

Research Report

Financial Products and Short-form Disclosure Documents - Challenges and Trends

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Working Paper

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Table of contents

Introduction to Research Project	2
Objectives of Research Project	3
Methodology.....	3
Part I – Findings and Analysis	5
Part II – Survey of Jurisdictions	15
Australia	15
Canada	22
European Union	28
Hong Kong.....	39
New Zealand	46
Singapore	52
Appendix – Annotated Bibliography and Bibliography	58

Introduction to Research Project

Recent years have seen a trend in many jurisdictions towards the adoption of short-form disclosure documents for retail financial products. This has been noted by the International Organization of Securities Commissions (IOSCO) in a recent consultation report on retail structured products, which stated as follows:¹

Regulatory tool: Consistent with their respective legal frameworks, IOSCO members could consider either allowing or requiring short-form or summary disclosure (which may or may not be standardized). This short form or summary disclosure could be provided separately or included as part of a more detailed disclosure document to be made available to investors as appropriate in offering and selling retail structured products. IOSCO members could require these documents in addition to more lengthy disclosure documents.

Rationale and comments: Short-form or summary disclosure (whether prepared separately or as part of a more comprehensive disclosure document) can be made available to investors before investment, to support investors' understanding of the product and informed investment decision making and their comparison of different kinds of structured products or possible investments.

This paper analyses the challenges and trends in relation to short-form disclosure documents from a comparative perspective. Developments in the following markets have been examined for this purpose: Australia, New Zealand, the European Union ('EU'), Hong Kong, Singapore and Canada. These jurisdictions were chosen because they have all embraced a move towards short-form disclosure documents in recent years and have implemented – or are in the process of implementing - significant reforms for this purpose.

For the purposes of the analysis below, 'short-form disclosure documents' have been interpreted to mean disclosure documents in respect of which the maximum page length is prescribed, either on a mandatory or a recommended basis.

The concept of short-form disclosure in the form of summary disclosure documents is not new. In most cases, such documents operate alongside, or as part of, the formal disclosure document.² What is new, however, is the trend towards prescribing the maximum page length of disclosure documents. This paper examines this trend.

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¹ IOSCO, Regulation of Retail Structured Products, Consultation Paper, April 2013 ('**IOSCO Consultation Report**'), pages 47-48, <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD410.pdf>

² See, for example, the short-form prospectus or offer information statements that have been adopted in Australia for the offer of securities under Chapter 6D of the Corporations Act.

Objectives of Research Project

The objectives of the research project to which this paper relates are as follows:

- to review the international trend towards short-form disclosure documents and the policy reasons behind the trend;
- to examine the different approaches that have been adopted by the selected jurisdictions; and
- to identify the criteria and the factors that should be taken into account when jurisdictions consider which approach to adopt.

In this way, the project seeks to assist regulators in determining appropriate responses and strategies through a guide to the approaches in the selected jurisdictions, the legislative and policy underpinnings and the short-form disclosure documents themselves.

Methodology

The primary research source for the project has been published research and information. This includes laws and regulations, and regulatory reports and guidelines issued by the regulators in the selected jurisdictions. Interviews with regulators have also been conducted. These interviews proved useful in terms of understanding the general context behind the recent reforms and the relative importance of the factors that have been taken into account in implementing those reforms.

As part of the research methodology, the researchers have compiled a list of criteria by which short-form documents can be compared and by which the various choices or options can be identified.

This working paper is structured as follows:

Part I reports on the findings and analysis.

Part II surveys the selected jurisdictions by reference to the following issues and criteria in each jurisdiction:

Section 1 – General Information

- Sources of Information
- Background to the adoption of short-form disclosure documents
- Relevance of experience from other jurisdictions
- Key drivers and objectives
- Relevance of other measures
- Importance of risk disclosure
- Other issues (including any proposed changes)

Section B – Criteria

- Scope of products
- Length requirements
- Purpose and content requirements
- Liability
- Language, risk, warnings and additional information

The Appendix contains an annotated bibliography of selected sources, as well as a list of additional sources.

Part I – Findings and Analysis

A. The shortcomings of the conventional approach to disclosure

There is widespread recognition of the concerns associated with the conventional approach to disclosure in terms of compliance and liability. These concerns have arisen as a result of the requirement to provide investors with all of the information that they need in order to make an informed investment decision and have led to an increase in the length of disclosure documents and the use of technical terminology.³

This in turn has triggered concerns about the impact of the length and content of disclosure documents on the readability or ‘accessibility’ of disclosure documents to retail investors and has underpinned the rationale behind the trend towards prescribing the maximum length of disclosure documents and also the manner in which information is presented and expressed.

B. The purpose and content of short-form disclosure document

The purpose of the short-form document will, to a significant extent, determine the content requirements and how comprehensive the content should be. An overriding question is whether it should contain all of the information on which a reasonable investor should be expected to rely in order to make an informed investment decision or whether it should just provide a summary of the key features or facts.

The purpose of the short-form document will also affect length, liability and language, each of which is discussed further below.

On the question of comprehensiveness, it is relevant to note the recommendation in the IOSCO Consultation Report that robust disclosure standards should require that ‘issuers’ disclosure be consistent with the issuers’ understanding of the intended investors’ capacity to understand the disclosure.’ [IOSCO Consultation Report, page 46]. The implication here is that the focus of disclosure should be on drawing the investor’s attention to the features and risks of a product in broad terms, so that the investor can determine appropriateness and suitability, rather than on providing comprehensive information as a basis on which the investor can make an informed decision.

Three possibilities can be identified from the selected jurisdictions in terms of the purpose of the short-form disclosure document:

- A substitute for the prospectus/formal disclosure document (e.g. Australia);

³ As noted by the UK Financial Conduct Authority, ‘regulators and investors have a jaundiced view of disclosure practice because it has traditionally been badly written and badly structured. In addition, there have been difficulties in distinguishing between marketing and disclosure documents’: interview on 26 September 2013.

- A summary statement that is part of the formal disclosure document and therefore part of the liability regime that applies to the formal disclosure document (e.g. Hong Kong, Canada and New Zealand);
- A summary statement that exists on a stand-alone basis (i.e. it does not form part of the formal disclosure document and is therefore not subject to its liability regime) (e.g. Singapore and the EU).

In Australia, the short-form disclosure document takes the place of the long-form disclosure document in relation to the products that are subject to the relevant regulatory framework. This has been possible through the mechanism of incorporation by reference. Although embraced in Australia, the mechanism of incorporation by reference has been the subject of debate in jurisdictions like Hong Kong as to the merits of this approach and whether it meets the needs of investors, particularly in terms of ensuring easy access to information.

Other questions arise in relation to purpose. For example, in addition to acting as a disclosure document for investors, should the document be targeted at financial advisers and facilitate their provision of advice to investors? Some jurisdictions have expressly recognised the importance of short-form disclosure documents as an aid for financial advisers in helping to explain financial products to clients (e.g. Canada).

C. The length of short-form disclosure document

A key factor behind the length requirements is ‘readability’; namely, the need for disclosure documents to be presented in a format that is easy for retail investors to read and understand. Research on investor behaviour has suggested that retail investors are not likely to read documents that are more than two or three pages in length [see, for example, Committee of European Securities Regulators (‘CESR’) Consultation Paper, page 14]. In addition, prescribing a maximum length has been seen as a way of overcoming the traditional tendency for disclosure documents to get longer as product issuers and their lawyers sought to include more information in order to reduce liability concerns.

Although there is general consensus concerning the importance of length, there is divergence between jurisdictions in terms of the maximum page length, with Australia permitting a maximum page length of eight pages for superannuation and managed investment schemes.⁴ The following observations may be noted:

- In both Hong Kong and Singapore, the length requirement is expressed more as an expectation than as a hard-and-fast rule. For example, in Hong Kong the Product Key Facts Statement (‘KFS’) is expected to be no more than four pages while graphics and diagrams are included in the page limit where applicable.

⁴ To a significant extent, this reflects the fact that in Australia, the short-form document operates as a substitute for the long-form disclosure document. The purpose of the short-form disclosure document thus becomes relevant to the question of length, in addition to content.

- During the public consultation process in Australia, industry associations had expressed concerns in relation to the difficulties of having maximum page length restrictions, particularly for more complex products. It was in response to these concerns that the maximum number of pages for superannuation and managed investment schemes was increased from six pages to eight pages [Regulatory Impact Statement ('RIS'), para 105]. This is considerably longer than the prescribed maximum page length in other jurisdictions and appears to be inconsistent with research suggesting that retail investors are not likely to read documents that are more than two or three pages in length.

In all jurisdictions, the shift towards a maximum page length, on either a mandatory or a recommended basis, has required a highly prescriptive approach in relation to content.

D. The name of short-form disclosure documents

There are a number of factors that come into play in determining the name given to a short-form disclosure document. To a large extent this will reflect the purpose. For example, if it operates as a substitute for the long-form disclosure document as in Australia, logic would suggest that it should have the same name (i.e. Product Disclosure Statement). If, on the other hand, it acts as a summary document (or a 'quick read'), the name is likely to reflect its status as such:

- Key Information Document (EU)
- Product Key Facts Statement (Hong Kong)
- Product Highlights Sheet (Singapore)
- Fund Facts (Canada)
- Information Summary (New Zealand)

A relevant question is whether the name should imply that the document should provide a sufficient basis on which investors can make an informed decision or whether it should draw the attention of investors to the existence of the comprehensive disclosure document. The EU and Hong Kong arguably fall into the former category as the names, which include the adjective 'key', might create the impression that the documents contain all of the key facts or key information on which investors will need to rely to make an informed decision. This raises a query about whether this is the correct impression to create in the minds of investors, despite warnings to the effect that investors should not invest in the product based on the short-form disclosure document alone.

Market research also suggests that the choice of the acronym is relevant:

3. As an initial and general recommendation, CESR proposes renaming the disclosure the Key Information Document (KID), as feedback from stakeholders has suggested that KII ['key investment information'] is an awkward acronym. In general within this advice, therefore,

reference is made to KID rather than KII. [CESR's advice to the European Commission on the content and form of Key Information Document, February 2008, CESR/08-087]

E. The separate nature of short-form disclosure documents

With the exception of New Zealand, where the summary document is physically part of the disclosure document, all jurisdictions have adopted a separate short-form document that is not physically part of a longer disclosure document. In all jurisdictions, the summary documents either forms part of a longer disclosure document for legal purposes, as in Hong Kong, or operates on a stand-alone basis, as in Singapore where the document does not operate as part of the formal disclosure document and is therefore not part of its liability regime.

F. The liability that attaches to the short-form disclosure document

Liability is a critical question that goes to the issue of purpose, content and also language (e.g. whether the use of technical language can be avoided or reduced). A related question is whether the short-form disclosure document is part of the formal disclosure document and therefore subject to its liability regime or whether it has its own, more limited, liability regime. For example, does liability arise only where the document is misleading, inaccurate or inconsistent when read with the formal disclosure document and only on the part of the person who prepared the document? Or does it involve 'full prospectus liability', under which the issuer, its directors and any person who has made or consented to a statement in the disclosure document will be liable for loss or damage suffered by investors as a result of a defective disclosure document?

It might be argued that the more limited the liability implications, the more likely it is that the product issuer will tailor the document in a way that the retail investor can understand. It might also be argued that if the short-form disclosure document is part of the formal disclosure document and the purpose of the disclosure document is to provide the investor with such information as is necessary to enable the investor to make an informed investment decision, there will be a greater risk that technical language will be used to overcome liability concerns, thereby reducing the readability of the short-form disclosure document and undermining the purpose for which it was prepared in the first place.

To some extent, the concerns are alleviated in circumstances where the content of the disclosure document is prescribed (i.e. the disclosure document only needs to contain the information that is prescribed and there is no general disclosure requirement to include such information as is necessary to enable the investor to make an informed investment decision). That said, there is still an argument that making the short-form disclosure document part of, or a substitute for, the formal disclosure document will lead to the use of legalistic language and technical terms.

In the following jurisdictions, the short-form document is part of, or operates as, the formal disclosure document and is therefore subject to its liability regime:

- Hong Kong
- Canada
- Australia
- New Zealand

In Singapore and the EU, on the other hand, the short-form disclosure document operates on a stand-alone basis (i.e. it is not part of, or incorporated by reference into, the formal disclosure document) and is subject to its own liability regime.

G. The scope of products subject to the short-form disclosure document

An ongoing challenge has been determining the scope of products to which the short-form regime should apply, as exemplified by the debate over the reforms in the EU in relation to packaged retail investment products or 'PRIIPS'⁵ and the exclusion of 'hedge funds' from the short-form disclosure regime in Australia. A critical question is whether a comprehensive approach should be adopted, under which the regime applies to all financial products (as defined in the relevant jurisdiction) or whether it should be tailored to one product or certain products?

In particular, the challenges have increased as jurisdictions have moved beyond simple fund products, where the parties (i.e. the trustee/manager or, in Australia, the responsible entity) are highly regulated and the main risk is on the underlying investments, towards structured investment products where there is credit and counterparty risk on the product issuer as well.⁶

In this regard, a question has arisen as to how jurisdictions should deal with complex products and whether they should be subject to an enhanced regulatory regime (e.g. the requirement for complex products to be sold only with financial advice or the use of health warnings and complexity labels). One of the reasons that this has been a challenge is that complexity does not necessarily equate to higher risk. In addition, practical difficulties arise in determining what products fall with the definition of 'complex products'.

Complexity has been recognised as a challenge in relation to both length and disclosure generally. As noted in the IOSCO Consultation Paper [23], 'eight responding jurisdictions raised concerns about the complexity of retail structured products and the ability of retail investors to understand the products.'

⁵ Now referred to as 'Packaged Retail and Insurance-based investment Products' (PRIIPS) under the new regulation adopted by the European Parliament on 15 April 2014. See further in Part II.

⁶ The latter has created complications in terms of the use of a single risk indicator, as the risk profile may differ depending on the credit risk of the product issuer. See further in Section K below.

The issue of complexity has been considered by a number of jurisdictions. Singapore previously contemplated – but did not adopt – a proposal to include a definition of ‘complex investment products’, the sale of which would only be possible with financial advice, and requiring Product Highlights Sheets to contain a ‘health warning’ to the effect that the product could not be sold to an investor unless a financial adviser had explained to the investor whether it was suitable, and that the investor should not purchase the product if the investor did not fully understand the product.

This has also been identified as a challenge in New Zealand in relation to product disclosure statements generally [Discussion Paper, para 24]:

We acknowledge, however, that [prescribing a maximum length] may not be desirable for more complex products, or products that rely on relatively sophisticated analysis to make well-informed decisions, such as initial public offerings of equity securities (IPOs).

The EU previously considered a proposal to require complex products to carry a complexity label at the top of the Key Information Document (KID) for products that the manufacturer deems complex and possibly not suitable for retail investors. Under the new regulation adopted by the European Parliament on 15 April 2014, the KID is required to contain a ‘comprehension alert’.

H. The importance of comparability

In all jurisdictions, the shift towards a maximum page length, on either a mandatory or a recommended basis, has been accompanied by the standardisation of format to facilitate comparability, both within product classes and across product classes. Most jurisdictions have emphasised the importance of comparability. It is, however, a double-edged sword in relation to comparisons across product types as there is a ‘risk that investors may try to compare products with completely different product characteristics (for instance, solely on the basis of their expected returns) [IOSCO Consultation Paper, page 48]. In addition, it has been suggested that there is a risk that all products may end up looking the same.⁷

I. The language of short-form disclosure documents and presentation

All jurisdictions prescribe a disclosure standard in terms of the language that is used or the manner in which disclosure is written or presented:

- ‘clear, concise and effective manner’ (Hong Kong)
- ‘clear and simple language’ (Singapore)

⁷ Jenny Chen and Susan Watson, ‘Investor Psychology Matters: Is a Prescribed Product Disclosure Statement a Supplement for Healthy Investment Decisions?’ (2011) *New Zealand Business Law Quarterly* 412, 433, where the authors suggest that ‘presenting investors with simplified documents could exacerbate the presence of behavioural biases in investment decisions’. See also Lachlan Burn, ‘KISS, but tell all: short-form disclosure for retail investors’ (2010) 5(2) *Capital Markets Law Journal* 141, 155.

- ‘concise manner and in non-technical language’ (EU as currently applying to Undertakings for Collective Investment in Transferable Securities (‘UCITS’))
- ‘clearly expressed and written in language...that is clear, succinct and comprehensible’ (EU under the new regulation for PRIIPS)
- ‘concisely and in plain language’ (Canada)
- ‘clear, concise and effective manner’ (Australia)
- ‘clear, concise and effective manner’ (New Zealand)

Some jurisdictions additionally link the disclosure standard to the ability of retail investors to understand:

- ‘in such manner as to be readily understood by the investing public’ (Hong Kong)
- ‘in clear and simple language that investors can easily understand’ (Singapore)
- “‘plain language’ means language that can be understood by a reasonable person, applying a reasonable effort’ (Canada)
- ‘written in language and a style that communicate in a way that facilitates the understanding of the information’ (EU under the new regulation for Packaged Retail and Insurance Based Investment Products (‘PRIIPS’))

The reference in Canada to the ‘reasonable person’ appears logical. As noted by Burn:

At best, an issuer and its advisers can only prepare a summary disclosure document on the basis of an “average” retail investor. The most vulnerable investors will, by definition, be below average in their experience of investments and, perhaps, in their levels of understanding of anything. A regime that imposes a disclosure duty coupled with liability on issuers and, perhaps, their advisers will not, therefore, protect those who need protecting most. Only a regime that adopts MiFID’s philosophy [i.e. where products can only be sold through intermediaries who are able to determine appropriateness and suitability] can do that.⁸

J. Format and the use of graphics

Hong Kong, Singapore and Canada expressly encourage the use of diagrams and graphics. Font size is expressly mentioned in all jurisdictions.

In addition, most jurisdictions adopt a Q&A format for the presentation of information.

K. The highlighting of risk

All jurisdictions have requirements in relation to the highlighting of risk and adopt various measures (or a combination of measures) for this purpose. The measures include the requirement for features and risks to be highlighted and specific requirements on the risks that must be included in the short-form disclosure document.

⁸ Burn, above n 8, 158.

There are also measures that apply to specific products. For example, Hong Kong adopts a scenario analysis in relation to Structured Investment Products, which sets out ‘the best, middle-of-the-road and, at the very least, the worst-case scenarios’.

In Australia, the Australian Securities and Investments Commission (‘ASIC’) refers to the requirement for the short-form document for margin lending facilities to be in ‘stark language’, by which the emphasis is on disclosing risks and the consequences of risks in terms that the lay investor can understand.⁹

Some jurisdictions have embraced synthetic risk indicators as a means of helping retail investors assess risk and compare products. Others are sceptical about the merits of risk indicators and risk ratings (e.g. Singapore). Canada has a risk scale. The Fund Facts in Canada currently requires the fund manager of a mutual fund to provide a risk rating for the mutual fund based on a risk classification methodology chosen at the fund manager's discretion.

L. Warnings

All jurisdictions require various types of warning to be included in the short-form disclosure document.

M. Additional information

This concerns the question of whether the rules make provision for additional information to be included in the short-form disclosure document.

All jurisdictions contemplate that additional information may be included, albeit subject to various limitations (e.g. Canada provides that the Fund Facts should ‘include only the information necessary for a reasonable investor to understand the fundamental and particularly characteristics of the mutual fund’).

N. The importance of other measures

All jurisdictions recognise that disclosure, by itself, does not achieve informed decision-making and that steps need to be taken to improve financial advice and financial literacy/investor education.

Further questions and future research

There is no doubt that there is an international trend towards the adoption of short-form disclosure documents. Although this is a positive development in terms of producing shorter disclosure documents that are easier for retail investors to understand and increasing the likelihood that investors will make informed decisions, it is important to be aware of the

⁹ Australian Securities and Investments Commission, Non-standard margin lending facilities: Disclosure to investors, Regulatory Guide 219. The concept of ‘stark language’ was explored in Andrew Godwin, ‘The Lehman Minibonds Crisis in Hong Kong: Lessons for Plain Language Risk Disclosure’ (2009) 32(2) *The University of New South Wales Law Journal* 547.

limitations of disclosure and the extent to which disclosure is a necessary but insufficient measure.

Other measures that are relevant in this regard are measures aimed at strengthening investor education and the quality of financial advice. Although all of the jurisdictions under examination have adopted such measures, further consideration should be given to the interrelationship between short-form disclosure documents, investor education and financial advice and the extent to which each should complement the other. For example, further consideration should be given to guiding investors as to how they should read short-form disclosure documents.¹⁰ In addition, consideration should be given to the importance of designing short-form disclosure documents so that they also serve the purpose of facilitating the provision of advice by financial advisors. Investors who obtain financial advice are more likely to make informed decisions if their advisors are well-informed. In turn, their advisors are more likely to be well-informed if the short-form disclosure document is designed in a way that facilitates the provision of financial advice.

This involves presenting the information in a manner that reflects the process by which financial advice is given and includes the following techniques:

- setting out the information in a Q&A format;
- formulating the questions appropriately to ensure that they include the questions that investors are likely to ask and are worded in an appropriate manner (e.g. they are neutral and do not confuse investors or create the wrong impression);
- listing the questions in a logical order; and
- highlighting the risks in an appropriate manner and using language that identifies not just the risks but also the consequences of risk in language that investors can understand.¹¹

In addition, consideration should be given to the use of risk awareness statements or risk disclosure statements, particularly in relation to complex products. The thinking behind this is that if risks are drawn specifically to the attention of investors and if investors are required to read and sign such a statement, they will think more carefully about the product and be better able to determine the threshold question as to its suitability for their purposes.¹²

Finally, a question arises as to whether harmonisation between jurisdictions would be appropriate, either in relation to the short-form documents that are used or the general approach that is adopted. There is a threshold issue as to whether harmonisation would be

¹⁰ Hong Kong has adopted such a measure in its guide entitled 'How to Read Product Key Facts Statements'.

¹¹ This has been referred to in Australia as 'stark language'. See ASIC, Non-standard margin lending facilities: Disclosure to investors, November 2010, Regulatory Guide 219.

¹² For a discussion about risk awareness statements, see Andrew Godwin, 'The Lehman Minibonds Crisis in Hong Kong: Lessons for Plain Language Risk Disclosure' (2009) 32(2) *The University of New South Wales Law Journal* 547.

possible, given differences in the legal and regulatory regimes and also differences in the scope of products to which the short-form disclosure documents apply and the purpose that such documents are designed to serve. These differences would appear to rule out formal harmonisation between jurisdictions, at least in the short term. However, it is likely that even limited or qualified harmonisation (e.g. harmonisation in relation to straightforward fund products) would provide benefits for jurisdictions, particularly as fund passport initiatives gain momentum and the cross-border distribution and sale of financial products becomes more widespread. For this purpose, it would be useful to achieve closer dialogue and cooperation between the regulators on the development and use of short-form disclosure documents.

Future research initiatives include conducting market research regarding the relationship between the length of disclosure documents and the likelihood that investors will read and engage with them. Although the value of such research is likely to be limited by the fact that all investors are different and it is impossible to construct a profile of a 'typical investor', the results should provide useful insights into whether the maximum length of disclosure documents really makes a difference and, if so, the extent to which the specific number of pages matters.

It would also be useful to conduct research on the interrelationship between the various measures referred to above (namely – disclosure, financial advice and investor education) and whether achieving closer complementarities between them would assist retail investors.

Finally, it would be useful to undertake a comparative analysis between jurisdictions in relation to the specific content, presentation and formatting features of the short-form disclosure documents that have been adopted to date.

PART II
SURVEY OF JURISDICTIONS
AUSTRALIA

Section 1 – General Information

A. Sources of information

Australian Securities and Investments Commission (ASIC), Information Sheet 133 (18 June 2012) (' IS 133 ') http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/info133-published-18-June-2012.pdf/\$file/info133-published-18-June-2012.pdf
ASIC, Information Sheet 155 (27 November 2013) (' IS 155 ') https://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/info155-published-27-November-2013.pdf/\$file/info155-published-27-November-2013.pdf
Corporations Amendment Regulations 2010 (No. 5) (' the Regulations ') http://www.comlaw.gov.au/Details/F2010L01585/Download
Parliamentary Joint Committee on Corporations and Financial Services, Report on Inquiry Into Financial Products and Services in Australia (November 2009) (' Ripoll Report ') http://www.aph.gov.au/binaries/senate/committee/corporations_ctte/fps/report/report.pdf
Regulatory Impact Statement, Corporations Act Amendment Act 2010 (No 5) (' RIS ') http://www.comlaw.gov.au/Details/F2010L01585/Download

B. Background

As in other jurisdictions, the adoption of short-form disclosure documents in Australia was driven by challenges facing retail investors, including asymmetric information and differences in levels of financial literacy [RIS, para 2]. The move was prompted by the fallout from the Global Financial Crisis, particularly problems relating to margin lending facilities as seen in the collapse of high-profile investment firms such as Opes Prime and Storm Financial, which had previously not been regulated as a financial product and had therefore not been subject to the disclosure requirements for financial products. The Ripoll Report noted that it had received submissions to the effect that disclosure had become excessive and too compliance-focused.

In 2008, the Rudd government set up the Financial Services Working Group ('FSWG') to 'slash the lengthy, complex and unreadable disclosure documentation'.¹³ This led to the Regulations, which introduced a tailored disclosure regime for certain products (the 'tailored regime').

C. Relevance of experience from other jurisdictions

Although it is likely that the FSWG considered the experience from other jurisdictions in designing the tailored disclosure regime, the outcome was quite different from the summary short-form disclosure documents that other jurisdictions had adopted. In place of the long-form disclosure documents, Australia adopted a short-form disclosure document, known as the 'shorter' Product Disclosure Statement (PDS), which contains all of the prescribed information through the mechanism of incorporation by reference (see Section 2C for information on incorporation by reference).

D. Key drivers and objectives

The move towards the tailored regime was partly driven by high-profile collapses of financial firms¹⁴ and partly driven by concerns, supported by qualitative research that 'the PDSs currently being produced and provided to consumers [were] not fully effective in conveying the key product information to assist consumers to make informed choices'.¹⁵ The research found that

consumers described superannuation PDSs as disengaging and containing too much unnecessary information for the consumer. The language appeared difficult to understand and consumers did not see the PDSs as providing easy access to the required relevant information. As a result consumers were not necessarily relying on the PDS when choosing a fund, compromising understanding of the product and meaningful comparisons between products...¹⁶

As noted in the RIS, there had been a 'tendency for suppliers of financial products to provide excessive information'. Further, '[d]isclosure documents can vary significantly in their length, design and structure...PDSs can also vary in the amount of jargon and other technical language they contain, and the way this information is presented.' [RIS, para 8]. There was also evidence suggesting that 'the current framework [did] not allow for comparability across products because of heterogeneity in the way information and content [was] presented in PDSs' [RIS, para 10].

The move towards the tailored regime was also due to risk aversion on the part of PDS issuers as a result of the need to ensure compliance with their disclosure obligations and the resulting tendency to include more information than less, difficulties and uncertainty in interpreting the

¹³ Joint media release by the Minister of Finance and Deregulation and the Minister for Superannuation and Corporate Law, 'Complexity to be tackled in Financial Services Working Group to start immediately', 5 February 2008.

¹⁴ See the Regulatory Impact Statement for the *Corporations Act Amendment Act 2010 (No 5)* ('RIS'), para 24 & 25 for the need to have 'clearer articulation of key risks' in relation to margin lending facilities.

¹⁵ *Ibid* para 11, citing research by Wallis Consulting Group, Report for the Investment and Financial Services Association Ltd, March 2008.

¹⁶ *Ibid* para 12.

obligations as a result of principles-based regulation (including how to achieve the ‘clear, concise and effective’ standard) and the need to protect the issuer against potential liability claims.¹⁷

It was considered that these problems could be ‘addressed by government action supporting better regulatory balance which promotes lower compliance costs and better arrangements to support more effective disclosures in PDSs.’¹⁸

The RIS noted the expectation that consumers would ‘be in a better position to make informed investment decisions about whether to acquire a particular financial product.’ This was because ‘consumers [would] receive simpler, more readable and standardised PDSs that [would] facilitate decisions and comparisons across similar products’ [RIS, para 75]. Further, ‘[a] shorter document [would] be more user-friendly, so consumers [would be] more likely to engage with the PDS’ [RIS, para 76].

As stated in the relevant Information Sheets,¹⁹ the key objectives of the tailored regime included inserting ‘prescribed section headings to make it easier for consumers to find important information in the PDS and compare across products’ and ‘key content requirements to ensure that consumers are provided with the key information they need to make an investment decision’ so that consumers may ‘engage with disclosure documents and better understand their financial products’ in a format that is ‘consumer friendly and easy to read.’

E. Relevance of other measures

The RIS recognised that ‘even in cases where the presentation of financial information is succinct and [accessible], potential investors approach investment decisions with different levels of financial literacy’.²⁰ As a result, disclosure should be viewed as part of a package of measures that includes improving the quality of financial advice and investor education.

F. Importance of risk disclosure

The Regulations prescribe the detailed information that must be included in the PDS in relation to risk. In addition, the shorter PDS regime requires PDSs to contain prominent warnings [IS 155, p 4].

In relation to the disclosure of investment risk in superannuation funds, IS 155 encourages trustees to disclose the standard risk measure (SRM), which is an investment risk classification system developed by the Association of Superannuation Funds of Australia (ASFA) and the Financial Services Council (FSC) to enable investors to compare investment options across superannuation funds. It further recommends that funds that do not use the SRM should explain in the primary document why this model is not being used and describe what risk classification model has been used instead.

¹⁷ Ibid para 13.

¹⁸ Ibid para 17. For estimates on costs, see para 85.

¹⁹ IS 133 and IS 155.

²⁰ Citing the ANZ Survey of Adult Financial Literacy in Australia. October 2008.

G. Other issues (including any proposed changes)

Demonstrating the definitional challenges that arise in relation to a highly prescriptive regime, hedge funds have been expressly excluded from the tailored regime (specifically, from the category of ‘managed investment schemes’) on the basis that ‘while the shorter disclosure documents work well for relatively simple financial products, complex products often have features and risks that can’t be addressed in a short and simple manner.’²¹

In October 2013, ASIC refined the definition of a ‘hedge fund’ in line with the approach taken in Class Order [CO 12/749] Relief from the Shorter PDS Regime and issued a regulatory guide on improving disclosure for hedge funds.²² The exclusion applies ‘on a temporary basis until 22 June 2014, pending further work by the Government on the appropriate long-term treatment of these products’,²³ and has now been extended to 30 June 2015.

It is understood that ASIC is currently undertaking consumer testing in relation to the shorter product disclosure statements. Such research will be important in determining whether retail investors are in fact engaging with the shorter PDSs, particularly in terms of the prescribed maximum page length.

Section 2 – Assessment of Criteria

A. Scope of products

The requirement to produce a shorter PDS under the tailored regime applies to the following products:

- superannuation products (other than those that are solely a defined benefit interest, solely a pension product, or that have no investment component—also known as ‘risk-only superannuation products’);
- simple managed investment schemes; and
- standard margin lending facilities.

Comparability, both within product classes and across product classes, has been identified as a goal of the shorter PDSs in Australia. As stated in the RIS [para 76], ‘[t]he proposed standardised structure of the PDS ... means that they will be able to easily compare the key product features offered by different providers.’ And as stated in the information sheets, ‘the key objectives of the tailored regime included inserting prescribed section headings to

²¹ The Treasury, ‘Shorter Product Disclosure Statements’ (Media Release, No. 169, 22 December 2011). The definition of a hedge fund was subsequently debated in ASIC Consultation Papers 147 and 174.

²² ASIC, Hedge funds: Improving disclosure, Regulatory Guide 240 (October 2013) (‘RG 240’), RG 240.3: ‘There are some characteristics that distinguish hedge funds from other managed investment schemes, such as the use of leverage, derivatives and short selling, or seeking returns with a low correlation to equity, bond or cash markets. These characteristics and other features of hedge funds, such as charging performance fees, mean that investors in these funds can be exposed to more complex risks than investors in funds pursuing more “vanilla” investment strategies.’ As noted in RG 240.29, the guide applies to all hedge funds and funds of hedge funds, regardless of whether the fund meets the definition of a simple managed investment scheme.

²³ RG 240.30.

make it easier for consumers to find important information in the PDS and compare across products.’

B. Length requirements

The requirements prescribe a maximum page length of 8 A4 pages (for superannuation and managed investment scheme PDSs) and 4 pages (for standard margin loan PDSs).

C. Purpose and content requirements

There is no express statement in relation to purpose, although Information Sheet 133 provides that a shorter PRD must include ‘key content requirements to ensure that consumers are provided with the key information they need to make an investment decision.’ The content requirements are highly prescribed and there is no need to satisfy any general requirement to ‘include... such...information as a person would reasonably require for the purpose of making a decision, as a retail client, whether to acquire the financial product’ or ‘any other information that might reasonably be expected to have a material influence on the decision of a reasonable person, as a retail client...to acquire the product’, as is the requirement for financial products that are not subject to the tailored regime.

Under the technique of incorporation by reference, ‘[a]ny information that is incorporated by reference into the PDS is taken to be included in the PDS and is therefore subject to all provisions relating to a PDS. This means that the incorporated information must be clear, concise and effective and must not be misleading or deceptive’.²⁴ It also means that the full range of liability and enforcement provisions of the law apply to it.²⁵

On the above basis, the shorter PDS operates as a substitute for the long-form disclosure document. Through the technique of incorporation by reference, it contains all of the prescribed information that is required to enable investors to make an investment decision.

D. Liability

In Australia, the shorter PDS operates as a substitute for the long-form disclosure document and is therefore subject to the prescribed liability regime.

E. Language, risk, warnings and additional information

²⁴ See Australian Securities and Investments Commission, ‘Disclosure: Product Disclosure Statements (and Other Disclosure Obligations)’ (Regulatory Guide No 168, 6 September 2010) 168.110. See also IS 155: ‘[s]ome material is required or permitted to be located separately from the primary document, with a reference to be included in the primary document telling readers where they can find this information: see regs 7.9.11P and 7.9.11X of the Corporations Regulations. This mechanism is called “incorporation by reference” and is an important means by which the primary document can be kept short and concise, while providing full information elsewhere for those consumers who wish to read it.’

²⁵ IS 155.

The following table sets out the requirements regarding language, risk, warnings and additional information.

<p>Disclosure standard and language use</p>	<p>The Product Disclosure Statement must be worded and presented in a clear, concise and effective manner — see subsection 1013C (3) of the Act.</p> <p>ASIC Information Sheet 133:</p> <p>The key features of PDSs under the shorter PDS regime include:</p> <ul style="list-style-type: none"> • a maximum page length of 8 A4 pages (for superannuation and managed investment scheme PDSs) and 4 pages (for standard margin loan PDSs), together with a prescribed minimum font size • prescribed section headings to make it easier for consumers to find important information in the PDS and compare across products • key content requirements to ensure that consumers are provided with the key information they need to make an investment decision • provision for other material to be located outside the PDS document itself, but form part of the PDS through incorporation by reference, and • provision for inclusion of additional information within the PDS, provided the prescribed length is not exceeded.
<p>Format, font and use of graphics</p>	<p>ASIC Information Sheet 156:</p> <p>Font size in the primary document must be at least 9 points (except for the issuer’s name, address, ACN, ABN or Australian financial services licence number, which must be at least 8 points): see Schs 10D(1)(2) and 10E(1)(2).</p> <p>We encourage you to consider how easy your PDS is to read – for example, by testing it with potential consumers. You may be able to make the PDS easier to read by increasing the font size and ensuring that the print is not too pale or faint.</p> <p>See, for example, the Regulations, Schedule 10D, paragraph 1 in relation to superannuation funds:</p> <p>(2)The minimum font size for text in the Statement is:</p> <ul style="list-style-type: none"> (a) for the name, address, ABN (if applicable), ACN (if applicable) and AFSL (if applicable) of the person giving the Statement — 8 points; and (b) for all other text — 9 points.

Highlighting of risk	<p>The Regulations prescribe the detailed information that must be included in the PDS in relation to risk.</p> <p><i>ASIC, Non-standard margin lending facilities: Disclosure to investors, Regulatory Guide 219, provides that ‘the short-form document must be in ‘stark language’, of the kind that can be readily understood by retail clients.’</i></p>
Warnings	<p>ASIC Information Sheet 155:</p> <p>The shorter PDS regime requires shorter PDSs to contain warnings... To alert consumers, these warnings must be made prominent. You may be able to amend the formatting of the required words to create emphasis – for example, by:</p> <ul style="list-style-type: none"> • increasing their font size • changing their colour • putting a box around them • using a coloured background, or • inserting a warning symbol next to them. <p>The Regulations stipulate the warnings that must be given in relation to each product.</p>
Additional information	<p>Information Sheet 133:</p> <p>Extra information and section headings may be included in the primary document provided the prescribed length is not exceeded: see Schs 10D(2)(5) and 10E(2)(5) of the Corporations Regulations.</p> <p>Some material is required or permitted to be located separately from the primary document, with a reference to be included in the primary document telling readers where they can find this information: see regs 7.9.11P and 7.9.11X of the Corporations Regulations. This mechanism is called ‘incorporation by reference’ and is an important means by which the primary document can be kept short and concise, while providing full information elsewhere for those consumers who wish to read it. A ‘shorter PDS’ includes both the primary document and material incorporated by reference. Therefore, material incorporated by reference is deemed to be part of the shorter PDS and the full range of liability and enforcement provisions of the law apply to it: see s1013C(1C) of the Corporations Act [see the above Corporations Amendment Regulations 2010 (No. 5)] as modified.</p> <p>See, for example, the Regulations, Schedule 10C, paragraph 2(2)(4):</p> <p>(4) The Product Disclosure Statement:</p> <ul style="list-style-type: none"> (a) may include additional sections after sections 1 to 7; and (b) may include other information;

	to an extent that does not have the effect of contravening subclause 1 (1) [i.e. the length requirements].
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CANADA

Section 1 – General Information

A. Sources of information

Canadian Securities Administrators (CSA), Implementation of Stage 2 of Point of Sale Disclosure for Mutual Funds – Delivery of Fund Facts – Notice of Amendments to NI 81-101 Mutual Fund Prospectus Disclosure, Form 81-101F3 Contents of Fund Facts Document, Companion Policy 81-101CP to National Instrument 81-101 Mutual Fund Prospectus Disclosure and Consequential Amendments (13 June 2013) (**'Stage 2 Amendments'**)

http://www.osc.gov.on.ca/documents/en/Securities-Category8/ni_20130613_81-101_implementation-stage-2-pos.pdf

CSA, Notice and Request for Comment, Implementation of Stage 2 of Point of Sale Disclosure for Mutual Funds and Draft Amendments (21 June 2012)

<http://www.lautorite.qc.ca/files//pdf/reglementation/valeurs-mobilieres/81-101/2012-06-21/2012juin21-81-101-avis-cons2-en.pdf>

Joint Forum of Financial Market Regulators, Consultation Paper 81-403: Rethinking Point of Sale Disclosure for Segregated Funds and Mutual Funds (13 February 2003) (**'Consultation Paper'**)

http://www.jointforum.ca/en/init/point_of_sale/final%20consultation%20paper%20with%20appendices%20e.pdf

Joint Forum of Financial Market Regulators, Framework 81-406 Point of Sale Disclosure for Mutual Funds and Segregated Funds (24 October 2008) (**'Framework Document'**)

http://www.osc.gov.on.ca/documents/en/Securities-Category8/rule_20081024_81-406_framework-pos.pdf

Joint Forum of Financial Market Regulators, Proposed Framework 81-406: Point of Sale Disclosure for Mutual Funds and Segregated Funds (15 June 2007) (**'Proposed Framework'**)

http://www.jointforum.ca/en/init/point_of_sale/point_of_sale.asp

National Instrument 81-101, Mutual Fund Prospectus Disclosure Form 81-101F3 Contents of Fund Facts Document (**'Contents Requirements'**)

[https://www.bcsc.bc.ca/uploadedFiles/securitieslaw/policy8/81-101F3_\[F\].pdf](https://www.bcsc.bc.ca/uploadedFiles/securitieslaw/policy8/81-101F3_[F].pdf)

Securities Act, National Instrument 81-101, Mutual Fund Prospectus Disclosure (**'Regulation'**)

http://www.bclaws.ca/Recon/document/ID/freeside/46_1_2000

Policy Statement to Regulation 81-101 Respecting Mutual Fund Prospectus Disclosure (1 January 2014) (**'Policy Statement'**)

<http://www.lautorite.qc.ca/files//pdf/reglementation/valeurs-mobilieres/81-101/2014-01-01/2014jan01-81-101-ig-vadmin-en.pdf>

B. Background

A summary document for mutual funds was first proposed in Canada in 2003 in the Consultation Paper. It was subsequently picked up in 2007 under the Proposed Framework. The reason for proposing a summary document was that '[m]any investors [had] trouble finding and understanding the information they need because it [was] buried in the simplified prospectus for mutual funds and in the information folder and insurance contract for segregated funds. These documents [tended] to be long and complex. Investors also [found] it difficult to compare information about different funds. In addition, 'research [indicated] that many investors [did] not use this information when making purchase decisions' [The Framework Document, 10482].²⁶

C. Relevance of experience from other jurisdictions

The regulators drew broadly on the experience in other jurisdictions, reviewing 'many research studies and academic papers from around the world to understand how investors make investment decisions and what information they want to make a decision' [Proposed Framework, 6-8. See Appendix 4 of the Proposed Framework for a list of the research studies and academic papers].

D. Key drivers and objectives

The Framework Document [page 10481] notes the following:

[O]ur vision focuses on three key principles:

- providing investors with key information about a fund
- providing the information in a simple, accessible and comparable format
- providing the information before investors make their decision to buy

We want investors to have disclosure that can give them a basic and correct understanding of the potential benefits, risks and costs of investing in a fund and to be able to meaningfully compare one fund with another.

It also provided a succinct outline of the Fund Facts document:

Fund Facts. The Fund Facts is the central document in the disclosure regime under the framework. It is in plain language, fits on both sides of one page and highlights key information that is important to investors, including performance, risk and cost. To promote comparability and simplicity, many aspects of the Fund Facts will be prescribed, such as the items, headings, their order and certain content. Other aspects, including the specific content under some items, will be left to fund managers and insurers to determine. Flexibility will be permitted to accommodate different kinds of funds.

²⁶ Another reason for proposing a summary document was to harmonise disclosure for mutual and segregated funds (often referred to as a 'mutual fund with insurance wrapper'): phone interview with the Ontario Securities Commission, 16 January 2013.

Testing of the Fund Facts was conducted in 2006, in relation to both mutual funds and segregated funds. According to the relevant research report, ‘the Fund Facts was very well received by the investors and the advisers who we tested. The investors described it as informative, relevant and easy to read. Investors said they want to receive the document before they make a decision to invest. The advisers said they would use it with clients as a presale document and that it would be helpful in explaining things.’ [Proposed Framework, pages 5-6. See Appendix 5 for the Fund Facts Document Research Report]

E. Importance of risk disclosure

The Proposed Framework noted that it was important for investors to have a ‘basic and correct understanding of the potential benefits, risks and costs of investing in a fund and to be able to meaningfully compare one fund with another’ [Proposed Framework, page 1].

Under the Stage 2 Amendments, an explanation of “volatility” has been added to the risk section to provide greater explanation of the risk scale that is required to be included in the Fund Facts document.

F. Other issues (including any proposed changes or reforms)

The Framework Document [page 10481] noted that ‘[i]nsurance and securities regulators [were] strongly committed to the key principles and [would] consider their applicability to other securities and insurance products.’²⁷

The Canadian Securities Administrators has published for comment a proposed risk classification methodology for the use of mutual fund managers in Fund Facts documents: ‘The CSA developed the Proposed Methodology in response to stakeholder feedback that the CSA has received throughout the implementation of the point of sale disclosure framework for mutual funds (the Framework), notably that a standardized risk classification methodology proposed by the CSA would be more useful to investors as it would provide a consistent and comparable basis for measuring the risk of different mutual funds.’²⁸

Section 2 – Assessment of Criteria

A. Scope of products

Canada adopts a tailored approach. The requirement to produce Fund Facts only applies to mutual funds and segregated funds, although it has been reported that they may eventually be available for other types of investment fund, such as exchange-traded funds and non-redeemable investment funds.

²⁷ The regulators are considering applying the summary disclosure approach to exchange-traded funds. However, there are concerns about applying it to a broader range of products: phone interview with the Ontario Securities Commission, 16 January 2013.

²⁸ CSA Notice 81-324 and Request for Comment, Proposed CSA Mutual Fund Risk Classification Methodology for Use in Fund Facts, 12 December 2013, http://www.osc.gov.on.ca/documents/en/Securities-Category8/csa_20131212_81-324_rfc-mutual-fund-risk.pdf.

Comparability, in terms of the ability to compare information about different funds, has been identified as a goal of Fund Facts. As noted in the Framework [10481], '[w]e want investors to have disclosure that can give them a basic and correct understanding of the potential benefits, risks and costs of investing in a fund and to be able to meaningfully compare one fund with another.'

B. Length requirements

The requirements provide that each of Part I and Part II of the Funds Facts document must not exceed one page in length, unless the required information in any section causes the disclosure to exceed this limit. Where this is the case, a fund facts document must not exceed a total of 4 pages in length.

C. Purpose and content requirements

The Policy Statement [paragraph 2.2] states the following in relation to the purpose of the Regulation:

- (1) The purpose of the Regulation is to ensure that the offering disclosure regime for mutual funds provides investors with disclosure documents that clearly and concisely state information that investors should consider in connection with an investment decision about the mutual fund, while recognizing that different investors have differing needs in receiving disclosure.
- (2) The disclosure regime for mutual funds is built on 2 main principles:
 - providing investors with key information about a mutual fund; and
 - providing the information in a simple, accessible and comparable format.

The Content Requirements [General Instructions (4)] provide that Fund Facts should include 'only the information necessary for a reasonable investor to understand the fundamental and particular characteristics of the mutual fund.'

As stated in paragraph 2.1.1 (1) of the Policy Statement:

- (1) The Regulation requires that the fund facts document be in plain language, be no longer than 4 pages in length, and highlight key information important to investors, including performance, risk and cost. The fund facts document is incorporated by reference into the simplified prospectus.

On the basis of the above, the Fund Facts document in Canada operates as a summary statement that is part of the formal disclosure document.

D. Liability

The Fund Facts document is part of the formal disclosure document and is therefore subject to its liability regime.

E. Language, risk, warnings and additional information

The following table sets out the requirements regarding language, risk, warnings and additional information.

<p>Disclosure standard and language used</p>	<p>Contents Requirements, General Instructions:</p> <p>(3) A fund facts document must state the required information concisely and in plain language.</p> <p>Regulation, Part 1:</p> <p>“plain language” means language that can be understood by a reasonable person, applying a reasonable effort;</p> <p>See Policy Statement, Part 3, for details of the plain language approach.</p> <p>Policy Statement, para 2.1.1(3):</p> <p>(3) To help write the fund facts document in plain language, mutual fund companies can use the Flesch-Kincaid methodology to assess the readability of a fund facts document. The Flesch-Kincaid grade level scale is a methodology that rates the readability of a text to a corresponding grade level and can be determined by the use of Flesch-Kincaid tests built into commonly used word processing programs. The CSA will generally consider a grade level of 6.0 or less on the Flesch-Kincaid grade level scale to indicate that a fund facts document is written in plain language. For French-language documents, mutual fund companies may wish to consider using other appropriate readability tools.</p>
<p>Format, font and use of graphics</p>	<p>Contents Requirements, General Instructions:</p> <p>(5) Regulation 81-101 respecting Mutual Fund Prospectus Disclosure requires the fund facts document to be presented in a format that assists in readability and comprehension. This Form does not mandate the use of a specific format or template to achieve these goals. However, mutual funds must use, as appropriate, tables, captions, bullet points or other organizational techniques that assist in presenting the required disclosure clearly and concisely.</p> <p>(6) This Form does not mandate the use of a specific font size or style but the font must be legible. Where the fund facts document is made available online, information must be presented in a way that enables it to be printed in a readable format.</p> <p>(7) A fund facts document can be produced in colour or in black and white, and in portrait or landscape orientation.</p>

	<p>(8) A fund facts document must contain only the information that is specifically mandated or permitted by this Form. In addition, each Item must be presented in the order and under the heading or sub-heading stipulated in this Form.</p> <p>(9) A fund facts document must not contain design elements (e.g., graphics, photos, artwork) that detract from the information disclosed in the document. Contents of a Fund Facts Document 91.</p>
Highlighting of risk	<p>Policy Statement:</p> <p>2.1.1. Fund Facts Document</p> <p>(1) The Regulation requires that the fund facts document be in plain language, be no longer than 4 pages in length, and highlight key information important to investors, including performance, risk and cost. The fund facts document is incorporated by reference into the simplified prospectus.</p>
Warning	<p>Content Requirements, Item 7:</p> <p>(2) State in bold font in wording similar to the following:</p> <p>Before you invest in any fund, you should consider how it would work with your other investments and your tolerance for risk.</p>
Additional information	<p>Content Requirements, General Instructions (4):</p> <p>‘...Include only the information necessary for a reasonable investor to understand the fundamental and particular characteristics of the mutual fund.’</p>

EUROPEAN UNION (EU)

Section 1 – General Information

A. Sources of information

Committee of European Securities Regulators (CESR), 'CESR's Guide to Clean Language and Layout for the Key Investor Information Document (20 December 2010) (' CESR Guide ') http://www.esma.europa.eu/system/files/10_1320.pdf
CESR, Consultation Paper – CESR's Technical Advice at Level 2 on the Format and Content of Key Information Document Disclosures for UCITS (8 July 2009) (' CESR Consultation Paper ') http://www.esma.europa.eu/system/files/09_552_CP_Final_KID_advice.pdf
CESR, Feedback Statement - CESR's Technical Advice to the European Commission on the Format and Content of Key Information Document Disclosures for UCITS (19 April 2010) http://www.esma.europa.eu/system/files/09_995.pdf
CESR, Template for the Key Investor Information Document (' Template ') http://www.esma.europa.eu/system/files/10_1321.pdf
Council of the European Union, Presidency Draft Compromise (28 May 2013) (' Presidency Draft Compromise ') http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%2010111%202013%20INIT&r=http%3A%2F%2Fregister.consilium.europa.eu%2Fpd%2Fen%2F13%2Fst10%2Fst10111.en13.pdf
European Commission, Commission Regulations (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 (' Commission Regulation ') http://www.esma.europa.eu/system/files/5-Reg_583_210.pdf
European Commission, Document of the Services of the Commission, Simplified Prospectus Workshops – Issues Paper (3 May 2006) (' 2006 Issues Paper ') http://ec.europa.eu/internal_market/investment/docs/other_docs/prospectus/bp-1st-sp-workshop_en.pdf
European Commission, Explanatory Memorandum for Proposal for a Regulation of the European Parliament and of the Council on Key Information Documents for Investment Products (3 July 2012) (' Explanatory Memorandum ' or ' Original PRIPS Proposal ' as below) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0352:FIN:en:PDF
European Parliament, 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) ('UCITS IV Directive') http://www.esma.europa.eu/system/files/L_302_32.pdf
European Parliament, Draft Report on the Proposal by the Committee on Economic and Monetary Affairs dated 20 December 2012 ('Econ Draft Report') http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONGML%2bCOMPARL%2bPE-502.113%2b01%2bDOC%2bPDF%2bV0%2f%2fEN
IFF Research and YouGov, UCITS Disclosure Testing Research Report (June 2009) ('Research Report') http://ec.europa.eu/internal_market/investment/docs/other_docs/research_report_en.pdf
Regulation of the European Parliament and of the Council on Key Information Documents for Packaged Retail and Insurance Based Investment Products (PRIIPs), adopted by the European Parliament on 15 April 2014 ('PRIIPS Regulation') http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2014-0357#BKMD-34
Report on the Proposal for a Regulation of the European Parliament and of the Council on Key Information Documents for Investment Products dated 6 November 2013 http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONGML%2bREPORT%2bA7-2013-0368%2b0%2bDOC%2bPDF%2bV0%2f%2fEN

B. Background

The EU adopted a short-form disclosure document in relation to collective investment schemes or Undertakings for Collective Investment in Transferable Securities ("UCITS") in 2009 under the UCITS IV Directive and the Commission Regulation. Known as a 'Key Information Document' or 'KID', the document replaced the simplified prospectus for UCITS, which had been introduced by the UCITS Management Directive (2001/107/EC) in 2002. The simplified prospectus (SP) had been:

...widely seen as having failed to achieve its objectives. In particular, there [was] considered to be a continuing lack of transparency about UCITS, especially their costs and risks; the information given in the SP [was] not easily understood and used by the average retail investor; the SP [was] too lengthy and technical; its production [was] costly and time-consuming; SPs often [exceeded] the Directive requirements; their content [was] not consistent in all Member States; and they [did] not assist comparisons between funds, particularly when cross-border sales [were] involved. [CESR Consultation Paper, page 3].

After considering feedback from external stakeholders, including retail investors' representatives, and also the results of investors testing, CESR made various recommendations, including the following:

- The document containing the key investment information ('KII') should be referred to as the Key Information Document or 'KID'.
- The length of the KID should be limited to two sides of A4 for all UCITS.

[CESR Consultation Paper, page 4]

Under the PRIIPS Regulation, a similar approach will be extended to all ‘packaged retail investment products’ (see Section G).

C. Relevance of experience from other jurisdictions

The introduction of the KID was described as a ‘radical attempt to address these shortcomings by giving management companies more scope to produce a document that is readily understandable by the average retail investor.’ [CESR Guide, page 4]

The 2006 Issues Paper, which considered reforms to the simplified prospectus, drew on the experience in a number of jurisdictions, including the Key Features Document in the United Kingdom (and the KeyFacts Quick Guide that was then proposed), the Financial Information Leaflet Regime in the Netherlands and proposed reforms in the United States and Canada.

Market testing subsequently revealed that consumers and intermediaries considered the ‘key investor information’ document to be an improvement on the pre-sales information that was then available [Research Report, para 10.2], partly because the key investor information document was short and more likely to be read [Research Report, para 9.27].

D. Key drivers and objectives

The UCITS IV Directive makes it clear that the purpose of key investor information is to help investors reach informed investment decisions and that it should be presented in a short format:

(59) Key investor information should be provided as a specific document to investors, free of charge, in good time before the subscription of the UCITS, in order to help them to reach informed investment decisions. Such key investor information should contain only the essential elements for making such decisions. The nature of the information to be found in the key investor information should be fully harmonised so as to ensure adequate investor protection and comparability. Key investor information should be presented in a short format. A single document of limited length presenting the information in a specified sequence is the most appropriate manner in which to achieve the clarity and simplicity of presentation that is required by retail investors, and should allow for useful comparisons, notably of costs and risk profile, relevant to the investment decision.

The Commission Regulation highlighted the need to engage investors through format, presentation and the quality and nature of the language used:

(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.

E. Relevance of other measures

When the KID was first proposed, it was recognised that other measures would be needed to allow investors to make informed investment decisions and that it would have to operate alongside these measures, which included good-quality financial advice and improved levels of financial literacy [CESR Consultation Paper, page 5]. In particular, CESR recognised that the KID would represent ‘a considerable enhancement of disclosures for UCITS but...that it [would] not, on its own, solve the problem of informed decision-making by retail investors’ [Ibid].

CESR also contemplated the possibility that industry and consumer representatives would take steps to enhance consumer education, including providing a common glossary of terms to overcome problems that investors had in understanding the terminology used in financial services documents [CESR Consultation Paper, page 14].

F. Importance of risk disclosure

From the outset, it was recognised that risk disclosure was an important element of the KID. The Commission Regulation prescribed the use of a synthetic risk indicator [See Commission Regulation, para (6); see also CESR Consultation Paper, page 22 for an analysis of the use of a synthetic risk indicator.].

As noted in the Commission Regulation:

(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 over-burdening 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.

The use of a synthetic risk indicator had been strongly supported in the results of market testing, as reported in the Research Report. As noted in the CESR Consultation Paper [page 22]:

Findings from Phase 1 of the consumer testing exercise revealed that investors seem to be more confident in their ability to compare funds and assess their level of risk when they are provided with the synthetic risk indicator. It appeared also that their real level of understanding was not impacted (neither better nor worse on an overall basis).

In addition, '[c]onsumers expressed a strong preference for the synthetic indicator over the purely narrative approach. Respondents liked the visual nature of the indicator, which is less intimidating than the narrative alternative, and said that it made the risk profile easier to understand, especially for non-experienced investors' [Ibid].

G. Other issues (including any proposed changes)

Under the PRIIPS Regulation, a three-page key information document will apply to all packaged retail investment and insurance-based products or 'PRIIPS'. In order to give *PRIIPs* manufacturers and persons *advising on or selling PRIIPs* sufficient time to prepare for the practical application of the requirements, the requirements under the PRIIPS Regulation will not become applicable until two years after the regulation comes into force. UCTIS are subject to a transitional period of five years before they become subject to the PRIIPS Regulation.

A PRIIP is defined as any product that falls within the definition of a 'packaged retail investment product' (or 'PRIIP') or an 'insurance-based investment product'.

A packaged retail investment product (or PRIIP) is defined as '*an investment, including instruments issued by SPVs ..., where, regardless of the legal form of the investment, the amount repayable to the investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the investor.*'

An insurance-based investment product is defined as '*an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations.*'

The decision to extend the short-form disclosure regime to a broader range of products beyond collective investment schemes – was driven by concerns that 'product disclosure rules had added unnecessary costs for firms and created complexity for consumers'.²⁹ In part, this was because of research suggesting that providing too much information could lead to poor decision-making on the part of retail investors.³⁰

Members of the Committee on Economic and Monetary Affairs of the European Parliament had suggested in 2013 that the PRIIPS proposal should extend to shares and bonds as well, but this was abandoned in a vote on 21 October 2013.³¹

Section 2 – Assessment of Criteria

A. Scope of products

²⁹ See Comments of UK Financial Conduct Authority (FCA) director of enforcement, Tracy McDermott, as reported by MoneyMarketing on 10 October 2013, available at <http://www.moneymarketing.co.uk/2001422.article>.

³⁰ See FCA, 'Applying Behavioural Economics at the Financial Conduct Authority', April 2013 (Occasional Paper No. 1).

³¹ For products that fall outside the scope of the PRIIPS Regulation, see Recital [7] and Article 2.

The EU currently adopts a tailored approach, under which the requirement to produce a Key Information Document or KID applies to undertakings for collective investment in transferable securities (UCITS). The PRIIPS Regulation will extend the approach to ‘packaged retail investment and insurance-based products’ (as defined above).

Comparability across UCITS products has been identified as a goal of the KID. As stated in the UCITS Directive:

(59) Key investor information should be provided as a specific document to investors, free of charge, in good time before the subscription of the UCITS, in order to help them to reach informed investment decisions. Such key investor information should contain only the essential elements for making such decisions. The nature of the information to be found in the key investor information should be fully harmonised so as to ensure adequate investor protection and comparability. Key investor information should be presented in a short format. A single document of limited length presenting the information in a specified sequence is the most appropriate manner in which to achieve the clarity and simplicity of presentation that is required by retail investors, and should allow for useful comparisons, notably of costs and risk profile, relevant to the investment decision.

Comparability has also been identified as a goal in the PRIIPS Regulation as stated in the Recitals:

(12) the key information document should be drawn up in a standardised format which allows retail investors to compare different PRIIPs...The same order of items and headings for the items should be followed for each document...

B. Length requirements

The length requirements currently applicable to UCITS are as follows:

- Article 6: ‘The key investor information document shall not exceed two pages of A4-sized paper when printed.’
- Article 27: ‘The key investor information document for structured UCITS shall not exceed three pages of A4-sized paper when printed.’

‘CESR notes that it might not be easy to sum up the features of some specific, complicated funds within one sheet, but this has to be weighed against clear feedback from consultation and consumer testing that investors are not likely to read documents more than two pages long.’ [CESR Consultation Paper, page 14]

Under Article 6 of the PRIIPS Regulation, the key information document must be ‘written in a concise manner on no more than three sides of A4 when printed’.

C. Purpose and content requirements

Article 78(2) of the UCITS Directive provides as follows:

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

Article 78(3) provides that the essential elements in respect of the UCITS on which information must be provided 'shall be comprehensible to the investor without any reference to other documents.' Under Article 78(4), '[k]ey investor information shall clearly specify where and how to obtain additional information relating to the proposed investment, including but not limited to where and how the prospectus and the annual and half-yearly report can be obtained on request and free of charge at any time, and the language in which such information is available to investors.'

The Template has a note at the top as follows:

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.

As noted in Section D, the implication that a retail investor should be able to make an informed decision based on the KID alone has caused concerns, particularly in the context of the proposed PRIIPS reforms.

On the basis of the above, the Key Information Document or KID in the EU operates as a summary statement on a stand-alone basis (i.e. it is not a part of the formal disclosure document and the KID is not incorporated by reference into the prospectus).

This is also the case with PRIIPS. The PRIIPs Regulation states in Recital (11) that '[r]etail investors should be provided with the information necessary for them to take an informed decision and compare different PRIIPs'. Article 6 provides as follows:

(1) The key information document *shall constitute pre-contractual information. It shall be accurate, fair, clear and not misleading. It shall provide key information and shall be consistent with any binding contractual documents, with the relevant parts of the offer documents and with the terms and conditions of the PRIIP.*

(2) The key information document shall be a stand-alone document, clearly separate from marketing materials. *It shall not contain cross-references to marketing material. It may contain cross-references to other documents including a prospectus where applicable, and only where the cross-reference is related to the information required to be included in the key information document by this Regulation.*

D. Liability

The liability position in relation to KIDs in the EU has been the subject of ongoing debate, particularly in the context of the PRIIPS reforms. As noted above, Article 78(2) of the UCITS

Directive provides that '[k]ey investor information shall include appropriate information about the essential characteristics of the UCITS concerned, which is to be provided to investors so that they are reasonably able to understand the nature and the risks of the investment product that is being offered to them and, consequently, to take investment decisions on an informed basis.' [emphasis added] Although the KID operates on a stand-alone basis and is not incorporated into the prospectus, the underlined words appear to import prospectus liability into the KID.

The PRIIPS Regulation also provides that retail investors should be able to take an informed investment decision based on reading a KID alone:

- Recital 10 (final sentence)

...Furthermore, retail investors should be able to understand the key information document on its own without referring to other non-marketing information.

- Recital 11

Retail investors should be provided with the information necessary for them to take an informed investment decision and compare different PRIIPs...

- Recital 16

Key information documents are the foundation for investment decisions by retail investors...

- Recital 19

So that the retail investors is able to take an informed investment decision, persons advising on or selling PRIIPs should be required to provide the key information document in good time before any transaction is concluded...

- Article 8(1) in relation to the explanatory statement to be included in a KID:

This document provides you with key information about this investment product. It is not marketing material. The information is required by law to help you understand the nature, risks, costs, potential gains and losses of this product and to help you compare it with other products.

This has provoked concerns from industry.³² In addition, industry had expressed concerns about the liability regime proposed. Article 11(1) of the Original Proposal provided as follows:

Where an investment product manufacturer has produced a key information document which does not comply with the requirements of Articles 6, 7 and 8 on which a retail

³² See, for example, the Joint Associations Committee on Retail Structured Products, PRIIPS Trilogue issues, 23 January 2014, <http://www.icmagroup.org/Regulatory-Policy-and-Market-Practice/Primary-Markets/retail-structured>.

investor has relied when making an investment decision, *such a retail investor may claim from the investment product manufacturer damages for any loss caused to that retail investor through the use of the key information document.* [emphasis added]

In line with the EU Council’s proposal,³³ industry suggested that a manufacturer should not incur civil liability solely on the basis of the key information document unless it was misleading, inaccurate or inconsistent when read together with the prospectus. In response to these concerns, Article 11(1) was amended to provide as follows:

PRIIP manufacturer shall not incur civil liability solely on the basis of the key information document, including any translation thereof, unless it is misleading, or inaccurate or is inconsistent with the relevant parts of legally binding pre-contractual and contractual documents or with the requirements set out in Article 8.

E. Language, risk, warnings and additional information

The following table sets out the requirements regarding language, risk, warnings and additional information for both UCITS under the current requirements and PRIIPS under the PRIIPS Regulation.

UCITS - Disclosure standard and language used	Article 78(5): Key investor information shall be written in a concise manner and in non-technical language...
PRIIPS – Disclosure standard and language used	Article 6(3)(b): the key information document shall be drawn up as a short document written in a concise manner...which promotes comparability and is clearly expressed and written in language and a style that communicates in a way that facilitates the understanding of the information, in particular, in language that is clear, succinct and comprehensible.
UCITS - Format, font and use of graphics	<p>UCITS Directive</p> <p>Recital 59:</p> <p>(59)...Key investor information should be presented in a short format. A single document of limited length presenting the information in a specified sequence is the most appropriate manner in which to achieve the clarity and simplicity of presentation that is required by retail investors, and should allow for useful comparisons, notably of costs and risk profile, relevant to the investment decision.</p> <p>Article 78(5): ...It shall be drawn up in a common format, allowing for comparison, and shall be presented in a way that is likely to be</p>

³³ Ibid, para 3.4. See also Burn, above n 8.

	<p>understood by retail investors.</p> <p>Common running order: see recital (4) of the Commission Regulation no. 583 & Article 4</p> <p>CESR Guide, page 8: ‘Typefaces vary, but when using the full width of A4 paper, aim for at least 11pt for serif fonts and 10pt for sans serif fonts; a slightly smaller type size is legible when narrow columns are used.’</p>
PRIIPS – Format, font and use of graphics	<p>Article 6(3)(a): must be laid out in a way that is easy to read, using readable-sized characters.</p> <p>Article 6(4): colours may not diminish comprehensibility if printed in B&W or photocopied.</p> <p>Article 6(5): corporate branding or logos should not distract from the information.</p>
UCITS - Highlighting of risk	The Commission Regulation prescribes the use of a synthetic risk indicator.
PRIIPS – Highlighting of risk	Article 8(3)(c)(i): a summary risk indicator is required, supplemented by a narrative explanation of the indicator, including its main limitations and other risks not adequately captured by the indicator.
UCITS – Warnings	<p>UCITS Directive, Article 78(3)</p> <p>3. Key investor information shall provide information on the following essential elements in respect of the UCITS concerned:</p> <p>...</p> <p>(e) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the relevant UCITS.</p>
PRIIPS – Warnings	<p>Article 8(3)(c): must include a description of the risk/reward profile, including a statement as to the maximum possible loss of invested capital.</p> <p>Article 8(3)(ab): where applicable, must contain a comprehension alert, which states that ‘You are about to purchase a product which is not simple and may be difficult to understand.’</p>
UCITS - Additional information	Article 78(3)...Those essential elements shall be comprehensible to the investor without any reference to other documents. [i.e. no incorporation by reference. However, under Article 78(4), ‘[k]ey investor information shall clearly specify where and how to obtain

	<p>additional information relating to the proposed investment, including but not limited to where and how the prospectus and the annual and half-yearly report can be obtained on request and free of charge at any time, and the language in which such information is available to investors.'</p>
<p>PRIIPS – Additional information</p>	<p>Article 8(3)(h): the key information document shall contain, under a section titled 'Other relevant information', a brief indication of any additional information documents to be provided to the investor by this manufacturer at pre- or/and at post-contractual stage, excluding any marketing material.</p>

HONG KONG

Section 1 – General Information

A. Sources of information

Hong Kong Monetary Authority, Circulars: Enhanced Regulatory Requirements on Selling of Investment-Linked Assurance Scheme (ILAS) Products (11 March 2011) <http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2011/20110314e1.pdf>; Selling of Investment-Linked Assurance Scheme (ILAS) Products (22 April 2013) <http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2013/20130422e1.pdf>

(These circulars govern the sale of ILAS products, which is not regulated by the SFC)

Investor Education Centre, How to Read Product Key Facts Statements (October 2013) <http://www.hkiec.hk/web/common/pdf/publication/en/kfs.pdf>

SFC, Circular: Implementation Arrangements to the Code on Unit Trusts and Mutual Funds (16 December 2010) (**'SFC Circular'**)
<http://www.sfc.hk/edistributionWeb/gateway/EN/circular/products/product-authorization/openFile?refNo=H613>

SFC, Circular to Issuers of SFC-Authorized Investment-Linked Assurance Schemes (ILAS Schemes) - Enhanced Disclosure Requirements for ILAS Schemes (3 May 2013) <http://www.sfc.hk/edistributionWeb/gateway/EN/circular/openFile?refNo=13EC17>

SFC, Consultation Paper on Proposals to Enhance Protection for the Investing Public (September 2009) (**'Consultation Paper'**)
<http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/%20openAppendix?refNo=09CP3&appendix=1>

Responses from the Public

<http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/product-authorization/responses?refNo=09CP3>

SFC, Consultation Conclusions on Proposals to Enhance Protection for the Investing Public (May 2010) (**'Consultation Conclusions'**)
<http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/product-authorization/conclusion?refNo=09CP3>

SFC, Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products (25 June 2010) (**'Handbook'**)
http://en-rules.sfc.hk/en/display/display_main.html?rbid=3527&element_id=3038

SFC, Issues Raised by the Lehmans Minibonds Crisis, Report to the Financial Secretary (December 2008) ('**SFC Minibonds Report**')

<http://www.sfc.hk/web/doc/EN/general/general/lehman/Review%20Report/Review%20Report.pdf>

Securities and Futures Commission (SFC), Product Key Facts Statements (KFS) ('**SFC Website**')

<http://www.sfc.hk/web/EN/regulatory-functions/products/product-authorization/products-key-facts-statements.html>

SFC, Product Key Facts Statements Illustrative Templates, <http://www.sfc.hk/web/EN/regulatory-functions/products/product-authorization/products-key-facts-statements.html>

B. Background

Much of the impetus for the reforms in Hong Kong was driven by the fallout from the collapse of a structured derivative-linked product called Minibonds in 2008, as outlined in the SFC Minibonds Report. This triggered a process of consultation 'on a package of proposals to strengthen the regulatory regime with respect to investment products and conduct of intermediaries' for 'the three key stages of the life of an investment: the pre-sale, sale and post-sale periods' [Consultation Conclusions]. As stated in the Consultation Conclusions,

The proposed measures included the introduction of a consolidated SFC Handbook comprising revised product codes for unit trusts and mutual funds and for investment-linked assurance schemes and a new product code for unlisted structured investment products, a requirement for product key facts statements that summarise the key features and risks of investment products, a post-sale "cooling-off" or "unwind" period for certain unlisted structured investment products, and new requirements to enhance regulation of intermediaries conduct and selling practices relating to the sale of investment products.' [page 1, para 4].

C. Relevance of experience from other jurisdictions

The SFC drew on the experience in other jurisdictions, including the UK, the EU and Australia. In particular, the format of the Product KFS template was based on the draft KID issued by the Committee of European Securities Regulators (CESR) in February 2008 'with an aim to better align the presentation of the Product Key Facts Statement (KFS) and KID to facilitate comparability of the two documents and reduce non-substantive differences between the two forms.' [Consultation Conclusions, para 243, page 56; see also Consultation Paper, para 164]. Comparability between the Product KFS and the KID is relevant as EU-domiciled funds are marketed and sold in Hong Kong.

D. Key drivers and objectives

As noted in the Consultation Conclusions, '[t]he Handbook contains a set of overarching principles that will apply across the different types of products governed by the Handbook. These are intended to enhance product transparency and to set an overall disclosure standard for all offering documents in respect of different investment products being offered to the public in Hong Kong' [para 9, page 5]. Specifically, '[p]roduct KFS are intended to serve as concise product summaries, written in plain language, and feedback indicated that respondents felt that this would help investors understand the key features and risks of investment products.' [para 11].

It is clear that standardisation of Product KFSs to facilitate comparison across products, simplification and readability were key drivers behind the reforms in Hong Kong [see Consultation Paper, 165, 168 & pages 8-9].

The Consultation Paper referred to the expected benefits of Product KFSs, noting that '[w]hile they cannot be a substitute for the full information contained in an offer document, we believe that these Product KFS will prove to be effective in ensuring that a product's key features and risks are communicated to investors.' [Consultation Paper, pages 8-9].

E. Relevance of other measures

As noted above, the reforms to the disclosure requirements in relation to the relevant products were introduced alongside measures to 'enhance regulation of intermediaries conduct and selling practices relating to the sale of investment products' [Consultation Conclusions, page 1].

F. Importance of risk disclosure

In prescribing a document that summarises the key features and risk of financial products, the reforms recognise the importance of risk disclosure and the need to give equal prominence to features and risks. In particular, the Handbook requires all Product KFSs to 'carry a prominent upfront warning statement on their first page to warn investors that the Product Key Facts Statement is a part of the offering document (where applicable) and they should not invest in the product based on the Product Key Facts Statement alone' [Handbook, para 6.8]. In relation to offering document, the Handbook requires that '[a]ll key features and risks of the product [be] highlighted for investors prominently in a succinct manner.' [Handbook, note to para 6.4]

G. Other issues (including and proposed changes or reforms)

The Consultation Conclusions referred to two issues that are relevant for the purposes of the cross-country comparison in this Working Paper: (1) whether incorporation by reference should be adopted; and (2) whether the Product KFS should physically be part of the offering document instead of a separate document.

In relation to (1), the Consultation Conclusions agreed that there were 'merits in this proposal as it would result in shorter offering documents and facilitate the presentation of information to

retail investors in a manner which may better suit their needs’ [para 95]. ‘However, any proposal to cater for incorporation by reference must be supported by a carefully thought-out mechanism so as to ensure that investors receive sufficient notice of the information so incorporated. Those investors who wish to study the additional materials referred to in the offering document should be able to view them from an easily and readily available source free of charge. This may affect the documentation structure across different product types and may have a wide range of implications not just for structured investment products, but also for a broad spectrum of products offered to the public in Hong Kong. Depending upon the actual mechanism proposed to be employed, this might not be possible without legislative change, which falls outside the remit of this consultation’ [para 95, page 21].

In relation to (2), the SFC noted the concern that ‘if the Product KFS were required to be physically bound together with the other parts of offering documents, then the offering documents would become very bulky and not user-friendly, thus defeating the original purpose of introducing the Product KFS. An additional concern related to compliance burdens [Consultation Conclusions, para 241].

Section 2 – Assessment of Criteria

A. Scope of products

Hong Kong adopts a tailored approach. The requirement to produce a Key Facts Statement applies to the following products:

- Fund products;
- investment-linked assurance scheme (ILAS) products; and
- unlisted structured investment products

The Product KFSs have been standardised to the extent possible in order to enable investors to compare products more easily [Consultation Paper, para 13; Consultation Conclusions, para 56]. As noted in the Consultation Paper [para 168]:

168. To allow easy comparison of different types of products (one of the key objectives behind the Product KFS proposal), the general subject matter, layout and format adopted in the templates should be substantially similar in Product KFS. Specific disclosures under each of the broad subject matter headings must, of course, be tailored by product issuers properly to reflect the features of the scheme in question.

Note (6) to paragraph 6.7 of the Handbook provides that ‘Product Key Facts Statements shall be prepared in a format that facilitates comparison with other products.’

B. Length requirements

The requirements provide that a KFS is ‘generally about four pages long’. A KFS may be longer than four pages if the product issuer finds it necessary to provide more explanation

or include illustrations (such as graphics, charts and diagrams) to help investors understand the product.’

Further, ‘[p]roduct Key Facts Statements shall be concise and kept at a minimal length. As a matter of best practice, it is expected that Product Key Facts Statements should not be more than 4 pages’ [note (2) to paragraph 6.7 of the Handbook].

C. Purpose and content requirements

According to the Consultation Conclusions, ‘Product KFS are intended to serve as concise product summaries, written in plain language...feedback indicated that respondents felt that this would help investors understand the key features and risks of investment products.’ [para 11].

The general position, as reflected in paragraph 6.5 of the Handbook, is as follows:

Product summaries in the form of a Product Key Facts Statement shall be prepared for all products. Save as otherwise provided in the applicable product codes, the Product Key Facts Statement shall be a part of the offering document of the product. Product Key Facts Statements shall be clear, concise and shall be capable of being easily understood by investors.

Paragraph 6.7 provides as follows:

A Product Key Facts Statement shall highlight key information in respect of the product to investors in a clear, concise and effective manner. A Product Key Facts Statement shall be fairly presented and shall not contain any false or misleading information.

Note (1) to paragraph 6.7 provides that ‘[a] Product Key Facts Statement should contain information that enables investors to comprehend the key features and risks of the product.’

Paragraph 6.8 provides that ‘[a]ll Product Key Facts Statements shall carry a prominent upfront warning statement on their first page to warn investors that the Product Key Facts Statement is a part of the offering document (where applicable) and they should not invest in the product based on the Product Key Facts Statement alone.’

On the basis of the above, the Product KFS in Hong Kong operates as a summary statement that is part of the formal disclosure document. In addition, investors are warned against relying on the Product KFS alone.

D. Liability

In Hong Kong, the Product KFS is as part of the formal disclosure documents and is therefore subject to its liability regime.

E. Language, risk, warnings and additional information

The following table sets out the requirements regarding language, risk, warnings and additional information.

<p>Disclosure standard and language used</p>	<p>Handbook (disclosure standard in relation to the prospectus generally):</p> <p>3.4 Disclosure shall be complete, accurate and fair, and be written and presented in a clear, concise and effective manner and in such manner as to be readily understood by the investing public. Information provided shall not be false or misleading nor be presented in a deceptive or unfair manner. Where ongoing disclosure is required, the relevant information shall be disseminated in a timely and efficient manner.</p> <p>6.1 Disclosure shall be clear and effective and readily understood by the investing public.</p> <p>6.3 Disclosure shall be legible.</p> <p>Handbook (disclosure standard in relation to Product Key Facts Statements):</p> <p>6.5 ... Product Key Facts Statements shall be clear, concise and shall be capable of being easily understood by investors.</p> <p>6.7 A Product Key Facts Statement shall highlight key information in respect of the product to investors in a clear, concise and effective manner. A Product Key Facts Statement shall be fairly presented and shall not contain any false or misleading information.</p> <p>...</p> <p><i>(3) Product Key Facts Statements shall be prepared in plain, concise and easily-understood language. Legal or financial jargon should be avoided.</i></p>
<p>Format, font and use of graphics</p>	<p>Handbook, notes to paragraph 6.7:</p> <p>(4) Use of simple examples, charts, tables, diagrams and graphics for</p>

	<p>illustration purposes in a Product Key Facts Statement is encouraged. Use of bold headings and white space should also be considered as this may make the document easier to read and navigate. Information should not be densely packed.</p> <p>(5) Information in a Product Key Facts Statement shall be presented in a font that is easy to read and highly legible. The font size adopted shall also be reasonably legible taking into account the language used.</p> <p>(6) Product Key Facts Statements shall be prepared in a format that facilitates comparison with other products.</p>
Highlighting of risk	<p>Handbook:</p> <p>6.4 (Note (1)) All key features and risks of the product shall be highlighted for investors prominently in a succinct manner.</p> <p>6.7 A Product Key Facts Statement shall highlight key information in respect of the product to investors in a clear, concise and effective manner.</p>
Warning	<p>Handbook:</p> <p>6.8 All Product Key Facts Statements shall carry a prominent upfront warning statement on their first page to warn investors that the Product Key Facts Statement is a part of the offering document (where applicable) and they should not invest in the product based on the Product Key Facts Statement alone.</p>
Additional information	<p>There is provision in the template for 'additional information' to be included.</p>

NEW ZEALAND

Section 1 – General Information

A. Sources of information

Capital Market Development Taskforce, Report of the Capital Market Development Taskforce (December 2009) ('Taskforce Report') http://www.med.govt.nz/business/economic-development/pdf-docs-library/cmd-capital-markets-matter-full-report.pdf
Financial Markets Authority (FMA), Guidance Note: Effective Disclosure (June 2012) ('Guidance Note') https://www.fma.govt.nz/media/802192/final_guidance_8_june.pdf
FMC (Third Exposure Draft) Regulations 2014 (May 2014) ('Draft Regulations') http://www.med.govt.nz/business/business-law/current-business-law-work/financial-markets-conduct-act/financial-markets-conduct-regulations-2013-draft-regulations-stage-3/fmc-third-exposure-draft-regulations-2014.pdf-1
<i>Financial Markets Conduct Act 2013</i> (NZ) ('FMC Act') http://www.legislation.govt.nz/all/results.aspx?search=ts_act%40bill%40regulation%40deemedreg_Financial+Markets+Conduct_resel_25_a&p=1
Ministry of Business, Innovation and Employment, Financial Markets Conduct Regulations, Discussion Paper (December 2012) ('Discussion Paper') http://www.med.govt.nz/business/business-law/pdf-docs-library/current-business-law-work/securities-law-review/fmc-regulations/Financial%20Markets%20Conduct%20Regulations%202013%20Discussion%20Paper.pdf
Ministry of Business, Innovation and Employment, Financial Markets Conduct Regulations - Exposure Draft of Disclosure Requirements (October 2013) ('Draft Disclosure Requirements') http://www.med.govt.nz/business/business-law/current-business-law-work/financial-markets-conduct-act/consultation-regulations/exposure-draft-of-disclosure-requirements.pdf
Ministry of Business, Innovation and Employment, mock-ups showing how a disclosure document for managed funds, and the first 2 pages of disclosure documents for equity, debt, and other managed investment schemes could look under the FMC Act ('Mock-ups') http://www.med.govt.nz/business/business-law/current-business-law-work/financial-markets-conduct-act/consultation-regulations/
Regulatory Impact Statement, Financial Markets Conduct Regulations ('RIS') http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-mbie-fmc-jun13.pdf

B. Background

Pending the reforms that will be introduced by the FMC Act, the position in New Zealand reflects the conventional disclosure framework, where disclosure takes the form of a prospectus and an investment statement. The perceived weakness with this regime is that prospectuses

and investment statements fail ‘to adequately inform investors, as they tend to be poorly structured, too long, and unclear. The impact of this is that investors cannot make informed decisions or do not participate in the market at all’ [RIS, 3]. This resonates with the experience in the EU and Canada in relation to simplified prospectuses.

Under the reforms to be introduced by the FMC Act, the investment statement and prospectus will be replaced with the requirement to prepare a Product Disclosure Statement (PDS), the purpose of which is ‘to provide certain information that is likely to assist a prudent but non-expert person to decide whether or not to acquire the financial products’ [FMC Act, s 49]. The PDS will be ‘short and highly prescribed for mainstream products’ and will ‘usually be divided into two parts: a key information summary of around 1-2 pages that summarises the key features of the investment and risks associated with it; and a more detailed description of information that is essential to an investor’s decision. The key information summary will be “much more standardised in content and presentation than the investment statement” [Discussion Paper, para 14].

The new PDS regime will come into effect on 1 December 2014, with a two year transition where issuers can choose to offer under the old or new regime. The Ministry of Business, Innovation and Employment (MBIE) is currently consulting on the Draft Regulations.

C. Relevance of experience from other jurisdictions

As noted in the Discussion Paper, the experience in both New Zealand and overseas markets was considered in formulating the reforms. The overseas markets included the EU, Australia, Canada and the United States [Discussion paper, page 12; Taskforce Report, page 31, RIS paras 21, 22, 45 and 46].

The Taskforce Report [page 31] also noted that earlier in 2009, the Securities Exchange Commission (SEC) in the United States had adopted changes that require funds to include a key information summary section at the front of the full prospectus.

D. Key drivers and objectives

One of the principal objectives behind the decision to adopt a short-form information summary at the front of the Product Disclosure Statement was to ‘aid investor comprehension of the key points of the product’ by prescribing the content of the information summary and limiting its length [Discussion Paper, para 26]. As noted by the Discussion Paper in paragraph 27:

The opening text of the key information summary is the most important element of the PDS because it is the first, and perhaps only, disclosure that a potential investor will read before subscribing to an offer. Some investors may only get through a sentence, some a paragraph, others a page. What they see there will hopefully lead them to consider the remainder of the PDS if they are interested in the product and, if they are really keen, to look at the information on the offer register.

E. Importance of risk disclosure

As noted above, the key information summary will summarise the key features of the investment and risks associated with it.

The Draft Disclosure Requirements set out the information concerning risk that is required to be included in the PDS. The Mock-ups include reference to the key risks. The Mock-up for managed funds includes a risk-reward indicator on a scale of 1-7.

F. Other issues (including and proposed changes or reforms)

An investor website was recommended in the Taskforce Report [page 31]:

We recommend introducing a website that enables investors to easily get information about and compare investment options. The website could allow investors to search for different investment options by type, risk level, minimum amount, fees and so on, and also provide or signpost to impartial educational material. Similar ideas have been used in other industries. For example, realestate.co.nz allows potential home buyers to search for properties within a certain price range, number of bedrooms and/or location. It is important that the financial information website be independently funded and maintained to avoid any perceptions or fact of conflict. One option is to impose a levy on products so that, ultimately, investors are funding it.

The FMC Act will be implemented in phases in 2014.

Section 2 – Assessment of Criteria

A. Scope of products

Under the reforms, New Zealand will adopt a comprehensive approach, where the requirement to produce a key information summary applies to all financial products. Note, however, that the key information summary will not be a stand-alone document but will appear at the front of the product disclosure statement.

Comparability has been identified as a goal of key information summaries. As noted in the Discussion Paper [page 12], '[d]isclosure should assist investors to compare products and enable them to identify which products best align with their financial needs and goals.'

B. Length requirements

Under the Draft Regulations, the key information summary must comply with a length limit that is determined by reference to the number of pages (2, 3 or 4 pages depending on the product type) or the number of words (1,200, 1,800 or 2,400 depending on the product type).

C. Purpose and content requirements

Under the new reforms in New Zealand, the PDS will be ‘short and highly prescribed for mainstream products’ and will ‘usually be divided into two parts: a key information summary of around 1-2 pages that summarises the key features of the investment and risks associated with it; and a more detailed description of information that is essential to an investor’s decision.’³⁴

In New Zealand, the key information summary (KIS) will operate as a summary that is physically part of the formal disclosure document.

The Draft Regulations provide that ‘[t]he purpose of a KIS is to provide the issuer’s assessment of the most significant aspects of the offer of the financial products that are relevant to a prudent but non-expert person’s decision as to whether or not to acquire the financial products.’

D. Liability

The key information summary will be a part of the formal disclosure document and will therefore be subject to its liability regime.

E. Language, risk, warnings and additional information

The following table sets out the requirements regarding language, risk, warnings and additional information.

Disclosure standard and language use	<p>The FMC Act:</p> <p>61 PDS must be worded and presented in clear, concise, and effective manner</p> <p>(1) An issuer that prepares, or is required to prepare, a PDS must ensure that the information in the PDS is worded and presented in a clear, concise, and effective manner.</p> <p>See also the Draft Disclosure Requirements.</p> <p>Discussion paper:</p> <p>37 Effective communication of financial information is difficult. A lot of jargon is used in finance, and investors have varying degrees of financial literacy and understanding. FMA’s Effective Disclosure guidance note provides guidance on the use of plain language in offer documents. The guidance relates to the existing disclosure regime of</p>
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³⁴ See Financial Markets Conduct Regulations – Discussion Paper (December 2012) (‘Discussion Paper’) paras 14 & 19.

	<p>prospectuses and investment statements, but the same principles apply to the presentation of offer documents under the FMC Bill given the clear, concise and effective requirement.</p> <p>...</p> <p>40 A related presentational issue is how technical terms, where they are unavoidable, should be explained in the PDS. Common solutions include attaching a glossary, using footnotes, or 'call-outs' (similar to speech bubbles). A risk with a glossary is that it requires the reader to be aware of the glossary and to locate it, and creates a risk that the reader loses their place in the document. Footnotes or call-outs avoid this issue. Call-outs may be more consumer-friendly and less academic or legalistic in appearance.</p>
Format, font and use of graphics	<p>Discussion paper:</p> <p>27 The opening text of the key information summary is the most important element of the PDS because it is the first, and perhaps only, disclosure that a potential investor will read before subscribing to an offer. Some investors may only get through a sentence, some a paragraph, others a page. What they see there will hopefully lead them to consider the remainder of the PDS if they are interested in the product and, if they are really keen, to look at the information on the offer register.</p> <p>28 Page limits may create incentives to use smaller and more compact fonts than would otherwise be selected. If the font used in the PDS is too small, there is a risk of it being difficult to read or dismissed by investors as unimportant 'legal small print'. For this reason, we propose to impose minimum font sizes for PDSs.</p>
Highlighting of risk	<p>The Draft Disclosure Requirements and the Draft Regulations prescribe the detailed information that must be included in the key information summary in relation to risk with reference to the relevant section of the PDS.</p>
Warning	<p>The Draft Disclosure Requirements and the Draft Regulations prescribe the risk warnings that must be included at the top of the key information summary in relation to the various product types.</p>
Additional information	<p>Discussion paper:</p> <p>26 In line with the Cabinet decision and the international trends noted above, we propose that all products be required to have a key information summary at the front of the PDS. The key information summary will be highly prescribed and summarise the most important parts of the PDS. In general, we favour restricting the length of the</p>

	<p>summary to two pages. We consider that this will considerably aid investor comprehension of the key points of the product. Given its limited length, the summary will have reference to other information.</p> <p>The Draft Disclosure Requirements provide that branding and additional promotional or explanatory material (such as photographs and explanatory information) is permitted as long as:</p> <ul style="list-style-type: none">• the PDS is within any length restrictions applicable• they do not conflict with the clear, concise and effective requirement• they do not detract from the prescribed materials.
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SINGAPORE

Section 1 – General Information

A. Sources of information

Monetary Authority of Singapore (MAS), Consultation Paper on Review of the Regulatory Regime Governing the Sale and Marketing of Unlisted Investment Products (12 March 2009) (**Consultation Paper**) <http://www.mas.gov.sg/News-and-Publications/Consultation-Paper/2009/PDF-220KB-Review-of-the-Regulatory-Regime-Governing-the-Sale-and-Marketing-of-Unlisted-Investment-Products.aspx>

MAS Response to Feedback Received Phase 1 (**Response 1**) http://www.mas.gov.sg/~media/resource/publications/consult_papers/2009/Response%20to%20FB%20Received%20Phase1.pdf

MAS Response to Feedback Received Phase 2 (**Response 2**) http://www.mas.gov.sg/~media/resource/publications/consult_papers/2010/Response%20to%20Feedback%20Received%20%20Phase2.pdf

MAS, Consultation Paper on Regulatory Regime for Listed and Unlisted Investment Products (28 January 2010) (**Consultation Paper on Regulatory Regime**) <https://www.google.com.au/#q=MAS%2C+Consultation+Paper+on+Regulatory+Regime+for+Listed+and+Unlisted+Investment+Products%2C+28+January+2010>

MAS, Guidelines on the Product Highlights Sheets (21 October 2010) (**Guidelines**) http://www.mas.gov.sg/~media/resource/legislation_guidelines/securities_futures/sub_legislation/GuidelinesOnPHS.ashx

MAS, Consultation Paper, Policy Consultation on Proposals to Facilitate Better Understanding of Prospectuses (October 2013) (**2013 Consultation Paper**) http://www.mas.gov.sg/~media/resource/publications/consult_papers/2013/14%20Oct%202013%20Policy%20Consultation%20on%20Proposals%20to%20Facilitate%20Better%20Understanding%20of%20Prospectuses.pdf

B. Background

As in Hong Kong, the reforms in Singapore were heavily influenced by the fallout from the collapse of Minibonds in 2008 and the global financial crisis generally [Consultation Paper, para 1.1.1]. This led to proposals in the Consultation Paper, the focus of which was on ‘the regulatory regime for unlisted investment products that [were] commonly sold to retail investors’ [Consultation Paper 4].

Following the Consultation Paper, the MAS ‘formed a workgroup comprising representatives from the financial services industry to develop the content and format of the Product Highlights Sheet. The objective of this workgroup [was] to formulate Product Highlights Sheets that [were] clear, concise and effective, and tailored for different types of unlisted investment products.’ [Response 1, page 3].

C. Relevance of experience from other jurisdictions

In formulating the reforms, the MAS considered developments in the US, the EU and Australia [Consultation Paper paras 3.1.3 – 3.1.6]. In addition to introducing enhanced requirements for unlisted investment products, the Consultation Paper floated a proposal ‘specific to the sale and marketing of complex investment products. The concept of complex investment products [was] derived from the EU Markets in Financial Instruments Directive (“MiFID”) [Consultation Paper, 10]. The proposal was that complex investment products would be subject to an enhanced sale and marketing regulatory regime [Consultation Paper 4]. Under the proposed regime, complex investment products could only be sold to investors with financial advice and issuers would be required to include a health warning in both the prospectus and the Product Highlights Sheet and all marketing and advertising materials that the product being offered was a complex investment product [Consultation Paper, 33].³⁵ This was similar to recommendations by the Hong Kong Monetary Authority in its Report on Issues Concerning the Distribution of Structured Products Connected to Lehman Group Companies (2008) that “health warnings” be attached to retail structured products with embedded derivatives or retail derivative products generally’ [Consultation Paper 5.4.1, 5.4.2].

The proposal to introduce the concept of a complex investment product was later shelved and replaced with ‘a revised package of proposals to enhance safeguards for retail investors for a wider range of investment products. These proposals [were] set out in the Consultation Paper on Regulatory Regime for Listed and Unlisted Investment Products published on 28 January 2010’ [Response 2, page 6].

A. KEY DRIVERS AND OBJECTIVES

The aims of the proposals in the Consultation Paper were to:

- (a) promote more effective disclosure by improving the quality of information available to investors;
- (b) strengthen fair dealing in the sale and advisory process; and
- (c) enhance MAS’ powers under the Financial Advisers Act [Consultation Paper, 4].

The reason for adopting a short-form disclosure document in the form of the Product Highlights Sheet was driven by a ‘a generally held view that the prospectus [had] been largely ineffective

³⁵ As noted in para 5.3.1., [u]nder the EU MiFID and UK regulatory models, “complex products” may be sold without advice to retail investors only upon the distributor having first performed an appropriateness test to determine if the investor has the appropriate knowledge and experience to purchase the product’.

as a primary disclosure document in helping investors make informed investment decisions.’ This was because ‘[i]nvestors [found] prospectuses difficult to read and understand as they [tended] to be drafted in a legalistic manner. The length of some prospectuses may even deter investors from reading them at all’ [Consultation Paper, para 3.1.1].

As a result, and ‘having considered the experiences of overseas jurisdictions and the merits of a separate simplified disclosure document’, MAS proposed the Product Highlights Sheet to supplement the prospectus. The prospectus was to contain ‘all material information that an investor would reasonably require to make an investment decision, and the Product Highlights Sheet [was] to highlight key information to investors in a clear, concise and effective manner’ [Consultation Paper, para 3.1.6]. The Product Highlights Sheet would need to be given together with the prospectus to investors before they make investment decisions.

D. Relevance of other measures

In the Consultation Paper [para 3.1.11], the MAS proposed specific financial education activities to help investors understand how to use the Product Highlights Sheet.’ These activities included the publication of the Guidelines ‘to provide guidance to issuers and their professional advisers in preparing a Product Highlights Sheet.’

The Consultation Paper noted that adequate disclosure by the issuer to investors of the features and risks of an investment product was one of two key elements, the other one being a reasonable basis for an adviser’s recommendation where advice is given [Consultation Paper, 1.2.1].

E. Importance of risk disclosure

As noted above, adequate disclosure to investors of the features and risks of an investment product was one of the key elements of the Product Highlights Sheet.

In Response 2, MAS noted that as a result of its decision not to proceed with a compulsory health warning, it would not proceed to implement a mandatory risk rating framework for investment products. [Response 2 6-7].

F. Other issues (including any proposed changes or reforms)

The 2013 Consultation Paper proposes to extend the requirements for a product highlights sheet to offers of securities beyond asset-backed securities, structured notes, unlisted collective investment schemes and exchange traded funds and to allow certain information contained in a separate document outside the prospectus to be incorporated in the prospectus by reference to the separate document [see paragraph 2.2.1 of the 2013 Consultation Paper].

Section 2 – Assessment of Criteria

A. *Scope of products*

Singapore adopts a tailored approach. The requirement to produce a Product Highlights Sheet applies to the following products:

- asset-backed securities and structured notes where the offer is made in or accompanied by a prospectus; and
- unlisted collective investment schemes and exchange traded funds where the offer is made in or accompanied by a prospectus.

Although the Product Highlight Sheet templates for the various products have been standardised, comparability has not been expressly highlighted as a goal in the regulatory statements.

B. *Length requirements*

The requirements provide that ‘the Product Highlights Sheet should not be longer than four pages. Diagrams and a glossary, if included, would not count towards the four-page limit. However, the Product Highlights Sheet including diagrams and the glossary should not exceed eight pages. Diagrams may be inserted within the main body of the Product Highlights Sheet if appropriate. The issuer’s corporate logo or trade mark may also be inserted.’

C. *Purpose and content requirements*

Paragraph 2.2 of the Guidelines provides as follows:

- 2.2 The Product Highlights Sheet should highlight key features and risks of the investment product to investors. The Product Highlights Sheet should:
- (a) clearly disclose required information in the format as set out in these Guidelines;
 - (b) not contain any information that is not included in the prospectus; and
 - (c) not contain any information that is false or misleading.

In Singapore, the Products Highlights Sheet does not operate as part of the formal disclosure document and is therefore not part of the liability regime for the formal disclosure document. As noted in the Consultation Paper on the Regulatory Regime: ‘[r]espondents to the March 2009 Consultation Paper raised concerns that issuers would use legalistic language and technical terms to ensure accuracy of the information disclosed if prospectus liability [was] imposed on the Product Highlights Sheet. Respondents also raised concerns that the proposed requirement that information presented in the Product

Highlights Sheet be “clear, concise and effective” is highly subjective, in particular the interpretation by different individuals of what constitutes “effective”.

On the basis of the above, the Product Highlights Sheet in Singapore operates as a summary statement on a stand-alone basis (i.e. it is not a part of the formal disclosure document).

D. Liability

As noted in the Consultation Paper on Regulatory Regime [para 5.2.2], Singapore had ‘proposed to treat the Product Highlights Sheet as part of a prospectus, even though it [was] to be a physically separate document. Persons liable for complying with the prospectus requirements would also be liable for complying with the Product Highlights Sheet requirements.’ However, as further noted [para 5.2.3 and 5.2.4], ‘[r]espondents to the March 2009 Consultation Paper raised concerns that issuers would use legalistic language and technical terms to ensure accuracy of the information disclosed if prospectus liability is imposed on the Product Highlights...After careful consideration of the feedback received, MAS [was] of the view that the objective of the Product Highlights Sheet, as a simplified disclosure document for retail investors, would be better served if the legal liability attached to the Product Highlights Sheet [was] applied in a way that [allowed] issuers the flexibility to disclose the key features and risks of the product in an easily understood manner.’ Accordingly, issuers would only be liable if the Product Highlights Sheet contained information that was not included in the prospectus or was false or misleading.

E. Language, risk, warnings and additional information

The following table sets out the requirements regarding language, risk, warnings and additional information.

<p>Disclosure standard and language used</p>	<p>Guidelines:</p> <p>3.4 Issuers should answer the questions prescribed in the templates in clear and simple language that investors can easily understand. Issuers should avoid using technical terms in the Product Highlights Sheet. Where technical terms are unavoidable, issuers should attach a glossary to the Product Highlights Sheet to explain these technical terms.</p> <p>5.2.3 Respondents to the March 2009 Consultation Paper raised concerns that issuers would use legalistic language and technical terms to ensure accuracy of the information disclosed if prospectus liability is imposed on the Product Highlights Sheet. Respondents also raised concerns that the proposed requirement that information presented in the Product Highlights Sheet be “clear, concise and effective” is highly subjective, in particular the interpretation by different individuals of what constitutes “effective”.</p>
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<p>Format, font and use of graphics</p>	<p>Guidelines:</p> <p>3.2 The templates serve as a minimum standard. Issuers should adhere to the format (including the tabular structure and the yellow Pantone 109C or similar strip on the right edge of the document) and headings and sub-headings set out in the templates for their respective investment products. Additional sub-headings may be added if these are useful to enumerate points in a long section. Issuers should include any additional key information that is important for investors to understand the product.</p> <p>3.6 The use of diagrams such as graphs, charts, flowcharts, tables or numerical explanations to explain structures or payoffs of the investment products to investors is encouraged.</p> <p>3.8 Information in the Product Highlights Sheet (including footnotes and references) should be in a font size of at least 10-points Times New Roman.</p>
<p>Highlighting of risk</p>	<p>Guidelines:</p> <p>3.2 ...Issuers should include any additional key information that is important for investors to understand the product.</p> <p>3.3 ...Issuers should consider and decide on the information to be disclosed in the Product Highlights Sheet so as to highlight key features and risks of their respective investment product to investors. Issuers should consider whether the omission of any information from any part of the Product Highlights Sheet would result in that part of the Product Highlights Sheet being construed as false or misleading.</p>
<p>Warning</p>	<p>Singapore decided not to proceed with a 'health warning' for complex products. However, the Product Highlights Sheet templates include the following warnings at the top of the document:</p> <ul style="list-style-type: none"> • It is important to read the Prospectus before deciding whether to purchase the product. If you do not have a copy, please contact us to ask for one. • You should not invest in the product if you do not understand it or are not comfortable with the accompanying risks.
<p>Additional information</p>	<p>3.5 Issuers may include references to websites or to corresponding sections of the prospectus which set out additional information for investors in the right-hand column of the Product Highlights Sheet. Issuers are encouraged to include links to online copies of disclosure documents, educational resources or explanatory material. However, key information should be clearly disclosed in the Product Highlights Sheet and issuers should not merely make reference to information in other sources, such as the prospectus.</p>

APPENDIX

ANNOTATED BIBLIOGRAPHY

AUSTRALIA

Source	Commentary
ASIC, '12-131MR Shorter PDS Regime Guidance and Relief' (June 2012) http://www.asic.gov.au/asic/asic.nsf/byheadline/12-131MR+Shorter+PDS+regime+guidance+and+relief?openDocument#	This paper introduces the shorter product disclosure statement (PDS) regime. It is to be read in conjunction with <i>Information Sheet 133</i> and <i>Information Sheet 155</i> .
ASIC, <i>Information Sheet 133</i> (June 2012) http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/info133-published-18-June-2012.pdf/\$file/info133-published-18-June-2012.pdf	<i>Information Sheet 133</i> to be read in conjunction with <i>Information Sheet 155</i> . Defines simple managed investment schemes, and applies the shorter PDS regime to margin-lending facilities
ASIC, <i>Information Sheet 155</i> (June 2012) http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/info155-published-18-June-2012.pdf/\$file/info155-published-18-June-2012.pdf	<i>Information Sheet 155</i> provides more detail on the shorter PDS regime and its application to other products.
ASIC, <i>Class Order — Relief from the Shorter PDS Regime</i> , CO 12-749 (18 June 2012) http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/ES-co12-749.pdf/\$file/ES-co12-749.pdf	Transitional arrangements for some shorter PDS products (from 22 June 2012 to 22 June 2013).
ASIC, <i>Report 121: Australian Investors at a Glance</i> (April 2008) http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rep_121_Australian_investors_at_a_glance.pdf/\$file/rep_121_Australian_investors_at_a_glance.pdf	Research highlighting the general need for further investor literacy and education. In late 2006, ASIC commissioned Roy Morgan Research to conduct focus groups and interviews with almost 50 Australian investors. This was followed by a phone survey of more than 1,200 investors in 2007. The research focussed on investors with shares, investment property, managed investments, self-managed super funds (SMSFs) and other direct investments (including investments such as debentures and bonds).
ASIC, <i>Regulatory Guide 168</i> (September 2010) http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg168-September-2010.pdf/\$file/rg168-September-2010.pdf	This regulatory guide gives policy guidance on preparing a standard PDS.
ASIC, <i>Report 230: Financial Literacy and Behavioural Change</i> (March 2011) http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/info230-published-18-March-2011.pdf/\$file/info230-published-18-March-2011.pdf	Not specific to short-form disclosure, but report takes stock of what ASIC has learned about financial literacy to date to inform the national financial literacy strategy.

<p>b.nsf/LookupByFileName/rep230-financial-literacy-and-behavioural-change.pdf/\$file/rep230-financial-literacy-and-behavioural-change.pdf</p>	<p>Behavioural studies and ASIC's own research identifies a range of related barriers that prevent people from making good financial decisions. These include information and choice overload, complexity and uncertainty, time effects and pressures, over (and under) confidence, self-control and framing (i.e. how information is presented).</p>
<p>Commonwealth of Australia, Financial Literacy Foundation, <i>Financial Literacy: Australians Understanding Money</i> (September 2007) http://www.financialliteracy.gov.au/media/209293/australians-understanding-money.pdf</p>	<p>The findings of a survey of 7,500 Australians aged 12 to 75 who were asked to self-assess their money management ability, understanding, attitudes and behaviour. Some interesting statistics highlight the need for greater investor education: for example, only 34% of adults saying they would consider both risk and return when making an investment decision, 30% saying they would consider the type of investment, and only a small proportion saying they would consider other issues such as background information on the reputation of the company and diversification.</p>
<p>Commonwealth of Australia, <i>Financial System Inquiry Final Report</i> (March 1997) ('Wallis Report')</p>	<p>The <i>Wallis Report</i> inquired into the field of financial regulation, with a focus on aiming to improve market conduct, disclosure, safety, stability, competition and competitiveness. Chapter 7 of the <i>Wallis Report</i> made some key recommendations to improve financial disclosure to investors, including amending the law to require the issue of succinct profile statements about offers of retail financial products. The profile statements would include:</p> <ul style="list-style-type: none"> • a brief description of the characteristics of the product; • a clear and unambiguous statement of the risks involved; and • a clear and unambiguous statement of applicable fees, commissions and charges, in a form which enables comparison with similar products.
<p>Commonwealth of Australia, Parliamentary Joint Committee on Corporations and Financial Services, <i>Report on Inquiry into Financial Products and Services in Australia</i> (November 2009) ('Ripoll Report') http://www.aph.gov.au/binaries/senate/committee/corporations_ctte/fps/report/report.pdf</p>	<p>Inquiry launched in the aftermath of the GFC and the collapse of Opes Prime. The <i>Ripoll Report</i> highlights the need for a multi-faceted approach to protect investors, including greater regulation of advisers, improving investor financial literacy, and amending the <i>Corporations Act</i> to require advisers to disclose more prominently in marketing material the restrictions on the advice they are able to provide consumers (and any potential conflicts of interest).</p>
<p><i>Corporations Amendment Regulations 2010 (No 5)</i> (Cth) http://www.comlaw.gov.au/Details/F2010L01585/ed1bed9e-4b9c-4d28-ab9c-8caa44394411</p>	<p>Regulations introducing the shorter PDS regime.</p>
<p>Dimity Kingsford-Smith, 'ASIC Regulation for the Investor as Consumer' (2011) 29</p>	<p>This article considers ASIC's work in navigating the limits of disclosure and investor education in a retail market.</p>

<p><i>Company and Securities Law Journal</i> 327</p>	<p>Influenced by the policy co-ordinates of the <i>Wallis Report</i> of 1997, ASIC has concentrated on disclosure and investor education, along with surveillance and enforcement of conduct of business rules.</p>
<p>Dimity Kingsford Smith, 'Regulating Investment Risk: Individuals and the Global Financial Crisis' (2009) 32 <i>University of New South Wales Law Journal</i> 514</p>	<p>Author's overall thesis is that risk is downplayed at the expense of return. The author argues that there is growing empirical evidence that individuals do not engage readily with financial matters, and that especially in relation to risk, they have difficulty investigating and understanding its consequences. Psychological biases tend to exacerbate the individual tendency to forget discussions of risk or to deny or downplay it.</p>
<p>Gail Pearson, 'Risk and the Consumer in Australian Financial Services Reform' (2006) 28 <i>Sydney Law Review</i> 99</p>	<p>This paper argues that risks to the consumer have not been sufficiently articulated in the conversations around the massive changes to the regulation of financial services in Australia. This paper outlines the various consumer protection strategies for 'retail clients' for financial services and locates this in a discussion of both risk and compliance. It suggests that the necessary emphasis on compliance by providers may have obscured the need for conversing about risk to clients.</p>
<p>Ian Ramsay, <i>Use of Prospectuses by Investors and Professional Advisers</i> (Centre for Corporate Law and Securities Regulation, 2003) http://www.law.unimelb.edu.au/files/dmfile/AustralianProspectusSurvey2.pdf</p>	<p>This research report contains the results of two surveys of recipients of prospectuses: investors and their professional advisers. The objective of the surveys was to obtain information on how prospectuses are used and obtain views on the utility of prospectuses. Both surveys indicated that the difficulties in understanding prospectuses derive from their 'excessive length, detail and jargon'. The consistent findings of 'excessive length, detail and jargon' suggest an under-utilisation of the rule permitting the incorporation of material by reference.</p>
<p>Regulatory Impact Statement (RIS), <i>Corporations Act Amendment Act 2010 (No 5)</i> (Cth) http://www.comlaw.gov.au/Details/F2010L01585/0ae2f215-ebe9-46bd-abf9-e3355dcd39de</p>	<p>Reports on the work of the Financial Services Working Group (the Working Group) comprising officials from the Treasury, the Department of Finance and Deregulation and the Australian Securities and Investments Commission (ASIC) to examine ways of developing shorter, simpler and more readable disclosure documents for financial services products.</p>

CANADA

Source	Commentary
<p>Canadian Securities Administrators (CSA)*, 'Notice and Request for Comment, Implementation of Stage 2 of Point of Sale Disclosure for Mutual Funds and Draft Amendments' (21 June 2012) http://www.lautorite.qc.ca/files//pdf/reglementation/valeurs-mobilieres/81-101/2012-06-21/2012juin21-81-101-avis-cons2-en.pdf</p>	<p>* The CSA coordinates and harmonises regulation for the Canadian capital markets.</p> <p>This Notice proposed changes to the delivery requirements for Fund Facts and also changes to the content of Fund Facts in relation to the risk classification methodology.</p>
<p>CSA, 'Notice of Amendments to Instrument 81-101 Mutual Fund Prospectus Disclosure, Form 81-101F3 Contents of Fund Facts Document, Companion Policy 81-101CP to National Instrument 81-101 Mutual Fund Prospectus Disclosure and Consequential Amendments' (13 June 2013) http://www.osc.gov.on.ca/documents/en/Securities-Category8/ni_20130613_81-101_implementation-state-2-pos.pdf</p>	<p>This Notice reports on amendments to the rules on mutual fund prospectus disclosure. The amendments require mutual funds subject to NI 81-101 to produce and file a Fund Facts and make it available on the mutual fund's or mutual fund manager's website. The Fund Facts must also be delivered or sent to investors free of charge upon request.</p> <p>The Amendments also require delivery of the Fund Facts instead of the prospectus to satisfy the prospectus delivery requirements under securities legislation to deliver a prospectus within two days of buying a mutual fund.</p>
<p>Joint Forum of Financial Market Regulators, <i>Consultation Paper 81-403: Rethinking Point of Sale Disclosure for Segregated Funds and Mutual Funds</i>, (13 February 2003) http://www.jointforum.ca/en/init/point_of_sale/final%20consultation%20paper%20with%20appendices%20e.pdf</p>	<p>Consultation Paper in relation to the disclosure requirements for segregated funds and mutual funds.</p>
<p>Joint Forum of Financial Market Regulators, <i>Framework 81-406 Point of sale disclosure for mutual funds and segregated funds</i> (24 October 2008) http://www.osc.gov.on.ca/documents/en/Securities-Category8/rule_20081024_81-406_framework-pos.pdf</p>	<p>This Paper describes the revised Framework 81-406 and the changes made as a result of the consultation process. The Paper states that the vision focuses on three key principles:</p> <ul style="list-style-type: none"> • providing investors with key information about a fund • providing the information in a simple, accessible and comparable format • providing the information before investors make their decision to buy
<p>Joint Forum of Financial Market Regulators, <i>Proposed Framework 81-406: Point of Sale Disclosure for Mutual</i></p>	<p>This described the elements of the proposed point of sale disclosure regime, including a new fund summary document called "Fund Facts", delivery</p>

<p><i>Funds and Segregated Funds</i> (15 June 2007) http://www.jointforum.ca/en/init/point_of_sale/point_of_sale.asp</p>	<p>options, investor rights and the regulatory requirements for preparing, filing and delivering the document.</p>
<p>'National Instrument 81-101: Mutual Fund Prospectus Disclosure Form 81-101F3 Contents of Fund Facts Document' https://www.bcsc.bc.ca/uploadedFiles/securitieslaw/policy8/81-101F3_[F].pdf</p>	<p>This document describes the disclosure required in a fund facts document for a mutual fund.</p>
<p>'Policy Statement to Regulation 81-101 respecting Mutual Fund Prospectus Disclosure' (January 2014) http://www.lautorite.qc.ca/files//pdf/reglementation/valeurs-mobilieres/81-101/2014-01-01/2014jan01-81-101-ig-vadmin-en.pdf</p>	<p>This policy document states the views of the Canadian Securities Administrators (CSA) on various matters relating to the Regulation, the purpose of which is “to ensure that the offering disclosure regime for mutual funds provides investors with disclosure documents that clearly and concisely state information that investors should consider in connection with an investment decision about the mutual fund, while recognizing that different investors have differing needs in receiving disclosure.”</p>
<p>Securities Act, 'National Instrument 81-101: Mutual Fund Prospectus Disclosure' http://www.bclaws.ca/Recon/docume nt/ID/freeside/46_1_2000</p>	<p>This Instrument sets out the disclosure requirements for mutual fund prospectuses, including fund facts documents.</p>

EUROPEAN UNION

Source	Commentary
<p>Committee on Economic and Monetary Affairs (CEMA), European Parliament, <i>Draft Report on the Proposal for a Regulation of the European Parliament and of the Council on Key Information Documents for Investment Products</i> (20 December 2012)</p> <p>http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-502.113%2b01%2bDOC%2bPDF%2bV0%2f%2fEN</p>	<p>Draft report and draft amendments by the European Parliament to the proposed regulation on key information documents for investment products.</p>
<p>CEMA, European Parliament, <i>Report on the Proposal for a Regulation of the European Parliament and of the Council on Key Information Documents for Investment Products</i> (6 November 2013)</p> <p>http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bREPORT%2bA7-2013-0368%2b0%2bDOC%2bPDF%2bV0%2f%2fEN</p>	<p>Report and draft amendments by the European Parliament to the proposed regulation on key information documents for investment products.</p>
<p>Committee of European Securities Regulators (CESR), 'CESR's Guide to Clean Language and Layout for the Key Investor Information Document' (20 December 2010)</p> <p>http://www.esma.europa.eu/system/files/10_1320.pdf</p>	<p>This guide describes ways of meeting the regulatory objective for Key Investor Information (KII) to achieve the clarity and simplicity of presentation that is required by retail investors.</p>
<p>CESR, 'CESR's Template for the Key Investor Information Document' (20 December 2010)</p> <p>http://www.esma.europa.eu/system/files/10_1321.pdf</p>	<p>CESR's template for the Key Investor Information document.</p>
<p>CESR, <i>Consultation Paper — CESR's Technical Advice at Level 2 on the Format and Content of Key Information Document Disclosures for UCITS</i> (8 July 2009)</p> <p>http://www.esma.europa.eu/system/files/09_552_CP_Final_KID_advice.pdf</p>	<p>Consultation Paper on the format and content of Key Information Document Disclosures for UCITS.</p>
<p>CESR, 'Feedback Statement — CESR's Technical Advice to the European Commission on the Format and Content of Key Information Document Disclosures for UCITS' (19 April 2010)</p> <p>http://www.esma.europa.eu/system/files/09_995.pdf</p>	<p>In this document CESR gives feedback on the responses received to the consultations on its technical advice on the format and content of Key Information Document disclosures for UCITS and the methodology for the calculation of the synthetic risk and reward indicator.</p>
<p><i>Commission Regulations (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</i></p>	<p>The Regulations implement Directive 2009/65/EC concerning UCITS.</p>

<p>or By Means of a Website http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:176:0001:0015:en:PDF</p>	
<p>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) http://www.esma.europa.eu/system/files/L_302_32.pdf</p>	<p>The directive on UCITS, including the use of Key Investor Information.</p>
<p>Document of the Services of the Commission, <i>Simplified Prospectus Workshops — Issues Paper</i> (3 May 2006) http://ec.europa.eu/internal_market/investment/docs/other_docs/prospectus/bp-1st-sp-workshop_en.pdf</p>	<p>Issues Paper on the simplified prospectus regime.</p>
<p>Explanatory Memorandum, European Commission, <i>Proposal for a Regulation of the European Parliament and of the Council on Key Information Documents for Investment Products</i> (3 July 2012) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0352:FIN:en:PDF</p>	<p>Explanatory Memorandum in relation to the proposed PRIIPS reforms: ‘While disclosures for UCITS have therefore already been improved, those for the wider range of retail investment products have not. The task now is to address all such products: European retail investors should always receive short, comparable and standardised disclosures, termed ‘key information documents’ or KIDs in this explanatory memorandum, whatever the investment product they are considering.’</p>
<p>IFF Research and YouGov, <i>UCITS Disclosure Testing Research Report</i> (June 2009) http://ec.europa.eu/internal_market/investment/docs/other_docs/research_report_en.pdf</p>	<p>The Report states [para 1.1] that ‘[t]he European Commission has proposed replacing the current Simplified Prospectus for UCITS funds with a new form of disclosure entitled Key Investor Information (KII). The KII is intended to be a concise and focused presentation of the information which it is important for a prospective investor in a UCITS fund to be aware of. The intention is that this core document can be used virtually unchanged across Europe, with the ultimate goals of both maximising investor protection and improving the single market in UCITS. This report details findings of a research project designed to provide input from both consumer and intermediaries into the way in which information should be presented in the KII document. It is intended that the final presentation of the KII will be strongly led by investor testing so that it responds to both investor need and ability to comprehend/use information which in turn will maximise its contribution towards informed decision-</p>

	making in the market.’
Lachlan Burn 'KISS, But Tell All: Short-Form Disclosure for Retail Investors' (2010) 5(2) <i>Capital Markets Law Journal</i> 141	Provides an outline of the background to the proposed reforms and the related issues.
Presidency, Council of the European Union, <i>Proposal for a Regulation of the European Parliament and of the Council on Key Information Documents for PRIIPS</i> — <i>Presidency Draft Compromise</i> (24 June 2013) http://register.consilium.europa.eu/doc/srv?!=EN&t=PDF&gc=true&sc=false&f=ST%2011430%202013%20INIT	Updated Presidency compromise on the Commission proposal for a Regulation of the European Parliament and of the Council on key information documents for packaged retail investment products (PRIIPS).
Regulation of the European Parliament and of the Council on Key Information Documents for Packaged Retail and Insurance Based Investment Products (PRIIPs), adopted by the European Parliament on 15 April 2014 ('PRIIPS Regulation') http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2014-0357#BKMD-34	In order to enter into force, this Regulation must be approved by the Council of the European Union and then published in the Official Journal of the European Union. The Regulation applies two years after publication in the Official Journal.

HONG KONG

Source	Commentary
<p>Andrew Godwin, 'The Lehman Minibonds Crisis in Hong Kong: Lessons for Plain Language Disclosure' (2009) 32(2) <i>University of New South Wales Law Journal</i> 547</p>	<p>This article outlines the development and application of plain language techniques in respect of investment products. It examines the background to the Minibonds crisis, including the nature of the product, how it was sold, whether the documentation was expressed in plain language and what went wrong with the product. The author also undertakes a review of the plain language requirements in Hong Kong, Australia and the United Kingdom for the comparative light that it throws on regulatory developments.</p>
<p>Hong Kong Monetary Authority (HKMA), <i>Implementation of Recommendations in the HKMA's Report on Issues Concerning the Distribution of Structured Products Connected to Lehman Brothers</i> (March 2009) http://www.hkma.gov.hk/eng/key-information/guidelines-and-circulars/circulars/2009/20090325-1.shtml</p>	<p>Series of recommendations for Registered Institutions (RIs) concerning the distribution of retail structured products in the wake of the Hong Kong Minibonds Crisis. These recommendations include the implementation of:</p> <ul style="list-style-type: none"> • Health warnings attached to retail structured products with derivatives; • The separation of a customer's risk profile from the sales process; and • A continuous review by an RI of the risk ratings of the investment products it sells – and if a higher risk rating is attributed to the product this should be disclosed to the investor.
<p>HKMA, <i>Report of the Hong Kong Monetary Authority on Issues Concerning the Distribution of Structured Products Connected to Lehman Group Companies</i> (2008) http://www.hkma.gov.hk/media/eng/doc/other-information/lehman_report.pdf</p>	<p>Comprehensive report detailing issues raised by the Lehman Minibonds Crisis. In particular, the Report recommends that “Health-warnings” should be attached to retail structured products with embedded derivatives or to retail derivative products generally. The Report also recommends that uniform disclosure formats such as simple “product key facts statements” and “sales key facts statements” should be produced for such products (and indeed other retail investment products).</p>
<p>Richard Mazzochi, Scott Farrell and Abigail Rath, 'Tailoring Structured Notes to the Hong Kong Public' (2004) 23 <i>International Financial Law Review</i> 43</p>	<p>Short article that looks to Australia, where sophisticated structured note products are sold to the public, for techniques to ensure the investments are created and sold in a way that makes them comprehensible while at the same time protecting those with legal responsibility for the offering.</p>
<p>SFC, 'Circular to management companies / Product Issuers of SFC-Authorized Schemes — Implementation Arrangements to the Code on Unit Trusts and Mutual Funds (“UT Code”)' (16 December 2010) http://www.sfc.hk/edistributionWeb/ga</p>	<p>Includes details on the procedures for obtaining approval in relation to the Product KFSs and the implementation arrangements</p>

teway/EN/circular/products/product-authorization/openFile?refNo=H613	
SFC, <i>Consultation Conclusions on Proposals to Enhance Protection for the Investing Public</i> (May 2010) http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/product-authorization/conclusion?refNo=09CP3	The measures in the Consultation Conclusions included a consolidated product handbook with revised product codes for unit trusts and mutual funds and for investment linked assurance schemes as well as a new product code for unlisted structured investment products
SFC, <i>Consultation Paper on Proposals to Enhance Protection for the Investing Public</i> (September 2009) http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/%20openAppendix?refNo=09CP3&appendix=1	Responses from the public are available at: http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/product-authorization/responses?refNo=09CP3
SFC, 'Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products' (April 2013) ('Handbook') http://en-rules.sfc.hk/en/display/display_main.html?rbid=3527&element_id=3038	The Handbook was gazetted and first became effective on 25 June 2010. The disclosure requirements are contained in Chapter 6 of the Handbook and Chapter 6 of the Code on Unit Trusts and Mutual Funds.
SFC, <i>Issues Raised by the Lehman Minibonds Crisis — Report to the Financial Secretary</i> (December 2008) http://www.sfc.hk/web/doc/EN/general/general/lehman/Review%20Report/Review%20Report.pdf	Report detailing issues raised by the Lehman Minibonds Crisis. In particular, the Report highlights the high number of complaints that investors were not given information that they could understand. Instead, the report recommends that investors should be provided with a summary explaining the nature of the investment product either in addition to the prospectus or offering document or as part of it.
SFC, Product Key Facts Statements (KFS) http://www.sfc.hk/web/EN/regulatory-functions/products/product-authorization/products-key-facts-statements.html	Website information about Product Key Facts Statements.

Source	Commentary
<p>Capital Market Development Taskforce, <i>Capital Markets Matter</i> (prepared for the Ministry of Economic Development, 2009) http://www.med.govt.nz/business/economic-development/pdf-docs-library/cmd-capital-markets-matter-full-report.pdf</p>	<p>The Capital Market Development Taskforce was established in July 2008 to develop a blueprint for New Zealand's capital markets. This Report highlights the lack of investment in New Zealand capital markets. The Report argues that Product disclosure in its present form does not work well. It is not sufficiently standardised, concise, simple or understandable, and is of little use to most retail investors. The Report highlights the need for increased investor literacy and recommends replacing the investment statement with a new two-part disclosure document.</p>
<p>Financial Markets Authority, <i>Guidance Note: Effective Disclosure</i> (June 2012) https://www.fma.govt.nz/media/802192/final_guidance_8_june.pdf</p>	<p>The Guidance Note relates to disclosure in Investment Statements and Prospectuses. Disclosure documents must be 'clear, concise and effective' (pg 16). The Guidance Note contains a table of suggested plain language techniques (page 17–18) as well as a table of techniques for keeping disclosure documents concise (page 19).</p>
<p><i>Financial Markets Conduct Act 2013</i> (NZ) http://www.legislation.govt.nz/all/results.aspx?search=ts_act%40bill%40regulation%40deemedreg_Financial+Market+Conduct_resel_25_a&p=1</p>	<p>The legislation in New Zealand introducing reforms to securities law and regulation.</p>
<p>Jenny Chan and Susan Watson, 'Investor Psychology Matters: Is a Prescribed Product Disclosure Statement a Supplement for Healthy Investment Decisions?' (2011) <i>New Zealand Business Law Quarterly</i> 412</p>	<p>Article examines the proposed reforms in New Zealand and compares them with the approach in the European Union and Australia. The article focuses on various studies relating to general lack of investor readership, understanding, and the propensity for information overload. In particular, the article draws heavily from behavioural science literature by drawing out the various biases that affect investor behaviour, such as representative bias, the framing effect, and the overconfidence bias.</p>
<p>Ministry of Business, Innovation and Employment, <i>Financial Markets Conduct Regulations — Discussion Paper</i> (December 2012) http://www.med.govt.nz/business/business-law/pdf-docs-library/current-business-law-work/securities-law-review/fmc-regulations/Financial%20Markets%20Conduct%20Regulations%202013%20Discussion%20Paper.pdf</p>	<p>The regime in the FMC Bill replaces investment statements and prospectuses in the Securities Act. The FMC Bill leaves the detailed presentation and content requirements for disclosure obligations to the regulations. Pages 14-19 provides an overview.</p>
<p>Ministry of Business, Innovation and Employment, 'Financial Markets Conduct Regulations — Draft Regulations and Detailed Requirements for Disclosure</p>	<p>Series of mock-ups showing how disclosure documents for managed funds, and the first 2 pages of disclosure documents for equity, debt, and other managed investment schemes could look under the <i>Financial</i></p>

<p>Documents' (October 2013) http://www.med.govt.nz/business/business-law/current-business-law-work/financial-markets-conduct-act/draft-regulations</p>	<p><i>Markets Conduct Act 2013</i> (NZ).</p>
<p>Ministry of Business Innovation and Employment, 'Financial Markets Conduct Regulations — Exposure Draft of Disclosure Requirements' (October 2013) http://www.med.govt.nz/business/business-law/current-business-law-work/financial-markets-conduct-act/draft-regulations/exposure-draft-of-disclosure-requirements.pdf</p>	<p>Exposure draft of disclosure requirements.</p>
<p>Ministry of Economic Development, <i>Review of Securities Law</i> (Discussion Paper, June 2010) http://www.med.govt.nz/business/business-law/pdf-docs-library/current-business-law-work/securities-law-review/review-of-securities-law-discussion-document-1625-kb-pdf.pdf</p>	<p>Chapter 3 considers the purposes of disclosure and the audiences for disclosure before going on to look at the overall framework for disclosure by issuers including how point of sale disclosure should be made (i.e. in one or two documents and/or on a website); and what the appropriate content and format of disclosures should be. The Chapter also highlights that the dominant purpose of regulating disclosure about financial products is to seek to balance information asymmetries, as the issuer has more information than the investor about who is offering the product, the product itself, and the terms and conditions on which it is sold. This information asymmetry disadvantages the investor, resulting in an inefficient market.</p>
<p>Office of the Minister of Commerce, <i>Cabinet Paper to the Chair of the Cabinet Economic Growth and Infrastructure Committee: Securities Law Reform</i> (February 2011) http://www.med.govt.nz/business/business-law/pdf-docs-library/current-business-law-work/securities-law-review/review-of-securities-law-cabinet-paper-feb-2011483-kb-pdf.pdf</p>	<p>The paper proposes that the requirement for issuers to prepare a prospectus and investment statement be replaced by a requirement to prepare a single product disclosure statement (PDS) tailored to retail investors. The PDS would be divided into two parts: a short one to two page key information summary to facilitate comparisons between products, and a more detailed second part with all of the information that is essential to an investor's decision about whether to invest. PDSs would be tailored to fit specific financial products (for example, there may be different PDSs for different kinds of collective investment scheme). The content of PDSs would also be heavily prescribed, and the length of the PDS would be prescribed, where practical, given the nature of the financial product being issued.</p>
<p>Regulatory Impact Statement, <i>Financial Markets Conducts Regulations</i> (NZ) http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-mbie-fmc-jun13.pdf</p>	<p>Reports on the options for regulations required to bring the Financial Markets Conduct Bill (FMC Bill) into force.</p>
<p><i>Securities Regulations 2009</i> (NZ) http://www.legislation.govt.nz/reg</p>	<p>Part 1 of the Regulations prescribes the requirements for:</p>

[ulation/public/2009/0230/latest/whole.html#DLM2291143](http://www.secdatabase.com/SEC/SEC%20Filings/SEC%20Filings%20by%20Company/SEC%20Filings%20by%20Company%20-%202009/2009/0230/latest/whole.html#DLM2291143)

- Short form prospectus for offers to existing security holders;
- Simplified disclosure prospectus for public issuers; and
- Further provisions relating to content of all registered prospectuses

SINGAPORE

Source	Commentary
Monetary Authority of Singapore (MAS), 'Consultation Paper on Regulatory Regime for Listed and Unlisted Investment Products' (28 January 2010) http://www.mas.gov.sg/~media/resource/publications/consult_papers/2010/Regulatory%20Regime%20for%20Listed%20and%20Unlisted%20Investment%20Products.pdf	Consultation Paper on the revised package of proposals arising out of the March 2009 Consultation Report, including proposals aimed at enhancing the safeguards for retail customers. These proposals will apply to both unlisted and listed investment products sold to retail investors..
MAS, 'Consultation Paper on Review of the Regulatory Regime Governing the Sale and Marketing of Unlisted Investment Products' (12 March 2009) http://www.mas.gov.sg/News-and-Publications/Consultation-Paper/2009/PDF-220KB-Review-of-the-Regulatory-Regime-Governing-the-Sale-and-Marketing-of-Unlisted-Investment-Products.aspx	Consultation paper on the review of the regulatory regime governing the sale and marketing of unlisted investment products, including proposals aimed to: <ul style="list-style-type: none"> • promote more effective disclosure by improving the quality of information given to investors; • strengthen fair dealing in the sale and advisory process, and • enhance MAS' powers for breaches of the Financial Advisers' Act.
MAS, 'Guidelines on the Product Highlights Sheets' (21 October 2010) http://www.mas.gov.sg/~media/resource/legislation_guidelines/securities_futures/sub_legislation/GuidelinesOnPHS.ashx	Guidelines issued by the Monetary Authority of Singapore (the "Authority") pursuant to section 321 of the Securities and Futures Act (Cap. 289) ("SFA"). They aim to provide guidance to issuers ¹ and their professional advisers in preparing a Product Highlights Sheet.
MAS, 'Response to Feedback Received Phase 1' (8 September 2009) http://www.mas.gov.sg/~media/resource/publications/consult_papers/2009/Response%20to%20FB%20Received%20Phase1.pdf	Response to feedback in relation to the March 2009 Consultation Paper.
MAS, 'Response to Feedback Received Phase 2' (28 January 2010) http://www.mas.gov.sg/~media/resource/publications/consult_papers/2010/Response%20to%20Feedback%20Received%20Phase2.pdf	Response to feedback in relation to the March 2009 Consultation Paper.
MoneySENSE, 'Ten Important Questions Investors Should Ask Before Buying A Structured Product' http://www.moneysense.gov.sg/understanding-financial-products/investments/guides-and-articles/ten-important-questions-investors-should-ask-before-buying-a-structured-product.aspx	Fact sheet highlighting 10 key questions that an investor ought to ask before they commit to investing in a structured financial product.

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<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD410.pdf>

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http://www.mas.gov.sg/~media/resource/publications/consult_papers/2013/14%20Oct%202013%20Policy%20Consultation%20on%20Proposals%20to%20Facilitate%20Better%20Understanding%20of%20Prospectuses.pdf

Securities and Futures Commission (Hong Kong), Circular to Issuers of SFC-Authorized Investment-Linked Assurance Schemes ('ILAS Schemes') – Enhanced Disclosure Requirements for ILAS Schemes (3 May 2013)
<http://www.sfc.hk/edistributionWeb/gateway/EN/circular/openFile?refNo=13EC17>

Securities and Futures Commission (Hong Kong), Product Key Facts Statements Illustrative Templates, <http://www.sfc.hk/web/EN/regulatory-functions/products/product-authorization/products-key-facts-statements.html>