

31 May 2007

The Committee of European Securities Regulators
11-13 avenue de Friedland
75008 Paris
France

Dear Sirs

**Response to the Call for Evidence on Key Investor Disclosures for UCITS:
a) Commission's 'request for assistance', and
b) Specific call for evidence on UCITS distribution (CESR/07-205)**

The Investment Management Association (IMA) is the trade body representing the UK asset management industry¹.

We welcome the Commission's decision to review and revise the UCITS Simplified Prospectus, and are pleased to have the opportunity to respond to CESR's Call for Evidence.

We believe that the Simplified Prospectus (SP) covers important information that should be presented in a style and format that will positively assist potential investors in reaching a decision. We agree with the assessment that the current version of the document fails investors. CESR and the Commission need to acknowledge that considerable cost and time has been expended in the introduction of the current SP, and that it is therefore important that the revised version meets the expectations of investors, is economical to create and update, and can be adapted to future changes in fund types and distribution channels, at least to the extent that can be foreseen.

We believe that absolute comparability, for example in past performance, is not possible, but that the legislation and/or guidelines should be sufficiently specific to enable the investor to reach that informed decision.

¹ IMA members include independent fund managers, together with the asset management arms of banks, life insurers and investment banks, and occupational pension scheme managers. They are responsible for the management of nearly £3 trillion of funds (based in the UK, Europe and elsewhere), including authorised investment funds, institutional funds (e.g. pension and life funds), private client accounts and a wide range of pooled investment vehicles. In particular our members manage 99% of UK-authorised investment funds (i.e. authorised unit trusts and open-ended investment companies).

We believe that the issue should be the subject of maximum harmonisation. This is a vital element in ensuring the use of the document across the EU. The current position, where individual Member States impose additional requirements is a real deterrence to the true operation of the single market.

We consider that UCITS has established a world-wide brand awareness for a transparent, mass retail, product, and that a reasonable degree of standardisation in identifying the key investor information will enhance that global reputation.

I attach our responses to the two separate elements, and should you wish to discuss any of the points we have raised in further detail please do not hesitate to contact me.

Yours faithfully

Angus Milne
Senior Adviser

Request for Assistance on detailed content and form of key investor disclosures for UCITS

3.1 Guiding Principles

The first basic principles set out in the Commission's letter make up the correct list, and are complete in that form. We agree that this is pre-contractual information, but believe that its legal status needs to be more fully defined. We support the assertion that it should not be conceived as a marketing tool. To do otherwise would have made the document subject to local marketing rules, which may constrict what can be included or excluded, and reduce its ability to be seen as a pan-European document.

Consideration has previously been given to providing some form of legal protection for this document by linking it more fully with the full Prospectus. However, this may be difficult if that Prospectus does not need to be translated in to local languages. We certainly do not think that it would be appropriate or reasonable for there to be a requirement for the Full Prospectus to be translated. Consideration should be given to providing this document with some stand-alone status, if indeed that can provide any further protection.

The introduction of the Simplified Prospectus was a time-consuming and costly exercise, and we therefore support the Commission's view that this review should take in to account that the context in which funds are used will change, and that this should be taken into account. As fewer clients are direct holders of units, there is less of a direct relationship between provider and investor. As more business is likely to be conducted over the web, whatever requirements are set out should accommodate both paper and web-based documents.

3.2 Detailed content

We would fully support the Commission's suggestion that a much more limited range of information should be mandated as making up the SP. The key items are, probably:

- Name of the fund
- Investment objectives
- Generic Risk (e.g. capital not guaranteed, intended as a medium to long term investment)
- Fund-specific Risk
- Minimum subscription
- Costs
- Performance
- Point of contact

The type of investor would only be necessary if the fund has some very specific peculiarities. A UCITS fund is one that is designed to be appropriate for retail customers, performing the investment style expressed in the objectives, so would normally be suitable for any customer – dependent upon their own personal circumstances. That last element is for the investor and/or the adviser to resolve.

Other information, such as that listed on the Commission's paper, should indeed also be excluded from the revised document. We consider that the following could be excluded:

- Scheme creation date
- Expected period of existence
- Name and contact details of the depositary
- Name and contact details of the auditors
- Name and details of the promoter
- Profile of the typical investor
- Detailed information on taxation
- Most of the commercial information
- Portfolio turnover rate

3.2.1 Risk Disclosure

With plain language narrative it is often difficult to understand the significance of the various risks, and there is a tendency to include all potential risks, in order that providers are not accused of being misleading. It might be reasonable for certain key risks to be identified, with the provider having an option for further information to be available on request.

Prioritisation of risks is difficult. The significance of most risks will be determined by the personal circumstances of the investor (which will change) and the market conditions at the time. It is therefore not reasonable to complete this effectively in a standard document covering all potential investors and all market conditions.

Risk indicators can come up against the same problems. Given that the issue of greatest concern expressed by retail investors is the likelihood of loss of original capital, we are working on some ways of communicating risk to customers. We would hope to be in a position to share this information with you later in the year.

The Financial Services Consumer Panel published some research¹ recently, on the investor's understanding of risk, and this highlighted some of the problems associated with trying to explain complex issues to a non-financial audience.

3.2.2 Cost Disclosure

We are fully supportive of the idea that the TER should be the standard method of illustrating the costs of investing. We think that it is important for an EU-wide standardised calculation of the TER to be created. This will enhance the reputation of the UCITS as a transparent investment product. It is important for any initial or exit charges to be shown, and this information should be shown beside the TER – but not as part of it.

¹ http://www.fs-cp.org.uk/pdf/risk_ratings.pdf

We would urge you not to proceed with any synthetic indicator that attempts to combine entry and exit charges with the ongoing annual costs. We believe that this is likely to mislead investors.

Depending on the way in which an investor accesses the fund, the initial charge will vary considerably. While a standard initial charge may be around 5% it is not unusual for investors to be paying an initial charge of 2% or less.

The synthetic indicator – certainly the model currently in use in the UK – also makes assumptions about the term of investment and the investment performance to be used. The only guarantee with this indicator is that it will be wrong – or a complete coincidence.

The UK model is also unable to incorporate any reference to performance fees that may be payable. This is an important aspect that is brought out in the TER calculation. Tools are, or could be, available to allow an investor to calculate the likely overall cost, taking into account the actual initial charge being levied and the actual number of years over which the investor wishes to invest, using the published TER. These should be encouraged rather than any synthetic indicator.

3.2.3 Past Performance presentation

Past performance is seen by investors as an important part of the investment decision, and to exclude this information would be to deny the investor some useful information. However, we do recognise that it should only be one of a number of factors, and so should not be so comprehensive or voluminous that it achieves undue prominence.

Whether the presentation is by way of figures, bar charts or line charts is, we believe, best decided by independent consumer research, and we do believe that some standardisation of the calculation and presentation would be desirable.

We do not, though, believe that this standardisation should be over-prescriptive. We agree that annual figures should be shown, for periods of, perhaps, five or ten years. We anticipate that the new document, as with the current version, will need to be updated annually, but it should be possible to allow mid-year updates, including the updating of past performance information.

The updating of the Simplified Prospectus usually follows the completion of the annual audit, which produces the new TER. Funds have audit dates throughout the year, so the most recent past performance figures shown in the SP will be based on those different year-ends. A number of providers will update those documents quarterly, and would wish to include the past performance information based on successive 12-month periods to each update. As the SP will often be provided to investors alongside other promotional material, there is a reluctance to use investment past performance information that is significantly different in the two documents.

3.3 Presentation of Information

We do not think that it is helpful to lay down the maximum length of the document, rather that prescription should instead be limited to setting out the information to be included. To prescribe the size by reference to number of pages will lead on to prescription of the type face and size, location of information etc. To prescribe by number of words would (apart from having to decide this for each language) force providers to consider the number of words over getting the right information to investors.

We do believe that there is a core of information that could provide the investor with sufficient to make a decision. There is then other, ancillary, information that some investors might find useful. The SP should limit itself to the first category, but allow the document to signpost other material. Information on the identity of the depositary, on the date of creation of the scheme, on some detail of the fund taxation, or additional information on the fund risks, could be signposted on to either a paper or electronic document.

A paper-based SP might be used by providers as a stand-alone document, or it might be included in a marketing pack. If the latter, would it be able to maintain its stand-alone regulatory status – and not be a marketing document – which we think that this would be helpful if it is to remain clear and concise. Consideration should also be given to allowing the key information to be provided in two or more documents, to provide greater flexibility for the updating of information.

A different approach could be taken for web-based material. The 'document' could be a series of links – to performance, to charges, to investment objectives etc, with the possibility of providing considerably more detail still further behind, should the investor want to make further enquiries.