



**ASSOGESTIONI**

associazione del risparmio gestito

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Our ref: Prot. N. 311/07

### **Response to CESR Call for evidence on “Key Investor Disclosure for UCITS”.**

Assogestioni<sup>1</sup> welcomes CESR’s invitation to express our views regarding the request for assistance received from the Commission and to respond to the two specific calls for evidence on the simplified prospectus for retail investors and on UCITS distribution.

**The Commission request for assistance.** Preliminary to our comments on the specific calls for evidence, we would like to express some general remarks on the content of the Commission’s letter of request for assistance dated 11 April 2007.

We agree with the Commission’s proposal of a document which contains only key (i.e. relevant and essential) information for retail investors, in clear and simple language, divided in two parts: one, containing product information relating only to the UCITS essential characteristics, which shall be used without alterations (except translation) in all Member States where the UCITS is notified to market its units; another, containing only practical information which enables retail investors to exercise their rights associated to the product which shall – where relevant – be adapted to the local investor market where the UCITS is sold. Our analysis of what key items should be disclosed to the retail investor and our suggestions on presentation, form and timing of this disclosure, based on the long experience of the industry we represent, is contained in our response to CESR questionnaire on the simplified prospectus for retail investor.

We further agree with the Commission’s statement that adequate investor disclosures for UCITS can make an important contribution to the efficient functioning of the UCITS market which is characterised by great diversity, increasing product complexity and changing distribution channels and that UCITS

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<sup>1</sup> Assogestioni is the Italian association of the investment fund and asset management industry and represents the interests of 148 members who currently manage assets whose value exceeds 1.100 billion euro. Our members are both directly and indirectly affected by the issues involved in the implementation of MiFID regulations.



disclosure regime is important to drive point of sale transparency and regulation because “as it could serve as a benchmark for comparable saving products<sup>2</sup>”.

However, we stress that the future of the UCITS industry is at stake due to already existing pressing competition of equivalent products which are not subject to the same level of disclosure in all Member States. This unlevelled situation is worsen by the fact that there are non-MIFID firms that will distribute products.

For this reasons, we ask CESR to consider that before imposing any further transparency obligation on asset managers, the same level of transparency and disclosure ensured by the fund producer must also be ensured by the producer of other products (for instance, insurance companies, issuer of structured securities, etc.) in view of the “level playing field” principle. It would be therefore necessary to envisage further preliminary work and some coordination in the updating of several EU directives (for instance, the UCITS Directive and the Directive 2002/92/EC on insurance mediation).

In particular, with reference to the issue whether it is appropriate to distinguish the content of KII according to the nature of the investor (retail or professional), we observe that:

- (i) where the offer of a UCITS is made to a retail public (with prior publication of the (full) prospectus and the KII) it is not necessary to distinguish the content of the KII depending on whether the UCITS is sold directly or indirectly (i.e. through tax wrappers or insurance contract, etc.) to retail investors. In cases of c.d. indirect sales to retail investors, asset managers should only be required to provide the same KII that are communicated to the retail investor to product manufacturers who integrate or package UCITS in their products;
- (ii) the envisaging of a possible variation of the content of the KII could be appropriate only where the offer of a UCITS is made exclusively to a professional public *and* an exemption from the duty to publish the prospectus is introduced (along the lines of the exemption rule established in the Prospectus Directive). However such a differentiated regime should be set for UCITS asset managers only after the introduction in the Prospectus Directive of an equivalent regime applicable to all issuers of financial instruments that are indirectly sold to a retail public (i.e. not only through re-selling but also through indirect sales). In the absence of such an equivalent regime for issuers of other financial instruments, the UCITS provider should be left free to exchange information with the product provider on a voluntary basis rather than being obliged to modify the content/format of the KII (see answer 16.b above).

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<sup>2</sup> See at page 3 of the Commission’s letter dated 11 April 2007.



**Specific Call for evidence.** Please find below our comments to the two specific calls for evidence.

## **1. CESR QUESTIONNAIRE ON THE SIMPLIFIED PROSPECTUS FOR RETAIL INVESTORS**

### **The information to be included**

#### **1) What information should be included?**

Pre-contractual disclosure to investors should be an instrument providing only key information to the average retail end-investor in a short, simple and well-structured form in order to help him to make an informed investment choice.

Any other information that the investor may wish to know before buying the investment, which is not relevant to his/her decision whether to buy the offered product, should be accessible through a general reference contained in the pre-contractual disclosure document (i.e. signposting should refer the investor who wishes further or more detailed information to the full prospectus and/or other sources, like for instance, a web page of the product company).

The option of dividing the document in two parts (with part 1 including key information and part 2 including legal notices) is not appropriate as it could result in a disruption of the investor's attention from the essential investment information and it is deemed contrary to the objective of having a "short", simple and easily understandable document.

#### **2) What substantive UCITS features do consumers need to know about?**

The experience of the management industry we represent highlights that what is relevant to the average retail end-investor's knowledge in order to reach an informed decision on the investment is only:

##### **I) as to essential product information:**

- a) a short description of the investment objective and investment policy;
- b) costs and associated charges;
- c) risk profile of the investment.

##### **II) as to the essential practical information**

- a) how to buy and sell units;
- b) when and how dividends on units or shares of the UCITS (if applicable) are distributed;
- c) frequency and where/how prices are published or made available;
- d) tax treatment;
- e) where/how to obtain additional information on the proposed investment.



Any other information currently listed under Schedule C or in the relevant Commission's Recommendations (in particular, the auditors and depositary's names, the typical investor profile<sup>3</sup>, the turnover rate) is not relevant or not really helpful for a retail investor to take an informed decision or to exercise product related rights and should not be contained in the pre-contractual document/disclosure.

### **3) What information should be provided about risks and rewards?**

**A) Presentation of risks.** As for risks, the most appropriate option is a summary table of all risks with a general indication (from very low to very high risk) for each risk. An indication of the minimum fund holding period is advisable, as it would create a context for the presentation of risks, provided of course that the minimum period is complied with. This proposal is already contained in the Commission Recommendation 2004/384/EC. We suggest that CESR recommend to upgrade it into a Level 2 rule in order to give it more legal power.

Regarding the details on how this indicator should be calculated (e.g. based on the fund historical volatility or on a forward-looking VaR style methodology?) and classified (e.g. how many categories? how to set the band limits?), we note that there is still lack of industry best practice. In the Italian experience, the ways different and multi-level risk factors (to which funds are exposed) are translated into a "single-dimension sentence" are heavily dependent on the investment policy of the funds (e.g. the time horizon) and on the risk management models used by the investment companies (e.g. are they based on a TEV approach or on a VaR one? What are the particular assumptions of the market model? etc.).

Furthermore, investment strategies and risk management systems are still much differentiated among the industry and in many cases they represent an important competitive leverage. Risk is a complex concept. In our opinion to ask investment companies to explain it in a "retail-friendly" way is a good regulatory goal. Nevertheless, the choice (and the responsibility) on how best to achieve this goal should remain in the industry hands. Consequently, while we suggest the idea of a synthetic risk indicator being supported via a Level 2 measure, we also ask that, at present, the way it is put into practice (calculated and classified) is left to the industry self regulation. Once satisfactory practices are found, a Level 3 approach could be put at work.

**B) Presentation of the risk/performance rate.** A chart or a table on the fund performance and benchmark is the most appropriate solution. The use of text

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<sup>3</sup> A segmentation of the average retail investors profile is not necessary. Furthermore under MIFID discipline it is the advisor and the distributor duty to help the investor to choose adequate or appropriate products.



explanations must absolutely be avoided. It is inappropriate to present performance back testing.

If it is a newly-set up fund, the benchmark performance or the investment objective for absolute return funds could be presented, provided it is clearly highlighted that such presentation is only potential or based on forecasts, as no actual performance track record exists yet.

#### **4) What information should be provided about strategy and objectives?**

It is appropriate to implement the approach based on a short and simple presentation of the investment policy and objectives with the indication of the relevant benchmark and the investment universe.

#### **5) How should the past performance be presented, and for what time period?**

We welcome the principle of standard historic performance presentation on a minimum period of 12 months. In any case, the performance indication by means of cumulative charts must be avoided.

It would be appropriate that, for funds on which a medium/long minimum period is suggested, the performance is presented on the basis of the relevant minimum period; an alternative solution where the performance is the same for all funds (i.e. 12 months), would be to present the fund holding period next to the presentation of the historic performance.

It is certainly appropriate to include a notice that there is no guarantee that the same performance can be maintained in the future (this notice is already compulsory in Italy).

#### **6) How should information about charges and fees be presented?**

Changes to the current approach envisaged in the simplified prospectus discipline are required to improve effective information on costs and obtain the highest level of transparency and clarity on expenses and commissions.

In general we support the adoption of TER as a good and broadly accepted cost disclosure instrument. While there could be, in theory, better measures of costs, in practice TER has gained popularity between practitioners and investors thanks to it being simple and understandable. On the contrary, any use of “reduction in yield” formula should be avoided because this alternative measure depends on the hypothesis on the future performance of the fund (that could convey a wrong message to the investor) and is based on calculations more complicated than those underlying TER. Therefore, we do not support the adoption of this method.

Regarding TER calculation and disclosure rules, we believe that the content of Annex I of the Commission Recommendation 2004/384/EC is sufficient. We only suggest to add the breaking down of TER into its basic components (for instance management commission, performance fees, depository fees and so on).



We do not support the inclusion in the TER of:

- a) entry and exit fees: entry and exit fees may still be disclosed using the phrase “up to”; and
- b) transaction costs: it is virtually impossible to assess all of them precisely. Furthermore they are non-recurrent costs linked to the investment policy of the fund (as a consequence historical data, if available, would be of little relevance). For these reasons the industry considers that TER is not able to represent fairly also transaction costs.

Regarding the disclosure of portfolio turnover rate (PTR) we note that, while in theory this figure could give the investor the possibility to gauge, at least to some extent, the costs of the portfolio trading activity, in practice there is still much debate on how it should be calculated. Our experience is that the formula contained in Annex II of the above-mentioned Recommendation does not perform well. Consequently, we think that the turnover rate has not to be disclosed.

Finally, with reference to the transparency of distribution costs we think that the problem of how to make distribution costs transparent necessarily implies consideration of other EU regulations, with specific regards to the disclosure regime in MIFID. In principle, the indication of the fee splitting between managing company and distributor is appropriate with a view to enhancing transparency. However, we stress that MIFID requires that the indication on the amounts payable to each distributor is mandatory for the distributor, not for the product company. In particular, in case of multi-sector/sicav funds, commissions sharing between the management company and the distributor should be disclosed – as already requested by Consob in Italy – by showing an average percentage indicator for each category and for each class (for instance, funds/share areas, class load) relating to commissions for the product distributor.

#### **7) How could the packaging of funds into different end-products be handled?**

As anticipated in our preliminary remarks, we do not think it is appropriate to provide different key investor information depending on the conditions underlying the fund offer, since transparency for investors of other products is not an objective of the fund’s producer, rather it is an objective of the organization offering the product including such fund. Consequently, we think it is sufficient that asset managers provide product manufactures with the same information that is provided to the retail investor in cases of direct sale of a UCITS.

The same level of transparency and disclosure ensured by the fund producer must be also ensured by the producer of other products (for instance, insurance companies, issuer of structured securities, etc.) in view of the “plain level field” principle; this approach obviously requires some coordination in the updating of several EU directives (for instance, the UCITS Directive and the Directive 2002/92/EC on insurance mediation).



## **8) How far should the information be harmonized between firms and between EU members ?**

Full harmonisation on essential product information to be included in the disclosure document should be reached. In particular presentation of performance data as well as expenses and commissions must be harmonized.

This is necessary both in order to allow comparability and in support of the envisaged modifications in the UCITS notification process. In relation to the latter objective, we stress that it is very important to obtain the envisaged goal proposed by the Commission<sup>4</sup> that product information on the essential characteristics of the UCITS shall be used without alterations, except translation, in all Member States where the UCITS is notified to markets its units in accordance to Article 46”.

### **Providing the information to consumers: form and mode of delivery**

## **9) Would it be useful to specify how this information should be presented?**

The asset management industry believes that it is important to leave some flexibility regarding the layout and wording of this document. In particular, we do not support the Commission proposal to impose on management companies the adoption of one document for *each* of the unit trusts and common funds it manages. Member States should be left free to require whether disclosure in relation to more than one sub-funds (of an umbrella-structure) and of all funds created by the product company should be contained in one document only, provided that the investor can easily find the essential information in relation to the relevant sub-fund or fund offered to him/her.

CESR should consider that freedom of form in this respect can save many operative and compliance costs to the industry without weakening the effectiveness of disclosure for the investor.

Furthermore, presentation is not a fundamental requirement and the graphic layout of the disclosure should be a matter for the company to decide, also for commercial and marketing considerations. Only general layout rules that are important to obtain effective communication for investors should be imposed on investment companies.

We propose that too small characters must be avoided, while the most relevant information must be highlighted, also graphically. The use of colours does not

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<sup>4</sup> See. Paragraph 2, of the new Section C “Key investor information”, at page 12 and the Explanatory Comment at page 18-19 of the Commission “Exposure Draft on the Initial orientations for discussion on possible adjustments to the UCITS Directive. Entitled “5. Simplified prospectus - Investor disclosure regime”.





affect clarity or transparency, rather it's a question of marketing approach relating to the document. Imposing certain layout requirements (e.g. the use of certain colours) may even have the adverse consequence of increasing publishing/review costs of the document.

#### **10) In what form should the information be delivered?**

The most appropriate tool (either through the web or actual hand-out) depends on the offer distribution channel. Therefore, in case of a traditional offer "network", handing out the document seems to be the best option, although alternative tools may also be used (i.e. sending the document to the customer by email). If the offer channel is Internet, the same tool is used to convey information, which are presented in the relevant web page. If the offer comes directly from the product company, such company must be free to provide the document in the form it deems most appropriate (web, ordinary mail, direct hand-out in its offices).

### **Timing**

#### **11) How should we ensure that consumers receive information within a reasonable timing so as to use them when taking their investment decisions?**

We suggest that the KII document may be delivered only upon request of the potential customers, such request may be filed – depending on the sale channel – with the product company, the network or simply on the web site of the product company or the offer organisation. Clearly, if the offer is made through the "network", financial planners – also in view of the knowledge they have on the economic capacity of their customers and their investment objectives – may anticipate the customer request and take the initiative to hand him out the document.

In any event any rule on timing should be along the lines of what is established by Directive 2002/65/EC concerning the distance marketing of consumer financial services.

## **2. CALL FOR EVIDENCE ON UCITS DISTRIBUTION**

### **Para. 8 Call for evidence:**

***a) whether all types of current or projected distribution method fall within one of the three scenarios outlined above;***

***b) how the nature of the commercial relationship between the provider and the distributor affects the ability of the former to control what pre-sale/point- of sale information the end investor receives;***





**8.a)** We agree with CESR's identification of three main scenarios to identify all the possible distribution channels, depending on the extent to which the UCITS provider is involved in the selling process and can retain responsibility over the distribution charging structure (i.e. direct sales; tied sales and sales through independent third parties).

**8.b)** Only under the direct distribution scenario, the UCITS provider is able to have full control of the content and format of the UCITS material distributed to final investors.

In the second scenario, where the distributor is affiliated with the UCITS provider we may say that common internal inter-group business practice may entail direct exchange of information on the content and eventually format under a B2B basis.

Under the third scenario, the UCITS provider has no control on the information and format of the documentation distributed to the final investor unless specifically informed by the third party distributor or investor.

**Para. 16 Call for evidence:**

***We invite interested parties to respond with information on:***

- a) the types of product and services that may be offered to investors;***
- b) the extent to which the essential features of UCITS (risk, charges and performance) may be modified by the features of the product and service in which the UCITS is wrapped;***
- c) the types of additional information required for an investor in the product and service (and any information concerning the UCITS itself that is not necessary for them);***
- d) how information concerning the UCITS is made available to investors in situations where there is no current requirement to offer a simplified prospectus.***

**16. a)** A list is provided below:

- Direct subscription of the UCIT;
- Fund of fund subscribing UCITS;
- Capital protected fund of fund subscribing UCITS products;
- Unit Linked insurance policy investing into one or more UCITS;
- Structured fund, structured bond index linked insurance policy investing into one or more UCITS performance through a total return swap;
- Savings plan (e.g. individual pension plan) subscribing one or more UCIT;
- Open ended pension fund subscribing one or more UCITS;



- Individual investor mandate subscribing UCITS only, or UCITS and securities and other instruments.

**16.b)** The degree of modification of the essential features of the UCITS relates to: (i) the difference between the stated investment policy of the wrapper and that of the wrapped UCITS' (ii) the wrapper's costs and revenue structure.

There can be considerable divergence between the investment policy of the constituent funds and that of the wrapper. This difference is minimal in cases where the wrapper passively pools a single UCITS or a small number of UCITS with the same investment policy (e.g. European Equity fund of fund). On the other hand, the difference is substantial where the wrapper entails discretion in the asset allocation of the constituent UCITS and a mixed investment profile (e.g. a balanced fund of fund purchasing UCITS specializing in basic investment classes).

Generally speaking, wrappers are less risky than the constituent funds, both because of a broader asset allocation and of diversification in the active risk of the constituents (active risk stems from the deviation of each UCITS portfolio composition from its stated benchmark in the attempt for the manager to create alpha). A major factor contributing to the risk of the wrapper is the correlation or covariance of the performances between the individual UCITS constituents of the wrapper. The lower is the correlation, the larger is the differential reduction in variance created by pooling many UCITS in the wrapper. In some instances, the wrapper contributes to a marginal increase in risk as a consequence of its policy of active asset allocation and rebalancing the constituents UCITS.

The performance of the underlying UCITS is not affected by the nature of the wrapper except than for possible impact costs from huge rebalancing from wrappers. Asset managers offering UCITS for sale in wrappers usually take this effect into account in the cash policy of the fund.

Wrappers are generally more costly than the average underlying fund. The issue of costs transparency is addressed by MIFID. Wrappers have the power to ask UCITS distributors to cash a sub-distributor fee rather than charge the same fee at the level of the wrapper). In order to facilitate packaging into different wrappers, the underlying UCITS usually accommodate for different classes and distribution policies.

Wrappers may have different degrees of mandatory disclosure for the final investor with reference to the underlying UCITS. As a matter of fact, mandatory disclosure of the names of the underlying UCITS could be cumbersome and costly in so far as the wrapper has the power to rebalance the underlying UCITS (an exception could be a wrapper subscribing only a single UCITS). On the other hand, the investor in the wrapper should be assured that the underlying UCITS purchased by the wrapper are consistent with the stated investment policy of the wrapper itself. Generally speaking, the UCITS provider has no control on this, but a due diligence could be



performed on a B2B basis (e.g. within the wholesale distribution or subscription agreement) w/o affecting the content and format of the underlying UCITS simplified prospectus. Additionally, purchase of the wrapper should be aware of the possibility for the wrapper to subscribe sophisticated UCITS.

**16.c)** We find no need for more (or less) information on the simplified prospectus as compared with the CESR proposal.

**16.d)** One way to address the problem could be on a B2B basis. The UCITS provider may exchange information with the wrapper provider on a wholesale basis rather than modify the content/format of the simplified prospectus (see answer 16.b above).

**Para. 23. Call for evidence**

***We invite responses on information on:***

- a) the type of unit/share class offered to investors and whether they are restricted in their availability;***
- b) how units/share classes may be structured to help distribution;***
- c) how information is modified in case multiple share classes are available for distribution.***

**23.a)** UCITS may issue multiple classes to accommodate different investors and distributors' preferences. There could be restrictions in the availability of institutional classes, which have lower fees, for institutional investors only. A larger minimum denomination usually further differentiates between retail and institutional investors.

**23.b)** Different share classes may accommodate different entry and exit fees information (e.g. load versus no-load pricing) as well as distribution policy (capitalization/distribution).

The best practice in multiple share classes would be to implement full transparency of distribution fees versus management fees. Another type of information useful for any final investor is the TER with reference to any different share class.

**23.c)** When multiple classes are available for distribution it is sufficient that the UCITS prospectus discloses all share classes and their pricing. The MiFID discipline already covers issues of suitability for final investors.

We hope that our comments will be of help for CESR, and remain at your disposal for any request you may have.

The Director General  
*Fabio Gallo*