



**EUROPEAN COMMISSION**  
Internal Market and Services DG

FINANCIAL SERVICES POLICY AND FINANCIAL MARKETS

Brussels, 7<sup>th</sup> September 2007

**PREPARATION OF AMENDMENTS  
TO UCITS DIRECTIVE**

**SUMMARY OF STAKEHOLDER RESPONSES  
TO COMMISSION EXPOSURE DRAFT**

## **General remarks on consultation procedure and feedback:**

---

In its White Paper of November 2006, the Commission announced that it would put forward proposals for legislative amendments to the UCITS Directive. These modifications are needed to facilitate market-driven restructuring and boost efficiency in the dynamic but fragmented European fund market. In particular, they seek to facilitate the cross-border marketing of funds; realise scale and liquidity benefits by allowing fund mergers and asset pooling; enable fund managers to manage funds domiciled in another Member State; simplify and improve product disclosures; and strengthen supervisory cooperation mechanisms.

On March 22<sup>nd</sup> 2007, DG MARKT published consultation documents which set out concrete suggestions on the form and content of possible modifications to the UCITS Directive needed to effect these changes; the main options considered for realising the stated objectives; a preliminary analysis of these options from a cost-effectiveness and investor protection perspective. It was hoped to receive feedback and insight from a wide range of stakeholders as regards:

- the usefulness and practicability of the envisaged possible adjustments on:
- the design and scope of the envisaged adjustments as a means of delivering the stated policy objective;
- the coherence of the envisaged adjustments with the overall UCITS framework and related legislation;
- any unintended consequences for stakeholders – particularly investors;
- the cost-effectiveness of the envisaged adjustments.

The deadline for comments was June 15<sup>th</sup> 2007. DG MARKT received 63 contributions from 17 different countries as well as submissions from some international organisations. 61% of responses were received from industry sources, 30% from national authorities and 9% from investors' associations.

Comments reveal a broad base of support from industry, investors and regulators for the approaches set out in the consultation documents. For the most part, the basic design of the envisaged changes is largely supported: the solutions put forward are regarded as a sound basis for modifying the Directive. The following were the principal messages and issues concerning each of the main headings:

- *Notification procedure*: the main outstanding issue is to find some mechanisms whereby compliance with (non-harmonised) local rules on marketing communications and advertising can be determined without obstructing or delaying the right of funds to be sold into those markets.
- *Fund mergers*: comments focussed on the need to provide for greater involvement of competent authorities in the Member States of funds involved in a merger – in order to ensure that the administrative procedures were complied with, that the envisaged merger would not be detrimental to the interests of the merging or dissolving funds.

- *Management company passport*: the consultation reveals divergences of opinion both on the usefulness of the management company passport and the envisaged approaches for giving effect to this freedom;
- *Pooling*: while there was broad welcome for the envisaged adjustments to allow master-feeder structures, many respondents would in addition welcome greater freedom for feeder funds to transfer assets to more than one master fund.
- *Replacing the simplified prospectus with effective product disclosures (key investor information)*: there is broad recognition of the need for change and support for the basic approach set out in the consultation documents. The guiding principles for the format and content of the updated investor disclosures have been broadly endorsed.
- Regulators and investors consistently emphasised the need to strengthen provisions for routine/ongoing inter-supervisory cooperation in order to ensure effective compliance when different parts of the fund chain are located in different Member States.

Submissions generally took the form of comprehensive, free-format commentary on the detailed content of the consultation documents. The form and volume of consultation feedback did not lend itself to statistical analysis. Consequently, the following presentation of responses therefore extracts the main themes that were the subject of comment, presents the principal arguments advanced in respect of the key issues, and tries to give a broad indication of the balance of opinion.

The consultation yielded detailed insight and guidance on the regulatory principles and procedures that are needed to realise the desired improvements in the single market framework for UCITS. This feedback will be of great assistance in preparing Commission's legislative proposal which is currently foreseen for January 2008. This proposal will be transmitted as a basis for negotiation to the European Parliament and Council of Ministers.

The full list of respondents is attached in annex to this document. DG MARKT would like to thank all respondents for their valuable insights, and their commitment to improving the EU legislative framework for retail investment funds.

The individual submissions can be down-loaded from our web-site ([http://ec.europa.eu/internal\\_market/securities/ucits/index\\_en.htm](http://ec.europa.eu/internal_market/securities/ucits/index_en.htm)).

## 1. Envisaged adjustments to the notification procedure

---

### *Overview:*

Almost all respondents agreed that the notification procedure for cross-border selling of UCITS required urgent simplification. Only one respondent suggested that any overhaul be delayed pending assessment of recent CESR guidelines on common implementation of existing rules. Most respondents, both industry and regulators, supported the idea of modelling the notification procedure and document filing on the Prospectus Directive approach.

Most respondents call for a significant scaling back of host country administrative involvement and discretion when UCITS are notified for marketing in their territory. Authorisation and monitoring of compliance with UCITS rules in the fund home country is broadly considered to offer all necessary investor protection guarantees. According to this widely-held viewpoint, the modified Directive should explicitly exclude any residual powers for host authorities to impede or delay the placing of an authorised UCITS on their market. Some respondents urged EU authorities to dismantle the notification procedure entirely and to move towards a situation where funds could be freely marketed EU-wide on the sole basis of home country authorisation.

A minority of respondents favoured retention of ex-ante controls by host authorities in remaining non-harmonised fields – such as marketing and advertising. According to this view, it is less productive for regulators, more damaging for investors, and a source of uncertainty for fund managers/distributors if compliance problems have to be tackled after the fund has been placed on the market. On this basis, it would be preferable to allow a short period for host authorities to vet proposed marketing documents. An alternative proposal suggests that, where

UCITS are distributed through authorised MiFID firms, the host country authority could rely on its control over those distribution channels to satisfy itself that local marketing rules are complied with.

### *Detailed comments on the proposal:*

#### a) Notification procedure:

The majority of respondents considered that the envisaged notification procedure, as set out in the consultation material, represents a sound and operational basis for providing host authorities with the necessary information about UCITS which are about to be sold in their market. Some noteworthy concrete observations were provided concerning:

- *Transmission delay* - A few respondents questioned the rationale for a 3 day delay following transmission of notification documents before the fund could be marketed. Conversely, other respondents asked for more time for the host authorities to check marketing and advertising materials.
- *Notification letter* - Contributors agreed that the format and the content of the notification letter should be harmonised. The model prepared by CESR in the context of its recent notification guidelines was identified as a good starting point. For UCITS selling their units only through regulated entities a shorter format was recommended.
- *Checking a notification file*. Many contributors suggested that the fund home authority be subject to time limits for verification and transfer of the notification file. There was strong support for the principle that host authorities be forbidden from imposing any amendments to key investor information and prospectus. Some respondents

recognised that the host regulator should be able to require limited country-specific information to be added to the key investor information (e.g. information on subscription/redemption facilities).

- *Regulator to regulator communication.* The envisaged reorganisation of the notification procedure on a regulator-to-regulator footing is seen as a fundamental improvement. However, requiring host authorities to refer all queries (e.g. regarding details of marketing documents) via the fund home authority could in some cases prove inefficient. Some flexibility – enabling fund managers to convey information directly to host authorities – could be helpful.
- *Transmission of documents.* Electronic filing of documents was broadly welcomed as an important means of accelerating the procedure and reducing costs. There is a need for greater clarity on determining the start /closure of the 3 day period and how the fund manager is informed about the date of transmission. The practical modalities could be defined at level 2.
- *Updates of notification file.* Many contributors, industry representatives as well as regulators, argued that the proposed procedure for updates of documents would be excessively burdensome. They suggested limiting the notification of updates to key investor information or to facilitate electronic access.
- *Umbrella fund/sub-funds/share classes.* Many contributors recommended that a simplified procedure (without delays) for notification of new sub-funds or share classes be foreseen in the Directive.
- *Distribution through regulated intermediaries or eligible counterparties.* A small number of stakeholders argued that, where a fund is marketed in a host country through MiFID firms or other locally authorised/supervised intermediaries,

host country authorities should enforce compliance with local marketing rules at the local distribution level. A waiver from notification should be provided where UCITS are marketed to eligible counterparties.

#### b) Host Member State powers in respect of marketing/advertising:

Some contributors called for a harmonisation of host Member State marketing/advertising rules. However, there was widespread recognition that it would be difficult to harmonise national approaches on advertising and fair commercial practice. Faced with likelihood of some remaining non-harmonised provisions in this field, most respondents asked for a restrictive and exhaustive definition of host Member State powers. A large number of respondents called for the mandatory publication of applicable national marketing rules on regulators' websites. It was also suggested that a central record of these rules be maintained. Other contributors stated that no further supervisory control of marketing communications is needed, other than to ensure that they are 'fair, clear and not misleading' (as required by MIFID).

#### c) Supervisory issues.

There was request for clarification of the powers of host authorities in the case of breach of local rules. Explanations were sought on whether host authorities can act directly and independently in respect of non-compliant foreign UCITS or they should involve the fund's home authorities. Some respondents called for more explicit definition of the scope of "emergency powers". In their view, this procedure should only be applied in well-justified and exceptional situations – otherwise it could be open to abuse. The majority of respondents observed that closer cooperation between regulators was necessary in order to achieve greater trust and understanding of particular national concerns.

d) Use of languages. The majority of respondents welcomed the proposal to translate only the key investor information into the local language(s). They explained that other documents, such as full prospectus or financial reports, are not generally used by retail investors. For administrative purposes, competent authorities are capable of understanding documents in a language "customary in the sphere of finance". Translation into local language of these documents should be a commercial decision. Critics of this approach argued that investors in the host country should not be deprived of access to important legal information on their investment. Legal problems may arise with regard to inconsistency between key investor information and full prospectus if it is allowed to have both documents in different languages. The aspects of civil liability should be kept in mind if there are interlinks between those documents.

e) Benefits of envisaged changes. Most contributors confirmed that substantial savings could be hoped for through lower translation and printing costs and reduced legal fees. Benefits would also take the form of increased product choice for investors in some smaller markets which are currently not attractive for many providers due to administrative burdens and excessive translation costs. Reduced time to market was singled out as the most important benefit.

Other comments.

- Commission should monitor notification fees and take action when they hinder cross-border trade or competition.
- The requirement that a local paying agent be appointed should be reviewed in light of electronic payment facilities.
- The Directive should regulate the procedure for terminating marketing of fund units in the host market by UCITS.

## 2. Fund mergers

---

### *Overview:*

The approach outlined in the exposure draft enjoys broad support from industry and regulators. Only a small number of respondents considered that the issue of fund mergers did not warrant immediate action. Comments from investor representatives expressed a willingness to accept adjustments along the envisaged lines, subject to some adjustments to safeguard investor interests.

### *Detailed comments:*

a). Proposed merger definition & scope. Some respondents - mainly from common law countries - were concerned that the proposed merger definition excludes some merger techniques currently available under their domestic regimes. Several respondents inquired how a common law 'scheme of arrangement' would operate in a "civil law" context. They also expressed doubt as to the viability of mergers between contractual and corporate mergers. Some respondents called for the introduction of a simplified regime for domestic mergers and mergers of compartments of the same UCITS.

A minority of respondents considered that mergers should only be allowed between UCITS having similar investment policies or, alternatively, that additional safeguards be introduced for mergers between funds with appreciably different investment policies.

### b). Authorisation procedure / merger file.

- *Competent authorities.* Respondents generally supported the proposal that the regulator of the merging/dissolving UCITS ultimately determine whether the merger goes ahead or not. A few respondents advocated greater involvement of the regulator of the receiving UCITS in order to assess the impact of the merger on unit-holders of the receiving fund. Some respondents considered the 15 days period for

approving the merger too short and favoured a one-month deadline. Several respondents also stressed the need for effective supervisory cooperation mechanisms between authorities responsible for the merging and receiving funds .

- *Merger file.* Most respondents considered that the envisaged content of the merger file, which would be submitted to the relevant authorities, largely reflected current practice. Some considered that more far-reaching harmonisation of the file content/format should be envisaged while others favoured minimum harmonisation. Respondents called for a more explicit statement of the principle that regulatory approval can only be refused if the proposed merger does not comply with the envisaged requirements. Some respondents supported the idea of further developing the content of the merger file in detailed implementing legislation (Level 2) others maintained that further harmonisation at level 2 was not necessary.

### c). Third party control.

- *Depositary.* Several respondents asked that the exact role and responsibilities of the depositary in vetting the terms of the merger be clarified. Their main concern was that the depositary would be required to 'approve' the merger or to pronounce on its legality/merits.
- *Independent auditor.* A number of respondents considered that it was superfluous to require an auditor report before the merger could go ahead. Some considered that no auditor report should be required at all: others held that if an auditor's report were to be required, it should be undertaken on completion of the merger, in order to assess whether the

merger had taken place in accordance with the terms set out in the merger file. Clarification was requested of the term "independent" auditor: it was argued that the fund's usual auditor (for annual and other reports) should be deemed independent for these purposes. Some respondents questioned the exact scope of the tasks to be performed by such auditor(s): they highlighted the difficulties arising due to lack of harmonisation of NAV calculation methods and other accounting/valuation differences. Some respondents also suggested – as foreseen in company law provisions - that other external third parties be required to validate the merger.

d). Information to unit-holders.

- *Information to unit-holders in the receiving fund:* Some respondents considered that requiring the receiving UCITS to weigh up the potential "negative" consequences of the merger for its unit-holders could result in uncertainty and increased legal risks. They considered that sufficient provision has been made to avoid mergers giving rise to negative impacts (via e.g. dilution effects) on the receiving fund and its unit-holders. Some respondents considered that investors in the receiving UCITS did not need to be informed about the merger at all, or only in the event of "substantial" impacts. Conversely, several respondents called for greater involvement of regulators in assessing the impact of the proposed merger on investors in both funds.
- *Content, form and timing.* Investor representatives generally considered that the form and content of information concerning the merger should be fully specified. They argued that such information should be sent to all investors automatically and not merely "on request".

e). Unit-holders' rights (voting/redemption/no

costs).

- *Voting rights.* The proposal to follow national voting regimes was generally accepted. Most participants concurred with the envisaged threshold of 75% of votes cast (as distinct from eligible votes). Respondents also requested confirmation that the majority decision should bind the whole fund including dissenting unit-holders and non-voting unit-holders.
  - *Right to redeem free of charge.* Most participants understood the principle and logic of providing a right for investors to redeem free of charge. However, some respondents felt that investors should also be able to recover some portion of the entry charges paid at subscription. Otherwise, they would lose the full value of the heavy upfront investment in the original fund. An alternative proposal was that investors be given the right to switch, free of charge, to another fund of the same promoter with similar investment policies. Some respondents suggested that the right to redeem free of charge be confined to investors in the dissolving fund. It should only be extended to investors in the receiving fund in the event that the merger would have a negative/substantial impact on them.
  - *Costs:* Various respondents (industry and regulators) considered that in certain cases, costs could also be (partially) borne by the fund/investors. This view was not shared by investors. They contended that no costs should be borne by investors and that entry fees should be reimbursed to investors opting out of the merger. They furthermore considered that differences of fee structures/transaction costs between the merging and receiving UCITS which were likely to have a material impact on investors should be clearly disclosed.
- f). Entry into effect. A small number of respondents expressed doubts regarding the proposed procedure for completion of

the merger (publication of merger completion via press). Some respondents felt that it was unnecessary to require public announcement of merger completion. They considered that unit-holders enjoyed sufficient protection under the pre-merger information requirements coupled with the right to redeem without charge.

g). Other comments.

- *Tax issues.* A number of respondents urged the Commission to come forward with EU legislation harmonising tax treatment for fund mergers. They welcomed clarification of the tax consequences of fund mergers by means of a Communication but considered that this might not be sufficient to remove possible tax complications to some fund mergers.
- *Exact role of national law / relation with company law merger provisions.* Some respondents considered that the articulation between the envisaged UCITS fund merger provisions and corresponding national provisions had not been sufficiently addressed. Others inquired as to the interaction with other EU legislation (e.g. Cross-Border Merger Directive).
- *Post-merger period.* Some respondents considered that further attention should be given to what happens after the merger (performance presentation / information issues).

### 3. Pooling

---

#### *Overview:*

The proposal to allow UCITS to implement **entity pooling** techniques was universally supported by stakeholders. 54 respondents commented on the envisaged adjustments. All of them considered it necessary to amend the Directive in order to support entity pooling. A recurrent remark was that the exposure draft contained an excessive degree of prescription. Commentators urged the Commission to distil the key regulatory principles from the exposure draft, leaving details on procedure or application of principles to specific scenarios to be filled in through implementing legislation or common supervisory practice.

Almost half of those commenting supported the limited focus on allowing **master-feeder-structures**. An equally large number of respondents favoured a broader solution whereby feeders could invest into more than one master-fund – either as an alternative or in addition to the master-feeder arrangements.

Very few respondents pleaded for provisions to permit virtual pooling. The majority of commentators however, considered that the UCITS Directive does not need to be amended to allow virtual pooling as this does not entail creation of new legal structures or transfer of assets. Any impediments to cross-border virtual pooling (e.g. monitoring of operational risk associated with administration and custody of virtual pools) could be effectively resolved at supervisory level.

#### *Detailed comments*

##### a) No need for the two-feeder requirement.

The vast majority of respondents considered it unnecessary to require that a master should have at least two feeders. This is not a productive or meaningful way to ensure commingling of assets. It overlooks the fact

that in most cases the master will also have other investors (institutionals, individuals). Enforcing the two-feeder requirement also entails cumbersome and disproportionate administrative procedures.

##### b). Agreement between feeder and master.

Several industry stakeholders called on the Commission to abandon the envisaged requirement for a formal agreement between master and feeder funds. These stakeholders claim that it runs contrary to the principle of equal treatment of investors to single out feeder funds as requiring particular attention. On the other hand a number of regulators and investor associations welcomed the proposal that a formal agreement be established between master and feeder funds. They stressed that it would clarify the respective responsibilities of feeder and master funds and help the feeder to fulfil its obligations. One regulator suggested that the master should inform other investors on the specific rights of its feeders. Some regulators expressed the view that it would be necessary to provide for detailed implementing legislation to harmonise the main content of the master-feeder agreement.

##### c). Obligation on feeder depositary to police the operation of the master fund:

Several industry stakeholders opposed the idea that the feeder depositary/auditor should be obliged to monitor whether the master fund is operated in a way that is compatible with the obligations binding on the feeder fund. In their view, the role of the depositary of the feeder fund is confined to ensuring that assets are transferred to the master in accordance with the investment policy of the feeder. There is no need for the feeder depositary to do more than this: in discharging this limited role, it should be able to rely on the information it receives from the master's depositary/auditor. These critics argued,

furthermore, that there is no comparable requirement for funds of funds. Other respondents (notably regulators and investor associations) defended the envisaged approach. Master-feeder-structures should rather be compared with the delegation of asset management. In the case of delegation, the UCITS depositary is obliged to look through the management company and at the behaviour of the delegated party.

e). Info-sharing agreement between depositaries/auditors. The need for a formal info-sharing agreement between the depositaries/auditors of the feeder and master funds also generated much comment. Several industry stakeholders criticised this requirement. One respondent pointed out that there is no comparable requirement for funds of funds. Others considered that the costs would outweigh the benefits. On the other hand, several regulators, but also some industry representatives argued that the info-sharing agreement is needed to allow the feeder depositary to comply with its obligations.

f). Investment threshold in the master. Most stakeholders agreed with the envisaged requirement that the feeder invest at least 85% of its assets in the master. Most respondents considered this threshold to be appropriate/sufficient to sufficiently align the investment strategy and policy of master and feeder.

g). Derivatives. Respondents discussed whether, for what purposes and to what extent a feeder should be able to invest in derivatives. A few respondents argued that no specific restrictions on the feeder's use of derivatives should be contemplated. However, others favoured restricting the use of derivatives to a few specific situations (e.g. hedging currency risk). Allowing extensive or unconstrained use of derivatives could lead to material differences between the investment policy and performance of the master and feeder funds.

## 4. Management Company Passport

---

### *Overview:*

A majority of respondents considered that management companies should be able to provide the full range of portfolio management and fund administration activities on a cross-border basis. They argued that this would maximise economies of scale. It was claimed that any regulatory requirement to physically undertake management or administration activities in the fund domicile on the scope of management or administration functions would restrict freedom to organise business models, or choice of service providers and limit the benefits of the management company passport by imposing fragmentation of the fund value-chain. It was further argued that requiring the location of certain functions in the fund domicile is not necessary to ensure that the fund complies with the laws of the fund domicile. It was claimed that monitoring and enforcement can be carried out effectively on a remote or indirect basis. Furthermore, the continued requirement that the depositary be located in the fund domicile provides a sufficient basis for the fund authority to monitor the operation of the fund.

Another body of opinion considered that allowing all management and administration services to be provided to a fund on a cross-border basis could rob the authority responsible for the fund of the means to monitor and enforce compliance with regulatory provisions in force in the fund domicile. It could also make it difficult for the fund depositary to ensure that the fund operates in accordance with the rules under which it is constituted, and detect/correct material breaches of these rules. Proponents of this viewpoint agreed with the approach laid out in the consultation documents whereby some administrative substance should be located in the fund domicile in order to allow the competent authority of the

fund to discharge its responsibilities. Some respondents considered that the list of activities undertaken in the fund domicile should be enlarged.

Some contributors contended that the management company passport will offer limited savings, if any at all, compared to current possibilities for delegating fund management and other fund services to entities in other EU member States. On the contrary, it is argued that the management company passport will merely increase legal complexity, supervisory uncertainty and is unlikely to generate any cost savings or improvements for fund investors. Most regulators who responded to the consultation expressed the concern that the envisaged solutions did not sufficiently address the supervisory challenges that would arise if funds were managed/administered on a cross-border basis.

### *Detailed comments:*

#### a). viability for contractual funds:

A number of respondents questioned the viability of the management company passport in the case of contractual funds (having no legal personality distinct from the management company).

#### b). Clarity of regulatory responsibilities:

Many contributors underlined the need to further clarify respective responsibilities and obligations of both the fund and the management company regulator. The proposals were not sufficiently developed to avoid potential regulatory gaps or dual/overlapping responsibilities. To this end, a number of respondents considered that regulators' respective responsibilities should be exhaustively specified.

#### c). Supervisory cooperation as answer to concerns about split supervision:

Those stakeholders arguing in favour of the possibility for management companies to provide the full range of management/administration services on a cross-border basis considered that enhanced co-operation mechanism together with the presence of the depositary in the fund domicile should prove sufficient to meet all supervisory concerns. Some respondents called for greater clarity as regards the use of emergency powers and procedures for on-the-spot verifications. A few contributors argued that the UCITS fund supervisor should be able to impose its requirements directly upon management companies in other Member States. Many respondents underlined the important role of CESR in enhancing supervisory cooperation and solving potential problems with regard to split supervision.

d). Definition of UCITS fund domicile. Most respondents proposed to define the fund domicile by reference to the applicable law, as provided for in the UCITS instrument of incorporation/fund rules/trust deed.

e). Choice of functions to be retained in fund domicile:

Many contributors challenged the proposal that 'verification of valuation and pricing' and 'maintenance of unitholder/shareholders' register' were core administrative functions which needed to be performed in the fund domicile. Some stakeholders questioned the choice of these functions as being arbitrary: requiring their performance in the fund domicile would not materially improve the quality of supervision. It was also observed that in some countries these services are currently outsourced abroad and that the proposals will unsettle well established business structures.

Other comments:

- A few respondents observed that an effective MCP will be needed to exploit

the full benefits of master-feeder structures as proposed elsewhere in the consultation. If asset managers have to create a fully autonomous management company for the master fund and every feeder fund, the master-feeder provisions will remain a dead-letter.

- Depositary. The majority of respondents agreed that the depositary should continue to be located in the same Member State as the fund. Some replies indicated that a deeper specification of the responsibilities of the fund depositary could be one means to help competent authorities responsible for the fund operation to satisfy themselves that the fund was being operated in accordance with fund rules and relevant EU/national requirements.
- Taxation. Several respondents considered that the potential negative tax consequences of the full passport had been overstated. They argued that any potential tax implications can be addressed through the website of bilateral tax treaties or national legislation. However, some contributors insisted on the risk of double taxation (at level of fund and management company). A clear definition of UCITS domicile that could also be relevant for tax purposes was recommended.

## 5. Simplified Prospectus/Key Investor Information

---

### *Overview*

The proposed replacement of the current simplified prospectus by a new concept of investor disclosure ('key investor information' (KII)), is generally welcomed by stakeholders. There is broad support for the concept of a short, simple document conveying key facts to retail investors in a clear and understandable manner so as to assist them in taking an investment decision. It should be designed to meet the needs of the average retail investor - not the professional investor. To ensure comparability, the content and form of the information should be harmonised as much as possible. It should be possible to use KII on an EU-wide basis without further modification. Respondents urged the Commission to clarify that KII contains mandatory product disclosures: it is not a marketing document and therefore is not subject to review or alteration by host Member State authorities seeking to enforce compliance with local marketing rules.

### *Detailed comments*

#### a) Content.

A majority of stakeholders called for the fullest possible harmonisation of individual disclosure items to be included in KII. Many respondents also insisted that KII should contain only product information and no distribution related items. Some respondents favoured the possibility of producing different versions of KII as a function of the nature of investors and/or distribution channels. However, most respondents were very reticent faced with a great risk of disclosure proliferation. This could result in increased production costs and impair inter-fund comparability. It was further argued that adapting information to the needs of investors should be better undertaken at distributor level. Some commentators supported the inclusion of both product and practical/local information in KII. In such eventuality, they

insisted on a clear division of responsibilities between the fund manager (responsible for product information) and the distributor (responsible for practical information). Various respondents stressed the need for consumer/market testing to ensure that the disclosures are relevant and meaningful for investors.

#### Format.

- *Single document versus building block approach.* Many stakeholders stated their preference for a single document as opposed to using a more flexible approach whereby key investor information could be included in other disclosure/marketing documents depending on the sales channels used. They considered the single document to be the most cost-effective solution, having particular advantages when notifying UCITS for sale in other Member States. A single document would also help investors to compare UCITS. While some respondents clearly favoured the use of a standardised document, others considered that the fund manager should retain some flexibility in respect of lay-out and wording. Some respondents welcomed a more flexible approach allowing distributors to include KII in other documents. They considered that distributors should retain discretion on how to convey key investor information to the end-investor and that MiFID imposes stringent requirements on distributors in this regard. One drawback is the risk that host authorities tamper with KII whenever it is embedded in marketing documents.
- *Durable medium or electronic delivery.* Most respondents favoured electronic delivery of KII and the use of hyperlinks provided that certain safeguards were foreseen. While some respondents considered that

web delivery should become the main way of delivery, others considered that this should remain subject to the consent of the investor: paper copies should remain available on request. Some respondents cautioned against introducing any provisions privileging one type of technological solution for delivery – in order to provide flexibility and allow communication evolve in line with technology.

Most respondents insisted on a clear division of responsibilities between fund managers and distributors. They considered that no additional disclosure obligations should be imposed by the UCITS Directive on intermediaries: these issues have been comprehensively regulated by MiFID insofar as investment firms are concerned. A large number of respondents insisted that comparable levels of cost and performance transparency should be introduced for other types of packaged investment product (structured notes, unit-linked life insurance products).

Liability issues. Most respondents support the envisaged limitation of liability attached for KII. The Commission was urged to clarify the legal status of KII as a pre-contractual document. Some respondents considered that liability should only be incurred under the double condition that (1). the information is incorrect, inconsistent or misleading when read together with the full prospectus (2). and the client's investment decision is based on such information. On the other hand, some investor representatives considered that KII being the only document investors will normally receive and/or read, they should be able to claim on the basis thereof irrespective of what the (full) prospectus contains. Other investor representatives however were willing to accept limited liability as the price to be paid for obtaining short, relevant and meaningful investor disclosures.

Differential treatment for professional investors. Some respondents considered that

the content of KII could vary as a function of the retail or professional nature of investors. However, most respondents saw little advantage in such differentiation. They considered that KII should be primarily designed for retail investors and that professional investors normally undertake more extensive due diligence checks based on wider range of information. On this basis, several respondents argued in favour of an outright exemption for delivery of KII to professional investors along the lines provided for in the Prospectus Directive. Some respondents stressed that professional investors should nevertheless have the possibility to obtain KII if they so wanted.

Other comments.

- *Use of delegated powers.* Some respondents explicitly expressed support for the proposed approach of confining the UCITS Directive amendments to the level of principle, leaving the detail of contents, presentation and methods of delivery to be completed through detailed implementing legislation.
- *Transitional provisions.* Some participants stressed the need for transitional provisions to be inserted in the Directive to allow smooth transition from current Simplified Prospectus to the new KII.

## List of respondents

|     |  |                  |       |
|-----|--|------------------|-------|
| 1.  | ABI                                      | Industry         | IT    |
| 2.  | AFG                                      | Industry         | FR    |
| 3.  | AFM                                      | Public Authority | NL    |
| 4.  | AFTI                                     | Industry         | FR    |
| 5.  | ALFI                                     | Industry         | LU    |
| 6.  | AMF                                      | Public Authority | FR    |
| 7.  | Association of Foreign Banks in Germany  | Industry         | DE    |
| 8.  | Assogestioni                             | Industry         | IT    |
| 9.  | Austrian Federal Economic Chamber        | Public Authority | AU    |
| 10. | Austrian MinFin & Fin. Markets Authority | Public Authority | AU    |
| 11. | BEAMA                                    | Industry         | BE    |
| 12. | Blackrock Investment Management          | Industry         | UK    |
| 13. | BoNY                                     | Industry         | USA   |
| 14. | BVI                                      | Industry         | DE    |
| 15. | CBFA                                     | Public Authority | BE    |
| 16. | Citi group                               | Industry         | IRL   |
| 17. | CMVM                                     | Public Authority | PT    |
| 18. | CNMV                                     | Public Authority | ES    |
| 19. | Cominvest Asset Management               | Industry         | DE    |
| 20. | Czech Finance Ministry                   | Public Authority | CZ    |
| 21. | DATA                                     | Industry         | UK    |
| 22. | Dillon Eustace                           | Industry         | IRL   |
| 23. | DSA                                      | Consumer         | DK    |
| 24. | Dutch Ministry of Finance                | Public Authority | NL    |
| 25. | DUFAS                                    | Industry         | NL    |
| 26. | EACB                                     | Industry         | EU    |
| 27. | EAPB                                     | Industry         | EU    |
| 28. | EBF                                      | Industry         | EU    |
| 29. | EFAMA                                    | Industry         | EU    |
| 30. | Eversheds                                | Industry         | UK/EU |
| 31. | Faider                                   | Consumer         | FR    |
| 32. | Fidelity International                   | Industry         | UK    |
| 33. | Field Fisher Waterhouse LLP              | Industry         | UK    |
| 34. | Financial Services Consumer Panel        | Consumer         | UK    |
| 35. | Finnish Ministry of Finance              | Public Authority | FI    |
| 36. | FIN-USE                                  | Consumer         | EU    |
| 37. | FSA and HM Treasury                      | Public Authority | UK    |
| 38. | German Insurance Association             | Industry         | DE    |
| 39. | German Ministry of Finance               | Public Authority | DE    |
| 40. | ICI                                      | Industry         | USA   |
| 41. | IFIA                                     | Industry         | IRL   |
| 42. | IFSRA                                    | Public Authority | IRL   |
| 43. | ILAG                                     | Industry         | UK    |

|     |   |                  |       |
|-----|---|------------------|-------|
| 44. | IMA   | Industry         | UK    |
| 45. | IMMFA   | Industry         | UK    |
| 46. | joint response: Irish Dept. of Finance, IFSRA | Public Authority | IRL   |
| 47. | JP Morgan Asset Management                    | Industry         | UK    |
| 48. | M&G Investments                               | Industry         | UK    |
| 49. | MP Asset Management                           | Industry         | SL    |
| 50. | Pioneer Investments                           | Industry         | IRL   |
| 51. | Polish Financial Supervision Authority        | Public Authority | PL    |
| 52. | Raiffeisen Capital Management                 | Industry         | AU    |
| 53. | Robeco  | Industry         | NL    |
| 54. | Schroders                                     | Industry         | UK/LU |
| 55. | Slovakian Ministry of Finance                 | Public Authority | SK    |
| 56. | Slovenian Investment Fund Association         | Industry         | SL    |
| 57. | Slovenian Ministry of Finance                 | Public Authority | SL    |
| 58. | SMA   | Public Authority | SL    |
| 59. | State Street Corporation                      | Industry         | USA   |
| 60. | Test-Achats                                   | Consumer         | BE    |
| 61. | Unicredit Group                               | Industry         | IT    |
| 62. | Verbraucherzentrale Bundesverband             | Consumer         | DE    |
| 63. | VÖIG  | Industry         | AU    |