

PRIIPS - FCA'S DISCLOSURE RULES - IMPLICATIONS FOR FUND MANAGERS

On 2 May 2017 the FCA published [Policy Statement PS 17/6](#) (PS) on its disclosure rules for Packaged Retail and Insurance-based Investment Products (PRIIPs).

These disclosure requirements have implications not just for providers of retail products, but also for operators of private funds, depending upon the profile of their investor base.

PURPOSE

The PS sets out the final FCA rules and guidance to sit alongside [The PRIIPs Regulation](#) (EU 1286/2014) and the associated Regulatory Technical Standards, which lays out the form and content of the PRIIP Key Information Document (KID). This package will take effect on 1 January 2018. After that date firms will have to provide a KID for each PRIIP which they make available.

Which firms are affected?

The PRIIPs Regulation, and therefore the PS, are relevant for firms that manufacture, advise on, or sell retail investment products that fall within the scope of the PRIIPs Regulation. This therefore includes all types of fund managers (from UCITS managers to hedge fund and private equity managers) and distributors (from platforms to placement agents).

Which products are caught?

The PRIIPs Regulation covers investments where, regardless of the legal form, the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or to the performance of one or more asset which is not directly purchased by the retail investor.

The PS includes lists of products that FCA considers to be PRIIPs and non-PRIIPs:

PRIIP	NON-PRIIP
Packaged retail products such as regulated funds (including NURSSs and QISs)	Non-life insurance products
Alternative investment funds including unregulated collective investment schemes (CISs) such as unauthorised unit trusts, private equity funds and hedge funds	Deposits (except for structured deposits)
Unregulated CISs that are not alternative investment funds	Pensions

Alternative investment funds that are not CISs such as investment trusts and venture capital trusts, EuSEFs and EuVEcAs	Annuities
Insurance-based investments, structured products, derivatives, and investments issued by some special purpose vehicles	Debt securities
	Investment trust savings schemes
	Individual Savings Accounts

UCITS operators will be required to replace their UCITS KIIDs with PRIIPs KIDs after a transitional period.

Implications for private funds

The PRIIPs Regulation may be relevant for operators of private funds, including hedge funds, private equity funds and other alternative funds, which raise money from high-net-worth or sophisticated individuals (including their staff, friends and family) or from public authorities.

The PRIIPs Regulation only applies where a PRIIP is being offered / sold / made available to a retail investor, which is any investor who is not a professional investor.

The full MiFID definition of professional client applies. Most private fund managers "opt up" high-net-worth or sophisticated individuals to become professional clients. This is straightforward provided they are satisfied that the investor is capable of making his/her own investment decisions and understanding the risks involved in the investment (known as the "qualitative test").

However, for the purposes of assessing whether an investor is a professional client for purposes of the PRIIP Regulation, the qualitative test alone is not enough. Investors must also meet two out of three limbs of a more onerous "quantitative test". Broadly the limbs are: (i) the investor has carried out ten similar transactions per quarter over that last year; (ii) the investor's portfolio exceeds €500,000; and (iii) the investor works in the industry with knowledge of similar transactions.

It may be hard for high-net-worth or sophisticated investors to meet the quantitative test, and so a greater number of individuals than expected will not fall within the professional client definition and will therefore be considered retail investors for the purposes of the PRIIP Regulation.

As such, managers may be marketing to investors that meet the qualitative test and so can be considered “elective professional clients” but who do not meet the quantitative test and so are considered retail investors for the purposes of the PRIIPs Regulation.

Subject to any further clarification from the Commission or ESMA, the FCA's view is that **the PRIIPs Regulation applies to non-EEA managers or distributors** making PRIIPs available to retail clients in the EEA.

What are the sanctions for non-compliance?

Managers failing to produce KIDs will be subject to the standard range of regulatory sanctions. In addition, managers may face damages claims from investors for loss caused by reliance on inaccurate or misleading KIDs.

The KID

Each KID will need to be no more than three pages long and contain specified information, presented in a pre-determined sequence. Firms will need to give information about the PRIIP under sections entitled:

- ◆ What is this product?
- ◆ What are the risks and what could I get in return?
- ◆ What happens if [name of the PRIIP manufacturer] is unable to pay out?
- ◆ What are the costs?

- ◆ How long should I hold it and can I take money out early?
- ◆ How can I complain?
- ◆ Other relevant information

What happens after Brexit?

The FCA envisages that following Brexit the PRIIPs Regulation will form part of the body of EU legislation that will be converted into UK law.

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MAY 2017

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