



SJ n° 2255/Div.

Mr Fabrice Demarigny
Secretary General
Committee of European Securities
Regulators (CESR)
11-13, Avenue de Friedland
75008 Paris

Paris, 25 May 2007

AFG RESPONSE TO CESR CALL FOR EVIDENCE ON KEY INVESTOR DISCLOSURES FOR UCITS

Dear Mr Demarigny,

The Association Française de la Gestion financière (AFG)¹ welcomes the CESR call for evidence on key investor disclosures for UCITS.

For many years now, AFG has been actively contributing to European discussions and consultations relating to the revision of the UCITS Directive, either directly or through the European Fund and Asset Management Association (EFAMA) in particular.

The aim of CESR's call for evidence is to get views regarding the request for assistance received from the European Commission.

¹ The Association Française de la Gestion financière (AFG)¹ represents the France-based investment management industry, both for collective and discretionary individual portfolio managements.

Our members include 365 management companies and 772 investment companies. They are entrepreneurial or belong to French or foreign banking or insurance groups.

AFG members are managing more than 2500 billion euros in the field of investment management, making in particular the French industry *the leader in Europe in terms of financial management location* for collective investments (with more than 1500 billion euros managed, i.e. 22% of all EU investment funds assets under management, wherever the funds are domiciled in the EU) *and the second at worldwide level*. In the field of collective investment, our industry includes – beside UCITS – the employee savings schemes funds and products such as regulated hedge funds/funds of hedge funds as well as a significant part of private equity funds. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA) and of the European Federation for Retirement Provision (EFRP). AFG is also an active member of the International Investment Funds Association (IIFA).

Regarding this CESR's call for evidence, we wish to make the following remarks.

I. General remarks on the request for assistance by the European Commission to CESR

First, we agree that the overarching objective for this work should be *to replace the existing so-called simplified prospectus* with short, meaningful explanations of the risks, costs and expected outcomes associated with investment in a UCITS fund/sub-fund.

Second, we wish to stress that even though the work to be carried out on key investor disclosures may be tackled from a retail investor's perspective (in order to ensure that the content is understandable for retail investors), AFG considers that *such an information should not be delivered only to retail investors as a principle*. Many professional investors make use of the same information, and therefore a fully clear-cut "retail versus institutional approach" of the subject would be wrong.

Third, a dimension of the topic has not been made clear by the request for assistance: a revised form of Simplified Prospectus under the form of Key Investor Information – *if sufficiently harmonised in its definitions, format and key information – would greatly ease the notification procedure for the cross-border passporting of UCITS*. Currently, very often the so-called "product passport" encounters difficulties because these three crucial dimensions of the Simplified Prospectus (key definitions, key information, format) are different from one Member State to another one. The Host regulator is not used to the Home Simplified Prospectus, creating therefore delays in the scrutiny of imported UCITS files.

Fourth, we also agree that *in the medium term* this work should reduce the costs for fund managers of producing and publishing investor disclosures. However, *in the short term*, the huge investments recently done by managers to comply with the national implementations of the Commission Recommendation on the Simplified Prospectus have to be amortised and therefore this key information disclosure (as replacing the existing Simplified Prospectus) cannot be envisaged to become reality before a couple of years – and this timeline fits the European legislative agenda of the European Commission.

Fifth, *regarding the method to be followed*, we agree that CESR must not wait until the final adoption of Level 1 UCITS Directive amendments for starting launching its work on content and form of appropriate investor disclosures (cost, risk, past performance presentation and other investor-relevant disclosures). However, even though we consider that the content and format should not be different depending on the distribution channel involved, we think that, before working on the content and format of such information themselves, *two crucial parameters have to be clarified: what is the objective of the key investor disclosures and how such key investor disclosures should be (or would have to be) used by distributors*. On the first point, we consider that the aim of the information must be to ensure comparability between funds for the investor (and therefore content and format must reach harmonisation on key definitions, key information and format) ; on the second point, we think that the use to be made of the simplified prospectus/key investor information by distributors (on the basis of the MiFID or the Insurance Mediation Directive for instance) must be *clearly defined and similar from one channel (or Directive) to another one*. If these clarifications are not provided, launching an in-depth work on the revision of the simplified prospectus might lead to a solution which will not finally fit with the aim of such information and its use by distributors.

In any case, AFG wonders why CESR (and the European Commission) schedules such a long timeline for adopting a harmonised Simplified Prospectus/KII. Many existing or previous experiences have been tested in Member States – or even out of the European Union – and these experiences should contribute to a fast work on this issue.

Sixth, following this involvement of distributors within the topic, we ask for a clear clarification of responsibilities between producers and distributors – as well as a level playing

field as it would not be fair to require from investment funds (and their distributors) information that are not asked from other financial product providers and sellers.

Seventh, we clearly ask for Level 2 (i.e. legally binding) measures on the content and format of the key investor information, instead of Level 3 (i.e. legally non-binding) measures. The main reason for the failure of the existing simplified prospectus was, indeed, that its details were provided under the legal format of a Commission Recommendation – which was of a non-binding nature, leading to many different implementations from one Member State to another one. We don't want to take a similar risk today through Level 3 or more widely with any kind of non-binding measures.

II. On the substance of the request for assistance by the European Commission to CESR (Annex of the request)

a) Para 2: purpose and objective of request for assistance

First, we contest the statement by the European Commission that UCITS are now a widely-retailed product. We already mentioned above a similar remark regarding the use of the simplified prospectus including by professional investors. More widely here, we wish to recall that the UCITS Directive is not based on a differentiation between retail investors and non-retail investors: nowhere in the UCITS Directive such a differentiation is made. In addition, in practice, both retail and institutional investors invest in UCITS – the latter receiving and very often making use of simplified prospectuses as well. But it does not mean that these latter investors become retail investors.

Therefore, even if the aim of the simplified prospectus/key investor information should be to provide information understandable by retail investors, it must not mean that it is exclusively dedicated to retail investors.

Second, we contest the statement that the simplified prospectus – referred to as “key investor information” – should not necessarily take the form of a specific document. We consider that this statement is unclear. If we get a consensus that the major aim of the simplified prospectus/key investor information is to ensure comparability between funds by investors, *we must be sure that this comparability is possible in practice*. If the elements of this information were provided through different key definitions, key information and formats, how could it be possible?

Third, regarding the taking into account of different sales channels and methods for distributing UCITS, we agree with this approach. But taking into account different sales channels and methods must not lead to different disclosure rules (which would then generate significant costs). On the contrary, the same approach is needed, whatever the sales channels or the Directives (MiFID, Insurance Mediation Directive) concerned.

b) Para 3: focus of the work to be undertaken in response to the request for assistance

3.1 Guiding principles for work under the request for assistance

We mainly agree on the basic principles listed at the beginning of para 3.1.

However, we consider that this paragraph is ambiguous on some points.

First, the request for assistance suggests to replace the simplified prospectus by “explanations” or “requirements”. No format is mentioned anymore. As already stated by us above, the European industry needs an harmonised format, in order both to ensure comparability in practice by investors and to ease the cross-border passporting of UCITS.

Second, the third bullet point of the request for assistance suggests for comparable contents and formats across EU. But we think that the notion of “comparable contents and formats” is

ambiguous. Investors need for comparable products; but to ensure comparability between products, it is not enough to ask for comparable contents and formats: it requires *harmonised* contents (but only on key definitions and key information – such as risks, fees and performance calculation) and format. Otherwise, mere “comparable” contents and formats might not be enough in practice to ensure a real comparability of products – which should be the ultimate goal to be reached.

Third, if we fully share the need for looking at different contexts, e.g. different product wrappers or different channels for distribution, we wish to recall that it should lead to ensure similar disclosures.

Fourth, the key investor information must remain the same whoever the investors are. Any need for differentiation between investors for the same UCITS (e.g. taxation) should be left to distributors.

Fifth, we need some clarifications regarding the future of existing formats which have been developed at national level in addition to the simplified prospectus (such as the so-called “format libre” in France), once the new key investor information is put in place.

3.2 Detailed content of disclosure

We agree on the four principles identified by the European Commission. However, it will depend on the details which will be developed under these four general principles.

We also agree on the complete deletion of information identified by the European Commission as being less important for investors (date of creation, identity of depositary, etc.).

3.2.1. Risk disclosure

We have some doubts on the feasibility of the last bullet point, i.e. developing a *methodology* to give an indicator of the risk appetite and/or uses for which a UCITS is suitable.

Obviously, the producer shall provide for risk disclosure on the product. But it seems premature to provide for a (single) pan-European methodology regarding such a risk disclosure.

In addition, we think that the topic of risk disclosure must be also clearly tackled at the level of the distributor, which is more able to offer a scale of risks within the full range of products it offers (including non-fund products). In fact, the main element is the quality of advice provided by the distributor: risk disclosure by the producer should not lead to alleviate the duty of advice to be fulfilled by the distributor.

In any case, such a methodology for risk disclosure should avoid quantitative data, and instead should provide for recommended minimum periods of investment.

3.2.2. Cost disclosure

We fully agree on the need for an EU-wide standardised calculation method of Total Expense Ratio (TER). But we fully disagree for authorising a “similar composite measure”. The former is already known and used in several major Member States; we therefore do not need for the latter. Regarding the components to be included in the TER, transactions fees as well as performance fees should not be included.

We fully agree on maintaining cost disclosure by percentage rates. On the contrary, we are not in favour of cash figures, as we not aware of the need of investors for such – supplementary – information.

We have strong doubts on any “synthetic indicator” combining the effects of front-end loads and management fees, as front-end loads are variable (depending on the period of investment) and might also depend on distribution channels (and knowing that sometimes some distribution channels are not known by producers).

3.2.3. (Past) performance presentation

We support the mandatory disclosure of past performance (accompanied by appropriate disclaimers), as well as developing a common standard for presenting past performance to investors. It is crucial to ensure the same method for calculation and presentation (once again to ensure comparability between products). In particular, performances should be calculated on an annual basis, and fees should be included.

3.3 Presentation of information

It is necessary to specify a structure and format of the key investor information. We agree on the principles identified by the European Commission.

Regarding the maximum length, we think that the shorter would be the better if we want the document to be really used.

Regarding multiple sub-funds, we agree that it would be too complicated to have a single document for all the sub-funds: in this specific case, the aim should be to get a document per sub-fund.

On the contrary, we think that it is possible to get a single document for all share classes.

3.4 Specific issues

3.4.1 Practical/local information

We consider that this type of information should not be regulated at the level of the fund manager. This type of information relates to distributors.

3.4.2 Language

Regarding the language, we fully agree on the requirement to provide key investor information in the local language.

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If you wish to discuss the contents of this letter with us, please contact myself at 01 44 94 94 14 (e-mail: p.bollon@afg.asso.fr), Stéphane Janin, Head of International Affairs Division at 01 44 94 94 04 (e-mail: s.janin@afg.asso.fr) or his deputy Catherine Jasserand at 01 44 94 96 58 (e-mail: c.jasserand@afg.asso.fr).

Yours sincerely,

(signed)

Pierre Bollon