

**Comments Template on
 Consultation Paper on the proposal for Guidelines under the Insurance
 Distribution Directive on insurance-based investment products that
 incorporate a structure which makes it difficult for the customer to
 understand the risks involved**

**Deadline
 28 April 2017
 18:00 CET**

Name of Company:	Standard Life UK	
Disclosure of comments:	EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential. Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.	Public
<p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Do not change the numbering in the column "reference"; if you change numbering, your comment cannot be processed by our IT tool ⇒ Leave the last column <u>empty</u>. ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>. ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, in Word Format, to CP-17-001@eiopa.europa.eu.</p> <p>Our IT tool does not allow processing of any other formats.</p> <p>The numbering of the questions refers to the Consultation Paper on the proposal for Guidelines under the Insurance Distribution Directive on insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved</p>		
Reference	Comment	
General Comments	<ul style="list-style-type: none"> • We seek parity across MiFID II and IDD, and consideration of Solvency II. 	

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As it stands, the IDD would appear to be placing more restrictive rules on insured funds compared to mutual funds under MIFID II. We ask that this situation is equalised.

If our interpretation is correct, where we have strategies which utilise derivatives for the purposes of efficient portfolio management, these would be treated as complex under the IDD.

Under MIFID II, provided a fund is classified as a UCITS, it could use derivatives for this same purpose but not be classified as complex on the basis that UCITS are considered to be non-complex financial instruments.

This treatment of insured funds under the IDD would have significant impact on customer choice, by applying unnecessary restrictions resulting in reduced choice for customers.

In addition, Solvency II indicates that the use of derivative instruments shall be possible insofar as they contribute to a reduction of risks or facilitate efficient portfolio management and we would welcome this being reflected in EIOPA's Guidelines.

- We seek clarity on the intention under the IDD by the "exposure to" wording. We believe this suggests a look through to the underlying assets is required. We would appreciate clarity on which level we should be measuring complexity at – the product, fund, or asset level?

This would mean that the presence of derivatives, even where these are only used for efficient portfolio management, renders many existing unit linked funds complex, where equivalent strategies under MIFID II would not be. We include a diagram below to illustrate the point.

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Under the current IDD wording, we believe the “exposure to” wording suggests that complexity is measured at the asset level; whereas under MIFID II this would be at the fund level.

If we measure at asset level, we believe a distinction should be drawn between funds using derivatives for efficient portfolio management and funds using derivatives in pursuit of their investment objective or to generate investment returns, which should be considered complex in certain cases.

We suggest funds using derivatives for effective portfolio management are treated as non-complex, like UCITS funds under MIFID II.

	MIFID II	IDD
Product	e.g. Pension Wrapper	IBIP
Fund Vehicle	UCITS Fund	Unit Linked Fund
Assets	e.g. Equities, bonds, derivatives (for effective portfolio management) etc.	e.g. Equities, bonds, derivatives (for effective portfolio management) etc.

Do you have any comments on the Impact Assessment?

Question 1

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	No comment.	
Question 2	<p>What role do you consider that execution-only sales will have in the distribution of insurance-based investment products in view of the restrictions in Article 30(3)(a) of the IDD, the fact that the provisions in Article 20(1) of the IDD still need to be satisfied regarding the specification of the customer's demands and needs, and the potentially higher risks of the product not being suitable or appropriate for the customer?</p> <p>We expect to see a reduction in the volume of execution-only sales of insurance-based investment products (IBIPs) and a potential increase in the number of customers going through an appropriateness assessment.</p>	
Question 3	<p>What types of insurance-based investment products do you think could fall within the scope of Article 30(3)(a)(i) and which within the scope of Article 30(3)(a)(ii) of the IDD?</p> <p>For Standard Life, it is our investment bonds – onshore and offshore bonds – that will fall within scope.</p>	
Question 4	<p>Do you have any comments on Guideline 1 and its explanatory text?</p> <p>Complexity and risk should be assessed at the underlying investment level, not necessarily at product level. The criteria set out under the proposed Guideline 2 for measuring whether a product's structure is, should be sufficient. Focussing on the structure of the underlying investment options, helps ensure customers understand any associated risks resulting from the way the investment option is structured and achieves consistency between IDD and MiFID II.</p> <p>We ask that in its final Guidelines, EIOPA acknowledges and reflects that the use of</p>	

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	<p>derivatives can facilitate efficient portfolio management and reduce risks. We ask EIOPA to amend Guideline 1 to reflect that the use of derivatives should not automatically make a product or fund complex.</p> <p>We propose that a further point (d) is added to Guideline 1, stating that:</p> <p style="padding-left: 40px;">“(d) derivative instruments that contribute to a reduction of risks, or facilitate efficient portfolio management.”</p>	
Question 5	<p>Do you have any comments on Guideline 2 and its explanatory text?</p> <p><u>Guarantees</u></p> <p>We ask that the Guideline makes clear insurers or intermediaries can clearly explain to a customer whether there are conditions attached to guarantees, or if the insurance undertaking is able to exercise discretion. This would ensure that the structure of the product should not be difficult to understand.</p> <p><u>“Beneficiary clause” criteria</u></p> <p>We have concerns with the inclusion of the “beneficiary clause” criteria for determining complexity, as beneficiary clauses do not influence how risky a product is, or how it performs.</p> <p>Modifying the beneficiary clause can be in the interests of customers as they enable them to keep control over the beneficiary. This can be easily explained and should not be a factor in this Guideline.</p> <p>We suggest this point is removed from the criteria or its intention clarified if EIOPA</p>	

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	doesn't intend firms to make such a literal interpretation.	
Question 6	<p>Do you have any comments on the interaction between the requirements in EIOPA's technical advice on 'other non-complex insurance based investments' and the requirements proposed in these Guidelines?</p> <p>No.</p>	
Question 7	<p>If you currently distribute insurance-based investment products via execution-only, which of the proposed criteria regarding structures which make it difficult for the customer to understand the risks involved, would exclude those products from being distributed via execution-only under IDD?</p> <p>We refer to our comments under question 5 regarding the inclusion of the "beneficiary clause" criteria for determining complexity. We suggest this point is removed from the criteria or its intention clarified if EIOPA doesn't intend firms to make such a literal interpretation.</p> <p>We strongly believe the Guideline should specify that products are assessed at product level.</p>	
Question 8	<p>Do you have any comments on the distribution processes outlined in the decision trees and the generic examples of complex and non-complex insurance based investment products?</p> <p>The decision trees are a useful illustration of the distribution processes.</p>	
Question 9	Do you have any other comments on this Consultation Paper?	

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Closed business

We ask EIOPA to clarify that closed business and contracts concluded before the IDD comes into force on 23 February 2018 are not covered by the Directive or the proposals of CP17/001, including when contractual options such as top-ups or switches of investment options are exercised by the customer.

The IDD concerns the distribution of products from when the Directive comes into force on 23 February 2018, so any products distributed before this date should not be covered by its provisions.

Switches

It is also unclear if a customer would be required to go through an appropriateness test if they held a non-complex IBIP and switched their investment selection to an underlying investment option that would deem the product complex.