European Securities and Markets Authority

EUROPEAN BANKING AUTHORITY

EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY

JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

Response form for the Joint Consultation Paper concerning amendments to the PRIIPs KID

16 October 2019

Date: 16 October 2019
ESMA 30-201-535

JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

Responding to this paper

The European Supervisory Authorities (ESAs) welcome comments on this consultation paper setting out proposed amendments to Commission Delegated Regulation (EU) 2017/653 of 8 March 2017[1] (hereinafter “PRIIPs Delegated Regulation”).

The consultation package includes:
- The consultation paper
- Template for comments

The ESAs invite comments on any aspect of this paper. Comments are most helpful if they:
- contain a clear rationale; and
- describe any alternatives the ESAs should consider.

When describing alternative approaches the ESAs encourage stakeholders to consider how the approach would achieve the aims of Regulation (EU) No 1286/2014[2] (hereinafter “PRIIPs Regulation”).

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in the present response form.
- Please do not remove tags of the type <ESA_QUESTION_PKID_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
- When you have drafted your response, name your response form according to the following convention: ESA_PKID_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESA_PKID_ABCD_RESPONSEFORM.

[1] COMMISSION DELEGATED REGULATION (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents

[2] Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), OJ L 352, 9.12.2014, p. 1.

- The consultation paper is available on the websites of the three ESAs and the Joint Committee. Comments on this consultation paper can be sent using the response form, via the ESMA website under the heading 'Your input - Consultations' by **13 January 2020**.

- Contributions not provided in the template for comments, or after the deadline will not be processed.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESAs rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESAs Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 2018/1725[3]. Further information on data protection can be found under the Legal notice section of the EBA website and under the Legal notice section of the EIOPA website and under the Legal notice section of the ESMA website.

[3] Regulation (EU) 2018/1725 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

General information about respondent

Name of the company / organisation	Baillie Gifford & Co
Activity	Investment Services
Are you representing an association?	☐
Country/Region	UK

Introduction

Please make your introductory comments below, if any:

<ESA_COMMENT_PKID_1>
We welcome the opportunity to engage in this consultation. We consider this consultation to be a preliminary step towards a more comprehensive review of the PRIIPs Regulation (‘Regulation‘).

The heart of any financial services transparency initiative should always be the protection of end customers – in this case, the consumers of products captured by the Regulation. With this in mind, our response to the questions that are part of this consultation revolve around the basic premise that information provided to consumers should always be *fair, clear and not misleading*.

The intention of the Regulation is to protect consumers by increasing transparency and improving comparability between products. However, we strongly believe that certain information currently required to be included in the PRIIPs Key Information Document (‘KID’) has the potential to harm rather than protect consumers. Whilst we acknowledge that there is recognition amongst the ESAs of the issues that have arisen from the practical application of the detailed technical requirements included in the PRIIPs Commission Delegated Regulation 2017/563, we are extremely disappointed that the proposals suggested in the consultation do not go sufficiently far in terms of adequately addressing the following concerns: ***forecasted future performance***, ***understated risks*** *and* ***unreliable transaction costs.*** In fact, it is our view that some of the proposed solutions simply ‘mask’ the fundamental flaws that exist in the Regulation and that the only way to resolve them is through changes in the Level 1 text.

In its previous consultation, we have urged the ESAs to ensure that the Commission does not ignore its legal obligation to complete the review of the Regulation. It is therefore disappointing that this review will not be completed by the end of this year. This is considering the fact that the Commission has been given a year extension to complete this. As a consequence of this, UCITS funds will be required to switch from UCITS KIID to PRIIPs KID without a thorough assessment of the effectiveness of the disclosures and the appropriateness of its use on other financial products beyond the existing scope.

Given there is acknowledgement from the ESAs that some of the concerns raised by stakeholders might not be entirely resolvable through a change in the Level 2 text, we are surprised that they have not included any specific recommendation to change the Level 1 text. We strongly believe this was a missed opportunity, particularly given that Level 1 text will certainly need to be amended as more space will be needed to accommodate the additional disclosures required by the Sustainable Finance Disclosures Regulation which will no doubt make their way into the PRIIPs KID.

We also question the value of the consumer testing given the acknowledgement from the ESAs that it will not be possible to test all aspects of the KID within the timeframe of the current review. This is yet another example of a missed opportunity as a full-scale consumer testing exercise would have provided the Commission with the necessary insight into the effectiveness of the disclosures. Furthermore, we do not support the fact that the consumer testing is being conducted concurrently with the consultation as there is a danger that the preference of the consumers does not align with that of the respondents to this consultation. We are of the view that the sensible approach would have been to consult on only those proposals that have passed the consumer test.

Comparability was mentioned several times during the recent public hearing organised by the ESAs. We support the principle of comparability across all investment products. However, we believe that this should not come at the expense of fair, clear and not misleading disclosures so we urge the ESAs to ensure optimal balance is achieved between comparability and meaningfulness of disclosures. This could mean acknowledging that a 'one-size fits all' approach throughout all the sections of the KID may not be capable of being achieved across all investment products.

Finally, we recommend that the ESAs ensure proposals have undergone a robust and thorough analysis (including consumer testing) before they are submitted to the Commission. Part of this analysis should include ensuring the proposals would withstand the Level 1 review which we now understand will happen in 2024. Given the criticisms that the PRIIPs KID has received since its introduction, we do not think that consumers will be as equally forgiving if the regulators do not get this right the second time around. Investor confidence plays a pivotal role in 'fostering retail investments', which is part of the Commission's Capital Market Union Action Plan. It will be reputationally damaging to the industry if after making changes at the beginning of 2022, significant changes will again be required to the PRIIPs KID post-2024. When deciding on its final proposals, we strongly urge the ESAs not to lose sight of the aim of the Regulation, which is *'to encourage efficient EU markets by helping investors understand and compare key features, risk, rewards and costs of PRIIPs, through access to a short and **consumer-friendly KID**'.* The complexity of parts of the current regulatory disclosure and some of the proposed changes appear to have lost sight of this overriding principle.
<ESA_COMMENT_PKID_1>

Q1 : Are there provisions in the PRIIPs Regulation or Delegated Regulation that hinder the use of digital solutions for the KID?

<ESA_QUESTION_PKID_1>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_1>

Q2 : Do you agree that it would be helpful if KIDs were published in a form that would allow for the information to be readily extracted using an IT tool?

<ESA_QUESTION_PKID_2>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_2>

Q3 : Do you think that the amendments proposed in the consultation paper should be implemented for existing PRIIPs as soon as possible before the end of 2021, or only at the beginning of 2022?

<ESA_QUESTION_PKID_3>
Our preference is for all amendments to be implemented at the same time and only at the beginning of 2022. Constant change to the PRIIPs KID risks further confusion to consumers. Also, implementing the amendments at the beginning of 2022 means a level playing field between those products already producing PRIIPs KID and those financial products that will be producing it for the first time (e.g. UCITS funds). Furthermore, the beginning of 2022 is a more realistic timescale given that we do not expect the amendments to be finalised until the second half of 2020 at the earliest. This will give market participants more than a year to implement the changes.
<ESA_QUESTION_PKID_3>

Q4 : Do you think that a graduated approach should be considered, whereby some of the requirements would be applied in a first step, followed by a second step at the beginning of 2022?

<ESA_QUESTION_PKID_4>
See our response to Question 3.
<ESA_QUESTION_PKID_4>

Q5 : Are there material issues that are not addressed in this consultation paper that you think should be part of this review of the PRIIPs Delegated Regulation? If so, please explain the issue and how it should be addressed.

<ESA_QUESTION_PKID_5>
The method prescribed to calculate the level of risk is based on the historical share price volatility and does not take into consideration the capacity for loss to consumers from the investment. This simplistic way of calculating the SRI further exacerbates the already misleading information consumers can derive from the performance scenarios.

A less liquid PRIIP, a VCT for example, will appear to be at the lower end of the scale (below four – 'low risk') simply because its price moves infrequently when, in reality, a VCT is generally a high-risk investment because of the nature of its underlying investments. As such, **we recommend a methodology that incorporates an indication of capacity for loss from the investment be used.**
<ESA_QUESTION_PKID_5>

Q6 : Do you have comments on the modifications to the presentation of future performance scenarios being considered? Should other factors or changes be considered?

<ESA_QUESTION_PKID_6>
Our main concern is that the Regulation requires the industry to do something it has enduringly been discouraging consumers from doing – namely, estimate future returns based on past performance. **Our preference is that, in line with the current UCITS KIID requirements, past performance becomes the standard disclosure and replaces the need for performance scenarios that we believe provide an overly positive outlook for returns and the clear potential to mislead consumers**.

However, we recognise that the complete removal of performance scenarios is not a viable option at this time given that there is no appetite to make changes to the Level 1 text. As such, **our next preferred option is the use of past performance as a scenario such that the outcomes presented provide consumers with information on what they could have received in return**, giving more factual information as oppose to predicted return. This option is an extended version of the compensatory mechanisms introduced by the ESAs to address potential methodological faults with the use of the dividend yield methodology. We strongly encourage the ESAs to consider this option in addition to the proposals they have included in the consultation.

We also have significant concerns with the inclusion of a new column in the performance scenario table entitled 'estimated chance this scenario occurs'. It is hugely surprising that the ESAs have proposed this considering they have had numerous discussions with stakeholders regarding the misleading nature of performance scenarios. We believe that this additional column will only exacerbate the already misleading information consumers can derive from the performance scenarios.
<ESA_QUESTION_PKID_6>

Q7 : If intermediate scenarios are to be included, how should they be calculated for Category 3 PRIIPs (e.g. structured products)? If intermediate scenarios are not shown in the performance section, which performance assumption should be used for the 'What are the costs?' section?

<ESA_QUESTION_PKID_7>
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<ESA_QUESTION_PKID_7>

Q8 : If a stress scenario is included in the presentation of future performance scenarios, should the methodology be modified? If so, how?

<ESA_QUESTION_PKID_8>
We recommend for the stress scenario to be excluded in the presentation of future performance scenarios. This is consistent with the requirement under Article 44 (Fair, clear and not misleading information requirements) of the Commission Delegated Regulation 2017/565 to show both negative ('unfavourable') and positive ('favourable') scenarios when disclosing future performance. Furthermore, when consumer testing was conducted in 2015, only three scenarios (favourable, non-favourable and neutral) were presented to the participants. Having both unfavourable and stress scenarios only lead to confusion.
<ESA_QUESTION_PKID_8>

Q9 : Do you agree with how the reference rate is specified? If not, how should it be specified?

<ESA_QUESTION_PKID_9>
We recognise the ESAs' efforts to correct the issues identified with the current methodology. However, we are extremely disappointed that the ESAs did not consider it necessary for their proposal to have undergone a comprehensive testing (including a robust back-testing) before presenting it to the public for consultation. We understand the time constraints, but this should not be used as an excuse to bypass 'proper' rulemaking.

We have worked with the Investment Association in testing the dividend yield methodology and the results from a sample of passive funds confirm that the issues of procyclicality have been addressed. However, we question whether this improvement outweighs the new challenges introduced by the methodology.

Firstly, it is still an estimate or prediction of future returns and as such has the potential to mislead consumers. Secondly, the proposed requirement for calculating the dividend yield of the equity is very complicated as the expectation is to use the average dividend yield for each country and sector represented, weighted by its representation in the fund. Furthermore, government bonds, corporate bonds and foreign exchange instruments are expected to be treated in a similar manner as equities. Thirdly, we are uncertain whether the ESAs have considered the additional costs to be incurred by product manufacturers in collecting the data needed to perform the underlying calculations. We understand that the ESAs believe this information should be readily accessible to fund managers. Whilst there may be some truth to this, it may well be that the current licence requirements do not allow these data to be used for calculating and disclosing performance scenarios. Finally, early results from the Investment Association's testing indicate that the methodology favours passive funds over actively-managed funds. We find this worrying as an active manager and we recommend that the ESAs ensure that no particular 'type of management' is favoured when deciding on appropriate solution to address concerns on performance scenarios.

As we have said in the Introductory section, it is important for the ESAs not to lose sight of the aim of the Regulation, which is to protect consumers by increasing transparency and improving comparability between products through a short and **consumer-friendly** KID. We question whether the use of the dividend yield methodology will help achieve this as it will be difficult to explain this to consumers.

According to the proposal, the reference rate shall be read from the accepted market-standard interest rate curve for the currency and country of the asset derived from the prices of sovereign bonds of the country. However, the proposal is unclear on the maturity of the sovereign bond to be used in the calculation.

We understand that the Investment Association's preference is an alternative that does not require firms to calculate the reference rate on an asset-weighted basis. We have only seen this approach being tested on passive funds, so we recommend further testing be done on actively-managed funds to ensure it meets the ESAs acceptance criteria.
<ESA_QUESTION_PKID_9>

Q10 : The revised methodology specifies that the risk premium is determined by future expected yields. The methodology further specifies that future expected yields should be determined by the composition of the PRIIP decomposed by asset class, country and sector or rating. Do you agree with this approach? If not, what approach would you favour?

<ESA_QUESTION_PKID_10>

As per our response to the previous question, the proposed requirement for calculating the dividend yield of the equity is very complicated as the expectation is to use the average dividend yield for each country and sector represented, weighted by its representation in the fund. Furthermore, government bonds, corporate bonds and foreign exchange instruments are expected to be treated in a similar manner as equities.

There is also lack of clarity on (a) how to determine the country of origin of the asset and (b) how the sector of the asset should be determined. As such, we favour an approach that reduces the complexity arising from the detailed look-through as long as this does not compromise the results of the scenarios presented to consumers. As per our response to Question 9, we recommend further testing of the Investment Association's proposal for dividend yield to be calculated by portfolio weighting without the requirement to decompose by country and sector of the asset.
<ESA_QUESTION_PKID_10>

Q11 : The ESAs are aware that historical dividend rates can be averaged over different time spans or that expected dividend rates can be read from market data providers or obtained from analyst reports. How should the expected dividend rates be determined?

<ESA_QUESTION_PKID_11>
Considering our concerns regarding additional costs to be incurred by product manufacturers in relation to data, we would welcome the ESAs making the historical dividend rates publicly available.
<ESA_QUESTION_PKID_11>

Q12 : How should share buyback rates be estimated?

<ESA_QUESTION_PKID_12>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_12>

Q13 : Do you agree with the approach for money-market funds? Are there other assets which may require a similar specific provisions?

<ESA_QUESTION_PKID_13>
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<ESA_QUESTION_PKID_13>

Q14 : The methodology proposes that the future variance be estimated from the 5-year history of daily returns. Should the volatility implied by option prices be used instead? If so, what estimate should be used if option prices are not available for a particular asset (equities namely)?

<ESA_QUESTION_PKID_14>
We do not support the use of option prices to determine volatility. As the question suggests, option prices are not always available for equities. Moreover, this will require firms to have access to options data, which again will mean additional costs to product manufacturers.
<ESA_QUESTION_PKID_14>

Q15 : Do you think compensatory mechanisms for unforeseen methodological faults are needed? If yes, please explain why.

<ESA_QUESTION_PKID_15>
We find it concerning that the ESAs have proposed compensatory mechanisms instead of addressing the fundamental issue on performance scenarios – that you cannot accurately predict future performance. The mechanisms proposed simply 'mask' the flaws in the methodology. We strongly urge the ESAs to consider the alternative option we have proposed in our response to Question 6 as with that option there will be no need to introduce compensatory mechanisms.
<ESA_QUESTION_PKID_15>

Q16 : Do you favour any of the options above? If so, which ones? How would you ensure that the information in the KID remains comparable for all products?

<ESA_QUESTION_PKID_16>
See our response to Question 15.
<ESA_QUESTION_PKID_16>

Q17 : Are there any other compensatory mechanisms that could address unforeseen methodological faults? If yes, please explain the mechanism; explain how it ensures that scenario information in the KID allows investors to compare PRIIPs, and explain how the information for similar products from different manufacturers remains sufficiently consistent.

<ESA_QUESTION_PKID_17>
See our response to Question 15.
<ESA_QUESTION_PKID_17>

Q18 : What are your views on the use of a simplified approach such as the one detailed above, instead of the use of probabilistic methodologies with more granular asset specific requirements?

<ESA_QUESTION_PKID_18>
As stated in our response to Question 6, **our preference is that past performance becomes the standard disclosure and replaces the need for performance scenarios that we believe provide an overly positive outlook for returns and the clear potential to mislead consumers**. However, we recognise that the complete removal of performance scenarios is not a viable option at this time given that there is no appetite to make changes to the Level 1 text. As such, **our next preferred option is the use of past performance as a scenario such that the outcomes presented provide consumers with information on what they could have received in return**, giving factual information as oppose to predicted return. We understand the Investment Association supports a **simplified dividend yield methodology.** However, due to time constraints, the Investment Association was not able to provide us with evidence to show that this methodology addresses the concerns and challenges we have outlined in our response to Question 9. We recommend further testing to be done on this methodology, particularly from an actively-managed funds perspective, to ensure it meets the ESAs acceptance criteria. This testing should include the Investment Association's proposal to exclude non-distributing assets from the calculation instead of giving them a weight of 0%. As a growth house, many of our holdings are non-distributing, so this assumption could result in heavily misleading information for certain funds and a similar 'active versus passive' type comparability issue as outlined in our response to Question 9.
<ESA_QUESTION_PKID_18>

Q19 : Do you consider the use of a single table of growth rates appropriate? If no, how should the methodology be amended?

<ESA_QUESTION_PKID_19>
There is certainly merit in considering the use of a single table of growth rates. We understand from the ESAs that this approach would be simpler to implement and communicate to consumers and would remove the primary concern of unrealistic favourable growth rates. However, we have not seen sufficient evidence to prove the appropriateness of this methodology. Furthermore, the consultation does not include sufficient details in relation to how this methodology will be implemented. Nevertheless, we envisage this approach to be consistent with the methodology that is set out in the FCA handbook to calculate the long-term returns of pension funds. We are also aware that the same approach is being applied in Denmark.

As the same maximum growth rate will be applied to all investments within an asset class, it will be harder for consumers to differentiate between products. The ESAs have said that a product will be distinguishable by costs, which we believe will again favour passive funds over actively-managed funds. As an active manager, we do not believe that a methodology that favours one type of management over another is appropriate. We recommend the ESAs address this deficiency if this approach is supported by majority of the respondents. Furthermore, there is also the question of which supervisory authority will ultimately be responsible in setting the growth rates as we believe it could be difficult to revise these rates in response to changing market conditions.
<ESA_QUESTION_PKID_19>

Q20 : More generally, do your views about the use of a probabilistic methodology vary depending on the type of product (e.g. structured products vs non-structured products, short-term vs long-term products)? For which type of products do you see more challenges to define a probabilistic methodology and to present the results to investors?

<ESA_QUESTION_PKID_20>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_20>

Q21 : Do you think these alternative approaches should be further assessed? If yes, what evidence can you provide to support these approaches or aspects of them?

<ESA_QUESTION_PKID_21>
See our response to Questions 18 and 19.

Whilst we acknowledge the time constraints, this should not stop the ESAs from extensively testing the approaches preferred by stakeholders. As we have said in our introductory statement, it is important that the acceptance criteria for any proposal should include the ‘ability to withstand Level 1 review’. We believe it will be significantly detrimental to the reputation of the industry if, after making changes at the beginning 2022, significant changes will again be required after the review which we have heard will now happen in 2024.
<ESA_QUESTION_PKID_21>

Q22 : Are there any other approaches that should be considered? What evidence are you able to provide to support these other approaches?

<ESA_QUESTION_PKID_22>
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<ESA_QUESTION_PKID_22>

Q23 : Do you think illustrative scenarios should be included in the KID as well as probabilistic scenarios for structured products?

<ESA_QUESTION_PKID_23>
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<ESA_QUESTION_PKID_23>

Q24 : If not, do you think illustrative scenarios should replace probabilistic scenarios for structured products?

<ESA_QUESTION_PKID_24>
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<ESA_QUESTION_PKID_24>

Q25 : Do you agree with this approach to define PRIIPs which would show illustrative performance scenarios using the existing definition of Category 3 PRIIPs? If not, why not? Where relevant, please explain why this approach would not be appropriate for certain types of Category 3 PRIIPs?

<ESA_QUESTION_PKID_25>
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<ESA_QUESTION_PKID_25>

Q26 : Would you be in favour of including information on past performance in the KID?

<ESA_QUESTION_PKID_26>
Yes, we are in favour of including information on past performance in the KID. As stated in our response to Question 6, **our preference is that past performance becomes the standard disclosure and replaces the need for performance scenarios that we believe provide an overly positive outlook for returns and the clear potential to mislead consumers**. Whilst it is disappointing that time constraints are curtailing the opportunity to properly address the inclusion of performance scenarios, we agree that the disclosure of past performance alongside the existing performance scenarios would go part way to alleviating some of our concerns regarding existing KID disclosures. By allowing the disclosure of past performance, consumers will be provided useful context required in making an informed decision, with a graphical format over a 10-year horizon providing an investor with a better indication of the volatility of returns. As part of a more comprehensive review of the PRIIPS framework expected to be conducted in future years, **we would urge that serious consideration is given to having past performance replace the need for performance scenarios in KIDs**.
<ESA_QUESTION_PKID_26>

Q27 : Would your answer to the previous question be different if it were possible to amend Article 6(4) of the PRIIPs Regulation?

<ESA_QUESTION_PKID_27>
Our response to the previous question would not be different because we are of the view that regardless of whether past performance will be included in the KID or not, there will be a need to amend the Level 1 text in relation to the maximum number of pages not only to accommodate many of the UCITS KIID-specific disclosures within the KID but also to ensure that any additional disclosures arising from the Sustainable Finance Disclosures Regulation can be included.

<ESA_QUESTION_PKID_27>

Q28 : Do you think that it can be more appropriate to show past performance in the form of an average (as shown in the ESA proposal for consumer testing) for certain types of PRIIPs? If so, for exactly which types of PRIIPs?

<ESA_QUESTION_PKID_28>
We do not agree with the proposal to disclose past performance in the form of an average. Disclosure of past performance should be in line with the existing UCITS KIID methodology as the graphical format over a 10-year horizon provides an investor with a better indication of the volatility of returns.
<ESA_QUESTION_PKID_28>

Q29 : Do you have any comments on the statement that would supplement the display of past performance (e.g. with regard to the presentation of costs which are not included in the net asset value (NAV))?

<ESA_QUESTION_PKID_29>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_29>

Q30 : Are you of the opinion that an additional narrative is required to explain the relationship between past performance and future performance scenarios?

<ESA_QUESTION_PKID_30>
There is certainly merit in the inclusion of an additional narrative explaining the relationship between past performance and future performance scenarios. We will be using this narrative to explain the main drivers of a fund's performance. More importantly, we will be using this narrative to make it clear that past performance is not a guide to future performance and that the scenarios presented are simply illustrative examples of possible outcomes.
<ESA_QUESTION_PKID_30>

Q31 : Do you see merit in further specifying the cases where the UCITS/AIF should be considered as being managed in reference to a benchmark, taking into account the provisions of the ESMA Questions and Answers on the application of the UCITS Directive[4]?

<ESA_QUESTION_PKID_31>
We urge the ESAs to review the provisions of the ESMA Q&A specifying the cases where the UCITS/AIF is considered to be managed in reference to a benchmark prior to it being transposed to the PRIIPs KID Q&A. We share EFAMA's sentiments as expressed in their previous letter to ESMA in which it stated that *the reference to an index 'playing a role' remains vague and would not be sufficient to categorise the general management of the UCITS as being benchmark dependent*.
<ESA_QUESTION_PKID_31>

Q32 : Do you see the need to add additional provisions for linear unit-linked insurance-based investment products or linear internal funds?

[4] See "Section II – Key Investor Information Document (KIID) for UCITS" (in particular, Q&A 8) of the Q&A document available at: https://www.esma.europa.eu/sites/default/files/library/esma34-43-392_qa_ucits_directive.pdf

<ESA_QUESTION_PKID_32>
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<ESA_QUESTION_PKID_32>

Q33 : Do you agree that a fixed intermediate time period / exit point should be used instead of the current half the recommended holding period to better facilitate comparability?

<ESA_QUESTION_PKID_33>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_33>

Q34 : In this case (of a fixed intermediate time period), do you agree to show costs if the investor would exit after 5 years for all PRIIPs with a recommended holding period of at least 8 years? Or do you prefer a different approach such as:

<ESA_QUESTION_PKID_34>
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<ESA_QUESTION_PKID_34>

Q35 : Do you think it would be relevant to either (i) use an annual average cost figure at the recommended holding period, or (ii) to present both an annual average cost figure and a total (accumulated) costs figure?

<ESA_QUESTION_PKID_35>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_35>

Q36 : Do you think that it would be helpful, in particular for MiFID products, to also include the total costs as a percentage of the investment amount?

<ESA_QUESTION_PKID_36>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_36>

Q37 : In this context, are there PRIIPs for which both performance fees and carried interests are applied?

<ESA_QUESTION_PKID_37>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_37>

Q38 : Do you agree with this analysis from the ESAs? If yes, what are your views on the extent to which fees related to the management of the underlying real estate assets, i.e. the properties themselves, should be taken into account in the calculation of the cost indicators?

<ESA_QUESTION_PKID_38>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_38>

Q39 : Do you agree with the ESAs' preferred option 3 to revise the cost tables?

<ESA_QUESTION_PKID_39>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_39>

Q40 : If not, which option do you prefer, and why?

<ESA_QUESTION_PKID_40>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_40>

Q41 : In particular, do you think that the proposed changes to the presentation of the impact of costs on the return in percentage terms (i.e. including reduction in return before and after costs) is an improvement on the current presentation?

<ESA_QUESTION_PKID_41>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_41>

Q42 : Do you have other comments on the proposed changes to the cost tables?

<ESA_QUESTION_PKID_42>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_42>

Q43 : What are your views on the appropriate levels of these thresholds? Please provide a justification for your response.

<ESA_QUESTION_PKID_43>
We are extremely disappointed that ESAs have only allocated one question in the entire consultation to transaction costs methodology. As such, we will be using this question to raise our overall feedback on the proposals on transaction costs.

In previous consultations, we have noted our disagreement with the ‘slippage cost methodology’ as the means to calculate implicit transaction costs as we do not believe that it gives an accurate picture of the true costs incurred. We would like firmly to reiterate the same sentiment in this consultation. Apart from the fact that the use of this methodology does, in certain circumstances, lead to negative transaction costs, slippage costs cannot be relied on in estimating future costs as they are largely sensitive to trading styles and strategies, the particular benchmark used, and, for some instruments (e.g. derivatives), the availability and reliability of intra-day prices.

Between the two options proposed in the consultation, our preference is a modified version of Option 1. We support the new proposal for transactions executed on an over-the-counter basis. However, we reject the continued use of ‘slippage cost methodology’ for all other transactions. We also strongly disagree with the introduction of minimum zero cost floor as we believe this is just a mechanism to conceal the flaws with the use of the methodology. More importantly, we do not see how this proposal reconciles or aligns with our NCA’s (FCA) recommendation that firms should adopt a ‘holistic’ approach in costs and charges disclosure. Applying this approach would further exacerbate the diverging disclosures due to inconsistent calculation methodologies. We also find the introduction of a volume threshold problematic as it could lead to unintended consequences primarily in relation to a change in market behaviour just so that the threshold is not breached.

<ESA_QUESTION_PKID_43>

Q44 : If UCITS would fall in the scope of the PRIIPs Regulation, do you agree that the coexistence of the UCITS KII (provided to professional investors under the UCITS Directive) and the PRIIPs KID (provided to retail investors under the PRIIPs Regulation) would be a negative outcome in terms of overall clarity and understandability of the EU disclosure requirements? Are you of the view that the co-legislators should therefore reconsider the need for professional investors to receive a UCITS KII, as the coexistence of a PRIIPs KID together with a UCITS KII (even if not targeted to the same types of investors) would indeed be confusing, given the differences in the way information on costs, risks and performance are presented in the documents? Alternatively, are you of the view that professional investors under the UCITS Directive should receive a PRIIPs KID (if UCITS would fall in the scope of the PRIIPs Regulation)?

<ESA_QUESTION_PKID_44>
In response to the ESAs previous consultation, we questioned the assumption that professional investors may still be provided with a KIID. We believe that it is highly unlikely that professional investors will require a key information document as they are more than capable of understanding complex information. In fact, from an 'appropriateness' perspective we are permitted to assume that **a professional client has the necessary experience and knowledge to understand the risks involved in relation to the particular investment product**. Keeping the requirement to provide KIID to professional investors would just mean unwarranted resources being spent by management companies to produce two KI(I)Ds. To this end, we propose that this requirement is taken out once the UCITS exemption expires.
<ESA_QUESTION_PKID_44>

Q45 : What are your views on the issue mentioned above for regular savings plans and the potential ways to address this issue?

<ESA_QUESTION_PKID_45>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_45>

Q46 : Do you agree that these requirements from Article 4 should be extended to all types of PRIIPs, or would you consider that it should be restricted to Management Company of UCITS or AIFs?

<ESA_QUESTION_PKID_46>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_46>

Q47 : Do you agree that this requirement should be extended to all types of PRIIPs, or would you consider that it should be restricted to Management Company of UCITS or AIF?

<ESA_QUESTION_PKID_47>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_47>

Q48 : Do you agree that these requirements should be extended to all types of PRIIPs, or would you consider that they should be restricted to the Management Company of the UCITS or AIF?

<ESA_QUESTION_PKID_48>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_48>

Q49 : Do you have any comments on the proposed approaches in relation to the analysis and proposals in this Section, and in particular on the extent to which some of the abovementioned requirements should be extended to other types of PRIIPs?

<ESA_QUESTION_PKID_49>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_49>

Q50 : Do you think this proposal would be an improvement on the current approach?

<ESA_QUESTION_PKID_50>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_50>

Q51 : Do you envisage significant practical challenges to apply this approach, for example for products which allow the investor to choose between a wide range or large number of options?

<ESA_QUESTION_PKID_51>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_51>

Q52 : Do you see any risks or issues arising from this approach in relation to consumer understanding, for instance whether the consumer will understand that other combinations of investment options are also possible?

<ESA_QUESTION_PKID_52>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_52>

Q53 : Do you think this proposal would be an improvement on the current approach?

<ESA_QUESTION_PKID_53>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_53>

Q54 : Are there other approaches or revisions to the requirements for MOPs that should be considered?

<ESA_QUESTION_PKID_54>
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<ESA_QUESTION_PKID_54>

Q55 : Do you have any comments on the preliminary assessment of costs and benefits?

<ESA_QUESTION_PKID_55>
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<ESA_QUESTION_PKID_55>

Q56 : Are you able to provide information on the implementation costs of the proposed changes, in particular regarding, (1) the proposed revised methodology for performance scenarios (using a reference rate and asset specific risk premia), and (2) the overall changes to the KID template?

<ESA_QUESTION_PKID_56>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_56>

Q57 : Are there significant benefits or costs you are aware of that have not been addressed?

<ESA_QUESTION_PKID_57>
TYPE YOUR TEXT HERE
<ESA_QUESTION_PKID_57>