



European Securities and
Markets Authority

Reply form for the Consultation Paper on PRIIPs Key Information Documents



Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper on PRIIPs Key Information Documents, published on the ESMA website.

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

- use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
- do not remove the tags of type <ESMA_QUESTION_PRIIPS_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- if they respond to the question stated;
- contain a clear rationale, including on any related costs and benefits; and
- describe any alternatives that ESMA should consider

Naming protocol

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA_ PRIIPS _NAMEOFCOMPANY_NAMEOFDOCUMENT.

E.g. if the respondent were XXXX, the name of the reply form would be:

ESMA_ PRIIPS_XXXX_REPLYFORM or

ESMA_ PRIIPS_XXXX_ANNEX1

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Deadline

Responses must reach us by **29 January 2016**.

All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input/Consultations’.



Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the headings 'Legal notice' and 'Data protection'.



Introduction

Please make your introductory comments below, if any:

<ESMA_COMMENT_PRIIPS_1>

The German Contracts for Difference Verband e.V. (CFD Association) appreciates the opportunity to introduce itself and comments below on the ESMA Consultation Paper on PRIIPs Key Information Documents (the "Consultation Paper") published by EBA, EIOPA, and ESMA (the "ESAs").

The CFD Association represents the interests of the German CFD & FX trading brokers and market makers. The CFD Association consists of 12 members and represents a broad cross-section of the German CFD market.

The CFD Association strives to improve the political and regulatory conditions for the CFD & FX trading in Germany and promotes the increasingly popular asset class Contracts for Difference. The Association acts as a competence center, improves the publicity for this market segment and sets an even sharper focus on investor protection. In addition, the association operates as a point of contact to the media, defines guidelines and expresses recommendations on contemporary questions of the CFD market.

The association is committed to European financial standards and aims to implement them consistently. Values such as transparency, fairness and integrity are utmost important for the realisation of these goals. In terms of investor protection the recommendations published by the ESMA serve as a guideline for all common activity.

Some general remarks to contracts for difference (CFD) in the context of key investor documents are: Contracts for difference (CFD) are financial instruments that are used for speculative purposes and might be difficult to assess in their complexity and scope. Therefore CFDs are not comparable to conventional investment products and are not suitable for every investor.

With a CFD clients speculate on a price performance of a particular exchange-traded (eg. stocks or commodities) or OTC underlying (e.g. indices and FX). The decisive factor to the investor is the difference between the price at inception of the CFD transaction (i.e. opening of a CFD position) and the price at the end of the CFD transaction (i.e. the closing of the CFD position). An actual purchase or trading of the underlying does not take place. As a result the investors do not earn a yield on their investment but generate a profit or loss on the difference between their opening and closing price.

CFDs are products featured with a leverage effect ("leverage"), i.e. CFDs offer the opportunity to trade with a small percentage of the notional of the underlying asset and thus to participate from entire performance of the respective underlying. Investors can trade both rising and falling prices of an underlying by either buying (long position) or selling (short position) CFDs.

CFDs therefore differ from classical investments such as stocks because the investor never actually acquires or possesses the underlying security, i.e. neither holding a participation in a company nor another tangible asset. A CFD is a linear product; all price-forming factors of the underlying assets also have an effect on the price development of the CFD and are significantly enhanced by the leverage in their profit and loss effects.

With an investment in CFD products, the investor does not acquire a freely transferable financial product, because the investor only enters into a contract with his respective trading partner. As a result an investor can close the CFD position only with the very same trading partner. CFD positions are to a large extent traded on an intraday basis; i.e. only a minority of investors are holding their investment for 2 days or longer.

Investors of CFDs are trading a number of contracts rather than investing a fixed amount of money. Therefore the investment amount differs between a few USD for some commodities, e.g. 10.000 EUR for



the DAX Index and 150 EUR for e.g. the Allianz share. The costs associated with CFD are typically spreads, commissions and overnight-financing costs. Spreads and commissions can easily be expressed as a monetary amount and can therefore be compared between different CFD producers. Overnight-financing costs can also be compared easily on a one-day basis between CFD brokers.

<ESMA_COMMENT_PRIIPS_1>

Question 1

Would you see merit in the ESAs clarifying further the criteria set out in Recital 18 mentioned above by way of guidelines?

<ESMA_QUESTION_PRIIPS_1>

We consider the further detailed Comprehension Alert as not applicable for CFDs since CFDs are plain vanilla products.

<ESMA_QUESTION_PRIIPS_1>

Question 2

(i) Would you agree with the assumptions used for the proposed default amounts? Are you of the opinion that these prescribed amounts should be amended? If yes, how and why?

(ii) Would you favour an approach in which the prescribed standardised amount is the default option, unless the PRIIP has a known required investment amount and price which can be used instead?

<ESMA_QUESTION_PRIIPS_2>

(i) We suggest not to use a default amount for presentation of figures both in the Risk/Reward and the Costs section of the KID.

The rationale behind this concern: As laid out in the introduction the risk of a CFD is linear to the underlying. Retail CFD clients are used to trade CFDs in a number of contracts rather than investing a fixed amount of money. If we were to describe costs, risks and rewards based on a standard investment amount the transparency of costs and risk/reward per contracts would be lost and we would be acting against market standards.

(ii) Yes, as laid out in our answer (i).

<ESMA_QUESTION_PRIIPS_2>

Question 3

For PRIIPs that fall into category II and for which the Cornish Fisher expansion is used as a methodology to compute the VaR equivalent Volatility do you think a bootstrapping approach should be used instead? Please explain the reasons for your opinion?

<ESMA_QUESTION_PRIIPS_3>

Not applicable to CFDs since CFDs are category I instruments.

<ESMA_QUESTION_PRIIPS_3>

Question 4

Would you favour a different confidence interval to compute the VaR? If so, please explain which confidence interval you would use and state your reasons why.

<ESMA_QUESTION_PRIIPS_4>

As outlined in the Introduction CFDs are linear products and mirror the underlying's performance. Additionally CFD have a liquidation feature attached in case the required margin cannot be covered by the client's account capital. We would prefer to calculate with standard price movements in percentages and a monetary amount instead of probability calculations like Value-at-Risk and a %-loss.

<ESMA_QUESTION_PRIIPS_4>

Question 5



Are you of the view that the existence of a compensation or guarantee scheme should be taken into account in the credit risk assessment of a PRIIP? And if you agree, how would you propose to do so?

<ESMA_QUESTION_PRIIPS_5>

Not relevant for CFD. CFDs are assigned to SRI 7 and to include guarantee schemes into the CRM would not change the SRI at all.

<ESMA_QUESTION_PRIIPS_5>

Question 6

Would you favour PRIIP manufacturers having the option to voluntarily increase the disclosed SRI? In which circumstances? Would such an approach entail unintended consequences?

<ESMA_QUESTION_PRIIPS_6>

Not applicable to CFD as CFD will by default have SRI 7.

<ESMA_QUESTION_PRIIPS_6>

Question 7

Do you agree with an adjustment of the credit risk for the tenor, and how would you propose to make such an adjustment?

<ESMA_QUESTION_PRIIPS_7>

Not applicable to CFDs: As mentioned in the Introduction a tenor of 1, 3, 5 years does not suite for day-trading products like CFD.

<ESMA_QUESTION_PRIIPS_7>

Question 8

Do you agree with the scales of the classes MRM, CRM and SRI? If not, please specify your alternative proposal and include your reasoning.

<ESMA_QUESTION_PRIIPS_8>

We agree with this scale as it is straight forward to understand.

<ESMA_QUESTION_PRIIPS_8>

Question 9

Are you of the opinion that for PRIIPs that offer a capital protection during their whole lifespan and can be redeemed against their initial investment at any time over the life of the PRIIP a qualitatively assessment and automatic allocation to MRM class 1 should be permitted?

Are you of the opinion that the criteria of the 5 year tenor is relevant, irrespective of the redemption characteristics?

<ESMA_QUESTION_PRIIPS_9>

Not applicable for CFD as a CFDs does not contain a capital protection feature.

<ESMA_QUESTION_PRIIPS_9>

Question 10

Are you aware of other circumstances in which the credit risk assessment should be assumed to be mitigated? If so, please explain why and to what degree it should be assumed to be mitigated?

<ESMA_QUESTION_PRIIPS_10>

Not applicable to CFD.

<ESMA_QUESTION_PRIIPS_10>

Question 11

Do you think that the look through approach to the assessment of credit risk for a PRIIP packaged into another PRIIP is appropriate?

<ESMA_QUESTION_PRIIPS_11>

Usually the underlying of a CFD does not in itself contain another PRIIP with counterparty credit risk embedded. Should a CFD contains another PRIIP with credit risk we consider a look through approach is appropriate.

<ESMA_QUESTION_PRIIPS_11>

Question 12

Do you think the risk indicator should take into account currency risk when there is a difference between the currency of the PRIIP and the national currency of the investor targeted by the PRIIP manufacturer, even though this risk is not intrinsic to the PRIIP itself, but relates to the typical situation of the targeted investor?

<ESMA_QUESTION_PRIIPS_12>

The risk indicator for CFD is 7 by default; therefore not relevant for CFD.

<ESMA_QUESTION_PRIIPS_12>

Question 13

Are you of the opinion that the current Consultation Paper sufficiently addresses this issue? Do you it is made sufficiently clear that the value of a PRIIP could be significantly less compared to the guaranteed value during the life of the PRIIP? Several alternatives are analysed in the Impact Assessment under policy option 5: do you see any additional analysis for these assessment?

<ESMA_QUESTION_PRIIPS_13>

Not applicable for CFD as stated in the introduction,

- a) a CFD is a linear product with a constant risk profile
- b) CFD do not have a maturity; except some CFD on Future underlyings

<ESMA_QUESTION_PRIIPS_13>

Question 14

Do you agree to use the performance fee, as prescribed in the cost section, as a basis for the calculations in the performance section (i.e. calculate the return of the benchmark for the moderate scenario in such a way that the return generates the performance fee as prescribed in the cost section)? Do you agree the same benchmark return should be used for calculating performance fees for the unfavourable and favourable scenarios, or would you propose another approach, for instance automatically setting the performance fees to zero for the unfavourable scenario? Please justify your proposal.

<ESMA_QUESTION_PRIIPS_14>
Not applicable for CFD.
<ESMA_QUESTION_PRIIPS_14>

Question 15

Given the number of tables displayed in the KID and the to a degree mixed consumer testing results on whether presentation of performance scenarios as a table or a graph would be most effective, do you think a presentation of the performance scenarios in the form of a graph should be preferred, or both a table and a graph?

<ESMA_QUESTION_PRIIPS_15>
In our view the performance scenarios should be displayed in tables; this will give a clearer overview - especially in case the performance is shown in percentage movements of the underlying and monetary movements of the CFD.
<ESMA_QUESTION_PRIIPS_15>

Question 16

Do you agree with the scope of the assets mentioned in paragraph 25 of Annex VI on transaction costs for which this methodology is prescribed? If not, what alternative scope would you recommend?

<ESMA_QUESTION_PRIIPS_16>
We do not agree as CFD are missing.
<ESMA_QUESTION_PRIIPS_16>

Question 17

Do you agree with the values of the figures included in this table? If not, which values would you suggest? (please note that this table could as well be included in guidelines, to allow for more flexibility in the revision of the figures)

<ESMA_QUESTION_PRIIPS_17>
We disagree in this point. As mentioned in the introduction the cost categories for CFD are Spread, Commission and Overnight-Financing. We would like to express the costs not in Bps but in a monetary amount.
<ESMA_QUESTION_PRIIPS_17>

Question 18

Do you agree that the monetary values indicated in the first table are a sum of costs over the respective holding periods? Or should the values reflect annualized amounts? If you prefer annualized amounts, which method for annualisation should be used (e.g. arithmetic average or methods that consider discounting effects)?

<ESMA_QUESTION_PRIIPS_18>

We do not agree with the presentation of costs in the first table as outlined in Q18 and the introduction. Cost categories should be spread, commission and ON-costs for CFD. Displaying annualized costs or costs after 1, 3 and 5 years is not applicable for CFDs. CFDs are mostly traded intra-day - see also introduction above.

<ESMA_QUESTION_PRIIPS_18>

Question 19

Do you think that estimating the fair value of biometric risk premiums as stated in paragraph 55(b) of Annex VI would raise any technical or practical difficulties?

<ESMA_QUESTION_PRIIPS_19>

Not applicable to CFD.

<ESMA_QUESTION_PRIIPS_19>

Question 20

Knowing that the cost element of the biometric risk premium is included in the total costs calculation, how do you think the investor might be most efficiently informed about the other part of the biometric risk premium (i.e. the fair value), and/or the size of biometric risk premium overall? Do you consider it useful to include the fair value in a separate line in the first table, potentially below the RIY? Or should information on the fair value be disclosed in another part of the KID (for instance, the "What is this product?" section, where the draft RTS currently disclose biometric risk premiums in total, and/or in the performance section)? What accompanying narrative text do you think is needed, and where should this be placed, including specifically narrative text in the cost section?

<ESMA_QUESTION_PRIIPS_20>

Not applicable to CFD.

<ESMA_QUESTION_PRIIPS_20>

Question 21

Given evidence as to the difficulties consumers may have using percentage figures, would you prefer an alternative presentation of the second table, solely using monetary values instead? As with the first table, please also explain what difficulties you think might arise from calculating monetary values, and whether this should be on an annualized basis, and if so, how?

<ESMA_QUESTION_PRIIPS_21>

See answer 18.

<ESMA_QUESTION_PRIIPS_21>

Question 22

Given the number of tables shown in the KID, do you think a more graphic presentation of the breakout table should be preferred?

<ESMA_QUESTION_PRIIPS_22>

We believe retail clients will get a clearer picture from showing the information in tables.

<ESMA_QUESTION_PRIIPS_22>

Question 23

The example presented above includes a possible way of showing the variability of performance fees, by showing the level for all three performance scenarios in the KID, highlighting the 'moderate' scenario, which would be used for the calculation of the total costs. Do you believe that this additional information should be included in the KID?

<ESMA_QUESTION_PRIIPS_23>

Not applicable to CFD.

<ESMA_QUESTION_PRIIPS_23>

Question 24

To reduce the volume of information, should the first and the second table of Annex VII be combined in one table? Should this be supplemented with a breakdown of costs as suggested in the graphic above?

<ESMA_QUESTION_PRIIPS_24>

Yes, we support a representation in one table since for CFDs the cost categories are fixed and should be expressed as a monetary amount only.

<ESMA_QUESTION_PRIIPS_24>

Question 25

In relation to paragraph 68 a) of Annex VI: Shall the RTS specify that for structured products calculations for the cost free scenario have always to be based on an adjustment of the payments by the investor?

<ESMA_QUESTION_PRIIPS_25>

As mentioned in the Introduction CFD will not show a % yield per year. CFD are linear products and they mirror the performance of the underlying. Costs shall be expressed as a monetary amount.

<ESMA_QUESTION_PRIIPS_25>

Question 26

Regarding the first table of the cost section presented in Annex VII, would you favour a detailed presentation of the different types of costs, as suggested in the Annex, including a split between one-off, recurring and incidental costs? Alternatively, would you favour a shorter presentation of costs showing only the total costs and the RIY?



<ESMA_QUESTION_PRIIPS_26>

We believe the most transparent way of cost display is necessary for CFD. Please see answer 17 where we highlighted to show the “only” costs of CFD (spread, commission and ON-financing) separately.

<ESMA_QUESTION_PRIIPS_26>

Question 27

Regarding the second table of the cost section presented in Annex VII, would you favour a presentation of the different types of costs showing RIY figures, as suggested in the Annex, or would you favour a presentation of costs under which each type of costs line would be expressed differently, and not as a RIY figure - expressed as a percentage of the initial invested amount, NAV, etc.?

<ESMA_QUESTION_PRIIPS_27>

As stated before and in the Introduction we would not like to show a Yield for CFD but inform about the costs per contract and the profit and loss as a monetary amount for certain percentage moves.

<ESMA_QUESTION_PRIIPS_27>

Question 28

Do you have any comments on the problem definition provided in the Impact Assessment?

Are the policy issues that have been highlighted, in your view, the correct ones? If not, what issues would you highlight?

Do you have any views on the identified benefits and costs associated with each policy option?

Is there data or evidence on the highlighted impacts that you believe needs to be taken into account?

Do you have any views on the possible impacts for providers of underlying investments for multi-option products, and in particular indirect impacts for manufacturers of underlying investments used by these products, including where these manufacturers benefit from the arrangements foreseen until the end of 2019 under Article 32 of the PRIIPs Regulation?

Are there significant impacts you are aware of that have not been addressed in the Impact Assessment? Please provide data on their scale and extent as far as possible.

<ESMA_QUESTION_PRIIPS_28>

We would like to add, that CFDs are not comparable to the target products for this regulation with all the information which is taken into account for a KID. CFDs are not structured products like UCITS funds, bonds combined with options or other derivatives and have underlyings, which are traded on exchanges.

The remaining question for any type of PRIIP would be what information we should insert if the information in question is not available, not relevant or not meaningful for the PRIIP. This should also be standardised. We would appreciate guidance for how to document this missing piece of information.

<ESMA_QUESTION_PRIIPS_28>

