

**The answers of the
"Commission Consultative Epargnants" to
the CESR's questionnaire on simplified prospectus for retail investors dated April 2007.**

Note : the "Commission consultative Epargnants" is an advisory committee to the Board of the Autorité des Marchés Financiers (AMF). Members are representatives from various associations of investors. This advisory committee provides advice to the Board of the AMF on matters of investor protection and investor information. The opinions expressed are those of the advisory committee and do not necessarily reflect those of the AMF.

From a general standpoint, the Commission fully supports the European Commission's proposal to develop a new and user-friendly document in lieu of the current simplified prospectus.

Question 1: what information should be included?

It is the opinion of the Commission that the information in the simplified prospectus ("SP") should be kept short, straightforward, simple and in a single format to allow comparison between funds. To that effect, the SP should only consist of a two-page document providing for instance:

- on the front page (the first part) : the key information pertaining to the considered collective investment scheme ("CIS") that is necessary for any investor to make an informed investment decision;
- on the back page (the second part) : other key information, preferably relevant to help the investor effect his investment (such as contact details, subscription details).

If the format does not allow to have all key information necessary to make a decision on the front page, part of it may be included on the back page together with information on how to invest.

Needless to say, the font size used should be readable in both cases, especially as regards the first page. In any case, the use of a small font size should be strictly limited to information which is not essential for the investor to understand the precise purpose of the CIS (for instance, references back to other documents or information such as the full prospectus or the CIS management company's website).

Question 2: what substantive UCITS features do consumers need to know about?

- The Commission believes that the Key Investor Information ("KII") should target the "average consumer" (as opposed to the less financially capable investors) on the ground that:
 - the financial knowledge of the "average consumer" is already generally limited;
 - targeting less financially capable investors would represent an almost impossible challenge. Furthermore, it would go far beyond the objective defined for the SP which is the provision of relevant information to the general investor for him to make an informed investment decision (as opposed to an educational document to help investors improve their knowledge as regards investments in financial instruments).

- With regard to the information to be included in the KII, the Commission would suggest the following:

On the front page :

- (i) **The name of the CIS management company**, with a reference (if applicable) to its parent company;
- (ii) **A brief presentation of the CIS investment objective and policy**: this information should include a chart comparing the pros and cons of the CIS.

(iii) **The benchmark(s)** provided that (a) it is (they are) used by the investment manager for the purposes of managing the CIS and that (b) it is (they are) mentioned in the CIS full prospectus. Subject to these two conditions, the performances of the benchmark(s) must be presented in comparison with the ones of the CIS.

Most asset managers do have a benchmark linked to their investment objectives. Even many so-called "absolute return" managers do have one, if only as a trigger to their performance fee (e.g., EONIA + x %). If the manager of the CIS has absolutely no benchmark because of a totally discretionary investment policy, then he should clearly explain why in section (v) hereabove.

(iv) The information as to **whether there is an unconditional 100% (before fees are deducted) guarantee attached to the investment into the CIS** : this mention should be clearly stated (for instance, the following sentence could be used: "the investment into the CIS is not guaranteed so that you may lose all or part of your investment").

(v) **The minimum investment period in years** that is recommended for the investor to receive the potential benefits from his investment. The Commission feels this information is most necessary to help the investor choose the best investment as regards his future projects (for instance, the purchase of a car in one year's time or the payment of the children's tuition fees in ten years' time).

(vi) **The risks / rewards profile**: In the light of the CIS investment objective and strategy, such section should present on the one hand, the risks that are likely to occur and on the other hand, the benefits that are likely to be received.

The Commission suggests focusing on the risk and reward that are likely to occur (in particular, as opposed to a reference to risks that are unlikely). For this information to be understandable for the investor, it could be presented through a risk/reward scale ranging from 1 (for instance for the less important risks/reward) to 5 (for the most important risks/reward).

The investment manager should also explain in this section the consequences that would result from the occurrence of the risks in particular on the expected rewards. He should further indicate the likelihood of the occurrence of the said risks.

Finally, where there is no possible benchmark because the fund's pay-off will be the result of a pre-defined formula, scenarios could be required.

(vii) **The annual amount or percentage of fees that the investors will incur as a result of their investments into the CIS** (including the annual management and distribution fees, subscription and redemption fees). For the purposes of a fully transparent information, the Commission suggests specifying clearly that these fees do not include brokerage fees ("frais de transaction").

(viii) **The investor profile**, at least to allow a distinction between products targeting retail investors or professionals (if some products are designed for both targets, this might be specified). This would especially be relevant in case where the delivery of KII would not be restricted to retail investors.

On the back page :

(i) **The date on which the CIS was legally created** (unless this information is already found in the performance chart showing the CIS track record);

(ii) **The EU Member State in which the CIS is domiciled**;

(iii) **The CIS expected period of existence** if applicable (this would be particularly relevant for French "fonds à formule") and if this is not obvious in other sections (such as the description of the investment objective and strategy);

(iv) **The CIS historical performance** : the Commission believes that for this information to be useful to the investor, it should relate to a minimum period of at least 10 years, the CIS actual period of existence or the minimum investment period.

(xi) **The subscription and redemption conditions**. Such information should in particular indicate the subscription and redemptions fees, the cut-off time and the minimum investment threshold if any.

(v) The information as to **whether the CIS distributes dividends or not**.

(vi) **The periodicity of calculation of the CIS net asset value** (daily, weekly, etc.).

(vii) **The conditions for receiving additional information** (the CIS full prospectus, annual and semi-annual reports).

The information to be provided in the SP as regards risks and rewards should be short and clear in order to be understood by the investors.

Therefore, the SP should only provide for the risks that are likely to occur (as opposed to a long list of risks that are unlikely). Risks should be clearly associated with reward opportunities.

The risks should be presented in a manner that is clear and easy for the investors to understand. Such presentation could therefore be made by means of a risk scale ranging from 1 (for instance for the less important risks) to 5 (for the most important risks), or a table showing the pros and cons of a given investment.

For a complete information, the Commission believes that the following items should also be specified:

- the minimum investment holding period: such an information would undoubtedly help the investor choose the best investment in consideration of his future plans.
- the CIS and benchmarks' past performances.

Finally, the Commission considers that the information on risks and rewards should include a brief presentation on the part of the investment manager with regard to:

- the consequences that would result from the occurrence of the risks in particular on the expected rewards;
- the likelihood of the occurrence of the said risks.

Question 4: what information should be provided about strategy and objectives?

The description of the CIS investment strategy and objectives should, in the opinion of the Commission, be short, clear, concise and self-explanatory. By reading this description, the average investor should understand the precise objective of the CIS (for instance, to outperform the J.P. Morgan EMU), the types of financial instruments in which the CIS intends to invest (for instance, US small caps) and the strategy used (for instance, mainly plain-vanilla investments and on an ancillary basis, use of leverage).

The description of the CIS investment strategy and objectives should also refer to the benchmark(s) used (as mentioned in question 2 hereabove).

Finally, the Commission believes such a presentation of the CIS investment objective and policy should include a chart comparing the pros and cons of the CIS.

Question 5: how should past performance information be presented, and for what time period?

Past performance information should be presented in a standardized way for instance by using a simple chart (on the basis of the US model which has proved effective for decades), or bar charts.

For the presentation of past performance to be relevant to the investors, it should cover a period of at least ten years or at least equivalent to the CIS period of existence or minimum investment period. This is justified by the fact that one cannot judge or assess a CIS by only looking at its past performance for a short period (for instance for the last two years). Such information would be useless and could be misinterpreted in particular by the "layman investor". In this regard, the 5-year standard provided by the MIFID Directive would not, in the Commission's opinion, be suitable in all cases and in particular, as regards equity funds. In such a case, the information could be misleading as equity funds would show for the last five years a very positive performance due to the favourable market conditions, whereas their performance before the 5-year period would actually show great volatility and hence, make such funds less attractive.

In any case, the presentation of past performance should always contain a clear sentence in bold drawing the attention of the SP's readers that past performance is no guarantee of future performance.

The past performance of the CIS should be shown together with the one of the benchmark(s) chosen by the asset manager, as past performance of the CIS alone is meaningless. Most asset managers do have a benchmark linked to their investment objectives. Even many so-called "absolute return" managers do have one, if only as a trigger to their performance fee (e.g., EONIA + x %). If the manager of the CIS has absolutely no benchmark, then he should clearly explain why in the Strategy and Objectives section (as mentioned in question 2 hereabove). In addition, the benchmark must not be misleading as far as the index calculation is concerned, and clearly specify if dividends are reinvested or not.

Question 6: how should information about charges and fees be presented?

The presentation of the charges and fees that the investors have to bear as a result of their investments into the CIS is a delicate matter considering that:

- a too light presentation focusing only on management and subscription and redemptions fees could be misleading (investors could consider that they would not have to pay additional charges);
- a too precise presentation describing in an exhaustive manner all fees and charges attached to the investment into the CIS would most likely not be understood by the average investor.

The Commission suggests as a happy medium to include in the presentation of fees and charges the following items:

- the annual management and distribution fees (covering notably the investment manager's, the valuation agent's, the depositary's, the auditors', the distributor's remunerations);
- the subscription and redemption fees;
- if applicable, performance fees to be paid to the CIS investment manager;
- a clear indication that brokerage fees ("frais de transaction") are not included: in this respect, the amount of brokerage fees incurred by the CIS for the last fiscal year could be provided in the full prospectus for information purposes only for the investors to have a general idea of the bulk of these fees.

Given the difficulty for the average investor to read and fully understand percentages, the Commission would suggest providing the aforementioned fees both in percentages and in simple cash terms based on an investment example. In addition, the simple cash example, for instance on the minimal recommended holding period, will allow to combine the impact of asset-based fees and of the subscription/redemption based ones.

As regards the disclosure of the commission split, the "total expense ratio" or "TER" should clearly be defined as including both "management" and "distributing" costs. In line with the MIFID provisions, the Commission would not require a quantified split, but a statement that this split must be communicated by the seller to the investor so as to identify conflicts of interests' risks.

Finally, as regards the use of the term "total expense ratio" or "TER", it could to some extent be construed by investors as covering all expenses and fees resulting from the investment into the CIS (whereas brokerage fees are excluded). The Commission would suggest either to define it in the SP (for instance by specifying that this TER exclusively includes annual management and distribution fees and excludes all subscription and brokerage fees) or to use a more relevant term. In any case, the denomination of the different fees should be clarified so as to better reflect their precise purposes (e.g., distribution) and beneficiaries (e.g., distributors).

Question 7: how could the packaging of funds into different end-products be handled?

As regards the responsibility of the CIS producer, it is the opinion of the Commission that the KII provided to investors should always be identical whatever the way pursuant to which the investment was made (either directly or indirectly through a life insurance contract or any other "wrapper"). As a matter of fact, there is no reason why investors should receive a different information depending on their investment process. All investors actually need to receive the CIS substantial characteristics in order to make an informed investment decision (e.g., make an additional investment into the CIS, redeem all or part of their units or shares, etc.).

If it is true that the distribution of a CIS within a "wrapper" usually entails further costs at the expense of the investor, such additional costs are to be disclosed to the end-investors pursuant to the MIFID Directive which govern disclosures to investors in particular in the context of financial instruments' distribution.

Having said that, the Commission would like to stress that the MIFID directive only applies to financial instruments (such as CIS). Hence, it does not cover other types of products (such as life insurance contracts or other wrapped financial instruments) which nevertheless are "direct competitors" as regards

financial instruments and which may in certain circumstances be more risky to the average investor. In this regard, the Commission would like to propose that a general discussion be opened at the European level on the disclosure to be made to the investors with regard to the additional costs they have to bear due to the packaging of a CIS. The Commission believes that the setting up of a disclosure regime for wrapped financial instruments similar to the one developed by the MIFID Directive could be proposed at the discussion.

Question 8: how far should the information be harmonized between firms and between EU Members?

The Commission strongly believes that the KII should be built in an identical manner whatever the UCITS and its country of domicile (i.e., an identical form and content). The use of harmonized KII (i.e., single format) is the only way investors in the different Member States may compare UCITS between themselves and therefore be in position to make an informed decision.

Moreover, the use of an harmonized document will enable the average investor to get used to its form and content, to read it more easily, to understand it and finally to know exactly where to look for the information he is particularly interested for the purposes of comparison.

The Commission feels that the use of non harmonized KII (for instance, a KII model per Member State) would therefore be most detrimental to investors and miss the general goal of an integrated market.

As regards the additional local information (e.g., where the prices are published in the host Member State), the Commission considers that such information could be inserted in the second page of the SP.

Question 9: would it be useful to specify how the form and mode of delivery of the information to the investors should be presented?

It is a well-known fact that investors are more responsive to information that is clearly presented, concise and colourful.

The Commission would therefore suggest that the KII be presented in a readable font size, use clear and short sentences and use colours in particular as regards the warnings, the performance chart or table. The same colour could be used in the different Member States in respect of warnings.

Question 10: in what form should the information be delivered?

In the opinion of the Commission, the delivery of a hard-copy of the KII should be the rule as this is the only way one can be sure that the KII is actually in the hands of the investors.

However, the Commission considers that the delivery of the KII through the internet should not be excluded. On the contrary, such delivery could be used as an alternative form subject to specific conditions to be determined. For instance, the delivery of the KII to the investor prior to his subscribing into the CIS could be considered as effected if the KII was sent by the CIS producer or distributor to the investor at his personal e-mail address and that the investor clearly acknowledged receipt of the KII by means of an e-mail to the CIS producer or distributor.

Question 11: how should we ensure consumers get information in sufficient time for it to be useful for their investment decision?

In practice, it appears that the situation where an investor is delivered a SP by the CIS producer, distributor or by his financial advisor, only a few minutes before investing is rather common (which obviously is a case where the investor is not given the time to make an informed decision).

In order to prevent such situation, it might be considered to impose a minimum period of time (for instance a three day period) between the receipt by the investor of the KII and his actual investment into the CIS, irrespective of the way the investment is made in the CIS (through an advisor, directly, etc.).

The Commission believes that the setting up of such a minimum period would urge investors to read the KII and the CIS producer to be more careful in the drafting of the KII.

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As a conclusion, the Commission hopes the above answers are helpful and would be most happy to send representatives to discuss the subject further with the CESR or to participate in any related meeting.

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