

Retail Disclosure Consultation
Financial Services
HM Treasury
1 Horse Guards Road
SW1A 2HQ

By email: retail.disclosure@hmtreasury.gov.uk

3 March 2023

Dear Retail Disclosure Consultation Team

Re: BVCA response to HM Treasury's PRIIPs and UK Retail Disclosure Consultation

The BVCA is the industry body and public policy advocate for the private equity and venture capital (PE/VC) industry in the UK. With a membership of over 700 firms, we represent the vast majority of all UK-based PE/VC firms, as well as their professional advisers and investors. Between 2017 and 2021, BVCA members invested over £57bn into around 3,900 UK businesses, in sectors across the UK economy ranging from heavy infrastructure to emerging technology. Companies backed by private equity and venture capital currently employ over two million people in the UK and 90% of the businesses our members invest in are small and medium-sized businesses.

We welcome the proposal to repeal the PRIIPs disclosure regime. We have repeatedly raised concerns that the disclosures mandated by PRIIPs are unhelpful to investors and at worst the methodology required by PRIIPs legislation may result in misleading disclosures.

We have responded only to the consultation questions on which our members have specific views.

Q1: Do you agree with the description of the various problems with the PRIIPs Regulation as stated above? Are there any other aspects of the regulation that you would like to raise as the government moves beyond PRIIPs into a new retail disclosure regime?

We agree with HMT's description of the problems with the PRIIPs Regulation in paragraphs 2.1 to 2.24 of the consultation paper. In particular, we support HMT's emphasis on the need for firms to be given flexibility to communicate effectively with their clients. Ultimately, the provision of information about investments should simplify rather than complicate the investment process for clients. As such, giving firms the flexibility to focus on communicating the information about their investments to clients in a clear manner is more important than having a standardised document, such as the Key Information Document (KID), which allows for comparison.

Q2: Do you agree with the principles set out in paragraph 3.2? If not, please explain.

We agree with the principles set out in paragraph 3.2. However, we suggest clarifying the scope of 'retail' for the purpose of these principles. In particular, we are concerned that there may be investors for whom alternative fund products are appropriate but who narrowly do not meet the test for being a MiFID professional client (but could be opted up to an elective professional client in respect of non-MiFID business).

MiFID professional client definition

This clarification of scope is needed because the MiFID elective professional client tests are calibrated for investment services provided in relation to liquid assets, such as listed and regularly traded shares. Because they were designed with liquid assets in mind, the tests are extremely difficult to satisfy by individuals who invest in illiquid products like PE/VC funds, regardless of their wealth, sophistication, or experience. Even the largest institutional investors make relatively few investments in PE/VC funds each

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year, so retail investors will rarely, if ever, meet the quantity test, and relevant experience in business, e.g. as entrepreneurs, is overlooked by the qualitative test, which only recognises financial services.

As a result, our members often find that sophisticated and high-net-worth investors, certain family offices, entrepreneurs, academic endowments, executives, and directors must be treated as retail investors, despite meeting or surpassing the level of experience and expertise of institutional investors in this context. There are wide implications of falling under the current regime, including the requirement to produce a PRIIPs KID for investors who do not meet the MiFID professional client definition.

We would urge HMT and the FCA not to use the MiFID professional client concept when defining 'retail' for the purposes of these principles, but instead apply a broader concept reflecting the long-standing UK domestic approach.

Co-investment arrangements

In PE/VC, institutional and professional investors will typically insist that senior executives of the fund manager invest in the funds whose portfolio company investments the firm is responsible for selecting, executing and supporting over three to seven year holding periods. This is a long-standing practice that helps to ensure there is long-term alignment of interest between the fund's portfolio companies, the firm's investment team and investors in the fund (colloquially known as "skin in the game"). These arrangements are often achieved through co-investment vehicles. Under the PRIIPs regime, there was a risk that co-investment by the firm and its affiliates required firms to produce a PRIIPs KID, imposing unnecessary administrative cost and burdens on firms to produce retail disclosures, effectively for their own consumption.

Co-investment arrangements in these circumstances are only open to members of the firm and its affiliates, whose roles in relation to the fund mean that they are sufficiently knowledgeable and experienced to understand the investment proposition. These arrangements are not made widely available to retail investors; however, the PRIIPs rules effectively mean that a firm can be required to prepare retail disclosures 'for itself'. In policymaker acknowledgement that this outcome would be nonsensical, we received informal guidance from the European Commission that a PRIIPs KID is not required to be produced by firms in these circumstances. We strongly recommend that HMT and the FCA make this clear in the rules when designing a new retail disclosure regime. This is needed to reflect the commercial reality of these arrangements and ensure the UK regime is not unduly burdensome on PE/VC firms.

Please also note that the European Commission's proposal to revise the ELTIF framework, a European investment vehicle designed for long-term investments, provided a similar exemption for executives involved in the management of ELTIFs. It said that suitability assessments would not be required where the retail investor is a member of senior staff, portfolio manager, director, officer, agent or employee of the manager or of an affiliate of the manager and has sufficient knowledge about the fund concerned. We strongly recommend a similar approach is taken for the requirement to produce retail disclosures under a new UK regime.

Q3: Do you agree that retail disclosure should aim to ensure that an investor is empowered to make well-informed decisions related to the product that they are purchasing, rather than focusing on comparability? If not, please explain.

We agree. Please see our response to Q1 above.

Q4: Do you agree that disclosure requirements should be flexible, with prescriptive requirements for format and structure only when deemed necessary by the FCA? If not, please explain.

We agree in principle, but suggest that HMT sets out a perimeter for the FCA to act within. Specifically, we suggest that HMT specifies the circumstances in which more prescriptive requirements should apply.

For instance, HMT might wish to specify that the prescriptive requirements for retail disclosure only apply to the most complex investment products or where products are being mass-marketed to retail investors.

We strongly believe that the new disclosure requirements should not apply to co-investment arrangements (as described in our response to Q2) or where the relevant investors have marketing exemptions, such as those for high net worth individuals and sophisticated investors. These criteria could be linked to the marketing provisions in the Financial Services and Markets Act 2000.

Q5: Are you content with the decision to resolve the UCITS interaction through empowering the FCA to determine a future retail disclosure regime, as discussed above?

We are content with this approach in principle.

Q6: Do you agree that there is no need to maintain any PRIIPs-related retail disclosure elements in legislation? If not, please explain.

We note your concerns in the consultation paper about ensuring there is no gap between the abolition of PRIIPs and the coming into force of its replacement. Provided the transition is orderly and enough time is given to make the transition, we do not anticipate this being an issue, especially since we already have the existing PRIIPs grandfathering legislation.

We suggest giving firms a cut-off date by which any new products have to satisfy the requirements of the new disclosure regime. In the meantime, we suggest providing for a transitional period during which firms can choose whether to stop or to continue producing KIDs.

Q7: Upon revocation of the PRIIPs Regulation, do you agree with the government's view that the FCA will not require any new additional powers to deliver a retail disclosure regime in line with the objectives stated in Chapter Three? If not, please explain.

We agree with this view in principle.

Q9: Do you have any views on digital disclosure, and in particular to what degree do you think a less prescriptive disclosure regime will facilitate innovative disclosure formats going forward?

We welcome the idea of digital disclosure, subject to firms being granted a sufficient degree of flexibility.

Q10: Do you have views on other priorities for retail disclosure reform that the government and FCA should consider in future? Similarly, are there other challenges or trends in retail disclosure that regulators and policymakers should consider?

We consider that the government and FCA should focus on a flexible approach that puts the onus on firms to determine the level of disclosure that is appropriate to their clients and/or investors based on general principles, rather than seeking to be prescriptive. A prescriptive approach risks the same challenges that have arisen in relation to PRIIPs.

Please do not hesitate to get in touch if you have any questions or if you would like to discuss any of the above in more detail (please contact Tom Taylor ttaylor@bvca.co.uk / Nick Chipperfield nchipperfield@bvca.co.uk).

Yours faithfully,



Tim Lewis, Chair, BVCA Regulatory Committee