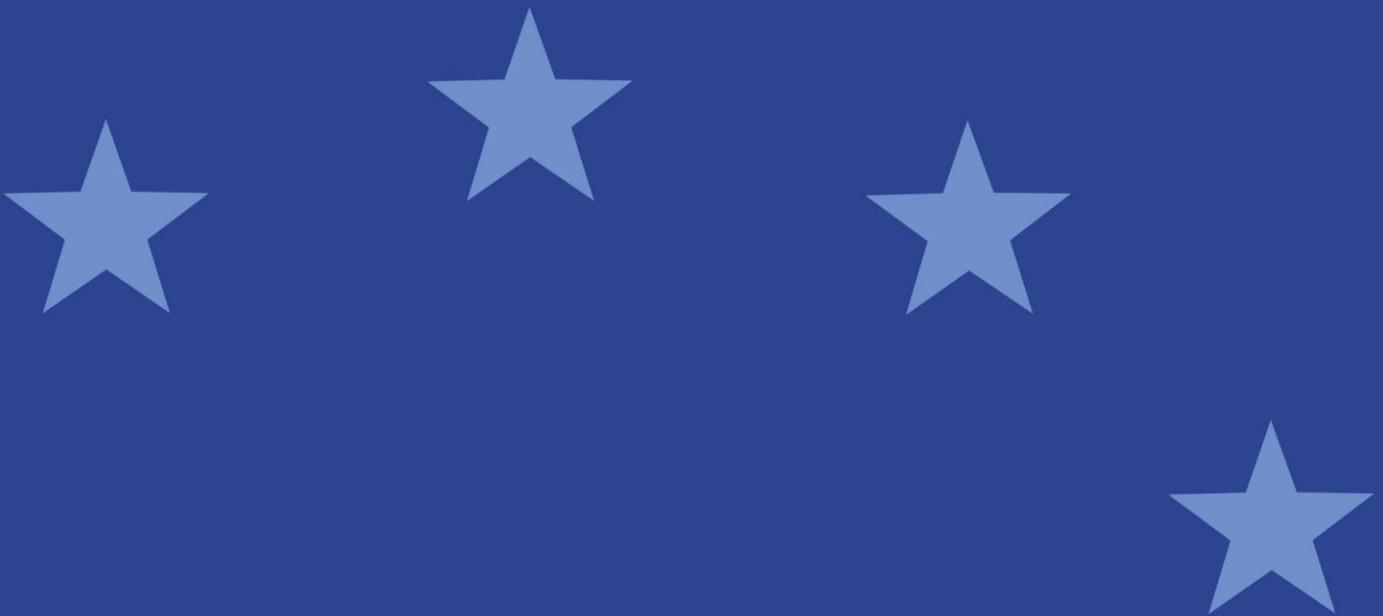




European Securities and
Markets Authority

Questions and Answers

Key Investor Information Document (KIID) for UCITS





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I. Background

1. The revised Undertakings for Collective Investment in Transferable Securities (UCITS) Directive puts in place a comprehensive framework for the regulation of harmonised investment funds within Europe. The extensive requirements with which UCITS must comply are designed to ensure that these products can be sold on a cross-border basis. The most recent version of the Directive also introduces a management company passport.
2. The UCITS framework is made up of the following EU legislation:
 - a. Directive 2009/65/EC, which was adopted in 2009. It is a ‘framework’ Level 1 Directive which has been supplemented by technical implementing measures (see the Level 2 legislation in b. below).
 - b. Directive 2007/16/EC¹; Directive 2010/43/EU²; Regulation No 583/2010³; Directive 2010/42/EU⁴; and Regulation No 584/2010⁵.
3. ESMA’s predecessor (CESR) produced a series of questions and answers (Q&A) based on questions received through CESR’s MiFID Q&A mechanism. The Q&As reflected common positions agreed by CESR Members. They were one of the tools used by CESR to elaborate on the provisions of certain EU legislation, thereby fostering supervisory convergence, and were considered useful by external stakeholders. ESMA has therefore decided to introduce a similar mechanism in the UCITS area.
4. Similarly, ESMA is required to play an active role in building a common supervisory culture by promoting common supervisory approaches and practices. In this regard, ESMA will continue to develop Q&As as and when appropriate.

II. Purpose

5. The purpose of this document is to promote common supervisory approaches and practices in the application of the UCITS Directive and its implementing measures. It does this by providing responses to questions posed by the general public and competent authorities in relation to the practical application of the UCITS framework.
6. The content of this document is aimed at competent authorities under UCITS to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA.

¹ COMMISSION DIRECTIVE 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions

² COMMISSION DIRECTIVE 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company

³ COMMISSION REGULATION (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website

⁴ COMMISSION DIRECTIVE 2010/42/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure

⁵ COMMISSION REGULATION (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities



However, the answers are also intended to help UCITS management companies by providing clarity as to the content of the UCITS rules, rather than creating an extra layer of requirements.

III. Status

7. The Q&A mechanism is a practical convergence tool used to promote common supervisory approaches and practices under Article 29(2) of the ESMA Regulation.⁶
8. Therefore, due to the nature of Q&As, formal consultation on the draft answers is considered unnecessary. However, even if they are not formally consulted on, ESMA may check them with representatives of ESMA's Securities and Markets Stakeholder Group, the relevant Standing Committees' Consultative Working Group or, where specific expertise is needed, with other external parties.
9. ESMA will review these questions and answers to identify if, in a certain area, there is a need to convert some of the material into ESMA guidelines and recommendations. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation will be followed.

IV. Questions and answers

10. This document is intended to be continually edited and updated as and when new questions are received. The date each question was last amended is included after each question for ease of reference.
11. Questions on the practical application of any of the UCITS requirements may be sent to the following email address at ESMA: UCITSKIID@esma.europa.eu

⁶ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC Regulation, 15.12.2010, L331/84.

Question 1: Preparation of KIID by UCITS that are no longer marketed to the public or by UCITS in liquidation

Date last updated: September 2012

Question 1a: Where an existing UCITS is no longer marketed to the public, should it be required to prepare a KIID?

Answer 1a: In accordance with Article 82 of the UCITS Directive a UCITS is required to keep the essential elements of key investor information up-to-date. In accordance with Article 23 of Commission Regulation (EU) No 583/2010, a KIID with duly revised presentation of past performance of the UCITS shall be made available no later than 35 business days after 31 December each year. Notwithstanding that a UCITS is no longer marketed to the public, an up-to-date version of the KIID should be available to the existing investors.

Question 1b: Similarly, should there be an obligation to prepare a KIID for a UCITS that is in liquidation?

Answer 1b: When a UCITS is in liquidation there can be no obligation to prepare a KIID as the liquidator may have assumed many of the powers of the UCITS management company.

Question 1c: For a structured UCITS, as defined in Article 36 of Commission Regulation (EU) No 583/2010 that is no longer marketed to the public, should there be an obligation to update the KIID?

Answer 1c: Yes. A structured UCITS, as defined in Article 36 of Commission Regulation (EU) No 583/2010, needs to keep its KIID up to date.

Question 2: Communication of KIID to investors

Date last updated: September 2012

Question 2a: Should existing investors within a UCITS be provided with a KIID in the case of additional investments?

Answer 2a: Yes. Existing investors should be provided with a KIID in the case of additional investments, on the basis that the KIID is a pre-contractual document and each additional subscription is a new contract. However, where unit holders in a UCITS invest through a regular savings plan, a KIID is not required in relation to the periodic subscriptions, unless a change is made to the subscription arrangements, for example, increases or decreases in the subscription amount, which would require a new subscription form.

Question 2b: Should existing investors within a UCITS umbrella fund, who switch or exchange units in one sub-fund for units in another, be provided with the KIID for the sub-fund in which they are going into?

Answer 2b: Yes. As a pre-contractual document, the investor must receive the KIID for the sub-fund they are going into including where this investment arises from switching from another sub-fund within the umbrella.

Question 2c: Should an amended KIID be provided to existing investors within the UCITS?

Answer 2c: No. In accordance with Article 79 of the UCITS Directive, key investor information shall constitute pre-contractual information. A KIID does not need to be provided to existing investors unless they are making additional subscriptions. Investors always have the right to be provided with the KIID on request.

Question 2d: Must professional investors be provided with a KIID?

Answer 2d: Yes. All prospective investors must be provided with a KIID.

Question 3: Treatment of UCITS with share or unit classes

Date last updated: September 2012

Question: Should individual KIIDs be prepared for each class of units or shares within a UCITS?

Answer: In accordance with Article 26 of Commission Regulation (EU) No 583/2010 a separate KIID shall be produced for each individual share class. However, information relevant to two or more share classes may be combined into a single KIID provided the resulting KIID complies in full with all KIID requirements (including the limit on length). Also, a UCITS may select a class to represent one or more other classes of the UCITS provided the information in the KIID is fair, clear and not misleading to prospective investors in those other classes. Where charging structures differ between classes, the share class with the highest overall charge is the most appropriate representative share class to avoid the risk of understating charges. However, it is the responsibility of the UCITS to select the most appropriate representative share class having regard to the characteristics of the UCITS, the natures of the differences between share classes in the UCITS and the range of choices on offer to each investor.

Question 4: Past performance

Date last updated: September 2012

Question 4a: If a UCITS does not yet have performance data for one complete calendar year (and is not a UCITS which may provide simulated data for past performance), how should this position be disclosed in the KIID?

Answer 4a: In accordance with Article 15(4) of Commission Regulation (EU) No 583/2010 a statement that there is insufficient data to provide a useful indication of past performance should be included in the KIID. There is no need to accompany that statement with a blank performance chart.

Question 4b: Where a UCITS refers to an index in its investment objectives and policies as a benchmark and will measure the performance against this but does not intend to track that index, is it necessary to show the performance of the benchmark index in the past performance section of the KIID?

Answer 4b: Yes, in accordance with Article 18(1) of Commission Regulation (EU) No 583/2010, a bar showing the performance of the benchmark index must be included in the bar chart alongside each bar showing the UCITS past performance. It should be made clear in the past performance section of the KIID that the performance is not tracking the index.

Question 4c: Where a UCITS refers to an index in its investment objectives and policies (for example as an indication of the universe from which investments may be selected) but does not intend to measure performance against that index, is it necessary to show the performance of the index in the past performance section of the KIID?

Answer 4c: No, in this case it is not necessary to refer to the index in the past performance section of the KIID.

Question 4d: What should be displayed in the bar chart for years when there is no data?

Answer 4d: Pursuant to Article 15, paragraph 3 of Regulation 583/2010, when there is no data available, the year shall be shown as blank with no annotation other than the date.

Question 4e: If the benchmark is changed, how should the chart of past performance be displayed for the period preceding the change?

Answer 4e: Pursuant to Article 17 of Regulation 583/2010, where a material change occurs to a UCITS' objectives and investment policy during the period displayed in the bar chart, the UCITS' past performance prior to that material change shall continue to be shown. Therefore, if the benchmark is modified, the bar chart should display the performance of the previous benchmark for the period preceding the change. A statement indicating this change should also be included in the past performance section.

Question 4f: When several versions of a benchmark are available which differ in the approach taken to reinvestment of revenues, which version should be used in the past performance chart?

Answer 4f: Pursuant to Article 16 of Regulation 583/2010, past performance figures shall be calculated on the basis that any distributable income of the fund has been reinvested. Therefore, where available the performance of the benchmark with reinvestment of revenues should be used in the bar chart alongside the UCITS' past performance. Where such a benchmark does not exist, an appropriate disclosure highlighting that the benchmark does not take into account the reinvestment of revenues should be included in the KIID.

Question 5: Clear language

Date last updated: September 2012

Question 5a: Is it possible to signpost to a glossary?

Answer 5a: Yes. However, as provided by the guide to clear language and layout for the Key Investor Information document (ref. CESR/10-1320), the use of a glossary should not result in too numerous cross-references.

Question 5b: Is it possible to show the complete name of the fund when first mentioned and then simply refer it as “the Fund” after in the KIID.

Answer 5b: Yes and the same approach can be taken for share classes of funds with a reference to “the share class of the fund” in the KIID.



Question 6: Identification of the UCITS

Date last updated: September 2012

Question: Should the name of the investment manager(s) of the UCITS, if any, be disclosed in the KIID?

Answer: No. Only the name of the UCITS management company should be disclosed.