

PRIIPs - Proposed scope rules and amendments to Regulatory Technical Standards

Consultation Paper

CP21/23***

July 2021

How to respond

We are asking for comments on this Consultation Paper (CP) by **30 September 2021**.

You can send them to us using the form on our website at: www.fca.org.uk/cp21-23-response-form

Or in writing to:

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Contents

1	Introduction	3
2	Proposed rules clarifying the scope of the PRIIPs regime in the UK	9
3	Information on performance and overall risk	14
4	Technical amendments to transaction costs disclosure requirements	20
Annex 1		
	Cost Benefit Analysis	24
Annex 2		
	Compatibility Statement	33
Annex 3		
	Questions in this paper	37
Annex 4		
	Abbreviations in this document	39
Appendix 1		
	Draft Handbook Text and draft changes to RTS	

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1 Introduction

Why we are consulting?

- 1.1** We are seeking views on proposed targeted amendments to address concerns with the Packaged Retail and Insurance based Investment Products (PRIIPs) disclosure regime. Specifically, we are proposing amendments to address the lack of clarity on the PRIIPs scope, misleading performance scenarios and summary risk indicators, and address concerns with elements of the transaction costs calculation methodology.
- 1.2** Our proposals on clarifying the scope of the regime and on performance information follow recent enabling legislative changes made as part of the Financial Services Act 2021. The other proposals exercise our pre-existing power to amend technical standards, which amendments to the Financial Services and Markets Act 2000 (FSMA) gave us following the UK's exit from the European Union (EU).
- 1.3** Our proposals in this CP are focused on addressing the areas of the Regulation that pose the most harm to consumers.

Key definitions

- 1.4** Regulation (EU) no 1286/2014 on key information documents for packaged retail and insurance-based investment products (**the PRIIPs Regulation**) came into force on 1 January 2018. It requires those who produce, advise on or sell packaged retail and insurance-based investment products (**PRIIPs**) to prepare and provide retail investors with a standardised 3-page Key Information Document (**KID**). This must be in line with prescriptive requirements set out in delegated regulation (EU) 2017/653, which lays down regulatory technical standards (**RTS**).
- 1.5** In this consultation paper, we use the PRIIPs Regulation and the PRIIPs RTS to refer to the onshored (ie domestic) text unless otherwise indicated.

Background

- 1.6** The PRIIPs Regulation was developed to improve investor protection and rebuild the confidence of retail investors in the financial market, in particular in the aftermath of the financial crisis. Its main aim is to improve the transparency of information about packaged investment products, which can be complex and difficult for investors to understand and evaluate. Through the KID it intended to help encourage informed decision making and a more level playing field between different products and distribution channels.

- 1.7** We have always supported the aims of the PRIIPs regime. But we have been aware for some time of serious concerns about areas where the PRIIPs framework does not seem to work as intended.
- 1.8** To better understand these concerns, in July 2018 we published a Call for Input (Cfi) seeking views and evidence on market participants' initial experiences of the requirements introduced by the PRIIPs Regulation. We subsequently published the findings gathered via the Cfi in a Feedback Statement (FS) FS19/1, where we summarised the responses.
- 1.9** Respondents expressed serious concerns about lack of clarity on the scope of application of the PRIIPs regime, in particular in the corporate bond market. They were concerned about the methodologies for producing performance scenarios and summary risk indicators, which are prescribed in the RTS, resulting in misleading information being presented in the KID for some products.
- 1.10** Before the UK left the EU we were severely limited in what we could do to address the serious concerns identified as part of the Cfi and FS, in particular about the uncertainty around scope and unintended effects of certain PRIIPs requirements which pose a risk of consumer harm.
- 1.11** At that time the European Supervisory Authorities (ESAs) were reviewing the PRIIPs RTS. We acted as key contributors to this review and used the evidence we gathered via the Cfi and FS to engage with and influence the EU review process throughout 2019 and 2020.

Implications of EU withdrawal

- 1.12** Since the UK's exit from the EU on 31 January 2020 the PRIIPs Regulation and RTS were converted into domestic law via the European Union (Withdrawal) Act 2018. This also gave powers to Ministers to make secondary legislation to amend retained EU law to ensure it functions effectively after exit.
- 1.13** The Treasury's Packaged Retail and Insurance-based Investment Products (Amendment) (EU Exit) Regulations 2019 (SI 2019/403, as amended by SI 2020/628 and other instruments) introduced amendments to make the European text work in the domestic context. It did this, for example, by transferring the functions and powers of the European Commission and the ESAs to relevant UK authorities and by amending the territorial scope of the retained PRIIPs regime so it only applies to PRIIPs sold to retail investors in the UK.
- 1.14** EU and EEA manufacturers and distributors which currently manufacture and market PRIIPs into the UK and wish to continue operating in the UK will be subject to the PRIIPs Regulation as amended by domestic legislation. We intend that our amendments and rules will apply to those firms in the same way that they apply to UK businesses.
- 1.15** The Treasury has tasked us with amending and maintaining EU binding technical standards such as the PRIIPs RTS. These rules sit underneath EU regulations and directives and provide technical detail on how those requirements must be met. So our power to amend the PRIIPs RTS is constrained by provisions in the PRIIPs Regulation

setting out what the RTS must specify. In addition, the scope of the PRIIPs Regime is set out in the PRIIPs Regulation rather than the RTS.

Recent enabling legislative changes

- 1.16** In July 2020, the Treasury outlined its intention to bring forward legislation to improve the functioning of the PRIIPs regime in the UK to avoid consumer harm and provide the appropriate certainty to industry once the UK ceased to be bound by the EU regime. The legislative changes have been completed as part of the Financial Services Act 2021. Among other things, this has introduced a new power (a new article 4A inserted in the PRIIPs Regulation) for the FCA to make rules specifying whether a product, or category of product, falls within the definition of a PRIIP under the PRIIPs Regulation.
- 1.17** The Act also amended the requirement in article 8 of the PRIIPs Regulation for the KID to contain 'performance scenarios' to be produced and presented in the manner specified in the RTS. The Regulation now provides a broader and more flexible requirement for 'information on performance' (again, as specified in the RTS). This gives us room to explore different options for how PRIIPs manufacturers can produce and present this kind of information to potential investors in the KID while reducing as much as possible the risk that this information is misleading or has misleading effects on consumers.
- 1.18** These enabling legislative amendments came into force on [1 July 2021]. We are consulting now in preparation for making rules and RTS amendments in line with these amendments.

What are we consulting on

- 1.19** This consultation sets out our proposals to address the most serious and persistent concerns identified in our Call for Input and ongoing supervision of the regime. Our proposals would:
- a.** introduce rules to clarify the scope of the PRIIPs Regulation in relation to corporate bonds, making it clearer that certain common features of these instruments do not make them into PRIIPs
 - b.** introduce interpretative guidance to clarify what it means for a PRIIP to be 'made available' to retail investors
 - c.** amend the PRIIPs RTS to:
 - i.** replace the requirement and methodologies for presentation of performance scenarios in the KID with a requirement for narrative information on performance to be provided;
 - ii.** address the potential for some PRIIPs to be assigned an inappropriately low summary risk indicator in the KID;
 - iii.** address concerns pertaining certain applications of the slippage methodology when calculating transaction costs
- 1.20** We set out details of the proposals we are consulting on in Chapters 2, 3 and 4.

Who will be interested in this consultation?

1.21 This consultation will be of particular interest to:

- consumers and consumer organisations
- those who manufacture PRIIPs and those who advise on or distribute PRIIPs, including:
 - issuers of securities that are or may be classed as PRIIPs (including businesses that do not require Part 4A authorisation under FSMA)
 - life companies and discretionary investment management firms
 - firms providing services in relation to insurance-based investments
 - fund managers, wealth managers and financial advisers
 - stockbrokers and other firms that provide advice to retail clients on funds
 - issuers of structured products and derivatives
 - firms operating retail distribution platforms

Application of our changes to regulated investment funds

1.22 Although UK undertakings for collective investment in transferable securities (UCITS) schemes (including Exchange Traded Funds that are UCITS schemes) are investment products that fall within the definition of a PRIIP, an exemption applies to them. A similar exemption applies to non-UCITS retail schemes (NURS) if the fund manager opts to use a NURS-KII document instead of a PRIIPs KID. So, the amendments that we are making to the requirements in the PRIIPs Regulation will not apply immediately to such schemes.

1.23 In relation to such schemes, firms will need to continue to apply the existing Key Investor Information Document (KIID) requirements in the UCITS Directive until 31 December 2026 in line with the 5-year extension to the exemption which the HM Treasury announced in June 2021.

1.24 The Financial Services Act 2021 makes provision for a new Overseas Funds Regime which will allow designated categories of non-UK funds to be marketed to retail investors in the UK. The proposals in this paper do not apply to the OFR. We will consult separately in due course on pre-sale disclosure requirements for non-UK funds that become recognised under the OFR.

1.25 Apart from EEA UCITS, overseas funds that are individually recognised under section 272 of FSMA are currently treated as PRIIPs and the proposals in this paper apply to them. The current exemption from the requirement to produce a PRIIPs KID in article 32 of the PRIIPs Regulation also applies to any EEA UCITS which may be recognised under section 272.

Outcomes we are seeking

1.26 Our proposals aim to mitigate potential harm to retail investors, in particular those buying PRIIPs without advice and who may not sufficiently understand the main features of the options they are considering or how they might compare in terms of

risk, costs, and potential rewards. The changes we are proposing should mitigate the risk these consumers suffer unexpected investment losses or forego the benefits of making a better-informed investment choice, thus advancing our consumer protection and competition objectives.

- 1.27** Our proposals should address the existing conflict between PRIIPs requirements which on the one hand require PRIIPs manufacturers to ensure the information in the KID is accurate, clear, fair and not misleading while at the same time prescribing the production and presentation of information on performance and risk which, in some cases, can be seriously misleading.
- 1.28** Our proposals are also intended to help promote liquidity and choice in the retail market for corporate bonds and other less complex securities by reducing legal uncertainty about when an issuer is required to produce a KID, further contributing to the advancement of our objective to promote competition in the interests of consumers.
- 1.29** If our proposals are implemented, we propose to evaluate their effectiveness through engagement with industry and consumer bodies. We would expect to see better quality information in the KIDs offered to investors and would hope to hear from investment manufacturers and distributors that might previously have been hesitant to make their products available to retail investors where those products are potentially a good option for them.

The wider context to this consultation

- 1.30** The FCA's Business Plan 21/22 set out our aim to build on our existing programme of work to change the consumer investment market so that consumers have access to investment products that are appropriate, they can make effective decisions and the firms we authorise operate to high standards. We subsequently published the Consumer Investments Call for Input which highlighted areas where the consumer investment market is not working well for customers and sought views on what changes we can make to improve it.
- 1.31** Additionally, in our recent discussion paper 'Strengthening our financial promotion rules for high-risk investments and firms approving financial promotions' we are seeking views on the classification of high-risk investments. We are also seeking views on how to further segment high-risk investments from the mainstream investment market with the aim of improving the ability of consumers to make effective investment decisions.
- 1.32** The disclosure requirements are an important part of this and consumers should have confidence in disclosure regimes such as PRIIPs. Furthermore, our work on the new Consumer Duty highlights the importance of communication through disclosure and aims to be give consumers the information they need, at the right time, and present it in a way they can understand. This consultation aims to make targeted amendments that will improve the efficacy of the regime and build that confidence.

- 1.33** This consultation is the first step that we are taking to improve disclosure in the consumer investment space. HMT have indicated an intention to “conduct a more wholesale review of the disclosure regime for UK retail investors” in their [PRIIPs policy statement published on 31 July 2020](#). We intend to work closely with HMT as part of this review.

Equality and Diversity

- 1.34** We have considered the equality and diversity issues that may arise from the proposals in this CP.
- 1.35** Overall, we do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010. But we will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when making the final rules. In the meantime, we would welcome your input to this consultation.

Next steps

- 1.36** We want to know what you think of our proposals. Please send us your comments by 30 September 2021 using the online response form on our website or by emailing us at the address on page 2.
- 1.37** Subject to the feedback to this consultation, we plan to make final rules on scope, issue guidance on what we deem ‘made available’, and amend the PRIIPs RTS before the end of 2021. We currently intend these changes will come into effect on 1 January 2022.

2 Proposed rules clarifying the scope of the PRIIPs regime in the UK

- 2.1** The PRIIPs Regulation applies to all PRIIP manufacturers, and advisers or distributors offering PRIIPs to consumers in the UK, irrespective of whether the business is engaging in financial services activities requiring authorisation under FSMA.
- 2.2** If an investment falls within the definition of a PRIIP and is going to be offered to retail investors in the UK, then the manufacturer (eg the issuer) of that investment must draw up and publish a KID on its website before the product can be sold to retail investors.
- 2.3** Firms advising on or selling PRIIPs are generally also required to provide the KID to the retail investor in good time before they purchase the investment.

Scope of the PRIIPs regulation

- 2.4** The PRIIPs Regulation sets out a broad definition of what kind of investment is a PRIIP at article 4. In summary, article 4 of the PRIIPs regulation defines a PRIIP as one or both of a packaged retail investment product (**PRIP**) or an insurance-based investment product (**IBIP**), as follows:
- a.** a PRIP is an investment where, regardless of its 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 assets that are not directly purchased by the retail investor (art. 4(1))
 - b.** an IBIP is an insurance product which offers a maturity or surrender value which is wholly or partially exposed, directly or indirectly, to market fluctuations (art. 4(2))
- 2.5** Applying these definitions is unproblematic for many investments whose status as a PRIIP is generally uncontroversial, for example:
- investment funds (though UCITS and NURS funds are currently exempt and subject to the UCITS disclosure regime for the time being)
 - securities which are structured products
 - structured deposits
 - derivatives, such as options, futures, and contracts for differences
 - certain non-pension annuities
 - insurance-based investment products such as unit-linked, with-profits and Holloway sickness policies
- 2.6** Similarly, it is clear enough that many types of investment are not PRIIPs, either because they are specifically carved out under article 2 of the PRIIPs Regulation or because they clearly do not meet the criteria for the PRIIPs definition(s) in Article 4, for example:
- general insurance and pure protection policies
 - deposit products that are not structured deposits
 - pension products

- individual savings account (ISA) wrappers (though investments held within an ISA may be PRIIPs)
- ordinary shares in a company
- sovereign bonds
- plain vanilla, fixed-rate debt securities

Where the scope requires clarification

- 2.7** In relation to several investments, however, it is less clear whether they are within scope of the PRIIPs Regulation. Through evidence we gathered as part of our Cfl, we understand this problem has been felt particularly keenly in the corporate bond market. In particular in relation to debt securities which are not necessarily complex but include commonly used features such as issuer calls (make whole) and change of control puts. Arguably, these features make the amount repayable to the investor subject to fluctuations and so within scope of PRIIPs.
- 2.8** Concerns have also been raised about uncertainty surrounding the application of the PRIIPs regime to 'legacy' products issued before the PRIIPs regulation came into force in 1 January 2018, but which may still be available for trading on secondary markets.
- 2.9** We understand many issuers may have taken a conservative interpretation of the regulation and either taken on the cost of producing a KID for their product where perhaps none was required, or else taken steps to limit access to their securities to non-retail investors only. Feedback to our Cfl suggests distributor firms may be excluding retail investors from access to dealing services for certain investments on the grounds that they may be PRIIPs and so would be required to produce a KID where the obligation did not previously exist, for example tranches of bonds issued before 2018.
- 2.10** Stakeholders suggested there has been a marked reduction in the number and overall volume of low denomination issuances of debt securities since the PRIIPs regime has come into force. They noted that issuers outside the financial services industry were seen as particularly likely to withdraw from retail markets. While these observations are difficult to test, they are concerning and suggest that retail investors may be experiencing a degree of loss of liquidity and choice in secondary markets.
- 2.11** In a bid to make the scope of the regulation clearer, the ESAs on 24 October 2019 issued a Joint ESA Supervisory Statement conveying their view that perpetual, subordinated, fixed rate and puttable bonds (meaning debt securities in general) were not PRIIPs. Also, that some variable and callable bonds were not PRIIPs, depending on the nature of their features.
- 2.12** While generally welcomed by stakeholders, this statement is not binding. We understand that stakeholders are still reluctant to issue corporate bonds to retail investors, given the potential severity of the legal risks if an issuer fails to supply a KID for a product in scope of the Regulation.

Proposed scope rules

- 2.13** We are very concerned about the apparent impact of the PRIIPs legislation on choice and liquidity in retail corporate bond markets, which may be limiting the ability of retail investors to sell, reinvest, or make new investments in this sector while reducing the diversity of corporate bond funding sources. These are serious unintended consequences of the uncertain application of the definition of a PRIIP as set out in the regulation.
- 2.14** We propose to make rules, exercising our new power under article 4A of the PRIIPs Regulation, clarifying that certain features do, or do not, make a product into a PRIIP. Our proposed rules are broadly aligned with the ESAs Supervisory Statement but unlike that statement will have legal effect and are intended to substantially resolve the underlying legal uncertainty.
- 2.15** Our proposed rules look to distinguish between:
- a.** corporate bonds which contain features that introduce a degree of variability or uncertainty to the overall return to investors, but which are properly viewed as non-packaged, direct investment in the business of the issuer, and
 - b.** corporate bonds where the overall return to investors is substantially determined by the performance of investment assets the investor does not purchase, or which are better regarded as a packaged investment due to their complex features
- 2.16** Our proposed rules would clarify that:
- a.** To be a PRIP, a debt security must come between the retail investor and an ultimate investment asset which is not purchased by the investor. A debt security issued is not to be regarded as a PRIP (and therefore is not a PRIIP) if the overall return for the investor is determined by the economic performance of the commercial or industrial activities of the issuer. In contrast, a debt security would be a PRIIP where the returns to the investor are materially determined by price movements or the investment performance of assets other than the debt security itself, including reference assets and indices or benchmarks relating to assets or a class of assets. For example, a variable rate corporate bond will not be a PRIP for that reason alone. The variability would need to be linked to reference assets, indices, or benchmarks relating to assets or a class of assets rather than the cost of money or the ups and downs of the general economy. Under our proposed clarification a debt security with a floating or variable coupon determined by a general economic indicator would not be a PRIP, even if there is a price spread reflecting the credit risk of the issuer. But it may still be a PRIP if the interest payable is subject to additional modification or structuring such as a cap.
 - b.** Debt securities with fixed coupons are not PRIPs, even if the coupons are subject to pre-defined changes. The returns to investors in relation to these investments are not subject to fluctuations.
 - c.** Incorporation of a put option that gives the investor a discretion to demand early repayment of the debt security or to convert it into one or more shares of the same issuer, in each case under pre-agreed terms, does not make the debt security into a PRIP. Similarly, a debt security featuring a call option allowing the issuer to redeem the debt security early at a price that is at least equal to par would not be a PRIP for that reason alone, provided the option is not exercisable in response to fluctuations in reference values or the performance of one or more investment assets. These kinds

of put and call option, which include but are not limited to make-whole or change of control clauses, are generally investor-friendly. In our view these clauses do not introduce comparable evaluative complexity and variability as the kinds of products which are uncontroversially PRIIPs.

- d. A debt security will not be a PRIIP simply by virtue of having a perpetual or indefinite term, or because of its subordination in the creditor hierarchy in the event of the issuer's insolvency.
- e. A debt security or indeed any other financial instrument issued or sold before 1 January 2018 is not a PRIIP. This is the case even if it remains available for trading on a secondary market to which retail investors have access. In respect of a legacy product, it is not necessary to assess if its features make it into a PRIIP.

2.17 We believe the proposed rules will be a legally effective solution to this longstanding issue and therefore should give issuers the confidence to broaden the availability of corporate bonds to retail investors. We also intend for our proposed rules to promote the consistent application of the scope of the PRIIPs Regulation to bond markets in the UK.

2.18 We are nevertheless mindful of the complexities in this area. We want to ensure the proposed rules are themselves clear and that the principled distinction we are looking to draw is clear. We would very much welcome respondents' views on the drafting.

Proposed 'made available' guidance

2.19 The obligation under the PRIIPs regime to produce and publish a KID only applies where a PRIIP is 'made available' to retail investors in the UK. Where a product is not being offered or sold to retail investors it generally should not matter whether or not it is a PRIIP, as the obligations under the PRIIPs Regulation are not engaged.

2.20 This, however, has emerged as another point of interpretative ambiguity. Some stakeholders have complained that they face the costs of producing a KID (or potential legal risks in not doing so) where their product is not intended for retail clients but could potentially be sold to retail investors on (for instance) a secondary market. On a literal reading, a PRIIP may be regarded as 'made available' in any circumstances where it is possible for at least one retail investor to buy it. We do not think this is a reasonable interpretation. But we acknowledge that it is currently not clear what steps a PRIIPs manufacturer or distributor must take to demonstrate that a PRIIP is not being 'made available' to retail investors.

2.21 We are therefore proposing guidance setting out our interpretation of what conditions a person who would otherwise be subject to the requirements of the PRIIPs Regulation must satisfy in order to show that a PRIIP has not been 'made available' to retail investors. Where those conditions are met, we will regard the PRIIP as not being 'made available' to retail investors and there will be no obligation to prepare, publish or provide a KID.

2.22 In our proposed guidance we set out what we consider to be sensible and proportionate conditions to ensure a PRIIP is directed away from retail investors, namely:

- a. the marketing materials for the financial instrument (including the prospectus, if there is one) make it clear that it is being offered only to investors eligible for categorisation as professional clients or eligible counterparties and that it is not intended for retail investors
- b. the marketing and distribution strategy for the PRIIP is in fact targeted at professional and eligible counterparty clients and not retail clients; and
- c. the financial instrument is issued at a minimum denomination value of £100,000 or under (or equivalent sum in foreign currency)

2.23 We consider these conditions to reflect good market practice and where they are met will not consider a PRIIP as being 'made available' to a retail investor.

2.24 We consider that these conditions would adequately mitigate the potential loss of the benefit of a KID for the retail investors who manage to purchase a PRIIP that is not intended for them without requiring unduly onerous precautions from issuers and intermediaries as might otherwise be assumed necessary to effectively prevent sales to retail investors.

2.25 We are nevertheless interested in feedback from industry and consumer groups on whether these conditions are set at the right level.

Q1: Do you agree with our proposed rules to clarify the scope of the PRIIPs regime?

Q2: Are there remaining areas of ambiguity in the scope of the PRIIPs Regulation which would not be addressed by the proposed rules, and if so, which?

Q3: Do you agree with the proposed guidance on conditions for a PRIIP to be regarded as not made available to retail investors?

3 Information on performance and overall risk

Introduction

- 3.1** The PRIIPs Regulation sets out general requirements for the kind of information to be disclosed in the KID. The PRIIPs RTS, which is generally highly prescriptive, sets out:
- the detail of what that information must contain,
 - the methodologies according to which the information must be produced,
 - and the manner in which it must be presented in the KID
- 3.2** The overriding goal of the proposals in this chapter is to address concerns that compliance with the prescriptive requirements in the RTS cause for firms and consumers. Currently, the production and presentation of performance scenarios and summary risk indicators can, for some products, result in misleading information in the KID. There is a clear risk of harm to investors who may be basing their investment decision on overly optimistic or otherwise biased performance scenarios or on generic indications of risk that suggest the product is lower risk than it should reasonably be considered to be.
- 3.3** These unintended consequences of RTS requirements undermine the aims of the KID regime. They pose a clear conflict with the general obligation on persons subject to the PRIIPs regime to ensure the information in the KID is accurate, clear, fair and not misleading.
- 3.4** The PRIIPs Regulation contains several specific requirements for the disclosure of aggregate costs and charges, investment risk, and performance scenarios. The PRIIPs RTS set out the methodologies that must be followed in calculating, assessing and presenting the information to be disclosed.

Misleading performance scenarios

- 3.5** At present PRIIPs manufacturers are required to include performance scenarios calculated in line with specified methodologies prescribed in the PRIIPs RTS. These methodologies require the use of historical data to calculate synthetic potential rewards that an investor may receive under different market conditions: stress, unfavourable, moderate and favourable.
- 3.6** The performance scenarios in the PRIIPs KID are intended to give retail investors a range of scenarios that indicate what they may receive as a return on their investment. These help them compare products with similar risk or cost profiles or exposed to similar assets or sectors.
- 3.7** Supervisory engagement with industry as well as responses to our CfI have identified significant concerns that the current methodology for calculation and presentation of performance scenarios can produce misleading illustrations across almost all asset

classes. Stakeholders have suggested that RTS-compliant performance scenarios for alternative investment funds and investment trust companies could be very misleading.

3.8 These problems seem to be caused, in the main, by the pro-cyclical nature of the RTS methodology for producing performance scenarios. Due to market conditions in the 5 years before 2018, a high proportion of KIDs produced since the PRIIPs regime has come into force may be displaying illustrations of future returns that are significantly over-optimistic.

3.9 We issued a [statement](#) in January 2018 as an initial response to these concerns for performance scenarios saying that:

- where a PRIIP manufacturer is concerned that performance scenarios in their KIDs are too optimistic, such that they may mislead investors, we are comfortable with them providing explanatory materials to put the calculation in context and to set out their concerns for investors to consider
- where firms selling or advising on PRIIPs have concerns that the performance scenarios in a particular KID may mislead their clients, they should consider how to address this, for example by providing additional explanation as part of their communications with clients

Proposal to remove performance scenarios from KIDs

3.10 The RTS sets out the prescriptive requirements governing how, and which performance scenarios must be generated and how they must be presented. The overarching requirement that the KID must contain performance scenarios is set out in article 8(3) of the PRIIPs Regulation. As mentioned in Chapter 1, the FCA has the powers to amend the RTS.

3.11 Section 38 of the Financial Services Act 2021 removes the reference to 'performance scenarios' and instead provides a more flexible requirement that the KID should contain 'information on performance'. This allows us to explore different options for how PRIIPs manufacturers can produce and present this kind of information to potential investors in the KID. It also reduces as much as possible the risk that this information is misleading or has misleading effects on consumers.

3.12 We consider that performance scenarios as they are currently prescribed pose risks to consumers. As a result, PRIIP manufacturers are subject to obligations that are incompatible with their duty to ensure the information in the KID is accurate, clear, fair, and not misleading. The methodology for producing performance scenarios is complicated, reflecting the intended breadth of its application. It is unclear that it could be sufficiently improved to ensure illustrations of potential future performance are informative to investors and not misleading across the full range of products within scope of the PRIIPs regime and under all reasonably conceivable market contexts.

3.13 At this stage, and as a more immediate remedy, we are proposing to remove the requirement for PRIIPs manufacturers to display performance scenarios in the KID. Instead, PRIIPs manufacturers would be required to provide other types of information on performance. We set these out below.

- 3.14** As shown in our draft instrument, the changes proposed would involve deleting all of Annex IV to the RTS.

Narrative description of performance

- 3.15** We are proposing to add to the RTS a new Annex 4A setting out requirements for the performance information that must be included in the KID. This information would replace the performance scenarios section in the KID.
- 3.16** There is already an obligation, under article 2(2) of the RTS, for the KID to include information stating its investment objectives and the means for achieving those objectives. Manufacturers should include information which includes the main factors upon which return depends, the underlying assets or reference values, and how the return is determined. Firms are also expected to explain the relationship between the PRIIP's return and that of the underlying investment asset or reference values. The proposed narrative section is intended to expand on rather than duplicate these existing disclosures.
- 3.17** PRIIPs manufacturers would be required to describe, in narrative form, the factors likely to affect future performance. This would include those most likely to determine the outcome of the investment and those which could have a material impact on its performance. In addition, PRIIPs manufacturers would need to disclose in the KID the most relevant index, benchmark, target, or proxy, as applicable, along with an explanation of how the PRIIP is likely to compare in terms of performance and volatility. Finally, the narrative information would include an explanation of a favourable, negative, or worst scenario for how the investment performs.
- 3.18** One option is for our rules, or potentially associated guidance, to identify the factors that PRIIPs manufacturers should include as part of this narrative section. For example, degree of volatility, sensitivity to changes in interest rates or other relevant benchmarks, etc. Please see Question 5a of this document; we would be interested in respondents' views on this.
- 3.19** For consumers, a narrative is intended to provide a reasonable indication of what market conditions would affect a product's performance. This type of information may mitigate potential cognitive bias that leads people to assume past performance will be repeated in future.
- 3.20** We believe this type of information will result in a reduction in the level of harm currently posed to consumers by misleading performance scenarios.
- 3.21** We will be carrying out consumer testing of this proposal alongside this CP to test consumer understanding and its impact on choices made. We will publish the results of this consumer testing as part of our policy statement.

Past performance

- 3.22** We know through responses to our CfI that some respondents wanted performance scenarios to either be replaced or accompanied by a display of past performance, as

is currently used in the UCITS KIID. These respondents believed that consumers were already familiar with this concept, and it did not create an expectation of a given future return.

3.23 We note that not all products will have historic data. Even where they do, there may not be enough past performance information to enable retail investors to reliably assess factors such as an investment's relative volatility. Many products will be new to the market at any one time, and many others will have a track record of only a few years.

3.24 We are not proposing the addition of past performance in the KID as part of this review. However, in Question 6 of this document, we would be interested in your views on whether the display of past performance in addition to the proposed narrative information section would be helpful to consumers and their investment decision. In order to help respondents consider Question 6, we have also included indicative drafting, in square brackets, alongside the proposed new performance information requirements in the RTS to illustrate what a requirement to display past performance information could entail.

Misleading summary risk indicators

3.25 The PRIIPs Regulation requires the KID to include a section titled 'What are the risks and what could I get in return?'. The PRIIPs RTS sets out prescribed requirements concerning the description of risk factors and the assignment of the product to a presentation of, and methodology for assigning a PRIIP to a risk in the KID. This has 2 main elements:

- a.** The first is the Summary Risk Indicator (SRI). This is a standardised risk score between 1 and 7, which is based on a combination of the product's market risk and credit risk classifications, to be assessed according to the methodology prescribed in the RTS.
- b.** The second is a narrative disclosure of the main risks associated with the investment, including required and optional elements.

3.26 The SRI must be supplemented by a narrative explanation of that indicator, its main limitations, and the risks which are materially relevant to the PRIIP that are not adequately captured by the SRI.

3.27 In FS19/1 we noted concerns raised by respondents that the SRI produced following the RTS methodology appeared to deliver lower risk ratings than expected when the PRIIP's underlying, or reference asset is illiquid. Concerns were also raised about the SRI not capturing all risks associated with some PRIIPs. It appears the SRIs produced under the current methodology have the potential of under-estimating the overall level of risk that retail investors should take into consideration.

3.28 We propose to introduce amendments to the PRIIPs RTS to address these concerns.

Inappropriate risk scores

- 3.29** In FS19/1 we recognised that the methodology for determining a product's SRI relies heavily on volatility measures. This can lead to misleading SRIs for some types of investment product.
- 3.30** As an example of this concern, SRIs produced in compliance with the RTS requirements appear to mis-rate PRIIPs issued by Venture Capital Trusts (VCTs). A VCT's underlying assets tend to be illiquid and have fewer observable pricing data points, as they are only periodically valued, unlike assets which are frequently priced and traded. One respondent to our CfI submitted findings from their own research that showed 70% of VCT investments had an SRI score of 3 (medium-low risk). This could be interpreted by consumers as a product which is unlikely to lose money, whereas these products are widely considered to be high risk.
- 3.31** As the aim of the SRI is to help consumers choose a PRIIP in line with their risk appetite, under-estimates of overall risk undermine a key objective of the Regulation and may lead to harm if consumers buy products that pose a greater risk of financial loss than they are prepared to accept.
- 3.32** We are therefore proposing to introduce a requirement in the RTS requiring PRIIPs manufacturers to upgrade their product's SRI if they consider that the risk rating produced by the methodology is too low.
- 3.33** In addition, we are proposing to require that PRIIPs issued by VCTs must be assigned an SRI score no lower than 6. This will therefore disapply the RTS methodology for SRIs in relation to these products.
- 3.34** Finally, for data collection purposes and to assist the FCA's supervision of the effectiveness of the remedy, we would require PRIIPs manufacturers to notify us by email if they have upgraded their products' SRI score, including the following:
- identifying information for the relevant PRIIP (name of the product, tranche, issuer, etc)
 - the new score the manufacturer has assigned to the product as well as that which would have been assigned under the RTS methodology and
 - a brief explanation of the risk factors the manufacturer believes were not adequately reflected in the summary risk indicator. PRIIPs manufacturers are already required to disclose in the KID (at 'Element E') an explanation of any risks materially relevant to the PRIIP which could not be adequately captured by the SRI. We expect most cases comprise the same risks as might call for upgrading the SRI.
- 3.35** The requirements for this notification are intended to be very simple and non-onerous for PRIIPs manufacturers. We expect manufacturers to use no more than the information from the relevant KID to satisfy the requirement of the notification.
- 3.36** Please see Question 9 of this document. We welcome any evidence for specific products where the SRIs produced under the RTS methodology might be systematically under-estimating the overall level of risk of the product to retail investors.

Disclosures of uncaptured risk

- 3.37** The PRIIPs RTS allows PRIIPs manufacturers 200 characters to explain all other significant risks not covered in the SRI score calculations. In FS19/1 we acknowledged that the description accompanying the SRI could be longer to allow a better or more complete summary of key risks.
- 3.38** We are now proposing to amend the RTS to extend the current 200-character limit to 400 characters.
- 3.39** As we said in FS09/1, PRIIPs manufacturers must ensure descriptions of risks are clear and appropriate for retail clients, and do not simply link to, or replicate language used in a prospectus if this would not be easily understood by less sophisticated clients. Clearer explanations of the product will benefit consumers' understanding of what they are investing in.

- Q4:** Do you agree with our proposal to remove the requirement for the KID to display performance scenarios?
- Q5:** Do you agree with our proposal to require PRIIP manufacturers to include a narrative description of performance in the KID?
a) If so, should the FCA specify the factors that the narrative should cover (as applicable)?
- Q6:** Do you agree with our decision not to include past performance as part of our proposals for information on performance?
a) if not, can you please explain why you think the addition of past performance in the KID alongside a narrative description of performance would be useful to consumers and their investment decision making?
- Q7:** Do you agree with our proposal to require PRIIPs manufacturers to upgrade a product's SRI score where the score resulting from application of the RTS methodology seems to underestimate the level of risk?
- Q8:** Do you agree with our proposal that PRIIPs which are issued by venture capital trusts should be assigned a summary risk indicator of at least 6?
- Q9:** Are there other PRIIPs in respect of which the FCA should specify the summary risk indicator?
a) If so, please let us know which, with your reasons and any evidence you may have.
- Q10:** Do you agree with our proposal to increase the character limit for disclosures of uncaptured risk?

4 Technical amendments to transaction costs disclosure requirements

- 4.1** The onshored PRIIPs RTS sets out the methodology to identify and calculate the costs of PRIIPs and how these should be presented in the section of the KID headed 'What are the costs?'. PRIIP manufacturers are required to disclose both the direct and indirect costs to be borne by the retail investor. This includes the costs of buying and selling underlying investments within a PRIIP, including the implicit transaction costs which are contained in the price at which a transaction takes place. The PRIIPs RTS prescribe methodologies to calculate these costs.
- 4.2** Issues previously raised by stakeholders as part of our CfI primarily focused on the calculation methodology for transaction costs, which is sometimes called 'slippage'. We have already addressed objections raised by industry stakeholders in relation to the slippage methodology in FS19/1 and do not intend to re-open the discussion of whether slippage is an appropriate measure for the purposes of PRIIPs transaction cost disclosures.
- 4.3** In this consultation paper we are proposing some targeted amendments to address issues arising from transaction cost reporting in specific contexts.

Slippage and the arrival price

- 4.4** Slippage is the difference between the price at which a trade is executed and the 'arrival price' when the order to trade is transmitted to the market. It captures the bid-ask spread, as well as what is called the market impact. This is the effect that an order has on the price during the time it is in the market. It assumes that any element of market fluctuation during the time that the order is being executed is random. The PRIIPs legislation requires slippage to be calculated across all transactions for a product over a 3-year period. When slippage is calculated over many transactions, this random element should average out to approximately zero.
- 4.5** Some respondents to our CfI raised concerns that the slippage methodology can, in some cases, lead to negative transaction costs. Several respondents said they had seen negative transaction costs published in KIDs. However, no response contained full transaction-level calculation data for a portfolio over 3 years of transactions to substantiate the claim that the methodology is not working as expected or intended. We did receive examples of individual transactions where respondents argued that the costs appear anomalous.
- 4.6** Some respondents argued that traders who use a Volume Weighted Average Price (VWAP) strategy are unfairly penalised by having to disclose slippage costs. Others argued that slippage leads to fluctuations in cost over time. Several respondents raised concerns that intraday price availability for some securities, in particular some bonds, is poor.

- 4.7** We maintain that the slippage methodology is working as intended and is the best way to calculate transaction costs for most products. Slippage, as required by the PRIIPs Regulation, is a 3-year average and not intended as an accurate measure of transaction costs for each individual transaction. The measurement of slippage cost should not substitute firms' obligations under best execution rules. Using the slippage methodology to calculate transaction costs for disclosure should not force PRIIPs manufacturers to consider this as the only or best way to monitor best execution. Slippage does not lead to perfectly stable output over time. Transaction costs fluctuate over time, and investment vehicles undertake different volumes of transactions over time.
- 4.8** We also want to remind stakeholders that genuine negative transaction costs should be quite rare. They almost always occur where the product is able to recover transaction costs via opportunistic timing of transactions. This is generally difficult to achieve on a systematic basis. As we set out in our CfI and subsequent FS, we undertook a supervisory review on costs and charges which found that most instances of negative transaction costs were because of human error and not due to the operation of the methodology itself. We highlighted this in FS19/01 and in Annex 3 of the publication we set out some common errors seen in the methodology to assist PRIIPs manufacturers when they are using slippage.
- 4.9** This CP sets out our proposed amendments to the current PRIIPs RTS to improve the accuracy of transaction cost reporting in the following areas:
- treatment of anti-dilution
 - calculation of costs of over-the-counter (OTC) transactions in bonds
 - calculation of costs of index tracking funds

Anti-dilution

- 4.10** An open-ended fund may incur transaction costs when the fund buys (or sells) investments in response to flows into (or out of) the fund. Anti-dilution is the practice whereby the fund passes on those costs to the relevant incoming (or outgoing) investors. Without this, ongoing investors would bear the costs of these transactions.
- 4.11** The PRIIPs rules require firms to calculate the costs of all the transactions done by a fund. They permit firms to subtract from this total cost any benefit that the fund gets from anti-dilution. However, we have seen examples where the benefit to a fund from anti-dilution is more than all the transaction costs that it has incurred over the same period. This leads it to report negative transaction costs in the KID.
- 4.12** We consider that, where the amount of anti-dilution benefit is more than all the transaction costs incurred, this should not be considered in the reporting of transaction costs.
- 4.13** We therefore propose amendments to the RTS to ensure that:
- firms using an anti-dilution mechanism disclose anti-dilution benefits in the KID, as part of the narrative description display for transaction costs in the KID
 - the anti-dilution benefit must not be considered if and to the extent that the benefit would take the total transaction costs below zero.

- 4.14** This proposal solution aligns with a similar rule in COBS 19.8 introduced for workplace pensions transaction costs disclosures in PS20/2.
- 4.15** We consider that the first change will allow firms to be more transparent about their costs and help consumers understand better the impact of any anti-dilution mechanism. We also consider that the second change will prevent negative transaction costs being disclosed as a result of the inclusion of anti-dilution. It is also important to note that properly assessed anti-dilution mechanisms normally should recover no more than the cost of transactions undertaken by the product, with no surplus.

Calculation of transaction costs for debt securities

- 4.16** As set out in FS19/1 we accept that price availability is variable across securities, in particular for over-the-counter (OTC) transactions in bonds. We are aware that many bonds trade infrequently and know the prices available from data providers may not reflect the most recent market movements.
- 4.17** We propose to clarify how we expect transaction costs to be calculated for OTC bond transactions. In this situation, the firm will have had to check the fairness of the price before transacting. We consider that the best evidence that will be available for the market mid-price of the bond will be the average of the best bid and best offer obtained when seeking quotes from multiple counterparties.
- 4.18** We consider that this is a reasonable interpretation of the existing requirement of the current regulation to use the market mid-price at the time the order was transmitted to another person for execution. We consider that this should be more accurate and straightforward than alternative approaches and should remove the possibility of firms calculating negative transaction costs for these transactions.

Calculation of transaction costs for index-tracking funds

- 4.19** Index-tracking funds transact differently from actively managed funds. They buy and sell securities in response to flows into and out of the fund and transact when there are changes in the index. They usually undertake fewer transactions than an actively managed fund and may only transact in significant volume on a limited number of occasions each year. For these reasons, slippage is not necessarily the best way of calculating the costs associated with index-tracking funds.
- 4.20** Index-tracking funds also sometimes send orders to the market to be executed at pre-determined times (for example the market close), to track the index more efficiently. For operational reasons, they sometimes transmit these orders several hours before they are intended to be executed, creating more risk of random error.
- 4.21** We consider it would be better for index-tracking funds to use a spread model to calculate costs as opposed to slippage. We therefore propose that when calculating the costs associated with orders that are initially entered into an auction, the arrival price should be calculated as the mid-price immediately prior to the auction. In calculating the costs associated with orders that are executed at a predetermined

time, the arrival price shall be calculated at that pre-determined time, even if the order has been transmitted for execution before that time.

4.22 We are also proposing to make technical amendments to the RTS to help firms improve their calculation and disclosure of transactions costs.

Understanding the average price

4.23 Some respondents to the CfI noted that there are differing views about how to calculate the average transaction cost over three years. They said that one approach is to calculate all transaction costs over three years and take the average for the whole period, while the other is to calculate transaction costs as an average each year, and then average those three annual averages.

4.24 We consider that the correct way to calculate the average transaction costs is the first approach. In other words, to calculate all transaction costs over three years and take the average for the whole period rather than a rolling average of annual transaction costs. We are therefore proposing to amend the RTS to remove any uncertainty.

4.25 Other technical amendments that we are proposing to make to the RTS include:

- extending the data calculation exemption for the entrance of UCITS into the PRIIPs regime
- allowing firms to use the most recent available price, then a 'justifiable' independent price when calculating costs when the open/close prices lead to misleading results
- adding clarity to the methodology to be used for PRIIPs less than 3 years old to assist in issues with data for new PRIIPs

4.26 We look forward to respondents' views on these proposals.

Q11: Do you agree with technical amendments we are proposing to make to the PRIIPs RTS for transaction costs?

Q12: Do you agree with our proposed amendments in relation to anti-dilution?

Q13: Do you agree with our proposed clarification in relation to OTC bond transactions?

Q14: Do you agree with our proposed shift to a spread model in calculating costs for index-tracking funds?

Q15: Do you agree with our proposal to clarify how to calculate the average price of transaction costs?

Annex 1

Cost Benefit Analysis

Intro

1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of our proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made' and 'an estimate of those costs and of those benefits'. Section 138I also provides that if, in our opinion, the costs or benefits cannot reasonably be estimated or it is not reasonably practicable to produce an estimate, the CBA need not estimate them; in that case, the CBA must include a statement of our opinion and an explanation of it. Section 138L provides that if the increase in costs is of minimal significance, we are not obliged to produce a CBA.
2. Our CBA presents estimates of the significant impacts of our proposal. We provide monetary values for the impacts where we believe it is reasonably practicable to do so. For others, we provide analysis of outcomes in other dimensions. Our proposals are based on carefully weighing up the impacts we foresee and reaching a judgement about the appropriate level of consumer protection (see Chapter XX of the CP above for additional detail).

Problem and rationale for intervention

3. The Packaged Retail and Insurance based Investment Products (PRIIPs) Regulation requires those who produce, advise on or sell PRIIPs to retail investors in the UK to prepare and provide investors with a standardised 3-page Key Information Document (KID) in accordance with prescriptive requirements in the Level 2 Regulatory Technical Standards (RTS). The PRIIPs Regulation aims to improve consumer understanding and outcomes by standardising retail disclosure documents, giving consumers the ability to compare competing products.
4. In February 2019 we published a Feedback Statement (FS19/1) on our call for input (Cfi) from July 2018, summarising views and evidence on market participants' initial experiences of the PRIIPs regulation. We received concerns over the legal uncertainty surrounding the scope of products captured by the PRIIPs regulation. In addition, respondents highlighted concern about how the KID is presented and the required methodology, more particularly in relation to summary risk indicators, performance scenarios and transaction costs. We discuss each of these concerns in turn.
5. Scope - Feedback from our Cfi and supervisory confirms that there is uncertainty surrounding the scope of the PRIIPs Regulation, notably for certain retail corporate bonds. Respondents to the Cfi expressed particular confusion regarding which corporate bonds are in or out of the scope of the regulation and as a result reported

that they would refrain from issuing bonds to retail investors, which we fear has resulted in reduced liquidity and choice for these consumers. Cfl stakeholders also raised concerns that the PRIIPs Regulation requires that a KID is prepared when a PRIIP is 'made available' to retail investors. Some stakeholders complained that they face the costs of producing a KID (or potential legal risks in not doing so) when their product is not intended for retail clients but it could potentially be sold to retail investors on (for instance) a secondary market.

6. **Summary risk indicators** - The PRIIPs Summary Risk Indicator (SRI) presents the risk of a product on a scale of 1-7. The methodology underpinning this score is primarily driven by historic price volatility and, where relevant, credit risk. We received feedback from the Cfl that the SRI appeared to deliver lower risk ratings than expected where the underlying or reference asset is illiquid. Respondents also expressed concerns that the presentation of the SRI gives a misleading impression that the scale rating reflects the overall level of investment risk associated with the product, when it is mainly a measure of price volatility. For some investment products, price volatility is a less relevant risk. Other risks not captured in the SRI are more significant but are only explored briefly in the accompanying description.
7. **Performance Scenarios** - The KID performance scenarios display in monetary terms the amount that an investor could expect from a product if they were to invest and hold for the recommended holding period. They are calculated using historic data to present potential rewards that an investor may receive under different market conditions: stress, unfavourable, moderate and favourable. Cfl responses expressed significant concerns that the current methodology for presentation of performance scenarios produce misleading illustrations across almost all asset classes. Several responses stated that the performance scenarios for alternative investment funds and investment trust companies are very misleading. There was universal agreement in responses that the problems were caused by a reliance on past performance in the PRIIPs RTS methodology. Due to market conditions in the 5 years before 2018, a high proportion of KIDs were identified as displaying possible returns that, according to responses, are significantly over-optimistic.
8. **Transaction costs** - There has been a long-standing concern among industry that the slippage methodology used to calculate transaction costs is inappropriate as it can lead to disclosure of negative transaction costs that are liable to confuse or mislead consumers. Slippage is the difference between the price at which a trade is executed and the 'arrival price' when the order to trade is transmitted to the market. In the Cfl, respondents highlighted concerns that some KIDs were displaying negative, zero or very high transaction costs that are unlikely to fairly represent the true transaction costs of the product.

The Harm

9. KIDs are designed to be simple to understand and consumer friendly. The current presentation and methodologies prescribed in the regulation means KIDs can, in some instances, contain misleading information about a products performance, risk profile and transaction costs.
10. By relying on misleading and inaccurate information in the KID, investors could be harmed as the product they choose to invest in may not be in line with their risk

appetite or expectations of return. This results in consumer harm through the purchase of unsuitable products or being miss-sold products based on the contents of the KID.

- 11.** The driver of harm is that the existing rules have proven ineffective or even detrimental and need to be removed or amended. The current onshored PRIIPs RTS:
- prescribes the production of performance scenarios that can come into conflict with the overarching requirement that the KID to be fair, clear and not misleading.
- 12.** For transaction costs and SRIs, does not sufficiently accommodate for products for which the prescribed methodology does not work, and therefore results in KIDs that risk in some cases misleading consumers and putting firms at risk of not meeting their obligations under the regulation.

Summary of our proposed intervention

- 13.** Our proposals are set out in detail in the CP and will mitigate the display of potentially misleading information in the KID that risks consumers being harmed. We propose to address the concerns that we have identified in relation to the PRIIPs Regulation and the KID by:
- introducing rules to clarify the scope of the PRIIPs Regulation in relation to corporate bonds, making it clearer that certain common features of these instruments do not make them into PRIIPs;
 - introduce interpretative guidance to clarify what it means for a PRIIP to be "made available" to retail investors;
 - amend the PRIIPs RTS so as to:
 - replace the requirement and methodologies for presentation of performance scenarios in the KID with a requirement for narrative information on performance to be provided;
 - address the potential for some PRIIPs to be assigned an inappropriately low summary risk indicator in the KID;
 - address concerns pertaining transaction costs reporting, in particular certain applications of the slippage methodology.

Scope

- 14.** We are proposing to clarify through rules the scope of the PRIIPs regime in relation corporate bonds, confirming which features do not turn a debt security into a PRIIP as well as looking to clarify the type of corporate bond that would normally be a PRIIP. We also propose to clarify that legacy products issued before the coming into force of the PRIIPs regime have never been PRIIPs and do not require a KID even if they continue to be made available to retail investors in secondary markets.
- 15.** In addition, we are proposing guidance setting out our interpretation of when a product is not 'made available' to retail investors. Generally speaking, this would be based on the firm taking reasonable steps in its marketing and distribution approach to target wholesale clients only and issuing its notes with a minimum denomination size of £100,000.

Summary Risk Indicators

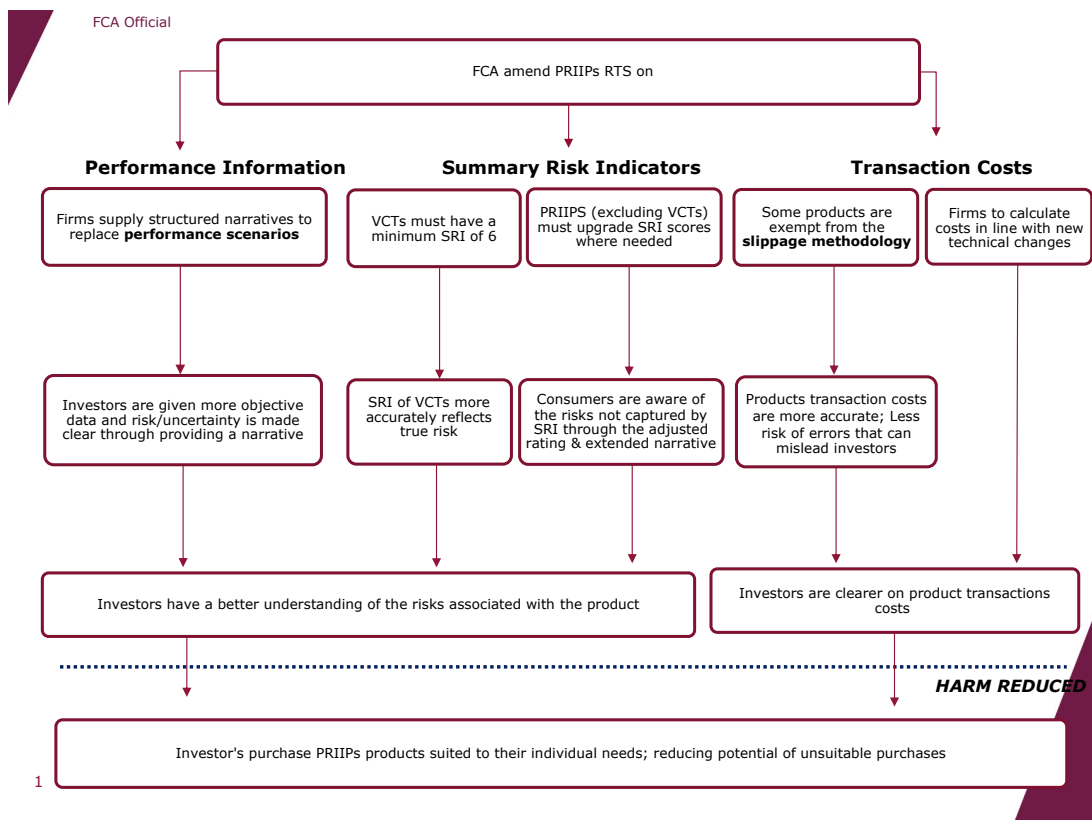
- 16. We are proposing to amend the onshored PRIIPs RTS to require firms to upgrade their risk rating in the KID if use of the current methodology results in a rating that does not accurately reflect the risk profile of the product. We are also proposing to prescribe in the RTS that Venture Capital Trusts must be a minimum risk rating of 6.
- 17. Where the SRI display does not fully reflect the complete risk profile of a PRIIP, the RTS already requires manufacturers to include relevant narrative. To help make this narrative more meaningful, we propose to extend the 200-character limit to 400-characters.

Performance Information

- 18. We are proposing to remove from the onshored RTS the requirement for firms to display performance scenarios. We are also proposing to add to the onshored PRIIPs RTS a requirement for firms to display a narrative display of performance in the appropriate performance information section of the KID.

Transaction Costs

- 19. We are proposing to amend the onshored RTS to introduce technical amendments for transaction costs and derogations to the slippage methodology for anti-dilution mechanisms, passive funds and bonds.
- 20. The causal chain set out below shows how we expect our proposals to mitigate the potential harm to consumers.



Baseline and key assumptions

- 21.** The PRIIPs Regulation applies to all PRIIP manufacturers, and advisers or distributors offering PRIIPs to consumers in the UK, irrespective of whether the business is engaging in financial services activities requiring authorisation. This means that some firms doing business in the UK are subject to the PRIIPs Regulation even though they are not carrying out regulated activities and do not need to be authorised by the FCA under Part 4A of FSMA.
- 22.** We expect our proposals to directly affect firms that manufacture PRIIP products as they are responsible for drawing up a KID. Advisors and distributors are not affected by our changes as they are not responsible for drawing up a KID for PRIIP products.
- 23.** The onshored PRIIPs Regulation sets out a broad definition of what constitutes a PRIIP. We cover this in detail in chapter 2 of this CP. It defines it as a product that, regardless of its legal form or construction, is:
- an investment product where 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 assets that are not directly purchased by the retail investor, or
 - an insurance-based investment product which offers a maturity or surrender value that is wholly or partially exposed, directly or indirectly, to market fluctuations.
- 24.** Identifying whether a particular product is a PRIIP may not be straightforward as the concept of 'exposure to reference values' is wide. In some cases, the specific terms of a product have to be considered before determining whether or not it is a PRIIP.
- 25.** In 2020, we recorded 330,000 transactions of products classified as PRIIPs from 133 different providers. These include a mix of manufacturers, advisers and distributors. This may not capture the full PRIIPs market because some products cannot be fully identified as a PRIIP through data at an aggregate level. The table below shows the split by size of firm.

Large	Medium	Small
38	72	23

- 26.** A PRIIPs manufacturer is responsible for preparing a KID for each PRIIP they produce and publishing each KID on their website. Our proposals will directly affect PRIIPs manufacturers through changes to the template and content of the KID. Irrespective of whether they are FCA regulated or not, all manufacturers whose products fall under the regulation must create a PRIIPs KID to accompany every PRIIP product that they produce. We do not expect manufacturers, advisers or distributors that deal with products that are out of scope of the onshored PRIIPs Regulation to produce or publish a KID.
- 27.** In line with Article 15 of the onshored PRIIPs RTS, we can also assume that manufacturers already review and update their KID every 12 months. There will therefore be no on-going costs as a result of the proposal.
- 28.** A proportion of PRIIP KID production is outsourced to companies who can change the template at a minimal cost. We are unable to estimate the exact proportion of KID production that is outsourced. Thus, we have taken a conservative approach and

assumed no outsourcing, ie all 133 retail investment providers will have to make changes at a firm level for all their PRIIP products.

Summary of costs and benefits

29. We expect that our proposals will result in direct costs to firms, as described below. We have estimated the average cost per firm to be about £20.8k (where costs vary by size of firm). We do not expect a significant increase in supervision costs to the FCA.
30. We expect benefits to be realised in the form of reduced risk of harm for retail investors. We believe that by removing misleading information from the KID and clarifying certain aspect of the regulation, the potential of consumer harm will be reduced as they will be in a better position to invest in products that are suitable for them. It is not reasonably practicable to quantify these benefits. However, we consider that the per retail investor saving required for the policy to break even in the first year is £8.50, and that the benefits are likely to exceed this.
31. We estimate the total cost for all 133 firms.

	Ongoing/One-off costs	Costs	Benefits
PRIIP Manufacturers	One-Off	Familiarisation and legal costs - £674k	-
		IT Costs - £900k	-
		Change and Governance - £1.2k	-
	On-going	-	Clarity on the scope of corporate bonds
Consumers	Ongoing	-	Purchasing more suitable investments Improved trust in the KID
Total cost	One-off	£2.8m	

PRIIPs Manufacturer Costs

32. We believe PRIIP manufacturers to be directly affected by our proposals and incur costs.
33. We anticipate that manufacturers in scope will incur direct one-off costs due to familiarisation and gap analysis, IT changes and governance changes. We give an overview of our approach to estimating these costs in the sections below. We consider there are no ongoing costs, as PRIIPs regulation already requires reviewing the KID every 12 months.
34. We use the FCA Standardised Cost Model (SCM) to estimate costs. Most of the affected parties are not regulated entities and as such applying the SCM relies on additional assumptions. We consider this a conservative estimate of costs as we expect a proportion of firms to outsource production of the KID to third parties. However we recognise there are some uncertainties over the number of firms affected, as explained in the Baseline section.

Familiarisation and Legal changes

35. We use standard assumptions from our SCM to produce an estimate of familiarisation costs. We anticipate that there will be approximately 35 pages of policy documentation excluding

the legal instrument. Assuming 300 words per page and a reading speed of 100 words per minute, it would take around 1.75 hours to read the document. It is further assumed that large firms will need 6 staff to review the text, medium firms 4 and small firms 1.5. The average hourly compliance staff salary is based on the Willis Towers Watson 2016 Financial Services Report, adjusted for subsequent annual wage inflation and including 30% overheads.

- 36.** Firms will need to familiarise themselves with the requirements of the proposals and check their current practices against these expectations through the legal text. With regard to legal costs, we assume 60 pages of legal text. We anticipate that 4 legal staff will read the legal instrument at large firms, 2 at medium firms and 1 at a small firm, taking 12 hours each. We also assume an hourly salary of £69 plus overheads for large and medium firms and an hourly salary of £55 for small firms.
- 37.** The total familiarisation and legal cost per firm is estimated at £674k for all firms.

IT change

- 38.** We would expect firms to incur costs in updating their IT systems to implement the changes. We do not expect firms to make large scale IT changes to comply with the rules. However, we do expect firms will have to change the templates of the KID to comply with the requirements. In particular, replacing performance scenarios with a narrative display of performance, establishing a method to calculate transaction costs if the slippage methodology is not deemed suitable and allowing an extension to the narrative of SRI.
- 39.** One-off IT costs are estimated using research on the structure of IT projects, (see Annex 1 in our approach to analysing costs and benefits). We assume that the change needed will be a small project and will include staff time across 6 different roles: business analysis team, design team, programming team, project management team, test team and senior management. The project days needed varies according to the size of the firm. We expect this project to take around 1 day for small firms, 2 days for medium firms and up to 5 days for large firms to implement. We estimate the costs based on salary information from Willis Towers Watson 2016 UK Financial Services Report, varying by size of firm.
- 40.** We expect total one-off IT costs to be £900k for all firms.

Governance and change

- 41.** We would also expect firms to revise their internal processes and implement better procedures to comply with the rules, in particular we expect firms to update the prescribed risk warnings and narratives within the KID.
- 42.** The SCM captures the estimated cost of such changes through 'change projects', which principally estimates costs on the basis of time incurred by a project team and management, including senior staff time.
- 43.** We expect small, medium and large firms to spend 3, 14 and 45 days respectively to deliver the changes to meet the new proposals. The time is spread across project teams and requires board and executive committee review taking 0.3 and 0.4 person days respectively.

44. Governance and change costs are expected to be £1.2m for all firms.

Costs to consumers

45. We do not expect our proposed measures to lead to any costs to consumers as they amend the existing disclosure requirements. We note that consumers that are familiar with the KID may notice that the display of performance information has now been changed to a format that allows them to get a more objective view on how the product may perform.

Costs to the FCA

46. There are no expected additional resource implications relating to our activities from the proposals. Compliance will be monitored through business-as-usual processes within existing resources.

Benefits

47. We expect our proposed measures to address the drivers of harm discussed above and reduce the potential of consumer harm in the PRIIPs market.
48. Our proposals are aimed at preventing misleading information being disclosed to retail investors which could cause them to invest in PRIIPs products that are not suitable for them. Consumer will benefit from more objective data and the risk/uncertainty of products will be clarified through a structured narrative. Investors will have a better understanding of the risks associated with the product.
49. Changes to the summary risk indicators will mean the risk of VCTs more accurately reflect the true risk and investors will be better informed of the nature of the risk. Additionally, the requirement on manufacturers to upgrade SRI scores (excluding VCTs) and provide an extended narrative will make consumers more aware of the risks not directly captured by the SRI. Consumers will benefit by purchasing more suitable investments and reducing the risk of financial loss of purchase outside of their risk appetite.
50. Investors will benefit from more accurate information on transaction costs as derogations from the slippage methodology will reduce the likelihood of results that have the potential to confuse investors. Our changes will also help consumers be clearer on the products transaction costs.
51. Overall, we consider that the proposals will reduce consumers' asymmetric information by improving how PRIIP manufacturers communicate the nature of a product through a KID. As a result, investors can better rely on the document when making investment decisions and will be able to purchase PRIIPs products more suited to their individual needs. There are also benefits from reduced risk of financial loss and improved trust in the PRIIPs market.
52. Due to the qualitative nature of these benefits, we do not believe that it is reasonably practicable to estimate the above benefits of the proposed intervention. However, our calculations suggest that the total cost of the policy in year one is £2.8m with no on-going costs. Our Products Sales Data reporting indicates that in 2020 there were 330,000 transactions related to PRIIPs products that took place. Assuming that this volume remains the same in the absence of intervention, the savings per consumer

(assuming one transaction per consumer) required for the policy to break-even after one year is £8.50. We consider that the benefits are likely to exceed this.

- 53.** We also expect there will be cost savings for wholesale and corporate bonds manufacturers who were previously publishing a KID un-necessarily, due to confusion over the scope of the regulation.

Q16: Do you have any comments on our cost benefit analysis?

Annex 2

Compatibility Statement

Compliance with legal requirements

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is compatible with (a) its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also sets out the FCA's view of how the proposed rules and guidance are compatible with the duty on the FCA to discharge its general functions (which include rule-making and giving general guidance) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.
5. This Annex includes our assessment of the equality and diversity implications of these proposals.
6. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

The FCA's objectives and regulatory principles: Compatibility statement

7. The proposals set out in this consultation are primarily intended to advance the FCA's operational objective of protecting and enhancing the integrity of the UK financial system. They are also relevant to the FCA's consumer protection objective and the competition objective given the impact of more complete and consistent disclosures along the investment chain. Improving the quality of the PRIIPs Key KID should address the existing conflict between PRIIPs requirements which on the one hand require PRIIPs manufacturers to ensure the information in the KID is accurate, clear, fair and not misleading while at the same time prescribing the production and presentation of information on performance and risk which, in some cases, can be seriously misleading. This information is set out more detail in 1.26.
8. We consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well as set out in 2.16. For the purposes of the FCA's strategic objective, "relevant markets" are defined by s. 1F FSMA.
9. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s. 3B FSMA.

The need to use our resources in the most efficient and economic way

10. The proposals set out in this CP are consistent with an efficient and economic use of our resources.

The principle that a burden or restriction should be proportionate to the benefits

11. The Cost Benefit Analysis in Annex 1 sets out the costs and benefits for the proposals set out in this CP. We consider that the benefits of these proposals outweigh the costs.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

12. Our proposals have regard to the desirability of sustainable growth in the medium and long term

The general principle that consumers should take responsibility for their decisions

13. Better disclosures by manufacturers will allow firms to tailor their products to the needs of consumer more effectively. As a result, consumers will benefit from the improved choice of products as well as greater information on their Investments.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information

14. This principle is not relevant to the proposals set out in this CP.

The principle that we should exercise our functions as transparently as possible

15. We have sought to be as transparent as possible, indicating our direction of travel for the proposals set out in this CP.

16. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA).

Expected effect on mutual societies

17. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies as these are typically not listed issuers of equity shares.

Compatibility with the duty to promote effective competition in the interests of consumers

18. In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers.
19. We do not consider the proposals in this CP to be inconsistent with our duty to promote effective competition in the interests of consumers. Our proposals promote liquidity and choice in the retail market for corporate bonds and other less complex securities by reducing legal uncertainty about when an issuer is required to produce a KID, further contributing to the advancement of our objective to promote competition in the interests of consumers.

Treasury recommendations about economic policy

20. We consider that our proposals are consistent with the aspects of the government's economic policy to which the Financial Conduct Authority should have regard.
21. In the remit letter from the Chancellor of the Exchequer to the FCA on 23 March 2021, the Chancellor affirms the FCA's role in protecting consumers, promoting competition in financial services and protecting and enhancing the integrity of the UK financial system.
22. The FCA has regard to this letter and the recommendations within. As set out in this Annex, we consider that our proposals are proportionate, aim to increase investor protection and promote effective competition.

Equality and diversity

23. We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not,

and to foster good relations between people who share a protected characteristic and those who do not.

- 24.** As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. The outcome of our consideration in relation to these matters in this case is stated in paragraph 1.34-1.35 of this CP.

Legislative and Regulatory Reform Act 2006 (LRR)

- 25.** We consider that the proposals in this CP have had regard to the 5 LRR principles – that regulatory activities should be carried out in a way which is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. We have had regard to the Regulators' Code, particularly the requirement for regulatory activity to be proportionate and targeted.

Annex 3

Questions in this paper

- Q1:** Do you agree with our proposed rules to clarify the scope of the PRIIPs regime?
- Q2:** Are there remaining areas of ambiguity in the scope of the PRIIPs Regulation which would not be addressed by the proposed rules, and if so, which?
- Q3:** Do you agree with the proposed guidance on conditions for a PRIIP to be regarded as not made available to retail investors?
- Q4:** Do you agree with our proposal to remove the requirement for the KID to display performance scenarios?
- Q5:** Do you agree with our proposal to require PRIIP manufacturers to include a narrative description of performance in the KID?
a) If so, should the FCA specify the factors that the narrative should cover (as applicable)?
- Q6:** Do you agree with our decision not to include past performance as part of our proposals for information on performance
a) if not, can you please explain why you think the addition of past performance in the KID alongside a narrative description of performance would be useful to consumers and their investment decision making?
- Q7:** Do you agree with our proposal to require PRIIPs manufacturers to upgrade a product's SRI score where the score resulting from application of the RTS methodology seems to underestimate the level of risk?
- Q8:** Do you agree with our proposal that PRIIPs which are issued by venture capital trusts should be assigned a summary risk indicator of at least 6?
- Q9:** Are there other PRIIPs in respect of which the FCA should specify the summary risk indicator?
a) If so, please let us know which, with your reasons and any evidence you may have.
- Q10:** Do you agree with our proposal to increase the character limit for disclosures of uncaptured risk?

- Q11:** Do you agree with technical amendments we are proposing to make to the PRIIPs RTS for transaction costs?
- Q12:** Do you agree with our proposed amendments in relation to anti-dilution?
- Q13:** Do you agree with our proposed clarification in relation to OTC bond transactions?
- Q14:** Do you agree with our proposed shift to a spread model in calculating costs for index-tracking funds?
- Q15:** Do you agree with our proposal to clarify how to calculate the average price of transaction costs?

Annex 4

Abbreviations in this document

Abbreviation	Description
Cfi	Call for Input
CP	Consultation Paper
EEA	European Economic Area
ESA	European Supervisory Authority
EU	European Union
FCA	Financial Conduct Authority
FS	Feedback Statement
FSMA	Financial Services and Markets Act (2000), as amended
IBIP	Insurance based Investment Product
KID	Key Information Document
KIID	Key Investor Information Document
NURS	Non UCITS Retail Scheme
PRIP	Packaged Retail Investment product
PRIIP	Packaged Retail and Insurance-Based Investment Product
PRIIPs Regulation	Regulation (EU) No 1286/2014
PS	Policy Statement
RTS	Regulatory Technical Standard

Abbreviation	Description
SRI	Summary Risk Indicator
SRRI	Summary Risk and Reward Indicator
UCITS	Undertaking for Collective Investment in Transferable Securities
VCT	Venture Capital Trust

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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Appendix 1

Draft Handbook Text and draft changes to RTS

**PACKAGED RETAIL AND INSURANCE-BASED INVESTMENT PRODUCTS
(SCOPE RULES AND TECHNICAL STANDARDS) INSTRUMENT 2021**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) article 4A of 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 (“the PRIIPs Regulation”) as amended by section 38 of the Financial Services Act 2021; and
 - (2) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137T (General supplementary powers), in relation to Annex B as modified by article 4A of the PRIIPs Regulation and in relation to Annex C as modified by s. 138S of the Act;
 - (b) section 138P (Technical Standards);
 - (c) section 138Q (Standards instruments); and
 - (d) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purposes of sections 138G (Rule-making instruments) and 138Q(2) (Standards instruments) of the Act.

Pre-conditions to making

- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with section 138P of the Act.
- D. A draft of this instrument has been approved by the Treasury.

Commencement

- E. This instrument comes into force on *[date]*.

Amendments to the Handbook and modifications

- F. The FCA makes amendments to the Glossary in Annex A of this instrument.

Making the Product Disclosure sourcebook

- G. The Financial Conduct Authority makes rules and gives the guidance in accordance with Annex B to this instrument, and specifies whether a product, or category of product, falls within the definition of a PRIIP for the purposes of the PRIIPs Regulation.

- H. The Product Disclosure sourcebook (DISC) is added to the [Listing, Prospectus and Disclosure] block within the Handbook, immediately after the [Disclosure Guidance and Transparency Rules sourcebook].
- I. The FCA makes the amendments to the technical standards set out in the following EU regulation (“the PRIIPS RTS”) in accordance with Annex C to this instrument:

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

Interpretation

- J. In this instrument, any reference to direct EU legislation is a reference to it as it forms part of retained EU law.

Citation

- K. This instrument may be cited as the Packaged Retail and Insurance-based Investment Products (Scope Rules and Technical Standards) Instrument 2021.

By order of the Board
[date]

Annex A**Amendments to the Glossary of definitions**

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

PRIIPs technical standards the *UK* version of 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, which is *UK* law by virtue of the *EUWA*.

Annex B

Product Disclosure sourcebook (DISC)

In this Annex, all of the text is new and is not underlined.

1 Application

1.1 Purpose

- 1.1.1 G (1) The *PRIIPs Regulation* lays down uniform rules on the format and content of the *key information document* to be drawn up by *PRIIP* manufacturers and on the provision of the *key information document* to retail investors by *PRIIP* manufacturers and those selling or advising on *PRIIPs*.
- (2) The *key information document* introduces a common standard for setting out information to help retail investors understand and compare the main features, risks, potential rewards, and costs of investing in a *PRIIP*, thus supporting informed investment decisions by *consumers* in the retail market.
- (3) The detailed requirements concerning the content and presentation of the *key information document* are set out in the *PRIIPs technical standards*.
- 1.1.2 G Chapter 2 of this sourcebook sets out *rules* made by the *FCA* under article 4A of the *PRIIPs Regulation* (as amended by section 38 of the Financial Services Act 2021) which are intended to address areas of uncertainty concerning whether certain products, or categories of products, fall within the definition of a *PRIIP* for the purposes of the *PRIIPs Regulation*.
- 1.1.3 G For ease of reference, this sourcebook reproduces the *UK* version of the *PRIIPs technical standards* in Appendix 1R.

1.2 General application

- 1.2.1 R The *rules* and *guidance* in Chapter 2 apply to all *persons* who are subject to obligations under the *PRIIPs Regulation*.
- 1.2.2 G The *PRIIPs technical standards* also apply to all *persons* who are subject to obligations under the *PRIIPs Regulation*.
- 1.2.3 G *COBS* 13.1 and *COLL* 4.7 provide *guidance* relating to the application of the *PRIIPs Regulation* to *funds*.
- 1.2.4 G *COLL* 4.7 sets out *rules* and *guidance* on the *key investor information* and marketing communications as applicable to an *ICVC*, an *authorised fund manager* of an *AUT*, *ACS* or *ICVC*, and any other *director* of an *ICVC* where, in each case, the *AUT*, *ACS* or *ICVC* is:

- (1) a *UCITS scheme*; or
- (2) a *KII-compliant NURS*.

2 Scope rules under article 4A of the PRIIPs Regulation

2.1 Interpretation

- 2.1.1 R (1) As set out in more detail in article 4(1) of the *PRIIPs Regulation*, a packaged retail investment product or ‘PRIP’ means an investment, including instruments issued by special purpose vehicles, where, regardless of the legal form of the investment, 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 assets which are not directly purchased by the retail investor.
- (2) The PRIP definition in the *PRIIPs Regulation* should be read together with the *rules* in this Chapter, which supplement article 4.
- 2.1.2 G A *PRIIP* is defined in article 4(3) of the *PRIIPs Regulation* as a product that is one or both of a PRIP or an insurance-based investment product.

2.2 Scope rules

General distinction between PRIP and non-PRIP debt securities

- 2.2.1 R (1) A *debt security* is not a PRIP if it meets the following criteria:
- (a) it does not fall within *DISC 2.2.2R*;
 - (b) the *issuer’s* default risk is wholly or predominantly determined by the economic performance of the commercial or industrial activities of the *issuer* (or, where the *debt security* is guaranteed by a *group person*, that *person*); and
 - (c) the terms of the *debt security* do not impose any modification, structuring, or conditionality on the *issuer’s* obligation to pay interest or repay the principal save for the effect of any feature listed under *DISC 2.2.4R*.
- (2) For the purposes of (1)(b), lending, investment, and any other financial sector activities are not commercial or industrial activities.
- 2.2.2 R (1) A *debt security* is a PRIP where the level of interest payable, any conditionality of principal repayment, or the *issuer’s* default risk, is linked to or materially dependent on the following, whether or not modified by a pre-determined formula:
- (a) fluctuations in reference indices or benchmarks relating to investment assets or a class of investment assets, for example a stock market index;

- (b) the value or performance of reference investment assets, such as a basket of *shares* or specified *commodities*; or
 - (c) the value or performance of *investments* held by the *issuer* (or by a *person* connected to the *issuer*).
- (2) For avoidance of doubt, there are excluded from (1)(a):
- (a) the Bank of England official Bank Rate; and
 - (b) any benchmarks or indices tracking the rate of inflation, money market interest rates, or other indicators pertaining to the performance of the general economy.

2.2.3 R In *DISC* 2.2.2(1)(c):

- (1) the *investments* include, for example, *derivatives*, real estate holdings, a pool of receivables, or a portfolio of *securities*; and
- (2) a *person* is connected to the *issuer* if it is a member of the same *group* as the *issuer*, has a relevant business relationship with the *issuer*, or otherwise does not have an arm's-length relationship with the *issuer*.

Neutral features

2.2.4 R The following features do not cause a *debt security* to meet the criteria for a PRIP in article 4(1) of the *PRIIPs Regulation*:

- (1) a fixed *coupon* rate, including where:
 - (a) a set *coupon* rate applies until maturity, including a nil or zero rate; and
 - (b) the *coupon* rate is subject to pre-defined changes at fixed times prior to maturity, that is, a stepped *coupon*;
- (2) a floating or variable *coupon*, provided:
 - (a) the interest payable is determined by an index or benchmark of the kind described by *DISC* 2.2.2R(2), with or without a spread reflecting the credit risk of the *issuer*; and
 - (b) the interest payable is not subject to any additional modification or structuring such as, for example, a cap, or a floor other than zero;
- (3) a put *option* giving the investor a discretion to demand early repayment of the *debt security* on pre-agreed terms, or giving the investor the choice to convert or exchange their *debt security* into one or more *shares* of the same *issuer* at a pre-determined price;

- (4) a call *option* allowing the *issuer* to redeem a *debt security* early at a price higher than or equal to par, where:
 - (a) the *option* becomes exercisable due to changes in the financial health, market confidence in, or control of the *issuer*, or general economic conditions, but not including *options* exercisable in response to fluctuations, price movements or performance of an index, benchmark, specified asset or underlying asset falling within *DISC* 2.2.2(1); and
 - (b) the mechanism to calculate the net present value of the future *coupon* payments is made clear to the investor in the terms of the *debt security*;
- (5) a perpetual or indefinite term; or
- (6) the *debt security*'s subordination in the creditor hierarchy in the event of the *issuer*'s insolvency.

Legacy products traded on secondary markets

2.2.5 R A *financial instrument* issued prior to 1 January 2018 is not a *PRIIP*.

2.3 Guidance on when a **PRIIP** is not “made available” to a retail investor

- 2.3.1 G In the *FCA*'s view, and for the purposes of the *PRIIPs Regulation*, a *financial instrument* is not “made available” to a retail investor where the following conditions are met:
- (1) the marketing materials for the *financial instrument* (including the *prospectus*, if there is one) feature prominent and clear disclosures to the effect that the *financial instrument*:
 - (a) is being offered only to investors eligible for categorisation as *professional clients* or *eligible counterparties* under the *FCA*'s *rules*; and
 - (b) is not intended for retail investors;
 - (2) the *issuer* of the *financial instrument* or, in relation to secondary market offers, the distributor, has taken reasonable steps to ensure the offer and any associated promotional communications are directed only to investors eligible for categorisation as *professional clients* or *eligible counterparties*;
- and
- (3) a denomination or minimum investment of £100,000 applies to the *financial instrument*, or equivalent amount for a *financial instrument* denominated in another currency, where the equivalent amount is

calculated not more than three *business days* before the date of issue of the *financial instrument*.

Annex C

Amendments to the PRIIPs RTS

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

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

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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) ⁽¹⁾, and in particular Article 8(5), Article 10(2) and Article 13(5) thereof,

Whereas:

1. ...

...

9. While estimates on returns from a PRIIP are difficult to produce and understand, information on ~~such estimates are~~ performance is of primary interest for retail investors and should be included in the key information document. Retail investors should be provided with clear information on ~~return estimates that is~~ the main factors likely to determine or influence investment performance and any fluctuations in the value of the PRIIP, including relevant correlations and benchmarks, in a manner consistent with realistic assumptions about possible outcomes and with the estimates of the PRIIPs' level of market risk, presented in such a way so as to ~~make clear the uncertainty of that information and the fact that better or worse outcomes are possible~~ enable the investor to form a reasonable understanding of how the PRIIP is likely to perform across an appropriately diverse and relevant range of market conditions.

...

18. Where individual key information documents for each option are deemed not appropriate for retail investors by the PRIIP manufacturer, specific information about the underlying investment options and the generic information about the PRIIP, should be provided, separately. To avoid confusion, the generic information about the PRIIP provided in the key information document should indicate the range of risks, factors determining or influencing performance and costs that can be expected across the different underlying investment options offered. ...

...

20. Data that is used for preparing the information contained in the key information document, such as data on costs, risks and information on performance scenarios, may change over time. Changing data can lead to changes in the information to be included, such as a change in the risk or costs indicators. ...

...

CHAPTER I

CONTENT AND PRESENTATION OF THE KEY INFORMATION DOCUMENT

Article -2

Interpretation

4. In this Regulation, unless the contrary intention appears:

(a) ...

...

Article -1

Definitions

4. For the purposes of this Regulation, the following definitions apply:

(a) ...

...

(d) 'UK UCITS' has the meaning given in section 237(3) of FSMA;

(e) a 'derivative-based PRIIP' is a Category 1 PRIIP that is a future, call option, or a put option traded on a regulated market or on a third-country market considered to be equivalent to a regulated market in accordance with Article 28 of Regulation (EU) 600/2014.

...

Article 3

'What are the risks and what could I get in return?' section

1. In the section entitled 'What are the risks and what could I get in return?' of the key information document, PRIIP manufacturers shall apply the methodology for the presentation of risk as set out in Annex II, include the technical aspects for the presentation of the summary risk indicator as set out in Annex III and comply with the technical guidance, the formats and the methodology criteria for the presentation of performance scenarios information, as set out in ~~Annexes IV and V~~ Annex 4A.

- 1A. By way of derogation from paragraph 1:

(a) subject to sub-paragraph (b), a PRIIP manufacturer must ensure the summary risk indicator produced via application of the methodology set out in Annex II is appropriate and unlikely to mislead investors in the PRIIP, if necessary by

increasing the summary risk indicator that would otherwise be assigned to the PRIIP under that methodology; and

(b) in respect of a PRIIP which is issued by a venture capital trust, a PRIIP manufacturer must assign a summary risk indicator no lower than 6.

1B. If a PRIIP manufacturer increases the summary risk indicator of a PRIIP in accordance with paragraph 1A(a) or (b), it must notify the Financial Conduct Authority via email to [inbox]. The notification must include:

(a) identifying information for the relevant PRIIP;

(b) the summary risk indicator the manufacturer has assigned to the product as well as that which would have been assigned under the methodology in Annex II; and

(c) a brief explanation of the risk factors the manufacturer believes were not adequately reflected in the summary risk indicator that would have been assigned under the methodology in Annex II.

...

~~3. PRIIP manufacturers shall include four appropriate performance scenarios information on investment performance, as set out in Annex V 4A in the section entitled ‘What are the risks and what could I get in return?’ of the key information document. Those four performance scenarios shall represent a stress scenario, an unfavourable scenario, a moderate scenario and a favourable scenario.~~

~~4. For insurance based investment products, an additional performance scenario shall be included in the section entitled ‘What are the risks and what could I get in return?’ of the key information document reflecting the insurance benefit the beneficiary receives where a covered insured event occurs.~~

~~5. For PRIIPs that are futures, call options and put options traded on a regulated market or on a third country market considered to be equivalent to a regulated market in accordance with Article 28 of Regulation (EU) No 600/2014 of the European Parliament and of the Council (9), performance scenarios shall be included in the form of pay-off structure graphs as set out in Annex V in the section entitled ‘What are the risks and what could I get in return?’ of the key information document.~~

...

CHAPTER III

REVIEW AND REVISION OF THE KEY INFORMATION DOCUMENT

Article 15

Review

1. ...
2. The review referred to in paragraph 1 shall verify whether the information contained in the key information document remains accurate, fair, clear, and non-misleading. In particular, it shall verify the following:
 - (a) whether the information contained in the key information document is compliant with the general form and content requirements under Regulation (EU) No 1286/2014, or with the specific form and content requirements laid down in this Delegated Regulation;
 - (b) whether the PRIIP's market risk or credit risk measures have changed, where such a change has the combined effect that necessitates the PRIIP's move to a different class of the summary risk indicator from that attributed in the key information document subject to review;
 - (c) ~~whether the mean return for the PRIIP's moderate performance scenario, expressed as an annualised percentage return, has changed by more than five percentage points~~ whether the performance information narrative continues to provide investors with a fair impression of how the PRIIP is likely to perform under an appropriately diverse and relevant range of market conditions.

...

...

ANNEX I

TEMPLATE FOR THE KEY INFORMATION DOCUMENT

PRIIP manufacturers shall comply with the section order and titles set out in the template, which however does not fix parameters regarding the length of individual sections and the placing of page breaks, and is subject to an overall maximum of three sides of A4-sized paper when printed.

Key Information Document

Purpose

This document provides you with key information about this investment product. It is not marketing material. The information is required by law to help you understand the nature, risks, costs, potential gains and losses of this product and to help you compare it with other products.

Product

[Name Of Product] [Name Of PRIIP manufacturer] [where applicable ISIN or UPI] [website for PRIIP manufacturer] Call [telephone number] for more information [date of production of the KID]

[Alert (where applicable) **You are about to purchase a product that is not simple and may be difficult to understand**]

What is this product?

Type

Objectives

Intended retail investor

[Insurance benefits and costs]

What are the risks and what could I get in return?

Risk Indicator Description of the risk-reward profile Summary Risk Indicator SRI template and narratives as set out in Annex III, including on possible maximum loss: can I lose all invested capital? Do I bear the risk of incurring additional financial commitments or obligations? Is there capital protection against market risk?

Performance Scenarios ~~Performance Scenario templates and narratives as set out in Annex V including where applicable information on conditions for returns to retail investors or built in performance caps, and statement that the tax legislation of the United Kingdom may have an impact on actual payout~~

Investment performance information Appropriate narrative information on the drivers of investment performance as set out in Annex 4A

What happens if [PRIIP Manufacturer] is unable to pay out?

Information on whether there is a guarantee scheme, the name of the guarantor or investor compensation scheme operator, including the risks covered and those not covered.

What are the costs?

Costs over time Template and narratives according to Annex VII

Composition of costs Template and narratives according to Annex VII

Narratives on information to be included on other distribution costs

How long should I hold it and can I take money out early?

Recommended [required minimum] holding period: [x]

Information on whether one can disinvest before maturity, the conditions on this, and applicable fees and penalties if any. Information on the consequences of cashing-in before the end of the term or before the end of the recommended holding period

How can I complain?

Other relevant information

ANNEX II
METHODOLOGY FOR THE PRESENTATION OF RISK
PART 1
Market risk assessment

Determination of the market risk measure (MRM)

1. ...

...

Use of appropriate benchmarks or proxies to specify PRIIPs categories

7A. Where appropriate benchmarks or proxies are used by a PRIIP manufacturer, those benchmarks or proxies shall be representative of the assets or exposures that determine the performance of the PRIIP. The PRIIP manufacturer shall document the use of such benchmarks or proxies and disclose them in the narrative performance information section of the key information document, as set out in Annex 4A.

MRM class determination for Category 1 PRIIPs

8. ...

...

ANNEX III
PRESENTATION OF SRI

Presentation format

1. ...

Completion guidance with regard to the SRI

2. ...

...

6. For ~~derivatives~~ derivative-based PRIIPs that are futures, call options and put options traded on a regulated market or on a third country market considered to be equivalent

to a regulated market in accordance with Article 28 of Regulation (EU) No 600/2014, Elements A, B, and, where relevant, H, shall be included.

Narrative explanations

7. For the purposes of the SRI presentation, including point 4 of this Annex, the following narrative explanations shall be used, as appropriate:

[Element A]

...

[Where applicable:] [Element E] [Other risks materially relevant to the PRIIP not included in the summary risk indicator to be explained with a maximum of ~~200~~ 400 characters]

[Where applicable:] [Element F] ...

...

ANNEX IV PERFORMANCE SCENARIOS is deleted in its entirety. The deleted text is not shown but the annex is marked [deleted] as shown below.

~~**ANNEX IV**~~

~~**PERFORMANCE SCENARIOS [deleted]**~~

Amend the following as shown.

ANNEX 4A

PERFORMANCE INFORMATION

1. The section entitled ‘What are the risks and what could I get in return?’ of the PRIIP’s key information document must include appropriate performance information summarising, in narrative form, the main drivers of investment performance for the PRIIP.
2. The PRIIP manufacturer must ensure the performance information is:
 - (a) accurate, fair, clear, non-misleading and likely to be understood by the retail investors to whom the PRIIP may be offered;
 - (b) compatible with the information stating the objectives of the PRIIP disclosed in accordance with article 2(2); and
 - (c) likely to be useful to retail investors in assessing the prospects for future returns of investment in the PRIIP as well as comparing it with other PRIIPs.

3. The information must, as a minimum, include the following elements:
- (a) a description of the main factors likely to affect future returns for the investor, identifying those most likely to determine the outcome of the investment and other factors which could have a material impact on performance;
 - (b) identification of the most relevant index, benchmark, target, or proxy, as applicable, along with an explanation of how the PRIIP is likely to compare in terms of performance and volatility;
 - (c) a brief explanation of the kinds of conditions that would be conducive to the PRIIP generating higher returns;
 - (d) a brief explanation of the kinds of conditions whereby the PRIIP is likely to generate lower returns or lead to investment loss; and
 - (e) a brief description of what outcome the investor may expect where the PRIIP matures or is redeemed or encashed under severely adverse market conditions.

[Past performance

- 4.
- (a) The PRIIP manufacturer must include in the key information document a graphical representation of the PRIIP's past performance over the preceding 10 calendar years.
 - (b) If the PRIIP has been available for between 1 and 10 calendar years, the PRIIPs manufacturer must include in the key information document a graphical representation of as much past performance information as is available for the product.
 - (c) If the PRIIP has been available for less than one calendar year, the PRIIP manufacturer must include a statement in the key information document explaining that there is insufficient data to provide a useful indication of past performance for investors.
 - (d) The graphical representation of past performance must include:
 - (i) gross as well as net returns of investment in the PRIIP over the period, clearly identified so as to communicate the impact of the costs of investment in the PRIIP which are disclosable under Annex VI;
 - (ii) the performance of the relevant comparator in point 3(b) of this Annex over the same period;
 - (iii) the following warning: 'Past performance does not predict future outcomes. The return on your investment may be very different from how this product has performed in the past.'
 - (e) Where a material change occurs to the PRIIP's objectives and means for achieving those objectives during the period covered by the graphical representation of the PRIIP's past performance, this should be indicated along with a clear warning that the performance was achieved under circumstances that no longer apply.
 - (f) (i) A PRIIPs manufacturer is not required to include a graphical representation of the PRIIP's past performance if such representation, in their view, is likely to have a misleading effect on investors' perception of the risks or prospective returns of the investment.]

- (ii) If the PRIIPs manufacturer decides to omit a graphical representation of past performance for the reason in (i) it must notify the FCA via email to [inbox], including identifying information for the relevant KID and a brief explanation of why the representation of past performance was considered likely to have a misleading effect.

ANNEX V METHODOLOGY FOR THE PRESENTATION OF PERFORMANCE SCENARIOS is deleted in its entirety. The deleted text is not shown but the annex is marked [deleted] as shown below.

~~ANNEX V~~
~~METHODOLOGY FOR THE PRESENTATION OF PERFORMANCE SCENARIOS~~
[deleted]

Amend the following as shown.

ANNEX VI
 METHODOLOGY FOR THE CALCULATION OF COSTS
 PART 1
 List of costs

I. LIST OF COSTS OF INVESTMENTS FUNDS (AIFs AND UCITS)

Costs to be disclosed

One-off costs

1. ...

...

Calculation of specific types of costs of investments funds

Transaction costs

7. Transaction costs shall be calculated on an annualised basis, based on an average of the transaction costs incurred by the PRIIP over the previous three years, with the average taken from all transactions. Where the PRIIP has been operating for less than three years, transaction costs shall be calculated using the methodology set out in point 21 - 23 of this Annex.

8. The aggregate transaction costs for a PRIIP shall be calculated as the sum of the transaction costs as calculated in accordance with points 9 to 23A of this Annex in the base currency of the PRIIP for all individual transactions undertaken by the PRIIP in the specified period. This sum shall be converted into a percentage by dividing by the average net assets of the PRIIP over the same period.
9. ...
10. Estimates of transaction costs using the methodology described below in points 19 to 20 of this Annex must be used for investments in other instruments or assets. Transaction costs associated with non-financial assets must be calculated in accordance with point 20A of this Annex.

Treatment of anti-dilution mechanisms

11. Where a PRIIP has a pricing mechanism that offsets the impact of dilution from transactions in the PRIIP itself, the amount of benefit accruing to the ongoing holders of the PRIIP from anti-dilution mechanisms may be deducted from the transaction costs incurred within the PRIIP using the following methodology:
 - (a) ...
 - ...
 - (c) the anti-dilution benefit shall only be taken into account to the extent that the benefit does not take the total transaction costs below zero.

Actual transaction costs

- ...
14. The arrival price shall be determined as the mid-market price of the investment at the time when the order to transact is transmitted to another person. For orders that are transacted on a day that is not the day that the order was originally transmitted to another person, the arrival price shall be determined as the opening price of the investment on the day of the transaction or, where the opening price is not available, the previous closing price. Where a price is not available at the time when the order to transact is transmitted to another person, ~~(due to the order initiated outside market opening hours or in over the counter markets where there is no transparency of intra-day prices for example), the arrival price shall be determined as the opening price on the day of the transaction~~ the arrival price shall be determined as the most recently available price or, where a recent price is not available, a justifiable independent price or, where a justifiable independent price is not available, the opening price on the day of the transaction or, where the opening price is not available, the previous closing price. Where an order is executed without being transmitted to another person, the arrival price shall be determined as the mid-market price of the investment at the time when the transaction was executed.
15. Where information about the time when the order to transact is transmitted to another person is not available (or not available to a sufficient level of accuracy), or where information about the price at that time is not available, ~~it is permissible to use as the arrival price the opening price of the investment on the day of the transaction~~ a justifiable independent price may be used as the arrival price or, where a justifiable independent price is not available, the opening price of the investment on the day of the transaction or, where the opening price is not available, the previous closing price.

~~When calculating transaction costs using data prior to 31 December 2017, intra-day prices may be considered as not available.~~

...

18. In calculating the costs associated with orders that are initially entered into an auction, the arrival price shall be calculated as the mid-price immediately prior to the auction. In calculating the costs associated with orders that are executed at a predetermined time, the arrival price shall be calculated at that pre-determined time, even if the order has been transmitted for execution before that time.

Transactions executed on an over-the-counter basis

18A. By way of derogation from points 12 to 16 of this Annex for transactions executed on an over-the-counter basis, the actual transaction costs shall be calculated in the following way:

- (a) Where a transaction is executed after bid prices and offer prices have been obtained from more than one potential counterparty, the arrival price shall be determined as:
- (i) the mid-point between the best bid price and best offer price, where the best bid price is below the best offer price;
 - (ii) the best bid price in the case of a sale or the best offer price in the case of a purchase, where the best bid price is higher than the best offer price.
- (b) Where a transaction is executed without both bid prices and offer prices having been obtained, the transaction cost shall be calculated by multiplying the number of units transacted by half the value of the spread between the bid price and the offer price of the instrument. The value of that spread shall be calculated on the following basis:
- (i) from a composite of live market bid/offer quotes, where available;
 - (ii) where live market quotes are not available they shall be obtained by reference to spreads from either:
 - previous transactions in assets bearing similar characteristics (duration, maturity, coupon, call-/put- ability) and liquidity, using transactions previously executed by the PRIIP manufacturer; or
 - data verified by an independent third-party or an asset valuation from an independent third party.

Transaction costs for other assets

...

20A. When calculating the costs associated with non-financial assets, the transaction costs shall be calculated as the aggregate of the actual costs directly associated with that transaction including all charges, commissions, taxes and other payments (such as anti-dilution levies), where those costs are made from the assets of the PRIIP. In the case of cost depreciation over a period specified in the PRIIP's accounting policies, actual costs shall be equal to the cost amounts depreciated over the last three years.

Transaction costs for new PRIIPs

...

Low number of transactions and other similar cases

23A. By way of derogation from points 12 to 18 of this Annex, transaction costs may be calculated using the methodology described in point 21(b) of this Annex where one or more of the following conditions is met:

- (a) a PRIIP undertook a very low number of transactions over the previous three years;
- (b) the total value for all transactions undertaken over the previous three years accounts for a very low percentage of the net asset value of the PRIIP;
- (c) the estimate of total transaction costs is not significant as compared to the estimate of the total costs.

Use of data prior to 31 December 2029

23B. Until 31 December 2029, transaction costs may be calculated using the methodology laid down in point 21 of this Annex for PRIIPs that are UCITS or AIFs.

23C. Until 31 December 2029, where an insurance-based investment product invests in a UCITS or AIF, the transaction costs for those investments may be calculated using the methodology laid down in point 21 of this Annex.

Performance related fees

...

Carried interests

...

II. LIST OF COSTS OF PRIIPS OTHER THAN INVESTMENT FUNDS

Costs to be disclosed

...

Costs of PRIIPs referred to in point 17 of Annex IV that are derivative-based PRIIPs

...

PART 2

Summary cost indicators and compound effect of the costs

I. SUMMARY COST INDICATORS

...

62. For the calculation of the summary cost indicator the costs to be disclosed referred to in point 72 of this Annex shall be the total costs. This shall equal for investment funds the sum of the costs as referred to in points 1 and 2 of this Annex plus the sum of the costs as referred to in points 4 and 6 of this Annex; for PRIIPs other than investment funds, except derivative-based PRIIPs referred in point 17 of Annex IV, the sum of the costs as referred to in points 27 and 28 of this Annex plus the sum of the costs as referred to in points 31 and 32 of this Annex; for derivative-based PRIIPs referred to in point 17 of Annex IV, the sum of the costs as referred to in points 34 and 35 of this

Annex; and for insurance-based investment products, the sum of the costs as referred to in points 47 and 48 plus the sum of the costs as referred to in points 50 and 51 of this Annex. The total costs shall also include exit penalties, where relevant.

One-off costs and one-off costs ratios

...

64. For the calculation of the entry and exit costs ratio the costs to be disclosed referred to in point 72 of this Annex shall for investment funds be the entry and exit costs according to points 1 and 2 of this Annex; points 27 and 28 of this Annex for PRIIPs other than investment funds, except derivative-based PRIIPs referred in point 17 of Annex IV; point 35 for derivative-based PRIIPs referred in point 17 of Annex IV; and points 47 and 48 of this Annex for insurance-based investment products. Exit costs shall also include exit penalties, where relevant.

Recurring costs, portfolio transaction costs and insurance costs/other recurring costs ratios

...

66. For the calculation of the portfolio transaction costs ratio and the insurance costs ratio the following shall apply:
- (a) for the calculation of the portfolio transaction, the costs to be disclosed referred to in point 72 shall be the portfolio transaction costs according to points 7 to 23 of this Annex for investment funds, point 29(c) of this Annex for PRIIPs other than investment funds, except derivative-based PRIIPs referred in point 17 of Annex IV, and point 52(h) of this Annex for insurance based investment products;
 - (b) ...

...

Calculation of summary cost indicator

...

71. The estimation of future benefit payments under point 70 of this Annex shall be based on the following assumptions:
- (a) except for derivative-based PRIIPs as referred to in point 17 of Annex IV, the annual internal rate of return, i.e. the performance, of the PRIIP shall be assumed to be a return equivalent calculated applying the methodology and the underlying hypothesis used for the estimation of the a moderate performance scenario based on reasonable and robust assumptions and methodology from the performance scenarios section of the key information document;

...

...

