

## Key Investor Information Document Q&A

A number of significant reforms to the UCITS regulatory regime were implemented in July 2011, designed to modernise and enhance the UCITS framework, increase efficiencies for industry participants and reduce operating costs. These reforms were introduced by what is known as the UCITS IV directive, which also consolidated into one piece of legislation all of the previous UCITS legislative measures (with the exception of the 2007 Eligible Assets Directive.)<sup>1</sup>

The implementation of UCITS IV resulted in the introduction of the Key Investor Information Document (“**KIID**”), a compulsory, pre-contractual, consumer communication which is required by all UCITS to be made available in a durable medium to investors in EU member states.

The purpose of the KIID is to summarise the key features of a UCITS so as to provide retail investors with sufficient information in respect of an investment product and its risks, thereby allowing them to make an informed investment decision.

A KIID must be drafted in a clear and concise manner, in language which makes it easily understood by the average retail investor and the use of technical and legal jargon must be avoided. The investment objective and policies of a fund cannot be simply copied and pasted from the prospectus documentation, unless that wording has been reviewed in light of the regulation governing the KIID and is seen to strictly conform to the European Securities and Markets Authority (“**ESMA**”) guidance on clear English. In preparing a KIID, the management company / self-managed UCITS is required to pitch its content at an average retail investor who is reading about a fund for the first time.

The KIID must also include a synthetic risk and reward indicator (“**SRRI**”), a numerical scale from 1 to 7, based on the volatility of a UCITS’ past performance, with 1 indicating a low risk and reward and 7 indicating a high risk and reward potential, thus simplifying an investor’s ability to compare investment products.

### What is the prescribed format for the KIID?

The KIID can be no longer than two pages in length (three pages for a structured UCITS). It must be prepared in a predetermined format, pursuant to guidelines issued by ESMA, thereby allowing investors to easily compare different UCITS products. The two page limit applies to translated versions of the KIID and should be taken into account in the preparation stages, as once translated, certain languages such as German and Finnish can expand the text by 20-30%.

The five key sections of the KIID are:

- Objectives and Investment Policy
- Risk and Reward Profile
- Charges
- Past Performance
- Practical Information

The KIID must follow the running order of the ESMA template. There are significant restrictions on the ability to depart from the prescribed format or to insert additional wording which is not set out in the ESMA template. The KIID should not be presented in a manner which is likely to result in investors considering it less important than other available information in respect of the UCITS.

### What is the minimum font size permitted?

While ESMA has prescribed a minimum font size of 8, it has recommended a font size of 10 to 11. The Central Bank of Ireland (“**Central Bank**”) has recommended a font size of 10, also accepting that a font size of 9 might be acceptable if the document is

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1. The consolidated UCITS provisions as set out in Directive 2009/65/EC and later amended by Directive 2014/91/EU are referred to in this briefing note as the UCITS Directive

sufficiently clear as a whole. In practice, we have seen a number of clients opt to prepare the English draft of KIIDs in a larger font size (eg, font size 10 or 11) than its translated counterparts (eg, font size 9).

## **Can a UCITS have a consolidated KIID for all sub-funds?**

No, but it is possible to have a multiple share class KIID for one sub-fund, provided the document clearly distinguishes between the share classes where necessary. To date, we have typically seen clients opt to prepare KIIDs per share class.

## **When must the KIID be updated?**

KIIDs must be updated within 35 business days of 31 December each year. There are a number of general requirements with regard to updating KIIDs outside of this annual update.

## **When will the SRRI need to be updated?**

If there is a change in the fund's objective or investment policy which may impact the SRRI, the SRRI will need to be updated immediately. Otherwise, the SRRI should be updated where it has been inaccurate over a four month period.

## **Following the implementation of amendments to the UCITS regulatory framework set out in the UCITS V directive, is a UCITS required to incorporate a disclosure in respect of its remuneration policy?**

A UCITS or its manager must adopt a remuneration policy pursuant to the amended UCITS Directive. The KIID must contain a statement to the effect that details of the up-to-date policy are available by means of a website. A link to the relevant website must also be included, along with a disclosure outlining that a paper copy of the policy will be available upon request. All existing KIIDs must be updated by February 2017.

## **Will the Central Bank review the KIID?**

The Central Bank does not typically subject the KIID to prior review, however it does reserve the right to review the KIID and revert to the UCITS at a later date. The KIID is filed electronically with the Central Bank, together with written confirmation that the KIID complies in full with the relevant regulations and guidance. The confirmation must also provide that the information set out in the KIID does not conflict with the contents of the prospectus. Translated KIIDs must be filed with the Central Bank as part of a foreign registration notification, as prescribed by the UCITS Directive ie, not as part of the general KIID submission.

## **When should the KIID be provided to investors?**

The KIID must be provided to investors in "such good time before their proposed subscription of units" in the UCITS. Where a UCITS is not selling directly, but uses a distributor or other intermediary, the KIID must be provided to that third party for onward provision to the investor.

It is not necessary to circulate updated KIIDs to existing investors, as any relevant notification of material changes will have been provided to investors in advance and the updated KIID will be made available online / in a durable medium.

The KIID must be provided to investors free of charge. Potential investors must be given the choice between receiving a hard copy of the KIID or alternatively through a durable medium. The KIID may also be attached to another document, such as a prospectus, when it is given to the potential investor. In such cases, however, the context in which the KIID appears should not undermine the KIID, or imply that it is an item of promotional literature or that accompanying items of promotional literature are of equal or greater relevance to the retail investor.

## **Is it possible to cross-reference to the prospectus within the KIID?**

Yes, but this should be kept to a minimum. The KIID should contain all information necessary for the investor to understand the essential elements of the UCITS. In addition, the legislation provides that where sources other than the prospectus or periodic reports are used, it should be made clear that these documents are the primary sources of additional information and such cross referencing should not downplay their significance.

## **What approach do we recommend when preparing the Objectives and Investment Policies section of the KIID?**

ESMA guidance confirms that the investment policy should be based on current and expected investments in instruments and confirms that some sections of the prospectus may be immaterial for the KIID. If there is potential to invest in a wide variety of investment investments in different markets, the UCITS is expected to analyse their materiality based on past and expected usage. ESMA guidance further provides that where necessary, the Objectives and Investment Policies section of the KIID can go beyond that of the prospectus and use elements covered in other sections of the prospectus.

## What should be included when calculating the ongoing charges figure?

An ongoing charges figure of a UCITS, together with any entry / exit charges and performance fee must be set out in the KIID. The ongoing charges figure must include all costs borne by the UCITS, based on the total of all such payments made over a specific period. This will include costs incurred for the operation of the UCITS or the remuneration of parties providing services to the UCITS.

## Is branding permitted?

Yes, provided that it does not distract the investor from the essential contents of the KIID or generally obscure text.

## Future Developments

The regulation on packaged retail and insurance based investment products ("**PRIIPs Regulation**") introduces a new three page Key Information Document ("**KID**") for products within the scope of the regulation marketed to retail investors. The PRIIPs Regulation applies from 31 December 2016, but UCITS are expressly exempted from its requirements until December 2019, when the European Commission is required to consider whether the requirement to produce a KID should apply to UCITS.

Full details of the Asset Management and Investment Funds Group, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team, can be accessed at [www.matheson.com](http://www.matheson.com).

## Contacts



**Tara Doyle**

PARTNER

D +353 1 232 2221  
E tara.doyle@matheson.com



**Michael Jackson**

MANAGING PARTNER

D +353 1 232 2000  
E michael.jackson@matheson.com



**Dualta Counihan**

PARTNER

D +353 1 232 2451  
E dualta.counihan@matheson.com



**Joe Beashel**

PARTNER

D +353 1 232 2101  
E joe.beashel@matheson.com



**Anne-Marie Bohan**

PARTNER

D +353 1 232 2212  
E anne-marie.bohan@matheson.com



**Shay Lydon**

PARTNER

D +353 1 232 2735  
E shay.lydon@matheson.com



**Liam Collins**

PARTNER

T +353 1 232 2195  
E liam.collins@matheson.com



**Philip Lovegrove**

PARTNER

D +353 1 232 2538  
E philip.lovegrove@matheson.com



**Elizabeth Grace**

PARTNER

D +353 1 232 2104  
E elizabeth.grace@matheson.com



**Oisín McClenaghan**

PARTNER

T +353 1 232 2227  
E oisincclenaghan@matheson.com



**Michelle Ridge**

PARTNER

T +353 1 232 2758  
E michelle.ridge@matheson.com



**Barry O'Connor**

PARTNER

T +353 1 232 2488  
E barry.oconnor@matheson.com

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