



CESR's Consultation Paper on content and form of Key Investor Information disclosures for UCITS (Ref: CESR/07-669)

Who are BlackRock?

BlackRock is one of the world's largest publicly traded investment management firms. As of September 30, 2007, the assets under management of BlackRock were US\$1.3 trillion (€923 billion). The firm manages assets on behalf of institutions and individuals worldwide through a variety of equity, fixed income, cash management and alternative investment products. In addition, a growing number of institutional investors use BlackRock Solutions® investment system, risk management and financial advisory services. Headquartered in New York City, the firm has approximately 5,500 employees in 20 countries and a major presence in key global markets, including the U.S., Europe, Asia, Australia and the Middle East. BlackRock is a premier provider of global investment management, risk management and advisory services to institutional and retail clients around the world. In September 2006 BlackRock and Merrill Lynch Investment Managers merged transforming the business into a truly global asset management business.

As the third largest cross border UCITS provider in Europe, with close to US\$130 billion (€92 billion) in UCITS funds under management, the issues surrounding the provision of client information have a direct impact on our business. Our response is therefore based on our experience of the regulatory and commercial marketplace.

BlackRock Investment Management (UK) Limited is a member of both the IMA and EFAMA, and is generally aligned and supportive of the position they have adopted on the CESR consultation paper.

BlackRock's view on the consultation paper:

We are very supportive of the need for well informed and educated investors. Product providers, distributors and regulators should be fully aligned in this desire. Informed investors, who understand why their investments move as they do, are much more likely to be happy and content. As a result they are likely to undertake repeat investments and, most importantly, develop trust in the financial services industry.

The existing simplified prospectus is by nearly all measures a regulatory failure. It is neither a prospectus, nor is it simple. It has become an unwanted and unread document, and a waste of money and effort borne by the industry, and ultimately by investors.

We commend CESR on the content of the consultation paper. It is evident that a considerable amount of thought has already been given to the KII presentation and scope. Many of the early recommendations are sensible and, with further dialogue with the fund industry and consumers, hopefully we will end up with an information document that will serve a real purpose.

We would like to see the document keep true to the principle of clear and simple disclosure of key information. Some of the items under discussion could easily become too complicated (charges, risk disclosures etc). It must be remembered that this is only a summary document, and it therefore cannot and should not cover all eventualities. If it ends up covering all aspects of the UCITS, then we will merely replicate the SP under a different name.

Clearly a concern of UCITS providers is the transparency across competing products. While we continue to support the clear disclosure of information to investors, we would not wish UCITS to be disadvantaged when compared to similar product offerings that may be securities and present opaque disclosure to investors, particularly in the area of charges.

One element that needs to be clarified is whether the KII will be regarded as a financial promotion. We feel strongly that it should not be and that a safe harbour needs to be created. If one is not, then there is a good chance that member states regulatory authorities will have room to include additional local provisions (gold plate). In addition, it is important that the KII is not to be viewed as a financial promotion if the proposed amendments to the UCITS directive of cross-border notifications is to function properly.

We are also very unsure whether the legal nature of the document can be sufficiently clarified so as to limit the risk to product firms. We are concerned that the KII will be seen as at least part of the 'contract' with the investor. For us to say to investors that this is "only the key information" and full information is in the prospectus, may leave us with limited legal protection, as we would be asking the investor to agree to terms that they have not seen. It may well be that this is further complicated by the differences in contract law across the EU.

Finally, we continue to believe strongly that the interests of European consumers will be best served if the general level of financial education can be improved. We therefore continue to encourage CESR and the Commission to promote an increase in the importance afforded to financial education. We believe that this should start at an early age and should be part of the core education curriculum. This will be a slow burn and the full benefit may only be seen over a generation, but it is fundamental to the future personal financial security of Europe's citizens.

BlackRock response to CESR questions:

1. Are respondents aware of other research which is relevant to the market and regulatory failures associated with the SP?

We are not aware of any other specific work in this area.

2. Do respondents consider CESR's proposals would address the regulatory failures associated with the SP?

We agree that the Simplified Prospectus has been a regulatory failure. It is not understood by the majority of investors and it is unloved by the industry. It is therefore encouraging that a fresh approach is now being developed. In order for the KII to succeed it will be vital that appropriate consumer testing is undertaken. It won't matter how good we (industry and regulators) believe the KII is, if consumers don't read it, or do but still do not understand it.

3. Do respondents think that CESR has accurately described the context in which KII is likely to be used, and has correctly identified outstanding issues?

Yes.

4. Do respondents agree with the proposed purpose and scope of KII?

Generally, yes. The KII should be a simple document that delivers to retail clients the basic important factors that they should know about the product they are buying or being sold.

The legal status of the document needs to be 100% clear, otherwise product providers may be forced to add too many risk caveats and other text as to make the document unwieldy and potentially unreadable (much like the SP). It must also be ensured that KII delivers all of the information required under the Distance Marketing Directive, so as to avoid the necessity of serving a separate communication.

To avoid a lengthy document, as well as securing legal certainty, it would be reasonable to assume that the investor has a basic understanding of investments. This would avoid the tendency to include descriptions about what an equity or bond is. Specifically, it should be the role of the adviser (MiFID firm) to explain the details of the product and provide the necessary education. For clients who decide to deal directly with the product provider, a generic recommendation that they should seek professional advice if they are unclear on any aspect of the UCITS should suffice.

5. Should non-retail investors be permitted to opt out of receiving KII?

Yes.

6. Do you think that CESR's proposals on general presentation are appropriate?

Yes.

7. Should CESR propose adopting a more prescriptive approach, for instance using detailed templates, or should it support a less prescriptive, more principles-based approach?

We support prescription. This would stand more chance of ensuring 1) meaningful comparisons across firms; and 2) reduce the likelihood of additional legal content.

8. In relation to the proposals on content, should Option A (with fewer items) be favoured compared to Option B?

Option A. The fewer the items, the more readable it is likely to be. If the KII is to be viewed as effective 'delivery of the Prospectus' (as it may need to be to satisfy the legal liability issue), then the additional detailed items included in Option B should be reserved for the main section of the prospectus sign-posted by the KII (probably to a web address).

9. How should both options best be tested with consumers?

It will be necessary to gain input from investors and advisers. Investors should include both those already buying UCITS and those that have not previously done so. Advisers should also be asked how they would use the document and what may be missing or could yet be omitted.

With 27 member states it may be too extensive a task to facilitate this across all markets. We would therefore recommend that emphasis is given to, or restricted to, those EU markets with the largest proportion of UCITS sales with retail customers.

10. Has CESR correctly struck the balance between reducing the information provided and ensuring investors receive the key messages they need?

We believe so, but will only be confirmed by the consumer testing.

11. Should the competent authority of the fund and the tax regime of the fund in its Home Member State be included?

The inclusion of the competent authority may depend on whether the KII is categorised as a financial promotion. If it is then it may be a regulatory requirement to do so. If it proves to be optional, then leaving it to the prospectus seems appropriate.

We believe that the tax domicile of the UCITS should be disclosed. Details, even brief details, on the regime itself should be left for the prospectus. Host State tax information could be signposted to the Prospectus or elsewhere.

12. Do you think other items of information are necessary? If so, which ones in particular?

The existence of further shares classes may be appropriate to disclose, with details to be found in the Prospectus.

13. Do you agree that distribution costs should not be systematically ‘unbundled’ within KII? Should there be flexibility to allow this where appropriate?

No. We do not believe that there is presently sufficient consumer education of investment products to merit the breakdown of the distribution cost within the KII. This is not to say that charges should in any way be hidden, we support the disclosure of total fees. However in other industries the cost of distribution is not detailed. The more information that is disclosed, the more complex the situation can look; and the investor may be turned-off from investing for completely the wrong reason. We do agree that the TER should be calculated consistently and thus be comparable across providers. The TER should represent the cost to the investor – any distribution fees should be disclosed separately by the client facing MiFID firm.

14. Does the proposed approach of local information (a harmonized section for local information within KII, that would be precisely delineated) achieves a correct balance between the need for local information and the smooth functioning of the passport? Is a more radical approach (i.e signposting local information to a website) feasible and appropriate?

The mere suggestion that ‘local’ information may need to be included is an admission that there is not a true single market for investment funds. If there is a local paying agent then clearly this will need to be highlighted. But why should there be a need for such a paying agent? Electronic cross-border payment systems function perfectly well. Ongoing information, such as prices or reports should be obtainable from websites, and it should not be necessary to have a local representative for this.

Moreover, if KII is required to contain local ‘gold-plate’ information, we may soon get to the point where we are producing multiple versions of almost the same document. We would suggest that the information in KII is highly prescribed, thus creating one version (apart from language translation). If there is a need for local information, would it not be possible to allow for this to be available on the product provider/distributors website? This could be sign-posted on the KII.

15. Should a ‘building block’ approach be permitted, whereby providers can produce different parts of the KII separately?

We are happy that KII information should be recognisable as such and should not be scattered across a larger marketing document.

16. Do respondents agree with the proposed treatment of funds of funds?

Yes.

17. Should separate KII be produced for each sub-fund of an umbrella? Should providers be permitted to produce a compendium for all the sub-funds of an umbrella if they wish?

We would support an ability to produce an omnibus version of KII covering, for example, an umbrella UCITS. In this way, information applicable to all funds would not need to be repeated, thus reducing the volume of documentation. We agree with the belief that a standalone KII for single fund would appear clearer and shorter in isolation, but most providers have good selling funds and those that are sold only rarely. Producing standalone documents across the entire fund range (BlackRock's flagship fund range in Luxembourg has +70 funds) would end up being more cumbersome than that of today's SP process. We believe that providers should have the option of providing an omnibus document, even if in practice this is only used to make available the KII's for the lesser utilised funds.

18. Do respondents agree with the proposals for treatment of unit / share classes? In particular, should providers be permitted to produce KII featuring a representative class?

Providers should be able to produce a KII for a representative share class. This should be the one made available to retail clients, or generally acquired by them.

19. Do you think that CESR's proposals on the presentation of the strategy and objectives of a fund is appropriate?

Almost. As long as the legal liability aspect is adequately resolved, the KII should include the Investment Objective (what it seeks to achieve), but not the Policy (how it seeks to achieve this). As with other sections of the KII an investor must have an appreciation that this is only a summary of the prospectus.

By way of example, the investment objective in the current prospectus for the MLIF Global Allocation Fund reads:

"The Global Allocation Fund seeks to maximise total return. The Fund invests globally in equity, debt and short term securities, of both corporate and governmental issuers, with no prescribed limits. In normal market conditions the Fund will invest at least 70% of its total net assets in the securities of corporate and governmental issuers. The Fund generally will seek to invest in securities that are, in the opinion of the Investment Adviser, undervalued. The Fund may also invest in the equity securities of small and emerging growth companies. The Fund may also invest a portion of its debt portfolio in high yield fixed income transferable securities. Currency exposure is flexibly managed."

Within a KII it should be considered sufficient to read:

"To achieve long term capital growth from investing globally, with an emphasis on undervalued securities. There is no guarantee that this objective will be met or a minimum amount repayable on redemption."

20. In particular, is it relevant to merge strategy and objectives into one generic item?

See response to previous question.

21. Is the streamlining of the current applicable Recommendation relevant for the purpose of focusing the description on key elements? Do you agree with the addition of new key items to mention within that section: guarantee, period of holding inappropriate if any, design also for retail non-sophisticated investors?

Yes. (See response to question 19.)

22. More specifically, do you agree that it should be required that in case the capital is not legally guaranteed, the term 'guaranty' should not be used in the KII, and it should be shortly mentioned to investors how the protection is achieved? In case the capital is legally guaranteed do you agree the guarantor should be mentioned? Do you agree that it is not necessary to mention explicitly that a fund is not capital guaranteed?

We agree that the term guaranty should not be used unless it is absolute. Protection, if applicable, should be clearly described.

We believe that there is merit in explicitly stating that there is no guarantee when dealing with non-sophisticated retail clients. (See response to question 19.)

23. Do you agree that mentioning whether it would not be appropriate for the investor to invest into the UCITS, if he anticipates the need to redeem within a defined time period to be stated, is the appropriate way to deal with time horizon issues without leading to misunderstandings?

We believe that there is limited value in this. If the client is being advised it should be the responsibility of the adviser (MiFID firm) to make the longer term nature of investment fund investing known. If dealing direct, it should be reasonable to assume that the client has sufficient knowledge to make such a determination for themselves.

24. Do you agree that giving management companies the opportunity to flag funds that have not been designed for non-sophisticated investors, with no legal consequences, would help in preventing missellings, especially in the case of 'execution only' subscriptions?

We believe it may be appropriate to make it known to retail clients that a fund is not directly intended for them. However, as UCITS is a product directive and allows for a European passport, any UCITS should be available for retail client investment. It will therefore be important not to overtly dissuade investors from buying one UCITS in favour of another. Moreover UCITS, irrespective of the underlying portfolio, are non-complex products under MiFID.

25. Do you agree that the presentation of a synthetic indicator should be favourably tested with stakeholders and consumers?

We are not supportive of the concept of a synthetic risk indicator. This is because we believe that it could give a false impression to investors of the actual level of risk that exists and that it would not provide them with any indication of the risk of the UCITS compared to a competing non-UCITS product.

We therefore support the inclusion of simple text descriptions only.

26. What specific presentation (icon, wording, numeric scale...) should be favoured, and if so on what basis?

See response to previous question.

27. How prescriptive should regulators be for the choice of a methodology, given that it should take into account largely shared risk management practices and suit investors' perception of risks?

Existing UCITS risk management practices are derived from regulation. VaR is an available assessment tool for investment managers, and recommended by the UCITS directive for UCITS employing sophisticated strategies. However, VaR is only an historical test and does not take account of all of the risks that can affect an investment fund.

We therefore feel there is more merit in providing a brief description of the risk of the investment objective not being met. In text terms, in relation to the MLIIF Global Allocation Fund highlighted above, we would suggest that it should be sufficient to state:

"The value of your investment is likely to fluctuate both up and down, and this could on occasion be quite pronounced. You should only invest if you can afford to risk losing at least part of the money invested."

28. Are you aware of any specific existing calculation methodology that should be proposed?

No.

29. Is the suggested assessment grid Annex 5 for methodological and presentation issues appropriate and sufficient for identifying a relevant methodology?

The approach seems reasonable, but we would refer you to our response to question 25.

30. How could the potential limitations of the quantitative calculation of a synthetic risk/reward indicator be further mitigated?

We refer to our response to question 25.

31. Do you agree that the possible limitations to a risk reward might be effectively communicated to consumers through textual warnings? Is the proposed wording appropriate?

We refer to our response to question 25.

32. Which funds or which risks might not be adequately captured by a quantitative methodology?

We have nothing to add.

33. Could the display of scenarios or tables illustrating the behaviour of formula funds enhance the information disclosed for those funds? Do you think that such presentations should be limited to formula funds? Do you think that such presentations might have some misleading effects, might be manipulated, or mistaken for a guarantee? How could these be addressed and reduced? Do you think that such disclosure should be made in a harmonised way? What could be possible ways of showing prospective scenarios?

Potentially, but this would not seem to sit comfortably with a short two page document. Examples of how this would look will need to be developed before a final decision is reached.

34. On the narrative side, do you agree with the suggested high-level principles?

Yes.

35. Is CESR correct to recommend that information about past performance be included in the KII?

On balance we believe so. But it is unlikely that the KII will replace the fact sheets that product providers produce. Traditionally these fact sheets are used both pre and post sale and include market and fund commentaries and greater product information (top ten holdings; asset split; performance over different periods and against benchmarks). However, if performance were to be omitted from the KII, there is a chance that non-sophisticated retail clients may place too much store in the fact sheet, which generally provide the information that a retail customer thinks they would want to know rather than the information they should know.

We are concerned though that the inclusion of past performance may cause national regulators to insist that the document is a financial promotion, or at a minimum, that the presentation of such past performance must comply with host state marketing rules. We already have differences in presentation style. There is a common theme that the past five years are to be shown and to break this down into five separate yearly returns. However, there is little consistency as to the start and end dates. These vary from calendar years to years to the last complete calendar quarter end. If performance is to be included, it must be in only one way, regardless of the host state marketing rules.

36. Has CESR identified the right areas and ways in which this information should be standardised?

We believe so.

37. Which charges should performance figures take into account? For instance, should figures include allowance for subscription and redemption fees?

See our response to previous question.

38. Has CESR identified the best overall options for including information about charges in the KII?

Yes.

39. Should a 'consolidated' charges disclosure be included, and how should it be described?

We would be supportive of a single percentage disclosure that should capture all reasonably expected expenses. It may be impossible to make this figure entirely accurate, given that same fees are charged on an ad valorem basis and therefore are fluid and not entirely known until a later date.

Taking in to account our response to question 36, we would be happy with both ex-ante and ex-post figures being displayed.

40. Should options for the disclosure of charges in cash terms be explored further?

Some retail customers would undoubtedly find cash figures easier to understand. However, there is only real value in doing so if the numbers bear relation to the actual amount being invested. In the UK we have some experience of this. The UK Key Features regime requires firms to provide both percentages (AMC and TER etc) and monetary figures pre sale. Pre sale the monetary disclosure is based on an assumed generic investment amount (so is unlikely to bear direct relationship to the investor's experience). These numbers are then used to calculate an arbitrary total cost, based on an assumed growth rate, which is then reflected as a reduction in yield number. Most commentators believe there is little value to the end consumer in this process. The numbers are complex to calculate, tend to bear no reflection on the likely experience of the investor and, worst still, can cause investors to believe that they represent a future projection.

- 41. Do you have any comments on how charges should be organised (e.g. between charges relating to subscribing and redeeming units, ongoing fund charges, and contingent charges), labelled (e.g. 'initial charges,' 'exit charges,' 'ongoing charges') and the accompanying narrative messages regarding what they include or exclude? How much detail is necessary in a document like the KII?**

We are generally happy with the CESR remarks. We support the use of plain language disclosures, so under a heading of "What will it cost?", you could have:

"There is an initial one-off charge of X%"; "There is also a mixture of ongoing expenses payable throughout the year, such as the charge for managing the investment, transaction costs, custodian fees and depositary charges. The largest of these is the fee for managing the investment, which is X%. As a guide, historically, when all the ongoing expenses are added up, they have amounted to around X% over a year."

- 42. In relation to the handling of ex-post and ex-ante figures, is it appropriate to include only a single figure for ongoing fund charges in the KII, and if so, on what basis? Do stakeholders have any particular views as to the handling of such information?**

As mentioned previously, we are in favour of a single, universally calculated TER.

- 43. How should situations where there is a material change in charging levels be addressed?**

Any material change in charges should already trigger a shareholder mailing under the conditions required by the UCITS directive and detailed in the fund's prospectus.

- 44. Should portfolio transaction charges be included or excluded from the disclosure of ongoing fund charges? If they should be included, how should assets for which transaction charges are not readily available be handled?**

Excluded. They provide no value to a non-sophisticated retail client and, in any event, do not indicate either a positive or negative impact on fund charges or performance. As part of the description of the TER, the investor should be made aware that this represents the AMC, plus other expenses, such as, transaction, custody, depositary, (tax) etc.

- 45. Has CESR identified the best option for handling performance fees in the KII?**

Providing examples within the KII will not be practical if the document is to meet its intention of being no more than two-sides of A4. Customers should be made aware if there is a performance fee, when it is triggered (i.e. if the performance is higher than LIBOR) and at what rate (i.e. 20% of the out performance). Customers should then be referred to the prospectus if they require greater detail.

46. Do you agree that CESR should recommend that charges are disclosed on a maximum basis?

This seems reasonable, as long as it is not interpreted to represent a charges cap (vis-à-vis ad valorem charges or performance fees).

47. Are there any options for providing more accurate information, in a way which consumers might understand, about charges under different distribution arrangements?

It could be left for the distributor to append a revised charges statement if it differs significantly for the maximum disclosure made in the products firms KII.

48. Do you agree that CESR should recommend that charges for a feeder fund and its master be combined into a single disclosure in the KII?

Yes.

49. Do respondents have any comments on the proposals for consumer testing?

Please see our response to question 9.

50. Do respondents have any initial views on the one-off costs of replacing the SP with KII?

As long as the transitional period is not too short, and we are able to produce at least some omnibus versions of the KII (see response to question 17), then the introduction costs should not be materially high.

51. Do respondents have any initial views on the on-going costs of KII, compared with those currently included in producing the SP?

As highlighted by our answer to question 17, if it is going to be required that firm's produce fund by fund KII's, then the cost of the KII will be significantly higher than that of the existing SP.

52. What, if any, transitional arrangements should there be if the SP is replaced with KII?

Minimum transitional period of 12 months should be provided for, but with the option to convert some or all products early if desired to do so.

53. Is the gradual introduction of KII feasible?

Yes. It is likely that material for some products will be updated earlier than others, or that it would be easier to update soft collaterals (web sites) earlier than printed materials.