

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:	Alternative Investment Management Association	
Disclosure of comments:	Please indicate if your comments should be treated as 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 question or a cell, leave 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-18-005@eiopa.europa.eu</p> <p>Our IT tool does not allow processing of any other formats.</p>		
Reference	Comment	
General Comments	<p>The Alternative Investment Management Association Limited (AIMA)¹ welcomes the opportunity to provide feedback to the European Supervisory Authorities (ESAs) on their "joint consultation paper concerning amendments to the PRIIPs KID" (the "consultation"). Given the range of issues many asset managers of both funds distributed to retail investors and funds exclusively distributed to professional investors have experienced since the regime came into effect, we are grateful to the ESAs for presenting industry and its representatives with the chance to explain some of their concerns in greater detail.</p> <p>The scope of the PRIIPs regime is the principal focus of this letter. Yet, it would be fair to say that we have no shortage of anecdotal evidence from our member base confirming the existence of all</p>	

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manner of issues with the regime that have often been reported in the financial press, such as the potentially misleading nature of the information contained within the Key Information Document (KID). However, these issues are perhaps best addressed by those voices speaking on behalf of fund managers working with retail investors as part of their core activities, and therefore able to speak to them in a more detailed and granular fashion. As such, we have sought to emphasise those issues that are perhaps more unique to the managers of funds pursuing sophisticated alternative investment management strategies and which typically target professional investors (which of course do not require the production and distribution of a KID).

As Section 3 provides for "other specific amendments", we would like to add a concern that we have in relation to the fact that applying the obligations under PRIIPs to all categories of an asset manager's staff and reverse solicitations from sophisticated investors is disproportionate. We are aware that this point is not raised in the consultation but would like nonetheless to take advantage of this consultation to present our concerns.

The remuneration guidelines in relation to the AIFMD and the UCITS Directive specify that a portion of the variable remuneration paid to certain categories of staff should be paid in instruments including shares/units of the investment manager's funds to ensure alignment between investors and the personnel who have all the information about how the fund is being operated. Those staff members typically party to such incentive schemes will usually be involved in the day-to-day running of the investment portfolio and, as such, have a far greater understanding of the risks involved than could be accurately captured in a KID. As a result, when investments in a fund by these same well-informed members of staff are the sole reason that the PRIIPs requirements are triggered, the cost (which we understand can range between EUR5,000 and EUR8,000 for the initial production, plus ongoing costs of up to EUR8,000 each year) is no longer balanced by a relevant benefit.

Naturally, genuine retail investors should continue to benefit from relevant consumer protection regulation as is befitting their circumstances and experience. An appropriate distinction could be achieved by limiting a prospective derogation from the requirement to prepare a KID only with respect to funds where the sole retail investors are "investment staff". We suggest for this purpose an appropriate definition of "investment staff" would be based upon the requirements from the ESMA Guidelines on sound remuneration policies under the AIFMD which define "investment staff"

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as:
“categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the AIFM’s risk profile or the risk profiles of the AIF that it manages and categories of staff of the entity(ies) to which portfolio management or risk management activities have been delegated by the AIFM, whose professional activities have a material impact on the risk profiles of the AIF that the AIFM manages.”
Introducing a safe harbour of this kind would be an effective and proportionate way to reduce the significant compliance burden on alternative asset managers in the round, while also maintaining high levels of protection for non-qualifying staff members.
It would also be appropriate, we feel, to extend such a prospective derogation from the obligation to prepare and distribute a KID to reverse solicitations into AIFs. Article 5 of the PRIIPs regulation itself reads in relevant part as follows:
“Before a PRIIP is **made available** to retail investors, the PRIIP manufacturer shall draw up for that product a key information document in accordance with the requirements of this Regulation and shall publish the document on its website.” (emphasis added)
The “made available” wording is key here, as this expands the regulation’s scope quite extensively beyond marketing strategies. This represents a disproportionate regulatory burden in the alternative investment fund management space, given that reverse solicitations involve situations where there has been no marketing by the AIFM or on its behalf and most often constitute approaches from sophisticated investors – with considerable experience of alternative investment strategies – even if they do not meet the MIFID II definition of professional client.
As such, we would suggest the ESAs consider interpreting “made available” in an AIF context in the same way as “marketing” is interpreted under the AIFMD. This would ensure that only those retail investors that have been subject to genuine marketing strategies by AIFMs need to receive a KID, and thus limit the costs referenced above to scenarios in which distribution of such information would be of added value.
Although we are definitely aware that these points were not part of the consultation, we hope our comments above are helpful. We would be very happy to elaborate on any of the points raised in

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	this letter, should you have any further queries.	
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