

INTERNATIONAL FINANCIAL DATA SERVICES

The Secretariat

The Committee of European Securities Regulators
11-13 avenue de Friedland
75008 Paris
France

17th December 2007

Dear Sir,

**CESR Consultation Paper on content and form of
Key Investor Information disclosures for UCITS**

International Financial Data Services (IFDS) is a joint venture between Boston (USA) based State Street Corporation, one of the world's leading investment servicing companies and DST Systems Inc, a Kansas City based leader in the design, development and operation of shareholder accounting and record systems.

IFDS is a provider of ASP (Application Service Provision) and BPO (Business Process Outsourcing) solutions to the global collective investment industry in the UK, Luxembourg and Canada. In the UK, IFDS is the leading provider of ASP and BPO services to the collective investment scheme industry with more than thirty fund management companies as clients. Our systems and services are used for the administration of some 6 million collective investment scheme (UCITS) investor accounts, which represents in fund management terms over 30% of the UK market.

I attach our detailed response to the above-mentioned consultation paper

Yours sincerely

C.J.Shelton
Risk & Compliance Director

International Financial Data Services (UK) Limited

IFDS's Response – CESR Consultation on Key Investor Information disclosures

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

Fundamentally, we consider that the problem of information asymmetry cannot be resolved by a document – it requires a marked, consistent, and ongoing rise in the financial capability of investors, and note that in the UK the FSA has been working on this area for some years. We therefore do not presume that SP be deemed a “regulatory failure”.

We would however agree that KII has the potential to provide a brief summary to enable fund comparison more effectively than SP.

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?*

We consider CESR has correctly summarised the required arrangements. In particular we agree the distinction made between the requirement of the UCITS Operator to provide KII to the registered unitholders and the obligation of any adviser / nominee / intermediary firm to provide the Operator's KII to their underlying clients. Given the rise of supermarket / wrap business this segregation is well made.

We agree the comment in paragraph 3.14 that disclosure relating to “wrapped” investments should be the responsibility of the wrap provider rather than the UCITS Operator, but suggest an extension of this. Regulations could similarly exclude the need for the UCITS Operator to provide KII to any direct business placed using an advisor, placing reliance upon the advisor to provide KII and reducing the duplication of documentation to the investor.

We also agree with the reference to outsourcing in paragraph 3.7.

Timing:

As regards the timing of provision (paragraphs 3.25 – 3.30) we would support continuation of the current arrangements whereby “execution only” business is permitted for an investor who opts to use a dealing channel that prevents real-time provision of documentation (e.g. telephone dealing). The wide availability of 2-page KII via websites would make independent review by investors possible ahead of such dealing instructions, but should not be the basis of regulation.

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

We consider that a document with the scope proposed for KII could become a useful comparative tool for investors. That said, there will be considerations as to whether KII must be a stand-alone publication or should form part of a larger document setting out contractual implications. A stand-alone document is beneficial for comparison between UCITS, but of less value when comparing a UCITS with another investment type.

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

We suggest that for operational efficiency – particularly in respect of the dealing process – regulations should not require a firm to provide KII to a non-retail investor. Any investor or prospective investor (or any category) should be able to request a KII from a product provider, and websites and contact centres provide ready means for such literature requests.

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

We consider the general presentation to be appropriate, though some comment is relevant on a couple of suggested items.

Risk Rating:

We consider that an over-simplified range of responses to risk rating (a number from 1-5, or “high risk” / “low risk” as suggested) is insufficient as it removes risk from its context and thereby undermines the value of the statement. Given that this document will relate to UCITS schemes the investment portfolio is the driver of capital risk, and any comment regarding risk must be seen in that context.

We suggest that such context can be provided through the use of standard text answers based on the overall portfolio construction. For example, a fund invested solely in government bonds might be commented “As the risk of a government bond defaulting is low there is lower capital risk in this UCITS than those investing in other securities.” It should be possible to form a low number of standard responses – perhaps between 5 and 10 – and standard text within a Member State would allow ready comparison of funds in context.

Importantly, due to the need for KII to be directly comparable between UCITS offered by different firms, we consider that the Home State Regulator should set the standardised responses applicable to the funds authorised in their jurisdiction. CESR may therefore represent a suitable forum for full standardisation across all EU States.

Practical Information:

Due to the contractual nature of fund investment it will not be possible to set out detailed comment on dealing processes and stay within the 2-page target for KII. We therefore request clarification that comments such as “how to buy/sell units” requires an answer that simply refers the reader to a dealing line, website, or address for postal instructions. Such a brief statement should be followed by a comment that the investor should also read the detailed dealing instructions in a cross-referenced document setting out contractual matters.

Tax / Legal liability:

Due to the intention that KII be a short document, and the potential dangers for a firm who misrepresents the tax or liability position, we again suggest that Home State Regulators should prescribe the relevant wording for their jurisdictions. This ensures a level playing field for all providers from a given jurisdiction.

Past Performance:

We suggest that firms should be able to use accounting years (where used consistently), and not be required to calculate based on a calendar year.

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 suggest that as KII will provide brief specific information to enable ready comparison of headline aspects of a UCITS scheme, prescription is necessary to achieve the goal. Firms should be prevented from attempting to include excess material not documented for other funds, and we have commented elsewhere on the potential need for Home State Regulators to prescribe certain standardised wording.

It must be noted that KII will not establish the contractual arrangement between the firm and the investor – and this is correct given the context of fund supermarket / wrap / intermediary business whereby the identity of the underlying investor may never be known to the UCITS Operator. For those customers investing directly with the UCITS Operator it would be appropriate for the KII to record where the contractual material (Terms of Business, etc.) would be found, and the inclusion of signposts supported (e.g. “To read more about how charges affect your investment, see page x of the ‘Scheme Particulars’ document”).

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

As a comparative document we consider that Option A probably provides sufficient information, though confirmation of the Home State Regulator could be beneficial in clarifying the implications of any cross-border activity. To highlight complaints in such a brief document sends out a negative message, and such detail should be included in any contractual material published separate from the KII.

The need to record depositary / auditor details is less clear to us, as such items do not in themselves impact upon the nature of the UCITS or the investor’s experience of the fund. Testing of the Option B items therefore seems a correct response.

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

We have no comments on this question.

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

We consider that the KII will provide the information necessary to meet the aim of introducing the document. However, it must be recognised that for the party investing with the scheme operator (by they retail, professional, or counterparty) there will need to be additional contractual material contained in another document.

Given the growth of supermarket / wrap / intermediary business it seems a correct decision to seek to separate fund information from contractual matters.

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

We consider identification of the competent authority to be a valid inclusion. As noted above, we suggest that any tax regime information to be included should be standardised text issued by the Home State Regulator concerned.

12. *Do you think other items of information are necessary?*

We do not consider additional items are necessary for the purpose of KII.

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

We suggest a pragmatic approach is necessary, based on certain principles that will be applied to the market concerned.

The KII is to set out the position of the UCITS and its Operator. As such the KII should be based exclusively on those fees deducted by the UCITS Operator for its services. Where an investor chooses to invest via some intermediary organisation then the investor should pay separate and additional fees to that intermediary for the services the investor receives – and such payments should not be a matter for the UCITS Operator to disclose within its KII.

In jurisdictions where the investor is required to use the services of a particular intermediary in order to deal then we suggest that the KII should show separately the Operator’s fees and any additional fees charged by that essential intermediary, and that including the aggregated fee enables best comparison.

CESR makes reference to the practice of discounts (and fee rebates should be similarly considered) affecting the actual fees experienced by an investor. Given that UCITS have the ability to launch share classes with different expense treatment we suggest that CESR considers whether the use of such discounts and rebates support the best interests of investors as a whole. For market forces to operate correctly the investor should pay the fees appropriate to the services he requests: the Operator’s fee covers operation of the UCITS, and the investor should separately pay his agent for any such service required. The UK’s Financial Services Authority is currently in the middle of consultation on “consumer agreed remuneration”, which we consider to be operationally feasible but suggest requires an end to discounts and rebates as a result of intermediary involvement.

14. *Does the proposed approach of local information (a harmonised section for local information within KII, that would be precisely delineated) achieve 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?*

We note the Committee’s comments in paragraph 4.30, regarding the exclusion of all local information. While such an approach would make the document less capable of acting as a stand-alone document, it may be unhelpful to infer that KII will contain all information

necessary to make a purchase decision. We see KII as a comparison tool, and not the only document an investor should review. Investors must be aware that they are entering into a financial contract, and so KII should contain clear signposts to relevant sections of a more detailed document of a contractual nature (be that terms & conditions, scheme particulars, etc.).

As the specific local information (e.g. telephone numbers) should not affect the comparison of two UCITS we consider that its inclusion is not essential. It would however appear of value for the Operator to note the methods of communication / instruction available. This would provide clear comparison information as to whether the investor can deal via post, telephone, and internet routes – and directing the investor to the location of the necessary information in the larger separate document.

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

In the context of the KII we cannot suggest any scenario in which the ability to provide part of a KII would be more beneficial than providing the full KII. As such, permitting a “building block” approach would seem to undermine the clarity and understanding of KII.

Where KII is intended to remove information asymmetry, a model that requires investors to assemble the relevant information seems inconsistent.

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

Given that a fund of funds can have a fluid portfolio the only practical course of action is to not require a look-through on the KII, but for the KII to be written in such a way as to reflect the essential characteristics of the UCITS in question. We consider that the key items recorded for inclusion in the KII would enable this outcome.

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?*

As the KII is intended to enable comparison between UCITS then the KII should be produced at the sub-fund level. That said, we consider it would be appropriate for a firm to also make available a compendium document provided such a document contained a complete KII for all sub-funds of a given umbrella.

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?*

We consider that as KII is intended as a comparison tool the investor must be able to access KII for the specific class being contemplated. Use of a representative class alone will create knowledge gaps and inconsistency.

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

As the fund's investment objective and policy are distinct then we consider they should be separately expressed. We further consider the policy suggested by paragraph 5.3 to be appropriate.

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

As these two items are distinct we consider they should be separately shown. While changing a fund's objective is fundamental, an Operator has greater flexibility in amending a fund's investment policy.

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 inappropriateness if any, design also for retail non-sophisticated investor?*

As KII is to be comparative, we agree that the word "guarantee" should be controlled. We would however suggest that where a UCITS Operator undertakes to guarantee 100% security of capital under certain conditions (though not necessarily relying upon a guarantor) the KII should be able to record such protection as a "guarantee". As KII is not to use legal language there should be no concern about such reference. However, as CESR recommends KII record the name of any legal guarantor, the KII should clarify where a capital guarantee is provided by the UCITS Operator itself – enabling fair comparison with those UCITS backed by an external guarantee.

Turning to the minimum investment period we are concerned that such statements move the product provider towards a partial advice service. As KII is to serve comparative purposes then any KII item that could affect the investor's time horizon (such as a redemption charge) should be unpacked. However, we do not believe it would be appropriate for a UCITS Operator to then specify whether an investor should (or should not) invest for more/less than a certain time period. To do so could be misleading (undermining the value of formal financial advice), and undermine the competitiveness of UCITS compared with other financial products.

We similarly consider the suggestion regarding "non-sophisticated investors" to be too subjective for a comparative tool such as KII. While recognising that UCITS can now include a variety of investment models it is fundamentally a retail product. The value of the UCITS brand may be undermined by suggesting a division between "good" UCITS funds and "bad" ones.

We suggest that as KII is a comparative tool, the clear recording of the investment objective and investment policy should sufficiently indicate the complexity of strategy being employed.

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?

Please see our answer to Q 21.

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?*

Please see our answer to Q21. We consider that unless the UCITS Operator is offering a specific service of financial advice to the investor it is potentially misleading to make statements regarding recommended holding periods. Such a requirement could also place UCITS at a competitive disadvantage to other financial products.

Where a fund has certain characteristics that affect the likely timeline we would expect such matters to emerge from other disclosures required (e.g. redemption fees, investment strategy, risk factors, etc.).

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 mis-sellings, especially in the case of “execution only” subscriptions?*

Please see our answer to Q21. We consider that making a polar distinction between two camps of UCITS would weaken the power of the UCITS brand. It could also lead to investors having a false impression of the investment risks associated to UCITS in either category.

Chapter 6: General comment

We consider that the key consideration for a risk indicator is to ensure that it accurately reflects the investment, enabling meaningful comparison to other products – some of which may not be UCITS – and does not over-simplify the position. A key aspect of risk disclosure is the financial capability of the investors reading that disclosure. We would be concerned therefore if a synthetic indicator reduced the genuinely complex nature of risk to a simplistic measure, and so suggest that focussed narrative represents a better comparative tool. The involvement of Regulators to devise standardised text should be considered as a means of supporting comparison between products.

While paragraph 6.12 indicated significant support from the investors’ side, we would caution that the true value of such a measure would be found only once market conditions caused people to reflect on the investment decisions made. We would note also that mis-selling is not the full picture; an investor may as a result of disclosures fail to make an investment that would in fact be appropriate for them, and such outcomes should also be considered within the consumer testing performed.

Chapter 7: General comment

While past performance is no guarantee of future performance and should not therefore be the basis of an investment decision it is understandable that investors will be interested in the track record of UCITS when considering a purchase.

We would suggest that such performance review indicates the ability of the fund manager to arrange a successful portfolio and that, to fulfil KII's role as a comparative tool, the simplest approach is to use mid-to-mid / offer-to-offer prices when presenting past performance. Charges applied outside the portfolio (initial, exit, dilution levy, local taxes, etc.) should be excluded to enable the best comparison of fund manager performance, though a clear note should be included stating that such fees / charges are not reflected within the performance data.

It is important that the desire for a single measure does not lead to misleading comparisons between funds in different jurisdictions.

Chapter 8: General comment

If a break-down of charges is to be shown then we suggest that a set of standard labels be used. We further suggest that any such breakdown clearly segregate fees that are defined percentage (e.g. AMC); variable percentage (custody fees, performance fees), and monetary (e.g. regulator fees). Without such a standardised approach the KII may not be beneficial to investors seeking to compare UCITS. The breakdown would also work alongside the performance measurement noted earlier.

As the Operator is in a position to amend certain fees it would seem appropriate for any breakdown to separate fees set by / paid to the Operator from any other expenses incurred. Performance fees would fall into this category.

Chapter 9: General comment

As noted above, we consider that consumer testing must assess the potential that the document deters appropriate sales.

While it would seem appropriate for firms to use up their existing stocks of material the transition to new documentation should be set so that at a known date all firms will use KII.

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