Association of the Luxembourg Fund Industry
Association Luxembourgeoise des Fonds d'Investissement

Luxembourg, 15 May 2009

Response to CESR consultation paper 09-047
Technical issues relating to Key Information Document (KID) disclosures for UCITS

Introduction

ALFI represents the Luxembourg investment management and fund industry. It counts among its membership asset management groups from various horizons and a large variety of service providers. According to the latest CSSF figures, on 28 February 2009, total net assets of undertakings for collective investment were EUR 1,530,291 billion.

There are 3,402 undertakings for collective investment in Luxembourg, of which 2,037 are multiple compartment structures containing 10,890 compartments. With the 1,365 single-compartment UCIs, there are 12,255 active compartments in Luxembourg.

We thank CESR for the opportunity to participate in this consultation on the technical issues relating to Key Information Document ("KID") disclosures for UCITS. We welcome CESR’s interest in this matter and we share CESR’s desire for clear and accurate disclosure of information to retail investors in a form that helps them to understand a fund and to compare it to other funds that might be available to them. We congratulate CESR for preparing such a comprehensive consultation on this broad and complex subject. We consider our response to this consultation to be a continuation of our response to consultation CESR/07-6691 and we invite CESR to consider the two responses as a coherent opinion.

In this paper we present short answers to the questions that CESR asked in its consultation paper and some additional comments, which we hope CESR will find helpful. We have included references to relevant pages and paragraph numbers in CESR's paper.

CHAPTER 1: RISK AND REWARD DISCLOSURE

Question 1

We acknowledge the appeal of a risk/reward methodology that helps consumers to compare one fund with another and to choose a fund based upon its position on a synthetic scale. However, we remain concerned that no single indicator can adequately summarise a fund's risk and return, and we think that it is unwise to offer consumers an abstract risk indicator that seems to offer empirical authority in which they can take comfort when there are likely to be circumstances in which it is misleading.

We note the Commission's finding (page 7, para 5) that "there were not many differences in investors' understanding … between the narrative approach and the synthetic risk indicator approach." We believe that the narrative approach is more appropriate and that it should be used to enhance the understanding of any synthetic risk and reward indicator that might be prescribed. If the decision is taken to use a synthetic risk and reward indicator we hope that the following comments offer constructive opinion on the indicator's design.

We consider it particularly important that the calculation methodology for any indicator is fully prescribed by CESR to avoid any interpretation in its implementation. We agree with CESR's requirements for the calculation methodology (page 8, para 7) and for a large number of funds we think that it will work well. We do not think that the methodology will meet CESR's requirements in the case of certain types of fund, including alternative investment funds and structured funds. For those funds, interpretation seems to play an important part in the application of the methodology and we doubt that it will be particularly easy for UCITS providers to implement and for regulators to supervise.

We agree with CESR's assessment (pages 9, 10, 11 and 12) that if a synthetic risk indicator must be used then a volatility measure is a reasonable basis for it. We also agree that the methodology should also not be so adaptive as to be incompatible with the plan to update the KID annually in normal market conditions (page 10, para 21).

Questions 2 and 3

To the extent that a fund's price history has been affected by liquidity, counterparty and other risks, the calculation methodology that CESR has proposed will be effective. However, we do not think that the proposed calculation methodology will necessarily be comprehensive if that is meant to imply that it will provide adequate indication of those risks in all circumstances. The last year's experience makes that self-evident: many funds that would have been categorised as low-risk by CESR's methodology (some of which had recorded very low volatility for several years) became very high risk within weeks.

Question 4

We are unable to provide an opinion on the likelihood of "bunching" based upon the information that we have been given about the proposed scheme. We imagine that the distribution of funds across the scale of the scheme will be a function of the number buckets that form the scale, the volatility range of each bucket, and of the population of UCITS to which the scheme is applied. We suppose that a scheme in which the population of funds is evenly distributed across the scale is to be preferred to one in which funds are "bunched", but we cannot easily say how stable that distribution is likely to be. We think that these issues can only be determined by formal research. We think that CESR should commission such research in order to perfect the design of the scheme.

If CESR's concern at page 13, para 41 is substantiated, we wonder whether a volatility-based measure is sensible or whether the basis of the risk estimation and the number of categories should be reduced to something simpler and more qualitative, such as "low", "moderate", "substantial" and "severe" risk. Please also see our answer to Question 6.

Question 5

We see little merit in the "add-on" idea. We prefer the idea of calculating the risk indicator using the methodology and then marking it, so that the investor can understand that it has been qualified in some way.

We understand and sympathise with CESR's approach to the application of the methodology in situations where there is insufficient history or where judgement is otherwise required (c.f. particularly page 9, para 14; page 14, paras 42 and 43; and page 15, para 45) to make the methodology fit a fund's circumstance. However, we are concerned about the possibility that different practices will emerge across Europe amongst UCITS operators and regulators. We believe that the uncertainty arising from these undefined aspects of CESR's proposal may be mitigated in the following ways:

— By confirming that the KID is a document issued under the sole authority of the home member state, which is valid for use in any host member state in which a UCITS has been notified for public offering, free from the intervention of that host member state's regulator;

— By providing an official implementation guide to regulators and industry participants, which addresses some of these issues in more detail than CESR's consultation paper does and which **prescribes in as much detail as possible how the KID must be implemented**;

— By regular consultation between regulators during the initial implementation of the KID, to develop consistent regulatory practice and to update the official implementation guide with the benefit of that experience.

Question 6

In our response to CESR/07-6691 we suggested an alternative scheme, in which a fund was assigned to a risk category based upon its investment universe. We suggested that CESR might find the work of EFAMA's European Fund Classification Forum useful when considering the design of such a scheme. We have no alternative suggestions.

Question 7

We believe that the methodology will work reasonably well for most types of UCITS for which the distribution of future returns are statistically normal. We have reservations about the applicability of the concept to certain types of fund, including alternative investments and structured funds:

— Many alternative investment funds exhibit "fat tail" characteristics, so that a simple volatility figure can sometimes underestimate the volatility of the product. We think that value-at-risk indicators better describe the risk of these products.

— When a structured fund is created, the investment manager deliberately and significantly disrupts the return distribution (e.g., by removing a tail and by modifying the distribution elsewhere). We are concerned that the proposed methodology might result in a capital protected equity fund being allocated to the same risk category as an 80:20 balanced fund when in fact its volatility profile will be totally different (because the return distribution of an equity option is very different to that of an equity).

Therefore, whilst we support CESR's objective to create a methodology that is applicable to as many funds as possible (page 8, para 7), we think that there are good reasons to consider creating a special category for certain funds, in which risk can be assessed through more than one indicator or by a predominately narrative approach.

Questions 8 and 9

We do not think that a fund should be assigned to the highest possible risk category if it lacks sufficient history to calculate a volatility indicator in accordance with CESR's model, nor do we think that risk should somehow be "added on". We think that it would be better to calculate volatility based upon the available history (or upon the promoter's target for volatility, if the fund has less than 6 months' history) and to modify the result by placing an exclamation mark next to it, with an explanatory footnote (page 9, paras 11 and 12).

If the proposed methodology cannot be used to calculate a strategy fund's risk because the fund has no target of maximum VaR or volatility limit then we would prefer that the fund be shown as "unclassified" with an explanatory footnote.

Question 10

We think that a 7-category scale is feasible but we think that it would work better with fewer categories for the following reasons:

— The classification of a fund with respect to the scale is likely to be more stable over time;

— As the number of categories increases, we doubt that investors will be able to discriminate effectively between adjacent categories;

— It will be easier to describe the meaning of each category if there are fewer of them;

— A scale with fewer categories is being used successfully in Germany (with 5 categories, but please also see our answer to Question 14 below).

In our answer to Question 7, we said that special categories with explanations should be considered for funds that the standard methodology could not easily support.

Question 11

Please see our answers to Questions 7 to 10 above.

Question 12

We think that the methodology will be simple to implement and to supervise for a broad range of funds, mainly the market funds. We think that it is feasible to implement for strategy funds and structured funds although we have some concerns about the validity of the methodology and we believe that the scheme will be more difficult for regulators to supervise.

Question 13

We have no additional suggestions to make.

Question 14

We think that it would be good to define a scale with an even number of categories to discourage investors from choosing the middle category, as if that was the natural balance between risk and reward. Please also see our answer to Question 10.

Question 15 and 16

The question of how to define the range of the volatility buckets and whether the scale should be linear or not is something that should be answered through research, which we have not done. That research should also consider the question of what constitutes a "fair distribution of funds along the scale" and whether that is an appropriate goal.

Whether or not a linear scale is used, we think that it is important to explain the risk classification scheme to investors. For example, can they assume that a fund in category 6 is three times more risky than a fund in category 2? We therefore think that it will be important for CESR to prepare an investor's guide to the KID and the risk indicator in particular. We think that it would be helpful if the guide contained a narrative description of the expected risk and reward profile of each category, which should be more than an explanation of the volatility range of each category. We do not think that there is room to include these explanations in the two-side KID.

Question 17

It is hard to see how anything other than a numeric scale could practically be used, even if the numeric indicator is an abstract expression of risk. We doubt that there will be sufficient room on the KID for a narrative description of each category, and we do not agree with the use of ideograms as an alternative to a numeric scale or as an extension of it. We think that it is sensible to modify a risk category using an exclamation mark ("!") provided that an explanatory footnote is also provided.

Question 18

We do not agree that some funds should be placed in the highest risk category simply because the risk indicator methodology cannot accommodate them. It does not necessarily follow that they are high risk, and it certainly makes no sense for guaranteed funds. Please see our answers to Questions 8 and 9.

Question 19

We agree with the idea of modifying a category provided that an explanatory footnote is included in the KID. We think that an exclamation mark would be a satisfactory means to show that the modification exists.

Questions 20 and 21

When we take into account everything else that must be included, we do not think that there is room to print the list of disclaimers in a two-side KID (page 25, paras 89 and 90), including a narrative explanation of all risk categories. We have therefore assumed that CESR means to publish some of these disclaimers in a single European consumer guide to the KID, and that the UCITS promoter should only publish fund-specific notes on the KID such as:

— How and why a risk category has been modified (where the "!" symbol has been used);

— Details of the nature, timing and extent of any capital guarantee or protection;

— A warning about whether the fund is likely to be unsuitable for investors wishing to redeem their holding within a certain period (although we are unclear about the range of circumstances in which CESR expects to see this facility used and we would welcome more specific guidance on it).

Question 22

We have no additional warnings to suggest for this proposal.

CHAPTER 2: PAST PERFORMANCE

Question 23

We have the following comments on the general framework for the presentation of past performance:

— We agree that it is important to show the annual performance of a UCITS, so that one KID can be compared to another. However, we think that the proposal to use only a bar chart is simplistic. We believe that a combination chart of annual and NAV performance would allow the KID to display investment returns on a comparable annualised basis and provide consumers with a visual representation of volatility, which they will intuitively understand. We have presented two ideas for such a combination chart at Annex A to this paper. **We think that the visual presentation of performance through a line chart is so important that we recommend CESR to consider these design ideas further and to include them in its consumer testing**.

— We agree that if a fund has a performance history equal to or greater than 6 complete years then the KID should present a performance chart on a scale of 10 years. If the performance history is between 5 and 1 complete years then the KID should present a performance chart on a scale of 5 years. If the KID has less than one complete year's performance history then the KID should include a statement to say that it is not permitted to present the performance history because the fund has been launched for less than one year.

Question 24

Please see our answer to Question 5: we would like CESR to ensure that regulatory practice in respect of the KID is harmonized across Europe and to prescribe in as much detail as possible how the KID is to be implemented.

Question 25

Please see the second part of our answer to Question 23 in respect of the time scale that should be used to present past performance in the KID (page 29, para 11).

We think that CESR's comment on investor taxation is incongruous in the context of a discussion about past performance, although we agree that a standard notice on that matter could usefully be included in the KID.

We think that references to "no-load" is a matter for the presentation of charges rather than past performance, and we do not think that CESR should include a statement about entry/exit charges in the past performance section of the KID.

Question 26

We think that UCITS operators will be capable of implementing CESR's methodology (and the alternatives that we have presented at Annex A) with ease.

Question 27

We agree with CESR's principle that any charts should be clearly presented with a common approach to scales, etc. We also think that performance figures should be displayed with one decimal precision (i.e., *n.n*%). Please also see the first part of our answer to Question 23: annual performance bar charts alone do not present enough information to allow consumers effectively to compare one UCITS to another.

Question 28

Please see the first part of our answer to Question 23, in which we recommend CESR to consider the presentation of performance through a line chart. We also think that our comments about using a representative share class in a KID (please see the final point of our answer to Question 61) apply equally to the display of past performance.

Question 29

Yes, notwithstanding that CESR's question covers a very broad subject.

Question 30

We agree with the principle of CESR's proposed wording on which charges are reflected in past performance and which are not, but we think that CESR's draft text is insufficient. For example:

- The past performance chart will reflect any performance fees that have been taken from the fund, but these are not considered part of the ongoing charges (page 30, para 13; page 49, para 24; page 58, para 1.4 etc).
- Entry and exit charges might not be the only charges that are taken directly from the consumer and will therefore not be reflected in the past performance chart. Switch charges and dealing transaction charges would be two examples.
- In respect of the selection of the NAV for performance calculation purposes, we believe that the KID must be prepared on the basis of the NAV that was calculated on the UCITS' last dealing day of each year. We do not think that CESR should oblige UCITS to calculate a special NAV for the purposes of the KID nor do we think that the definition of a calendar year should be adjusted.
- We agree with CESR's treatment of income.

Question 31

We have no additional suggestions to make.

Question 32

With respect to the presentation of past performance that occurred prior to a material change, we do not think that both "Good practice 1" and "Good practice 2" should be allowed.

Question 33

We prefer "Good practice 1".

Question 34 and 35

We would welcome greater guidance from CESR of what is a material change to a fund to ensure that this is consistently interpreted.

Question 36

We agree that a fund should not be compelled to display a benchmark unless one is identified in its objectives and investment strategy. We think that a UCITS operator should be permitted to display a benchmark if it elects to do so, provided that the benchmark is appropriate (e.g., that it is the basis upon which the fund is being measured in marketing documents such as fact sheets and similar materials). We do not think that the question of how to regulate the choice of benchmarks should be within the scope of a consultation on the KID. Unless CESR or the Commission has clear evidence that there is a market failure in this part of the industry, we think that they should regulate it with a light touch (i.e., make no change).

Question 37

There are no other issues that we think should be considered in respect of the inclusion of a benchmark alongside fund performance.

Question 38

We strongly agree with CESR's opinion that proxy data should not be permitted in the presentation of past performance.

Question 39

We believe that a fund's past performance should only be represented by the fund's real performance data. If the UCITS operator is required or otherwise elects to display benchmark data, it should be permitted to do so only in the periods for which the fund's real performance data are presented.

We note that CESR has treated proxy data differently in respect of the preparation of a synthetic risk and reward indicator. We have already clearly expressed our concerns about the use of a synthetic indicator and about the methodology with which it may be prepared. The use of proxy data to estimate the indicator does not significantly change our opinion or add to our concern (which is already serious). We think that the use of proxy data to prepare the risk indicator creates no good reason to present the same data in the past performance chart, and we strongly oppose the idea.

Question 40

We can think of no circumstances under which such a practice should be allowed.

Question 41

(Part i) We believe that track record extensions should be permitted when a UCITS changes its domicile and legal form (including where it forms a new sub-fund within an umbrella fund) on the same terms that it would be permitted if the UCITS changed its legal form in the same member state.

(Part ii) We agree that track record extension is a specialised subject, which is presently managed satisfactorily by the industry. Unless CESR or the Commission has clear evidence that there is a market failure in this part of the industry, we think that they should regulate it with a light touch (i.e., make no change).

(Part iii) We think that CESR's approach for new classes of share for an existing fund or sub-fund is appropriate.

(Part iv) We agree that a feeder fund should be permitted to adopt the performance history of the master provided that it offers unequivocally the same investment proposition to its investors. We thought that the difference between the two options in CESR's text (page 36, para 41.b) was not sufficiently clear to enable us to say which we preferred.

Question 42

Please see our answer to Part i of Question 41. We very much prefer a harmonized approach to different national regulations.

Question 43

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

Question 44

Please see our answer to Part i of Question 41.

Questions 45 and 46

We agree with CESR (page 39, para 50) that back-testing can provide investors with an illustration of how a structured fund would have performed under historical market conditions. We cannot share CESR's opinion that back-tested representations of performance are more likely to be misunderstood than other representations because we have not seen the prototypes that CESR used in consumer testing we do not know how the tests were conducted. We think it is very likely that a good level of understanding can be achieved through diligent preparation of the KID.

We are more sympathetic to CESR's concern that a UCITS promoter might favour a representation of performance that flatters a structured fund's performance (page 39, para 51) but that is no good reason to exclude back-testing as a means of representation: the same could be said of the other two methods (prospective scenarios and probability tables) and CESR has not excluded them.

General comments on Sections 2.2.2 and 2.2.3

We believe that the KID should be a document that presents facts about a UCITS, upon which retail investors can rely. A UCITS operator should be obliged to describe clearly what the objective of an investment fund is and what strategy it will use. An investor may form an opinion on the investment objective and the strategy and the investment manager (whether by looking at past performance or by other means) and decide to invest or not. We do not think that regulators should compel UCITS operators to predict the probability and severity of profits and losses. We do not think that this form of disclosure is reasonable because it relies upon scenarios that contain subjective assumptions about the future. We think it would put UCITS operators into an invidious position: who could expect them to make anything other than optimistic assumptions for fear that unrealised pessimism would put them at a disadvantage in the market? We also think that most investors would be unaware of the nature of the assumptions and their effect on the prediction. We would much prefer to illustrate performance through back testing.

We assume that a structured fund that closes to subscriptions after the initial offer period will produce a KID for the initial offer period only, after which it will be withdrawn.

Question 47

We think that the Directive's requirement to which CESR refers (Art. 78.3.c, "where relevant, performance scenarios") is so vague that a willing audience could believe that almost any proposal would satisfy it. We are not willing to do so, and if performance scenarios are to be required by law we think that they should be designed much more carefully.

Questions 48 and 49

We like neither option.

The charts (page 62) are too small to read even for people with good eyesight and we doubt that there will be room in the already-overcrowded KID to make them larger. The table (page 63) is at least easier to read but not particularly useful as an example for deciding the design of the KID. The print is already small and it takes up quite a lot of space. For the charts and the table, the scenarios seem to be specific to a fund that offers a terminal value 5 years in the future. How would they show the value received by an investor who redeems early? How would they represent more complex funds that offer investment returns as a combination of income and capital, and over substantially longer periods? How would they show the success or failure of funds that assure the preservation of capital at a certain level (say 95%) each quarter? Is the performance guaranteed or not? How is the UCITS operator to decide the future performance of the index and the "risk free asset return"? How many retail investors understand what "risk free asset return" means? (At least after 2008 they understand that it does not necessarily mean a bank deposit account.)

Question 50

The design of structured funds varies a lot in the detail and the high level of innovation in this sector of the industry will quickly reveal the limits of prescription and create problems bringing products to market. We therefore think that a more flexible approach should be taken initially. **In general but particularly in this sector, we also think that regulation should be developed with care to ensure that UCITS are able to compete with other structured investment products on a level playing field**. However, we think that some consideration should be given to the development of guidelines for the presentation of performance for the main categories of structured fund. That might help to address some of the issues that we noted in our answer to Questions 48 and 49, and it would promote comparability between similar products. We think that CESR should consult with the industry and take particular care to involve people who work as structured product specialists within asset management firms. We think that a co-operative approach between CESR and EFAMA would be a good idea. We do not think that this work should be done hastily.

Question 51

Provided that it is properly explained, it might make sense to present some structured funds' performance with respect to a "bond floor" amongst other things but we don't think that retail investors will understand the term "risk free asset return" as CESR used it.

Question 52

We don't think that Option B (prospective scenarios) as CESR presented it will be easy for UCITS operators to implement confidently.

Question 53

Please see our comments above.

Question 54

We have no great concern about the basics of probability theory but we think that Option C (performance scenarios based on probability tables) requires UCITS operators to make too many assumptions for it to provide a reasonable indication of future performance.

Question 55

We do not think that Option C will cover all the types of fund to which CESR referred.

Question 56

We do not think that Option C will be easy to implement.

Question 57

We can suggest no other issues to take into account for Option C.

CHAPTER 3: CHARGES

Question 58

We acknowledge that it is not easy to define a standard representation of charges because the circumstances of one fund can differ so much from another's. We think that CESR's Option B (page 46) is feasible, subject to our comments below:

— When we say that we agree with a summary, we mean a single summary figure for the year in respect of which the KID has been issued and **not** a summary of the effect of the charges over some notional investment period of several years.

— Charges are often specified in more than two decimal places, and sometimes in as many as five. We would expect the charge to be shown exactly as it is printed in the full prospectus.

— We have presented some example tables below to show how Option B (page 46) might be implemented. **They are intended to aid our discussion, and should not be taken as our recommendations for the final design of the charges section of the KID. Please also see our comments on this page about the degree of flexibility required in practice to properly represent the variety of charging models that exist within the fund industry.**

— We think that the section "other charges taken from the fund" in our example below is sufficiently general that it could accommodate the disclosure of all ongoing charges (pages 58 and 59; part 1 of Annex B).

— We think that a brief description of each charge (perhaps even shorter than the descriptions in our examples) is important to help investors to understand what the charges are.

— We think that if a charge is not applied, for example where the exit charge is "NIL", then the table should say so but that the description should be omitted. This should apply equally to the initial charge and perhaps to the performance fee.

— Some flexibility might be needed to accommodate charges that are a feature of some funds but not of others, particularly if they are transaction-based charges. One example would be charges applied upon the conversion of holdings from one class of share to another. In our example table below, these might be incorporated into the section describing one-off charges. We acknowledge the practical difficulty of representing all possibilities in a model table, and we recommend CESR to develop a clear set of guidelines for the preparation of charge tables, to ensure that an appropriate degree of flexibility is allowed at fund-level whilst maintaining the comparability of one KID with another across Europe. We think that the guidelines should include standardised ways to describe the common types of charge in all European languages.

— Where a charge can vary between different parts of the sales network, we think that the maximum rate should be shown; it should be qualified as such; and the investor should be referred to the salesman or financial advisor who can say what the exact charge will be.

— Where a charge can vary with time, as exit charges can, we think that the period in which the charge may be levied should be declared and the narrative should say that the charge is contingent and that the liability to pay it reduces to zero over time.

One-off charges taken directly from you:		
Initial charge	up to [n.nnnnn]%	This charge may vary between points of sale. It is deducted before your money is invested in the fund. Please ask your salesman or financial advisor to say how much you will be charged.
Conversion charge	up to [n.nnnnn]%	This charge will only apply if you convert your investment from one class of share to another.
Performance-related charges taken from the fund:		
Performance fee	up to [n]% of excess performance	This charge will apply only if the investment manager exceeds the fund's performance target by more than a specific amount. Please refer to the full prospectus or ask your salesman or financial advisor for more information.
Ongoing charges taken from the fund:		
Investment management charge	[n.nn]% per annum	This fixed charge pays for the investment management service. It is taken directly from the fund's assets, typically daily at a rate equivalent to the annual rates shown.
Administration and other expenses	[n.nn]% per annum	This charge pays for the fund's operating expenses as they arise and is taken directly from the fund's assets. It is not a fixed charge; the amount shown represents the expenses that arose in the last calendar year, and can vary from one year to another.
Total ongoing charges taken from the fund in the last year:		**[n.nn]%**

Alternatively, the table could be arranged to show the charges for several classes of share within the same KID:

Charge type and notes	A shares	B shares	B1 shares	C shares	I shares
One-off charges taken directly from you:					
Initial charge [1]	up to [n.nnnnn]%	up to [n.nnnnn]%	None	up to [n.nnnnn]%	None
Exit charge [2]	None	None	[n.nnnnn]% falling to zero over [n] years	None	None
Performance-related charges taken from the fund:					
Performance fee [3]	up to [n]% of excess performance [include brief reference to the calculation basis]				By separate arrangement
Ongoing charges taken from the fund:					
Investment management charge [4]	[n.nn]% per annum	[n.nn]% per annum	[n.nn]% per annum	[n.nn]% per annum	By separate arrangement
Administration and other expenses [5]	[n.nn]% per annum	[n.nn]% per annum	[n.nn]% per annum	[n.nn]% per annum	[n.nn]% per annum
Total ongoing charges	**[n.nn%]**	**[n.nn%]**	**[n.nn%]**	**[n.nn%]**	**[n.nn%]**

1. The initial charge may vary between points of sale. It is deducted before your money is invested in the fund. Please ask your salesman or financial advisor to say how much you will be charged.
2. The exit charge will only apply if you withdraw your money within [n] years of investing it. Please refer to the full prospectus or ask your salesman or financial advisor for more information.
3. The performance fee will apply only if the investment manager exceeds the fund's performance target by more than a specific amount. Please refer to the full prospectus or ask your salesman or financial advisor for more information.
4. The investment management charge is fixed and pays for the investment management service. It is taken directly from the fund's assets, typically daily at a rate equivalent to the annual rates shown.
5. The administration and other expense charge pays for the fund's operating expenses as they arise and is taken directly from the fund's assets. It is not a fixed charge; the amount shown represents the expenses that arose in the last calendar year, and can vary from one year to another.

Another alternative would be to use two tables, to show more clearly the difference between charges that are paid indirectly and directly (this is a prototype that was developed by one of our members; it is not a final design recommendation):

Fund Costs

Annual operating expenses The management and administration of the Fund results in ongoing costs, which are deducted from Fund assets and thus are paid indirectly by Shareholders. Operating expenses for subsequent years may be lower or higher.

Annual Operating Expenses (% of Fund's net assets)				
	Class A	**Class B**	**Class D**	**Class I**
Management fee	0.70%	—	0.70%	2.28%
Distribution services fee	None	—	0.75%	None
Total expense ratio (TER) for fiscal 2003	0.00%	—	0.00%	0.00%

To help control costs, the Fund's administrative, custody and registrar charges are each limited to 0.05% of average net assets per year.

Shareholder transaction fees These fees are paid directly by Shareholders when they buy, sell or convert Fund Shares.

Shareholder Transaction Fees (% of Share price)				
Maximum Charge	**Class A**	**Class B**	**Class D**	**Class I**
On purchases	1.25%	—	1.25%	None
On redemptions/switches	6.00%	—	6.00%	None

The latter two examples require more careful design as the number of share classes increases, and they have certain disadvantages. (Investors might not understand why so many share classes exist, why they have different charges and what their eligibility criteria are. Some funds might have so many share classes that it is impracticable to display them all on the KID, and so the UCITS operator will have to decide which to exclude and how to refer to them. Investors are unlikely to understand whether one fund's C shares should be compared to another fund's D shares.) On the other hand, their advantage is that they offer the UCITS operator a way accurately to present several share classes in a single KID, avoiding the problems of using of a "representative" or "typical" share class. Please also see the final point of our answer to Question 61.

The information about I shares in the latter two examples above is obviously irrelevant to retail investors. This confirms our opinion that UCITS operators should be obliged to produce and deliver KIDs (whether directly or through intermediary distributors) to retail investors only, and only in respect of share classes that are available to retail investors.

Question 59

We said in our response to CESR's previous consultation on KII (CESR/07-6691, question 40) that we did not think that options for disclosure in cash terms should be considered further. That remains our firm view.

Question 60

We agree that ongoing charges could be represented in a single ex-post figure, and we have included it in our example table, above.

Question 61

We agree with the methodology presented at Annex B to CESR's consultation paper, subject to our answers to the other questions in this chapter and to the following comments.

— We agree that ongoing charges should be calculated on an ex-post basis. We believe strongly that the calculation should be prepared sympathetically to the other components of the KID, which is on the basis of calendar year data, not on audited data (page 49, para 24 and page 60, paras 2.2 and 2.4). Whether those data are audited or not should be an incidental matter and should not in our opinion affect the accuracy of the calculation.

— We are unclear what the reference to the cost of "unit cancellation" means (page 58, para 1.3). If it means contingent deferred sales charge, then we think that it should be treated as a one-off charge in our example table above. If it means something else such as a dilution levy then we would be grateful for clarification from CESR.

— We recommend that CESR clarify Part 3 of the methodology to say that a UCITS operator should not be compelled to estimate ongoing charges for new funds if the operator believes that the estimate would be unreliable. In those circumstances (i.e., in the first year of operation), we think that the UCITS operator should be permitted to say something like, "no precise information is available at this time." If the UCITS operator believes that it can make a reliable estimate of ongoing charges or if it is willing to cap ongoing charges then we agree that it should say so in the KID.

— We note CESR's comment at page 60, para 2.3 about separate calculations for each share class. We did not find a section in CESR/09-047 that described the use of a representative share class. It remains our view that our members should be free to decide whether to prepare a single KID for each one or several share classes of a sub-fund and that if one or more share classes are omitted from a KID, a footnote should say so and say that further information is available on a separate KID or from the UCITS operator. We also broadly agree with CESR's view that it should be permissible to use one share class as a representative for the others that are absent from the KID but we do not think that it should be compulsory. We are unclear what the final design of this aspect of the KID will be (we think that CESR/07-6691, paras 4.49 to 4.52 is unfinished work) and we would be grateful for clarification from CESR. The questions about how to display charges using a representative share class apply equally to the display of past performance.

Question 62

We agree that the ongoing charges figure should exclude performance fees.

We agree that performance fees should be explained in the KID through a brief narrative.

We agree that the actual amount of performance fee that had previously been charged should not be shown.

Question 63

We agree that the KID should contain a reference to where more detailed information on performance fees can be found.

Question 64

We do not support the proposal to include a narrative description to the effect that fund returns might be impacted by portfolio transaction costs because, even if it is very carefully drafted, we think that it will be hard for consumers to know what to do with such information, and because CESR's description of the circumstances in which it might be applied (page 51, para 34) is vague and unlikely to be uniformly implemented throughout the industry.

Question 65

We agree that the KID should include an explanation that ongoing charges can vary from one year to another. However, the management fee, which is typically the largest part of the ongoing charge, tends to be fixed from year to year. We therefore favour the descriptions that we have included in our example table above. Please see our answer to Question 69 in the event of a material change to the ongoing charges.

Question 66

We believe that circumstances might arise in which large changes in the assets under management within a fund can have a large effect on the relative value of ongoing fund expenses, particularly when a fund reduces in size dramatically and fixed costs remain unchanged. We would expect the UCITS operator to issue an updated KID if the effect was expected to be material. We would like CESR to prescribe what that materiality threshold should be.

Questions 67 and 68

We agree with CESR's assessment of the issues that might arise when estimating ex-ante the ongoing charges for a new fund and we agree with CESR's proposal for how they should be dealt with. However, with respect to the sample text at page 55, para 54, it should be enough for the UCITS operator to state that the figures have been estimated.

Questions 69, 70 and 71

We agree with CESR's proposal that ex-post figures should be replaced with an ex-ante estimate in the event of a material change to a UCITS' ongoing charges. As a general principle, we believe that the KID should be updated in the event of any change that is deemed by regulation to be an event that should be notified to shareholders, and that such regulations should be harmonized across Europe. For non-notifiable changes, we would like CESR to prescribe the materiality threshold in excess of which the KID should be updated and we suggest a threshold of 10% of the ongoing charges that are described in the current edition of the KID.

We agree with CESR's proposed wording to explain why an ex-ante estimate of ongoing charges has been used in the KID.

Annex A
Examples of past performance charts showing a combination of annual returns and NAV performance