

CNMV CONSULTATIVE PANEL REPORT ON THE CESR CONSULTATION PAPER ON CONTENT AND FORM OF KEY INVESTOR INFORMATION DISCLOSURES

The CNMV's Consultative Panel has been set by the Spanish Securities Market Law as the consultative body of the CNMV. This Panel is composed by market participants (members of secondary markets, issuers, retail investors, intermediaries, the collective investment industry, etc) and its opinions are independent from those of the CNMV.

The White Paper on Enhancing the Single Market Framework for Investment Funds, published by the European Commission in November 2006, acknowledged that the simplified prospectus was a failure because of its complexity and length and expressed the need to reform it.

To that end, a proposal has been made to replace the existing simplified prospectus with short, meaningful explanations of the risks, costs and expected outcomes associated with investment in a UCITS, in a short and simple form, understandable to investors.

In order to identify what should be the content of that information, called **Key Investor Information** ("KII"), the European Commission has requested technical advice from CESR, which has drawn up a number of proposals and drafted a questionnaire for public consultation.

The CNMV Advisory Committee looks favourably upon the proposal since it should improve the information available to investors, and it considers that information is the best way to protect investors' interests.

This Committee also looks favourably upon the CESR's proposals insofar as they increase the usefulness of the information provided to investors and are fully coherent with the principles underlying Spanish legislation in this area.

Nevertheless, the CNMV Advisory Committee considers it necessary to emphasise the following factors in connection with the referenced sections of the CESR document:

a) Section I, Chapter 3: Context in which KII would be used

CESR is aware that UCITS do not simply compete with one another, but also with products governed by other requirements such as the Prospectus Directive. The CNMV Advisory Committee emphasises the advisability of achieving coherence between the reporting requirements imposed on the various forms of investment, which is essential from the standpoint of investor protection.

b) Section II, Chapter 4: Recommendations as to the format, content and presentation of the *Key Investor Information*.

- The CNMV Advisory Board considers it inadvisable to drop the tax regime applicable to the investment in its Home State from the KII since this information is valuable for domestic investors.
- Regarding the possibility of referring the investor to a web site for local information (such as the cut-off time for subscriptions and

reimbursements), the CNMV Advisory Board considers that this information is relevant enough to merit inclusion in the KII. If the KII's purpose is to provide all the information to enable an investor to make an investment decision, the investor should not be referred to a web site for such important information as the cut-off time applied by the fund manager.

- It is also advisable to include information identifying the depository and the auditor, and the form in which complaints may be made.

c) Section II, Chapter 5: Describing the Fund's objectives and strategy.

In line with the requirements of Spanish law, the CNMV Advisory Board considers that the reference to the existence of guarantees should be confined to cases where there is a legal guarantee, not where there is mere objective of capital preservation.

d) Section II, Chapter 6: Risk disclosure.

Conceptually, the development of a risk/return indicator is beneficial insofar as it may assist investors in making investment decisions, and it would facilitate comparison between various alternatives. Nevertheless, because of the difficulty of defining such an indicator and the broad variety of UCITS, it might be difficult for such an indicator to fulfil its goals.

Moreover, each Member State has its own financial tradition, with the result that investor profiles and financial cultures need not necessarily be comparable. Risk is assumed on the basis of a subjective judgement, and this raises serious doubts about the advisability of a single indicator for all Member States.

e) Section II, Chapter 8: Charges

- Disclosure of distribution charges: Distributor remuneration structures vary between Member States. Moreover, the amount of remuneration for a given Fund varies between distributors, which raises the question as to whether such charges should be included in the KII and the indicator.

The CNMV Advisory Committee considers that, if the purpose of drawing up an indicator of charges is to enable different UCITS to be compared, the amount of distribution charges should be included in that ratio, provided that they represent an additional expense for the investor. Otherwise (i.e. if the distribution charges are not an additional cost for investors but are paid out of another cost that has already been recognised, e.g. by retrocession to distributors of part of the management charge), then, for greater clarity and brevity of the KII, that information should not be included, considering also that:

1. MiFID already requires intermediaries to disclose the fees charged by the fund manager.
2. the information on distribution costs may be extremely complex, since the fraction of the commission that is retroceded will vary between distributors as it is negotiated individually with each one, and the

percentage of retrocession is often variable so that the final amount is only known at year-end, based on the total volume distributed.

In short, if one of the goals of replacing the simplified prospectus with the KII is to eliminate all redundant information, the disclosure of distribution charges and their inclusion in the charge ratio should be confined to cases where they represent an additional charge to investors.

Moreover, the CNMV Advisory Committee considers it essential to disclose front-end and back-end fees, provided always that such fees are actually charged to the investor.

- Disclosure of investment charges in cash amounts as well as percentage terms.

The option of disclosing portfolio transaction charges in cash as well as percentage terms would unnecessarily increase the amount of information in the KII due to duplication (presenting the same data in two different ways). Also, it might be very complex to implement in certain circumstances (e.g. performance fees) and does not serve the purposes inspiring the proposals relating to the KII.