

CESR CONSULTATION
KEY INVESTOR DISCLOSURE FOR UCITS
UCITS DISTRIBUTION
SIMPLIFIED PROSPECTUS FOR RETAIL INVESTORS

FBF'S RESPONSE

EXECUTIVE SUMMARY

1. The French Banking Federation (FBF) is the professional body representing over 500 commercial, cooperative and mutual banks operating in France. It includes both French and foreign-based organizations.

As universal banks, the FBF members are highly interested in the evolution of the legal framework of the investment funds, the French industry on investment funds being one of the biggest in the world. More specifically, the retail banking networks in France are highly interested by this regulation since the UCITS represent the greatest part of the financial instruments in which the retail clients invest.

Thus the FBF very welcomes the three document published by CESR regarding the question of the placing of UCITS near retail investors.

2. The FBF underlines that the CESR approach is all the more important that the European Commission, in its document published in March about the initial orientations of possible adjustments to UCITS Directive 85/611/EEC, **does not tackle the question of the distribution of UCITS**, even if the FBF very welcomes the European Commission's broad outline of a reform of the simplified prospectus, as set out in its White Paper on Investment Funds.

3. The main positions of the FBF can be summed up in two statements.

First statement:

Regarding the distribution of the investment funds near retail investors, the regulatory framework must be fully consistent with those involved by the MiFID.

The FBF underlines that the UCITS Directive, as the Prospectus Directive, is dedicated to the producers. As the Prospectus Directive is dedicated to the "production" of UCITS by the issuers, the UCITS Directive is dedicated to the production of UCITS by the asset management companies. But there is only one text dedicated to the distribution of financial instruments to the retail investors: the MiFID. Thus the possible modifications of the UCITS

Directive must take into account the framework of the distribution implemented with the MiFID. There should be only one regulation of the distribution of financial instruments to the retail investors and any provision included in the UCITS Directive could be detrimental to the consistency of the European framework and for the retail banking networks.

In other words, it is essential to ensure that this framework will apply indifferently to the investment funds and to securities. The question of the implementation of an open architecture or an “in-house fund distribution”, or the question of the direct selling of UCITS *versus* the selling *via* packaged products is secondary since the MiFID will apply in the same conditions to the distributors.

Second statement:

The FBF fully agrees with the European Commission general proposal of replacing the simplified prospectus with “key investor information”.

Such a new system would be relevant and efficient, if the document rely on a harmonization of the key definitions, the key information and the format.

Moreover, such a document harmonized on these three points at the European level will permit comparability between different UCITS.

A UCIT may distribute the simplified prospectus in an official language in the member state, so in the language of the investor. However, the rest of the full documentation should be in a language currently used in the asset management sector

KEY INVESTOR DISCLOSURES FOR UCITS

4. First of all, the FBF fully agrees that the overarching objective should be to replace the existing simplified prospectus with short, meaningful explanations of the risks, costs and expected outcomes associated with investment in a UCITS fund/sub-fund. It is very clear today that the existing simplified prospectus does not give satisfaction.

5. The FBF estimates that this reform must be undertaken with the strong resolution to deliver a real single market. In particular, the new regime should rely on full harmonisation, without any scope for “goldplating”, being underlined that the main critics expressed about the implementation of the Prospectus Directive, which is dedicated to the public offerings of securities, is the tendency of some supervisors to add purely local regulations. Only if definitions, key information (such as calculations) and format are made on the same basis and under the same assumptions can the key investor information provide the best possible degree of comparability of the information and contribute as much as possible to investors’ understanding of the instruments. It has appeared that the so-called “product passport” encounters difficulties because these three crucial dimensions of the Simplified Prospectus (definitions, key information, format) are different from one Member State to another one. The Host regulator is not used to the Home Simplified Prospectus, creating therefore delays in the scrutiny of imported UCITS files.

In this specific point, the FBF underlines that the best way to implement such harmonisation is a Level 2 (*i.e. legally binding*) provision, instead of Level 3 (*i.e. legally non-binding*) measures. The main reason for the failure of the existing simplified prospectus was that its details were provided under the legal format of a Commission Recommendation – which was of a non-binding nature, leading to many different implementations from one Member State to another one.

6. The FBF believes that only such a far-reaching and resolute approach of full harmonisation would justify the additional investments that will be imposed on the industry. At the same time, there should be a sufficiently long transition period for firms to implement the new requirements.

7. In terms of scope and content of the new document, the FBF believes that the objective should be a document of maximum two pages (or comparable, if not provided as hard copies). This should contain both quantitative and qualitative information pertaining to the specific investment instrument, along the lines of the Commission’s current thinking. At the same time, it is clear to us that this document could not provide information on aspects that will be different for different investors, such as distribution channels and cost and tax implications. It will be the responsibility of distributors to provide this additional information, as well as to help the investor understand the information provided by the fund manager in his specific context.

8. As regards forward-looking aspects around UCITS distribution, the FBF has noticed the Commission’s potential interest in complementary work on “point of sale” obligations for the principal distributor/ adviser networks through which UCITS and UCITS-based investments are sold. However, the rationale for this work would be unclear, as distributors are already covered by the broad scope of the MiFID. And as it is stated above, the regulatory framework applicable to the UCITS must be consistent with the MiFID, since the MiFID is the text applicable to the distribution of financial instruments across the Europe.

SIMPLIFIED PROSPECTUS

9. The FBF has already expressed, about the key investor disclosures, many concerns about the way the Simplified Prospectus should be modified to give satisfaction from both point of view of distributors and investors. The FBF obviously welcomes the CESR's approach which consists in drawing up a document that will genuinely be suited to provide relevant and understandable information to retail investors in an adequate format and scope.

UCITS DISTRIBUTION

10. The FBF understands that CESR wishes to obtain further evidence about the way in which UCITS funds are distributed, and the type of intermediation that may exist in the relationship between the UCITS provider and the end investor. The answer will give an input on the ways in which UCITS funds can be "packaged" and distributed to retail investors.

About the packaging of UCITS funds and the information given to the investors, three cases shall be distinguished:

- First, the product may be packaged in a life-insurance contract; then the supervisor requires that the insurance company provides for a link to the Simplified Prospectus;
- Second, in the case of a discretionary portfolio manager, investment rules are disclosed;
- Third, for funds of funds, there is no specific information delivered on underlying funds.

11. This being underlined, the FBF agrees with CESR's assessment regarding the emergence of new trends in fund distribution, including open architecture, funds of funds and internet selling. These developments are welcomed as they give evidence of sound and vibrant markets and provide a wide range of choices to retail investors.

The FBF underlines at the same time important role that intermediaries continue to play. This is especially in light of the often limited financial literacy of consumers on the one hand, and a growing number of increasingly complex products on the other hand.

12. The FBF also considers that meaningful and complete information to the investor cannot be restricted to the product itself. Indeed, this information about the product is one of the essential pre-conditions for a good investment choice. Banks in their role as distributors will make appropriate use of this information as part of their investment advice to retail investors, and will combine it with additional information relevant to the specific needs of the client. The FBF believes that intermediaries play an important role even for those retail investors who do have a sound level of general understanding of economics and financial markets.

13. Then, it seems clear that a good quality of advice requires a good level of knowledge about the specific product and can therefore only be delivered on a limited number of products. Whilst it is in principle desirable that a wide range of products be available in a specific market, individual distributors should retain the choice of which products from this range they would like to offer to their clients. This should be seen as a reasoned strategy, and it does not exclude the parallel existence of competing business models that rely on a larger number of products but cut back on the quality of advice.