

CLIENT ALERT

# PRIIPs Implementation: Do You Need a “KID” for your Fund?

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The EU packaged retail and insurance-based investment products regulation (the PRIIPs Regulation)<sup>1</sup> aims to provide a new, pre-contractual disclosure document (a key information document or KID) for retail investors when they are considering buying certain kinds of investment products that are referred to in the PRIIPs Regulation as packaged retail insurance-based investment products (PRIIPs). The PRIIPs regime comes into effect from 1 January 2018. From that date, firms marketing their fund to retail investors in the European Economic Area (EEA) may need to provide such investors with a KID before such fund is made available to them.

### ***What is a PRIIP?***

A PRIIP is defined as an investment where, regardless of its legal form, the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets that are not directly purchased by the retail investor; or an insurance-based investment product which offers a maturity or surrender value that is wholly or partially exposed, directly or indirectly, to market fluctuations. The definition includes instruments issued by special purpose vehicles that meet the definition of PRIIPs. The above definition will apply to a wide variety of investment products, including structured products and alternative investment funds. Firms will also need to consider whether the definition would apply to co-investment vehicles, friends and family vehicles and other similar vehicles (if any) in their fund structure.

<sup>1</sup> EU Regulation 1286/2014 on key information documents for packaged retail and insurance based investment products.

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## **PRIIPs Implementation: Do you need a “KID” for your Fund?**

### ***Does the PRIIPs Regulation apply to non-EU managers or funds?***

The PRIIPs Regulation will apply where an investment is made available to “retail clients”<sup>2</sup> in the EEA. It is irrelevant where the investment is manufactured or where the manager or sponsor of such investment is based. As a general guide, “retail clients” will typically include high-net-worth individuals, smaller undertakings, municipalities and local authorities that do not or cannot “opt up” to “professional client” status in accordance with the procedure set out in MiFID II<sup>2</sup>.

### ***Key requirement of the PRIIPs Regulation***

The PRIIPs Regulation requires any person selling or advising on a PRIIP (whether a distributor or the product manufacturer in the case of direct sales) to provide a KID to retail clients in good time before those investors are bound by any contract or offer relating to that PRIIP. In other words, the investor must be given sufficient time to weigh up their investment options. The information should also be published on the website of the product manufacturer or, if applicable, the distributor.

The KID must contain certain prescribed information and comply with the strict requirements as to form and content set out in the PRIIPs regulatory technical standards. This information will include: the name of the PRIIP; the identity and contact details of the PRIIP manufacturer; information about the PRIIP manufacturer’s regulator and the nature and features of the PRIIP (including detailed requirements as to the presentation and the content of each of the elements of information, the methodology underpinning the presentation of risk and reward and the methodology for the calculation of costs). The PRIIP manufacturer must review the information in the KID regularly and ensure that any revised document is promptly made available to the retail client.

A PRIIP manufacturer shall not incur civil liability solely on the basis of the KID, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of legally binding pre-contractual and contractual documents or with the requirements laid down in the PRIIPs Regulation. A retail investor who demonstrates loss resulting from reliance on a KID where that KID is shown to be misleading, inaccurate or inconsistent with the investor documentation of the PRIIPs Regulation, may claim damages from the PRIIPs manufacturer for that loss in accordance with national law.

### ***What should you do now?***

Firms that will or intend to market their fund in the EEA after 1 January 2018 should:

- Review the target investor list to determine whether any of their prospective investors in the EEA are “retail clients” and if so determine if such investors can be “opted up” to “professional client status.” Please remember that “retail clients” could include small companies and local authorities and are not limited to individuals.

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<sup>2</sup> A “retail client” is defined in point (10) of Article 4(1) of the EU directive on markets in financial instruments Directive 2014/65/EU (MiFID II).

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## PRIIPs Implementation: Do you need a “KID” for your Fund?

- Take appropriate steps to restrict and/or control access to and distribution of fund marketing materials and agreements to potential investors in the EEA who may be “retail clients.”
- Seek advice and assistance on the preparation of your KID. The form and substance of this document is prescribed by the PRIIPs Regulation. It will be important that any KID prepared for your fund complies with the requirements of the PRIIPs Regulation including local language requirements.

If you have any questions regarding this client alert, please contact the following attorneys or the attorney with whom you regularly work.

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