

Notes on CP 16/18 – Changes to disclosure rules in the FCA Handbook to reflect the PRIIPs Regulation

The timing of the FCA's [Consultation Paper](#) means it couldn't ignore the possible impacts of Brexit on the launch of PRIIPs in the UK. Two statements in the introduction make the situation very clear: "The UK will be obliged to enforce EU Regulations for as long as the UK remains a member of the EU" and "As a regulation, the PRIIPs Regulation is directly applicable without any additional domestic legislation being passed".

The CP proposes a number of policy decisions and Handbook changes and it is fair to assume that, unless there are major objections, they will be adopted as is. There is not much cause for concern in the CP, other than in respect of the scope, so we offer the following summary mostly as confirmation or clarification.

SCOPE – Paras 2.5 to 2.15

As has been the case since the PRIIPs Regulation was published, the scope is still far from straightforward, but Paras 2.8 and 2.10 attempt to add some clarity by listing those products the FCA considers are clearly either in or out of scope, but around those paragraphs are still ambiguities – "consideration of the actual terms of the specific product may be needed" (2.7) and "the scope of the PRIIPs Regulation may alter over time" (2.11).

There is some ambiguity around the treatment of Investment Trust Savings Schemes (ITSS). Para 2.8 includes both "securities in an investment trust that are held directly by the investor" and "investment trust savings schemes that allow shares/securities on investment trusts to be held in a managed account" in the list of products in scope. But Para 3.13 says "the underlying investment trusts held within an ITSS will be PRIIPs". We have sought advice from industry bodies on whether we should treat both the shares and any form of savings plan for investment trusts as PRIIPs.

There also appears to be a mismatch between the FCA and European regulators, as Para 2.8.8 includes some non-pension annuities. However, at the European Commission workshop on PRIIPs implementation on 11 July, the regulators said a KID is only suitable for the "saving phase", so annuities are out of scope; in short, "it doesn't work" for annuities.

NURS FUNDS – Paras 3.16 to 3.25

The CP clears up the confusion surrounding the position until 31 December 2019 on whether it is KIIDs or KIDs for NURS funds in general and property NURS funds in particular.

Because NURS funds are covered in the new COLL 4.7, there will be no further need for a Modification by Consent waiver to issue a NURS-KII. Waivers will expire on 30 December 2016, and managers of NURS funds will be able to issue either KIDs or NURS-KIIs.

NURS fund managers have the option (not available to UCITS ACDs) to make the transition from NURS-KII to KID any time before December 2019.

COLL 4.7.3A(5) explains how property NURS funds will deal with the lack of an SRRI, but it is clearly the intention to include them in the exemption from KIDs.

DISCLOSURE REQUIREMENTS FOR VARIOUS PRODUCT TYPES

– Paras 3.12 to 3.36 and 3.51 to 3.55

The NURS-KII and, with effect from 31 December 2016, the KID replace the Simplified Prospectus or KFD currently produced by firms for packaged products, so neither of these documents will be permissible in future. Non-PRIIP packaged products will continue to need both a KFD and KFI.

Whether **Investment Trust Savings Schemes** are in or out of scope of PRIIPs (see “Scope”, above), the CP states they will no longer need a KFD, but they have the option of producing a combined information document; the Investment Trusts themselves are PRIIPs and will issue KIDs. **Structured products** no longer need to produce KFIs, as they are superseded by KIDs. A **feeder NURS fund** issuing a KID needs to signpost the necessary information for the master fund; if issuing a NURS-KII, it must comply with the UCITS Directive.

The use of personalised projections is seen as helpful to retail customers and the FCA proposes to permit (but not require) their continued use in line with COBS 13.5.

THIRD COUNTRY ISSUES – Paras 3.39 to 3.45

The FCA’s proposal is consistent with that outlined at the recent EC workshop. The driver for a KID is the location of the retail client, not the manufacturer, so a non-EEA PRIIP manufacturer or distributor must produce a KID if selling to EEA retail clients. On the other hand, an EEA manufacturer or distributor does not need a KID to sell PRIIPs outside the EEA.

UCITS V REMUNERATION POLICY – Para 3.23

In line with UCITS KIIDs, NURS-KIIs need to include (by 18 March 2017) a statement about the firm’s remuneration policy. However, as AIFMD has no requirement for website publication, the disclosure will need to say that investors can receive a copy of the remuneration policy on request.

RESPONDING TO THE CP

There are 17 questions in all, mostly seeking agreement with the FCA’s proposals. Given the short time to the implementation of the PRIIPS Regulation, the consultation period is only two months, so the deadline is 19 September. The FCA will issue a Policy Statement making final rules in November.

If you require further information please get in touch with us by calling 020 7337 2291 or by email at fe-kiihub@financialexpress.net.

21st July 2016