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The PRIIPs Regulation – A view from Germany

Why Asset Managers should be ready as of January
2017 and not rely on Grandfathering

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The Regulation on Key Information Documents for Packaged Retail and Insurance-Based Investment Products (PRIIPs Regulation) – A View from Germany

Why Asset Managers Should be Ready as of January 2017 and not Rely on Grandfathering

Introduction

The Regulation (EU) 1286/2014 of the European Parliament and the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (“PRIIPs Regulation”) will introduce a new key information document (“KID”) for certain packaged and insurance based investment products (“PRIIPs”) that are offered to retail investors. The KID must be provided to retail investors prior to their making an investment decision. If no KID is available, the marketing of the respective product to retail investors is prohibited.

For more information on the investment products covered by the PRIIPs Regulation and the key elements of the format and the content of a PRIIP KID, please see [Dechert OnPoint on The Regulation on Key Investor Documents for Packaged Retail and Insurance-Based Investment Products](#).

Timing

The PRIIPs Regulation has been published in the Official Journal of the European Union on 9 December 2014. It came into force on 29 December 2014 and will apply directly in all member states of the European Union from 31 December 2016. The final Level 2 Regulatory Technical Standards were published by the European Commission on 30 June 2016 and will enter into force twenty days following publication in the Official Journal.¹

Grandfathering Period for Investment Funds

The European law maker recognized that existing European rules already provide for the production of similar key information documents such as the Key Investor Information Document (“KIID”), introduced by the UCITS Directive. Consequently, the PRIIPs Regulation provides for a grandfathering period for management companies, investment companies and persons advising on or selling units of UCITS until 31 December 2019. They can continue to produce and use the KIIDs that they currently use for UCITS purposes.

In Germany, the same grandfathering period applies to management companies, investment companies and persons advising on or selling units of Retail-AIFs since German open-ended and closed ended AIFs as well as

¹ Numerous acts of EU legislation in the area of financial services such as the PRIIPs Regulation contain empowerments for so-called “Level 2” measures to be adopted by the EU Commission by means of Delegated Acts, Implementing Acts, or measures under the former comitology Regulatory Procedure with Scrutiny (RPS measures). These measures are endorsed in accordance with different procedures set out in the relevant basic act and may be subject to formal committee decisions or provide for certain control rights of the European Parliament and the Council. Where the Level 2 measures concern purely technical matters and require the expertise of supervisory experts, it can be determined in the basic act that these measures are technical standards based on drafts developed by the European Supervisory Authorities (ESAs). A distinction can be made between Regulatory Technical Standards (RTS) which are adopted by the Commission by means of a Delegated Act and Implementing Technical Standards (ITS) which are adopted by means of an Implementing Act.

EU-AIFs offered to retail investors must provide KIIDs that are drafted in accordance with the UCITS-KIIDs to these retail investors²

Issues for Funds Wrapped in Unit Linked Insurance Products

Although the Regulation provides for a grandfathering period for most of the investment funds marketed in Germany, which means that they can still produce and use UCITS KIIDs or AIF-KIIDs until 31 December 2019 if such a fund is “wrapped” into a life insurance product (unit linked life insurance) it will actually be required for the fund resp. its management company to provide the insurance company with information and data that the insurance company itself requires to produce its PRIIP KID. This data must be calculated and assembled according to the provisions of the PRIIPs regulation in order for the insurance company to be able to produce a PRIIPs KID for its life insurance product. It will not be possible to simply use the UCITS KIID data.

Background:

The PRIIPs Regulation establishes that, for PRIIPs offering a range of options for investment (Multiple Investment Options (“MOP”)), such as for example a fund linked life insurance which offers different UCITS or AIFs as an underlying, the KID shall provide a general description of the underlying fund and “state where and how” more detailed information can be found for the underlying funds.

However, the Level 2 rules go beyond by deviating from the requirement to “state where and how” more detailed information can be found. Rather, they require the provision of information in the KID format as established in the Level 2 rules.

The Level 2 rules stipulate that for MOP, PRIIPs manufacturers e.g. an insurance company should select one of the following two options: The issuer of the PRIIP can either produce a separate KID for each investment option, e.g. for each underlying fund, including information about the PRIIP in general e.g. the life insurance coverage and about the option (fund) in particular; or it can produce a generic KID for the PRIIP in general, and then provide specific information about the fund or funds through separate documents. The rules are drafted in a way that such “specific information” must contain the key features for each investment fund i.e. the comprehension alert, the investment objectives, the summary risk indicator, the various performance scenarios and the presentation of the costs and must also be calculated according to the Level 2 rules.

Although the Level 2 rules clearly state that the information regarding the KID and the underlying information on the investment options would remain the sole responsibility of the PRIIP manufacturer e.g. the insurance company, since they do not manufacture the respective underlying funds themselves, they do not hold the respective data in relation to the specific fund. If the insurance company is not able to produce the respective KIIDs it will have no choice than to withdraw some products from the market and/or cease offering the products with the underlying investment funds for which it does not hold the respective data.

As a matter of fact the insurance companies will be obliged to request the information and data that must be assembled resp. calculated on the basis of the Level 2 rules from the respective funds. Although this does not necessarily mean that the funds will be required to produce PRIIPs KIIDs by January 2017, it does mean that the

² If AIFs are offered to semi-professional investors (as defined in section 1 (19) of the German Investment Code – KAGB) through a MiFID regulated entity which provides investment advice, the MiFID entity is also required to provide semi-professional investors with a KIID since semi-professional investors as defined in the KAGB are deemed retail investors according to German MiFID rules. The Law to amend financial market laws (FimanoG), parts of which are expected to enter into force in Germany on 31 December 2016, will offer AIF-management companies offering units to semi-professional investors a choice: they will be able to either provide a PRIIP KID or a KIID in accordance with UCITS standards to investors.

fund must be ready to provide the underlying information and data in a format that must be compliant with the PRIIPs KIDs requirements to the insurance company already as of January 2017 and not only in January 2019.

Outlook

Notwithstanding calls from certain trade bodies for a delay to PRIIPs to allow market participants a more reasonable time frame in which to come into compliance, the publication of final Level 2 rules means that firms must work to the 31 December 2016 deadline for compliance.

Many German insurance companies have already reached out or will shortly reach out to asset managers to make sure that the data and information will be provided in a timely manner. However, the asset managers - in particular asset managers abroad – should not wait to be contacted in order not to be caught off guard. In addition many asset managers might not be aware of the fact that one or more of their funds are wrapped into a life insurance product. It is therefore highly advisable to consider the impact of the PRIIPs regulation based on the above as soon as possible in order to avoid significant losses of assets coming from insurance companies that will eliminate the respective funds from their offering because of data gap in reporting PRIIP data.

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