

Financial Services (Collective Investment Schemes)
FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES)
(KEY INVESTOR INFORMATION) REGULATIONS 2011

2005-48
Repealed
Subsidiary
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Subsidiary Legislation made under s.53.

**FINANCIAL SERVICES (COLLECTIVE INVESTMENT
SCHEMES) (KEY INVESTOR INFORMATION)
REGULATIONS 2011**

Repealed by Act.2019-26 as from 15.1.2020

(LN. 2011/194)

Commencement **13.10.2011**

Amending enactments	Relevant current provisions	Commencement date
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EU Legislation/International Agreements involved:

Directive 2009/65/EC

Regulation (EU) No 583/2010

2005-48

Repealed

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In exercise of the powers conferred on me by section 53 of the Financial Services (Collective Investment Schemes) Act 2011 and in order to give effect in the law of Gibraltar to 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, I have made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Financial Services (Collective Investment Schemes) (Key Investor Information) Regulations 2011 and come into operation on the day of publication.

Application.

2.(1) In this regulation, “the Regulation” means 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, as set out in the Schedule.

(2) The provisions of the Regulation set out in columns 1 and 2 of the table below shall be read in light of column 3.

ARTICLE NUMBER IN THE REGULATION	WORDS IN THE REGULATION	TO BE READ AS
2(2)	Directive 2009/65/EC	The Financial Services (Collective Investment Schemes) Act 2011
4(12)	Article 16 of Directive 2009/65/EC	Regulation 13 of the Financial Services (Collective Investment Schemes) Regulations 2011
8(5)(e)	Article 50(1)(g) of Directive 2009/65/EC	Regulation 47(1)(g) of the Financial Services (Collective Investment Schemes) Regulations 2011
9	Directive 2010/43/EU	The Financial Services (Collective Investment Schemes) (Conduct of

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		Business) Regulations 2011
19(4)	Article 2(1)(p)(i) and (iii) of Directive 2009/65/EC	Paragraphs (a) and (c) of the definition of “merger” in regulation 2(1) of the Financial Services (Collective Investment Schemes) Regulations 2011
28	Article 50(1)(e) of Directive 2009/65/EC	Regulation 47(1)(e) of the Financial Services (Collective Investment Schemes) Regulations 2011
31(1)	Article 58 of Directive 2009/65/EC,	Regulation 73 of the Financial Services (Collective Investment Schemes) Regulations 2011
34(2)(b)	Article 63(5) of Directive 2009/65/EC	Regulation 78(5) of the Financial Services (Collective Investment Schemes) Regulations 2011
38(1)	Directive 2009/65/EC	The Financial Services (Collective Investment Schemes) Act 2011

Offences.

3.(1) It shall be an offence for any person to be responsible for any act or omission contrary to the provisions of the Regulation (as defined in regulation 2) or these Regulations.

(2) Any person found guilty of an offence contrary to sub-regulation (1) shall be punishable on summary conviction by a fine not exceeding level 5 on the standard scale.

(3) The Authority may take into account any offence committed contrary to sub-regulation (1) when deciding whether to grant, renew, revoke or suspend any permit, licence or authorisation to the person responsible for the offence and material to the facts giving rise to the offence.

(4) Nothing in this regulation applies to the Minister or to the competent authority.

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SCHEDULE

Regulation 2(1)

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (1), and in particular Article 75(4), Article 78(7), and Article 87(2) thereof,

Whereas

(1) Directive 2009/65/EC specifies the main principles that should be followed in preparing and providing key investor information, including requirements concerning its format and presentation, its objectives, the main elements of the information that is to be disclosed, who should deliver the information to whom and the methods that should be used for such delivery. Details on the content and format have been left to be developed further by means of implementing measures, which should be specific enough to ensure that investors receive the information they need in respect to particular fund structures.

(2) The form of a Regulation is justified as its form alone can ensure that the exhaustive content of key investor information is harmonised. Furthermore, a key investor information document will be more efficient where requirements applicable to it are identical in all Member

States. All stakeholders should benefit from a harmonised regime on the form and content of the disclosure, which will ensure that information about investment opportunities in the UCITS market is consistent and comparable.

(3) In some cases, key investor information can be delivered more effectively when the key investor information document is provided to investors through a website, or where the key investor information document is attached to another document when it is given to the potential investor. In these cases, however, the context in which the key investor information document appears should not undermine the key investor information document, 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.

(4) It is necessary to ensure that the content of the information is relevant, the organisation of the information is logical and the language appropriate for retail investors. To address these concerns, this Regulation should ensure that the key investor information document is able to engage investors and aid comparisons through its format, presentation and the quality and nature of the language used. This Regulation aims to ensure consistency in the format of the document, including a common running order with identical headings.

(5) This Regulation specifies the content of the information on investment objectives and the investment policy of UCITS so that investors can easily see whether or not a fund is likely to be suitable for their needs. For this reason, the information should indicate whether returns can be expected in the form of capital growth, payment of income,

(1) OJ L 202, 27.7.2009, p. 32.

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not a combination of both. The description of the investment policy should indicate to the investor what the overall aims of the UCITS are and how these objectives are to be achieved. With regard to the financial instruments in which investments are to be made, only those which may have a material impact on UCITS performance need to be mentioned, rather than all possible eligible instruments.

- (6) This Regulation lays down detailed rules on the presentation of the risk and reward profile of the investment, by requiring use of a synthetic indicator and specifying the content of narrative explanations of the indicator itself and risks which are not captured by the indicator, but which may have a material impact on the risk and reward profile of the UCITS. In applying the rules on the synthetic indicator account should be taken of the methodology for the calculation of the synthetic indicator as developed by competent authorities working within the Committee of European Securities Regulators. The management company should decide on a case-by-case basis which specific risks should be disclosed by analysing the particular characteristics of each fund bearing in mind the need to avoid overloading the document with information that retail investors will find difficult to understand. In addition the narrative explanation of the risk and reward profile should be limited in size in terms of the amount of space it occupies within the key investor information document. It should be possible to have cross-references to the prospectus of the UCITS where full details of its risks are disclosed.
- (7) Consistency should be ensured between the explanation of risks in the key investor information document and the management company's internal processes related to risk management established in accordance with Commission Directive 2004/39/EC of 1 July 2004 implementing Directive 2009/65/EC of the European Parliament and the Council as regards organisational requirements, conflicts of interests, conduct of business, risk management and content of the agreement between a depositary and a management company⁽⁹⁾. For instance, so as to ensure consistency, the permanent risk management function should where appropriate be given the opportunity to review and comment on the risk and reward profile section of the key investor information document.
- (8) This Regulation specifies the content for and form of the presentation and explanation of charges, including relevant warnings, so that investors are appropriately informed about the charges they will have to meet and their proportion to the amount of capital actually invested into the fund. In applying these rules, account should be taken of the work on the methodology for the calculation of charges figures as developed by competent authorities working within the Committee of European Securities Regulators.
- (9) The detailed rules on the presentation of information about past performance are based on the requirements for such information in the Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/311/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC⁽¹⁰⁾. This Regulation supplements the rules of Directive 2004/39/EC by including specific requirements necessary for harmonising the information for the purpose of facilitating comparisons between different key investor information documents. In particular, this Regulation prescribes that only net annual returns shall be shown, through a bar chart format. Certain aspects of the presentation of the bar chart should be regulated, including the limited circumstances in which simulated data might be used.
- (10) It should be recognised that cross-referring to information might be useful to the investor but it is essential that the key investor information document should contain all information necessary for the investor to understand the essential elements of the UCITS. If cross-references to sources of information other than the prospectus and periodic reports are used, it should be made clear that the prospectus and periodic reports are the primary sources of additional information for investors, and the cross-references should not downplay their significance.
- (11) The key investor information document should be reviewed and revised as appropriate and as frequently as is necessary to ensure that it continues to meet the requirements for key investor information specified in Articles 48(2) and 79(1) of Directive 2009/65/EC. As a matter of good practice, management companies should review the key investor information document before entering into any initiative that is likely to result in a significant number of new investors acquiring units in the fund.
- (12) The form or content of key investor information may need to be adjusted to specific cases. Consequently, this Regulation tailors the general rules applicable to all UCITS so as to take into account the specific situation of certain types of UCITS, namely those having different investment compartments or share classes, those with fund-of-funds structures, those with master-feeder structures, and those that are structured, such as capital protected or comparable UCITS.

(9) See page 42 of this Official Journal.

(10) OJ L 145, 30.4.2004, p. 1.

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- (13) With regard to UCIS having different share classes, there should be no obligation to produce a separate key investor information document for every such share class, so long as investors' interests are not compromised. The details of two or more classes may be combined into a single key investor information document only where this can be done without making the document too complicated or crowded. Alternatively, a representative class may be selected, but only in cases where there is sufficient similarity between the classes such that information about the representative class is fair, clear and not misleading as regards the represented class. In determining whether the use of a representative class is fair, clear and not misleading, regard should be had to the characteristics of the UCIS, the nature of the differences represented by each class, and the range of choices on offer to each investor or group of investors.
- (14) In the case of a fund of funds, the right balance is kept between the information on the UCIS that the investor invests in and its underlying collectives. The key investor information document of a fund of funds should therefore be prepared on the basis that the investor does not wish or need to be informed in detail about the individual features of each of the underlying collectives, which in any case are likely to vary from time to time if the UCIS is being actively managed. However, in order for the key investor information document to deliver effective disclosure of the fund of funds' objective and investment policy, risk factors and changing structure, the characteristics of its underlying funds should be transparent.
- (15) In the case of master-feeder structures, the description of the feeder UCIS' risk and reward profile should not be materially different to that of the corresponding section in the master UCIS' key investor information document so that the feeder can copy information from the key investor information document of the master wherever it is relevant. However, this information should be supplemented by relevant statements or only adjusted in those cases where ancillary assets held by the feeder might modify the risk profile compared to the master, addressing the risks inherent in these ancillary assets, for instance where derivatives are used. The combined costs of investing in the feeder and the master should be disclosed to investors in the feeder.
- (16) With regard to structured UCIS, such as capital protected and other comparable UCIS, the provision of prospective performance scenarios in place of past performance information is required. Prospective performance scenarios involve calculating the expected return of the fund under favourable, adverse, or neutral hypotheses regarding market conditions. These scenarios should be chosen so as to effectively illustrate the full range of possible outcomes according to the formula.
- (17) Where the key investor information and the prospectus are to be provided in a durable medium other than paper or by means of a website, additional safety measures are necessary for investor protection reasons, so as to ensure that

investors receive information in a form relevant to their needs and so as to maintain the integrity of the information provided, prevent alterations that undermine its comprehensibility and effectiveness and avoid manipulation or modification by unauthorised persons. This Regulation contains a reference to rules on durable medium laid down in the Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defining terms for the purposes of that Directive (7) in order to ensure the equal treatment of investors and a level playing field in financial sectors.

- (18) In order to allow management companies and investment companies to adapt to the new requirements contained in this Regulation in an efficient and effective manner, the starting date of application of this Regulation should be aligned with the transposition of Directive 2009/65/EC.
- (19) The Committee of European Securities Regulators, established by Commission Decision 2009/77/EC (8), has been consulted for technical advice.
- (20) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee.

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND GENERAL PRINCIPLES

Article 1

Subject matter

This Regulation lays down the detailed rules for the implementation of Articles 75(2), 76(2) to (5) and 81(1) of Directive 2009/65/EC.

Article 2

General principles

1. Requirements laid down in this Regulation shall apply to any management company with regard to each UCIS it manages.
2. This Regulation shall apply to any investment company which has not designated a management company authorised pursuant to Directive 2009/65/EC.

(7) OJ L 24, 2.9.2006, p. 26.

(8) OJ L 35, 29.1.2009, p. 12.

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Article 3

Principles regarding the key investor information document

1. This Regulation specifies in an exhaustive manner the form and content of the document containing key investor information (hereinafter referred to as key investor information document). No other information or statements shall be included except where this Regulation states otherwise.
2. The key investor information shall be fair, clear and not misleading.
3. The key investor information document shall be provided in such a way as to ensure that investors are able to distinguish it from other material. In particular, it shall not be presented or delivered in a way that is likely to lead investors to consider it less important than other information about the UCITS and its risks and benefits.

CHAPTER II

FORM AND PRESENTATION OF KEY INVESTOR INFORMATION

SECTION 1

Title of document, order of contents and headings of sections

Article 4

Title and content of document

1. The content of the key investor information document shall be presented in the order as set out in paragraphs 2 to 4.
2. The title 'Key investor information' shall appear prominently at the top of the first page of the key investor information document.
3. An explanatory statement shall appear directly underneath the title. It shall read:

'This document provides you with key investor information about this fund. It is not marketing material. The information is required by law to help you understand the nature and the risks of investing in this fund. You are advised to read it so you can make an informed decision about whether to invest.'

4. The identification of the UCITS, including the share class or investment compartment thereof, shall be stated prominently. In the case of an investment compartment or share class, the name of the UCITS shall follow the compartment or share class name. Where a code number identifying the UCITS, investment compartment or share class exists, it shall form part of the identification of the UCITS.

3. The name of the management company shall be stated.

6. In addition, in cases where the management company forms part of a group of companies for legal, administrative or marketing purposes, the name of that group may be stated. Corporate branding may be included provided it does not hinder an investor in understanding the key elements of the investment or diminish his ability to compare investment products.

7. The section of the key investor information document entitled 'Objectives and investment policy' shall contain the information set out in Section 1 of Chapter III of this Regulation.

8. The section of the key investor information document entitled 'Risk and reward profile' shall contain the information set out in Section 2 of Chapter III of this Regulation.

9. The section of the key investor information document entitled 'Charges' shall contain the information set out in Section 3 of Chapter III of this Regulation.

10. The section of the key investor information document entitled 'Past performance' shall contain the information set out in Section 4 of Chapter III of this Regulation.

11. The section of the key investor information document entitled 'Practical information' shall contain the information set out in Section 5 of Chapter III of this Regulation.

12. Authorisation details shall consist of the following statement:

'This fund is authorised in [name of Member State] and regulated by [identity of competent authority].'

In cases where the UCITS is managed by a management company exercising rights under Article 16 of Directive 2009/65/EC, an additional statement shall be included:

'[Name of management company] is authorised in [name of Member State] and regulated by [identity of competent authority].'

13. Information on publication shall consist of the following statement:

'This key investor information is accessible as at [the date of publication].'

SECTION 2

Language, length and presentation

Article 5

Presentation and language

1. A key investor information document shall be:
 - a) presented and laid out in a way that is easy to read, using characters of readable size;

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(b) clearly expressed and written in language that communicates in a way that facilitates the investor's understanding of the information being communicated, in particular where:

- (i) the language used is clear, succinct and comprehensible;
- (ii) the use of jargon is avoided;
- (iii) technical terms are avoided when everyday words can be used instead;

(c) focused on the key information that investors need.

2. Where colours are used, they shall not diminish the comprehensibility of the information in the event that the key investor information document is printed or photocopied in black and white.

3. Where the design of the corporate branding of the management company or the group to which it belongs is used, it shall not distract the investor or obscure the text.

Article 6

Length

The key investor information document shall not exceed two pages of A4-sized paper when printed.

CHAPTER III

CONTENTS OF SECTIONS OF THE KEY INVESTOR INFORMATION DOCUMENT

SECTION 1

Objectives and investment policy

Article 7

Specific contents of the description

1. The description contained in the 'Objectives and investment policy' section of the key investor information document shall cover those essential features of the UCITS about which an investor should be informed, even if these features do not form part of the description of objectives and investment policy in the prospectus, including:

- (a) the main categories of eligible financial instruments that are the subject of investment;
- (b) the possibility that the investor may redeem units of UCITS in demand, qualifying that statement with an indication as to the frequency of dealing in units;
- (c) whether the UCITS has a particular target in relation to any industrial, geographic or other market sectors or specific classes of assets;

(d) whether the UCITS allows for discretionary choices in regards to the particular investments that are to be made, and whether this approach includes or implies a reference to a benchmark and if so, which one;

(e) whether dividend income is distributed or reinvested;

For the purposes of point (d), where a reference to a benchmark is implied, the degree of freedom available in relation to this benchmark shall be indicated, and where the UCITS has an indexing objective, this shall be stated.

2. The description referred to in paragraph 1 shall include the following information, so long as it is relevant:

(a) where the UCITS invests in debt securities, an indication of whether they are issued by corporate bodies, governments or other entities, and, if applicable, any minimum rating requirements;

(b) where the UCITS is a structured fund, an explanation in simple terms of all elements necessary for a correct understanding of the pay-off and the factors that are expected to determine performance, including references, if necessary, to the details on the algorithm and its workings which appear in the prospectus;

(c) where the choice of assets is guided by specific criteria, an explanation of those criteria, such as 'growth', 'value' or 'high dividends';

(d) where specific asset management techniques are used which may include hedging, arbitrage or leverage, an explanation in simple terms of the factors that are expected to determine the performance of the UCITS;

(e) where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the UCITS, a statement that this is the case, making it also clear that portfolio transaction costs are paid from the assets of the fund in addition to the charges set out in Section 3 of this Chapter;

(f) where a minimum redemption period for holding units in the UCITS is stated either in the prospectus or in any marketing documents, or where it is stated that a minimum holding period is an essential element of the investment strategy, a statement with the following wording:

'Recommendation: this fund may not be appropriate for investors who plan to withdraw their money within [period of time].'

3. Information included under paragraphs 1 and 2 shall distinguish between the broad categories of investments as specified under paragraphs 1(a), (c) and 2(a), and the approach to these investments to be adopted by a management company as specified under paragraphs 1(b) and 2 (b), (c) and (d).

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4. The 'Objectives and investment policy' section of the key investor information document may contain elements other than those listed in paragraph 2, including the description of the UCITS investment strategy, where these elements are necessary to adequately describe the objectives and investment policy of the UCITS.

SECTION 2

Risk and reward profile

Article 8

Explanation of potential risks and rewards, including the use of an indicator

1. The 'Risk and reward profile' section of the key investor information document shall contain a synthetic indicator, supplemented by:

- (a) a narrative explanation of the indicator and its main limitations;
- (b) a narrative explanation of risks which are materially relevant to the UCITS and which are not adequately captured by the synthetic indicator.

2. The synthetic indicator referred to in paragraph 1 shall take the form of a series of categories on a numerical scale with the UCITS assigned to one of the categories. The presentation of the synthetic indicator shall comply with the requirements laid down in Annex I.

3. The computation of the synthetic indicator referred to in paragraph 1, as well as any of its subsequent revisions, shall be adequately documented.

Management companies shall keep records of these computations for a period of not less than five years. This period shall be extended to five years after maturity for the case of structured funds.

4. The narrative explanation referred to in paragraph 1(a) shall include the following information:

- (a) a statement that historical data, such as is used in calculating the synthetic indicator, may not be a reliable indication of the future risk profile of the UCITS;
- (b) a statement that the risk and reward category shown is not guaranteed to remain unchanged and that the categorisation of the UCITS may shift over time;
- (c) a statement that the lowest category does not mean a risk-free investment;
- (d) a brief explanation as to why the UCITS is in a specific category;

(e) details of the nature, timing and extent of any capital guarantee or protection offered by the UCITS, including the potential effects of redeeming units outside of the guaranteed or protected period;

5. The narrative explanation referred to in paragraph 1(b) shall include the following categories of risks, where these are material:

- (a) credit risk, where a significant level of investment is made in debt securities;
- (b) liquidity risk, where a significant level of investment is made in financial instruments, which are by their nature sufficiently liquid, yet which may under certain circumstances have a relatively low level of liquidity, so as to have an impact on the level of liquidity risk of the UCITS as a whole;
- (c) counterparty risk, where a fund is backed by a guarantee from a third party, or where its investment exposure is obtained to a material degree through one or more contracts with a counterparty;
- (d) operational risks and risks related to its sleeping assets;
- (e) impact of financial techniques as referred to in Article 50(1)(g) of Directive 2009/65/EC such as derivative contracts on the UCITS risk profile where such techniques are used to obtain, increase or reduce exposure to underlying assets.

Article 9

Principles governing the identification, explanation and presentation of risks

The identification and explanation of risks referred to in Article 5(1)(b) shall be consistent with the internal process for identifying, managing and monitoring risk, adopted by the UCITS management company as laid down in Directive 2010/47/EU. Where a management company manages more than one UCITS, the risks shall be identified and explained in a consistent fashion.

SECTION 3

Charges

Article 10

Presentation of charges

1. The 'Charges' section of the key investor information document shall contain a presentation of charges in the form of a table as laid down in Annex II.

2. The table referred to in paragraph 1 shall be completed in accordance with the following requirements:

- (a) entry and exit charges shall each be the maximum percentage which might be deducted from the investor's capital commitment to the UCITS;

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(b) a single figure shall be shown for charges taken from the UCITS over a year, to be known as the 'ongoing charges,' representing all annual charges and other payments taken from the assets of the UCITS over the defined period, and based on the figures for the preceding year;

(c) the table shall list and explain any charges taken from the UCITS under certain specific conditions, the basis on which the charge is calculated, and when the charge applies.

Article 11

Explanation of charges and a statement about the importance of charges

1. The 'Charges' section shall contain a narrative explanation of each of the charges specified in the table including the following information:

(a) with regard to entry and exit charges:

(i) it shall be made clear that the charges are always maximum figures, as in some cases the investor might pay less;

(ii) a statement shall be included stating that the investor can find out the actual entry and exit charges from their financial adviser or distributor;

(b) with regard to ongoing charges, there shall be a statement that the ongoing charges figure is based on the last year's expenses for the year ending (month/year), and that this figure may vary from year to year where this is the case.

2. The 'Charges' section shall contain a statement about the importance of charges which shall make clear that the charges an investor pays are used to pay the costs of running the UCITS, including the costs of marketing and distributing the UCITS, and that these charges reduce the potential growth of the investment.

Article 12

Additional requirements

1. All of the elements of the charging structure shall be presented as clearly as possible to allow investors to consider the combined impact of the charges.

2. Where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the UCITS, this shall be stated within the 'Objectives and investment policy' section as indicated in Article 7(2)(c).

3. Performance fees shall be disclosed in accordance with Article 10(2)(e). The amount of the performance fee charged during the UCITS' last financial year shall be included as a percentage figure.

Article 13

Specific cases

1. Where a new UCITS cannot comply with the requirements contained in Article 10(2)(b) and Article 11(1)(b), the ongoing charges shall be estimated, based on the expected total of charges.

2. Paragraph 1 shall not apply in the following cases:

(a) for funds which charge a fixed all-inclusive fee, where instead that figure shall be disclosed;

(b) for funds which set a cap or maximum on the amount that can be charged, where instead that figure shall be disclosed so long as the management company gives a commitment to respect the published figure and to absorb any costs that would otherwise cause it to be exceeded.

Article 14

Cross referencing

The 'Charges' section shall include, where relevant, a cross-reference to those parts of the UCITS prospectus where more detailed information on charges can be found, including information on performance fees and how they are calculated.

SECTION 4

Past performance

Article 15

Presentation of past performance

1. The information about the past performance of the UCITS shall be presented in a bar chart covering the performance of the UCITS for the last 10 years.

The size of the bar chart referred to in the first subparagraph shall allow for legibility, but shall under no circumstances exceed half a page in the key investor information document.

2. UCITS with performance of less than 5 complete calendar years shall use a presentation covering the last 5 years only.

3. For any years for which data is not available, the year shall be shown as blank with no annotation other than the date.

4. For a UCITS which does not yet have performance data for one complete calendar year, a statement shall be included explaining that there is insufficient data to provide a useful indication of past performance to investors.

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5. The bar chart layout shall be supplemented by statements which appear prominently and which:
- (a) were above its financial value as a guide to future performance;
 - (b) indicate briefly which charges and fees have been included or excluded from the calculation of past performance;
 - (c) indicate the year in which the fund came into existence;
 - (d) indicate the currency in which past performance has been calculated.

The requirement laid down in point (b) shall not apply to UCITS which do not have entry or exit charges.

6. A key investor information document shall not contain any record of past performance for any part of the current calendar year.

Article 16

Past performance calculation methodology

The calculation of past performance figures shall be based on the net asset value of the UCITS and they shall be calculated on the basis that any distributable income of the fund has been reinvested.

Article 17

Impact and treatment of material changes

1. Where a material change occurs to a UCITS' objectives and investment policy during the period displayed in the bar chart referred to in Article 15, the UCITS past performance prior to that material change shall continue to be shown.

2. The period prior to the material change referred to in paragraph 1 shall be included on the bar chart and labelled with a clear warning that the performance was achieved under circumstances that no longer apply.

Article 18

Use of a benchmark alongside the past performance

1. Where the 'Objectives and investment policy' section of the key investor information document makes reference to a benchmark, a benchmarking the performance of that benchmark shall be included in the chart alongside each bar showing the UCITS past performance.

2. For UCITS which do not have past performance data over the required five or 10 years, the benchmark shall not be shown for years in which the UCITS did not exist.

Article 19

Use of 'simulated' data for past performance

1. A simulated performance record for the period before data was available shall only be permitted in the following cases, provided that its use is fair, clear and not misleading:

(a) a new share class of an existing UCITS or investment compartment may simulate its performance by taking the performance of another class, provided the two classes do not differ materially in the extent of their participation in the assets of the UCITS;

(b) a feeder UCITS may simulate its performance by taking the performance of its master UCITS, provided that one of the following conditions are met:

- (i) the feeder's strategy and objectives do not allow it to hold assets other than units of the master and auxiliary liquid assets;
- (ii) the feeder's characteristics do not differ materially from those of the master.

2. In all cases where performance has been simulated in accordance with paragraph 1, there shall be prominent disclosure on the bar chart that the performance has been simulated.

3. A UCITS changing its legal status but remaining established in the same Member State shall retain its performance record only where the competent authority of the Member State reasonably assesses that the change of status would not impact the UCITS performance.

4. In the case of mergers referred to in Article 2(1)(g)(i) and (ii) of Directive 2009/65/EC, only the past performance of the receiving UCITS shall be maintained in the key investor information document.

Article 20

Practical information and cross references

Article 20

Content of 'practical information' section

1. The 'Practical information' section of the key investor information document shall contain the following information relevant to investors in every Member State in which the UCITS is marketed:

- (a) the name of the depositor;
- (b) where and how to obtain further information about the UCITS, copies of its prospectus and its latest annual report and any subsequent half-yearly report, stating in which language(s) those documents are available, and that they may be obtained free of charge.

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- (k) where and how to obtain other practical information, including where to find the latest prices of units;
- (l) a statement that the tax legislation of the UCITS home Member State may have an impact on the personal tax position of the investor;
- (m) the following statement:

This issuer of investment company or management company may be held liable solely on the basis of any statement contained in this document that is misleading, inaccurate or inconsistent with the relevant parts of the prospectus for the UCITS.

2. Where the key investor information document is prepared for a UCITS investment compartment, the 'Practical information' section shall include the information specified in Article 25(9) including on investors' rights to switch between compartments.

3. Where applicable, the 'Practical information' section of the key investor information document shall state the information required about available share classes in accordance with Article 26.

Article 21

Use of cross references to other sources of information

1. Cross-references to other sources of information, including the prospectus and annual or half-yearly reports, may be included in the key investor information document, provided that all information fundamental to the investors' understanding of the essential elements of the investment is included in the key investor information document itself.

Cross references shall be permitted to the website of the UCITS or the management company, including a part of any such website containing the prospectus and the periodic reports.

2. Cross-references referred to in paragraph 1 shall direct the investor to the specific section of the relevant source of information. Several different cross-references may be used within the key investor information document but they shall be kept to a minimum.

ARTICLE 20

Review and revision of the key investor information document

Article 22

Review of key investor information

1. A management company or investment company shall ensure that a review of key investor information is carried out at least every twelve months.

2. A review shall be carried out prior to any proposed change to the prospectus, the fund rules or the instrument of incorporation of the investment company where those changes were not subject to review as referred to in paragraph 1.

3. A review shall be carried out prior to or following any changes regarded as material to the information contained in the key investor information document.

Article 23

Publication of the revised version

1. Where a review referred to in Article 22 indicates that changes need to be made to the key investor information document, its revised version shall be made available promptly.

2. Where a change to the key investor information document was the expected result of a decision by the management company, including changes to the prospectus, fund rules or the instrument of incorporation of the investment company, the revised version of the key investor information document shall be made available before the change comes into effect.

3. A key investor information document with only revised presentation of past performance of the UCITS shall be made available no later than 35 business days after 31 December each year.

Article 24

Material changes to the charging structure

1. The information on charges shall properly reflect any change to the charging structure that results in an increase in the maximum permitted amount of any one-off charge payable directly by the investor.

2. Where the ongoing charges calculated in accordance with Article 10(7)(b) are no longer reliable, the management company shall instead estimate a figure for 'ongoing charges' that it believes on reasonable grounds to be indicative of the amount likely to be charged to the UCITS in future.

This change of basis shall be disclosed through the following statement:

The ongoing charges figure shown here is an estimate of the charges. (Insert short description of why it is calculated using and rather than as per figure.) The UCITS annual report for each financial year will include details of the actual charges made.

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CHAPTER IV

PARTICULAR UCITS STRUCTURES

SECTION 1

Investment compartments

Article 25

Investment compartments

1. Where a UCITS consists of two or more investment compartments a separate key investor information document shall be produced for each individual compartment.

2. Each key investor information document referred to in paragraph 1 shall indicate within the 'practical information' section the following information:

(a) that the key investor information document describes a compartment of a UCITS and, if it is the case, that the prospectus and periodic reports are prepared for the entire UCITS named at the beginning of the key investor information document;

(b) whether or not the assets and liabilities of each compartment are segregated by law and how this might affect the investor;

(c) whether or not the investor has the right to exchange his investment in units in one compartment for units in another compartment, and if so, where to obtain information about how to exercise that right.

3. Where the management company sets a charge for the investor to exchange his investment, in accordance with paragraph 2(c), and that charge differs from the standard charge for buying or selling units that charge shall be stated separately in the 'Charges' section of the key investor information document.

SECTION 2

Share classes

Article 26

Key investor information document for share classes

1. Where a UCITS consists of more than one class of units or shares the key investor information document shall be prepared for each class of units or shares.

2. The key investor information document for two or more classes of the same UCITS may be combined into a single key investor information document, provided that the resulting document fully complies with all requirements as laid down in Section 2 of Chapter II, including as to length.

3. The management company may select a class to represent one or more other classes of the UCITS, provided the choice is fair, clear and not misleading to potential investors in those other classes. In such cases the 'Risk and reward profile' section of the key investor information document shall contain the explanation of material risk applicable to any of the other classes being represented. A key investor information document based on the representative class may be provided to investors in the other classes.

4. Different classes shall not be combined into a composite representative class as referred to in paragraph 3.

5. The management company shall keep a record of which other classes are represented by the representative class referred to in paragraph 3 and the grounds justifying that choice.

Article 27

Practical information section

If applicable, the 'Practical information' section of the key investor information document shall be supplemented by an indication of which class has been selected as representative, using the term by which it is designated in the UCITS prospectus.

That section shall also indicate where investors can obtain information about the other classes of the UCITS that are marketed in their own Member State.

SECTION 3

Fund of funds

Article 28

Objectives and investment policy section

Where the UCITS invests a substantial proportion of its assets in other UCITS or other collective investment undertakings as referred to in Article 30(1)(a) of Directive 2009/65/EC, the description of the objectives and investment policy of that UCITS in the key investor information document shall include a brief explanation of how the other collective undertakings are to be selected on an ongoing basis.

Article 29

Risk and reward profile

The narrative explanation of risk factors referred to in Article 8(1)(b) shall take account of the risks posed by each underlying collective undertaking, to the extent that these are likely to be material to the UCITS as a whole.

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Article 30

Charges section

The description of the charges shall take account of any charges that each UCITS will itself incur as an investor in the underlying collective undertakings. Specifically, any entry and exit charges and ongoing charges levied by the underlying collective undertakings shall be reflected in the UCITS calculation of its own ongoing charges figure.

SECTION 4

feeder UCITS

Article 31

Objectives and investment policy section

1. The key investor information document for a feeder UCITS, as defined in Article 38 of Directive 2009/65/EC, shall contain, in the description of objectives and investment policy, information about the proportion of the feeder UCITS' assets which is invested in the master UCITS.
2. There shall also be a description of the master UCITS' objectives and investment policy, supplemented, as appropriate by either of the following:
 - (a) an indication that the feeder UCITS investment returns will be very similar to those of the master UCITS; or
 - (b) an explanation of how and why the investment returns of the feeder and master UCITS may differ.

Article 32

Risk and reward profile section

1. Where the risk and reward profile of the feeder UCITS differs in any material respect from that of the master, this fact and the reason for it shall be explained in the 'Risk and reward profile' section of the key investor information document.
2. Any currency risk and the relationship between purchase and redemption arrangements for the master and feeder UCITS shall be explained in the 'Risk and reward profile' section of the key investor information document.

Article 33

Charges section

The 'Charges' section of the key investor information document shall cover both the costs of investing in the feeder UCITS and any costs and expenses that the master UCITS may charge to the feeder UCITS.

In addition, it shall combine the costs of both the feeder and the master UCITS in the ongoing charges figure for the feeder UCITS.

Article 34

Practical information section

1. The key investor information document for a feeder UCITS shall contain in the 'Practical information' section information specific to the feeder UCITS.
2. The information referred to in paragraph 1 shall include:
 - (a) a statement that the master UCITS' prospectus, key investor information document, and periodic reports and accounts are available to investors of the feeder UCITS upon request, how they may be obtained, and in which language(s);
 - (b) whether the items listed in point (a) are available in paper copies only or in other durable media, and whether any fee is payable for items not subject to free delivery in accordance with Article 6(3)(f) of Directive 2009/65/EC;
 - (c) where the master UCITS is established in a different Member State to the feeder UCITS, and this may affect the feeder's tax treatment, a statement to this effect.

Article 35

Past performance

1. The past performance information in the key investor information document of the feeder UCITS shall be specific to the feeder UCITS, and shall not reproduce the performance record of the master UCITS.
2. Paragraph 1 shall not apply:
 - (a) where a feeder UCITS shows the past performance of its master UCITS as a benchmark; or
 - (b) where the feeder was launched as a feeder UCITS at a later date than the master UCITS, and where the conditions of Article 19 are satisfied, and where a simulated performance is shown for the year before the feeder entered, based on the past performance of the master UCITS; or
 - (c) where the feeder UCITS has a past performance record from before the date on which it began to operate as a feeder, its own record being retained in the bar chart for the relevant years, with the material change labelled as required by Article 17(2).

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SECTION 5

Article 37

Structured UCITS

Length

Article 36

The key investor information document for structured UCITS shall not exceed three pages of A4-sized paper when printed.

Performance scenarios

1. The key investor information document for structured UCITS shall not contain the 'Past performance' section.

CHAPTER V

DURABLE MEDIUM

For the purposes of this Section, structured UCITS shall be understood as UCITS which provide investors, at certain predetermined dates, with algorithm-based payoffs that are linked to the performance, or to the realisation of price changes or other conditions of financial assets, indices or reference portfolios or UCITS with similar features.

Article 35

Conditions applying to the provision of a key investor information document or a prospectus in a durable medium other than paper or by means of a website

2. For structured UCITS, the 'Objective and investment policy' section of the key investor information document shall include an explanation of how the formula works or how the pay-off is calculated.

1. Where, for the purposes of Directive 2009/65/EC, the key investor information document or prospectus is to be provided to investors using a durable medium other than paper the following conditions shall be met:

3. The explanation referred to in paragraph 2 shall be accompanied by an illustration, showing at least three scenarios of the UCITS' potential performance. Appropriate scenarios shall be chosen to show the circumstances in which the formula may generate a low, a medium or a high return, including, where applicable, a negative return for the investor.

(a) the provision of the key investor information document or the prospectus using such a durable medium is appropriate to the context in which the business between the management company and the investor is, or is to be, carried on; and

4. The scenarios referred to in paragraph 3 shall enable the investor to understand fully all the effects of the calculation mechanism embedded in the formula.

(b) the person to whom the key investor information document or the prospectus is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses that other medium;

They shall be presented in a way that is fair, clear and not misleading, and that is likely to be understood by the average retail investor. In particular, they shall not artificially magnify the importance of the final performance of the UCITS.

2. Where the key investor information document, or the prospectus is to be provided by means of a website and that information is not accessed personally to the investor, the following conditions shall also be satisfied:

5. The scenarios referred to in paragraph 3 shall be based on reasonable and conservative assumptions about future market conditions and price movements.

(a) the provision of that information in that medium is appropriate to the context in which the business between the management company and the investor is, or is to be, carried on;

However, whenever the formula exposes investors to the possibility of substantial losses, such as a capital guaranteed that functions only under certain circumstances, these losses shall be appropriately illustrated, even if the probability of the corresponding market conditions is low.

(b) the investor must specifically consent to the provision of that information in that form;

6. The scenarios referred to in paragraph 3 shall be accompanied by a statement that they are examples that are included to illustrate the formula and do not represent a forecast of what might happen. It shall be made clear that the scenarios shown may not have an equal probability of occurrence.

(c) the investor must be notified electronically of the address of the website, and the place on the website where the information may be accessed;

(c) the information must be up to date;

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(e) the information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.

3. For the purposes of this Article, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the management company and the investor is to be carried on if there is evidence that the investor has regular access to the Internet. The provision by the investor of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

CHAPTER VI
FINAL PROVISIONS

Article 38

Entry into force

1. This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

2. This Regulation shall apply from 1 July 2011.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 1 July 2010.

For the Commission
The President
José Manuel DURAZO