

ZENTRALER KREDITAUSSCHUSS

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VERBAND DEUTSCHER PFANDBRIEFBANKEN E.V. BERLIN

Mr Carlo Comporti
Committee of European
Securities Regulators (CESR)
11 – 13 Avenue de Friedland
75008 Paris
FRANCE

10785 Berlin, 8 September 2009
Schellingstraße 4
Tel.: + 49 (0) 30/20 21 – 1610
Fax: + 49 (0) 30/20 21 – 19 1600
Dr. La / sk

CESR's technical advice at level 2 on the format and content of Key Information Document disclosures for UCITS

Ref.: CESR/09-552

AZ ZKA: EG-INV-RE

AZ BVR: EG-INV-RE

Dear Mr Comporti,

We are grateful for the opportunity to comment on CESR's consultation paper "CESR's technical advice at level 2 on the format and content of Key Information Document disclosures for UCITS". Please find enclosed our comments to the consultation paper. Please feel free to contact Mr Diedrich Lange in case of any queries.

Yours sincerely,

on behalf of the Zentraler Kreditausschuss
Bundesverband der Deutschen
Volksbanken und Raiffeisenbanken e.V. BVR
National Association of German Cooperative Banks



Gerhard Hofmann

by proxy

Dr. Diedrich Lange



Enclosure

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Response to CESR's technical advice at level 2 on the format and content of Key Information Document disclosures for UCITS

Ref.: CESR/09-552

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September 2009

¹ The ZKA is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks financial group, and the Verband deutscher Pfandbriefbanken (vdp), for the mortgage banks. Collectively, they represent more than 2,200 banks.

Do you agree with the proposals in Box 1?

We feel that a stand-alone, numbered bullet point for the envisaged disclaimer is missing to the effect that the author shall not be liable for the completeness of the information. This disclaimer is necessary because, compared to the prospectus, the short information can never be exhaustive. We do not subscribe to CESR's proposal that the disclaimer ought to be virtually hidden under the heading "practical information". Apart from the foregoing caveats, we agree to the proposals.

Should the information referred to in point 9 of the box be called „Practical information" ?

Yes, we feel that this information should be called "Practical Information".

Do you agree with the proposals in Box 2?

Yes.

In particular, do you agree that the maximum length of the document and the minimum acceptable point size for type should be prescribed at Level 2?

Yes, we do agree.

Are there any other rules that should be prescribed in relation to the appearance of the KID?

No, there are not.

Do you agree with the proposals in Box 3?

Yes, we do agree.

Do you agree with the proposals in Box 4?

In particular, do you agree that the information shown is comprehensive and provides enough detail to ensure comparability between KIDs?

Are there any other matters that should be addressed at Level 2?

What are your views on the advantages and disadvantages of each option described above?

Yes, we agree to the proposals.

Do you agree that Option B (a synthetic risk and reward indicator accompanied by a narrative) should be recommended in CESR's final advice? Respondents are invited to take due account of the methodology set out in Annex 1, as supplemented by the addendum to be published by the end of July, when considering their view on this question.

No, we are against the recommendation under option B. In terms of content, we feel it is worth highlighting that the risk and reward indicator fosters an oversimplification of the investment decisions as far as the investor-side is concerned. We feel that this is not fit for purpose. Our reservations are particularly owed to the envisaged comparison between funds. We therefore advocate in favour of a purely narrative presentation of risk and reward in the KID. A reduction of the complexity inherent in investment decisions is not possible. Hence, the investor request for a possibly widest-reaching simplification of investment decisions via a signal-type feature should not be accommodated. This is one of the lessons which, last but not least, was learnt during the financial crisis: Unidimensional risk ratings are prone to failure.

Furthermore, we object to a firmly predetermined system for classification into different risk categories. This is a point which we already elaborated in greater detail during the previous consultation. From the point of view of a retail bank, it remains unclear how the risk categorisation interacts with its own obligations under Art. 19 (4) MiFID. Can the risk categorisation be adopted for the purposes of the KID or is the bank obligated to carry out an independent valuation?

In our view, the risk categorisation only makes sense if it is also used as a basis for the suitability test and the appropriateness test under the provisions of MiFID. Otherwise, there is a danger that different statements might confuse the customer. In this case, however, a clear policy on the issue of liability for faulty disclosures would be necessary. Especially intelligibility should become the trademark of the KID; it would not be helpful to limit oneself exclusively to the UCITS Directive. *In lieu* of this, is also worth safeguarding the intelligibility in the context of other Directives, for instance MiFID.

What is more, the practical problems in using the risk categories should not be underestimated. Since the implementation of MiFID, the IT systems of retail banks have already been using risk categories that have been tested and tried on the ground. These vary between banks and depend on the respective structure of the customer base. Furthermore, they do not only cover UCITS products but value each and any of the financial instruments which are distributed by the bank.

We therefore suggest abandoning any plans for a specific system on risk categorisation. For a distributing bank, particularly the strict imposition of 6 classes will probably not be feasible. At least a clear and unequivocal definition of the relations with regard to the obligations of a bank under Art. 19(4) MiFID will be necessary.

Do you agree with the proposals for presentation of risk and reward in Box 5A?

Yes, we do.

Do you agree with the proposals for presentation of risk and reward in Box 5B? In particular, is the proposed methodology in Annex 1 capable of delivering the envisaged benefits of a synthetic indicator?

No. As far as content is concerned, we feel that it is worth noting that the risk and reward indicator promotes an oversimplification of the investment decisions on the investor side (c.f. our caveat above). Particularly with regard to the envisaged comparison between funds, this is not fit for purpose. We therefore advocate in favour of a purely narrative presentation of risk and reward in the short information leaflet. A reduction of the complexity inherent in investment decisions is not possible. Hence, the investor request for a possibly widest-reaching simplification of investment decisions via a signal-type feature should not be accommodated. This is one of the lessons which, last but not least, was learnt during the financial crisis: Unidimensional risk ratings are prone to failure.

Does the methodology proposed by CESR work for all funds? If not, please provide concrete examples.

Respondents are invited to take due account of the methodology set out in Annex 1, as supplemented by the addendum to be published by the end of July, when considering their view on this question.

Are there any other issues that CESR should consider if it decides to recommend this approach to the disclosure of risk and reward?

Do you agree with the proposals in Box 6?

In particular, do you agree the table showing charges figures should be in a prescribed format?

Do you agree with the methodology for calculating the ongoing charges figure?

Contrary to CESR, we are not of the opinion that it will be possible to capture the portfolio's transaction costs in a methodological manner. This is due to the fact that it is impossible to calculate these costs in advance and it is also due to the fact that these costs depend on the respective capital market development which may trigger strategy-based restructurings. Furthermore, these costs depend on the costs for security transactions and settlement thereof.

Do you agree with the proposals in Box 7?

Re 1) No, we do not agree with the proposals. In terms of financial mathematics, the statement which is made in the sentence is by no means clearly defined. Neither does annex 3 make any contribution towards a definition in terms of financial mathematics. For instance, there is no specification as to

- The point in time at which the combined effect should be measured
- The fact that depending on the point in time of the comparison there will have to be a discounted comparative calculation
- That a comparison – last but not least with other fund products - only delivers meaningful information when seen on a yield basis and not in absolute terms.

Based on the foregoing, we are against the envisaged proposal. This is due to the fact that it is not feasible in its current form. Furthermore, we have strong concerns over written disclosures of estimates to customers. Our reservations are owed to the fact that such estimates will invariably be based on a host of assumptions which require a great deal of explanation and, for this reason, will hardly be fit for purpose. Last but not least, once the arithmetics underpinning the assumptions have been presented to the customer, said assumptions will, to some extent, prejudice future costs. However, it is not possible to require such a long-term self obligation. The disclaimer is by far not comprehensive enough for the requisite exhaustive exemption from liability. This is especially true in view of the fact that Euro amounts are supposed to be mentioned which give rise to an expectation that – in view of the uncertainties which have been mentioned above - cannot be met.

In particular, do you agree that CESR should not prescribe a specific growth rate in the methodology for calculating the illustration of the charges?

Yes, we do.

Do you agree with the proposals in Box 8?

Yes, we do.

Do you agree that a variation of 5% of the current figure is appropriate to determine whether a change is material?

No, the percentage rate is too low. We suggest a ratio of at least 10%.

Do you agree with the proposals in Box 10?

Yes, however also at this juncture, the percentage rate is too low. We suggest a percentage rate of at least 10% (cf. above).

Do you agree that the above CESR proposals on past performance presentation are sufficient and workable? If not, which alternative approach would you prefer?

Do you agree that the above CESR proposals on past performance presentation are sufficient and workable? If not, which alternative approach would you prefer?

Yes, we do agree.

Do you agree that the above CESR proposals on material changes are sufficient and workable? If not, which alternative approach would you prefer?

Do you agree with this approach? If not, which alternative approach would you prefer?

Do you agree that the above CESR proposals on the use of „simulated“ data for past performance past performance presentation are sufficient and workable? If not, please suggest alternatives?

Do you agree with the proposals in Box 17?

Do you agree with the proposals in Box 18?

Do you agree with the proposals in Box 19?

Do you agree with the proposals in Box 20?

Yes, we do agree.

Do you agree with the proposals in Box 21?

Do you agree with the proposals in Box 22?

Do you agree with the proposals in box 23?

Yes, we do agree.

Do you agree with the above CESR proposals on performance scenarios? In particular which option (A or B) should be recommended? If not, please suggest alternatives.

Do you agree with the proposals in box 25? If not, what alternative approach would you suggest?

Do you agree with the approach to transitional provisions set out above?

Are there any other topics, relating to KII or use of a durable medium, not addressed by this consultation, for which CESR might undertake work on developing Level 3 guidelines?