



Association of the Luxembourg Fund Industry
Association Luxembourgeoise des Fonds d'Investissement

ALFI UCITS IV implementation project

Key Investor Information document

Q&A

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Important

This document was prepared by ALFI's implementation working group for the Key Investor Information document (KID). The working group comprises representatives of asset managers, management companies, securities service firms, audit firms, law firms, and document and information management firms.

This document contains the working group's answers to questions about KID implementation. The answers are not necessarily definitive and they might not be suitable for every circumstance. **This document is not meant to be an industry standard or a guide to best practice** but it represents the view from a group of market participants. The Q&A has not been validated by any regulator. It does not diminish the management company's or the investment company's responsibility to comply with the EU Regulation 583/2010 on the KID, CESR's related guidelines and technical advice papers and any other European or national law or regulation. This document must not be relied upon as advice and is provided without any warranty of any kind and neither ALFI nor its members who contributed to this document accept any liability whatsoever for any action taken in reliance upon it.

This document may be amended without prior notice to incorporate new material and to amend previously published material where the working group considers it appropriate. ALFI will publish amended copies of this document to its members, showing marked-up changes from the immediately preceding copy.

The titles used in this document are references to the relevant recitals, chapters, sections and articles of the EU Regulation 583/2010 and associated CESR guidelines and consultation papers.

ALFI's members are welcome to submit a question to the working group, which will review it and consider whether to include it in a future copy of this document. Please send your questions to info@alfi.lu. We will acknowledge receipt of each question but we regret that we may be unable to reply individually to each one.

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Key documents for KID practitioners

The following documents are the important references for the implementation and maintenance of the KID:

Directive 2009/65/EC

Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

EU Regulation 583/2010

Commission Regulation (EU) No 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

CESR/09-949

CESR's technical advice to the European Commission on the level 2 measures related to the format and content of Key Information Document disclosures for UCITS (28 October 2009)

CESR/10-673

CESR's guidelines on the methodology for the calculation of the synthetic risk and reward indicator in the Key Investor Information Document (1 July 2010)

CESR/10-674

CESR's guidelines on the methodology for calculation of the ongoing charges figure in the Key Investor Information Document (1 July 2010)

CESR/10-1318

CESR's level 3 guidelines on the selection and presentation of performance scenarios in the Key Investor Information document (KII) for structured UCITS (20 December 2010)

CESR/10-1319

CESR's Guidelines for the transition from the Simplified Prospectus to the Key Investor Information document (20 December 2010)

CESR/10-1320

A guide to clear language and layout for the Key Investor Information document (KII) (20 December 2010)

CESR/10-1321

CESR's template for the Key Investor Information document (20 December 2010)

CESR's website contains additional documents, including consultation papers, industry responses and CESR feedback statements that were produced during the regulatory drafting process.

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Part 1

EU Regulation 583/2010

Introduction

Recital 5

Q. What does "material impact on UCITS' performance" mean with respect to the disclosure of the financial instruments in the KID?

A. Practitioners must judge for themselves what this means. Some practitioners have indicated that they intend to apply similar principles as they apply to their compliance monitoring processes, using a numerical threshold to decide whether to disclose the use of a particular type of instrument. In most cases this is likely to be easy in practice, with simple asset class and sector or geographical disclosures.

Recital 6

Q. Do we think that it would be acceptable to include within a KID cross-references to the fund's main prospectus in which a full explanation of risk is provided?

A. A cross-reference to the main prospectus is acceptable. However, the KID must contain enough information to provide a clear explanation of the fund's risk. Practitioners should ensure that their cross-references are not inadvertently used as a substitute for proper disclosure within the KID in the spirit in which it was conceived.

Q. KIDs must be treated as individual documents which may be updated separately from the main prospectus (see the KID update rules). When adding main prospectus cross-references to a KID, should the reference indicate which version of the main prospectus is being referred to (e.g., by date)?

A. Practitioners may wish to make cross references to a prospectus or to any other place (e.g., a web site) precise but flexible, so that they are relevant to the section of the KID in which the cross reference has been placed and are useful to the investor. Precision may be achieved by quoting the name of the prospectus section or its number. Flexibility may be preserved by avoiding references that include page numbers, which may vary from one edition of the prospectus to another. Longevity of the cross-reference may be improved by avoiding references to the date of issue of a particular prospectus. Care should be taken when updating a prospectus, website or other referenced document to ensure that the cross-references that are used within live KIDs remain valid. If the cross-reference is rendered invalid by a change to the referenced document practitioners should update the KID or take other steps to ensure that the cross-reference functions as it was intended to. Practitioners may wish to consider ways in which cross-references that were included in previous issues of the KID are preserved so that they may be used in the event that an investor cites them in correspondence. A cross-reference, even though it is superseded may still be relevant to an investor's enquiry.

Q. The KID must be translated into the host state's official languages. Translation of the main prospectus is not mandatory. If the local translation of the KID contains a cross-reference to the main prospectus, in what language must the referenced document be published?

A. The Directive does not address this issue directly. Practitioners who wish to use main prospectus cross-references may wish to consider making the cross-referenced part of the entire prospectus available in the same language as the KID. Whether that is achieved by the full translation of the prospectus or by the translation of the relevant section and its publication on the Internet or in a supplementary document is a matter for the practitioner to decide in its sole discretion.

Q. If the main prospectus is translated into the host state's official languages, by what process should it be registered with the home and host state authorities?

A. Under Directive 2009/65/EC Arts 93 and 94 there is no requirement to file a translated prospectus with the host regulator nor to include it within the notification papers that are filed with the home state regulator. However, if the UCITS chooses to translate its prospectus into one or more of the official languages of the host state, Art 93(2)(a) of the Directive indicates that the translated copy should be included in the notification letter.

Recital 11

Q. How should practitioners comply with the following: "As a matter of good practice, management companies should review the key investor information document before entering into any initiative that is likely to result in a significant number of new investors acquiring units in the fund"?

A. If practitioners respect the Regulation's provisions for review and revision (Section 6) they may consider themselves to have satisfied the spirit of this recital.

Recital 13

For questions on representative share classes and "similarities" please refer to comments against Art 4(4) below.

Chapter 1, Subject Matter and General Principles

Q. Should the change of name, merger or liquidation of a compartment be shown in its KID? For example, would it be possible to add a footnote to a statement as follows?

Rename: "The Fund XYZ will be renamed as ABC Fund as at [applicable date]."

Merger: "The Fund XYZ will be merged with Fund ABC on [merging date] and no further subscriptions will be accepted as from [latest subscription date]."

Liquidation: "This Fund will be liquidated on [liquidation date]. No subscriptions from new Investors will be accepted as of [latest subscription date] and no further subscriptions from existing Investors will be accepted as from [latest subscription date]."

A. No.

Chapter 2, Form and Presentation of Key Investor Information Section 1, Title of Document, Order of Contents and Headings of Sections

Art 4(2), (3) and (4)

Q. Is some flexibility permitted in the order of content of the document? For example, is it permitted to put the explanatory statement below the fund name?

A. There is no flexibility. Art 4(1) says that the content should be presented *in the order as set out* by the article.

Art 4(3)

Q. Is it permitted to extend the explanatory statement with text such as, "You should also read the information contained in the full prospectus for this fund"?

A. No. Art 3(1) says, "No other information or statements shall be included ..." The explanatory statement is prescribed text and there is no provision that would permit it to be extended.

Art 4(4)

Q. In certain host states practitioners provide a local translation of the compartment name. May a translated title be used on a foreign language KID in lieu of the native language title? May the native language and the foreign language translation both be used on the KID, in which case how?

A. In respect of the main prospectus, there is no single practice within the industry. Most practitioners do not translate compartment names into foreign languages but some practitioners do translate compartment names and a few produce foreign language prospectuses that show the compartment name in both the original and the foreign language. Practitioners may wish to manage the KID consistently with the main prospectus. In the question of dual names, the Directive 2009/65/EC and the EU Regulation 583/2010 do not explicitly prohibit the use of native and foreign language names on the same KID but nor do they foresee a KID with dual names.

Q. In case of two or more share classes of the same UCITS are combined into a single KID, shall all share/unit classes with ISIN codes be referenced in the title?

Sample:

European Equity,

Class A - Acc (LU0112345789)

Class A - Dis (LU0212345789)

Class B - Acc (LU0312345789)

Class B - Dis (LU0412345789)

a compartment of Global Invest managed by [Name of the Management Company](, group of [Name of the Group])

A. Yes. We think that three types of KID are possible: the single share class KID, the representative share class KID and the multi-share class KID. The latter is foreseen by Recital 13 of the EU Regulation 583/2010, which says, "the details of two or more classes may be combined into a single [KID] only where this can be done without making the document too complicated or crowded (ALFI's emphasis)," and by Art 26(2) which says, "the key investor information pertinent to two or more classes of the same UCITS may be combined into a single [KID] provided that the resulting document fully complies with all requirements ..." The sample shown above would be appropriate for a multi-share class KID.

This question led us to discuss the meaning of two other parts of the EU Regulation 583/2010. Art 20(3), says, "Where applicable, the 'Practical Information' section of the [KID] shall state the information required about available share classes in accordance with Art 26." We think that the condition "where applicable" means that if this UCITS issues other share classes then the KID must say so. For each type of KID, we think that practitioners might consider the following approaches:

Single share class KID. Practitioners may declare the existence of other share classes by simply saying, "more share classes are available for this UCITS", perhaps with a reference to the prospectus, or by saying, "this UCITS also issues shares of class A, A1, B, B1, C", etc, again with a reference to the prospectus. Practitioners may consider including ISIN numbers, although that might better be the subject of a cross-reference.

Representative share class KID. The EU Regulation 583/2010 indicates that the decision to use one share class to represent another is an important one (c.f. Art 26(5), "the management company shall keep a record of which other share classes are represented ... and the grounds for that choice". This implies that the KID should explicitly say which other share classes it represents. Practitioners therefore may consider that they would comply with Art 20(3) if they named every share class that the KID represented and then declare the existence of any further share classes using the method described for a single share class KID, above.

Multi-share class KID. If a practitioner prepares a multi-share class KID in the spirit of the EU Regulation 583/2010 (Recital 13), we think that it will be obvious which share classes it describes. The existence of any further share classes may then be declared using the method described for a single share class KID, above.

Q. In the case of a representative share class KID, is it permitted to add a note to the UCITS name on the front page of the KID (Art 4(4)) to indicate that it is a "representative share class"?

A. No. Art 3(1) says, "No other information or statements shall be included ..." There is no provision that would permit such a note to be added.

Q. If a representative share class is used, is there an obligation to show the fund codes (e.g., ISINs) of the other share classes that it represents?

A. No. It is neither compulsory nor is it prohibited to show the fund codes of represented share classes and practitioners may decide what to do in their sole discretion.

Q. May the fund code (e.g., ISIN) be moved to the Practical Information section in order to keep the identification statement simple?

A. No. Art 4(4) is clear that the code number must be included in the section "Title and content of document".

Q. If a fund has several code numbers, which one should be included in the identification part of the KID and should the others be omitted or should they be provided in the Practical Information section?

A. For the Luxembourg fund industry ALFI recommends participants to use the ISIN code in the identification part of the KID. In respect of the other identifiers such as SEDOL, CUSIP, WKN, it is neither compulsory nor is it prohibited to show them and practitioners may decide what to do in their sole discretion.

Q. Can a KID be published when the ISIN or similar code is not available?

A. Yes. Art 4(4) of the EU Regulation 583/2010 says, "Where a code number ... exists, it shall form part of the identification of the UCITS". If no code number exists, the KID may still be published.

Q. If a KID has been published without an ISIN or similar code, should the KID be updated in the manner of a material change when a code is assigned?

A. We do not think that the assignment of an identification number is a material change to the UCITS but because the EU Regulation 583/2010 considers the identification number to be an essential part of the UCITS' identity (Art 4(4)), we think that the KID should be updated promptly after the number is assigned.

Q. When referring to umbrella funds, should the KID conform to the drafting in the Directive 2009/65/EC and the EU Regulation 583/2010, which use the term "compartment", or to common usage in the fund industry, which uses the term "sub-fund"?

A. Participants may use either term and may wish to use the terms that they use in their main prospectus. CESR/09-949 provides guidance at Box 1 on page 8, where it provides the example, "123 Fund, a sub-fund / compartment of XYZ Fund SICAV". We think that CESR clearly means that the terms "sub-fund" and "compartment" are equally acceptable.

Q. Can the word "SICAV" or "FCP" be added after the UCITS' name, to clarify to investors the legal regime applicable to their investment?

A. Yes, we think so, and CESR/10-1321 (the KID template) uses the acronym SICAV in the UCITS' name. However, there is nothing in the EU Regulation 583/2010 that suggests it is mandatory and practitioners may wish to consider whether investors would understand what these acronyms mean, particularly if they do not speak French.

Art 4(5)

Q. Should the coordinates (i.e., registered number) of the management company be included?

A. No. Art 3(1) says, "No other information or statements shall be included ..." There is no provision that would permit a management company's coordinates to be included. However, practitioners might wish to include label text such as, "Management Company:", which would make clear to the reader the status of the named entity. We think that this would respect Art 3 and be useful in circumstances in which a promoter has employed a third party management company or in which the legal name of the management company is obscure.

Q. May the management company name be moved to the Practical Information section in order to keep the KID simple?

A. No. Art 4(5) is clear that the management company must be named in the section "Title and Content of Document".

Q. If a UCITS is a self-managed SICAV, is it acceptable to say, "The Fund is self-managed" or "A self-managed investment company"?

A. In addition to the requirement of Art 4(5) of the EU Regulation 583/2010, CESR/09-949 says at Box 1, page 9 that if a UCITS "has a management company, the name of the management company shall be stated." If there is no management company we think that there is no need to say any more and Art 3(1) says, "No other information or statements shall be included." We also doubt that investors will understand what the term "self-managed" means.

Art 4(8)

Q. Is it permitted to extend the title of the section "Risk and reward profile" to become "Current risk and reward profile"?

A. No. Art 3(1) says, "No other information or statements shall be included ..." The title is prescribed text and there is no provision that would permit it to be extended.

Art 4(12) and (13)

Q. Would it be sufficient simply to show the date (e.g., December 31, 2010) rather than the full sentence, "This key investor information is accurate as at [the date of publication]"?

A. No. The EU Regulation 583/2010 prescribes the full sentence. It is mandatory.

Q. Would it be permissible to repeat the date on the second page?

A. No. Art 3(1) and Art 4(13) of the EU Regulation 583/2010 provide clear direction that the date should be printed only once, at the end of the "Practical Information" section. The required date is the date of publication, *not* the last date of the calendar year just closed.

Q. Should the statements about "authorisation details" and "information on publication" be placed in the Practical Information section?

A. Strictly speaking these statements are not part of the Practical Information section but they run consecutively with it.

Q. Could the authorisation statement be modified to say, "This fund is authorised in [name of Member State] and regulated by [identity of competent authority]. The key investor information is accurate as at [the date of publication]."

A. No modification is necessary. The text in the question is simply a concatenation of the statements prescribed by Arts 4(12) and 4(13).

Q. Art. 4(12) of EU Regulation 583/2010 foresees two statements relating to the authorisation and supervision of the UCITS, and of the Management Company. Is the second statement only applicable when the Management Company uses the "European passport"? Is this statement therefore not applicable where the UCITS and its Management Company are incorporated in the same Member State, and supervised by the same regulator?

A. The statement relating to the authorisation and supervision of the management company should only be included in the KID when it is exercising its passport rights with respect to the UCITS described in the KID.

No reference

Q. The EU Regulation 583/2010 prescribes a lot of text, for example, Art 4(3)'s "explanatory statement" and others such as the official titles of sections, the civil liability statement, table headings, etc. Who will ensure that uniform translations are used by every practitioner in every country?

A. The ALFI working group is using the English version of the EU Regulation 583/2010. The various other official language versions issued by the European Commission will contain the correct translations of the prescribed terms.

Those documents are available at <http://eur-lex.europa.eu/Notice.do?checktexts=checkbox&checktexte=checkbox&val=519457%3Acs&pos=1&page=1&lang=en&pgs=10&nbl=1&list=519457%3Acs%2C&hwords=&action=GO&visu=%23texte>

Q. In respect of other text, some states require that the translations of official documents be sworn to be true. Does that apply to the KID?

A. No. Recital 66 of Directive 2009/65/EC says that "translations [of the KID] should be produced under the responsibility of the UCITS, which should decide whether a simple or a sworn translation is necessary". A host state may not insist on receiving a sworn translation.

Q. Is it therefore permissible to create simple (i.e., not sworn) translations of other documents such as the main prospectus and annual reports.

A. The Directive is not clear on this point. Recital 66, which gives the UCITS the power to decide whether to use sworn or simple translation, applies to the KID only. Art 94(1)(d) of the Directive can be read to imply that the same approach may be taken with respect to the other documents ("translations ... shall be produced under the responsibility of the UCITS") but Art 94(1)(a) directs that "such information or documents shall be provided to investors in the way prescribed by the laws, regulations or administrative provisions of the UCITS' host member state". This appears to us to mean that host member states may require sworn translations, in which case UCITS must comply.

Q. Will non-EU regulators issue official translations of prescribed text to govern the issue of the KID in their jurisdictions?

A. The KID is the product of EU Regulation 583/2010. It has not yet been recognised by overseas regulators. ALFI is making representations to encourage non-EU regulators to recognise the KID and we hope that they will agree to do so.

Chapter 2, Form and Presentation of Key Investor Information

Section 2, Language, Length and Presentation

Art 5

Q. Is a 2-column layout permitted?

A. Yes. CESR/10-532 says at page 8 that "you can use 'newspaper' columns".

Art 5(1)(a)

Q. Is there a minimum font size that would satisfy the requirement to use "characters of readable size"?

A. The EU Regulation 583/2010 does not prescribe a minimum font size but CESR's technical advice to the European Commission (CESR/09-949, page 12) recommended a size not less than 8 points and its consultation on the use of plain language and the layout of the KID (CESR/10-532, page 8) recommended 10 to 11 points. The effect will depend on the font design.

Art 5(1)(b)

Q. The concept of plain language is subjective. Who will assess it and how?

A. Practitioners may wish to employ a multi-disciplinary team to ensure that the language used within a KID is appropriate. The team may include members of the compliance, legal and marketing departments and be reviewed by the management company. CESR/10-532 (a guide to clear language and layout for the KID) provides more advice. Significant reliance on a glossary may indicate that a KID does not satisfy the plain language requirement.

Q. Will it be compulsory to use a glossary of terms?

A. It is not compulsory to use a glossary of terms but you may define and use one if you wish. CESR will not issue a pan-European glossary and nor do we expect any other regulator or industry association to issue one.

Art 5(3)

Q. Is it permitted to print in the footer of the second and third pages the following text or otherwise to repeat simple document identity information (e.g., UCITS name and ISIN) on the top of the second and third pages of a KID?

Key Information Document, December 31, 2009	Page 2 of 2	[Name of UCITS]
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A. Strictly speaking, no. Art 3(1) says, "No other information or statements shall be included ...", which would appear to prohibit this additional text. The date is also prescribed by Art 4(13) and may not be repeated in a header or footer. In addition, the official name of the KID is "Key Investor Information", not "Key Information Document". However, the inclusion of discreet headers and/or footers that preserve the identity of the UCITS, page sequences and the document reference number when the KID is printed onto single-sided paper would aid clarity and we think that they are likely to be accepted by regulators.

Art 6

Q. The Regulation says that the KID must not exceed two pages of A-4 paper when printed. Is it true that a KID for a structured fund may be 3 pages long?

A. Yes, see CESR/09-949, Page 11, Box 2, Para 3 and EU Regulation 583/2010 Art 37.

No reference

Q. Must the sections Objectives and Investment Policy, Risk and Reward Profile and Charges always be presented on the first page of the KID (with the exception of structured funds) in order to aid comparison?

A. With the exception of the title "Key Investor Information", which must be at the top of the first page (Art 4(1)), the EU Regulation 583/2010 does not explicitly say which page a particular section of the KID must appear on (it only states

the order in which they must be presented) but it is evident that the early sections will be on the first page and in most cases the practical information section and the authorisation details will be on the second or (if applicable) the third page.

Q. If it is not possible to fit all of the above sections onto a single page, is it permissible to split the description of charges in detail over two pages?

A. The EU Regulation 583/2010 does not prohibit sections from crossing a page break. Practitioners are therefore free to decide this aspect of the KID's design.

Q. May the management company add a document number in the header or footer to help it to manage different editions of the KID?

A. Strictly speaking, no. Art 3(1) says, "No other information or statements shall be included ...". However, a repeated title and a discreet document number in a corner of a page is likely to be accepted by regulators.

Q. When producing a 3-page KID for a structured fund, can I add page numbers and can I repeat the fund title on the third page to eliminate the risk that it could be printed and incorrectly attached to the wrong KID?

A. Strictly speaking, no. Art 3(1) says, "No other information or statements shall be included ...". However, a discreet page number is likely to be accepted by regulators.

Q. Will ALFI develop a standard prototype for the KID, which could be available for its members to adopt?

A. ALFI has no plans to prepare a Luxembourg standard model. CESR/10-1321 provides guidelines on a template that CESR has developed for the KID.

Chapter 3, Content of Sections of the Key Investor Information Document

Section 1, Objectives and Investment Policy

No reference

Q. How important is it for promoters to ensure that their prospectus is fully harmonised with their KIDs?

A. The KID and the main prospectus should be coherent. At its simplest that means that they should not contradict one another. The EU Regulation 583/2010 also says in Recital 10 that the KID "should contain *all* information necessary for the investor to understand the *essential* elements of the UCITS." (ALFI's emphasis.) Provided that they do not contradict one another and that the KID does not omit essential information, practitioners must decide for themselves the degree to which the contents of the two documents should be conformed, keeping in mind that Recital 10 also acknowledges that the prospectus will contain information that cannot be included in the KID for lack of space. There is no explicit requirement for the KID and the prospectus to share identical text but ALFI said in its response to consultation CESR/09-552 (question 8) that it "finds it hard to see how the description of the objectives, policy and the investment strategy will be anything but a verbatim copy of what is in the main prospectus, particularly when the civil liability statement is so onerous". Conversely, CESR's consultation on the use of plain language and the layout of the KID (CESR/10-532, page 9) says, "do not copy from the prospectus unless that is in clear language. Some elements of the prospectus ... may be immaterial ... [and] you may need to go beyond the prospectus wording to ensure that you give a balanced description [of the UCITS]".

Art 7

Q. Is it likely that management companies will amend the investment objectives and investment policies in their prospectuses in order to ensure that they are the same as the text in the relevant sections of the KID?

A. At this early stage in the implementation of the KID there are signs that some practitioners are reviewing their main prospectus language to ensure that it complies with the plain language requirement of the KID. There is nothing in the EU Regulation 583/2010 that explicitly obliges them to do so.

Q. May the KID cross-reference the prospectus text that describes the fund's investment objective and investment policy?

A. There is no prohibition on such a cross-reference but the KID must contain "all information necessary for the investor to understand the essential elements of the UCITS". Practitioners who employ cross-references in this part of the KID may wish to take special care that they have upheld the spirit of the EU Regulation 583/2010. See also Art 21.

Q. Can the KID present the investment objectives and investment policy in separate sections if that would aid clarity?

A. Strictly speaking, no. Art 3(1) says, "No other information or statements shall be included ..." The title "Objectives and investment policy" is prescribed text and there is no provision that would permit it to be divided. However, provided that they comply with the rules on the contents of this section, practitioners are free to write the section as they think best. In its consultation paper CESR/10-532 (a guide to plain language and layout) CESR presented the option to split the Objectives and Investment Policy into separate paragraphs and to use sub-headings.

Q. May I use the title "investment strategy" rather than "investment policy" if I think it is more commonly understood?

A. No. Art 3(1) says, "No other information or statements shall be included ...". The title "Objectives and investment policy" is prescribed text and there is no provision that would permit it to be amended.

Q. May a brief description of the eligibility criteria for a share class be inserted in the "Objectives and investment policy" section? For example, could the KID say, "You may buy shares of this Fund if you qualify as institutional and initially invest at least USD 10 million"?

A. The EU Regulation 583/2010 does not prescribe this information for the KID and nor does it permit it (Art 3(1): "no other information or statements shall be included"). There is also no example of this information in CESR/10-1321 (the KID template) nor is it mentioned in CESR/09-949.

Art 7(1)(b)

Q. Information on the investor's ability to redeem units on demand seems to belong more to the section Practical Information than to the section Objectives and Investment Policy. Can I move it to the section Practical Information?

A. No. You must put information in the sections strictly in accordance with the EU Regulation 583/2010. This is intended to ensure the comparability of KIDs issued by different promoters.

Q. May the statement on redemption possibilities be moved to the Practical Information section?

A. No. Art 7(1) is clear that the information must be provided in the section Objectives and Investment Policy.

Art 7(1)(d)

Q. May a benchmark be disclosed in this section for the sole purpose of showing it alongside the past performance?

A. No. This is not a simple question and it is useful to examine various ways in which benchmarks are used by the industry and how they should be presented in the KID.

If the fund is an index-tracker, the benchmark must be included in the KID (Art 7(1)(d), "where the UCITS has an index-tracking objective, this shall be stated [in the objective and investment policy section]" and Art 18(1), "where the objectives and investment policy section makes reference to a benchmark, a bar showing the performance of that benchmark shall be included in the chart [of past performance]").

If the benchmark is implied (for example, if the name **and a tracking error** are stated in the marketing material or if the investment manager's internal design documents say that the portfolio is constructed and managed with respect to a benchmark) it must be included in the KID – see Art 7(1)(d), "includes *or implies* a reference to a benchmark" and Art 7(1), "even if these features do not form part of the description of objectives and investment policy in the prospectus".

If the portfolio is *constructed and managed without reference* to a benchmark and yet a benchmark is included on marketing material or in the fund's factsheet simply because it provides general market context (this *does* happen) there should be no *implication* within the meaning of Art 7(1)(d). A benchmark which is used in this way must not be included in the KID, which should contain only information about the "essential features of the UCITS" (Art 7(1)).

If the portfolio is *constructed and managed without reference* to a benchmark and yet a benchmark is used to calculate a performance fee, the benchmark must be included in the charges section of the KID (Arts 10(2)(3) and 12(3)) but there should be no *implication* within the meaning of Art 7(1)(d).

In summary, with particular regard to the chart of past performance:

If the benchmark is described in the objective and investment policy section of the KID it **must** be shown on the chart of past performance.

If the benchmark is implied then it **must** be described in the objective and investment policy section of the KID and it **must** be shown on the chart of past performance.

If the benchmark is used only to calculate performance fees and/or to provide general market context (i.e., the portfolio is *constructed and managed without* reference to it), then it must **not** be shown on the chart of past performance.

Practitioners may wish to consider carefully how to approach this subject in the context of national marketing rules. In some countries regulators might not permit a benchmark to be included in marketing material unless it is described in the KID (the aim being to discourage fund promoters from changing the benchmark on their marketing material in order to flatter their fund's performance).

Q. If a fund is actively run and has no benchmark (i.e., the investment decisions are based entirely on the judgement of the investment manager) must it be stated explicitly or may it be assumed to be the case because there is no benchmark and no reference made to a passive or tracking strategy?

A. Art 7(1)(d) requires the KID to disclose "whether the UCITS allows for discretionary choices in regards to the particular investments", and practitioners should comply. It is for the practitioner to decide how to do so. A well-written description of the UCITS investment strategy could achieve this without an explicit statement.

Art 7(2)(e)

Q. What type of fund trading strategies are likely to qualify under this article as incurring transaction costs that have a material effect on investment returns?

A. There is nothing in the EU Regulation 583/2010 or CESR/09/949 (general guidelines on the KID) or CESR/10-674 (guidelines on the calculation of ongoing charges) to inform an answer to this question. Practitioners may wish to consider making such a disclosure for UCITS that employ quantitative strategies, which involve a higher volume of securities trading than might be expected for other forms of active management. They similarly may wish to consider making such a disclosure for UCITS that invest substantially in markets where securities transaction charges are relatively expensive. We do not think that it is necessary under this article to take account of transaction costs that arise because of shareholder capital activity.

Q. What words could be used to satisfy the provisions of Art 7(2)(e), "where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the UCITS, a statement that this is the case, making it also clear that portfolio transaction costs are paid from the assets of the fund in addition to the charges set out in Section 3 of this Chapter"?

A. We think that the following text would be suitable: "The portfolio transaction costs of this fund's investment strategy are a material component of its performance. Portfolio transaction costs are paid from the assets of the fund. They are additional to the charges set out in the Charges section."

With respect to the related statement on the performance chart (Arts 15(5) and 15(5)(b), "The bar chart layout shall be supplemented by statements which appear prominently and which ... indicate briefly which charges and fees have been included or excluded from the calculation of past performance."), we think that the following text would be suitable: "The chart shows the fund's performance after all charges, including portfolio transaction costs, have been paid."

Art 7(2)(f)

Q. Information on the minimum recommended term for holding units in the fund seems to belong more to the section Risk & Reward than to the section Objectives and Investment Policy. Can I move it to the section Risk & Reward?

A. No. You must put information in the sections strictly in accordance with the EU Regulation 583/2010. This is intended to ensure the comparability of KIDs issued by different promoters.

Chapter 3, Content of Sections of the Key Investor Information Document Section 2, Risk and Reward Profile

Art 8

Q. The SRRI between share classes may not be the same. This can typically be the case for unhedged currency share classes. If a UCITS decides to use multiple share classes in one KID, is the following example acceptable?

	← Lower risk				Higher risk →			
	Potentially lower reward				Potentially higher reward			
Share Class A – Cap. (LUxxxxxxxxxx)	1	2	3	4	5	6	7	
Share Class B – Dis. (LUxxxxxxxxxx)	1	2	3	4	5	6	7	
Share Class C – Cap. (LUxxxxxxxxxx)	1	2	3	4	5	6	7	

A. Yes, provided that the practitioner takes care to ensure that the resulting document is "clear and not misleading" (Art 26(3) and Recital 13).

Q. When a representative share class is used, can the same example be used by referencing the representative share class in the left box?

A. No. This question implies that there will be more than one representative share class on a KID or that a representative share class KID will be combined with a multiple-share class KID. There may only be one representative share class on a KID. We do not think that will be permitted to combine the concept of a representative share-class KID and a multi-share class KID because it will be likely to confuse investors about what information is being presented on a representative basis and on an explicit basis.

Q. Is it possible to create a KID per share class and to show the SRRI of another share class on the grounds that the two share classes are similar (i.e., that the latter adequately represents the former)?

A. No. The practitioner must decide whether to produce a single share class KID, a multi-share class KID or a representative share class KID and calculate the SRRI accordingly. Even in the latter case, we think that the practitioner must calculate the SRRI for each share class to be satisfied that they are sufficiently similar for the representation to be satisfactory.

Q. In the event of a merger where the receiving fund is a new fund, is it acceptable or not to use the return of the contributing fund to calculate the SRRI and the past performance chart?

A. In respect of the SRRI it is acceptable because CESR/10-673 Box 4, Para 2.b permits a representative portfolio model to be used and to the extent that the receiving fund will pursue the same objectives and investment policy as the contributing fund we consider that it is a good basis for computing the SRRI. In respect of past performance presentation we see two possible cases:

(1) In the case where the receiving fund has a performance history the receiving fund's history must be used (EU Regulation 583/2010, Art 19(4)).

(2) In the case where the receiving fund is a new fund it should be treated as a fund without performance history (Art 15(4)). In the event of a redomiciliation by merger of the contributing fund into a **new** fund, we think that the contributing fund's performance history can be used to **simulate** the performance of the new fund provided there is no more than one contributing fund and the investment objective and policy remains the same. Such a simulation must be disclosed in the KID.

Also, in the event that two existing funds are merged, the track record of the older fund cannot be inherited and the performance histories of the two funds cannot in any way be chain-linked. It is prohibited by EU Regulation 583/2010, Art 19(4) and CESR/09-949, Page 37, Box 14, Para 5.

Q. If a fund with a long performance history launches a new share class with a materially lower management fee and therefore a much lower expected ongoing charge, may the KID show a simulated performance history, based on the performance of another share class, adjusted for the difference in the ongoing charge?

A. Yes, we think so.

Art 19(1)(a) of EU Regulation 583/2010 says, "a new share class of an existing UCITS or investment compartment may simulate its performance by taking the performance of another class, provided the two classes do not differ materially in the extent of their participation in the assets of the UCITS."

We see two ways to do this. The first is by substitution, in which the new share class takes exactly the performance of the other share class, provided that the charging structures are not materially different ($\geq 5\%$, see CESR/09-949, Box 7, Para 2) and that there are no complications to mislead the investor, such as currency difference. The second is by synthesis, in which the new share class takes the performance of the other share class, adjusted for the cumulative effect of differences in their charging structures. The French and German texts of the regulation are consistent in this respect: translated, they say that simulation may be made "on the basis of" the performance of another share class. In all cases, the simulation must be "fair, clear and not misleading" (Art 19(1)) and free from complications such as currency difference, and it must be prominently disclosed on the past performance chart (Art 19(2)).

Q. In cases where there is insufficient performance history (e.g. new funds and funds in which the investment policy changes) and the SRRI calculation is based on a representative model portfolio, does this need to be disclosed in the KID?

A. Strictly speaking, no. Neither Art 8 nor CESR/10-673 requires such a disclosure. However, Art 8(4)(a) requires the KID to include a statement that historical data may not be a reliable indication of the future risk profile of the UCITS. That would be an appropriate place to say that the risk indicator is based upon a simulation of the UCITS performance using historical market data. For example, the following statement might be made: "The risk category was calculated using [simulated] historical performance data and it may not be a reliable indicator of the fund's future risk profile."

Q. How often does the promoter have to calculate the synthetic risk and reward indicator (SRRI)?

A. The published SRRI must be updated (1) "when changes to the risk and reward section of the KID are the result of a decision by the management company regarding the investment policy or strategy of the fund", and (2) "if the relevant volatility of the UCITS has fallen outside the bucket corresponding to its previous risk category on each weekly or monthly data reference point over the preceding 4 months". This last test is a "sliding window" test, which means that the SRRI must be **calculated weekly** if weekly return data are available and **monthly** otherwise and **in practice all calculations in respect of a month are made only after that month has passed**.

The quotations above are from CESR/10-673 dated 1 July 2010 – the CESR guidelines on the methodology for the calculation of the SRRI for the KID – see Box 3 on page 8. The EU Regulation 583/2010 says in Recital 6 that "in applying the rules on the synthetic indicator account should be taken of the methodology developed by competent authorities working within the Committee of European Securities Regulators".

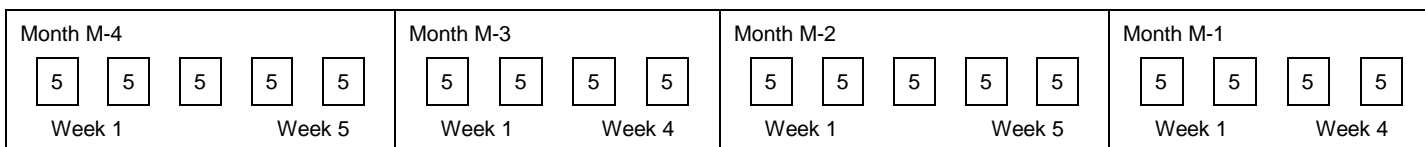
Q. By how much and for how long must the computed SRRI differ from the published SRRI to trigger the revision of the KID during a year?

A. The KID must be revised if the SRRI computed in respect of **every** weekly or monthly reference point in the most recent contiguous performance period of 4 months is different to the published SRRI, in which event the new SRRI will be the most frequently observed result (i.e., the mode result) (see CSER/10-673, Page 8, Box 3, Para 3). Examples:

Currently published SRRI value: 5

Is **every** result observed in the contiguous 4 month period different to the currently published value?: No

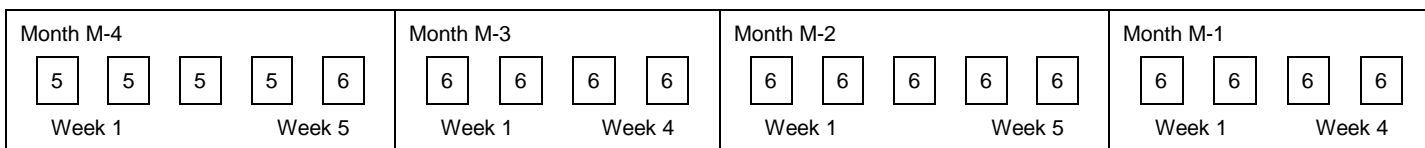
SRRI value to be published in the next version of the KID: 5



Currently published SRRI value: 5

Is **every** result observed in the contiguous 4 month period different to the currently published value?: No

SRRI value to be published in the next version of the KID: 5



Currently published SRRRI value: 5

Is **every** result observed in the contiguous 4 month period different to the currently published value?: Yes

Mode SRRRI value: 6 (14 out of 18 observations)

SRRRI value to be published in the next version of the KID: 6

Month M-4 6 6 6 6 6 Week 1 Week 5	Month M-3 6 6 6 7 Week 1 Week 4	Month M-2 7 7 7 6 6 Week 1 Week 5	Month M-1 6 6 6 6 Week 1 Week 4
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Q. How should time be measured for the purposes of computing weekly and monthly performance and, when applying the sliding window test, how should we decide in which month a week falls if it crosses a month-end boundary?

A. Monthly performance may easily be measured by taking the NAVs that the UCITS published within each calendar month (e.g., bi-monthly NAVs) and the sliding window test may easily be applied on the basis of 4 contiguous calendar months. If the UCITS publishes its NAV once per week or more often, the practitioner must address the question of what month a week falls into and how to cope with months that may be 4 or 5 weeks long. It is possible to answer these questions precisely using the ISO 8601 standard for date and time representation (the Gregorian calendar). However, we also consider it reasonable to adopt a "standard length" sliding window of 17 calendar weeks. Operationally, this would be easier to support and it would ensure an invariable application of the methodology. By choosing a prime-numbered standard length window the practitioner can ensure that the sliding window test never delivers a tied mode result with weekly performance samples.

Q. If my sliding window test delivers a tied mode result, what tie-breaking procedure should be used?

A. Practitioners may use their judgement. For example, they may choose the result that is closest to the last published figure or, if the tied results are an equal distance from it, they may choose the result that the practitioner considers to be most likely to survive in future computations. We think that a tied mode is an unlikely event.

Q. If the KID has been updated for another reason (say a change in the practical information section) and the latest computed value of the SRRRI is different to the previously published value, should the new KID carry the latest computed SRRRI value or the previously published SRRRI value?

A. The conditions described in the previous answer must be met.

Q. Must the "sliding window" test be applied to the SRRRI calculation every time the KID is revised?

A. When *revising* a KID, there is only one circumstance in which the sliding window test must not be used, which is when the revision is because of the management company's decision to change the fund's investment policy or strategy. (See CESR/10-673, page 11, last paragraph, "the SRRRI should always be revised when changes to the risk and reward section of the KID are the result of a decision by the management company regarding the investment policy or strategy of the fund. In these circumstances, any changes to the SRRRI should be intended as new classifications of the risk of the fund and, consequently, be carried out according to the general rules concerning the risk classification of UCITS". In the case of a market fund, the SRRRI must be calculated using a model portfolio as if the fund has insufficient performance history – see CESR 10/673, Box 4. In the case of absolute return, total return, lifecycle and structured funds, all as defined by CESR/10-673, Boxes 5, 6, 7 and 8 should be used.)

Q. The annual edition of the KID will probably be published early in February each year. When computing the SRRRI, should the latest available return history be used (i.e., possibly up to the last week in January) or should the history stop at the prior calendar year end?

A. CESR's methodology (CESR/10-673) says at that participants should take "the last 5 years" (Page 5, Box 1, Para 3) or if there are fewer than 5 years they should "take the available history of the returns of the fund" (Page 9, Box 4, Para 2.a). The EU Regulation 583/2010 says that the KID "is accurate as at [the date of publication]". Both suggest that the latest return history may be included. However, if the past performance section is aligned to the end of the calendar year and the SRRRI must be recalculated each month, it would be consistent to use a compatible performance history, which would stop at the end of the calendar year. Also, from a practical perspective the KID production process will take some time each year and for which a performance cut-off at year end is practically most sensible.

Q. What is your understanding of how to calculate the SRRRI for constant NAV (e.g., money market) funds? Would it be based on the annualised yield?

A. Neither the EU Regulation 583/2010 nor CESR/09-949 specifically mentions constant NAV funds but we think that a correct interpretation in this case would be to compute the SRRRI as for a market fund (CESR/09-949, page 9, Box 4) using the fund's annualised yield.

Q. If a practitioner wishes to produce a KID for an existing fund from 1 July 2011, should the SRR be calculated a single time with the latest available performance history or as at the 2010 year-end cut-off with subsequent validations and updates if necessary using the "sliding window" test?

A. We think that practitioners should use the latest available data.

Q. Can a promoter include the SRR in the fund's prospectus?

A. Yes, inasmuch as there is no prohibition on it but given the potential for the SRR to change and invalidate the prospectus, a participant should consider this carefully before doing so, particularly if the prospectus contains SRRs for many compartments. There is similarly no prohibition on including the SRR in other material such as fact sheets and marketing materials provided that the same consideration is given to the effect on the document if the SRR changes.

Q. My prospectus already contains a risk indicator in the form of three simple categories: "high", "medium" and "low". May I retain these categories or must I conform the prospectus to the 7-category numerical scale of the KID SRR?

A. If your prospectus employs a numerical risk indicator, e.g., categories 1 to 5, we think that you should conform it to the SRR model (the regulators might insist upon it to avoid the potential for confusing investors) or remove it entirely.

Q. CESR/10-673 requires a UCITS to be classified as a market fund, total return fund, absolute return fund, structured fund or a life cycle fund for methodological reasons. For these 5 categories different calculation methods are possible. Taking Art 3(1) into account (no other information or statements shall be included in KID) should this classification be disclosed in the KID?

A. The EU Regulation 583/2010 does not oblige you to say that one or the other CESR methodology has been used. However, if you think that the nature of the fund (e.g., whether it offers an absolute return or a total return, etc) is an essential feature then you should state it in the KID.

Art 8(1)(a)

Q. How should a KID provide a "narrative explanation of the indicator and its main limitations"?

A. Art 8(4) explains this requirement in some detail.

Art 8(4)(d)

Q. This article requires "a brief explanation as to why the UCITS is in a specific [SRR] category". Can a promoter simply refer to the use of the methodology? What is expected for standard situations like equity funds?

A. No, a promoter may not simply say that it is the result of CESR's methodology. For example, a practitioner might say that an equity fund is in a higher risk category because the price of equities can rise and fall frequently or that a structured fund is in a lower risk category because it benefits from a guarantee.

Art 8(5)

Q. The narrative explanation of risk should include material categories of risk (credit risk, liquidity risk, counterparty risk, operational risk, etc). Fund sponsors are looking for guidance on this. Can we say that a risk category is not material if the UCITS complies with Chapter VII of the UCITS Directive (obligations concerning the investment policies of UCITS)?

A. Art 8(1)(b) says that the risk section must contain a "narrative explanation of risks which are *materially* relevant to the UCITS and which are *not adequately captured by the synthetic indicator*" (ALFI's emphasis). Practitioners must decide what is materially relevant to each UCITS. We recommend practitioners to establish multi-disciplinary teams to decide this question for each fund. The team should include representatives from the investment and operational risk, compliance, legal, product development, portfolio management and distribution functions.

Practitioners will find more guidance in Art 8(5), which is repeated in CESR/10-794. Also, CESR/10-532 (guide to plain language) provides some high-level advice on page 11, describing the concepts of risk for reward, uncertainty, impact and probability, guarantees and protections and (on page 12) materiality.

By way of *very general* examples, practitioners might consider a bond fund to have material credit risk. This is a very simple statement, which might be sufficient for a fund investing in high-quality government bonds and which might be

emphasised if the fund invests significantly in high-yield bonds. The same fund might be considered to have liquidity risk, which would be less for high-quality government securities and more for high-yield bonds. An equity fund might be considered to have no material credit risk but to have liquidity risk if it invests in small-cap equities. A fund investing predominately in OTC derivatives might be considered to have material counterparty risk and a fund investing directly in securities in certain markets (e.g., Russia) might have risks related to the safekeeping of assets (Art 8(5)(d)).

Chapter 3, Content of Sections of the Key Investor Information Document

Section 3, Charges

Art 10

Q. Is it correct that switch charges should be shown in the Practical Information section rather than in the Charges section?

A. No. The Practical Information section must (if applicable) contain a statement of the investor's right to switch between compartments (Art 20(2)) and where to find more information about that right (Art 25(2)(c)). If the management company sets a switch charge that is different from the ordinary charge for buying and selling shares, then the charge must be described in the Charges section (Art 25(3)).

Q. How should contingent deferred sales charge be shown on the KID?

A. It is the entry charge, which the practitioner may describe in more detail in accordance with Art 11 of EU Regulation 583/2010.

Q. ALFI describes contingent deferred sales charge (CDSC) as an entry charge, but isn't it really an exit charge for the purposes of the KID?

A. CDSC is by definition an entry charge but it is conceivable that some investors may mistake it for an exit charge. A carefully written explanation in the KID, consistent with the explanation in the main prospectus, should ensure that investors correctly understand the charge.

Q. Is a promoter permitted to modify the ongoing charges table as it was presented in CESR's consultations so that the charges for several share classes are separately presented in the same table (see examples below)?

As presented in CESR's consultations:

<i>One-off charges taken before or after you invest</i>	
Entry charge	xx%
Exit charge	xx%
This is the maximum that might be taken out of your money before it is invested.	
<i>Charges taken from the fund over a year</i>	
Ongoing charge	xx%
<i>Charges taken from the fund under certain specific conditions</i>	
Performance fee	xx% a year of any returns the fund achieves above the benchmark for these fees, the name benchmark

Alternative presentation:

<i>One-off charges taken before or after you invest</i>				
Entry charge	xx%			
Exit charge	xx%			
This is the maximum that might be taken out of your money before it is invested.				
	Share Class A LU0112345789	Share Class B LU0212345789	Share Class C LU0312345789	Share Class X LU0412345789
<i>Charges taken from the fund over a year</i>				
Ongoing charge	xx%	xx%	xx%	xx%
<i>Charges taken from the fund under certain specific conditions</i>				
Performance fee % a year of any returns the fund achieves above the benchmark for these fees, the name benchmark	xx%	xx%	xx%	xx%

A. Yes, we think that both designs are permitted.

Q. What must the KID describe: the potential performance fee, as described in the prospectus, or the performance fee that was paid in the latest calendar year?

A. Both. Article 12 of the EU Regulation 583/2010 says that "performance fees shall be disclosed in accordance with Article 10(2)(c). The amount of the performance fee charged during the UCITS' last financial year shall be included as a percentage figure." This information should be included in the charges table. See also Annex II of the EU Regulation 583/2010 and CESR/10-1321 – the template for the KID. Example: "Performance fee: [x]% a year of any returns the fund achieves above the S&P 500 Index. In the fund's last financial year the performance fee was [y]% of the fund."

Q. Is it permitted to show switch charges by inserting a new row in the table?

A. We think that the requirement to show switch charges in satisfaction of Art 25(3) may be achieved by inserting a statement in the narrative part of the charges section of the KID. This would be consistent with Annex II of EU Regulation 583/2010 and the KID template at CESR/10-1321. The CESR guide to clear language and layout for the KID (CESR/10-1320) also appears to support this interpretation; it says on page 12 that the explanation of charges (i.e., the narrative part, not the table) should say "if a charge for a fund switch differs from the normal charge for buying units."

Q. If a fund has the power to apply a dilution levy should it be described in the KID and if so where?

A. We think that it should be described in the Charges section of the KID because it is an amount "that might be taken out of your money before the proceeds of your investment are paid out" (EU Regulation 583/2010, Annex II) – it is an entry or exit charge. We cannot provide definitive advice on what the description should say because dilution levy practices vary considerably in the industry. The detail of the description is therefore a matter for the relevant board of directors to decide. For example, if a dilution levy is applied often they may consider it appropriate to include it in the maximum value of the entry or exit charge that is shown in the charges table and if it is applied rarely they may consider it sufficient to describe the rate of the levy and the circumstances in which it might be applied in the narrative section only. In each case, they may wish to state in the narrative section that the levy is retained by the UCITS. Note that a dilution levy is different to swing pricing (see Q&A on Art 10(2)(a), below).

Q. If no performance fee or entry or exit charge is applied, should the relevant row be removed from the table or should the phrase "Nil" or "not applicable" be used?

A. We recommend that a phrase such as "None" or "Not applicable" should be used. We do not recommend "Nil" or "N/A" or "-" because some readers might not understand what they mean. We do not recommend deleting the row from the table because its absence might cause the reader to question whether the charge is not applicable or simply not disclosed.

Q. Must the prospectus contain the same information about ongoing charges, presented in the same way?

A. No. However, the prospectus should not disagree with the KID on facts.

Q. If switch charges are applied in one country only, will the production of a KID specific to that country be permitted?

A. We think that the KID should be produced on a universal basis, with a statement that lesser charges might be applied.

Q. In the event of a merger, is the absorbing fund required to publish an updated KID showing estimated ongoing charges?

A. Only if the practitioner believes that the single figure calculated in accordance with Art 10(2)(b) would not be possible or reliable, in which case the KID should be published with an estimated ongoing charge. For example:

If the absorbing fund is an existing fund and the practitioner thinks that the merger is not so significant with respect to the size of the absorbing fund as to make the ongoing charges figure unreliable then Art 10(2)(b) will apply. If the merger is significant with respect to the size of the absorbing fund and the practitioner thinks that a figure produced in accordance with Art 10(2)(b) would be unreliable then the ongoing charges figure must be estimated in accordance with Art 24(2).

If the absorbing fund is a new fund, the ongoing charges should be estimated in accordance with Art 13(1) and the practitioner may consider the experience of the absorbed fund(s) in the preceding year when it prepares its estimate.

Art 10(2)(a)

Q. Is it possible to show different entry or switch charges to the extent that they might vary from one country to another and must they be published in every country or may a specific KID be produced for each country according to its specific charges?

A. We think that the KID should be produced on a universal basis, with a statement that lesser charges might be applied. We do not think that country-specific KIDs should be produced in the manner suggested by this question.

Q. Must swing pricing be disclosed in the charges table?

A. No. Swing pricing is not a charge but an adjustment in the net asset value at which shares in the UCITS may be traded. Being a pricing model, it is not an essential feature of a fund in the sense required by the EU Regulation 583/2010. However, as such it must be described in the fund's prospectus.

Art 10(2)(b)

Q. Should the ongoing charges figure be rounded and if so with what precision? (Example: Annex III requires says that past performance must be presented to one decimal place.)

A. CESR/10-674 (methodology for calculation of the ongoing charges figure in the KID) says that "the figure shall be expressed as a percentage to two decimal places (Page 6, Para 10). In the case of new funds CESR's methodology says that "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".

Q. If management fees are charged to shareholders outside the share class, pursuant to a separate investment management agreement between the investment adviser and each shareholder, is there any requirement to include a figure for management fees in the on-going charges for the share class?

A. No. It is not a fee paid by the fund but a fee paid directly by the investor pursuant to a separate fee agreement. See also CESR/10-674, page 4, paragraph 2: "ongoing charges are payments deducted from the assets of a UCITS."

Q. In the event that the management company has waived a fee or met a portion of the fund's expenses so as to cap them, yet retained the right to revoke the waiver or lift the cap without notice, what should be included in the KID?

A. The KID should show the ongoing charges that were actually paid by the fund. To the extent that a fee has been waived or an expense has been capped in the period for which the ongoing charge is being calculated, the waived or capped part should not be included in the calculation. To the extent that the waiver has been revoked or the cap has been lifted in the period for which the ongoing charge is being calculated, the reinstated fee or expense should be included in the calculation. If the introduction or revocation of a waiver or a cap is likely to cause the ongoing charge to be "no longer reliable" (Art 24(2) of EU Regulation 583/2010) then the ongoing charge should be estimated and the KID should be revised with an appropriate disclosure. Since this would be a decision taken by the management

company, the revised KID should be published before the change comes into effect (Art 23(2), see also Paragraph 4 of Box 7, CESR/09-949 and the Q&A for Art 13(2) in this paper).

Art 11(1)(b)

Q. The EU Regulation 583/2010 says, "with regard to 'ongoing charges', there shall be a statement that the ongoing charges figure is based on the last year's expenses, for the year ending [month/year], and that this figure may vary from year to year where this is the case." Is it permitted to omit the explicit statement and instead imply it by including a clear label on the table, such as "Ongoing charges for 2009"?

A. No. The EU Regulation 583/2010 requires that a statement should be made and so it must be made explicitly.

Art 13

Q. If the ongoing charges are estimated, is a narrative statement that the ongoing charges are estimated required and/or possible?

A. Art 24(2) requires practitioners to disclose the fact that figures are estimated by including the statement, "The ongoing charges figure shown here is an estimate of the charges." See Art 24(2) for more detail.

Art 13(2)

Q. Are the provisions of Art 13(2) applicable only to recently launched UCITS or may they be applied to well-established UCITS.

A. The techniques referred to by Art 13(2) are available to all UCITS, no matter what their age. The intention of Art 13(2) is to say that a newly launched UCITS which would be required by Art 13(1) to estimate its ongoing charges should not do so if it applies a fixed all-inclusive fee or if it sets a cap or maximum ongoing charge which it commits to respect.

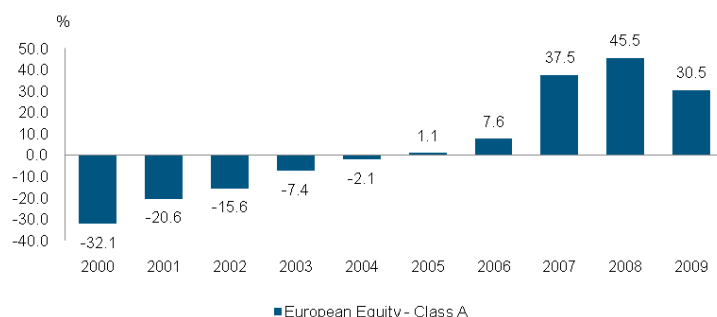
Q. In cases where the UCITS can comply with Art 10(2)(b) but the management company is willing to give a commitment to cap the charge at a maximum amount, must an ex-post expense figure always be calculated and published or can a capped figure be published instead?

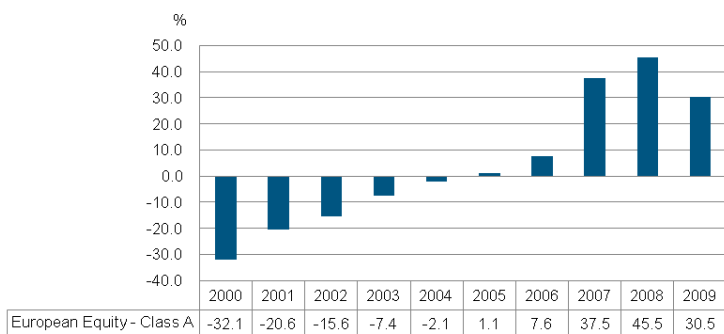
A. If a fund is able to comply with Art 10(2)(b) then it must compute the ongoing charges figure on an ex-post annual basis in accordance with CESR/10-674 and publish the result in the KID. Note that a portion of the ongoing charges may be met by the management company or any other party and be excluded from the ongoing charges figure (thus effectively capping it) provided that the conditions of CESR 10-674 (for example, paragraph 7) are met. If the management company's policy is to cap ongoing charges, whether by explicit commitment to the fund or informally, it may consider disclosing it in the KID but it is not obliged to do so and it must in any case publish the result of the ex-post calculation. Note that Art 13(2), which also discusses capped ongoing charge figures, applies only to funds that cannot comply with Art 10(2)(b) because, for example, they are new or because the ex-post result would not be reliable (Art 24(2)).

Chapter 3, Content of Sections of the Key Investor Information Document Section 4, Past Performance

Art 15

Q. Are these sample presentations of past performance acceptable?





A. Yes, we think that both designs are permitted.

Q. What is your understanding of performance publication requirements for constant NAV (money market) funds? Would it be the annualised yield for the past 10 years?

A. Neither the EU Regulation 583/2010 nor CESR/09-949 specifically mentions constant NAV funds but we think that a correct interpretation in this case would be to show past performance as the fund's annual yield.

Q. May past performance data be sourced from a data vendor (e.g., Morningstar) with a footnote to declare the source?

A. The management company or the self-managed UCITS may delegate the calculation of past performance but it remains responsible for valuation and for the production of the KID. For that reason and because Art 3(1) of the EU Regulation 583/2010 says, "No other information or statements shall be included", we think that a source attribution statement will not be permitted.

Q. For various reasons it is likely that the performance figures for the same period will be different on the KID and the fact sheet. Will that cause problems?

A. If the past performance figures on the fact sheet represent the same period as the past performance figures on the KID (for example, calendar year performance shown in discrete annual intervals) then the practitioner should consider using the same methodology to prepare them, so that they agree. If the past performance figures represent different periods (for example, trailing annual performance on the fact sheet and calendar year performance on the KID) then they will very probably differ but we do not think that is likely to cause problems.

Q. If a fund uses swing pricing, which price should be used in the calculation of past performance (and the SRR): the original price or the swung price?

A. Calculations should be on the basis of the published NAV (i.e., if the NAV on a particular day was swung, the swung price should be used).

Q. In the event that one fund merges with another, may the absorbing fund's past performance be shown without modification or footnote?

A. Yes. The absorbing fund must retain its performance history (EU Regulation, Art 19(4)) and the practitioner is not obliged to declare the merger on the past performance chart. CESR/09-949 provides more insight into this question at page 38: "CESR considered whether a disclosure to investors such as 'On [date] the fund [X] absorbed fund [Y]', would be effective. This information does not seem likely to help investors to make a better-informed decision. It is not essential for investors, when deciding whether or not to invest in the existing fund, to know that it has previously absorbed other funds. CESR recommends that the information should nevertheless be available through other sources (prospectus or website)."

Q. If a share class has a history of dormancy (i.e., it is launched and subsequently liquidated and then launched again under the same ISIN, perhaps several times), how should its past performance chart be displayed?

A. We see two possibilities:

(1) Show actual past performance for each complete calendar year that exists and show no performance for each year where there is no complete calendar year of performance, with an explanatory note on the chart.

(2) Show actual past performance for each complete calendar year that exists and use simulated past performance under Art 19 of the EU Regulation 583/2010 to complete the missing history, with an explanatory note on the chart.

Art 15(2)

Q. The EU Regulation 583/2010 says, "UCITS with performance of less than 5 complete calendar years shall use a presentation covering the last 5 years only." Is it permitted to present those 5 years' performance on a chart that is scaled for 10 years, with the "empty" years marked as the years before the fund was launched?

A. No. Art 3(1) says, "No other information or statements shall be included ..." and in respect of the performance chart the EU Regulation 583/2010 says "the last 5 years **only**."

Art 15(4)

Q. Art 15(4) states, "for a UCITS which does not yet have performance data for one complete calendar year, a statement shall be included explaining that there is insufficient data to provide a useful indication of past performance to investors." Does this mean that an empty chart should be displayed or that no chart should be displayed?

A. We think that it would be satisfactory to display a chart-sized frame containing a statement such as "There are insufficient data to provide a useful indication of past performance to this fund's [or share class's] investors" (derived from Art 15(4)). Note that when a chart is not displayed the requirement of Art 15(5)(c) – indicate the year in which the fund came into existence – must still be met.

Art 15(5)(a)

Q. The EU Regulation 583/2010 requires the past performance chart to be supplemented by a statement that "warns about its limited value as a guide to future performance." Can we say that it is "not" a guide to future performance?

A. Yes. The EU Regulation 583/2010 is describing the principle; it is not prescribing the text that must be used. The phrase "past performance is not a guide to future performance" is commonly used within the European financial services industry and is accepted by regulators.

Art 15(5)(c)

Q. The EU Regulation 583/2010 requires the past performance bar chart to "indicate the year in which the fund came into existence". Is it permitted to move this information to the section Practical Information?

A. No. Art 4(1) says that the content of the KID should be presented *in the order as set out* by the article and Art 15(5)(c) is clear that this information must be included in the section "Past Performance".

Q. In the case where the dates are different, should a KID indicate the date upon which the share class was launched or the fund?

A. We think that it is better to show the date that reflects the creation date of the investment portfolio and therefore the KID should indicate the date upon which the fund was launched. If a well-established fund produces a KID for one or more share classes that are more recent than the fund and for which the practitioner is not permitted or chooses not to display simulated past performance under Art 19 (1), the KID will display a shorter period of past performance than the launch date would suggest or even no past performance at all. In that case, practitioners may wish to explain why.

Art 16

Q. Past performance "shall be calculated on the basis that any distributable income of the fund has been reinvested". If a distribution is made from capital, how should it be considered for the purpose of calculating past performance?

A. It should be reinvested by the same method. If the fund's distribution policy creates a risk of capital erosion it should be described in the risk narrative section of the KID.

Art 17

Q. The EU Regulation 583/2010 says, "The period prior to the material change referred to in paragraph 1 shall be indicated on the bar chart and labelled with a clear warning that the performance was achieved under circumstances that no longer apply." What should such annotations look like (e.g., may they be overlaid, signalled by the use of a symbol and a footnote, etc)?

A. CESR/09-949 (technical advice on level 2 measures related to format and content of the KID) presents an example at Page 34 which shows the annotation printed over the bar chart. This appears to be CESR's preferred design. However, the key test is that the indication should be clear and it seems reasonable to think that with careful design a symbol and a footnote could achieve the required effect.

Q. In respect of Art 17(2), is it permitted to explain in the KID the detail of the change or is it only permitted to explain that "the performance was achieved under circumstances that no longer apply"?

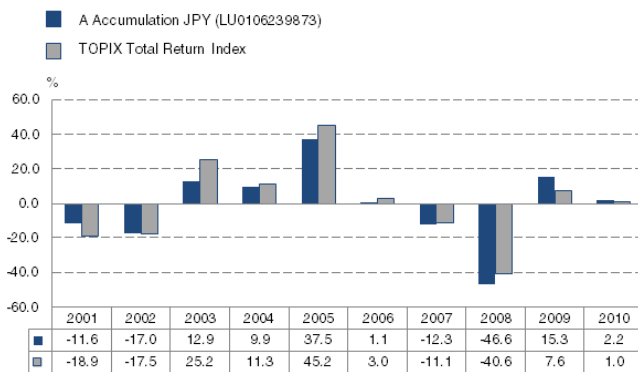
A. We think that it is permitted to say that "the performance was achieved under circumstances that no longer apply" and to provide a very brief explanation, such as the ongoing charge was lower, or the investment strategy was different, or the investment manager was different, etc.

Q. Article 17(1) states that: "Where a material change occurs to a UCITS' objectives and investment policy during the period displayed in the bar chart referred to in Article 15, the UCITS' past performance prior to that material change shall continue to be shown." In some sectors of the industry, when a fund undergoes a material change of investment objective, self-governing bodies and performance rating firms do not permit the performance history to be used in marketing material. The performance history is discarded and a new history begins from the effective date of the change. In this situation could it be argued that the past performance is not available to the KID and that these years should be represented under Article 15(3): "For any years for which data is not available, the year shall be shown as blank..."?

A. No. Art 17(1) is clear that the "past performance prior to the material change shall continue to be shown."

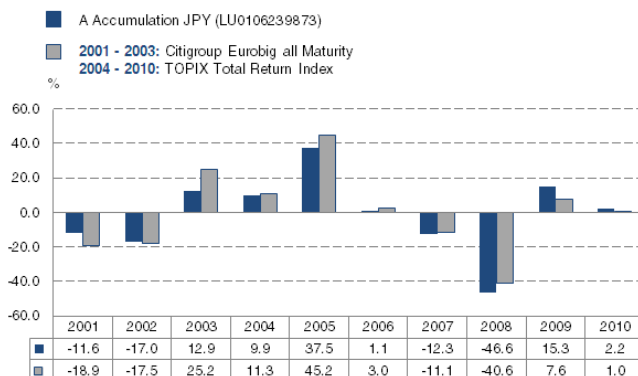
Q. If the benchmark is changed, which of the following charts of past performance are acceptable?

i:

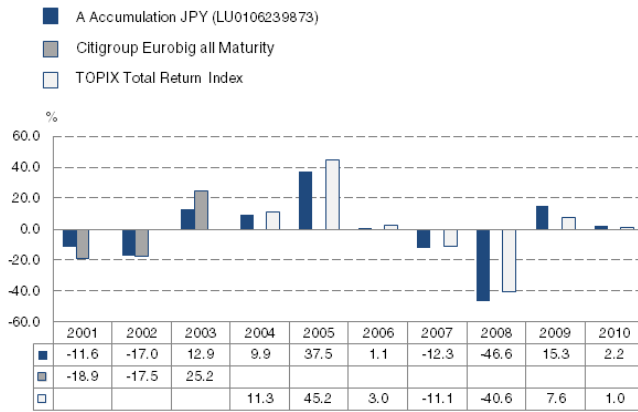


(1) For this reference period, the Citigroup Eurobig all Maturity benchmark performance was used.

ii:



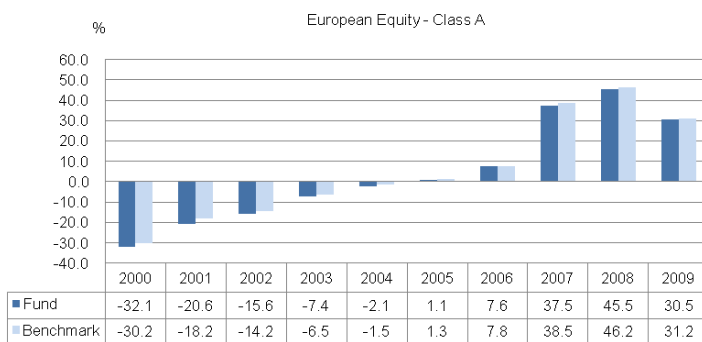
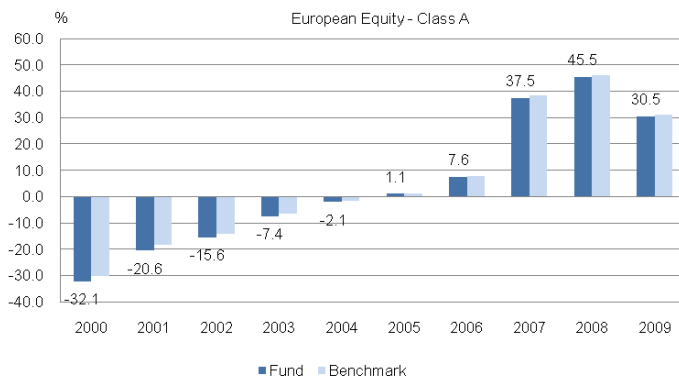
iii:



A. We think that they are all acceptable. In example (i), we see a risk that the investor will overlook the footnote and understand the chart to show that the benchmark has always been the TOPIX. We think that examples (ii) and (iii) are clearer in this respect.

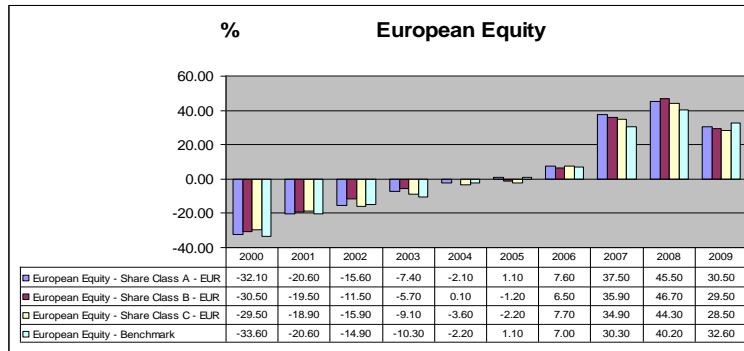
Art 18

Q. Are these sample presentations of past performance acceptable?



A. Yes, we think that both designs are permitted but they are at the limit of what is acceptable in terms of their use of colour.

Q. Is the following example showing multiple share classes in one KID linked to a benchmark acceptable?



A. We think that the general idea of the table is acceptable but there are some aspects of it that are not acceptable. The performance numbers should be stated to one decimal place; the font size is too small; we think that the use of colour is at the limit of what is acceptable: the contrast between the colours is clear when the document is printed in colour or monochrome but it becomes difficult to see when the document is copied on a standard office photocopier. When they prepare multi-share class KIDs we recommend that practitioners take note of Recital 13 of the EU Regulation 583/2010, which requires that the KID should not be "too complicated or crowded". Practitioners should also take note of Art 18(2) of the EU Regulation 583/2010, which says that a benchmark may not be shown during years in which a UCITS does not exist. In this case, for as long as one or more share classes existed, we think that the benchmark may be shown.

Q. In the example above, if one of the share classes had only 3 years' performance history, would it be permitted to show it on the 10-year chart, leaving 7 years blank?

A. No. You may simulate the missing history under the provision of Art 19, in which case you must annotate the chart accordingly. If you choose not to simulate the performance history you should comply with Art 15(2), "UCITS with performance of less than 5 complete calendar years shall use a presentation covering the last 5 years only" and produce a KID with a 5-year scale or rely upon a representative share class KID.

Q. Extending the example above, in the case that the share classes used different benchmarks (for example, if there were foreign currency hedged share classes, each measured according to a specially constructed currency hedged benchmark), could each share class and its benchmark be shown on the same chart?

A. It is unlikely that several share classes and their separate benchmarks could be shown on a single KID without "making the document too complicated or crowded" (Recital 13 of the EU Regulation 583/2010). Practitioners would be wiser to present the share classes on several KIDs or choose a representative share class if it is possible.

Q. If a benchmark is changed, how should the chart of past performance be displayed for the period preceding the change?

A. Each benchmark should be shown only in respect of the periods in which it was relevant to the UCITS.

Q. In the event that a fund converts from being managed with a benchmark and a tracking error budget to being managed in an unconstrained manner, how should the chart of past performance be displayed for the period preceding the change?

A. The benchmark should be shown for the periods in which the fund was managed with respect to the benchmark and should not be shown for the periods in which it ceased to be relevant. The chart of past performance should be annotated to say when the fund converted from relative to unconstrained management.

Art 19

Q. If a UCITS launches a new share class and uses Art 19(1)(a) to simulate past performance (say 10 years' performance) on a KID published for that share class alone, may the simulation be continued until the simulated history is replaced by actual history? In our example, after 3 years is it permitted to display 3 years' actual performance and 7 years' simulated performance or is it only permitted to show only actual performance?

A. We may consider 3 scenarios for the presentation of past performance after a share class has at least one year of its own actual performance:

(1) Use a combination of actual and simulated performance. This scenario would continue to claim the right to use simulated performance under Art 19(1)(a) but would seek to be clear, fair and not misleading by showing actual performance where it is available. The performance chart would be clearly marked to ensure that the boundary between simulated and actual data was obvious to the reader. We think that this complies with the EU Regulation 583/2010 and would be permitted by regulators.

(2) Use up to 10 years simulated performance during the first year of the share class's existence and issue the next KID with actual performance only (i.e., 1 year's performance). This scenario would cease to rely upon Art 19(1)(c) and would instead comply fully with Art 15. It is permitted but it has the disadvantage the the launch edition of the KID may show up to 10 years' simulated performance and the second year edition of the same KID will show only one year's actual performance.

(3) Continue to use simulated performance only. This scenario would appear to be in breach of Art 19, which says, "a simulated performance record for the period *before data was available shall only be permitted in the following cases*". Simulated data may not be used in periods for which actual data are available.

There is of course another possibility, which is to treat the new share class as having no performance history, and show no past performance until it has existed for a full calendar year.

Q. If a UCITS uses Art 19(1)(a) to create a KID with several years' simulated performance history and subsequently liquidates the share class upon which the simulation was made, is it permissible for the new share class to continue to use the simulated history?

A. Yes. If the simulation initially satisfied the conditions of being fair, clear and not misleading then it may continue. Simulations under Art 19(1)(a) are permissible because the share classes are based upon the same portfolio of investments, which will continue to exist even as share classes are liquidated.

Q. When performance has been simulated, shall the prominent disclosure indicating that the performance was simulated be printed on top of the performance chart?

A. Yes. CESR/10-949 says at Page 37, Box 14, Para 3, "in all cases, following MiFID standards, there shall be prominent disclosure in the performance bar chart itself that this performance has been simulated" and the EU Regulation 583/2010 says at Art 19(2) that "in all cases where performance has been simulated [...] there shall be prominent disclosure on the bar chart ...".

Chapter 3, Content of Sections of the Key Investor Information Document

Section 5, Practical Information and Cross-References

Art 20

Q. May the name, address and telephone number of the Management Company/self-managed SICAV be included in the Practical Information section? May the contact details of the relevant representative agents in the countries where the UCITS is marketed also be included in that section?

A. Yes, we think that Art 20(1)(b) and (c) of the EU Regulation 583/2010 permits this: "The 'Practical Information' section of the [KID] shall contain the following information relevant to investors in every Member State in which the UCITS is marketed ... (b) where and how to obtain further information ..." If the practitioner has the space to include the details of every marketing agent then we think that those details are also permitted but for widely distributed funds the number of agents would make it impracticable and it would be sensible to describe a single point of contact.

Q. May the KID be produced in several local editions, showing only the contact details of the representative agents in a particular locality?

A. No. Art 78(6) of the UCITS Directive says that a KID "shall be used without alterations or supplements, except translation, in all Member States where the UCITS is notified to market its units." (See also Art 159(6) of the Luxembourg Law of 17 December 2010.)

Art 20(1)(b)

Q. When providing information about where and how to obtain further information such as the prospectus, is it permissible to add a sentence such as, "only the full prospectus contains all the information about the fund and investors must read it"?

A. No. The EU Regulation 583/2010 also says in Recital 10 that the KID "should contain *all* information necessary for the investor to understand the *essential* elements of the UCITS." (ALFI's emphasis.) The disclaimer in the question above appears to deny the principle that the KID alone should be sufficient.

Art 20(1)(e)

Q. In the event that a practitioner changes a fund's benchmark and publishes an updated KID, would it be at risk if it was unable to publish the updated prospectus until some time later and the KID was therefore "inconsistent with the relevant parts of the prospectus"?

A. This question assumes that the benchmark is described in the prospectus. It is only a risk under Art 20(1)(e) of EU Regulation 583/2010 to the extent that the benchmark is named in the prospectus and the KID is inconsistent with it.

(If the benchmark forms part of the investment objective and strategy in the prospectus or is the basis for a performance fee, the KID must be changed promptly after the home state regulator has approved the change to the prospectus and (Art 23(2) of EU Regulation 583/2010) the new KID "shall be made available before the change comes into effect".)

Chapter 3, Content of Sections of the Key Investor Information Document Section 6, Review and Revision of the Key Investor Information Document

Art 23

Q. In the event of a material change to a fund (e.g., change to investment objective) or a change to the KID (e.g., change to the risk narrative), should the revised KID be sent to existing shareholders?

A. There is no obligation to send the revised KID to existing shareholders and practitioners may decide whether or not to do so. Generally, we think that they will not. Material changes to a fund (e.g., investment objective, management fee, dealing frequency) must in any event be notified to investors in writing prior to the change taking effect and we think that the current practice of giving notice by letter will be sufficient. We do not consider a change to the risk narrative of the KID to be a notifiable change because it is only a narrative and it does not form part of the UCITS' investment and borrowing powers.

Art 24

Q. How material must be a change to the ongoing charges to cause an update of the KID?

A. The EU Regulation 583/2010 does not prescribe a materiality threshold but CESR/09-949 at Box 7, Para 2(b) sets a threshold of 5% of the published ongoing charges figure. Practitioners should note that CESR/09-949 was technical advice to the European Commission and, not being cited in EU Regulation 583/2010, is not binding but may be taken as a guide.

The KID must also be updated if the management fee is changed (Art 23(2) or if the maximum rate of any one-off charge is changed (Art 24(1)).

Q. The EC Regulation contains no mention that the KID must be updated if the actual ongoing charges differ by 5% or more from those disclosed in the KID. How are participants to know when they are obliged to update their KID?

A. Participants must revise their KID if any of the conditions at CESR/09-949, Boxes 7 and 8 are met.

Q. The rules concerning updates of a KID in the case of material changes to charges (EU Regulation 583/2010, Art 24 and the guidelines at CESR/09-949, Box 7) refer to changes in the charging "structure". What is meant by this: changes to the composition of the charges or changes in the value of the charges, even as the composition remains constant?

A. There are circumstances in which a change may be considered to be "structural" in the sense that it abolishes a charge or introduces an entirely new charge. These are the circumstances described in paragraphs 2(a), (b) and (c) of

Box 7 of CESR/09/949. However, we think that the principle described in paragraph 1 of Box 7 is also important: "the management company shall establish procedures to ensure that the charges figures disclosed in the KID are kept under regular review, so that they remain fair, clear and not misleading at all times." The frequency at which the charges are reviewed is for the management company to decide.

Chapter 4, Particular UCITS Structures

Section 1, Investment Compartments

Art 25

Q. Is a KID required for a compartment that exists in the full prospectus but which has not yet been launched?

A. Yes. Irrespective of the date of its actual launch, a KID must be produced for each compartment for which the promoter seeks the regulator's approval. It also forms part of the notification package that has to be submitted to the home regulator regarding the cross-border distribution of funds and compartments respectively.

Q. For an umbrella UCITS with only one active compartment but whose prospectus describes other compartments that have not yet been launched, what information should be disclosed in the practical information section?

A. Regardless of whether the other compartments have been launched, if they are described in the prospectus each KID should say:

That the KID describes a compartment of a UCITS and that the prospectus and reports are prepared in respect of the entire UCITS – Art 25(2)(a).

Whether the compartment is a protected cell – Art 25(2)(b) – and if not how it is potentially affected by the other compartments.

Whether the investor has any rights to switch between compartments and if so where to find information about the charges for doing so – Art 25(2)(c).

Chapter 4, Particular UCITS Structures

Section 2, Share Classes

Art 26

Q. Is it possible to choose more than one representative share class per UCITS?

A. Yes. Practitioners may issue more than one KID per UCITS using different representative share classes. For example a base currency share of class A may be used to represent foreign currency hedged share classes of type A and a base currency share class of type C may be used to represent foreign currency hedged share classes of type C, etc.

Q. Will a host state regulator permit a KID based on a representative share class to be used in respect of a represented share class if the represented share class is notified for sale to the public but the representative share class is not? Also, may a KID be used if the representative share class is notified for sale to the public but it refers to a represented share class that is not notified?

A. We do not yet know how regulatory practice in respect of the KID will evolve in various host states and whether the variations in practice under UCITS III, where some host state authorities control authorisation at sub-fund level whilst others control it at share class level, will continue or whether UCITS IV and the new notification process in particular will produce greater harmonisation. The KID was conceived according to the principle that it may be used in a host state subject only to notification and translation (Directive 2009/65/EC, Art 93(2)(b)) but there is no provision in the Directive, the EU Regulation or CESR's guidelines that help us to answer this question. In principle we think that the answer to each question should be yes but practitioners may wish to consider the simpler approach of using a KID that is based upon a share class that is notified in the host state.

Q. The EU Regulation 583/2010 says at Recital 13, "a representative class may be selected, but only in cases where there is sufficient similarity". How can we define sufficient similarities? For example, how should we compare share classes with different expenses or share classes with capped expenses or with different management fees resulting in a different ongoing charge figure? For guidance purposes, will the CSSF or

CESR/ESMA issue acceptable thresholds for differences beyond which two share classes may not be considered similar?

A. Some practitioners might prefer to publish representative share class KIDs because, for example, they find it operationally easier to produce them. Practitioners who decide to produce a representative share class KID should consider the similarities and differences between the share classes carefully to be sure that the representation is reliable. Many criteria may be used to decide whether one share class is fit to represent another. The EU Regulation 583/2010 does not define them. It only says that "a representative share class may be selected, but only in cases where there is sufficient similarity between the classes such that information about the representative class is fair, clear and not misleading as regards the represented class."

One criterion for the representation test might be currency exposure. UCITS often issue shares of the same class in several currencies. Before they use a share issued in one currency to represent the same class of shares issued in other currencies, practitioners may wish to consider whether the currency exposure is a material risk and whether it is fairly described in the KID (e.g., in the past performance section, the risk and reward section, etc). Even if the risk is clearly described, participants may wish to consider whether the past performance charts of the representative and represented share classes are sufficiently similar to permit the representation to be made. Some care may be required here: it is easier to suggest similarity by comparing discrete interval differences than by comparing cumulative differences. Participants may also wish to take account of whether the currency risk is hedged against the base currency or is otherwise mitigated by a currency peg or some other form of exchange rate control. Further care is required here: some strategies hedge currency exposure against a benchmark or against the underlying portfolio currency exposure rather than the fund's base currency.

Other criteria may include charge differences (e.g., CDSC), accumulation and distribution policies, minimum investment and shareholding amounts, availability, etc. Practitioners must decide for themselves how much difference may exist before two share classes may no longer be considered to be "similar". We do not expect regulators or trade associations to define thresholds. Perhaps the simplest test is the SRRI, where it is obvious that if two share classes produce a different SRRI result they cannot be said to be similar and one share class may not represent the other.

These "similarity tests" must be reviewed with each new edition of a KID and at other times consistent with Chapter III, Section 6 of the EU Regulation 583/2010 and with CESR/10-673 (applied in accordance with EU Regulation 583/2010, Recital 6) and a record of them must be kept (Art 26(5)). Participants who choose to publish representative KIDs would be wise to design a checklist system to ensure that they perform these tests and maintain their records.

Q. Must the similarity test be applied to all sections of the KID?

A. Yes, taking into account that certain differences such as accumulation or distribution policy may be satisfactorily explained by a note on the KID.

Q. Is it therefore necessary to calculate on a "sliding window" basis (see above) the SRRI for a representative share class and every share class that it represents, to be sure that they produce the same result?

A. We think that the practitioner should calculate the SRRI for each share class to be satisfied that they are sufficiently similar for the representation to be satisfactory.

Q. When a UCITS has two or more share classes that are similar, which one should be the representative and which the represented?

A. CESR/09-949 provides advice on how to choose a representative share class. Generally, the practitioner is free to decide but there are some restrictions. For example, at page 49 CESR says that, "if the highest charging share class has not been available throughout the period covered in the past performance presentation, then it cannot be used as a representative class".

Q. Is it permitted to use a share class that has a shorter performance history (say, 3 years) to represent a share class that has a longer performance history (say, 10 years)?

A. In the specific examples quoted (3 and 10 years), we think that it will not be permitted because much of the performance history of the older share class will not be presented. If the difference is smaller – perhaps only a matter of months and still fair, clear, not misleading – we think that it would be permitted.

Arts 26 and 27

Q. Is a KID required for a share class that exists in the full prospectus but which has not yet been launched?

A. Please see the related question and answer in respect of sub-funds at Art 25.

Q. Are you obliged to *publish* the KID for a share class or sub-fund that has not yet been launched but which you have prepared and filed with the CSSF, and how should you manage the share class launch and KID publication process with respect to regulatory process (e.g., home state approval and host state notification) and internal operational controls?

A. Please see the related answer in respect of the preparation of a KID at Art 25, above. Irrespective of when it is prepared, the KID must be filed with the home state regulator before the share class or sub-fund is launched (for the remainder of this answer we will refer to both as the "fund"). Art 80 of the UCITS IV Directive obliges the practitioner to give the KID to investors before they invest and Art 81 of the UCITS IV Directive permits the KID to be published in a "durable medium" or by means of a website provided that investors must be given a paper copy free of charge if they request it. Similarly, Art 81 says, "*additionally*, an up-to-date version of the [KID] shall be made available on the website of the investment company or management company". We therefore conclude that from the point at which a practitioner *offers a fund for sale*, whether by private placement or public offer, it must make the KID available to investors through its sales channels and it must maintain an up-to-date copy of the KID on its website. This presupposes that it has the necessary regulatory consents (home state approval, host state notification) and that its operational processes have been prepared to support the sale of the fund. We have qualified our answer in terms of the point at which the fund is offered for sale because, although the Directive and the EU Regulation 583/2010 do not explicitly permit it, we think that it will be acceptable not to *publish* the KID in the event that a fund is launched with the practitioner's own seed capital and not immediately marketed, provided that the KID is filed with the home state regulator prior to launch.

Q. The EU Regulation 583/2010 requests that a KID shall be prepared for each class of shares. Not all share classes are notified in all jurisdictions. Should only the KID for the notified share classes be communicated to the host state financial regulatory authorities?

A. Yes. Please see our answer to a similar question about Art 26, above. The notification letter should make clear which KID is being used to support which share class. If the practitioner has decided to produce one KID per share class or a multi-share class KID, this will be simple. If the practitioner has decided to use a representative share class then it might need to be more explicit in the notification letter.

Q. To retrieve fund information from fund promoter's websites, sometimes investors are invited first to say what country they are in. Should only the KID for the notified share classes be accessible based on the selected country?

A. Recital 17 of EU Regulation 583/2010 says that when the KID is provided by means of a website "additional safety measures are necessary for investor protection reasons, so as to ensure that investors receive information in a form relevant to their needs, and so as to maintain the integrity of the information provided ...". Art 38 of EU Regulation 583/2010 appears to define those protections in more detail, saying at Art 38(2)(a) that "the provision of information is appropriate to the context in which the business between the management company and the investor is, or is to be, carried on". There are other protections defined in Art 38 but practitioners may wish to consider whether the types of controls that are already found in the industry, such as inviting website visitors to declare which country they are browsing from (which implies a control to ensure that they will only see information relating to funds that are notified in that state) and whether they are retail or institutional investors, will satisfy these requirements. In the case of an information-only website, we think that they probably will. In the case of an execution venue website, we think that more controls will be necessary in accordance with MiFID and the Distance Marketing Directive, which are beyond the scope of ALFI's work on the KID.

Q. The EU Regulation 583/2010 enables a share class to be used as a representative of one or more other classes of the UCITS. Is it possible to define a class as representative class which is not registered in all jurisdictions? For example, how would regulators manage the following case?

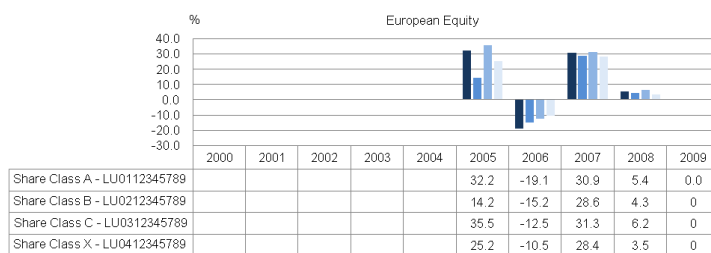
Sample:

Share Class A is domiciled in Luxembourg and registered in Germany, France, Belgium and Bulgaria. Share Class B is domiciled in Luxembourg and registered in all jurisdictions, excepted Greece.

The key investor information is pertinent for the two share classes, so that they can be combined into a single KID. In our sample, for Greece, the KID proposes a share class to a Greek investor in which he cannot invest, as it is not registered.

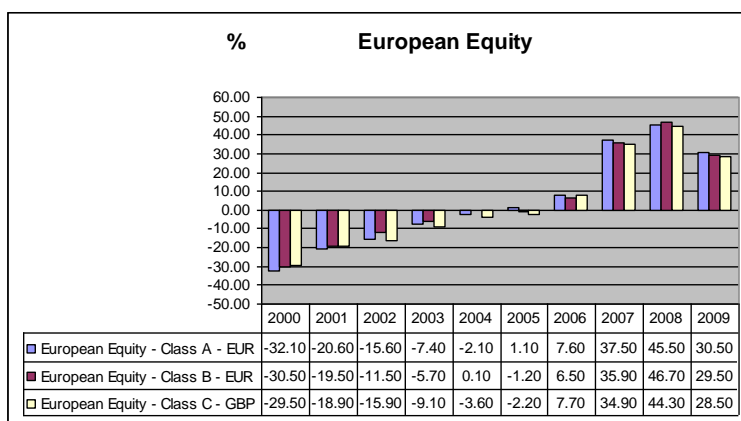
A. Yes.

Q. In case of a combination of two or more classes of the same UCITS into a single KID, how should past performance be presented? Is the following sample acceptable?



A. We think that the general idea of the table is acceptable but there are some aspects of it that are not acceptable. The relationship between the table rows and the bars is not explicit; the table should be limited to 5 annual intervals because the fund has only 4 years' history; the interval for 2009 is invalid; the chart does not explicitly say that the performance is "yearly performance" – see CESR/10-949, Page 31 for this last point; the font size is too small. We think that the use of colour is at the limit of what is acceptable: the contrast between the colours is clear when the document is printed in colour or monochrome but it becomes difficult to see when the document is copied on a standard office photocopier.

Q. In case a KID is established for multiple share classes, for each share class, the following table shows a colour in the table row which can be referenced back to the bar. Is this acceptable?



A. We think that the general idea of the table is acceptable but there are some aspects of it that are not acceptable. The performance numbers should be stated to one decimal place; the font size is too small; we think that the use of colour is at the limit of what is acceptable: the contrast between the colours is clear when the document is printed in colour or monochrome but it becomes difficult to see when the document is copied on a standard office photocopier. When they prepare multi-share class KIDs we recommend that practitioners take note of Rectal 13 of the EU Regulation, which requires that the KID should not be "too complicated or crowded".

Q. When a share class exists in the categories accumulation and distribution, (1) shall the two options be mentioned separately, including the ISIN codes? (2) If yes, in which section should this information shall be displayed (title, practical information section)? (3) If yes, should charges be indicated separately? (4) Should the past performance chart consider variations in share class performance?

A. (1 and 2) The two share classes may be presented in one of three ways:

(a) **Separate KIDs**, in which their accumulation or distribution characteristics would be clearly and separately described.

(b) A **representative KID** with one of the share classes being the representative class and the other being the represented class. For example, if the accumulation class was the representative class the KID would be prepared according to accumulation principles and the fact that the KID represents the distribution share class would be declared in the Practical Information section (EU Regulation 583/2010, Art 20(3) and Art 27). When considering whether to use a representative KID in these circumstances, practitioners should assess, for example, whether a KID that is based on an accumulation share class can satisfactorily inform investors about what the distribution policy of the distributing share class is and whether distributions present any risk of capital erosion, etc.

(c) A **multi-share class KID**. When deciding whether to combine accumulation and distribution share classes on a multi-share class KID, practitioners may wish to consider whether investors will be able to understand the combined document and know when to disregard the information that is not relevant to the share class that they are buying.

(3) In a representative share class KID, the charges that are shown must be from the representative share class. In a multi-share class KID, the charges must be shown for each share class.

(4) In a representative share class KID, the past performances that are shown must be from the representative share class. In a multi-share class KID, the past performances must be shown for each share class. The EU Regulation 583/2010 says at Art 16 that past performance "shall be calculated on the basis that any distributable income of the fund has been reinvested". Therefore unless there are differences in the ongoing charges the past performance of accumulation and distribution share classes of the same fund denominated in the same currency will be the same – in theory, at least. In practice, there are many factors that can influence the relative performance of share classes and practitioners should consider them carefully before they decide to produce a representative share class KID.

Q. When share classes are referenced by a representative KID and a share class is entirely redeemed or liquidated, should the KID be updated?

A. We think that practitioners may use their own discretion to decide whether and when to update the KID in this circumstance. If the practitioner does not intend to liquidate the share class then it may wish to consider leaving the KID unchanged in the expectation that subscriptions may follow. If the share class has been liquidated then the KID should be updated but the practitioner may consider it to be an immaterial change, which could be made during the annual update process. The practitioner would also be free to make the change sooner – perhaps in preparation for a significant marketing effort (see EU Regulation 583/2010, Recital 11).

Q. Is it possible to have multiple representative share classes in one KID?

A. No. A UCITS may issue several KIDs using representative share classes but there must be only one representative share class in each KID.

Q. Is it possible to have a mixture of multiple representative share classes and multiple single share classes in one KID?

A. No.

Art 26(5)

Q. The EU Regulation 583/2010 says that "The management company shall keep a record of which other classes are represented by the representative class referred to in paragraph 3 and the grounds justifying that choice." Should this choice and the list of represented classes be referenced in the KID? If yes, in which section should this information be added?

A. The fact of the representation should be stated in the Practical Information section but not the reasons for it.

Art 27

Q. The EU Regulation 583/2010 says, "That [the Practical Information] section shall also indicate where investors can obtain information about the other classes of the UCITS that are marketed in their own Member State." Should this information always be included in the KID when other share classes are defined for the UCITS by adding a reference to the prospectus and/or the Management Company website?

A. Practitioners are not prohibited from including this information in the KID but it is likely to be impractical for a cross-border undertaking of any significance because of the number of share classes registered in many member states. In those circumstances practitioners might find that it would be better to include in the KID a reference to their website.

Q. Would it be permissible to add to the practical information section the following statements? "Please note that not all the share classes included in this [KID] may be registered for distribution to the public in your jurisdiction. For more information about the share classes that are registered in your jurisdiction, please refer to [the management company website]."

A. We think that the statements are acceptable in principle.

Chapter 4, Particular UCITS Structures

Section 3, Fund of Funds

No questions have been asked.

Chapter 4, Particular UCITS Structures

Section 4, Feeder UCITS

No questions have been asked.

Chapter 4, Particular UCITS Structures

Section 5, Structured UCITS

No questions have been asked.

Chapter 5

Durable Medium

Art 38

Q. What is considered to be a durable medium other than paper? Computer discs or PDF documents sent by e-mail? Other foreseeable media?

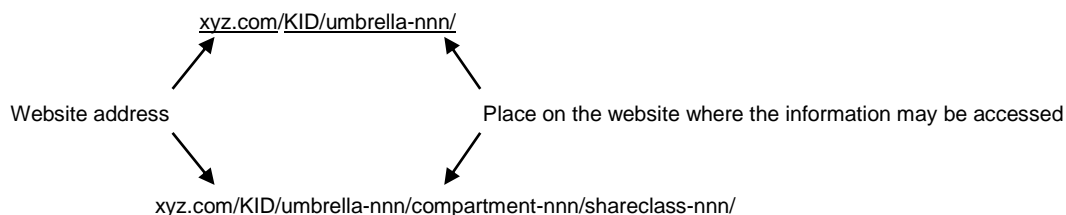
A. Media such as computer discs, flash cards and e-mail bearing PDF files or other forms of document may be considered to be durable media provided that they may be retained by the investor. Recital 17 of the EU Regulation 583/2010 describes important matters such as the long-term integrity of the medium and measures to prevent unauthorised modification of the KID in these forms. The Recital specifically refers to Directive 2006/73/EC for rules on durable media. (The text of Art 2 of Directive 2006/73/EC says that "'durable medium' means any instrument which enables a client to store information addressed personally to that client in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored". The text of Art 3 of Directive 2006/73/EC is for the most part the same as the text of Art 38 of the EU Regulation 583/2010.)

Q. Should management companies/distributors record for each investor the selected medium?

A. Since the investor must explicitly agree to receive the KID in a durable medium other than paper (Art 38(1)(b)), the management company or the distributor who obtained the agreement should keep a record of it.

Q. When a management company/distributor electronically notifies investors of the address of the website, should it also provide exactly the address on the website where the information may be accessed or is it enough to provide the home page?

A. Art 38(2)(c) of the EU Regulation 583/2010 says that the electronic notification must include "the address of the website *and the place on the website where the information may be accessed*". For example:



The practitioner must decide how much detail to provide in the electronic communication and, in the case of the short link, how to design the website to enable the investor to download the relevant KID taking into account whether it is an institutional or retail investor, what language is required, the jurisdiction in which distribution will take place, etc.

Q. When the web address changes, should management companies/distributors send an update to investors?

A. There is no obligation to send an update to investors. Practitioners may wish to consider their web site design carefully so that the address is unlikely to change. If change is unavoidable, practitioners should leave a "redirection" facility on the old web page, which ensures that visitors reach the correct page or information about who the investor should contact in order to retrieve the required KID.

Q. On whose website must the KID be published? The UCITS' website? The management company's? The promoter's? The distributor's?

A. Art 81 of Directive 2009/65/EC says that "an up-to-date version of the key investor information shall be made available on the website of the investment company or management company" (ALFI's emphasis). Art 38 of EU Regulation 583/2010 simply says "a website", which we interpret to mean that the KID may also be published on any other appropriate website. If the KID uses cross-references then they must be "to the website of the UCITS or the management company" (Art 21 of EU Regulation 583/2010).

Q. When a KID is updated, should management companies/distributors inform investors?

A. No. Art 23(1) of EU regulation 582/2010 only requires that it be "made available promptly", which means that it should be delivered to investors as a pre-contractual obligation and that it should be published on the practitioner's web site.

Art 38(2)(b)

Q. Can deemed consent be used, i.e., by embedding some text in the terms and conditions of the web site and posting a notice to the effect that an investor that uses the site will be deemed to have given consent to receive the KID and the prospectus electronically?

A. We think that deemed consent will not be acceptable because Art 38(2)(b) of EU Regulation 583/2010 says that "the investor must specifically consent".

Q. Does this requirement create an obligation to keep a record of the consent and if so whose obligation is it?

A. We think that a record-keeping obligation is implied by language about explicit consent (Art 38(1)(b) and 38(2)(b)) and in any case civil law would require practitioners to be able to provide evidence that the consent was specifically given.

Q. In respect of "durable medium" and the use of web sites, the EU Regulation 583/2010 says that "the investor must specifically consent to the provision of that information in that form." Must that consent be given in writing by signing a paper form or may it be given by clicking upon a "consent" button on the web page?

A. We think that it would be acceptable for consent to be given in any form that may be evidenced – in writing, by recorded telephone, via a website, etc.

Art 38(2)(e)

Q. What does "for such period of time as the client may reasonably need to inspect it" mean?

A. At the very least we think that it means for as long as that edition of the KID remains valid, and that it should be replaced when the next edition is published. We also think that the practitioner should keep archive copies of each edition of a KID that it produces and make them available to investors. We think that practitioners may choose how to make them available. For example, that might be upon the investor's request (delivering them in hard copy or electronically according to the investor's preference) or through an archive section on the practitioner's website.

Q. How long should a practitioner archive previous editions of each KID and should they be made available to investors via the practitioner's website?

A. The civil law in Luxembourg requires companies to keep records for 10 years.

Chapter 6 Final Provisions

No questions have been asked.

Annex I

Requirements related to the presentation of the synthetic indicator

No questions have been asked.

Annex II

Presentation of charges

Q. Is it permitted to extend the statement, "This is the maximum that might be taken out of your money [before it is invested][before the proceeds of your investment are paid out]" to say that part of the charges are paid over to the distributor?

A. No. Art 3(1) says, "No other information of statements shall be included ...", which would appear to prohibit this additional text.

Q. Should an underlying fund's performance fee (if it has been paid) be included in the performance fee statement of the holding fund's KID?

A. No. There is nothing in the EU Regulation 583/2010 or the CESR guidelines on this matter but we consider the performance fee statement, as required under Art 10(2)(c) of EU Regulation 583/2010 and as described in CESR/09-949, to apply to the performance fee that is charged directly to the UCITS by its manager and to exclude performance fees charged by underlying managers.

Annex III

Presentation of the past performance information

No questions have been asked.

Additional Questions

Q. The EC Regulation contains no binding references to the CESR recommendations on the methodologies for the SRRI and ongoing charges. How should a practitioner implement these aspects of the KID?

A. The reference to the SRRI methodology is made in Recital 6 of the EC Regulation and the reference to the ongoing charges methodology is made in Recital 8. Whilst these are not binding references, they amount to an instruction to practitioners to use the CESR methodologies. The new European Securities and Markets Authority might confirm the status of these guidelines in the future.

Q. Must the KID be published for all share classes including institutional share classes or must it be published only for retail share classes?

A. We think that it must be published for all share classes, including institutional share classes and there is nothing in the Directive or the EU Regulation 583/2010 that differentiates between institutional and retail investors and products in this way. CESR/09-949 acknowledges the question but does not resolve it: "The question of whether a share class designed for institutional investors is being promoted "to the public" is not one which this Advice can answer definitively. If such a class is being promoted to the public, a KID must be available to be provided to investors, even if potential institutional investors opt not to receive the document."

Q. When a UCITS is distributed in countries other than Member States of the European Union, e.g. Switzerland, Hong Kong, Singapore, will it be acceptable to translate the KID without further modification or will modifications or perhaps an entirely local document be required? Should the simplified prospectus be maintained for these countries?

A. We are uncertain about Swiss policy on whether the KID will be accepted as a substitute for the simplified prospectus. It seems likely that in most non-EU jurisdictions Luxembourg funds will have to produce point of sales material that is compliant with local rules and that the KID will not be accepted as a substitute. Examples include the Key Facts Statement in Hong Kong and the Product Highlight Sheet in Singapore. The Monetary Authority of Singapore will permit the distribution of the KID in Singapore (source: Deloitte Luxembourg) but the Product Highlight

Sheet remains the mandatory point of sale document. Some of ALFI's members have received encouraging responses that other non-EU regulators will permit the KID to replace the simplified prospectus in their jurisdiction.

Q. Is there more detailed information about these foreign requirements?

A. For the Hong Kong Key Facts Statement refer to:

<http://www.sfc.hk/sfc/html/EN/intermediaries/products/pkfStatements/pkfStatements.html>

For the Singapore Product Highlight Sheet refer to MAS Circular No. CMD 01/2010.

Q. Is it required or permitted to show the minimum subscription and shareholding amounts on the KID?

A. The EU Regulation 583/2010 does not prescribe this information for the KID and nor is it permitted (Art 3(1): "no other information or statements shall be included").

Q. Must an updated KID be published in the official gazette? Does Luxembourg have any specific rules in this regard?

A. No.

Part 2

CESR/10-673

CESR's guidelines on the methodology for the calculation of the synthetic risk and reward indicator in the Key Investor Information Document

Q. Who should conduct, monitor and approve the classification of a fund as market-, absolute return-, total return fund under CESR's methodology?

A. The investment company or management company should decide which of CESR's categories should be applied to its funds. Since CESR's definitions are high-level and leave space for interpretation, practitioners will need to use their judgement to decide which category is appropriate for a fund, and may need to consult relevant specialists such as compliance and risk managers. Since the investment company's or the management company's "senior management" are responsible for the preparation of the KID it would be appropriate for them to review the classification decision before the KID is published, and for the basis of the classification and their approval to be recorded in a formal document.

Q. If the SRRRI sliding window test indicates that the published SRRRI value should be changed, how quickly should the KID be updated and may that update be deferred for a short time to coincide with the annual update?

A. The new KID should be published as soon as is reasonably practicable after the sliding window test indicates that a change is necessary. Publication should not be delayed simply because the annual update is due to happen soon.

Q. If a UCITS issues daily NAVs, should every NAV be incorporated into the SRRRI calculation, or only the weekly return? Similarly, if the UCITS issues bi-monthly NAVs, should every NAV be included in the SRRRI calculation, or only the monthly return?

A. In respect of the first question, only weekly returns may be used. In respect of the second question, only monthly returns may be used. Daily or bi-monthly NAVs may not be used except to calculate those weekly or monthly returns.

Q. What should principally decide the SRRRI calculation methodology: the name of the fund or how its investment strategy fits with CESR's description of the qualifying criteria for the SRRRI computation methodologies (e.g., market, absolute return, total return, etc.)?

A. We think that the methodology is principally determined by the fit between the fund's investment strategy and CESR's description of the qualifying criteria for the SRRRI computation methodology.

Q. Do the methodological definitions in CESR's SRRRI guidelines restrict what name may be applied to a fund?

A. CESR/10-673 only provides guidelines on the methodology for the calculation of the SRRRI. It is not a regulation on fund classification and naming, which is a complex subject. Practitioners who are looking for guidance on fund classification and naming will find a very good reference in EFAMA's European Fund Classification system (www.efama.org).

Q. Is the management company obliged to disclose to investors which of CESR's methodologies it used to compute the SRRRI?

A. No.

Q. The explanatory text to Box 1 states that "[...] management companies should operate the risk classification of UCITS as an integrated part of, or at least in strict coordination with, the arrangements and procedures adopted for risk management purposes, to ensure monitoring of the correct and consistent implementation of this process on an ongoing basis."

Does this mean that the VaR parameters that are used to manage the UCITS' risk in accordance with CESR/10-788 (if the UCITS uses VaR) must be exactly the same as the parameters used to compute the SRRRI under CESR/10-673?

A. No, they need not be exactly the same. There are many legitimate ways to calculate VaR in compliance with CESR/10-788. Provided that CESR's guidelines are respected, model selection and implementation remains a matter of the risk manager's objective judgement, taking into account the nature of the fund and the aim of constructing the most appropriate model for risk management purposes. In practice, two independent risk managers could take a

fund's return history and justifiably calculate different VaR. If such flexibility were to be permitted under CESR/10-673 it would undermine the suitability of the indicator as an aid to the retail investor comparing one fund to another. For the SRRI, a harmonised calculation methodology is therefore essential: two independent risk managers should be expected to take a fund's return history and calculate the same SRRI, notwithstanding that the practitioner must still use some judgement to apply the methodology.

We understand "in strict co-ordination with the arrangements and procedures adopted for risk management purposes" to mean that CESR expects practitioners to select the SRRI methodology deliberately and objectively, and to monitor the results as an integrated part of the fund's risk management process.

Q. Is it permitted to use one benchmark for the calculation of a fund's VaR in accordance with CESR/10-788 and a different benchmark for the simulation of its SRRI in accordance with CESR/10-673?

A. Yes, provided that there is good reason to do so. One such reason might be if the most suitable benchmark for the computation of VaR in accordance with CESR/10-788 has insufficient history to be of use when simulating the SRRI. In that case, another suitable benchmark could be used to simulate the SRRI. If the most suitable benchmark for VaR calculation also had a 5-year history, it would be reasonable to expect it to be used to simulate the SRRI.

Q. The KID should be available before the fund is launched. On which date should the initial SRRI be calculated and does the SRRI need to be monitored between this date and the launch of the fund in order to be sure that it meets the requirements of the sliding window test?

A. Practically speaking, it would be simplest to compute a simulated SRRI in the week before the launch and start the sliding window test from that date. There is nothing to prohibit the practitioner from calculating the SRRI earlier and maintaining it under the sliding window test.

Q. Should the SRRI be calculated on the basis of the NAV gross or net of fees and expenses?

A. The SRRI should be calculated on the basis of the NAV net of fees and expenses, with dividends reinvested. (See page 6 of CESR/10-673, which refers to the "net asset value.")

Q. To what degree must the computation be documented? Is it necessary for the management company to be able to re-compute any of the SRRIs for the last five years?

A. Paragraph 8 of Box 1 on page 5 of CESR/10-673 says that "management companies shall keep records of these computations for a period of not less than five years; this period shall be extended to five years after maturity for the case of structured products."

We consider this to mean that the management company must retain a record of the method that it used to compute the SRRI (for example, which of CESR's classifications it employed and how it applied CESR's formula, particularly where CESR's definitions permitted some freedom to decide how the formula should be applied in detail) and the source data that were used in the computation. Examples of source data include the UCITS "return history", which the practitioner may take to mean the NAV history rather than derived data such as the return in a particular period t or the arithmetic mean of the returns over a longer period T . Similarly, in respect of "the fund's representative portfolio model, target asset mix or benchmark" (Box 4, para 2(a)) that are used to simulate a return history, the source data may include sufficient information to identify the securities in the model portfolio or asset mix, or the precise identity of the benchmark, but need not include the prices of the related securities, which may be derived from market data systems if they are needed again in the future. Similarly, computed data such as those described in para 2(c) of Box 4 need not be stored, provided that the practitioner is able to compute them again if it is required in the future to demonstrate how it found the SRRI.

CESR's methodology also contains indications as to what data are relevant to the computation. For example, para 2(a)(ii) of Box 6 says that "the reference asset allocation of the fund at the time of the computation" are relevant, and we think that it should be retained.

It may not be strictly necessary to retain computed data but there may be circumstances in which it may be worthwhile to retain the results of key computations – the "milestones" that were passed as the computation progressed – to provide a credible audit trail which could be sample-tested without the need for expensive re-computation from first principles. For example, we think that it would be a good idea to retain the weekly or monthly SRRI result (actually, the volatility result), which delivers the number that used in the "sliding window" test, and which determines what SRRI value should be published in the KID. There may be other examples and the practitioner must decide which to keep, taking into account the benefit of the audit trail, the cost of re-computing the SRRI from first principles, the likelihood that it will be asked to do so, and the limitations on the practicality of creating useful audit logs for complex calculations on potentially very large data sets.

Q. May the SRRI be simulated using a composite benchmark?

A. Yes. Particular care should be taken with absolute return and total return funds to ensure that the composite benchmark is properly adjusted to reflect the variable allocation of the fund to its target asset classes with respect to time, and that the fund is not inadvertently treated as a market risk fund by virtue of its relationship with the benchmark. Practitioners should keep a record of the basis upon which a composite benchmark was composed and adopted and how it was used to simulate the SRRI (CESR/10-673, page 6).

Q. May a fund's correlation with a benchmark be used as grounds for deciding that it is a market risk fund, and are there criteria to say what degree of correlation is acceptable?

A. CESR's guidelines on the methodology for the calculation of the SRRI in the KIID (CESR/10-673) provide definitions for different types of fund. The definitions do not set criteria for testing the correlation of fund and benchmark as an aid to deciding whether the fund is a market risk fund by virtue of the fact that it is or will be sufficiently invested in some "pre-determined segments of the capital market" (i.e., the segments represented by the benchmark); that is something that the practitioner must decide.

We think that a combination of quantitative and qualitative techniques may be used to establish the suitability of benchmarks for all types of fund. They may take into account the degree of freedom granted by the investment management mandate. For example: how much the fund may be over- or under-weight the sectors of the benchmark, or how the beta of the fund and the benchmark compare. There are many other possible criteria. We think that it is important that the classification of a fund according to CESR's methodology should be objective, defensible, likely to be persistent and be documented. The practitioner should perform periodic tests of the classification and, where relevant, the benchmark's suitability for the fund.

Q. If there is more than one suitable benchmark for a fund, how should the most appropriate one be chosen, particularly when simulating the SRRI?

A. As with the previous question, we think that a combination of quantitative and qualitative techniques may be used to choose the most suitable benchmark. The practitioner may wish to use the techniques that it considers most useful to the objective of selecting the benchmark that best describes the specific risk of the fund.

Q. If a fund does not have a benchmark (for example, in the specific case of a market risk fund which has no identified benchmark), how should the practitioner choose a benchmark with which to simulate the SRRI?

A. It is not always necessary to choose a benchmark. CESR/10-673 also permits a "representative portfolio model [or] asset mix".

Q. The explanatory text to Box 4 at page 10 of CESR/10-673 (market funds) specifies that "ongoing costs" should be accounted under certain circumstances. Which costs have to be considered and when can we justifiably expect them to affect volatility estimates to a material degree?

A. The term "ongoing costs" complies with the notion of "ongoing charges" as used in Art 10 of EU Regulation 583/10 and CESR's guidelines on the methodology for calculation of the ongoing charges figure in the KIID (CESR/10-674). Management companies should analyse the cost impact on volatility estimates and provide a definition of "materiality". We think that only in the case of exceptional cost structures benchmark returns will need to be adjusted to account for ongoing costs.

Part 3

CESR/10-674

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

Page 4, Introduction

Q. The introduction mentions only management companies but does it also mean to include self-managed investment companies?

A. Yes, it means to include self-managed investment companies.

Page 4, Para 1(c)

Q. This paragraph requires that records of each calculation be kept for a period of 5 years whereas paragraph 16 on Page 7 says that the "ongoing charges figures that were applicable during previous years/periods should be published at the location (...)". Is the maximum record maintenance period limited to 5 years?

A. The data that were used to compute the ongoing charges figure should be retained for 5 years following the last day on which the KID was available to be issued. The result of the computation – the single ongoing charge figure that was published in the KID – should be published at the place specified in the KID for as long as the fund remains in existence. The civil law in Luxembourg requires companies to keep records for 10 years.

Page 4, Para 4(c)

Q. How should the Luxembourg taxe d'abonnement be treated under the methodology?

A. CESR/10-674 says at Para 2 on page 2, "there is a presumption that all costs borne by the fund must be taken into account unless they are explicitly excluded," and this tax is not excluded. We think that it should be included in the ongoing charge figure under Para 4(c).

Page 5, Para 5(c)

Q. Should bank overdraft charges be excluded under Para 5(c)?

A. Yes, bank overdraft charges are interest on borrowing.

Page 5, Para 5(d)

Q. Is it correct to exclude withholding tax on dividends/interests, stamp duty payments, re-registration fees and VAT on custody fees from the ongoing charges figure?

A. Para 5(d) is not relevant to the treatment of withholding taxes on dividend and interest income because they arise during the period in which the fund owns the asset; they are not related to the "acquisition or disposal" of that asset. However, being taxes that are deducted at source, they should be excluded from the ongoing charges figure.

Stamp duty is clearly excluded under Para 5(d) and we consider that re-registration charges associated with portfolio activity should also be excluded unless Paras 4 or 6(a) require them to be included.

VAT should be treated in the same way as the payment to which it was related: if the payment is excluded so should the VAT be and vice versa.

Q. Is it permitted to exclude the cost of action in respect of withholding tax recovery on the basis that they are "linked charges"?

A. Para 5(d) is not relevant to the treatment of withholding taxes on dividend and interest income because they arise during the period in which the fund owns the asset; they are not related to the "acquisition or disposal" of that asset. Tax reclaim expenses are therefore not "linked charges".

Q. Is it permitted to exclude the cost of action in respect of withholding tax recovery or similar administrative or legal action on other grounds?

A. CESR/10-674 says at Para 2 on page 2 that, "there is a presumption that all **costs** borne by the fund must be taken into account unless they are explicitly excluded," and it says at Para 1 on page 3 that the guidelines were drafted with the intention that the KID should disclose, "a single figure representing all **annual charges** and **other payments** taken from the assets of the UCITS on a **periodic** basis." If these expenses arise periodically, as they might if protective tax claims are being made every year, there appears to be good reason to include them under Paras 4(a), (b) or (e), depending on how the expense arises. If in the opinion of the relevant board of directors the expense is extraordinary, for example, arising from a single legal action, there may be grounds to exclude it.

The EU Regulation 583/2010 also provides an insight into this question:

Art 10(2)(b) says that the ongoing charges figure should be the charges taken from the fund over a year and should be "based on the figures for the preceding year" (i.e., an ex-post calculation);

Art 11(1)(b) confirms that the basis for the ongoing charges figure should be the last year's expenses (i.e., an ex-post calculation);

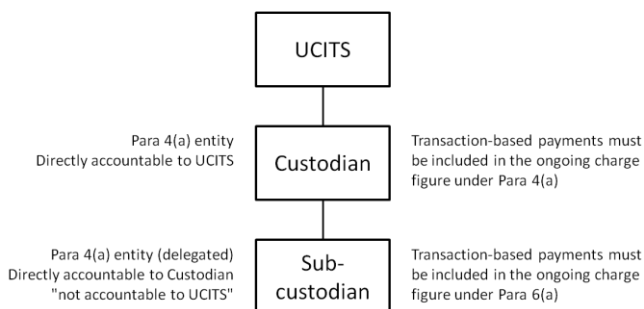
Art 24(2) says that if the "ongoing charges calculated in accordance with Art 10(2)(b) are no longer reliable, the management company shall instead estimate a figure for 'ongoing charges' that it believes on reasonable grounds to be indicative of the amount likely to be charged to the UCITS in the future."

An extraordinary charge may therefore be excluded from the ongoing charge figure provided that the disclosure statement prescribed by Art 24(2) is included in the KID.

Page 5, Para 5(d) and 6(a)

Q. CESR says that transaction fees are generally excluded for the purposes of calculating ongoing charges (paragraph 5d) but it also says that this exclusion shall not extend to transaction based payments to parties, including the custodian, "in respect of which the recipient is not accountable to the UCITS" (paragraph 6a). What does this mean?

A. We think that the phrase "in respect of which the recipient is not accountable to the UCITS" refers to payments made for the benefit of **any** party referred to in paragraph 4(a) or 4(b) when that party raises charges against the UCITS *in connection with the UCITS' acquisition or disposal of assets for its portfolio, even if the charges are not explicit*. Consider one possible scenario in the following diagram:



In this case, we think that all transaction-based payments made to the sub-custodian (whether they are invoices raised against the principal custodian or applied as a spread on a transaction) must be included in the ongoing charge figure. This is only one of many possible applications of this concept.

Q. Paragraph 6(a) says that "the exclusion in 5(d) for transaction-related costs shall not extend to ... payments made to any of the persons listed in 4(a) or 4(b) in respect of which the recipient is not accountable to the UCITS." Does this mean that the exclusion in 5(d) may be applied to payments to persons listed in 4(a) or 4(b) in respect of which the recipient is accountable to the UCITS?

A. We think that paragraphs 4(a) and 4(b) have precedence over paragraph 5(d): payments must be included in the ongoing charges figure if they are made for the benefit of any party referred to in paragraph 4(a) or 4(b) when that party raises charges against the UCITS *in connection with the UCITS' acquisition or disposal of assets for its portfolio*.

Page 5, Para 6(b)

Q. Does this paragraph apply only to funds of funds?

A. No. It applies to every UCITS that acquires the units of another UCITS or collective investment undertaking.

Page 5, Para 8

Q. What constitutes a "substantial proportion" of assets for the purpose of applying this paragraph and does the CESR advice mean to reference Art 55(3) of the UCITS Directive rather than Art 50(3)?

A. We note that Circular CSSF 03/122 in respect of the simplified prospectus says that "if a UCITS invests more than 20% of its assets in other investment funds which publish a TER in accordance with this circular, a synthetic TER corresponding to such investment must be indicated." Although Circular CSSF 03/122 will not apply to the KID, practitioners may wish to take it into account it when deciding what "substantial" means.

In the EU, the home state regulator's guidance should normally be respected. If an EU host state regulator recommends a lower threshold then practitioners may choose to apply it but they would risk no sanction if they did not.

The reference to Art 50(3) in paragraph 8 of CESR/10-674 is a typographic error. The correct reference is to Art 55(3).

Page 6, Para 8(d)

Q. CESR's paper says, "where CIUs falling within (c) represent less than 15% of the UCITS assets ...". Is it acceptable to determine the 15% at a single date (for example, 31 December) or is it necessary to calculate the volume-weighted average of such holdings on every day in the year?

A. We think that it is acceptable to test the 15% threshold on 31 December only and to analyse the underlying UCITS' or CIU's ongoing charges on the same "snapshot" basis on the same date. This is consistent with the spirit of the methodology, which at paragraph 15(a) requires "the ongoing charges figure ... of each underlying CIU [to be] 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)."

Page 6, Para 8(e)

Q. Can we understand this paragraph to mean that if a UCITS receives a rebate of charges from a fund in which it invests and the UCITS assessment of the ongoing charge of that underlying fund as prepared according to paragraphs 8(a), (b), (c) or (d) did not take account of the rebate, the UCITS may reduce the aggregate result of its calculation by the rebate amount?

A. Yes.

Q. Must this be applied only in respect of rebates that have been received?

A. It may be applied to rebates that have been received and to rebates that have been accrued. The practitioner may decide the method that it thinks appropriate.

Q. Should funds of funds include the performance fee of underlying funds in their calculation of the ongoing charges figures?

A. No. Paragraph 8 of CESR/10-674 requires funds of funds "to take account of the ongoing charges incurred in the underlying CIUs", and explains how that may be done in several circumstances, none of which require the underlying CIU's performance fees to be taken into account. Paragraph 8(a) is a good example: only the underlying CIU's "most recently available ongoing charges figure shall be used," which means the figure calculated in accordance with CESR/10-674, which at Paragraph 5(b) explicitly excludes "a performance fee payable to the management company or any investment adviser."

Page 6, Para 8(f)

Q. Should an underlying fund's entry/exit charges be included in the ongoing charge of the holding fund's KID?

A. Yes. See paragraph 8(f) of CESR/10-674 and Art 30 of EU Regulation 583/2010.

Page 6, Para 13

Q. The point mentions that the methodology for calculation can be based on a UCITS' statement of operation published in the latest annual or semi-annual report "if this is sufficiently recent". What is acceptable to be sufficiently recent?

A. It is tempting to think of "sufficiently recent" as a fixed time limit – within 3 months of the end of the reporting period, for example – but we think that would be too arbitrary. We think that it would be better to consider whether the latest annual or semi-annual report would permit the practitioner to produce an ongoing charges figure that remains "fair, clear and not misleading at all times." (CESR/09-949, Box 7, paragraph 1) If in the practitioner's judgement it would, then we think that it would be an acceptable basis for the calculation. If it would not, then we think that the practitioner should use some other basis.

Q. CESR/10-674 says that "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." Can the management company decide to use the figures of the half yearly report even though the calculation is based on the costs charged during a 6-month period and not a 12-month period, while Art 10(2)(b) of the EU Regulation 583/2010 seems to impose an ex post calculation based on a full year. Is this a contradiction and how should it be resolved?

A. There is no contradiction. The calculation may use data from the semi-annual report (CESR/10-674, paragraph 13) but it should adjust the data to ensure that the *annualised* ongoing charges are published (EU Regulation 583/2010, Art 10(2)(b), "charges taken from the UCITS over a year"). The practitioner may wish to take into account other matters such as accrual adjustments to ensure that the published figure is reliable. The purpose of paragraph 13 is to permit the practitioner some flexibility to choose a cost data set that will produce a reliable indication of the ongoing charge over a year.

Q. If a practitioner wishes to produce a KID for an existing fund from 1 July 2011, should the ongoing charges be calculated with respect to the UCITS' most recent annual or semi-annual report or with respect to even more recent records?

A. Please see the Q&A above in respect of what "sufficiently recent" means.

Q. If the KID is updated at any time other than the annual revision (for example, because the SRRI changed), should the ongoing charges be *recalculated* using the most recent cost data or should the ongoing charges figure only be updated if the most recent records indicate a change greater than some threshold?

A. CESR/09-949 at Box 17, Para 1 and 2(a) says that the KID must be *reviewed* prior to or following any material change affecting the sections on objectives and investment policy, risk and reward profile, charges, past performance, and practical information. However, at the bottom of page 44 of the same document, CESR says, "carrying out a review does not imply that there must be a consequential revision on every occasion; a review is an internal process which may conclude that there is no need for an actual revision at the present time." If the practitioner has established "procedures to ensure that the charges figures disclosed in the KID are kept under regular review, so that they remain fair, clear and not misleading at all times," (CESR/09-949, Box 7, Para 1) there is no need to recalculate the ongoing charges figure when the KID is revised for some other reason. However, when the KID is revised part-way through a year, the latest result from the practitioner's regular ongoing charge calculation should be published in the new KID (CESR/09-949, Box 8, Para 3).

Q. In respect of fund set-up costs, which may be amortised over future years, and prepayments, should the ongoing expenses contain only that part of the expense which is applicable to the period for which the expenses were calculated?

A. Yes.

Page 6, Para 14

Q. If the semi-annual report is to be used as the source of cost data and the UCITS accounting policy accrues costs on a calendar day basis (i.e., 365 calendar days per year), should the average net assets be calculated as a simple average of all NAVs published or as an average of the NAV on each day in the calendar year.

A. In this example, and taking into account our answer above in respect of annualised results, the average net assets should be calculated as an average of the NAV on each calendar day within the half-year, because that "relates to the same period as the costs". It is for the practitioner to decide which NAV to apply on the calendar days when the NAV is not published. We draw practitioners' attention to Art 24(2) of the EU Regulation 583/2010, which determines what the practitioner should do in the case that the result of the calculation produces a result that would not be reliable.

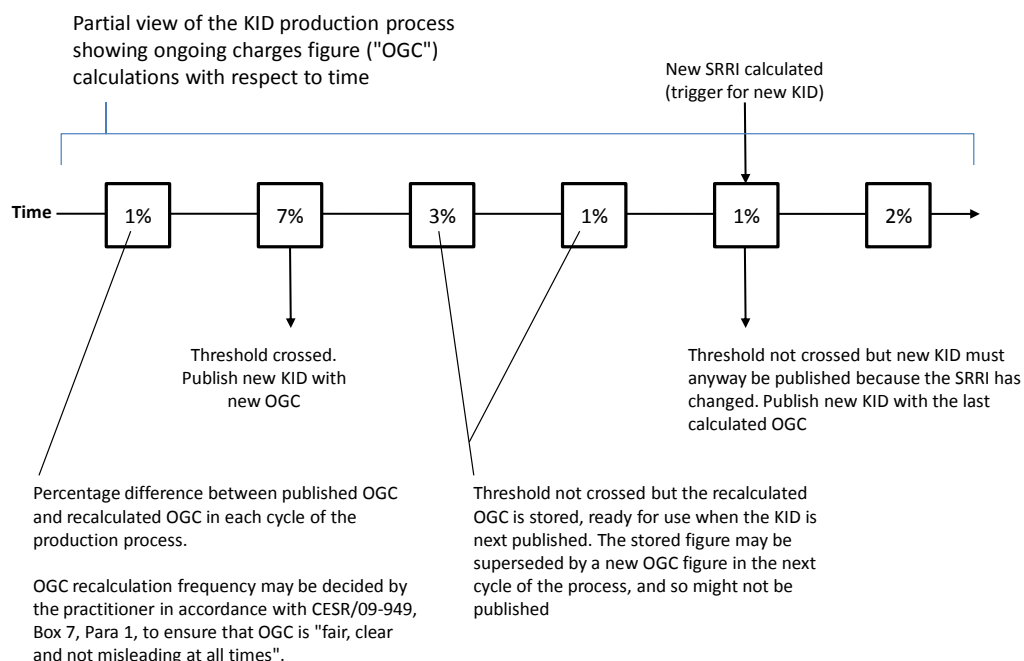
Q. Should average net assets be calculated on the basis of the published NAV or (in the case of swing pricing) the NAV before it was swung?

A. Use the published NAV.

Page 6, Para 15

Q. For a UCITS that invests a substantial proportion of its assets in other UCITS or CIUs, must the regular calculation of the ongoing charges figure take account of the evolution of the asset weights *and* the ongoing charges of the underlying funds or may a simplified approach be used, in which the new asset weights are counted but the underlying funds' ongoing charges are not researched anew unless the 5% test would indicate that the result would be published in a new KID?

A. CESR 09/949, Box 7, Para 1 says that the "management company shall establish procedures to ensure that the charges figures disclosed in the KID are kept under regular review, so that they remain fair, clear and not misleading at all times". CESR 09/949, Box 7, Para 2(b) and 2(c) establish the principle that, if the ongoing charge changes by 5% or more, a new KID should be produced, showing the new ongoing charge. However, CESR 09/949, Box 8 Para 3 says that if the difference is less than 5%, the new ongoing charge figure "shall be published when the KID is next revised". Therefore, the issue is not whether it is acceptable to use latest asset weights and older ongoing charges figures for the underlying funds when recalculating a UCITS' ongoing charge solely for the purpose of testing if the threshold has been crossed, but whether it is in any event acceptable to calculate *and publish* an ongoing charge figure using older ongoing charges figures for the underlying funds.



We think that the principal purpose of paragraph 15(a) of CESR/10-674 is to ensure that the latest **asset weights** are used when calculating the ongoing charges figure. We do not think that it means that ongoing charges figure of the underlying CIU should be calculated as at the same date. For example, we do not think that it creates an obligation to apply paragraph 8(b), where relevant, with the same frequency. However, we do think that the latest available ongoing charges for the underlying UCITS or CIU should be used in the case of all underlying UCITS or CIUs – cf. paragraph 8(a), "its most recently available ongoing charges figure shall be used."

Q. Does this mean that the latest available ongoing charge figure of an underlying UCITS or CIU should be used each time a synthetic ongoing charge is calculated?

A. Yes. Note the word *available*.

Q. Does it also mean, in the case of paragraph 8(b) of CESR's methodology, that an underlying CIU's ongoing charge must be updated each time the UCITS updates its synthetic ongoing charge?

A. No. We think that the management company is free to decide how often to calculate the underlying CIU's ongoing charge, taking into account the CIU's circumstances. This may be less frequently than it calculates the UCITS' synthetic ongoing charge. The important principle is that the management company should ensure that the UCITS' synthetic ongoing charge figure is "fair, clear and not misleading".

Q. How does this apply to an underlying CIU in the case of paragraph 8(c) of CESR's methodology?

A. The same principle applies: the UCITS' synthetic ongoing charge figure should be fair, clear and not misleading. The management company may decide what information it would be reasonable to use.

Q. Must the synthetic ongoing charge of a fund of funds be recalculated every time it buys or sells an underlying fund for its portfolio and must the KID be republished if the result differs from the published ongoing charge by more than 5%?

A. There is no requirement to calculate a UCITS' synthetic ongoing charge each time it buys or sells an underlying fund for its portfolio. Paragraph 15(a) of CESR/10-674 says that "the ongoing charges figure ... 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 on which the UCITS' figures are taken).**" (ALFI's emphasis.) The important principle is that the management company should ensure that the UCITS' synthetic ongoing charge figure is "fair, clear and not misleading" (CESR/09-949, Box 7, paragraph 1). With that in mind, the management company may decide when to recalculate the synthetic ongoing charges figure.

Page 7, Para 16

Q. Does this paragraph require the practitioner to retrospectively calculate ongoing charges for prior years according to the CESR methodology and publish the result on the relevant website?

A. No.

Q. Does this paragraph require the practitioner to publish historical total expense ratios using the methodology that the UCITS employed before the CESR methodology was introduced?

A. No.

Page 7, Paras 17 and 18

Q. Is the methodology for calculation of new funds also valid for new classes issued by existing funds?

A. Yes, we think that it is valid and necessary.

Q. If the UCITS intends to apply a cap to expenses would it be appropriate to include in the KID a statement to that effect?

A. Please refer to ALFI's Q&A on Art 13 of EU Regulation 583/2010.

Part 4

Using KID in distribution networks

This section has been prepared to address questions about the practical issues of using KID in distribution networks, which require a broader consideration of laws, regulations and industry practices than we might have under the section dealing with EU Regulation 583/2010. Other sections of this Q&A may also deal with related topics.

The reader may find it easier to start this section by reading Table 1 at page 43 below, which looks at the fund industry from the perspective of Art 80 of the UCITS Directive.

Q. What provisions does a UCITS need to make to ensure that the latest version of the KID is provided to all parts of its distribution network?

A. Investment companies and management companies may wish to review their distribution networks to understand the legal meaning of a party "who acts on its behalf and under [their] full and unconditional responsibility" and which elements of their networks should be managed under Art 80(1) and which under Art 80(2) of the UCITS Directive (which were transposed into Arts 161(1) and 161(2) of the Luxembourg law of 17 December 2010). **The following comments are therefore general and we recommend practitioners to take legal advice.**

Under Art 80(1) of the UCITS Directive, investment companies and management companies which sell UCITS directly or through agents acting on their behalf and under their responsibility must provide the latest copy of the KID to investors. The investment company or management company should therefore ensure that it and/or its agents acquire the ability to provide the KID throughout their distribution network to the extent that it falls under this article and that they do so in accordance with the EU Regulation 583/2010 (durable medium, Art 38). How they do so is an operational matter for the practitioner to decide and may be discussed elsewhere in this Q&A. Examples of the agents who would be acting on behalf of the investment company or management company would be transfer agents (in respect of order execution for direct investors, even though the transfer agent is not engaged in selling), tied sales agents and third parties who are contracted as distributors *and in respect of whom the investment company or management company remains fully and unconditionally responsible*. **For the avoidance of doubt, such third parties acting for the investment company or management company in this way have no obligation under Art 80(1) of the Directive to provide the KID to investors. Their obligation may only be established under the terms of a commercial agreement with the investment company or management company.**

Under Art 80(2) of the UCITS Directive, investment companies and management companies which do **not** sell directly or through agents acting on their behalf and under their responsibility must **upon request** provide the KID to product manufacturers and intermediaries selling or advising investors on potential investments in their UCITS or in products that offer exposure to their UCITS. Examples of such parties would be wrap managers, fund of fund managers, structured product manufacturers, etc.

Q. Must fund promoters update their distribution agreements to include provisions for delivery of the KID, for example, to ensure that the distributor or intermediary is obliged to give the latest copy of the KID to investors prior to the first investment?

A. It depends on the capacity in which the distributor is acting and the contents of the distribution agreement. If the distributor is acting as an intermediary under Art 80(2) of the UCITS Directive (i.e., **not** acting in the name and under the full responsibility of the investment company or management company) and the agreement contains a clause that requires the distributor to comply with all applicable laws, then the practitioner might decide that it is enough to rely upon the fact that Art 80(2) provides that member states' national laws should require intermediaries who sell UCITS or advise investors to invest should provide the KID to those investors. Thus "applicable laws" will be enacted. In such cases the investment company or management company might consider that it is enough to send its distributors a general letter to explain its approach.

If the distributor is acting under Art 80(1) of the UCITS IV Directive (i.e., acting in the name and under the full responsibility of the management company) then it might be necessary to review the agreement because, even if it contains an "applicable law" clause, the UCITS Directive and related national laws apply to investment companies and management companies, who must ensure that their agents provide the KID to investors. Practitioners would be wise to take legal advice in this and similar matters.

Although European law cannot bind intermediaries acting outside of the EU, it nevertheless requires investment companies and management companies to provide the KID to investors under Art 80(1) and, upon request, to intermediaries under Art 80(2), even if the investors and intermediaries are outside the EU. We consider this obligation to apply only to the extent that the delivery of the KID is permitted by the applicable laws of that extra-EU jurisdiction.

Table 1

The following table considers the implementation of Art 80 of the UCITS Directive. It divides the industry into three segments: (1) investment companies, management companies and third parties acting under their "full and unconditional responsibility"; (2) intermediaries who do not act under an investment company's or management company's "full and unconditional responsibility" and other parties who include UCITS in their products; and (3) infrastructure companies and others.

We think that the following interpretation of Art 80 provides a sensible way to approach the question of who must deliver the KID to an investor, and that it reflects how the industry operates. However, the industry is so diverse that this interpretation cannot be definitive and practitioners should take legal advice on their own circumstances and the implications of other parts of the Directive, including Recital 16 and Art 13(2) (delegation and liability) and Annex II (marketing a function included in the activity of collective portfolio management).

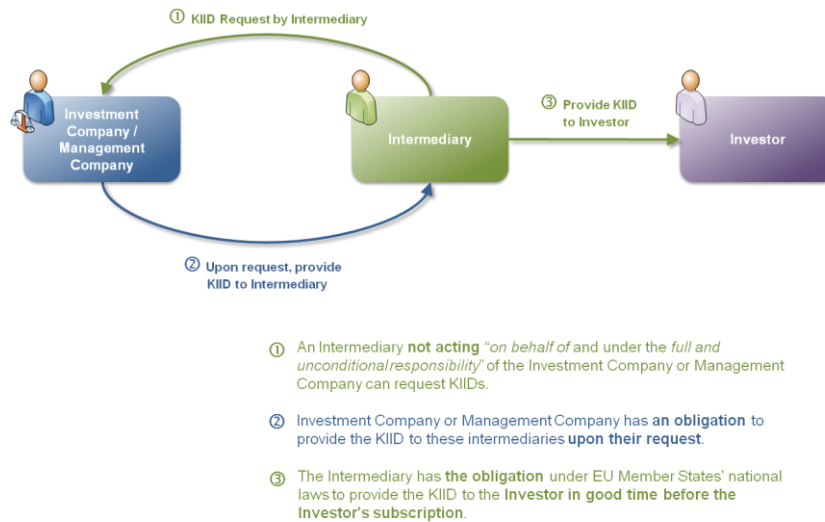
Investment company or management company	Has an obligation to deliver the KID when selling directly and to ensure that its delegates deliver the KID, all "in good time before [investing]". The obligation applies equally to retail and institutional investors but does not apply to entities that are classified under Art 80(2) or (ALFI's inference) entities classified under "neither Art 80(1) nor Art 80(2)", below. Transfer agents that are part of the investment company or management company operate under the same obligation.
Distributor or selling agent acting "on behalf of" and under the "full and unconditional responsibility" of the investment company or management company.	As the investment company's or management company's delegate. The UCITS Directive puts the KID delivery obligation on the investment company or management company and so it must reach a contractual agreement with its delegate on what to do with respect to KID. A third party transfer agency has no direct obligation under the UCITS Directive to deliver the KID to any party, but an investment company or management company may require it to do so as its delegate under the terms of their service contract. The transfer agency is simply an administration agent acting "on behalf of" the investment company or management company. Important: it might be possible to be a distributor or selling agent and not be the investment company's or management company's delegate –see Art 80(2) entities, below.
All entities below	Investment company or management company only has an obligation to deliver the KID to these entities upon their request.
Intermediary not acting "on behalf of and under" the investment company's or management company's "full and unconditional responsibility". Examples: Retail banks Independent financial adviser Fund platforms providing investors with information and execution facilities, and possibly with advice Private bank providing both discretionary investment management, advisory and execution only services	Intermediaries within the EU should take legal advice on whether they have an obligation under national laws implementing the UCITS Directive to deliver the KID to their clients and potential clients.
Structured product manager Fund of funds Introducing agent Product wrap manager – e.g., life product, pension product.	
All entities below	Investment company or management company has no obligation to deliver the KID to these entities.
Infrastructure companies such as clearing banks, global custodians, administration only platforms and execution-only venues.	Infrastructure companies connect industry participants. They do not provide sales or advisory services. They appear not to have an obligation to provide the KID to their participants. However, an infrastructure company which permits institutional investors to execute trades in a UCITS may have an obligation to deliver the KID to those investors. Infrastructure companies within the EU should take legal advice on whether they have an obligation under national laws implementing the UCITS Directive to deliver the KID to their participants.
Tax wrap manager – e.g., UK individual savings account (ISA) manager	Not applicable. The tax wrap manager's function is to ensure that the investor conforms to the tax rules. It is not a sales or advisory process. However, if the tax wrap manager also sells or advises then it should be treated as an Art 80(1) or Art 80(2) entity.

The following diagrams (which are not exhaustive) illustrate how the KIID may be provided:

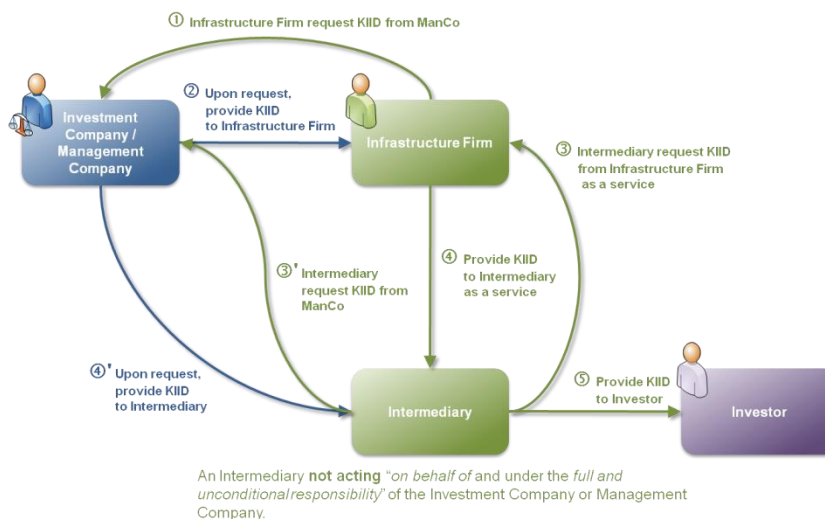
Art 80(1):



Art 80(2):



Art 80(2) including an infrastructure firm:



Q. Does the investment company or the management company have an obligation to monitor distributors and intermediaries for evidence that the KID is being delivered to investors?

A. The obligation to monitor distributors and intermediaries will depend upon the nature of the distribution network – whether, for example, a party falls under the scope of Art 80(1) or 80(2) of the UCITS Directive and whether other national laws and regulations or European laws such as the MiFID Directive are applicable. Practitioners would be wise to take legal advice in this and similar matters. In the Luxembourg Law of 17 December 2010 (implementing UCITS IV), Art 110(f) says, "Management Companies are authorised to delegate to third parties [in which] case [...] measures must exist which enable the persons who conduct the business of the management company to monitor effectively at any time the activity of the undertaking to which the mandate is given." For a Luxembourg management company, we therefore think that it would be appropriate to monitor distributors acting under such a delegation, who would seem to be acting under Art 80(1) of the UCITS Directive. Conversely, we see no obligation under the Luxembourg law to monitor an intermediary or product manufacturer (e.g., wrap, structured product, fund of funds manager, etc) to whom the management company has made no such delegation and who would seem to be acting under Art 80(2) of the UCITS Directive. Where a monitoring obligation exists, we think that it would be appropriate to rely upon a due diligence review of the distributor's process and records, which would be performed when the relationship is first established and regularly thereafter.

Q. In certain cases, distributors or intermediaries may be seen as investors, e.g., if they place an order on their own behalf, or act as nominees. In these cases, promoters have a direct relationship with them; they are registered as shareholders in the fund's register. Under the terms of the law, should we consider these parties to be investors or intermediaries?

A. We recommend practitioners to discuss this with such parties. They may agree to be treated as intermediaries. If no agreement can be reached, they should be treated as investors.

Q. What procedures would you recommend to management companies in order to get the proof of their provision of KIID to their distribution partners?

A. This is a matter between each management company and its distribution partners.

Please note that the following questions and answers deal with particularly complex issues, involving many different possible operating models and investor circumstance. The answers are not necessarily definitive and they might not be suitable for every circumstance. They are not meant to establish an industry standard or a guide to best practice. Practitioners must decide their own policy in respect of the provision of the KID.

Q. Should practitioners amend application forms to obtain from the investor a declaration that it has received the KID for the proposed initial investments? Should practitioners introduce order forms to obtain from the investor such a declaration in respect of each subsequent investment?

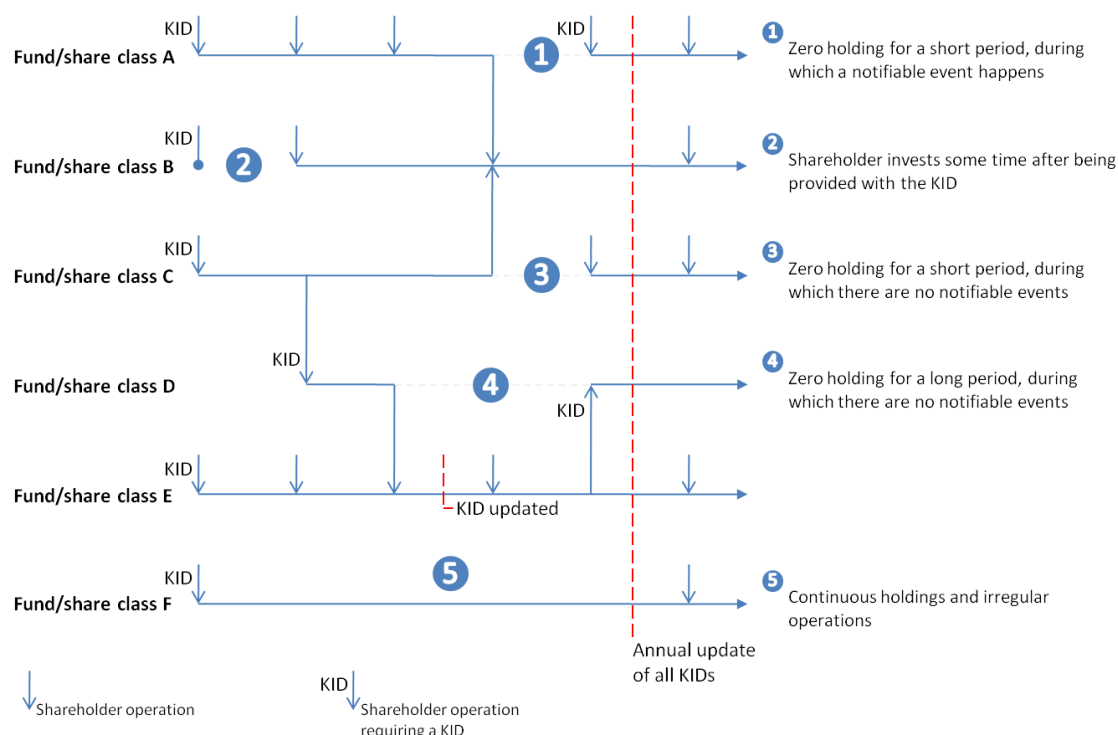
A. It is the practitioner's responsibility to provide the KID to the investor. An investor's declaration of receipt is no substitute for provision but it may provide a practitioner with some assurance that the relevant KID has been provided. The practitioner may therefore choose to add such a declaration to the initial application form and the subsequent order form. The practitioner should take care to ensure that the investor can understand the meaning of the declaration, that it may give it freely and explicitly, and that it may choose not to give it. It may also be interesting to amend the initial application form to obtain the investor's consent to receive the KID in a durable medium other than paper or by means of a website (Art 38 of EU Regulation 583/2010). In that case, it would be necessary on the application form to solicit the investor's explicit consent to receive the KID in that durable medium and to record the investor's e-mail address.

Q. If an investor's relationship with a UCITS pre-dates the KID regime, may participants assume some form of "grandfather" status for that investor's holdings in that share class, under which the investor may add to its investments without any obligation upon the participant to provide the relevant KID to the investor?

A. There is no requirement to provide the first edition of a KID to investors whose initial investment in a UCITS pre-dates the KID regime. Practitioners may consider providing the first edition of a UCITS' KID and an explanation of the KID regime to such investors if they wish. The advantages of doing so include (1) removing any possible doubt that the investors' subsequent operations on the UCITS comply with the requirements of the KID regime; (2) providing investors with important information about the UCITS, such as the SRRI and risk narrative; (3) providing relevant examples when informing investors about the KID regime and how it will affect the way that they place orders for the UCITS.

Q. Art 80 of the UCITS IV Directive says that practitioners must provide the KID to "investors in good time before their proposed subscription of units in such UCITS". Does that mean each and every subscription or only the initial subscription?

A. We think that it normally means that the KID must be provided in respect of the initial subscription, and that subsequent subscriptions may be processed free from the obligation to provide the KID again, even if it has been updated. For example, it would be impractical to provide the KID to investors in regular savings plans prior to each subsequent subscription. When Art 79 of the UCITS Directive says that the KID "shall constitute pre-contractual information" and when Art 80(1) says that it should be provided "in good time before [the] proposed subscription," we consider that it means the initial subscription into the UCITS that the KID describes. In reaching this opinion, we have taken account of the Distance Marketing Directive (although it may not be directly applicable), and consider the obligation to provide a KID, "to apply to the first of a series of successive operations or separate operations of the same nature performed over time which may be considered as forming a whole, irrespective of whether that operation or series of operations is the subject of a single contract or several successive contracts. [...] The subscription to new units of the same collective investment fund is considered to be one of 'successive operations of the same nature'" (Recitals 16 and 17 of the Distance Marketing Directive). However, practitioners may wish to consider whether there may be circumstances in which a KID that was provided in respect of an initial investment may no longer be reliable, and another provision may be necessary before further investments may be made. Consider the following diagram:



It shows the general rule that the first subscription to a UCITS, which may be an ordinary subscription or a switch in, should be preceded by the provision of a KID. Thereafter practitioners may wish to consider the following cases:

- (1) The investor's holding of a UCITS is reduced to zero units, during which time a notifiable event (being an event of which a regulator would require prior written notice to be given to investors) happens on the UCITS. In that case the investor would not receive written notices of important changes to the UCITS and we think that the practitioner should treat the next subscription as an initial subscription, and to provide the KID as if it had not previously been provided to that investor.
- (2) The investor requested a KID, which the management company provided. The investor subscribed after a delay. In that case we think that there is no need to provide the KID to the investor again *unless* during the delay a notifiable event (being an event of which a regulator would require prior written notice to be given to investors) happens on the UCITS. In that case the investor would not receive written notices of important changes to the UCITS and we think that the practitioner should again provide the KID as if it had not previously been provided to that investor.
- (3) The investor's holding of the UCITS is reduced to zero units for a short time, during which time a notifiable event does NOT happen on the UCITS. In that case we think that there is no need to provide the KID to the investor again. Practitioners who are inclined to treat this as a case in which they should provide the KID again may wish to consider whether it would disrupt investors who use a UCITS regularly but not continuously. Examples may include short term liquidity funds, which investors may use to park cash whilst waiting for their preferred fund's dealing day, and investors who perform "bed and breakfast" trades for tax purposes.

(4) The investor's holding of a UCITS is reduced to zero units for a long time (say, more than one year). In that case we think that the practitioner should treat the next subscription as an initial subscription, and to provide the KID as if it had not previously been provided to that investor.

(5) The investor's holding of a UCITS remains above zero but there is a long time (say, more than one year) between operations. The investor will nevertheless receive written notice of any material change to the fund. In that case we think that there is no need to provide the KID to that investor again.

We again took account of the Distance Marketing Directive to decide one year as the period of dormancy after which an earlier provision of the KID may be considered to be unreliable: "Where, however, no operation of the same nature is performed for more than one year, the next operation will be deemed to be the first in a new series of operations." **However, it is important to note that practitioners must decide their own policy in respect of the provision of the KID prior to a subsequent operation.**

Q. Must a transfer agent ensure that the KID has been provided before putting a transfer into effect?

A. No. A transfer request is only an administrative process to reflect a deed of transfer that two parties have executed in another place and it may be performed without any obligation to provide a KID.

Q. Is a central transfer agent required to keep records of whether a KID was provided to a potential investor, even if the sales process is conducted by an advisor elsewhere?

A. There is no requirement in the UCITS Directive to keep a record of the provision of a KID to an investor but Luxembourg company law and the commercial code require companies to keep adequate records of their business and we think that this would include a record of the provision of a KID under certain circumstances. Whether that means the transfer agent depends upon the circumstance. For the purposes of this answer we will assume that the management company and the transfer agent are different entities and that the transfer agent is the management company's delegate. We will also assume that the management company has a separate means to provide the KID to *intermediaries and infrastructure firms* and to record that provision. (For these investors, it would be enough for the management company and the transfer agent to agree their identity and for the transfer agent to note that it may execute subscriptions on their accounts without further controls in respect of the KID.) We will therefore focus on the provision of the KID to direct investors under the meaning of Art 80(1) of the UCITS Directive.

Since the UCITS Directive applies to the management company, the transfer agent's record-keeping obligation and subscription control process in respect of KID may be described in their delegation agreement, without which the transfer agent has no obligation in respect of the KID. The transfer agent may or may not be the party who provides the KID and in the latter case its obligation will be limited to receiving and keeping a record of provision, so that subscriptions may be checked against those records and be executed in compliance with Art 80(1) of the UCITS Directive. For example, if the management company agrees with an investor to provide the KID by means of a website (EU Regulation 583/2010, Art 38(2)), it would be the management company (or another of its delegates) that provides the KID and the transfer agent need only record that fact and execute that investor's subscriptions without further controls in respect of the KID. For each investor who has not agreed to be provided with the KID by means of a website, the management company may instead provide the transfer agent with a record of each provision of a KID to that investor, and request that it control the investor's subscriptions using those records. For practical reasons, in a direct sales model (as opposed to an intermediary or advisory sales model) where the investor has not agreed to be provided with the KID by means of a website, the management company is also likely to delegate to the transfer agent the job of providing the KID to the investor, and the transfer agent would directly make the record of each provision.

Q. If a transfer agent receives a subscription from an investor who has not been registered as having agreed to be provided with the KID by means of a website and the transfer agent has no record of whether the investor has been provided with the relevant KID, what should it do with the order? Can it execute the order and retrospectively provide the KID to the investor?

A. As in the previous question, we will assume that this question is in respect of the provision of the KID to direct investors under the meaning of Art 80(1) of the UCITS Directive. Practitioners who execute the subscription and retrospectively provide the KID to the investor will not be in compliance with Art 80 of the UCITS Directive and we think that the management company will run the risk (1) of censure from regulators and (2) that the investor will repudiate the subscription in the future, demanding that the management company bear any loss arising from it. We therefore think that the safer course of action would be to reject the subscription and to send the KID to the investor with the rejection notice and an explanation of the KID rules.

In the case of a switch, we think that the management company should contact the investor to explain the problem and to ask for further instruction in respect of the redemption leg (i.e., whether to execute or cancel it). If the management company cannot contact the investor, we think that it would be safer to execute the redemption leg and reject the subscription leg, **but each management company must decide its own policy**. Practice is likely to vary across the industry and practitioners may wish to consider explaining their policy in the UCITS' prospectus.

Q. Can transfer agents (or similar execution venues) adopt a policy of sending the relevant KID to investors with every contract confirmation note as a general policy to be sure that the KID is provided in every circumstance?

A. We do not recommend it. Retrospective provision is unlikely to be an adequate defence in the event that an investor complains that the KID was not provided in good time before its proposed subscription.

Q. Should the practitioner provide relevant KIDs to investors each year, for example when it sends annual holding statements?

A. There is no obligation to provide the KID again to investors and it is entirely a matter for the practitioner's discretion.

Q. When the KID is provided to the investor in accordance with the Directive is there any further obligation to provide a copy of the full prospectus, even if it has not been translated into the host state official language?

A. There is an obligation to *publish* the full prospectus (Art 68 of the Directive) and to provide it to investors upon request (Art 75) but, unlike the KID (Art 80(1)), there is no obligation to provide it to an investor before it invests in a UCITS and it is for the UCITS to decide whether to translate it (Art 94(c)). (See also Arts 150 and 156 of the Luxembourg Law of 17 December 2010.)

Q. Will independent auditors expect to find evidence of KID provision when they review management companies and transfer agents?

A. An independent auditor, which may be in receipt of representations about compliance with applicable laws and regulations from a company's management, may choose to test relevant aspects of that company's operation during its audit. Whether that test will examine the design and operation of KID processes, including evidence of provision, is a matter for the independent auditor to decide.

Q. Do you consider the marketing of unit-linked life insurances as marketing of units under the UCITS Directive (i.e., must the life product promoter provide the KID to the investor)?

A. The life product provider must consider how to provide its clients with information on the funds underlying its product. The UCITS management company has no obligation to provide the KID to the life company's client. Under Art 80(2) of the UCITS Directive, the UCITS management company has an obligation to provide the KID to the life company upon the life company's request.

Q. If an investor buys a share class that is subject to a contingent deferred sales charge (CDSC) and the terms of the purchase include the conversion of the investor's holding into another share class (one that charges a lower management fee) at the end of the deferred sales charge period, is it necessary to provide the investor with the KID for that other share class or is it sufficient to inform the investor about the conversion on the KID of the original share class?

A. We can think of several ways to do this:

(1) Provide the investor with the KID for both share classes before the subscription into the CDSC share class and explain on the KID of the CDSC share class that shares will be converted to the other share class at the end of the deferred sales charge period.

(2) Provide the investor with a multi-share class KID that describes both share classes, which explains that the CDSC shares will be converted to the other class at the end of the deferred sales charge period.

(3) Provide the investor with the KID for the CDSC share class prior to the subscription and, just prior to the end of the deferred sales charge period, provide the investor with the KID for the other share class and explain that the holdings will be converted from one to the other.

Other practices may be acceptable.

Q. CESR/10-1319 (transition guidelines) appears to say that a UCITS should offer EITHER a Simplified Prospectus OR a KID during the current transitional period. If a firm wishes to introduce KIDs across its range of funds but one or more third party distributor (such as a fund platform) is not yet able to accept KIDs, would it be possible for these funds to offer both SPs and KIDs? The SP would be distributed by the platform that is unable to accept KIDs.

A. Art 118(2) of the UCITS Directive says "that UCITS [should] replace their simplified prospectuses ... with key investor information." CESR/10-1319 uses the same language. In our view the reasonable interpretation of the text is that once the KID has been published the SP is obsolete and should not be used.

CESR/10-1319, Box 3, Para 1 says, "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". See also the explanatory text at Para 9 on the same page. In our view, once the KID has been issued, the management company and all distributors in all EU member states should stop using the SP for that UCITS.