ISDA®

International Swaps and Derivatives Association, Inc.
One Bishops Square
London E1 6AD
United Kingdom
Telephone: 44 (0) 20 3088 3550
Facsimile: 44 (0) 20 3088 3555
email: isdaeurope@isda.org
website: www.isda.org

ICMA

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Joint Associations Committee on Retail Structured Products (the **JAC) Response to CESR Consultation Papers: "A guide to clear language and layout for the Key Investor Information document (KII)" (CESR/10-532) and "CESR's template for the Key Investor Information document" (CESR/10-794)**

The Joint Associations Committee[1] welcomes the opportunity to comment on CESR's proposals as set out in the above Consultation Papers. The JAC has worked to promote a co-ordinated industry approach to improving consumer outcomes for some time, initially formalised by the publishing of the JAC Principles[2] and more recently in our active involvement in responding to both CESR and European Commission consultation processes in relation to UCITS KII and the European Commission's Packaged Retail Investment Products initiative (the **PRIPs Initiative**). We fully support these initiatives and agree that a correctly structured Key Investor Information regime should be of benefit to both product producers and investors.

We agree that the guidance as set out in the above Consultation Papers will be helpful for market participants. We set out below our suggestions in relation to additional useful guidance which could be incorporated, with a particular focus on structured UCITS funds. Structured UCITS typically have far more detailed disclosure documentation than that used for non-structured UCITS and for this reason the preparation of a KII document in respect of a structured UCITS is likely to be far more challenging than for a non-structured UCITS. This is, therefore, an area in which further CESR guidance will be particularly useful.

To the extent that the proposed UCITS regime will also be influential in determining the shape of the short-form disclosure regime to be developed under the PRIPs Initiative, we also highlight concerns as to the appropriateness of the template and the guidance in the context of the wider range of PRIPs products. In this regard, we refer to our recent supplementary submission to the European Commission in respect of the PRIPs Initiative (the **JAC PRIPs Submission**) which sets out our proposals and concerns in more detail. In particular, we would like to draw CESR's attention to the pro forma template KII (the **JAC Template KID**) which is the focus of that submission. This pro forma was prepared by members of the Joint Associations Committee for discussion with the European Commission and draws on (i) the work of the Commission, the Council and the Parliament in respect of the review of Directive 2003/71/EC, (ii) the work of the regulators in Hong Kong and Singapore, and (iii) useful concepts raised in the Barclays Capital submission to the Commission in relation to KID of 18 December 2009. We hope that elements of this template would also have useful application in the UCITS sphere and highlight examples of this below. For your ease of reference, we are simultaneously sending the JAC PRIPs Submission, including the pro forma template.

[1] The JAC's work is sponsored by interested trade associations; in this instance, the International Capital Market Association (ICMA http://icma-group.org/About-ICMA.aspx) and the International Swaps and Derivatives Association (ISDA http://www.isda.org/). In the first instance, any queries may be addressed to rmetcalfe@isda.org.

[2] "Retail Structured Products: Principles for Managing the Provider-Distributor relationship" (July 2007) and "Structured Products: Principles for Managing the Distributor-Individual Investor Relationship" (July 2008) which are non-binding best practice guidance produce by the JAC and its members. The full text of the Principles are available at www.isda.org/press/RSP-Principles071007.pdf and www.isda.org/press/pdf/GlobalPrinciples-sp.pdf respectively.

CONSULTATION RESPONSES

EXECUTIVE SUMMARY

- Structured UCITS are typically more complex than non-structured UCITS and as a result are currently the subject of far more detailed disclosure documentation.

- This means that the task of preparing a KII document for structured UCITS will be more challenging than for a non-structured UCITS. Given that the page limit is inflexible, material information, including elements of the disclosure suggested in CESR's draft guidance (for example, in relation to risk, telling an investor why a risk is taken, an assessment of the materiality of the risk to the investor and explanations of ways by which a risk is mitigated) will have to be omitted.

- For this reason, more detailed guidance and a separate template for structured UCITS would be of great assistance to the industry. In particular, detailed CESR guidance setting out "safe harbours" for KII preparers when determining what material information can safely be omitted and what information should be considered "self evident" will be important to allow KII preparers to manage disclosure risk.

- The issues presented by lack of space in the UCITS context will only be exacerbated in relation to PRIPs. PRIPs will cover a wide range of structurally diverse products, many of which (Contractual PRIPs[3] in particular) have a more complex risk and reward profile than a structured UCITS.

- The industry would welcome the opportunity to work with CESR both in shaping a "safe harbour" regime and preparing a template KII document for structured UCITS.

- In light of the determinations by other regulators that arbitrary page limits run contrary to policy objectives for KII, we would urge CESR and the Commission to consider carefully whether the imposition of an arbitrary page limit for the PRIPs short form disclosure regime is either necessary or desirable . We highlight below areas where we feel that this would be counterproductive.

CONSULATION PAPER (CESR/10-532): "A guide to clear language and layout for the Key Investor Information document (KII)"

Part 2 – Using plain language

Question 1 – Do you agree with the concepts in Part 2 and that they should form the basis for writing a KII?

We broadly agree that the principles set out in Part 2 are helpful. In particular:

- we agree with the suggestion that the audience should be assumed to be a "co-operative" and "motivated" individual. If the KII regime is to work, investors must be required to take a degree of responsibility for engaging with the document. We are concerned that responsible investors are not denied useful information

[3] Please see the distinction made between Contractual PRIPs and Collective Investment PRIPs in the JAC submission to the European Commission in relation to PRIPs of 17 November 2009. The different legal form of Contractual PRIPs has the potential to alter the risk profile, and hence the risk disclosure required, considerably (e.g. the need to disclose issuer credit risk).

due to an undue emphasis being placed on catering for less diligent investors. This would be another element of "dumbing down" which CESR quite rightly suggests should be avoided.

- looking forward, we would argue that more flexibility in relation to length should be built into the PRIPs KII regime whereby clear, succinct and well structured disclosure relating to key information is not removed simply for the sake of meeting arbitrary page limits. Removing such information creates unnecessary disclosure risk for the KII preparer and is detrimental to a diligent investor's understanding. This would be of particular concern in the context of the wider range of more complex PRIPs products. We note further that other regulators (e.g. the Hong Kong SFC) have acknowledged that arbitrary page limits are counterproductive to the policy objectives for KII. For this reason they have built more flexibility into their KII regimes.

- we agree that in some instances clear language techniques have potential for reducing word count. However, this is not always the case. In particular, the industry often uses jargon as a shorthand for complex concepts or techniques which are nonetheless broadly understood by market participants (for example, "long/short" or "leverage"). Clear, retail investor friendly explanations of such concepts, whilst not needing to be lengthy, may require more space than is available in the KII document. For this reason we support the option to explain such terms in a glossary document. The use of brackets or footnotes may be of use for more simple concepts but risks making the KII document cluttered and disjointed.

- whilst KII regimes have an important role to play in addressing information asymmetry/investor understanding issues, they should not be seen as a panacea. Investor education initiatives and a reformed conduct of business regime are at least of equal importance. In particular, we note that consumer research has concluded that investors place a greater emphasis on their direct interaction with the distributor than they place on any disclosure documentation when making an investment decision.

Question 2 – Do you have any alternative or additional suggestions?

None

<u>Part 3 – Designing a KII</u>

Question 3 – Do you agree with the concepts in Part 3 and that they should form the basis for designing a KII?

We agree with the concepts set out in Part 3. We note, however, that:

- the introductory paragraph refers to subjective concepts such as "grabbing attention", being "distinguishable" and "appearing important". These benchmarks will only be useful if specific practical advice as to how they should be met is also offered. Is the intention that the text constituting the rest of Part 3 serves this purpose? If so, could this be specifically noted?

- the limitation of 50-75 characters per line may be restrictive. Given the amount of information to be disclosed (particularly in relation to structured UCITS) this is likely to result in documents with significant amounts of "newspaper" column text, which will be equally unappealing to the eye. Should the aim instead be to have text arranged in a variety of formats (some in wider paragraphs and others in columns)?

Question 4 – Do you have any alternative or additional suggestions?

- A technique endorsed by the UK Financial Services Authority for use in key features documents is presenting information in the form of responses to questions which an investor may ask. JAC members agree that this can be an effective method of communicating information to retail investors. This technique was adopted in the preparation of the JAC Template KID. Please see this template for examples of questions which may be relevant.

- Another method which research has demonstrated can assist investor understanding is the presentation of information in the form of graphs, tables and charts. We note that this is already mandated for certain aspects of KII but that in the context of structured products it would also be useful to have the option to present certain data relating to the underlying in these alternative formats. Unfortunately, the page limits under the UCITS regime are likely to preclude this given the additional space required to incorporate these alternative formats. CESR may, however, wish to consider incorporating provisions into the PRIPs regime similar to those found in the Hong Kong SFC's "Key Facts Statement" regime which allows for flexibility in the page limits to allow information to be presented in more investor friendly but space intensive formats.

<u>Part 4 – Guidance for each section of the KII</u>

Questions 5 and 6 – Do you agree with the concepts in Part 4 and that they should form the basis for assessing the content of each section of a KII - Do you have any alternative or additional suggestions?

- We disagree with the statement in **Part 4(b)** that "*you may need to go beyond the prospectus wording to ensure you give a balanced description of the objectives and investment policy*". Under Article 64 of the revised UCITS Directive, the prospectus is required to include "the information necessary for investors to be able to make an informed judgement of the investment proposed to them, and, in particular, of the risks attached thereto". It is unclear why CESR would expect a KII document to go beyond the terms of what is required under the Directive. If there is to be such a requirement, clear and specific guidance should be given as to what additional information would be expected.

  We note further that requiring further information of this nature also increases risk for the KII preparer as such information could lead to the KII being found to be inconsistent with the prospectus and thus in breach of the applicable liability regime under Article 74.

- We agree that the removal of "self-evident" text (as suggested in **Part 4(b)**) is a useful technique but would suggest that it may not always be easy to determine what might or might not be "self-evident" to an unsophisticated investor. Is it "self-evident" that the regulatory regime applying to a Fund may preclude it from performing certain acts that it states that it will perform in a KII document? As such, is the caveat "to the extent permitted by regulations" not important where a regulation not known to an investor may affect the Fund's ability/duty to perform an obligation? Flexibility (preferably in the form of "safe harbours") will be required in the enforcement regime to take account of genuine assessments by KII preparers that information was "self evident" where the benefit of hindsight demonstrates this to have been incorrect.

- Both **Parts 4(b) and 4(c)** discuss the omission of non-material information. We would note in this regard:

  - A determination as to what is and is not material will be one of the most challenging aspects of completing a KII. It is far easier to judge materiality with the benefit of hindsight and, as such, significant allowances will need to be made in the enforcement regime where genuine assessments on behalf of KII preparers later prove to be incorrect. Again, we would suggest that clearly defined "safe harbours" would be the best way to address this issue. With this in mind, more detailed process-based guidance from CESR as to how to determine what information is and is not material in the context of

KII, and which risk disclosure can safely be left to the prospectus (as cross referenced in the KII) would be useful.

  - The information suggested in Part 4(c) in relation to materiality of risks, (i.e. that the KII sets out "how likely it is that a particular risk will materialise, and how severe the impact would be if it did") would seem particularly problematic. Risks by their very nature are difficult to predict with certainty and providing such an assessment would leave the KII preparer a hostage to fortune.

  - In relation to structured UCITS in particular, the strict page limit prescribed means that in many cases excluding only immaterial information will not be sufficient and that, to meet the page limit, material information will also have to be omitted. Whilst this is perhaps undesirable (and in this regard we note our comments above in relation to the counterproductive effective of rigid page limits), the mandated page limit makes this inevitable. This is clearly a source of significant potential risk for KII preparers. As such, for structured UCITS, the guidance as to a "safe" approach to selecting which material information can be omitted from a KII as suggested above would be particularly valuable.

- The section titled "Special Considerations for structured UCITS" in **Part 4(b)** might benefit from being broken down into appropriately categorised sections (e.g. split into those considerations relating "Scenario Analyses", those relating to "Formula" and those relating to "Guarantee/Capital Protection"). Furthermore, might the considerations in relation to altered risk and reward profile and the risk of capital loss at specified trigger dates be better placed in a separate "Special Considerations" section in the Risk and Reward section (i.e. Part 4(c)) of the guidance.

- **Part 4(c)** appears to contemplate the inclusion of significant quantities of narrative explanation in addition to the Synthetic Risk Reward Indicator (**SRRI**) and mandated accompanying text. This includes, for example, telling an investor why a risk is taken, an assessment of the materiality of the risk to the investor and explanations of ways by which a risk is mitigated. As noted above, whilst this would clearly all be useful information for an investor, for the majority of products, there will not be sufficient space for it to be included. This should be recognised in the guidance by splitting this section into two parts: (i) the core information required for all products, and (ii) this further information (as set out above) that would be of assistance where space permits.

  We note further that the need to include significant explanatory text to accompany the SRRI is one of the reasons why the JAC PRIPs Submission argues that the SRRI should not be included in the PRIPs short-form disclosure regime. In the context of more complex products (including structured UCITS) it is unhelpfully reductionist and detracts from, and reduces the space available for, more valuable narrative explanation.

- We would question whether the statement in **Part 4(c)** that risk only relates to "uncertainties" reflects the way in which an investor would analyse a product. Please see the JAC PRIPs Submission and the JAC Template KID and the way information is split between the Product Description and Key Risks section therein. After lengthy consideration as to how best to apportion information it was determined that the Product Description should address the intended return of the product (i.e. if held to term (if applicable) and with no unforeseen disruptions having occurred) and any provisions which would result in the potential disruption or reduction of this return (or restrict an investor's ability to realise their investment at its full value at any given time) should be disclosed as a risk, that being the way in which we felt an investor was likely to view such provisions. Where necessary the completion notes to the JAC Template KID suggest that cross-references be included in the Product Description referring investors to the appropriate explanation in the Key Risks section. This assists the investor in navigating the KII and ensures that disclosure of risk and potential reward is, at all times, balanced. CESR may wish to consider whether a similar approach to determining what is or is not a risk is adopted for the purposes of the UCITS KII.

- We agree that the grouping of risks is a useful technique to assist comprehension. Please see the JAC Template KID for possible risks categories which we have identified.

- We agree that the ability (as set out in **Part 4(d)**) to cross-refer to more detailed charges information in the prospectus is valuable. This reduces the need for unnecessary detail in the KII whilst at the same time assisting investors to effectively utilise the full range of disclosure information available to them. CESR may wish to consider whether it would be helpful to provide more detailed guidance as to which charges information it is acceptable to leave to be disclosed in the prospectus and which information must appear in the KII.

- In relation to **Part 4(f)**, it might be useful for investors if sub-headings were included in the Practical Information to categorise the information provided (for example, "Further information available to you", "Taxation", "[X]'s Liability" etc). In the JAC Template KID this section has been divided out into a number of different sections to make the information more readily identifiable, and, therefore, accessible, to investors. Please note further, that in context of PRIPs short form disclosure regime, we would suggest that the disclosure relating to "Taxation" is moved to the "Charges" section (as per the JAC Template KID). We feel that it would be easier for investors if all amounts potentially deductable from their investment are disclosed in the same section.

CONSULTATION PAPER (CESR/10-794): "CESR's template for the Key Investor Information document"

Question 1 – Do you find the attached template useful?

We agree that a template setting out the content and layout for the KII is useful.

Question 2 – Do you have any other suggestions?

- The template states that it applies to "standard" UCITS only. We assume that this means that this would not include structured UCITS. It would be helpful if CESR produced a template in respect of structured UCITS reflecting the alternative information requirements for those products and presentational advice in respect of the scenario analyses. The industry would welcome the opportunity to work with CESR in producing such a template.

- The first three bullet points in the Risk and Reward Profile section[4] are likely to be common to all KII documents. CESR may wish to consider suggesting non-mandatory wording for such warnings to assist KII preparers.

- We note that even before the completion of the narrative disclosure in the Objectives and Investment Policy and Risk and Reward Profile sections and the details of where and how to obtain further information in the Practical Information section, the template already runs to two pages. Please see the concerns expressed in our responses to Consultation Paper (CESR/10-532) regarding page limits, particularly in the context of more complex structured UCITS. These issues are likely to be further exacerbated in the context of the more diverse and complex range of PRIPs products.

- Charges figures are to be expressed as a percentage figure. What should this be a percentage of?

Yours sincerely,

Timothy R Hailes
Chairman – Joint Associations Committee on Retail Structured Products

JAC contact - Richard Metcalfe, ISDA
rmetcalfe@isda.org, 0044 20 3088 3552

[4] i.e. statements to the effect that (i) historical data may not be a reliable indication for the future, (ii) the risk category shown is not guaranteed and may shift over time and (iii) the lowest category does not mean "risk free".

KEY INVESTOR INFORMATION DOCUMENT

[*OPTION TO INSERT NAME AND LOGO OF ENTITY RESPONSIBLE FOR PRODUCING KID*]

[*INSERT PRODUCT NAME*]
[*INSERT PRODUCT REFERENCE CODE*]

What is the purpose of this Key Investor Information Document?

This document sets out certain key information relating to the [*Insert product name*]. Details of further product information are set out in "Further Information Available To You" below. The full legal terms and conditions can be found in [*Insert details of relevant offering document*]. [*Insert if a Glossary is to be used (optional):* **Highlighted** terms are explained in the Glossary.]

IF YOU DO NOT UNDERSTAND ANY FEATURE OF THIS PRODUCT OR ARE UNSURE AS TO WHETHER IT IS SUITABLE FOR YOU, YOU SHOULD OBTAIN INDEPENDENT ADVICE BEFORE INVESTING

This document was published on [*Insert date*] and is accurate only as at that date. This document was produced by [*Insert name of party responsible for the KID*].

Quick Facts

Product Category: [Structured [Debt] Security][Structured Deposit][Insurance].

Product Type: [Note][Certificate][Warrant] [linked to [Underlying]]

Product Producer: [*Insert the full name and title (e.g. "Issuer") and specify the Product Producer's business sector (e.g. Banking, Insurance) and jurisdiction of registration*]

Product Distributor: [*Distributor to insert the full name of the Product Distributor or, in the case of affiliate Distributors, the name of the relevant group*]

Product Currency: [•]

[**Listing:** [●][None]]

Offer Price: [•] [per Security][per Unit]

Product Start Date:

Product End Date:

Offer Period: [●] to [●]

Early Withdrawal: [Available [(with charge)][(without charge)]][Not Available]

Early Termination: [*If applicable (e.g. a Knock-out feature), insert a brief statement to this effect*][Not applicable]

[**Form of Return:** [Cash][Physical Delivery]]

Final Return: [*Insert brief description of return*]

Periodic Return: [Nature of payment] payable on [●]

Underlying: [*Insert name and type of Underlying (e.g. Share, Index, Basket of Shares)*]. [*Optional:* For further details please see Annex [1][2]].

Product Description

[*Option to insert symbols here with explanation*]

What is the aim of this product?

[*Insert a brief synopsis of the product*]

Why might I buy this product?

[*Insert a generic description of the product objective*]

What return could I receive under this product?

[*Complete in accordance with Completion Note 1 below*]

How and when will I normally receive this return?

[*Complete in accordance with Completion Note 2 below*]

KEY INVESTOR INFORMATION DOCUMENT

[*OPTION TO INSERT NAME AND LOGO OF ENTITY RESPONSIBLE FOR PRODUCING KID*]

[*INSERT PRODUCT NAME*]
[*INSERT PRODUCT REFERENCE CODE*]

What are the Key Risks involved in this Product? [*Complete in accordance with Completion Note 3 below*]

AN INVESTMENT IN THIS PRODUCT INVOLVES RISK. THE LIST BELOW HIGHLIGHTS ONLY CERTAIN KEY RISKS. A DISCUSSION OF FURTHER RISKS WHICH MAY BE ASSOCIATED WITH AN INVESTMENT IN THIS PRODUCT CAN BE FOUND AT PAGES [●]-[●] OF [*INSERT DETAILS OF RELEVANT OFFERING DOCUMENT*].]

The risk profile of the product may change through its lifetime. The key risks listed below represent the [Product Producer/Product Distributor]'s assessment of the key risks as of the date of this document.

What is the risk that I may lose some or all of the money that I invest?

[*Complete in accordance with Completion Note 4 below*]

Can the Product Producer adjust the product or my return without my consent?

[*Complete in accordance with Completion Note 5 below*]

Can the Product Producer terminate the product before the Product End Date, extend the product or delay payment of my return?

[*Complete in accordance with Completion Note 6 below*]

Can I withdraw my money from the product, or otherwise sell the product, at any time?

[*Complete in accordance with Completion Note 7 below*]

How might movements or disruptions in financial markets affect my return?

[*Complete in accordance with Completion Note 8 below*]

Will other business activities of the Product Producer affect the value of my investment?

[*Complete in accordance with Completion Note 9 below*]

What Charges and Taxes might I have to pay in relation to this product?

The following charges apply. Overall, they reduce your return.

[*See Completion Note 10 and the prompts below*]

Product Producer charges:

- **One-off charges on purchase:** [*Insert details or if no such charge applies state "Not applicable"*]
- **Charges over the product lifetime**: [*Insert details or if no such charge applies state "Not applicable"*]
- **One-off charges at the end of the product term**: [*Insert details or if no such charge applies state "Not applicable"*]
- **One-off charges on early withdrawal:** [*Insert details or if no such charge applies state "Not applicable"*]

[N.B. In each case charges stated should be the maximum possible charge that may apply]

Product Distributor charges: [*To be completed by the Product Distributor*]

[*Where a bid/offer spread may apply in relation to the Secondary Market insert:* **Bid/offer spread:** If you wish to sell the product before the Product End Date the price at which a buyer may be willing to buy the product from you may be less than the price at which they may offer to sell the product to you or someone else.]

Taxes: The tax laws of [*Insert relevant jurisdictions*], your own country and other countries may affect your investment in this product. For further information, please speak to an adviser.

KEY INVESTOR INFORMATION DOCUMENT

[*OPTION TO INSERT NAME AND LOGO OF ENTITY RESPONSIBLE FOR PRODUCING KID*]

[*INSERT PRODUCT NAME*]
[*INSERT PRODUCT REFERENCE CODE*]

Further Information Available To You [*To be completed by the Product Distributor*]

You should also refer to the following documents which are available free of charge both online at [*web address*] and in hard copy on request from [*address*]:

[*Complete in accordance with Completion Note 11 below*]

How do I purchase this product and who should I contact for more information? [*To be completed by the Product Distributor*]

The period during which this product is initially being offered to you by the [Product Distributor] is [*Insert details of the* [*Offer Period*]]. [The product is subject to a minimum investment of [●]]. The product is available for purchase in minimum units [(denominations)] of [●].

For more information or to purchase the [*Insert product name*] please contact the [[Product Producer][Product Distributor] at: [*Insert contact details*]][your financial advisor].

Who is the Product Producer?

[*Insert Product Producer's name*] is [authorised and] regulated by the [*Regulatory Authority*]. [*Insert Product Producer's name*] is registered in [*Country*] [*Registration Details (e.g. Company Number)*]. Registered Office: [*Insert address*].

[*Insert brief description of the nature of the Product Producer's business to include a prominent statement as to whether or not investments issued by the Product Producer are covered by any investment protection scheme*][*Insert a cross reference to any more detailed Product Producer disclosure in the relevant Offering Document*]

Who is the Product Distributor?

[*To be completed by the Product Distributor*]

Annex [1]

[Scenario Analysis][Historical Performance Data] (Optional)

[Include appropriate prominent warnings regarding the limitations of any data included, including whether the scenarios reflect output at maturity only and clarification that the scenarios do not represent a forecast of expected performance. It should be made clear that the scenarios shown may not have an equal probability of occurrence]

[Appropriate scenarios shall be chosen to show the circumstances in which the product may generate a low, a medium and a high return, including, where applicable, an investment loss for the investor]

Annex [1][2]

Information relating to the Underlying (Optional)

[*Insert a brief description of the Underlying where required to supplement the information in the Quick Facts section*]

COMPLETION NOTES

PRODUCT DESCRIPTION

COMPLETION NOTE 1:

What return could I receive under this product?

Explain the basis of calculation of the return in plain English. Formulae may be included if this will aid investor understanding. If scenario analyses/historical performance data are to be included, these should be incorporated in Annex 1 as prompted. Return for this purpose should include both the return (if any) of the investor's capital or upfront premium and the return on that capital or upfront premium. Details of any capital protection should be included but with corresponding prominent warnings (cross referring to the risk section below) as to limits to such capital protection.

[*Insert if appropriate:* The return (if any) that you receive under this product is linked to the performance of the Underlying specified above. Before investing you should ensure that you understand the nature of the Underlying.]

[*If scenario analyses/historical performance data are to be included insert:* Examples of possible payouts for this product can be found in Annex 1 on page [●] below]

[*Insert for all products, including capital protected products:* **YOUR INVESTMENT MAY GO DOWN AS WELL AS UP AND YOU MAY LOSE ALL OF THE MONEY THAT YOU INVEST.**]

[*Where the product contains adjustment provisions insert:* **IN CERTAIN CIRCUMSTANCES THE [*INSERT RELEVANT PARTY*] MAY HAVE A RIGHT TO ADJUST THIS PRODUCT AND YOUR RETURN. FOR FURTHER DETAILS SEE THE "KEY RISKS" SECTION BELOW**]

COMPLETION NOTE 2:

How and when will I normally receive this return?

Insert relevant details. Include details of whether the product return is received in cash or by physical delivery and scheduled payment date.

[*Where the product contains early termination or payment deferral provisions insert:* **IN CERTAIN CIRCUMSTANCES THE [*INSERT RELEVANT PARTY*] MAY HAVE A RIGHT TO [TERMINATE THE PRODUCT BEFORE THE PRODUCT END DATE] [OR] [DELAY YOUR RETURN]. FOR FURTHER DETAILS SEE THE "KEY RISKS" SECTION BELOW**]

KEY RISKS

COMPLETION NOTE 3:

General approach

Questions listed in this section are by means of example only - delete and/or reorder as appropriate. Consider whether any additional product/structure specific questions or risks (e.g. knock out provisions) should be added and, if so, set out when the consequences of such features may be most evident.

COMPLETION NOTE 4:

What is the risk that I may lose some or all of the money that I invest?

> Include appropriate explanation of Product Producer and any other relevant counterparty credit risk. Consider including a cross reference to the "Who is the Product Producer?" section below.

> Include a statement as to whether or not the product is capital protected and, if so, setting out and appropriately explaining any limitations on this protection.

> Where the product does not have the benefit of a guarantee and/or any government investor/depositor protection scheme, include a specific statement to this effect.

> Where appropriate, include a statement clarifying that the investor does not have recourse to the underlying asset/assets and an appropriate explanation of the consequences of this from an investor perspective in a default scenario.

COMPLETION NOTE 5:

Can the Product Producer adjust the product or my return without my consent?

> Include details and appropriate explanations of any adjustment provisions.

COMPLETION NOTE 6:

Can the Product Producer terminate the product before the Product End Date, extend the product or delay payment of my return?

> Include details of any Product Producer call, early termination or deferral provisions.

COMPLETION NOTE 7:

Can I withdraw my money from the product, or otherwise sell the product, at any time?

> Include appropriate explanation of any restrictions/charges on early withdrawal, to include appropriate warnings in relation to any charges or restrictions on early withdrawal. Where appropriate, include a warning that the product value may be lower during the term of the product than at the Product End Date.

> Include contact details for secondary market pricing and sales and, where appropriate, include warning relating to the lack of or limited secondary market for the product and a warning that the return received through a sale in the secondary market may be lower than if the product was held to term.

COMPLETION NOTE 8:

How might movements or disruptions in financial markets affect my return?

> Include appropriate explanation of market exposure risks, to include warnings relating to any potential volatility and any leverage employed and any specific market or asset class risk related to the Underlying.

> Include appropriate explanation of any currency risk.

> Include appropriate plain English explanation of any market disruption risk and the consequences of a market disruption for the investor.

> Where hedging may be directly relevant to the investor's return, include a brief plain English explanation that the Product Producer has hedged or may hedge its exposure to the product and include an explanation of how this may affect investors, e.g. consequences of hedging disruption events.

COMPLETION NOTE 9:

Will other business activities of the Product Producer affect the value of my investment?

> Include appropriate explanation of any relevant conflicts of interest the Product Producer may have relating to the product.

<u>CHARGES AND TAXES</u>

COMPLETION NOTE 10:

The Product Producer and Product Distributor should ensure that all charges to be paid by the investor or deducted from the investor's return are covered. Where charges are investor specific, investors should be prompted to confirm these with the Product Producer/Product Distributor as appropriate prior to purchase.

<u>FURTHER INFORMATION</u>

COMPLETION NOTE 11:

Insert in bullet point format:

- details of relevant Offering Document and useful ancillary materials including the languages in which such information is available; and
- details of where information in relation to any underlying assets (both pre and, if applicable, post-issuance) are/will be available and the languages in which such information is available.

ISDA®

ICMA

30 June 2010

Dear Sir/Madam,

The Joint Associations Committee[1] welcomes the opportunity to make a supplementary submission in relation to the EU Commission's Packaged Retail Investment Products (**PRIPs**) initiative. This submission is supplementary to our earlier submission dated 19 November 2009 (the **JAC November Submission[2]**) and focuses specifically on the content and format of a short form disclosure Key Investor Information Document (**KID**) for PRIPs.

This submission takes the form of a pro forma template KID (the **Template KID**) with accompanying commentary and is the result of several months' collaborative work amongst JAC members. As with our earlier submission, the principal focus of our work has been in relation to the sale of structured securities to retail investors but attempts have been made to ensure that the structure and language used in the template produced could be applied across both other Contractual PRIPs and Collective Investment PRIPs. We note, however, that there are fundamental differences in the nature of the investment being offered in a Contractual PRIP as compared to a Collective Investment PRIP. As such, the KID regime in respect of these two families of PRIPs will need to be different in some respects to ensure that in each case the correct emphasis is placed on the various elements of disclosure[3]. If appropriately structured, this need not detract from the product comparison objective. Furthermore, such differences will help in emphasising to investors the distinguishing features of these families of products.

The Template KID aims to build on the work of the Commission and CESR in respect of the UCITS KID. It represents an attempt to transpose this work into the broader PRIPs field, in particular seeking to identify areas in which we feel that the UCITS proposals will require modification to work effectively with this wider range of products. In completing this work, we have also drawn on (i) the work of the Commission, the Council and the Parliament in respect of the review of Directive 2003/71/EC (the **Prospectus Directive**), (ii) the work of the regulators in Hong Kong and Singapore in relation to the short form disclosure initiatives under consideration in those jurisdictions and (iii) useful concepts raised in the Barclays Capital submission to the Commission in relation to KID of 18 December 2009 (the **Barclays Capital KID**). We hope that the Template KID will provide a useful basis for ongoing discussions between the industry and the Commission in relation to the key issues arising in respect of the PRIPs disclosure initiative.

We would very much welcome the views of Commission Services in relation to this Template KID and would be happy to meet with Commission Services to discuss these matters further.

Structure of this submission:

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[1] The JAC is sponsored by multiple associations with an interest in structured products. In the first instance, queries may be addressed to rmetcalfe@isda.org.

[2] Please see www.isda.org/c_and_a/pdf/PRIPS_JAC_Response_Updated.pdf

[3] In this regard, please see paragraphs 8, 9, 16 to 18 and 33 to 37 of the JAC November Submission.

Section A introduces and provides explanatory commentary on the Template KID (attached as a separate document). **Section A.1** covers the general drafting principles applied and **Section A.2** provides section by section commentary.

Section B discusses other essential issues which we feel will need to be addressed under a PRIPs short form disclosure regime, namely:

Scope, Purpose, Responsibility, Liability, Relationship with the Prospectus Summary, Relationship with MiFID and Delivery.

SECTION A

A.1 General drafting principles

In preparing the Template KID we have sought to adhere to a number of the core principles as set out in the Issues Paper published by the Commission in relation to the PRIPs Workshop held in October of last year. Most notably, the principles that disclosure should:

- be fair, clear and not misleading;
- be expressed in short, simple and plain language;
- follow a harmonised structure and sequence of sections; and
- contain common disclosure elements and key points of comparison that must be included in all PRIPs disclosures.

Further points of note in respect of our approach are:

- **Terminology:** Terminology has been drafted to be as general as possible. This is to allow the same headings to be used for as broad a range of "PRIPs" products as possible, thereby acknowledging the PRIPs initiative's harmonisation agenda. Examples of such language include: Product Producer, Product Start Date/End Date and Final/Periodic Return.

- **Section headings:** Additional section headings have been added, or proposed UCITS headings reformulated, where this is felt to be either necessary to introduce additional disclosure required in the context of securities products or helpful to facilitate better investor understanding. The intention remains that the headings and the order of sections would be harmonised for all PRIPs KIDs. Observing UK FSA guidance in relation to investor-friendly key features disclosure, where appropriate, headings have been phrased in the form of questions that investors are likely to ask.

- **Principles v Prescription:** The template seeks to strike a balance between prescribed content and principles based prompts. A level of prescription (particularly in relation to structure) aids comparability and ensures that key messages are communicated in a consistent manner. Too much prescribed content risks detracting from clear and effective disclosure. Members agree that a harmonised structure and a requirement that certain key questions are addressed are important to facilitate comparability, but also feel that the flexibility to include certain other relevant questions, where appropriate, allows disclosure to be appropriately tailored. Where additional disclosure is included this would be subject to the overriding requirement that it should be fair, clear and not misleading.

- **Cross references to other documents:** We feel that in the structured securities sphere there is also a balance to be struck between ensuring that the KID is sufficiently comprehensive to aid an investor when considering whether to invest, while at the same time ensuring that the KID does not become over-burdened with detail which is easily accessible elsewhere. This is particularly important if the KID is to remain accessible for investors. We welcome the provisions in the draft UCITS Regulation which permit limited cross-references to the relevant Offering Document. We agree that the party compiling the KID should not use numerous lengthy and non-specific cross references as this will detract from the value of the KID and reduce accessibility. We feel, however, that targeted cross references to specific sections of the Offering Document which contain more comprehensive disclosure in relation to certain prescribed areas is a very positive development. This approach allows the KID to give the investor a flavour of the issues that should be considered whilst at the same time directly assisting the investor in locating specific and appropriate further reading. This would be of particular benefit in relation to disclosure of risk, charges and (in context of structured securities) relating to the Product Producer which are all already disclosed in an accessible format in the relevant Offering Document. To ensure optimum effectiveness, cross references should be to specific pages or sections in the relevant Offering Document.

- **Length:** We note the requirement proposed in respect of the UCITS KID that the KID be no longer than two pages for standard UCITS and three pages for structured UCITS. Members acknowledge the importance of ensuring that the KID remains a concise document but are of the opinion that an arbitrary page limit which necessitates the removal of important and useful disclosure would be counterproductive. Given the additional disclosure necessary in a KID for structured securities (e.g. more detailed disclosure in relation to return and risk and additional obligor disclosure) members feel that a target of four pages might be appropriate, but that flexibility should be allowed in the context of more complex products, particularly where more extensive disclosure in relation to the Underlying(s) of such product is essential to investor comprehension. As above, appropriate use of cross referencing (and indeed the use of a Glossary) will also be important in ensuring that the document is as concise as possible.

  We also note that the Hong Kong "Key Facts Statement" regime allows page limits to be relaxed to permit certain information to be presented in alternative formats which improve investor understanding but take up more space (e.g. graphically). IOSCO's work in this field also supports the use of alternative formats to assist investor comprehension. We feel that it would benefit investors if a similar flexibility were permitted under the PRIPs regime.

A.2 Section commentary

The commentary below is intended to explain any key drafting features and raise any conceptual issues identified in the course of drafting. It is set out on a section by section basis.

A.2.1 Header and "Purpose" Section

This initial information sets out the product in question and the status of the KID. We note that clear signposting of this nature has been found to assist retail investor comprehension. In respect of specific content:

Product Reference Code: Any standard product identification code (for example, in the case of debt securities, this would be the ISIN and Valor/WKN/Common Code).

Glossary: A prompt has been included to allow for the use of a Glossary document to supplement the KID. Members were generally supportive of the suggestion that, for certain products, an optional Glossary document, in similar format to that proposed for the Barclays Capital KID, might be useful in assisting readability. It would allow for explanation of more specialist terms in the Glossary. This would reduce "clutter" in the KID itself and in allowing for more detailed, retail friendly explanations to be offered, it would also assist in improving the understanding of less sophisticated investors (in line with the Commission's wider investor education goals).

Such a Glossary could be prepared by Product Producers/Distributors on a house-by-house basis or subject to some form of Commission-led standardisation where appropriate. Standard form definitions could be developed for certain common terms. The JAC would be happy to work with the Commission and/or CESR on any such project.

KID validity period: To avoid an undue administrative burden being placed on the party charged with preparation of the KID, it is proposed that the duty to update the KID should be consistent with the current Prospectus Directive regime (i.e. there should be no obligation to update the KID after admission to trading, if relevant, or the end of the relevant offer period, whichever is later). Wording has been inserted in this section of the Template KID making this clear to investors.

A.2.2 Quick Facts

This section is designed to address the product comparison function of the KID. It is a feature used in both the Hong Kong SFC template Key Facts Statement and the Barclays Capital KID. The aim has been to choose headings that are generic, allowing the same headings to be used across the range of both Contractual and Collective Investment PRIPs products and thereby facilitate comparison between them. Comparability is also assisted by the easily accessible “line item” format. The intention would be that investors would become familiar with these commonly used headings which, in turn, would improve their confidence when analysing and comparing different products. There will necessarily be some overlap between this section and the following sections.

The Commission may wish to consider whether this section could be modular. For example, a series of different Quick Facts section templates might be available (one for each Product Category). Whilst the majority of headings could be common to all templates, a modular structure would allow additional headings (which apply exclusively to Contractual PRIPs or Collective Investment PRIPs or indeed only to an individual Product Category) to be included in the relevant module for the relevant Product Categories only (e.g. in the case of securities, whether or not the product is listed). This would be more efficient because where a key point of comparison applies only to certain Product Categories it need only appear in the Quick Facts section for those Product Categories to which it relates.

In respect of specific headings in the Quick Facts section:

Product Category: This is designed to place the product in a category according to its wrapper (e.g. a "structured security"). This could work alongside investor education initiatives to improve investor understanding by making clear the distinction between different product wrappers.

Product Type: This describes the more specific nature of the products within the generic "Product Category" (e.g. a note as opposed to a warrant or certificate). This may not be relevant in relation to products where the Product Category is not subdivided.

Product Start Date/Product End Date: As above, general language has been used to attempt to ensure applicability to a range of PRIPs. For example, in the context of an offering of Notes these terms would relate to the Issue Date and Maturity Date respectively.

Final Return/Periodic Return: This is a further example of using general language. In completing these prompts, the party completing the KID would stipulate the nature of the payment (e.g. "Redemption Amount" or "Interest"/"Coupon" and briefly explain how the payment is calculated (e.g. "linked to the performance of [●]").

A.2.3 Product Description

This section would contain a more detailed narrative description of the product to assist comparability and accessibility. This section has a standardised structure using a series of prescribed headings (framed as questions). As above, the phrasing of information as questions an investor might ask is in accordance with UK FSA guidance on the preparation of key features documents, reflecting findings that this aids investor understanding. We have also provided for the inclusion of standardised prominent warnings cross-referring to the key risks section to ensure that the disclosure is suitably balanced in terms of risk and return.

A.2.4 Key Risks

In line with the desire to focus on key product specific information only, we would propose that this section contains only disclosure relating to the "key risks" of the product. Risks that would relate to all products of the relevant product category would not be included. Instead cross references would be incorporated referring investors to the disclosure relating to those more general risks set out in the relevant Offering Document. In this regard, please see our comments in relation to the use of cross references in Section A.1 above. The risk headings included are by means of example only and would be deleted (and/or additional headings added) as appropriate.

We are aware that this section is relatively "text heavy" but feel that the approach elected would offer optimum disclosure for investors, again based on a question and answer format to aid comprehension. Each risk should be explained in full in retail friendly language in the KID.

Other formulations considered include:

(i) the approach adopted in the Barclays Capital KID of a headings based risk section linking to/supported by an explanation of the relevant risk factors in an accompanying Glossary; and

(ii) a hybrid approach of disclosure based on one or two word "risk tags" (e.g. "Credit Risk"), in line with the Barclays Capital approach, but with the explanation of the tag appearing adjacent to it in the KID itself.

Both of these approaches have their merits. In particular, approach (i), which allows for a "cleaner" document which would be visually easier for investors. However, on balance, members felt that the "risk tags", whilst easily identifiable to those with investment knowledge, may not be intuitive for retail investors. As such, the preferred approach is to frame the disclosure as questions to which an investor could easily relate. We would nonetheless be happy to discuss further the most appropriate format for this section.

Further to member comment, a Synthetic Risk Reward Indicator (**SRRI**) has not been incorporated. Members strongly supported the arguments against the inclusion of such an indicator as expressed in the Barclays Capital submission to the Commission, namely that:

> *"(i) in the context of retail structured securities it would be very difficult (if not impossible) to formulate an indicator calculation methodology which would allow a meaningful comparison between such a broad range of products;*
>
> *(ii) the use of a single figure score would anyway detract from the wider risk disclosure in this section as retail investors are likely to place undue emphasis on the indicator (a similar weakness to credit ratings). This is of greater concern where the indicator is of questionable validity;*
>
> *(iii) where a risk indicator is used in respect of a retail structured security, significant space would be required to set out the explanation of the indicator, the score and the warnings in relation to its reliability. This would reduce the space available for more meaningful disclosure of the actual risks involved in the product and add unnecessary clutter to the document; …*

In addition:

(i) Investors tend to place undue emphasis on a risk indicator. This is a particular concern in the context of structured securities since the risk profile is generally more diverse than that involved in a UCITS (in particular, given the additional obligor credit risk dimension). A single figure rating discourages investors from fully engaging with the detail of this risk profile. This must surely detract from the value of the KID as an investor education document.

(ii) Diverse risk profiles often apply to structured securities and risk is often investor specific. For example, an investor investing in a product denominated in a currency other than that of his home member state takes significant foreign exchange risk which may not be factored into the indicator. Consequently, narrative risk explanations are far more useful to investors allowing them to assess the relevance of each risk factor identified in the context of their specific portfolio. As above, the incorporation of a SRRI would require reasonably significant explanatory narrative which would reduce the space available for explanation of the actual risks involved.

(iii) Computing a calculation basis for a risk indicator for products for which there is no (or limited) past performance data presents significant challenges. Given the Commission's work in the Rating Agencies sphere, it would seem odd to move towards a formulation that introduces significant new subjectivity and is more conflicted than the existing Rating Agency regime. Furthermore, any element of subjectivity introduced (as may be unavoidable), would open the party calculating the rating to liability risk in respect of investors subsequently seeking to challenge an assumption made in the course of such calculation.

(iv) Finding a common calculation methodology that could be used across the full range of PRIPs would represent an even greater challenge. The nature of structured securities (and indeed a number of the other Contractual PRIPs products) is fundamentally different to UCITS. For example, no "strategy" applies and collateral arrangements (if indeed these apply at all) are arranged on a different basis. As such, the regime applying to UCITS would not easily be transposed to other PRIPs products in a way that would allow for reliable or meaningful ratings to be produced.

Were different methodologies to be applied to different product categories, there is a significant risk that investors would nonetheless regard the index scores as comparable across product categories. This could offer an unfair advantage for certain products for which the categorisation framework was more favourable.

(v) There are concerns that, in the context of capital protected products which are highly complex but relatively low risk (e.g. complex structuring might be used to reduce risk), an inappropriately designed indicator may incorrectly score these products as higher risk due to their complexity. This potential asymmetry between complexity and risk was a theme discussed in the JAC November Submission at paragraphs 23 to 29.

We note further that it is reported that the numeric indicator was considered but then rejected by the Monetary Authority of Singapore in relation to their proposed Product Highlights Sheet.

In relation to the calculation methodologies considered by CESR in relation to the UCITS KID we note the more detailed analysis included in the JAC's response dated 10 September 2009 to the CESR Consultation Paper (09-552), together with Addendum on technical advice at level 2 on the format and content of Key Information Document (KID) disclosures for UCITS of 8 July 2009, available at www.isda.org/c_and_a/pdf/KID-disclosures-for-UCITS-JACresponse.pdf.

A.2.5 Charges and Taxes

Members were generally supportive of the approach taken to charges disclosure in the Barclays Capital KID and the rationale provided in the accompanying submission.

Excerpt from the Barclays Capital submission:

"***2.6 Charges***

- *For clarity we have split the charges up into categories.*

- *To facilitate comparison between products, the format of this section could be retained for all products. Hence where no charge relating to a particular category applies in relation to this product we have not removed the category but simply stated that no such charge applies.*

- *For transparency we have:*

  (i) disclosed the deduction of all Issuer costs as charges; and

> (ii) *disclosed the existence of a bid/offer spread for any secondary market sales. Even though this is not strictly a product charge, it will nonetheless act to reduce the potential return that an investor would receive.*

- *In contrast to the CESR Advice in relation to UCITs, we have not included an illustration of charges in numerical tabular format. We appreciate the rationale for this requirement. However, the costs payable in respect of many retail structured securities are often based on less predictable components (for example, variable funding costs) and as such we feel the number of assumptions that are required to produce numerical data renders the data unreliable from an investor perspective. In the context of retail structured securities, such a numerical illustration of data is, therefore, more likely to mislead investors than provide useful insight. This is of particular concern given the findings of the consumer testing conducted by IFF Research and YouGov in respect of the UCITs KID (the* ***UCITS Consumer Testing****) that retail investors often treat such illustrative data as fact (i.e. a conclusive list of the actual amount of charges that they will be expected to pay).*"

In terms of the nature of Product Producer fees that should be disclosed, we refer to the JAC November Submission and in particular paragraphs 33-37 thereof which contain more detailed commentary in this regard.

A.2.6 Further Information Available To You

This section mirrors the "Documents Available To You" section incorporated into the Barclays Capital KID. Members generally agreed that a section setting out clearly what other materials were available would be very helpful in improving investors' understanding of the full range of disclosure materials available to them and in that way also further contextualising the KID.

It was felt that this section might also usefully contain reference sources for post-issuance information.

A.2.7 "How do I purchase this product….."

It is intended that this section would provide information in relation to how a prospective investor might purchase the product. It was felt that the KID was not the appropriate forum to disclose full details of the terms and conditions of the offer but that this question should be addressed in outline.

A.2.8 "Who is the Product Producer?"

In the context of structured securities specifically, and Contractual PRIPs generally, obligor credit risk is an important investment consideration. As such, it was felt that a distinct section containing stipulated Product Producer disclosure would assist with clarity. However, members would emphasise that the KID should not be required to contain detailed Product Producer disclosure. This is already set out in an accessible format in the Offering Document. As such cross-references directing investors to the specific pages of those Offering Documents upon which such information can be found would be the most effective way of ensuring that such information is made available to investors. Incorporation of such information into the KID itself would significantly lengthen the document with no apparent additional benefit to investors. Clearly, this section may not be appropriate in the context of Collective Investment PRIPs. For further discussion of the differing disclosure requirements for Collective Investment PRIPs as compared to Contractual PRIPs, please see paragraphs 16 and 17 of the JAC November Submission.

A.2.9 Annex 1 - Scenario Analysis/Historical Performance

In line with the Commission's work in relation to the UCITS KID, a Past Performance section has not been incorporated. Historical performance information is not generally available in relation to structured securities products. Instead, a prompt has been included to allow for the annexing of a scenario analysis/historical performance section.

In this regard please note:

(i) Members are generally supportive of the Commission's proposal that a low, medium and high return scenario should be included, along with appropriate warnings regarding limitations of the data used and that the scenarios were not equally probable.

(ii) This section has been included as an Annex to allow the KID producer to incorporate varying formats of information at their election without disrupting the flow, and preserving the uniformity, of the core document. Members felt that allowing the KID producer the flexibility to present scenario analyses in a variety of flexible formats would assist accessibility (e.g. numerically, graphically and/or in a chart format). Product Producers are often used to preparing marketing materials for products of this nature on a regular basis and are, therefore, familiar with what presentational approaches are generally best suited to particular product types and are expected and valued by distributors and end investors. In this regard we note that the Hong Kong SFC has allowed for flexibility to be applied to the length of its Key Facts Statement document where this would allow for the incorporation of information in alternative "investor friendly" formats.

(iii) Members feel that a degree of flexibility with regards the approach taken for the preparation of scenario analyses would improve the utility of the data prepared. However, prescribing rigid calculation methodologies may risk generating inappropriate results for certain products. A general requirement that the scenario analyses provided are prepared and presented in a manner which is fair, clear and not misleading should ensure appropriate standards are maintained.

A.2.10 Annex 2 – Information relating to the Underlying(s)

For certain structured securities an understanding of the nature and likely performance of the underlying or underlying(s) will be important to an investor’s ability to understand his possible return. Therefore, a separate Annex has been incorporated allowing for disclosure in this regard. This has been incorporated as an Annex because such disclosure will not be appropriate in relation to every product (for example, if the underlying is a specific share, this can adequately disclosed in the Quick Facts section of the KID). Using an Annex for this disclosure allows the uniformity of sections in the core document to be maintained in respect of all products, with an Annex relating to the Underlying only added where appropriate.

SECTION B

FURTHER KEY ISSUES

B.1 Scope

As set out in the JAC November Submission, the KID should only be required for products actually sold to “retail” investors (see paragraphs 4 to 6 of that document). The regime will need to be carefully crafted to ensure that products sold to “wholesale” investors are not unintentionally caught by the PRIPs KID regime. The KID document provides no investor/public policy benefit in the “wholesale” space and, as such, the significant additional cost to the KID producer cannot be justified.

Similar concerns apply in relation to "vanilla" products. We note that the currently proposed economic definition of PRIPs (as per the Commission's Update of 16 December 2009) requires that a PRIP will necessarily contain an “element of packaging”. We assume that this reflects the Commission's intention that "vanilla" products will be strictly out of scope. We believe that this must be the correct outcome. The regime would seem both inappropriate and unnecessary for such products with no discernible public policy benefit.

B.2 Purpose

The purpose should be to set out certain ***key*** information in relation to the product with the goal of “aiding” a prospective investor when considering whether to invest. In this way, consistency would be ensured with the analogous Prospectus summary regime (as set out in the recently approved Directive amending the Prospectus Directive). We note further that the “key information” definition now incorporated into the Prospectus Directive is broader than the information we would expect to be required in a KID document (both in terms of content and the level of detail required, e.g. more detailed issuer disclosure and information regarding use of proceeds). We note that this definition of “key information” would only be appropriate if, in line with the Prospectus summary, the KID is only expected to provide all “key information” when read together with the Prospectus document. In this regard, please see our comments in relation to the use of cross referencing above.

The KID should not be required to contain "all" information that an investor might reasonably require. That is both unnecessary from an investor protection perspective and unrealistic from a disclosure perspective. The role of disclosing "all" information that an investor requires should remain that of the relevant Offering Document.

B.3 Responsibility for preparation

The Commission, in its December communication relating to the PRIPs initiative, discussed two possible approaches:

(i) Detailed rules setting out responsibilities for preparation of document, to generally sit with Product Producer, but, given the role of Product Distributors in relation to bringing certain PRIPs into the retail market, responsibilities also placed on Product Distributors.

(ii) A more flexible approach relying on the cooperation between Product Producer and Product Distributor.

Members feel that option (ii) must be the better approach for the reasons set out at paragraphs 19 to 21 of the JAC November Submission. Arguably, the correct approach to responsibility can only be determined once a clearer picture of required content for the document emerges. Whilst some sections of the Template KID are better suited to being completed by the Product Producer, (e.g. Quick Facts and Key Risks), others would need to be completed by the Product Distributor (e.g. Product Distributor Charges, Further Information, How do I purchase this product, Product Distributor disclosure and elements of the Product Description). More specifically, members are concerned that the extent of the information to be provided under any Product Description section is clearly limited to statements of fact. If it is not, Product Producers may find themselves in a position where the information they are required to provide risks being characterised as investment advice.

Furthermore, the Commission should consider whether the Product Description section is in fact better prepared by the Product Distributor. Product Distributor's often already prepare retail investor friendly Product Description-style summaries as part of their marketing material. As the party directly engaged with the investor, and indeed paid to manage the investor relationship, the Product Distributor is arguably better placed to understand the nature of material that investors require.

B.4 Liability

We note our comments at paragraph 14 of the JAC November Submission. We would suggest that the same level of liability as applies to the Prospectus summary under the revised Prospectus Directive regime should also apply to the KID, i.e. that that no civil liability should attach in respect of the KID unless it is misleading, inaccurate or inconsistent, when read together with the other parts of the relevant Offering Document, or it does not provide, when read together with the other parts of that Offering Document, key information in order to aid investors when considering whether to invest in such securities.

A higher level of liability is unnecessary and would likely result in an over-cautious approach being taken by the party charged with compiling the KID. Having a higher liability standard and placing strict limits on the length of the KID would also place an unacceptable risk on the party charged with preparation and is likely to result in a number of Product Producers and Product Distributors electing not to offer certain products to retail investors. This would reduce competition and investor choice.

B.5 Relationship with the Prospectus Summary

The debate as to how the requirement to produce a KID should interact with the requirement to produce a Prospectus Summary is important and a duplication of information should be avoided. We would suggest that, in the context of relevant products sold to “retail” investors, the requirement to produce a Summary should be replaced with a requirement to produce a KID. Alternatively, the two regimes could be harmonised such that the form of Summary required to be produced in these circumstances under the Prospectus Directive regime mirrors the requirements under the PRIPs KID regime. We assume that this may be the intention of Recital 19 to the amending Directive in respect of the PD (A7-0102/2010). Whilst we would welcome this outcome, further aspects which it will be important to consider are:

(i) how information that it is currently required under the Summary regime but may not be required in such detail under the KID regime should be treated (for example, Product Producer/Issuer disclosure); and

(ii) the approach that should be taken in the context of “retail” debt issuance programmes, or debt issuance programmes allowing for the issuance of securities to both “retail” and “wholesale” investors. The summary disclosure currently seen in base prospectuses for programmes is generic in nature, referring to types of issuance contemplated under the programme rather than specific issuances. This would not seem to be compatible with the product specific approach likely to be required in relation to KID. A number of suggestions have been made in relation to how this issue could be addressed. We would be happy to discuss this in more detail with the Commission if that would be of assistance.

B.6 Relationship with MiFID

Whilst it would be desirable for a common approach to be taken to retail classification under the MiFID and PRIPs regimes, the current MiFID approach requires refinement. In considering any proposals for reform of the investor categorisation regime under the MiFID we would urge the Commission to consider carefully how any such changes would work in context of a future PRIPs regime. As in "Scope" above, it will be important to ensure that the scope of any definition of "retail" for investor classification purposes is carefully considered to avoid products that are essentially "wholesale" being unintentionally caught in the PRIPs regime. We would be very happy to engage in discussions on this important point.

B.7 Delivery

The KID should be designed to work equally effectively in both soft and hard copy. There should be an obligation to deliver the KID in sufficient time to allow it to inform investment decisions.

Yours sincerely,

Timothy R Hailes

Chairman – Joint Associations Committee on Retail Structured Products

JAC contact - Richard Metcalfe, ISDA

rmetcalfe@isda.org, 0044 20 3088 3552

FORM OF TEMPLATE KID – *see separate document*