Reply form for the Consultation Paper on PRIIPs Key Information Documents

10 November 2015

European Securities and Markets Authority

Date: 10 November 2015

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper on PRIIPs Key Information Documents, published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_QUESTION_PRIIPS_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

- if they respond to the question stated;
- contain a clear rationale, including on any related costs and benefits; and
- describe any alternatives that ESMA should consider

Naming protocol

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA_ PRIIPS _NAMEOFCOMPANY_NAMEOFDOCUMENT.

E.g. if the respondent were XXXX, the name of the reply form would be:

ESMA_ PRIIPS_XXXX_REPLYFORM or

ESMA_ PRIIPS_XXXX_ANNEX1

To help you navigate this document more easily, bookmarks are available in "Navigation Pane" for Word 2010 and in "Document Map" for Word 2007.

Deadline

Responses must reach us by **29 January 2016.**

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input/Consultations'.

Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and 'Data protection'.

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_PRIIPS_1>

The Swedish Securities Dealers Association (SSDA) and Structured Products in Sweden (SPIS) reply to ESMAs Consultation Paper on PRIIPs KEY Information Document

The Swedish Securities Dealers Association (SSDA) and its subdivision for structured products, Structured Products in Sweden (SPIS), welcome and support the agreement of the European Parliament and the European Council on Packaged Retail Investment and Insurance Products (PRIIPs, Regulation no. 1286/2014). The term 'we', should be considered as the common view of the SSDA and SPIS. The SSDA was founded in 1908 and is an association, which represents the common interest of banks and investment services firms active on the securities market. Its mission is work for a sound, strong and efficient Swedish securities market. SSDA promotes member's view in regards to regulatory, market and infrastructure-related issues.

Through this introduction we would like to highlight some observations we have made concerning the contents, presentation and calculation of information to be disclosed in the Key Information Document (KID). Standardisation and increased transparency of financial products should be beneficial for the functioning of the European financial markets and should contribute to make products more attractive; whilst simultaneously facilitating cross border investment, reduce fragmentation and increase comparability between all retail European investment products. Our objective has been to maintain a constructive and open approach to all questions. Answering them with the objectives set out in PRIIPs level 1 in mind and aiming to improve retail investor's ability to make qualified investment decisions.

Our belief is that the most optimal way is through high quality, simple and transparent standards that lower the information asymmetry between the product manufacturers and the retail investors' ability to make qualified investment decisions. We welcome the initiative to make the PRIIP market more efficient, transparent and robust for the investors. If a question or topic has not been commented on or answered, it should not be interpreted that we approve or dismiss the specific question. If any question(s) are unclear or need further classification please feel free to contact us and we will try to provide further clarification.

Timeline

The timeline presented for the implementation of PRIIPs is very brief given the extensive implementation processes of the technical requirements. Especially, given the unusually high level of ambiguity and uncertainty in the language and content in some areas of the draft Regulatory Technical Standards (RTS). The RTS currently entails little on what was already stated in the regulation and lacks technical detail and clarity, something we believe to be critical at this point late stage in the legislative process. Moreover, given the close ties to MiFID II and IDD, the length of the implementation timeline becomes even more critical. This will create great implementation challenges for both institutions and regulators. The implementation timeline should instead be altered to reflect the complexity of the requirements placed on the market, investors and Competent Authorities. Therefore, we would encourage a delay to accommodate a responsible implementation schedule.

Scope - Hedging and OTC derivatives

In PRIIPs Level I, the definition of PRIIP contained in the Level I (recital 6) text explicitly states that a PRIIP needs to "provide an investment opportunity to the retail investor, where the amount repayable to the retail investor is subject to fluctuations…" To the extent an instrument is not an "investment" or does not involve an "amount repayable" which fluctuates as described in the definition, the relevant instrument should not be in scope. Nonetheless; in PRIIPs draft RTS Annex II, Part 1.9c it is highlighted that all derivatives are in scope. Here we are concerned to the appropriateness of including all derivatives since this would be contradictory to the Level I text and the consequences of such an extended scope do not seem to be assessed.

All derivatives are not purchased for speculative purposes but on the contrary can be used to mitigate or hedge risks. In this context, i.e. derivatives used for commercial hedging, there is no “investment” as required by the Level I text and the intended use/purpose of such a derivative used for is not “investment” but for commercial hedging.

Additionally, if derivatives used for hedging purposes and OTC are in scope, the format and information contained in the KID will be misleading since the purpose of the hedging exercise is to obtain exactly the opposite result of a speculative instrument i.e. mitigate or hedge risks. Such a requirement will increase costs and create new practical challenges that will curb the market of such derivatives to larger trades, limiting for instance small and medium size entities (SMEs) ability to manage risks. SMEs who require a high level of certainty around such risk factors to be able to have time to resize or re-structure their future operations, hedging risks such as interest rate mismatches, foreign exchange risk, credit risk, commodity risk or emissions allowance risk.

The distinction between derivatives used for speculative/investment purposes and those used for commercial hedging is one that was recognised in EMIR and we urge you to ensure that this distinction also is recognised in the context of the PRIIPs; especially as the Level I text mandates that a product will only be within scope of the Regulation to the extent that it is an “investment”. Therefore, we are critical to the appropriateness of including all derivatives in the scope, especially derivatives used for commercial hedging, since this will reduce market efficiency, increase risks and potential losses to the real economy; resulting in a reduction of investments which will have a negative impact on growth - directly contradicting the purpose of the Capital Markets Union.

Grandfathering

The question of the position as regards existing PRIIPs is complex and not clearly addressed in grandfathering rules in the RTS. PRIIPs issued prior to the implementation of the PRIIPs regulation will be traded on a secondary market after the implementation date. The RTS as it stands today states that KIDs are required for products “made available” to investors at the implementation date which would encompass initial offerings as well as products sold on secondary markets. This could essentially result in a great burden for manufacturers to create and maintain KIDs on PRIIPs they no longer offer but that is still sold on a secondary market.

A possible outcome would be that resellers would make the business decision to stop offering liquidity on such products to avoid the risk of being associated with lacking KIDs. This would not benefit any market participants’ nor secondary market activity. We do not believe that this is the intent of the regulation, as PRIIPs should reflect that a two-way market for many retail products exists. We would hence encourage the ESAs to consider further guidance on the grandfathering of existing products, or alternatively state that “making a product available” constitutes the initial public offering of a product and not the sale of products on a secondary market that existed already prior to the PRIIPs implementation.

Risk calculations

For certain product classes that fall into Category III, the bootstrap methodology described in Annex II will result in an inaccurate calculation of the risk in the MRM. The disadvantage with bootstrapping is that when simulating, then “what has not happened” cannot happen in the simulation. As an example, take a credit linked note for company A. If company A has not defaulted in the last 5 years, then any bootstrapping will result in that default of company A will not occur in the future at all leading to a MRM class of 1 (this result is also independent on whatever VaR-level that is chosen). This will be the same irrespective of the risk of the underlying.

Similar examples of where the methodology presents scenarios that are misleading or factually incorrect can be provided. We are also concerned with respect to the assumption that all underlying instruments should have an expectation equal to the risk-free rate. Further, we question if there is a mistake with the realised performance of assets? Could it have been mixed up with the pricing of derivatives where calculating values in the artificial "risk-neutral" (or martingale) world? In the recent study ordered by the Swedish FSA, this was explicitly mentioned and the reason for the difference was noted.

Furthermore, when constructing our own risk-indicator we choose to separate market risk from credit risk. One of the major reasons for this was that if the risks are combined an institution can "hide" bad credit risk in a product that already has a high market risk. That is one would most likely never find a product with CR1 and MR7, but rather CR6 and MR7. Here we do not believe that changing the grading in the SRI is the correct solution, but separating MRM and CRM from each other would be more suitable.

Subscription period products and minimum level

Subscription period products with preliminary terms generally contain minimum level terms to protect investors. In case the minimum terms cannot be reached the product will not be issued, thereby providing investors with certainty, transparency and security. The minimum terms are set to allow for some, but not unreasonable, market movements during the subscription period. Hence when setting the date for preliminary and minimum terms, it is not the intention of such market conditions to use the minimum terms, and it will therefore be both misleading and confusing to base costs calculations on minimum terms. As an example this could lead to situations where the implied costs in the structure if calculated on the minimum terms will contradict the costs policy of the product manufacturer. As this is obviously not a possibility, the current requirements as stated in the RTS would lead to a misleading and/or factually incorrect KID.

Scenarios

Scenarios are frequently used in marketing material as a useful tool to educate investors on how a product behaves in different situations. Depending on the product characteristics the approach how to select and the number of scenarios varies based on a number of factors, such as the customer, instrument, usage, etc. It is therefore not possible to establish general rules. Including the scenarios as currently drafted in the RTS will not enable manufacturers to demonstrate the product features and risk diluting the effect if the KID is read alongside a product description with educational focused scenarios.

Territorial scope

In our opinion the lack of clarity concerning territorial scope and products from third countries creates problems for issuers. If an EU-manufacturer creates a PRIIP which is to be sold outside the EU, it would generally be the case that such a product should be marketed according to the rules of the target market and not the EU. Furthermore, it should be made clear that in the situation that an EU based firm reselling a PRIIP does not encounter a requirement to ensure a KID is available when the manufacturer is not EU-based.

Language

In the connection to territorial scope, we would like to highlight the need for clarity regarding the language requirement when producing a KID. For example, it is not clear what language a KID should be produced in should a Swedish customer has a Spanish account and uses a broker in Luxembourg. Given that the Commission's goal is to increase cross border trading and investment with such initiatives as the CMU, clear guidance should be available on this point.

Costs

It is emphasized that it is important to ensure alignment with the similar requirement under MiFID II to the highest extent possible; and bearing in mind that while KID discloses manufactures' costs, MiFID II is regulating the costs of the firm providing investment services (such as selling the PRIIP). In our opinion spread is not a cost. Implying spread is a cost give the impression, that it is possible to trade at mid-price. The bid/mid spread is a measure to mitigate credit risk, where the bank would be imposed by the trade, as well as the cost of hedging the position.

While the cost calculations appear appropriate for funds and open ended products, the presentation of cost as described in the RTS will misrepresent costs to investors in relation to one-off/upfront costs for all buy-to-hold product when the product is held to maturity. The calculation is based on the assumption that the product in question is sold in determining this cost, thereby including bid-offer spreads. However, in the case of buy-to-hold products, the investor holding the product over its recommended holding period will not incur that cost. While it is important to inform investors that bid-offer spreads will negatively impact his/her return if the product is sold prior to the recommended holding period, it is factually incorrect and misleading to consolidate these different cost items, as an investor could be led to believe that these full costs are taken out by the product manufacturer, regardless of the overall investment horizon.

<ESMA_COMMENT_ PRIIPS_1>

Question 1
Would you see merit in the ESAs clarifying further the criteria set out in Recital 18 mentioned above by way of guidelines?

<ESMA_QUESTION_PRIIPS_1>
We believe that the guidance regarding the comprehension alert is sufficiently and clearly provided in PRIIPs Level 1 Article 8, 3b. Furthermore, in our view complexity classification is already more than sufficiently covered by MiFID II, where financial institutions are required to define their target market for each product and define if a product is complex or not. Therefore, in our view, there is no need for further guidelines as these would only duplicate what is already stipulated.
<ESMA_QUESTION_PRIIPS_1>

Question 2
(i) Would you agree with the assumptions used for the proposed default amounts? Are you of the opinion that these prescribed amounts should be amended? If yes, how and why?
(ii) Would you favour an approach in which the prescribed standardised amount is the default option, unless the PRIIP has a known required investment amount and price which can be used instead?

<ESMA_QUESTION_PRIIPS_2>
As one of the primary objectives in PRIIPs Level 1 is to limit divergent approaches to disclosure and an appropriate methodology is dependent on the end goal with the nature of the information given we find that there are two alternative depending on the objective:

1) If the purpose is to compare two different products, then a unified amount across all investment products is required.
2) If the purpose is to show what the fee is in the product, and not compare with other products; then the minimum investable amount would be the logical choice.

However, if we are required to choose, we would prefer maintain consistency with Level 1, a level playing field across all PRIIPs (insurance based, UCITS, AIFs and Structured Products) and maximize comparability. Therefore we believe that the same standardized amount should be applied, in our view €1000 (or its equivalence if the PRIIP is non-€ denominated) would be the more suitable choice.

<ESMA_QUESTION_PRIIPS_2>

Question 3
For PRIIPs that fall into category II and for which the Cornish Fisher expansion is used as a methodology to compute the VaR equivalent Volatility do you think a bootstrapping approach should be used instead? Please explain the reasons for your opinion?

<ESMA_QUESTION_PRIIPS_3>
To maintain the objectives set in PRIIPs level 1 recital 6, especially the objective of making PRIIPs available and more accessible to retail investors, we believe that the KID manufacturing process needs to be lean, uncomplicated and cost efficient. It is especially important to maintain proportionality between member states and financial institutions of different size. Hence, we encourage the ESAs to avoid introducing novel or various methodologies, such as bootstrapping, since this would add unnecessary complexity and open up for different interpretations/applications from the various product manufacturers. Furthermore, there is a large risk that this would unintentionally make the product more difficult for the retail investor to understand then deemed necessary.

For certain product classes that fall into Category III, the bootstrap methodology described in Annex II will result in an inaccurate calculation of the risk in the MRM. The disadvantage with bootstrapping is that when simulating, then “what has not happened” cannot happen in the simulation. As an example, take a credit linked note for company A. If company A has not defaulted in the last 5 years, then any bootstrapping will result in that default of company A will not occur in the future at all leading to a MRM class of 1 (this result is also independent on whatever VaR-level that is chosen). This will be the same irrespective of the risk of the underlying.

Similar examples of where the methodology will present misleading or factually incorrect scenarios can be provided. We are also concerned with respect to the assumption that all underlying instruments should have an expectation equal to the risk-free rate. We question if there is a mistake with the realised performance of assets? Could it have been mixed up with the pricing of derivatives where calculating values in the artificial “risk-neutral” (or martingale) world? In the recent study ordered by the Swedish FSA (Quantitative Study of Structured Products Dnr 13-12974), this was explicitly mentioned and the reason for the difference was noted.

<ESMA_QUESTION_PRIIPS_3>

Question 4

Would you favour a different confidence interval to compute the VaR? If so, please explain which confidence interval you would use and state your reasons why.

<ESMA_QUESTION_PRIIPS_4>
We believe that the confidence interval should be significantly wider than currently considered if VaR is to be applied. Our experience, when taking various product characteristics, market conditions and long tail-effects into account, is that combining the average down side with a VaR 99 per cent based indicator is a more suitable method in order to provide differentiating results.

Furthermore, in our view VaR-99 is not enough to apply the model for longer time horizons. Hence, we believe that an average down side measure, like the Expected Downside Value (EDV), should also be included as it indicates the market risk under “normal” market conditions and the VaR-99 indicates how sensitive the PRIIP is to more extreme market conditions. A method we have already applied in Sweden.
<ESMA_QUESTION_PRIIPS_4>

Question 5

Are you of the view that the existence of a compensation or guarantee scheme should be taken into account in the credit risk assessment of a PRIIP? And if you agree, how would you propose to do so?

<ESMA_QUESTION_PRIIPS_5>
We believe that including a compensation or guarantee scheme in the credit risk assessment of a PRIIP could be misleading and further add unnecessary complexity to the SRI. This especially since guarantees do not always cover the full amount and is considered to be an external factor outside the scope of the PRIIP. Furthermore, information concerning any compensation or guarantee scheme is already included in the section “What happens if [the name of the PRIIP manufacturer] is unable to pay out?”

In addition, it is far from certain that such compensation or guarantee scheme covers the risk related to a specific product. They are generally designed to mitigate the risk in relation to the entity that safe-keep securities on behalf of an investor or the entity in which cash accounts are held. In most cases those entities are different from the manufacturer or any other entity in relation to which a PRIIP is linked.

<ESMA_QUESTION_PRIIPS_5>

Question 6
Would you favour PRIIP manufacturers having the option to voluntarily increase the disclosed SRI? In which circumstances? Would such an approach entail unintended consequences?

<ESMA_QUESTION_PRIIPS_6>
We do not believe that manufacturers should have the option to voluntarily increase the disclosed SRI. In our view, the general investor believes that there is a positive relationship between risk and return. Hence, giving the manufacturer the possibility to increase the disclosed SRI would lead to an escalation of the individual investor expectations of returns; not correctly reflecting the characteristics of the product. This contradicting the objective and spirit of PRIIPs level 1. Furthermore, if ex-post complications would arise such an option could create liability issues for manufactures and relevant financial supervisory authorities.
<ESMA_QUESTION_PRIIPS_6>

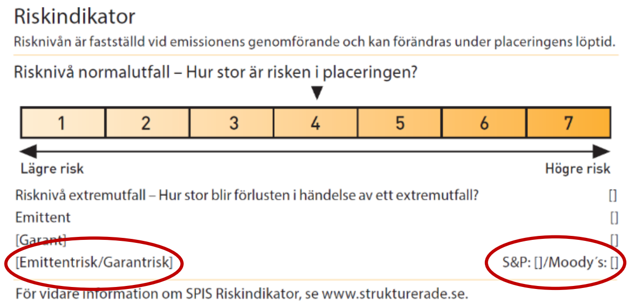
Question 7
Do you agree with an adjustment of the credit risk for the tenor, and how would you propose to make such an adjustment?

<ESMA_QUESTION_PRIIPS_7>
In principle we agree with this argument and believe that this could be favourable option for future application. However, since there currently are no commonly agree upon methods to calculate such adjustments, this would in our view, only contribute with more complexity, have unintended consequences and open up for discrimination for products that carry identical or similar risks. Furthermore, manufactures with a lower credit rating could intentionally alter the tenor of their product to enhance their credit rating and benefit from a lower CRM classification. When constructing our own risk-indicator we choose to separate market risk and credit risk. One of the major reasons for this was that if the risks are combined an institution can “hide” bad credit risk in a product that already has a high market risk. Hence, currently we do not regard this as a viable option and believe that this supports the argumentation that CRM and MRM should be presented separately in the SRI (see question 8).
<ESMA_QUESTION_PRIIPS_7>

Question 8
Do you agree with the scales of the classes MRM, CRM and SRI? If not, please specify your alternative proposal and include your reasoning.

<ESMA_QUESTION_PRIIPS_8>
We are of the opinion that market and credit risks should be presented independently of one another in KID i.e. creating a “multi-dimensional” SRI. Market and credit risk are calculated and presented in fundamentally different ways. Market risk in most cases is subject to a quantitative measure such as average downside and VaR; whilst credit risk is normally explained in qualitative format such as credit rating. Furthermore, the combination of the two opens up for arbitrary behaviour in the classification process which can lead to an increased degree of manipulation. As currently presented combining credit risk and market risk in one SRI does not give the retail investor a full and correct understanding of the different risks involved, impairing the investors ability to fully compare products through the KID - contradicting the objective and spirit of PRIIPs level 1. Below you find the current SRI applied by the Swedish Structured Products industry with the separate market (1-7 scale) and credit risk (rating).

When constructing our own risk-indicator we choose to separate market risk from credit risk. One of the major reasons for this was that if the risks are combined an institution can “hide” bad credit risk in a product that already has a high market risk. That one would most likely never find a product with CR1 and MR7, but rather CR6 and MR7. Here we do not believe that changing the grading in the SRI is the correct solution, but separating MRM and CRM from each other would be more suitable.



Description of the Swedish Risk indicator model:

- The members of SPIS have agreed upon a risk indicator for the Swedish Structured Product Market. This was developed and implemented with the aim of setting the market standard for risk measures on the Swedish market and in order to fulfil not only the demand for comparison with other existing measures currently available within the funds industry but also to add a new measure that would successfully describe the concepts of nonlinear exposure.

- The aim was that the measures should be balanced in terms of being simple to adopt and to implement; whilst simultaneously being fairly accurate and provide useful guidance to its users among advisors and end investors.

- The model has two market risk measures: EDV (Expected Downside Value) and VaR-99.

- EDV indicate the market risk under “normal” market conditions, whilst the VaR-99 indicates how sensitive the PRIIP is for “extreme” market conditions. We believes that the EDV is the most important measure and by adding VaR99 one also captures the impact of the capital guarantee mechanism.

- The model includes three independent measures:

VaR-99 (Extreme market situations)
EDV (Expected Downside Value) (Normal market situations)
Credit Rating (Issuer and guarantor risk) <ESMA_QUESTION_PRIIPS_8>

Question 9
Are you of the opinion that for PRIIPs that offer a capital protection during their whole lifespan and can be redeemed against their initial investment at any time over the life of the PRIIP a qualitatively assessment and automatic allocation to MRM class 1 should be permitted?
Are you of the opinion that the criteria of the 5 year tenor is relevant, irrespective of the redemption characteristics?

<ESMA_QUESTION_PRIIPS_9>
We find that the any automatic classification MRM class 1 (or any other automatic classification), of a capital protected product during its lifespan, to be inappropriate. This since it would lower comparability and open for regulatory arbitrage opportunities. Further, we do not see any motive to cap the tenor at 5-years.
<ESMA_QUESTION_PRIIPS_9>

Question 10
Are you aware of other circumstances in which the credit risk assessment should be assumed to be mitigated? If so, please explain why and to what degree it should be assumed to be mitigated?

<ESMA_QUESTION_PRIIPS_10>
We agree that there are circumstances in which credit risk is mitigated, notably in the cases when there is an over-collateralization protecting this investor. Therefore, we believe that such a protection should be acknowledged in the credit assessment and that the general credit risk should be reduced.
<ESMA_QUESTION_PRIIPS_10>

Question 11
Do you think that the look through approach to the assessment of credit risk for a PRIIP packaged into another PRIIP is appropriate?

<ESMA_QUESTION_PRIIPS_11>
Yes, we believe the look-through approach for repackaged PRIIPs to be appropriate and we also believe that this should be applied to UCITS-fund to increase comparability.
<ESMA_QUESTION_PRIIPS_11>

Question 12
Do you think the risk indicator should take into account currency risk when there is a difference between the currency of the PRIIP and the national currency of the investor targeted by the PRIIP manufacturer, even though this risk is not intrinsic to the PRIIP itself, but relates to the typical situation of the targeted investor?

<ESMA_QUESTION_PRIIPS_12>
We believe that taking currency risk into account could be misleading and further add unnecessary complexity to the PRIIP. This due to the fact that it is a risk outside of the products characteristics, which we believe to be sufficient.
<ESMA_QUESTION_PRIIPS_12>

Question 13
Are you of the opinion that the current Consultation Paper sufficiently addresses this issue? Do you it is made sufficiently clear that the value of a PRIIP could be significantly less compared to the guaranteed value during the life of the PRIIP? Several alternatives are analysed in the Impact Assessment under policy option 5: do you see any additional analysis for these assessment?

<ESMA_QUESTION_PRIIPS_13>
Already included in the draft through RTS article 9

<ESMA_QUESTION_PRIIPS_13>

Question 14

Do you agree to use the performance fee, as prescribed in the cost section, as a basis for the calculations in the performance section (i.e. calculate the return of the benchmark for the moderate scenario in such a way that the return generates the performance fee as prescribed in the cost section)? Do you agree the same benchmark return should be used for calculating performance fees for the unfavourable and favourable scenarios, or would you propose another approach, for instance automatically setting the performance fees to zero for the unfavourable scenario? Please justify your proposal.

<ESMA_QUESTION_PRIIPS_14>
Scenarios are frequently used in marketing material as a useful tool to educate investors on how a product behaves in different situations. Depending on the product characteristics the approach how to select and the number of scenarios varies based on a number of factors, such as the customer, instrument, usage, etc. It is therefore not possible to establish general rules.

Including the scenarios as currently drafted in the RTS will not enable manufacturers to demonstrate the product features and risk diluting the effect if the KID is read alongside a product description with educational focused scenarios. We believe that the performance scenarios should be presented net of all identifiable implicit costs and inducements and should only be disclosed in the scenario where they occur i.e. most likely not in the negative scenario. Therefore, we believe that the same benchmark should be applied to all three scenarios'.
<ESMA_QUESTION_PRIIPS_14>

Question 15

Given the number of tables displayed in the KID and the to a degree mixed consumer testing results on whether presentation of performance scenarios as a table or a graph would be most effective, do you think a presentation of the performance scenarios in the form of a graph should be preferred, or both a table and a graph?

<ESMA_QUESTION_PRIIPS_15>
We prefer a table (as presented in Annex 4 - Appendix 1) to a graph since this would facilitate the presentation of the performance in both absolute (€) and relative terms (%). Any potential graphs should only demonstrate product characteristics and not make any speculative assumption as this could give the investor a false sense of security. Graphs would create issues for PRIIPs where interim performance must be shown. Furthermore, requirements to calculate future prices will require a certain computer capacity discriminating toward smaller manufacturers.
<ESMA_QUESTION_PRIIPS_15>

Question 16

Do you agree with the scope of the assets mentioned in paragraph 25 of Annex VI on transaction costs for which this methodology is prescribed? If not, what alternative scope would you recommend?

<ESMA_QUESTION_PRIIPS_16>
NA

<ESMA_QUESTION_PRIIPS_16>

Question 17 *Do you agree with the values of the figures included in this table? If not, which values would you suggest? (please note that this table could as well be included in guidelines, to allow for more flexibility in the revision of the figures)*

<ESMA_QUESTION_PRIIPS_17>
NA
<ESMA_QUESTION_PRIIPS_17>

Question 18 *Do you agree that the monetary values indicated in the first table are a sum of costs over the respective holding periods? Or should the values reflect annualized amounts? If you prefer annualized amounts, which method for annualisation should be used (e.g. arithmetic average or methods that consider discounting effects)?*

<ESMA_QUESTION_PRIIPS_18>
We would prefer that the values reflect annualized amounts since this is the current market practice. However, we wonder how to apply this to the costs of an open ended UCITS-fund? Is there some type of discount method applied to these funds for comparative reasons? I.e. some type of standard holing period, such as 5 years. Furthermore, it is emphasized that it is important to ensure alignment with the similar requirement under MiFID II to the highest extent possible; and bearing in mind that while KID discloses manufactures' costs, MiFID II is regulating the costs of the firm providing investment services (such as selling the PRIIP). In our opinion spread is not a cost. Implying spread is a cost that gives the impression, that it is possible to trade at mid-price. The bid/mid spread is a measure to mitigate credit risk, that the bank would be imposed by the trade, as well as the cost of hedging the position.
<ESMA_QUESTION_PRIIPS_18>

Question 19 *Do you think that estimating the fair value of biometric risk premiums as stated in paragraph 55(b) of Annex VI would raise any technical or practical difficulties?*

<ESMA_QUESTION_PRIIPS_19>
NA

<ESMA_QUESTION_PRIIPS_19>

Question 20

Knowing that the cost element of the biometric risk premium is included in the total costs calculation, how do you think the investor might be most efficiently informed about the other part of the biometric risk premium (i.e. the fair value), and/or the size of biometric risk premium overall? Do you consider it useful to include the fair value in a separate line in the first table, potentially below the RIY? Or should information on the fair value be disclosed in another part of the KID (for instance, the "What is this product?" section, where the draft RTS currently disclose biometric risk premiums in total, and/or in the performance section)? What accompanying narrative text do you think is needed, and where should this be placed, including specifically narrative text in the cost section?

<ESMA_QUESTION_PRIIPS_20>
NA
<ESMA_QUESTION_PRIIPS_20>

Question 21

Given evidence as to the difficulties consumers may have using percentage figures, would you prefer an alternative presentation of the second table, solely using monetary values instead? As with the first table, please also explain what difficulties you think might arise from calculating monetary values, and whether this should be on an annualized basis, and if so, how?

<ESMA_QUESTION_PRIIPS_21>
We believe that the table should always show a percentage figure and the nominal amount net of costs. In principal we are not against showing monetary amount, including implicit profits, but including this increases the probability that the investor misinterprets the information at hand. Hence, it contradicts the principles set in PRIIPs level 1.
<ESMA_QUESTION_PRIIPS_21>

Question 22

Given the number of tables shown in the KID, do you think a more graphic presentation of the breakout table should be preferred?

<ESMA_QUESTION_PRIIPS_22>
No, we do not believe that a graphic presentation should be included since it does not add value relative to table II and could hence confuse the investor.

<ESMA_QUESTION_PRIIPS_22>

Question 23
The example presented above includes a possible way of showing the variability of performance fees, by showing the level for all three performance scenarios in the KID, highlighting the 'moderate' scenario, which would be used for the calculation of the total costs. Do you believe that this additional information should be included in the KID?

<ESMA_QUESTION_PRIIPS_23>
In our view, the KID is already more complex than some of the products it is supposed to represent. Hence, including additional information and highlighting the moderate scenario would most likely create a false security with the potential investor and add unnecessary complexity to the already complex KID - contradicting the principles and objectives set out in PRIIPs level 1.
<ESMA_QUESTION_PRIIPS_23>

Question 24
To reduce the volume of information, should the first and the second table of Annex VII be combined in one table? Should this be supplemented with a breakdown of costs as suggested in the graphic above?

<ESMA_QUESTION_PRIIPS_24>
If both tables are deemed necessary, we believe that they should be combined. However, to in order to reduce complexity and maximize the limited space available we would prefer to apply the first table in the KID in line with the principles and objectives set out in PRIIPs level 1. As mentioned before we do not see the benefit of an additional graphic breakdown.
<ESMA_QUESTION_PRIIPS_24>

Question 25
In relation to paragraph 68 a) of Annex VI: Shall the RTS specify that for structured products calculations for the cost free scenario have always to be based on an adjustment of the payments by the investor?

<ESMA_QUESTION_PRIIPS_25>
We do not believe it is necessary to include RIY in the table. This since it is of a speculative character and does not increase comparability, transparency nor added value to the retail investor

.<ESMA_QUESTION_PRIIPS_25>

Question 26

Regarding the first table of the cost section presented in Annex VII, would you favour a detailed presentation of the different types of costs, as suggested in the Annex, including a split between one-off, recurring and incidental costs? Alternatively, would you favour a shorter presentation of costs showing only the total costs and the RIY?

<ESMA_QUESTION_PRIIPS_26>
We would prefer to only disclose total cost, that is choosing not to disclose the RIY since, this is motivated by the results from the PRIIPs consumer testing survey that shows that RIY would most likely be difficult for the investor to understand. As this is not an alternative we favour a detailed presentation of the different types of costs i.e. including one-off, recurring and incidental costs.

While the cost calculations appear appropriate for funds and open ended products, the presentation of cost as described in the RTS will misrepresent costs to investors in relation to one-off/upfront costs for all buy-to-hold product when the product is held to maturity. The calculation is based on the assumption that the product in question is sold in determining this cost, thereby including bid-offer spreads. However, in the case of buy-to-hold products, the investor holding the product over its recommended holding period will not incur that cost. While it is important to inform investors that bid-offer spreads will negatively impact his/her return if the product is sold prior to the recommended holding period, it is factually incorrect and misleading to consolidate these different cost items, as an investor could be led to believe that these full costs are taken out by the product manufacturer, regardless of the overall investment horizon.
<ESMA_QUESTION_PRIIPS_26>

Question 27

Regarding the second table of the cost section presented in Annex VII, would you favour a presentation of the different types of costs showing RIY figures, as suggested in the Annex, or would you favour a presentation of costs under which each type of costs line would be expressed differently, and not as a RIY figure - expressed as a percentage of the initial invested amount, NAV, etc.?

<ESMA_QUESTION_PRIIPS_27>
To ensure consistency throughout the KID and based on the results from the PRIIPs consumer testing survey we believe that all the costs in the table should be expressed on the same basis i.e. annualized percentage.

<ESMA_QUESTION_PRIIPS_27>

Question 28

Do you have any comments on the problem definition provided in the Impact Assessment?

Are the policy issues that have been highlighted, in your view, the correct ones? If not, what issues would you highlight?

Do you have any views on the identified benefits and costs associated with each policy option?

Is there data or evidence on the highlighted impacts that you believe needs to be taken into account?

Do you have any views on the possible impacts for providers of underlying investments for multi-option products, and in particular indirect impacts for manufacturers of underlying investments used by these products, including where these manufacturers benefit from the arrangements foreseen until the end of 2019 under Article 32 of the PRIIPs Regulation?

Are there significant impacts you are aware of that have not been addressed in the Impact Assessment? Please provide data on their scale and extent as far as possible.

<ESMA_QUESTION_PRIIPS_28>

Timeline

The timeline presented for the implementation of PRIIPs is very brief given the technical nature of the required implementation processes and the close ties of PRIIPs to MiFID II and IDD. The length of the timeline becomes even more critical, given the unusually high level of ambiguity and uncertainty in the language and content in some areas of the draft RTS. The RTS adds very little on what was already stated in the regulation and lacks technical detail and clarity that should be available at this point in the legislative process. This will create great implementation challenges for both institutions and regulators. The timeline should reflect the complexity of the requirements placed on the market, investors and NCAs. Therefore, we would encourage a delay for PRIIPs to accommodate a responsible implementation schedule in each jurisdiction.

Scope - Hedging and OTC derivatives

In PRIIPs Level I, the definition of PRIIP contained in the Level I (recital 6) text explicitly states that a PRIIP needs to ”provide an investment opportunity to the retail investor, where the amount repayable to the retail investor is subject to fluctuations…” To the extent an instrument is not an “investment” or does not involve an “amount repayable” which fluctuates as described in the definition, the relevant instrument should not be in scope. Nonetheless; in PRIIPs draft RTS Annex II, Part 1.9c it is highlighted that all derivatives are in scope. Here we are concerned to the appropriateness of including all derivatives since this would be contradictory to the Level I text and the consequences of such an extended scope do not seem to be assessed.

A well-functioning derivatives market is a prerequisite for any rational investment, both in the real and the financial economy; an assurance today offered through tailored (OTC) derivative solutions. When entering into such a OTC derivative the seller will need to consider a number of variables that impact (e.g.) pricing; making no derivative (and therefore no KID) identical as factors such as credit quality of the counterparty, collateral amount and quality and portfolio effects are taking into account. This not only implies that a KID would be required for each and every single OTC contract, but also that key information, e.g. on pricing (costs), and possibly risks, scenarios would be different. Where specific models are used to calculate such information the exercise to do this for each and every contract becomes non-trivial for the seller of the derivative.

All derivatives are not purchased for speculative purposes but on the contrary can be used to mitigate or hedge risks. In this context, i.e. derivatives used for commercial hedging, there is no "investment" as required by the Level I text and the intended use/purpose of such a derivative used for is not "investment" but for commercial hedging.

Additionally, if derivatives used for hedging purposes and OTC are in scope, the format and information contained in the KID will be misleading since the purpose of the hedging exercise is to obtain exactly the opposite result of a speculative instrument i.e. mitigate or hedge risks. Such a requirement will increase costs and create new practical challenges that will curb the market of such derivatives to larger trades, limiting for instance small and medium size entities (SMEs) ability to manage risks. SMEs who require a high level of certainty around such risk factors to be able to have time to resize or re-structure their future operations, hedging risks such as interest rate mismatches, foreign exchange risk, credit risk, commodity risk or emissions allowance risk.

Furthermore, where products are not actively marketed/there is no open offer period/liquid secondary market, it would be disproportionate and inappropriate to require a manufacturer to review and update the KID would be. Such requirements would have the effect of greatly increasing time to market for the producer of the derivative, as a KID would be required for each and every contract/trade prior to execution. This would be especially critical if the investor quickly needs to cover its risk. In combination with the requirements to regularly update the KID on the secondary market, these issues make it even more challenging for producers to maintain a broad offering for bespoke solutions.

From our perspective the consequences of a wide scope and requirements for KID updating will affect European SMEs access to necessary hedging derivatives. Leaving SMEs and non-professional investors with access to a limited range of standardised derivatives when running cross-border operations. At an aggregate economic level this will increase systemic vulnerability as hedging levels decrease and risks remain hidden, un-netted and potentially un-managed in the real economy. These greater risk levels and potential losses will drive SMEs to hold larger capital buffers, tying-up capital that could otherwise have been reinvested in the real economy, and reducing European firms' ability to attract capital and fund themselves at reasonable cost.

The distinction between derivatives used for speculative/investment purposes and those used for commercial hedging is one that was recognised in EMIR and we urge you to ensure that this distinction also is recognised in the context of the PRIIPs; especially as the Level I text mandates that a product will only be within scope of the Regulation to the extent that it is an "investment". Therefore, we are critical to the appropriateness of including all derivatives in the scope, especially derivatives used for commercial hedging, since this will reduce market efficiency, increase risks and potential losses to the real economy; resulting in a reduction of investments which will have a negative impact on growth - directly contradicting the purpose of the Capital Markets Union.

Grandfathering

The question of the position as regards existing PRIIPs is complex and not clearly addressed in grandfathering rules in the RTS. PRIIPs issued prior to the implementation of the PRIIPs regulation will be traded on a secondary market after the implementation date. The RTS as it stands today states that KIDs are required for products "made available" to investors at the implementation date which would encompass initial offerings as well as products sold on secondary markets. This could essentially result in a burden for manufacturers to create and maintain KIDs on PRIIPs they no longer offer, as long as that product is sold on a secondary market.

A possible outcome would be that resellers would make the business decision to stop offering liquidity on these products to avoid any risk associated with missing KIDs, which would not benefit any market participants. We do not believe that this is the intent of the regulation, as PRIIPs should reflect that a two-way market for many retail products exists. We would encourage the ESAs to consider further guidance on the grandfathering of existing products or alternatively, state that "making a product available" constitutes the initial public offering of a product and not the sale of products on a secondary market that existed prior to the PRIIPs implementation.

Subscription period products and minimum level

Subscription period products with preliminary terms generally contain minimum level terms to protect investors. In case the minimum terms can't be reached the product won't be issued, thereby providing investors with certainty, transparency and security. The minimum terms are set to allow for some, but not unreasonable, market movements during the subscription period. On the date setting preliminary and minimum terms, it is hence not the intention in such market conditions to use the minimum terms, and it will therefore be both misleading and confusing to base costs calculations on minimum terms. As an example this may lead to situations where the implied costs in the structure if calculated on the minimum terms will contradict the costs policy of the product manufacturer. As this is obviously not a possibility, the current requirements as stated in the RTS would lead to a misleading and/or factually incorrect KID.

Territorial scope

In our opinion the lack of clarity concerning territorial scope and products from third countries creates problems for issuers. If an EU-manufacturer creates a PRIIP which is to be sold outside the EU, it would generally be the case that such a product should be marketed according to the rules of the target market and not the EU. Furthermore, it should be made clear that in the situation that an EU based firm reselling a PRIIP does not encounter a requirement to ensure a KID is available when the manufacturer is not EU-based.

Language

In the connection to territorial scope, we would like to highlight the need for clarity regarding the language requirement when producing a KID. For example, it is not clear what language a KID should be produced in should a Swedish customer has a Spanish account and uses a broker in Luxembourg. Given that the Commission's goal is to increase cross border trading and investment with such initiatives as the CMU, clear guidance should be available on this point.

<ESMA_QUESTION_PRIIPS_28>