Does not dispense with the need to consult the regulation published in the Official Gazette.

CMVM

CMVM Regulation No. 2/2012
Disclosure Duties Relating to Complex Financial Products and Marketing of Transactions and Insurance Linked to Investment Funds

One of the causes that led to the financial crisis in 2007 was the creation of extremely complex financial products and their inherent high risk (mentioned in the Larosière Report and others). Many of these products were no longer solely traded among eligible counterparties (ECPs) but offered to unqualified retail investors as well. With this setting in mind, Decree-Law No. 211-A/2008 of 3 November establishes a particular information regime for complex financial products so that the public is made fully aware of its characteristics and risks. Additionally, in accordance with Article 2/8 of said Regulation, the CMVM established (via CMVM Regulation No. 1/2009) disclosure and transparency duties for advertising texts and information documents for said financial products.

This Regulation is established due to the need to revise CMVM Regulation No. 1/2009 in light of the experience gained during circa three years since its application. Furthermore, it emerges from the increasing concerns regarding the difficulty encountered by investors in understanding said products even for those investors with an above average level of financial literacy. Another concern is the fact that the expected return rate of a significant amount of complex financial products is lower than that of traditional lower-risk investment alternatives, according to CMVM Study Report No. 1/2010, and of implicit return rates of other products with similar risk rates that are traded on the secondary market. Consequently, this Regulation also concerns information to be provided to investors who are not acquainted with the price adequacy at which these complex financial products are offered. Lastly, this Regulation further aims to implement the CMVM's policy on said issue in the mentioned document on this issue in 2011.

The options in this Regulation have also taken the international financial innovation and marketing of complex financial products' framework into consideration. On the international front, EU Regulation No. 1095/2010 of the European Parliament and of the Council of 24 November 2010, established the European Securities and Markets Authority (ESMA), allocated said authority with an important role in promoting transparency, simplicity and equity in the market as regards financial products and services for consumers (Article 9/1) including the monitoring of new and existing financial activities (Article 9/2). The initiatives that the supervisory counterpart authorities have been announcing or fulfilling as to the supervision of the marketing of complex financial products besides their experiences in devising and disclosing investor warnings, were also taken into consideration. Finally, the European Commission proposal for a European Regulation on Packaged Retail Investment Products (PRIP), of 3 July, was taken into account.

As regards the main changes that this Regulation introduces, several aspects are worthy of note. Said will concentrate on a sole regulatory instrument for the information, advertising and marketing of all complex financial products subject to the CMVM's supervision and will now include insurance linked to investment funds and transactions linked to investment funds (unit-linked). The latter were subject to CMVM's Regulation No.8/2007 which now only covers individual open-end pension funds. Certain uncertainties are also clarified as regards units in Non-UCITS that do not include real estate investment funds or venture capital funds wherein the definition of its criterion as a complex financial product (taking into account the relevant specific characteristics), will occur prior to its authorisation.

Substantively, both the information document and the advertising text shall include an appealing warning symbol that in a simple and direct manner, informs investors of the relevant characteristics of the financial product - the chance of partial or total capital loss.

Another relevant change regards investor warnings that have been expanded and typified. CMVM Regulation No. 1/2009 already provided for some warnings albeit experience has shown that said were restricted as to the actual needs. It is noted that the content types of the current warnings are also novel. Said categorisation eases the production of pre-contractual information documents and advertising messages including its supervision and whenever applicable, approval by the CMVM. Moreover, investors will also be able to understand and compare risks of complex financial products.

In order to simplify the drawing up and supervision of information documents and for the purposes of clarity of information, the format and contents of the information document that contains Key Investor Information, called KIID, are regulated.

Moreover, said Regulation also aims to attain language standardisation in the KIID and advertising, thus avoiding vague and unfitting expressions that may mislead investors. Among the relevant definition concept (i.e. guaranteed capital and guaranteed return), certain expressions in inappropriate contexts are forbidden. Furthermore, risk factors have been listed and defined and must be identified in the KIID. Identifying non-typified risk factors that might underlie the complex financial product is now compulsory.

Advertising-wise, a four month maximum validity period is proposed for approved advertising messages regardless of the specific validity rules and the possibility of renewal, thus reinforcing the current information as an essential element for advertising messages. Also embracing and drawing on the CMVM's expertise in this regard and in order to streamline the authorisation procedure, specific requirements concerning format and content of advertising messages were also introduced, particularly those contained in electronic trading platforms. It should be noted that such rules do not restrict its applicability to domestic companies, so that even the financial intermediaries that provide electronic trading platforms under the freedom to provide services become subject to the same when conveying advertising on the respective platforms. Such understanding will ultimately find favour with Recital 43 of Directive 2006/73/EC of the Commission of 10 August 2006, which allows Member States to subject marketing communications (i.e. advertising) pertaining to marketing of financial instruments to prior approval frameworks.

Another revolutionising element is the requirement to compulsorily present scenarios according to the probability of its occurrence. Now, the requirement includes a worst-case scenario which corresponds to the 10th percentile expected return values, the average scenario, to the median percentile return values and the 90th percentile expected return values, corresponding to the best-case scenario. In order to prevent the need for probability calculation in those cases wherein the protection of investors' interest does not require so, such scenarios are only compulsory when KIID voluntarily includes scenarios or examples. The CMVM may also request that scenarios are included where this is appropriate to protect investors in cases where the amplitude between the maximum and minimum internal return rate surpasses or equals five percentage points or the distribution of results is highly irregular.

Complying with the limitations outlined in the Joint Understanding by the *Banco de Portugal* and *CMVM* as to the Demarcation of Powers concerning Complex Financial Products that was signed on 12 March 2009, and the Joint Understanding by the CMVM and ISP on the Regulation and Supervision of the Open-end Pension Funds with Individual Membership, Transactions and Assurances linked to Investment Funds that was entered into on 14 November 2008 underlie this regulatory endeavour.

In order to ensure continuity with CMVM Regulation No. 1/2009, this Regulation is based on the concept of placement or marketing used. This implies an initiative or activity aimed at investors in Portugal, in disclosing or proposing the subscription, acquisition or transaction of a complex financial product, by using any of the customary advertising or reporting means that includes other means of distance communication, such as the Internet. This placement concept is laid down in financial law and practice, with this regulation not providing any implementation.

The comments submitted during the CMVM Consultation Paper No. 1/2012 were relevant for the solutions that were adopted in this Regulation.

After consultation with the Portuguese Insurance & Pension Funds Supervisory Authority (*Instituto de Seguros de Portugal-ISP)* in accordance with Article 353/3/a) of the Securities Code.

Thus, as provided for in Articles 155, 319, 353/1 & /3 and 369/1 of the Securities Code, Article 2/8 of Decree-Law 211-A/2008 of 3 November and Article 83/a) & /q) of Decree-Law No. 252/2003, of 17 October and Article 9/n) of the CMVM Bylaws, approved by Decree-Law No. 473/99 of 8 November, the Executive Board of the CMVM (*Comissão do Mercado de Valores Mobiliários*), approves the following Regulation:

Chapter I
General Provisions

Article 1
Purpose

This Regulation sets out the duties regarding:

a) Information to be provided in the marketing of complex financial products (CFPs); and

b) CFP advertising; and

c) Marketing of insurance and transactions linked to investment funds.

Article 2
Scope

1. This Regulation applies to CFP the marketing whereof is subject to CMVM's supervision and is aimed at a minimum of five retail investors resident or established in Portugal, including the following:

a) Derivative financial instruments and derivative securities, except for certificates limited to closely replicating the trend of a financial instrument that may not be regarded as a complex financial product;
b) Structured bonds;
c) Other debt securities with possible redemption below par value due to link with another product or event;
d) Insurance and transactions linked to investment funds;
e) Dual products.

2) The classification as a CFP of investment units in collective investment undertakings (CIU) that are not subject to the framework laid down by Directive 2009/65/EC of the European Parliament and of the Council, of 13 July, which coordinates the laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), which are not real estate investment funds or venture capital funds depend on the assessment on a case-by-case basis prior to its authorisation and constitution, portfolio composition and investment policy proposals for CIU.

3) The sole provision of reception and transmission or execution of orders related to CFP trading on a regulated market or multilateral trading system is not subject to the provisions of this Regulation on condition that the service rendered is demonstrably provided on the client's initiative.

4) The marketing of CFP, the unit value whereof is equal to or greater than €100,000, only the issuing, management or marketing entities, as applicable, should comply with the duty to notify the CMVM of the commencement of same and the duties envisaged in Article 21.

5) The marketing of investment units that are classified as CFP pursuant to paragraph 2 shall not be subject to the provisions contained in Section I of Chapter II.

Article 3
Definitions

For the purposes of this Regulation, the following shall mean:

a) Invested capital: All the disbursements incurred by the investor, be it the price, margins, insurance premium, costs or other type of costs.

b) Management entity: Entity that manages a CIU or other autonomous asset, namely management company of investment funds and insurance company.

c) Electronic trading platform: any electronic system that enables investors to directly trade CFP, including via Internet access.

d) Product with capital guaranteed: product where the capital amount to be repaid or amount to receive is set, being greater or equal to the capital invested. A product with guaranteed capital is not risk free. There are two types:

i. Capital-Guaranteed Product at all Times: a capital guaranteed product where purchase or refund thereof is secured at any time.

ii. Capital-Guaranteed Product at Maturity: product with capital guaranteed if the investment is held until maturity.

e) Certain-Return Product: product where the periodic payment does not rely on any event. There are two types:

i. Fixed-Return Product: product with a fixed return, wherein the amount of said return is determined at the outset;

ii. Variable Return Product: certain return product where the amounts payable are not defined at the time of acquisition or initial transaction of same.

f) Income-Guaranteed Product: certain remuneration product, at least partially fixed, and where the capital is guaranteed. A product of guaranteed income is not risk-free. There are two types:

i. Income-Guaranteed Product at all Times: a guaranteed income product where purchase or refund thereof is secured at any time by the investor;

ii. Income-Guaranteed Product at Maturity: product that guarantees the income provided the investment is held until maturity.

g) Dual Product: product that includes the joint marketing of two or more financial products or a combination of bank deposits and financial products with one product resulting therefrom with the name and specific inseparable features relating to the details comprising said product.

h) Credit risk: risk, particularly due to the bankruptcy or insolvency of the issuer, of the duties inherent in a certain CFP (such as, interest payment and capital repayment) not being complied with timeously. If the bankruptcy or insolvency of a third party also affects the profitability of the CFP, this also shows the credit risk of said entity. All CFPs have credit risk.

Article 4
Information Source and Use Restricted Expressions

1. In the information provided for the marketing or advertising concerning CFP:

a) Data that is not the sole responsibility of the entity that provides it shall include the relevant source;

b) Assertions that are not substantiated and evidence-based as to the competitive position of a certain product, service, issuer, management entity and marketing entity may not be included;

c) Expressions that clash with the definitions of the preceding Article may not be used.

2. When marketing or advertising CFPs, the following expressions may only be used under the following situations:

a) «Free of cost», «no incurred charges» or similar expressions, whenever no payment of interest, commission fees or other charges apart from the CFP price is requested of the client;

b) «No initial down payment» or similar expression, when no such down payment is requested of the client;

c) «Offer», «gift», «present» or similar expression, when no such conditions or circumstances that compel the reimbursement or compensation of the asset or benefit are in place;

d) «The market's lowest», «The market's highest», «The market's best» or similar expressions, when said are followed with equal highlight by the specific conditions of the financial product or services and the sources that claim said statement.

Chapter II
Information

Section I
Pre-Contract Information

Article 5
Information Document

1. The CFP's marketing entity shall ensure that there is an information document entitled "Key Investor Information Document" (KIID).

2. Should the CFP continue to be marketed, the KIID shall be updated:

a) Concerning historical data, at least once every year, as at 31 December and by 30 April of the next year;

b) Whenever there are changes made to any other information.

3. The provisions of paragraphs 8 and 9 of the following Article shall apply to the update envisaged in the preceding paragraph.

4. The marketing entity is liable for:

a) The delivery or availability of the KIID to the investor prior to the acquisition or initial transaction of CFP; and

b) The information set out in the KIID and shall ensure that same complies with this Regulation and the requirements of Article 7 of the Securities Code, including where the document is drawn up by third-parties.

Article 6
Requirements

1. The KIID shall contain all the necessary information for sound decision-making by the investor on the characteristics and risks of a particular CFP, referred to as individual KIID, or regarding the CFP category, referred to as general KIID.

2. The KIID's name shall not be confused with the name of other products or instruments and shall not be capable of misleading the investor.

3. The title "Key Investor Information Document" and the term "Complex Financial Product" is clearly referred to in KIID and shall not be confused with the name of the CFP mentioned in the relevant KIID.

4. Within the context of private offers, the CMVM may authorise that the KIID is drawn up in a language commonly used in international financial markets if it is considered that the understanding thereof by the marketing addressees is protected.

5. The CMVM shall notify the applicant of the decision envisaged in the preceding paragraph within five days as from receipt of the duly substantiated application.

6. Whenever an individual KIID is unavailable or unreasonably expensive due to mass marketing methods and strategies of the CFP, a general KIID may be used.

7. The KIID may be replaced by a document approved by the market managing entity or multilateral trading system subject to the CMVM's supervision provided it contains the information mentioned in Article 8.

8. The marketing of CFP is subject to the following:

a) notification to the CMVM, no later than five working days prior to commencement of the marketing of KIID or document envisaged in the previous paragraph, as applicable, and

b) with regard to a public offer, the disclosure of the respective KIID on the CMVM Information Disclosure system.

9. The CMVM may request a review of the KIID whenever it deems that same does not comply with the terms and conditions set out in this Regulation and may also for that purpose request information or additional information that it deems necessary.

Article 7
KIID Availability

1. The KIID or document that may replace same is delivered free of charge to the investor, in one of the following forms:

a) Paper;

b) On another durable medium or via a website, provided it is secured, involving identical level of durability, authenticity and intelligibility, proof of receipt by the investor and taken note of warning notices.

2. The availability in paperless form should only be carried out if it is appropriate within the context of the marketing's specific circumstances and if the investor, after he was presented with the option, expressly agreed to the use of this other form.

3. Besides the requirements envisaged in the preceding paragraph, availability via a website, may only take place if:

a) The investor has been electronically notified of the address of the website and the place on the website for access to the KIID, or document that replaces it;

b) It is secured that the access remains continually accessible for a reasonable amount of time so that the investor may consult.

4. Notwithstanding the provisions of the previous paragraphs, the marketing entity has a duty to deliver the KIID or the document replacing it on paper, free of charge, if the investor so requests this.

Article 8
Format and Content

1. The content and format of the KIIDs comply with, *mutatis mutandis* in the case of general KIIDs, the model in Annex I.

2. The KIID should include the following, namely:

a) General warning that *"A responsible investment requires that you know all the implications and are willing to bear said implications"*;

b) Warning symbols pursuant to the following Article;

c) Name of the CFP and, where available, the ISIN Code;

d) Clear identity of the issuer or management entity, as applicable;

e) Specific warnings to investors pursuant to Article 10;

f) Description and main features of the CFP, according to Article 11;

g) Description of main risk factors, in accordance with Article 12;

h) Description of scenarios and probabilities, where applicable, pursuant to Article 13;

i) Description of charges according to Article 14;

j) Description of historical return and risk, where applicable, pursuant to Article 15;

k) Additional information in accordance with Article 16.

3. The CMVM may, exceptionally, depending on the particular features of each CFP, order for additional information to that mentioned in the preceding paragraph to be included when it is necessary to protect the investors' interests.

4. Pursuant to Annex I, the KIID contains two fields that should be signed and the date and time inserted by the investor and read as follows:

a) "*I have taken note of the warnings*";

b) "*I received a copy of this document before subscription",* or "*I received a copy of this document before the initial transaction*", as applicable.

5. For purposes of the preceding paragraph, the wording of the statements and signature of the investor may be carried out by another person, where the investor does not know or cannot write or sign:

a) If said third party that cannot be an employee of the marketing entity, provides a power of attorney to represent the investor for said purpose; or

b) In the case of signing at the investor's request before a notary or similar entity, these statements may be handwritten by the employee of the marketing entity.

6. The rules envisaged in paragraphs 4 and 5 shall apply to the document replacing the KIIDs.

Article 9
Warning Symbol

1. Pursuant to Annex II, the KIID contains a warning symbol, provided the following conditions are complied with:

a) Green colour – Green may only be assigned to the CFP with guaranteed income when issued or guaranteed by an entity subject to prudential supervision in the European Union or covered by the mutual recognition system.

b) Yellow colour – Yellow may only be assigned to CFP with guaranteed income that are not issued or guaranteed by an entity referred to in the preceding paragraph and also to CFP where maximum loss of capital at maturity is less than or equal to 10% of the capital invested.

c) Orange colour – Orange is assigned to CFP where there is a possibility of recording a capital loss at maturity that is greater than 10% and less than 100% of the capital invested.

d) Red colour – Red is assigned to all CFP where there is a possibility of recording a capital loss greater than or equal to 100% of the capital invested.

2. The warning symbol contains the following phrase - *"All investments carry risk"* and, where applicable *"See the KIID/Prospectus available on www.cmvm.pt.".*

3. Depending on the colour of the warning symbol applicable and the conditions laid down, the following additional phrases are required:

a) Green colour – In the case of PFC without capital guarantee at all times, *"Involves the tying up of capital for [insert deadline, if certain, or the maximum period, if uncertain, of the tying up of capital required to obtain the guaranteed income]"*;

b) Yellow colour – Depending on whether the CFP with guaranteed income or at risk of partial loss of capital, the phrase *"Involves the tying up of capital for [insert deadline, if certain, or the maximum period, if uncertain, of the tying up of capital required to obtain the guaranteed income]"* or *"Risk of losing up to 10% of the invested capital"*, respectively;

c) Orange colour – *"Risk of losing more than 10% of the invested capita""*;

d) Red colour – *"Risk of losing entire capital invested"* or *"Risk of losing more than the capital invested"*, as applicable.

Article 10
Specific Investor Warnings

1. The KIID includes the following specific warnings, where applicable: "*This complex financial product:*

a) *"May lead to the loss of some of the capital invested", "may lead to the total loss of capital invested"* or *"may lead to the total loss of all or more than the capital invested,"* applies to products without capital guarantee on maturity wherein there is the possibility of losing part or all or more than the capital invested. The term *"sudden"* is added after the word *"loss"* in those situations where such a possibility exists;

b) *"May provide zero return", "may provide zero or negative return"* or *"may provide zero or negative return if the investment is not held until maturity"*, when products do not have guaranteed income throughout, with the first two being applicable when there is no guaranteed return at maturity and the latter when this takes place;

c) *"Provides a lower rate of return required by the institutional investors for identical risk levels",* when the minimum annual internal rate of return, calculated by taking into account all the costs and charges incurred by the investor, is less than or equal to the internal rate of return required by institutional investors for financial products with the same risk levels, reduced by a differential that may not exceed two percentage points;

d) *"Requires the investor's willingness to tie up the capital for* [insert deadline, if certain, or the maximum period, if uncertain, of the tying up of capital required to obtain the guaranteed income] *or to incur capital expenses and losses from the sale thereof on the secondary market",* applies only to products with capital guarantee at maturity;

e) *"May be repaid early, at the option of the issuer (or management entity)"* or *"may be repaid early for fulfilling the automatic reimbursement condition",* as applicable;

f) *"Is subject to credit risk of the issuer* [identify] (or management entity [identify]*)"*, or *"is subject to credit risk of the issuer* [identify] (or management entity [identify]*), and reference entity* [identify]*)",* where applicable;

g) *"Implies the incurring of costs, fees or charges"*;

h) *"Implies or may imply that the investor bears the costs of hedging risks of the issuer or others"*;

i) *"This is subject to any potential conflict of interests in the calculation agent's performance* [identify calculation agent] and [identify other entities, the conduct of which may conflict with investor interests];

j) *"Is not tantamount to the acquisition or initial transaction of underlying assets"* or, if applicable, *"does not provide a return equal to the variation in reference rate";*

k) *"It is index-linked, not being possible to calculate the value of the reference rate based on public information"*.

2. For the purposes of paragraph c) above, it is deemed that the minimum annual internal rate of return is less than or equal to the internal rate of return required by institutional investors if one of the following conditions is fulfilled:

a) The percentage of subscribed or to be subscribed issuance, under the same conditions, by institutional investors outside the group of the issuer or the management or marketing entity is equal to or greater than 20%; or

b) In the case of CFP for which there is already a market price and marketing is conducted at a price below or equal to that market price.

3. The KIID of the CFP, due to its specific complexity, namely, owing to the dependence of return on a number of conditions, involves particular problems of understanding and should include the warning *"This financial product is particularly complex and hard to understand by retail investors".*

Article 11
Description and Main Features of the Product

1. The KIID includes a succinct description of the functioning and key features of the product, designating the following:

a) How, when and on what basis the investor pays or may pay;

b) How, when and on what basis the investor receives or may receive;

c) When, how, under which circumstances and the consequences resulting from the investment ending or coming to an end.

2. After the description referred to above, a clear characterization of the product, detailing where the information concerning product features, namely, the conditions of acquisition or initial transaction, marketing period, length of the contract, conditions for return, redemption and repayment, the terms and conditions for termination of the CFP.

Article 12
Risk Factors

1. The KIID includes an identification of the CFP's key risk factors, with a brief description, taking into account, namely, the product's features and the significant direct impact on the capital and return of the CFP.

2. The list of risk factors to be analysed in each CFP, where applicable, covers at least the risks stated in Annex III.

3. After identifying the risk factors of the product, the following statement is included, where applicable: "There may be other risk factors with significant direct impact on the capital and return of the CFP".

Article 13
Scenarios and Probabilities

1. The KIID on a CFP, for which payment or amount of regular return, the redemption date or the redemption amount is subject to any event taking place, should describe:

a) The worst case scenario and the best case scenario;

b) Where, on a voluntary basis or required pursuant to paragraph 5, the KIID presents scenarios or examples, the following will have to be complied with:

i. The worst case scenario, to be displayed first, corresponding to the 10th percentile of expected rates of return, stating the conditions where such a scenario occurs, the expected rate of return thereof and indicating that an estimated 10% probability envisages that the rate of return is likely to be less than that stated;
ii. The average case scenario, to be displayed second, corresponding to the mean of the expected rates of return, stating the conditions where such a scenario occurs, the expected rate of return thereof and indicating that an estimated 50% probability envisages that the rate of return is likely to be less than that stated;
iii. The best case scenario, to be displayed last, corresponding to the 90th percentile of the expected rates of return, stating the conditions where such a scenario occurs, the expected rate of return thereof and indicating that an estimated 90% probability envisages that the rate of return is likely to be less than that stated.

2. In carrying out the required simulations in order to comply with the prerequisites of the preceding paragraphs, the Monte Carlo method is used, by performing at least 10,000 simulations, or other numerical method that is technically more appropriate to the specific features of the CFP and consistent with the methodology that the issuer makes use of for internal accounting purposes or to determine fair value.

3. The parameters required for calculating the provisions of paragraph 1, such as volatility, dividend, correlation or other variables concerning the distribution function of the rates of returns, which need to be inferred, should be estimated by using technically appropriate methods and be consistent with the methodology that the issuer makes use of for internal accounting purposes or to determine fair value, by making use of a time frame of the time series that is the same as the maximum life cycle of the CFP unless another time frame is appears more appropriate based on the features thereof.

4. The CMVM may prescribe technical methods in addition to those envisaged in paragraphs 2 and 3.

5. The CMVM may decide to include the scenarios in the CFP's KIID whenever this is deemed appropriate for investor protection and if one of the following conditions apply:

a) The range between the highest and lowest internal rate of return is greater than or equal to five percentage points;

b) A highly asymmetric income distribution.

6. Whenever scenarios are identified, the following statement should be included: *"The scenarios presented correspond to the simulations, with no guarantee of same taking place*".

Article 14
Charges

1. The KIID sets out and describes all the costs, charges and penalties that are assigned to the investor or the CFP.

2. In the charges assigned to the investor are set out, namely, the subscription or acquisition or initial transaction fees, the redemption, reimbursement or sale fees, the transfer fees and any penalties, where applicable.

3. In the charges that are assigned to the CFP are established, namely, the fixed and variable management fees, the deposit fees, auditing costs and other operating costs, where applicable.

4. In the case of insurance and transactions linked to investment funds, the KIID includes the Global Costs Rate (GCR) and average portfolio turnover, pursuant to Annex IV.

5. The Global Costs Rate (GCR) is the quotient resulting from the sum of the management fee, deposit fee, auditing costs and other operating costs, excluding transaction costs during a certain period, and the average net asset value of the CFP in said period.

6. The Global Costs Rate (GCR) relates to the preceding calendar year, determined as at 31 December, and the calculation thereof should be ratified by the fund's auditor.

Article 15
Historical Returns and Risk

1. In the case of a CFP with a track record of at least one year, the KIID should display a chart with the trend of the CFP's value and information on historical returns and risk, of the last ten calendar years or, if not applicable, of the full calendar years, in accordance with the prerequisites of Annex IV.

2. Where the CFP is an insurance or transaction linked to investment funds, the information envisaged in the previous paragraph shall be provided for each separate investment fund.

3. Whenever return measures are disclosed, the following should likewise be included:

   a) An indication that *"past performance is no guarantee of future returns"*;

   b) A clear identification of the reference period, including starting and ending dates;

   c) An indication that net returns depend on the income tax framework and certain tax benefits and other charges directly linked thereto.

4. Whenever return measures are disclosed, the risk indicator set out in Annex IV is also disclosed.

5. When the annualized return measures are based on a reference period that is greater than one year, reference should be made to the fact that such a return would only have been achieved if the investment had been made for the entire period.

Article 16
Additional Information

1. The KIID includes further relevant information, namely, the total amount of the issue, reference to any application for admission to trading on a regulated market, indication of the marketing entity(ies), indication of the supervisory authorities and other entities to which complaints may be submitted, indication of calculation agent, management entities of the respective indices, entity responsible for drawing up KIID, tax system, places where other relevant documentation may be consulted, rights to cancel the contract, date the document was drawn up and the last document update.

2. The designation of supervisory authorities should differentiate authorities that:

   a) Approve documents for the offer;

   b) Supervise, at the prudential and conduct level, the issuer or the management entity;

   c) Supervise marketing of the CFP.

Section II
Contract Information

Article 17
Subscription Documents

1. The application form, or similar document, for the acquisition or initial transaction of CFP, may not contain any statements that exclude the responsibility of the marketing entity or restrict the KIID's validity, except where envisaged pursuant to the law.

2. The provisions of Article 8/5 shall also apply to the signature of the document mentioned in the previous paragraph.

3. The marketing entity is required to deliver to the investor a copy of the documents signed by said investor.

Section III
Post-Contract Information

Article 18
Ongoing Information

At least once each quarter, the marketing entities issue statements of account, on the investment in insurance and transactions linked to investment funds that contain at least the following information:

a) The start and end dates of the time period to which the provided information refers;

b) The market price or where there is no market price, the CFP's theoretical value calculated pursuant to the technical methodologies appropriate to the respective features;

c) Description of financial flows that took place during the time period, such as the establishment, increases, early call-ups, maturity, payment of returns, levying of charges, indicating the respective value dates, and detailing the amounts received by investors, commissions, taxes and other charges incurred.

Article 19
Individual Notification for Material Changes

1. Until termination of the CFP and notwithstanding the specific systems applicable, the management or marketing entity shall immediately notify the CMVM of any changes in the particulars, features, facts or assumptions thereof.

2. The clients that have invested in the CFP, or have forwarded the order accordingly in the case of ongoing investment process, are individually and timeously notified of the amendment stated in the previous paragraph when the same:

a) Is substantial, considered as such by the CMVM, and relates to the product's features or respective investment policy;

b) Implies an increase in the commissions borne by the CFP.

3. The notification envisaged in the preceding paragraph also includes information concerning clients' rights in accordance with the applicable legal and contractual requirements.

4. When the CMVM considers that the reported amendment is significant, it shall notify the entities envisaged in paragraph 1 of such understanding within five days from the date of said notification.

Article 20
Final Information

Within one month from the CFP's termination date, the management entity, marketing entity, or financial intermediary where the CFP is registered or filed, provides the investor with clear and comprehensive information on the reasons for termination and the reasons for the amounts of repayment financial flows.

Section IV
Reporting to the CMVM and the Market

Article 21
Reporting to the CMVM

1. Notwithstanding Article 127 of the Securities Code, the outcome of the CFP's marketing is reported to the CMVM within seven working days after the closing thereof.

2. Information equivalent to that envisaged in the previous paragraph is provided on a quarterly basis, where the CFP is under continuous marketing.

3. The issuer, marketing or management entity, as applicable, submits to the CMVM half-yearly information that would make it possible to identify the CFP, the cash flows, the reasons therefor and corresponding internal rate of return.

4. Every six months, financial intermediaries that provide electronic trading platforms submit information to the CMVM on CFP traded on the platform, including trading volumes per CFP.

5. The CMVM may disclose information submitted pursuant to the previous paragraphs.

6. By means of an Instruction, the CMVM prescribes the content and format of providing the information referred to in the preceding paragraphs.

Article 22
Reporting to the Market

1. Notwithstanding the special systems applicable and as regards public offers for CFP and insurance and transactions linked to investment funds, the following information is disclosed to the market via the CMVM Information Disclosure System:

a) Material changes reported to the CMVM pursuant to Article 19/1;

b) Substitution of the issuer, management entity or marketing entity;

c) Suspension of the CFP's marketing and the grounds therefor;

d) Liquidation or termination date of a perpetual CFP;

e) The unit value of the unit of account’s insurance and transactions linked to investment funds with the same frequency as that envisaged for the corresponding calculation;

f) The outcome of the public offer for CFP.

2. For purposes of the preceding paragraph, the issuer, management or marketing entity, as applicable, submits the information in sufficient time so as to ensure the usefulness of same.

Chapter III
Advertising

Article 23
Prior Approval and Termination

1. Advertising of CFP is subject to prior approval by the CMVM and should be aligned with the contents of the respective KIID.
2. The application for approval of advertising should be submitted with the draft advertisements to the CMVM in a medium that enables the CMVM to understand the actual conditions of disclosure to the public.
3. The applicants are notified of the CMVM's decision within seven days from the date of receipt of the application duly completed and documented.
4. Advertising is considered to be approved where the CMVM does not issue an opinion within the time period set out in the previous paragraph.
5. The approved advertisement shall be valid for four months.
6. If between the date of approval and the end of the validity period, any shortcoming is detected in the advertisement, or due to any new fact or a fact that later comes to the fore that was not previously considered and which is imperative for the recipients of same, the advertisement expires and the advertising campaign shall be immediately terminated.
7. If the applicant purports to continue with the advertisement after the expiry of the validity period, same should be submitted to the CMVM for revalidation, provided:

   a) Does not contain significant changes; and

   b) If kept up to date.

8. The provisions of paragraph 5 shall apply to the revalidated advertising.

Article 24
Minimum Content

1. The issuers, management or marketing entity, as applicable, and the entity responsible for advertising should be clearly identified in CFP advertisements.

2. Notwithstanding the dissemination means used, the advertisements should include the following information:

a) Description of the product and identification as a CFP pursuant to Article 6/3;

b) General warning notice as envisaged in Article 8/2/a);

c) Warning symbol, drawn up according to Article 9, notwithstanding the provisions of paragraph 3 concerning its size;

d) Warning notices envisaged in Article 10/1/a to /d) & /3, preceded by "Special warning notice for the investor" in bold and highlighted in a text box;

e) Reference to the KIID, prospectus or other information document, as applicable, stating where these may be consulted or obtained;

f) Where any rate of return is mentioned, information on the worst possible outcome should be included with the same emphasis;

g) Disclosure of historical performance should be attached with information on the respective risk, taking into account the provisions of Article 15 and be accompanied by the wording *"past performance is no guarantee of future returns"*.

3. The warning notices envisaged in d) of the previous paragraph and also reference to the conditions for accessing the investment and respective restrictions, of any restrictions on the returns and risks involved in the investment should be presented in a balanced manner in relation to the remainder of the message.

4. Where any promotional benefits are linked to the acquisition or initial transaction of a CFP, the conditions for the allocation, continuance and loss of these benefits should be clearly presented.

Article 25
Audio or Audio-visual

In addition to the preceding Article, advertising CFP through an audio or audio-visual medium should be disseminated so that appropriate reading and listening can take place, including the warning symbols (or audible message similar to the provisions envisaged in Annex II) and the warning notices and places where the documents required by law or regulation are available.

Article 26
Advertising with links to other Internet pages

When advertisements of the CFP and related financial services through the Internet enable the user to be redirected to another page before the display of graphic warning symbols, warning notices and places where the documents required by law or regulation are available, the lead capture page should include such information and ensure a proper viewing of same.

Article 27
Electronic Trading Platforms

1. Advertising the electronic trading platforms complies, *mutatis mutandis*, with the provisions of Articles 23 - 26.

2. The advertisements on the CFP set out on the pages of the website of electronic trading platforms should display the contents envisaged in Article 24/2/c) and /d):

a) Should be clearly legible and highlighted, taking up at least 1/6 of the screen;

b) Tailored to the type of CFP concerned and, when advertising covers several CFP, with reference to CFP involving the highest level warning symbol;

c) Regardless of the website's configuration, before the acquisition or initial transaction of any CFP on the platform.

3. The improper, excessive or inappropriate use of warning notices, which would reduce it to triviality and also resorting to non-static or fleeting means that do not allow or do not guarantee the appropriate presentation of warning notices to investors, is prohibited in the electronic trading platforms.

Chapter IV
Marketing and Archive

Article 28
Investor Suitability

1. The marketing entities ask the investor for the information required to assess the suitability of the CFP to personal circumstances of said investor, including the risk profile, in accordance with the Securities Code, including, at least, information on their knowledge and expertise as regards investment.

2. If the warning notices envisaged in Article 314/2 or /3 of the Securities Code are applicable, the investor will be subject to signing a statement in a separate document worded as follows:

a) *"I hereby declare that I have been requested to provide information concerning knowledge and expertise as regards investment";*

b) *"I hereby declare that I have been warned that due to the outcome of the suitability test that was conducted, the* [name of CFP] *does not fit my investor profile, but that nonetheless I maintain my decision to invest in* [name of CFP]";

c) *"I hereby declare that I have been warned that by refusing to hand over the required information for conducting the suitability test prevents my investor profile from being established".*

3. Article 8/5 applies to wording of the statements and signature mentioned in the preceding paragraph.

Article 29
Duty of Safekeeping

1. Notwithstanding any stricter legal provisions or regulations, the marketing entities shall keep all documents and records relating to the following in the archives:

a) The marketing of insurance and transactions linked to investment funds for five years after the transaction;

b) The contracts with clients or documents that contain the conditions whereby the entity provides services to the client for a five-year period as from the end of the client relationship.

2. The marketing entity or, in the event of the issuer or the management entity being subject to the supervision of the CMVM and author of the KIID, shall keep the documentation and information that support the tailoring of the warning symbol to the CFP, and also the scenarios and probabilities referred to in Article 13, until the end of a minimum period of one year has elapsed after termination thereof.

Article 30
Marketing of Insurance and Transactions linked to Investment Funds by Internet and Telephone

1. The provisions of Chapter V of Title II of the CMVM Regulation No. 2/2007 apply to marketing via the Internet for insurance and transactions linked to investment funds.

2. The marketing entities of insurance and transactions linked to investment funds shall record the application for subscription, initial transaction, transfer, redemption or repayment transmitted by telephone and should notify the investor of said recording at the beginning.

Chapter V
Final Provisions

Article 31
Entry into Force and Transitional Provisions

1. This Regulation shall come into force on 1 November 2012.

2. The marketing of a CFP that is in progress at the date envisaged in the preceding paragraph should be in accordance with the provisions of this Regulation by 30 April 2013, where marketing of the CFP extends beyond said date.

3. The information documents drawn up pursuant to CMVM Regulation 1/2009 and simplified prospectuses drawn up pursuant to Regulation No. 8/2007 on CFP envisaged in the previous paragraph may continue to be used until 30 April 2013:

Article 32
Repeal

Notwithstanding the provisions of paragraph 3 of the preceding Article, the following are hereby repealed:

a) CMVM Regulation No. 1/2009; and

b) CMVM Regulation No. 8/2007, in whatever relates to the insurance and transactions linked to investment funds.

Lisbon, 25 October 2012 - The Chairman of the Executive Board, *Carlos Tavares;* Member of the Executive Board, *Carlos Francisco Alves.*

ANNEX I

Key Investor Information (KIID)

[In accordance with Article 8/1]

§ 1
KIID Text

1. The KIID text should be completed with a font type and size that make it easily readable.

2. The heading "Key Investor Information" is prominently displayed.

3. The wording "Complex Financial Product" appears immediately after the heading and is prominently and clearly displayed.

4. The headings of each section are displayed with a font size greater than body text.

§ 2
General Warning Notice

The warning notice envisaged in Article 8/2/a) appears immediately after the wording "Complex Financial Product", and prominently displayed.

§ 3
Specific Investor Warning Notice

The warning notices referred to in Article 10 are entered in an easily readable format in a box labelled "Specific Investor Warning Notices" that is to be included on the first page of the KIID.

§ 4
Size of Document and Text on Description and Features of the CFP

The size of the KIID should not be more than 6 pages (A4).

§ 5
Model of KIID

Key Investor Information Document

COMPLEX FINANCIAL PRODUCT

A responsible investment requires that you know all the implications and are willing to accept said implications.

Field to insert: *Name of the CFP and, where available, the ISIN Code* [Information envisaged in Article 8/2/c)] *Clear identity of the issuer or management entity, as applicable* [Information envisaged in Article 8/2/d)]	[*Field to insert Warning Symbol envisaged in Article 9 and Annex II*]

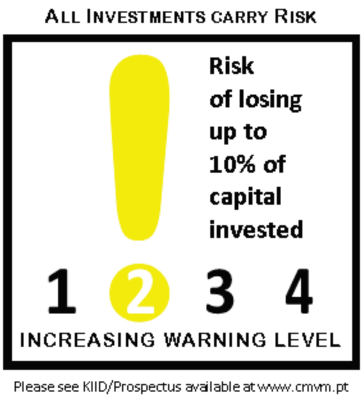
Specific Investor Warning Notices
[***Warning Notices envisaged in Article 10***]
Handwritten text: ***I have taken note of the warning notices*** Date: Time:
Client signature:
Description and Main Features of the Product
[Information envisaged in Article 11]
Key Risk Factors
[Information envisaged in Article 12 and Annex III]
Scenarios and Probabilities
[Information envisaged in Article 13]
Charges
[Information envisaged in Article 14]
Historical Returns and Risks
[Information envisaged in Article 15]
Additional Information
[Information envisaged in Article 16]
Handwritten text: ***I received a copy of this document before [acquisition or initial transaction].*** Date: Time:
Client signature:

ANNEX II

Warning Symbol and Audible Message

[Pursuant to Article 9]

§1
Warning Symbols



§2
Technical Characteristics of Warning Symbols

1. Font:

   a) Text Font "All Investments carry Risk" = Arial Rounded MT | Font size 07

   b) Text Font for warning phrases = Calibri | Font size 10

   c) Text Font "Increasing Warning Level" = Arial Rounded MT | Font size 08

   d) Text Font for Textbox "Please see KIID/Prospectus available at www.cmvm.pt" = Calibri | Font size 07

   e) Numbers (1,2,3,4) = Calibri Bold | Font size 36

2. Square dimension = 4.7 cm x 4.7 cm | Line width 3pt

3. Colour:

   a) Black (numbers and square line) (RGB - Red: 0 | Green: 0| Blue: 0)

   b) Red (RGB - Red:255 | Green:13| Blue: 13)

   c) Orange (RGB - Red:255 | Green: 153| Blue: 0)

   d) Yellow (RGB - Red:255 | Green:255| Blue: 0)

   e) Green (RGB - Red:0 | Green: 176| Blue: 80).

§3.
Audible Message

1. "Green colour": *"All Investments carry risk! This complex financial product is designated with the* colour green, a 1 warning level *(on ascending scale of 1 to 4)"*; if applicable: "Involves the tying up of capital invested for *[insert deadline, if certain, or the maximum period, if uncertain, of the tying up of capital required to obtain the guaranteed income]"* and *"Please see KIID or Prospectus available at* www.cmvm.pt*"*

2. "Yellow colour": *"All Investments carry risk! This complex financial product is designated with the* colour yellow, a 2 warning level *(on ascending scale of 1 to 4)*"; as applicable: *"Involves the tying up of capital invested for [insert deadline, if certain, or the maximum period, if uncertain, of the tying up of capital required to obtain the guaranteed income]*" or *"Implies risk of partial loss (up to 10%) of the invested capital"*; and, if applicable: *"Please see KIID or Prospectus available at* www.cmvm.pt*"*

3. "Orange colour": *"All Investments carry risk! This complex financial product is designated with the* colour orange, a 3 warning level *(on ascending scale of 1 to 4)*"; *"Implies risk of partial loss (greater than 10%) of the invested capital"*; and, if applicable: *"Please see KIID or Prospectus available at* www.cmvm.pt*"*

4. "Red colour": *"All Investments carry risk! This complex financial product is designated with the* colour red, a 4 warning level *(on ascending scale of 1 to 4)*"; as applicable*: "Involves risk of losing entire capital invested" or "Implies risk of losing more than the capital invested";* and, where applicable: "*"Please see KIID or Prospectus available at* www.cmvm.pt*"*

ANNEX III

Risk Factors

[Pursuant to Article 12/2]

Single §

For the purposes of Article 12/2, the following risks should be considered in view of the meanings set out:

a) Market Risk: Risk of the market value of an asset or group of underlying assets or a reference rate (namely, fluctuating interest rates, exchange rates, share prices or commodity prices) varying and having an impact on the return of the CFP.

b) Capital Risk: Risk of the amount that the investor is to receive proves to be lower than the capital invested. All CFPs that are not considered to be guaranteed capital products at all times pursuant to Article 3/d) have capital risk.

c) Credit Risk: as envisaged in Article 3/h).

d) Counterpart Risk: The risk of an entity (other than the issuer) that is a party to an agreement or transaction (e.g., an interest rate swap contract) that does not honour its commitments under the original agreement, and without this involving the CFP's credit risk.

e) Interest Rate Risk: The risk of negative impact on the CFP's return due to adverse movements in interest rates.

f) Foreign Exchange Risk: The risk of negative impact on the CFP's return due to adverse movements in exchange rates.

g) Liquidity Risk: The risk of having to wait or incur costs (namely, having to sell at a price less than the actual economic value) in order to convert a certain financial instrument into currency.

h) Risk of Conflicts of Interest: The risk of an event occurring where the consequences are not fully and completely envisaged in the contractual clauses or legislation governing the CFP, or the resolution whereof is entrusted to the issuer, the management entity, calculation agent or third parties, and the resolution is implemented in a manner contrary to the investor's interests, giving priority to the decision maker's own interests or that of third parties linked thereto.

i) Legal and Fiscal Risk: Risk of amendments to the law, including taxation, and other applicable rules with implications for the return of the CFP.

ANNEX IV

Global Costs Rate and Average Portfolio Turnover in the Reference Period, Returns and Historical Risk

§1
Global Costs Rate and Average Portfolio Turnover in the Reference Period

i. Schedule of relevant costs for the purposes of Global Costs Rate
[Information envisaged in Article 14/4]

Costs	Value	NAV% (1)
Management fee		
Fixed component		
Variable component		
Deposit fee		
Auditing costs		
Other costs		
TOTAL		
GLOBAL COSTS RATE (GCR)		

(1) Average for the reference period.

ii. Average Portfolio Turnover in the Reference Period
[Information envisaged in Article 14/4]

Trading volume	
Average portfolio value	
Average Portfolio Turnover (%)	

§2
Historical Returns and Risk

i. Formula for Calculating the Rate of Return
[Historical Returns – Information envisaged in Article 15/1 & /2]

1. Calculating the historical rate of return is based on the following assumptions:

   a) The value of the CFP for the reference period shall be the fair value, which can be the market price or, if there is no such price, the theoretical value calculated based on technically suitable method and renowned internationally;

b) The minimum reference period to be taken into consideration for the purposes of calculating actual return envisaged in paragraph 2 is 12 months;

c) Only annualized return measures may be disclosed, notwithstanding the disclosure of actual return measures of CFP with less than one year of activity or marketing, provided based on a minimum reference period of six months;

d) Calculating the rates of return is based on amounts in Euros, notwithstanding the possibility of disclosing, at the same time, the measures of return that are not adjusted for exchange rate purposes, provided that these are duly specified;

e) In the event of calculating rates of return that are not net of any costs or charges, these are duly specified for the reference period.

2. Calculating the actual historical rate of return is based on the following formula:

$$\text{Actual Return} = \left[\frac{P_t(1-C_r)}{P_0(1+C_s)}\prod_0^t\left(1+\frac{R_j}{P_j}\right)\right]-1$$

Where:

P_t – CFP value at the end of the reference period;

P_0 – CFP value at the start of the reference period;

C_s – Maximum subscription cost applicable at the start of the reference period;

C_r – Maximum redemption cost applicable assuming that the whole investment is repaid at the end of the reference period;

R_j – Return assigned on *j* date;

P_j – Value of CFP (former return) on *j* date.

ii. Formula for Calculating Risk

[Historical Risk - Information envisaged in Article 15/3]

1. Calculating historical risk is based on the following assumptions:

a) Only annualized volatilities pursuant to paragraph 2 may be disclosed;

b) In order to calculate volatility, information on the historical return for the last five years on a weekly basis or where this is impossible, on a monthly basis, should be taken into consideration;

c) With regard to the CFP envisaged in Article 2/1/c) and /2 of this Regulation and provided that said CFP does not have a past record, a synthetic risk indicator should be calculated that is based on past performance of the benchmark or a portfolio with a similar composition and profile.

2. Calculating the annualized historical volatility of the CFP is based on the following formulas:

$$\boldsymbol{Volatility = \sigma_f = \sqrt{\frac{m}{T-1}\sum_{t=1}^{T}(r_t - \bar{r})^2}}$$

where return of the fund ($r_{f,t}$) is calculated during T periods over $1/m$ years, with m = 52 and T = 260 in order to calculate the weekly return and m = 12 and T = 60 to calculate the monthly return and where $\bar{r}$ é is the arithmetic mean of the weekly or monthly rates of return, as applicable, of the CFP over T periods, in accordance with the following formula:

$$\boldsymbol{\bar{r} = \frac{1}{T}\sum_{t=1}^{T} r_t}$$

3. Classification of the historical level of risk is carried out in accordance with the following Table:

Risk Category	**Volatility Range**	
	Greater than or equal to	Less than
1	0%	0.5%
2	0.5%	2%
3	2%	5%
4	5%	10%
5	10%	15%
6	15%	25%
7	25%	

4. Classification of the historical risk level of CFP is represented in the KIID pursuant to the following diagram, with emphasis on the relevant risk category.

Low Risk ⟷ High Risk

Potentially Lower Return — Potentially Higher Return

1	2	3	**4**	5	6	7