	Comments Template for Joint Consultation Paper concerning amendments to the PRIIPs KID (JC 2018 60)	**Deadline 6 December 2018 23:55 CET**
Name of Company:	The Association for Financial Markets in Europe (**AFME**)	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
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Reference	**Comment**	
General Comments	AFME welcomes the opportunity to provide comments in response to the "Joint Consultation Paper concerning amendments to the PRIIPs KID." AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is registered on the	

	EU Transparency Register, registration number 65110063986-76. We note the fact that, for the reasons explained in the consultation by the ESAs, the paper only covers the approach for performance scenarios and other specific issues. As stated, the consultation has been written to assist funds in dealing with the difficulties they have experienced rather than other products (such as OTC derivatives and certain bonds), which may (or may not) be in scope. As a general point, in our view the issue of the uncertainty as to scope of the regulation is key and should be addressed in the short term by the issuance of guidance on its applicability to certain types of bond with investor protective features (as proposed by the ESAs in their July 2018 letter to the EC) and also as part of a broader review to consider other asset types (from both a scope and a KID content/presentation perspective). This broader review should be initiated as soon as practicable. Regarding the proposed changes we would make the following general comments in response to the questions. Please note that we are not in a position to make specific comments about the calculation methodology, although we note that the current methodology is not workable for certain types of products.	
Q1	On the assumption that OTC derivatives may be in scope, we do not consider that providing clients with a view of how previous investments/transactions have performed would add value and help a (retail) client to make a more informed choice. As there is no direct correlation between how a past and future investment/transaction could perform, we consider that it could potentially be more misleading than helpful. With respect to FX derivative products in particular, past performance is not necessarily relevant or helpful to clients when considering whether to enter into a transaction, as the primary purpose of entering into such a transaction is to hedge currency risk. Providing an indication of how the trade would have performed under past market conditions would not give a meaningful result	

	because the economics of a derivative product, e.g. the dealt rate, strike, barrier levels, etc. are based upon current market conditions. An example is a one year Knock Out barrier option (Note: a Knock Out or KO is the price/other limit that terminates the contract) based upon current market conditions. If we compare the option trade to the actual market value of the underlying as at one year ago, it can easily result in a trade that knocks out immediately, because the underlying market rate one year ago is above the KO barrier set per current market conditions. If we considered an alternative, e.g. changing or setting the option economics to match the prevailing market conditions as at one year ago, this would not result in a meaningful comparison, because it would not reflect the actual terms of the trade. More generally, our members take the view that, whilst illustrating how a particular instrument might have performed in the past could be useful to show a retail investor how the payoff varies under different market conditions, there remains a risk that retail investors rely on the past performance as an indicator of future performance. However, if the ESAs do consider there are cases where past performance is relevant (e.g. actively managed funds), they could then require its inclusion for Category 2 PRIIPs only (i.e. not for Category 1, 3 and 4.) This would allow past performance comparability between actively managed and passive fund structures/trackers, but avoid OTC derivatives (see above), structured products and other products with non-linear payoffs from showing potentially misleading figures.	
Q2	See response to Question 1 above.	
Q3	See response to Question 1 above.	
Q4	See response to Question 1 above.	
Q5	See response to Question 1 above.	

Q6	Again, on the assumption that OTC derivatives may be in scope, in our view we would prefer the term ‘investment’ to be replaced (for reasons of clarity) with ‘transaction’ or something similar. This is because (retail) clients of our members do not typically use these products for investment purposes. In addition, there are other changes that would reduce the risk of an investor being overly reliant on the performance scenario results. Such changes include: a) removal of the use of the word “estimates”; b) amending the phrase “indication of the range of possible returns” to “indication of a range of possible returns”; and c) highlighting the fact that the scenarios do not necessarily represent all possible outcomes or even represent likely outcomes.	
Q7	In our view the proposed amendments in the consultation would make the KID less useful to (retail) clients. This is because a reduction in the number of scenarios could suggest that there is the potential for wider fluctuations in risk, which is the opposite of the desired effect. We therefore support continuing with the current range of scenarios rather than reducing to two, which may require changes to documentation without any clear benefit to clients. We also support the continued use of clarifying text to inform clients that the scenarios are not an exhaustive list. We would also suggest adding text that states that clients may speak with their provider to discuss a full range of possible outcomes.	
Q8	We note that on page 15 of the CP, § “Amendments to the narrative explanations”, para. 1, the paper expresses some concern that the current presentation of the performance scenarios does not explain clearly enough that the values presented are just some of a range of possible outcomes. In the cases of OTC derivatives (again on the assumption that some instruments may be in scope), we think that consideration should be given to using the same approach for the	

	performance scenarios as that specified for exchange traded derivatives (ref RTS Annex IV para. 17, and Q&A page 25 question 3), which is to use a payoff diagram rather than a table of scenario values. The scenario values can be indicated on the diagram, but the presentation of the performance as a diagram rather than a table will make it clear to the reader that there are a large range of possible outcomes of the product, and that the calculated scenarios are just a selection of those possible outcomes. We note that this comment has already been considered and allowed to a very limited extent in Q&A page 24 question 2, but in our view, consideration should be given to an extension to cover a larger range of OTC derivative products, with more relaxed conditions on usage.	
Q9	In our view clarification is required on the comments in the Consultation Paper about "autocallable" features and the application to OTC derivatives. The word 'autocallable' is conventionally used to describe structured products that knock out if a pre-specified barrier is reached on a particular date. However, some OTC derivatives, e.g. accumulators, have continuously observed knock out barriers, whereby the structure is cancelled (all remaining fixings are knocked out) with only unsettled cashflows paid out. If these products fall within the definition of 'products with an autocallable feature', this will have an impact on the presentation of the performance scenarios. We would also point out that the proposed autocall methodology, to the extent it applies, may result in an investor being provided with a significantly smaller number of performance scenario results than they currently receive, especially for products referencing an underlying with strong historic performance. This would reduce the usefulness of the KID for the purpose of comparing different products.	
Q10		
Q11		
Q12		

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Q13		