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FEEDBACK STATEMENT

**Guidelines for the transition
from the Simplified Prospectus
to the Key Investor
Information document**



Executive Summary

In this document CESR gives feedback on the responses received to the consultation on the guidelines for the transition from the Simplified Prospectus to the Key Investor Information document published in July (Ref. CESR/10-672). These guidelines address some practical implications of Article 118(2) of the revised UCITS Directive, which allows UCITS management companies up to 30 June 2012 to implement Key Investor Information (KII) as referred to in Article 78.

Given the broad support from respondents for the proposed guidelines, CESR decided to confirm most of its proposals in the final text (Ref. CESR/10-1319, which is being published alongside this feedback statement). However, one amendment was made to clarify that any decision to incorporate elements of the KII into the simplified prospectus is entirely at the discretion of the management company.

The guidelines will enter into force in line with the transposition deadline for the revised UCITS Directive (1 July 2011).



Background

1. CESR published a consultation on guidelines for the transition from the Simplified Prospectus to the Key Investor Information document (Ref. CESR/10-672) on 20 July 2010. A total of 15 responses were submitted by the deadline of 10 September. Responses were from a range of stakeholders including firms and associations representing the asset management, banking and insurance sectors, as well as retail investor representatives. A list of non-confidential respondents is included in Annex 1.

General comments

2. Some respondents fully supported the proposed guidelines.
3. Two respondents called for Member States to allow a transitional period of one year, as is permitted under the UCITS Directive. There was general agreement on the importance of ensuring that inwardly-notified UCITS' rights to continue using the simplified prospectus (SP) are fully respected.
4. Two respondents felt that an exemption from the requirement to produce a KII document should be granted in two specific cases:
 - when existing funds with a simplified prospectus are no longer marketed; and
 - when funds are in liquidation.
5. According to these respondents, the first situation would be particularly relevant for structured UCITS and would avoid unnecessary costs and administrative burdens.
6. Two respondents stated that in their understanding, Article 82 of the revised UCITS Directive envisaged that the transition from the SP to the KII required a simple notification to competent authorities, not an ex-ante approval. This would mean that the KII could be used by management companies immediately.
7. One trade association felt that for management companies whose home Member States introduce KII before 1 July 2011, it should be possible for the KII to be used for cross-border notifications even if the other Member States have not implemented the Directive early. Similarly, one member of this trade association asked for a specific statement to be made that where the management company already makes use of the KII during the transitional period, the host Member State must accept the KII for notification purposes.
8. One stakeholder noted that some 3rd countries may take some time to adjust to the new EU framework and continue to require the simplified prospectus, thereby creating inconsistencies and an administrative burden for management companies.

CESR notes that the decision on whether to grant a transitional period (and if so, the duration of that period) is the responsibility of the relevant Member State rather than CESR members. As required by the Directive, however, CESR members will continue to accept simplified prospectuses used by inwardly-notifying UCITS until 30 June 2012.

The suggestions made regarding possible exemptions from preparation of the KII in the case of funds that are no longer marketed (particularly structured UCITS) and those in liquidation are outside the scope of CESR's guidelines on the transition from the SP to the KII.



Box 1 – Scope

9. There were no comments on the Scope section.

Box 2 – General approach to the introduction of the Key Investor Information (KII) document

Q.1 Do you agree with the proposed general approach in Box 2? Are there any other matters which the guidelines should address?

10. Several respondents broadly agreed with the provisions in Box 2. However, some of them wished to ensure that there will not be any obligation to incorporate elements of the KII into the SP; some members of a trade association found this potentially confusing for investors. One of them went further, questioning the merits of even allowing certain elements of the KII to be introduced into SPs on the basis that this would be difficult for management companies to introduce in practice, as well as confusing for investors. One of the stakeholders felt that full comparability would not be possible until all SPs had been transformed into KII in any case so management companies should have discretion to choose the most operationally efficient approach that reduced costs for investors.
11. One respondent considered the provisions in paragraph 5 of Box 2 to be slightly ambiguous and felt that it should be clarified that any revisions made to the simplified prospectus during the transition period would in no way reduce the amount of time available for the transition.
12. One respondent disagreed with point 2 of Box 2, which would require management companies to prepare a KII for any new standalone or umbrella UCITS created during the transition period. In their view this would i) confuse investors; ii) oblige management companies to adapt all their processes even if they only wished to create a single new UCITS during the transition period; and iii) cause difficulties for competent authorities as they would have to develop processes for receiving KII only from new standalone UCITS or new umbrella structures. Another respondent also favoured allowing management companies to prepare SPs for new UCITS created during the transition period, in order to avoid a situation in which investors are given different styles of disclosure containing different information (thereby reducing comparability).

CESR agreed that the revision of the SP during the transitional period should be left to the discretion of the management companies and clarified this approach by slightly modifying the wording in paragraph 5 of Box 2. CESR further agreed that Member States would not impose any obligation on management companies to modify the contents or format of the SP during the transitional period.

Taking into account the benefits to investors of receiving the improved disclosures in the KII and of putting in place the new framework as soon as possible, CESR decided to confirm its view that for any new stand-alone UCITS or a new UCITS umbrella structure authorised during the transitional period, the management company should provide key investor information from the outset.



Q.2 Do you agree with the proposed treatment of cross-border notifications, fund mergers and master-feeder structures? Are there any other special circumstances which these guidelines should address?

13. CESR's proposals for the treatment of cross-border notifications, fund mergers and master-feeder structures were welcomed by respondents.
14. However, one stakeholder highlighted the practical difficulties of translating KII documents into the necessary languages for the purposes of the cross-border notification process. In relation to the final sentence of paragraph 1 of Box 3, they felt that this approach was too strict, particularly in Member States that choose not to allow any transitional period. As such, this stakeholder felt it should be possible for the translated SP to be used for cross-border marketing purposes during the transitional period even if the SP has been replaced by KII in the home Member State.

Given the broad support for CESR's proposals on treatment of cross-border notifications, fund mergers and master-feeder structures, these have been confirmed in the final guidelines. Regarding the requirements in the final sentence of paragraph 1 of Box 3, CESR considered that the risk of creating an unlevel playing field among unitholders and potential unitholders (through the provision of two different types of disclosure document) outweighed the possible burden this provision would place on management companies.

Q.3 Are there any circumstances in which these guidelines could be detrimental to consumers?

15. Two respondents reiterated their concerns regarding the confusion potentially caused to investors if a hybrid SP/KII document was provided or in the case of a KII being provided for structured funds that are no longer marketed or are in the process of being liquidated. In the latter case they also raised issues of the administrative burden.

CESR considers that it is appropriate to allow management companies to incorporate certain elements of the KII into their SPs during the transitional period. As noted above, CESR has clarified in the guidelines that any decision to do so is entirely at the discretion of the management company.

On the issue of exempting management companies from preparation of the KII in certain circumstances, CESR considers that this falls outside the scope of its guidelines on the transition from the SP to the KII.



Annex 1 – List of respondents

	Name of respondent
1.	Austrian Federal Economic Chamber, Division Bank and Insurance
2.	European Banking Federation
3.	Italian Banking Association
4.	Association française de la gestion financière
5.	Spanish Association of Collective Investment Schemes and Pension Funds
6.	Association of British Insurers
7.	Association of the Luxembourg Fund Industry
8.	European Fund and Asset Management Association
9.	Investment and Life Assurance Group
10.	BVI Bundesverband Investment und Asset Management
11.	Danish Shareholders Association