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CONSULTATION PAPER

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

Deadline for contributions: CESR invites responses to this consultation paper by **10 September 2010**. All contributions should be submitted online via CESR's website under the heading 'Consultations' at www.cesr.eu. All contributions received will be published following the close of the consultation, unless the respondent requests their submission to be confidential.



Table of contents

Executive Summary	3
Template	4
The Guidelines	5

Executive Summary

This paper considers 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.

The transitional period will give UCITS time to use up their existing stocks of simplified prospectuses (SPs) and prepare replacement Key Investor Information documents, but Member States (MS) can decide whether or not to allow UCITS established in that State up to 12 months to implement the KII. However, a MS cannot restrict the rights of inwardly-notified UCITS if their home State allows a transitional period.

In trying to balance the scope for consumer confusion with the costs to be borne by management companies and ultimately consumers, CESR's guidelines set out what it considers to be the appropriate approach that management companies should take during the transitional period when:

- making alterations to an existing SP;
- launching a new UCITS or investment compartment (sub-fund);
- adding share classes;
- passporting a new or existing UCITS into another MS; and
- undertaking a merger or setting up a master-feeder structure as allowed by the revised Directive.

Overall, CESR takes the pragmatic view that in most circumstances the SP can continue to be offered up until 30 June 2012, where the national law and regulation of the UCITS home State allows it.

The exception to this is for new UCITS authorised after 30 June 2011, where the KII should be prepared from the outset.

- In addition, a UCITS that continues to use the SP after 1 July 2011 may adapt it to reflect the requirements of KII.

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

Introduction

1. This paper considers the provisions made in Article 118(2) of the revised UCITS Directive (2009/65/EC) for the deferred implementation of Key Investor Information (KII), and what practical issues this might give UCITS management companies during the twelve-month transitional period ending 30 June 2012.
2. MS can decide whether to allow UCITS established in that State up to 12 months to implement the KII. A MS, in making that decision, cannot restrict the rights of inwardly-notified UCITS; such funds can continue to use the simplified prospectus (SP) up to 30 June 2012 or for as long as their home State allows.
3. The transitional period, in allowing the SP and KII to exist side by side, leaves room for differing interpretations about the approach a management company should take when:
 - (a) it needs to amend a simplified prospectus;
 - (b) it intends to launch a new fund or sub-fund or share class; or
 - (c) it intends to notify a UCITS in another MS, carry out a cross-border merger or set up a master-feeder structure.
4. CESR believes it would be beneficial to UCITS management companies for there to be a common interpretation of how the transitional arrangements for key investor information should be applied, and sets out its views in the following guidelines.
5. All references to a management company in the guidelines should be read as applying to an investment company that has not designated a management company.

Guidelines

Scope

Box 1

1. These guidelines apply from 1 July 2011 to a collective investment undertaking authorised under Directive 2009/65/EC.
2. Where these guidelines propose that a management company may provide a simplified prospectus instead of key investor information, such flexibility is subject to those national laws and regulations of the UCITS' home member State that implement Article 118(2) of the Directive.

Explanatory text

1. The revised UCITS Directive (2009/65/EC) must be implemented in all Member States (MS) by 1 July 2011. Article 118(2) gives a derogation for the adoption of Key Investor Information (KII):
Member States shall ensure that UCITS replace their simplified prospectus drawn up in accordance with the provisions of Directive 85/611/EC with key investor information drawn up in accordance with Article 78 as soon as possible and in any event no later than 12 months after the deadline for implementing, in national law, all the implementing measures referred to in Article 78(7) has expired. During that period, the competent authorities of the host Member States shall continue to accept the simplified prospectus for UCITS marketed on the territory of those Member States.
2. This document assumes that Article 78(7) must be implemented by 30 June 2011. Consequently, the transitional period provided by Article 118(2) expires on 30 June 2012 at the latest, although MS may choose to set an earlier date or may decide not to provide any transitional period at all. A management company may only apply these guidelines in conformity with the national laws and regulations of the state in which the UCITS is established.
3. CESR considers that it is necessary to take a pragmatic approach which recognises the logistical issues faced by management companies during the transitional period and which aims to minimise costs.
4. Box 2 describes the general approach to existing and new UCITS (including new investment compartments and share classes) while Box 3 describes the application to cross-border notifications, fund mergers and master-feeder structures.

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

Box 2

1. A management company shall be allowed either to begin providing key investor information for all of its existing UCITS simultaneously or to phase the introduction of key investor information throughout the transitional period allowed by the UCITS home state.
2. For any new stand-alone UCITS or a new UCITS umbrella structure authorised during the transitional period, the management company shall provide key investor information from the outset.

3. For any new investment compartment added to an umbrella UCITS existing at 30 June 2011, the management company may choose whether to provide a simplified prospectus or key investor information for that compartment.
4. If a new share class of an existing UCITS is approved during the transitional period, the management company shall treat it in the same way as the existing classes of that UCITS, providing either a simplified prospectus or key investor information in respect of all classes of units / shares in the fund.
5. A management company that continues to provide a simplified prospectus for a UCITS during the transitional period may carry out and publish one or more revisions of that simplified prospectus. Such revisions may include the addition of elements of key investor information such as a synthetic risk-reward indicator or a standard charges table.

Explanatory text

5. CESR considers that, where the transitional period is in force, management companies should have the choice whether to convert from the SP to KII on a fund-by-fund basis. Although it is likely that in many cases management companies will be able to minimise cost and disruption by making the transition in a single exercise, there may be specific operational reasons that make it more practical or cost-effective not to do so. CESR is however concerned that investors might be confused if they are offered both an SP and KII for different funds in the same range, and therefore recommends that management companies consider this issue carefully when making plans for the adoption of KII in a phased exercise.
6. In CESR's view, the transitional provision applies only to UCITS that are in existence as at 1 July 2011 and thus already have an SP available to investors. For that reason, it would not be possible for a management company to prepare a completely new SP after that date for a newly-authorised UCITS. However, CESR sees no objection, where a new investment compartment is created in an existing UCITS umbrella structure, to revising the current SP to include details of the new sub-fund.
7. In the case of share classes, the key investor information requirements are more detailed and prescriptive about whether a separate KII document is needed for every class. This implies that new classes in an existing UCITS ought to adopt KII from the outset, but CESR considers that it would be unduly confusing for investors if some classes in a UCITS are covered by an SP whilst KII is provided for others. CESR recommends that management companies should be consistent in their treatment, so while the SP is still in use for a fund, any new classes should also be covered by that SP.
8. It is likely that, for the above reasons and others such as the need to update total expense ratios (TERs), a management company will wish to revise and reissue SPs during the transitional period. CESR sees no objection to doing so and such revisions may, if the management company wishes, include adaptations to bring the SP more in line with the requirements of KII. This might, for example, include the addition of the KII synthetic risk-reward indicator to the narrative risk disclosures currently required for the SP.

Questions for the consultation

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

Special circumstances

Box 3

1. Where a UCITS (or an investment compartment or share class thereof) has been or is to be notified under Chapter XI of the Directive, and is continuing to provide the simplified prospectus in its home State, the requirements of Articles 93(2)(b) and 94(1)(b) shall be satisfied by the management company providing a simplified prospectus instead of key investor information. A management company shall always provide the same type of document (whether simplified prospectus or key investor information) to investors in the UCITS' home State and in every host State in which it is notified.
2. Where a merger is proposed under Chapter VI of the Directive during the transitional period, and the receiving UCITS is continuing to provide the simplified prospectus, the requirements of Article 43(3)(e) shall be satisfied by the management company providing a simplified prospectus instead of key investor information.
3. Where a feeder UCITS and a master UCITS are established in a member State or States in which the transitional period is in force, their management company (or companies) shall have the choice whether to prepare a simplified prospectus or key investor information.

Explanatory text

9. Article 118(2) makes it clear that a management company may market its UCITS on a cross-border basis using the SP during the transitional period. CESR considers that this provision applies equally to UCITS that are already accessing the market of a host State at 1 July 2011, and those that begin to do so subsequently. Furthermore, having regard to Article 94(1) which requires a UCITS to provide investors in each host State with the same information and documents provided to investors in its home State (translated if necessary), CESR considers that a UCITS cannot adopt KII in any host State either earlier or later than the date on which it adopts KII in its home State.
10. The process for mergers introduced under the revised Directive foresees that investors in the merging UCITS will automatically be provided with a copy of the KII of the receiving UCITS. CESR considers that, in order to achieve the objective of the merger legislation during the transitional period, it is reasonable for a receiving UCITS that has not yet adopted KII to provide the SP to the merging UCITS' investors instead.
11. Where a master-feeder structure is established during the transitional period, there is a possibility that one or both funds could be providing the SP to their investors. A situation in which one fund offers the SP and the other KII could arise, for example, if the feeder is required by its national law and regulation to adopt KII at an earlier date but the master chooses not to do so. Since it may be difficult to avoid such situations, and in order for firms to be able to take full advantage of master-feeder UCITS structures from the outset, CESR proposes that there should generally be flexibility on this point during the transitional period.
12. However, CESR is concerned that the use of differing disclosure formats by a feeder and its master may result in confusion for investors, and considers that management companies should try to minimise this risk where it is practical and proportionate to do so. Consequently, where the home State(s) of both funds allow the use of the SP, then CESR recommends that the management company or companies should try to reach agreement to provide the same type of disclosure for both feeder and master (i.e. either both of them provide the SP or both provide KII). It should be noted, however, that a master must provide the same type of document to all its prospective investors, so it cannot have (for example) a KII for the use of feeder investors and a SP for everyone else.

Questions for the consultation



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?

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