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Dear sir/madam,

**RE: Call for Evidence on the European Commission Mandate on Certain Aspects relating to Retail Investor Protection**

ICI Global[1] welcomes the opportunity to provide input on the European Securities and Markets Authority's (ESMA) Call for Evidence on retail investor protection.[2] The focus of our response is on the investor disclosure and digital disclosure topics covered in the Call for Evidence. We share some additional perspectives on the interoperability between MiFID II and the Sustainable Finance Disclosure Regulation (SFDR). We hope our recommendations are helpful to ESMA in providing advice to the European Commission ("the Commission") on a retail investment strategy for the European Union (EU) and associated legislative reforms.

**Q1: Please insert here any general observations or comments that you would like to make on this call for evidence, including any relevant information on you/your organisation and why the topics covered by this call for evidence are relevant for you/your organisation.**

We believe that the EU's regulatory framework for retail investment contains broadly the right protections. The current framework does not, however, sufficiently empower retail investor engagement in EU capital markets, particularly on a cross-border basis and when investors are using digital technology. Moreover, without ESMA guidance, the amended suitability framework may work in practice to hinder retail investors' choices of investment products.

[1] ICI Global carries out the international work of the Investment Company Institute, the leading association representing regulated funds globally. ICI's membership includes regulated funds publicly offered to investors in jurisdictions worldwide, with total assets of $42.6 trillion. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of regulated investment funds, their managers, and investors. ICI Global has offices in London, Brussels, Hong Kong, and Washington, DC.

[2] ESMA Call for Evidence: On the European Commission mandate on certain aspects relating to retail investor protection, 1 October 2021, available from https://www.esma.europa.eu/sites/default/files/esma35-43-2827_call_for_evidence_on_retail_investor_protection.pdf

As set out in more detail in our responses to the other consultation questions in this letter, we recommend the following reforms:

- **Provide EU investors with useful information to compare products and make informed investment decisions** by replacing the patchwork of cost categories in existing disclosures with a unified categorization that is used across all investor disclosures and splits out distribution and management costs (see response to question 2).

- **Reduce the risk of information overload for retail investors** by taking further steps to develop a harmonised pan-EU disclosure regime for investment products – building on existing approaches in UCITS and PRIIPs – to eliminate Member State level supplementary investor disclosures (see response to question 3).

- **Improve the consistency of investor disclosures** by aligning the concepts of "non-complex" products in MIFID and "simple" products in PRIIPs, and converging Member State supervisory approaches to defining complexity (see response to question 4).

- **Ensure retail investors receive the right vital information before buying an investment product** by completing reforms to the PRIIPs KID including introducing past investment performance information, revised transaction costs calculations, and a renamed risk indicator (see response to question 5).

- **Ensure that retail investors have a means to express a broad range of investment preferences related to environmental and social characteristics** by confirming via a Q&A document (or similar), that retail clients may express a preference for financial products with sustainability characteristics that do not fall within the amended MiFID II definition of "sustainability preferences," and that investment firms may make available to retail clients financial products meeting such preferences.

- **Permit national competent authorities to engage in regulatory forbearance with respect to the application of suitability assessments relating to sustainability preferences** until full disclosures are being made under the SFDR RTS and the Taxonomy Regulation (as a minimum, prior to 1 January 2023, but ideally until financial undertakings are required to make disclosures under Article 8 of the Taxonomy Regulation in January 2024).

- **Improve retail investors' experience of fund subscription by enabling funds to utilise digital innovation and technology**, including: (i) making all forms of e-delivery the default for all disclosures; (ii) enabling disclosures to be adapted for delivery in non-document form (e.g., on a mobile phone app or webpage); and (iii) enabling the use of a portable digital identity framework (see response to questions 15 and 47).

**Q2: Are there any specific aspects of the existing MiFID II disclosure requirements which might confuse or hamper clients' decision-making or comparability between products? Are there also aspects of the MiFID II requirements that could be amended to facilitate comparability across firms and products while being drafted in a technology neutral way? Please provide details.**

Differences in the categorization of costs and the terminology used in MiFID II, UCITS, PRIIPs and IDD disclosures creates challenges for investors to understand and effectively use cost information to make investment decisions. We recommend replacing the patchwork of cost categories in product level disclosures (e.g., the UCITS KIID, PRIIPS KID) and distributor level disclosures (e.g., MiFID ex-ante disclosures) with a unified categorization that is used across all investor disclosures. Under our proposed framework, costs would be allocated to one of the following six categories.

- **One-off charges** – costs for the initial provision of the investment service(s) or product(s) and its/their termination, split into entry costs and exit costs.
- **Ongoing management charges** – costs paid during the life of the investment service(s) or product(s) that are related to management activities (e.g., portfolio management).
- **Ongoing distribution charges** – costs paid during the life of the investment service(s) or product(s) to intermediaries and third parties, such as commissions and other distribution related fees, including fees paid to intra-group entities for the distribution of in-house products or closely linked third-party products.
- **Transaction costs** – costs related to transactions performed in the course of the provision of an investment service or incurred as a result of the acquisition or disposal of investments.
- **Ancillary service costs** – costs related to ancillary services not included in the above categories.
- **Incidental costs**, including performance fees.

The annex to this letter contains a worked example to illustrate key differences in the categorization of costs and in the terminology used in disclosures under the existing framework.

**Q3: Are there specific aspects of existing MiFID II disclosure requirements that may cause information overload for clients or the provision of overly complex information? Please provide details.**

European investors are provided with, or have made available to them, a myriad of different documents when subscribing to an investment fund. These documents either stem from EU level disclosure requirements (e.g., MiFID II, UCITS, PRIIPs and IDD) or Member State level disclosure requirements (e.g., country supplements for prospectuses, supplementary

investor disclosures etc.)[3] There is a risk that retail investors may be overloaded with information, which could result in investor confusion or turning investors away from consuming valuable information about their investment services and products.

We recommend that further steps be taken to develop a harmonised pan-EU disclosure regime for UCITS to eliminate Member State level supplementary investor disclosures. Building on the approach adopted for the UCITS KIID and PRIIPS KID and for marketing communications in the cross-border distribution of funds package, a pan-EU disclosure regime would achieve the following:

- provide more consistent information to investors regardless of their location in the EU; and
- promote harmonized cross-border selling of UCITS, including through digital channels.

**Q4: On the topic of disclosures, are there material differences, inconsistencies or overlaps between MIFID II and other consumer protection legislation that are detrimental to investors? Please provide details.**

We recommend aligning the concepts of “non-complex” products in MiFID and “simple” products in PRIIPs (i.e., requiring a comprehension alert). An aligned approach would provide greater consistency in the treatment of identical or similar MiFID and non-MiFID products, including disclosure requirements.

We also recommend encouraging further convergence in Member State supervisory approaches to defining complexity (i.e., avoiding a UCITS being defined as *complex* in one Member State and *non-complex* in another.) Achieving greater convergence in approaches to defining complexity should improve the consistency of disclosures that are made to investors and remove impediments to the cross-border distribution of UCITS.

**Q5: What do you consider to be the vital information that a retail investor should receive before buying a financial instrument? Please provide details.**

Product level disclosures (e.g., the UCITS KIID and PRIIPs KID) and distributor level disclosures (e.g., MiFID ex-ante disclosures) contain broadly the right categories of key information to support investors when deciding to subscribe to an investment fund. Alongside reforms to MiFID ex-ante disclosures (see our response to question 2 above), we recommend the following changes to the PRIIPs KID:

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[3] See ESMA’s Report on Marketing requirements and marketing communications under the Regulation on cross-border distribution of funds for an example of Member State level requirements, available from https://www.esma.europa.eu/sites/default/files/library/esma_34-45-1219_-_report_on_national_rules_governing_marketing.pdf

- **Including past performance information in the KID** – either in the body of the document or through the use of layering in digital disclosure[4] – and completing work to identify whether future performance scenarios can be calculated in a manner that is not misleading to investors and enables comparison across different types of investment product (e.g., through clear explanation of the factors likely to affect future performance).

- **Introducing flexibility in the calculation of transactions costs** to :(i) ensure investors are provided with decision-useful and comparable information; and (ii) address practical challenges and suitability issues arising from the application of the slippage cost methodology[5] to assets that do not trade continuously or have a clearly identifiable spreads (e.g., due to illiquidity or OTC trading). Introducing flexibility in the way that anti-dilution effects are taken into account can avoid potentially misleading negative calculated transaction costs from being disclosed to investors.

- **Renaming the "summary" risk indicator (SRI)** to avoid investors misinterpreting this as a comprehensive indicator or summary of the overall risk of a fund is exposed to.[6]

**Q9: On the topic of disclosures on sustainability risks and factors, do you see any critical issue emerging from the overlap of MiFID II with the Sustainable Finance Disclosure Regulation (SFDR) and other legislation covering ESG matters?**

We have previously provided comments to the Commission[7] on proposed revisions relating to sustainability factors, risks and preferences in respect of the MiFID II Organisational Regulation[8] and the MiFID II Delegated Directive.[9]

We note that legislation amending the MiFID II Organisational Regulation (taking effect from 2 August 2022) and the MiFID II Delegated Directive (taking effect from 22 November 2022) in relation to sustainability factors, risks and preferences has now been published in the

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[4] For instance, breaking down each (or some) section(s) of a document into layers – the first layer containing general/key information and the second layer containing descriptive/additional information and links to external sources.

[5] "Spillage cost" is calculated using the difference between the arrival and execution price of a trade to capture the market impact and delay cost components of implicit transaction.

[6] The SRI is only a measure of market risk and credit risk (i.e., relating to price volatility) and does not cover other risks which a particular fund may be subject to and in some cases which may be more significant.

[7] *See* ICI Global's response to the Commission's draft delegated acts that add a new definition of 'sustainability preferences' to the MiFID II framework, *available at*: https://www.ici.org/system/files/attachments/pdf/32584a.pdf

[8] Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms, ("MiFID II Organisational Regulation"), *available at* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0565

[9] Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits, ("MiFID II Delegated Directive"), *available at* https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32017L0593

Official Journal of the European Union (by Commission Delegated Regulation (EU) 2021/1253 and Commission Delegated Directive (EU) 2021/1269, respectively (together, the "Amending Delegated Acts")).

Although the final content of the Amending Delegated Acts differs from the proposals on which we have previously commented, we regret that a number of the issues we had previously identified persist in the final versions of the Amending Delegated Acts. For the reasons set out below, we consider that this is likely to have a negative impact on retail investors in the EU because, among other things, it may hamper investors' ability to make informed choices. Practically speaking, the amended MiFID II suitability requirements could create more confusion than clarity for fund investors at this time.

*Sustainability preferences*

We are supportive of the overall objective that, in accordance with an investment firm's obligation to act in the best interest of its clients, recommendations to clients and potential clients should reflect both the financial objectives of the client and any preferences as to sustainability considerations expressed by those clients.

We are also supportive of the proposition that investment firms should have in place appropriate arrangements to ensure that the inclusion of sustainability factors in the advisory process and in portfolio management does not lead to mis-selling practices or to the misrepresentation of financial instruments or strategies as fulfilling sustainability preferences where they do not.

Nonetheless, we wish to express our concerns that the overlapping terms provided in MiFID II and the SFDR and, in particular, the definition of sustainability preferences that will apply under Article 2(7) of the amended MiFID II Organisational Regulation, could have a negative impact on the ability of retail investors to invest in financial products that fall within Article 8 of the SFDR. The Delegated Acts will significantly narrow the universe of financial products that can be offered to investors who express sustainability preferences to their advisors. Moreover, retail investors may not understand the extent to which expressing sustainability preferences may limit their choice of investment products.

*Consequences of overlap between MiFID II and SFDR*

We note that ESMA's 2019 technical advice to the Commission recommended permitting both SFDR Article 8 and Article 9 financial products to be deemed to meet clients' sustainability preferences. Despite ESMA's advice, Article 2(7) of the amended MiFID II Organisational Regulation will limit financial products that meet sustainability preferences to those that commit to making a minimum number of investments that are Taxonomy aligned or that are sustainable investments for the purposes of Article 2(17) of the SFDR, or that consider principal adverse impacts ("PAIs") on sustainability factors. This excludes SFDR Article 8 financial products that do not make the commitments referred to in Article 2(7) of the amended MiFID II Organisational Regulation.

We are concerned that investors may, in fact, have a broader range of preferences than what has been captured in Article 2(7) of the amended MiFID II Organisational Regulation, and that the suitability requirements will adversely limit these investors' investment

choices. Given the definition of sustainability preferences in Article 2(7) of the amended MiFID II Organisational Regulation, it is not clear how retail investors will be able to express a preference for a product that promotes environmental and social characteristics but falls outside of Article 2(7).

We are also concerned that the amended suitability and product governance requirements under the Amending Delegated Acts will present difficulties to investment firms that act as distributors of our members' financial products and risk causing confusion for retail investors that are interested in investing in financial products that seek to promote environmental or social characteristics or that have a sustainable investment objective.

Defining a narrow range of financial products that meet sustainability preferences risks channelling retail investment into a narrow subset of financial products that may not adequately meet retail investors other investment objectives (i.e., financial objectives and risk tolerance). As a result, we are concerned that retail investors may not be sufficiently aware of the full range of products that might otherwise be available outside of the limitations of Article 2(7) of the amended MiFID II Organisational Regulation. If retail investors were able to express their preferences for products that promote environmental and social characteristics more broadly, financial advisors and their retail clients would be able to have a more robust discussion about broader range of products.

We acknowledge that it is not within the competence of ESMA to amend the provisions of the Amending Delegated Acts, including the definition of "sustainability preferences" in Article 2(7) of the amended MiFID II Organisational Regulation. We believe, however, that ESMA can alleviate some of the concerns expressed above by publishing guidance in a Q&A document (or similar) that confirms that retail clients may express a preference for financial products with sustainability characteristics that do not fall within Article 2(7) of the amended MiFID II Organisational Regulation, and investment firms may make available to retail clients financial products meeting such preferences

*Timing Issues between MiFID II and SFDR*

Unfortunately, timing of the requirements under MiFID II, the SFDR, and the Taxonomy Regulation exacerbate the issues associated with the narrow range of financial products referred to in Article 2(7) of the amended MIFID II Organisational Regulation.

The amendments to the MiFID II Organisational Regulation will take effect on 2 August 2022 and will oblige firms performing suitability assessments to take account of information made available under the SFDR and the Taxonomy Regulation. The information necessary to perform a suitability assessment against investors' sustainability preferences, however, will not yet be available because (i) companies will not be required to report Taxonomy alignment until January 2023 for non-financial undertakings or until January 2024 for financial undertaking; and (ii) investment products will not be required to uniformly disclose Taxonomy alignment or the percentage of sustainable investments within a portfolio until January 2023.

In practice, due to the sequencing of the SFDR and Taxonomy Regulation, asset managers will not have adequate sustainability information on their funds' underlying investments to

effectively attribute alignment to the Taxonomy, or to demonstrate allocations to "sustainable investments." The delay to the SFDR RTS means that product distributors will not be able to access consistent disclosures from asset managers in respect of Article 8 and Article 9 products or in respect of Taxonomy alignment until January 2023 at the earliest. It is unclear how product distributors will be able to identify products meeting their clients' sustainability preferences in the meantime.

In the absence of clarification or guidance from ESMA and/or national competent authorities, firms will have difficulty meeting their suitability obligation based on products having a minimum proportion of sustainable investments or minimum Taxonomy alignment. Requesting investors to express sustainability preferences prior to adequate information being available to assess investment products is likely to create a misleading impression for retail investors as to the ability of product to meet investors' sustainability preferences.

We believe that ESMA, by way of guidance, should provide that is it appropriate for national competent authorities to engage in regulatory forbearance with respect to the application of suitability assessments relating to sustainability preferences until full disclosures are being made under the SFDR RTS and the Taxonomy Regulation (as a minimum, prior to 1 January 2023, but ideally until financial undertakings are required to make disclosures under Article 8 of the Taxonomy Regulation in January 2024). Moreover, in respect of product governance requirements, ESMA should encourage NCAs to allow firms to apply such requirements flexibly and on a best efforts basis, noting the difficulties that product distributors will face in reliably identifying products that meet retail investors' sustainability preferences.

**Q14: Would it be useful to integrate any of the approaches set out in paragraph 27 above in the MIFID II framework? If so, please explain which ones and why.**

We have not identified the need to integrate into the MiFID II framework any of the approaches which ESMA has found are typically included in guidance for digital disclosures.[10] We have provided comments on each of the approaches that ESMA has identified below. If, despite our comments, ESMA deems it necessary to recommend that any of these approaches are incorporated into the MiFID II framework, this should be done in a technology neutral manner.

*Easy navigability of information*

We do not recommend any changes to the MiFID rules on the navigability of disclosures. Existing MiFID rules allow disclosures to be organised in a manner that enables potential investors to identify easily particularly relevant sections of a disclosure and navigate between different sections when viewing a disclosure using a digital device. For instance, an investor can use a menu feature in an app, chapters in a video or a contents sidebar or similar on a webpage, to immediately go to a section of the disclosure.

[10] Call for Evidence at 27.

*Retrievability of information*

We do not recommend changing MiFID II to mandate the way in which firms provide instructions to investors on accessing disclosures from a generic website or hyperlink. Existing MiFID rules enable firms to identify the appropriate method for providing instructions to investors on how to access digital disclosures, based on the device and medium concerned.

*Obligation to provide the possibility to save information*

We do not recommend introducing additional obligations in MiFID II for firms to enable investors to be able to save information. Existing MiFID II rules, including obligations for firms to provide disclosures in a durable medium, already require firms to enable investors to be able to store and reproduce information. Any changes that ESMA deems necessary to recommend should be technology neutral.

*Presentation and format*

We do not recommend any changes to the MiFID rules on the presentation and format of disclosures. Existing MiFID rules allow disclosures to be organised in a manner that enables them to be easily readable and adaptable to different kinds of device. We recommend that a similar approach to that in MiFID II – which enables the presentation of information to be adapted for digital disclosures, consistent with the approach for the PEPP KID – is also applied to UCITS and PRIIPs disclosures (see our response to question 15 below.)

*Versioning*

We do not consider it necessary to introduce additional specific obligations on firms to retain copies of all versions of digital disclosures provided to clients. Existing MiFID rules already require firms to keep records of all services, activities and transactions they undertake.[11] Investors should be able to access the version(s) of the disclosure document(s) that they relied on when subscribing to an investment fund (e.g., a UCITS KIID and MiFID ex-ante disclosure.) Providing access to past versions of disclosures increases the risk of confusion for investors if they rely on out-of-date information to undertake new transactions (e.g., additional subscriptions or redemptions.) Firms should determine the best approach to highlighting current and past versions of disclosures to investors.

*Limiting of security risks for clients*

We do not recommend changes to the MiFID rules regarding the disclosures that firms must include in electronic communications on the firms' measures to mitigate the risk of phishing and other security risks. We fully support effective measures that can be taken to limit cybersecurity risks for investors. Given the evolving nature of cyber threats and technology, mandatory disclosures, however, may become less effective over time.

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[11] Article 16(6), MiFID II requires an investment firm to arrange for records to be kept of all services, activities and transactions undertaken by it for regulatory and compliance purposes.

*Use of different means*

We do not consider it necessary to change the MiFID II rules regarding a firm's ability to use a range of different communication means such as live chats, chat bots, Q&As, infographics, guides, interactive tools, or similar approaches, to interact with investors. Existing MiFID rules permit communication through various digital channels.

*Monitoring Effectiveness*

We do not recommend changes to the MiFID rules to introduce specific obligations on firms to monitor the design and prominence of relevant disclosures. Existing MiFID rules require firms to provide clear, fair,[12] and comprehensive information that are not misleading to investors in such a manner that investors are reasonably able to understand the characteristics of investment products or services.[13] Firms are also obliged to regularly review information made available to distributors whom, in turn, maintain a relationship with end investors.

**Q15: Should the relevant MIFID II requirements on information to clients be adapted in light of the increased use of digital disclosures? If so, please explain how and why.**

We have not identified changes that are needed to the MiFID II rules on the delivery and form of digital disclosures and recommend that these rules be applied to UCITS and PRIIPs disclosures. As set out below, the rules for UCITS and PRIIPs disclosures should be adapted to better facilitate digital disclosures by: (i) making all forms of e-delivery the default for all disclosures; and (ii) enabling disclosures to be adapted for delivery in non-document form (e.g., on a mobile phone app or webpage.)

*E-Delivery*

Current UCITS and PRIIPs rules require investor consent, and other conditions to be satisfied, before a UCITS KIID or PRIIPs KID can be provided to an investor using a durable medium other than paper (e.g., e-delivery). Digital disclosures have the potential to engender greater investor engagement and understanding, including through interactive features such as layering and through tailoring and personalization.

We recommend that the approach in the MiFID Quick Fix[14] and adopted for the PEPP KID[15] – making e-delivery the default for disclosures without explicit consent and subject to limited

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[12] For instance, Article 24(3) requires "All information, including marketing communications, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading"

[13] For instance, Article 24(5) requires firms to provide information in a comprehensible form in such a manner that clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis.

[14] Article 1(4) amendments inserting paragraph 5a into Article 24, MiFID II, available from https://eur-lex.europa.eu/eli/dir/2021/338

[15] Article 24 of the PEPP Regulation enables PEPP providers and distributors to provide all documents and information to PEPP customers electronically, provided that the PEPP customer is able to store such information in a way accessible for future reference and for a period of time adequate for the purposes of the

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conditions – should be applied to UCITS and PRIIPs disclosures through the following reforms:

- **UCITS:** Removing the additional conditions that apply to the provision of the UCITS KIID and prospectus in a durable medium other than paper or by means of a website.[16]
- **PRIIPs:** Making e-delivery of the PRIIPs KID the default in all distribution scenarios and removing the additional conditions that apply to the provision of the PRIIPs KID in a durable medium other than paper or by means of a website.[17]

Other digital "features" of the PEPP KID, such as the use of QR codes linking to electronic versions of disclosures should also be applied to the UCITS KIID and PRIIPs KID.[18]

*Delivery form*

Current rules require UCITS KIIDs and PRIIPs KIDs to be produced on document based templates.[19] Disclosures in document form, even when produced electronically (e.g., PDF) are not conducive to all digital devices (e.g., mobile phones). Information may be challenging or inconvenient to access or read (e.g., if an investor must "zoom in" to read a PDF on a mobile phone screen), which may deter investors from "consuming" important information.

We recommend that the EIOPA's proposed approach for the PEPP KID– which enables the presentation of information to be adapted for online disclosures and permits the *layering* of information – be applied to the UCITS KIID and PRIIPs KID. EIOPA's layering approach includes breaking down each (or some) section(s) of a document into layers – the first layer

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information and that the tool allows the unchanged reproduction of the information stored. Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product ("PEPP Regulation") https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.198.01.0001.01.ENG

[16] Amending article 38, UCITS KIID Regulation

[17] Amending article 14, Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products ("PRIIPs Regulation"), available from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014R1286

[18] Inserting the provision in paragraph 3 of Annex I of the PEPP KID Regulation (adapted as relevant to the UCITS KIID and PRIIPS KID), which enables PEPP providers to include a QR code linking to the electronic version of the PEPP KID, Commission Delegated Regulation (EU) 2021/473 of 18 December 2020 supplementing Regulation (EU) 2019/1238 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements on information documents, on the costs and fees included in the cost cap and on risk-mitigation techniques for the pan-European Personal Pension Product, available from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R0473

[19] See CESR's template for the Key Investor Information document, available from https://www.esma.europa.eu/sites/default/files/library/2015/11/10_794.pdf and Annex I of the PRIIPS Delegated Regulation 2017/653, available from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0653

containing general/key information and the second layer containing descriptive/additional information and links to external sources. [20]

We recommend the following reforms to the UCITS KIID and PRIIPs KID: [21]

- Enabling the presentation and order of content of disclosures to be adapted to the durable medium used, including website, mobile application, audio or video;[22]
- Permitting the layering of information when disclosures are provided in an electronic format;[23] and
- Increasing the parameters regarding the maximum overall length of disclosures when printed to five sides of A4-sized paper, to enable layered information presented on digital disclosures to be included in a single printed document.[24]

**Q47: Do you see the need to foster data portability and the development of a portable digital identity? Please outline the main elements that a digital identity framework should be focusing on.**

Know Your Customer (KYC) obligations on firms to obtain physical or scanned documents when verifying an investor's identity detract from retail investors' experience of fund subscription using digital technology. Furthermore, divergence in Member State approaches to the distance verification of information, such as the use of webcams and scanned documents or the third-party verification of original documents, inhibit cross-border fund subscription.

The development of a portable digital identity framework coupled with other measures that enable the use of technology for fund subscription, such as distance contract e-signatures (building on the eIDAS framework),[25] present a multitude of benefits including:

- Making the on-boarding process more convenient and less time consuming;

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*See* Section 2.1, EIOPA Consultation Paper on the proposed approaches and considerations for EIOPA's Technical Advice, Implementing and Regulatory Technical Standards under Regulation (EU) 2019/1238 on a Pan-European Personal Pension Product (PEPP), available from https://www.eiopa.europa.eu/sites/default/files/publications/consultations/consultation_paper_on_pepp.pdf

[21] Inserting the provisions in Article 1 "Presentation of information in an online environment" and Article 2 "Layering of information" and in paragraph 1 of Annex I of the PEPP KID Regulation, adapted as relevant for the UCITS KIID and PRIIPs KID.

[22] Section 2 of the UCITS KIID Regulation and PRIPPs Regulation do not enable the presentation of disclosures to be adapted depending on the communication medium.

[23] Neither the UCITS KIID Regulation nor the PRIPPs Regulation permit layering of information.

[24] Article 6 of the UCITS KIID Regulation limits the length of the KIID to two pages of A4-sized paper when printed.

[25]The eIDAS Regulation established a framework for the cross border use of e-identification as well of electronic trust services, see Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market, available from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2014.257.01.0073.01.ENG

- Reducing the risk of fraud for investors (e.g., through the interception of documents sent by post); and
- Supporting fund managers and their service provides in discharging AML and KYC obligations.

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If you would like to discuss any matter covered in this letter in further detail please do not hesitate to contact me using the information above.

Yours sincerely

/s/

Jennifer S. Choi
Chief Counsel, ICI Global

**Annex - Example of the current costs and charges disclosure framework**

We have provided an example below to illustrate key differences in the categorisation of costs and in the terminology used in disclosures under the existing framework.

A European investor subscribes to two UCITS – "UCITS A" and "UCITS B" – through a MiFID distributor. Prior to subscription, the investor is provided with a KIID for each UCITS and a MiFID ex-ante disclosure document. In each of the UCITS KIIDs, costs and charges are split into the following three categories:[26]

- one-off charges taken before or after investment, broken down into entry and exit charges;
- ongoing charges taken from the UCITS over the course or a year;
- charges taken from the UCITS under certain specific conditions, such as a performance fee.

In the MiFID ex-ante disclosure document provided to the investor, costs and charges related to the investment service provided by the distributor are split into the following five categories:[27]

- One-off charges related to the provision of the investment service, including switching costs;
- Ongoing charges related to the provision of the investment service, including management fees;
- All costs related to transactions initiated in the course of the provision of an investment service, including entry and exit-charges paid to the fund manager and platform fees;
- Any charges that are related to ancillary services, including research costs and custody costs;
- Incidental costs, including performance fees.

The MiFID ex-ante disclosure also show aggregated costs and charges for the two UCITS, split into the following four categories:[28]

- One-off charges, including front-loaded management fees and distribution fees;
- Ongoing charges, including management fees, service costs, swap fees;

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[26] Annex II, 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 "(UCITS KIID Regulation"), available from https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32010R0583

[27] Table 1, Annex II, MiFID II Organisational Regulation

[28] Table 2, Annex II, MiFID II Organisational Regulation

- All costs related to the transactions, including entry- and exit-charges paid by the fund
- Incidental costs, including performance fees.

The two UCITS to which the investor is subscribing have the following fee structures:

- UCITS A (has a *bundled* fee that includes a management component and a distribution component.[29] The distribution component represents a periodic commission payment to the distributor that is linked to the sale of the UCITS (i.e., an inducement under MiFID rules).
- UCITS B has a *clean* fee that only contains a management component as no commission payment is made to the distributor (i.e., no inducement is paid under MiFID rules).

The KIIDs that are provided to the investor present the fees in the following manner:

- In the KIID produced for UCITS A, the bundled fee is shown as the *ongoing charge* (i.e., the distribution and management components are not split out separately);
- In the KIID produced for UCITS B the clean fee is shown as the *ongoing charge*.

In the MiFID ex-ante disclosure, the fees charged by the UCITS are presented in the following two categories:

- The commission payment to the distributor for the sale of UCITS A is categorised as a *cost related to transactions initiated in the course of the provision of an investment service.*[30]
- The management component of the bundled fee charged by UCITS A is aggregated with the clean fee charged by UCITS B and categorised as an *ongoing charge*.

Costs such as platform fees and transaction costs will be aggregated with the commission payments made to the distributor and presented as costs related to transactions initiated in the course of the provision of an investment service.

Differences in the categorisation and terminology used in the UCITS KIIDs and MiFID ex-ante document may present challenges for the investor to understand the cost of the various products and services. For instance, to determine the relative cost of the management fees charged by UCITS A compared to UCITS B, the investor must complete the following steps:

(a) Refer to the *cost related to transactions initiated in the course of the provision of an investment service* in the MiFID ex-ante disclosure;

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[29] For a description of different share classes, see page 7-8 of ICI's Research Perspective: Ongoing Charges for UCITS in the European Union, 2020, available from https://www.ici.org/system/files/2021-09/per27-09.pdf

[30] In accordance with Article 50(2)(b) of the MiFID II delegated regulation and as confirmed by Question 7 in Section 9 of ESMA's Question and Answers on MiFID II and MiFIR investor protection and intermediaries topics.

(b) From the cost figure obtained in step (a), deduct any costs such as platform fees or other transaction cost to obtain the distribution component of UCITS A's fee (i.e., the inducement);

(c) Refer to the *ongoing charge* in the KIID for UCITS A and deduct the cost figure obtained in step (b) to obtain the management component of UCITS A's fee;

(d) Compare the cost figure obtained in step (c) for UCITS A with the *ongoing charge* in the KIID for UCITS B.

The steps set out above require the investor to understand the categorisation of management and distribution fees in both the UCITS KIID and the MiFID ex-ante disclosure.