetic indicator in Box 5B (1) and (3) are obviously inconsistent. Paragraph 1 requires “narrative description of the main risks relevant to the overall risk profile”, while paragraph 3 speaks about “narrative description of the limitations of the indicator”, as does the explanatory text on p. 29-30. Indeed, display of limitations to the synthetic presentation of risk and reward is in our view the only plausible cause for the accompanying narrative. A description of the main risks would only reflect the meaning of the indicator in narrative terms and thus, call into question the necessity of presenting an indicator in general, especially in light of the limited space for KII.

Addendum to CESR’s consultation paper on the format and content of Key Information Document disclosures for UCITS

Q1: *Do you agree with the criteria considered by CESR to formulate its proposals regarding the volatility intervals? Are you aware of any other factors that should be considered?*

Q2: *Which option (A or B) do you see as more appropriate for the KID?*

Q3: *Would you like to propose any other alternative for the volatility intervals? If so, please explain your reasoning.*

In case SRRI should be introduced, the majority of BVI members advocates Option B presented in Box 2 as in their view, it results in a more consistent

⁴ According to the Communication on Packaged Retail Investment Products, the initiative covers only products offering exposure to underlying financial assets and hence, does not extend e.g. to investments in plain-vanilla saving accounts or government bonds.

dispersion of fund types across the risk and reward categories. However, a higher number of migrations must be anticipated under this approach.

Q4: *Do you agree that introducing some rules for assessing migration is desirable?*

Q5: *If so, which option (2 or 3) do you think is more appropriate?*

Q6: *Would you like to propose any other rule for assessing migrations? If so, please explain your reasoning.*

Should SRRI become mandatory requirement for risk and reward disclosure, establishment of migration rules would be absolutely necessary in order to mitigate non-representative variations of volatility and to avoid erratic developments of risk categorisation. Among the options proposed by CESR, BVI members tend to prefer rule 3 (p. 7 of the addendum) applying safety margins in case of subsequent changes to the risk category. However, the suggested modifications of thresholds are considered too narrow in order to effectively prevent frequent reclassification of funds. Indeed, the usually procyclical “downgrading” of funds in terms of risk category might be treated as a warning signal by investors and thus, trigger liquidity stress situations as experienced in the latest financial crisis.

Q7: *Do you agree with CESR’s proposal concerning the methodology to compute the SRRI of structured funds? If not, please explain and, if possible, suggest alternatives.*

Q8: *Do you agree with CESR’s proposal to use VaR as an (intermediate) instrument for the measurement of volatility? Is the proposed VaR-based approach appropriate to convey correct information about the relevant return volatility of structured funds?*

Q9: *Do you share the view that the solution proposed by CESR is flexible enough to accommodate the specific features of all (or most) types of structured funds? If not, please explain your comments and suggest alternatives or explain how the approach could be adjusted or improved.*

Q10: *Do you agree with CESR’s proposal concerning the methodology to compute the VaR-based volatility of structured funds over a holding period of 1 year? If not, please explain your comments and suggest alternatives.*

Q11: *Do you agree with CESR’s proposal concerning the methodology to compute the VaR-based volatility of structured funds at maturity? If not, please explain your comments and suggest alternatives.*



We have significant concerns with regard to the proposed approach to SRRI calculation for structured funds.

First of all, CESR has to date not been able to provide for a conclusive and extensive definition of “structured funds”. The considerations on p. 13 of the addendum result only in compilation of more or less typical features of these funds while putting a strong focus on guaranteed and capital protected vehicles. However, this elaboration can be by no means considered comprehensive in terms of possible product set-up and risks being soon overridden by market developments in view of the rapid innovation taking place in this fund sector. Cf. also our comments on section 14 of the consultation paper.

Moreover, as explained in our reply to Q1 and Q2 on section 5 of the consultation paper, the suggestion to rely on VaR figures in order to establish the volatility of structured funds hampers comparability of SRRI due to the lack of standardisation in terms of underlying assumptions and models. Also, the establishment of VaR figures requires extensive Monte Carlo simulations which might be adequate for plain-vanilla options, but need further clarifications as regards so-called Asian or Himalaya options. These types of options are path-dependent until their maturity and blend in some key characteristics of basket-style or rainbow options (which have more than one underlying security or asset) and range options (with multiyear time ranges). In these terms, calculation of VaR for a one year time horizon would not be sufficient. Further questions arising in these circumstances are: How should the management company proceed, if several indices are linked to the performance of an option? Which assumptions should be made – for example assumptions on correlation between the two assets? What if the underlying index does not have a one year history?

Most importantly, the proposed calculation methodology might trigger situations where CPPI or guaranteed funds are classified into a higher risk category compared to funds with similar assets but without a CPPI strategy or guarantee. This is due to the suggested relying on the maximum of different VaR figures. For German UCITS, the relevant VaR would be established in reference to a comparable portfolio (“Vergleichsvermögen”) representing an asset mix which is consistent with the investment policy of the fund. This “Vergleichsvermögen” needs to be stable and is generally defined at the fund’s launch in a way representative for a large number of

possible developments of the fund. Assuming that, due to the CPPI concept, the amount of risky assets in the fund portfolio decreases over time, the actual and future risks until the maturity of the CPPI fund will be much smaller than the risk of the “Vergleichsvermögen”. Therefore, the risk classification of the fund based on maximum VaR or the method proposed for total return funds in para. 3.2.2 cannot be deemed accurate.

Section 6: Charges disclosure

Q1: *Do you agree with the proposals in Box 6?*

Q2: *In particular, do you agree the table showing charges figures should be in a prescribed format?*

We agree with the proposed general mode for presentation of charges in table form.

As regards explanatory text on entry / exit charges on p. 33, however, we do not think that KID is the right place to inform investors about particular features of fund saving plans which are subject to separate contractual agreement and function on terms independent from the general product design. In addition, whether or not investors are charged proportionately higher fees depends generally upon the conditions offered by the intermediary. Hence, it should be the intermediary's duty to explain the possible implications of a subscription plan in the relevant context. Hence, we request CESR to verify its suggestion and in any case, to make clear that the proposed warning should apply only where proportionately higher charges are possible due to specific circumstances of the investment.

Moreover, we think that the KID is not the right place to educate investors on the possibility to achieve a rebate on the amount of entry fee. The requirement “It should be made clear that the investor might pay less” in Box 6 (3a) might be mistaken for an invitation to negotiate the level of entry charge with the intermediary and is, therefore, not acceptable in the KID context. Under the MiFID rules, it is anyway the duty of the distributor to disclose the amount of the entry fee actually charged to the client.

Q3: *Do you agree with the methodology for calculating the ongoing charges figure?*

We reject the proposed calculation methodology on several points.

Requirements for funds of funds

First of all, the method for taking into account ongoing costs of target funds proposed in Annex 2 point 7 is not acceptable to BVI members. The suggested approach provides no added value to investors as it is based on a snapshot of a UCITS' portfolio at the date of calculation and makes too many allowances in terms of actually incurred costs. Moreover, it has the potential to discriminate against funds of funds set up in open architecture and thus, selecting their target investments among a broad variety of providers. It must be anticipated that these funds would encounter significant difficulties when making "best estimates" of ongoing charges at the level of target funds in contrast to fund managers operating within one financial group. This outcome would discourage open structures within funds of funds which would be counterproductive in terms of protecting investors' interests.

Also, it appears not justified to require allowance for costs of underlying investments in case of funds of funds, but not to impose similar obligations e.g. on funds investing in structured products which entail even more significant costs. Such a selective approach will render funds of funds less attractive in terms of administration and distribution and on the other hand, might promote evolution of funds with focus on investments in intransparent securities.

If CESR members insist upon including target funds in the calculation of ongoing charges at the fund of funds level, however, it might be envisaged by way of compromise to reflect the annual management fee of the underlying funds in the ongoing charges figure. This approach would generate a quality of information comparable to CESR's proposal but at least, should considerably reduce the administrative burden for the fund industry.

Concerning the specific calculation provisions, we do not see any scope of application for the event assumed by CESR in the bracketed text in letter e). In our view, the fund's profit and loss account is of no relevance for the calculation of ongoing charges.



Treatment of transaction-based payments

The rationale for the provision in point 5 is still not clear to us. As it stands, the passage might be interpreted as re-including transaction costs in the calculation method for ongoing charge in case the operator, depositary or custodian or anyone acting on their behalf is party to the transaction. The newly inserted limitation to payments “for which the recipient is not accountable to the UCITS” does not help any further as in case of common funds, transactions are concluded with the management company and no accountability to the UCITS does generally arise. However, a partial re-inclusion of transaction costs makes definitely no sense and would heavily distort the investors’ perception of costs depending on the trading model of a management company.

Therefore, we urge CESR to make unmistakably clear that costs of all transactions pertaining to the UCITS’ portfolio are excluded from the calculation of ongoing charges. This could be achieved by the following modification of the wording:

*“The exclusion for transaction-related costs does not extend to transaction-based payments made to the operator, depositary or custodian, or anyone acting on their behalf, **which are not necessarily incurred in connection with the acquisition or disposal of any assets for the UCITS portfolio; (...)**”*

Q4: Do you agree with the proposals in Box 7?

Q5: In particular, do you agree that CESR should not prescribe a specific growth rate in the methodology for calculating the illustration of the charges?

While appreciating CESR’s efforts to enhance comprehensibility of the summary measure of charges and to render its presentation more neutral, we still cannot see how such illustration may provide added value for the investors’ understanding of the effect of charges on their investment. This approach is based upon arbitrary assumptions pertaining to the amount of invested capital, holding period and average yearly growth and thus, is never capable of providing an appropriate picture of investment costs, let alone of serving as the basis for cost comparison among different products. The inaccuracy of such presentation is further aggravated by variability of subscription and redemption fees of which the highest possible amounts

shall be taken into account for the purpose of calculating the cash figure pursuant to the methodology proposal in Annex 3. Accordingly, in our view, a summary measure of charges is nothing more but a meaningless example and bears no relevance for the individual investor.

However, in the event such measure should be introduced, we support CESR's suggestion to refrain from prescribing a specific growth rate for all UCITS in the methodology for calculation.

Q6: *Do you agree with the proposals in Box 8?*

BVI members strictly reject the proposition requiring new funds to make estimates about the ongoing charges figure. The majority of UCITS launched by German fund providers does not set any limitations to the maximum amount of chargeable fees. Previous experiences from such cases show that a sensible assumption on the level of a fund's NAV is simply not feasible due to a number of unforeseeable factors such as investors' preferences and future market conditions. Moreover, presenting investors with an estimated figure might lure them into thinking that the stipulated amount may not be exceeded and thus, raise problems in terms of misleading effects of information and attaching civil liability. Therefore, it appears more appropriate for new funds to display the ex-ante amount of annual management fee alongside a clear warning about the possible impact of further costs to be taken from the fund.

Should the requirement to estimate an ex-ante figure for new funds be maintained, however, we strongly demand attaching a disclaimer in terms of limited relevance of such estimation analogous to the proposal in Box 9 (3).

Q7: *Do you agree that a variation of 5% of the current figure is appropriate to determine whether a change is material?*

Also in case of material changes to the charging structure, BVI members are of the opinion that any requirement to replace the ex-post figure with an ex-ante prognosis of future charges would constitute an obvious discontinuity in the methodology of cost disclosure and should, therefore, be abandoned. Even though more practicable than in case of new funds, estimation of charges will never provide a valid number due to fluctuations in the fund's NAV and possible variations in the ancillary costs of fund management.



Nevertheless, should the proposal on estimation of next year charges be retained, it must be made unmistakably clear that the requirement of estimation applies only to the modified elements of charges and does not affect the remaining calculation which should be based on accounted figures.

As regards criteria for establishing a material change, we think that **an increase or decrease of the ongoing charges figure by 5% is too low to be considered material**. Variations of this magnitude are very common for nearly all types of UCITS. In our view, the threshold should be raised to at least 10% in order to distinguish material changes from ordinary fluctuations of portfolio management costs.

In this context, it is important to clarify whether the phrase “material change in the charging structure” in Box 9 (1c) means only structural modifications such as increase or decrease of the depositary fee or introduction of new charges, or whether it applies to any anticipated variation to the level of charges which might exceed the stipulated threshold for materiality, e.g. as a result of expensive court proceedings. As the latter case is very difficult to foresee and might expose the management company to incalculable risk of legal liability, we would strongly prefer a clear limitation to structural changes.

In any case, given that projected changes in costs have to be disclosed anyway, the necessity for determining whether a change is to be regarded as material or not appears moot.

Lastly, the provision in Box 9 (1c, ii) is in its current generality totally ambiguous and should, therefore, be deleted or alternatively supplemented by a meaningful guidance on the circumstances in which disclosure of charges might be deemed unfair, unclear or misleading.

Q8: <i>Do you agree with the proposals in Box 10?</i>
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As a consequence of our suggestions on the preceding Box 9, not every variation of the ongoing charges figure by more than 5% shall be deemed material. Therefore, the second sentence in Box 10 should be modified as follows:



*“If that review shows that the new figure varies by **x%** or more from the value of the published figure, **the KID should be updated accordingly.**”*

In addition, we would like to refer to our comments on Box 13 where we explain in detail our opinion on the appropriate deadlines for the review of KID.

Section 7: Past performance presentation

Q1: *Do you agree that the above CESR proposals on past performance presentation are sufficient and workable? If not, which alternative approach would you prefer?*

We agree with the suggestions for past performance presentation, except for the principle on handling of new funds in para. 4. According to the current proposal, performance of new funds could only be shown after performance data for a full calendar year has become available. For funds launched in February, this means an effective ban of performance presentation within KII for a period of 23 months! In our view, this outcome has the effect of depriving investors of information relevant for their investment decision and might be even deemed violation of client information duties before civil courts.

Hence, we once again urge CESR to allow for earlier display of past performance figures in case of newly launched funds. In our view, this should be permitted after six months of a fund's existence and accompanied by a clear statement that the short performance history is of limited significance for future developments. If that proves not acceptable, at least MiFID standards laid down in Art. 27 (4b) of the level 2 Directive should apply in order to allow UCITS to show their performance after twelve months of marketing.

Moreover, we think that UCITS should not be generally deprived of the possibility to present investors with a complete picture of past performance even if it implies deviations from annual performance figures for the year of a fund's launch. Marketing experience clearly shows that investors are very interested in obtaining full performance data and should, therefore, not be referred to sources outside the KID. Moreover, the loss of comparability



between funds appears marginal and will be fully outweighed by gains in terms of adequate investor information.

We also have some reservations against the treatment of structured funds suggested in para. 1. Please refer to Section 14 for further details.

***Q2:** Do you agree that the above CESR proposals on past performance calculation are sufficient and workable? If not, which alternative approach would you prefer?*

We agree with CESR on that point.

Box 13: *Maintaining the past performance record*

BVI members strictly reject the suggestion to publish a revised KID displaying past performance figures for the preceding calendar year within 25 business days after its end for each and every UCITS. This task is simply impracticable for management companies with potentially hundreds of UCITS distributed in different Member States, especially as the annual revision of KID shall involve general scrutiny of the provided information.

Moreover, it appears inconsequential to link the annual revision of KID to the availability of past performance data. In the former discussions on the KID content, past performance has been considered by CESR members as an information item of inferior quality and with the potential to mislead investors which is why performance presentation for new funds shall not be allowed. Hence, it makes no sense to require swift adaptation of KID to reflect latest fund performance, but to disregard the applicable charges figures which become available only after the end of a fund's financial year. Indeed, as fund performance and charges are anyway determined for the purpose of accounting after the end of a financial year, we think that the regular duty for updating the KID should also interrelate with that event. A linkage to the UCITS financial year would also allow for sufficient flexibility in terms of timing and resources for the KID revision.

Therefore, we urge CESR to allow for the regular update of KID within a specified period of time after the end of a fund's financial year.

Q3: *Do you agree that the above CESR proposals on material changes are sufficient and workable? If not, which alternative approach would you prefer?*

BVI members are concerned about possible impact of the proposed treatment of material changes on funds with longer performance history. Depending on criteria to be adopted as regards definition of materiality, it might be very difficult, if not impossible, to establish whether and at what point of time material changes have occurred in the past. In many cases, records on events concerning the fund might not have been kept for a period of preceding ten years or their anew evaluation would generate efforts out of all proportion to the expected results. Moreover, it might cause significant irritations among investors if the fund they stayed invested in for a longer time were out of the sudden bound to highlight material changes to its past performance history.

For these reasons, we strongly request CESR to adopt a pragmatic approach to the presentation of material changes by long existing funds. A possible solution might be to require flagging of material changes in the performance chart only in case these take place after implementation of the UCITS IV rules at national level.

In addition, we deem it necessary to provide additional guidance on the requirements for presentation in case the material change occurs in the course of a calendar year.

Q4: *Do you agree with this approach? If not, which alternative approach would you prefer?*

We have no objections to the proposed approach to the terms for displaying a benchmark alongside a fund's performance.

Q5: *Do you agree that the above CESR proposals on the use of 'simulated' data for past performance presentation are sufficient and workable? If not, please suggest alternatives?*

We accept CESR's statement in the second last passage of the explanatory text on p. 47 that incurrence of additional or different costs would render past performance simulation misleading. In our view, however, track record

extension should nonetheless be allowed if due allowance for the variation of charges is made in calculating the simulated data.

Furthermore, BVI members are in favour of permitting track record extension in case of changes to the fund domicile (e.g. a fund is liquidated in Member State A, but the assets are 1:1 transferred to a newly founded fund in Member State B) and regarding fund clones established in different jurisdictions. In order to avoid misguidance of investors, such extension should be conditional upon the lack of relevant impact on the fund performance.

Section 8: Practical information

Q1: *Do you agree with the proposals in Box 17?*

The statement on civil liability suggested in para. 2 should be deleted as it relates to matters of general financial education and only takes up space necessary for disclosure of essential elements of a UCITS investment. If retained, however, the sentence should be slightly reworded in order to make clear that civil liability is actually limited to the specified events which should be brought in line with Art. 79 (2) of the UCITS Directive:

*"[Insert name of investment company **or** management company] may **only** be held liable in law for any statement contained in this document **if it** is misleading, inaccurate or **materially** inconsistent with the relevant parts of the fund's prospectus."*

Q2: *Do you agree with the proposals in Box 18?*

In our view, CESR does not sufficiently take into account that KID is a document of a very limited space and thus, cannot possibly provide extensive information even on essential elements of an investment. Hence, the requirement in Art. 78 (3), 2nd subparagraph of the UCITS Directive should be interpreted in a sense that the actually presented key information must be understandable by investors, but not comprehensive in terms of detail. Comprehensive information on essential elements of a fund is provided in the sales prospectus comprising several pages of detailed explanations.

That being said, we see the need to reword the provision in Box 18 (1), 1st sentence in the following manner:

*“Signposts to other sources of information should be permitted (...) as long as (...) the referenced material is not fundamental to investors’ understanding **of the essential elements** of the investment.”*

Also, with regard to the third paragraph in the explanatory text, it appears more appropriate to refer to “~~full~~ comprehension of the essential elements” which shall be always possible without reference to other sources.

Section 9: Circumstances in which a KID should be revised

Q: Do you agree with the proposals in Box 19?

We do not think that notification of a UCITS in another Member State should prompt the obligation to revise the KID as substantive elements of the key investor information are anyway kept up-to-date in accordance with the revision requirements in case of material changes.

In relation to Box 19 (4, ii), we do not understand why and how the existing version of the KID should be withdrawn in case of proposed changes to the legal documents. If CESR meant to ensure that only the revised version should be used in the sales process from the moment the change comes into effect, this should be clarified by respectively rephrasing the subparagraph.

Moreover, we suggest clarifying that no revision of KID is necessary in case of funds for which active distribution process has terminated. Examples are fixed-term funds such as guarantee funds which usually grant only a short subscription period for their units. As the KID constitutes pre-contractual information according to Art. 79 (1) of the UCITS Directive, provision of regular updates in case of lacking sales must be considered superfluous.

Section 10: Umbrella structures

Q: Do you agree with the proposals in Box 20?



We agree in principle, but would like to refer to our request for the possibility of combining the KID for several umbrella compartments in one document articulated in the context of section 3. Also, a statement on the segregation of assets and liabilities should be required only where such segregation does not take place between compartments.

Section 11: Share classes

Q: *Do you agree with the proposals in Box 21?*

We agree with the text in Box 21. The explanation on the possible use of a representative unit class in case of divergent charging structures (p. 59, 1st paragraph), however, is contradictory and needs further clarification in terms of whether the class with the highest or lowest costs shall be deemed representative for the purpose of KID.

Section 12: Fund of funds

Q: *Do you agree with the proposals in Box 22?*

With regard to the description of the target funds' selection process required in para. 1, more specific guidance is necessary as to how to achieve meaningful explanation in a brief manner. The passage already contained in the explanatory text does not help any further as, in our view, it might not be advisable to use terms like "quantitative", "risk-adjusted" or "Sharpe ratio" in the context of KID.

Moreover, we reject the proposed calculation method for a fund of funds' ongoing charges figure as explained in our reply to Q3 in section 6.

Section 13: Feeder funds

Q: *Do you agree with the proposals in Box 23?*

The text in Box 23 (5) does not adequately reflect the level 1 provisions on master feeder structures according to which the master UCITS is not

allowed to charge subscription or redemption fees to the feeder UCITS (cf. Art. 66 (2) of the UCITS Directive). Hence, the reference to “costs of investing” in the first sentence as well as the entire second sentence of para. 5 should be withdrawn.

Section 14: Structured funds, capital protected funds and other comparable UCITS

Q: Do you agree with the above CESR proposals on performance scenarios? In particular which option (A or B) should be recommended? If not, please suggest alternatives.

We are not happy with the general suggestion to display performance scenarios for certain types of UCITS. In view of the obvious political will to implement such scenarios and the respective postulate in Art. 78 para. 3 of the UCITS Directive, however, **we consider option A showing the return of a fund under different market conditions in form of a presentation table an acceptable solution.** Option B which aims at illustrating the probability of certain defined events must be rejected as it is based on several assumptions and simulations with regard to future events which are unable of standardisation or supervision and should be very difficult to interpret for investors.

In this context, however, it will be necessary to establish valid criteria for distinguishing structured funds required to display performance scenarios from other types of UCITS meant to show past performance figures. The “definition” presented by CESR in footnote 7 on p. 63 is rather an illustration of typical features associated with structured funds, but does not account for all possible variations in terms of product set-up; the same applies to the considerations on p. 13 of the addendum to the consultation paper. Given the continuous product innovation in the field of structured funds, it should be very difficult to agree on a precise legal definition for these vehicles. Thus, we suggest to capture only general attributes of structured funds by means of level 2 measures and to provide for a more detailed guidance at level 3 in order to warrant legal certainty for UCITS managers.

In addition, we think that the selected mode of presentation for performance scenarios must be capable of demonstrating the differences between

structured funds comprising a “hard” guarantee and others in a comprehensible manner.

Section 15: Medium and timing of delivery, including use of a durable medium

Q: Do you agree with the proposals in Box 25? If not, what alternative approach would you suggest?

We consider the proposals in Box 25 appropriate as long as they relate to the provision of KID to investors. As regards the management companies' duty to supply KID to intermediaries under Art. 80 (2) 1st sentence of the UCITS Directive, the mode of such supply should fit the specific distribution activity (e.g. via local branch or purely on-line) and hence, be freely definable in the distribution contract.

Section 16: Other possible Level 3 work

Q1: Do you agree with the approach to transitional provisions set out above?

In our view, the transitional provision in Art. 118 (2) of the UCITS Directive allows UCITS managers to adjust their internal systems and processes to the KID standards within twelve months after expiry of the deadline for national transposition. This flexibility should not be hampered by stricter requirements for specific cases such as launches of new funds or due updates of available materials. In practice, fund managers will anyway use the KID format as soon as the internal restructuring is completed as it should make no sense from the economical point of view to produce new simplified prospectuses if processes for provision of KID are in place. Further level 3 guidance on consistent interpretation of the transitional rules is, hence, not necessary.

Q2: Are there any other topics, relating to KII or use of a durable medium, not addressed by this consultation, for which CESR might undertake work on developing Level 3 guidelines?



Apart from the issues already addressed in our above comments, we do not perceive any need for further regulatory action at level 3.

We hope that our considerations will assist CESR in finalising its advice on an EU-harmonised approach to KID disclosures and remain at your disposals for any questions or further exchange of views.

Yours sincerely

BVI Bundesverband Investment und Asset Management e.V.

Signed
Stefan Seip

Signed
Dr. Magdalena Kuper