Reply form for the Consultation Paper on PRIIPs Key Information Documents

10 November 2015

Date: 10 November 2015

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper on PRIIPs Key Information Documents, published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

1. use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
2. do not remove the tags of type <ESMA_QUESTION_PRIIPS_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
3. if you do not have a response to a question, do not delete it and leave the text "TYPE YOUR TEXT HERE" between the tags.

Responses are most helpful:

1. if they respond to the question stated;
2. contain a clear rationale, including on any related costs and benefits; and
3. describe any alternatives that ESMA should consider

Naming protocol

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA_ PRIIPS _NAMEOFCOMPANY_NAMEOFDOCUMENT.

E.g. if the respondent were XXXX, the name of the reply form would be:

ESMA_ PRIIPS_XXXX_REPLYFORM or

ESMA_ PRIIPS_XXXX_ANNEX1

To help you navigate this document more easily, bookmarks are available in "Navigation Pane" for Word 2010 and in "Document Map" for Word 2007.

Deadline

Responses must reach us by **29 January 2016.**

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input/Consultations'.

Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and 'Data protection'.

Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_PRIIPS_1>
Assogestioni[1] welcomes the opportunity to respond to the ESA's Joint Consultation Paper [JC/2015/073].

Firstly, we would like to express our appreciation for the work realized by the ESAs to identify and propose valuable approaches and options, practical for different types of PRIIPs. Nevertheless, the existing time constraints are fully apparent in the work. It appears that the impending coming-into-force of the Regulation is the sole reason behind the ESAs could not take the necessary time to consult again with the stakeholders on the feasibility of the new technical solution proposed as, for example, on the calculation of transaction costs and the risk indicator. Consequently, we urge the ESAs to take into account, in their upcoming discussions with the Commission and the co-legislators, that a delay of the application of one calendar is required to allow proper discussions on the technical aspects other than implementation of the PRIIPs Regulation.

Secondly, we would like to draw the ESAs' attention to the following policy issues, which we deem crucial:

- **Avoid that the exemption granted in the L1 text for UCITS and other retail funds producing the UCITS KIID is not indirectly undermined by way of L2 provisions.** In particular, we refer to the measures applicable in case of MOPs, multiple option products. We believe that such an outcome was not envisaged by the EU legislators and is covered by the Level 1 text. Article 6(3) of the PRIIPs Regulation stipulates that in case of MOPs "*the key information document shall provide at least a generic description of the underlying investment options and state where and how more detailed pre-contractual information documentation relating to the investment products backing the underlying investment options can be found*." This means that no obligation can be foreseen on fund manufacturers whose funds are the underlying of a MOPs and it should be conceived as allowing the provision of the UCITS KIID as pre-contractual information on any UCITS or AIF benefitting from the exemption under Article 32.
- **Give the possibility to include historical performance presentation as a further scenario, where applicable.** As art. 8(3)(d)(iii) of the Level 1 Regulation requires "*appropriate performance scenarios, and the assumptions made to produce them*" it should be made possible for funds and, more in general, for all PRIIPs, to include, where possible, an additional scenario in the PRIIPs KID showing their 5/10 years past performance. An exclusion of such a representation would undermine the added value of the KID for products of asset management.
- **For the estimation of transaction cost, extend the use of the standardized table to already existing funds, rather than circumscribing it only to new ones.** We are strongly against the methodology proposed for transaction costs for existing funds as it considers the market impact as a cost. The standardized table will allow a more uniform calculation of transaction costs among all PRIIP manufacturers and will also be

[1] Assogestioni is the trade body for Italian investment management industry and represents the interests of members who manage funds and discretionary mandates around € 1,823 billion (as of December 2015).

cost-effective, as it will support manufacturers (especially smaller ones) in the calculation of transaction costs without undue cost expenditures.

- **Levy *as much as possible* on the methodologies already in place and used to provide the information on the content of the KIID**. In particular the SRRI method used in the UCITS KIID for the calculation of risks should be maintained The proposed Cornish Fisher methodology to use for funds with linear pay-off profile compared to the use of the volatility has no materially impact, while the frequency of the returns instead do (daily in opposite with weekly/monthly returns). Preliminary calculations using the revised Cornish Fisher expansion for weekly returns lead to the same results as the SRRI method currently in place for UCITS. The implementation of the new methodology proposed would generate high costs of implementation, without creating any added value to the information already provided with a volatility indicator. Furthermore, we strongly support the use of the specific guidelines on the calculation of the SRRI foreseen for the UCITS KIID for different types of funds with insufficient performance history. The ESAs proposal to classify such type of funds with a qualitative approach would probably arise to an incorrect risk classification in several cases.
- **Consider the possibility to delay the application of the PRIIPs Regulation.** Given the very technical nature of the underlying methodologies and calculations, there will not be enough time to implement the PRIIP KID by 31 December 2016. This is specifically important in case the methodology on transaction costs is not amended to also allow existing investment funds to use the estimates provided in the table in para. 25 of Annex VI (Methodology for the calculation of costs), currently foreseen for new funds only.

Finally, to meet the ESAs' invitation to respond to all aspects of the RTS (pag. 3 of Consultation), in Q28 we have included our general considerations after the comment on impact assessment.

<ESMA_COMMENT_ PRIIPS_1>

Question 1
Would you see merit in the ESAs clarifying further the criteria set out in Recital 18 mentioned above by way of guidelines?

<ESMA_QUESTION_PRIIPS_1>

No, at this stage we do not see merit in the ESAs further clarifying the criteria set out in Recital 18 of L1 Regulation.

The criteria for the comprehension alert are linked to the definition of complex and non-complex financial instruments described under MiFID II (Art. 25(4)) as well as complex and non-complex insurance-based investment products under IDD (Draft IDD Art. 30(3)). In general, we believe that when a product is deemed non-complex according with MiFID II / IDD, an alert should not be included in the PRIIP KID.

<ESMA_QUESTION_PRIIPS_1>

Question 2

1. *Would you agree with the assumptions used for the proposed default amounts? Are you of the opinion that these prescribed amounts should be amended? If yes, how and why?*
2. *Would you favour an approach in which the prescribed standardised amount is the default option, unless the PRIIP has a known required investment amount and price which can be used instead?*

<ESMA_QUESTION_PRIIPS_2>

We suggest amending the threshold proposed to have the same level playing field and ensure more comparability between products. Where fixed monetary amounts are foreseen as costs by PRIIPs, differences in the results in the RIY arise due the level of the monetary threshold used: with a lower threshold, the resulting RIY is higher, especially for shorter time horizons (e.g. 1 year). Therefore, we suggest to set the threshold to EUR 10,000 for investments funds and single-premium insurance in place of the amount currently set at EUR 1,000 and 15,000 respectively. This new threshold would also be in line with the average amount invested in investment funds by Italian retail investors. This default amount should also be a factor of 10,000 for non-Euro amounts.

In order to ensure comparability, this threshold (EUR 10,000) should also be used when a PRIIP requires a lower investment amount. In this case an appropriate warning should be included.

Only for required investment amounts higher than EUR 10,000 (i.e. in those cases where the applicable law and regulation or instruments of incorporation of the fund foresee higher amounts), the default amount cannot be used and a higher threshold should be considered.

<ESMA_QUESTION_PRIIPS_2>

Question 3

For PRIIPs that fall into category II and for which the Cornish Fisher expansion is used as a methodology to compute the VaR equivalent Volatility do you think a bootstrapping approach should be used instead? Please explain the reasons for your opinion?

<ESMA_QUESTION_PRIIPS_3>

No, we believe that the bootstrapping approach should not be used for Category II. This methodology, as the ESAs also indicated, would generate higher implementation and on-going costs, with no advantage - neither for investors nor for manufactures.

<ESMA_QUESTION_PRIIPS_3>

Question 4

Would you favour a different confidence interval to compute the VaR? If so, please explain which confidence interval you would use and state your reasons why.

<ESMA_QUESTION_PRIIPS_4>

No, we agree with a confidence interval of 97,5% to compute the VaR.

<ESMA_QUESTION_PRIIPS_4>

Question 5

Are you of the view that the existence of a compensation or guarantee scheme should be taken into account in the credit risk assessment of a PRIIP? And if you agree, how would you propose to do so?

<ESMA_QUESTION_PRIIPS_5>

No, we do not agree with the option to take into account the existence of a compensation or guarantee scheme in the PRIIP credit risk assessment. These schemes are not linked to the product itself and will allow PRIIPs with a high credit risk to appear as risky as PRIIPs with lower credit risk. While the existence of a deposit guarantee scheme is a supplementary advantage for depositors, it should be stressed that the guarantee applies to the investor's total deposits and is capped. In addition, the level of additional protection varies among individual investors, as the scheme is capped at EUR 100.000 per bank, making the individual's protection dependent on the total amount of money deposited at a single bank institution or banking group. Furthermore, where a compensation scheme applies, there is always a delay in the pay out.

In any case the absence of a guarantee scheme should not make funds be disregarded in comparison with other PRIIPs. Funds that, in general, do not have credit risk and for which a guarantee scheme does not apply should be able to highlight the role of the depositary in the section "*What happens if [the name of the PRIIP's manufacturer] is unable to pay*?". Indeed, according to both EU and national law and regulation, all assets which the depositary holds in custody must be subject to adequate segregation. This ensures an adequate level of protection for funds' investors.

<ESMA_QUESTION_PRIIPS_5>

Question 6
Would you favour PRIIP manufacturers having the option to voluntarily increase the disclosed SRI? In which circumstances? Would such an approach entail unintended consequences?

<ESMA_QUESTION_PRIIPS_6>

Yes, we agree that an increase of the SRI should be allowed as an option. However, the RTS should foresee this possibility as a general principle without setting the specific circumstances as it is not possible to predict all the cases of application. To give possible examples, the following cases can be considered: (i) increase the SRI by one risk step in case the calculated SRI is oscillating between two risk buckets; (ii) increase the SRI when there is higher probability that the classification changes in the near future and the asset managers is updating the KID for another reason.

<ESMA_QUESTION_PRIIPS_6>

Question 7
Do you agree with an adjustment of the credit risk for the tenor, and how would you propose to make such an adjustment?

<ESMA_QUESTION_PRIIPS_7>

We agree with an adjustment of the credit risk for the tenor, as the risk of loss on investment arising from the obligor's failure to meet his contractual obligations may be different in the long period (e.g. 30 years rather than 5 year).

A possible criterion could be based on the default probability at maturity calculated by the credit rating agencies.

<ESMA_QUESTION_PRIIPS_7>

Question 8
Do you agree with the scales of the classes MRM, CRM and SRI? If not, please specify your alternative proposal and include your reasoning.

<ESMA_QUESTION_PRIIPS_8>

As Level 1 asks for one risk indicator only and a multi-dimensional indicator would not be understandable for investors, the combination of market and credit risk to form the Summary Risk Indicator should take into account the following considerations.

Generally speaking, it seems that when aggregating market risk and credit risk into the SRI, credit risk is underrepresented when compared to market risk.

A different SRI should result for a PRIIPs that have the same market risk and different credit risk. For example, PRIIPs with a 30% volatility with no credit risk have the same SRI class of a PRIIP that also has the risk to lose all its amount due a higher credit risk (rating CCC or below). As the higher SRI categories will comprehend products with different levels of credit risk, it will not be clear for the investor whether the higher risk is mainly linked to the market or is simple linked to a high probability of default of the issuer. In addition, it is unclear because a PRIIPs issued from a lower than B issuer with a MRM Class-1 have SRI-Class 6 and not the maximum SRI Class-7: it's probably that a PRIIPs issued from a AAA issuer that invest only in such lower than B issuer will have a MRM Class-7 and therefore a SRI Class-7.

In addition, the default probability to the recommend holding period of the PRIIPs should be considered more appropriately when combing the MRM and CRM in the SRI.

With specific regard to CRM, in case multiple obligors apply (para. 59-60) and a weighting of different credit risks is to be done, this should be based on the weighted average default probability (the risk of default is exponential).

As regards MRM, we have concerns with the range of risk proposed. This scale comes from studies conducted within the UCITS framework where funds deal with specific eligible investments assets concentration and liquidity rules, financing exposure and risk framework. The scale is, in fact, more detailed for the lower risk classes than for the higher one and it was been calibrated with weekly/monthly returns (and not with daily returns, as proposed). The use of the same scale does not necessarily fulfill the regulation objective to compare different types of products (not only UCITS and AIF funds) with the consequence that very different types of risk products are comprised in the same MRM Class.

In particular, we are against the combination into the same MRM Class-7 of PRIIPs that may lose more than the invested money with other PRIIPs with an equivalent volatility higher than 25%. Investors have to know whether the PRIIP can create additional payment liabilities beyond the investment amount not only through a narrative warning (as suggested in element o) in Annex III).The risk representation should not create the perception that the risks similar to the one stemming from a higher volatility. We therefore recommend that all PRIIPs with which investors could lose more than the invested amount should be classified in an additional class (Class 8), in case the ESAs want to maintain the UCITS SRRI scale. Differently the annualized volatility range should be changed to include only this type of PRIIPs in Class-7 MRM.

As far as CRM for AIFs or UCITS, is concerned, as already expressed in our reply to question 5, we strongly support para. 54 (p. 40) stating that credit risk shall not be generally assessed on these funds. In addition we strongly recommend to include in the KID a short remark stating that these PRIIPs (i.e. funds that should not carry out the credit risk assessment) do not have credit risk. In the RTS, the methodologies should also make clear that for PRIIP for which a credit assessment does not have to be made, the MRM corresponding to CR1 risk should only be considered.

Finally, following the considerations above, we have concerns on both CRM scale proposed in para. 64 and the one proposed in the example accompanying Q8.

<ESMA_QUESTION_PRIIPS_8>

Question 9

Are you of the opinion that for PRIIPs that offer a capital protection during their whole lifespan and can be redeemed against their initial investment at any time over the life of the PRIIP a qualitatively assessment and automatic allocation to MRM class 1 should be permitted? *Are you of the opinion that the criteria of the 5 year tenor is relevant, irrespective of the redemption characteristics?*

<ESMA_QUESTION_PRIIPS_9>

No, we do not agree that PRIIPs offering a capital protection during their whole lifetime and which can be redeemed against their initial investment at any time over the life of the PRIIP could be qualitatively assessed as belonging to MRM class 1: the 5-year tenor is relevant irrespective of the redemption characteristics and the same consideration goes even if the PRIIP is guaranteed by a third party. The longer the term of the PRIIP, the more relevant the impact of inflation. Same considerations arise for credit risk.

<ESMA_QUESTION_PRIIPS_9>

Question 10 *Are you aware of other circumstances in which the credit risk assessment should be assumed to be mitigated? If so, please explain why and to what degree it should be assumed to be mitigated?*

<ESMA_QUESTION_PRIIPS_10>

No, we are not aware of other circumstances. It is our view that where a PRIIP is an insurance or a bank product (and thus its assets resides on the institution's balance-sheet and the investor is not the beneficial owner), no further mitigation factor should apply for the assessment of its credit risk. The new rules adopted at European level to ensure the stability of financial, banking and insurance services, such as the Bank Recovery and Resolution Directive or Solvency II do not change the principle.

<ESMA_QUESTION_PRIIPS_10>

Question 11 *Do you think that the look through approach to the assessment of credit risk for a PRIIP packaged into another PRIIP is appropriate?*

<ESMA_QUESTION_PRIIPS_11>

As a preliminary remark, in relation to the methodology proposed for the credit risk scope (para. 53-55), we agree and strongly support para. 54 that states that "*credit risk shall not be assessed on AIFs or UCITS, expect as specifically otherwise*".

However, we regret not seeing explicit references to funds in the following para. 55. Indeed, even though para. 55 b) takes into consideration prudential rules on counterparty risk set under the UCITS framework, the absence of explicit references gives rise to some doubts on the application of the look-through approach.

In particular, we suggest to clarify the criteria proposed in para 55 c), which also apply to structured funds. In our understanding, a look through approach is not only requested when the credit risk is material, but also when it is not already taken into account in the MRM (for example, for equity should not be taken into account). Indeed, category III, that applies for funds with not-linear payoff, requires to simulate the market risk but not the credit risk of the underlying. To avoid misunderstanding and a double consideration of this risk we suggest to redraft as follows: "*In such case, the creditworthiness of each issuer or counterparty of the underlying assets or transaction(s) of the PRIIP, when material and* ***not already taken into account in the MRM****, shall be assessed on a look-through basis in accordance with the section titled "credit risk - assessment". If however (one of) the underlying asset(s) or transaction(s) is a derivative or an EPMT, the credit risk attached to such instrument shall be assessed in accordance with paragraph (b).*"

Para. 55 d) is also unclear. In particular, it is difficult to understand the scope of such provision even when it is read together with the explanatory text on page 76. In addition, it is unclear when para. 55(d)(i) (i.e. credit risk assessed for both the PRIIP and the underlying investment) or para. 55(d)(ii) (i.e. credit risk assessed for only the underlying investment) would apply. In our understanding, the criteria should not to be chosen alternatively on a discretionary basis and we encourage the ESAs to clarify these points.

<ESMA_QUESTION_PRIIPS_11>

Question 12
Do you think the risk indicator should take into account currency risk when there is a difference between the currency of the PRIIP and the national currency of the investor targeted by the PRIIP manufacturer, even though this risk is not intrinsic to the PRIIP itself, but relates to the typical situation of the targeted investor?

<ESMA_QUESTION_PRIIPS_12>

We believe that a disclosure of the currency risk in the risk section should be made when this risk is not intrinsic in the PRIIP itself (and already included in the SRI). On the other hand, we do not deem it necessary to update the indicator itself.

To avoid the production of different KIDs for every country the PRIIP is marketed into in case it diverges from the retail investor's currency, we suggest to redraft the statement in element c) of Annex III's Appendix 1 in the way that follows:

[Where applicable: c] The money you get back is in [insert currency],~~ which means that the value of this product to you also depends on the exchange rate between [currency of product] and [currency of the country in which the product is offered]~~. ***If your country has another currency, this means that the value of this product to you also depends on the exchange rate between [currency of product] and the currency of your country.***

<ESMA_QUESTION_PRIIPS_12>

Question 13

Are you of the opinion that the current Consultation Paper sufficiently addresses this issue? Do you it is made sufficiently clear that the value of a PRIIP could be significantly less compared to the guaranteed value during the life of the PRIIP? Several alternatives are analysed in the Impact Assessment under policy option 5: do you see any additional analysis for these assessment?

<ESMA_QUESTION_PRIIPS_13>

For guaranteed PRIIPs, we suggest to improve the explanation of the SRI included in "element d" of Appendix I (Format of Presentation of the Summary Risk Indicator) that warns investors on the fact that SRI is calculated on the assumption that the investor keeps the PRIIP until maturity. We suggest to be more explicit on the possible risk arising by adding, for example, that the measure does not cover the risk associated with (where applicable) early redemptions or secondary market transactions and that the value of the PRIIP during its life could be significantly lower than the guaranteed value at maturity.

More in general, we also suggest to include a further warning, in line with the one included in the UCITS-SRRI risk indicator, to help investors understand the limit of the PRIIPs-SRI risk indicator and avoid possible misunderstanding. In this sense, we suggest to insert a warning that includes:

(a) a statement that the data used to calculate the SRI may not be a reliable indication of the future risk profile of the PRIIPs;
(b) a statement that the SRI shown is not guaranteed to remain unchanged and that the categorisation of the PRIIPs may shift over time;
(c) a statement that the lowest category does not mean a risk-free investment.

<ESMA_QUESTION_PRIIPS_13>

Question 14

Do you agree to use the performance fee, as prescribed in the cost section, as a basis for the calculations in the performance section (i.e. calculate the return of the benchmark for the moderate scenario in such a way that the return generates the performance fee as prescribed in the cost section)? Do you agree the same benchmark return should be used for calculating performance fees for the unfavourable and favourable scenarios, or would you propose another approach, for instance automatically setting the performance fees to zero for the unfavourable scenario? Please justify your proposal.

<ESMA_QUESTION_PRIIPS_14>

We do not agree to use performance fee as prescribed in the cost section as a basis for the calculation in the performance section.

Such an approach means that the past performance of the last five years has always to be considered a "moderate performance", which may not be the case. In case a fund has always outperformed in the past five years, this outperformance would not be considered the normally expected return.

The PRIIPs manufacturer should be allowed to choose the reasonable performance for each scenario as suggested in para. 4 to 12 taking into account all costs, including performance fee, as indicated in para. 15. Therefore, we suggest to delete para. 17 that indicates that “*Where the calculation of performance fee requires an assumption to be made about the return of the benchmark for the moderate scenario shall be calculated in such a way that the return on the PRIIP generates the performance fee as prescribed in [cost section on performance fee]. This return of the benchmark shall also be used to calculate the performance fee (if any) for the unfavourable and favorable scenarios.*”

In our opinion, performance scenarios and cost sections remain consistent even if there is no specific link to the methodologies used in the cost section for performance scenarios, as the presentation of costs in para. 67 a) asks to take into account the annual internal rate of return (rate gross from costs) coming from the moderate performance scenario.

Given the number of monetary values required in the draft RTS, in order to avoid confusion for investors when assessing the performance scenarios and the costs for the moderate scenario, we suggest to only illustrate, in line with L1, a monetary representation for the cost table and not for the performance scenario (please see also our comments to Q15).

<ESMA_QUESTION_PRIIPS_14>

Question 15

Given the number of tables displayed in the KID and the to a degree mixed consumer testing results on whether presentation of performance scenarios as a table or a graph would be most effective, do you think a presentation of the performance scenarios in the form of a graph should be preferred, or both a table and a graph?

<ESMA_QUESTION_PRIIPS_15>

We are in favor of a table representation of performance scenarios expressed only in percentage values. In our opinion, the use of two tables, as proposed in Appendix 1 (pag. 53), can lead to confusion, as investors would tend to compare the table of performance scenario expressed in monetary terms with the cost table. Nevertheless, given the limited space of the KID (maximum 3 pages document) two tables on performance scenario appear excessive.

In addition, it is our view that the graphic representation, as the one presented on p. 12 of the Consultation Paper, could be misleading for investors. In particular, we believe that the dashed lines do not correctly reflect the possible performances in-between, as they would make investors assume that the performance between one dash and the other (i.e. between one moment in time and the other) would be linear, while this could not be always the case. We therefore prefer a table representation: it would be clearer and less distortive.

<ESMA_QUESTION_PRIIPS_15>

Question 16

Do you agree with the scope of the assets mentioned in paragraph 25 of Annex VI on transaction costs for which this methodology is prescribed? If not, what alternative scope would you recommend?

<ESMA_QUESTION_PRIIPS_16>

We are strongly against the methodology proposed in the RTS to calculate transaction costs for existing PRIIPs (funds). The new methodology proposes a model based on the concept of an "arrival price" (para. 16) and this is not appropriate for the following reasons:

- Inclusion of market impact: this approach makes the calculation of transaction costs based on incorrect assumptions: if the market goes up between the time the order is initiated and executed, the price difference would be treated as a transaction cost under the proposed methodology; differently, if the price at execution is lower than the one at the time of order, the trade could incur negative transaction costs. These differences depend on the market and are also linked to the trading model used. This is why market impact should not be considered as a cost. The considerations around market impact are technically wrong and do not promote and ensure comparability between PRIIPs or predictability of costs for the retail investor.

- Equity transaction costs: As far as equity transaction costs are concerned, the new approach would lead funds investing in equity to appear excessively expensive in relation to their transaction costs, if the difference between the realized net execution price and the mid-market price (the "arrival price") were to be include in addition to the explicit broker fee.

- Fixed income transaction costs: It is not feasible to calculate transaction costs for fixed-income trades on the basis of the proposed methodology because of the lack of reference data to establish the relevant arrival prices. Since the arrival price reflects the mid-market price at the time the order is initiated, the calculation of the arrival price necessarily implies availability of the relevant data on market prices. In the fixed income market, however, market prices are not yet transparent enough to assume this required data set. In addition, and equally important, the approach to calculate the relevant arrival price as proposed in para. 16 of Annex VI creates significant arbitrage opportunities for calculating transaction costs, thus reducing level playing field. Furthermore, even if some data vendors publish indicative quotes for fixed income instruments which, however, do not necessarily represent real trading quotes, these information are not provided on a free basis. This with generate excessive costs, without any benefit.

- Operational costs: the mid-market price of the investment at the time the order is initiated ("arrival price"), as indicated before, is a new information which is not required to comply with the best execution obligations nor with art. 14 of UCITS Directive 2010/43/EU. While these measures require to report the time of the order, they do not prescribe to also report its value . The new provision will imply an important cost impact, especially for smaller manufacturers, as new systems and procedures would need to be developed. Furthermore, as transactions costs need to be estimated from 3 years historical data (cfr. para. 9) we find the proposed method too burdensome and we do not see any benefit in finding a suitable calculation methodology.

For all the reasons above, we strongly recommend the ESAs to extend the use of the standardized table of para. 25 that sets a simplified estimation method to already existing funds, rather than circumscribing it only to new PRIIPs. The standardized table will allow uniform calculation of transaction costs among all PRIIP manufacturers and will also be cost-effective, as it will support manufacturers (especially smaller ones) in the calculation of transaction costs without undue cost expenditures.

As the standardized methodology apply only to new funds, in order to avoid double counting, as already stated in our reply to the ESA's Technical Discussion Paper over the last summer[2], we suggest to use the standardized table only for non-explicit transactions costs because the fees charged for equity transactions and other transactions in instrument with explicit transaction costs are already captured by letter (j) in paragraph 6 of Annex VI.

<ESMA_QUESTION_PRIIPS_16>

Question 17

Do you agree with the values of the figures included in this table? If not, which values would you suggest? (please note that this table could as well be included in guidelines, to allow for more flexibility in the revision of the figures)

<ESMA_QUESTION_PRIIPS_17>

Yes, we agree with the values of the figures included in this table.

<ESMA_QUESTION_PRIIPS_17>

Question 18

Do you agree that the monetary values indicated in the first table are a sum of costs over the respective holding periods? Or should the values reflect annualized amounts? If you prefer annualized amounts, which method for annualisation should be used (e.g. arithmetic average or methods that consider discounting effects)?

<ESMA_QUESTION_PRIIPS_18>

We are of the view that the monetary values should reflect annualized amounts. Indeed, the absence of annualized amounts may have a dissuasive effect on the investor, wrongly displaying higher costs incurred the longer a fund is held, while in reality as the entry and exit charges are amortized over longer periods the annual cost decreases. We believe the arithmetic average method would probably be easier to understand for a retail investor.

<ESMA_QUESTION_PRIIPS_18>

Question 19

[2] You can find our reply at: http://www.assogestioni.it/index.cfm/1,766,10991,49,html/esma-risk-performance-scenarios-and-cost-disclosures-in-kid-for-prips.

Do you think that estimating the fair value of biometric risk premiums as stated in paragraph 55(b) of Annex VI would raise any technical or practical difficulties?

<ESMA_QUESTION_PRIIPS_19>
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Question 20

Knowing that the cost element of the biometric risk premium is included in the total costs calculation, how do you think the investor might be most efficiently informed about the other part of the biometric risk premium (i.e. the fair value), and/or the size of biometric risk premium overall? Do you consider it useful to include the fair value in a separate line in the first table, potentially below the RIY? Or should information on the fair value be disclosed in another part of the KID (for instance, the "What is this product?" section, where the draft RTS currently disclose biometric risk premiums in total, and/or in the performance section)? What accompanying narrative text do you think is needed, and where should this be placed, including specifically narrative text in the cost section?

<ESMA_QUESTION_PRIIPS_20>
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<ESMA_QUESTION_PRIIPS_20>

Question 21

Given evidence as to the difficulties consumers may have using percentage figures, would you prefer an alternative presentation of the second table, solely using monetary values instead? As with the first table, please also explain what difficulties you think might arise from calculating monetary values, and whether this should be on an annualized basis, and if so, how?

<ESMA_QUESTION_PRIIPS_21>

No, we do not think that the second cost table should contain a presentation of cost items using only monetary values, instead of percentages. We have a preference for percentages as they are less misleading for investors (especially recurring costs): with monetary figures, investors could be lead to take the figures strictly and literally.

The use of percentage figures would also be in line with the existing UCITS KIID and we are not aware of concerns raised by investors in relation to UCITS as a result of using percentage figures in the KIID.

These actual percentages are also in line with the requirement in MiFID II

<ESMA_QUESTION_PRIIPS_21>

Question 22

Given the number of tables shown in the KID, do you think a more graphic presentation of the breakout table should be preferred?

<ESMA_QUESTION_PRIIPS_22>

We are aware of the number of tables shown in the KID. Nevertheless, it is our view that a table representation is necessary to show the information on costs, not only as this type of representation allows for a more appropriate portrait of both summary and detailed breakout indications/figures, but also because we believe it is the adequate method to allow comparison and understanding by investors of different products.

<ESMA_QUESTION_PRIIPS_22>

Question 23

The example presented above includes a possible way of showing the variability of performance fees, by showing the level for all three performance scenarios in the KID, highlighting the 'moderate' scenario, which would be used for the calculation of the total costs. Do you believe that this additional information should be included in the KID?

<ESMA_QUESTION_PRIIPS_23>

We believe that the format of presentation of costs as indicated in Annex VIII of Appendix 1 should not include the additional information as provided in the table at p. 14. Indeed, the additional information on the variability of performance fees could be misleading for investors. The indication of the variability of performance fees for all three performance scenarios would create confusion in the cost table, as it would lead investors to assume that only the variability of such cost item could have an impact on the costs borne by investors.

<ESMA_QUESTION_PRIIPS_23>

Question 24

To reduce the volume of information, should the first and the second table of Annex VII be combined in one table? Should this be supplemented with a breakdown of costs as suggested in the graphic above?

<ESMA_QUESTION_PRIIPS_24>

No, we are not in favor of combining both tables, as the second table is "complementary" to the first one and adds clarity to the information included in it. Such a representation breakout would also be in line with what required under MiFID II. Nevertheless, we propose some changes to the tables as presented in the draft. Please consider our suggestions below in our reply to Q26 and Q27.

<ESMA_QUESTION_PRIIPS_24>

Question 25

In relation to paragraph 68 a) of Annex VI: Shall the RTS specify that for structured products calculations for the cost free scenario have always to be based on an adjustment of the payments by the investor?

<ESMA_QUESTION_PRIIPS_25>

Yes, the RTS could specify that for structured products, calculations for the cost free scenario have always to be based on an adjustment of the payments by the investor, as investors in structured products often have no possibility to make additional investments after the initial subscription.

<ESMA_QUESTION_PRIIPS_25>

Question 26 *Regarding the first table of the cost section presented in Annex VII, would you favour a detailed presentation of the different types of costs, as suggested in the Annex, including a split between one-off, recurring and incidental costs? Alternatively, would you favour a shorter presentation of costs showing only the total costs and the RIY?*

<ESMA_QUESTION_PRIIPS_26>

In the first table, we suggest a shorter presentation of costs only showing the total costs and RIY, in line with L1. As mentioned in our reply to Q24, we are in favor of maintaining two different cost tables: one with summary information and the other with breakout items.

As regard the format of the presentation of costs and the narrative explanation text in the table in the Annex VI, we suggest to consider the following aspects:

- the cost format presentation should be updated to include the titles of the table indicated in art. 8(1) of RTS ("Cost over time" and "Composition of costs") and consequently the narrative explanation should be split between one generic description for the whole section and one more specific description for each table. As regards the narrative part inserted before the first table, we ask the ESAs to rephrase the second paragraph in order to avoid misunderstandings. In particular, we suggest the following amendment: "*The costs that are shown here are the costs of this product. ~~There may be other costs charged to you by the person who is either selling this product to you or advising you on this product.~~ The~~y~~* ***table*** *will provide you with information about these costs, and show you the impact that all costs will have on your investment over time.* ***There may be other costs charged to you by the person who is either selling this product to you or advising you on this product."*** The reference to "they" is unclear and we believe that the aforementioned amendment would be more straightforward to understand.
- the information on costs are, in general, estimations. The warning text in Annex VI should clearly indicate this to avoid misunderstanding. We also suggest to make Article 8(6) of RTS more generic with the following amendment: "***~~This~~ A n****arrative explanation that specify that the costs presented in the KID may differ from the actual costs the retail investors would pay […]*"
- in the "Cost over time table", an explanation on the assumptions from which these are derived is missing. We suggest to add an explanatory text as for example the follow: "*the estimate of costs are based on the moderate performance scenario*".

<ESMA_QUESTION_PRIIPS_26>

Question 27

Regarding the second table of the cost section presented in Annex VII, would you favour a presentation of the different types of costs showing RIY figures, as suggested in the Annex, or would you favour a presentation of costs under which each type of costs line would be expressed differently, and not as a RIY figure - expressed as a percentage of the initial invested amount, NAV, etc.?

<ESMA_QUESTION_PRIIPS_27>

In the second table, we are in favor of a cost presentation under which each type of cost line is expressed in percentage terms. As the first table is showing the effect of charges over time, it would be most useful if the second table showed the actual cost structure or a possible estimation of it.

Hence, the percentages indicated in the table should not be in the form of RIY figures based on the RHP. It would be misleading to show a 5% entry cost as 1% assuming that the investor would be able to understand that the table relates to a recommended holding period of 5 years and the 5% has been amortized.

To better explain the meaning of these costs, we suggest the following amendments to the narrative explanation proposed in the "Composition of costs" table. Manufactures should be able to add, where necessary, short descriptions to what will be defined as compulsory narrative explanation:

- One-off costs:
  - entry costs*: "This is the maximum that might be taken out of your money before it is invested. In some cases you might pay less.*"
  - exit cost: "*This is the maximum that might be taken out of your money when you exit the investment upon [maturity][the holding period recommended].In some cases you might pay less.*"
- Recurring costs:
  - portfolio transaction costs per year: "*This is incurred each time the fund's underlying investments are bought and sold. The figure shown is the estimation [of yearly average for the last three years] or [of the costs could be] (for PRIIPs with no 3 years of historical date or when a material changes on investment strategy apply). These costs vary depending on the frequency of buying and selling and on the nature of the investments involved.*"
  - other recurring costs per year: "*This is taken from your investment each year to cover the costs of managing and operating the product. The figure shown is [based on actual costs for the year ending xx/xx/xx] or [estimate] (for new PRIIPs or when a material changes of cost apply)."*
- Incidental costs:
  - Performance fees: "*[No performance fee apply] or [Description] The figure shown is [the yearly average for the last five years] or [estimation] (for new PRIIPs or when a material changes apply) The performance fee varies depending on the performance of both the product and the benchmark and may not arise at all."*
  - Carried interest: "[*No carried interest apply] or The figure shown is [the yearly average for the last five years] or [estimation] (for new PRIIPs or when a material changes apply)."*
  - Exit penalty: "*[No exit penalty apply] or [An exit penalty will apply if you leave before the [maturity][recommended holding period]]. The figure*

shown is the maximum which applies if you leave in the first year. (N.B. The intention is to cover any penalties/costs that are not included in the one-off "exit costs")."

<ESMA_QUESTION_PRIIPS_27>

Question 28   *Do you have any comments on the problem definition provided in the Impact Assessment?*   *Are the policy issues that have been highlighted, in your view, the correct ones? If not, what issues would you highlight?*   *Do you have any views on the identified benefits and costs associated with each policy option?*   *Is there data or evidence on the highlighted impacts that you believe needs to be taken into account?*   *Do you have any views on the possible impacts for providers of underlying investments for multi-option products, and in particular indirect impacts for manufacturers of underlying investments used by these products, including where these manufacturers benefit from the arrangements foreseen until the end of 2019 under Article 32 of the PRIIPs Regulation?*   *Are there significant impacts you are aware of that have not been addressed in the Impact Assessment? Please provide data on their scale and extent as far as possible.*

<ESMA_QUESTION_PRIIPS_28>

We provide below some comments on both the Impact Assessment and the draft RTS not covered in the questions above.

PART A. COMMENTS ON THE IMPACT ASSESSMENT

- **Investor information according to UCITS / PRIIPs regulations**. First of all, it is crucial to ensure that the exemption granted by Article 32 of the PRIIP KID Regulation to UCITS and non-UCITS equally requested to produce the UCITS KIID according to national legislations is not undermined by L2 measures practically surmounting the exemption, specifically for MOPs. As drafted, the MOP rules would require a very large number of investment funds to produce both a UCITS KIID and make information available to an insurance manufacturer to produce the KID for the unit linked products, at least until 31 December 2019. Moreover, and very importantly, it would result in confusing information for investors, with the core features of risk, performance and costs presented differently in the two documents.

  For these reasons, it is important to bear in mind the conclusions drawn by the ESAs and indicated at p. 123 of the Consultation Paper (first bullet point under *MOP Costs*), to ensure that the measures do not practically vanish the exemption granted in L-1 text.

As a second point, we stress that, given the process of implementation still underway and the many technical issues involved, it will be difficult for manufacturers to adapt their internal procedures and operations for the new PRIIP KIDs as from January 2017.

- **Methodology underpinning the market risk assessment.** The proposed approach requested for category II and III is different from the one used in the UCITS KIID. The proposed Cornish Fisher methodology to use for funds with linear pay-off profile compared to the use of the volatility has no materially impact, while the frequency of the returns instead do (daily in opposite with weekly/monthly returns). Preliminary calculations using the revised Cornish Fisher expansion for weekly returns lead to the same results as the SRRI method currently in place for UCITS. The implementation of the new methodology proposed would generate high costs of implementation, without creating any added value to the information already provided with a volatility indicator.

- **Closed-end funds traded on the secondary market.** We see an impact of the provisions contained in the PRIIPs Regulation on manufactures of closed-end funds (e.g. real estate funds) traded on secondary markets because it seems that a KID should be done even if the manufacturer is not actively supporting its distribution. The provision should also take care where the PRIIPS is near to its maturity.

PART B. ADDITIONAL COMMENTS RELATING TO THE DRAFT RTS NOT COVERED IN THE QUESTIONS

B1. Presentation of risk
Annex II. Methodology underpinning the presentation of risk
Part 1 – Methodology underpinning the market risk assessment

General comments
The structure of Part 1 does not help understand the category into which a PRIIP falls and, consequently, the applicable methodology. The current drafting is confusing and should be simplified.

It is important to ensure that, on top of the language and formulas used in this section, the principle behind the methodology is understood by quantitative analysts that are ultimately responsible for the calculation of the MRM. Reference to some literature of the formulas used are also welcomed.

On the basis of our assessment, it is our understanding that funds with linear pay-off fall in Category II while funds with not linear pay-off fall in Category III. Funds whose underlying is liquid with insufficient data available (no historical data or a natural benchmark) should fall in Category V as funds with illiquid assets. The above indications do not apply for guaranteed funds with a recommended holding period up to 5 year as these funds always fall in Category I.

Category I
The inclusion in the same MRM of both products with high risk (annual volatility > 25%) and with losses exceeding the invested capital does not seem appropriate, because it

does not differentiate the two products, which are very different from an investor's point of view (please, see also our response to Q8).

It should be clarified the means of "unconditional protection of capital". In our understanding the protection refers to all the capital and not only to a percentage of it (e.g. 95%) and arises with an obligation of return (e.g. third party guarantee) and not with the use of management techniques that minimize the probability of loss of the capital invested. Where our understanding is correct, the CRM-1 Class should be applied only to PRIIPs that have a maturity of up to 5 years when they offer "unconditional protection of capital" during their whole lifespan and not only at maturity. An investor may not correctly understand the risk to lose its money where it redeem the PRIIPs before.

<u>Category II: *Linear pay-off profile UCITS and AIFs*</u>
Category II seems to include linear pay-off profile UCITS and AIFs and thus the bulk of fund products. If this assumption is correct, we ask the ESAs to redraft the PRIIPs in scope (linear pay-off profile UCITS and AIFs).

In particular, the last paragraph on page 35 states that "*where these PRIIPs have, either directly or on a synthetic basis, a delta one or a leveraged exposure on underlying asset(s) that pays a constant multiple of a market price or index*". This rises the question about what is meant to be captured by "a constant multiple of a market price or index" and the reference to leverage.

As regards the methodology, we propose the following suggestions:

- <u>Cornish Fisher methodology</u>: please refer to the comments made to Q3 (no bootstrapping approach) and Q28 (impact assessment) above. Furthermore, in our understanding, following the revision of the first formula in para. 27 (VaR return space), the second formula should also be revised as follows: $VaR_{pricespace} = \exp\left(VaR_{retspace} - 0.5N\sigma^2\right)$
- <u>Frequency of data input</u>: the ESAs suggest to use daily prices for the VaR calculation. Daily prices produce much "noise", which will distort the calculations. Instead, weekly prices or monthly should be used, which will still allow enough sample data to be collected. The use of weekly prices or monthly prices, where possible, in line with the UCITS SRRI methodologies also overcomes operational problems for funds that do not have a daily NAV. The SRRI range scale was also calibrated with weekly/monthly returns.
- <u>Historical data</u>: A 5-year historical performance should always be used. With reference to para. 20 and para 10 (last sentence), it is not clear whether funds can apply Category II with only 3 years of historical performance or they should concatenate their historical performance with the 2 years historical benchmark/proxy performance like in the UCITS SRRI.

<u>Category III - *Non-linear pay-off profile UCITS and AIFs (i.e. structured UCITS and AIFs)*</u>
Category III funds are defined as "*any AIFs and UCITS not falling under Category II*". We suggest to clarify the scope: PRIIPs that have non-linear pay-off profile and unconditional PRIIP not falling into Category I, IV). In addition, it should also be clarified that funds with an insufficient amount of data or holding illiquid assets should be classified under Category V and not III.

As for the methodology, please find below our suggestions/comments:

- the description of the methodology is not clear. We suggest a more generic and principle-based approach, i.e. similar to the guidelines on the SRRI for structured UCITS;
- we suggest to align the methodologies for insufficient data set in Category II and III. In particular, we ask to clarify par. 17 which states: *The MRM of Structured PRIIPs shall be assessed based on the methodology detailed in Paragraphs 30 to 48, provided that at least 500 historical daily prices of such Structured PRIIPs' underlyings are available in relation to the last 5 years. Where such data is not available, the Structured PRIIP shall be assigned to Category V.* In relation to this paragraph, we have the following remarks:
    - o weekly prices (as Category II), and, where possible, monthly prices should also be used.
    - o The reference to historical series is not clear: 500 historical daily prices are about 2 years and a half of data; therefore the reference that requires that this data are available in relation to the last 5 years is unclear. It is reasonable that the 500 historical daily prices starts from T+0 and not T – 2 years.

<u>Category V: *Funds with insufficient amount of data*</u>

We do not support the ESAs proposal for Category V to classify funds with insufficient data with the qualitative approach set out in para 13, because an incorrect risk classification would arise from such categorization

An underestimation of the risk arises when the default MRM Class is lower than the "risk limit" of the fund, such as for hedge funds that do not apply UCITS diversification limit or use more leverage.

An overestimation of the risks also arise, for example, for a new absolute return or total return fund with a dynamic allocation or for a life cycle fund where MRM-Class 5 would be at the minimum 5 and this would not always be correct if their asset mix is very conservative. The table below shows the SRRI classification for absolute return fund based in Italy, where more than 50% of this type of funds have an SRRI lower than 5.

UCITS-SRRI	Classification of Italian Absolute return fund
1	0%
2	3%
3	14%
4	42%
5	20%
6	19%
7	2%

Therefore, we strongly support the use of the specific guidelines on the calculation of the SRRI foreseen for the UCITS KIID for different types of funds with insufficient performance history.

We also ask the ESAs to clarify para. 13(a)(ii) with regard to insufficient data that states: "*when historical data is lacking but a natural benchmark or a proxy exists such a benchmark or proxy shall be used subject to relevant documentation*". The added value of this statement is unclear, as there are other paragraphs already dealing with rules on insufficient data: Category II, para. 10 last sentence ((2 years historical daily prices or 4 years of historical weekly prices/proxy are available) and Category V, para. 17.

Category V: *Funds holding illiquid assets*

We have concerns on the qualitative criteria indicated for illiquid asset classes. We suggest to also take into account, as much as possible, the underlying asset classes types, maximum leverage, minimum concentration (i.e. an AIF which invests in concentrated low grade debts with leverage should be assigned with the maximum risk possible for a non-contingent liability product). Where appropriate, these funds should be classified according to methodologies similar to the ones applicable to the corresponding liquid assets (time series of return and/or indices), with increases of MRM class depending on illiquidity, leverage, concentration, etc.

In addition, we wonder whether a MRM Class of 5 is reasonable for funds with more than 50% of illiquid assets or a higher MRM Class should instead be used.

Part 2 – Methodology for the credit risk assessment

We strongly support para. 54 (p. 40), which states that credit risk shall not be assessed for AIFs and UCITS. Please refers to our doubts as already indicated in our response to Q11.

Additionally, as indicated in our response to Q5 and Q8, in order to properly inform investors, the KID should also include a short statement that these UCITS/AIFs do not carry Credit Risk (CR).

As the methodology proposed relies on external credit ratings and pending a suitable methodology to be defined by the ESAs, in line with Article 5a of CRA III in relation to the over-reliance on credit rating, we suggest to include a warning to inform investors of the possible limit of the CR assessment, in case this is made.

Part 3: Aggregation of market and credit risk into the summary risk indicator

Please refer to our response to Q8.

Part 4. Review of the summary risk indicator
To avoid burdensome operational costs, we suggest to redraft the provision set out in point 71 as follows, in order to align it to the one already used in the KIID for the SRRI:

71. The PRIIP manufacturer shall monitor market data relevant to the calculation of the MRM and, should that measure have moved so as to correspond to a different MRM class, the PRIIP shall be attributed the new MRM class corresponding to the MRM class which *the PRIIP has matched ~~for the majority of the reference points~~* ~~**over**~~ **on each weekly [or monthly] data reference point during** *the preceding four months.*

Part 5. Liquidity risk and article 5 RTS

As a general comment, in order to ensure more clarity, we suggest to: i) include a definition of liquidity risk; ii) explain the meaning of the criteria used to assesses the liquidity risk; and iii) to coordinate these elements with the narrative warning, where relevant (as indicated in Annex III) and the warning itself (as indicated in Appendix I).

For example:

- it is unclear to which PRIIPs the criteria stated in para. 76 apply. On the basis of a first assessment, the criteria only seem to apply to PRIIPs complying with para. 74. However, when considering the provision in para. 75, a warning should be given when the (liquidity) risk is materially relevant;
- In para. 76(d), we deem it important to clarify the meaning of "significant" of early exit penalties. Please also provide further clarifications as to what is to be considered a "long" disinvestment notice.

As regards the definition of liquidity risk, it is our understanding that a PRIIP in which an investor cannot withdraw or redeem before the maturity does not carry a liquidity risk and no warning should therefore be included in the risk section. A disclosure regarding the ability to make, and the conditions for, any disinvestments before maturity should be indicated only in the "how long should I hold it and can I take my money out early? Section.

In case this assumption is not correct, we suggest to differentiate the warning to be included in the KID in case of "liquidity risk" depending on whether it is or it is not possible for the investor to cash in early. If the warning highlights both the circumstances, it may be unclear for the investor what is the real risk of the PRIIPs. We suggest, for example, the following: [where applicable: element g] "*Additionally, be aware that it may not be possible for you to cash in early", or, "Additionally, be aware that you may incur additional costs and losses if you cash in early*".

Part 6: Currency risk assessment

Please refer to our answer to Q12.

Annex III (Methodology for the presentation of summary risk indicator) and Appendix 1 (Format of presentation of the summary risk indicator)

The presentation format of the SRI is composed of a table and two narrative explanations (in the brackets). Para. 6 of Annex II sets out the condition to include the first narrative element ("*the risk can be significantly different if you cash in at a time other than the end of the recommended holding period*"). For the sake of clarity, we suggest to classify this element with [Element A]. No reference is made in Annex III to the condition governing the inclusion of the second sentence within the SRI presentation format ("*It may not be possible for you to cash in early, or, if you do so, you may incur additional costs or losses*"). We consider this element quite similar to the following element "g". We ask to clarify whether, and if so, how this statement should or not be included within the SRI presentation format.

Element a) included in Appendix 1 describes the scope of SRI. The reference to “some form of protection” does not seem appropriate. In addition, the proposed narrative gives more emphasis on the loss side without duly considering that a higher SRI may give investors also higher return. We suggest to amend the description as follows: *[element a] The summary risk indicator is a guide to the level of risk of this product. It helps you to assess it and compare it with other products~~. **It takes into account how likely it is that you might lose money and whether the money you have invested has some form of protection**~~.]*

For the description of element “b”, “h” and “k” of Appendix 1, a maximum number of characters is set. We deem it not necessary to put a limit, given that the description would in any case be succinct to fit in a 3-page document.

For the description of element “c” of Appendix 1, please refer to our response to Q12.

Para. 7 of Annex III requires to include in the description element “e”, which describes the main limitation of the SRI. Element “e” partially seem to duplicate the warning included in element “A”; we therefore suggest only to highlight the SRI limitation not already included within the SRI format. This warning should not be request for PRIIPs that cannot be redeemed before maturity. We suggest amending the element as follows: “[***Where applicable,*** *element e] the risk score does not take into account ~~**whether you can take your money out early or**~~ the costs you might incur to **take your money out early** ~~**for doing so**~~*”.

Para. 8(a) indicates the warning for liquidity risk. In point i), the reference to para. 76 does not seem correct, while in point ii) the reference to Part 5 of Annex II is not clear.

Para. 10 requires a specific disclaimer if the PRIIPs do not hold a capital protection against market risk (“*element j): the amount that you have invested is not protected so in some unfavorable circumstances you could lose all of your investment*”). We think this warning is too strong for funds that in general do not have capital protection but do comply with prudential requirements on diversification (e.g. UCITS). We suggest to amend the disclaimer to also take into account these circumstances.

Para. 12 requires a specific disclaimer if the PRIIPs do not hold a capital protection against credit risk *(“element m: in the event the manufacturer is not able to pay you what is owed you could loss your entire investment”*). As already indicated in other part of the document, funds complying with para. 54 should not made a credit risk assessment; **this warning should therefore not be applicable and a different warning for funds should be foreseen.**

<u>**B.2 Performance scenario**</u>

Article 6 RTS

The ESAs’ proposal requests a representation of three scenarios: an unfavourable scenario, a moderate scenario and a favourable scenario. An additional scenario shall be included for insurance-based products reflecting the return retail investor receives if a covered insurance event occurs.

As art. 8(3)(d)(iii) of the Level-1 Regulation requires "*appropriate performance scenarios, and the assumptions made to produce them*;" it should be made possible for funds, and more in general, for all PRIIPs, to include, where possible, an additional scenario in the PRIIPs KID showing their 5/10 years past performance.

At the time the UCITS KIID was developed, it was considered appropriate to include such information to clarify how the fund is managed and provide investors with valuable information. An exclusion of such a representation would undermine the added value of the KID for asset management products. The inclusion of an additional scenario based on past performance would not hinder the comparability of different products, as this is in any case ensured by the three standard scenarios.

Annex IV (Technical rules of performance scenarios),
Please consider our answer to Question 14.

Annex V (Methodology for the presentation of performance scenario) and Appendix 1(Presentation of performance scenarios)

We disagree with the following statement (para. 3 of Annex V): "*in cases where products are considered to be illiquid according to Annex II part 5 paragraph 76, no information on the performance scenarios for the interim periods is required*.". Some illiquid PRIIPs do indeed offer disinvestment opportunities before the recommended holding period, but at additional costs and/or losses. For these types of investment, it is important to also show interim holding periods to investors. Only PRIIPs with no disinvestment possibility before the recommended holding period should be allowed to provide only one performance scenario. Para. 5 of Annex V should also be updated accordingly eliminating "*the performance scenarios may be shown only at maturity or at the recommended holding period*". The reference to para. 77 of Annex II always in the same para. 5 seems erroneous (para. 76 seems to be instead).

As regards the format to be used for the table presentation, we suggest to differentiate the tables as, at the moment, provide the same information. In our understanding, the first table presents data in a monetary amount while the second table in percentage. The information on "accumulated invested amount" should also be explained. In our understanding this is the sum of the nominal amount invested at the relevant date (1 years, 3 years and 5 years) and, for a single premium option, the value is always the same (for example EUR 10,000).

As regards the narrative explanation to be included in the presentation of performance scenarios (Appendix 1), we have the following remarks:

- "*[Element b] The scenarios shown are a simplified representation of possible outcomes.* ~~*You can use these scenarios to compare with the scenarios of other products, because they are calculated under similar conditions.*~~" We do not considerate it appropriate to highlight that the scenarios are calculated under similar conditions until a standardisation of the scenario apply.

- We suggest to redraft the warning in point [c] as follows, in order to better illustrate to investors that the scenario does not represent a forecast of what can happen. Furthermore, for actively asset managed product, it is of great importance to highlight that the performance does not only depend on the market, but also on the asset management activity itself: "*[element c] The scenarios presented are not an ~~exact~~ indicator of future performance,* ***but a portray of varying circumstances of returns****~~, but an estimation to that effect~~. What you get will vary depending on how the market [****where applicable, and asset manager]*** *performs and how long you keep the investment/product."*
- The narrative foreseen in element a), b), and c) may be not appropriate for all PRIIPs, where it is compulsory. We suggest to only set the principle, leaving the general description of the scenario to the manufacturer, as the narrative proposed seems oversimplified. For example, where appropriate, the reference to a rise/drop in the market should be substituted by a specific index. Where a product is exposed to more markets with different strategies (for example, a balanced or absolute or total return fund), the reference to a market is unclear because markets interact differently amongst themselves. The information of the % of rise/drop in the "market" occurs twice in the short explanation suggested (*[for the favorable scenario a rise in the market of [..]% is shown. So if the market goes up by […]%]).* Where our proposal is not in line with ESAs, it should be clarified to which period the warning refers (the recommended holding period). We furthermore suggest to enlarge the choice of the possible outcome, for example in element d) "*[…] So if the market goes up by […]% the money you may get back will* [*not rise/* ***not rise*** *equally with the market****, rise in line with the market*****,** ***rise more than the market****/not rise any longer/be cancelled*]".
- *[Element i] For a more complete overview of the assumptions that were made in producing the performance scenarios, please see our [insert* ***~~name of the document~~*** *where this information can be found]. A* more general principle should be indicated, for example, this information could be found also on the website.

B.3 Cost

Annex VI (Methodology for calculation of costs)

Para. 1-3 (One-off costs)
We ask for further clarifications on what is meant by a cost "borne by the fund" (para. 2). Our understanding is that such a cost is a recurring cost rather than a one-off cost. Additionally, we do not understand the term "loading costs" (para. 3(b)) and wonder whether this is the same as subscription costs.

Para. 4-6 (Recurring costs)
In para. 5 we suggest to exclude incidental cost, that are usually cost born by the UCITS/AIFs.

In para. 6(b)(v), we suggest to separate the "securities lending" services and the "property management" which are two different services. Furthermore, "capital expenditure" should not be considered as a cost as it is a capital investment made directly on the assets with the effect of increasing its value and it is not an outsourced service.

In addition, we ask for further clarification of what is meant by "provisioned fee" in para. 6(d).

With regards to para. 6(l) (cost of acquiring or disposing of units in UCITS or AIF), we suggest to redraft points (i) and (iii) to exclude the reference to the summary cost indicator. This indicator takes into account the maximum of the entry and exit fee that could be taken when disposing a fund but the real cost of disposing it is already covered in point (iv). Considering both requirements may lead to an overestimation of the costs. We therefore suggest to amend the provision as follows:

> (l) the costs of acquiring or disposing of units in UCITS or AIFs shall be taken into account in accordance with the following steps:
>
>> *(i) ~~Where a fund invests its assets in UCITS or AIFs, its summary cost indicator and recurring ratio shall take account of the charges incurred in the underlying UCITS/AIFs. Tthe following shall be included in the calculation~~:*
>> *(ii) if the underlying is a UCITS/**AIF** its most recently available **on-going**/recurring and entry/exit charges figure shall be used; this may be the figure published by the UCITS/**AIF** or its operator or management company, or a figure calculated by a reliable third-party source if more up-to-date than the published figure;*
>> *(iii) ~~**the summary cost indicator and**~~ the recurring ratio may be reduced to the […].*

With specific regards to para. 6(l)(v): *(v) in cases where **methods to compensate for effect of the in- and outflow by investors in the UCITS/AIF are applied** the value of the difference between the transaction price and the mid-price shall be taken into account as transaction cost* above, we suggest to explain the principle underlying such request. In our understanding, this cost is requested only when a funds invests in other funds that use a mechanism to compensate cost to rebalance their portfolios in order not to disadvantage existing shareholders' interests in that fund (i.e. dual-pricing, or for single pricing, where dilution levy or swing pricing apply). The estimation of this cost does not apply for single-NAV funds, where the valuation of some assets is not made at the mid-price.

With regards to para. 6(m), the same consideration made for para. 6(l) apply.

For para. 6(q), the reference to "paragraph 2 and following" it's not clear.

<u>Para. 8-28 (Transaction costs)</u>
Please consider our answers to Q16 and Q17.

Furthermore, in para 18(b) the reference to "customised derivatives" is not understandable. What are the derivatives included in this para? Also para. 19 and 20 are not clear.

<u>Para. 29-30 (Performance related fees)</u>
Para. 29(b)(2)(a) requires the estimation of the return for new funds, to take into consideration "the return of a comparable fund or of a peer group". We suggest to be more general on that point. In some cases, it could not be appropriate or possible to take into account other funds or peer group.

<u>Para. 72-78 (Specifications for the calculation of ratios)</u>

In para. 77, it seems to be assumed that ex-post data come from PRIIP' statement of operations published. We suggest to also consider that some data usually are not published in the statement such as, for the example, those concerning "implicit transaction costs".

Please consider the following amendment*: 78. Information about these ratios that were applicable during previous years / periods should be* ***made available*** ~~***published***~~ *at the location which is specified in the key information document as the general source of further information for investors who require it*.

Para. 80-84 (calculation methodologies for new PRIIPs)
As regards para. 80, we suggest to be more generic as both comparable PRIIPs and peer group may not be the appropriate proxy. We suggest the following amendment:

80. In place of ex-post data, estimates shall be used in the calculation of the different types of costs. Such estimates shall be ~~***carried out by adopting as proxies either a comparable PRIIP or a peer group***~~ ***based on the expected total charges.***

Para. 85-90 (common requirements to all types of PRIIPs)
As regards the minimum amount set in para 86, please refer to our response to Q2.

Annex VII (Format of presentation of costs)
Please consider our answers to Q26 and Q27.

B.4 Other issues

Article 3: Identity section
"*The information about the PRIIP manufacturer and its competent authority referred to in Article 8(3)(a) of Regulation (EU) No 1286/2014 shall include: [...] f) The date of the production and of any subsequent revision of the key information document" is required sub-paragraph (f) to be stated in the KID.* "

In line with art. 4(13) of the UCITS KIID Regulation, we suggest to only refer to the date of publication as indicated in Annex I of the template of the Key Investor Document, under the subsection "Product". The date of production may be different from the one of publication. In addition, the provision of both information (publication and production) does not give any added value or useful indication for open-ended products without specific tenor and with almost an yearly update.

We therefore suggest to introduce the following statement in the KID: "*This KID is valid as of [the date of publication]*". The use of the term "valid" more accurately expresses the idea that the content of the KID can be subject to changes over time and that the version delivered to the investor corresponds to the last update.

In case both details are given (i.e. production and revision/publication), we suggest to specify that only the latest data of the revision are to be provided.

Article 4: "What is this product?" Section

Article 4(4) of RTS proposes to include "*the target market identified by the PRIIP manufacturer´s product oversight and governance processes*". The referenced Article 8(3)(c) of the PRIIP KID Regulation merely requires "*a description of the type of retail investor to whom the PRIIP is intended to be marketed, in particular in terms of the ability to bear investment loss and the investment horizon*". The addition of "product oversight and governance processes" does not exist in the Level-1 Regulation and thus would require non-MiFID firms, such as UCITS Management Companies and AIFMs, to apply the MiFID II product governance and oversight rules for product manufacturers, which was not intended in the Level-1 Regulation. Therefore, the above mentioned sentence should be amended as follows: "*the target market identified by the PRIIP manufacturer*~~***´s product oversight and governance processes***~~"

Moreover, the ESAs' proposal goes even further by stating that these product oversight and governance processes need to take into account "*the financial interests, knowledge, objectives and characteristics of the types of retail investors for whom the PRIIP has been designed…*". This goes beyond the product oversight and governance processes requirement of the to-be-released draft MiFID II Delegated Directive, which at this stage, according tho ESMA's Final Report, contains more generic references to "*the needs, characteristics and objectives"* of clients. The PRIIP KID Regulation is meant to provide product disclosure and should not introduce new governance requirements through the Level-2 measures. These aforementioned requirements should therefore be replaced with a reference to Art. 16 para. 3 of MiFID II and Art. 25 of draft IDD.

Article 7: 'What happens if [the name of the PRIIP manufacturer] is unable to pay out?' section
An additional paragraph providing information on funds where no credit risk incurs should be included in article 7. Investors should not have the perception that a fund is riskier than other PRIIPs, especially when these other products include compensation or guarantee scheme.

As the pay-out of the fund's assets is not affected by a management company's financial position or potential default, and no compensation or guarantee scheme apply, it should be clarified that fund's assets are held separately from the management company and safeguarded by a depositary and the pay-out of the fund's assets is thus not affected by a management company's financial position or potential default. This form of protection should also be highlight in the KID.

With the same aim of highlighting this form of protection, the principle behind the warning to be include in the SRI format presentation (Annex III and Appendix I) should be taken into account.

Article 10: 'How can I complain?' section
We are generally in agreement with the draft of Article 10. However, we note that the current proposal requires the PRIIP manufacturer to provide information on "the person advising on, or selling, the PRIIP on the relevant website". This assumes a direct connection between the PRIIP manufacturer and the distributor, which is not always the case. In particular, the information about who will be advising on or selling the PRIIP is rarely known by the manufacturer. <u>This information should thus be deleted.</u>

Articles 12-15: Specific provisions on the key information document (i.e. Multi-investment option PRIIPs)

While we welcome the clarification that the PRIIP manufacturer is responsible for the provision of the KID, we nevertheless think that the ESAs' current drafting oversteps Level-1 text[3] which merely requires multi-investment option PRIIPs (MOPs) to provide "*at least **a generic description** of the underlying investment options and **state where and how more detailed pre-contractual information documentation** relating to the investment products backing the underlying investment options **can be found**.*" Articles 12-15 (in particular Articles 12(1)(a) & (b) and Article 15(2)) as currently proposed by the ESAs would de-facto require asset managers to provide "PRIIP KID-like" data to other providers, such as insurance companies. This unwarranted outcome is even acknowledged by the ESAs in the consultation paper[4].

The Level-1 text only requires "pre-contractual information documentation" such as the UCITS KIID. Until the review of the UCITS exemption in 2019, the ESAs should thus allow this information to be sufficient, since it would otherwise undermine the UCITS KIID's pre-contractual nature before the legislators' decision on the matter. Only in 2019, if the co-legislators decide not to prolong the UCITS KIID going forward and instead require the PRIIP KID for all types of PRIIPs, should the full PRIIP information then be required for funds currently providing a UCITS KIID. In any case, In the meantime (i.e. in the time framework going from January 2016 – date of application – and 2019 – exemption deadline for UCITS and other retail funds providing the UCITS KIID), the KID of the MOP wrapper (a KID itself) would still provide at least the "generic description" mentioned in Article 6 paragraph 3 of the Level-1 Regulation.

In addition to the reasoning above, there is another aspect that the ESAs should also take into consideration. This relates to the type of pre-contractual information that will be presented to retail investors in the near to medium future. Since UCITS are legally required to provide a KIID until at least 2019, investors will always receive a KIID when investing directly into a UCITS. If MOPs were required to provide a PRIIP KID for the underlying investment options, then retail investors would receive different pre-disclosure information based on whether they are investing into a UCITS directly (i.e. KIID) or through a unit-linked insurance (i.e. KID). This is unsatisfactory, and will create unnecessary confusion for investors.

Therefore, Articles 12-15 need to be redrafted in order to comply with the Level-1 framework.

Article 16: Periodic review of the information in the Key information document

- <u>Recital 19: Use of mailing lists</u>. Recital 19 needs to be either deleted or further clarified, as it states that "*[tools, such as mailing lists or email alerts, might be implemented to inform existing retail investors when key investor documents are*

[3] PRIIPs Regulation Art. 6(3)

[4] Page 123 on MOPs Costs: "[…] *In so far as the insurance undertaking requests that the UCITS to already prepare KID compliant information for the insurance undertaking – though this is not directly required under the PRIIP Regulation -- this would have the practical impact of undermining the temporary exemption in the Regulation and requiring UCITS to produce simultaneously a KII and KID-compliant information.*"

revised". This requirement gives rise to operational impracticalities. It is not possible for the manufacturers to inform the single investors, as most manufacturers are not aware who the end investors are and often do not have direct contact with them. The sole responsibility of the manufacturer should be the review, revision and republication of the KID on his website and information of its known distribution network of the revised KID.

- Art. 16 (1). In order to ensure more clarity, we suggest to amend art. 16(1) as follows: "*The PRIIP manufacturer shall review the information contained in the key information document **at the latest** by*"**.** The requirement to review the information on the twelfth month following the date of the initial publication of the KID and every twelfth month following the latest review of the KID would have the effect of spreading the review of the KIDs all along the calendar year. For asset managers which present a large range of funds, this constant review of KIDs would diminish economies of scale and therefore generate extra costs. Furthermore we would suggest to take into account the rule currently used in the UCITS KIID, i.e. a review within the 35 business days after the end of the calendar year, and, where possible, to extend this time period to take into account new complexity due to the proposed KID methodologies on transaction costs and risks (for example a review within the first quarter after the end of the calendar year).

Article 17: Ad hoc review of the Key information document
We suggest to include a reference to "materiality" as in the UCITS KIID requirement. A similar provision would ensure that only material changes trigger an ad hoc review of the KID. This is important, as it ensures that minor and inconsequential changes do not require the PRIIP manufacturer to perform an ad hoc review

Article 20 (it should be 21): conditions on good time
The conditions for delivery in good time should make reference to the relevant passages in MiFID II, IDD and the PRIIP KID to ensure consistent application of the distribution requirements for all types of PRIIPs. We therefore suggest to align Article 20 with Article 80(1) of the UCITS Directive (2009/65/EC).

Annex I. Template of the Key information document
We appreciate the template, but it is not totally clear how all the information to be included in the KID as required by L1 and L2 will work together. For example:

- Itis unclear where the comprehension alert should be inserted pursuant to article 8(3)(b). This article seems to include it in the "Product" section but there is no explicit reference to it in the relevant template;
- for the section "what is this product?", it seems that the information to be provided pursuant to article 8(3)(c) should be differentiated between "Type", "Purpose" and "Intended Market". We suggest to give manufacturer the discretion to organize this section, as long as it is in line with the requirements;
- the use of different terms ("narrative text" and "text") referring to the possibility to include text in the sections is unclear.

<ESMA_QUESTION_PRIIPS_28>