



KIDs for Life:
The PRIPS
Initiative

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Introduction

Over the last number of years the European Commission (the “**Commission**”) has been examining ways to improve the provision of information about investment products to retail investors. The background to this is that investment products are sold to the retail market in a variety of quite different legal forms and under different regulatory regimes with the result that, whilst the underlying investment product may in many cases be similar, the information provided to retail investors from one product to another may differ quite significantly and may confuse investors. As a result, the Commission considers that retail investors may be receiving overly complex information about possible investments where the risks and costs of products are difficult to assess or compare.

The Commission has been examining this area for some time, issuing a communication on packaged retail investment products (“**PRIPs**”) in April 2009 and following that with a public consultation in November 2010. The outcome of that work is the Commission’s proposal, issued on July 3, 2012, for a Regulation on key information documents (“**KIDs**”) for investment products sold to retail investors.

For the life insurance industry this will be relevant particularly for unit-linked and with-profits business. The Regulation, when implemented, will require life companies to produce a short form KID (generally two pages) in a standardised format, summarising the main terms of the product and to provide the KID document to prospective investors generally before a contract is concluded.

Importantly, this proposal is to be contained within a Commission Regulation which means that it will be of direct effect and will not require particular action by individual EU Member States. Although we expect to see domestic implementing regulations, the fact that this is being done by Regulation means that there will be no room for interpretation by local regulators. The KID document requirement in standardised format will be imposed throughout the EU.

At this stage it is envisaged that the proposal will become effective at the end of 2014. Clearly, life companies will need to put this on their agendas now, monitor the development of the proposal and consider what implementing steps may need to be taken not only in terms of the production but also the delivery of the KID to prospective investors through distribution channels.

Who will this apply to?

The proposed regulation will apply to manufacturers of packaged retail investment products.

The draft Regulation defines an investment product as “*an investment where regardless of the legal form of the investment the amount repayable to the investor is exposed to fluctuations in reference values or in the performance of one or more assets which are not directly purchased by the investor*”. The reference to “packaging” is to be contrasted with direct investing. For example, a direct investment in equities is not caught by this proposal whereas a collective investment scheme investing in equities or a unit-linked insurance product doing so are deemed to be packaging or wrapping the underlying exposure in a product to which the proposal will apply.

It also defines retail clients which, in summary, will be all those who are not professional clients.

Although it will apply to a broad range of packaged investment products (collective investment schemes, certain insurance products, structured securities and structured deposits), the primary application of the KID proposal in the life insurance context will be to unit-linked and with profits business. The Regulation will not, however, apply to insurance products that only offer insurance benefits such as pure protection insurance products or non-life products which provide no surrender value exposed to fluctuation in the performance of one or more underlying assets or reference values.

Life companies should expect that compliance with the KID requirement will be costly and will require a significant amount of advance planning. A similar process has just been completed by the UCITS industry which had to issue KIDs by mid-2012. Life industry participants may be able to learn quite an amount from the experience of the UCITS industry, including perceived benefits or otherwise of using outsourced service providers to assist in the process and how to plan and implement the new regime.

What will a KID look like?

As was the case with UCITS, the KID will follow a standardised “look and feel” approach with specific rules as to form and content.

The content requirements are designed to present key information in a common way so that investors can compare information between different products easily and can understand the information being presented to them. Importantly, a key feature is that the information

provided must be a short form document (generally two pages) and has to be written in plain language without the use of technical language or jargon. The KID also has to be a stand-alone document - retail investors must not be required to have to read other documents to be able to understand the key features of the product itself.

As set out in the Commission's Explanatory Memorandum, the essential elements of the product which will have to be described in the KID will include:

- the identity of the product and its manufacturer;
- the nature and main features of the product, including whether the investor might lose capital;
- its risk and reward profile;
- costs; and
- past performance.

Other information may be required for specific products and information about possible future outcomes should be provided for private pension products.

Who has to prepare the KID?

The obligation to prepare the KID will fall on the product manufacturer. That includes not only the person who produces the product but also any person who has substantively changed the risk or cost structure of an existing investment product. In other words, an entity combining other products into a new product could also be a product manufacturer for this purpose.

Importantly, the proposal makes provision for the liability of the product manufacturer for the content of the KID and for the burden of proof. Life companies, as product manufacturers, will need to bear in mind that if they produce a KID which does not comply with the form and content requirements of the Regulation and a retail investor has relied on that KID in making an investment decision the retail investor can claim damages from the life company for any loss caused to that retail investor through the use of that KID.

The Regulation also shifts the burden of proof. Where the retail investor demonstrates loss as a result of or from the use of the information contained in the KID then it is for the product manufacturer to prove that the KID has been drawn up in compliance with the relevant requirements of the Regulations.

It is also worth noting that the Regulation will introduce an administrative sanctions regime and administrative sanctions measures for breaches of the Regulation.

Who has to provide the KID and to whom and when?

The KID has to be provided by a person selling the investment to a retail investor in good time before the conclusion of a transaction relating to the product.

A derogation is available from this general requirement where the KID can be provided immediately after the conclusion of the transaction in the event that the retail investor chooses to conclude the transaction using a means of distance communication, where the provision of the information in advance is not possible and where the person selling the investment product has informed the retail investor of that fact.

The KID has to be provided free of charge and it has to be provided either on paper, using a durable medium other than paper or by means of a website subject to certain specific additional requirements.

What should Life companies do now?

Life companies should not regard this as a proposal which might not be implemented. It has already happened in the UCITS environment and it is clear that it will happen for other packaged retail investment products including life products. Therefore it needs to be put on your agenda now and you need to start giving thought as to what steps you will need to take to comply.

This may involve consideration as to the nature of your business, whether it is domestic or cross border and the implications. You will also need to give consideration to your distribution channels and obligations that may need to be imposed contractually on distributors in respect of the KID and its provision to retail clients. You will also need to look at issues such as using a website to make the KIDs available and you will also need to look at the process around producing required information in a plain and concise manner bearing in mind that what might be plain and concise in one language may not necessarily be in another.

Consideration should also be given to the cost implications not only of the production and provision of the KID and the impact that will have on your distribution channels but also on cost structures and the past performance of your products and how they will be perceived by retail investors who will have the KID as a new tool to carry out price and performance comparisons.

Learning from the UCITS experience may be worthwhile.

How can we help ?

Dillon Eustace has assisted many asset management firms/UCITS platform with their KIDs including drafting plain English disclosures, advising on required fee/charging disclosures and in creating templates for cross border use.

Based on that experience we think that we can readily assist life companies in dealing with the KID, although it may be next year before life companies look to commence preparing for this new initiative.

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