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Attention: Steven Maijoor, Chair

The European Banking Authority
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Attention: Andrea Enria, Chair

The European Insurance and the Occupational Pensions Authority
Westhafenplatz 1
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Attention: Gabriel Bernardino, Chair

17 February 2017

Gentlemen

On behalf of our members, the Joint Association Committee on Retail Structured Products (the **JAC**) would like to raise a number of concerns in respect of the interpretation and application of the Regulation on key information documents for packaged retail and insurance-based investment products[1] (the **Regulation**) and the draft regulatory technical standards[2] (the **RTS**) (together the **PRIIPs regime**).

Since the publication of the draft RTS in November 2015, the JAC has actively engaged in discussions with its members on the substantive requirements, the various connotations and the practical impact of the PRIIPs regime as a whole. The corollary of this is that the JAC has visibility as to the views of the panoply of manufacturers, distributors and legal advisers that comprise its members. In this letter we have limited ourselves to summarising the key issues that are of concern to the JAC and we should therefore be grateful for the opportunity to discuss our comments and questions in more detail with you and a representative selection of our members.

The JAC members are very much in support of the PRIIPs regime and the initiative to harmonise the regulation of retail structured products on a pan-European level is a welcome development. However, it is clear that further work needs to be done to develop the PRIIPs regime. In addition to our letter to the European Commission and ESMA (Appendix 1) and our response to the Joint Consultation Paper on PRIIPs Key Information Documents[3] (the **CP**) (Appendix 2), the purpose of this letter is to set out in the aspects of the Regulation and the RTS that are of some consternation to the JAC and we feel require clarification prior to implementation. What follows is a summary of these key aspects.

[1] Regulation (EU) 1286/2014
[2] JC 2015 073
[3] JC 2015 073

1. Timing

We should like to make it clear at the outset that members are extremely concerned by the timeframe for implementation and there is an emphatic preference for timing to be extended given the lack of clarity in the PRIIPs regime and the onerous obligations requiring significant systems and technological changes for product manufacturers (for example the development and testing of automation tools to generate the "what is this product" section of the KID). Given that the final RTS are unlikely to be published before the summer and the fact that competent authorities may need to issue consultation papers in respect of amendments to their national regimes, the timing for implementation is unrealistic.

In order to meet the scheduled date for implementation of 31 December 2016, participants would need to carry out (or at least start to implement) these changes before the publication of the final RTS and in the absence of further guidance or clarity. It is our view that carrying out the work required for implementation in this way will be extremely difficult, time consuming and will not permit any margin for testing which is a crucial component for delivering the desired outcome of providing consumers with a useful document.

Since the main objective of the PRIIPs regime is to simplify the information provided to retail investors in respect of PRIIPs and to facilitate comparability of the products, implementation of the regime in the absence of further guidelines will result in further fragmentation which will undeniably exacerbate the very problem that the PRIIPs regime is seeking to address.

Furthermore, in European Commission's announcement of a one year delay to the application of MiFID 2, it states factors such as complexity, the need to avoid legal uncertainty and market disruption as the key reasons as to why a delay was deemed necessary. It is for the very same reasons that we would strongly advise a delay to the date for implementation of the PRIIPs regime.

2. Product scope

There remains considerable uncertainty in respect of product scope and it is unclear how the PRIIPS regime is to be implemented in the absence of guidelines on the products that would and would not fall within scope. Given the breadth of the retail classification under MiFID and the requirement for uniformity, we think that an incontrovertible approach to product scope is a necessity.

One of the key issues raised is whether all derivatives are in scope. Recital 1 of the Regulation states that "Retail investors are increasingly offered a wide variety of packaged retail and insurance-based investment products (PRIIPs) when they consider making an investment. Do the ESAs consider a hedging derivative (that is sold alongside an investment product), an investment and therefore a KID is required? Are the ESAs able to clarify what is meant by "an investment"?

To the extent that certain derivatives are in scope, we are concerned that the requirement to produce a PRIIPs compliant KID cannot be met. For example;

- the granular details of the underlying trade will not be known until the trade is placed, which will be after the product is “distributed” to the retail investor;
- in respect of FX, given the speed of movement of the FX markets, this will constitute a significant impediment for production of a normal KID for these purposes and, as a result, the availability of these products may be significantly impacted. This also raises the question as to whether FX forwards are in scope. It is our view that they should not be

within the scope of the PRIIPS regime since these are not packaged and they do not incorporate an amount repayable that is subject to fluctuations (as defined by the Regulation), they are simply an agreement between parties to exchange pre-determined cash flows.

While there may be scope to deliver a KID after the conclusion of a transaction (as per Article 13), a possible alternative is to permit the preparation of a generic or pro-forma KID with the final trade details available separately. Article 6(3) foresees that the preparation of a detailed KID is not practical in all circumstances and that generic KIDs do have a place in product distribution to retail investors. We believe there is merit in extending this flexibility to scenarios which are not simply limited to "multiple-options" scenarios, but also to OTC transactions to assist with the impracticalities in the application to FX and also the situation where final terms/price is dependent on the execution of a transaction.

In addition to the above, we should like to note the following:

- **Listed options**: for listed options, our understanding is that the Exchange is the manufacturer since they have designed the contract terms and conditions, and hence will be responsible for producing the KID. This gives rise to challenging questions such as how the material is going to be made available and whether Exchanges will have the capacity to adapt. We are of the view that the ESAs should consider a generic form of KID incorporating only high level disclosures and references to term sheets, or final terms, rather than a single KID for each transaction.

- **Online trading systems:** It should be noted that online trading systems are not always used for trading products. Where the purpose of using an online pricing and trading system is price discovery and there is no intention to trade, such activity should be classified as "out of scope" and KIDs should not be required since there is no investor.

3. Mandated 3 page length of the KID

We think that the amount of text and number of tables currently mandated in the RTS makes the KID form and content requirements unworkable. In particular, we should like to draw your attention to the following:

- if you complete the requirements as currently included in the RTS, using the same font size as used in the RTS, the mandatory text alone would run to more than 3 pages and that is without attempting to address the summary description of the product (and indeed without the additional scenarios contemplated for certain products),

- in the example KID given by the ESAs in the materials for the open meeting they omitted some of the mandatory text to allow them to fit it into 3 pages; and

- the liability regime makes the manufacturer liable for failing to comply with the requirements of Article 8 (which include qualitative requirements relating to the summary disclosure of the product) and it will currently be impossible for a manufacturer to do this (given that the space available after including all of the mandatory text falls a long way short of what would be required to provide summary disclosure that is fair, clear and not misleading).

We would request that the ESAs provide sample KIDs for mainstream products[4] at the earliest opportunity so that product manufacturers have a better understanding of how a finalised KID should look in advance of implementation and further to demonstrate that it is possible to fit all of the required information into three A4 sides in a way that is accurate, fair and not misleading.

4. Territorial scope

The territorial scope of the PRIIPs regulation requires further clarification. The matrix below sets out our understanding of how the current provisions apply and the scenarios that require clarification:

Manufacturer	Distributor	Retail Client	In scope?
EEA	EEA	EEA	Yes
EEA	EEA	Non-EEA	Unclear
EEA	Non-EEA	EEA	Yes
EEA	Non-EEA	Non-EEA	Unclear
Non-EEA	EEA	EEA	Yes (Article 19(c))
Non-EEA	EEA	Non-EEA	Unclear
Non-EEA	Non-EEA	EEA	Unclear
Non-EEA	Non-EEA	Non-EEA	No

We are concerned by the possible extension of the PRIIPs regime to third countries for the following reasons:

- There may be conflicts with local short form disclosure regimes and documentation in place in that third country
- If KIDs are translated in the EEA but not in non-EEA jurisdictions, there might be a mismatch or an unlevel playing field and this may not be helpful to end-investors
- Outside the EEA, the manufacturer would not have the benefit of the protections afforded within the EEA, for example, that the civil liability of a PRIIP manufacturer is limited to circumstances where an investor has incurred loss as a result of a KID being misleading, inaccurate or inconsistent with the relevant parts of legally binding pre-contractual and contractual documents. It is also important to note that the explanatory statement set out in Article 8(2) of the PRIIPs Regulation clearly states that the KID does not constitute marketing materials. This is important in terms of the regulatory liability which is imposed as a result of it.

5. Summary risk indicator

The methodology used to determine market risk is dependent on the classification of the PRIIP. Should the relevant classification be included in the KID? Our current understanding is that structured products will fall into category III. However, category II PRIIPS also include PRIIPs which "have, either directly or on a synthetic basis, a delta one or a leveraged exposure on underlying asset(s) that pays a constant multiple of a market price or index". Would this include, for example, Delta-1 certificates or leveraged certificates? Our view is that Delta-1 certificates are classified as 'structured products' (category III) as we think that they are the sum of a zero coupon bond minus 1 put ATM plus 1 call ATM. Do the ESAs think that warrants should be classified as derivatives or structured products?

[4] In respect of structured products, we suggest that the ESAs provide a sample KID for autocallable on indices and stocks

The methodology for calculating the market risk measure in respect of category III PRIIPs is too vague and open to too much interpretation for the relevant calculations to be made. Certain paragraphs (for example, 42 to 44 inclusive on page 39 of the Consultation Paper[5]) are stated to be "deleted" – is this intentional? We think that a more detailed formulaic description of what is required (ideally with a worked example) is required in order to make the calculation.

It is questionable why there is an automatic default option of MRM 1 for category 1 PRIIPs. Where a product has a significant level of protection embedded in it seems unbalanced that complete capital protection will receive an MRM of 1 whereas a significant level of protection may receive an MRM of 4 or 5. The different risk outcome on the SRI indicator is significant relative to different levels of risk the investors experience between the products. The MRM for derivatives should not be 7 across the board as, for example, because the risk profile for long positions in the underlying and call options are different.

We believe the most risky products (where the investors can lose more than the invested capital such as CFDs) should not fall within the same risk class and other PRIIPs but be assigned a specific MRM class of “7+” or “8”. Alternatively a specific label indicating the contingent liability should be displayed next to risk indicator.

6. Performance scenarios

Further clarity is required in respect of performance scenarios and we note the following:

- Since only “scenarios that can reasonably be expected” can be shown (Annex IV paragraph 7 of the CP) does this mean, for example, that the unfavourable scenario should not include the worst possible case if this is highly unlikely to happen? Further guidance required on how to determine reasonably expected outcomes.

- It is not clear if the evaluation of scenarios should be based on market outcomes (i.e. the underlying of the product) or outcomes of the structured product itself (which is different and may result in different scenarios). There appears to be some inconsistency between paragraphs 1(b) and 4 on page 51 of the CP. Is, for example, a flat market outlook a reasonable moderate scenario?

- If each product manufacturer must determine, based on its policy, what is “reasonable” this could lead to difficulties for investors in using KIDs for comparative purposes as the assessment of what is reasonable may differ between product manufacturers. Furthermore, we think that the statement in the KID that the performance scenarios facilitate comparability because they are calculated under similar conditions is misleading since this is clearly not the case. We are of the view that Appendix 1 paragraph [b] must be amended. Please see "Proposed amendments to the draft RTS" below.

For the performance scenario methodology we would favour an approach where performance scenarios correspond to a percentile of the payoff distribution at maturity, computed with the same model than the one used by the manufacturer to price the product, together with an asset risk premia. For equities and commodities, should performance scenarios be probabilistic, a growth rate set to the risk free rate would not be satisfactory because a risk premium exists for these products. We are in favour of a solution whereby the asset grows at the risk free rate adjusted by an asset specific risk premium, constant and explicitly set by regulators (e.g. for equities the risk premium

[5] JC 2015 073

should probably be between 4% and 7% p.a.). This would ensure all manufacturers use the same equity risk premium and would be simple to implement. The ESAs should set some risk premium per asset classes and regularly review it.

7. Review

The 'ad hoc' review requirements are still unclear. What would constitute a material change which triggers and ad hoc review and revision of the KID? We are of the view that guidelines are required to ensure that the process is consistent across all manufacturers.

8. Updating

For products that are continuously marketed the manufacturer will require sufficient time to update the KID and it will not be possible for real-time/same day updates to be available.

Since the updating requirements are different for products that are made available to investors in a non-continuous manner, further guidance is required as the meaning of "non-continuous manner". Our view is that 'made available in a non-continuous manner' should be interpreted within its literal meaning, i.e. the product is actively made available for sale for example by allowing retail investor to purchase it after an initial offer period. We would therefore propose that the following guidelines as to the updating requirements:

- There should be no update requirement where an investor is 'divesting' rather than investing
- Where products are not actively marketed/there is no open offer period/liquid secondary market, requiring a manufacturer to review and update the KID would be disproportionate. If the opposite view were taken by the ESAs, the unintended consequence of this could be to deprive investors of positive liquidity in the secondary market
- The KID should be updated and republished if and when an investor requests to buy it (i.e. when the product is 'made available for sale')

9. Provision of the KID to investors

Further practical guidance is required on what constitutes "good time" in relation to the provision of the KID to investors. Article 20 of the draft RTS provides some colour but further information (e.g. practical examples) would help in determining what should be considered good time (e.g. what would be considered sufficient reading/consideration time for an inexperienced investor investing in a complex product where timing is not urgent? Would 2 hours, for example, be sufficient? How would this differ if the timing was urgent and/or the product was not complex etc.?). In addition, if the derogation relating to reverse enquiries (paragraph 3, Article 13 of the PRIIPs Regulation) is relied upon (i.e. the investor consents to receiving the KID without undue delay after the conclusion of the transaction), further clarity is required on what should be considered an "undue delay" (e.g. would two business days, for example, constitute an undue delay?).

10. Discretionary mandates

Under Article 13(2) of the PRIIPs Regulation, it states that a person advising on, or selling, a PRIIP may satisfy the requirements under Article 13(1) (provision of the KID) by providing the key information document to a person with written authority to make investment decisions on behalf of the retail investor in respect of transactions concluded under that written authority. We would like the ESAs to clarify that where a manufacturer of a PRIIP deals exclusively with a discretionary manager and does not advise or sell to the underlying retail client, they are out of scope and would not be obliged to provide a KID. Our view is that there should not be a requirement for a KID to be

sent to a discretionary manager on the basis that, by definition of their role, the discretionary manager should be able to fully comprehend the relevant product features and therefore effectively provides the same role in terms of investor protection as the KID when acting on behalf of the retail investor.

11. MiFID 2

Following the European Commission's announcement of a delay to the application of MiFID 2, are the ESAs prepared to comment on how this will impact the PRIIPs regime? We note the view that there is no issue of dependency between the two regimes however there is clearly one of alignment since there is overlap between MiFID 2 and the PRIIPs Regulation in a number of areas including product governance and disclosure of costs and charges, and more importantly a mismatch in the requirements of each. How are the ESAs planning on dealing with the mismatch between the PRIIPs Regulation and the legislation in force prior to the implementation of MiFID 2?

There is a need for consistency between MiFID 2 and the PRIIPs Regulation and issues around the overlap remain unclear. Our view is the regimes should be as closely aligned as possible and, for example, the MiFID 2 requirement to define a target market (Article 24(2)) and to indicate if the product is aimed at retail or professional clients (Article 24(4)(b)) should be satisfied by the requirement in Article 8(3)(c)(iii) of the PRIIPs Regulation to describe: "the type of retail investor to whom the PRIIP is intended to be marketed, in particular in terms of the ability to bear investment loss and the investment horizon."

12. Liability

We think that issue of liability is unclear where there is more than on PRIIPs manufacturer and further whether they are located in different jurisdictions.

13. Application of the PRIIPs Regulation to products manufactured before 31 December 2016

The application of the PRIIPs regime to products issued prior to the effective date of the new regulation is an area of great concern. There would be significant costs involved for manufacturers in complying with the Regulation in relation to pre-existing products and such products would have been manufactured without knowledge of the requirements of the PRIIPs Regulation and the costs of complying with this Regulation would not have been taken into account when pricing the product.

At in the ESAs public hearing in Frankfurt in December 2015, it was stated that products that are no longer 'open for business' by 31 December 2016 will not require a KID. We suggest that the scope should be reduced to products which are in their public offer period and this should be tied in to the definition in the Prospectus Directive.

If pre-existing PRIIPs do require a KID then timing in respect of implementation is a problem as further changes will be required. It has been suggested that this issue will be addressed in the Level 3 measures which are unlikely to be available prior to 31 December 2016.

14. The KID and existing disclosure regimes

For German and Italian investors, will the PRIIPs KID and the PIB (product information document) or the Schetta Prodotto coexist for a time? If so, then responsibilities will need to be clarified for the cases where two parties need to produce the documents so as to minimise any potential for misalignment/inconsistencies.

Is early compliance for UCITS possible? Will early compliance constitute non-compliance with the PRIIPs Regulation?

15. Proposed amendments to the draft RTS

In addition to our comments above, we have reviewed the draft RTS in detail and propose the following amendments to the draft RTS:

15.1 Review, revision and republication – structured products - costs – primary and secondary offers

We suggest amendments to paragraphs 37, 45, 46 and 47 of Annex VI and to Annex VII of the Draft RTS below.

(a) Subscription Period - Fixed Product Terms

We consider the scenario of a structured product with a **subscription period and with fixed product terms**.

Since (i) the fair value of the PRIIP is likely to fluctuate throughout the subscription period and (ii) the entry cost is derived from the difference between the offer price and the fair value, the entry cost calculation (and therefore the RIY) will fluctuate throughout the subscription period (assuming the offer price remains fixed and/or is not adjusted proportionally with the fair value). This gives rise to the concern that the KID will need to be adjusted during the term of the subscription period to account for the change in the derived entry cost calculation (and hence RIY).

In this regard, it is important to understand that the entry cost calculation is an indirect one derived using the difference between offer price and fair value. This results in the nonsensical situation of the derived entry cost of the PRIIP for one investor being different to that of another investor purchasing at different times, notwithstanding that the actual entry costs would not have changed. As the ESAs note in the 23 June 2015 Technical Discussion Paper (section 3.1.3.2 on page 90): "…[E]ach investor will have the same product terms so it might be difficult to communicate that they are paying different structuring costs."

Indeed, the indirect entry cost calculation will become misleading when it is calculated after the economics are set. For example, if during the subscription period the fair value moves from EUR 900 to EUR 890 and the offer price is constant, the indirect entry cost would appear to have increased by EUR 10, whereas in practice the actual entry costs of hedging and structuring the PRIIP have not changed since they were set at the beginning of the subscription period. It is worth noting that (as discussed in the 23 June 2015 Technical Discussion Paper (section 3.1.3 on page 84)), instead of the indirect calculation method, the ESAs could have decided that entry costs should be estimated directly, in which case the above concern would fall away.
For these reasons, there should be no requirement to review or revise an updated KID during the subscription period in respect of changes to the costs or RIY which are caused solely due to changes in the fair value. See revised wording proposed below.

(b) Subscription Period - Preliminary Product Terms

Where preliminary terms are used, the KID produced at the beginning of the offer will use values of such terms that result in the highest cost that could apply. Once the actual cost is known (on the strike date, being on or around the end of the subscription period), a revised KID should be published. Otherwise, for the reasons given in (a) above, there should be no requirement to review or revise the KID for changes to the costs or RIY between the initial publication of the key information document and the strike date.

(c) Secondary market

The draft RTS is silent on the position as to disclosure of cost in secondary market offerings. As noted above, where a structured product is offered in the secondary market, the fair value will vary almost continuously.

It would be a disproportionate and unrealistic result if the KID of a structured product needed to be constantly updated due to changes in the fair value. There should be no requirement to review, revise or republish key information documents to reflect changes to the costs, other than in the event of a periodic review or an ad hoc review arising for other reasons.

Instead, a qualitative statement should be added under the cost disclosure that if investors purchase in the secondary market, the price will include an amount equal to the difference between the purchase price and the fair value. Proposed wording has been added below.

(d) Proposed amendments
Annex VI of the Draft RTS

37. For the purposes of the calculation of the implicit costs embedded in PRIPs, the manufacturer shall refer to the issue price and, after the subscription period, to the price available to purchase the product on a secondary market. There shall be no requirement to review or revise the entry cost information after the subscription period, where the only change to such cost calculation is due to changes in the fair value.

45. In the case of subscription products, the fair value must be calculated on the date when the product terms are determined. This valuation date shall be close to the beginning of the subscription period ~~and a criterion to update cost information, in case of long offering periods or in case of high volatility in the markets, has to be defined~~. There shall be no requirement to review or revise the entry cost information during the subscription period, where the only change to such cost calculation is due to changes in the fair value.

46. If preliminary terms are used, costs need to be calculated by using the minimum or maximum, as applicable, terms of the product such that the cost is maximised. The costs shall be recalculated upon the final terms being determined and a revised key information document shall be prepared and published accordingly.

47. If variable subscription prices are used~~, a procedure on how to incorporate and disclose the cost effect of the varying subscription price, has to be defined~~ the cost calculation should reflect a representative sample of such prices.

Annex VII of the Draft RTS

The figures assume you invest €1 000 (or €15 000 for insurance PRIIPs). The figures shown are partially based on data from the past and therefore may change in the future.

[As certain terms of the product have not been determined, the costs are based on estimates and may change. A key information document with revised costs will be published once the terms of the product have been determined. This is expected to be on or around […].]

[If you purchase in the secondary market, the price will include an amount equal to the difference between the purchase price and the fair value.]

15.2 Products made available to retail investors in a non-continuous manner (Reg Art 5, Draft RTS Art 20, recital 20)

Many structured products are listed on an exchange for regulatory (rather than liquidity) purposes - a so-called 'technical listing'. In such case, those products not sold in the initial distribution to investors are held by the issuer and are not actually traded on the exchange. Accordingly, in such circumstances, notwithstanding the listing (and assuming that the product is not otherwise being offered to retail investors), the PRIIP is not made available to retail investors. Therefore no KID is required.

By analogy, we note that under the Prospectus Directive regime, the listing of a product does not constitute an offer to the public; there needs to be something over and above the listing. We refer to the response to question 74 of the Q&A in respect of Directive 2003/71/EC (the Prospectus Directive) which states: "*In general, the simple indication of secondary market prices should not be considered an offer to the public if there are no further circumstances which might altogether amount to an offer to the public*".

However, we feel that the last sentence of recital 20 of the Draft RTS introduces uncertainty in the context of a listing. We propose the following amendment by way of clarification to recital 20 of the Draft RTS:

> "Where a PRIIP is not currently available for retail investors, the continued review and revision of the key information document for that PRIIP would be disproportionate, however a review and revision of the key information document should be undertaken if such a PRIIP is to become available to retail investors again. The trading of a PRIIP on a secondary market however would not exempt the PRIIP manufacturer from the obligation to continue to review and revise the key information document for that PRIIP. However, where a PRIIP is listed but not traded on an exchange or otherwise made available to a retail investor it shall be considered as not currently available for investors."

15.3 Cost Disclosure for interim holding periods

For illiquid products, there is an exemption from the requirement to include performance scenarios for interim holding periods. We presume this should also extend to cover the disclosure of interim holding period costs. We therefore suggest the addition of the following text to the end of para 85 of Annex VI of the Draft RTS:

> "Where products are considered to be illiquid according to Annex II part 5 paragraph 76, the total costs may be shown only at the recommended holding period."

15.4 Performance scenarios (Annex V, Appendix 1)

As noted above, the fact that each manufacturer must determine what is "reasonable" may affect comparability of products by the investor who will not necessarily be aware that the assessment of what is reasonable may differ between manufacturers. We think the wording of Appendix 1 paragraph b is therefore somewhat misleading and we would therefore propose the following amendment:

[b] The scenarios shown, are a simplified representation of possible outcomes. ~~You can use these scenarios to compare with the scenarios of other products, because they are calculated under similar conditions.~~

The standard wording included in square brackets under the performance scenarios in paragraphs d), e) and f) is unclear and does not seem to cover all possibilities. A placeholder for free text should be added to allow for all possibilities, as suggested below.

"[d] For the **favourable scenario** a rise in the market of […]% is shown. So if the market goes up by […]% the money you may get back will [not rise /equally with the market/ not rise any longer/be cancelled][…].

For the **moderate scenario** a [rise/drop] in the market of […]% is shown. So if the market goes up/down by […]% the money you get back will [not rise/ not rise equally with the market/ not rise any longer/ be cancelled][…].

And –for the **unfavourable scenario** a fall in the market of […]% is shown. So if the market drops by […]% the money you get back will [not drop any further/ not drop equally with the market price/is cancelled][…].

Examples of sample wording:

With current text	With alternative text
For the **favourable scenario** a rise in the market of 25% is shown. So if the market goes up by 25% the money you may get back will not rise any longer.	For the **favourable scenario** a rise in the market of 25% is shown. If the market goes up by more than 25% the money you may get back will not increase any further.
For the **moderate scenario** a rise in the market of 10% is shown. So if the market goes up by 10% the money you get back will not rise any longer.	For the **moderate scenario** a rise in the market of 10% is shown. If the market goes up by more than 10% the money you get back will not increase any further.
And –for the **unfavourable scenario** a fall in the market of 25% is shown. So if the market drops by 25% the money you get back will not drop any further.	And –for the **unfavourable scenario** a fall in the market of 25% is shown. If the market drops by more than 25% the money you get back will not decrease any further.

15.5 Description of the underlying

Clearly the information in respect of the underlying instrument(s) or reference value(s) is key information in relation to a PRIIP. However, given that the KID is limited to three pages, it will not be possible to include a meaningful description and other material information to assess the likely performance of the underlying instrument(s) or reference value(s). Therefore, absent a clear statement in the RTS as to the specific information that shall be provided in the KID in relation to the underlying instrument(s) or reference value(s), there is a liability concern that the KID does not provide "key information" and/or that it is

"accurate, fair, clear and not misleading" given the omission of meaningful information to assess the likely performance of the underlying instrument(s) or reference value(s).

In this regard, it is helpful that Article 4(3)(a) of the draft RTS provides that the KID shall "*identify* …the underlying investment assets or reference values" (italics added). However, we feel further clarity is needed. We therefore suggest amending draft RTS Art 4(3) – through the addition of new sub-paragraph (a) and amendments to sub-paragraphs (b) and (c) as follows:

> "(a) shall identify the underlying investment assets or reference values by (i) naming the index, in the case of an index, or the share issuer and type of shares in the case of shares or equivalent information in relation to any other type of asset or value, together with, (if applicable) the International Securities Identification Number or other securities identification code(s) and/or (if applicable) a web-site where more information may be obtained."
> (b)< change (a) to (b) and delete ", the underlying investment assets or reference values," >
> (c) < change (b) to (c) >

Yours faithfully,

Timothy R Hailes
Chairman, Joint Associations Committee

APPENDIX 1

Letter from the Joint Associations Committee on Retail Structured Products to the European Commission and ESMA dated 17 February 2016

APPENDIX 2

Response of the Joint Associations Committee on Retail Structured Products to the ESAs Joint Consultation Paper on the PRIIPs Key Information Document