

PRIIPS: CSSF FAQ and ESAs Q&A updates

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CSSF FAQ: Update

On 14 August 2018, the CSSF updated its FAQ on the AIFM Law (Question 23 b) and its FAQ on non-AIF SICARs and non-AIF SIFs in order to reflect the possibility for those investment structures to produce a UCITS KIID and to benefit from the temporary exemption from the obligation to comply with the PRIIPs Regulation.

The PRIIPs Law indeed allows SICARs and UCIs other than UCITS to establish a KID in the UCITS format (i.e. not a PRIIPs KID but a UCITS KIID), provided that this KID expressly states that the SICAR or UCI, as applicable, does not qualify as a UCITS. In this case, and in the absence of any contrary position taken by the competent authorities of any host Member States where a Luxembourg SICAR or UCI would be marketed, the PRIIPs manufacturer is exempt from the obligations stated in the PRIIPs Regulation.

Pursuant to the provisions of the PRIIPs Regulation, this exemption will be valid until 31 December 2019, subject to an extension of this transitional regime by the EU authorities.

PRIIPS Q&A ESAs

In July 2018, the European Supervisory Authorities ("**ESAs**") updated their Q&A on the PRIIPs KID. According to the newly added questions:

- As regards the publication of the KID: the KID must be published on the public section of the website of the PRIIPs manufacturer in order to ensure its widespread dissemination and availability.
- As regards the performance scenarios of a PRIIP for which the recommended holding period ("**RHP**") is less than one year: in such an event, it should be assumed that the performance scenarios should reflect the projected return over the RHP (the disclosure obligations in the performance scenarios for over a year and a half of the RHP would not be applicable).
- As regards the case where the moderate scenario shows a total loss of capital or even a

negative return (i.e. it is less than or zero): this should not be used to present the costs (as in this case the Reduction-in-Yield would suggest no costs or very low costs). According to the ESAs, point 71(c) of Annex VI of the PRIIPs Delegated Regulation should be applied in order to avoid potential errors in the calculation, i.e. the performance should be assumed to be 3% annual growth for the purposes of determining the reduction in yield.

On the same date, the ESAs also published a new version of the flow diagram for the risk and reward calculations in the PRIIPs KID, which includes a new calculation example for Category 3 PRIIPs stress performance scenario.

For any further information please contact us or visit our website at www.elvingerhoss.lu.

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter

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