

New EU Regulation to Enhance Rules on Marketing of Retail Investment Funds in Europe

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On September 14, 2016, the European Parliament objected to the European Commission's proposed implementation of the Packaged Retail Insurance and Investment Products ("PRIIPs") Regulation and called for a delay in its entry into force. The forthcoming PRIIPs regime – including both the substantive regulation as well as its implementing legislation – is scheduled to come into force on December 31, 2016, unless a delay to that implementation date is agreed.

EU Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 ("PRIIPs Regulation") sets out enhanced disclosure requirements for producers of packaged retail insurance and investment products. The principal obligation under the PRIIPs Regulation is for manufacturers, advisers and sellers of retail investment funds and retail insurance products to provide potential investors with Key Information Documents ("KIDs") to inform them of the risks of investing, among other important information. While the Regulation is set to come into force at the end of 2016, industry participants – in addition to the EU Parliament and Council – have been critical of its proposed implementation and have urged the Commission to delay its implementation.

This memorandum summarizes the requirements of the PRIIPs Regulation, as well as recent developments concerning its application and implementation.

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Scope of the PRIIPs Regulation

The PRIIPs Regulation applies to all providers of packaged retail investment and insurance products, including advisors and retailers, provided that the products are marketed or distributed to retail investors in the European Economic Area (“EEA”). The Regulation requires retail insurance and investment fund providers to provide potential investors with a KID setting out certain prescribed information.

The Regulation was passed in 2014, and is currently set to come into force by December 31, 2016.

KIDs Requirements for Investment Funds

Retain investment fund providers will be required to disclose “key information” to potential investors. This information includes *inter alia*:

- a definition of the retail product being offered;
- an explanation of the risks and returns inherent in the product and the costs associated with investing in it;
- the recommended minimum holding period;
- the availability of investor compensation or other guarantee scheme; and
- the complaints procedures.

The format of the KID is standardized: the document must clearly indicate that it is a KID; it must be a stand-alone document, which is separate from the prospectus, private placement memorandum and other marketing materials; and be no more than 3 pages.

The language of the KID must be easy for non-professional investors to understand, and the format and presentation must be easy for such investors to read. The KID should include a “comprehension alert”, indicating to potential investors that the PRIIP is a complex financial product. The KID must also be translated into the local language for each EU Member State in which the fund intends to market.

The KID must be presented to retail investors *before* the point of sale, and must also be published on the

fund provider’s website. Any investment marketing materials must refer investors to the existence of the KID and where they may find it.

The information in the KID must be continually reviewed and updated by fund providers. The PRIIP manufacturer may incur liability for (a) information which is misleading or inaccurate, (b) any inconsistencies between the information in the KID and other legally-binding contractual documents, or (c) inconsistencies between the KID and certain requirements of the PRIIPs Regulation.

Next Steps

Much of the substance and detail of the new PRIIPs regime is contained in a “delegated regulation” which was adopted by the European Commission on June 30, 2016. The delegated regulation sets out detailed requirements and technical standards to which PRIIPs providers must adhere when writing, reviewing and updating their KIDs.

However, following extensive criticism of the delegated regulation by industry bodies, the European Parliament formally objected to the delegated regulation on September 14, 2016, highlighting various flaws which it feared would result in lack of clarity, misleading information, and inconsistency of application of the KIDs requirements. On September 21, 2016, 24 members of the European Council voiced similar concerns. Critics of the delegated regulation urge the Commission to delay the implementation of the PRIIPs Regulation by one year so that new technical standards can be considered and adopted.

It is presently unclear whether the Commission will agree to postpone the implementation date. If the deadline is not extended, the Commission must seek approval for a new delegated regulation before the end of this year. In these circumstances, it is possible that the PRIIPs Regulation will come into force before the final form of the delegated regulation is settled. If so, the industry may be required to make best efforts to comply with the “spirit” of the PRIIPs Regulation without the benefit of detailed guidance.

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