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**CESR's guidelines on the  
methodology for calculation of  
the ongoing charges figure in  
the Key Investor Information  
Document**

### **Executive Summary**

1. CESR delivered its advice to the European Commission on the format and content of Key Information Document disclosures in October 2009 (Ref. CESR/09-949). That advice was supplemented by two detailed technical methodologies on the risk and reward indicator (Ref. CESR/09-1026) and the ongoing charges figure (Ref. CESR/09-1028) that were delivered in December 2009. The Commission has indicated that it sees these methodologies as being more appropriately adopted via binding technical standards by the new European Securities and Markets Authority (ESMA) rather than as level 2 implementing measures. During the period leading up to the establishment of ESMA, CESR has agreed to adopt the methodologies as level 3 guidelines in order to provide clarity to the industry in implementing the new package of UCITS requirements.
2. The methodology for calculation of the ongoing charges figure set out in these guidelines applies to all UCITS and aims at ensuring a harmonised approach to the calculation of this figure, thereby enabling investors to compare UCITS more easily. The methodology identifies clearly which items should be included in the ongoing charges figure. There is a presumption that all costs borne by the fund must be taken into account unless they are explicitly excluded, while performance-related fees and transaction costs are among the costs excluded from the calculation (as are entry and exit charges borne by the investor). An ex-post calculation based on audited accounts should be used wherever possible. The methodology also takes account of the adaptation necessary in the case of new funds, or where there is a significant change to the costs of an existing fund.



## Background and introduction

1. In its technical advice to the European Commission on the Key Information Document for UCITS (CESR/09-949), published on 28 October 2009 (hereafter the Advice), CESR made a number of recommendations on an improved approach to charges disclosure, including a clearer separation of the different types of charge and a harmonised approach to their presentation. As part of this, CESR proposed that each UCITS disclose in its Key Investor Information a single figure representing all annual charges and other payments taken from the assets of the UCITS on a periodic basis. This figure, to be referred to as the 'ongoing charges figure', was to be calculated using a harmonised methodology. CESR submitted that methodology to the Commission as part of the package of level 2 advice delivered in December 2009 (Ref. CESR/09-1028). CESR also published a feedback statement setting out how the responses to the consultation had been reflected in the advice (Ref. CESR/09-995).
2. Following submission of CESR's advice, the European Commission began work to prepare the level 2 implementing measures that would support the requirements of the revised UCITS Directive (2009/65/EC) at level 1. The advice that CESR submitted on charges disclosure – in particular Section 5 of Ref. CESR/09-949 – was incorporated into the level 2 implementing measures without any substantive changes to the content. This is reflected in Articles 10 to 14, 24, 30, 33 and Annex II of the KII implementing Regulation<sup>1</sup>.
3. During the preparation of the implementing measures, the Commission explained that the technical methodologies, which it considered formed a central element of the advice, would not be best suited to delivery by means of measures at level 2, but instead as binding technical standards under the new EU supervisory framework. This covers both the detailed methodology for calculating each UCITS' ongoing charges figure and the methodology for calculation of the synthetic risk and reward indicator (on the latter, see document Ref. CESR/10-673).
4. The Commission considers the methodologies an important element in the operation and uniform application of the requirements on Key Investor Information and takes the view that they should be harmonised and legally binding on all UCITS. The Commission has further acknowledged that, due to their highly technical features which are tailored to the current market, it is likely that the methodologies will require work by CESR in the future to reflect developments in the market in an appropriate and timely manner. This will allow sufficient flexibility in monitoring the application of the methodologies over time and appropriate adjustments to be made.
5. Taking these points into account, the Commission decided that it would be preferable to allow the future European Securities and Markets Authority (ESMA) to adopt the methodologies as technical standards in their entirety. In the interim, CESR has agreed to adopt the methodologies as level 3 guidelines. This provides clarity and certainty to the industry for the purposes of implementing the new UCITS requirements as a package. Stakeholders should note that the substance of the methodology itself has not changed and is exactly the same as the version published on 22 December 2009 (Ref. CESR/09-1028).

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<sup>1</sup> COMMISSION REGULATION 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website

## Methodology for calculation of the ongoing charges figure

The following calculation methodology should be used by UCITS management companies for the purposes of calculating the ongoing charges figure referred to in Article 10(2)(b) of the KII implementing Regulation.

1. The management company of the UCITS shall:
  - (a) be responsible for the calculation of the ongoing charges figure and for its accurate statement in the KID;
  - (b) establish procedures that are consistent with this methodology and are adequately documented;
  - (c) keep records of each calculation for a period of 5 years after the last date on which that version of the KID was available to be issued.

### *Definition of ongoing charges to be disclosed*

2. In the context of the KID, 'ongoing charges' are payments deducted from the assets of a UCITS where such deductions are required or permitted by national law and regulation, the fund rules or instrument of incorporation of the UCITS, or its prospectus. The figure to be disclosed in the KID shall be based on the total of all such payments made over a specific period, excluding the exceptions identified in (5) below.
3. The ongoing charges figure shall include all types of cost borne by the UCITS, whether they represent expenses necessarily incurred in its operation, or the remuneration of any party connected with it or providing services to it. These costs may be expressed or calculated in a variety of ways (e.g. a flat fee, a proportion of assets, a charge per transaction, etc).
4. The following list is indicative but not exhaustive of the types of ongoing charge that, if they are deducted from the assets of a UCITS, shall be taken into account in the amount to be disclosed:
  - (a) all payments to the following persons, including any person to whom they have delegated any function:
    - the management company of the UCITS
    - directors of the UCITS if an investment company
    - the depositary
    - the custodian(s)
    - any investment adviser;
  - (b) all payments to any person providing outsourced services to any of the above, including:
    - providers of valuation and fund accounting services
    - shareholder service providers, such as the transfer agent and broker dealers that are record owners of the UCITS' shares and provide sub-accounting services to the beneficial owners of those shares;
  - (c) registration fees, regulatory fees and similar charges;
  - (d) audit fees;
  - (e) payments to legal and professional advisers;
  - (f) any costs of distribution.
5. The following charges and payments shall not form part of the amount to be disclosed as ongoing charges in the KID:

- (a) entry / exit charges or commissions, or any other amount paid directly by the investor or deducted from a payment received from or due to the investor;
  - (b) a performance-related fee payable to the management company or any investment adviser;
  - (c) interest on borrowing;
  - (d) payments to third parties to meet costs necessarily incurred in connection with the acquisition or disposal of any asset for the UCITS' portfolio, whether those costs are explicit (e.g. brokerage charges, taxes and linked charges) or implicit (e.g. costs of dealing in fixed-interest securities, market impact costs);
  - (e) payments incurred for the holding of financial derivative instruments (e.g. margin calls);
  - (f) the value of goods or services received by the management company or any connected person in exchange for placing of dealing orders (soft commissions or any similar arrangement).
6. The exclusion in 5(d) for transaction-related costs shall not extend to:
- (a) transaction-based payments made to any of the persons listed in 4(a) or (b), in respect of which the recipient is not accountable to the UCITS; all such amounts shall be taken into account in the published figure;
  - (b) the costs of acquiring or disposing of units in other UCITS or collective investment undertakings (CIUs), which shall be taken into account in accordance with 8(f) below.
7. Under a fee-sharing agreement, the management company or another party may be meeting, in whole or in part, operating costs that should normally be included in the ongoing charges figure.
- (a) Any remuneration of the management company (or another person) that derives from such fee-sharing agreements shall be taken into account and added to the total ongoing charges figure. Possible examples include the remuneration of a management company through a fee-sharing agreement with a broker on transaction costs, or with a custodian on stock-lending income.
  - (b) There is generally no need to take into account fee-sharing agreements on expenses that are already accounted for in the ongoing charges disclosure (for example, the remuneration of a management company through a fee-sharing agreement with a fund which is captured under paragraph 4(a) above). However, in the specific case of a UCITS investing in other CIUs, any fee-sharing agreement between the management company of the UCITS and the CIU or its operator or management company shall be taken into account if it is not already captured under paragraph 8 below.
8. Where a UCITS invests a substantial proportion of its assets in other UCITS or CIUs, and so makes the disclosures required by the second paragraph of Article 50(3) of the UCITS Directive, its ongoing charges figure shall take account of the ongoing charges incurred in the underlying CIUs. The following shall be included in the calculation:
- (a) if the underlying CIU is a UCITS (or a non-harmonised CIU which elects to comply with the KID disclosure requirements) its most recently available ongoing charges figure shall be used; this may be the figure published by the CIU or its operator or management company, or a figure calculated by a reliable third-party source if more up-to-date than the published figure;
  - (b) if the underlying CIU is operated by the UCITS management company or any linked company (i.e. within the definition in the first paragraph of Article 50(3) of the Directive), but does not fall within (a), the UCITS management company shall make a best estimate of its ongoing charges according to this methodology;
  - (c) if the underlying CIU does not fall within (a) or (b) and does not publish an ongoing charges figure, the UCITS management company shall either use any published information that represents a reasonable substitute for that figure (e.g. a total expense ratio published by a

reliable source) or else shall make a best estimate of its maximum level based on scrutiny of the CIU's current prospectus and most recently published report and accounts;

- (d) where CIUs falling within (c) represent less than 15% of the UCITS' assets, it shall be sufficient to use the published annual management charge for each of those CIUs instead of estimating their ongoing charges;
  - (e) in all cases, the ongoing charges figure may be reduced to the extent that there is any arrangement in place (and that is not already reflected in the fund's profit and loss account) for the investing UCITS to receive a rebate or retrocession of charges from the underlying CIU;
  - (f) in cases where subscription and / or redemption fees are payable by the UCITS in relation to the acquisition or disposal of units in an underlying CIU, the monetary value of those fees shall be aggregated for the period under review and taken into account in the calculation of the ongoing charges figure.
9. In the case of a UCITS which is an umbrella, each constituent compartment or sub-fund shall be treated separately for the purpose of this section, but any charges attributable to the UCITS as a whole shall be apportioned among all of the sub-funds on a basis that is fair to all investors.

*Methodology for calculation (except for new funds)*

10. The ongoing charges figure shall be the ratio of the total discloseable costs to the average net assets of the UCITS, calculated according to this section. The figure shall be expressed as a percentage to two decimal places.
11. As provided for in section 3 of the KII implementing Regulation, the ongoing charges figure shall be calculated at least once a year, on a ex-post basis. Where it is considered unsuitable to use the ex-post figure because of a material change (e.g. an increase in management fees), an estimate may be used instead until reliable ex-post figures reflecting the impact of the material change become available.
12. A separate calculation shall be performed for each share class, but if the units of two or more classes rank pari passu, a single calculation may be performed for them (see also Article 26 of the KII implementing Regulation on the use of a representative class).
13. The ex-post figure shall be based on recent cost calculations which the management company has determined on reasonable grounds to be appropriate for that purpose. The figure may be based on the costs set out in the UCITS' statement of operations published in its latest annual or half-yearly report, if this is sufficiently recent; if it is not, a comparable calculation based on the costs charged during a more recent 12-month period shall be used instead. The costs are assessed on an 'all taxes included' basis, which means that the gross value of expenses shall be used.
14. The average net assets shall relate to the same period as the costs, and be calculated using figures based on the UCITS' net assets at each calculation of the NAV (e.g. daily NAVs where this is the normal frequency of calculation approved by the UCITS competent authority).
15. Where the ongoing charges attributable to an underlying CIU are to be taken into account:
- (a) the ongoing charges figure (or equivalent) of each underlying CIU is pro-rated according to the proportion of the UCITS' net asset value which that CIU represents at the relevant date (being the date at which the UCITS figures are taken);
  - (b) all the pro-rated figures are added to the ongoing charges figure of the investing UCITS itself, thus presenting a single total (a 'synthetic' ongoing charges figure).

16. Information about the ongoing charges figures that were applicable during previous years / periods should be published at the location (e.g. the management company's website) which is specified in the KID as the general source of further information for investors who require it.

*Methodology for calculation for new funds*

17. The same methodology shall apply as for an ex-post calculation, subject to the following differences:
- (a) paragraphs 13 and 14 above do not apply and estimates shall be used instead in accordance with Article 13 of the KII implementing Regulation;
  - (b) if, in the management company's opinion, expressing a figure to two decimal places would be likely to suggest a spurious degree of accuracy to investors, it shall be sufficient to express that figure to one decimal place;
  - (c) it shall be assumed, unless there is a statement in the prospectus to the contrary, that no rebates or fee waivers will be received to the benefit of the fund
18. The management company shall ensure that the accuracy of the estimated figure is kept under review. The management company shall determine when it is appropriate to begin using ex-post figures rather than an estimate; but in any case it shall, no later than 12 months after the date on which units were first offered for sale in any Member State, review the accuracy of the estimate by calculating a figure on an ex-post basis.