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The Committee of European Securities Regulators

Dear Sirs

Barclays Capital's response to "CESR Consultation Paper on content and form of Key Investor Information disclosures for UCITS"

Barclays Capital welcomes the opportunity to contribute to the discussion regarding the replacement of the existing Simplified Prospectus with the Key Investor Information document including its content and format. The attached submission reflects our position with respect to the above Consultation Paper.

Yours sincerely
Shachi Shah
Managing Director
Barclays Capital

Overview

Barclays Capital has distributed over 50 structured UCITS funds since launching its first fund 24 months ago. We engage with many third party distributors and institutional clients throughout Europe and many of whom, like ourselves, do not regard the Simplified Prospectus ("SP") as a practical and effective document for 'retail investors' to understand the principal features of the fund.

We welcome any improvements to the format and content of the SP and its suggested replacement, the Key Investor Information ("KII"). However, it should be clear that this document will be:

- (i) for 'retail investors';
- (ii) informative and key structural features should not be sacrificed to achieve a 2 page document by over simplifying strategies, risks and costs of a fund, and
- (iii) accepted by all EU Member States that KII and Prospectus is suitable and sufficiently informative for retail investors and therefore no further documents will be needed for the passporting process.

Designed for the retail investor

The KII, like the current SP, is to facilitate 'retail investors' with their investment decision process with respect to UCITS Fund. The SP was not developed specifically for 'non-retail investors' simply because these investors were considered to be professional investors and could make any investment decisions without relying on the SP. Therefore, any changes to the SP should only consider its impact on the 'retail investor' alone.

During this consultation process, it should also be considered whether any such document is required if the only investors are 'non-retail investors'.

Form and Content

The KII should be simple, easy to read, short and comparable to other UCITS Funds. The concerns we have with some of the suggested changes are as follows:

- the KII should only represent the information already available in the Company Prospectus and the relevant Fund Supplement, it should not look to provide additional information such as synthetic risk factors, harmonised charges, minimum investment holdings, which may confused or potentially contradict what has been described in these other documents;
- **Minimum investment holdings should not be added** as this implies investment advice and will vary from individual to individual;
- **Synthetic risk factors should not be added** as there too many variables and inconsistencies in determining a common risk measure which can be easily compared with other UCITS Funds. We strongly disagree with this and how dangerous
- **Harmonised Charges should not be added** because this requires various assumptions in order to obtain a single overall cost and therefore can be misleading.

Any additional content to will require additional legal disclosure which in turn lengthens the document.

Passporting

Any such changes to the existing SP and its replacement, KII, should be agreed by each EU State Member as an appropriate document for retail and would not require any changes or additional information during the passporting process. This being the case would significantly improve the passporting process. However, we must stress that if such changes are only partially accepted by any EU State Member then all the benefits of such changes will be lost and will certainly be against the basic principles of a harmonised fund industry across the EU.

Chapter 1: Introduction

No question.

Chapter 2: Summary analysis of SP regulatory failure

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

From our experience, we have found through the passporting process and distribution via third parties distributors, that the current SP is not an effective document in providing the key information in a consistent format. It is also not universally accepted as an adequate document for marketing UCITS in certain EU States.

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

Yes this consultation has addressed a number of issues with the SP, however, not all of the suggested solutions are appropriate or even practical.

Chapter 3: Wider Context in which KII would be used

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 it has.

Chapter 4: General options for format and contact of KII

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

Yes, we agree with the proposed purpose and scope of KII.

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

Yes 'non-retail investors' should be able to opt from receiving the KII, however, the question should be whether the Company is required to produce the KII if the only investor is a 'non-retail investor' and the answer to this is No. The KII is constructed solely to assist 'retail investors' with their investment decisions when investing in a UCITS funds. All other investors, 'non-retail investors' and in accordance with MiFID, would be classified as a 'professional client' or 'eligible counterparty' and as such would already have access to any relevant information in order to make any investment decisions Therefore, if a UCITS Fund is only being offered to 'non-retail investor's then such a document would have no added value to such an investor and therefore should not be created. Further reason why KII should not contain information that is not the Company Prospectus / Fund Supplement.

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

Yes we believe that the general presentations are appropriate.

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?*

A prescriptive approach would be fine as it will certainly lead to consistencies between UCITS Funds, however, it must be understood that some information requested may not be available or even relevant and it should be left out at the discretion of the Company with explanation.

Principles-based approach is OK provided regulator is not going to look behind KII disclosures.

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

Option A is the preferred proposal. However, as described under option B, we would also consider testing the benefits of providing information on the tax regime of the home member state. Tax has different implication for each investor and by providing any tax information may imply a form of advice which means further disclosures.

We don't agree with adding anything suggested in Option B, except for adding the following
* cut-off for dealing instructions should be part of 'practical information'
* information on the existence of other share classes

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

We suggest to involve a sample group of 'retail investors' and provide them with two KIIs, where one is only using option A and the other has the additional changes, obviously referencing the same UCITS Fund. Then run questionnaire to ascertain which KII is more informative.

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

We believe that CESR has suggested a good balance, however, we need to ensure that the content is clear and not misleading.

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

There is no real added benefit to the investor which authority has approved the fund, however, its important for the investor to understand where the fund is domiciled when determining any tax implications, if any. But, as discussed above, its important that any tax information is limited or even exempt to avoid unnecessary tax disclosures which can lead to a much lengthier document. Investors should always be advised to seek tax advice elsewhere and not to rely on this document for such advice.

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

As discussed above

* cut-off for dealing instructions should be part of 'practical information'
* information on the existence of other share classes

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

Yes distribution costs should not be systematically 'unbundled' within the KII for a number of reasons:

- (i) Such fees may vary from region to region and distributor to distributor;
- (ii) Such fees may not have been finalised as yet; and
- (iii) Further disclosure will not facilitate the investor in comparing UCITS Funds because they don't directly impact the fund's performance since such costs are coming out of the already disclosed investment management fee.

There should be no flexibility whether this should be applied or not. This is because the approach will vary from one UCITS Fund to another and will lead to greater inconsistencies between UCITS Funds.

- 14. Does the proposed approach to local information (a harmonized 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 (e.g. signposting local information to a website) feasible and appropriate?**

The proposed approach with local information is appropriate. Signposting to a website can be used in conjunction with this approach.

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

No. The Building Block approach is not the most efficient and consistent way to compile and present the key fund information, and leading to difficulties in comparing UCITS Funds where the content and format varies. Allowing providers to complete different parts of the KII is problematic and we strongly advise against this.

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

We agree with treatment of fund of funds as a single fund that invests in a portfolio of funds and therefore investors will not need any additional information within the KII, except for specific risks and returns with these types of funds as applicable.

- 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 suggest that a KII should only be produced for a sub-fund where its be distributed to 'retail investors'. No, providers shouldn't produce a compendium of all the sub-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?**

If the relevant Fund has more than one share class, then the KII should allow the basic details of each share class, i.e. fees, currency, minimum investment and potential dividends. This should be captured in a basic table. The use of a representative share class is not desirable and would only be feasible where the details of all other share classes are the same.

It was also suggested the need to produce an additional KII for each share class. This would be very onerous and impractical, and we strongly suggest not to proceed any further with this recommendation.

Chapter 5: Describing the Fund's investment objectives and strategy

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

Yes the general presentations are appropriate.

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

Yes, providing that this is consistent with what has been described in the Fund Supplement.

- 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?**

As discussed, this document is specific to 'retail investors' so the information should be clear and precise. The suggested streamlining does focus on the key elements.

With respect to the 'new key items' our comments are as follows:

- (i) We agree that the use of 'capital guarantee' wording would imply a legal guarantee and the use of 'capital protection' wording implies the investment strategy. Therefore, we agree that the KII should not refer to a guarantee unless it uses a legal guarantee.
- (ii) We don't agree with the addition of the 'minimum investment holding period'. This implies the fund is providing investment advice and therefore understands each investor's own investment needs. Investors have different investment horizons and objectives so it would not be appropriate to generalise how all investment should invest to achieve their optimal return. In addition to this, any such advice would most certainly lead to significant legal disclosures and thus increasing length of this document.
- (iii) The design (format and content) of this document is to facilitate retail investors with their investment decision. Therefore, KII's design should focus on 'retail investors' only. Attempting to also design this for any other type of investor, is a waste of time simply. This is because such investors are unlikely to refer to this document because they have already obtained the necessary information to make any decision.

22. *More specifically, do you agree that it should be required that in case the capital is not legally guaranteed, the term 'guarantee' should not be used in the KII, and it should be briefly 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?*

As discussed above, we agree that the term guarantee should only be used in the KII where it's a legal guarantee and this can be confirmed by referring to the legal arrangement in place to provide such guarantee, i.e. the deed of guarantee, which should include who is providing such guarantee.

If the fund is not 'capital guaranteed or 'capital protected', we believe it would be beneficial for the KII to mention this.

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?*

Providing any such information to investors should be carefully considered and whether it's appropriate, as described above.

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?*

The KII should be designed for and offered specifically to retail investors only.

Chapter 6: Risk disclosure

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

We strongly disagree with the need for a synthetic risk indicator to replace the existing risk disclosures. There is no one way to present risk synthetically in a common way to ensure investors can easily compare the risk of one UCITS Fund to another. Each Company will apply different approaches and interpretation of the methodology that can change over time and inline with their own investment approach. This can also lead to potential varying synthetic risk indicators for similar funds and thus jeopardising the purpose of the KII, that is, providing a simple, concise and comparable document.

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

As above.

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

As above

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

There are numerous in house and external methodologies for presenting risk. Most appropriate method should be used for any given fund.

- 29. Is the suggested assessment grid at Annex 4 for methodological and presentation issues appropriate and sufficient for identifying a relevant methodology?**

No comment.

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

Agree calculations at CESR and implemented by EU State Members and such calculations are monitored by the Investment Manager.

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

No comment.

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

Credit risks and sudden market events that can disrupt the liquidity and pricing of the assets.

- 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?**

Yes scenarios and tables can enhance the behaviour of formula fund and should be limited to such funds with the necessary disclosures. Yes such presentation might be misleading, but can be mitigated by appropriate explanations. It would be difficult to harmonise this representation as formula funds are very customised and therefore would require a specific presentation. Best way to provide prospective scenarios is showing both the up and down side examples.

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

Disagree with Principal 3, by describing the probability of heavy losses and gains. Any fund can suffer significant losses or gains, subject to any specific structuring that limits such exposures. By informing investors of the probability of large loss or gain can be misleading, in particular, if its suggested that a particular fund has a high probability of gains but never actually achieves this the investors will not be pleased and may seek legal action. And will certainly not be investing in any other funds. Similarly, for where it has been described that the fund has a low probability of loss and the opposite occurs.

There is a danger for 'retail investors' to apply the information wrongly and thus come to the wrong conclusions

There is no benefit in providing this particular principle but there may be some benefit in providing a risk disclosure on the potential for large losses or gains due to the nature of the underlying.

Chapter 7: Past performance

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

Past performance should not be considered a requirement of the KII. Investors can be directed to a website or their distributor for further information on historical performance, but it should not be a part of the KII. Investors need to make a decision on all facets of the fund, but because this is a very short document they may simply focus on the past performance for making this decision, which is not appropriate.

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

As above.

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

The Performance figures should include all fees, excluding subscription and redemption fees, but including dividend distributions.

Chapter 8: Charges

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

CESR has identified the appropriate options for presenting information about charges.

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

Consolidated charges will make it easier for investors to compare other UCITS funds, however, the problem is how best to consolidate this information in fair way. There are two major problems with consolidating information on charges

(i) *difficulty in harmonising different types of fees in an accurate manner*: each cost can be determined in a number of different ways, for example, the initial cost for investment may be a percentage of your investment or as a fixed cash number, similarly, the investment management fee can be described as fixed or variable percentage of the net asset value of the fund. To understand the impact of the above examples in a combined approach will require several assumptions and standardisation across UCITS Funds. This is not practical and will lead to confusion amongst investors and will base their decisions off other measures; and

(ii) *some charges are discretionary and may not be charged*; subscription and redemption costs can also vary from distributor to distributor of the Fund and this may not be explicitly described in the KII. For example, a particular share class may have an initial subscription charge of 'up to 4%' of the initial issue price of the share, however, this charge is not determined by the Company but rather the appointed distributor or distributors and therefore can vary from 0% to 4%. The same can be said for redemption charges. In fact, such charges should be considered separate from the Fund when comparing UCITS Funds as they tend to be determined outside the fund by other parties and not the Company.

Investors should simply be presented with two categories of costs to determine

(i) cost of subscribing and disinvesting from the fund, which may vary and is typically subject to a third party; and

(ii) total cost on performance of the fund, which includes the investment management fee and any fixed fees such as director fees, administration and custody and other related on going costs as determined by the Company. This fee is far more important to investors when comparing UCITS Funds.

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

No because some charges will be determined based off a moving value, i.e. a percentage of the net asset value. Trying to bring this to a cash number will imply its fixed and this may not be the case.

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?*

As described above.

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?*

Providing a single figure for ongoing fund charges is common and is often referred to as the TER. The TER would include the investment management fees, administration and custody, director fees, legal, establishment costs and other ongoing charges, but this definition must be agreed by all EU State Members to ensure consistency of treatment. Some of these fees are fixed and others are determined as a percentage of net asset value, so an estimated value can be provided and therefore new fund's will not have a actual TER but an estimated TER until the accounts of the fund have been finalised. The KII should be updated following the finalisation of the accounts each year.

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

If there are any material changes to the disclosed fees all investors should be notified in advance, unless this has already been disclosed. Where there are changes to the investment management fees they should be agreed by interested parties, including relevant investors, prior to any change and investors should be given sufficient time to disinvest prior to such change.

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?

Transactional charges may be included, however, this will be typically an estimated running charge.

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

The performance fee, if applicable, is part to the investment management fee and should be considered as an ongoing fund charge. Therefore, we agree that this fee should be disclosed in KII, but a simple notification that such a charge is applied and further details can be found in the Fund Supplement.

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

We agree that charges should be disclosed on a maximum or 'up to' basis, however, this should be detailed between share classes, not as a representative share class. That is, some share classes might have a lower investment management fee to another share class and therefore such classes shouldn't be prejudiced by those share classes of higher fees. Therefore, investors should be aware of these different fee structures not simply relying on a representative share class.

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

No. Fees payable to distributors are covered by the investment management fee and thus already disclosed to investors. It would be very difficult to provide any granularity to distribution fees as this can vary amongst distributors and between regions. An investor can be informed that such fees will be paid out of the investment management fee, but estimate would be misleading.

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?

Combining the costs of the Feeder Fund and its master needs to be considered further, but in principal this seems reasonable.

Chapter 9: Testing the Benefits, and Assessing the Costs of KII

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

None,

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

Will we need to replace any existing SPs or is this only applicable to new funds?

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

There will certainly be a reduction in the number of pages required to print and translate

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

Transition period for existing SPs to be converted to KII only when SP are to be updated.

- 53. Is the gradual introduction of KII feasible?**

Its reasonable.