

**2<sup>nd</sup> Circular addressed to the financial services industry  
regarding the recast EU Directive on Undertakings for Collective  
Investment in transferable Securities ('UCITS IV Directive')**

**Key Investor Information ('KII')**

**4<sup>th</sup> December, 2009**

**The purpose of this circular is to provide the financial services industry with:**

- (a) A brief overview of the principal elements of the KII;
- (b) An overview of CESR's advice on the KII and other possible work;
- (c) An outline on how the Authority plans to transpose the requirements on the KII. This circular also services as a consultation document on the new rules which the MFSA intends to adopt in order to transpose those articles in the UCITS IV Directive which set requirements relating to the KII; and
- (d) An update on recent developments relating to the UCITS IV Directive.

**What is the KII?**

The UCITS IV Directive will be introducing a standardised summary information document which will be entitled '*Key Investor Information*' ('KII'). The KII is set to replace the currently required '*Simplified Prospectus*' for all UCITS Schemes with a view to assisting the investor by improving transparency and comparability through a short and standardised fact sheet which will be prepared in non-technical language.

As in the case of the Simplified Prospectus, all UCITS schemes will be required to prepare a KII which must be delivered to all investors in the Scheme. The requirements on the KII are set out in articles 78 to 82 of the UCITS IV Directive. These articles will be supplemented by the implementing measures which will be issued by the Commission further to CESR's level 2 technical advice.

**CESR's level 2 technical advice on the format and content of the KII**

On the 28<sup>th</sup> October, 2009, CESR issued its technical advice at level 2 on the format and content of the KII. The main areas covered by CESR's advice are the following:

**[i] Format and Presentation** – This section describes the KII's format and suggests that plain language should be used in preparing this document. In this section, CESR also recommends

that the document ought to be concise and sets certain limits to the number of pages which should make up the KII.

**[ii] Objectives and Investment Policy** – CESR is of the view that the KII should provide a simple description of the investment objectives and policies of each UCITS. In this regard, the text to be utilised in the KII should be understandable by a retail investor. CESR also recommends that the KII should include a statement on the lines that investors may redeem their units on request. This recommendation is being made on the basis that a consumer testing exercise indicated that a significant number of investors failed to understand this essential feature of all UCITS.

**[iii] Risk & Reward** – CESR’s advice states that UCITS should adopt the Synthetic Risk & Reward Indicator (‘SRRI’), which is a numerical scale which represents a sequence of whole numbers in ascending order, representing the level of risk and reward from lower to higher. CESR also recommends that this is supported by a narrative explanation of the main limitations of the indicator and a narrative presentation of the material risks relevant to the respective Sub-Fund of the UCITS Scheme, which are not fully captured by the methodology of the synthetic indicator.

**[iv] Charges** – In this area, CESR makes recommendations on the type of disclosure the KII should contain on the charges which are applicable with respect to an investment in a particular sub-fund. In this regard, CESR outlines that the KII should contain a table of charges with prescribed headings such as: entry/ exit charges; ongoing charges figure; portfolio transaction costs; and performance fees.

**[v] Past Performance** – CESR advises that presentation of past performance should be made through the use of a bar chart displaying up to ten years performance where available. CESR’s advice also includes specific requirements on the methodology of calculating the past performance of a fund.

**[vi] Practical Information** – CESR recommends the inclusion of a section in the KII that provides additional information which is relevant to investors in every Member State in which the UCITS is promoted to the public.

**[vii] Circumstances in which the KII should be revised** – UCITS IV requires a fund manager to maintain the essential elements of the KII up to date. In this regard, CESR’s advice in this area indicates what should be taken into account in deciding whether and when a revision is needed.

**[viii] Special Cases - how the KID might be adapted for particular fund structures** – Given the extensive variety of structures that exist in the UCITS sphere, CESR identified several situations in which a customised approach to the content of the KII might be necessary. This section is intended to ensure that investors are provided with an appropriate level of information regardless of the UCITS’ structure.

### **CESR Level 3 measures on the KII**

CESR’s advice explains that there may be other aspects of the UCITS IV Directive which may affect the provisions of the KII and thus Level 3 measures may be required. Furthermore, Article 118 (2) of the UCITS IV Directive states that with respect to the KII, a special transitional

provision of a further 12 months after the implementation date (1<sup>st</sup> July 2011) will be allowed for UCITS to replace their simplified prospectus with the KII. CESR further states that during the additional 12 month period, Competent Authorities must continue to accept the simplified prospectus for both domestic and foreign passporting UCITS.

### **Consultation on the proposed MFSA measures for the transposition of the articles in the UCITS IV Directive relating to the KII**

As indicated above, the requirements on the KII are set out in articles 78 to 82 of the UCITS IV Framework Directive. These will be supplemented with level 2 requirements which will be adopted by the Commission further to CESR's advice. This circular has *inter alia* the purpose of: [i] serving as a consultation document on the amendments to the standard licence conditions ('SLCs') and new additions which the Authority intends to make in Part B II of the Investment Services Rules for Retail Collective Investment Schemes, for transposing the requirements of UCITS IV framework directive that relate to the KII; and [ii] providing the industry with an indication of how the Authority intends to implement the Commission's implementing measures depending on whether these are issued in the form of an EC Regulation or a EC Directive.

### **Amendments and additions to the SLCs in Part BII of the Investment Services Rules for Retail Collective Investment Schemes ('Part BII')**

The SLCs in Part BII will be amended in order to replace reference to the simplified prospectus with reference to the KII. In addition the Authority plans to introduce thirteen new SLCs in Part B II of the Rules in order to transpose article 78 to 82 of the UCITS IV framework directive. The attached document outlines these new SLCs. **The MFSA invites comments by not later than the 31<sup>st</sup> December, 2009 on the draft new rules attached to this document. Interested parties are to send their comments in writing addressed to the Director – Securities Unit, MFSA.**

### **Commission Level 2 Implementing measures**

The Commission's Level 2 implementing measures may be issued either in the form of an EC Directive or an EC Regulation. Should these measures be issued in the latter form, these would not require transposition, as an EC Regulation by nature would automatically be applicable in Malta and enforceable by the MFSA. In this regard, the Authority would simply amend its Rules to cross refer to the Regulation with the ultimate purpose of alerting the industry about its applicability in Malta.

If, on the other hand, the Commission Level 2 measures are issued in the form of an EC Directive, the supplementary requirements on KII would need to be transposed into Maltese law. In this regard, the MFSA intends to issue an Appendix to the new Rules which would cover the supplementary technical implementing measures issued by the Commission.

### **Recent Developments**

On the 17<sup>th</sup> November, 2009 the UCITS IV Framework Directive was published in the Official Journal of the European Union. A copy of the UCITS IV Directive is available on the MFSA's web-page dedicated to 'Securities' in the section entitled 'UCITS IV'.

MFSA encourages members of the Maltese investment funds industry to download a copy of the UCITS IV from our web-page and familiarise themselves with the requirements of this Directive.

### **Contacts**

Should you have any queries regarding the UCITS IV Directive and the KII please do not hesitate to contact:

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## **New Section – Key Investor Information**

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### **NEW SLC [transposing article 78 (1) of the UCITS IV Framework Directive]**

The Scheme or the Manager shall draw up a short document on each UCITS containing key information for investors. This document shall be referred to as the key investor information ('KII'). The words 'key investor information' shall be clearly stated in the document. Where the UCITS is marketed outside Malta further to the notification procedures set out in the Undertakings for Collective Investment in Transferable Securities and Management Regulations, the words 'key investor information' shall be stated in one of the official languages of the Host State where the UCITS is marketed or into a language approved by the Competent Authorities of that State.

### **NEW SLC [transposing article 78 (2) of the UCITS IV Framework Directive]**

The KII shall include appropriate information about the essential characteristics of the UCITS concerned, which should be provided to investors so that they are reasonably able to understand the nature and the risks of the investment product that is being offered to them and, consequently, to take investment decisions on an informed basis.

### **NEW SLC [transposing article 78 (3) of the UCITS IV Framework Directive]**

The KII shall provide information on the following essential elements in respect of the UCITS concerned:

- (a) identification of the UCITS;
- (b) a short description of its investment objectives and investment policy;
- (c) past performance presentation or, where relevant, performance scenarios;
- (d) costs and associated charges; and
- (e) risk/reward profile of the investment, including appropriate guidance on and warnings of the risks associated with investments in the relevant UCITS.

The KII shall present these essential elements in a manner that is likely to be understood by retail investors without having to refer to other documents.

### **NEW SLC [transposing article 78 (4) of the UCITS IV Framework Directive]**

The KII shall clearly specify where and how to obtain additional information on the proposed investment, including but not limited to where and how the prospectus and the annual and half-yearly report can be obtained free of charge at any time, and the language in which such information is available to investors.

## **NEW SLC [transposing article 78 (5) of the UCITS IV Framework Directive]**

The KII shall be written in a brief manner and in non-technical language. It shall be drawn up in a common format, allowing for comparison, and shall be presented in a way that is likely to be understood by retail investors.

## **NEW SLC [transposing article 78 (6) of the UCITS IV Framework Directive]**

Where the UCITS is passporting outside Malta, the KII shall be used without the need of alterations or supplements, except translation, in all Member States where the UCITS is notified to market its units in accordance with the Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations.

## **NEW SLC [transposing article 78 (7) of the UCITS IV Framework Directive]**

**[Implementing Measures – Scenario 1/Commission Regulation - The following will be adopted in the Rules, if the Commission’s implementing measures are issued in the form of a Regulation]**

In complying with the above SLCs of this section of Part B II of the Investment Services Rules for Retail Collective Investment Schemes, the Scheme or the Manager shall also refer and comply with the applicable provisions of Chapter XX of the Commission Regulation.

**OR**

**[Implementing Measures – Scenario 2/Commission Directive - The following will be adopted in the Rules, if the Commission’s implementing measures are issued in the form of a Directive]**

In complying with the above SLCs of this section of Part B II of the Investment Services Rules for Retail Collective Investment Schemes, the Scheme or the Manager shall also refer and comply with the provisions set in Annex XX to Appendix I of Part B of these Rules.

## **NEW SLC [transposing article 79 of the UCITS IV Framework Directive]**

The KII shall constitute pre-contractual information. It shall be fair, clear and not misleading. It shall be consistent with the relevant parts of the prospectus.

The KII shall contain a warning to the effect that the Scheme and the Manager shall not be liable to civil action on the basis of the information contained in the KII, unless this information is misleading, inaccurate or inconsistent with the relevant parts of the prospectus.

## **NEW SLC [transposing article 80 (1 & 3) of the UCITS IV Framework Directive]**

The Scheme or the Manager, which sell units in the UCITS directly or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility, shall provide investors with the KII on such UCITS Schemes in good time before their proposed subscription of units in such UCITS Schemes. The KII shall be provided to investors free of charge.

## **NEW SLC [transposing article 80 (2 & 3) of the UCITS IV Framework Directive]**

The Scheme or the Manager, which does not sell units in a UCITS directly or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility, shall provide the KII to product promoters and intermediaries selling or advising investors on potential investments in such UCITS or in products offering exposure to such UCITS.

**In addition to the above, in order to transpose article 80 (2&3), the following SLC shall be included in the Investment Services Rules for Investment Services Providers:**

Licence Holders selling or advising investors on potential investments in UCITS, shall provide the KII to their clients or potential clients. The KII shall be provided to investors free of charge.

## **NEW SLC [transposing article 81 of the UCITS IV Framework Directive]**

The KII may be provided to investors in a durable medium or by means of a website. A paper copy shall be delivered free of charge to the investor, upon request.

The Scheme or the Manager shall ensure that an up-to-date version of the KII is made available on their website.

**[Implementing Measures – Scenario 1/Commission Regulation - The following will be adopted in the Rules, if the Commission’s implementing measures are issued in the form of a Regulation]**

In complying with this SLC, the Scheme or the Manager shall also refer and comply with the applicable provisions of Chapter ... of the Commission Regulation.

**OR**

**[Implementing Measures – Scenario 2/Commission Directive - The following will be adopted in the Rules, if the Commission’s implementing measures are issued in the**

**form of a Directive]**

In complying with this SLC, the Scheme or the Manager shall also refer and comply with the provisions set in Annex IV to Appendix I of Part B of these Rules.

**NEW SLC** [transposing article 82 (1) of the UCITS IV Framework Directive]

The Scheme shall submit its KII and any amendments thereto, to the MFSA for approval prior publication.

**NEW SLC** [transposing article 82 (2) of the UCITS IV Framework Directive]

The essential elements of the KII shall be kept up to date.