

Are PRIIPs back on track with a new RTS?

After many weeks of complete silence, the European Commission published its (presumably) final version of the PRIIPs Regulatory Technical Standards (RTS) on 8 March, almost meeting its self-imposed deadline of adopting them by the end of February.

Many companies have understandably put PRIIPs on hold and chosen to focus on MiFID II, since the three European Supervisory Authorities (ESAs) refused to support the Commission's earlier version of the RTS just before Christmas. While there is little surprise in the new RTS, and we need to wait for the Level 3 guidance on how some of it will work in practice, there is a lot of work to do before KIDS can be delivered at the end of the year. So we strongly recommend that PRIIPs is brought back onto everyone's agenda.

What have we learned from the RTS and what are we still waiting for?

The European Parliament had objected to the earlier RTS on three grounds:

- Multi Option PRIIPs (MOPs) and the exemption for UCITS funds;
- The performance scenarios, as the original methodology has been shown to be potentially too optimistic ; and
- Clarity over when a comprehension alert would be required.

Not surprisingly, the changes to the RTS focus on getting these three areas right, so the European Parliament and Council will give them the go-ahead next time.

MOPS/UCITS

The Regulation specifically gives UCITS (and NURS funds that issue a UCITS-type KIID) an exemption until the end of 2019. Where an investor can select a UCITS fund as a direct investment within a MOP, the UCITS KIID may now be used as the fund guide if the MOP manufacturer chooses to go down the 'generic KID + fund guide' route.

This still leaves two concerns over the UCITS exemption. First, it only applies where the investor can make the fund choice, not if inclusion of the UCITS fund is part of the PRIIP design and, second, the MOP KID still needs to show the range of risks and costs for all the underlying funds. So it will need to show a combination of UCITS SRRIs and PRIIP SRIs on the same visual, which will be misleading and meaningless.

Performance

As the ESAs had rejected the Commission's suggestion of having a 0% return at the heart of the performance scenarios, the Commission has now reverted to the original (too optimistic) favourable, moderate and unfavourable scenarios, but added a compulsory fourth "stress" scenario, which will show "significant unfavourable impacts of the product not covered in the unfavourable scenario".

An additional scenario will still be required for insurance products, to show what happens in the event of a claim.

Comprehension alert

The definition of PRIIPs that need a comprehension alert is now linked directly to IDD or MiFID II, as appropriate. If a product cannot be classed as non-complex using either Article 30(3) of IDD or Article 25(4)(a) of MiFID II, it needs an alert in the “What is this product?” section of the KID.

Instances where clarity is still needed include those in the recitals of the RTS where there is no detail in the articles themselves.

For example, Recital 22 says that, where possible, manufacturers should inform existing investors when a KID has been revised. However, at the Commission seminar last July in Brussels, the advice was that, as this was only a recital, it was not binding, but represented good practice.

How does that concept of good practice translate to Recital 18, about MOPs, which requires that “the specific information on the underlying investment options [in the fund guide] should always reflect the features of the PRIIP through which the underlying investment options are offered”? It can’t be left to companies to decide, on the basis of good practice, whether or not a fund guide includes any risks or costs that apply at the product level. We have suggested for a long time that the product KID should explain that, as with the returns, the risks and costs will depend on the investor’s choice of funds and the fund guide should be what it says on the tin – a fund guide.

The assumption is that the Commission has been discussing the RTS with MEPs to make sure there is no risk of them being rejected by the Parliament again, but the ESAs may want to play it safe and not issue any Level 3 guidance/Q&As until that hurdle has been cleared. This could take up to three months, meaning almost the middle of the year. The hope is that it can fast-tracked, so the guidance can give greater clarity on the outstanding questions in time for everyone to meet the 1 January 2018 deadline for issuing their first KIDs.

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

10th March 2017