CP21/23: PRIIPS - Proposed Scope Rules and Amendments to Regulatory Technical Standards

Submission by the Transparency Task Force, September 29th 2021

About the Transparency Task Force

The Transparency Task Force is a Certified Social Enterprise, meaning that we exist to make an impact, not profit.

The mission of the Transparency Task Force is to promote ongoing reform of the financial sector, so that it serves society better. Our vision is to build a large, influential and highly respected international institution that helps to ensure consumers are treated fairly by the financial sector.

The primary beneficiaries of our work will be consumers; but the sector itself will also benefit through improved market conduct and increased trust in the services it provides.

Our objective is to carry out a broad range of activities that help to drive positive, progressive and purposeful finance reform, such as:

- Building a collaborative, campaigning community; the larger it is the more influence it can have in driving the change that is needed
- Raising awareness of issues; so that society better understands the problems that exist in the financial sector and how they can be dealt with
- Engaging with people who can make change happen; because through such dialogue we can influence thinking, policy making and market conduct

Much of our focus is on rebuilding trustworthiness and confidence in financial services. To make this possible we are busy developing a framework for finance reform which we describe as a "whole system solution for a whole-system problem" as described in our recently published book

Our response to you has been produced by a highly collaborative group of TTF volunteers, our "Response Squad," working together to build consensus, whilst always remaining true to our "North Star" question: "What is best for the consumer?"

For further information about the Transparency Task Force see:
http://www.transparencytaskforce.org

Our Response

Thank you for the opportunity to provide our thoughts in relation to PRIIPS, which are set out for you as a series of points, below:

1. When PRIIPs was introduced back in January 2018, the EU pushed the legislation onto the Investment Company sector in the UK, but left authorised funds/UCITS alone. The idea was that MiFID II would cover funds until PRIIPs was introduced for them in 2019. Every year, the EU seems to be allowing the implementation date to slip, which is a concern for us.

   In a recent article dated 9th September 2021 and entitled "EU retail-investment providers seek delay to new consumer-information rules" this comment is made:

   EU banks, insurers and asset managers have asked to get a 12-month implementation period to adapt to new rules intended to provide a consistent information document for buyers of retail investment products, such as mutual funds and life insurance. A proposed implementation date of July 2022 doesn't give enough time to coordinate within the industry or to update software, lobbyists said in a document circulated today.

   We believe that is a position that is not justified and works against consumer interests; we are therefore opposed to it.

2. PRIIPS should have covered authorised funds and UCITS at the same time as it hit investment companies (ICs). The reason for this is that retail and other investors use both funds and ICs – they are competing products. However, as the IC industry is UK-orientated, the EU has effectively disadvantaged the UK IC industry.

3. We believe that PRIIPs is not fit for purpose. There are 3 parts to a PRIIPs KID (Key Investor Document): the Performance section, the Risk section and the Costs section. The Performance and Risk sections are poor and, in certain scenarios, report very misleading results for investors. The flaw is that the regulations use the last 5 years' performance and risk figures to project forwards except that we have had a gigantic bull market since 2013 (the date that the figures start to be calculated) and using a bull market's figures to project forwards for another 5 years is wholly inappropriate.

5. The KID was so misleading that the FCA needed to allow asset managers to issue a form of disclaimer about the performance and risk sections.

6. PRIIPS regulations have hit capital raising in the UK, for example in relation to the retail bond market. Many FS firms no longer sell bonds to retail investors as these bonds have "callable" or convertible features which means that they could be classed as derivatives. All derivative products come under PRIIPs.

7. We believe that close inspection of the costs section reveals that some costs have been double-counted, whilst others have been completely missed. Overall, we believe that costs are being under-reported via the PRIIPs transaction cost methodology.

8. The FCA initiative on PRIIPS is to be welcomed. However, this year the UK (and EU) have allowed some funds to use soft commissions again and the UK has removed the cap on Senior Management bonuses. We are concerned that the powerful influence of the FS firms in the UK means there is a regulatory reluctance to make the PRIIPS regulations worse for FS firms, even if failing to do so causes material consumer detriment. We are equally concerned about poor market conduct in the EU. One report suggests that ESMA fined EU FS firms EUR4m last year, in total, which would seem to suggest a lack of monitoring and enforcement in the EU too.

9. The PRIIPs transaction cost methodology is similar to the MiFID II calculation methodology; there are issues with negative transaction costs. Some funds are reporting negative transaction costs and this is plainly wrong due, in the main, to a calculation error or errant data.

10. If you look at many popular IC websites, you may struggle to find the KID, even though the regulations state that it must shown in a prominent position. The ICs tend to keep the fund Factsheet in a more prominent position than the PRIIPs KID, but the Factsheet only shows the UCITS OCF (Ongoing Charges Figure) which is a set of costs that are much

lower than the PRIIPs RIY (Reduction in Yield). The differential between the investor costs shown on the Factsheet and those on the PRIIPS KID are meaningfully different. As a consequence, investors are being badly misled.

11. PRIIPs is meant to be a consumer-focused initiative, yet awareness amongst investors in the retail space is extremely low. Whatever the FCA does to improve PRIIPs, part of any reform must be about simplifying it and making the investor aware of its existence. As an aside, both points also apply to MiFID II.

12. In general terms, we are very disappointed that investors are still not getting the cost transparency they deserve.

Please do not hesitate to let me know if you have any queries.

Andy Agathangelou FRSA

Founder, Transparency Task Force; a Certified Social Enterprise
Governor, Pensions Policy Institute
Chair, Secretariat Committee, APPG on Pension Scams
Chair, Secretariat Committee, APPG on Personal Banking and Fairer Financial Services
Chair, Violation Tracker UK Advisory Board
Policy Adviser to Parrhesia, the Whistleblower Research Charity
Telephone: +44 (0)7501 460308