Confederazione Generale Italiana del Lavoro
Corso d'Italia, 25
00198 – Roma
Italy

Roma, 9 September 2010

Dear Madam / Sir,

We would like to send our comments to the consultation document "CESR's level 3 guidelines on the selection and presentation of performance scenarios in the Key Investor Information document (KII) for structured UCITS".

First of all, we regret that the Committee of European Securities Regulators have decided to lower the standard of disclosure and transparency for structured products by choosing a representation of performance scenarios not based on a common, objective and robust quantitative methodology. In the consultation document guidelines the Committee could have introduced principles and implementation criteria which are now widespread in the financial industry, received a positive feedback by two independent studies commissioned by the European Commission[1], and have also been positively tested by the Italian regulator in its risk-based transparency regulation for UCITS and financial products issued by insurance companies.

Instead of the proposed "what-if scenarios", the CESR could have issued rules and provisions aimed at implementing a more comprehensive and objective "probabilistic table" approach, which have also been described and discussed in past CESR consultation documents. In our opinion, the consultation document seems to neglect the authorities' role and objective of investors' protection, appears to give space to discretionary and opportunistic choices by the intermediaries, and it would not effectively contribute to a fair, clear and not misleading representation of risks and potential performances of structured UCITS.

As far as **Question 1** is concerned, we strongly believe "what-if scenarios" would inevitably be perceived to have equal probability of occurrence – even with the appropriate disclaimers and statements highlighted in the document. Information on the probability of each scenario is vital for the clarity and understanding of the financial product by investors.

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[1] See "Interim Research Report, Research on KII Disclosures for UCITS Products", prepared for the European Commission by IFF Research and YouGov (2008), and "UCITS Disclosure Testing Research Report", prepared for the European Commission by IFF Research and YouGov (2009).

Moreover, such information could be easily obtained by an appropriate integration of a recently issued guideline (see "CESR's guidelines on the methodology for the calculation of the synthetic risk and reward indicator in the Key Investor Information Document" CESR/10-673) regarding the calculation of the synthetic risk indicator for structured UCITS. In the above mentioned document CESR describe a "historical-simulated Value-at-Risk at maturity" methodology that could be extended and used to calculate the risk-neutral probabilities of each scenario represented to investors. If the risk-neutral probabilities of each scenario were published in the KID – here, we consider a "probabilistic table" a better medium than the proposed graphical representation - the KID will definitely:

- convey the appropriate information to exclude the perception of scenarios having the same probability of occurrence;
- take into account the impact of all the possible outcomes in the quantification of risk-neutral probabilities and financial payoff at maturity (provided the methodology for such quantification is defined by the CESR to be objective and robust as in the Italian risk-based approach to transparency regulation) and therefore, it will give less – if any – space to opportunistic manipulation by the issuer;
- compare the financial outcome to a standard benchmark across products and issuers – that is the capitalization of the risk-free asset return – and not to undefined "unfavourable", "favourable" and "medium" market conditions, and therefore adequately describe the financial payoff of the formula by comparing it to the above mentioned benchmark.

As far as **Question 2** is concerned, we strongly suggest to dismiss the scenarios described in Box 2 and to provide for the representation of the following scenarios:

- negative return scenario: the final value of the invested capital (capital net of subscription costs and charges) is lower than the notional capital (i.e. capital gross of subscription costs and charges);
- scenario where the return is positive or zero but lower than that of the risk-free asset: the final value of the invested capital is higher than or equal to the notional capital, but lower than the final value resulting from investing the notional capital in the risk-free asset over the same time horizon;
- scenario where the return is positive and in line with that of the risk-free asset: the final value of the invested capital is higher than the notional capital, and in line with the final value resulting from investing the notional capital in the risk-free asset over the same time horizon;
- scenario where the return is positive and higher than that of the risk-free asset: the final value of the invested capital is higher than the notional capital, and higher than the final value resulting from investing the notional capital in the risk-free asset over the same time horizon.

As far as **Question 3** is concerned, we would welcome the adoption of the "probabilistic table" approach – that is a tabular representation of the potential performance of the structured UCITS calculated through an objective, robust and quantitatively based methodology – instead of the graphical representation or even the tabular representation based on a discretionary and arbitrary methodology.

Consequently, as far as **Question 4** is concerned, we strongly suggest to integrate the guidelines with an adequate description and definition of risk-based transparency standards based on the widespread principles of product unbundling, potential performance scenarios (see question 2), and suggested holding period. The positive experience of the risk-based transparency regime issued by the Italian regulator could be a useful benchmark to refer to.

Finally, considered our comments, the relevance of the issues discussed above, and the need to effectively pursue the authorities' objective of investor protection, we would strongly suggest carrying out a new consumer test focused on the practical comparison of the two competing approaches.

We hope that you will find these comments useful, and remain at your disposal should you wish to discuss this response.

Yours faithfully,

Dr. Nicoletta Rocchi

Head of International Department and European Secretariat