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February 15, 2008

Fabrice Demarigny
Secretary General
The Committee of European Securities Regulators
11-13 Avenue de Friedland
75008 Paris
FRANCE

Re: CESR/07-669 – Consultation on Content and Form of Key Investor Information Disclosures for UCITS

Dear Mr. Demarigny:

The Investment Company Institute (ICI)[1] strongly supports the efforts of the Committee of European Securities Regulators (CESR) to develop the form and content of a key investor information document (KII) to replace the simplified prospectus.[2] The Institute and its members have a long history of seeking to address investor needs for information that is concise and understandable.

Our views on these issues are informed by the experiences of our members in organizing, advising and distributing US registered funds as well as UCITS funds. Our members are increasingly operating in a global environment, including through the cross-border development and sale of funds as well as through international investing. The potential for regulatory convergence or divergence strongly impacts the conduct of our member's businesses as changes in one jurisdiction could, and often do, affect the conduct of asset management in other jurisdictions. As a result, robust dialogue among international regulators and market participants is vital to the evaluation of new regulatory approaches. In particular, we believe that our research and member experience with fund disclosure in the US market may be helpful as CESR evaluates changes to its disclosure regime for funds.

[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $12.68 trillion and serve almost 90 million shareholders.

[2] We also submitted a comment letter on CESR's earlier consultation on key investor disclosures for UCITS in May 2007. *See* Letter to CESR from Susan M. Olson, Senior Counsel, Investment Company Institute (dated May 22, 2007) ("ICI 2007 CESR Letter") available at http://www.ici.org/statements/cmltr/07_cesr_ucits_com.html#TopOf Page.

We largely support CESR's proposals presented in the consultation and offer the following observations and suggestions based upon our experience:

- We commend the efforts of CESR to address the need for standardized performance for funds.
- We commend CESR's efforts to enhance risk disclosure for funds but have reservations with the proposal for a quantitative or synthetic risk indicator.
- We agree with CESR's concerns about the challenges of quantifying portfolio turnover costs and do not believe that CESR should require the quantification and disclosure of these costs.
- We believe that CESR should consider allowing the KII to be available electronically or in paper.

We discuss these comments in more detail below.

The Importance of Standardized Performance

We commend the efforts of CESR to address the need for a standardized performance methodology for funds. We believe that the development of standardized performance is necessary to prevent performance information from being misleading and to assist investors in making meaningful comparisons of fund performance.[3] Our US research indicates that historical performance is one of the most often reviewed pieces of information by investors. This information is used both before a purchase and after a purchase.[4] In the United States, mutual fund investors have had access to reliable and comparable performance information since the 1980s.[5]

As discussed below, we also believe a bar chart of total returns is an important tool for investors seeking information about the historical risk levels of a fund. Standardizing performance methodology for funds and using it in the form of a bar chart allows investors to assess the variability of a specific fund's returns as well as facilitates comparison among funds.

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[3] We previously submitted a comment letter to CESR on the importance of developing standardized fund performance. *See* ICI 2007 CESR Letter and Letter to the European Commission from Robert C. Grohowski, Senior Counsel, Investment Company Institute (dated Nov. 15, 2005), available at www.ici.org/statements/cmltr/05_eu_ucits_com.html.

[4] *See* Investment Company Institute, Understanding Investor Preferences for Mutual Fund Information (Aug. 2006) ("ICI Information Preferences Paper"), available at www.ici.org/stats/res/rpt_06_inv_prefs_full.pdf.

[5] The US Securities and Exchange Commission adopted rules standardizing performance figures for money market funds in 1980 and for other types of funds in 1988. The total return calculation used in the United States is found in Item 21 of Form N-1A. *See also* IOSCO Technical Committee Report, Performance Presentation Standards for Collective Investment Schemes: Best Practice Standards (May 2004) (recognizing the importance of standardized performance information) available at www.iosco.org/library/pubdocs/pdf/IOSCOPD169.pdf.

We fully support CESR's efforts to develop a standardized performance methodology for funds.

Improving Risk Disclosure

The Institute and its members have long engaged in efforts to educate investors about mutual fund risk. We support and commend CESR's desire to improve risk disclosure so that it is more useable and understandable. For investors to make appropriate investment decisions, they must understand all dimensions of risk. This broad understanding of risk is vital to the industry's ability to maintain and preserve investor confidence.

Based upon our experience and research in this area, however, we have concluded that no single quantitative or synthetic risk indicator can accurately portray the risk of a particular fund for a particular investor and may, in fact, mislead an investor. As a result, the Institute recommends that CESR not pursue the development of a numerical or synthetic measurement of risk for funds.

To help further inform your deliberations on the specific issue of mutual fund risk, we submit for your consideration extensive ICI research on improving descriptions of risks by mutual funds. The issue of mutual fund risk disclosure, including the consideration of risk measurements, has been well studied by the Institute, its members and the U.S. Securities and Exchange Commission ("SEC").

Different Concepts of Risk Cannot Be Captured in a Single Measure of Risk

In 1995, the SEC requested comment on improving descriptions of risk by mutual funds.[6] The Institute and its members engaged in extensive consideration of risk disclosure, including the feasibility of developing standardized, quantitative measures of mutual fund risk. We concluded that there was not, and could not be, one all encompassing measure of fund risk. We have attached as an appendix to this letter the Institute's research on risk disclosure and an excerpt from the Institute's comment letter to the SEC on the Risk Concept Release.[7] While we conducted this research in the United States, we believe the information regarding US investors' assessment of risk is pertinent to understanding how investors generally may evaluate risk.[8]

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[6] *Improving Descriptions of Risk by Mutual Funds and Other Investment Companies*, Release No. IC-20974 (Mar. 29, 1995) ("Risk Concept Release") available at http://www.sec.gov/rules/concept/mfrisk.txt.

[7] *See* Investment Company Institute, Shareholder Assessment of Risk Disclosure Methods, Spring 1996 ("ICI Risk Research") available at http://www.ici.org/stats/res/arc-dis/rpt_riskdiscl.pdf; Investment Company Institute Perspective, volume 1, number 2 (November 1995) (excerpt from ICI Comment Letter on Risk Concept Release) available at http://www.ici.org/statements/perspective/per01-02.pdf.

[8] In addition, the recent market turmoil involving subprime mortgages and ratings of securities linked to such assets suggests caution as several commentators have noted that even sophisticated and institutional investors may have over-relied on ratings. *See*, *e.g.,* Ishmael and Scholtes, "Downgrades Leave Investors' Heads Spinning," *Financial Times*, Dec. 6, 2007; Remarks by Asst. Secretary of Treasury for Financial Markets, Anthony W. Ryan, Euromoney Euro Fixed Income Forum

In evaluating the assessment of risk disclosure by investors, the Institute surveyed mutual fund purchasers to determine their reactions to some of the disclosure methods identified in the SEC's Risk Concept Release. The Institute also collected information on shareholder perceptions of and attitudes toward mutual fund risk, information sources for mutual fund risk and demographic and financial characteristics. Importantly, the research demonstrated that the concept of investment risk varied widely among mutual fund shareholders and that there was a significant danger that investors, not fully understanding the limitations of a risk measurement, may misuse or over-rely on a measurement to their detriment.[9]

Ultimately, the SEC declined to require funds to quantify risk citing, among other things, the lack of a broad consensus as to what measure of risk would best serve fund investors. The SEC noted that commenters had asserted that investors had too wide a range of investment goals and ideas of "risk" to be well served by any single measure. The SEC also recognized commenters' concerns that if there was a government mandated risk measurement, investors might rely on it despite the lack of agreement on how to measure risk.[10] The SEC has continued to follow this approach. No requirement to quantify risk is considered in the SEC's recent proposal for a short-form disclosure document for mutual funds (the "summary prospectus").[11]

In addition to the significant challenges and problems presented by the development of a risk measure for funds, CESR also must carefully consider the potential harm to investors that may arise if there is a government mandated risk indicator for funds, but no such indicator for competing investments.[12] ICI research already indicates that investors may not fully appreciate the complexities and limitations of risk measurements. We are highly concerned that the possibility of a government mandated risk indicator for funds, but not for other competing investments, could raise the clearly erroneous suggestion to investors that funds somehow pose a risk different from other investments. Such a result would obviously be detrimental to investors and would likely increase investor confusion.

(HP-709) (Dec.4, 2007) available at http://www.treas.gov/press/releases/hp709.htm; Giles, "Old Lady Offers Advice on Preventing Future Crisis," *Financial Times*, Oct. 25, 2007; Tully, "Risk Returns with a Vengeance," *Fortune*, Sept. 3, 2007. Many of the funds that likely would be viewed as "low risk" based on traditional models have been negatively affected by the current market disruptions.

[9] *See* ICI Risk Research.

[10] *See Registration Form Used By Open-End Management Investment Companies*, Release No. IC-23064 (March 23, 1998) ("SEC 1998 Release") available at http://www.sec.gov/rules/final/33-7512r.htm.

[11] *See Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies*, Release Nos. 33-8861 and IC-28064 (Nov. 21, 2007) (the "Summary Prospectus Proposal") available at http://www.sec.gov/rules/proposed/2007/33-8861.pdf.

[12] *See also* Letter to the European Commission from Susan M. Olson, Senior Counsel, Investment Company Institute (dated January 17, 2008) available at http://www.ici.org/statements/cmltr/08_ec_retail_com.html#TopOfPage.

We urge CESR to decline to pursue the single risk measurement for funds.

Focus Efforts on Narrative Risk Disclosure and the Bar Chart of Returns

In lieu of a specific measurement of risk, we suggest that CESR focus its efforts on improving narrative risk disclosure coupled with the proposed bar chart of total returns. Taken together, this information will assist investors in appreciating the various risks that may be associated with a particular fund.

In 1998, noting the need for improved disclosure about the risks of investing in a fund, the SEC adopted revisions to fund documents to require more specific narrative risk disclosure and a bar chart of returns. Recognizing dissatisfaction with detailed and technical descriptions of the risks of particular securities in which a fund invests, the SEC adopted amendments that require disclosure about the risks to which the fund's portfolio *as a whole* are subject, as well as the circumstances that are reasonably likely to adversely affect a fund's net asset value, yield or total return.

With respect to the adoption of the requirement for the bar chart, the SEC stated that it was not suggesting that all investors generally equate variability in a fund's returns with the risks of investing in the fund. The SEC acknowledged that investors have a wide range of ideas of what risk means. Nevertheless, the SEC stated that the bar chart was strongly supported by investors. Focus groups found the chart helpful in evaluating and comparing funds and more than 75% of individual investors responding to the Risk Concept Release favored this presentation of fund volatility.[13] Consequently, the SEC concluded that a bar chart graphically illustrating the variability of a fund's returns would provide investors with some idea of the risk of an investment in a fund. The bar chart includes a fund's annual returns for the last 10 calendar years of the fund's existence.[14] The SEC retained this approach to risk disclosure in the proposed summary prospectus.

Portfolio Transaction Costs

We agree with CESR's statements concerning the difficulties of calculating portfolio transaction costs and also believe that, as a consequence of these difficulties, there is no single agreed-

[13] SEC 1998 Release at footnote 52.

[14] The bar chart of returns does not include the returns of a market index. Rather, the average annual return table that accompanies the bar chart includes the return of a broad-based securities index (with no deduction for fees, expenses or taxes). Funds also are permitted to include other indexes, such as a more narrowly based index that reflects the market sectors in which the fund invests. Form N-1A, Item 2(c)(2) and instruction 2(b), available at http://www.sec.gov/about/forms/formn-1a.pdf.

upon measure for quantifying these costs for fund investors.[15] As CESR also acknowledges, information on fund portfolio transaction costs is reflected in a fund's performance and, further, performance is one of the most common pieces of fund information reviewed by investors. We also note that because these costs impact the performance of a fund, portfolio managers have an incentive to limit excessive trading. For all of these reasons, we do not believe CESR should require the quantification of a fund's portfolio transaction costs.

Nevertheless, we have concluded that in the absence of any simple or agreed-upon way to quantify and disclose all transaction costs, providing portfolio turnover rate and accompanying narrative disclosure is a reasonable approach. The Institute has previously commented to the SEC:

> While portfolio turnover rate is not a perfect proxy for fund trading costs, it is generally viewed as being highly correlated with transaction costs. In addition, it can easily be calculated by funds, and is easily understood by investors and readily comparable among funds. We believe that these advantages outweigh any imprecision of a portfolio turnover rate's correlation to trading costs.[16]

In its proposal on the summary prospectus, the SEC acknowledged its recent consideration of this topic, noting that some had expressed concerns regarding the degree to which investors understand the effect of portfolio turnover, and the resulting transaction costs, on fund expenses and performance. To address these concerns, the SEC proposed brief portfolio turnover disclosure (for funds other than money market funds), including the portfolio turnover rate, in the summary prospectus.[17]

Electronic Delivery and ICI Research on US Investor Use of the Internet

ICI's recommendation that CESR consider allowing the KII to be delivered in paper or through the Internet derives from our considerable research on US investor use of the Internet. Although our research involves US investors and US mutual funds, we believe the trends identified in this research are useful in considering the potential role of the Internet for delivery of fund information to investors generally.

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[15] The SEC examined this issue in a concept release in 2003. *See Request for Comments on Measures to Improve Disclosure of Mutual Fund Transaction Costs*, Release No. IC-26313 (Dec. 19, 2003) available at http://www.sec.gov/rules/concept/conceptarchive/conceptarch2003.shtml.

[16] Letter to Jonathan G. Katz, Secretary, SEC, from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute (dated Feb. 23, 2004) available at http://www.ici.org/statements/cmltr/2004/04_sec_port_disclose_com.html#TopOfPage.

[17] *See* Summary Prospectus Proposal at 23.

In 2006, the ICI studied the Internet usage trends of US mutual fund investors and also conducted research to examine the sources used by US investors to obtain fund information.[18]

The relevant findings on the use of the Internet from the 2006 Survey and the ICI Information Preferences Paper are:

- Internet access among US mutual fund shareholders is nearly universal; more than 9 out of 10 households owning funds have Internet access.
- More than 70% of US households that own mutual funds use the Internet at least once a day.
- Internet access is greatest among younger US shareholders although Internet access among senior-aged US shareholders has grown significantly, with nearly 75% of US shareholders age 65 or older having Internet access.
- US shareholders embrace the Internet and a majority of recent fund investors regularly go online and use the Internet for a variety of financial purposes.

Consequently, the Internet has great potential for delivering fund information to US investors and we would hope to see the development of similar Internet trends among UCITS investors.

Although CESR's review of certain research indicated that some mutual fund investors, including US investors, may prefer to receive fund information in paper, our recommendation would not hinder that preference. Further, we note that our research indicates that in the United States the frequency of Internet use influences a US shareholder's preference for obtaining information. For example, among US shareholders using the Internet at least once a day, 41% prefer fund information online.[19] As both access to and frequency of use of the Internet continue to increase in the United States, electronic delivery represents both a highly efficient and effective medium for delivery of fund information, especially in the case of a short and concise document such as the KII. Consequently, we suggest that CESR consider trends on Internet access and usage since these trends are likely to generally indicate a growing interest among investors in the electronic delivery of information. We believe that providing electronic delivery as an option for delivery of the KII is appropriate, forward-thinking and provides investors with information that is easily and readily accessible.

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[18] Investment Company Institute, Research Fundamentals: Ownership of Mutual Funds and Use of the Internet, 2006 (Oct. 2006) ("2006 Survey"), available at www.ici.org/stats/res/fm-v15n6.pdf; ICI Information Preferences Paper.

[19] ICI Information Preferences Paper, figure 5.

The SEC's proposal for the summary prospectus incorporates such an approach for delivery of a document similar to the KII. To fulfill US statutory obligations to deliver a prospectus, the SEC proposal requires funds to deliver the summary prospectus and provide the full prospectus online. Upon request, funds must deliver a paper copy of the full prospectus. Consistent with current US law, the summary prospectus may be delivered electronically with affirmative consent from an investor. Therefore, investors always have the ability to receive the summary prospectus and full prospectus in paper, but the proposal also takes advantage of the benefits of providing information electronically.[20]

We believe that CESR should consider the advisability of allowing the KII to be available to investors either electronically or in paper form. The Internet is an effective way to provide investors with an option for timely and convenient access to required information without imposing inappropriate costs and burdens on the offer and sale of fund shares. We encourage CESR to recommend that the European Commission's new disclosure rules give investors the option to receive the KII electronically.

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We would welcome the opportunity to speak with you in more detail about ICI research and our comments. If we can provide any other information, please feel free to contact me at solson@ici.org or +1 202.326-5813.

Sincerely,

/s/ Susan M. Olson

Susan M. Olson
Senior Counsel, International Affairs

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[20] *See* Summary Prospectus Proposal at 38-42 (discussion of delivery requirements).