PRIIPs – Scope Rules and amendments to Regulatory Technical Standards

Policy Statement
PS22/2

March 2022

This relates to

Consultation Paper 21/23
which is available on our website at
www.fca.org.uk/publications

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1 Summary

1.1 In July 2021, we published Consultation Paper 21/23 (CP 21/23), 'PRIIPs – Proposed scope rules and amendments to Regulatory Technical Standards.' The CP proposals aimed to address the most serious and persistent concerns identified through our Call for Input (CfI) and ongoing monitoring of the onshored Packaged Retail and Insurance-based Investment Products (PRIIPs) regulation. These proposals included targeted amendments to the existing disclosure requirements contained in FCA Handbook rules and Guidance, and the PRIIPs Regulatory Technical Standards (RTS).

1.2 This Policy Statement (PS) summarises the feedback received to CP 21/23 and outlines our final policy position, Handbook rules and amendments to the RTS. The Handbook rules and RTS will come into force on 25 March 2022, with a transition period which will end on 31 December 2022 by which date firms must apply the new requirements.

1.3 With these new rules we seek to mitigate potential harm to retail investors, including those buying PRIIPs without advice and who may not sufficiently understand the key features of the options they are considering or how they compare in terms of risk, costs, and potential rewards.

Who this affects

1.4 Our rules, and the amended RTS, will directly affect all persons manufacturing, selling, or advising on a PRIIP. These firms include, but are not limited to:

- Issuers of securities that are or may be classed as PRIIPs (including those that do not require Part 4A authorisations under FSMA)
- Life companies and discretionary investment management firms
- Firms providing insurance-based investments services
- 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

1.5 This PS will be of interest to consumers, consumer organisations and trade bodies.

The wider context of this policy statement

Our consultation

1.6 While we have always supported the objectives of the PRIIPs regime, we have been aware for some time of serious concerns about areas where the PRIIPs framework does not work as intended.

1.7 To better understand these issues, in July 2018 we published a Call for Input (CfI) seeking views and evidence on market participants' initial experiences of the PRIIPs Regulation requirements. We subsequently published the findings gathered via the CfI in a Feedback Statement (FS) FS19/1, where we summarised the responses.

1.8 Respondents expressed serious concerns about lack of clarity on the scope of the PRIIPs regime, especially 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 key information document (KID) for some products.

1.9 The PRIIPs regime stems from European regulation, now 'onshored' into the UK. Concerns about its functioning have been acknowledged both in the EU and in the UK. The EU has also conducted a review and implemented targeted amendments. The UK's exit from the EU occurred before the review was finished and we subsequently onshored an unamended version of the legislation. HM Treasury (HMT) therefore outlined its intention to bring forward legislation to improve the functioning of the PRIIPs regime in the UK, to mitigate potential consumer harm. The legislative changes were deliberately targeted to address the most concerning issues and have now been completed and implemented as part of the Financial Services Act 2021 (FS Act).

1.10 In CP23/21 we set out proposals to amend the PRIIPs RTS and introduce rules in line with the PRIIPs provisions in the FS Act.

1.11 We believe the targeted amendments, and future PRIIPs reform, will improve disclosure in the consumer investment space, and will mitigate harm to retail investors.

1.12 As stated in CP 23/21, these amendments are targeted amendments only. We explained that this is the first step towards HMT's commitment to 'conduct a more wholesale review of the disclosure regime for UK retail investors,' which would include a more holistic review of the PRIIPs regime.

1.13 We recognise that how disclosures are distributed is changing, and we will work closely with HMT to agree how we can improve the regime to make sure the information provided to retail consumers is relevant, easy to analyse and helps people make informed decisions. For example, we will consider how we can ensure the PRIIPs KID will work across different media, aiming to ensure the format is also suited to digital investments.

How it links to our objectives

1.14 **Promote effective competition in the interests of consumers in the markets for regulated financial services.** Our rules are 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, and thereby to promote competition in the interests of consumers.

1.15 **Secure an appropriate degree of protection for consumers.** The changes to the RTS and rules that we will be introducing should help consumers better understand the risks that investments entail and stop people missing out on the benefits of making a better-informed investment choice. This is because retail investors will be provided with a more accurate Summary Risk Indicator (SRI) score and will not be presented with confusing negative transaction costs. This advances our consumer protection and competition objectives.

1.16 **Protect and enhance the integrity of the UK financial system.** The changes that we will make to the RTS should address the existing conflict between PRIIPs requirements. PRIIPs manufacturers are required to ensure the information in the KID is accurate, clear, fair and not misleading while at the same time having to produce and present information on performance and risk in a prescribed way which, in some cases, can be seriously misleading. This should enable market participants to meet the accuracy and fair, clear and not misleading requirements more easily, reducing the risk of decreased trust in the market from consumers receiving misleading information.

What we are changing

1.17 In this PS, we outline the changes that we will be making to the PRIIPS regulation following analysis of the feedback we have received to our consultation. In summary, our changes:

- introduce rules to clarify the scope of the PRIIPs Regulation for corporate bonds, making it clearer that certain common features of these instruments do not make them into a PRIIP
- introduce interpretative guidance to clarify what it means for a PRIIP to be 'made available' to retail investors
- amend the PRIIPs RTS to:
  - replace the requirements 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 about certain applications of the 'slippage' methodology when calculating transaction costs

1.18 We will also make consequential date changes to the PRIIPs RTS and Handbook rules to align with the extension of the Undertakings for Collective Investment in Transferable Securities (UCITS) exemption contained in the PRIIPs Regulation (as enacted in retained EU law) to 31 December 2026.

Outcomes we are seeking

1.19 We want retail investors to receive more reliable, and comparable, information at the point of sale, facilitating better product understanding, and reducing unsuitable purchases.

1.20 The clarification of the scope of PRIIPs is intended to provide manufacturers and distributors with more confidence to issue corporate bonds accessible to retail investors without an accompanying KID where they have been reluctant to do so before. In turn, this should increase retail access to higher quality instruments that benefit from wholesale market pricing.

Measuring success

1.21 We will evaluate the effectiveness of our package of measures through feedback from and engagement with industry and consumer bodies as well as through ongoing supervision of the regime. We expect to see better quality information in the KIDs offered to investors. In addition, through clarifying the scope of the regime we expect that investment manufacturers and distributors will have confidence to issue non-PRIIPs products to retail consumers without a KID, where previously their uncertainty prevented them from doing so.

Summary of feedback and our response

1.22 We received 39 responses to our consultation. Overall, there was good support for our proposals. However, we received several challenges,

- respondents wanted further clarification on whether specific products were in the scope of the PRIIPs regime
- respondents queried if £100k was a suitable amount for a product to be viewed as not made available to retail investors
- some respondents wanted performance scenarios to be retained for specific products, as it works well for them
- respondents queried why the slippage methodology was being retained
- respondents thought that the notification requirement to inform the FCA if a PRIIPs manufacturer upgrades a product's SRI was unnecessary

1.23 Having considered the feedback received, we have finalised our rules with some changes and additional guidance as summarised below:

- we have introduced an implementation period, to provide firms with time to adjust and introduce the changes required to comply with our new regulations
- we have removed the requirement to update the FCA if a PRIIPs manufacturer upgrades a product's SRI score

1.24 We elaborate on these changes and our response to other areas of feedback in Chapter 3.

Equality and diversity considerations

1.25 We have considered the equality and diversity issues that may arise from the actions set out in this PS.

1.26 Overall, we do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010. However, we will continue to consider the equality and diversity implications of our regulations once the final rules are in force.

Next steps

1.27 Our changes to the PRIIPs RTS and our new rules will take effect from 25 March 2022. However, firms will have until 31 December 2022 to implement the new changes.

1.28 During this implementation period, firms that are directly affected should familiarise themselves with the details of the RTS and the rules and make arrangements to ensure they meet all requirements by 31 December 2022.

2 The wider context of this policy statement

2.1 Consumer Investment markets are a key focus for the FCA. Disclosures have an important role to play in achieving good consumer outcomes. These targeted changes to the PRIIPS regime play a part in improving the overall consumer journey to investing. In this chapter, we summarise some other key domestic developments that are relevant to this PS and the actions we are taking, to provide context for the proposed changes.

2.2 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 consumers can access investment products that are appropriate for them and make effective decisions, and the firms we authorise operate to high standards. We subsequently published our consumer investments strategy which set out our aim not unduly to restrict investors, but to empower consumers so they can invest with confidence, understanding the risks they are taking, and the regulatory protections provided.

2.3 The importance of disclosure is flagged in our work on the New Consumer Duty, which highlights the importance of communication through disclosure that gives consumers the information they need, at the right time, presented in a way they can understand.

2.4 Our recent consultation paper on 'Strengthening our financial promotion rules for high-risk investments, including cryptoassets', proposes measures informed by behavioural science that aim to ensure only those consumers that understand the risks invest in high-risk investments, as well as higher standards for authorised firms which approve and communicate financial promotions.

2.5 Disclosure regimes, such as PRIIPs, play an important part in ensuring the right information is provided to consumers at the right time, providing consumers with confidence to make informed investment decisions with adequate consumer protection.

3 Rules clarifying the scope of the PRIIPs regime in the UK

3.1 This proposal received 21 responses, with 17 of these broadly supportive of the proposals. Some respondents expressed their desire for the FCA to reconsider the scope of the PRIIPs regime and were disappointed that our proposals were not more fundamental.

Our response

As explained in CP 21/23, this is the first step that we are taking to improve retail disclosure requirements following the UK's exit from the EU. HMT committed, in its PRIIPs policy statement, to 'conduct a more wholesale review of the disclosure regime for UK retail investors', and we intend to work closely with HMT to develop this.

Meanwhile, we will introduce the proposed rules as we consulted on to address the uncertainty as to whether certain features do, or do not, make a product into a PRIIP. This should give issuers the confidence to broaden the availability of corporate bonds to retail investors.

Remaining areas of ambiguity

Scope

3.2 We received some responses asking for clarity on whether specific products were in scope of the PRIIPs regime. We also received responses asking if certain products would be excluded from scope.

3.3 We do not have the power to include/exclude products from the scope of the regime. We are only able to issue guidance on our interpretation of the existing regulations. To provide more certainty we have, therefore, clarified our view of certain products below.

Our response

FX forwards. FX Forwards, and FX Swaps, are derivatives. As outlined in FS 19/01, and explained on our website, we consider that derivatives, if offered to retail investors, would fall within the definition of PRIIPs.

REITs. As outlined in FS 19/01, it is the responsibility of the manufacturer of REITs to determine whether the REIT is a PRIIP or not, on a case-by-case basis.

Listed Investment Companies. As outlined in FS 19/01, we maintain our view that if a collective investment undertaking falls within the definition of an 'alternative investment fund,' and is made available to the retail market, then it should be considered a PRIIP. A listed investment company would fall under that definition, notwithstanding that it is also a body corporate.

Exchange Traded Derivatives (ETDs). We maintain our view that ETDs are derivatives. As explained on our website, we consider that derivatives, if offered to retail investors, would fall within the definition of PRIIPs.

SPACs. Generally, we would not consider a SPAC to fall in scope of the PRIIPs Regulation where it is publicly listed and follows the traditional model where the investor can either swap their shares in the SPAC for shares of the merged company or redeem once the acquisition is completed. However, it is the responsibility of the manufacturer to consider the features of a SPAC, particularly an unlisted entity, and determine whether it could constitute a PRIIP.

Royalty Companies. We would typically consider a royalty company to be out of scope of the PRIIPs Regime where the assets held by retail investors are publicly listed corporate shares. However, it is the responsibility of the manufacturer to determine whether the Royalty Company offering is a PRIIP or not, on a case-by-case basis.

US ETFs. As outlined in CP 16/18, a third-country manufacturer or distributor of a PRIIP to retail clients in the UK will be required to prepare and produce a KID.

Sukuk. As the characteristics of a Sukuk can vary, it is the responsibility of the manufacturer to determine whether the Sukuk is a PRIIP or not, on a case-by-case basis.

Regulated Covered Bonds. It is the responsibility of the manufacturer of regulated covered bonds to determine whether the characteristics of the bond mean that it constitutes a PRIIP or not, on a case-by-case basis.

Sovereign Bonds. We do not consider sovereign bonds to fall within the scope of PRIIPs.

Made available

3.4 We received 20 responses to this proposal, and 12 supported our proposed guidance on conditions for a PRIIP to be regarded as not made available to retail investors offered, while 8 disagreed with it. Disagreement centred on how the minimum denomination for considering a security not to be made available to retail investors was set at £100k. Some wanted this reduced, others wanted it abolished, and one wanted it to be the lowest of £100k, €100k or $100k. One respondent disagreed with the cumulative approach we took to the 'made available' guidance.

Our Response

We are introducing the guidance as consulted on. We consider that this guidance will not require unduly onerous precautions from issuers and intermediaries to prevent sales to retail investors. Further, we believe the conditions set out in the guidance will provide a suitable level of protection for retail investors.

We will maintain the cumulative approach to our guidance as well as the minimum denomination of £100k.

4 Information on performance and risk

4.1 This chapter summarises the feedback we received on our proposals to amend the disclosure and information on performance and risk.

Summary of proposals

4.2 We proposed several changes to:

- remove performance scenarios from the KID and introduce a requirement for manufacturers to instead include a narrative description of performance in the KID
- require PRIIPs manufacturers to upgrade their product's SRI if they consider that the risk rating produced by the methodology is too low, we also proposed requiring PRIIPs issued by VCTs to assign an SRI score no lower than 6
- increase the character limit for uncaptured risks from 200 characters to 400 characters

4.3 We asked:

- Q4 Do you agree with our proposals to remove the requirements 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?
- Q5a) 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?
- Q6a) 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?
- Q9a) 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?

Summary of feedback received

Removal of performance scenarios

4.4 We received 27 responses to this question, with 17 broadly in support of the proposal. Most of these responses cited misleading and unrealistic outcomes displayed or consumer confusion as the reason to remove performance scenarios.

4.5 Some respondents were concerned that removing performance scenarios would reduce the comparability of products, an objective of the PRIIPs regime. Others proposed that the FCA introduce regulations that align with changes made by European Supervisory Authorities to the EU RTS so that a standard can be formed across Europe.

4.6 A couple of respondents disagreed with the removal of performance scenarios for specific products, including structured products. They noted that performance scenarios are typically accurate for these products, and therefore provide useful information for retail investors.

4.7 One respondent did not want the performance scenarios to be removed without prior consumer testing.

4.8 One respondent agreed that performance scenarios should be removed but wanted the Reduction in Yield calculation to be replaced by a nominal growth figure.

Our response

We will proceed with our proposal to remove the requirement for PRIIPs manufacturers to display performance scenarios in the KID. This is because they resulted in manufacturers being subject to obligations that are incompatible with their duty to ensure the information in the KID is accurate, clear, fair, and not misleading. It remains unclear that the underlying methodology 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. To mitigate the risk of incomparable products we have introduced a narrative description of disclosure and issued further information on this.

While we recognise that performance scenarios work as intended for specific products, e.g., structured products, we are unable under the current legislation to apply different regulations to different products. On balance, for most products, we assess that performance scenarios result in misleading information being displayed.

While we recognise that the nominal growth rate works well for long term investment products, the PRIIPs regime includes short-term investment products. Therefore, we will retain the Reduction in Yield calculation.

Narrative description of performance

4.9 We received 25 responses to this question and 14 were broadly supportive. These respondents felt a narrative description of disclosure would permit greater flexibility in describing performance factors and allow performance to be more accurately described. However, some respondents felt that a move to a narrative description of performance might remove consistency across KIDs and decrease comparability.

4.10 Some respondents thought that this policy proposal was a "stop-gap" solution, that will remove consistency across KIDs. Others thought that retail investors would not engage with narrative descriptions of performance.

4.11 Almost all respondents wanted some form of guidance to support the construction of narrative descriptions of performance. Although there were differing views as to how prescriptive this guidance should be.

Our response

At this stage, we have decided to rely on existing research in this area rather than conduct consumer testing. We had sufficient immediate concerns to justify removing the misleading elements without testing. As we are removing the prescriptive requirement of performance information, the narrative text will vary from KID to KID. Therefore, it is unclear that testing would be sufficiently comprehensive, or could be undertaken sufficiently rapidly, to address issues across the full range of products requiring a KID. We have published the relevant literature in Annex 3. This research highlights that retail investors are best able to engage with disclosures, such as narrative text, when they are presented in a way that is short, easy to understand and suitably prominent.

Given the feedback received, we have decided to remove, as proposed, the previous prescriptive requirement in respect of performance information, but include guidance in the RTS to support firms in their creation of the narrative descriptions of disclosure. This will provide manufacturers with the flexibility to accurately disclose the factors that could impact the returns on a product.

Past performance

4.12 We did not consult on the inclusion of past performance in the KID, but we did ask for respondents to provide their view on it. Respondents had mixed views on past performance.

4.13 Some respondents thought that past performance can be overly optimistic and can lead to retail investors underestimating the risk associated with a product. Further, some respondents noted that only some PRIIPs lend themselves to past performance.

4.14 However, other respondents believed it would add value to the KID, as clients usually find the information helpful. Further, some respondents felt it could educate retail investors about the impact of volatility, as it demonstrates the impact in a visual manner.

Our response

We will use the feedback we have received to inform our discussions with HMT when we engage with them on the wider review of retail disclosures.

Upgrade a product's SRI score

4.15 In CP 21/23 we proposed to require firms to upgrade a product's SRI score if the underlying methodology produced a score that was too low. This proposal received 21 responses, with 8 explicitly supporting it. Seven thought it undermined the purpose of PRIIPs as it would reduce consistency and comparability across KIDs. Ten respondents viewed this as a "quick fix" but would have preferred the SRI methodology to be further evaluated.

4.16 A number of respondents disagreed with the notification requirement, in part because it might incentivise firms not to increase an SRI score.

4.17 One respondent queried why a manufacturer could not downgrade a product's SRI score.

Our response

The aim of the SRI is to help consumers choose a PRIIP in line with their risk appetite, therefore, under-estimation of overall risk undermines 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 wish to accept. As stated in the CP, these measures intend to address the most concerning aspects of the regime and we are not addressing the underlying methodology at this point. For this reason, we have introduced rules to require PRIIPs manufacturers to upgrade a product's SRI score when the score resulting from the application of the RTS methodology underestimates the level of risk.

However, after evaluating feedback on the notification requirement, we have decided not to proceed with this proposal. Manufacturers will not be expected to notify the FCA if they upgrade a product's SRI score.

VCT assigned SRI of 6 or 7

4.18 In CP21/23 we proposed that a VCT must be assigned a minimum risk score of 6. This proposal received 10 responses. Two respondents argued that this proposal undermines consistency and comparability across asset classes. Three respondents asked that the underlying methodology should be addressed. One respondent said that VCTs should be assigned a risk score of 7, while 2 respondents did not understand why VCTs were singled out.

4.19 Two respondents were concerned that this would create an artificial benchmark for PRIIPs which invest in similar underlying assets.

Our response

We maintain that 6 is an appropriate minimum SRI for VCTs and expect firms to upgrade the SRI score for their product if they consider 6 is too low. We have introduced this proposal as consulted on as it will provide more consumer protection.

We do not intend for this to create a benchmark for similar asset classes. We consider that firms are in the best position to evaluate the riskiness of their product, and to upgrade the SRI score if it is too low.

As we explained in CP 21/28, these proposals are designed to address the most difficult aspects of the PRIIPs regime, as evidenced in our CfI. We will use the feedback we received to inform our conversations with HMT when they undertake their wider disclosure review.

Increased disclosure character limit for risk

4.20 In our CP, we proposed to increase the character limit for the description accompanying the SRI score. This description allows firms to explain all other significant risks not covered in the SRI score calculation. Respondents largely agreed with this proposal, with 15 of the 17 responses supportive of it. There was a small amount of disagreement. Some respondents thought that this would put a strain on the 3-page limit, while others thought it would reduce consumer engagement.

Our response

We maintain that increasing the character limit for the description accompanying the SRI will facilitate a more complete summary of key risks, where appropriate. PRIIPs manufacturers must ensure descriptions of risk are clear and appropriate for retail clients, and do not simply link to, or replicate language in a prospectus if this would not be easily understood by less sophisticated clients.

5 Technical amendments to transaction costs disclosure requirements

5.1 This chapter summarises the feedback we received on our proposals to make targeted amendments to the RTS to address issues arising from transaction cost reporting in specific contexts.

Summary of our proposals

5.2 We proposed several changes to improve the accuracy of transaction cost reporting in the following areas:

- treatment of anti-dilution
- calculation of over-the-counter (OTC) transactions in bonds
- calculation of costs of index-tracking funds

5.3 We asked:

- 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?

Summary of feedback received

Amendments to the RTS for transaction costs

5.4 Our proposals to amend the RTS for transaction costs received 13 responses. Five stakeholders said that the slippage methodology is not an appropriate measure of transaction cost for consumer disclosures. They argued that it is a faulty methodology and the disclosure of these costs without context or explanation can mislead investors. One respondent proposed the slippage methodology be replaced with a 'half-spread' methodology.

5.5 One respondent argued that the amendments to the RTS would detract from the consistency of approach upon which the key objectives of the regime are predicated. Two respondents were concerned that transaction costs confuse retail investors. They thought this risked excluding investors who do not fully understand how costs are calculated or what they relate to.

Our Response

We have already addressed objections raised by industry stakeholders in relation to the slippage methodology in FS 19/1 and do not intend to re-open the discussion of whether slippage is an appropriate measure for the purposes of PRIIPs transaction cost disclosures in this PS.

Anti-dilution benefits

5.6 In CP 21/23 we proposed to amend the RTS to ensure that:

- firms using an anti-dilution mechanism disclose anti-dilution benefits in the KID, as part of the narrative description of 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

5.7 There were 12 responses to this proposal. Two respondents expressed appreciation that our anti-dilution proposals would align with the workplace pensions transaction costs disclosures. One respondent raised a concern that our amendments would prevent governance bodies from being able to understand the impact of an anti-dilution mechanism. Three respondents wanted the full anti-dilution costs recorded in the KID, while one wanted it recorded in another area of the KID.

5.8 Three respondents disagreed with our proposal to disregard a portion of the anti-dilution benefit where it would lead to negative transaction costs, as they would prefer us instead to address the slippage methodology which causes negative transaction costs.

Our Response

While we recognise that a breakdown of transactions costs, including the effects of anti-dilution, would be helpful for sophisticated consumers and governance bodies, this is not the target audience of the KID. The KID is designed for retail investors, and our anti-dilution proposals will facilitate better consumer understanding of transaction costs.

We consider that disclosure of anti-dilution benefits in the KID will allow firms to be more transparent about their costs, and better inform consumers about the impact of any anti-dilution benefit. As explained in paragraph 5.6, we do not intend to address the underlying slippage methodology at this point. We will use the feedback we received on this proposal to inform our discussions with HMT on the future review of retail disclosures. We think that the anti-dilution rules will prevent negative transaction costs being disclosed, which will improve retail investor comprehension.

Calculation of transaction costs for debt securities

5.9 This received 5 responses, all of which were broadly supportive. However, one respondent raised a concern that the terminology we have used to frame the clarification is confusing and may inadvertently exclude electronic bond transactions executed on a trading platform.

Our response

We are introducing the rule changes as consulted on. We consider that this will be more accurate and straightforward than alternative approaches and should remove the possibility of firms calculating negative transaction costs for these transactions. We have aligned this with the regulations set out in COBS 19.

We note the feedback and clarify that OTC in this context does not inadvertently exclude bond transactions executed on a trading platform.

Calculation of transaction costs for index-tracking funds

5.10 In CP 21/23 we proposed that index-tracking funds use a spread model to calculate costs, as opposed to slippage. This received 7 responses, with 4 in broad agreement. Four respondents, including some who agreed with the proposal, wanted the spread model also to be applied to active funds with a low turnover.

Our response

Where there is a low turnover, the costs will likely be very small, so a proportionate approach can be justified. If a live fund has a low number of transactions over the previous 3 years, it will be able to use the spread model.

We think firms are best placed to evaluate if their fund meets the conditions outlined in the RTS.

Understanding the average price of transaction costs

5.11 Eight of the 10 respondents supported the proposal. One respondent thought our proposals did not provide meaningful clarification of how to calculate the average price of transaction costs.

Our response

We are introducing the rules as consulted on, to remove uncertainty. We will evaluate all aspects of the transaction costs methodology when HMT undertakes a wider review of retail disclosures.

6 Other Issues

Implementation of the new changes

6.1 Fourteen respondents (including several trade bodies) raised concerns about our proposed timeline for firms to comply with the new regulations. They flagged that they would need more time to make the required amendments to their systems and controls.

Our Response

To facilitate a smooth transition, we have decided to introduce an implementation period. This will give firms time to make the required changes but will also allow firms to issue the new KID sooner if they are able to. We think this balances consumer protection and firm capability.

6.2 The following timeline has been adopted:

- publication and rules to take effect – 25 March 2022
- end of implementation period – 31 December 2022

Application of our rules to authorised and recognised investment funds

Authorised investment funds

6.3 Parliament legislated to extend the exemption for Undertakings for the Collective Investment in Transferable Securities (UCITS) by 5 years – from 31 December 2021 to 31 December 2026. We will be making consequential amendments to the PRIIPs RTS and Handbook to align with this extension.

6.4 This exemption requires UK UCITS schemes to provide a Key Investor Information Document (KIID) rather than a KID. A similar exemption applies to non-UCITS retail schemes (NURS), marketed to UK retail investors, if the fund manager opts to use a NURS-KII document instead of a PRIIPs KID. Therefore, the amendments we are making to the requirements in the PRIIPs Regulation will not apply immediately to these schemes.

6.5 An EEA UCITS which was previously recognised under s.264 FSMA, and which is now registered for marketing under the Temporary Marketing Permissions Regime, must continue to provide a UCITS KIID. No decision has yet been made on whether the new EU PRIIPs KID for UCITS will be accepted in the UK after the end of 2022. It is for HMT to determine in due course what the future disclosure requirements for EEA UCITS will be.

Recognised investment funds

6.6 Apart from EEA UCITS, overseas funds that are individually recognised under section 272 of FSMA are currently treated as PRIIPs, and the regulations set out 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.

Application to Gibraltar-based firms

6.7 As a consequence of Regulation 11 of the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 (SI 2019/680), the amendments to the PRIIPs RTS do not apply in relation to the activities of the Gibraltar-based firms. For consistency, the rules and guidance in the Product Disclosure sourcebook (DISC) also will not apply in relation to the activities of Gibraltar-based firms.

7 Consequential changes to PRIIPS RTS and FCA Handbook guidance

7.1 As part of the Financial Services Act 2021, Parliament conferred power to the Treasury to extend the Undertakings for Collective Investment in Transferable Securities (UCITS) exemption in the PRIIPs Regulation by 5 years – from 31 December 2021 to 31 December 2026. This extension means that UK UCITS funds offered to UK retail investors must continue to supply a UCITS key investor information document (KIID).

7.2 We have made consequential amendments to the UK PRIIPs RTS and the associated Handbook guidance to reflect the new end date of the UCITS exemption in the UK's PRIIPs Regulation. The exemption also applies to any NURS for which a NURS-KII document is provided.

Application to Gibraltar

7.3 The FCA's view is that the extension of the UCITS exemption applies to Gibraltar-based firms falling within the scope of the exemption (The PRIIPs Regulation applies in relation to the activities of Gibraltar-based firms in accordance with Regulation 11 of the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 (SI 2019/680)). However, as outlined in paragraph 6.9, the consequential amendment made to Article 18 in the PRIIPs RTS, in response to the extension to the UCITS exemption, will not apply in relation to the activities of Gibraltar-based firms. However, we do not propose to take enforcement action against such firms for breach of Article 14(1) of the PRIIPs RTS if they provide the following disclosure in accordance with Article 14(2):

- They are a UCITS scheme and are supplying a UCITS KIID
- They are a Non-UCITS retail scheme supplying either a NURS-KII document or a PRIIPs KID. A NURS may meet the requirement to draw up key information under the rules in COLL 4.7 with either a NURS-KII document or a PRIIPs KID.

Annex 1
List of non-confidential respondents

AFME

Alan Jeavans

Bowen Song

Elijah Aderemi

FE fundinfo

Interactive Investor Services Limited

LME

Numis

Roger Lawson

Annex 2
Disclosure Remedies

1. It is important to note that providing consumers with information (from hereon in referred to as disclosure) does not guarantee that they will use it in their decision-making. In the first instance, it may be difficult or time-consuming to access and read disclosures.[1] As a result, consumers may simply not see the disclosure or elect not to read it.[2] Indeed, previous research conducted for the FCA has found that relatively few consumers access Key Information Documents when browsing for investments.[3] For these reasons and others, disclosure may not increase understanding or affect consumer choice.[4] When disclosure is provided and read, consumers will likely focus on that which is clear and easy to understand and ignore that which is unclear or difficult to understand.[5] Relatedly, more attention will be paid to information that is available at the moment of the decision[6] and that is displayed alongside other core information, without requiring additional steps (such as clicking-through) to access.[7] This rest of this annex sets out that where disclosures have been effective, they are more likely to have been provided in a way that is short, easy to understand and prominent.

2. Previous research conducted for the FCA has found that risk warnings that are more informative for consumers significantly increase consumers' comprehension and perception of the risks involved in high-risk investments. The standard risk warning, 'Your capital is at risk', was made more informative by spelling out the potential implications of investing: 'This is a high-risk investment. You could lose all your money and are unlikely to be protected if something goes wrong.' Notice the replacement of the often misunderstood 'capital' with 'money'. Making the warning more salient – by increasing the text size, displaying it on a red background and featuring it in the main body of the financial promotion as opposed to the small print – also appears to have increased comprehension.[8] Earlier evidence has demonstrated that information located near the top of a page is likely to be more effective than information positioned at the bottom of a page.[9]

3. Similarly, another recent study found that adding salient and simple FAQ-style information to retail investors' user journeys significantly improves investors' understanding of key risks associated with crowdfunding. Importantly, this FAQ-style information was easy to understand – short and focusing on the important takeaways in a simple and plain language. It also captured attention – using icons that made the

1 Sunstein, C. R. (2020). Sludge audits. Behavioural Public Policy, 1-20.

2 OECD (2018), "Improving online disclosures with behavioural insights", *OECD Digital Economy Papers*, No. 269, OECD Publishing, Paris, https://doi.org/10.1787/39026ff4-en.

3 Financial Conduct Authority (2017). Asset Management Market Study Final Report. Available online at: https://www.fca.org.uk/publication/market-studies/ms15-2-3.pdf (pg 26-27).

4 Australian Securities and Investment Commission (ASIC) and Dutch Authority for the Financial Markets (AFM) (2019) 'Disclosure: Why it Shouldn't be the Default', ASIC Report 632. Available at: https://download.asic.gov.au/media/5303322/rep632-published-14-october2019.pdf.

5 Shah, A. K., & Oppenheimer, D. M. (2007). Easy does it: The role of fluency in cue weighting.

6 Fernandes, D., Lynch Jr, J. G., & Netemeyer, R. G. (2014). Financial literacy, financial education, and downstream financial behaviors. *Management Science*, *60*(8), 1861-1883.

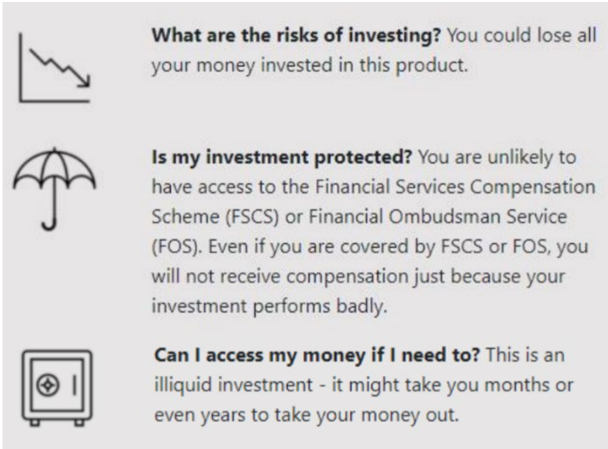
7 Smart, L. (2016). Full Disclosure: A Round-Up of FCA Experimental Research into Giving Information. FCA. Available at https://www.fca.org.uk/publication/occasional-papers/op16-23.pdf

8 Délias, Dunvel, Flo Farghly, Lucy Hayes, Cherryl Ng, and Max Spohn (2022). Going beyond "capital at risk": behaviourally informed risk warnings for high-risk investment products. FCA Research Note. Available online at: https://www.fca.org.uk/publication/research/behaviourally-informed-risk-warnings.pdf

9 Bergstrom, J. R., & Schall, A. (Eds.). (2014). *Eye tracking in user experience design*. Elsevier.

information more salient (see Figure 1).[10] Research in other contexts has similarly found that the introduction of FAQ-style information with icons helped consumers better understand contractual terms and privacy policies.[11]

Figure 1. FAQ-style information used in Farghly et al (2022).



4. Further research into the display of charges on investment funds, showed that the addition of a warning, especially when coupled with a chart showing the impact of charges or a screen providing a summary of charges, helped consumers better understand fees and choose cheaper funds. The warning was worded in a simple and actionable way, which read: 'Warning. Check how much you are paying. Fund charges can significantly impact investment returns.' It was also designed to be noticeable, using colour and bold text, with a prominent placing.[12] Whilst simple graphical information can be useful, for example in helping investors to make cheaper investment decisions[13], the inclusion of graphics does not always result in increased financial comprehension of financial products.[14] Further, the inclusion of graphs can be problematic if they draw attention to past performance statistics that may not be an informative guide to future performance.[15]

5. Simplifying information has proved effective in improving comprehension and choice across a range of sectors.[16] For example, in an online experiment, consumers selected a somewhat better asset allocation when provided with a three-page Key Information Document (KID) compared to being provided with a more detailed four-page summary prospectus.[17] In another example, the introduction of the 'Pension

---

10 Flo Farghly, Lucy Hayes, Cherryl Ng, and Max Spohn (2022). Pausing, reading and reflecting: decision points in high-risk investment consumer journeys. Available online at: https://www.fca.org.uk/publication/research/decision-points-consumer-journeys.pdf

11 Behavioural Insights Team (2020). Best practice guide. Improving consumer understanding of contractual terms and privacy policies: evidence-based actions for businesses, available online at: https://www.bi.team/wp-content/uploads/2019/07/FinalTCs-Best-Practice-Guide-July-2019-compressed.pdf

12 Lucy Hayes, William Lee and Anish Thakrar (2017). Now you see it: drawing attention to charges in the asset management industry. Available at: https://www.fca.org.uk/publication/occasional-papers/occasional-paper-32.pdf

13 de Goeij, P., Hogendoorn, T., & Van Campenhout, G. (2014). Pictures are worth a thousand words: graphical information and investment decision making. *Mimeo*.

14 Federal Reserve Board (2011), 'Designing Disclosures to Inform Consumer Financial Decision-making: Lessons Learned from Consumer Testing', Federal Reserve Bulletin.

15 Diacon, S. and Hasseldine, J. (2007), 'Framing effects and risk perception: The effect of prior performance presentation format on investment fund choice', Journal of Economic Psychology, 28:1, pp. 31–52.

16 Bhargava, S., & Loewenstein, G. (2015). Behavioral economics and public policy 102: Beyond nudging. *American Economic Review*, *105*(5), 396-401.

17 Dutch Authority for the Financial Markets (AFM). (2019). A randomized controlled trial on the effectiveness of mandatory investment information, article. Available online at: https://www.afm.nl/nl-nl/professionals/onderwerpen/consumentengedrag-artikelen/trial-mandatory-investment

Passport' led to a 10-fold increase in visits to the official pension advice website. The Passport summarised the usual 50- to 100-page information pack sent to those approaching retirement into a one-sided handout with a clear call to action to visit the advice website.[18]

18 The Behavioural Insights Team. (2017). Improving engagement with pension decisions: The results from three randomised controlled trials. Available online at: https://www.bi.team/wp-content/uploads/2017/10/Pension-wise-trials.pdf

Annex 3
Abbreviations used in this paper

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
FX	Foreign Exchange
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
SRI	Summary Risk Indicator
SRRI	Summary Risk and Reward Indicator
UCITS	Undertaking for Collective Investment in Transferable Securities
VCT	Venture Capital Trust

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Appendix 1
Made rules (legal instrument)

PACKAGED RETAIL AND INSURANCE-BASED INVESTMENT PRODUCTS (SCOPE RULES AND TECHNICAL STANDARDS) INSTRUMENT 2022

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 13(5) 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");

(2) article 4A of the PRIIPs Regulation; and

(3) the following sections of the Financial Services and Markets Act 2000 ("the Act"):

(a) section 137A (The FCA's general rules);

(b) section 137T (General supplementary powers), in relation to Annex D as modified by article 4A of the PRIIPs Regulation and in relation to Annex E as modified by s. 138S of the Act;

(c) section 138P (Technical Standards);

(d) section 138Q (Standards instruments); and

(e) section 139A (Power of the FCA to give guidance).

B. The rule-making powers and power to make technical standards 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 25 March 2022.

Amendments to the Handbook and modifications

F. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Collective Investment Schemes sourcebook (COLL)	Annex C

Making the Product Disclosure sourcebook

H. The Financial Conduct Authority makes rules and gives the guidance in accordance with Annex D 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.

I. 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.

Amendments to the PRIIPs RTS

J. The FCA makes the amendments to the technical standards set out in the following EU regulation ("the PRIIPS RTS") in accordance with Annex E 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

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

Citation

L. This instrument may be cited as the Packaged Retail and Insurance-Based Investment Products (Scope Rules and Technical Standards) Instrument 2022.

By order of the Board
24 March 2022

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

Amendments to the Conduct of Business sourcebook (COBS)

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

13 Preparing product information

13.1 The obligation to prepare product information

…

Application of the PRIIPs regulation to funds

13.1.1B G (1) A *UCITS management company* is exempt from the *PRIIPs Regulation* until 31 December ~~2021~~ 2026. These *firms* should continue to publish a *key investor information document* until that date (see *COLL* 4.7).

(2) (a) …

…

(c) An *authorised fund manager* of a *non-UCITS retail scheme* offered to *retail clients* in the *United Kingdom* may, until 31 December ~~2021~~ <u>2026</u>, draw up either:

…

…

Annex C

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

4 Investor Relations

…

4.7 Key investor information and marketing communications

…

Application of the PRIIPs regulation to NURS

4.7.1A G (1) An *authorised fund manager* of a *non-UCITS retail scheme* or an *ICVC* that is a *non-UCITS retail scheme* that is offered to *retail clients* may draw up either:

(a) a *key information document* in accordance with the *PRIIPs Regulation*; or

(b) until 31 December ~~2021~~ 2026, a *NURS-KII document* (in accordance with the exemption in article 32(2) of the *PRIIPs Regulation*).

…

…

Annex D

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*.

1.2 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*, but they do not apply in relation to the activities of *Gibraltar-based firms*.
1.2.2	G	The *PRIIPs technical standards* also apply to all *persons* who are subject to obligations under the *PRIIPs Regulation*. The *PRIIPs technical standards* apply to *Gibraltar-based firms* subject to Regulation 11 of the Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 (SI 2019/680).
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 a PRIP and/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, the following 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* 2.2.2R(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 that:

(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* 2.2.2R(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 3 *business days* before the date of issue of the *financial instrument*.

TP 1 Transitional provisions

TP 1.1 Transitional Provisions table

(1)	(2) Material to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.1	DISC	R and G	A *firm* may choose not to comply with DISC	From 25 March 2022 to 31 December 2022	25 March 2022

Annex E

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), 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 PRIPP's 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

~~(1)~~ In this Regulation, unless the contrary intention appears:

(a) …

…

Article -1

Definitions

~~(1)~~ 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 or 7.

…

(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, 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.

…

…

CHAPTER IV

CHAPTER IV DELIVERY OF THE KEY INFORMATION DOCUMENT

…

Article 18

Final Provision

…

Article 14(2) shall apply until 31 December ~~2019~~ 2026.

…

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?

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

<u>(7A)</u> 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 <u>and disclose them in the narrative performance information section of the key information document, as set out in Annex 4A</u>.

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);

(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; and

(d) supported by objective data.

(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) under a sub-heading 'what could affect my return positively?', a brief explanation of the kinds of conditions that would be conducive to the PRIIP generating higher returns;

(d) under a sub-heading 'what could affect my return negatively?', 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.

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 explicit transaction costs;

(11A) A PRIIPs manufacturer must provide information about the total benefit derived from an anti-dilution mechanism as part of or alongside the breakdown of identifiable transaction costs (see Annex I, "What are the costs?").

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 PRIPS OTHER THAN INVESTMENT FUNDS

Costs to be disclosed

…

Costs of PRIPs ~~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 PRIPs 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 investments funds be the entry and exit costs according to points 1 and 2 of this Annex; points 27 and 28 of this Annex for PRIPs 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 PRIPs 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~~;

…

…

Insert the following new Transitional Provision after Annex VII PRESENTATION OF COSTS. The text is not underlined.

PRIPPS RTS TP 1 **Transitional provisions**

TP 1.1 **Transitional provisions table**

(1)	(2) Material to which transitional provision applies	(3) Transitional provision	(4) Transitional provision: dates in force	(5) RTS provision: coming into force
1.1	Recital 9; Recital 18; Article -1; Article 3; Article 15; Annex I; Annex II; Annex III; Annex IV; Annex V; Annex VI	A person who manufactures, advises on or sells a PRIIP may choose to comply with the provisions listed in column (2) as if the changes made to them by the Packaged Retail and Insurance-Based Investment Products (Scope Rules and Technical Standards) Instrument 2022 had not been made.	From 25 March 2022 to 31 December 2022	25 March 2022

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