

## PS17/6: Disclosure rules following application of PRIIPs Regulation

### Background

The Packaged Retail and Insurance-based Investment Products ('PRIIPs') Regulation, and the need to consider the provision of a Key Information Document (KID), will apply from 1 January 2018.

### Requirement

The PRIIPs Regulation – which applies to both PRIIPs 'manufacturers' and to those that advise on or sell such products - requires the provision of a Key Information Document (KID) in accordance with Articles 5 and 13 of the PRIIPs Regulation:

"Before a PRIIP is made available to retail investors, the PRIIP manufacturer shall draw up for that product a key information document in accordance with the requirements of this Regulation and shall publish the document on its website"; and

"A person advising on, or selling, a PRIIP shall provide retail investors with the key information document in good time before those retail investors are bound by any contract or offer relating to that PRIIP".

The format of the KID, including a template, is set out in Regulatory Technical Standards 2017/653. The FCA's Policy Statement (PS 17/6) gives further guidance on this including at Annex 2, the type of products in scope of PRIIPs which may include Alternative Investment Funds ('AIFs') as defined.

A PRIIPs manufacturer may also therefore include an AIFM.

A link to the Policy Statement is contained [here](#).

### What is a PRIIP?

The definition of 'PRIIP' is quite broad. It is basically an investment where the amount repayable to the investor "is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor".

As such, not only do AIFs and UCITS fall within the definition (note that UCITS will not be subject to PRIIPs until 2019 – see below) but also options, futures and contracts for difference.

## Who is a 'retail' investor?

A 'retail investor' under the PRIIPs Regulation is a 'retail client' as defined under MiFID II i.e. "a client who is not a professional client". Professional clients are defined under COBS 3.5 and included both 'per se' and 'elective' professional clients.

Therefore apart from 'ordinary' retail investors, this will now also capture other types of investors such as high net worth individuals, sophisticated investors and employees of an AIFM - unless these investors can be categorised under [COBS 3.5](#) as professional clients.

PS 17/6 makes further reference to this in relation to AIFs 'being made available to retail clients' at Sections 2.17 and 2.18.

## Who is a PRIIPs 'manufacturer'?

The PRIIPs Regulation defines a 'PRIIP manufacturer' as "any entity that manufactures PRIIPs". Fortunately, elsewhere the Regulation provides examples of PRIIP manufacturers "such as fund managers, insurance undertakings, credit institutions or investment firms".

Typically, the 'manufacturer' of a fund would be the AIFM or UCITS Management Company. However, any entity that makes changes to an existing PRIIP "including, but not limited to, altering its risk and reward profile or the costs associated with an investment in a PRIIP" will also be a 'manufacturer' under the PRIIPs Regulation.

## Additional guidelines

The European Commission has also published Guidelines on the application of the KID to assist firms and clarifies areas such as:

- Even if a PRIIP is sold exclusively by persons other than the PRIIP manufacturer, the latter is required to prepare and publish a KID on its website.
- A KID must be a maximum of three sides of A4 when printed.
- PRIIPs established outside of the European Union are subject to the KID obligation when made available to retail investors within the European Union.
- Where a PRIIP is only made available outside the European Union, no KID is required.
- No adaptation to the KID, including titles and sequence of sections, is permitted.

## UCITS and NURS

For the record, under Article 32(1) a UCITS management company is currently exempt from the PRIIPs Regulation under transitional arrangements as it is considered broadly

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equivalent appropriate disclosure arrangements exist for the time being under UCITS. Transition arrangements will be in place until 31 December 2019 and instead such firms must continue to publish a key investor information document (in line with COLL 4.7) until that date.

Under Article 32(2) the manager of a non-UCITS retail scheme ('NURS') has the option of either producing a KID in accordance with the PRIIPs Regulation or continue with a NURS key investor information document until the same transition date as for UCITS funds.

## **Next steps**

Any entity which currently acts as an AIFM (or 'sells' an AIF) should consider their position under PRIIPS and ensure that they comply from 1 January 2018. This means that any future new investors in an AIF must satisfy the FCA COBS 3.5 definition of 'professional investors' or otherwise, this could mean that such funds are determined as 'being made available' to retail investors (regardless of caveats to the contrary). If so, a KID has to be produced and made available to such new investors along with all other relevant fund documentation prior to investment.

Any entities that believe that they may be affected by the PRIIPs regulations are encouraged to contact fund legal advisers as soon as possible to confirm fund specific requirements. AIFMs should also consider the position where sub-managers or advisers are involved in 'advising or selling' an AIF to ensure that they are also aware of the requirements regarding professional investor categorisation and/or provision of a KID as appropriate.

*This note is intended as a summary only. It is not full and/or firm specific advice and it is the responsibility of each regulated firm to ensure they fully consider relevant FCA publications.*

*For further information, please contact Gem Compliance Consulting Ltd.*