

2 September 2009

**Response to CESR consultation paper on technical advice at level 2
relating to Key Information Document disclosures for UCITS**

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Since 2004, Lipper has included the expertise and data of Fitzrovia International, whose fees and expenses research is unrivalled globally. This knowledge, developed over 15 years, has assisted CESR's Sub-group on the KID, the European Commission's Simplified Prospectus Workshop and its UCITS Contact Committee, as well as IOSCO's Investment Management Committee and TER Working Groups at both ALFI and INREV.

We are grateful for this opportunity to comment on the consultation paper and will focus our comments on one specific area of disclosure: Charges disclosure (Section 6 and Section 9).

Section 6: Charges disclosure

Do you agree with the proposals in Box 6? In particular, do you agree the table showing charges figures should be in a prescribed format?

Box 6 provides a reasonable and clear overview of a fund's charges.

Performance fees in the charges table. Why is only the benchmark element of the performance fee included? As performance-related fees can be quite complicated, the concern must be that other elements that are omitted from the charges table will have a material effect on the returns for investors, yet they might be unaware of them. At the very least, the fact that a performance fee has other aspects to its structure (such as a cap on fees as a proportion of net assets) should be flagged.

Point 3(c). Reference is made to the fact that "the performance fee of the fund's last financial year should be included as a percentage figure." This suggests that such a fee is the proportion of a fund's net assets: this is not what is suggested in the charges table. This point should be clarified. The performance fee structure (currently partially covered by the charges table, i.e. the most relevant information for new investors) and the performance fees previously charged (i.e. the proportion of a fund's net assets accounted for by performance fees in the fund's last financial year) are two different aspects.

Portfolio transaction costs. The desire to include portfolio transaction costs — if a reasonable approach for this can be found — is to be welcomed. However, it is worth noting that CESR has decided to drop the disclosure of portfolio turnover on the basis that retail investors are not able to interpret these figures appropriately. It might be asked whether they will be any better equipped to interpret figures showing portfolio transaction costs.

[Do you agree with the methodology for calculating the ongoing charges figure?](#)

Annex 2 provides a reasonable and clear overview of calculating a fund's ongoing charges. In particular, awareness of reliable third party sources is to be welcomed.

[Do you agree with the proposals in Box 7? In particular, do you agree that CESR should not prescribe a specific growth rate in the methodology for calculating the illustration of the charges?](#)

For the reasons that CESR outlines, this more limited approach to providing a summary measure of charges appears to be reasonable. However, further guidance on the holding period and rate of return to ensure some reasonableness in this area would likely be valuable to fund companies and so, in turn, to investors. For example, suggesting a return of 50% over one year would be in no one's interests.

[Do you agree with the proposals in Box 8?](#)

Box 8 provides a reasonable and clear overview of estimating a new fund's ongoing charges. The fact that it is an estimated figure should be flagged in the KID.

However, as always, estimates may not reflect the charges which a fund then actually bears and passes on to investors over its first year. In light of this, consideration might well be given to require disclosures or other communications to investors by those funds whose actual ongoing charges immediately following a first estimated ongoing charge bear little or no relation to one another. For example, CESR might require a fund company to provide a clear and simple explanation as to the difference between these two figures, as well as the actions being taken by the fund company to remedy the situation and/or to prevent its occurrence in future.

[Do you agree with a variation of 5% of the current figure is appropriate to determine whether a change is material?](#)

Ideally the charges table should disclose the latest available information on a fund's one-off and ongoing charges, together with performance fees. In the case of an ongoing charges figure, this is likely to be updated annually.

Instinctively I would feel that it is not the size of the variation of charges that matters, but whether the fee structure is being changed to the benefit of the organisation operating the fund, be it the annual management fee or, for example, back-office fees paid to a related party (such as an in-house administrator). Seeing the fund industry raise ongoing charges by 4% in order to avoid the suggested benchmark of "materiality" should be avoided. In a similar way, Annex 2 point 10 refers, quite reasonably, to materiality as "an increase in management fees".

Do you agree with the proposals in Box 10?

In addition to the comments on material changes above, investors should certainly be made aware of changes in ongoing charges figures each year. However, alerting investors sooner than with the annual update of the KID would seem to be unnecessary. Alerting investors sooner would be reasonable if the definition of materiality suggested above is used (i.e. where the fee structure is being changed to the benefit of the organisation operating the fund).

Section 9: Circumstances in which a KID should be revised

Do you agree with the proposals in Box 19?

Please see my comments on material changes in relation to Boxes 9 and 10 above.

Do you agree with the proposals in Box 20?

Switching charges should certainly be explained to investors.

Do you agree with the proposals in Box 21?

Box 21 provides a reasonable approach to selecting a representative share classes.

Do you agree with the proposals in Box 22?

Box 22 provides a reasonable approach for funds of funds' charges.

For further information, please contact:

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