

MEMO# 21905

October 30, 2007

Committee of European Securities Regulators Publishes Draft Recommendations for Fund Disclosure Reform

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TO: INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 18-07 RE: COMMITTEE OF EUROPEAN SECURITIES REGULATORS PUBLISHES DRAFT RECOMMENDATIONS FOR FUND DISCLOSURE REFORM

The Committee of European Securities Regulators (CESR) has published a consultation paper with its draft recommendations to the European Commission on mutual fund disclosure reform. [\[1\]](#) The core proposal is for a two-page “Key Investor Information” (KII) document that would replace the current UCITS Simplified Prospectus. The KII would have standardized format and contents across EU jurisdictions. CESR does not make any specific recommendations regarding the timing of delivery of the KII, though it is clearly considered to be “pre-contractual” information. An open hearing on the consultation will be held on November 23, 2007 at CESR’s headquarters in Paris, and comments on CESR’s draft recommendations are due by December 17, 2007.

Background

Earlier this year, the European Commission published a consultation considering a number of changes to the UCITS Directive, which provides the framework for a single European market for investment funds. One of the fundamental proposed changes was to scrap the current UCITS Simplified Prospectus and replace it with a “key investor information” regime. The Commission then asked CESR to provide recommendations on the format and contents of KII.

CESR proposes that the KII document, as a tool for helping retail consumers reach informed investment decisions, should contain only the essential elements for making those decisions and should not be burdened with excessive detail or information serving only legal or regulatory requirements. The KII should be produced for all UCITS funds and delivered to all investors in those funds, but non-retail investors would be able to waive delivery. CESR recognizes that the KII may require certain modifications with respect to a fund of funds, an umbrella fund, or a fund with multiple share classes.

KII Format and Contents

CESR recommends that the KII be presented as a single document of no more than two pages, unless there are unusual features requiring additional explanation. Standardized content would appear in a fixed order and hierarchy. CESR suggests using the following items in the listed order (subject to modification following the consultation and consumer testing):

Preferably on page 1:

- names of the fund, manager, and promoter/group;
- fund objectives and investment strategy;
- material risk/reward factors likely to affect the fund (CESR proposes consumer testing to determine whether a narrative description or some type of quantitative risk indicator would be more appropriate);
- past performance (using 10 years of data, if available, presented in a bar chart, and also showing the performance of a benchmark, if applicable);
- summary of charges payable directly and indirectly by the investor (consisting of subscription and redemption charges, ongoing charges taken from fund assets, and contingent charges such as performance fees);

Preferably on page 2:

- treatment of income (whether paid out or capitalized);
- practical information such as how to buy and sell fund units and the frequency of NAV calculation;
- brief details of the fund's Home State taxation regime;
- a liability statement (that the fund promoter is responsible for the contents of the KII);
- where and how to obtain further information about the fund;
- identity of the competent authority responsible for regulating the fund; and
- date of preparation of the KII.

The consultation goes into considerable detail on the format and content for the fund's objectives and investment strategy, risk disclosure, past performance, and charges. The consultation notes that some of the items listed above (for example, information on the tax regime and competent authority on the second page) may be less useful to consumers, and possible replacements should be considered. CESR recommends testing at least two alternative formats of the document, one with the elements listed above and one with additional information, and allowing consumers to indicate which elements they find most or least useful.

CESR's proposals for dealing with funds of funds, umbrella funds, and funds with multiple share classes adopt a practical approach. Generally, CESR proposes treating a fund of funds as a single fund for purposes of the KII. Charges of the underlying funds would then

need to be taken into account in disclosures. For umbrella funds, CESR recommends that a KII be produced for each individual sub-fund, not the umbrella as a whole (unless local marketing regulations require otherwise). For funds with multiple share classes, a provider could create a separate KII for each class or use the class with the highest charges as a representative for the others. Under limited circumstances, information on different share classes could be combined into a single KII.

KII Use and Distribution

The provider of a UCITS fund (the investment company or UCITS management company) would be responsible for preparing the KII with respect to each UCITS it manages and for distributing the KII to any investor the provider deals with directly or through a tied agent. The provider would also be responsible for providing the KII to third-party distributors, which would then be responsible for delivering the KII to their customers. Providers would have a duty to take reasonable steps to ensure that third-party fund distributors are informed when a revised version of the KII is made available. CESR does not consider there to be major conflicts between other applicable European Directives [2] and its proposals for the KII, though some minor changes to other Directives may be required.

Where UCITS are packaged in “wrappers” such as insurance or structured products, CESR considers that in most cases the KII of a UCITS may not be suitable for customers who invest in the wrapper. This is because the wrapper will either bear its own charges in addition to those of the fund or will in some way modify the results of investing in the fund. In those cases, the provider of the wrapper should have sole responsibility for providing relevant product information to customers.

CESR does not make any specific proposals with respect to the timing of delivery of the KII, apparently leaving it to the European Commission to sort out the issue. The consultation notes that the desired outcome is that consumers should have enough time to consider the information in the KII before they enter into a commitment in relation to the UCITS (describing the KII as “pre-contractual” information). MiFID, which would apply to most UCITS distribution, requires delivery of information to clients “in due time” and “in a durable medium.” CESR notes that the meaning of the MiFID requirements and how they will be applied to the delivery of KII under different subscription situations (notably advised sales and execution-only subscriptions through a website) have not yet been specified.

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If you have any questions or would like to discuss the CESR consultation, please contact Glen Guymon (202-326-5837 or gguymon@ici.org) or Susan Olson (202-326-5813 or solson@ici.org).

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endnotes

[1] CESR/07-669, CESR Consultation Paper on content and form of Key Investor Information disclosures for UCITS (Oct. 2007), available at www.cesr-eu.org/popup2.php?id=4814.

[\[2\]](#) “Applicable” Directives referenced include the Markets in Financial Instruments Directive (MiFID), Distance Marketing Directive, E-Commerce Directive, Life Insurance Directive, and Insurance Mediation Directive.

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