

MEMO# 31419

October 2, 2018

European Supervisory Authorities Letter Regarding the Application of the PRIIPs KID to UCITS

[31419]

October 2, 2018 TO: ICI Global EU Capital Markets Union Task Force
ICI Global Regulated Funds Committee
International Operations Advisory Committee RE: European Supervisory Authorities Letter Regarding the Application of the PRIIPs KID to UCITS

On 1 October 2018, the Joint Committee (JC) of the European Supervisory Authorities (ESAs) wrote^[1] to Olivier Guersent, Director General, DG FISMA, European Commission (“the Commission”) regarding the application of the Key Investor Document (KID) under the Packaged Retail Insurance Based Investment Products (PRIIPs) Regulation.^[2]

The letter expresses the JC’s concerns about an approach whereby retail investors subscribing to a UCITS fund would receive both the PRIIPs KID and the UCITS Key Investor Information Document (KIID) from 1 January 2020. The JC expresses the following specific concerns:

- The overlapping disclosures in the UCITS KIID and PRIIPs KID may deter investors from using these documents rather than facilitating informed investment decision making; and
- Information in the UCITS KIID may not be effectively be articulated alongside the PRIIPs KID information, due to technical differences in the methodologies underpinning the presentation of risks, performance and costs, and retail investors may not appreciate the differences in this information.

The potential for a UCITS retail investor to receive a UCITS KIID and PRIIPs KID will arise if the UCITS exemption in the PRIIPs Regulation lapses. Specifically, UCITS are exempt from the obligations under the PRIIPs Regulation until 31 December 2019.^[3] The PRIIPs Regulation envisages that by 31 December 2018, the Commission shall review the PRIIPs Regulation, including assessing whether the exemption for UCITS “shall be prolonged, or whether, following the identification of any necessary adjustments, the provisions on key investor information in [UCITS Directive] might be replaced by or considered equivalent to the key investor document under the [PRIIPs Regulation]”.^[4] In the absence of Commission action to prolong or otherwise adjust the UCITS exemption, a person advising on, or selling a UCITS will be required to provide the retail investor with a PRIIPs KID^[5] and a UCITS

KIID.[6]

The JC recommends that solutions, including legislative changes, are required to avoid a situation where both the UCITS KIID and PRIIPs KID are provided to UCITS investors from 1 January 2020. The ESAs propose undertaking a stakeholder engagement process, including via public consultation, in Q4 this year with a view to submitting recommended amendments to the relevant legislation and technical standards in Q1 2019.

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endnotes

[1] Letter from Joint Committee of the European Supervisory Authorities to Olivier Guersent, Director General, DG FISMA, European Commission, RE: ESA response to Commission request to develop guidance on facilitating the production and distribution of information on investment funds as of 1 January 2020, dated 1 October 2018, available from <https://esas-joint-committee.europa.eu/Publications/Letters/JC%202018%2055%20Joint%20letter%20to%20EC%20on%20PRIIPs.pdf>

[2] Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), available from <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32014R1286>

[3] Article 32(1), PRIIPs Regulation

[4] Article 33(1), PRIIPs Regulation

[5] Article 13(1)

[6] Article 80(1), UCITS IV Directive, available from <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32009L0065>