Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

Consumer Panel response to CESR's consultation paper on technical issues relating to Key Information Document (KID) disclosures for UCITS

Introduction

The Consumer Panel was established under the Financial Services and Markets Act 2000 by the Financial Services Authority to represent the interests of consumers. The Panel is independent of the FSA. The main function of the Panel is to provide advice to the FSA, but it also looks at the impact on consumers of activities outside the FSA's remit. The Panel represents the interests of all groups of consumers.

Overview

We strongly support the Commission and CESR's work on the development of the Key Information Document for UCITS. While disclosure in itself is not a panacea, this is a significant step forward in investor protection and one which, we believe, could have a positive impact on disclosure regimes for other products and in other retail financial services markets.

One of the most important aspects of the work undertaken on the KID is the consumer research that has been and is continuing to be used to inform CESR's advice to the Commission. The Panel has been calling for evidence-based policy making for some time and we strongly support CESR's approach to the development of the KID. Nevertheless we would like to take this opportunity to emphasise the importance of a post implementation review of the effectiveness of the KID as it is possible that further refinements will be required once the document is being used by investors to make real investment decisions. We would also like CESR to take account of the views of advisers who will also be making use of the new KID.

The Panel has been an active participant in the earlier stages of the consultation process and we will be continuing to engage in the debate as it moves forward. The Panel is not in a position, however, to respond to many of the detailed questions in the current consultation document. We have set out below our overall views on the issues raised in each of the three Chapters of the paper, together with such detailed comments as we are able to provide.

We are looking forward to seeing and responding to the full package of CESR advice on the KID later this year.

Chapter 1 – Risk and reward disclosure

Throughout the consultation process the Panel has favoured narrative rather than graphics and we were opposed to the use of a synthetic risk indicator, but we accept that the research results so far do not support this view. It is important that if an indicator is to be used, it should be accompanied by a disclaimer setting out its limitations and the points set out in paragraph 90 of the consultation paper do cover the key issues. On presentation, the proposed linear scale has the benefit of being relatively straightforward and we agree that the use of a simple modifier as proposed is suitable for this overall approach.

Chapter 2 – Past performance

Past performance is an area in which the Panel has taken a close interest and we have answered below a number of the specific questions in the consultation document. We are supporting the use of harmonised guidelines to ensure the necessary degree of consistency in the presentation of past performance. We agree with the assessment in the consultation document that some investors can misunderstand the limits of past performance information and this remains a risk. Nevertheless on balance we believe it is appropriate for this information to be included as, taken together with the other information in the KID, it is helpful to investors when choosing between the many funds available in the market.

Question 23: Is the proposed framework of general requirements for the presentation of past performance with a bar chart sufficient and appropriate?

Yes. We are particularly pleased that charts should show as much data as is available up to a total of ten years, rather than the five year period generally favoured by industry.

Question 25: Should CESR recommend a more prescriptive approach in terms of bar chart presentation?

It is important that there is a high degree of consistency between KIDs produced in different Member States, but we do not think that prescription is necessary beyond the basic general requirements referred to in the Consultation Paper. It would be helpful if general guidance could be given on bar chart presentation prior to implementation.

Question 28: Should any other issues be taken into account regarding presentation of past performance?

No, we believe that all the key factors have been taken into account.

Question 29: Is the proposed framework on past performance calculation sufficient and appropriate to allow comparability?

Yes, we believe that the proposals will facilitate comparability.

Question 30: In particular, are the proposed technical recommendations concerning the inclusion of charges and fees, the display of currency, the

selection of the NAV date and the treatment of income helpful, workable and sufficient?

We agree that the recommendations cover all the key areas and seem workable.

Question 31: Do any other issues need to be addressed to achieve a sufficient level of harmonisation?

We have nothing further to suggest.

Question 32: Regarding the display of past performance that occurred prior to a material change, do you think that both options (good practice 1 and good practice 2) should be allowed?

The key question for consumers is whether both types of recognised good practice would be confusing and/or hinder an investor's ability to compare products. Overall we view the options as consistent and each having merit, so we have no objection to both options being allowed.

Question 33: Or, for the sake of comparability should only one good practice be retained? If so, which one?

Please see out answer to question 32.

Question 34: Is there a need for harmonised guidelines at a European level concerning the definition of material changes or do you think that that it should be addressed by each Member State at a national level?

In the interests of consistency we favour harmonised guidelines for the definition of material changes.

Question 35: Do you see any other issues that should be taken into account as regards the presentation of past performances where there are materiality changes?

We have no further suggestions.

Question 36: Are the conditions identified by CESR, under which inclusion of a benchmark alongside the fund performance could be allowed, sufficient and appropriate? In particular:

i) Do you agree that a UCITS should not be required to display a benchmark unless one is identified in the fund's objectives and strategy? Is it appropriate to permit a benchmark to be displayed in other cases?

ii) Is there a need for harmonised guidelines regarding the choice of a benchmark in the 'strategy and objectives' or can this continue to be left to the discretion of each Member State?

The Panel has argued strongly for the inclusion of a benchmark for all funds where past performance is shown and we still believe that this is the best approach. The consultation paper states that a benchmark must only be included where the fund in question is a tracker or reference is made to a benchmark in the objectives and strategy section of the KID, but we strongly urge CESR to go further and require a benchmark to be shown in every case as it should be possible for management companies to select an appropriate indicator. This will be a valuable tool to help potential investors to assess and compare funds. In particular if a performance fee is payable by reference to a benchmark the performance of that benchmark must be shown even if it is not referred to in the objectives and strategy section. Again, we would like to see harmonised guidelines to ensure consistency in this area.

Question 37: Should any other issues be taken into account regarding the inclusion of a benchmark alongside the fund performance?

We have no further suggestions.

Question 38: Does the proposed recommendation rejecting the use of a benchmark as a proxy for non-existent performance data provide appropriate investor protection?

This approach is entirely appropriate and will provide a desirable level of investor protection.

Question 39: To what extent could the lack of inclusion of a benchmark for years in which the fund did not exist hamper the disclosure of the risk and reward profile of the fund?

We do not think that this is a significant issue.

Question 40: Are there conditions under which such a practice could be allowed without prejudicing investor protection?

No, the practice should not be permitted.

Question 54: Are the methodological requirements which underpin probability tables sufficient, clear and appropriate?

We welcome the proposal to conduct further work on probability tabling for structured products as we continue to have concerns on this particular point. More generally, while we agree that the example of a probability table shown in the paper could be a useful tool for investors, the current financial crisis has demonstrated all too well the risks of over-reliance on models. We urge the Commission to be cautious about their use.

Chapter 3 - Charges

It is important for investors to understand the level of charges they will be paying for any particular product but, as CESR is aware, presentation of information on charges in a readily understandable way is a little problematic. We will be interested to see CESR’s final advice and how effective the measure and presentation will be when used to make real investment decisions.

Our comments on some of the detailed questions in this Chapter are set out below.

Question 58: Do you think a summary measure of charges would help investors to understand the overall cost of investment in a UCITS?

We believe that the research has shown that there is sufficient interest in a summary measure of charges to justify continued research in this area. In principle we support the use of such a measure.

Question 59: Which presentation would be preferable: using a narrative with a percentage figure or a table of cash figures?

Overall the use of percentages is appropriate, but we would like consideration to be given to additional disclosure in cash terms. Ultimately the final decision should be based on the outcome of the continuing research.

Question 64: Do you agree with the proposal to highlight the potential impact of portfolio transaction costs on returns through a warning in the charges section and, in certain circumstances, the strategy/objectives or risk and reward sections of the KID?

We support this approach.

Question 65: Do you agree with the proposal to include this warning?

Yes, we support the inclusion of a warning about possible variations in the on-going charge.

Question 66: Are there circumstances not covered by the proposals which could lead to investors being misled about potential increases in charges?

We are not aware of any such circumstances, but we suggest that this is an area that should be covered in a post implementation review.

Acting Chairman
Financial Services Consumer Panel

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