

THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS
ANNEX G
CLOSED ENDED INVESTMENT FUNDS RD

REF Proposed New Rule	
	<p>Preamble</p> <p>The disclosure requirements set out below shall apply to a Fund that is a passive investor, i.e. a Fund that does not take or seek to take legal or management control of any of the issuers of its underlying investments. Legal control may be taken where it is incidental to the primary investment objective, necessary for the protection of shareholders and only in circumstances where the Fund will not exercise significant management control over the operations of that underlying issuer. Where a Fund is not a passive investor, then the Minimum Disclosure Requirements for the Equity, Debt or Derivative Registration Document shall apply, as appropriate.</p>
	<p><i>These terms shall have the following meanings for the purpose of these disclosure requirements:</i></p> <p>Fund- an issuer which is a collective investment undertaking not within the meaning of Article 2(1)(o) the Prospectus Directive</p> <p>Fund of Funds- a Fund which may invest in excess of 20% (but not more than 40%) of its gross assets in another collective investment undertaking.</p> <p>Investment Manager- any person appointed to make discretionary investment decisions in relation to the assets of the Fund which shall include any sub investment manager</p> <p>Umbrella Fund- a Fund with one or more sub-funds, a sub-fund being represented by separate class(es) or designation(s) of unit within the Fund which invests in a separate pool or portfolio of investments (The term Fund shall also mean sub fund for the purposes of this document, where the context requires)</p> <p>In addition to the information required below the Fund must provide such information as is required under paragraphs; 1,2,3,4,5,1,7,9.1,9.2.1,9.2.3,10.4,13,14,15,16,17.2, 18,19,20,21,22,23,24,25 of the Minimum Disclosure Requirements for the Equity Registration Document subject to any modification and/or requirements in this Annex G (which shall prevail) and subject to appropriate modification for a new fund with no previous listing and/or existence where Annex [] applies..</p>
1.0	Investment Objective & Policy
1.1.	<p>A detailed description of the initial investment objectives and policy which the Fund will pursue and a description of how the investment objectives and policy may be varied including any circumstances in which such variation requires the approval of unit holders.</p> <p><i>It should be made clear that the requirement to include a description of how the investment objectives and policy may be varied can be satisfied by a statement that “The Board of the Company may change the investment objectives and policy of the firm at any time by resolution”.</i></p>

1.2	The borrowing and/or leverage limits for the Fund. If there are no such limits, a statement to that effect.
1.3	The regulatory status of the Fund together with the name of any regulator.
2.	Investment Restrictions
2.1	<p>A statement of the investment restrictions, if any, which apply to the Fund.</p> <p><i>It would not be possible to comply with his requirement in any detail. It is only possible to specify what the investment manager will do in specific circumstances if you know what those circumstances will be. This second limb of this requirement should be deleted.</i></p>
2.2	<p>Where more than 20% of the gross assets of any Fund (except where 2.3 or 2.5 applies) is, at the time of the initial investment , to be:</p> <p>(a) invested in or lent to any single underlying issuer (including the underlying issuer’s subsidiaries or affiliates); or</p> <p>(b) invested in one or more Fund of Funds; or</p> <p>(c) exposed to the creditworthiness or solvency of any one counterparty (including its subsidiaries or affiliates);</p> <p>the following information must be disclosed:</p> <p>(i) information, to the extent that it is publicly available, relating to each underlying issuer/Fund/counterparty as if it were an issuer for the purposes of the Minimum Disclosure Requirements for the Equity Registration Document (in the case of (a)) or Minimum Disclosure Requirements for the Closed Ended Fund Registration Document (in the case of (b)) or the Wholesale Debt Registration Document Building Block (in the case of (c)) ; or</p> <p>(ii) if the securities issued by the underlying issuer/Fund/counterparty have already been admitted to trading on a regulated or equivalent market or the obligations are guaranteed by an entity admitted to trading on a regulated or equivalent market, the name, address, country of incorporation, nature of business and name of the market in which its securities are admitted.’</p> <p><i>This requirement can only apply at the time the investment is made. In a situation where an exposure increases as a percentage of the total assets after the investment is made, it is not possible to require further disclosure at that time. It should be clear that further disclosure should not be required as investments in a fund change over time.</i></p> <p><i>This comment applies generally to references to percentage limits in this schedule.</i></p>
2.3	Where a Fund is a Fund of Funds a description of if and how risk is spread in relation to its investments. In addition, 2.2 will apply, at the time of the initial investment to its underlying investments as if those investments had been made directly.
2.4.	Where exposure under 2.2 (C) is reduced by means of providing general collateral details of such collateral arrangements.

2.5	<p>Where a Fund may invest in excess of 40% of its gross assets in another fund the following must be disclosed:</p> <p>(a) information relating to each underlying fund as if it were an issuer under Minimum Disclosure for the Closed Ended Fund Registration Document ; or</p> <p>(b) if securities issued by an underlying fund have already been admitted to trading on a regulated or equivalent market or the obligations are guaranteed by an entity admitted to trading on a regulated or equivalent market, the name, address, country of incorporation, nature of business and name of the market in which its securities are admitted.</p>
2.6	<p>Physical Commodities Where a Fund invests directly in physical commodities a disclosure of that fact and the percentage that will be so invested.</p>
2.7.	<p>Property Funds Where a Fund invests directly in real property a disclosure of that fact and the percentage that will be so invested. See Questions 155-156 in consultation paper.</p>
2.8	<p><i>We do not understand what the requirement to disclose "if and how risk is spread in relation to those investment" means. Investment in derivatives, money market instruments and currencies should be disclosed in the investment policy section like investment in any other asset class.</i></p>
2.9	<p>Government Securities 2.2 does not apply to investment in securities issued or guaranteed by a government, government agency, regional or local authorities or instrumentality of any Member State or OECD Member State.</p>
2.10.	<p>Index Tracker Funds 2.2 does not apply to a Fund whose investment objective is to compile an investment portfolio which tracks, without material modification, that of a broadly based and recognised published index.</p>
3	<p>The applicant's service providers</p>
3.1.	<p>The actual or estimated maximum amount of all material fees payable by the Fund for any services under arrangements entered into on or prior to the date of the registration document and a description of how these fees are calculated, if appropriate.</p>
3.2.	<p>A description of any fee payable by the Fund which cannot be quantified under 3.1 and which is or may be material.</p>
3.3.	<p><i>This will be difficult to apply in practice. A broker crossing an order placed by a fund could be said to be receiving a benefit by virtue of providing a service to the</i></p>

	<p><i>fund, as could a manager receiving soft services, a custodian repoing fund securities and many other people acting in many other capacities. The present tense is also perplexing - at the time of the initial offering no-one "is in receipt of" anything.</i></p> <p><i>A further issue with this requirement would be its application to brokers placing securities. if placing fund securities constitutes providing a service to the fund, then all commission figures (including rebates and differential arrangements) would have to be disclosed in the document. This would be impractical to disclose in practice and should not be required. This requirement should be deleted.</i></p>
3.4.	The name of the service provider which is responsible for the determination and calculation of the net asset value of the Fund
3.5.	A description of any material potential conflicts of interest which any of the service providers to the Fund may have as between their duty to the Fund and duties owed by them to third parties and their other interests. A description of any arrangements which are in place to address such potential conflicts.
4.	<p>Investment Manager/ Advisers</p> <p><i>Item 5.1 of the equity schedule is a very general requirement which would be difficult to satisfy save in very general terms. It should be limited in its scope here to item 5.1.1.to 5.1.4.</i></p>
4.1.	In respect of any Investment Manager such information as is required to be disclosed under Item 5.1.1 to 5.1.4 of the Minimum Disclosure Requirements for the Equity Registration Document together with a description of its regulatory status and experience.
4.2.	In respect of any entity providing investment advice in relation to the assets of the Fund, the name and a brief description of such entity.
5.	Custody
5.1.	<p>A full description of how the assets of the Fund will be held and by whom and any fiduciary or similar relationship between the fund and any third party in relation to custody:</p> <p>Where a custodian, trustee, or other fiduciary is appointed</p> <p>(a) such information as is required to be disclosed under item 5.1.1 to 5.1.4 of the Minimum Disclosure Requirements for the Equity Registration Document;</p> <p>(b) a description of the obligations of such party under the custody or similar agreement;</p> <p>(c) any sub-custody arrangements; and</p> <p>(d) the regulatory status of such party and delegates</p>
5.2.	Where any entity other than those entities mentioned in 5.1 above, holds any assets of the Fund, a description of how these assets are held together with a description of any additional risks.
6.	Valuation/Redemption

6.1.	A description of how often, and the valuation principles and the method by which, the net asset value of the Fund will be determined, distinguishing between categories of investments as appropriate and a statement of how such net asset value will be communicated to shareholders.
6.2.	Details of all circumstances in which valuations and redemptions may be suspended and a statement of how such suspension will be communicated or made available to shareholders.
6.3.	A description of whether, and if so how often, and the method by which, units in a Fund can be redeemed.
6.4.	Details of the circumstances in which units may be compulsorily redeemed.
6.5.	Details of any provisions for limiting the amount of outstanding units which may be redeemed on any day and any special arrangements for dealing with requests in excess of such limits
7	Cross Liabilities
7.1.	In the case of an Umbrella Fund, a statement of any cross liability that may occur between classes or sub funds and any action taken to limit such liability.
8.	Financial Information
8.1.	Where, since the date of incorporation or establishment, a Fund has not commenced operations and no accounts have been made up as at the date of the registration document, a statement to that effect.
8.2.	At the most recent practicable date, a comprehensive and meaningful analysis of the Fund's portfolio (if unaudited, clearly marked as such), <i>This suggests that details of all assets in the portfolio should be disclosed. This seems excessive. A more appropriate disclosure requirement would be to limit this to, say, a list of all investments representing 5% or more of the portfolio and specified details of the 10 largest investments.</i>
8.3.	A statement to the effect that 'The value of your investments may fluctuate. Past performance provides no guarantee for future performance'. This statement should take more prominence than any profit forecast or estimate.
8.4.	An indication of the most recent net asset value should be included in the securities note.