

## **POSITION PAPER**

### **ON THE ROLE AND RESPONSIBILITIES OF FUND PLATFORMS IN THE DISTRIBUTION OF THE KEY INVESTOR INFORMATION DOCUMENTS (KIID)**

**October 2012**

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#### **1. BACKGROUND**

A new fund information document commonly referred to as KIID has been introduced by the UCITS IV European Directive. The basic principle is straight forward: the Fund Company is in charge of producing and maintaining the KIID and whoever faces the end-client is in charge of providing it to him before he makes the investment.

The implementation of this basic principle proves to be less straight forward, since it has led to a number of diverging interpretations concerning the roles and responsibilities of the various parties that can potentially be involved in the distribution process.

Article 80 of the UCITS IV European Directive states that it is the Fund Group's responsibility to provide the end-investor with the KIID when it sells its funds directly to end-investors or to end-investors through other entities acting on its behalf and under its full and unconditional responsibility. In all other circumstances, the Fund Group's responsibility is limited to making the KIID available on request to the intermediary involved in the transaction.

Fund Platforms generally have a contractual relationship with the Fund Group called "Distribution Agreement" (even if the Fund Platform does not actively distribute the product). The situation is furthermore complicated by the variety of business models of the different Fund Platforms.

The objective of this position paper is to try to clarify the role and responsibilities of Fund Platforms in the distribution of the KIID.

## **2. RELATIONSHIP BETWEEN THE FUND PLATFORM AND THE FUND GROUP**

Regarding article 80 of the UCITS IV Directive (2009/65/CE), the industry appears to be split into three segments:

- Investment companies, Management Companies (i.e. Fund Groups for the purpose of this paper) and third parties acting under their "full and unconditional responsibility",
- Intermediaries who do not act under an Investment Company's or Management Company's "full and unconditional responsibility",
- Infrastructure companies and others.

With the exception of some proprietary outlets, Fund Platforms do generally not "act under the full and unconditional responsibility" of the Fund Group and therefore we consider that they fall under article 80 (2) of the UCITS IV European Directive.

To the extent that existing agreements with Fund Groups may have to be amended to properly reflect the relationships, we are of the opinion that the introduction of a clause obliging the Fund Platform "to comply with all applicable laws" should be sufficient to satisfy the needs of the Fund Group, provided that the Fund Platform is operating under an EU license.

If the role of the Fund Platform is not to intervene at all in the distribution process, but to provide more limited specialist services such as trailer fee calculation, position reporting and reconciliation, data reformatting or warehousing, we are of the opinion that they do not act at all under article 80 of the UCITS IV European Directive and are therefore not in scope.

At the level of the Transfer Agent appointed by the Fund Group, the investments are either executed and/or registered in the name of the end-client or in the name of a Fund Platform or the Custodian Bank of the end-client. In case the Fund Platform is an Investment Firm, the Transfer Agent may rely on the "applicable laws" principle and the Fund Platform has no obligation to disclose his clients to the Transfer Agent.

In case the Fund Platform acts as a pure commission agent without being licensed as an Investment Firm the specific circumstances of the transaction may lead to an obligation of disclosure as the transaction may be considered to fall under article 80 (1) of the UCITS IV European Directive.

## **3. OBLIGATIONS OF FUND PLATFORMS REGARDING THE KIID TRANSMISSION**

If the client of the Fund Platform is not an end-investor, but a professional that is fully licensed or another financial institution, the Fund Platform has no obligation to provide a KIID nor to monitor the delivery of the KIID to the client of the professional intermediary. The KIID process remains within the responsibility of the professional intermediary.

If the client of the Funds Platform is an end-investor represented by a professional advisor or an Independent Financial Advisor (IFA), the Funds Platform has no obligation to provide a KIID nor to monitor the delivery of the KIID to the client of the professional advisor or the IFA. The KIID process remains within the responsibility of the professional advisor or the IFA.

If the client of the Funds Platform is an end-investor that has given a formal mandate to a licensed asset manager (which can also be the Funds Platform itself) to manage the portfolio of the end-investor on a discretionary basis, there is no obligation in the context of the KIID neither for the Funds Platform, nor for the Discretionary Asset Manager.

If the client of the Funds Platform is an end-investor not represented by a professional advisor or an IFA, the Funds Platform has the obligation to provide a KIID to the end-client prior to the investment decision and to ensure the tracking and monitoring of the end-investor's acceptance.

If the Funds Platform is not involved in the execution process at all (because its activity is limited to the trailer fee calculation for instance), it is completely outside the scope of the KIID dissemination process. However, the Fund Platform may consider, as an additional service to its clients, to provide the KIID to be eventually distributed to the end investor.

Some further illustrations of the various roles performed by Fund platforms are presented in appendix to this document.

#### **4. CONCLUSION**

In view of the variety of business models and countries of operation, it is recommended for each operator to take legal advice on their own specific circumstances in compliance with their national legislation as well.

We believe that it is the responsibility of the initial point of sale, in direct contact with the end-investor, to ensure that the client has received and accepted the KIID. Therefore Fund Platforms are only impacted for their direct B2C activities where the end-client is not represented by an advisor.

It is however advisable for the Fund Platforms to inform the intermediaries, upstream and downstream, making use of their services about their position towards the KIID (not providing KIID, no tracking, no monitoring).

Such notification could mention that the Fund Platform clients' are intermediaries, aware of the applicable law and their own duties towards national regulation.

**APPENDIX: some examples of Fund Platforms roles**

<b>Type of Fund Platform</b>	<b>Direct client.</b>	<b>Intermediary / professional client</b>
Order Routing & Execution Only.	<p>The Fund Platform has to prove that KIID has been provided to direct retail client.</p> <p>However, there might be various exceptions where the responsibility to provide the KIID remains with another 3<sup>rd</sup> party:</p> <ul style="list-style-type: none"> <li>• If the direct retail investor is represented by a professional or independent financial advisor</li> <li>• If a licensed Asset Manager has received a formal mandate by the direct retail investor to Manage the portfolio on a discretionary basis</li> </ul> <p>In these cases the formal obligation to provide the KIID to the retail investor could remain with such 3<sup>rd</sup> party</p>	<p>The Fund Platform doesn't need to provide the KIID, and via a notification, could remind its position to its clients.</p> <p>Provided the intermediary client is investing on its own behalf, the Fund Platform has no duties towards the KIID.</p> <p>Provided the professional client is not investing on its own behalf, the Fund Platform has still no duties towards the KIID, but the intermediary has to comply with its legal duties towards its own clients regarding the KIID.</p>
Order Routing, Execution & Financial Advice.	The Fund Platform has to prove that KIID has been sent to client.	<p>The Fund Platform doesn't need to provide the KIID, and via a notification, could remind its position to its clients.</p> <p>Provided the professional client is investing on its own behalf, the Fund Platform has no duties towards the KIID.</p> <p>Provided the professional client is not investing on its own behalf, the Fund Platform has still no duties towards the KIID, but the intermediary has to comply with its legal duties towards its own client regarding the KIID.</p>
Trailer Fee Services	Not applicable.	The Fund Platform acts as a Service Provider for the Distributor (or other financial professional clients) – where the services provided are not related to taking an investment decision. Therefore the Platform's services are outside of the scope of the KIID provision process.
Fund Platforms including Transfer Agent services.	The Management Company might delegate to the Fund Platform the duty to provide KIID (prior to investment decision) to all or certain clients and to prove it has been provided.	The Management Company might delegate to the Fund Platform the duty to provide the KIID to all or certain clients and to prove it has been provided.