European Securities and Markets Authority

Reply form for the Technical Discussion Paper on PRIIPs

23 June2015

European Securities and Markets Authority

Date: 23 June 2015

Responding to this paper

EBA, EIOPA and ESMA (the ESAs) welcome comments on this Technical Discussion Paper on Risk, Performance Scenarios and Cost Disclosures in Key Information Documents for Packaged Retail and Insurance-based Investment Products (PRIIPs).

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 so as to allow them to be processed more efficiently. Therefore, the ESAs 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 the ESAs should consider

Naming protocol

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

ESA_TDP_PRIIPs_NAMEOFCOMPANY_NAMEOFDOCUMENT.

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

ESA_TDP_PRIIPs_XXXX_REPLYFORM or

ESA_TDP_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 **17 August 2015.**

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 close of the consultation, unless you request otherwise. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with the ESAs' rules on public access to documents.[1] We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Board of Appeal of the ESAs and the European Ombudsman.

Data protection

Information on data protection can be found on the different ESAs' websites under the heading 'Legal notice'.

[1] See https://eiopa.europa.eu/about-eiopa/legal-framework/public-access-to-documents/index.html.

General information about respondent

Name of the company / organisation	bsi Bundesverband Sachwerte und Investmentvermögen e.V. (Real Asset Investment Association)
Activity	Investment Services
Are you representing an association?	☒
Country/Region	Germany

Introduction

Please make your introductory comments below, if any:

< ESMA_COMMENT_PRIIPs_1>

bsi Bundesverband Sachwerte und Investmentvermögen (Real Asset Investment Association) represents the German industry of real assets investments. Our members are asset managers, depositaries, accountants, lawyers, tax advisers and valuators. Our asset managers are manufactures of collective investment undertakings as Alternative Investment Funds. The invested capital stems from both professional and retail investors. The funds invest in real assets as e.g. real estate, aviation, infrastructure, renewable energy projects. bsi consists of 70 members in total with assets under management of more than 160 billion euros.

bsi welcomes the ESA's approach to achieve a high level of comparability between each PRIIPs-KIDs. However, in order to reach this goal, we encourage the ESA's to take into account the wide range of products and their specific characteristics.

Our members set up closed-ended Alternative Investment Funds (AIFs) investing in real assets. These funds do have relatively short public offering periods of about 6 to 18 months and a fixed maturity of about 10 to 15 years. Within the management period the funds generate revenues which are distributed to the investors. They receive annual payments and a closing payment at the end of the funds period. A fundamental condition is no early exit for the investors. Through this and the fixed and long-term period of the funds, a meaningful prognosis of risks and losses, their probability of occurring, their impact of the performance plus the exact and total amount of costs can hardly be made for the whole lifetime of the fund in a meaningful and not misleading manner.

Since offering periods are both singular at the beginning and short the review of the KID should be limited to this period. It would mean disproportional expenses for the manufacturer to keep a KID up-to-date in case these funds are traded on a secondary market because such trading is based on the decision of a third party and not the manufacturer. We therefore support the ESAs approach to limiting the updating duty to the offering period as already highlighted in the ESA's prior Discussion as from November 2014 (Discussion Paper - Key Information Documents for Packaged Retail and Insurance-based Investment Products [PRIIPs], 17.11.2014), see page 9, last paragraph. An exception to this duty should be reasonable even more, since investors regulatory do not wish to step off the funds after the placement period. Today secondary markets in closed-ended funds in Germany show only limited trading volumes. In the lack of liquidity a transfer of the funds' shares or units is usually impossible. This might underpin that the investors' needs to keeping the KIDs up to date after the placement periods is very much limited.

< ESMA_COMMENT_PRIIPs_1>

1. Please state your preference on the general approach how a distribution of returns should be established for the risk indicator and performance scenarios' purposes. Include your considerations and caveats.

<ESMA_QUESTION_PRIIPs_1>
Any estimation of distributions of returns must be based on a sufficient database (e.g. historical data or certain parameters for stochastic modelling purposes).

Regarding closed-ended AIFs it is important to consider that these AIF are established newly for an investment in certain real assets therefore there is no or few historical data available for these certain assets and their management (e.g. rent, feed-in compensation for electricity in case of renewable assets).

Modelling approaches and forward simulations based on certain specific conditions would require great administrative efforts and need to be based on certain reliable parameters, which normally haven't been developed by today. To ease the process for the fund's manager, we would recommend the use of the approach listed under e): "Stochastic modelling based on parameters chosen by the manufacturer". This would allow a more flexible and less time consuming approach, since the forward simulation could be based on some specific data, already available in the fund's managers database (such as income, expenses or debt-ratio).
<ESMA_QUESTION_PRIIPs_1>

2. How should the regulatory technical standards define a model and the method of choosing the model parameters for the purposes of calculating a risk measure and determining performance under a variety of scenarios?

<ESMA_QUESTION_PRIIPs_2>

bsi encourages the ESA's to elaborate on a risk indicator that takes into account all products within the scope of the PRIIPs regime. In order to produce a meaningful risk indicator of closed-ended AIFs investing in real assets their specific risks should be taken into account by the evaluation of the proposed risk-groups in the discussion paper (market, credit and liquidity risks). The fundamental difference to other investment products which invest more likely in securities should be regarded carefully.

Closed-ended AIFs investing in real assets are long-term provide investments. Since there are no redemption rights, investors regularly hold their shares and units throughout the lifetime of the fund. Selling stakes on a secondary market is in principle possible but quite unusual, which show the limited trade volumes of these markets. Short-term changes in the real assets' markets do not have a similar effect on the funds as they have in other investment products such as in securities which depend on volatility of stock markets.

It remains unclear how the term credit risk should be considered in closed-ended AIFs investing in real assets since there is no credit grantor which could cause a default. Closed-ended AIFs face at best other risks e.g. loss of rent, particularly because the real asset itself is usually insured against losses e.g. damages.

The given definition of liquidity risk does not take adequately in account the nature of closed-ended AIF with no redemption rights. It is true that the investor cannot sell his shares or units freely, but is tied until the end of the fund's period. However the investor must be informed carefully about the lack of redemption rights before the execution of the investment decision. Therefore we doubt that the information about liquidity within the risk indicator is useful for investors in funds that do not deploy redemptions rights.

Finally, a summary risk indicator should lead to meaningful comparability through a simple assessment of existing data of the AIFM and the AIF. Additional and complex calculation would be burdensome more than ever because of the AIFM's duty in effect to employ an effective risk management system.

<ESMA_QUESTION_PRIIPs_2>

3. Please state your view on what benchmark should be used and why. Are there specific products or underlying investments for which a specific growth rate would be more or less applicable?

<ESMA_QUESTION_PRIIPs_3>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_PRIIPs_3>

4. What would be the most reasonable approach to specify the growth rates? Would any of these approaches not work for a specific type of product or underlying investment?

<ESMA_QUESTION_PRIIPs_4>
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<ESMA_QUESTION_PRIIPs_4>

5. Please state your view on what time frame or frames should the Risk Indicator and Performance Scenarios be based

<ESMA_QUESTION_PRIIPs_5>
Closed-ended AIFs investing in real assets are long-term investment products. During the fund's period the risk assessment in particular towards the market and the credit risks may vary. In remains unclear how these variations are taken into account within a risk indicator. After the end of the placement period investor are unable to access the fund. Therefore less severe rules should apply for these funds, since the comparability takes a back seat with regard to other investment products.
<ESMA_QUESTION_PRIIPs_5>

6. Do you have any views on these considerations on the assessment of credit risk, and in particular regarding the use of credit ratings?

<ESMA_QUESTION_PRIIPs_6>
Finding a sound and durable risk indicator for credit risks is a challenging task for manufactures of closed-ended AIFs investing in real assets. In contrast to other investment products there is default risk as it might be typical when funds invest in such as securities. When investing in real assets other risks may arise, e.g. the loss of rent in a real estate investment. If payments of rent fail to appear, payments towards the investors may be stopped. Therefore an assessment of the credit worthiness of the debtor is essential. Because of the long-term character of the funds a single rating at the beginning of the fund could hardly be valid for the whole lifetime of the fund, but needs be updated on a regular basis. On the other hand these updates avert the aim of producing a durable risk indicator for all kinds of PRIIPs. Besides, there are further risks which could not be measured on a quantitative basis and therefore should not be integrated in the measurement of credit risks (e.g. location and status of real asset).
<ESMA_QUESTION_PRIIPs_6>

7. Do you agree that liquidity issues should be reflected in the risk section, in addition to clarifications provided in other section of the KID?

<ESMA_QUESTION_PRIIPs_7>
We think that investors should be informed carefully within the KID about the long-term character of a closed-ended AIF investing in real assets and moreover that shares and units cannot be traded easily aside from selling it on a secondary market. The KID should indicate this clearly but without mentioning it in a multiple way.

<ESMA_QUESTION_PRIIPs_7>

8. Do you consider that qualitative measures such as the ones proposed are appropriate or that they need to be supplemented with some quantitative measure to some extent?

<ESMA_QUESTION_PRIIPs_8>
Since it is not easy to identify a meaningful summary risk indicator for closed-ended AIFs investing in real assets we are in favor of a combination of quantitative criteria (e.g. volatility) and qualitative criteria (credit rating, other standardized values).
<ESMA_QUESTION_PRIIPs_8>

9. Please state your views on the most appropriate criteria and risk levels´ definition in case this approach was selected.

<ESMA_QUESTION_PRIIPs_9>
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10. Please state your views on the required parameters and possible amendments to this indicator.

<ESMA_QUESTION_PRIIPs_10>
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<ESMA_QUESTION_PRIIPs_10>

11. Please state your views on the appropriate details to regulate this approach, should it be selected.

<ESMA_QUESTION_PRIIPs_11>
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<ESMA_QUESTION_PRIIPs_11>

12. Please state your views on the general principles of this approach, should it be selected. How would you like to see the risk measure and parameters, why?

<ESMA_QUESTION_PRIIPs_12>
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<ESMA_QUESTION_PRIIPs_12>

13. Please state your views on the potential use of a two-level indicator. What kind of differentiators should be set both for the first level and the second level of such an indicator?

<ESMA_QUESTION_PRIIPs_13>
We find it very useful to develop a summary risk indicator on the basis of different particular indicators, because this approach leads to a higher validity of the indicator. Finding a sufficient risk assessment through for closed-ended AIFs investing in real assets on the basis of only one risk indicator would not be satisfactory and even contradict the comparability to other investment products.
<ESMA_QUESTION_PRIIPs_13>

14. Do you have suggestions or concrete proposals on which risk scale to use and where or how the cut-off points should be determined?

<ESMA_QUESTION_PRIIPs_14>
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<ESMA_QUESTION_PRIIPs_14>

15. Please express your views on the assessment described above and the relative relevance of the different criteria that may be considered.

<ESMA_QUESTION_PRIIPs_15>
Since 2013 closed-ended AIFs investing in real assets are subject to the duties of the *Regulation No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website* (so-called KID Regulation) and the *CESR-Guidelines „Selection and presentation of performance scenarios in the Key Investor Information document (KII) for structured UCITS"* which both apply mutatis mutandis in German law. Retail closed-ended AIFs investing in real assets have made predominantly positive experiences with the hypothetical scenario approach. A change to the probalistic approach would lead to material burden of costs which would also be irritating for investors – at least within the transition period.

The probalistic approach appears to be unsuitable for long-term investment products as closed-ended AIFs investing in real assets. The longer the duration of the funds the less precise is the validity and the probability of occurrence of forecast values.

We encourage the ESAs to leave it to the manufactures which performance criteria should be taken into account within the hypothetic scenario approach as opposed to predetermine criteria. Because of the variety and heterogeneity of closed-ended AIFs investing in real assets manufactures should assess and choose themselves what parameters are necessary in order to achieve a meaningful presentation of the performance. As an example: If the fund comprises cross-currency risks a performance scenario should indicate these risks, although a strict obligation would not make sense for funds without cross-currency risks.
<ESMA_QUESTION_PRIIPs_15>

16. Do you think that these principles are sufficient to avoid the risks of manufacturers presenting a non-realistic performance picture of the product? Do you think that they should be reinforced?

<ESMA_QUESTION_PRIIPs_16>
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<ESMA_QUESTION_PRIIPs_16>

17. Do you think the options presented would represent appropriate performance scenarios? What other standardized scenarios may be fixed?

<ESMA_QUESTION_PRIIPs_17>
For closed-ended AIFs investing in real assets only alternative b) would come to mind, because funds are typically set up new what makes it impossible to asses historical data.
<ESMA_QUESTION_PRIIPs_17>

18. Which percentiles do you think should be set?

<ESMA_QUESTION_PRIIPs_18>
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<ESMA_QUESTION_PRIIPs_18>

19. Do you have any views on possible combinations?

<ESMA_QUESTION_PRIIPs_19>
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<ESMA_QUESTION_PRIIPs_19>

20. Do you think that credit events should be considered in the performance scenarios?

<ESMA_QUESTION_PRIIPs_20>
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<ESMA_QUESTION_PRIIPs_20>

21. Do you think that such redemption events should be considered in the performance scenarios?

<ESMA_QUESTION_PRIIPs_21>
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<ESMA_QUESTION_PRIIPs_21>

22. Do you think that performance in the case of exit before the recommended holding period should be shown? Do you think that fair value should be the figure shown in the case of structured products, other bonds or AIFs? Do you see any other methodological issues in computing performance in several holding periods?

<ESMA_QUESTION_PRIIPs_22>
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<ESMA_QUESTION_PRIIPs_22>

23. Are the two types of entry costs listed here clear enough? Should the list be further detailed or completed (notably in the case of acquisition costs)? Should some of these costs included in the on-going charges?

<ESMA_QUESTION_PRIIPs_23>
bsi welcomes the ESAs approach to clearly differentiate between the types of costs ("entry-exit costs" and on-going charges"). This idea meets the different costs that incur on the different levels of the AIF.

Since the German implementation of the AIFMD in 2013 through the German Capital Investment Code (Kapitalanlagegesetzbuch – KAGB) closed-ended AIFs investing in real assets are obliged to show their costs in a key information document set up in accordance with the Regulation No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website (so-called KID Regulation) which applies mutatis mutandis in German law. Already today hands-on experiences from asset managers in closed-ended AIFs investing in real assets deliver a number of questions and difficulties when applying these rules which were mainly designed for open-ended funds investing in securities. As opposed to UCITS and open-ended AIFs investing in real assets, closed-ended AIFs investing in real assets are entirely set-up newly in order to invest money in a specific investment project, thus there is no historical data available from the past. The placement of units or shares usually takes place through a singular offering period. After this the AIF will be closed. After this units or shares can neither be issued nor redeemed again. Placement periods usually vary between 6-18 months. By this AIFMs look about only a relatively short placement period, anyway a full financial year as a point of orientation does not exist. Consequently the presentation of costs will always depend on estimation – at least in the beginning of the offering and therefore at the time when a PRIIPs KID has to be produced.

Furthermore closed-ended AIFs investing in real assets do not grant redemption rights during the funds period, which usually amounts about 10-15 years, since the assets are predominantly illiquid (e.g. real estate, renewable energy, aviation, Private Equity, shipping). With regard to the investment strategies, there are mainly three models in the market:

- AIFs where the asset is already determined at the beginning of the placement period and is also already being managed
- AIFs where the investments are made in line with the investment strategy of the AIF, but after the capital is collected
- AIFs where already one or more asset/s is/are determined and additional investments could be made afterwards.

As the case may be, the level of difficulties how to forecast the cost of the investment varies. For us, it is essential that none of the models explained should be treated preferentially only for conceptual reasons or because there is no information about the costs of the investment available. On the other hand one shall not expect the impossible. Estimating costs of an investment with a typical long-term character of a closed-ended AIF in real assets would hardly be legitimate.

Facing this double bind, we ask the ESAs to take into account the following:

1. We consider the differentiation of “up front initial costs” and “acquisition costs” as not precise enough since overlaps of both terms could occur. An investor in closed-ended AIFs investing in real assets regularly pays a so-called agio, which is a surcharge to the amount invested in the AIF. With this the marketing company is paid for the placement of the equity – within the TDP, it could be understood as a “distribution fee”. We ask the ESAs for a clearer elaboration whether costs are once and directly by the investor or costs are charged on the level of the AIF.

2. The definitions given in the TDP appear to go beyond a “pure“ agio, since e.g. costs for a registration in the commercial register are included as it is stated in footnote 17. Already towards this registration some difficulties come to mind: Firstly these costs only arise for investors who directly invest in the AIF, but not for those who invest through a limited partner in trust (custodian). Furthermore the amount of costs is not fixed. Notary costs are dependent on the invested amount which is chosen though the investor himself. When creating the KID the AIFM does not know the particular amount of these costs. One could think about a description of a case model, but this might take more place in the KID than the already limited length of the KID might allow. We ask the ESAs to consider a reference to prospectus as sufficient in this matter.

3. If the “entry-costs” also include additional costs paid by the investor, we ask for further clarification. Here again it may be difficult how the AIFM should know and show these costs. Under German Capital Investment Code (KAGB) closed-ended AIF shall disclose any other costs paid by the investors. Based on experience the scope of this duty remains unclear: Are costs taken into account that do not incur at the issuance, but through holding the share or unit of the AIF (e.g. costs for foreign tax advice on the level of the investor in foreign funds, expenses for transferring the share or unit initiated by the investor [heritage, gift, trade on a secondary market], participation fees for shareholders’ meetings or shareholders’ decisions, costs based on corporate rights of inspection). We support further clarification and orientation possibly even through an exemplary list of costs involved. At least other costs paid by the investor without being linked to the issuance and depending on other circumstances should be clearly exempted.

Towards the “up-front initial costs” we ask the ESAs to take into account the specificity of closed-ended AIF. Initial costs consist of singular expenses and remuneration of the issuance (e.g. costs for the conception, the founding and marketing of the AIF). This includes set-up costs for the prospectus and for legal and tax advice which incur until the authorization for marketing of the AIF is granted. These costs are paid by the AIF and should be amortized within three years, depending on the concept and the duration of the AIF. The initial costs could be allocated – as current in other fund models – in the ongoing remuneration of

the AIFM or rather be a part of the trailer fee for the placement of equity as opposed to an up-front fee. Art. 10 and Annex II of the Regulation (EU No. 583/2010 contains no provision about unconditional singular costs. Initial costs are neither agio nor disagio directly paid by the investor nor costs that only incur under certain circumstances (e.g. transaction costs). Classifying these costs as ongoing costs to be paid by the AIF during the placement period is certainly unfair: key investor information should disclose a true statement about the cost burden of the investment for the investor. The section “ongoing costs” shall deliver an indication about the costs in the upcoming financial years. The validity of information is significantly weakened if initial costs are considered to be ongoing costs. German BaFin considers a presentation in table form as reasonable and recommends to disclose “up-front initial costs” as an independent cost item under the section: “singular costs before and after the investment”. However it is very complicated that other investment funds products allocate their initial cost in the ongoing costs. By way of comparability, it appears that closed-ended AIFs deploy high costs. The TDP elaborates this issue for structured products. We encourage the ESAs to find models that can help to disclose costs fairly and let closed-ended AIF come out of this structural disadvantage.
<ESMA_QUESTION_PRIIPs_23>

24. How should the list be completed? Do you think this list should explicitly mention carried interest in the case of private equity funds?

<ESMA_QUESTION_PRIIPs_24>
Let us put in front some general thoughts about ongoing costs: Closed-ended AIF regularly invest in real assets with high administrative effort. Alongside the costs for the management of the AIF, another and therefore additional cost position applies for the management and maintenance of the asset itself (e.g. real estate, solar park, wind park, ship etc.). When assessing the average costs it is highly significant what exact time is taken into account. Historical data concerning the assets is not available at the moment when the KID is designed. Thus estimation is indispensable. However, further guidance must ensure that there is no advantage or disadvantage for one of the types of closed-ended AIF mentioned above (please see answer to question 23). Considering costs, it should be irrelevant whether the assets are already determined or not. No model should appear favorable, because of a lesser degree of information by conceptual reasons. On the other hand one shall not expect the impossible. Estimating costs of an investment with a typical long-term character of a closed-ended AIF in real assets would hardly be legitimate. It is also problematic that many of the costs for management and maintenance are subject to further conditions. This leads to high uncertainty if and to which extent theses costs finally incur. To some extent these costs can be allocated with other positions. Last but not least it is difficult to estimate the costs depending on expenditure during the management of a closed-ended AIF.

Regarding the list, we understand that it gathers all relevant person and unit within the management of an AIF (External AIFM, management of the AIF, limited partner in trust, depositary). In our view, the so-called issuer of a placing guarantee should be mentioned as well. The guarantor of a placement guarantee is a service provider (oftentimes a financial institution) that commits to fill in if the amount of equity is not collected as planned. Therefore the guarantor receives a fee. Finally, the advisory body if the AIF could be included in the list.

If “carried interest” should be included in the list, further questions arise, especially if this covers carried interest on the level of the AIF or on the level the target funds. We think including “carried interests” in the list could lead to further mixture of cost recipients and types of costs. Are remunerations to be presented twice if the recipient of the carries interest is the investment advisor at the same time? If target funds are covered, we fear that it is impossible for the AIFM to gather the information needed from these target funds. AIFM are fully dependent on the target funds to deliver this data.
<ESMA_QUESTION_PRIIPs_24>

25. Should these fees be further specified?

<ESMA_QUESTION_PRIIPs_25>
In the end, we are quite indecisive. It sounds reasonable to specify the individual cost positions on order to widen comparability, because the product manufacturers can take a glance on costs which are notable.

Aspect of disfavor is the difficulty to assess each and every possible circumstance. Apparent completeness could in turn lead to even further distortion for the investor.

<ESMA_QUESTION_PRIIPs_25>

26. Should these fees be further specified? The "recovering fees" cover the following situation: when an investor receives income from foreign investments, the third-country government may heavily tax it. Investors may be entitled to reclaim the difference but they will still lose money in the recovering process (fee to be paid).

<ESMA_QUESTION_PRIIPs_26>
Closed-ended AIF also have to consider costs incurred by corporate law (e.g. costs for the commercial register), which are charged from both public and private bodies authorized to act in a public duty (e.g. Chamber of Industry and Commerce).
<ESMA_QUESTION_PRIIPs_26>

27. Should these fees be further specified? The "recovering fees" cover the following situation: when an investor receives income from foreign investments, the third-country government may heavily tax it. Investors may be entitled to reclaim the difference but they will still lose money in the recovering process (fee to be paid).

<ESMA_QUESTION_PRIIPs_27>
The fee should be further specified, because the occurrence in practice remains unclear for closed-ended AIFs investing in real assets.
<ESMA_QUESTION_PRIIPs_27>

28. This list is taken from the CESR guidelines on cost disclosure for UCITS. What is missing in the case of retail AIFs (real estate funds, private equity funds)?

<ESMA_QUESTION_PRIIPs_28>
The investment strategy contains information about any possible costs. There are expenses that go beyond the list in the TDP which we would like to highlight:

- Ongoing valuation of the assets (costs for the valuation at the time of the acquisition belong to transaction costs)
- Customary escrow costs in banking outside the regular depositary costs, including costs for the custody of foreign custodians (some escrow costs incur at financial institutes which are not identical to the depositary and therefore these costs are not covered by the depositary costs).
- Costs for bank and cash accounts and towards payments of the AIF
- Costs for the asset management (administration, maintenance, operating costs invoiced by third parties, where applicable environmental audits towards the maintenance of the real assets.
- Costs invoiced from third parties towards legal claims for and against the AIF
- Costs for the commission of a proxy to exercise voting rights where applicable by law
- Tax and duties to be paid by the AIF
- Expenses caused by costs induced through shareholder meetings and decisions

These costs are crucial as already explained above. All these costs depend on the actual expenses. They incur unregularly and can possibly be allocated with other positions. When designing a KID, there is no historical data at hand. Estimation varies significantly depending on the assessed timespan. If estimation is chosen, the timespan should be manageable (e.g. one year). However, this could also lead to distortion as mentioned above, depending on conditions where the assets are already determined or not. And even if all assets are already determined, an estimation of all costs cannot be fair if we deal with AIFs with a long-term investment character of usually more than 10 years. This is highly problematical and gets only worse when it comes to AIFs with a determined investment strategy, but without having already acquired the assets.

With regard to Private Equity funds, the AIFM is very much dependent on the information delivered by the target fund. Furthermore it should be irrelevant if the mandate for the advisory is given from the portfolio company to an external company or to the target fund partner itself.
<ESMA_QUESTION_PRIIPs_28>

29. Which are the specific issues in relation to this type of costs?

<ESMA_QUESTION_PRIIPs_29>
Closed-ended AIF invest in real assets usually by deploying debt. Under German Capital Investment Code (KAGB) closed-ended AIF investing in real assets have to meet the duties for a limitation of leverage. Again it is important to ask, which timespan is assessed in order to estimate costs without leading to distortion and misinformation.
If assets are already determined the costs of the credit agreement can be adducted. However, it remains unclear if a follow-up finance is needed. This is highly problematical and gets only worse when it comes to AIFs with a determined investment strategy, but without having already acquired the assets.
<ESMA_QUESTION_PRIIPs_29>

30. Is it relevant to include this type of costs in the costs to be disclosed in the on-going charges? Which are the specific issues in relation to this type of costs? Which definition of Costs for capital guarantee or capital protection would you suggest? (Contribution for deposit insurance or cost of external guarantor?)

<ESMA_QUESTION_PRIIPs_30>
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31. Which are the specific issues in relation to this type of costs? Should the scope of these costs be narrowed to administrative costs in connection with investments in derivative instruments? In that respect, it could be argued that margin calls itself should not be considered as costs. The possible rationale behind this reasoning would be that margin calls may result in missed revenues, since no return is realized on the cash amount that is deposited, and that:

<ESMA_QUESTION_PRIIPs_31>
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32. Which are the specific issues in relation to this type of costs? Should this type of costs be further detailed/ defined?

<ESMA_QUESTION_PRIIPs_32>
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<ESMA_QUESTION_PRIIPs_32>

33. How to deal with the uncertainty if, how and when the dividend will be paid out to the investors? Do you agree that dividends can be measured ex-post and estimated ex-ante and that estimation of future dividends for main indices are normally available?

<ESMA_QUESTION_PRIIPs_33>
<ESMA_QUESTION_PRIIPs_33>

34. Is this description comprehensive?

<ESMA_QUESTION_PRIIPs_34>
Regarding closed-ended AIFs investing in real assets, the scope of the provisions towards the indirect transaction costs (bid-ask-spread and market impact) remains fully unclear.
<ESMA_QUESTION_PRIIPs_34>

35. Can you identify any difficulties with calculating and presenting explicit broker commissions? How can explicit broker commissions best be calculated ex-ante?

<ESMA_QUESTION_PRIIPs_35>
Additional costs for the transaction are depending on the individual transaction. The exact amount of the purchase is by nature unknown in advance, but is subject to further negotiation. A provision to present the amount as a percentage and not an absolute number would be helpful. Absolute numbers would only be presentable by using models, but models can again mislead the validity of the real costs that incur. Expenses beyond the actual remuneration can hardly be estimated for the different acquisitions at the time when the KID is designed.
<ESMA_QUESTION_PRIIPs_35>

36. How can the total of costs related to transaction taxes best be calculated? How should this be done to give the best estimate ex-ante? Are there other explicit costs relating to transactions that should be identified? Do you think that ticket fees (booking fees paid to custody banks that are billed separately from the annual custodian fee paid for depositing the securities) should be added to this list?

<ESMA_QUESTION_PRIIPs_36>
Acquiring real assets are oftentimes subject to tax duties, e.g. real estate transfer tax. We would like to draw the ESAs attention on the problem that there is no uniform tax rate, but moreover the location of the assets has a significant influence on this issue. Again if there is no asset acquired at the time when the KID is designed, there is no possible data for a fair estimation
<ESMA_QUESTION_PRIIPs_36>

37. As regards the abovementioned estimate, can the fair value approach be used?[2]

<ESMA_QUESTION_PRIIPs_37>
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<ESMA_QUESTION_PRIIPs_37>

38. Can you identify any other difficulties with calculating and presenting the bid-ask spread? Do you believe broker commissions included in the spread should be disclosed? If so, which of the above mentioned approaches do you think would be more suitable for ex-ante calculations or are there alternative methods not explored above?

<ESMA_QUESTION_PRIIPs_38>
TYPE YOUR TEXT HERE

[2] One could also argue that all fund managers either have their own dealing desk or sub-contract this to other dealing desks. Since the principle of Best Execution is paramount, the dealers should know the typical spread in the securities with which they deal.

<ESMA_QUESTION_PRIIPs_38>

39. Do you believe that market impact costs should be part of the costs presented under the PRIIPs regulation? If so, how can the market impact costs best be calculated? How should this be done to give the best estimate ex-ante?

<ESMA_QUESTION_PRIIPs_39>
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<ESMA_QUESTION_PRIIPs_39>

40. How should entry- and exit charges be calculated considering the different ways of charging these charges? How should this be done to give the best estimate ex-ante? Can you identify any other problems related to calculating and presenting entry- and exit fees?

<ESMA_QUESTION_PRIIPs_40>
<ESMA_QUESTION_PRIIPs_40>

41. Which other technical specifications would you suggest adding to the abovementioned methodology? Which other technical issues do you identify as regards the implementation of the methodology?

<ESMA_QUESTION_PRIIPs_41>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_PRIIPs_41>

42. Do you think that an explicit definition of performance fees should be included? Do you think the definition by IOSCO is relevant in the specific context of the cost disclosure of the PRIIPs Regulation?

<ESMA_QUESTION_PRIIPs_42>
We are indecisive on this issue. In principle a definition appears to be useful for a better understanding of performance fees. But, if a definition will be taken into the KID, it should be precise and meaningful. Alternatively a reference to the prospectus could be helpful.
<ESMA_QUESTION_PRIIPs_42>

43. What would be the appropriate assumption for the rate of returns, in general and in the specific case of the calculation of performance fees?

<ESMA_QUESTION_PRIIPs_43>
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<ESMA_QUESTION_PRIIPs_43>

44. Which option do you favor? Do you identify another possible approach to the disclosure and calculation of performance fees in the context of the KID?

<ESMA_QUESTION_PRIIPs_44>
We are in favour of a presentation of the performance-related remuneration as costs excluded from the total cost indicator.
<ESMA_QUESTION_PRIIPs_44>

45. Which of the above mentioned options 1 and 2 for the calculation of aggregate costs would you prefer? Do you agree with above mentioned assumptions on the specificities of the costs of life-insurance products? How should the breakdown of costs showing costs specific to the insurance cover be specified? Do you think that risk-type riders (e.g. term or disability or accident insurances) have to be disregarded in the calculation of the aggregated cost indicator? How shall risk-type rider be defined in this context? (one possible approach might be: A risk-type rider in this context is an additional insurance cover without a savings element, which has separate contractual terms and separate premiums and that the customer is not obliged to buy as a compulsory part of the product).

<ESMA_QUESTION_PRIIPs_45>
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<ESMA_QUESTION_PRIIPs_45>

46. Do you think this list is comprehensive? Should these different types of costs be further defined?

<ESMA_QUESTION_PRIIPs_46>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_PRIIPs_46>

47. Do you agree that guaranteed interest rate and surrender options should be handled in the above mentioned way? Do you know other contractual options, which have to be considered? If yes how?

<ESMA_QUESTION_PRIIPs_47>
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<ESMA_QUESTION_PRIIPs_47>

48. Should the methodology for the calculation of these costs be further specified?

<ESMA_QUESTION_PRIIPs_48>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_PRIIPs_48>

49. Do you think this list and breakdown is comprehensive?

<ESMA_QUESTION_PRIIPs_49>
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<ESMA_QUESTION_PRIIPs_49>

50. Should the methodology for the calculation of these costs be further specified? How?

<ESMA_QUESTION_PRIIPs_50>
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<ESMA_QUESTION_PRIIPs_50>

51. Should the methodology for the calculation of these costs be further specified? How?

<ESMA_QUESTION_PRIIPs_51>

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<ESMA_QUESTION_PRIIPs_51>

52. Should the methodology for the calculation of these costs be further specified?

<ESMA_QUESTION_PRIIPs_52>
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<ESMA_QUESTION_PRIIPs_52>

53. Should the methodology for the calculation of these costs be further specified? How? Do fund related costs also exist for with profit life insurance products?

<ESMA_QUESTION_PRIIPs_53>
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<ESMA_QUESTION_PRIIPs_53>

54. How to ensure that the look-through approach is consistent with what is applied in the case of funds of funds?

<ESMA_QUESTION_PRIIPs_54>
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<ESMA_QUESTION_PRIIPs_54>

55. Should the methodology for the calculation of these costs be further specified?

<ESMA_QUESTION_PRIIPs_55>
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<ESMA_QUESTION_PRIIPs_55>

56. Which above mentioned or further options do you support, and why? More generally, how to measure costs that are passed to policy holders via profit participation mechanisms? Would you say that they are known to the insurance company? Do you think an estimate based on the previous historical data is the most appropriate methodology for the calculation of these costs?

<ESMA_QUESTION_PRIIPs_56>
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<ESMA_QUESTION_PRIIPs_56>

57. Is this type of costs really specific to with-profit life-insurance products? Do you agree that these costs should be accounted for as on-going costs?

<ESMA_QUESTION_PRIIPs_57>
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<ESMA_QUESTION_PRIIPs_57>

58. Do you think the list of costs of life-insurance products presented above is comprehensive? Which types of costs should be added?

<ESMA_QUESTION_PRIIPs_58>
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<ESMA_QUESTION_PRIIPs_58>

59. To what extent are those two approaches similar and should lead to the same results?

<ESMA_QUESTION_PRIIPs_59>
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<ESMA_QUESTION_PRIIPs_59>

60. In comparison to structured products, do you see any specificity of costs of structured deposits? Do you think that the potential external guarantees of structured deposits might just have to be taken into account in the estimation of the fair value of these products?

<ESMA_QUESTION_PRIIPs_60>
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<ESMA_QUESTION_PRIIPs_60>

61. Do you agree with the above mentioned list of entry costs? Which of these costs are embedded in the price? Should we differentiate between "delta 1" and "option based" structured products? In which cases do you think that some of these costs might not be known to the manufacturer? Which of these types of costs should be further defined?

<ESMA_QUESTION_PRIIPs_61>
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<ESMA_QUESTION_PRIIPs_61>

62. To what extent do you think these types of costs should be further defined and detailed?

<ESMA_QUESTION_PRIIPs_62>
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<ESMA_QUESTION_PRIIPs_62>

63. How would you estimate ex ante the spread referred to above in (b), in the case the product is listed as in the case it is not? Should maximum spreads, when available, be considered? Should the term "proportional fees" be further defined? Which definition would you suggest?

<ESMA_QUESTION_PRIIPs_63>
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<ESMA_QUESTION_PRIIPs_63>

64. Do you agree with the list of costs outlined above? Which types of costs would require more precise definitions? To what extent should the methodology be prescriptive in the definition and calculation methodologies of the different types of costs?

<ESMA_QUESTION_PRIIPs_64>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_PRIIPs_64>

65. Would you include other cost components?

<ESMA_QUESTION_PRIIPs_65>
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<ESMA_QUESTION_PRIIPs_65>

66. Under which hypothesis should the costs of the underlying be included?

<ESMA_QUESTION_PRIIPs_66>
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<ESMA_QUESTION_PRIIPs_66>

67. How would you deal with the issue of the amortization of the entry costs during the life of the product? For derivatives it will be notably important to define what the invested capital is, in order to calculate percentages. The possibilities include: the amount paid (i.e. option premium price or initial margin/collateral) or the exposure (to be defined for optional derivatives). Do you see other possible approaches on this specific point?

<ESMA_QUESTION_PRIIPs_67>
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<ESMA_QUESTION_PRIIPs_67>

68. Do you think that there are products with ongoing hedging costs (to ensure that the manufacturer is able to replicate the performance of the derivative component of the structured product)?

<ESMA_QUESTION_PRIIPs_68>
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<ESMA_QUESTION_PRIIPs_68>

69. Do you agree with the general framework outlined above?

<ESMA_QUESTION_PRIIPs_69>
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<ESMA_QUESTION_PRIIPs_69>

70. Which criteria should be chosen to update the values in the KID when input data change significantly?

<ESMA_QUESTION_PRIIPs_70>
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<ESMA_QUESTION_PRIIPs_70>

71. As the evolution of underlying asset/s should be taken into account, are there specific issues to be tackled with in relation to specific types of underlying? To what extent should the RTS be prescriptive on the risk premium?

<ESMA_QUESTION_PRIIPs_71>
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<ESMA_QUESTION_PRIIPs_71>

72. Are you aware of any other assumptions to be set?

<ESMA_QUESTION_PRIIPs_72>
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<ESMA_QUESTION_PRIIPs_72>

73. Having in mind that most of the applied models in banking are forward looking (e.g. using implied volatility instead of historical volatility) which are the pros and cons of backward looking approach and forward looking approach?

<ESMA_QUESTION_PRIIPs_73>
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<ESMA_QUESTION_PRIIPs_73>

74. Do you think that there are other risk free curves that could be considered?

<ESMA_QUESTION_PRIIPs_74>
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<ESMA_QUESTION_PRIIPs_74>

75. Do you think that there are other market data that could be used to determine the credit risk? Do you think that implied credit spreads from other issuer bonds (other than structured products) could be used?

<ESMA_QUESTION_PRIIPs_75>
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<ESMA_QUESTION_PRIIPs_75>

76. How would you determine the credit risk in the absence of market data and which are the criteria to identify the comparable?

<ESMA_QUESTION_PRIIPs_76>
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<ESMA_QUESTION_PRIIPs_76>

77. How would you include the counterparty risk in the valuation? Would you include specific models to include counterparty risk in valuation (CVA models)? How would you consider the counterparty risk for pure derivatives?

<ESMA_QUESTION_PRIIPs_77>
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<ESMA_QUESTION_PRIIPs_77>

78. In which circumstances do you think parameters cannot be computed/estimated using market data? What would you suggest to deal with this issue?

<ESMA_QUESTION_PRIIPs_78>
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<ESMA_QUESTION_PRIIPs_78>

79. Would it be meaningful to prescribe specific pricing models for structured products, derivatives and CFDs? If yes which are the pros and cons of parametric and non-parametric models?

<ESMA_QUESTION_PRIIPs_79>
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<ESMA_QUESTION_PRIIPs_79>

80. What should be the value of x? (in the case of UCITS, x=5, but the extent to which this is appropriate for other types of PRIIPs, notably life-insurance products, is unclear).

<ESMA_QUESTION_PRIIPs_80>
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<ESMA_QUESTION_PRIIPs_80>

81. Should this principle be further explained / detailed? Should the terms “rank pari passu” be adapted to fit the different types of PRIIPs?

<ESMA_QUESTION_PRIIPs_81>
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<ESMA_QUESTION_PRIIPs_81>

82. What should be the relevant figure for the initial invested amount to be taken into account for the calculation of cost figures? Should a higher initial investment amount be taken into account not to overestimate the impact of fixed costs? How should the situation of products with regular payments be taken into account for that specific purpose? (Would an invested amount of 1 000 euros per period of time be a relevant figure?)

<ESMA_QUESTION_PRIIPs_82>
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<ESMA_QUESTION_PRIIPs_82>

83. For some life-insurance products, the costs will differ on the age of the customer and other parameters. How to take into account this specific type of PRIIPs for the purpose of aggregating the costs? Should several KIDs for several ages be considered?

<ESMA_QUESTION_PRIIPs_83>
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<ESMA_QUESTION_PRIIPs_83>

84. Do you agree with the abovementioned considerations? Which difficulties do you identify in the annualisation of costs?

<ESMA_QUESTION_PRIIPs_84>
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<ESMA_QUESTION_PRIIPs_84>

85. Which other assumptions would be needed there? In the case of life-insurance products, to what extent should the amortization methodology related to the amortization methodology of the premium calculation? To what extent should the chosen holding period be related to the recommended holding period?

<ESMA_QUESTION_PRIIPs_85>
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<ESMA_QUESTION_PRIIPs_85>

86. This definition of the ratio is taken from the CESR guidelines on cost disclosure for UCITS. Is it appropriate also in the case of retail AIFs? Should it be amended? Another approach to calculate these costs is to calculate the ratio of the total of these amortized costs to the invested amount in the fund. However in that case the question remains as to how to aggregate this ratio with the on-going charges ratio. Another possible approach could be to use the ratio between the total amount of costs over the holding period and the average net investment (assumed during the whole period, in order to take into account future additional investments, partial withdrawals, payments (i.e. programmed investments or disinvestments)). Do you think this approach would be appropriate?

<ESMA_QUESTION_PRIIPs_86>
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<ESMA_QUESTION_PRIIPs_86>

87. What would be other options to define the TCR ratio in the case of life-insurance products? What about the case of regular payments or regular increasing? Which definition would you favour? How to ensure a level playing field and a common definition with the other types of PRIIPs in this regard? Another possible approach could be to use the ratio between the total amount of costs over the holding period and the average net investment (assumed during the whole period, in order to take into account future additional investments, partial withdrawals, payments (i.e. programmed investments or disinvestments)). Do you think this approach would be appropriate? To what extent do these possible calculation methodologies fit the case of insurance products with regular payments?

<ESMA_QUESTION_PRIIPs_87>
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<ESMA_QUESTION_PRIIPs_87>

88. What would be other options to define the TCR ratio in the case of structured products? Do you identify other specific issues in relation to the TCR if applied to structured products? Another possible approach could be to use the ratio between the total amount of costs over the holding period and the average net investment (assumed during the whole period, in order to take into account future additional investments, partial withdrawals, payments (i.e. programmed investments or disinvestments)). Do you think this approach would be appropriate? For derivatives, it might be the case that it is necessary to further define the concept of investment to be used as denominator of the ratio. Possibilities include the use of the actual sums paid and received

(i.e. initial margins, variation margins, collateral postings, various payoffs, etc.) or the use of the exposure (i.e. market value of the derivative underlying). Do you think these approaches would be appropriate?

<ESMA_QUESTION_PRIIPs_88>
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<ESMA_QUESTION_PRIIPs_88>

89. This definition of the ratio is taken from the CESR guidelines on cost disclosure for UCITS. Is it appropriate also in the case of retail AIFs? Should it be amended? Another possible approach could be to use the ratio between the total amount of costs over the holding period and the average net investment (assumed during the whole period, in order to take into account future additional investments, partial withdrawals, payments (i.e. programmed investments or disinvestments)). Do you think this approach would be appropriate?

<ESMA_QUESTION_PRIIPs_89>
Closed-ended AIF investing in real assets are usually set-up completely new. Since there is no historical data a prognosis for the future relies on estimation especially towards the two indefinite variable costs and assessment basis. The beginning of the closed-ended AIF is however not even the most valid period towards these parameters. Explaining these in the KID therefore appears critical.

Also for Private Equity funds a meaningful estimation can hardly be made, especially because of the variability of the equity investment and irregular cash-flow. Ex-ante estimation will certainly be false.
<ESMA_QUESTION_PRIIPs_89>

90. These different aforementioned principles are taken from the CESR guidelines on cost disclosure for UCITS. Is it also appropriate in the PRIIPs context?

<ESMA_QUESTION_PRIIPs_90>
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<ESMA_QUESTION_PRIIPs_90>

91. To what extent do the principles and methodologies presented for funds in the case of on-going charges apply to life-insurance products?

<ESMA_QUESTION_PRIIPs_91>
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<ESMA_QUESTION_PRIIPs_91>

***92.* Do you think this methodology should be further detailed? To what extent do you think this methodology is appropriate and feasible (notably in terms of calibration of the model)? It might indeed be considered that valuation models for Solvency II usually are not likely to be designed for per contract calculations. Life insurers may restrict the calculation of technical provisions in the Solvency II-Balance-Sheet to homogenous risk groups. Furthermore they are allowed to use simplified calculation methods if the error is immaterial at the portfolio level. As profit sharing mechanisms in many countries are applied on the company level and not on a per contract level, projected cash flows from future discretionary benefits will not easily be broken down on a per product or even a per contract basis with the existing Solvency II-Valuation-Models.**

<ESMA_QUESTION_PRIIPs_92>
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<ESMA_QUESTION_PRIIPs_92>

93. Do you identify any specific issue in relation to the implementation of the RIY approach to funds?

<ESMA_QUESTION_PRIIPs_93>
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<ESMA_QUESTION_PRIIPs_93>

94. In addition to the abovementioned issues and the issues raised in relation to TCR when applied to structured products, do you identify any other specific issue in relation to the implementation of the RIY approach to structured products?

<ESMA_QUESTION_PRIIPs_94>
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<ESMA_QUESTION_PRIIPs_94>

95. Do you agree with the above-mentioned assessment? Should the calculation basis for returns be the net investment amount (i.e. costs deducted)? Do you identify specific issues in relation to the calculation per se of the cumulative effect of costs?

<ESMA_QUESTION_PRIIPs_95>
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<ESMA_QUESTION_PRIIPs_95>

96. Is this the structure of a typical transaction? What costs impact the return available to purchasers of the product?

<ESMA_QUESTION_PRIIPs_96>
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<ESMA_QUESTION_PRIIPs_96>

97. What costs impact the return paid on the products?

<ESMA_QUESTION_PRIIPs_97>
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<ESMA_QUESTION_PRIIPs_97>

98. What are the potential difficulties in calculating costs of an SPV investment using a TCR approach?

<ESMA_QUESTION_PRIIPs_98>
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<ESMA_QUESTION_PRIIPs_98>

99. What are the potential difficulties in calculating costs of an SPV investment using a RIY approach?

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