

DOCUMENT OF THE SERVICES OF THE COMMISSION

Simplified Prospectus Workshops

15th May 2006

11th July 2006

Issues Paper

Table of contents

INTRODUCTION.....	3
1 Objectives of the workshops	3
2 Current legal framework	4
2.1 UCITS III Directive	4
2.2 Recommendation.....	6
3 Problem identification	9
3.1 Stakeholders' feedback on the Green Paper	9
3.2 European Parliament feedback on the Green Paper – Klinz Report	11
3.3 CESR Report on implementation of the Recommendation	12
3.4 Conclusion.....	13
4 Simplified Prospectus in a changing context	13
4.1 Complex UCITS III products.....	13
4.2 New distributions patterns.....	16
4.3 Cross-product approach.....	17
5 Some relevant experiences	18
5.1 United Kingdom: KeyFacts Quick Guide	18
5.2 France: Delmas Marsalet Report.....	19
5.3 The Netherlands: Financial Information Leaflet Regime	20
5.4 Some non-EU experiences: USA and Canada proposed reforms	21
5.4.1 USA: point of sale disclosure ("Profile Plus")	21
5.4.2 Canada: point of sale disclosure documents	24
6 Getting the basics right.....	25
6.1 Purpose of the document.....	25
6.2 Target audience	29
6.3 Pertinent information to the end-investor.....	29
6.4 Design / format.....	33
6.5 Other issues	36
CONCLUSION	37
LIST OF ANNEXES.....	37
ANNEX 1	38
Schedule C of Annex I of the UCITS Directive.....	38
Contents of the simplified prospectus	38
ANNEX II	40
Some practical examples	40

Background Paper on Simplified Prospectus Workshops 15th May 2006 & 11th July 2006

INTRODUCTION

1 Objectives of the workshops

Following the feedback received on the current simplified prospectus regime¹, the Commission proposes to set up two workshops/brainstorming sessions with representatives of all constituencies (consumers/investors, industry (both fund managers and distributors) and public authorities).

The workshops are aimed at:

- (1) Confirming the objectives of the simplified prospectus.**
- (2) Reviewing the current experience in order to identify the reasons behind the failure of the simplified prospectus.**
- (3) Identifying ways to improve the simplified prospectus.**

It should be stressed that no written report is requested. The aim of the workshops is not to achieve consensus on all issues, but to collect different ideas which will allow the Commission to take a view on the best way to take this forward. The latter will then be reflected in the Commission's White Paper which is to be published in the autumn 2006.

The discussion during the first workshop will concentrate on items (1) and (2).

The Commission considers the following options as possible ways of moving forward:

- (1) Abandon the simplified prospectus.
- (2) Rely on self-regulation.
- (3) Soft law harmonisation: Adopt level 3 measures (i.e. CESR guidelines) / modify the existing Commission Recommendation on simplified prospectus².
- (4) Agree on more harmonised level 2 measures (i.e. clarification of definitions by means of secondary legislation pursuant to Article 53a of the UCITS Directive)..
- (5) Change the UCITS Directive (level 1 measure).
- (6) A combination of some of the above.

The Commission will take the time between both workshops to ascertain the possible options (pro/contra's – timing issue) and to prepare some background information further developing these options which will be provided to all participants.

¹ See below in Section 3.

² See below in Section 2.2

The second workshop should finally aim at arriving with a concrete solution which will then be reflected in the White Paper.

Following the White Paper and depending on the option chosen, further work might have to be undertaken (e.g. relating to the development of EU wide standards of information presentation). An external study could be launched to translate the agreed information elements into a format that can be easily understood by retail investors in the different EU Member States. This would also enable testing with retail investor communities across the different Member States of the EU in conformity with the "Better Regulation" principle.

2 Current legal framework

The current legal framework applicable to the simplified prospectus regime consists of (i) the UCITS directive 85/611/EC, as amended by Directive 2001/107/EC (the "**UCITS Directive**")³ and (ii) the EC Recommendation 2004/384/EC clarifying the contents and presentation of some elements of information which have to be included into the simplified prospectus pursuant to Schedule C of Annex I to the UCITS Directive (the "**Recommendation**")⁴.

2.1 UCITS III Directive

In order to enhance effective investor information, Directive 2001/107/EC⁵ introduced new rules on a new type of prospectus, the "simplified prospectus" in Directive 85/611/EC. The amending directive was published in the Official Journal of the European Union on 13th February 2002. Member States had to implement the relevant provisions into national law no later than 13th February 2004.

A distinction is to be made between:

- (i) provisions specifying rules to be applied by the home Member State in respect of simplified prospectuses issued by local fund managers;
- (ii) provisions specifying the (limited) host Member State competence in respect of simplified prospectuses used for the marketing of UCITS from another Member State into their country.

The relevant provisions are as follows:

- **Article 28 of the UCITS Directive**

(1) Both the simplified and the full prospectus must include the information necessary for investors to be able to make an informed judgment of the investment

³ OJ L 375, 31.12.1985, p.3 – *see also*: consolidated version of the UCITS Directive: <http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/consleg/1985/L/01985L0611-20050413-en.pdf>

⁴ 2004/384/EC: Commission Recommendation of 27 April 2004 on some contents of the simplified prospectus as provided for in Schedule C of Annex I to Council Directive 85/611/EEC (Text with EEA relevance) (notified under document number C(2002) 1541/2)

(OJ L 144, 30.4.2004, p. 44)– Corrigendum OJ L 199, 07.06.2004, p.30

⁵ OJ L 41, 13.2.2002, p.20 -.

proposed to them, and, in particular of the risks attached thereto. The latter shall include, independent of the instruments invested in, a clear and easily understandable explanation of the fund's risk profile.

(2) (...)

(3) *The simplified prospectus shall contain in summary form the key information provided for in Schedule C, Annex 1 to this Directive. It shall be structured and written in such a way that it can be easily understood by the average investor. Member States may permit that the simplified prospectus be attached to the full prospectus as a removable part of it. The simplified prospectus can be used as a marketing tool designed to be used in all Member States without alterations except translation. Member States may therefore not require any further documents or additional information to be added.*

(4) *Both the full and the simplified prospectus may be incorporated in a written document or in any durable medium having an equivalent legal status approved by the competent authorities.*

- **Article 30 of the UCITS Directive**

The essential elements of the simplified prospectus and the full prospectus must be kept up to date.

- **Article 32 of the UCITS Directive**

UCITS must send their simplified and full prospectus and any amendments thereto, as well as their annual and half-yearly reports, to the competent authorities.

- **Article 33 of the UCITS Directive**

(1) *The simplified prospectus must be offered to subscribers free of charge before the conclusion of the contract.*

In addition, the full prospectus and the latest published annual and half-yearly reports shall be supplied to subscribers free of charge on request.

(2) (...)

(3) *The annual and half-yearly reports must be available to the public at the places, or through other means approved by the competent authorities, specified in the full and simplified prospectus.*

- **Article 47 of the UCITS Directive**

If a UCITS markets its units in a Member State other than in which it is situated, it must distribute in that other Member State, in accordance with the same procedures as those provided for in the home Member State, the full and simplified prospectuses, the annual and half-yearly reports and the other information provided for in Articles 29 and 30.

These documents shall be provided in the or one of the official languages of the host Member State or in a language approved by the competent authorities of the host Member State.

- **Schedule C of Annex I to the UCITS Directive – Contents of the simplified prospectus**

Text attached in Annex 1 to this Paper.

Summary

The UCITS Directive defines the simplified prospectus as a useful information instrument aimed at helping the retail investor to make informed purchase decisions.

It should be short, understandable and contain - in summary form- the key information an investor needs to take an informed judgment.

Regulatory approval/verification by the home Member State is not necessarily required: it must only be "sent" to the competent authority.

It must be offered, but not necessarily be given, to retail investors before conclusion of the contract.

It is conceived as a fully harmonised document for the cross-border circulation of UCITS, falling under a field of competence reserved to the home Member State. Amendments, supplements or further changes apart from translation cannot be requested by the host Member State.

2.2 Recommendation

In order to ensure the effectiveness of the simplified prospectus as a tool for investor protection, the Commission issued the Recommendation to ensure a common reading of the relevant provisions of the UCITS Directive and an appropriate implementation across Member States. The Recommendation was published on 30th April 2004.

The Recommendation is not legally binding⁶: it only provides guidance to the Member States on what should be the exact content of the simplified prospectus pursuant to Schedule C of Annex I of the UCITS Directive.

In particular, it sets out standards to promote cost-transparency to make UCITS across Europe more comparable for investors. Therefore, based on IOSCO standards, the total expense ratio should be disclosed. Furthermore, it is recommended to disclose the portfolio turnover rate, the existence of fee-sharing agreements and soft-commissions as well as the transactions costs when they are deemed to be available. The Recommendation also contains elements for the presentation of past-performance.

⁶ Article 249 of the Treaty establishing the European Community.

The Recommendation provides further guidance on the following issues:

- **Investment objectives and investment policy**

The description of the UCITS' investment objectives should inform investors about the investment goal the UCITS intend to pursue. Therefore, the simplified prospectus must contain, in a concise form, an appropriate description of the outcomes sought for any investment in the UCITS, a clear statement of any third-party guarantees which protect investors and any restrictions on those guarantees, and information, where relevant, on index-tracking objectives.

The description of the UCITS' investment policy should allow the average investor to understand the manner and method by which the investment goal is expected to be achieved and draw investors' attention to the relevant characteristics. Therefore, the simplified prospectus must briefly make clear the main categories of eligible financial instruments which are the object of investment, the portfolio management strategy of the UCITS, by drawing attention to possible risk-concentration profiles where relevant, and the key characteristics of the bonds in which the UCITS invests. It must also contain information on the derivatives, the management style and the strategy to achieve the index-tracking objectives in the case of index-tracking funds.

Home Member States are recommended to allow the joint presentation of the UCITS' objectives and investment policy (provided that the information so combined does not lead to confusion of the objectives and the policies of the UCITS).

- **Risk profile of a UCITS**

The average investor should be enabled to understand the risk profile of a UCITS and be adequately informed on relevant risk characteristics. Therefore, the simplified prospectus must contain a brief and easily comprehensible description, in narrative form, of all of the risks material and relevant to the UCITS. This information should include (a) a statement to the effect that the value of investments may fall as well as rise and that the investors may get back less than they put in, (b) a statement that details of all the risks actually mentioned in the simplified prospectus may be found in the full prospectus and (c) a textual description of any risk investors have to face in relation to their investment. This textual description should include a brief and understandable explanation of any specific risk arising from particular investment policies or strategies or associated with specific markets or assets relevant to the UCITS (such as market risk, credit risk, settlement risk, liquidity risk, exchange or currency risk, custody risk and /or risks related to a concentration of assets or markets) and, where relevant and material, the horizontal risk factors that may affect the product (such as performance risk, risks to capital, exposure to the performance of the provider/third-party guarantor, inflexibility, inflation risk and/or lack of certainty that environmental factors such as tax regime will persist).

Member States are also encouraged, where they deem it relevant in the light of customary disclosure practice and existing investor protection standards, to require that this information be supplemented by a quantitative risk indicator based on the UCITS volatility, but subject to further convergence work on such indicators.

- **Past Performance Presentation**

To avoid misleading information for investors on historical performance and to advance the comparability of UCITS for investors within the EU, Member States are recommended to require disclosure of the UCITS' past performance (using a bar chart showing annual returns for the last 10 full consecutive years). If a UCITS is managed according to a benchmark or if its cost structure includes a performance fee depending on a benchmark, the information should include a comparison with the past performance of the benchmark. In addition, Member States are recommended to consider requiring disclosure, either of the cumulative performance, or the cumulative average performance of the fund over specific periods of time (and a comparison with the cumulative performance, or the cumulative average performance of a benchmark, when comparison to a benchmark is required).

Member States are recommended to consider whether or not to require subscription and redemption fees to be included in the calculation of the fund performance. However, they should require the exclusion of that information to be subject to an appropriate statement drawing attention to this fact. Member States are recommended to encourage their competent authorities to ensure progressive convergence to standards aligned on best practice in performance calculation.

Member States are also invited to consider as a possible option requiring disclosure of a benchmark for all UCITS authorised in their jurisdiction.

- **Economic information**

The information on the tax regime should be limited for the sake of clarity and concision of the simplified prospectus, to the tax regime applicable to the UCITS in its home Member State. To facilitate proper investor information, this information should be supplemented by a warning that further taxation may apply to the individual investor taking into account that the taxation of individual investors will depend on the fiscal regulation applicable in their personal or particular case.

- **Transparency and cost-disclosure**

The simplified prospectus must provide for full transparency of all the costs actually borne by investors in relation to their investment. To this end, it is necessary to disclose a total expense ratio (TER) calculated as an indicator of the fund's total operating costs as further spelled out by Annex I of the Recommendation. Therefore, Member States are recommended to require (a) disclosure of the TER (except for newly created UCITS), (b) on an ex ante basis, disclosure of the expected cost structure, (c) all entry and exit commissions and other expenses directly paid by the investor, (d) and indication of all the other costs not included in the TER, (e) the portfolio turnover rate as calculated under Annex II of the Recommendation and (f) an indication of the existence of fee-sharing agreements and soft-commissions

Member States are invited to allow both the TER and the portfolio turnover rate to be either included in or attached to the simplified prospectus in the same paper as the information on past performance.

Summary

The Recommendation offers relatively extensive (but not legally binding) guidance as to the exact content of the simplified prospectus.

It aims at ensuring a common reading of the relevant provisions of the UCITS Directive (in particular Schedule C of Annex I) and an appropriate implementation across Member States.

As it has no binding force, consistent implementation across Member States cannot be enforced at the EU level. Cooperation between national competent authorities is therefore crucial.

3 Problem identification

3.1 Stakeholders' feedback on the Green Paper

On 14th July 2005, the Commission published its "Green Paper on the enhancement of the EU framework for investment funds"⁷. The Green Paper invited the various stakeholders to comment on the functioning of the UCITS Directive, including the effectiveness of the simplified prospectus.

In February 2006, the Commission published a feedback statement summarising over 120 detailed responses received to its Green Paper.⁸ The feedback statement provides a systematic and detailed analysis of 121 written submissions which contained substantive comment on the issues raised in the Green Paper. Contributions to the consultation were received from 22 countries including 19 European Member States. Approximately 45% of the contributors raised the issue of simplified prospectus. Contributions were made by industry stakeholders (71%), public authorities (16%) and consumers (13%). The feedback statement gave a short overview of the main comments received in respect of the simplified prospectus. We set out below some more details.

Investors/consumers

The general message conveyed by the consumers was that the simplified prospectus did not meet their needs, especially the need for simple and comparable information. They expressed the view that it was too complex and contained too much material, and thus did not help enhancing their understanding or product transparency. They also criticised the use of a Recommendation as the adequate legal instruments as it has no legally binding force and therefore has not been respected in all Member States.

In respect of risk disclosure, consumer organisations expressed the concern that the concept of risk profile was not clear and harmonised.

⁷ Green Paper on the enhancement of the EU framework for investment funds, published on 14th July 2005 - http://ec.europa.eu/comm/internal_market/securities/docs/ucits/greenpaper_en.pdf

⁸ Feedback Statement - Enhancing the European Framework for Investment Funds, published in February 2006 – http://ec.europa.eu/comm/internal_market/securities/docs/ucits/greenpaper/feedback_statement_en.pdf

In respect of cost disclosure, consumers regretted that there was no clear definition of costs and the lack of harmonisation of the composition of the TER.

Industry

Similarly, representatives of the industry indicated that the original purpose of the simplified prospectus, i.e. to create a short, comparable document which could be easily understood by an average investor has not been achieved and so the simplified prospectus has not met the better regulation test. One of the reasons why this has been the case, as seen by the industry, is the Commission's failure to adopt a maximum harmonisation approach from the outset. As a result, a too broad scope of discretion has been left to the national regulators as regards the content and the format of the document.

The Recommendation, because of its non-binding nature, has in their view also failed to create a uniform format and content of the simplified prospectus. The effect is that some Member States have gone far over and above the requirements set forth in the UCITS Directive (gold plating), which has led to competitive inconsistencies across the EU. The amount of details required varies significantly from one Member State to the another (usually too much detailed information required) and so does the size of the document, e.g. 8 pages in France, 11 in Italy, 2-4 in the UK.

Industry representatives furthermore indicated that the TER was calculated differently in the various Member States and therefore not properly comparable (e.g. Luxemburg has made the inclusion of TER optional whereas the UK has additionally required inclusion of a reduction-in-yield calculation).

A number of industry participants observed that they regarded the simplified prospectus as a regulatory nuisance with little commercial value or application. Some contributors expressed the view that it has especially failed to achieve its goal in relation to funds which are structured and sold as sub-funds under an umbrella fund.

Another concern raised by the industry was the divergence of translation requirements across Member States. The majority of Member States require translations into local languages of both the simplified and full prospectus, even for minor amendments. Lack of consensus amongst regulators as to whether both documents must be given to investors at the point of sale was also raised as one of the problematic issues.

In general, most of the industry representatives are of the opinion that following the introduction of the simplified prospectus, cross-border distribution has become more complex and more expensive.

Public authorities

Public authorities (regulators & governments) which addressed the simplified prospectus issue generally expressed the view that although the idea of the simplified document and the Recommendation were a big step forward towards improved transparency and comparability, the implementation of the technical measures was poorly harmonised and, therefore, the document had not achieved its goal, i.e. the goal of properly informing the investors. Member States have differing views on the amount of detail that should be included in the information provided to investors. The regulatory authorities of Member States with large pools of savings

promote a high level of transparency, whereas regulators in Member States that basically serve as export platforms for funds are mainly interested in simplifying these disclosures. In the first group of Member States, where the Recommendation has been applied extensively and in a binding manner, management companies produce simplified prospectuses which are far too long and too detailed. In the other Member States, information that is important to investors, such as the TER, may sometimes be omitted because the recommendations were not applied.

3.2 European Parliament feedback on the Green Paper – Klinz Report⁹

The EP Report on Asset Management presents the European Parliament's response to the Commission's Green Paper.

In respect of the simplified prospectus, the EP notes that, "*within the current legislative framework, Member States have implemented the simplified prospectus in different ways and have, in some instances, established additional stringent national requirements in spite of Commission Recommendation 2004/384/EC on some contents of the simplified prospectus*" (item 5).

The EP proposes that "*the simplified prospectus - in the spirit of the FEFSI proposal of October 2003 - should take the form of a fact sheet to give investors transparency and provide them with a harmonised pan-European document setting out brief, standardised, understandable and comparable information of two to three pages in length in their own language, including information on the nature and risk of the financial instruments used and a quotation of the total expense ratio based on a standardised calculation and of load fees, an understandable description of the asset management (investment) strategy and references to the relevant sections of the full prospectus from which detailed information can be obtained; believes that this document must be offered to the investor before conclusion of the contract*" (item 6).

The EP furthermore points out "*that a harmonised simplified prospectus as requested by the Commission is a precondition for an effective product passport*" (item 14).

The EP hopes "*that the forthcoming CESR recommendations will be in line with these criteria and calls on the Commission to take them into account in evaluating the implementation of UCITS III and to draft a modification of Directive 85/611/EC on the content of the simplified prospectus to change it into a binding European legislative text on a fully harmonised simplified prospectus; the simplified prospectus should be designed after consulting all*

⁹ European Parliament, Report on Asset Management (2006/2037(INI) of the Committee on Economic and Monetary Affairs of 27th March 2006 (Rapporteur: Wolf Klinz (ALDE, Germany), shadow rapporteurs are Astrid Lulling (EPP, Luxembourg) and Pervenche Bérès (PSE, France) – adopted in plenary session of the European Parliament on 27th April 2006 *see press release*: http://www.europarl.eu.int/news/expert/infopress_page/042-7655-117-04-17-907-20060425IPR07602-27-04-2006-2006-false/default_en.htm - *see full text* : <http://www.europarl.eu.int/omk/sipade3?PUBREF=-//EP//TEXT+TA+P6-TA-2006-0181+0+DOC+XML+V0//EN&L=EN&LEVEL=0&NAV=S&LSTDOC=Y&LSTDOC=N>.

relevant parties, including industry and consumer associations, as well as after direct consumer testing, and with the help of marketing experts, otherwise it will remain unlikely to be read and understood by consumers" (item 7).

3.3 CESR Report on implementation of the Recommendation

CESR has, at the request of the European Commission, conducted a review of the implementation of the Recommendation across the Member States and has published the results of its review – based on a self-assessment by each of its Members - in July 2005 (ref. CESR/05-302b). The main conclusions of this report were the following¹⁰:

The key recommendations on the presentation of the objectives and the investment policy of a UCITS have been implemented by the great majority of Member States. The recommendations concerning risk profile have also been implemented by most Member States. The level of detail varies between Member States, especially concerning the recommendations on the specific risks and horizontal risk factors. However, the core suggestion that the most relevant and material risks associated with the investment in a particular UCITS should be presented to investors has been broadly implemented.

The recommendations on past performance presentation and benchmark comparison have been implemented by more than half of the Member States. Most Member States only consider disclosure of a benchmark necessary when the fund's investment objective explicitly refers to a certain benchmark. As regards subscription and redemption fees, the most common solution chosen is that the subscription and redemption fees are excluded but that this fact has to be appropriately disclosed.

In respect of economic information disclosure, Member States have generally implemented the recommendations regarding the limitation of the information on the tax regime.

14 Member States have implemented the disclosure of the TER and its calculation method according to Annex I as set out in the Recommendation. In one Member State the publication of the TER is only optional. Three Member States do not require disclosure of the synthetic TER as suggested by Annex I. It is considered by the industry of one Member State as a poor cost-benefit requirement.

The recommendation on the "expected" cost structure has been implemented by most Member States. 15 Member States have implemented the recommendation on indicating all the other costs not included in the TER including transaction costs. 15 Member States have implemented the recommendation on the indication of the portfolio turnover rate and its calculation method as indicated under Annex II.

Half of the Member States have implemented the recommendations concerning the indication of the existence of fee sharing agreements and soft commissions.

¹⁰ CESR Report points out that the report is only a "snap shot". Improvement of the implementation situation by the end of 2005 was expected. However, no current update is available.

3.4 Conclusion

Both the CESR review, the results of the public consultation on the Green Paper and the EP Report clearly confirmed that the simplified prospectus, as currently implemented, fails to deliver its objective. It does not constitute an investor-friendly instrument. The Recommendation has not been implemented consistently across the EU and hence, the simplified prospectus has failed to become the clear, concise, and meaningful information document that it was intended to be. There are frequent criticisms that the information contained is not meaningful to, or explained in a way that is not comprehended, by the average retail investor. As a result, investors are faced with different sets of information, difficult to compare and not enabling them to make informed purchasing decisions.

The Recommendation has sought to promote standards to increase transparency for investors, in particular as regards costs including hidden costs such as fee-sharing agreements or soft commissions. It therefore seems to be particularly worrying that the implementation of the key area on cost disclosure of the Recommendation remains patchy.

Summary

The main reasons for the failure can be summarized as follows:

- **No consistent implementation of the Recommendation across Member States;**
- **Not sufficiently harmonized (mainly in respect of costs & fees / statistical data);**
- **Use of the wrong legal instrument (a recommendation has no legal binding force);**
- **Not investor-friendly**
 - Content: too long**
 - too complex**
 - not meaningful to the average retail investor**
 - not comprehensible by the average retail investor**
 - Format/ design**
 - does not allow comparing different funds**

4 Simplified Prospectus in a changing context

The European investment fund industry is re-inventing itself: cross-border competition is taking root: fund managers and service companies are merging; distribution systems are opening up; new complex UCITS III products are being offered to retail investors; UCITS are facing an increasing competition of other long-term savings products. The discussion on the simplified prospectus has to be conducted against the general background of this changing landscape.

4.1 Complex UCITS III products

The UCITS-Directive creates a harmonised framework for investment funds. It specifies the core features of this financial product such as risk-diversification, redemption of units on the

request of unit-holders, regular valuation, and oversight by a depositary. The UCITS Directive also contains detailed provisions prescribing the assets which are eligible for investment by UCITS.

Directive 2001/108/EC¹¹ extended the range of financial assets in which UCITS may invest. As a result, UCITS are now permitted to invest not only in listed shares and bonds as before, but also in bank deposits, money market instruments, units of UCITS and other collective investment undertakings. The amendments also allow UCITS managers to manage index-replicating UCITS and to make greater use of derivatives. Financial derivative instruments may not only be used for the purposes of hedging, but also to increase returns. In order to provide guidance to the Member States as regards the implementation of the use of financial derivative instruments, the Commission published on 27th April 2004 Recommendation 2004/383/EC on the use of financial derivative instruments for undertakings for collective investment undertakings in transferable securities (UCITS)¹².

The on-going work of the Commission and CESR on the clarification of 'eligible assets' is vital in this respect. A draft proposal for implementing legislation has been published on the Commission website and will soon be formally communicated to the Member States and the European Parliament¹³.

As a result, consumers will be more and more faced with some very complex retail products. This means that they can be exposed to risks other than "ordinary" market risk, including more operational and counterparty risk. This is not a problem of itself. However, how well these risks are understood and managed is a concern. In addition, new products are being developed and brought to the market at high speed. Questions arise such as whether the product will perform in more testing marketing conditions; are they being rolled out to the mass market too quickly, are the risks and costs associated with these investments communicated clearly and effectively? One of the main risks seems to be the risk of mis-selling of new products.

Q1 How to ensure that complex products are sold in ways that limit the risk of mis-selling? Should the complex nature of the product be explained to the investor? If so, how can this be achieved in a simplified prospectus?

As products become more complex, the question furthermore arises whether product range differentiation is to be further considered in respect of investor information/protection.

In France, the Delmas-Marsalet Report¹⁴ recommends a greater differentiation of product range and distinguishes between two categories of products: (i) standard products capable of being integrated within simplified ranges that meet the primary needs of most investors and (ii) diversified products that round-out the standard range for customers that require more elaborate savings solutions. The Report considers that mutual fund types of a "conservative", "balanced" and "dynamic" label naturally have their place in a standard or intermediate

¹¹ OJ L 41, 13.2.2002, p. 20

¹² 2004/383/EC:Commission Recommendation of 27 April 2004 on the use of financial derivative instruments for undertakings for collective investment in transferable securities (UCITS)(Text with EEA relevance)(notified under document number C(2004) 1541/1)

(OJ L 144, 30.4.2004, p. 34)

¹³ http://ec.europa.eu/comm/internal_market/securities/docs/ucits/esc_13_2006_en.pdf

http://ec.europa.eu/comm/internal_market/securities/docs/ucits/esc_14_2006_en.pdf

¹⁴ Recommendation 2.2 of the Delmas-Marsalet Report - See also point 5.2 below.

product range, provided that these labels cover comparable asset allocation strategies in all institutions using/offering them, which – according to the Report, is currently not always the case. The Report furthermore suggests that the two categories could be used to direct the target marketing of the product range, thereby guiding customer selection among available options and facilitating the advisory services provided by the sales people. It goes on saying that, independent of producer marketing strategies and possible regular restrictions concerning the riskiest and most complex products, distributors could, in practice, reserve these types of products to customer groups best able to measure the impact and support the risk by developing a suitably organized frontline sales force and advisory team.

In the UK, the FSA published in June 2005 a discussion paper "Wider Range Retail Products: Consumer Protection in a Rapidly Changing World"¹⁵. The discussion paper considered the increasing variety of retail investment products, the risks these products posed to consumers, and how those risks could be addressed.

The discussion paper covered a broad range of products to include (what the FSA has termed) 'wider range' investment products that may exhibit high degrees of volatility, illiquidity or complexity and highlighted the risks these products pose to the FSA's objectives and potential mitigating action.

The discussion paper identified three risks to consumers posed by the current suite of retail investment products. These were: lack of consumer understanding of newer products; confusion over the sales and distribution channels used; and possible detriment caused by marketing prohibitions on certain unregulated funds. It furthermore investigated ways in which these risks could be mitigated considering various options. It set out a series of questions for respondents to give the FSA their views on wider range products.

The FSA published its feedback to the discussion paper in March 2006¹⁶. In addition to consulting on a possible extension of the range of authorized collective investment schemes the FSA proposes to focus on two additional areas of relevance to the wider range of investment products currently in the market:

- Consumer education and awareness - the FSA will reinforce its existing consumer information and awareness work, stressing the increasing need for consumers to invest proportionately across a range of products, to read the disclosure material they receive, and to seek financial advice when necessary; and
- Product provider responsibility – the FSA will examine the role that product providers and distributors play in ensuring customers are treated fairly, primarily through the provision and use of product information.

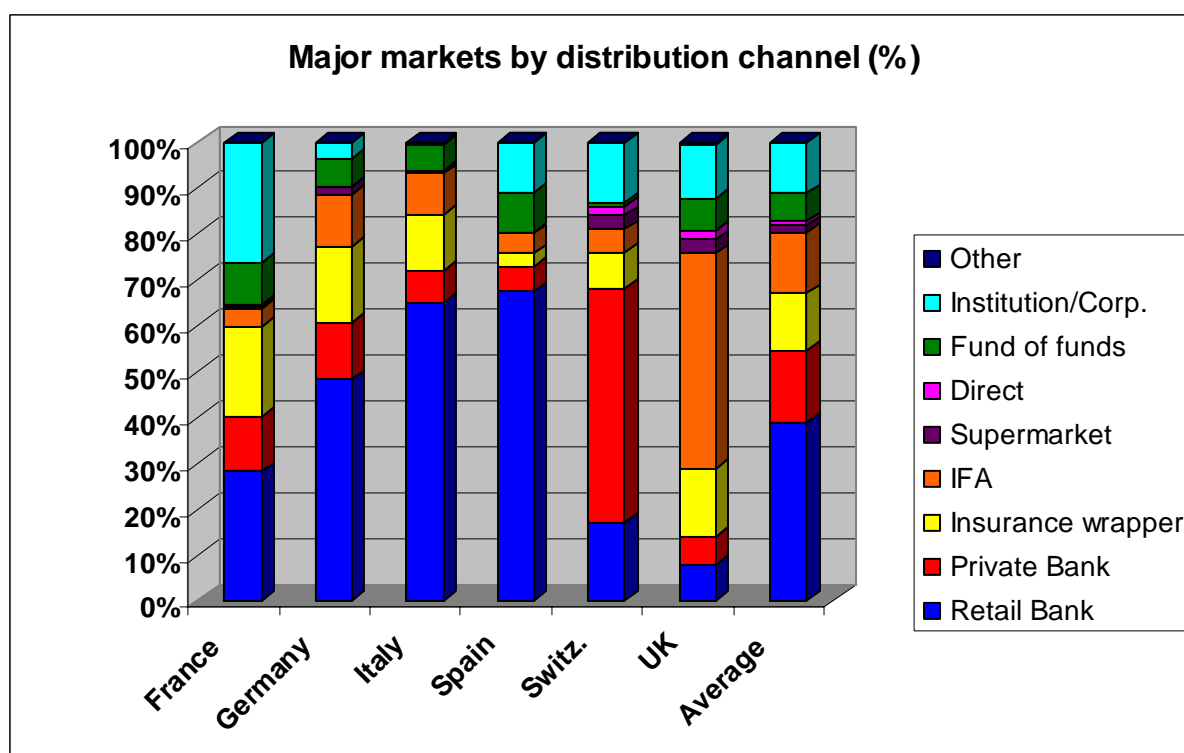
Q2 Is it useful/feasible to make a distinction between "complex" and "non-complex" UCITS?

¹⁵ http://www.fsa.gov.uk/pubs/discussion/dp05_03.pdf

¹⁶ See press release of 23.03.2006: <http://www.fsa.gov.uk/pages/Library/Communication/PR/2006/027.shtml>.
Feedback on DP05/3: http://www.fsa.gov.uk/pubs/discussion/fs06_03.pdf

4.2 New distributions patterns

As discussed in the Background Paper on UCITS Review¹⁷, integrated architecture is gradually losing ground to "open architecture" whereby two new kinds of actors distribute funds: more or less independent (not linked through capital) advisory marketing structures (fund distributors, fund supermarkets, and – to a lesser extent – retail banks proposing third-party funds to their clients) and individual financial advisors (essentially in the UK, in Germany and to a lesser extent in France – see chart below¹⁸), which are generally not tied to a particular product provider.



The internet is growing in importance as a distribution vehicle. This distribution channel reinforces market integration into an open architecture. Nonetheless, open architecture could exacerbate the risk of conflict of interest specific to distributor's remuneration considerations, if transparency on commissions and fees is not adequate.

As funds develop new distributions channels, the number of alternative fee structures increases. Funds may be paying services fees/distribution fees to their distributors; revenue sharing arrangements might apply; multiple class funds may offer an increasing number of choices to retail and institutional investors (whereby the investor pays different types of distribution fees depending upon the class chosen). Distribution costs may be payable upfront, over time, or when fund shares are redeemed. The variety and complexity of these choices and the fact that many distribution costs are paid by the fund promoter may tend to obscure the extent of these costs and the incentives that they may create (e.g. remuneration may clearly influence the advice given by the distributor to its clients to invest in a particular

¹⁷ Feedback Statement: Enhancing the European Framework for Investment Funds - http://ec.europa.eu/comm/internal_market/securities/docs/ucits/greenpaper/feedback_statement_en.pdf

¹⁸ Source: FERI Fund Market Information – Data Digest 2006.

fund and may limit the number/choice of the funds offered by it to its clients). Therefore transparency of costs and fees becomes even more crucial.

The UCITS Directive provides that, apart from entry and exit commissions, "other possible expenses or fees" should be disclosed, distinguishing between those to be paid by the unit-holder and those to be paid out of the unit trust's/common fund's or the investment company's assets. The Recommendation contains specific recommendations on disclosure of fees and expenses, which have however been implemented in divergent manners in the Member States.

The following general questions arise¹⁹:

Q1 Is full disclosure of fees relating to product/fund distribution in the simplified prospectus desirable/feasible?

Q2. Who should be responsible for disclosing these charges? The current UCITS disclosure regime, and in particular the simplified prospectus, relies more on the product manufacturer. Should more focus be placed on the distributor?

Q3. Will investor awareness of fees/charges inverse competitive pressure on promoters and distributors?

4.3 Cross-product approach

Significant concerns have been raised by respondents to the Green Paper and in the Klinz' Report on Asset Management as regards potential distortion between investment funds and certain other products (e.g. certificates, structured products, unit-linked life insurance), mainly due to less stringent disclosure/tax regimes applicable to such "competing" products.

This is most certainly an important issue to which full attention should be paid. However, the Commission needs to establish first, on the basis of hard evidence, that different regulatory treatment can distort investment decisions between UCITS and other financial products. This is a complex issue which needs to be extensively researched before any conclusion can be made. The Commission is launching a study on long-term savings products. The study will identify which products are competing for consumer attention, the manner in which they are sold to consumers and the conditions under which they are offered to consumers. The study is expected to start in autumn of this year.

Q1. Are these products actually in competition with funds? If so, which ones in particular?

Q2. Are differences in disclosure standards really distorting competition with these funds? Is there a real "disclosure gap" than needs to be rectified in its own right (because of the danger of mis-selling)?

¹⁹ A more detailed discussion on cost disclosure is contained in Section 6.3 of this paper.

5 Some relevant experiences

5.1 United Kingdom: KeyFacts Quick Guide²⁰

Under the current UK point-of-sale disclosure regime for packaged products²¹, customers are provided with a Key Features Document (KFDs) which explains the main points about the financial product that they are considering investing in. The main objective of this regime was to (i) give the investors the information they need about a product and its charges so that they can make informed decisions about whether to buy it; and (ii) to ensure that the information is presented in a format and at a time that helps consumers to make comparisons between products and providers. Although these objectives remain valid today, it has long been recognised that they have not been met under the current regime. FSA research has identified that consumers tend not to read KFDs or interact with this document effectively, for one or more of the following reasons:

- Uncertainty about the exact role of the documentation;
- Failure of much of this material to stand out and identify itself as being important;
- A perception that it appears to be boring and impenetrable;
- The reliance that many consumers have on advice delivered orally by the adviser.

Previous research has shown the following:

- Consumers will go to information that looks most likely to provide them with the information they need;
- What the documentation looks like will impact on the consumer. It needs to be engaging, not marketing 'bumph', not 'government like' but still important;
- A document works best when a few key messages are identified;
- The main issue is clarity and how attractive the information looks rather than the number of pages – although shorter documents are better than longer ones;
- Consumers are able to pick up messages in a well-structured document.

It is in response to the above that the FSA is in the process of developing a 'quick guide', designed to summarise and present the important product features in a more succinct and impactful way than has been achieved in the past. The document will also signpost the pathways to further information held in other product literature which consumers are given.

The use of a "Quick Guide" was first proposed in Consultation Paper 170 Informing Consumers: product disclosure at the point of sale (CP170, February 2003)²². Since then the FSA has refined its approach by working with industry and commissioning extensive independent testing of the document. The working title for the document is KeyFacts Quick Guide (KFQG).

²⁰ Consultation Paper (CP) 05/12** *Investment product disclosure: proposals for a Quick Guide at the point of sale* - see: http://www.fsa.gov.uk/pubs/cp/p05_12.pdf and Consumer Research Report prepared for the FSA by DVL Smith published in July 2005: "KeyFacts Quick Guide: Research Findings" - see: <http://www.fsa.gov.uk/pubs/consumer-research/crpr41.pdf>

²¹ Packaged products included life policies with an investment element, personal pensions including stakeholder pension schemes, units or shares in collective investment schemes and investment trust savings schemes.

²² http://www.fsa.gov.uk/pubs/cp/cp170_newsletter.pdf

5.2 France: Delmas Marsalet Report²³

AMF Board Member Jacques Delmas-Marsalet submitted his Report on the distribution of financial products to the French Finance Minister in November 2005. The Report asks what steps a (concerned) national authority can take to regulate the way in which high-risk investment products can be sold to retail investors. It covers a broad range of investment products: life insurance, structured products and UCITS.

The Report's recommendations, based on the work of a group relying on input from several regulators and interviews with institutions and professional associations, focus on six major objectives:

- provide more relevant information about financial products;
- improve the targeting of marketing efforts by distribution networks;
- provide clients with needs-oriented advice;
- ensure that such advice is objective and impartial;
- make salespeople more accountable;
- improve after-sales service.

The two important reasons which lay behind the idea to produce the Report were (i) the need to meet a growing demand for information and advice by consumers on savings investments and (ii) the need to prevent a recurrence of incidents of mis-selling. The Report identified, as one of the main causes of such incidents, the failure to provide adequate information.

One of the Report's recommendations is that pre-contractual information should be simplified by emphasizing the key factors in the consumer investment decision-making process. The six items corresponding to key questions that investors ask or should ask were recognised as: (i) product type (ii) capital protection (guaranteed or not), (iii) suggested minimum investment period, (iv) investment risk profile: possibilities of gain/loss over such period, (v) typical investor profile, and (vi) fees and expenses. This primary consumer decision-making information should, according to the Report, be presented in a readable and summarized form through an identifiable document. The Report stresses the importance of the document being as simple and clear as possible and capable of gradually replacing the advertising materials that too often drive investor choices.

The Report notes – in respect of UCITS - that although the key features identified above are not explicitly listed in the Recommendation, they do not seem to conflict with the spirit of the Recommendation. The Report therefore recommends that these six key features be included in the list of suggested modifications to the UCITS regime in the framework of the Green Paper consultations. The Report furthermore notes that the simplified prospectus now presents the six key features on the same level as a myriad of other less important items for

²³ Report on the marketing of financial products, presented by Jacques Delmas-Marsalet on the request of the Ministry of Economy, Finance and Industry - http://www.cob.fr/documents/general/6461_1.pdf (English translation) - http://www.amf-france.org/documents/general/6383_1.pdf (French text). see also: Financial Regulation Newsletter AMF – 2nd quarter 2006, Issue n°2 - http://www.amf-france.org/documents/general/6592_1.pdf

the decision-making process and that this content is required by the Directive and consequently cannot be excluded. The AMF nevertheless recently decided to authorize testing of a **free-form prospectus** that allows producers to highlight key features on one side of a sheet or standard brochure and regulatory information on the other. This re-ordering of information should help to clarify the presentation of existing simplified prospectus.

In addition, the Report recommends that a confirmation of receipt of the simplified prospectus should be made in handwriting by the consumer (rather than pre-printed) on the subscription form signed at the purchase of units in a fund.²⁴ Also, to enable UCITS investors to evaluate the simplified prospectus when presented at the time of sale, a waiting period of two days could be granted before a subscription becomes effective (a so-called "cooling-off period"). Investors could waive this right if they want immediate execution of their purchase orders (the Report however suggests that a working group of investment firms be formed to examine the feasibility of this suggestion).

5.3 The Netherlands: Financial Information Leaflet Regime

Since 1st July 2002, all providers of complex financial products in the Netherlands have been obliged to provide a Financial Information Leaflet (*Financiële bijsluiter*). This also applied to UCITS and non-UCITS authorized in The Netherlands, but not to UCITS authorized in another Member State and marketed in The Netherlands²⁵.

The Financial Information Leaflet is a document that is provided free of charge before the investor buys a financial product. The Financial Information Leaflet describes all the characteristics of the product and therefore gives the investor a simple overview of all the various advantages and disadvantages.

An evaluation conducted in 2004²⁶ with the participation of the industry and consumer organizations revealed that this document served a useful purpose. It was however suggested that the effectiveness of the leaflet could be significantly increased if it contained less information, if the language used was plainer and if the presentation was made more attractive. This has led to the development, in consultation with the industry and consumer organizations, of a new, more compact and graphical model.

On 7th February 2006 the Netherlands Authority for the Financial Markets (*Stichting Autoriteit Financiële Markten*, the "AFM") adopted a regulation imposing further rules on information disclosure for complex products²⁷. The Regulation sets out the (new) rules for information disclosure to consumers in respect of complex products and provides for a revised model of the Financial Information Leaflet. The Regulation contains detailed rules on the

²⁴ Not foreseen by the UCITS Directive which only requires the simplified prospectus to be "offered" to the customer/investor.

²⁵ <http://www.afm.nl/consumer/default.aspx?FolderId=1375&textsize=0>

²⁶ Evaluation report of Millward Brown/Centrum to the AMF of June 2004.

²⁷ *Nadere Regeling van de Autoriteit Financiële Markten van 7 februari 2006, houdende regels voor de informatieverstrekking bij complexe producten (Nadere Regeling financiële dienstverlening)*, as amended on 24th February 2006. The basic provisions are laid out in the Financial Services Decree (*Besluit financiële dienstverlening*). The latter works out in further detail the general statutory standards set forth in the new Financial Services Act (*Wet financiële dienstverlening*, the "WFD"), which entered into force on 1st January 2006.

format and design of the leaflet and also provides the inclusion of a risk-indicator. The use of the revised model will become compulsory as of 1 October 2006.

The purpose of the document is to give quick information on complex financial products to the investor at the early stage and to enable the investor to compare products of the same category. It is a compulsory pre-contractual information document for complex products. It should not contradict any other relevant information and remains subject to the general rules on "misleading information". Any commercial messages should make reference to the leaflet which in its turn should contain a cross-reference to the general terms and conditions applicable to the product.

Legal action available to investors is based on existing civil liability rules under national law (e.g. rules on pre-contractual liability, misleading and/ or inaccurate information). No prior approval of the leaflet by the AFM is required but the AFM will carry out checks on a random basis and can take regulatory action.

The new model is to be used for "complex financial products" irrespective of the nature of the investor. Complex financial products have to consist of at least two elements, one of which should be subject to market movements (the "investment" component). The new model does not apply to units in collective investment undertakings authorized in The Netherlands (both UCITS and non-UCITS) for which the existing model (financial information leaflet/simplified prospectus based on the Commission Recommendation 2004/ 384) remains required²⁸.

5.4 Some non-EU experiences: USA and Canada proposed reforms²⁹

Both the United States and Canada are currently looking at reforming their current point of sale disclosure to investors on the basis of the experiences of the past. The most striking elements of such initiatives in both countries are (i) the need for a short and concise document providing the investor with basic information enabling him to make an informed purchase decision ("Profile Plus" in USA and "Fund Summary Document" in Canada) and (ii) the use of internet as the relevant medium for distributing information to the investor/consumer, with a proposed "access equals delivery" policy.

5.4.1 USA: point of sale disclosure ("Profile Plus")

In 1998, the US Securities and Exchange Commission (SEC) adopted significant changes to the disclosure requirements for mutual funds. It adopted, amongst others, Rule 498 under the Securities Act of 1933, which allows funds to deliver a short, simple summary prospectus, called a "profile". The profile was designed to provide all of the information about a mutual fund that an informed investor would need to know. An investor who receives a fund profile may purchase fund shares based on the profile or request the full fund prospectus. In any event, an investor who purchases fund shares based on the profile will receive the fund's full prospectus with the purchase confirmation. Profiles may be distributed through any means, including direct mail, print media, broadcast and electronic media. However, few mutual funds have used the profile in the retail market, primarily because of liability concerns (for

²⁸ *Besluit Financiële dienstverlening, §4 and Nadere Regeling financiële dienstverlening, paragraaf 4.*

²⁹ It should be noted that the information provided is based upon the documents available on the respective websites. It does not necessarily reflect the current play of state since discussions in both countries are on-going.

example, by summarizing disclosure that appeared in the full prospectus, some fear that the fund profile could be deemed to have omitted material information).

In January 2004, the SEC proposed new rules and amendments to already existing rules on information disclosure³⁰. The proposed rules would require broker-dealers to provide their customers with targeted information, at the point of sale and in transaction confirmations, regarding to costs and conflicts of interest that arise from the distribution of mutual fund shares. The SEC requested interested parties to comment on those new proposals and amendments and received some valuable feedback³¹.

After discussions between the SEC and the NASD staffs, NASD formed end 2003 the Mutual Fund Task Force (the "Task Force")³² to provide guidance to the SEC as it considers issues relating to soft dollars, mutual fund portfolio transaction costs and distribution arrangements. The Task Force is comprised of senior industry executives who represent broker-dealers and mutual fund companies, as well as representatives from the academic and legal communities. The Task Force issued a Report on Mutual Fund Distribution which contains various recommendations in the field of mutual fund distribution³³.

The Profile Plus

Based upon its review, the Task Force considered that the most important changes the SEC should consider were those that made the costs and potential conflicts associated with mutual fund distribution more visible to the retail investor. In the Task's Force view, the SEC should require that a broker-dealer make available to investors, at the point of sale a two-page easy to understand document that describes the salient features of a fund, including revenue sharing and differential compensation arrangements (the "**Profile Plus**"). While this disclosure would include fees and expenses and the existence of particular incentives at the dealer level, it also would summarize information about the fund's investment strategies, risks and other significant features.

Web Site Disclosure

The Task Force furthermore recommended - based upon research - that a broker-dealer be required to provide the Profile Plus on its web site and refer investors to the disclosure, unless an investor opts out of this form of delivery. By referring an investor to a point of sale document on its web-site, a broker-dealer could provide disclosure in a timely and comprehensible manner at the point of sale. According to the Task Force, web site delivery of the Profile Plus would also provide investors with ready access to additional, more detailed disclosure through hyperlinks to the fund prospectus and a dealer disclosure statement concerning revenue sharing and differential compensation arrangements. It would

³⁰ See SEC Rel. No. IC-26341 (Jan. 29, 2004), 69 Fed. Reg. 6438 (Feb. 10, 2004) (the "Point of Sale Proposal").

³¹ The SEC reopened in February 2005 the comment period on these proposals and issued a supplemental request for comment (to be received by on or before 4th April 2005 - See SEC Rel. No. IC-26778 (Feb. 28, 2005), 70 Fed. Reg. 10521 (March 4, 2005) (the "Supplemental Request for Comment"). Comments provided are published on the SEC website; ICI (Investment Company Institute) was one of the respondents.

³² See SEC Rel. No. IC=26313 (Dec. 18, 2003), 68 Fed. Reg. 74819 74819 (Dec. 24, 2003). See also SEC Rel. No. IC-26356 (Feb. 24, 2004), 69 Fed. Reg. 9725 (Mar. 1, 2004) and SEC Rel. No. IC-26591 (Sept. 2, 2004), 69 Fed. Reg. 54727 (Sept. 9, 2004).

³³ See Report of the Mutual Fund Task Force: Mutual Fund Distribution
http://www.nasd.com/web/groups/rules_regs/documents/rules_regs/nasdw_013690.pdf

furthermore allow investors to compare funds offered by their broker-dealer. By giving investors a short disclosure document with access to further information through hyperlinks, the Profile Plus would allow investors to review as much or as little detail about a fund as may be desired.

"Access Equals Delivery"

The Task Force also urged the SEC to issue interpretative guidance providing that an investor's access to the Profile Plus, the full fund prospectus and the dealer disclosure document through the internet would constitute delivery of these documents for purposes of the federal securities laws ("access equals delivery" approach).

Responsibility for Information in the Profile Plus

The Task Force also urged the SEC to carefully delineate the respective responsibilities of funds and broker-dealers to provide various items of information to be included in the Profile Plus. The Report points out that in this regard, it will be important for the fund management companies and brokers-dealers to work with NASD to develop common industry practices for the prompt delivery of information for inclusion in the Profile Plus. A broker-dealer should be able to rely in good faith on information included in the Profile Plus that is provided to the firm by a fund management company. Further, a fund manager should be permitted to transmit information for inclusion in the Profile Plus as part of its regular schedule for updating fund prospectuses. Otherwise, inconsistencies between the Profile Plus and the fund prospectus inadvertently may occur, to the detriment of effective disclosure.

Disclosure in other distribution channels

In its Report, the Task Force indicates that mutual funds are distributed not only by broker-dealers, but also by other intermediaries, including banks, investment advisers, and retirement plan sponsors. They stress that distribution through these channels presents many of the same concerns of fee disclosure and sales incentives as distribution through broker-dealers or directly from the fund. They take the view that clear disclosure at the point of sale concerning the fees, investment strategies, risks and other information associated with the purchase, as well as disclosure concerning the intermediaries' own potential conflicts of interest, would benefit investors in these other distribution channels.

The Task Force therefore recommended that the SEC require that other regulated intermediaries provide investors with a disclosure document similar to the Profile Plus at the point of sale and insist on cooperation with other regulatory bodies so as to ensure that all intermediaries provide point-of-sale information that will help investors reach an informed investment decision.

5.4.2 Canada: point of sale disclosure documents

Notwithstanding the efforts of the Canadian securities authorities³⁴, it has become apparent in the last few years that the existing point of sale disclosure regimes for mutual funds and segregated funds do not work particularly well in practice. Consumers do not use point of sale disclosure documents (simplified prospectus for mutual funds/ information folder for segregated funds) to help them make their purchase decisions. They do not read the documents because they find them daunting. Most do not perceive the significance of such documents. Sales representatives tend to dismiss the utility of these documents and most of them do not use such documents in the sales process. Operators find the mandated disclosure documents costly to write, produce and deliver.

The main reasons which lie behind this are considered to be:

- Canadian laws assume fund consumers need more information than other investors;
- The disclosure documents try to do too many things at once;
- The information gets to consumers at the wrong time (under the current system, consumers do not get the information until the purchase has effectively been made);
- The information is delivered to consumers in the wrong form (commercially printed documents are expensive to produce and deliver and they are too bulky to be an effective sales tool; information in a printed document is soon out of date).

To help them to resolve the disconnect, the Canadian Securities Administrators (CSA) and the Canadian Council of Insurance Regulators published on 14th February 2003 a consultation paper entitled, *Rethinking Point of Sale Disclosure for Segregated Funds and Mutual Funds*³⁵, which set out proposals to improve and harmonise the way information about segregated funds and mutual funds is conveyed to consumers. The proposed system of disclosure rests on four cornerstones:

1. *Foundation document*. Each fund will have a base disclosure document. This document will contain all of the relatively static information about the features of the fund, the operator, and other service providers. It will define the fund and circumscribe the activities of industry participants with respect to the fund. Unlike current point of sale disclosure, the foundation document will not be called upon to educate consumers about investing, describe the track record of the fund, or describe sales options that consumers negotiate with their sales representatives. Operators will make this document available electronically (via web-based postings) and in paper at all times. The access-equal-delivery is proposed for this document.
2. *Continuous disclosure record*. Each fund will prepare annual audited financial statements and un-audited semi-annual financial statements. Operators will also prepare regular discussions of each fund's performance during specified financial

³⁴ In response to many complaints about the length and complexity of fund disclosure documents, the Canadian securities regulators have introduced a plain language drafting requirement for fund prospectuses in January 2000. The rule has also imposed a standard order in which information should appear in the prospectus, so as to facilitate comparability between funds.

³⁵ Consultation Paper 81-403, *Rethinking Point of Sale Disclosure for Segregated and Mutual Funds*
http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part8/jf_20030214_81-403consultation-paper.pdf
 prepared by the Canadian Securities Administrators and the Canadian Council of Insurance Regulators

periods. The continuous disclosure record of the fund will be available electronically (for example, through web based postings) and in paper at all times. Similar to the foundation document, it is proposed that access-equal-deliver approach is taken for these documents.

3. *Fund summary document.* Each fund will prepare a one- or two page fund summary to communicate key information that is unique to the fund. This document will also highlight the availability of more detailed information in the foundation document and the continuous disclosure record. Fund operators will make this document available to sales representatives and sales representatives will offer it to all consumers before a purchase is made. Fund operators may use electronic technologies to make the information contained in this document available to consumers and sales representatives.
4. *Consumers' guide.* Market participants will offer a consumers' guide to those consumers they believe will benefit from reading it. The consumers' guide will contain objective educational information about segregated funds and mutual funds. The consumers' guide will not be a fund specific document. It will be available electronically, as well as in paper.

The CSA published on 30th April 2004 a report³⁶ containing a summary of the comments they received on their Consultation Paper. The comments generally supported the CSA proposals, but also raised a number of issues which the CSA is considering. Worthwhile noting is that whilst industry participants responded strongly in favour of the CSA proposal to permit electronic access to the foundation document and continuous disclosure in lieu of physical delivery (provided that paper copies are delivered on request), consumer representatives did in general not feel as comfortable on the electronic access approach and asked to give them the option to opt-in to electronic access/delivery or to decline receipt all together. They considered that in any event, physical delivery should always be the default.

6 Getting the basics right³⁷

6.1 Purpose of the document

The main objectives of the current simplified prospectus regime can be summarized as follows:

- (1) **Inform consumers: communicate key information to consumers so that they are empowered to make informed choices.**
- (2) **Allow for comparisons among investment funds: consumers need to be able to compare funds if they are to make an informed purchasing decision. Using a**

³⁶ See CSA Notice 81-311 – Report on Consultation Paper 81-403 *Rethinking Point of Sale Disclosure for Mutual Funds and Segregated Funds*

http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part8/csa_20040430_81-311-rep-81-403.jsp

³⁷ A useful source of information: IOSCO Report of the Technical Committee: "Investor Disclosure and Informed Decisions: Use of Simplified Prospectuses by Collective Investment Schemes" published in May 2002 - <http://www.iosco.org/library/index.cfm?section=pubdocs&year=2002> (document 9 on the list)

standardized format is important because it allows for easy comparison among funds.

- (3) Create a single market for investment funds: facilitate cross-border marketing and enhance competition between the fund promoters.**

Q1. Do you agree with the abovementioned objectives? Does the simplified prospectus disclosure regime need to achieve any other objectives (e.g. such as investor education)?

- One of the key objectives set by the Delmas-Marsalet Report is indeed to improve product information: pre-contractual information should be simplified to emphasize key factors essential for decision-making. The objective of pre-contractual information should be to inform and assist the consumer in making an educated investment choice. The material necessary to make this choice must be presented prior to contract signing or investment purchase. For UCITS, this includes the simplified prospectus. According to the Report, contractual information must contain all provisions applicable during the term or holding period of a contract or investments. For UCITS, this includes the full prospectus, the fund rules and constitutive documents.
- Research conducted in Canada identified communicating key information at the point of sale as the most important objective of point of sale disclosure. It furthermore confirmed that facilitating comparisons among funds should be one of the goals of the point of sale disclosure and the use of a standardized format was considered to be a useful tool to achieve this. It was however believed that investor education, although a worthwhile goal, should not be included in the point of sale disclosure document³⁸.

Q2. What is the (legal) nature of the simplified prospectus?

- It seems important that the (legal) nature of the document is made clear to investors so as to enable them to ascertain the significance of the information contained therein. This is also important for liability issues.
- Is it considered as a substitute for the full prospectus or does it have a different purpose?
- Should the simplified prospectus be situated in the field of compulsory pre-contractual information or is it merely a marketing tool?
- If the simplified prospectus is an information tool, should it focus on essential information only (i.e. it should not contain any legal disclosures which should be in full prospectus)?
- Should there be a better differentiation between pre-contractual and contractual information?

³⁸ See CSA-Notice 81-311.

Recommendation 2.1.1.1 of the Delmas-Marsalet Report insists on this point and states that *"although pre-contractual information must be coherent with the contractual documents, the focus should be more limited and confined to those product or contract features essential for consumer decision-making. In this sense, the pre-contractual information must act as "how-to-guide" for financial products"*.

Q3. What should be the exact liability of the various parties involved (fund manager, intermediary/distributor)? Do you consider that a similar "responsibility" system as provided for in the Prospectus Directive is desirable and feasible in the context of UCITS?

One of problems often cited is that the simplified prospectus, as a pre-contractual document, cannot be kept "simple" since it must – on the basis of Article 28(1) of the UCITS Directive – include the information necessary for investors to be able to make an informed judgement of the investment proposed to them, and, in particular of the risks attached thereto. In order to avoid pre-contractual liability, there is thus a tendency to insert as much information as possible in the simplified prospectus, making it no longer "simplified".

Article 28(1) refers to "both the simplified and the full prospectus must (...)". Can this be read as being complementary? Can the simplified prospectus cross-refer to the full prospectus for more detailed information? The reading of Article 28(3) seems to go in such direction since it clearly indicates that the simplified prospectus shall contain certain key information (as set forth in Schedule C of the UCITS Directive) in *summary form*. In addition, it allows the simplified prospectus to be attached to the full prospectus as a removable part of it.

One possible way forward – which however would require amendment of the UCITS Directive – would be to introduce provisions similar to the ones used in the Prospectus Directive 2003/71/EC.

Article 5(2) of the Prospectus Directive provides as follows:

"It (i.e. the prospectus) shall also include a summary. This summary shall, in a brief manner and in non-technical language, convey the essential characteristics and risks associated with the issuer, any guarantor and the securities, in the language in which the prospectus was originally drawn up. The summary shall also contain a warning that:

- (a) it should be read as an introduction to the prospectus;*
- (b) any decision to invest in the securities should be based on consideration of the prospectus as a whole by the investor;*
- (c) where a claim relating to the information contained in a prospectus is brought before a court, the plaintiff investor might, under the national legislation of the Member States, have to bear the costs of translating the prospectus before the legal proceedings are initiated; and*
- (d) civil liability attaches to those persons who have tabled the summary indicating any translation thereof, and applied for its notification, but only if the summary is misleading, inaccurate or inconsistent to read with the other parts of the prospectus.*

Article 6 of the Prospectus Directive specifically deals with the responsibility attached to the prospectus. It sets out a general principle of responsibility for the information given to be introduced by the Member States in their national legislation, but clearly specifies that

"Member States shall ensure that no civil liability shall attach to any person solely on the basis of the summary, including any translation thereof, unless it is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus".

Q4. Who produces the information and who provides it to the consumer?

- It is important to make disclosure fit sensibly into the sales process and to ensure that the different inter-actors are clear on what is expected from them (e.g. at what point in the selling/consumer decision-making process the information is given, has an influence on what information is given and how it is given).
- There is also a need to take account of different distribution models. In addition to the "traditional" distribution methods through banks or investment advisers, in some Member States distribution also occurs through "fund supermarkets".

Should any particularities be taken into account? Should any difference be made between an advised and non-advised context?

- The obligation to "offer" or to "give/deliver" is also relevant: should it always be "provided" or only "offered on request"?

In this respect, Article 33 of the UCITS Directive makes a distinction between the simplified prospectus and the other information to be provided. It provides indeed that the simplified prospectus must be "*offered*" to subscribers free of charge before the conclusion of the contract, whereas the full prospectus and the latest published annual and half-yearly reports shall be "*supplied*" to subscribers free of charge "*on request*".

By way of comparison, the Prospectus Directive (Article 14) provides that the prospectus *shall be made available* to the public by the issuer, the offeror or person asking for admission to trading on a regulated market as soon as practicable and in any case, at a reasonable time in advance of, and at the latest at the beginning of the offer to the public or the admission to trading of the security involved. Article 14(2) of the Prospectus Directive specifies certain situations where a prospectus shall be "deemed available" to the public (including electronic format). Article 14((7) further more provides that where a prospectus is made available by publication in electronic format, a paper copy must nevertheless be delivered to the investor, upon his request and free of charge, by the issuer, the offeror, the person asking for admission to trading or the financial intermediaries placing or selling the securities.

6.2 Target audience

The current simplified prospectus regime is targeted at the "average (retail) investor", but it does not define who is considered to be an "average investor".

It also does not provide any exemption of delivery of the simplified prospectus for specific categories of investors (e.g. professional investors), e.g. by providing for a specific opt-out.

Q1 How would you define the "average investor" level? At what level should information be geared to be understood?

Many disclosure documents are designed for a very sophisticated audience with a greater reading ability than the "average" investor. In some cases, fund disclosure documents are only readily understandable by the lawyers who usually write them and not by potential investors. It is therefore extremely important to clearly define the right level of literacy of the "average" investor so that investment information can be written and presented accordingly.

Q2 Should a distinction be made between "retail investors" and "professional investors"? Do professional investors make use of the simplified prospectus?

- Should a simplified prospectus only be required for retail investors and not for "professional" investors?
- Should the simplified prospectus include different levels of risk warning taking into account the different nature of the investor?
- Should disclosure take account of the consumer's specific circumstances (i.e. a product which is 'risky' if whole life savings are put into it might be sensible home for a small part of a portfolio. It is realistic to expect standard disclosure to achieve this or should this be rather part of the distributor's advisory role.

6.3 Pertinent information to the end-investor

The UCITS Directive requires the simplified prospectus:

- **to contain information necessary for the investor to make an informed decision**
- **to focus on key information**
- **to contain all elements provided for in Schedule C, Annex 1 to this Directive**

The Recommendation provides further guidance on the various elements to be included.

As set forth under Section 3.1, most of the respondents to the Green Paper called for consumer testing in order to establish what format and, more importantly, what kind of information would make the simplified prospectus achieve its goal. One public authority

suggested moreover that it should be considered what is realistic for a typical consumer to understand/absorb rather than what would be desirable for a consumer to know.

Many stakeholders indicated that the simplified prospectus rules should be harmonised along with the EFAMA proposal, i.e. a two page format comprising all information required by the UCITS Directive. One industry representative enumerated elements of information which the document should contain. i.e.: fund name, objective, how it seeks to achieve it, principal risks, an indication of the likelihood of not achieving the objective, fees and costs, information that this document is merely a summary document and indication of what information is truncated with the option of requesting a copy of the full prospectus free of charge.

Another industry representative suggested that the simplified prospectus be replaced by a simple fact sheet, which should consist of a clear description of the range of outcomes a product offers and of the risks, as well as of what the product purports to deliver.

Most of the industry representatives who touched upon the issue of costs opted for their full and separate disclosure (including costs of administration, custody and deposit, taxes and management fees, fees of brokers and prime brokers, the costs of the execution venues as well as costs for clearing and settlement). Only one of the respondents who raised the issue of costs expressed the view that splitting of costs comprised in TER should not be disclosed. Many respondents stressed the need to harmonise TER definition.

Q1. Does the SP deliver the right level of information? What are the key questions an investor should ask? What is the right balance between information to be included in SP / full prospectus).

Is there any need to review current list of Annex I, Schedule C of the UCITS Directive (adding/deleting/clarifying items) and/or to review Recommendation (adding/deleting/clarifying items)?

- The Delmas-Marsalet Report (France) identifies 6 key items (product type, capital protection, suggested minimum investment period, investment risk profile, typical investor profile, fees and expenses). The Financial Leaflet in The Netherlands identifies the product, the risks, the costs, the yields and what happens in case of premature termination. The Quick Guide (UK/FSA) contains a checklist of 10 points (in Q&A format)³⁹, which signpost to further information. Any views on this? Any additional key issues?
- The US SEC proposed point of sale disclosure templates ("Profile") contains disclosure on costs and conflicts of interest. The NASD Mutual Fund Task Force Report on the Profile Plus provides that apart from disclosure of fees and expenses and the existence of particular incentives at the dealer level, the document would also

³⁹ (1) What is [*relevant product*]; (2) who is it right for; (3) what are the benefits; (4) what are the risks; (5) what is my commitment; (6) what will I get back; (7) are there any guarantees; (8) how flexible is it; (9) what are the charges for; (10) what do I now?

summarize information about the fund's investment strategies, risks and other significant features.

- The Canadian CSA proposal of layered point of sale disclosure for funds includes a "summary document" to be offered to the consumer prior to sale.

Q2 How to improve cost disclosure?

- The UCITS Directive (Schedule C of Annex I) provides for the disclosure of entry and exit commissions and other possible expenses or fees, distinguishing between those to be paid by the unit-holder and those to be paid out of the unit trust's/common fund's or the investment company's assets. The Recommendation (item 2.2.1) provides further guidance as to the elements this should include (see Section 2.2 above).
- What are the reasons for the patchy implementation of the Recommendation as regards fee-disclosure (e.g. different views in Member States on TER disclosure and calculation)? Does this primarily result from the "soft-law" character of the Recommendation? Does the non-binding character of the Recommendation make it difficult to justify changes of national laws and to convince local fund industries of new standards which would be necessary to achieve compliance with the Recommendation?
- What does the investor need to know / what does he/she want to know?
 - Who is being paid what out of fund assets?
 - What are these payments for?
 - What are they called?
- Components of TER / Level of breakdown of expenses⁴⁰?
 - Improved breakdown and disclosure of expenses might encourage institutional investments in UCITS – and subsequent economies of scale could be passed on to retail investors.
 - Consistent disclosure of TER components help UCITS to calculate consistent TERs (e.g. Lipper Fitzrovia ensures consistency by using audited financial statements and apply their consistent methodology of the last 12 years).
 - *Management fee.* Consistent disclosure of what a quoted management fee consists of would be of benefit to industry and investors, e.g. in some domiciles such fee covers administration expenses, in other domiciles it can cover virtually all operating expenses.
 - *Brokerage commissions.*

In the US brokerage commissions are excluded from the TER as they are buried within the overall profit/loss figures on a fund's capital account.

⁴⁰ This section contains some reflections received on an informal basis from Lipper Fitzrovia to enhance the discussion on the cost disclosure topic at the workshops. Lipper Fitzrovia will be present at the workshops and can thus further develop these issues in the discussion forum.

Therefore, where they do record this in an expense statement, it is excluded for consistency. In addition, the operating expenses of a fund (TER) are those that an investor could reasonably expect to pay each year - as brokerage is activity-related, this is not an operating expense per se. The TKA (Totalkostnadsandel) in Sweden includes brokerage commissions. Are the resulting figures more volatile (and therefore less useful for investors)? How feasible would it be to calculate such figures across European domiciles?

- Performance Fees : to be included in the TER / to be mentioned separately / to be included in TER and mentioned separately?⁴¹
- Distribution Fees : to be disclosed?⁴²
- Other costs not included in the TER. What do they include (transaction costs, distribution costs, other)? What about local costs (difficulty of including this in a harmonized document)? What does the consumer want/need to know?
- Costs to be disclosed by fund manager / costs to be disclosed by distributor (i.e. "retrocession fees"/ fee-sharing arrangements, transaction costs, soft commissions) (see also Section 4.2 above)?

Q3 How to improve risk disclosure?

- What is the best method for risk disclosure (use of risk indicators)?
- What does the investor need to know / what does he/she want to know? Figures? Narrative disclosure?
- Other?

Q4 Do you consider historical performance presentation useful/necessary?

- Reporting currency? Currency of the fund versus currency of the investor (as demanded in certain Member States)?

Q5 Need to go further than simulation: for 100 invested – what happens in 5 years (projection)?

Q6 Disclosure of portfolio turnover rate?

⁴¹ See position paper of 14/11/2005 of Lipper Fitzrovia containing various elements on fee and cost disclosure. The contribution is available on our internet site and is accessible through the "yourvoice" web-address http://forum.europa.eu.int/Public/irc/market/market_consultations/library?l=/financial_services/asset_management&vm=detailed&sb=Title

⁴² See footnote 32.

- Relevance? Some respondents to the Green Paper pointed out that the definition of portfolio turnover rate in the Recommendation is unsatisfactory and that it should be changed to the conventional US definition of portfolio turnover? Any views on this?

Q7 How to structure disclosure in certain specific situations?

- *Compendium documents/Umbrella funds*. How will it work in practice when a product contains a wide choice of funds with different investment objectives (e.g. ethical investment, index trackers, emerging markets) and different risk profiles? Disclosure at the level of the product or the fund or both?
- *Wrappers*⁴³: in some Member States certain collective investments may be sold with a "wrapper" around them (e.g. to give access to tax advantages). How to be accommodated within the disclosure? How should this be accommodated within the disclosure regime applicable to life insurance?

Q8 Updating requirements?

The UCITS Directive provides that the essential elements of the simplified prospectus and the full prospectus must be kept up to date.

- What are the "essential elements"?
- Should there be a periodic update or only when changes occur?
- Different if dealing with web versions?
- How to ensure that updated versions get to the sales people/distributors?

6.4 Design / format

The UCITS Directive requires the simplified prospectus to be:

- in summary form
- structured and written in such a way that it can be easily understood by the investor

The UCITS Directive and/or the Recommendation do not contain any specific provisions as to the use of a specific format or design.

Q1 Do you consider that the lack of a standardized format/design to be one of the (main) reasons of the failure of the simplified prospectus?

⁴³ See also Section 4.3 above.

Q2 Is a pan-European standardized format/design desirable? If so, what should be the basic concept thereof?

- **Length of the document**

Most of the respondents to the Green Paper indicated that it should be an A4 document of no more than 2 to 3 pages. Several stakeholders referred to the EFAMA/FEFSI model

The concept of a one or two page document is also supported by the on-going efforts in France, the UK, The Netherlands, the USA and Canada (see various models attached).

"The use of a short document is the best way to communicate important information to consumers because it stands the best chance of being read by consumers". What are your views/experiences on this? Do investors agree?

- **Plain language**

One of the remarks commonly made by the respondents to the Green Paper was that the language used in the simplified prospectus should be more plain and investor friendly. It should use everyday jargon-free language.

- **Structure / design**

Respondents to the Green Paper generally supported the view that the simplified prospectus should be a concise, easily readable and understandable document. They insisted on the use of a clear, structured format and a more transparent and attractive design.

Some elements to further explore:

- Use of Q&A structure (*see* proposed KeyFacts Quick Guide in the UK, Financial Information Leaflet in The Netherlands)?
- Signposts to further information (e.g. with hyperlinks)?

Q3 Should the simplified prospectus be a separate document or part of the full prospectus? Should it be available in local language(s)? Should it be made available/translated under the responsibility of the fund promoter or the distributor?

- **Separate document or removable part of the full prospectus**

Article 28(3) of the UCITS Directive allows Member States to permit that the simplified prospectus be attached to the full prospectus as a removable part of it. Has this option been used? Pros and cons?

- **Translation**

In the context of cross-border marketing of UCITS, Article 47 of the UCITS Directive provides that the UCITS must distribute in the host Member State the full and simplified prospectuses, the annual and half-yearly reports and the other information provided for in Articles 29 and 30 of the UCITS Directive. These documents should be provided in the or one of the official languages of the host Member State or in a language approved by the competent authorities of the host Member State.

Industry respondents to the Green Paper generally pointed out that translation costs are a serious barrier to cross-border marketing of UCITS and suggested that the document should only be available in the major EU languages. Alternatively, the simplified prospectus should be translated into national languages and the full prospectus be provided in a language customary in the sphere of international finance.

Q4 Should the simplified prospectus be physically delivered or is electronic delivery preferable?

The UCITS Directive provides that both the full and the simplified prospectus may be incorporated in a written document or in any durable medium having an equivalent legal status approved by the competent authorities. The use of electronic delivery is thus not excluded, provided that electronic delivery is recognized by the competent national authorities to have an equivalent legal status as physical delivery. What is the current status in the Member States? Is electronic delivery used / recognized by the authorities?

By way of comparison, Article 14.2 the Prospectus Directive is more specific on the use of documents in electronic format and clearly provides that the prospectus shall be deemed available to the public when published:

- (a) (...) (*insertion in certain newspapers*)
- (b) (...) (*paper copy available at certain locations*)
- (c) in an electronic form on the issuer's website and, if applicable, on the website of the financial intermediaries placing or selling the securities, including paying agents; or
- (d) in an electronic form on the website of the regulated market where the admission to trading is sought; or
- (e) in electronic form on the website of the competent authority of the home Member State if the said authority has decided to offer this service.

A home Member State may furthermore require issuers which publish their prospectus in printed format (see (a) and (b) above) to publish their prospectuses in an electronic form in accordance with (c).

Article 29 of Commission Regulation 809/2004⁴⁴ imposes some requirements/restrictions to the delivery in electronic format: document should be easily accessible when entering the web-site; a file format not allowing modifications should be used; the document should not contain hyperlinks (with exception of links to the electronic addresses where information incorporated by reference is available – such documents should be available with easy and immediate technical arrangements); the investors should have the possibility of downloading and printing the document.

Article 14.6 provides that where the prospectus is made available by publication in electronic format, a paper copy must nevertheless be delivered free of charge to the investor **but only on the latter's request**.

In general, there is a strong move in certain countries towards the use of internet for delivery of disclosure documents. The US and Canadian proposals both provide to a certain extent for an "access equals delivery" policy⁴⁵.

What are your views on this? Should a similar approach be taken for the "offering"/delivery of the simplified prospectus? What should be the limits?

6.5 Other issues

Q1 Should there be an approval of the simplified prospectus by the home Member State or a mere filing? What is the exact role of the regulator? Should self-certification be considered?

Article 32 of the UCITS Directive provides that the UCITS must **send** their simplified and full prospectus and any amendments thereto, as well as their annual and half-yearly reports, to the competent authorities of the home Member State. This means that the simplified prospectus is not necessarily to be pre-vetted and approved by the home Member State's regulator; a mere filing is sufficient under the Directive.

If a UCITS proposes to market its units in a Member State other than that in which it is situated, it must first inform the competent authorities of the host Member State thereof and must **send** the latter, amongst others, an attestation by the competent authorities to the effect that it fulfils the conditions imposed by the UCITS Directive, together with its simplified prospectus (Article 46 of the UCITS Directive). Under the current UCITS Directive, it might not entirely be clear whether the home Member State – in order to deliver its attestation - (i) has to verify/confirm the compliance of the content of the simplified prospectus with the relevant provisions of the UCITS Directive, i.e. whether the UCITS complies with Article 28 of the Directive (and hence, indirectly would in any event have to "approve" the simplified prospectus when used for cross-border marketing) or (ii) has to verify/ confirm that it has received the simplified prospectus from the UCITS, i.e. whether the UCITS complies with Article 32 of the Directive. In this context, self-certification by the UCITS of its compliance with Article 28 may be an option to consider.

⁴⁴ Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (Text with EEA relevance) (*OJ L 149, 30.4.2004, p. 1*)

⁴⁵ See Section 5 above.

On the other hand, once the attestation has been delivered by the home Member State regulator, the host Member State regulator cannot require any amendments, additional information or documents to be added (Article 28.3 of the UCITS Directive). They may only ask for a translation in the or one of the official languages of their country (Article 28.3 and 47 of the UCITS Directive). A second approval or validation procedure by the Host Member State, is not possible, the simplified prospectus being part of the field "reserved" by the Directive to the exclusive competence of the Home Member State.

Q2. Are there any issues to bear in mind for non-UCITS collective investment schemes to which Member States may choose to extend the disclosure requirements?

Certain Member States may choose to extend the disclosure requirements applicable to UCITS to non-UCITS collective investment schemes so as to ensure a coherent approach for all investment funds authorised in their country and enhance comparability. Any specific issues to be taken into account in this respect?

Q3. Is the simplified prospectus concept to be extended to other non-UCITS products?

As discussed under Section 4.3, UCITS are facing increasing competition with other products (unit linked life insurance, certificates, structured products).

- Should the simplified prospectus regime be extended to other "competing" products so as to enhance comparability / competition?
- Following the cross-product disclosure approach currently taken in certain jurisdictions (e.g. the UK, The Netherlands, France): will such countries be looking at how the simplified prospectus evolves to see how to include this in their cross-product disclosure approach?

CONCLUSION

Based on a structured consideration of these issues, the Commission hopes that the participants to the workshops will be able – on the basis of their expertise and experience – to provide a valuable contribution to the brainstorming sessions at the workshops allowing the Commission to make a decision on the most efficient options to take the simplified prospectus forward.

LIST OF ANNEXES

- Annex I: Schedule C of Annex I to the UCITS Directive
- Annex II: Some practical examples

ANNEX 1**Schedule C of Annex I of the UCITS Directive****Contents of the simplified prospectus****Brief presentation of the UCITS**

- when the unit trust/common fund or the investment company was created and indication of the Member State where the unit trust/common fund or the investment company has been registered/incorporated,
- in the case of UCITS having different investment compartments, the indication of this circumstance,
- management company (when applicable),
- expected period of existence (when applicable),
- depositary,
- auditors,
- financial group (e.g. a bank) promoting the UCITS.

Investment information

- short definition of the UCITS' objectives,
- the unit trust's/common fund's or the investment company's investment policy and a brief assessment of the fund's risk profile (including, if applicable, information according to Article 24a and by investment compartment),
- historical performance of the unit trust/common fund/investment company (where applicable) and a warning that this is not an indicator of future performance - such information may be either included in or attached to the prospectus,
- profile of the typical investor the unit trust/common fund or the investment company is designed for.

Economic information

- tax regime,
- entry and exit commissions,
- other possible expenses or fees, distinguishing between those to be paid by the unit-holder and those to be paid out of the unit trust's/common fund's or the investment company's assets.

Commercial information

- how to buy the units,
- how to sell the units,

- in the case of UCITS having different investment compartments how to pass from one investment compartment into another and the charges applicable in such cases,
- when and how dividends on units or shares of the UCITS (if applicable) are distributed,
- frequency and where/how prices are published or made available.

Additional information

- statement that, on request, the full prospectus, the annual and half-yearly reports may be obtained free of charge before the conclusion of the contract and afterwards,
- competent authority,
- indication of a contact point (person/department, timing, etc.) where additional explanations may be obtained if needed,
- publishing date of the prospectus.

ANNEX II

Some practical examples

- **KeyFacts Quick Guide (UK/FSA)**
- **Financial Information Leaflet (The Netherlands)**
- **Profile Plus (USA/NASD)**
- **EFAMA models**