

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:	Swedish Securities Dealer Association (SSDA)	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
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Reference	Comment	
General Comments	<ul style="list-style-type: none"> • The Swedish Securities Dealer Association (SSDA) appreciates the opportunity to comment on the Joint Consultation Paper concerning amendments to the PRIIPs KID. However, as a general comment, the SSDA would like to emphasise that the limited timeframe of the consultation makes it difficult to submit responses and suggestions that are as comprehensible and detailed as they should be in order to be fully beneficial to regulators. • Although the SSDA agrees with many of the issues raised in the consultation paper, our opinion is that it would be better to await the more extensive PRIIPs review and include 	

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them in it. This in order to avoid confusion and to make amendments that risk being changed once again. It is the firm opinion of the SSDA that the UCITS-exemption should be extended until the full review of PRIIPs has been carried out, as was originally intended.

Further, the consultation paper raises several issues that needs clarification, e.g. the issue of RIY and the Growth Assumption which in its current form of the Q&A carries the risk of presenting misleading information to investors. A few further issues are raised by the SSDA in the comments to this consultation paper. In order to avoid confusion it would be very much appreciated if the joint committee could, to the extent that it is possible, clarify these issues through level 3 guidance or in a revised Q&A.

- During the time period which will pass until the review of the PRIIP regulation has been carried out, there is a significant risk that retail investors can be misled by some of the information currently presented in the KID e.g. related to performance scenarios which show too positive returns. In order to avoid this, it is important that the joint committee as well as national regulators allow investment firms to provide their clients with supplementary information, i.e. in addition to the KID, to correct for or provide further explanation to the KID. In the opinion of the SSDA, such a flexible approach is essential from an investor protection perspective and it would be most unfortunate for retail clients in the EU if the joint committee was to take another position (see 4.1.7).
- In the opinion of the SSDA it is also very important that the PRIIPs scope is clarified by the Commission as soon as possible. This in order to avoid negative effects for the liquidity on the corporate bond market as a result of the uncertainty regarding whether or not they fall under the scope of PRIIPs. The SSDA supports the interpretation made by the ESAs in the letter dated 19 July 2018 as regards which bond features should have the effect of making a bond subject to PRIIPs regulation when sold to retail investors.

Further, for hedging products the only risk that make sense to present is the one

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	<p>connected to the counterparty risk and the direct costs that is related to transacting the contracts. At least for FX Forwards (which are exempt in Art 10 in the Delegated Act to MIFID II if regarded as “means for payments”) the KID in its current form shouldn’t be sent out to clients using it as a means for payment. We would appreciate clarification that these are not part of the scope as they are means of payment.</p> <ul style="list-style-type: none"> As a final general remark, the SSDA would also like to underline that another area which is very important to cover in a future, more extensive review of PRIIPS, relate to the cost & charges rules. In particular, in order to avoid misleading information to retail clients, it should be ensured that the terms and methodology used is the same in both MiFID II and PRIIPs. Joint committee may also fulfil an important role in order to ensure supervisory convergence as regards the interpretation of the rules. 	
Q1	<ul style="list-style-type: none"> The SSDAs opinion is that it would be better to await the full PRIIPs review and include the questions raised regarding past performance scenarios in it. This in order to avoid confusion and to push forward changes that, as a result of the limited timeframe, have not been sufficiently analysed, and that might be changed once again when the full review is carried out. It is the firm opinion of the SSDA that the UCITS-exemption should be extended until the full review of PRIIPs has been carried out, as was originally intended. IF past performance is indeed included in the KID, prior to the full PRIIPs review, the SSDA is of the view that it is only appropriate for Category 2 products, and not for Category 1 and 3. Please see also to the final bullet below regarding category 1, derivatives products. IF past performance is to be included in the KID for Category 2 products, the approach suggested in the consultation paper seems appropriate. Furthermore, clarification on what the definition “is available” means when it comes to 	

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	<p>the calculation of past performance is needed. Some Category 1 & 3 products may have past performance data for the underlying instruments, but this does not necessarily relate to the product itself. Therefore calculations based on the respective underlyings could be misleading to investors, making the definition of “is available” important for these products.</p> <ul style="list-style-type: none"> The KID is mainly targeted at - and most relevant for - investment products. In the case of hedging products (e.g. FX, IRS’s) past performance does not give the client any relevant guidance as a basis for an “investment” decision since the whole meaning and objective of using such products are to eliminate and offset underlying risk rather than the opposite, i.e. to have an exposure to the risk. These products are not intended as investments, the purpose for entering into such hedging contracts is for risk management and not investment purposes. Further, while hedging agreements involve two-way payments between parties, they do not involve an upfront principle amount to be paid upon which there is a return expectation. Therefore, as we have previously advocated a different approach needs to be taken to the KID for hedging products, to avoid giving unusable or misleading information. 	
Q2	<ul style="list-style-type: none"> See Q1. 	
Q3	<ul style="list-style-type: none"> See Q1. 	
Q4	<ul style="list-style-type: none"> See the answer to Q1, as well as the further arguments below. <p><u>Further arguments:</u></p> <ul style="list-style-type: none"> The SSDA does not support the use of simulated past performance for products where actual past performance is not available since there is a risk that such simulated information will be misleading for clients when it comes to Category 1 and 3. Simulated performance could be misleading and as compared to actual performance since historical simulations for different Category 1 and 3 products will potentially not be based 	

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	<p>on data from the same time period. The reason for this is that these non-linear products have finite structures meaning that the inception points might differ.</p> <ul style="list-style-type: none"> • The SSDA questions whether the difference between actual performance and simulated performance will be comprehensible for clients. Instead of enhancing comparability, it might diminish it. • We refer again to our response to Q1 regarding hedging products. Performance simulations for products used for offsetting and eliminating risk does not add any usable information for clients, rather it has created confusion. What is relevant though, is the cost of entering such protection/insurance. 	
Q5	<ul style="list-style-type: none"> • No, the SSDA is of the opinion that simulated past performance should not be included. 	
Q6	<ul style="list-style-type: none"> • Yes, the SSDA supports the proposed amendments to the narrative explanations. 	
Q7	<p><u>Risk-free rate of return</u></p> <ul style="list-style-type: none"> • As a general opinion, we do not support such a change at this point in time. We agree that there are drawbacks to the current methodology of the performance scenario calculations, but changing the methodology in this way would mean that no consideration to individual products different risk and risk premia is taken into account. Instead the benefits and drawbacks of the current, as well as proposed, methodology should be analysed as part of the full PRIIPs review. <p><u>Number of performance scenarios - range of outcomes</u></p> <ul style="list-style-type: none"> • The SSDA does not support the proposal of removing the moderate and unfavourable scenarios in the KID document. By removing these scenarios many features of the products under Category 1 and 3 will not be properly disclosed. This means that investors will not be able to: 1) get a comprehensible overview over how such products can be affected by the market developments that are actually more likely to occur than the stressed scenario, and 2) Category 1 and 3 products might be affected in the same way as 	

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	<p>Category 2 products under the stressed and favourable scenario, but differently in the moderate and unfavourable scenario. Yet they would seem to be affected in the same way if not all scenarios are disclosed.</p> <p><u>Extend historical period</u></p> <ul style="list-style-type: none"> The SSDA is of the opinion that an extension of the historical period from 5 to 10 years does not have the required benefits necessary in order to merit a change. Although the extension would likely capture more business cycles, and perhaps also boom-bust cycles, data limitations would appear for more products thereby increasing the use of simulations. 	
Q8	See General Comments	
Q9	<p><u>Market Risk Measure (MRM)</u></p> <ul style="list-style-type: none"> The SSDA supports the view expressed by the European Structures Investment Products Association, EUSIPA, in their Recommendations on the implementation of selected PRIIPs RTS from 21 September 2018. <p><u>Products with auto callable feature</u></p> <ul style="list-style-type: none"> Again, the SSDA would like to express its support to the views expressed by EUSIPA, see previous answer on MRM. <p><u>Narratives for the Summary Risk Indicator</u></p> <ul style="list-style-type: none"> SSDA supports the proposal. <p><u>Narratives for performance fees</u></p> <ul style="list-style-type: none"> The SSDA does not have any comments at this time. <p><u>Growth assumption for the reduction in yield calculation</u></p> <ul style="list-style-type: none"> The SSDA is of the opinion that the current guidance in the Q&A (Question 4 in section V) 	

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	<p>is inadequate. We welcome the proposed solution, as it clarifies the Q&A which created a hurdle effect, as products where an investor has lost 99% of the capital would show almost zero "RIY" irrespective of the costs applied.</p> <p>However there are some issues with the proposed solution as well. It is necessary to receive guidance through an updated Q&A in relation to if the "cost" in amounts should be independent of the RIY percentage. Also, it needs to be clarified if it is clarified that the 3% growth assumption refers to the internal rate of return in the moderate scenario, that it is net of fees, and that it is not the underlying of a PRIIP. Otherwise there is a risk of different interpretations that would harm comparability for investors.</p> <p><u>Other minor</u></p> <ul style="list-style-type: none"> • The SSDA does not have any comments. 	
Q10	<ul style="list-style-type: none"> • It is the firm opinion of the SSDA that the UCITS-exemption should be extended until the full review of PRIIPs has been carried out, as was originally intended. • Further, the SSDA would like to express its support of the comments made by The Swedish Investment Fund Association on this question. 	
Q11		
Q12		
Q13		