	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:	Investment Association (IA)	
Disclosure of comments:	Please indicate if your comments should be treated as confidential:	Public
	Please follow the following instructions for filling in the template: ⇨ 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 empty. ⇨ Please fill in your comment in the relevant row. If you have no comment on a question or a cell, leave the row empty. ⇨ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. **Please send the completed template, in Word Format, to CP-18-005@eiopa.europa.eu** **Our IT tool does not allow processing of any other formats.**	
Reference	**Comment**	
General Comments	We continue to strongly support the broad objective behind the PRIIP Key Information Document (KID) of providing consumer-friendly information to retail consumers in a consistent format. In order to safeguard this objective, regulators urgently need to address the failure of the technical engineering underpinning the KID. Instead of providing simple, accessible and comparable information, the emerging examples of the KID contain complex and unreliable data that can have harmful consequences on consumers' ability to save confidently. There is already sufficient evidence that targeted action is needed in two key areas: the use of performance scenarios and the slippage methodology for calculating transaction costs.	

In this context, we welcome the fact that the ESAs have started to be receptive to concerns from both consumer representatives and industry and are recognising that there are issues with the KID that need to be fixed. We recognise that the time constraints as outlined in Section 2.4 ,and referred to throughout the joint consultation paper, must have severely hampered the ESAs ability to properly address the issues identified. Therefore, we welcome the recent decision of the European Parliament's Committee on Economic and Monetary Affairs to extend the time available for the PRIIPs review and the period of the UCITS exemption. It is essential that this decision progresses to legislative amendments in order to ensure the UCITS exemption ends under the best possible conditions for all consumers. The ESAs, together with the co-legislators, should now act quickly to prioritise consumers' interests by initiating the PRIIPs review.

Respite from time constraints should enable the ESAs and co-legislators to identify, test and implement effective solutions for the deficiencies of both the slippage methodology and performance scenarios. In this regard, we would highlight the absence to date of any evidence-based validation of the technical approaches used in the current PRIIP KID. This holds true both of consumer testing of costs and charges presentation and the underlying methodologies – for example, there is no data to show whether the slippage methodology can be effective across different asset classes and trading strategies. In this respect, in response to the FCA Call for Input, we produced evidence demonstrating there are many examples of the slippage methodology failing. Our response accompanies our submission to the ESAs and can be found on our website https://www.theinvestmentassociation.org/assets//files/IA_response_to_FCA_call_for_input_280918.pdf.

In the Call for Input the FCA set out a defence of the slippage methodology by suggesting that most results are not unreasonable, that the small number of unreasonable results are mostly due to firms making errors and that negative transaction costs are not necessarily inaccurate.

The FCA pointed out that through their supervisory work they have found errors in firms' calculations and that when these are corrected the negative figures become positives. We acknowledge that any new regulation needs some time to bed in and for operational issues to be ironed out, and this is particularly so for the slippage methodology given the innovative nature of the data sets required. However, the assertion that correcting the errors identified will give correct transaction cost results entirely misses the point - negative transaction costs are not an isolated problem that can be fixed but are just the most visible symptom of a much wider and fundamental problem with the methodology. The fact that the calculation is capable of generating negative costs indicates that positive costs cannot be trusted.

In our view the need for meaningful information is being overlooked in pursuit of a highly technical approach that demands counter-intuitive yet technically accurate explanations. A key question is not being addressed by regulators: does a methodology that is capable of producing literally accurate but negative costs help customers to understand the charges and costs they are paying, to compare investments and to make informed investment decisions?

Our conclusion remains that this is categorically not the case. In our response to the Call for Input we provided clear evidence that the problems are far more widespread than the Call for Input suggests. In particular, our evidence showed:

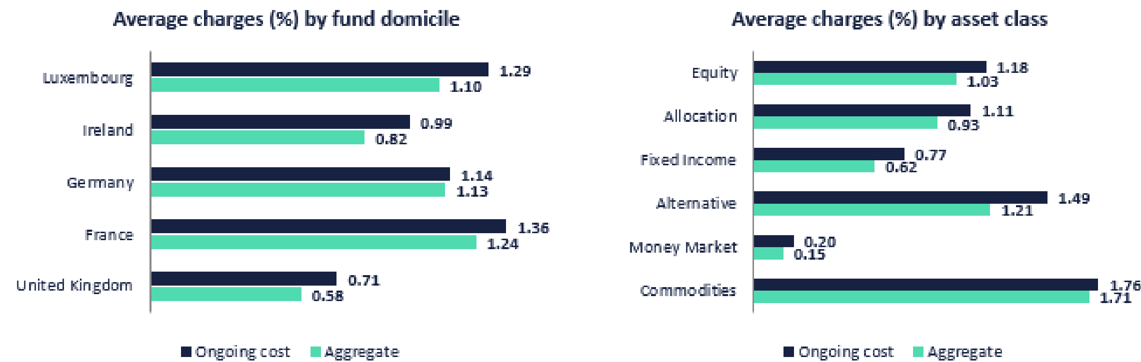
- Across Europe, over 3,000 funds (11% of those disclosing a transaction cost figure) reported negative or zero transaction costs.

- More detailed analysis pointed to more than half of UK Equity funds reporting total transaction costs that include a negative implicit cost component.

The effect of negative transaction costs is to understate the total aggregated costs and charges to

consumers. We compared the total aggregated costs and charges figure disclosure under MiFID II to the known ongoing costs. The results are shown in Figure 1 and demonstrate that consumers will see disclosure documents indicating that they will pay less (aggregate figure) than what they will really be charged (ongoing cost figure).

Figure 1: Average charges for funds with negative transaction costs



Transaction cost issues can be resolved by amending the RTS. In our response to the FCA Call for Input we recommended using a spread-based measure for implicit transaction costs. Such a methodology is already provided within the RTS (paragraph 21 of Annex VI). In addition, we would recommend that the ESAs explore whether refining the definition of the arrival price within the framework of the existing methodology would improve outcomes for consumers. For example, defining the arrival price as the mid-market price at the time a transaction is executed would eliminate the distortions caused by market movements unrelated to the transaction in question.

	It is now essential that the ESAs take the following steps: - Make clear that there is insufficient time to make meaningful improvements to the PRIIP KID in the timeframe envisaged in the joint consultation paper and that the wider review should start immediately. - Acknowledge that there are fundamental issues not yet addressed in the current consultation, notably the question of the reliability of the slippage methodology for calculating transaction costs. - Support a wider review (including consideration of targeted amendments to the level 1 Regulation where required) based on an open and collaborative approach to working with industry and other stakeholders to develop and test the best solutions for consumers.	
Q1	Whilst we welcome the recognition of the issues arising from the use of performance scenarios and the usefulness of past performance information, our view remains that for UCITS past performance should replace scenarios. In more detail, consumer research (IFF Research and YouGov, UCITS Disclosure Testing Research Report, Prepared for European Commission, June 2009) has shown that past performance is relevant and useful to consumers and that the majority of consumers understand that it is not a reliable indicator of future returns. This is why we support its inclusion in the KID. In particular, the bar chart presentation in the UCITS Key Investor Information Document (KIID) helps to provide a reminder of potential volatility of return, that is, returns can be both positive and negative. This was also supported by the UCITS KII consumer research findings. Both consumer groups and industry have consistently argued that excluding past performance from the KID is not	

conducive to good consumer outcomes.

The challenge now is that including past performance in the KID alongside the existing performance scenarios does not address the issue of how consumers might behave in response to the expectations created by the performance scenarios. The risk will remain that consumers may make decisions guided by overly positive expectations as to future returns following periods of market strength or unduly pessimistic expectations following periods of market weakness. So even if consumers find it easier to make a choice based on the scenarios compared to being presented with past performance, the principle of simulating scenarios based on past returns may mean that this later proves to have been the wrong investment choice.

To demonstrate how using scenarios to make an investment choice can lead to consumer detriment, we plotted on a monthly rolling window basis the PRIIP KID performance scenario figures for each month from January 1996 to November 2017. Figure 2 shows what this would look like for a typical Europe excluding UK fund for a 10,000 initial investment and a five year holding period. The red line shows the actual outcome for a five year investment made at any given time, with the last available period for investments being 2012-2017. The scenarios applicable at the time the investment was made can be seen alongside, illustrating clearly the difference between projection and actual experience.

Figure 2: Performance scenarios vs actual outcomes for Europe excluding UK sector

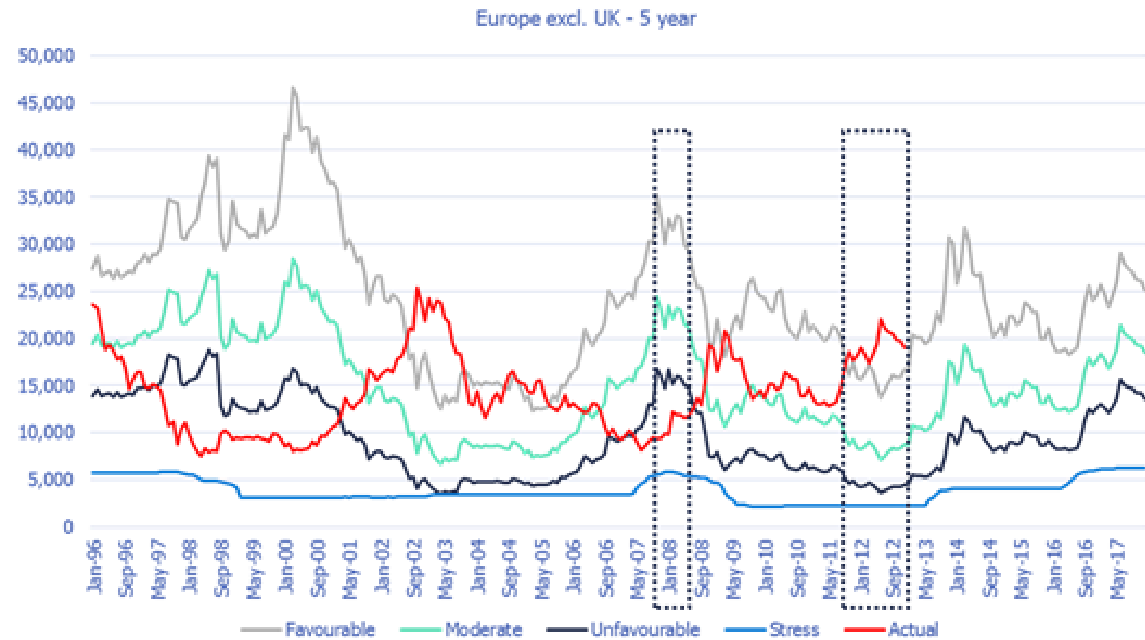


Figure 3 shows the table as it would appear in a PRIIP KID in January 2008 with the addition of the actual outcome in the last two rows, highlighted in red. A consumer presented with the PRIIP KID in January 2008 would see a table where only the stress scenario predicts negative returns while the moderate scenario shows an outcome (23,488) that is over twice as much as the actual amount the consumer would receive after five years (9,862).

Figure 3: PRIIP KID performance disclosure for Europe excluding UK sector in January 2008

Investment 10,000				
Scenarios		1 year	3 years	5 years
Stress scenario	**What you might get back after costs**	**6,558**	**6,632**	**5,830**
	Average return each year	-34.4%	-12.8%	-10.2%
Unfavourable scenario	**What you might get back after costs**	**10,206**	**12,860**	**16,769**
	Average return each year	2.1%	8.7%	10.9%
Moderate scenario	**What you might get back after costs**	**11,876**	**16,701**	**23,488**
	Average return each year	18.8%	18.6%	18.6%
Favourable scenario	**What you might get back after costs**	**13,755**	**21,590**	**32,745**
	Average return each year	37.5%	29.2%	26.8%
Actual outcome	**What investor would have got**	**7,537**	**9,799**	**9,862**
	Average return each year	-24.6%	-0.7%	-0.3%

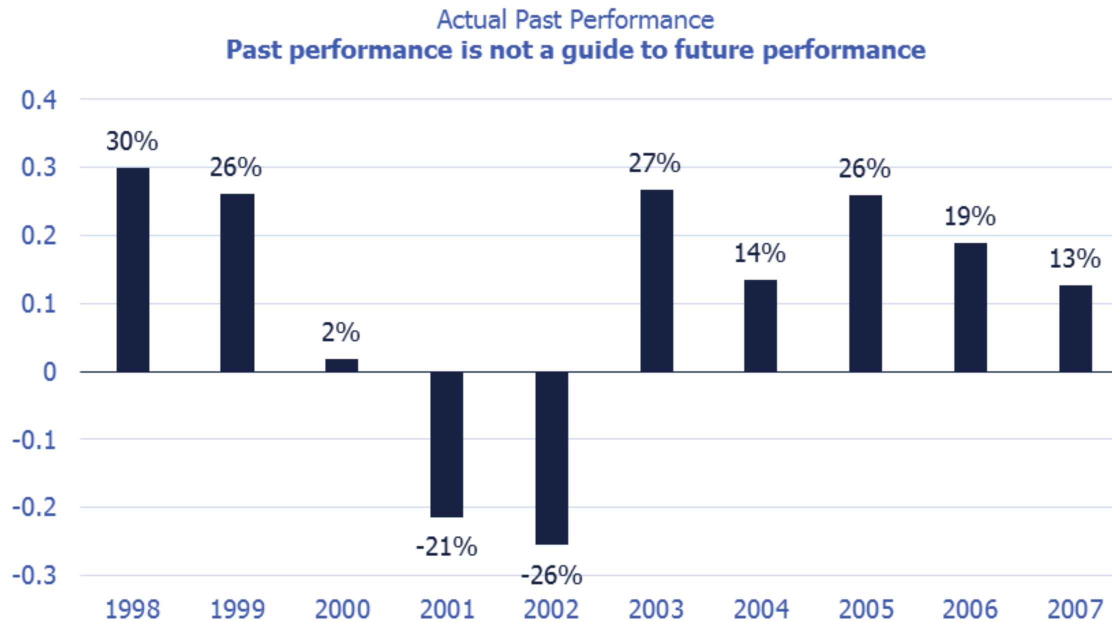
Figure 2 clearly shows that the potential for such a case would occur repeatedly in the late 1990s and early 2000s as well as during the 2008 financial crisis. This figure also shows that there were repeatedly cases where all scenarios were quite low and the actual outcome exceeded even the favourable scenario.

For example, during the first half of 2012 the KID would indicate that only the favourable scenario would predict positive returns. A consumer presented with a table showing negative returns for the moderate scenario would be discouraged from investing. In the light of the actual outcome this can be seen to be the wrong decision as investing in a Europe excluding. UK fund during the first half of 2012 would have returned between 50% and 100% after five years.

| | Ultimately, this clearly shows that the fundamental issue is not only how information is presented and how consumers make their choice but also whether this presented information is likely to drive investment decisions that can lead to consumer detriment.

Including past performance alongside the performance scenarios carries the risk that consumers may associate these actual (and factual) historical returns with the generation of the (non-factual) scenarios and be inclined to regard the simulated outcomes with a greater degree of confidence than they would in the absence of past performance. To illustrate this, Figure 4 shows how the "Performance scenarios" section (as envisaged on page 17 of the joint consultation paper) would appear for the above example, ie. a typical Europe excluding UK fund in January 2008.

Figure 4: Combination of past performance and performance scenarios for Europe excluding UK sector in January 2008 | |


Actual Past Performance
Past performance is not a guide to future performance
0.4
0.3
0.2
0.1
0
-0.1
-0.2
-0.3
30%
26%
2%
-21%
-26%
27%
14%
26%
19%
13%
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007

Simulated future performance

Investment 10,000				
Scenarios		1 year	3 years	5 years
Stress scenario	**What you might get back after costs**	**6,558**	**6,632**	**5,830**
	Average return each year	-34.4%	-12.8%	-10.2%
Unfavourable scenario	**What you might get back after costs**	**10,206**	**12,860**	**16,769**
	Average return each year	2.1%	8.7%	10.9%
Moderate scenario	**What you might get back after costs**	**11,876**	**16,701**	**23,488**
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Favourable scenario	**What you might get back after costs**	**13,755**	**21,590**	**32,745**
	Average return each year	37.5%	29.2%	26.8%

The very positive scenarios, where in the unfavourable case an annual return of 10.9% would be predicted over five years, could be reinforced in the context of the strong returns presented in past performance over 2003-2007. The significance of this risk can only be gauged through consumer testing but, if it crystallises, it will be contrary to the ESAs stated aim for the performance scenarios “to show the spread or range of outcomes, and not give undue certainty to these outcomes” (page 15 of the joint consultation paper).

Moreover, showing past performance alongside the scenarios can potentially transmit conflicting and very confusing messages to consumers. As shown in Figure 4, past performance will be accompanied by the regulatory warning that “past performance is not a guide to future performance”, as has been the case for years. But the scenarios immediately below it would effectively run contrary to this very same warning.

	There is a further, more practical complication arising from the inclusion of past performance in the KID. Namely, this could make it more challenging to comply with the three page limit (as is recorded in the ESAs analysis of costs and benefits on page 35). Finding space for a past performance chart will increase the need to condense other aspects of the KID and the most likely aspect to suffer is the narrative explanations and warnings that the ESAs have already identified as needing to be more prominent than is currently the case (page 15 of the joint consultation paper). An effective solution can only be achieved by addressing the performance scenarios themselves. For this reason, although we support the inclusion of past performance in the KID and welcome the fact that its importance has been recognised, we do not think that showing it alongside scenarios will help the ESAs meet their objectives of protecting consumers from misleading information and facilitating the use of the KID by UCITS. The PRIIP review needs to include consumer testing that takes into account not only presentation of information but also different iterations of this information such as past performance compared to scenarios, compared to the combination of the two, and how this connects to consumer choice and outcomes. It is now essential that the extension of the time available for the review of the PRIIP KID is used to consider remedies and should not preclude targeted amendments to the level 1 Regulation where required to facilitate well-tested solutions that ensure the best outcomes for consumers.	
Q2	We can envisage challenges where past performance information does not exist such as for non-listed closed-ended funds and structured products. These challenges should not be seen as a reason not to use past performance where it does exist for types of PRIIP where it is the most appropriate form of performance information. It should be possible within the framework of the	

	KID to present the most appropriate information in a way that is comparable with similar products and not to prescribe rigid standardisation leading to less appropriate information and offering spurious comparability across dissimilar products that consumers are unlikely to need to compare.	
Q3	If past performance is to be included, we agree that the best approach is to start with the tried and tested format used in the KII because this is familiar to consumers, having been in use since 2011, and because it is the result of positive consumer testing results (IFF Research and YouGov, UCITS Disclosure Testing Research Report, Prepared for European Commission, June 2009). Any decisions to diverge from this approach should be subject to further consumer testing and consultation.	
Q4	We do not think that simulated past performance should be included in the KID if it is to be presented alongside simulated performance scenarios that are themselves partly reflecting past performance. It is not clear what the additional benefit of providing simulated past performance would be.	
Q5	If simulated past performance is to be included, and in the absence of full consultation and testing, we would suggest limiting its application to the tried and tested approaches used in the UCITS KII.	
Q6	There would not appear to be any drawbacks to making the performance scenarios warning more prominent but, given recurring doubts about the extent to which consumers engage with the	

	narrative sections of the information presented to them, and in the absence of consumer testing, it is questionable whether it will cause a significant change to the levels of certainty that consumers attach to the performance scenarios. Moreover, now that there is time available to carry out a wider review, the engagement and understanding of the narratives should be tested to establish the best approach to improving them. For example, it may be that more scope is needed to customise narratives to suit the product in question.	
Q7	We agree with the analysis as set out. We think the ESAs are right not to pursue these options without more time to properly analyse and test them. In respect of anchoring performance scenarios in the risk-free rate of return we agree with the analysis that this is likely to impair the usefulness of the information provided to consumers and reduce their ability to compare PRIIPs. Moreover, this approach would make it harder for consumers to differentiate between a savings account bearing this risk-free rate of return and an investment product with an apparently similar return profile at a much higher level of risk. Indeed, it may discourage consumers from investing in funds as they would appear to bear more risk for the same level of return. To show how this would look in practice, we plotted on a monthly rolling window basis the PRIIP KID performance scenario figures against actual outcomes for an investment in a typical European fund for each month from January 1996 to November 2017.Figure 5 shows this for the existing methodology and Figure 6 for the proposed approach anchored in the risk-free rate of return. It is quite clear that anchoring the scenarios on the risk-free rate of return would give the misleading impression that: - the scenarios are less volatile, ie. consumers would be confronted with scenarios that hardly	

change year-on-year;

- the scenarios are much lower than the actual outcomes – particularly in the environment of quantitative easing following the 2008 financial crisis where for almost ten years in a row the moderate scenario would predict negative returns.

Figure 5: Performance scenarios based on existing RTS methodology

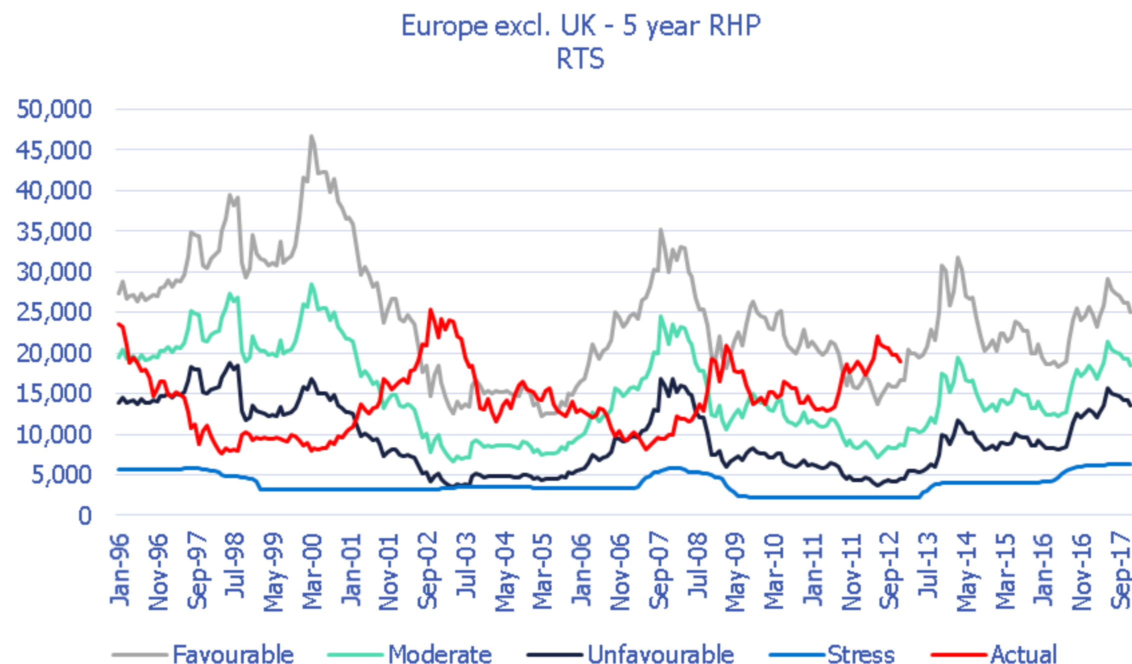
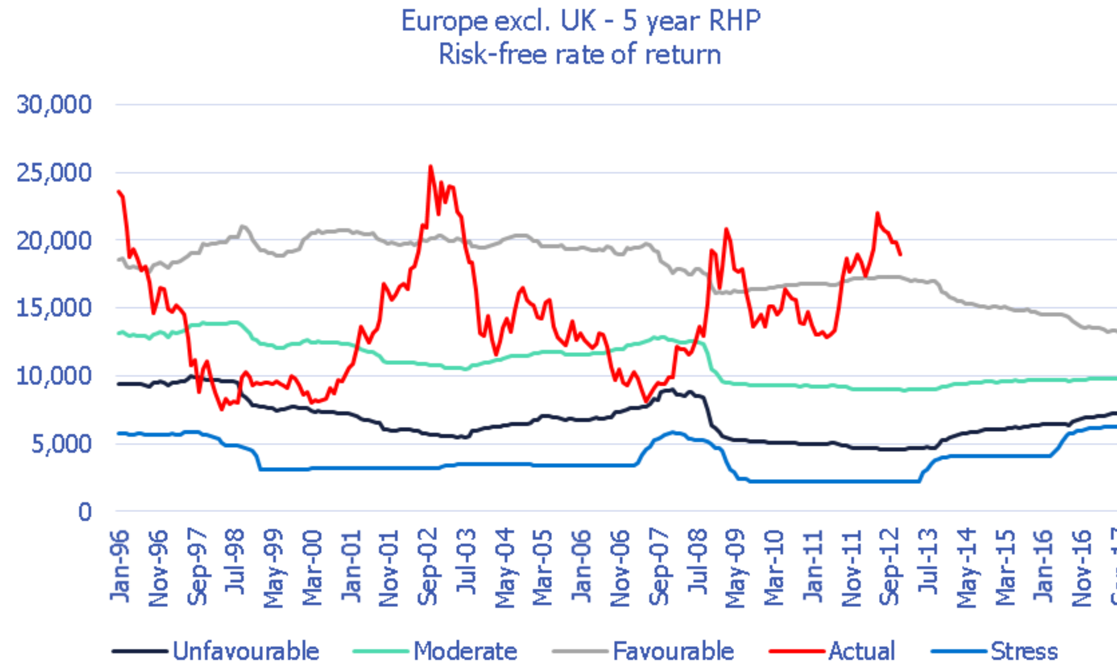
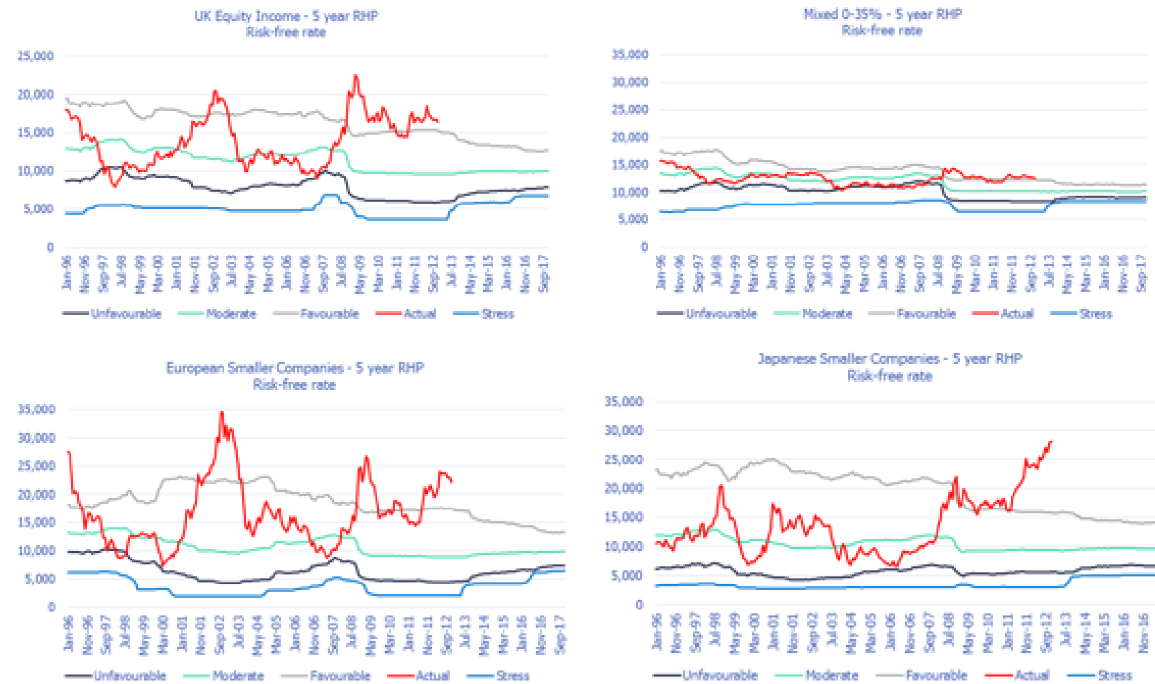


Figure 6: Performance scenarios anchored in the risk-free rate of return



Importantly, anchoring the scenarios on the risk-free rate of return largely eliminates the difference in outcomes between distinct asset classes. Figure 7 presents the scenarios anchored on the risk-free rate against the actual outcome for four different sectors: UK Equity Income, Mixed Asset 0-35%, European Smaller Companies and Japanese Smaller Companies. For all four, the moderate scenario remains close to (and slightly underneath) the initial invested amount of 10,000 for the entire period after the 2008 crisis even though the actual outcomes are not only

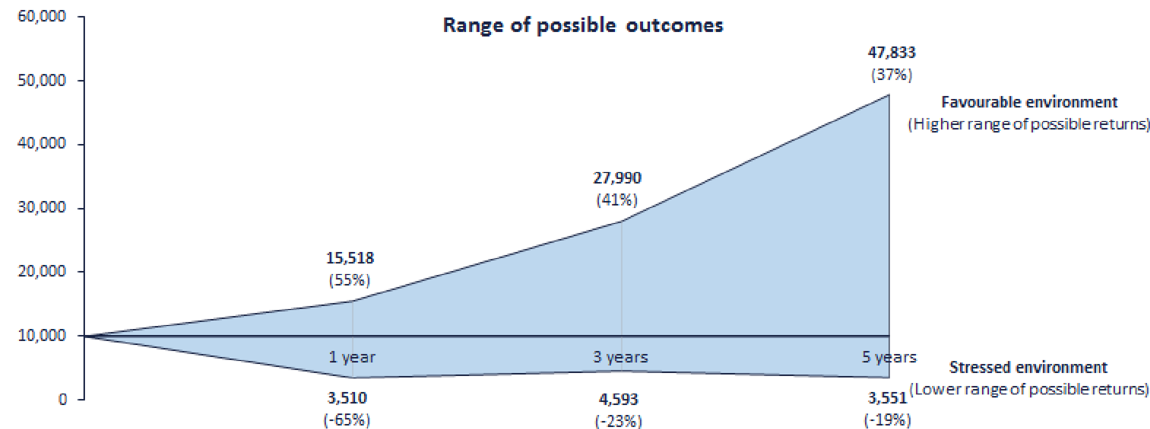
	significantly more positive but also very different. It can be seen (Figure 7) that the PRIIP KID at the end of 2012 would indicate to consumers that after five years they would receive between 9,000 and 10,000 under the moderate scenario for all four sectors. In reality, a consumer who had invested 10,000 in a typical fund in each of these sectors at the end of 2012 would have received, after five years, approximately: - 16,000 from a UK Equity Income fund - 12,000 from a Mixed 0-35% fund - 22,000 from a European Smaller Companies fund - 28,000 from a Japanese Smaller Companies fund. **Figure 7: Performance scenarios anchored in the risk-free rate of return for various asset classes**	



In respect of reducing the number of scenarios, although we have heard suggestions that fewer figures might help consumer engagement, we agree that this might make it more difficult to assess the likelihood of the different outcomes. Moreover, there is a risk that consumers wrongly regard just two scenarios as defining the maximum and minimum outcomes. Given the consumer testing findings to which the ESAs refer on page 21 of the joint consultation paper, we do not see a place for the “funnel of doubt” graphic in the KID. Based on examples of performance scenarios in existing KIDs, it can be seen that such a graphic would give even greater emphasis to overly positive expectations as to future returns. Figure 8 shows an example of how this would look like for an existing investment trust and it is quite clear that this would give the false impression that

although there is significant potential for positive returns, downside risk is limited. This bears no similarity to the more 'balanced' illustration presented on page 39 of the joint consultation paper that suggests this type of graphic would show broadly similar upside and downside risk.

Figure 8: Funnel of doubt based on the KID for a leading Investment Trust



In respect of extending the historical period to ten years, we agree that this approach would be likely to have limited impact at the present time and would reduce the number of products for which a full track record is available for the estimation of the scenarios. Further measures would be required to address this challenge, unnecessarily complicating the estimation process. One example of such an unnecessary complication would be where the historical returns for the past 10 years are not available so a proxy, such as sector or market returns, is used. Funds in the same sector would often use the same proxy and this would result in very similar (if not practically identical) scenarios thereby reducing consumers' ability to differentiate and choose between

	products. Such problems would arise but, importantly, without any evidence that the use of ten years significantly reduces the pro-cyclical element of the scenarios. We calculated performance scenarios using ten years of historical data and compared the results to calculations using five years of historical data; the results are shown in Figures 9 and 10. Although the scenarios in Figure 10 illustrate lower volatility, the pro-cyclical element remains. For example, the downturn after the financial crisis is clearly visible in the scenarios throughout 2009 whereas in some cases, such as in the first half of 2009, the actual outcome exceeds even the favourable scenario. **Figure 9: Performance scenarios based on existing RTS methodology**	

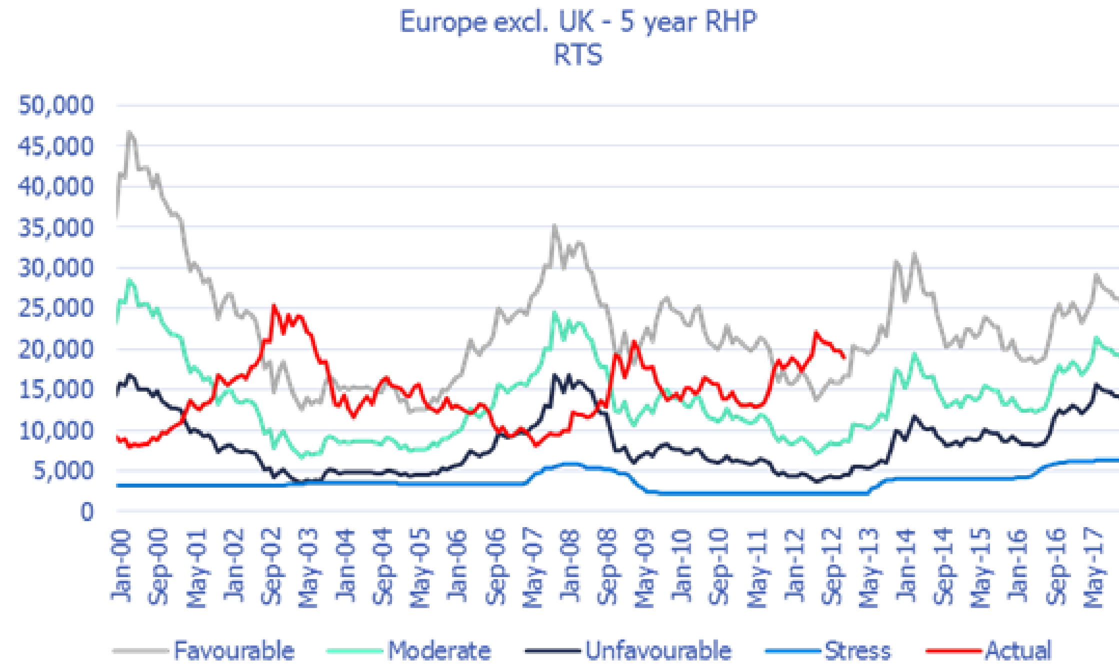
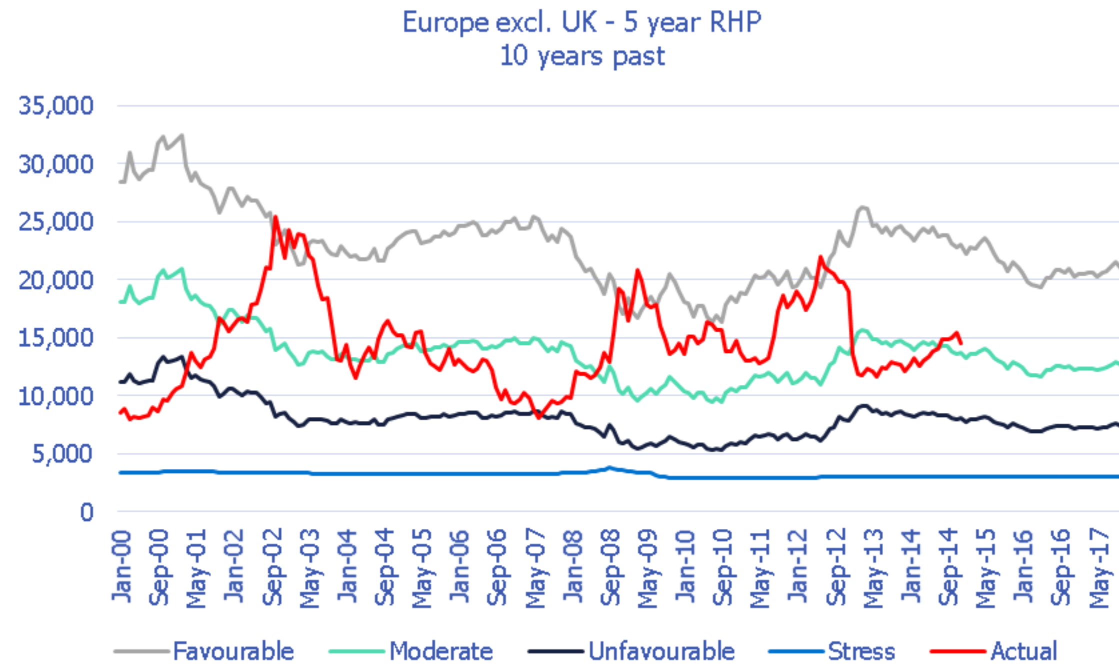


Figure 10: Performance scenarios based on past 10 years

| |  | |
| Q8 | Conceptually, the use of projected performance scenarios is profoundly flawed regardless of how they are calculated and presented, and the difficulty in finding an approach that provides balanced and meaningful information for consumers demonstrates that this is the case. This cannot be fixed by modifying the methodologies in the RTS. The only fix that would improve consumer protections would be to delete the requirement to include such projections from the level 1 Regulation and we would encourage the ESAs highlight this in their proposals to the | |

	Commission. If the ESAs proceed with the proposal to include past performance and to require a form of simulated past performance where no actual history exists, it will be necessary for the heading “Actual Past Performance” in the example presentation on page 17 to be capable of being modified to state “Simulated Past Performance” instead. This flexibility will need to be built into any template set out in modified RTS. However, it is possible that the word ‘simulated’ will not be well understood by consumers. As a result of our participation on the FCA Funds Objectives Working Group, throughout 2018, the IA has worked with The Wisdom Council to carry out extensive consumer testing of some of the language found in fund documentation. The aim is to publish guidance for our members in Q1 2019 to help them implement clearer customer communications, particularly focusing on objectives and investment policy of a fund in the first instance. The findings from the testing clearly shows consumers struggle with many investment terms, including commonly used terms such as ‘predominantly’ and ‘acceptably low’ which are considered by consumers to be too vague. This work reinforces our view on the importance of testing terms when introducing them to fund documentation.	
Q9	We agree that changing the growth assumption for the RIY calculation to a fixed rate instead of referencing the moderate performance scenario will improve the consistency of the cost information because it will eliminate distortions caused by products with different performance. Furthermore, in our view, it would be better to use an assumption that the performance shall be 0% (after all costs and charges) instead of an arbitrary figure of 3%. This would reflect a situation where estimated future benefit payments are exactly equal to the gross payments made by the consumer – in other words, consumers get back exactly what they put in, and performance	

	exactly covers all costs incurred. This gives an entirely performance-neutral expression of costs that (with the exception of one-off costs) ensures the RIY figure presented in the PRIIP KID is equivalent to both the actual costs as presented in the UCITS KIID and as disclosed in the context of MiFID II. Our preferred solution would be not to use an RIY calculation at all and instead to present the actual costs in order to remove the significant distortion to the cost metrics where there are one-off costs. The RIY has the effect of amortising entry costs over the entire holding period making it difficult to identify high entry costs, especially where there is a long holding period. For example, in the composition of costs table, an entry fee of 5% would be shown as approximately 1% where the recommended holding period is five years. As the holding period increases, the significance of large entry costs becomes less and less apparent. For example, a holding period of fifteen years would portray an entry fee of 5% as being in the region of 0.33%. Moreover, whilst such costs may be apparent in year one in the costs over time table, the longer time periods give the false impression that these costs can be avoided by staying invested for longer periods. Amortising one-off costs through the RIY calculation downplays their significance to a potentially misleading extent. We have received mixed messages from members on the character limit for risk narratives. Some tell us that in some cases 200 or 300 characters is too short to list the risks and is invariably too short to describe them. Others have indicated they have been able to comply with the limit by using the text available to signpost other sources of information about the risks associated with the product. In either case the proposal to increase the risk narrative by 100 characters appears to be entirely arbitrary and a range of options should be subjected to consumer testing in order judge the optimal solution.	

	We agree that more flexibility is required to properly represent the nature of performance fee arrangements. The character limit appears to be an arbitrary number and should be subjected to consumer testing of possible narratives in order judge the optimal solution. We have no views on the formula for the MRM calculation, auto-callable products or other minor amendments.	
Q10	In light of the European Parliament's Committee on Economic and Monetary Affairs recent decision to extend the time available for the PRIIPs review, and subject to this decision progressing to legislative amendments, we have no comments on the analysis at this stage other than in relation to professional investors. In our view it is sub-optimal for two types of KI(I)D to exist for the same product because they give different information. Moreover, although the UCITS KIID is currently made available to professional investors, the additional time available for the review gives an opportunity to examine what form of information is most appropriate.	
Q11	In light of the European Parliament's Committee on Economic and Monetary Affairs recent decision to extend the time available for the PRIIPs review, and subject to this decision progressing to legislative amendments in order to ensure the UCITS exemption ends under the best possible conditions for consumers, we expect a wider review to take place. We are optimistic that this will lead to proposals that better mitigate the risk of harm to consumers of PRIIPs and, from the start of 2022, ensure consumers of UCITS receive enhanced information compared to the existing UCITS KIID. Only then will it be possible to determine whether the benefits to consumers outweigh the significant costs of providing the information.	

Q12		
Q13	Although the costs for funds are likely to be relatively low compared to the overall cost of implementing the PRIIP KID in place of the UCITS KIID, the risk that consumers will regard simulated performance scenarios with a greater degree of certainty than they would in the absence of past performance, and the increased need to condense other aspects of the KID to accommodate past performance, mean that proper analysis and testing is required in order to determine whether the benefits are sufficient to justify these risks.	