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PRIIPs Regulation – 31 December 2016 deadline still applies

Despite recent industry calls urging the Commission to delay the application of the EU Regulation on key information documents (“KIDs”) for packaged retail and insurance-based investment products (“PRIIPs”) (the “PRIIPs Regulation”), the Commission in its letter on 18 May 2016 did not agree to delay the implementation of the PRIIPs Regulation and therefore all PRIIPs manufacturers and those persons advising on or selling PRIIPs must comply with the PRIIPs Regulation by 31 December 2016.

The PRIIPs Regulation introduces a pan-European standardised pre-contractual disclosure document requirement for manufacturers of PRIIPs to assist retail investors in understanding the key features and risks of retail investment products so that they can make a more informed decision on these investment products.

Insurance Industry Concerns

In late April 2016, the European Banking Federation, Insurance Europe, the European Fund and Asset Management Association and the European Structured Investment Products Association (together the “European Financial Associations”) wrote to Commissioner Jonathan Hill calling for a one-year delay in the application of the PRIIPs Regulation.

In this letter, the European Financial Associations highlighted their concerns about the timeline for the development and implementation of the PRIIPs KID given that the final draft Regulatory Technical Standards (the “RTS”), which were only published on 7 April 2016 and are essential for the development of the PRIIPs KID, still needed

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to be adopted and are likely to only be officially published in the third quarter of 2016 leaving only a number of months for PRIIPs manufacturers and those advising on or selling PRIIPs to meet the deadline of 31 December 2016. Given this tight deadline, the European Financial Associations pointed out that PRIIPs manufacturers would face considerable operational challenges to provide the PRIIPs KID to retail investors as they need to develop and test all necessary processes and systems to ensure that all steps are adequate and functioning to provide consumers with this useful tool. The European Financial Associations also pointed out that a number of fundamental questions are still unresolved in the final draft RTS from a practical, technical and legal point of view.

From an insurance perspective, Insurance Europe issued an insight briefing (26 April 2016) and a technical paper (18 May 2016) highlighting the technical concerns that the insurance industry has over the final draft RTS and pointing out that the proposed version of the PRIIPs KID misrepresents two important aspects of insurance based investment products, namely their cost and the risk they pose to customers.

Commission's Response

On 18 May 2016, the Commission issued a letter to the European Banking Federation which acknowledged the concerns about the timeline for finalising the RTS and the challenges this poses to industry however the Commission outlined that actions have been put in place to ensure that the final draft RTS are adopted before the summer in order to provide legal certainty to industry over the final format of the PRIIPs KID.

The Commission also noted that there are no transitional provisions for existing PRIIPs (i.e. both new and existing products offered to retail investors must be accompanied by a KID from 1 January 2017).

In the letter, the Commission also clarified its position on the following issues:

- ▣ Insurers offering multi-option insurance products (such as unit-linked products) will need to disclose information required under the PRIIPs Regulation;
- ▣ A derivative would generally fulfil the definition of a PRIIP and therefore, a KID is required. The RTS will provide a simplified KID for certain derivatives;
- ▣ The obligations imposed by the PRIIPs Regulation on PRIIPs manufacturers and those persons advising on and/or selling PRIIPs are triggered when a PRIIP is offered or sold to retail investors within the EU;
- ▣ The European Commission will host, together with the European Supervisory Authorities (“ESAs”), a technical workshop which will be open to all stakeholders and will allow questions about the new rules to be posed.

As there has been no announcement of a delay in the application of the PRIIPs Regulation, PRIIPs manufacturers and those persons advising on or selling PRIIPs should continue to review their operations and prepare for the implementation of the PRIIPs KID to meet the fast approaching deadline of 31 December 2016.

How can Dillon Eustace help?

To assist clients in developing their PRIIPs KID, Dillon Eustace has created a PRIIPs KIID template which follows the prescribed template in the final draft RTS and consolidates within the template the requirements contained in the final draft RTS.

Dillon Eustace will be reviewing and updating the template when the final draft RTS are adopted and published in the Official Journal of the EU.

Please contact any member of the Dillon Eustace Insurance Group or your usual Dillon Eustace contact if you have any queries in relation to the development of your PRIIPs KID.

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